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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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UNITED STATES *v.* BAJAKAJIAN

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 96–1487. Argued November 4, 1997– Decided June 22, 1998

After customs inspectors found respondent and his family preparing to board an international flight carrying $357,144, he was charged with, *inter alia*, attempting to leave the United States without reporting, as required by 31 U. S. C. §5316(a)(1)(A), that he was transporting more than $10,000 in currency. The Government also sought forfeiture of the $357,144 under 18 U. S. C. §982(a)(1), which provides that a person convicted of willfully violating §5316 shall forfeit "any property . . . involved in such an offense." Respondent pleaded guilty to the failure to report and elected to have a bench trial on the forfeiture. The District Court found, among other things, that the entire $357,144 was subject to forfeiture because it was "involved in" the offense, that the funds were not connected to any other crime, and that respondent was transporting the money to repay a lawful debt. Concluding that full forfeiture would be grossly disproportional to the offense in question and would therefore violate the Excessive Fines Clause of the Eighth Amendment, the court ordered forfeiture of $15,000, in addition to three years' probation and the maximum fine of $5,000 under the Sentencing Guidelines. The Ninth Circuit affirmed, holding that a forfeiture must fulfill two conditions to satisfy the Clause: The property forfeited must be an "instrumentality" of the crime committed, and the property's value must be proportional to its owner's culpability. The court determined that respondent's currency was not an "instrumentality" of the crime of failure to report, which involves the withholding of information rather than the possession or transportation of money; that, therefore, §982(a)(1) could never satisfy the Clause in a currency forfeiture case; that it was unnecessary to apply the "proportionality" prong of the test; and that the Clause did not permit forfeiture of *any* of the unreported

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currency, but that the court lacked jurisdiction to set the $15,000 forfeiture aside because respondent had not cross-appealed to challenge it.

Held: Full forfeiture of respondent's $357,144 would violate the Excessive Fines Clause. Pp. 5–21.

(a) The forfeiture at issue is a "fine" within the meaning of the Clause, which provides that "excessive fines [shall not be] imposed." The Clause limits the Government's power to extract payments, whether in cash or in kind, as punishment for some offense. *Austin* v. *United States*, 509 U. S. 602, 609–610. Forfeitures––payments in kind––are thus "fines" if they constitute punishment for an offense. Section §982(a)(1) currency forfeitures do so. The statute directs a court to order forfeiture as an additional sanction when "imposing sentence on a person convicted of" a willful violation of §5316's reporting requirement. The forfeiture is thus imposed at the culmination of a criminal proceeding and requires conviction of an underlying felony, and it cannot be imposed upon an innocent owner of unreported currency. Cf. *id.*, at 619. The Court rejects the Government's argument that such forfeitures serve important remedial purposes– by deterring illicit movements of cash and giving the Government valuable information to investigate and detect criminal activities associated with that cash– because the asserted loss of information here would not be remedied by confiscation of respondent's $357,144. The Government's argument that the §982(a)(1) forfeiture is constitutional because it falls within a class of historic forfeitures of property tainted by crime is also rejected. In so arguing, the Government relies upon a series of cases involving traditional civil *in rem* forfeitures that are inapposite because such forfeitures were historically considered nonpunitive. See, e.g., *The Palmyra*, 12 Wheat. 1, 14–15. Section 982(a)(1) descends from a different historical tradition: that of *in personam*, criminal forfeitures. Similarly, the Court declines to accept the Government's contention that the forfeiture here is constitutional because it involves an "instrumentality" of respondent's crime. Because instrumentalities historically have been treated as a form of "guilty property" forfeitable in civil *in rem* proceedings, it is irrelevant whether respondent's currency is an instrumentality; the forfeiture is punitive, and the test for its excessiveness involves solely a proportionality determination. Pp. 5–11.

(b) A punitive forfeiture violates the Excessive Fines Clause if it is grossly disproportional to the gravity of the offense that it is designed to punish. Although the proportionality principle has always been the touchstone of the inquiry, see, *e.g.*, *Austin*, *supra*, at 622–623, the Clause's text and history provide little guidance as to how disproportional a forfeiture must be to be "excessive." Until today, the Court

has not articulated a governing standard. In deriving the standard, the Court finds two considerations particularly relevant. The first, previously emphasized in cases interpreting the Cruel and Unusual Punishments Clause, is that judgments about the appropriate punishment belong in the first instance to the legislature. See, *e.g., Solem* v. *Helm*, 463 U. S. 277, 290. The second is that any judicial determination regarding the gravity of a particular criminal offense will be inherently imprecise. Because both considerations counsel against requiring strict proportionality, the Court adopts the gross disproportionality standard articulated in, *e.g., id.*, at 288. Pp. 11–14.

(c) The forfeiture of respondent's entire $357,144 would be grossly disproportional to the gravity of his offense. His crime was solely a reporting offense. It was permissible to transport the currency out of the country so long as he reported it. And because §982(a)(1) orders currency forfeited for a "willful" reporting violation, the essence of the crime is a willful failure to report. Furthermore, the District Court found his violation to be unrelated to any other illegal activities. Whatever his other vices, respondent does not fit into the class of persons for whom the statute was principally designed: money launderers, drug traffickers, and tax evaders. And the maximum penalties that could have been imposed under the Sentencing Guidelines, a 6-month sentence and a $5,000 fine, confirm a minimal level of culpability and are dwarfed by the $357,144 forfeiture sought by the Government. The harm that respondent caused was also minimal. The failure to report affected only the Government, and in a relatively minor way. There was no fraud on the Government and no loss to the public fisc. Had his crime gone undetected, the Government would have been deprived only of the information that $357,144 had left the country. Thus, there is no articulable correlation between the $357,144 and any Government injury. Pp. 14–17.

(d) The Court rejects the contention that the proportionality of full forfeiture is demonstrated by the fact that the First Congress, at roughly the same time the Eighth Amendment was ratified, enacted statutes requiring full forfeiture of goods involved in customs offenses or the payment of monetary penalties proportioned to the goods' value. The early customs statutes do not support the Government's assertion because, unlike §982(a)(1), the type of forfeiture they imposed was not considered punishment for a criminal offense, but rather was civil *in rem* forfeiture, in which the Government proceeded against the "guilty" property itself. See, *e.g., Harford* v. *United States*, 8 Cranch 109. Similarly, the early statutes imposing monetary "forfeitures" proportioned to the value of the goods involved were considered not as punishment for an offense, but rather as serving the remedial purpose of reimbursing the Government for the

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losses accruing from evasion of customs duties. See, *e.g., Stockwell* v. *United States,* 13 Wall. 531, 546–547. Pp. 17–21.

84 F. 3d 334, affirmed.

THOMAS, J., delivered the opinion of the Court, in which STEVENS, SOUTER, GINSBURG, and BREYER, JJ., joined. KENNEDY, J., filed a dissenting opinion, in which REHNQUIST, C. J., and O'CONNOR and SCALIA, JJ., joined.