

Syllabus

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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HUDSON ET AL. v. UNITED STATES

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

No. 96–976. Argued October 8, 1997— Decided December 10, 1997

The Office of the Comptroller of the Currency (OCC) imposed monetary penalties and occupational debarment on petitioners for violating 12 U. S. C. §§84(a)(1) and 375b by causing two banks in which they were officials to make certain loans in a manner that unlawfully allowed petitioner Hudson to receive the loans’ benefit. When the Government later criminally indicted petitioners for essentially the same conduct, they moved to dismiss under the Double Jeopardy Clause of the Fifth Amendment. The District Court ultimately dismissed the indictments, but the Court of Appeals reversed, relying on *United States v. Halper*, 490 U. S. 435, 448–449.

Held: The Double Jeopardy Clause is not a bar to petitioners’ later criminal prosecution because the OCC administrative proceedings were civil, not criminal. Pp. 4–12.

(a) The Clause protects only against the imposition of multiple *criminal* punishments for the same offense. See, e.g., *Helvering v. Mitchell*, 303 U. S. 391, 399. *Halper* deviated from this Court’s longstanding double jeopardy doctrine in two key respects. First, it bypassed the traditional threshold question whether the legislature intended the particular successive punishment to be “civil” or “criminal” in nature, see, e.g., *United States v. Ward*, 448 U. S. 242, 248, focusing instead on whether the sanction was so grossly disproportionate to the harm caused as to constitute “punishment.” The Court thereby elevated to dispositive status one of the factors listed in *Kennedy v. Mendoza-Martinez*, 372 U. S. 144, 168–169, for determining whether a statute intended to be civil was so punitive as to transform it into a criminal penalty, even though *Kennedy* itself emphasized that no one factor should be considered controlling, *id.*, at 169. Second, *Halper* “assess[ed] the character of the actual sanctions

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imposed,” 490 U. S., at 447, rather than, as *Kennedy* demanded, evaluating the “statute on its face” to determine whether it provided for what amounted to a criminal sanction, 372 U. S., at 169. Such deviations were ill considered. *Halper*’s test has proved unworkable, creating confusion by attempting to distinguish between “punitive” and “nonpunitive” penalties. Moreover, some of the ills at which it was directed are addressed by other constitutional provisions. Thus, this Court largely disavows *Halper*’s method of analysis and reaffirms the previous rule exemplified in *Ward*. Pp. 4–9.

(b) Applying traditional principles to the facts, it is clear that petitioners’ criminal prosecution would not violate double jeopardy. The money penalties statutes’ express designation of their sanctions as “civil,” see §§93(b)(1) and 504(a), and the fact that the authority to issue debarment orders is conferred upon the “appropriate Federal banking agenc[ies],” see §§1818(e)(1)–(3), establish that Congress intended these sanctions to be civil in nature. Moreover, there is little evidence—much less the “clearest proof” this Court requires, see *Ward*, 448 U. S., at 249—to suggest that the sanctions were so punitive in form and effect as to render them criminal despite Congress’ contrary intent, see *United States v. Ursery*, 518 U. S. ___, ___. Neither sanction has historically been viewed as punishment, *Helvering*, *supra*, at 399, and n. 2, 400, and neither involves an affirmative disability or restraint, see *Flaming v. Nestor*, 363 U. S. 603, 617. Neither comes into play “only” on a finding of scienter, *Kennedy*, 372 U. S., at 168, since penalties may be assessed under §§93(b) and 504, and debarment imposed under §1818(e)(1)(C)(ii), without regard to the violator’s willfulness. That the conduct for which OCC sanctions are imposed may also be criminal, see *ibid.*, is insufficient to render the sanctions criminally punitive, *Ursery*, *supra*, at ___, particularly in the double jeopardy context, see *United States v. Dixon*, 509 U. S. 688, 704. Finally, although the imposition of both sanctions will deter others from emulating petitioners’ conduct, see *Kennedy*, *supra*, at 168, the mere presence of this traditional goal of criminal punishment is insufficient to render a sanction criminal, as deterrence “may serve civil as well as criminal goals,” *e.g.*, *Ursery*, *supra*, at ___. Pp. 9–11.

92 F. 3d 1026, affirmed.

REHNQUIST, C. J., delivered the opinion of the Court, in which O’CONNOR, SCALIA, KENNEDY, and THOMAS, JJ., joined. SCALIA, J., filed a concurring opinion, in which THOMAS, J., joined. STEVENS, J., and SOUTER, J., filed opinions concurring in the judgment. BREYER, J., filed an opinion concurring in the judgment, in which GINSBURG, J., joined.