

has no Sixth Amendment right to spend another person's money for services rendered by an attorney, even if those funds are the only way that defendant will be able to retain the attorney of his choice."²⁹⁹ Because the statute vests title to the forfeitable assets in the United States at the time of the criminal act,³⁰⁰ the defendant has no right to give them to a "third party" even if the purpose is to exercise a constitutionally protected right.³⁰¹

Nevertheless, where the right to be assisted by counsel of one's choice is wrongly denied, a Sixth Amendment violation occurs regardless of whether the alternate counsel retained was effective, or whether the denial caused prejudice to the defendant.³⁰² Further, because such a denial is not a "trial error" (a constitutional error that occurs during presentation of a case to the jury), but a "structural defect" (a constitutional error that affects the framework of the trial),³⁰³ the Court had held that the decision is not subject to a "harmless error" analysis.³⁰⁴

Effective Assistance of Counsel.—"[T]he right to counsel is the right to the effective assistance of counsel."³⁰⁵ This right to effective assistance has two aspects. First, a court may not restrict defense counsel in the exercise of the representational duties and

cause, when we have held that . . . the Government may restrain persons where there is a finding of probable cause to believe that the accused has committed a serious offense"). A subsequent case found that where a grand jury had returned an indictment based on probable cause, the defendants did not have right to have such conclusion re-examined by a judge during a forfeiture proceeding. *Kaley v. United States*, 571 U.S. ___, No. 12-464, slip op. (2014).

²⁹⁹ 491 U.S. at 626.

³⁰⁰ The statute was interpreted in *United States v. Monsanto*, 491 U.S. 600 (1989), as requiring forfeiture of all assets derived from the covered offenses, and as making no exception for assets the defendant intends to use for his defense.

³⁰¹ Dissenting Justice Blackmun, joined by Justices Brennan, Marshall, and Stevens, described the Court's ruling as allowing the Sixth Amendment right to counsel of choice to be "outweighed by a legal fiction." 491 U.S. at 644 (dissenting from both *Caplin & Drysdale* and *Monsanto*).

³⁰² *United States v. Gonzalez-Lopez*, 548 U.S. 140, 144-45 (2006).

³⁰³ *Arizona v. Fulminante*, 499 U.S. 279, 307-310 (1991).

³⁰⁴ *Gonzalez-Lopez*, 548 U.S. at 148-49. The Court noted that an important component of the finding that denial of the right to choose one's own counsel was a "structural defect" was the difficulty of assessing the effect of such denial on a trial's outcome. *Id.* at 149 n.4.

³⁰⁵ *McMann v. Richardson*, 397 U.S. 759, 771 n.14 (1970). "[I]f the right to counsel guaranteed by the Constitution is to serve its purpose, defendants cannot be left to the mercies of incompetent counsel . . ." 397 U.S. at 771. As a corollary, there is no Sixth Amendment right to effective assistance where there is no Sixth Amendment right to counsel. *Wainwright v. Torna*, 455 U.S. 586 (1982) (summarily holding that defendant may not raise ineffective assistance claim in context of proceeding in which he had no constitutional right to counsel).