

INSIGHTS

Supreme Court Rules Against Freezing "Untainted" Assets

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In a ruling that could have far-reaching implications for criminal defendants' right to counsel of their choice, the Supreme Court decided on March 30, 2016 that the government cannot freeze "untainted" assets that are not related to any alleged wrongdoing. Reaching this conclusion, the Court overturned an Eleventh Circuit decision affirming an order freezing a defendant's assets that, while not obtained as a result of, or traceable to, the criminal conduct alleged, represented property of "equivalent value" to the illegal proceeds.

Writing for the majority in [*Luis v. United States*, 578 U.S. ____ \(2016\)](#), Justice Breyer, joined by Justice Roberts, Ginsburg and Sotomayor, drew a bright constitutional line, rooted in principles of property law, between tainted and untainted assets. The Court stated that the latter "belongs to the defendant, pure and simple. In this respect, it differs from a robber's loot, a drug seller's cocaine, a burglar's tools, or other property associated with the planning, implementation, or concealing of a crime." Weighing these property rights, together with the "fundamental character" of a criminal defendant's Sixth Amendment right to counsel, against the government's stated interests, the Court reasoned that "in our view, insofar as innocent (*i.e.*, untainted) funds are needed to obtain counsel of choice, we believe that the Sixth Amendment prohibits the court order that the Government seeks."

The Court found further support for its decision in the fact that, absent the ability to use untainted funds to secure counsel, "[t]hese defendants, rendered indigent, would fall back upon publicly paid counsel, including overworked and underpaid public defenders" and that "increasing the government-paid-defender workload [would] render less effective the basic right the Sixth Amendment seeks to protect."

The majority's opinion also sought to address the concerns of the dissenting justices that, given the fungible nature of money, "sometimes it will be difficult to say whether a particular bank account contains tainted or untainted funds." Justice Breyer noted that "the law has tracing rules that help courts implement the kind of distinction we require in this case."

Notably, while the petitioner's assets in *Luis* had been frozen under a statute applying to violations of health care laws," *see* 18 U.S.C. § 1345(a), the same statute also applies to a wide range of white collar crimes, including bank theft and bribery, as well as money laundering.

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