

14-419 LUIS V. UNITED STATES

DECISION BELOW: 564 Fed.Appx. 493

LOWER COURT CASE NUMBER: 13-13719

QUESTION PRESENTED:

This case presents an opportunity for the Court to resolve a circuit split on a question of fundamental importance to the adversarial system of justice: whether the restraint of *untainted* assets needed to retain counsel of choice in a criminal case violates the Fifth and Sixth Amendments.

Last Term, this Court reaffirmed that *tainted* assets may be restrained pre-trial (and forfeited upon conviction), even when those assets are needed to retain counsel of choice. *Kaley v. United States*, ___ U.S. ___, 134 S. Ct. 1090, 1105 (2014); accord *United States v. Monsanto*, 491 U.S. 600, 616 (1989); *Caplin & Drysdale, Chtd. v. United States*, 491 U.S. 617, 631 (1989). In rejecting constitutional challenges to pretrial restraints under 21 U.S.C. § 853, it was significant to this Court that the restrained assets were tainted, *i.e.*, traceable to the alleged criminal conduct. See, *e.g.*, *Kaley*, 134 S. Ct. at 1095 (noting that "no one contests that the assets in question derive from, or were used in committing, the offenses"). Although the Solicitor General and three Justices appeared to agree that the restraint of untainted assets would pose constitutional problems, see *id.* at 1095 n.3; *id.* at 1108 & n.2 (Roberts, C.J., dissenting), the majority opinion in *Kaley* "[did] not opine on the matter." *Kaley*, 134 S. Ct. at 1095 n.3.

The Fourth Circuit has expressly held that "[w]hile *Caplin [& Drysdale, Chtd.]* made absolutely clear that there is no Sixth Amendment right for a defendant to obtain counsel using tainted funds, [a defendant] still possesses a qualified Sixth Amendment right to use wholly legitimate funds to hire the attorney of his choice." *United States v. Farmer*, 274 F.3d 800, 804 (4th Cir. 2001).

Addressing a pretrial restraint under 18 U.S.C. § 1345, the Eleventh Circuit in this case upheld a preliminary injunction that currently restrains all of petitioner's assets, including undisputedly untainted funds needed by her to engage private counsel in her criminal case. Ignoring the Fourth Circuit's holding in *Farmer* and the important and historical distinction between tainted and untainted assets, the Eleventh Circuit interpreted *Kaley*, *Monsanto* and *Caplin & Drysdale, Chtd.* to "foreclose" petitioner's constitutional challenge to the pretrial restraint of legitimate, untainted funds she needs to retain counsel of choice. *United States v. Luis*, No. 13-13719, 564 F. App'x. 493, 494 (11th Cir. 2014).

Given the conflict between the circuits on a constitutional issue significant to criminal defendants, the criminal defense bar and the administration of justice, this petition presents the following question for certiorari review:

Whether the pretrial restraint of a criminal defendant's legitimate, untainted assets (those not traceable to a criminal offense) needed to retain counsel of choice violates the Fifth and Sixth Amendments.