SUPREME COURT OF THE UNITED STATES

No. 96–1487

UNITED STATES, PETITIONER *v.*
HOSEP KRIKOR BAJAKAJIAN

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

[June 22, 1998]

JUSTICE THOMAS delivered the opinion of the Court.

Respondent Hosep Bajakajian attempted to leave the United States without reporting, as required by federal law, that he was transporting more than $10,000 in currency. Federal law also provides that a person convicted of willfully violating this reporting requirement shall forfeit to the government "any property . . . involved in such offense." 18 U. S. C. §982(a)(1). The question in this case is whether forfeiture of the entire $357,144 that respondent failed to declare would violate the Excessive Fines Clause of the Eighth Amendment. We hold that it would, because full forfeiture of respondent's currency would be grossly disproportional to the gravity of his offense.

I

On June 9, 1994, respondent, his wife, and his two daughters were waiting at Los Angeles International Airport to board a flight to Italy; their final destination was Cyprus. Using dogs trained to detect currency by its smell, customs inspectors discovered some $230,000 in cash in the Bajakajians' checked baggage. A customs in-

spector approached respondent and his wife and told them that they were required to report all money in excess of $10,000 in their possession or in their baggage. Respondent said that he had $8,000 and that his wife had another $7,000, but that the family had no additional currency to declare. A search of their carry-on bags, purse, and wallet revealed more cash; in all, customs inspectors found $357,144. The currency was seized and respondent was taken into custody.

A federal grand jury indicted respondent on three counts. Count One charged him with failing to report, as required by 31 U. S. C. §5316(a)(1)(A),[1] that he was transporting more than $10,000 outside the United States, and with doing so "willfully," in violation of §5322(a).[2] Count Two charged him with making a false material statement to the United States Customs Service, in violation of 18 U. S. C. §1001. Count Three sought forfeiture of the $357,144 pursuant to 18 U. S. C. §982(a)(1), which provides:

> "The court, in imposing sentence on a person convicted of an offense in violation of section . . . 5316, . . . shall order that the person forfeit to the United States any property, real or personal, involved in such offense, or any property traceable to such property." 18 U. S. C. §982(a)(1).

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[1] The statutory reporting requirement provides:

"[A] person or an agent or bailee of the person shall file a report . . . when the person, agent, or bailee knowingly––

"(1) transports, is about to transport, or has transported, monetary instruments of more than $10,000 at one time––

"(A) from a place in the United States to or through a place outside the United States . . . ." 31 U. S. C. §5316(a).

[2] Section 5322(a) provides: "A person willfully violating this subchapter . . . shall be fined not more than $250,000, or imprisoned for not more than five years, or both." §5322(a).

Respondent pleaded guilty to the failure to report in Count One; the Government agreed to dismiss the false statement charge in Count Two; and respondent elected to have a bench trial on the forfeiture in Count Three. After the bench trial, the District Court found that the entire $357,144 was subject to forfeiture because it was "involved in" the offense. *Ibid.* The court also found that the funds were not connected to any other crime and that respondent was transporting the money to repay a lawful debt. Tr. 61–62 (Jan. 19, 1995). The District Court further found that respondent had failed to report that he was taking the currency out of the United States because of fear stemming from "cultural differences": Respondent, who had grown up as a member of the Armenian minority in Syria, had a "distrust for the Government." *Id.*, at 63; see Tr. of Oral Arg. 30.

Although §982(a)(1) directs sentencing courts to impose full forfeiture, the District Court concluded that such forfeiture would be "extraordinarily harsh" and "grossly disproportionate to the offense in question," and that it would therefore violate the Excessive Fines Clause. Tr. 63. The court instead ordered forfeiture of $15,000, in addition to a sentence of three years of probation and a fine of $5,000––the maximum fine under the Sentencing Guidelines––because the court believed that the maximum Guidelines fine was "too little" and that a $15,000 forfeiture would "make up for what I think a reasonable fine should be." *Ibid.*

The United States appealed, seeking full forfeiture of respondent's currency as provided in §982(a)(1). The Court of Appeals for the Ninth Circuit affirmed. 84 F. 3d 334 (1996). Applying Circuit precedent, the Court held that, to satisfy the Excessive Fines Clause, a forfeiture must fulfill two conditions: The property forfeited must be an "instrumentality" of the crime committed, and the value of the property must be proportional to the culpabil-

ity of the owner. *Id.*, at 336 (citing *United States* v. *Real Property Located in El Dorado County*, 59 F. 3d 974, 982 (CA9 1995)). A majority of the panel determined that the currency was not an "instrumentality" of the crime of failure to report because "[t]he crime [in a currency reporting offense] is the withholding of information, . . . not the possession or the transportation of the money.'" 84 F. 3d, at 337 (quoting *United States* v. *$69,292 in United States Currency*, 62 F. 3d 1161, 1167 (CA9 1995)). The majority therefore held that §982(a)(1) could never satisfy the Excessive Fines Clause in cases involving forfeitures of currency and that it was unnecessary to apply the "proportionality" prong of the test. Although the panel majority concluded that the Excessive Fines Clause did not permit forfeiture of *any* of the unreported currency, it held that it lacked jurisdiction to set the $15,000 forfeiture aside because respondent had not cross-appealed to challenge that forfeiture. 84 F. 3d, at 338.

Judge Wallace concurred in the result. He viewed respondent's currency as an instrumentality of the crime because "without the currency, there can be no offense," *id.*, at 339, and he criticized the majority for "strik[ing] down a portion of" the statute, *id.*, at 338. He nonetheless agreed that full forfeiture would violate the Excessive Fines Clause in respondent's case, based upon the "proportionality" prong of the Ninth Circuit test. Finding no clear error in the District Court's factual findings, he concluded that the reduced forfeiture of $15,000 was proportional to respondent's culpability. *Id.*, at 339–340.

Because the Court of Appeals' holding––that the forfeiture ordered by §982(a)(1) was *per se* unconstitutional in cases of currency forfeiture––invalidated a portion of an act of Congress, we granted certiorari. 520 U. S. ___ (1997).

II

The Eighth Amendment provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U. S. Const., Amdt. 8. This Court has had little occasion to interpret, and has never actually applied, the Excessive Fines Clause. We have, however, explained that at the time the Constitution was adopted, "the word 'fine' was understood to mean a payment to a sovereign as punishment for some offense." *Browning-Ferris Industries of Vt., Inc.* v. *Kelco Disposal, Inc.*, 492 U. S. 257, 265 (1989). The Excessive Fines Clause thus "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 (1993) (emphasis deleted). Forfeitures– payments in kind– are thus "fines" if they constitute punishment for an offense.

We have little trouble concluding that the forfeiture of currency ordered by §982(a)(1) constitutes punishment. 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, but only upon a person who has himself been convicted of a §5316 reporting violation.[3] Cf. *Austin* v. *United States*, *supra*, at 619 (holding

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[3] Although the currency reporting statute provides that "a person or an agent or bailee of the person shall file a report," 31 U. S. C. §5316(a), the statute ordering the criminal forfeiture of unreported currency provides that "[t]he court, in imposing sentence on a person convicted of" failure to file the required report, "shall order that the person forfeit to the United States" any property "involved in" or "traceable to" the offense, 18 U. S. C. §982(a)(1). The combined effect of these two stat-

forfeiture to be a "fine" in part because the forfeiture statute "expressly provide[d] an 'innocent owner' defense" and thus "look[ed] . . . like punishment").

The United States argues, however, that the forfeiture of currency under §982(a)(1) "also serves important remedial purposes." Brief for United States 20. The Government asserts that it has "an overriding sovereign interest in controlling what property leaves and enters the country." *Ibid.* It claims that full forfeiture of unreported currency supports that interest by serving to "dete[r] illicit movements of cash" and aiding in providing the Government with "valuable information to investigate and detect criminal activities associated with that cash." *Id.*, at 21. Deterrence, however, has traditionally been viewed as a goal of punishment, and forfeiture of the currency here does not serve the remedial purpose of compensating the Government for a loss. See Black's Law Dictionary 1293 (6th ed. 1990) ("[R]emedial action" is one "brought to obtain compensation or indemnity"); *One Lot Emerald Cut Stones* v. *United States*, 409 U. S. 232 (1972) *(per curiam)* (monetary penalty provides "a reasonable form of liquidated damages," *id.*, at 237, to the Government and is thus a "remedial" sanction because it compensates government for lost revenues). Although the Government has

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utes is that an owner of unreported currency is not subject to criminal forfeiture if his agent or bailee is the one who fails to file the required report, because such an owner could not be convicted of the reporting offense. The United States endorsed this interpretation at oral argument in this case. See Tr. of Oral Arg. 24–25.

For this reason, the dissent's speculation about the effect of today's holding on "kingpins" and "cash couriers" is misplaced. See *post*, at 9, 11. Section 982(a)(1)'s criminal, *in personam* forfeiture reaches only currency owned by someone who himself commits a reporting crime. It is unlikely that the Government, in the course of criminally indicting and prosecuting a cash courier, would not bother to investigate the source and true ownership of unreported funds.

asserted a loss of information regarding the amount of currency leaving the country, that loss would not be remedied by the Government's confiscation of respondent's $357,144.[4]

The United States also argues that the forfeiture mandated by §982(a)(1) is constitutional because it falls within a class of historic forfeitures of property tainted by crime. See Brief for United States 16 (citing, *inter alia*, *The Palmyra*, 12 Wheat. 1, 13 (1827) (forfeiture of ship); *Dobbins's Distillery* v. *United States*, 96 U. S. 395, 400–401 (1878) (forfeiture of distillery)). In so doing, the Government relies upon a series of cases involving traditional civil *in rem* forfeitures that are inapposite because such forfeitures were historically considered nonpunitive.

The theory behind such forfeitures was the fiction that the action was directed against "guilty property," rather than against the offender himself.[5] See, *e.g.*, *Various Items of Personal Property* v. *United States*, 282 U. S. 577, 581 (1931) ("[I]t is the property which is proceeded against, and,

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[4] We do not suggest that merely because the forfeiture of respondent's currency in this case would not serve a remedial purpose, other forfeitures may be classified as nonpunitive (and thus not "fines") if they serve some remedial purpose as well as being punishment for an offense. Even if the Government were correct in claiming that the forfeiture of respondent's currency is remedial in some way, the forfeiture would still be punitive in part. (The Government concedes as much.) This is sufficient to bring the forfeiture within the purview of the Excessive Fines Clause. See *Austin* v. *United States*, 509 U. S. 602, 621–622 (1993).

[5] The "guilty property" theory behind *in rem* forfeiture can be traced to the Bible, which describes property being sacrificed to God as a means of atoning for an offense. See Exodus 21:28. In medieval Europe and at common law, this concept evolved into the law of deodand, in which offending property was condemned and confiscated by the church or the Crown in remediation for the harm it had caused. See 1 M. Hale, Pleas of the Crown 420–424 (1st Am. ed. 1847); 1 W. Blackstone, Commentaries on the Law of England 290–292 (1765); O. Holmes, The Common Law 10–13, 23–27 (M. Howe ed. 1963).

by resort to a legal fiction, held guilty and condemned as though it were conscious instead of inanimate and insentient"); see also R. Waples, Proceedings In Rem 13, 205–209 (1882). Historically, the conduct of the property owner was irrelevant; indeed, the owner of forfeited property could be entirely innocent of any crime. See, *e.g.*, *Origet* v. *United States*, 125 U. S. 240, 246 (1888) ("[T]he merchandise is to be forfeited irrespective of any criminal prosecution . . . The person punished for the offence may be an entirely different person from the owner of the merchandise, or any person interested in it. The forfeiture of the goods of the principal can form no part of the personal punishment of his agent"). As Justice Story explained:

> "The thing is here primarily considered as the offender, or rather the offence is attached primarily to the thing; and this, whether the offence be *malum prohibitum*, or *malum in se*. . . . [T]he practice has been, and so this Court understand the law to be, that the proceeding *in rem* stands independent of, and wholly unaffected by any criminal proceeding *in personam*." *The Palmyra*, 12 Wheat., at 14–15.

Traditional *in rem* forfeitures were thus not considered punishment against the individual for an offense. See *id.*, at 14; *Dobbins's Distillery* v. *United States*, *supra*, at 401; *Van Oster* v. *Kansas*, 272 U. S. 465, 467–468 (1926); *Calero-Toledo* v. *Pearson Yacht Leasing Co.*, 416 U. S. 663, 683–684 (1974); *Taylor* v. *United States*, 3 How. 197, 210 (1845) (opinion of Story, J.) (laws providing for *in rem* forfeiture of goods imported in violation of customs laws, although in one sense "imposing a penalty or forfeiture[,] . . . truly deserve to be called, remedial"); see also *United States* v. *Ursery*, 518 U. S. 267, 293 (1996) (KENNEDY, J., concurring) ("[C]ivil *in rem* forfeiture is not punishment of the wrongdoer for his criminal offense"). Because they were viewed as nonpunitive, such forfeitures traditionally

were considered to occupy a place outside the domain of the Excessive Fines Clause. Recognizing the nonpunitive character of such proceedings, we have held that the Double Jeopardy Clause does not bar the institution of a civil, *in rem* forfeiture action after the criminal conviction of the defendant. See *id.*, at 278.[6]

The forfeiture in this case does not bear any of the hallmarks of traditional civil *in rem* forfeitures. The Government has not proceeded against the currency itself, but has instead sought and obtained a criminal conviction of respondent personally. The forfeiture serves no remedial purpose, is designed to punish the offender, and cannot be imposed upon innocent owners.

Section 982(a)(1) thus descends not from historic *in rem* forfeitures of guilty property, but from a different historical tradition: that of *in personam*, criminal forfeitures. Such forfeitures have historically been treated as punitive, being part of the punishment imposed for felonies and treason in the Middle Ages and at common law. See W. McKechnie, Magna Carta 337–339 (2d ed. 1958); 2 F. Pollock & F. Maitland, The History of English Law 460–466 (2d ed. 1909). Although *in personam* criminal forfeitures were well established in England at the time of the Founding, they were rejected altogether in the laws of this

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[6] It does not follow, of course, that all modern civil *in rem* forfeitures are nonpunitive and thus beyond the coverage of the Excessive Fines Clause. Because some recent federal forfeiture laws have blurred the traditional distinction between civil *in rem* and criminal *in personam* forfeiture, we have held that a modern statutory forfeiture is a "fine" for Eighth Amendment purposes if it constitutes punishment even in part, regardless of whether the proceeding is styled *in rem* or *in personam*. See *Austin* v. *United States*, *supra*, at 621–622 (although labeled *in rem*, civil forfeiture of real property used "to facilitate" the commission of drug crimes was punitive in part and thus subject to review under the Excessive Fines Clause).

country until very recently.[7]

The Government specifically contends that the forfeiture of respondent's currency is constitutional because it involves an "instrumentality" of respondent's crime.[8] According to the Government, the unreported cash is an instrumentality because it "does not merely facilitate a violation of law," but is "'the very *sine qua non* of the crime.'" Brief for United States 20 (quoting *United States* v. *United States Currency in the Amount of One Hundred*

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[7] The First Congress explicitly rejected *in personam* forfeitures as punishments for federal crimes, see Act of Apr. 30, 1790, ch. 9, §24, 1 Stat. 117 ("[N]o conviction or judgment . . . shall work corruption of blood, or any forfeiture of estate"), and Congress reenacted this ban several times over the course of two centuries. See Rev. Stat. §5326 (1875); Act of Mar. 4, 1909, ch. 321, §341, 35 Stat. 1159; Act of June 25, 1948, ch. 645, §3563, 62 Stat. 837, codified at 18 U. S. C. §3563 (1982 ed.); repealed effective Nov. 1, 1987, Pub. L. 98–473, 98 Stat. 1987.

It was only in 1970 that Congress resurrected the English common law of punitive forfeiture to combat organized crime and major drug trafficking. See Organized Crime Control Act of 1970, 18 U. S. C. §1963, and Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U. S. C. §848(a). In providing for this mode of punishment, which had long been unused in this country, the Senate Judiciary Committee acknowledged that "criminal forfeiture . . . represents an innovative attempt to call on our common law heritage to meet an essentially modern problem." S. Rep. No. 91–617, p. 79 (1969). Indeed, it was not until 1992 that Congress provided for the criminal forfeiture of currency at issue here. See 18 U. S. C. §982(a).

[8] Although the term "instrumentality" is of recent vintage, see *Austin* v. *United States*, 509 U. S., at 627–628 (SCALIA, J., concurring in part and concurring in judgment), it fairly characterizes property that historically was subject to forfeiture because it was the actual means by which an offense was committed. See *infra*, at 11; see, *e.g., J. W. Goldsmith, Jr.-Grant Co.* v. *United States*, 254 U. S. 505, 508–510 (1921). "Instrumentality" forfeitures have historically been limited to the property actually used to commit an offense and no more. See *United* States v. *Austin, supra*, at 627–628 (SCALIA, J., concurring in part and concurring in judgment). A forfeiture that reaches beyond this strict historical limitation is *ipso facto* punitive and therefore subject to review under the Excessive Fines Clause.

Forty-Five Thousand, One Hundred Thirty-Nine Dollars, 18 F. 3d 73, 75 (CA2), cert. denied *sub nom. Etim* v. *United States*, 513 U. S. 815 (1994)). The Government reasons that "there would be no violation at all without the exportation (or attempted exportation) of the cash." Brief for United States 20.

Acceptance of the Government's argument would require us to expand the traditional understanding of instrumentality forfeitures. This we decline to do. Instrumentalities historically have been treated as a form of "guilty property" that can be forfeited in civil *in rem* proceedings. In this case, however, the Government has sought to punish respondent by proceeding against him criminally, *in personam*, rather than proceeding *in rem* against the currency. It is therefore irrelevant whether respondent's currency is an instrumentality; the forfeiture is punitive, and the test for the excessiveness of a punitive forfeiture involves solely a proportionality determination. See *infra*, at 11–14.[9]

III

Because the forfeiture of respondent's currency constitutes punishment and is thus a "fine" within the meaning of the Excessive Fines Clause, we now turn to the question of whether it is "excessive."

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[9] The currency in question is not an instrumentality in any event. The Court of Appeals reasoned that the existence of the currency as a "precondition" to the reporting requirement did not make it an "instrumentality" of the offense. See 84 F. 3d, at 337. We agree; the currency is merely the subject of the crime of failure to report. Cash in a suitcase does not facilitate the commission of that crime as, for example, an automobile facilitates the transportation of goods concealed to avoid taxes. See, *e.g., J. W. Goldsmith, Jr.-Grant Co.* v. *United States*, *supra*, at 508. In the latter instance, the property is the actual means by which the criminal act is committed. See Black's Law Dictionary 801 (6th ed. 1990) ("Instrumentality" is "[s]omething by which an end is achieved; a means, medium, agency").

A

The touchstone of the constitutional inquiry under the Excessive Fines Clause is the principle of proportionality: The amount of the forfeiture must bear some relationship to the gravity of the offense that it is designed to punish. See *Austin* v. *United States*, 509 U. S., at 622–623 (noting Court of Appeals' statement that "'the government is exacting too high a penalty in relation to the offense committed'"); *Alexander* v. *United States*, 509 U. S. 544, 559 (1993) ("It is in the light of the extensive criminal activities which petitioner apparently conducted . . . that the question whether the forfeiture was 'excessive' must be considered"). Until today, however, we have not articulated a standard for determining whether a punitive forfeiture is constitutionally excessive. We now hold that a punitive forfeiture violates the Excessive Fines Clause if it is grossly disproportional to the gravity of a defendant's offense.

The text and history of the Excessive Fines Clause demonstrate the centrality of proportionality to the excessiveness inquiry; nonetheless, they provide little guidance as to how disproportional a punitive forfeiture must be to the gravity of an offense in order to be "excessive." Excessive means surpassing the usual, the proper, or a normal measure of proportion. See 1 N. Webster, American Dictionary of the English Language (1828) (defining excessive as "beyond the common measure or proportion"); S. Johnson, A Dictionary of the English Language 680 (4th ed. 1773) ("[b]eyond the common proportion"). The constitutional question that we address, however, is just how proportional to a criminal offense a fine must be, and the text of the Excessive Fines Clause does not answer it.

Nor does its history. The Clause was little discussed in the First Congress and the debates over the ratification of the Bill of Rights. As we have previously noted, the Clause was taken verbatim from the English Bill of Rights of 1689.

See *Browning-Ferris Industries of Vt., Inc.* v. *Kelco Disposal, Inc.,* 492 U. S., at 266–267. That document's prohibition against excessive fines was a reaction to the abuses of the King's judges during the reigns of the Stuarts, *id.*, at 267, but the fines that those judges imposed were described contemporaneously only in the most general terms. See *Earl of Devonshire's Case,* 11 State Tr. 1367, 1372 (H. L. 1689) (fine of £30,000 "excessive and exorbitant, against Magna Charta, the common right of the subject, and the law of the land"). Similarly, Magna Charta––which the Stuart judges were accused of subverting––required only that amercements (the medieval predecessors of fines) should be proportioned to the offense and that they should not deprive a wrongdoer of his livelihood:

> "A Free-man shall not be amerced for a small fault, but after the manner of the fault; and for a great fault after the greatness thereof, saving to him his contenement; (2) and a Merchant likewise, saving to him his merchandise; (3) and any other's villain than ours shall be likewise amerced, saving his wainage." Magna Charta, 9 Hen. III, ch. 14 (1225), 1 Stat. at Large 6–7 (1762 ed.).

None of these sources suggests how disproportional to the gravity of an offense a fine must be in order to be deemed constitutionally excessive.

We must therefore rely on other considerations in deriving a constitutional excessiveness standard, and there are two that we find particularly relevant. The first, which we have emphasized in our cases interpreting the Cruel and Unusual Punishments Clause, is that judgments about the appropriate punishment for an offense belong in the first instance to the legislature. See, *e.g.*, *Solem* v. *Helm,* 463 U. S. 277, 290 (1983) ("Reviewing courts . . . should grant substantial deference to the broad authority that legislatures necessarily possess in deter-

mining the types and limits of punishments for crimes"); see also *Gore* v. *United States*, 357 U. S. 386, 393 (1958) ("Whatever views may be entertained regarding severity of punishment, . . . these are peculiarly questions of legislative policy"). The second is that any judicial determination regarding the gravity of a particular criminal offense will be inherently imprecise. Both of these principles counsel against requiring strict proportionality between the amount of a punitive forfeiture and the gravity of a criminal offense, and we therefore adopt the standard of gross disproportionality articulated in our Cruel and Unusual Punishments Clause precedents. See, *e.g.*, *Solem* v. *Helm*, *supra*, at 288; *Rummel* v. *Estelle*, 445 U. S. 263, 271 (1980).

In applying this standard, the district courts in the first instance, and the courts of appeals, reviewing the proportionality determination *de novo*,[10] must compare the amount of the forfeiture to the gravity of the defendant's offense. If the amount of the forfeiture is grossly disproportional to the gravity of the defendant's offense, it is unconstitutional.

B

Under this standard, the forfeiture of respondent's entire $357,144 would violate the Excessive Fines Clause.[11]

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[10] At oral argument, respondent urged that a district court's determination of excessiveness should be reviewed by an appellate court for abuse of discretion. See Tr. of Oral Arg. 32. We cannot accept this submission. The factual findings made by the district courts in conducting the excessiveness inquiry, of course, must be accepted unless clearly erroneous. See *Anderson* v. *Bessemer City*, 470 U. S. 564, 574–75 (1985). But the question of whether a fine is constitutionally excessive calls for the application of a constitutional standard to the facts of a particular case, and in this context *de novo* review of that question is appropriate. See *Ornelas* v. *United States*, 517 U. S. 690, 697 (1996).

[11] The only question before this Court is whether the full forfeiture of respondent's $357,144 as directed by §982(a)(1) is constitutional under the Excessive Fines Clause. We hold that it is not. The Government

Respondent's crime was solely a reporting offense. It was permissible to transport the currency out of the country so long as he reported it. Section 982(a)(1) orders currency to be forfeited for a "willful" violation of the reporting requirement. Thus, the essence of respondent's crime is a willful failure to report the removal of currency from the United States.[12] Furthermore, as the District Court

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petitioned for certiorari seeking full forfeiture, and we reject that request. Our holding that full forfeiture would be excessive reflects no judgment that "a forfeiture of even $15,001 would have suffered from a gross disproportion," nor does it "affir[m] the reduced $15,000 forfeiture on *de novo* review." *Post,* at 6. Those issues are simply not before us. Nor, indeed, do we address in *any* respect the validity of the forfeiture ordered by the District Court, including whether a court may disregard the terms of a statute that commands full forfeiture: As noted, *supra,* at 4, respondent did not cross-appeal the $15,000 forfeiture ordered by the District Court. The Court of Appeals thus declined to address the $15,000 forfeiture, and that question is not properly presented here either.

[12] Contrary to the dissent's contention, the nature of the nonreporting offense in this case was not altered by respondent's "lies" or by the "suspicious circumstances" surrounding his transportation of his currency." See *post,* at 9–10. A single willful failure to declare the currency constitutes the crime, the gravity of which is not exacerbated or mitigated by "fable[s]" that respondent told one month, or six months, later. See *post,* at 10. The Government indicted respondent under 18 U. S. C. §1001 for "lying," but that separate count did not form the basis of the nonreporting offense for which §982(a)(1) orders forfeiture.

Further, the District Court's finding that respondent's lies stemmed from a fear of the Government because of "cultural differences," *supra,* at 3, does not mitigate the gravity of his offense. We reject the dissent's contention that this finding was a "patronizing excuse" that "demeans millions of law-abiding American immigrants by suggesting they cannot be expected to be as truthful as every other citizen." *Post,* at 10. We are confident that the District Court concurred in the dissent's incontrovertible proposition that "[e]ach American, regardless of culture or ethnicity, is equal before the law." *Ibid.* The District Court did nothing whatsoever to imply that "cultural differences" excuse lying, but rather made this finding in the context of establishing that respondent's willful failure to report the currency was unrelated to any other

found, respondent's violation was unrelated to any other illegal activities. The money was the proceeds of legal activity and was to be used to repay a lawful debt. Whatever his other vices, respondent does not fit into the class of persons for whom the statute was principally designed: He is not a money launderer, a drug trafficker, or a tax evader.[13] See Brief for United States 2–3. And under the Sentencing Guidelines, the maximum sentence that could have been imposed on respondent was six months, while the maximum fine was $5,000. App. to Pet. for Cert. 17a (transcript of District Court sentencing hearing); United States Sentencing Commission, Guidelines Manual, §5(e)1.2, Sentencing Table (Nov. 1994). Such penalties confirm a minimal level of culpability.[14]

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crime––a finding highly relevant to the determination of the gravity of respondent's offense. The dissent's charge of ethnic paternalism on the part of the District Court finds no support in the record, nor is there any indication that the District Court's factual finding that respondent "distrust[ed] . . . the Government," see *supra*, at 3, was clearly erroneous.

[13] Nor, contrary to the dissent's repeated assertion, see *post*, at 1, 3, 4, 5, 6, 7, 8, 11, 12, and 13, is respondent a "smuggler." Respondent owed no customs duties to the Government, and it was perfectly legal for him to possess the $357,144 in cash and to remove it from the United States. His crime was simply failing to report the wholly legal act of transporting his currency.

[14] In considering an offense's gravity, the other penalties that the Legislature has authorized are certainly relevant evidence. Here, as the Government and the dissent stress, Congress authorized a maximum fine of $250,000 plus five years' imprisonment for willfully violating the statutory reporting requirement, and this suggests that it did not view the reporting offense as a trivial one. That the maximum fine and Guideline sentence to which respondent was subject were but a fraction of the penalties authorized, however, undercuts any argument based solely on the statute, because they show that respondent's culpability relative to other potential violators of the reporting provision––tax evaders, drug kingpins, or money launderers, for example––is small indeed. This disproportion is telling notwithstanding the fact that a separate Guideline provision permits forfeiture if mandated by statute,

The harm that respondent caused was also minimal. Failure to report his currency affected only one party, the Government, and in a relatively minor way. There was no fraud on the United States, and respondent caused 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. The Government and the dissent contend that there is a correlation between the amount forfeited and the harm that the Government would have suffered had the crime gone undetected. See Brief for United States 30 (forfeiture is "perfectly calibrated"); *post*, at 1 ("a fine calibrated with this accuracy"). We disagree. There is no inherent proportionality in such a forfeiture. It is impossible to conclude, for example, that the harm respondent caused is anywhere near 30 times greater than that caused by a hypothetical drug dealer who willfully fails to report taking $12,000 out of the country in order to purchase drugs.

Comparing the gravity of respondent's crime with the $357,144 forfeiture the Government seeks, we conclude that such a forfeiture would be grossly disproportional to the gravity of his offense.[15] It is larger than the $5,000 fine imposed by the District Court by many orders of magnitude, and it bears no articulable correlation to any injury suffered by the Government.

C

Finally, we must reject the contention that the proportionality of full forfeiture is demonstrated by the fact that the First Congress enacted statutes requiring full forfei-

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see *post*, at 8. That Guideline, moreover, cannot override the constitutional requirement of proportionality review.

[15] Respondent does not argue that his wealth or income are relevant to the proportionality determination or that full forfeiture would deprive him of his livelihood, see *supra*, at 13, and the District Court made no factual findings in this respect.

ture of goods involved in customs offenses or the payment of monetary penalties proportioned to the goods' value. It is argued that the enactment of these statutes at roughly the same time that the Eighth Amendment was ratified suggests that full forfeiture, in the customs context at least, is a proportional punishment. The early customs statutes, however, do not support such a conclusion because, unlike §982(a)(1), the type of forfeiture that they imposed was not considered punishment for a criminal offense.

Certain of the early customs statutes required the forfeiture of goods imported in violation of the customs laws, and, in some instances, the vessels carrying them as well. See, *e.g.*, Act of Aug. 4, 1790, §27, 1 Stat. 163 (goods unladen without a permit from the collector). These forfeitures, however, were civil *in rem* forfeitures, in which the Government proceeded against the property itself on the theory that it was guilty, not against a criminal defendant. See, *e.g.*, *Harford* v. *United States*, 8 Cranch 109 (1814) (goods unladen without a permit); *Locke* v. *United States*, 7 Cranch 339, 340 (1813) (same). Such forfeitures sought to vindicate the Government's underlying property right in customs duties, and like other traditional *in rem* forfeitures, they were not considered at the Founding to be punishment for an offense. See *supra*, at 8–9. They therefore indicate nothing about the proportionality of the punitive forfeiture at issue here. *Ibid.*[16]

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[16] The nonpunitive nature of these early forfeitures was not lost on the Department of Justice, in commenting on the punitive forfeiture provisions of the Organized Crime Control Act of 1970:

"The concept of forfeiture as a criminal penalty which is embodied in this provision differs from other presently existing forfeiture provisions under Federal statutes where the proceeding is *in rem* against the property and the thing which is declared unlawful under the statute, or which is used for an unlawful purpose, or in connection with the prohibited property or transaction, is considered the offender, *and the*

Other statutes, however, imposed monetary "forfeitures" proportioned to the value of the goods involved. See, *e.g.*, Act of July 31, 1789, §22, 1 Stat. 42 (if an importer, "with design to defraud the revenue," did not invoice his goods at their actual cost at the place of export, "all such goods, wares or merchandise, or the value thereof . . . shall be forfeited"); §25, *id.*, at 43 (any person concealing or purchasing goods, knowing they were liable to seizure for violation of the customs laws, was liable to "forfeit and pay a sum double the value of the goods so concealed or purchased"); see also Act of Aug. 4, 1790, §§ 10, 14, 22, *id.*, at 156, 158, 161. Similar statutes were passed in later Congresses. See, *e.g.*, Act of Mar. 2, 1799, §§ 24, 28, 45, 46, 66, 69, 79, 84, *id.*, at 646, 648, 661, 662, 677, 678, 687, 694; Act of Mar. 3, 1823, ch. 58, §1, 3 Stat. 781.

These "forfeitures" were similarly not considered punishments for criminal offenses. This Court so recognized in *Stockwell* v. *United States*, 13 Wall. 531 (1871), a case interpreting a statute that, like the Act of July 31, 1789, provided that a person who had concealed goods liable to seizure for customs violations should "forfeit and pay a sum double the amount or value of the goods." Act of Mar. 3, 1823, ch. 58, §2, 3 Stat. 781–782. The *Stockwell* Court rejected the defendant's contention that this provision was "penal," stating instead that it was "fully as remedial in its character, designed as plainly to secure [the] rights [of the Government], as are the statutes rendering importers liable to duties." 13 Wall., at 546. The Court reasoned:

> "When foreign merchandise, subject to duties, is imported into the country, the act of importation imposes on the importer the obligation to pay the legal

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forfeiture is no part of the punishment for the criminal offense. Examples of such forfeiture provisions are those contained in the customs, narcotics, and revenue laws.'" S. Rep. No. 91–617, p. 79 (1969) (emphasis added).

> charges. Besides this the goods themselves, if the duties be not paid, are subject to seizure . . . . Every act, therefore, which interferes with the right of the government to seize and appropriate the property which has been forfeited to it . . . is a wrong to property rights, and is a fit subject for indemnity." *Id.*, at 546.

Significantly, the fact that the forfeiture was a multiple of the value of the goods did not alter the Court's conclusion:

> "The act of abstracting goods illegally imported, receiving, concealing, or buying them, interposes difficulties in the way of a government seizure, and impairs, therefore, the value of the government right. It is, then, hardly accurate to say that the only loss the government can sustain from concealing the goods liable to seizure is their single value . . . . Double the value may not be more than complete indemnity." *Id.*, at 546–547.

The early monetary forfeitures, therefore, were considered not as punishment for an offense, but rather as serving the remedial purpose of reimbursing the Government for the losses accruing from the evasion of customs duties.[17] They were thus no different in purpose and effect

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[17] In each of the statutes from the early Congresses cited by the dissent, the activities giving rise to the monetary forfeitures, if undetected, were likely to cause the Government losses in customs revenue. The forfeiture imposed by the Acts of Aug. 4, 1790 and Mar. 2, 1799 was not simply for "transferring goods from one ship to another," *post*, at 3, but rather for doing so "before such ship . . . shall come to the proper place for the discharge of her cargo . . . and be there duly authorized by the proper officer or officers of the customs to unlade" the goods, see 1 Stat. 157, 158, 648, whereupon duties would be assessed. Similarly, the forfeiture imposed by the Act of Mar. 3, 1823 was for failing to deliver the ship's manifest of cargo––which was to list "merchandise subject to duty"––to the collector of customs. See Act of Mar. 2, 1821, §1, 3 Stat.

than the *in rem* forfeitures of the goods to whose value they were proportioned.[18] Cf. *One Lot Emerald Cut Stones* v. *United States*, 409 U. S. 232, 237 (1972) *(per curiam)* (customs statute requiring the forfeiture of undeclared goods concealed in baggage and imposing a monetary penalty equal to the value of the goods imposed a "remedial, rather than [a] punitive sanctio[n]").[19] By contrast, the full forfei-

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616; Act of Mar. 3, 1823, §1, *id.*, at 781. And the "invoices" that if "false" gave rise to the forfeiture imposed by the Act of Mar. 3, 1863 were to include the value or quantity of any dutiable goods. §1, 12 Stat. 737–738.

[18] The nonpunitive nature of the monetary forfeitures was also reflected in their procedure: like traditional *in rem* forfeitures, they were brought as civil actions, and as such are distinguishable from the punitive criminal fine at issue here. Instead of instituting an information of libel *in rem* against the goods, see, *e.g.*, *Locke* v. *United States*, 7 Cranch 339 (1813), the Government filed "a civil action of debt" against the person from whom it sought payment. See, *e.g.*, *Stockwell* v. *United States*, 13 Wall. 531, 541–542 (1871). In both England and the United States, an action of debt was used to recover import duties owed the Government, being "the general remedy for the recovery of all sums certain, whether the legal liability arise from contract, or be created by a statute. And the remedy as well lies for the government itself, as for a citizen." *United States* v. *Lyman*, 26 F. Cas. 1024, 1030 (No. 15,647) (CC Mass. 1818) (Story, C. J.). Thus suits for the payment of monetary forfeitures were viewed no differently than suits for the customs duties themselves.

[19] *One Lot Emerald Cut Stones* differs from this case in the most fundamental respect. We concluded that the forfeiture provision in *Emerald Cut Stones* was entirely remedial and thus nonpunitive, primarily because it "provide[d] a reasonable form of liquidated damages" to the Government. 409 U. S., at 237. The additional fact that such a remedial forfeiture also "serves to reimburse the Government for investigation and enforcement expenses," *ibid.*; see *post*, at 4, is essentially meaningless, because even a clearly punitive criminal fine or forfeiture could be said in some measure to reimburse for criminal enforcement and investigation. Contrary to the dissent's assertion, this certainly does not mean that the forfeiture in this case––which, as the dissent acknowledges, see *post*, at 1 (respondent's forfeiture is a "fine"), 10 (§982(a)(1) imposes a "punishment"), is clearly punitive––"would have

ture mandated by §982(a)(1) in this case serves no remedial purpose; it is clearly punishment. The customs statutes enacted by the First Congress, therefore, in no way suggest that §982(a)(1)'s currency forfeiture is constitutionally proportional.

* * *

For the foregoing reasons, the full forfeiture of respondent's currency would violate the Excessive Fines Clause. The judgment of the Court of Appeals is

Affirmed.

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to [be treated] as nonpunitive." *Post*, at 3.