

## Syllabus

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**SUPREME COURT OF THE UNITED STATES**

## Syllabus

LUIS *v.* UNITED STATESCERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR  
THE ELEVENTH CIRCUIT

No. 14–419. Argued November 10, 2015—Decided March 30, 2016

A federal statute provides that a court may freeze before trial certain assets belonging to a defendant accused of violations of federal health care or banking laws. Those assets include (1) property “obtained as a result of” the crime, (2) property “traceable” to the crime, and (3), as relevant here, other “property of equivalent value.” 18 U. S. C. §1345(a)(2). The Government has charged petitioner Luis with fraudulently obtaining nearly \$45 million through crimes related to health care. In order to preserve the \$2 million remaining in Luis’ possession for payment of restitution and other criminal penalties, the Government secured a pretrial order prohibiting Luis from dissipating her assets, including assets unrelated to her alleged crimes. Though the District Court recognized that the order might prevent Luis from obtaining counsel of her choice, it held that the Sixth Amendment did not give her the right to use her own untainted funds for that purpose. The Eleventh Circuit affirmed.

*Held:* The judgment is vacated, and the case is remanded.

564 Fed. Appx. 493, vacated and remanded.

JUSTICE BREYER, joined by THE CHIEF JUSTICE, JUSTICE GINSBURG, and JUSTICE SOTOMAYOR, concluded that the pretrial restraint of legitimate, untainted assets needed to retain counsel of choice violates the Sixth Amendment. The nature and importance of the constitutional right taken together with the nature of the assets lead to this conclusion. Pp. 3–16.

(a) The Sixth Amendment right to counsel grants a defendant “a fair opportunity to secure counsel of his own choice,” *Powell v. Alabama*, 287 U. S. 45, 53, that he “can afford to hire,” *Caplin & Drysdale, Chartered v. United States*, 491 U. S. 617, 624. This Court has

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consistently referred to the right to counsel of choice as “fundamental.” Pp. 3–5.

(b) While the Government does not deny Luis’ fundamental right to be represented by a qualified attorney whom she chooses and can afford to hire, it would nonetheless undermine the value of that right by taking from Luis the ability to use funds she needs to pay for her chosen attorney. The Government attempts to justify this consequence by pointing out that there are important interests on the other side of the legal equation. It wishes to guarantee that funds will be available later to help pay for statutory penalties and restitution, for example. The Government further argues that two previous cases from this Court, *Caplin & Drysdale*, *supra*, at 619, and *United States v. Monsanto*, 491 U. S. 600, 615, support the issuance of a restraining order in this case. However, the nature of the assets at issue here differs from the assets at issue in those earlier cases. And that distinction makes a difference. Pp. 5–16.

(1) Here, the property is untainted, *i.e.*, it belongs to Luis. As described in *Caplin & Drysdale* and *Monsanto*, the Government may well be able to freeze before trial “tainted” assets—*e.g.*, loot, contraband, or property otherwise associated with the planning, implementing, or concealing of a crime. As a matter of property law, the defendant’s ownership interest in such property is imperfect. For example, a different federal statute provides that title to property used to commit a crime (or otherwise “traceable” to a crime) passes to the Government at the instant the crime is planned or committed. See 21 U. S. C. §853(c). But here, the Government seeks to impose restrictions upon Luis’ untainted property without any showing of any equivalent governmental interest in that property. Pp. 5–10.

(2) This distinction does not by itself answer the constitutional question because the law of property may allow a person without a present interest in a piece of property to impose restrictions upon a current owner, say, to prevent waste. However, insofar as innocent funds are needed to obtain counsel of choice, the Sixth Amendment prohibits the court order sought here.

Three basic considerations lead to this conclusion. First, the nature of the competing interests argues against this kind of court order. On the one side is a fundamental Sixth Amendment right to assistance of counsel. On the other side is the Government’s interest in securing its punishment of choice, as well as the victim’s interest in securing restitution. These latter interests are important, but—compared to the right to counsel—they seem to lie somewhat further from the heart of a fair, effective criminal justice system. Second, relevant, common-law legal tradition offers virtually no significant support for the Government’s position and in fact argues to the con-

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trary. Indeed, there appears to be no decision of this Court authorizing unfettered, pretrial forfeiture of the defendant’s own “innocent” property. Third, as a practical matter, accepting the Government’s position could erode the right to counsel considerably. It would, in fact, unleash a principle of constitutional law with no obvious stopping place, as Congress could write more statutes authorizing restraints in other cases involving illegal behavior that come with steep financial consequences. These defendants, often rendered indigent, would fall back upon publicly paid counsel, including overworked and underpaid public defenders. The upshot is a substantial risk that accepting the Government’s views would render less effective the basic right the Sixth Amendment seeks to protect. Pp. 11–15.

(3) The constitutional line between a criminal defendant’s tainted funds and innocent funds needed to pay for counsel should prove workable. Money may be fungible, but courts, which use tracing rules in cases of, *e.g.*, fraud and pension rights, have experience separating tainted assets from untainted assets, just as they have experience determining how much money is needed to cover the costs of a lawyer. Pp. 15–16.

JUSTICE THOMAS concluded that the rule that a pretrial freeze of untainted assets violates a defendant’s Sixth Amendment right to counsel of choice rests strictly on the Sixth Amendment’s text and common-law backdrop. Pp. 1–12.

(a) The Sixth Amendment abolished the common-law rule that generally prohibited representation in felony cases. “The right to select counsel of one’s choice” is thus “the root meaning” of the Sixth Amendment right to counsel. *United States v. Gonzalez-Lopez*, 548 U. S. 140, 147–148. Constitutional rights protect the necessary prerequisites for their exercise. As a result, the Sixth Amendment denies the Government unchecked power to freeze a defendant’s assets before trial simply to secure potential forfeiture upon conviction. Unless the right to counsel protects the right to use lawfully owned property to pay for an attorney, the right to counsel—originally understood to protect only the right to hire counsel of choice—would be meaningless. Without pretrial protection for at least *some* of a defendant’s assets, the Government could nullify the right to counsel of choice, eviscerating the Sixth Amendment’s original meaning and purpose. The modern, judicially created right to government-appointed counsel does not obviate these concerns. Pp. 1–5.

(b) History confirms this textual understanding. The common-law forfeiture tradition provides an administrable rule for the Sixth Amendment’s protection: A criminal defendant’s untainted assets are protected from government interference before trial and judgment, but his tainted assets may be seized before trial as contraband or

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through a separate *in rem* proceeding. Reading the Sixth Amendment to track the historical line between tainted and untainted assets avoids case-by-case adjudication and ensures that the original meaning of the right to counsel does real work. Here, the incursion of the pretrial asset freeze into untainted assets, for which there is no historical tradition, violates the Sixth Amendment. Pp. 5–9.

(c) This conclusion leaves no room for an atextual balancing analysis. Pp. 9–12.

BREYER, J., announced the judgment of the Court and delivered an opinion, in which ROBERTS, C. J., and GINSBURG and SOTOMAYOR, JJ., joined. THOMAS, J., filed an opinion concurring in the judgment. KENNEDY, J., filed a dissenting opinion, in which ALITO, J., joined. KAGAN, J., filed a dissenting opinion.

Opinion of BREYER, J.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

## SUPREME COURT OF THE UNITED STATES

No. 14–419

SILA LUIS, PETITIONER *v.* UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE ELEVENTH CIRCUIT

[March 30, 2016]

JUSTICE BREYER announced the judgment of the Court and delivered an opinion in which THE CHIEF JUSTICE, JUSTICE GINSBURG, and JUSTICE SOTOMAYOR join.

A federal statute provides that a court may freeze before trial certain assets belonging to a criminal defendant accused of violations of federal health care or banking laws. See 18 U. S. C. §1345. Those assets include: (1) property “obtained as a result of” the crime, (2) property “traceable” to the crime, and (3) other “property of equivalent value.” §1345(a)(2). In this case, the Government has obtained a court order that freezes assets belonging to the third category of property, namely, property that is untainted by the crime, and that belongs fully to the defendant. That order, the defendant says, prevents her from paying her lawyer. She claims that insofar as it does so, it violates her Sixth Amendment “right . . . to have the Assistance of Counsel for [her] defence.” We agree.

### I

In October 2012, a federal grand jury charged the petitioner, Sila Luis, with paying kickbacks, conspiring to commit fraud, and engaging in other crimes all related to health care. See §1349; §371; 42 U. S. C. §1320a–

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