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 Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

ALEXANDER *v.* UNITED STATES

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

No. 91–1526. Argued January 12, 1993—Decided June 28, 1993

After a full criminal trial, petitioner, the owner of numerous businesses dealing in sexually explicit materials, was convicted of, *inter alia,* violating federal obscenity laws and the Racketeer Influenced and Corrupt Organizations Act (RICO). The obscenity convictions, based on a finding that seven items sold at several stores were obscene, were the predicates for his RICO convictions. In addition to imposing a prison term and fine, the District Court ordered petitioner, as punishment for the RICO violations, to forfeit his businesses and almost $9 million acquired through racketeering activity. In affirming the forfeiture order, the Court of Appeals rejected petitioner's arguments that RICO's forfeiture provisions constitute a prior restraint on speech and are overbroad. The court also held that the forfeiture did not violate the Eighth Amendment, concluding that proportionality review is not required of any sentence less than life imprisonment without the possibility of parole. It did not consider whether the forfeiture was disproportionate or ``excessive.''

Held:

1. RICO's forfeiture provisions, as applied here, did not violate the First Amendment. Pp. 4–13.

(a) The forfeiture here is a permissible criminal punishment, not a prior restraint on speech. The distinction between prior restraints and subsequent punishments is solidly grounded in this Court's cases. The term ``prior restraint'' describes orders *forbidding* certain communications that are issued before the communications occur. See *e.g., Near* v. *Minnesota ex rel. Olson,* 283 U. S. 697. However, the order here imposes no legal impediment to petitioner's ability to engage in any expressive activity; it just prevents him from financing those activities with assets derived from his prior

racketeering offenses. RICO is oblivious to the expressive or nonexpressive nature of the assets forfeited. Petitioner's assets were forfeited because they were directly related to past racketeering violations, and thus they differ from material seized or restrained on suspicion of being obscene without a prior judicial obscenity determination, as occurred in, *e.g., Marcus* v. *Search Warrant,* 367 U. S. 717. Nor were his assets ordered forfeited without the requisite procedural safeguards. *Fort Wayne Books, Inc.* v. *Indiana,* 489 U. S. 46, distinguished. His claim is also inconsistent with *Arcara* v. *Cloud Books, Inc.,* 478 U. S. 697, in which the Court rejected a claim that the closure of an adult bookstore under a general nuisance statute was an improper prior restraint. His definition of prior restraint also would undermine the time-honored distinction between barring future speech and penalizing past speech. Pp. 4-9.

Syllabus

(b) Since the RICO statute does not criminalize constitutionally protected speech, it is materially different from the statutes at issue in this Court's overbreadth cases. Cf., *e.g., Board of Airport Comm'rs of Los Angeles* v. *Jews for Jesus, Inc.,* 482 U. S. 569, 574–575. In addition, the threat of forfeiture has no more of a ``chilling'' effect on free expression than threats of a prison term or large fine, which are constitutional under *Fort Wayne Books.* Nor can the forfeiture be said to offend the First Amendment based on *Arcara*'s analysis that criminal sanctions with some incidental effect on First Amendment activities are subject to First Amendment scrutiny where it was the expressive conduct that drew the legal remedy, 478 U. S., at 706–707. While the conduct drawing the legal remedy here may have been expressive, ``obscenity'' can be regulated or actually proscribed consistent with the Amendment, see, *e.g., Roth* v. *United States,* 354 U. S. 476, 485. Pp. 9–13.

2. The case is remanded for the Court of Appeals to consider petitioner's claim that the forfeiture, considered atop his prison term and fine, is ``excessive'' within the meaning of the Excessive Fines Clause of the Eighth Amendment. The Court of Appeals rejected petitioner's Eighth Amendment challenge with a statement that applies only to the Amendment's prohibition against ``cruel and unusual punishments.'' The Excessive Fines Clause limits the Government's power to extract payments as punishment for an offense, and the *in personam* criminal forfeiture at issue here is clearly a form of monetary punishment no different, for Eighth Amendment purposes, from a traditional ``fine.'' The question whether or not the forfeiture was excessive must be considered in light of the extensive criminal activities that petitioner apparently conducted through his enormous racketeering enterprise over a substantial period of time rather than the number of materials actually found to be obscene. Pp. 13–14.

943 F. 2d 825, vacated and remanded.

REHNQUIST, C. J., delivered the opinion of the Court, in which WHITE, O'CONNOR, SCALIA, and THOMAS, JJ., joined. SOUTER, J., filed an opinion concurring in the judgment in part and dissenting in part. KENNEDY, J., filed a dissenting opinion, in which BLACKMUN and STEVENS, JJ., joined, and in Part II of which SOUTER, J., joined.