APPENDIX

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IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 22-13312

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

NIDAL AHMED WAKED HATUM,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:15-cr-20189-RNS-1

Filed April 09, 2026

ON PETITION FOR REHEARING AND
PETITION FOR REHEARING EN BANC

Before NEWSOM, BRASHER, and BLACK, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. FRAP 40. The Petition for Rehearing En Banc is also treated as a Petition for Rehearing before the panel and is DENIED. FRAP 40, 11th Cir. IOP 2.

APPENDIX B

NOT FOR PUBLICATION

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FOR THE ELEVENTH CIRCUIT

No. 22-13312
Non-Argument Calendar

UNITED STATES OF AMERICA,

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NIDAL AHMED WAKED HATUM,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:15-cr-20189-RNS-1

Before NEWSOM, BRASHER, and BLACK, Circuit Judges.

PER CURIAM:

In 2017, Nidal Ahmed Waked Hatum ("Waked") pled guilty to conspiracy to commit money laundering, in violation of 18 U.S.C. §§ 1956(h) and 1957(a). As part of his guilty plea, Waked admitted that on multiple occasions he borrowed money from a bank in Panama based on fraudulent representations, transferred that money into the United States and back to Panama through Florida-based corporations that he owned, and then repaid the money with interest to the Panamanian bank.

As part of Waked's sentence, the government sought a forfeiture money judgment for the total amount of money that he laundered. The district court denied the government's motion and refused to impose a forfeiture money judgment against Waked. The government appealed, and we reversed, holding that the district court was required to impose forfeiture under 18 U.S.C. § 982(a)(1). *United States v. Waked Hatum*, 969 F.3d 1156 (11th Cir. 2020), *cert. denied*, 142 S. Ct. 72 (2021). However, we left it for the district court to (1) calculate in the first instance the amount of the forfeiture money judgment that it was required to impose, and (2) determine whether a judgment of that amount would be an excessive fine in violation of the Eighth Amendment. *Id.* at 1169.

On remand, the district court imposed a forfeiture money judgment of $10,426,000, the undisputed sum total of Waked's money laundering transactions. The district court also concluded that the judgment was not an excessive fine in violation of the Eighth Amendment. Waked appeals the forfeiture money judgment. After review,[1] we affirm.

[1] "We review the validity and scope of an appeal waiver *de novo*." *King v. United States*, 41 F.4th 1363, 1366 (11th Cir. 2022). "We review *de novo* the subject matter jurisdiction of the district court." *United States v. Mims*, 143 F.4th 1311, 1315 (11th Cir. 2025) (quotation marks omitted). "We review the factual findings underlying a forfeiture order for clear error, but we review any legal conclusions *de novo*." *United States v. Philossaint*, 141 F.4th 1334, 1339 (11th Cir. 2025). We review whether a fine is excessive under the Eighth Amendment *de novo*. *United States v. Schwarzbaum*, 127 F.4th 259, 275 (11th Cir. 2025).

I. BACKGROUND[2]

In March 2015, Waked was indicted for, among other charges, conspiracy to commit money laundering, in violation of 18 U.S.C. §§ 1956(h) and 1957(a). In October 2017, Waked pled guilty to that charge pursuant to a plea agreement in exchange for the dismissal of the remaining charges.

In pleading guilty, Waked agreed to a proffer of the following facts. From approximately 2000 to 2009, Waked was the general manager of the Panamanian corporation Vida Panama, Z.L., S.A. ("Vida Panama") and the owner of two Miami-based corporations, Star Textile Manufacturing ("Star Textile") and Global World Import & Export ("Global World"). During that time period, on multiple occasions Waked drew from Vida Panama's line of credit at the International Bank of China ("ICBC") in Panama for sums of money ranging from approximately $22,000 to $550,000. Waked then transferred those funds via wire transfer to Star Textile and Global World at Ocean Bank in Miami.

In order to justify the credit draws and wire transfers, Waked claimed to ICBC that the purpose of the transfers was that Vida Panama was purchasing goods from Star Textile and Global World. Waked submitted invoices to ICBC in support of that representation. However, no such purchases occurred, and the invoices were fraudulent. If ICBC had known the truth, it would not have authorized the credit

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[2] We limit our summary of this case's factual and procedural history to those facts that are directly relevant to this appeal. For a more complete summary of the background of this case, see our decision in the first appeal that arose from this case. *See Waked Hatum*, 969 F.3d at 1159–61.

draws and wire transfers. Therefore, Waked admitted that the funds he transferred "were derived from fraud on a bank in Panama."

After transferring the funds to Star Textile and Global World in Florida, Waked arranged for those funds to be promptly deposited back in Vida Panama's bank account in Panama via check. Waked then repaid the credit draws to ICBC with interest, so ICBC did not suffer any net financial losses.

In the plea agreement, Waked agreed to negotiate with the government regarding the amount of money that would be subject to forfeiture, but he reserved the right to present arguments before the district court regarding forfeiture if they did not reach an agreement. Waked also agreed to waive his right to appeal any sentence the district court imposed with three exceptions: (1) if his sentence included an upward departure or variance, (2) if his sentence exceeded the statutory maximum, and (3) "if the United States exercise[d] its statutory rights to appeal."

The district court then entered a preliminary order of forfeiture, which stated that a forfeiture money judgment would be imposed, with the amount to be determined at a later date under Fed. R. Crim. P. 32.2(b)(2)(C) and (e)(1).

In the presentence investigation report ("PSI") prepared for Waked's sentencing, the probation officer included additional details about Waked's offense conduct not contained in the factual proffer. As is relevant for this appeal, the PSI listed each of the transactions in which Waked drew funds from ICBC based on Vida Panama's credit line and transferred those funds to Star Textile and Global World. The PSI stated that, through these transactions, Waked transferred approximately $10,426,000 to Star Textile and Global World, all of which was sent back to Vida Panama and repaid to ICBC with interest. Waked objected to various facts in the PSI, but he did not specifically object to the $10,426,000 calculation.

The district court sentenced Waked to 27 months' imprisonment. The parties and the court agreed that they would address forfeiture after sentencing.

The district court ultimately rejected the government's request for a forfeiture money judgment and vacated the preliminary order of forfeiture. The court recognized that forfeiture was mandatory but decided not to impose any forfeiture money judgment against Waked because Waked returned the funds that he laundered to ICBC with interest. Additionally, the court stated that, if it was required to impose a forfeiture money judgment, the amount requested by the government—$20,852,000—was excessive under the Eighth Amendment. The court explained that, because Waked returned all funds he borrowed from ICBC on Vida Panama's credit line with interest, the bank suffered little harm, and so a forfeiture money judgment of $10,000 per transaction, for a total of $520,000, would be appropriate.

The government appealed the district court's forfeiture ruling.

On appeal, we reversed the district court's forfeiture ruling and held that the district court erred by failing to impose mandatory forfeiture against Waked. *Waked Hatum*, 969 F.3d at 1162–67. Waked raised multiple arguments in support of the district court's decision not to impose forfeiture, all of which we rejected. Specifically, we held that (1) the district court was required to impose forfeiture against Waked based on his conviction under § 982(a)(1), (2) § 982(a)(1) permitted forfeiture money judgments, and (3) the money that Waked laundered was property "involved in" his laundering scheme that was subject to forfeiture. *Id.* at 1162–65.

In reaching the third holding, we concluded that (1) it was not "impermissible double counting" to impose forfeiture against Waked even though he returned all of the laundered funds to ICBC; (2) it did not matter that the funds were technically possessed by Vida Panama, not Waked, because Waked had sufficient personal interest in the funds as Vida Panama's general manager; and (3) the requirement in *Honeycutt v. United States*, 581 U.S. 443 (2017), that property must be "tainted" to be forfeitable did not apply to this case because that decision concerned 21 U.S.C. § 853(a), while this case was based on § 982(a)(1). *Id.* at 1164–65. We also held that the government could seek substitute asset forfeiture under § 853(p) even though the "third party" to whom Waked transferred the laundered money was the victim, ICBC. *Id.* at 1166.

After holding that the district court erred by failing to impose forfeiture against Waked, we then held that the district court also erred in holding that a fine of $10,000 per transaction was the constitutional ceiling for a forfeiture judgment under the Eighth Amendment. *Id.* at 1167–69. Applying the factors for the Eighth Amendment analysis, we first concluded that Waked was within the class of persons whom the money laundering statutes were meant to cover. *Id.* at 1167.

We then stated that the maximum fine for Waked's money laundering conviction was twice the amount of money "involved in" his offense, which appeared to be $20,852,000, *i.e.*, twice the amount of the total transferred funds as listed in the PSI. *Id.* at 1167–68. However, we noted that the district court did not make the necessary findings of fact as to the proper forfeiture amount, so we could not determine whether that was the correct statutory maximum. *Id.* at 1168. Lastly, we explained that the district court erred by only considering the direct economic harm that ICBC suffered as a result of Waked's scheme because the court should have looked "beyond the impact on [ICBC's] bottom line when considering whether Mr. Waked's conduct was harmful." *Id.* at 1168–69. Specifically, we stated that the court should have considered the general harm to society that money laundering causes. *Id.* at 1169.

Based on the above holdings, we remanded for the district court in the first instance to (1) engage in the necessary factfinding to calculate the proper amount for the forfeiture money judgment, and (2) determine whether that judgment would be an excessive fine under the Eighth Amendment.[3] *Id.*

On remand, the government moved for an amended preliminary order of forfeiture, which the district court granted on January 13, 2022. Pursuant to our opinion in the government's appeal, the district court determined that it was required to impose a forfeiture money judgment against Waked. The court calculated that the money judgment should be for $10,426,000 because that was the unobjected-to total amount of Waked's laundering transactions as stated in the PSI. The court then scheduled a date for a separate hearing

[3] Waked petitioned for a writ of *certiorari* before the Supreme Court, which the Court denied. *Waked Hatum v. United States*, 142 S. Ct. 72 (2021).

to address Waked's objections to the forfeiture judgment under the Eighth Amendment.

On September 16, 2022, the district court entered a "Final Order of Forfeiture" in which it confirmed its imposition of the $10,426,000 forfeiture money judgment.[4] The court again concluded that $10,426,000 was the correct amount for the forfeiture money judgment because that was the amount of money that Waked laundered as part of his offense.

Then, applying the appropriate factors, the court determined that the forfeiture money judgment was not an excessive fine under the Eighth Amendment. First, the court stated that Waked was within the class of persons whom the money laundering statutes intended to cover, as we concluded in the government's appeal. Second, the court stated that the amount of the money judgment was well below the maximum penalty authorized by Congress. The court stated that under 18 U.S.C. § 1957(b)(2), the maximum fine it could impose was twice the amount of the criminally derived property involved in the laundering transactions. Because Waked laundered a total of $10,426,000, the maximum fine was $20,852,000, and so the amount of the money judgment was well below the authorized statutory maximum fine. Lastly, the court stated that the amount of the forfeiture money judgment was appropriate in light of the harm that Waked's laundering scheme caused. Although Waked's laundering caused little to no economic harm to ICBC,

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[4] Although the district court titled the order as the "Final Order of Forfeiture," the order was not the type of "final order of forfeiture" that Fed. R. Crim. P. 32.2(c)(2) states should be entered after ancillary forfeiture proceedings are completed.

the court explained that it caused harm to society generally.

Waked then filed a notice of appeal challenging the forfeiture money judgment.

On appeal, Waked initially argued, among other things, that the district court's forfeiture judgment was jurisdictionally defective because the court did not amend the sentencing judgment to include the remand forfeiture order. In response, prior to filing its appellate merits brief, the government moved to stay the appeal, which we granted, and then moved the district court to enter an amended sentencing judgment that incorporated the remand forfeiture order.

Over Waked's objection, the district court granted the government's motion and on October 18, 2024, entered an amended sentencing judgment that incorporated the remand forfeiture order. The court concluded that it was permitted to amend the sentencing judgment under Fed. R. Crim. P. 36 because its failure to incorporate the remand forfeiture order into the sentencing judgment was a clerical error that it could resolve immediately even though Waked's appeal was pending.

II. DISCUSSION

Waked challenges the district court's imposition of the forfeiture money judgment against him on seven grounds. He first argues that the district court lacked jurisdiction to enter the amended sentencing judgment that incorporated the remand forfeiture order because this appeal was already pending at that time. Second, he argues that there was no factual basis to support the forfeiture money judgment. Third, he argues that the district court's calculation of the forfeiture money judgment constituted impermissible double counting.

Fourth, he argues that the district court could not impose substitute asset forfeiture against him. Fifth, he argues that the district court could not impose forfeiture against him because he never personally received the funds that he laundered. Sixth, he argues that the forfeiture money judgment was an excessive fine under the Eighth Amendment. And lastly, he argues that the district court was not authorized under the forfeiture statute to impose a forfeiture money judgment.

In response, the government argues that we should dismiss this appeal because it is barred by the sentence-appeal waiver contained in Waked's plea agreement. We address each issue in turn.

A. Threshold Issues

Before reaching the merits of Waked's appeal, we address the two threshold issues that the parties raise: whether this appeal is barred by a sentence-appeal waiver, and whether the district court had jurisdiction to amend the sentencing judgment to include the remand forfeiture order.

1. Sentence-Appeal Waiver

The government argues that we should not reach the merits of Waked's appeal because we should enforce the sentence-appeal waiver contained in the plea agreement. It acknowledges that it appealed Waked's sentence when the district court initially refused to impose forfeiture, but it asserts that its prior appeal did not release Waked from the waiver as to his new sentence imposed on remand.

Sentence-appeal waivers that are made knowingly and voluntarily must be enforced if they are raised by the government. *King v. United States*, 41 F.4th 1363, 1367 (11th Cir. 2022). Plea agreements are like contracts between the government and criminal defendants, and so such agreements "must be construed according to the intent and reasonable expectation of the parties." *Id.*

We disagree with the government that Waked's sentence-appeal waiver bars his appeal of the forfeiture money judgment imposed on remand. The plea agreement states that Waked agreed to waive his right to appeal any sentence that the district court imposed unless, among other exceptions, "the United States exercises its statutory rights to appeal." The plea agreement does not specify whether the waiver remains effective if (1) the government successfully appeals Waked's sentence, (2) the district court resentences Waked on remand, and (3) the government does not appeal Waked's new sentence. The language of the plea agreement is ambiguous on this issue, and "ambiguities in plea agreements should be resolved against the government." *Allen v. Thomas*, 161 F.3d 667, 671 (11th Cir. 1998).

Construing the ambiguity in Waked's favor, we read the plea agreement to state that if the government appeals, Waked is no longer barred from appealing his sentence, including if he is resentenced on remand after an earlier successful appeal by the government. *See United States v. Vazquez*, 558 F.3d 1224, 1227 (11th Cir. 2009) (holding that a sentence-appeal waiver did not bar a defendant from appealing his sentence after he was resentenced on remand from a successful appeal by the government because the plea agreement, which stated that the defendant was released from the waiver if the government appealed "the sentence imposed," was ambiguous, and any ambiguity should be construed in the defendant's favor), *vacated and* *remanded on other grounds*, 558 U.S. 1144 (2010). Therefore, we may reach the merits of Waked's appeal.

2. District Court's Jurisdiction

Waked argues as a threshold matter that the district court lacked jurisdiction to enter the October 18, 2024, amended sentencing judgment to incorporate the remand forfeiture order because this appeal was already pending at that time. He asserts that the district court was divested of jurisdiction to amend the sentencing judgment when he filed his notice of appeal, so it was not authorized to amend the judgment as the government requested.

"The filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982). However, this principle does not prevent a district court from amending a judgment to fix a clerical error pursuant to Fed. R. Crim. P. 36 while an appeal is pending. *United States v. Pease*, 331 F.3d 809, 816 (11th Cir. 2003) ("It is settled law that the appeal of a judgment in a criminal case deprives the district court of jurisdiction to amend the judgment (except for clerical errors pursuant to Rule 36)."), *superseded by rule on other grounds*, Fed. R. Crim. P. 32.2 (2009).

Although Waked's notice of appeal that he filed after the September 16, 2022, forfeiture order generally divested the district court of jurisdiction over the case, the court did not lack jurisdiction to amend the sentencing judgment to incorporate the remand forfeiture order. *See Griggs*, 459 U.S. at 58. Rule 32.2 of the Federal Rules of Criminal Procedure requires that a district court include any forfeiture order imposed in the case in the judgment. Fed. R. Crim. P. 32.2(b)(4)(B); *see also United States v. Petrie*, 302 F.3d 1280, 1284 (11th Cir. 2002) (stating that Rule 32.2 "requires that the forfeiture order be made a part of the sentence and included in the judgment"). However, Rule 32.2 also provides that the failure to include a forfeiture order in the judgment is an error that "may be corrected at any time under Rule 36." Fed. R. Crim. P. 32.2(b)(4)(B). Rule 36 allows a district court to "at any time correct a clerical error in a judgment, order, or other part of the record, or correct an error in the record arising from oversight or omission." Fed. R. Crim. P. 36.

Under Rule 32.2(b)(4)(B), the district court's failure to incorporate the remand forfeiture order into the sentencing judgment was a clerical error that could be corrected at any time under Rule 36. *See* Fed. R. Crim. P. 32.2(b)(4)(B), 36. The district court therefore had jurisdiction to amend the sentencing judgment as it did even though Waked had already filed a notice of appeal because the filing of a notice of appeal does not divest the district court of jurisdiction to correct clerical errors under Rule 36.[5] *See Pease*, 331 F.3d at 816.

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[5] In *Pease*, we held that a district court lacked jurisdiction to amend a sentencing judgment to include a forfeiture order that was inadvertently omitted because an appeal was pending. 331 F.3d at 815–17. However, *Pease* was decided before Rule 32.2 was amended to clarify that amending a judgment to include an omitted forfeiture order was a correction of a clerical error under Rule 36. *See* Fed. R. Crim. P. 32.2(b)(4)(B) (2009). Therefore, that holding in *Pease* was superseded by the amended Rule 32.2.

B. *Merits Challenges to the Forfeiture Money Judgment*

We next turn to the merits of Waked's various arguments challenging the validity of the forfeiture money judgment.

1. *Factual Basis for the Forfeiture Judgment*

First, Waked argues that there was an insufficient factual basis to support the imposition of the forfeiture money judgment. Specifically, he asserts that there was no basis in the record to support the conclusion that he was responsible for any substantive violations of the money laundering statutes such that any of the funds that he transferred from Vida Panama to Star Textile and Global World were "involved in" any money laundering offense and so forfeitable under § 982(a)(1). He reasons that (1) the government failed to establish that any of the credit draws from ICBC constituted bank fraud under Panamanian or U.S. law, and (2) the credit draws could not constitute bank fraud because ICBC did not suffer any net economic loss as a result of the transactions. Waked also argues that the district court erred by relying on the PSI's calculation that he transferred a total of $10,426,000 from Vida Panama to Star Textile and Global World in determining the amount of the forfeiture money judgment.

Waked did not raise any of these arguments before the district court, so we review them for plain error. *See United States v. Malone*, 51 F.4th 1311, 1318–19 (11th Cir. 2022) ("We find plain error when (1) an error has occurred, (2) the error was plain, and (3) it affected the defendant's substantial rights, and if those prongs are met, we then have discretion to correct the error if it (4) seriously affected the fairness of the judicial proceedings.").

Under 18 U.S.C. § 982(a)(1), a district court must order a person who has been convicted of an offense in violation of 18 U.S.C. §§ 1956 or 1957 to forfeit to the government "any property, real or personal, involved in such offense, or any property traceable to such property." 18 U.S.C. § 982(a)(1). Waked pled guilty to a conspiracy to violate 18 U.S.C. § 1957(a), which criminalizes "knowingly engag[ing] or attempt[ing] to engage in a monetary transaction in criminally derived property of a value greater than $10,000 [that] is derived from specified unlawful activity." 18 U.S.C. § 1957(a); *see also* 18 U.S.C. § 1956(h) (criminalizing conspiring to violate § 1957). "Specified unlawful activity" includes any offense against a foreign nation involving "fraud, or any scheme or attempt to defraud . . . a foreign bank" that occurred in whole or in part in the United States. 18 U.S.C. §§ 1957(f)(3), 1956(c)(7)(B)(iii).

Waked has not shown that the district court plainly erred by failing to conclude that there was no factual basis for the imposition of the forfeiture money judgment against him under § 982(a)(1). In pleading guilty, Waked admitted that he borrowed funds from ICBC via Vida Panama's credit line by falsely representing to ICBC that those funds would be used to purchase goods from Star Textile and Global World. Waked also admitted that the funds were derived from bank fraud on ICBC and that he transferred the funds into and out of the United States through Star Textile and Global World. The district court could rely on these admissions to conclude that Vida Panama's credit draws from ICBC based on fraudulent misrepresentations constituted fraud sufficient to trigger mandatory forfeiture under § 982(a)(1). *See United States v. Evans*, 958 F.3d 1102, 1109 (11th Cir. 2020) (stating that a sentencing court may base its factual findings on, among other things, "facts admitted by a defendant's plea of guilty" (quotation marks omitted)). Waked does not cite to any legal authority supporting his argument on this ground, so he has failed to establish plain error. *See United States v. Johnson*, 694 F.3d 1192, 1195 (11th Cir. 2012) ("In order for an error to be obvious for purposes of plain error review, it must be plain under controlling precedent or in view of the unequivocally clear words of a statute or rule." (quotation marks omitted)).

Waked has also not shown that the district court plainly erred by failing to conclude *sua sponte* that the government needed to prove that ICBC suffered a net economic loss as a result of his credit draws to trigger mandatory forfeiture under § 982(a)(1). The Supreme Court has held that certain federal fraud statutes do not require that the victim suffer a net economic loss. *See Shaw v. United States*, 580 U.S. 63, 67–68 (2016) (holding that the federal bank-fraud statute, 18 U.S.C. § 1344, does not require that the victim suffer an ultimate financial loss); *Kousisis v. United States*, 605 U.S. 114, 123-35 (2025) (holding that the federal wire-fraud statute, 18 U.S.C. § 1343, does not require that the victim suffer a net economic loss). Given that Waked's argument is inconsistent with relevant Supreme Court precedent, and Waked has not cited to any binding precedent in support of his argument, Waked has failed to establish plain error.[6] *See Johnson*, 694 F.3d at 1195.

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[6] Additionally, to the extent that Waked argues that the district court erred by imposing the forfeiture money judgment based on his laundering transactions, such an argument is foreclosed by the law of the case doctrine because we explicitly held in the government's appeal that the district court was required to impose a forfeiture money judgment based on those transactions. *See Waked Hatum*, 969 F.3d at 1162–67; *United States v. Jordan*,

Lastly, the district court did not err, let alone plainly err, by relying on the PSI to calculate the amount of the forfeiture money judgment. Forfeiture is part of a defendant's sentence, and facts not objected to in the PSI are admitted for purposes of sentencing. *See Libretti v. United States*, 516 U.S. 29, 39 (1995) ("Our precedents have . . . characterized criminal forfeiture as an aspect of punishment imposed following conviction of a substantive criminal offense."); *United States v. Gilbert*, 244 F.3d 888, 924 (11th Cir. 2001) ("It is beyond doubt that criminal forfeiture is part of a defendant's sentence."), *superseded by rule on other grounds as recognized in United States v. Marion*, 562 F.3d 1330, 1340-41 (11th Cir. 2009); *United States v. Wade*, 458 F.3d 1273, 1277 (11th Cir. 2006) ("It is the law of this circuit that a failure to object to allegations of fact in a PSI admits those facts for sentencing purposes."). Therefore, in calculating the amount of the forfeiture money judgment, the district court could rely on the unobjected-to fact in the PSI that Waked transferred a total of $10,426,000 to Star Textile and Global World in the laundering transactions to which he admitted as part of his guilty plea.

Waked asserts that the district court could not rely on that unobjected-to calculation in the PSI because (1) the PSI merely addressed relevant conduct that was only pertinent to sentencing, not forfeiture, and (2) the PSI did not include any forfeiture calculations or conclusions about the scope of forfeiture. However, those arguments are inconsistent with the above-cited law, and, regardless, Waked does not cite to any binding precedent in support of his arguments.

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429 F.3d 1032, 1035 (11th Cir. 2005) ("The law of the case doctrine bars relitigation of issues that were decided, either explicitly or by necessary implication, in an earlier appeal of the same case.").

Therefore, Waked has failed to establish plain error. *See Johnson*, 694 F.3d at 1195.

2. Double Counting

Next, Waked argues that the district court engaged in impermissible double counting when it calculated the amount of the forfeiture money judgment. He asserts that, because he acquired all of the money that he laundered by drawing on Vida Panama's single credit line at ICBC, the total amount of money "involved in" his laundering offense was not the total aggregated amount of money that he transferred through his laundering transactions, but rather was limited to the largest single amount of money that he ever borrowed from ICBC based on Vida Panama's credit line, which was a "static pool of funds." Waked reasons that his credit draws and subsequent laundering transactions constituted a "repeated utilization of the same fungible property," which was like "repeatedly borrowing and returning the same bar of gold."

The property that is subject to forfeiture under § 982(a)(1) includes "the money or other property being laundered (the corpus), any commissions or fees paid to the launderer, and any property used to facilitate the laundering offense." *United States v. Puche*, 350 F.3d 1137, 1153 (11th Cir. 2003) (quotation marks omitted). In this case, the government is seeking the "corpus" of funds that Waked laundered. *Waked Hatum*, 969 F.3d at 1163.

Waked is incorrect that the district court engaged in impermissible double counting. Waked's various laundering transactions were not limited to a single "static pool of funds." On multiple separate occasions, Waked borrowed money from ICBC based on Vida Panama's credit line and then returned the borrowed funds to

ICBC with interest. Each credit draw was a discrete transaction with ICBC to borrow an amount of money separate from the funds that he borrowed on other occasions. Each of Waked's separate laundering transactions thus involved a discrete, separate amount of money, even if each was derived from the same source—Vida Panama's credit line. Therefore, Waked's multiple laundering transactions did not constitute a "repeated utilization of the same fungible property."

However, even if Waked's analogy comparing his credit draws and repayments to the borrowing and returning of a single gold bar was apt, which it is not, he would still not be entitled to reversal of the forfeiture money judgment. Under § 982(a)(1), the district court was required to order forfeited all "money or other property" that Waked "laundered," which includes the aggregated amount of all of his laundering transactions. *See Puche*, 350 F.3d at 1153; 18 U.S.C. § 982(a)(1).

In *United States v. Martin*, we rejected a similar argument in reviewing a district court's calculation of the total amount of money for which a defendant convicted of money laundering under 18 U.S.C. § 1956(a)(1)(B)(i) was accountable for purposes of determining the defendant's sentencing guideline base offense level under U.S.S.G. § 2S1.1. 320 F.3d 1223, 1225–26 (11th Cir. 2003). On multiple separate occasions, the defendant laundered funds that he derived from a single stolen check in transactions whose aggregate amount exceeded the original check amount. *Id.* at 1226. The defendant argued that he should not be held accountable for an amount greater than the value of the single check. *Id.*

We rejected the defendant's argument and concluded that the district court correctly calculated the amount for which the defendant was accountable by aggregating the amount of each individual transaction. *Id.* at 1226–27. We explained that "money laundering is not a continuing offense" because "each transaction or transfer of money constitutes a separate offense" and cited to a persuasive case in which a district court rejected a similar argument. *Id.* (quotation marks omitted) (citing *United States v. Li*, 973 F. Supp. 567, 574 (E.D. Va. 1997) ("It does not make sense to look only at the amount of capital injected or infused into the money laundering scheme, as [defendant] suggests, and ignore what happens to that capital. Clearly, the magnitude of the criminal enterprise is larger for a conspiracy involving a hundred unlawful transfers of $100 or $99 compared to a conspiracy involving one unlawful transfer of $100." (quotation marks omitted))). We reasoned that because "[e]ach unlawful monetary transaction harms society by impeding law enforcement's efforts to track ill-gotten gains," the district court did not err by aggregating the total amount of each individual transaction even though that total was greater than the value of the single check that was the source of all of the laundered funds. *Id.* at 1227.

Although *Martin* is procedurally distinct from this case, its reasoning is highly relevant. The district court did not err in calculating the amount of the forfeiture money judgment by aggregating all of Waked's laundering transactions.

3. Arguments Rejected in the Prior Appeal

Waked also raises multiple arguments that we rejected in the government's earlier appeal. Specifically, he argues that (1) substitute asset forfeiture is unavailable in this case because his return of the laundered funds did not constitute transference to a third party under 21 U.S.C. § 853(p)(1)(B);[7] (2) the district court should not have ordered forfeiture against him based on the funds that he laundered because he never personally received those funds; and (3) the relevant forfeiture statute does not permit the imposition of forfeiture money judgments.

Waked is barred from relitigating these issues pursuant to the law of the case doctrine. *See United States v. Jordan*, 429 F.3d 1032, 1035 (11th Cir. 2005) ("The law of the case doctrine bars relitigation of issues that were decided, either explicitly or by necessary implication, in an earlier appeal of the same case."); *This That And The Other Gift And Tobacco, Inc. v. Cobb Cnty., Ga.*, 439 F.3d 1275, 1283 (11th Cir. 2006) ("Under the law of the case doctrine, the findings of fact and conclusions of law by an appellate court are generally binding in all subsequent proceedings in the same case in the trial court or on a later appeal. . . .

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[7] Additionally, Waked argues that the government abandoned the right to seek substitute asset forfeiture against him because it failed to do so before the district court during the remand forfeiture proceedings. Waked is incorrect because "at any time" the government can request the district court to amend the preexisting forfeiture order to include any property subject to substitute forfeiture. *See* Fed. R. Crim. P. 32.2(e)(1)(B) ("On the government's motion, the court may at any time enter an order of forfeiture or amend an existing order of forfeiture to include property that . . . is substitute property that qualifies for forfeiture under an applicable statute."); *see also United States v. Misla-Aldarondo*, 478 F.3d 52, 75 (1st Cir. 2007) ("[A] court may properly issue a money judgment as part of a forfeiture order, whether or not the defendant still retains the actual property involved in the offense, or any property at all. Furthermore, the money judgment can be used in the future to seek forfeiture of substitute assets by court order under § 853(p) and Rule 32.2, *even where the government has not expressed an intent to do so at any time before it seeks such an order*." (emphasis added)).

The doctrine's central purposes include bringing an end to litigation, protecting against the agitation of settled issues, and assuring that lower courts obey appellate orders." (quotation marks omitted)).

In the government's earlier appeal, we explicitly held in a published, precedential opinion that (1) the government could seek substitute forfeiture under § 853(p) because Waked's transference of the laundered funds to ICBC satisfied § 853(p)(1)(B); (2) it did not matter that Waked never personally received the laundered funds because he had a strong personal interest in the funds; and (3) the district court was permitted to, and in fact was required to, impose a forfeiture money judgment against Waked. *Waked Hatum*, 969 F.3d at 1163–67. Additionally, none of the exceptions to the law of the case doctrine apply here. *See United States v. Anderson*, 772 F.3d 662, 668–69 (11th Cir. 2014) ("There are limited exceptions to the law-of-the-case doctrine: where there is new evidence, an intervening change in controlling law dictates a different result, or the appellate decision, if implemented, would cause manifest injustice because it is clearly erroneous." (quotation marks omitted and alteration adopted)). Accordingly, we will not address these arguments again. *See also United States v. Archer*, 531 F.3d 1347, 1352 (11th Cir. 2008) (stating that under the prior-panel precedent rule "a prior panel's holding is binding on all subsequent panels unless and until it is overruled or undermined to the point of abrogation by the Supreme Court or by this court sitting *en banc*.").

C. Eighth Amendment

Lastly, Waked argues that the district court erred by concluding that the $10,426,000 forfeiture money judgment was not an excessive fine under the Eighth

Amendment. He asserts that "the forfeiture bore no relationship to the underlying criminal law concerns and significantly exceeded the harm at issue given the actual fungible amount involved and the complete absence of any loss."

"Forfeitures are subject to the Eighth Amendment's prohibition against excessive fines if they constitute punishment for an offense." *United States v. Browne*, 505 F.3d 1229, 1281 (11th Cir. 2007) (quotation marks omitted). "Subject forfeitures violate the Excessive Fines Clause if they are grossly disproportional to the gravity of the defendant's offense." *Id.* (quotation marks omitted). In determining whether a fine is excessive under the Eighth Amendment, we examine three factors: "(1) whether the defendant falls into the class of persons at whom the criminal statute was principally directed; (2) other penalties authorized by the legislature (or the Sentencing Commission); and (3) the harm caused by the defendant." *Id.* (citing *United States v. Bajakajian*, 524 U.S. 321, 337–40 (1998)).

As to the first factor, we already decided in the first appeal that Waked is within the class of persons whom the money laundering statutes were intended to cover, and Waked does not dispute that conclusion. *Waked Hatum*, 969 F.3d at 1167.

As to the second factor, the maximum penalty that Congress and the Sentencing Commission authorized for Waked's § 1957 conspiracy conviction is $20,852,000—twice the amount of funds that the district court properly concluded were involved in Waked's laundering transactions. *See* 18 U.S.C. § 1956(h) (providing that a defendant convicted of conspiracy to violate § 1957 "shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy."); *id.* § 1957(b)(2) (authorizing a fine "of not more than twice the amount of the criminally derived property involved in the transaction"); U.S.S.G. § 5E1.2(c)(4) (providing that the maximum of the fine guideline range for defendants convicted under statutes that authorize a maximum fine of greater than $500,000 is the statutory maximum fine). The fact that the $10,426,000 forfeiture money judgment is well below the statutory maximum fine that the district court could have imposed is a consideration that we give "great weight" to.[8] *See United States v. Chaplin's, Inc.*, 646 F.3d 846, 852 (11th Cir. 2011) ("Congress, as a representative body, can distill the monetary value society places on harmful conduct; forfeitures falling below the maximum statutory fines for a given offense therefore receive a strong presumption of constitutionality." (quotation marks omitted)). It is also significant that the statutory maximum sentence that the district could have imposed on Waked for his money laundering offense was 10 years' imprisonment. 18 U.S.C. § 1957(b)(1).

As to the third factor, while it is uncontested that ICBC did not suffer any net economic harm from Waked's actions, Waked's laundering caused some harm to society generally.

In *Martin*, we rejected the defendant's argument that the district court erred by aggregating the total sum of his laundering transactions even though that sum was greater than the value of the single stolen check that was the sole source of the laundered funds. 320 F.3d at 1225–27. We reasoned that the purpose of the money laundering statute under which the

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[8] The district court did not impose any other fines against Waked as part of his sentence other than the standard $100 assessment.

defendant was convicted, 18 U.S.C. § 1956(a)(1)(B)(i), was "to punish defendants who, after the completion of the underlying specified unlawful activity, take the additional step of attempting to legitimize their proceeds so that observers think their money is derived from legal enterprises." *Id.* at 1226–27 (quotation marks omitted). We also stated that the harm caused by money laundering "does not generally fall upon an individual, but falls upon society in general," and "[e]ach unlawful monetary transaction harms society by impeding law enforcement's efforts to track ill-gotten gains." *Id.* at 1227 (quotation marks omitted). Based on these general principles, it is clear that Waked's actions in transferring money that he undisputedly acquired through bank fraud into the United States and then back to Panama via two Florida-based corporations caused at least some harm to society.

In *United States v. Bajakajian*, the Supreme Court considered whether a forfeiture award was an unconstitutionally excessive fine in violation of the Eighth Amendment. 524 U.S. at 324. In that case, the defendant pled guilty to failure to report that he was transporting more than $10,000 outside of the United States, in violation of 31 U.S.C. § 5316(a). *Id.* at 324–25. The defendant had attempted to transport a total of $357,144 outside of the United States without reporting it to customs inspectors. *Id.* The government sought forfeiture of the entire $357,144 based on 18 U.S.C. § 982(a)(1). *Id.* at 325. The district court rejected the government's request because the funds were not connected to any other crime, and therefore the government's requested forfeiture would be "extraordinarily harsh" and "grossly disproportionate to the offense in question." *Id.* at 325-26. Instead, the court ordered forfeiture of $15,000 in addition to 3 years of probation and a fine of $5,000. *Id.* at 326. The government appealed, seeking full forfeiture of the relevant funds. *Id.*

The Supreme Court held that the full forfeiture of the relevant funds would be an excessive fine under the Eighth Amendment. *Id.* at 334–44. First, the Court reasoned that the defendant did not fit into the class of persons for whom the forfeiture statute was principally designed because he was not “a money launderer, a drug trafficker, or a tax evader.” *Id.* at 337–38 (footnote omitted). Second, the Court noted that the maximum fine that the district court could have imposed under the Sentencing Guidelines was only $5,000, which was significantly lower than the government’s requested forfeiture of $357,144. *Id.* at 338–39. Lastly, the Court concluded that the harm that the defendant caused was minimal because he was guilty of a mere reporting offense that only caused relatively minor harm to the government. *Id.* at 339.

In this case, while the harm that Waked caused by his laundering transactions was not necessarily as severe as the harm caused by the defendant in *Martin*, given that the defendant in that case did not return the laundered money that he stole from the victim voluntarily, the harm Waked caused was more severe than that caused by the defendant in *Bajakajian*. *See Waked Hatum*, 969 F.3d at 1169 (distinguishing this case from *Bajakajian* and comparing it to *Martin*); *Bajakajian*, 524 U.S. at 337-39. Waked did not commit a mere reporting offense when he laundered a total of $10,426,000 into and out of the United States, and the money involved in his laundering scheme was directly connected to criminal activity—bank fraud against ICBC. Unlike the defendant in *Bajakajian*, Waked is exactly the type of person for whom the Supreme

Court stated the forfeiture statute was principally designed—a money launderer.[9] *See Bajakajian*, 524 U.S. at 337–38.

Applying all of the relevant factors, we conclude that the district court did not err by determining that the $10,426,000 forfeiture money judgment was not an unconstitutional fine in violation of the Eighth Amendment. Waked has failed to show that the forfeiture judgment was grossly disproportional to the gravity of his offense, especially in light of the highly significant fact that, unlike in *Bajakajian*, the amount of the forfeiture money judgment is well below the statutory maximum fine the district court could have imposed. *See United States v. 817 N.E. 29th Drive, Wilton Manors, Fla.*, 175 F.3d 1304, 1310 (11th Cir. 1999) ("[A]lthough we retain a duty under the Eighth Amendment independently to examine fines for excessiveness, a defendant would need to present a very compelling argument to persuade us to substitute our judgment for that of the United States Sentencing Commission. Thus, in a forfeiture action, if the value of the property forfeited is within or near the permissible range of fines under the sentencing guidelines, the forfeiture almost certainly is not excessive."); *United States v. Schwarzbaum*, 127 F.4th 259, 284

[9] Waked relies primarily on the unpublished decision in *United States v. Ramirez*, 421 F. App'x 950 (11th Cir. 2011), which, like *Bajakajian*, involved a defendant who committed a mere reporting offense with funds unrelated to any other criminal activity. That unpublished decision is not precedential. *See United States v. Morris*, 131 F.4th 1288, 1293 n.3 (11th Cir. 2025). Regardless, *Ramirez* does not support Waked's argument because that decision is distinguishable from this case for the same reasons that *Bajakajian* is distinguishable. *See Waked Hatum*, 969 F.3d at 1169 (distinguishing this case from both *Ramirez* and *Bajakajian*).

(11th Cir. 2025) (stating that the presumption that a fine is not constitutionally excessive under the Eighth Amendment "is particularly strong when the specific penalty sought by the Government is less than the statutory maximum").

III. CONCLUSION

The district court did not err by imposing the $10,426,000 forfeiture money judgment against Waked. The court also did not err by concluding that the forfeiture judgment was not an unconstitutionally excessive fine under the Eighth Amendment. Accordingly, we affirm the forfeiture money judgment.

AFFIRMED.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

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No. 18-11951

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UNITED STATES OF AMERICA ,

Plaintiff-Appellant,

versus

NIDAL AHMED WAKED HATUM,

Defendant-Appellee.

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Appeal from the United States District Court
for the Southern District of Florida
Robert N. Scola, District Judge, Presiding,
D.C. No. 1:15-cr-20189-RNS-1

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Argued and Submitted August 11, 2020
Atlanta, Georgia

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OPINION

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Before: Beverly B. Martin, Britt C. Grant, and Barbara Lagoa, Circuit Judges.

MARTIN, Circuit Judge:

If a defendant is convicted of a money laundering scheme that caused no financial harm to an innocently involved bank, is an order of forfeiture still mandatory? We conclude that it is and reverse the District Court's denial of the government's forfeiture motion in this case.

I.

A. FACTUAL BACKGROUND

Nidal Ahmed Waked Hatum is a 48-year-old citizen of Panama and Colombia. From January 2000 to February 2009, Mr. Waked was part owner and general man-ager of Vida Panama, Z.L., S.A. ("Vida Panama"), an electronics wholesaler and exporter based in Colón, Panama. For most of this time he was also the owner of two Miami, Florida-based corporations, Star Textile Manufacturing, Inc. ("Star Textile") and Global World Import & Ex-port ("Global World"). Vida Panama had a line of credit at the International Commercial Bank of China ("ICBC" or the "Bank") in Panama, while Star Textile and Global World had accounts at Ocean Bank in Mia-mi. Mr. Waked had signature authority on the bank accounts of all three corporations.

Between February 2000 and February 2009, Mr. Waked engaged in a series of so-called "mirror-image" financial transactions. Star Textile (and sometimes Global World) would send Vida Panama invoices for sums of money between $22,000 and $550,000, appearing to bill for electronics merchandise sold to Vida Panama. Mr. Waked would use these invoices to justify drawing on Vida Panama's line of credit at ICBC, which he would in turn use to pay Star Textile or Global World. After the transfer from Vida Panama cleared, Tamas Zafir, the manager of Star Textile and Global World, would send a check in the same amount from one of those corporations back to Vida

Panama. Ultimately, Mr. Waked would deposit that check in Vida Panama's bank account. In truth, Vida Panama was not buying merchandise from Star Textile or Global World. These invoices were phony and Mr. Waked was using them to launder money among his corporations. The record is murky as to the nature of the laundered money, but regardless of the reason for the draws on Vida Panama's line of credit, Mr. Waked admitted to knowingly misrepresenting to the Bank how the drawn money would be used. Because of the mirror-image nature of the scheme, the Bank incurred no financial loss from these trans-actions and all draws were repaid with interest. Nevertheless, had the Bank known of the falsehoods that prompted these financial transactions, it would not have approved the draws on Vida Panama's line of credit or the wire transfers.

B. PROCEDURAL HISTORY

Mr. Waked, Mr. Zafir, Star Textile, and Vida Panama were indicted in a three-count indictment on March 24, 2015. All defendants were charged with conspiracy to commit money laundering in violation of 18 U.S.C. § 1956(h) and bank fraud in violation of 18 U.S.C. § 1344(2). Mr. Waked and Vida Panama were also charged with an additional count of conspiracy to commit money laundering in violation of 18 U.S.C. § 1956(h). The indictment sought forfeiture from all defendants. The charges against Mr. Zafir were dismissed on speedy trial grounds on October 17, 2016.

On October 19, 2017, Mr. Waked pled guilty to conspiracy to commit money laundering in violation of 18 U.S.C. § 1956(h), based on misrepresentations to ICBC in violation of 18 U.S.C. § 1957. In return for Mr. Waked's guilty plea, the government agreed to dismiss the indictment as to the remaining defendants and to dismiss the other counts against Mr. Waked after sentencing. The plea agreement affirmatively addressed forfeiture:

> The United States and the defendant will endeavor to arrive at an agreement as to a specific sum of money that is subject to forfeiture … Should the parties not come to such an agreement, each party will present its position to the court for a determination of the amount. The defendant agrees to forfeit to the United States all of his right, title, and interest in property that was in-volved in the commission of the offense, or traceable to such property, in an amount to be determined by the court. … *The defendant agrees to the entry of a money judgment equal to the value of the property involved in the offense which is not otherwise recovered ….*

R. Doc. 342 ¶ 9 (emphasis added). The parties agreed to a factual proffer setting forth the facts of the money laundering scheme.

Mr. Waked's guideline sentencing range was 41 to 51 months. The government recommended a sentence of 51-months imprisonment. At sentencing, the District Court asked the government why it re-quested such a high sentence when the defrauded bank ultimately suffered no loss. The prosecutor responded that Mr. Waked's actions caused a large risk of harm to the bank, made worse by the long duration of the fraud. Mr. Waked, on the other hand, requested a downward variance to 30 months.

The District Court sentenced Mr. Waked to 27-months imprisonment. The court subsequently entered a preliminary order of forfeiture for "all property in-volved in the offense or traceable to such property" pursuant to 18 U.S.C. § 982(a)(1), the forfeiture statute for money laundering offenses. The property subject to forfeiture was not set at that time. The preliminary order noted that, pursuant to Federal Rule of Criminal Procedure 32.2(b)(2)(C) and (e)(1), the government would be permitted to move at a later date to specify the forfeiture amount.

The government requested forfeiture of $20,852,000. This was the total amount of money Mr. Waked illegally transferred from Vida Panama to Star Textile and Global World, plus the amount Vida Pana-ma received back in mirror-image repayments.[1] At a hearing on the motion for forfeiture, the government sought to proceed under the substitute forfeiture provision of 21 U.S.C. § 853(p), which is incorporated into money laundering forfeiture pursuant to 18 U.S.C. § 982(b)(1). Section 853(p) provides for forfeiture of "any other property of the defendant" up to the value of the forfeitable property when it is no longer in the defendant's possession. The government conceded there were no proceeds of Mr. Waked's money laundering offense, but argued that, under the broad "involved in" language of 18 U.S.C. § 982(a)(1), forfeiture of all the money Mr. Waked laundered was proper. Mr. Waked responded that the District Court was un-der no obligation to order forfeiture be-cause the

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[1] We take no position as to whether this is the correct amount. Any reference in this opinion to the amount of money transferred or the number of fraudulent transfers is derived from the District Court record.

laundered money had already been returned to the Bank. Mr. Waked also argued that forfeiture money judgments are not authorized by statute.

At the conclusion of the forfeiture hearing, the District Court agreed with Mr. Waked and denied the government's motion for forfeiture. The court denied forfeiture based on "the unique circumstances of this case[,] where Mr. Waked returned all of the money plus interest." The District Court followed its ruling with a written order acknowledging that forfeiture is mandatory but declining to impose it because the statute's purposes—"to ensure that criminals do not retain money for themselves and to punish defendants by transferring ill-gotten gains to the United States"—would not be served here. The court also said that even if it were re-quired to impose a forfeiture money judgment, the government's requested sum of $20,852,000 would be unconstitutionally excessive. Instead, the court would order $520,000 ($10,000 for each of the 52 transactions).

The government submitted an emergency motion pursuant to Federal Rule of Criminal Procedure 35(a) asking the District Court to correct Mr. Waked's sentence and order forfeiture. The government again sought $20,852,000, but now also requested an alternative judgment of $10,426,000 (the undisputed amount Mr. Waked caused Vida Panama to send in fraudulent transfers). At a hearing on the Rule 35(a) motion, the District Court said it was still having "a hard time getting [its] head wrapped around the idea that if the money goes back to the original victim before there's any prosecution, how is there any money to recover?" So it denied the government's request for relief. In addition to the reasons stated in its original order, the District Court also cited to the language in the plea agreement, saying that, since Mr. Waked returned all the laundered money to the Bank, there was no money to "recover."

This is the government's appeal of the final judgment, the denial of the request for forfeiture, and the denial of the Rule 35(a) motion. The government urges reversal on two fronts. First, the government argues the District Court was under an obligation to order forfeiture, and that no relevant exceptions relieved it of this obligation. Second, assuming the District Court is required to order forfeiture, the government further argues the court wrongly concluded that forfeiture in the amount of the laundered funds would violate the Eighth Amendment's prohibition against excessive fines.

II.

[1-3] "[W]e review *de novo* the district court's legal conclusions regarding forfeiture and the court's findings of fact for clean error." *United States v. Elbeblawy*, 899 F.3d 925, 933 (11th Cir. 2018) (quotation marks omitted). We also review *de novo* the district court's determination of whether a fine is constitutionally excessive, while reviewing for clear error the factual findings made by the district court in conducting the excessiveness inquiry. *United States v. Bajakajian*, 524 U.S. 321, 336 n.10, 118 S. Ct. 2028, 2037 n.10, 141 L.Ed.2d 314 (1998). The government must prove the elements of criminal forfeiture under 18 U.S.C. § 982(a)(1) by a preponderance of the evidence. *United States v. Hasson*, 333 F.3d 1264, 1277 (11th Cir. 2003).

III.

A. FORFEITURE OVERVIEW

[4] A person convicted of federal money laundering "must forfeit to the government all property that is either 'involved in' that violation or traceable thereto.*" United States v. Seher*, 562 F.3d 1344, 1368 (11th Cir. 2009) (quoting, inter alia, 18 U.S.C. § 982(a)(1)). Property eligible for forfeiture "includes that money or proper-ty which was actually laundered ('the corpus'), along with 'any commissions or fees paid to the launderer and any property used to facilitate the laundering offense.'" *Id.* (alteration adopted) (quoting *United States v. Puche*, 350 F.3d 1137, 1153 (11th Cir. 2003)). While § 982(a)(1) provides the substantive scope of property that may be forfeited from a defendant convicted of money laundering, 18 U.S.C. § 982(b)(1) incorporates the procedural provisions of 21 U.S.C. § 853 to govern "any seizure and disposition of the property and any related judicial or administrative proceeding."

[5, 6] Forfeiture of property under § 982(a)(1) is part of the "historical tradition" of "*in personam*, criminal forfeitures." *Bajakajian*, 524 U.S. at 332, 118 S. Ct. at 2035. As such, criminal forfeiture under this section is wholly punitive and "serves no remedial purpose." *Id.* Property forfeited under the criminal forfeiture laws is conveyed to the United States, not the victim or any other third party. *See United States v. Joseph*, 743 F.3d 1350, 1354 (11th Cir. 2014) (per curiam).

B. OBLIGATION TO ORDER FORFEITURE

1. *The Mandatory Nature of Money Laundering Forfeiture*

Section 982(a)(1) says that district courts "shall order" forfeiture for defendants convicted of money laundering. The Supreme Court has made clear that when Congress provides that a district court "shall order" forfeiture, it "could not have chosen stronger words to express its intent that forfeiture be mandatory." *See United States v. Monsanto*, 491 U.S. 600, 607, 109 S. Ct. 2657, 2662, 105 L.Ed.2d 512 (1989). Although *Monsanto* arose in the context of forfeiture under 21 U.S.C. § 853(a), our sister circuits have had no trouble applying it to § 982(a)(1). *See, e.g., United States v. Carter*, 742 F.3d 440, 446 (9th Cir. 2014) (per curiam); *United States v. Hampton*, 732 F.3d 687, 691 (6th Cir. 2013). Neither do we.

[7] Because forfeiture under § 982(a)(1) is mandatory, to the extent the District Court's denial of the government's motion was based on "equitable considerations," such as the statute's purpose, this ruling was in error. *See United States v. Blackman*, 746 F.3d 137, 143 (4th Cir. 2014). The only way the District Court could avoid imposing forfeiture in this case is if a requirement for imposition of forfeiture was not satisfied. We must now turn to the statutory definition of property for Mr. Waked's laundering offense and ask whether any such property existed in this case.

2. *Whether There Was Property "Involved in" the Laundering Scheme*

[8] The government seeks forfeiture based on the corpus of funds Mr. Waked laundered. It does not seek forfeiture of property used to facilitate the money laundering or any commissions or fees that Mr. Waked received in connection with the scheme. *See* Oral Arg. Recording (Feb. 11, 2020) at 16:50–16:57. Thus, this appeal comes down to whether there was any property "involved in" Mr. Waked's money laundering scheme such that forfeiture is mandatory. *See* 18 U.S.C. § 982(a)(1). If there was no such

property, the District Court's failure to order forfeiture would be harmless error.

Mr. Waked makes two broad arguments for why forfeiture is not authorized against him. First, he says that forfeiture money judgments are not permitted by statute and, as a result, the money he laundered is not "property" for purposes of § 982(a)(1). Second, for a variety of reasons, he says the laundered money cannot be used to calculate his forfeiture obligation because the money was returned to the Bank. We reject both arguments and rule that the money Mr. Waked laundered was property "involved in" his offense.

a. Forfeiture Money Judgments

We first address Mr. Waked's argument that the money he laundered cannot be considered property "involved in" the offense because forfeiture money judgments are not authorized by statute.

[9] Mr. Waked is right to concede that our precedent condones forfeiture money judgments. In both *Seher* and *Puche*, our Court approved forfeiture money judgments against defendants convicted of money laundering. *Seher,* 562 F.3d at 1355, 1373–74; *Puche*, 350 F.3d at 1153. And in *Elbeblawy*, we explained that money that is the "proceeds" of a criminal offense "constitute[s] a defendant's inter-est in property" and is subject to forfeiture via an *in personam* money judgment. 899 F.3d at 940 (quotation marks omitted). We recognize that the government seeks forfeiture from Mr. Waked under 18 U.S.C.§ 982(a)(1), which does not, as many other substantive forfeiture provisions do, reach only "proceeds" of the offense. *See, e.g.*, 18 U.S.C. § 982(a)(2), (7); 21 U.S.C. § 853(a). However, this distinction is not material

here. A defendant clearly has a personal interest in the corpus of funds he laundered.[2] *See Seher*, 562 F.3d at 1372; *see also United States v. Huber*, 404 F.3d 1047, 1056 (8th Cir. 2005) (explaining that§ 982(a)(1) permits forfeiture money judgments).

The Supreme Court's decision in *Honeycutt v. United States*, 581 U.S. —, 137 S. Ct. 1626, 198 L.Ed.2d 73 (2017), does not change this analysis. *Honeycutt* held only that a district court may not hold members of a conspiracy jointly and severally liable for property that one conspirator, but not the other, acquired from the crime. *See id.* at 1630, 1632. In holding that joint and several liability is not permitted under the forfeiture laws, the Supreme Court did not rule on the question of whether money judgments are unauthorized. *See United States v. Gorski*, 880 F.3d 27, 40–41 (1st Cir. 2018) (noting "*Honeycutt* did not rule on" the question of whether money judgments are authorized by statute (quotation marks omitted)); *see also United States v. Bikundi*, 926 F.3d 761, 794 (D.C. Cir. 2019) (per curiam) (stating that "it is unclear whether *Honeycutt's* logic extends to" forfeiture under § 982(a)(1)), cert. denied, 591 U.S. —, — S. Ct. —, — L.Ed.2d —, 2020 WL 3405990 (June 22, 2020) (No. 19-1020). But in any event, rather than "abolishing *in personam* judgments against conspirators, the [*Honeycutt*] Court presumed the continued existence of *in personam* proceedings when it stated that the statute at issue there 'adopt[ed] an in personam aspect to criminal forfeiture.'" *Elbeblawy*, 899 F.3d at

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[2] There is an exception to this rule for inter-mediaries who "handled but did not retain the property in the course of the money laundering offense" and did not "conduct[ ] three or more separate transactions involving a total of $100,000 or more in any twelve month period." 18 U.S.C. § 982(b)(2). These circumstances do not apply to Mr. Waked.

941 (second alteration in original) (quoting *Honeycutt*, 137 S. Ct. at 1635).

Unless and until Congress, the Supreme Court, or this Court sitting en banc changes the law of forfeiture, we will follow this Court's precedent permitting forfeiture money judgments.

b. The Laundered Money

[10] Mr. Waked makes several arguments for why, even if forfeiture money judgments are allowed by statute, the District Court was right not to order forfeiture against him. First, he argues that imposition of forfeiture against him would be "impermissible double counting" because he returned the money to the Bank. Second, he argues that the interest in the laundered money was Vida Panama's, not his. Finally, he argues the property for which forfeiture is sought was not "tainted," and thus cannot be ordered forfeited. We reject all three arguments.

[11] No court has directly confronted the question of whether laundered money that winds up back with a victim of the scheme is still property "involved in" the offense for forfeiture purposes. But two courts have examined a related question in the context of 18 U.S.C. § 982(a)(2), which provides for forfeiture of "any property constituting, or derived from, proceeds" obtained as the result of certain financial crimes. In *United States v. Boulware*, 384 F.3d 794 (9th Cir. 2004), the defendant was convicted for, among other things, making false statements to obtain a loan from a financial institution, thereby triggering § 982(a)(2)'s forfeiture obligation. *Id.* at 813. Although the defendant repaid the loan, the Ninth Circuit held he was not entitled "to a set-off" for otherwise forfeitable property that he returned to the defrauded

institution. *Id.*[3] The Ninth Circuit noted that "§ 982(b)(1) incorporates the provisions of 21 U.S.C. § 853(c)," which provides that the government's interest in forfeitable property vests upon the commission of the criminal act. *Id.* It is not difficult to apply this principle to money laundering, where the government's interest in the corpus vests "the moment" such property is laundered. *See United States v. McCorkle*, 321 F.3d 1292, 1294 n.2 (11th Cir. 2003). Even if we agreed that laundered funds voluntarily returned to the victim are not always subject to forfeiture, *see United States v. Hawkey*, 148 F.3d 920, 928 (8th Cir. 1998), that is not what happened in Mr. Waked's case. Mr. Waked does not argue that he "returned" the fraudulently obtained funds to the Bank out of the goodness of his heart. His laundering scheme depended on the Bank being repaid in full at the conclusion of each mirror-image transaction.

Mr. Waked's reliance on cases discussing so-called "double recovery" of property is also misplaced. In *United States v. Ruff,* 420 F.3d 772 (8th Cir. 2005), the Eighth Circuit doubted that a district court could order restitution to a government agency where that same government agency had already received forfeiture from the defendant. *See id.* at 775. But no such double recovery would result here because Mr. Waked made no payment to the government body seeking forfeiture. This distinction animated our decision in *Joseph*, where we held the district court

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[3] The Second Circuit has also held that "§ 982(a) of the criminal forfeiture statute does not permit a defendant to offset loan proceeds that have been repaid." *United States v. Annabi*, 746 F.3d 83, 85 (2d Cir. 2014)

had no authority to offset the defendant's restitution obligation (owed to the IRS) by the forfeited amount (owed to the Department of Justice). 743 F.3d at 1355–56. Thus, even if our Circuit did follow the rule announced in *Ruff,* that principle would not aid Mr. Waked.

[12] Mr. Waked next argues that only his interest in the property can be forfeit-ed, and because the money was laundered using Vida Panama's accounts, *in personam* forfeiture against him is not appropriate. Mr. Waked's argument on this point relies on a misreading of this Court's precedent in *United States v. Gilbert*, 244 F.3d 888 (11th Cir. 2001). Mr. Waked says *Gilbert* stands for the idea that any forfeiture judgment is limited to the "[d]efendant's *interest* in the actual property subject to forfeiture." Br. of Appellee at 11 (emphasis added) (citing *Gilbert*, 244 F.3d at 918–19). Yet a defendant who is convicted of money laundering still has an "interest" in the money that was laundered, even if the money was not held in the defendant's personal account. *See, e.g., Seher,* 562 F.3d at 1368 ("A person convicted of violating 18 U.S.C. § 1956 TTT must forfeit to the government . . . that money or property which was actually laundered . . . . ").

As part of his plea, Mr. Waked acknowledged that he personally applied for the credit draws and redeposited the money in Vida Panama's account with ICBC. He also acknowledged that he "intentionally misrepresented the nature and purpose of these financial transactions in order to induce ICBC to issue the loans and wire transfers." He did all this not as a bystander, but as general manager and part owner of Vida Panama with signature authority over its bank accounts. Allowing Mr. Waked to escape forfeiture on the ground that the interest in the laundered funds was actually Vida Panama's, not his own, would relieve him of culpability for the offense to which he already pled guilty. As 18 U.S.C. § 982(b)(2) makes clear, a defendant can only avoid this outcome if he "acted merely as an intermediary." Mr. Waked was more than an intermediary here. *See supra* at 1163–64 & n.2.

Finally, Mr. Waked argues criminal forfeiture can only be ordered against "tainted property," and that there is no tainted property here because the laundered funds were returned to the Bank with interest. This argument derives from the ruling in *Honeycutt* that forfeitable property under 21 U.S.C. § 853(a) is limited to "tainted property obtained as the result of or used to facilitate the crime." 137 S. Ct. at 1633. However, this aspect of the *Honeycutt* holding was based on the language of § 853(a), which limits forfeiture to "proceeds the person obtained directly or indirectly" as the result of the crime. By contrast, the government is seeking forfeiture against Mr. Waked un-der 18 U.S.C. § 982(a)(1). And because § 982(a)(1) contains neither a "proceeds" nor an "obtained" limitation, *Honeycutt's* "tainted property" requirement does not apply to this case. *See United States v. Chittenden,* 896 F.3d 633, 637 (4th Cir. 2018) (recognizing that *Honeycutt's* restriction of forfeiture to "tainted property the defendant personally acquired" is limited to § 853(a) and other laws with identical language).[4]

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[4] We also note that the District Court was mistaken when it construed Mr. Waked's plea agreement as precluding forfeiture. The District Court said at the Rule 35(a) hearing that the plea agreement's reference to "property TTT not otherwise recovered" as the basis for the forfeiture amount precluded forfeiture since the laundered money was returned to the Bank. This phrase does not preclude forfeiture. The plea agreement's use of the

C. AVAILABILITY OF SUBSTITUTE FORFEITURE

[14] The government also argues a forfeiture money judgment is available be-cause 21 U.S.C. § 853(p) permits substitute forfeiture where, as here, a defendant does not retain laundered funds.[5] Br. of Appellant at 32; Reply Br. at 16. Section 853(p) provides for forfeiture in the amount of "the property involved in or traceable to the crime" if that property "is not available for forfeiture." *United States v. Soreide,* 461 F.3d 1351, 1352 n.1 (11th Cir. 2006) (per curiam); *see also United States v. Bermudez*, 413 F.3d 304, 306 (2d Cir. 2005) (per curiam) (holding that substitute forfeiture for cases arising under § 982(a)(1) may be ordered in the amount of the laundering corpus). Although there are five general circumstances in which § 853(p) applies, the government argues only one is relevant here: that the forfeitable property has, "as a result of any act or omission of the defendant … [,] been transferred or

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word "recovered" in the forfeiture context clearly refers to property not already recovered for forfeiture by the United States, rather than the Bank. *See*, *e.g.*, *Caplin & Drysdale, Chartered v. United States*, 491 U.S. 617, 631, 109 S. Ct. 2646, 2655, 105 L.Ed.2d 528 (1989) (noting the "strong governmental interest in obtaining full recovery of all forfeitable as-sets").

[5] Mr. Waked says "the Government made no … motion or showing in the trial court" that the substantive conditions for substitute forfeiture are present, so it should not be allowed to make this argument on appeal. Br. of Appellee at 16. The record simply does not bear this out. The government repeatedly argued before the District Court that substitute forfeiture applies here. By that same token, Mr. Waked argued before the District Court—as he does on appeal—that the government's inability to satisfy the requirements of 21 U.S.C. § 853(p) precludes the court from entering an order of forfeiture.

sold to, or deposited with, a third party." 21 U.S.C. § 853(p)(1)(B).

Mr. Waked argues substitute forfeiture is unavailable—and thus that the district court should be affirmed—because the Bank is not a third party within the meaning of § 853(p)(1)(B). According to Mr. Waked, this is so because the Bank was the original and still-current owner of the laundered money, as opposed to a mere "third party" to whom the money was transferred. But Mr. Waked provides no support for his conclusory statement that victims of money laundering cannot also be third parties under § 853(p). Neither can we find any support for this idea in the text of the statute. Section 853(p)(1)(B) distinguishes between only "the defendant" and "a third party" to whom proper-ty was transferred. We see no reason why a victim of money laundering could not also have received a transfer of the property. *See United States v. Fabian,* 764 F.3d 636, 637 (6th Cir. 2014) ("One of those third parties was Jerry Mais, a victim of the fraud ….'). Our reading is confirmed by other provisions of the law, such as § 853(c)'s use of the term "third party" to refer to "a person other than the defendant." Again, there is no obvious reason why this term could not include a victim of the defendant's conduct.

We decline to affirm the District Court on the ground that substitute asset forfeiture is improper.

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The definition of property in 18 U.S.C. § 982(a)(1) is distinct from that in the other subsections of § 982(a), as well as 21 U.S.C. § 853(a). Our ruling allows forfeiture in the amount of property that Mr. Waked transferred as a part of his laundering scheme. We understand this out-come to be what Congress intended when it used the broad term "any property, real or personal, involved in such offense" and instituted a scheme of substitute forfeiture. We therefore conclude that the District Court was under an obligation to order forfeiture against Mr. Waked and we reverse its order to the contrary.

IV.

[15–18] The Eighth Amendment prohibits the imposition of "excessive fines."U.S. Const. amend. VIII. A forfeiture payment is a "fine" within the meaning of the Eighth Amendment if it "constitute[s] punishment for an offense." *Bajakajian,* 524 U.S. at 328, 118 S. Ct. at 2033. A criminal forfeiture money judgment is intended to punish. *See id.* "[A] punitive forfeiture violates the Excessive Fines Clause if it is grossly disproportional to the gravity of a defendant's offense." *Id.* at 334, 118 S. Ct. at 2036. In this Circuit, consideration of whether a punitive forfeiture violates the Eighth Amendment is governed by three main factors: "(1) whether the defendant falls into the class of persons at whom the criminal statute was principally directed; (2) other penalties authorized by the legislature (or the Sentencing Commission); and (3) the harm caused by the defendant." *United States v. Sperrazza*, 804 F.3d 1113, 1127–28 (11th Cir. 2015) (quotation marks omitted).

[19] The District Court, applying these Eighth Amendment precepts, held that a forfeiture order of \$20,852,000[6] would be excessively punitive because

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[6] The government now clarifies it is seeking a forfeiture judgment in the lesser amount of "\$10,426,000, representing the total amount of funds actually used in the transactions." Reply Br. at 25 n.9.

"little harm was caused by the Defendant." For this reason, the court held that, "even if it were required to impose [forfeiture], a forfeiture money judgment of $520,000 would be appropriate ($10,000 for each of the 52 transactions in this case)." The government argues on appeal that forfeiture of $10,426,000—the amount of money the Bank allowed Mr. Waked to transfer, rather than the amount both transferred and redeposited—is not constitutionally excessive.

Reviewing the District Court's legal analysis *de novo*, we conclude the court erred in its holding that a fine of $10,000 per transaction is the constitutional ceiling for an order of forfeiture against Mr. Waked. The District Court went astray by considering only one of the enumerated factors—harm caused by the defendant—in performing the excessiveness analysis. In addition, the District Court's application of that factor was erroneous because the court failed to properly define the harm. For these reasons, we vacate the District Court's holding that any forfeiture order above $520,000 would be unconstitutionally excessive.

A. CLASS OF PERSONS

[20] First, Mr. Waked is within the class of persons whom the money laundering statutes were meant to cover. He was not merely an intermediary. He was a sophisticated party who carried out a multi-million-dollar money laundering scheme over the course of several years. *See* 18 U.S.C. § 1957(a); *see also Sperrazza*, 804 F.3d at 1127 (holding that defendant's un-lawful tax evasion "places him 'at the dead center' of the class of persons" at whom the statute

criminalizing such conduct is directed). Mr. Waked's role necessitates an order of forfeiture to be instituted against him, presuming such an order complies with the other constitutional requirements.

B. AUTHORIZED PENALTIES

[21] The second factor requires the court to consider whether "the order of forfeiture is excessive in relation to the penalties authorized by the Congress and the Sentencing Commission." *Sperrazza*, 804 F.3d at 1127. If the value of the forfeit-ed property is within the permissible range of fines under the relevant statute or sentencing guideline, the forfeiture is presumptively constitutional. *See id.* The maximum fine for criminal money laundering is "twice the amount of the criminally derived property involved in the transaction." 18 U.S.C. § 1957(b)(2). And the statute defines "criminally derived property" as "any property constituting, or derived from, proceeds obtained from a criminal offense." *Id.* § 1957(f)(2).

[22, 23] Mr. Waked argues the government conceded before the District Court that "there are no proceeds of the offense" and so this penalty provision does not apply to him. This argument misunderstands the word "proceeds," which has a different meaning in § 1957 than in substantive forfeiture provisions. In the context of § 1957, the word "proceeds" generally refers to the total revenue—"receipts as well as profits"—of the underlying criminal offense. *United States v. Jennings*, 599 F.3d 1241, 1252 (11th Cir. 2010) (quotation marks omitted). Here, Mr. Waked defrauded the Bank by causing it to pay on Vida Panama's line of credit and allowing him to transfer money to Star Textile and Global World. These are

the "proceeds" to which § 1957(f)(2) refers. *See* Oral Arg. Recording (Feb. 11, 2020) at 1:38–1:46 ("[T]here were proceeds from . . . the specified unlawful activity[,] the preceding bank fraud on the Panamanian bank . . . *see also United States v. Kratt*, 579 F.3d 558, 560 (6th Cir. 2009) (defining "receipts . . . received from the fraudulently obtained loans" as including the full "amount of the loans").

Mr. Waked does not point to anything other than the government's supposed concession at the forfeiture hearing in support of his argument that § 1957(b)(2) should not be used to determine the maximum fine. As we read the record, the government did not waive the right to argue that there were bank fraud proceeds. And since the money Mr. Waked fraudulently obtained are proceeds within the meaning of § 1957(f)(2), the maximum fine for his money laundering offense is twice the amount of money "involved in" the laundering scheme. While this figure appears to be $20,852,000[7] the District Court has not made the findings of fact necessary to arrive at the proper forfeiture amount.[8] Once it does,

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[7] The Probation Department listed this amount as the maximum fine in the PSR and Mr. Waked did not object. Assuming this figure—or something close to it—is correct, United States Sentencing Guidelines § 5E1.2(c)(2), which limits the maximum fine based on the defendant's guideline offense level, would not apply because Mr. Waked was "convicted under a statute authorizing [] a maximum fine greater than $500,000."U.S.S.G. § 5E1.2(c)(4).

[8] Our dissenting colleague argues we should defer any discussion of the excessiveness of the forfeiture amount until after the District Court has made the appropriate findings. *Post* at 1172–73 & n.2. This we cannot do. In its order denying forfeiture, the District Court held that, "were [it] required to impose a forfeiture money judgment," only "a forfeiture money judgment of $520,000 would be appropriate." R. Doc. 375 at 2

any forfeiture amount below the maximum fine will be presumptively constitutional.

C. HARM CAUSED BY THE DEFENDANT

[24] Finally, the court must take account of the harm caused by the defendant. The District Court found that Mr. Waked's conduct caused little harm because "all of the funds were returned to the bank with interest." But for some crimes, including money laundering, the harm "does not generally fall upon an individual, but falls upon society in general." *United States v. Martin*, 320 F.3d 1223, 1227 (11th Cir. 2003) (per curiam) (quoting *United States v. Thompson*, 40 F.3d 48, 51 (3d Cir. 1994)). The District Court erred by failing to look beyond the impact on the Bank's bottom line when considering whether Mr. Waked's conduct was harmful.

[25] To the extent the District Court's order implicitly considered the harm Mr. Waked caused to society, it erred in com-paring his case to Bajakajian and *United States v. Ramirez*, 421 F. App'x 950 (11th Cir. 2011) (per curiam) (unpublished).[9] In *Ramirez*, a panel of our Court characterized the defendant as having committed a mere "reporting offense." 421 F. App'x at 952. We noted the defendant's conduct was not part of an "attempt to conceal his wrongdoing"

n.1. We already held that the District Court *is* required to impose a forfeiture money judgment, *supra* at 1166–67, so it follows that we must reach the court's alternative holding that any forfeiture amount over $520,000 would be excessive.

[9] In addition to being substantively distinguishable, we note that *Ramirez*, an unpublished opinion is not binding precedent in this Circuit. *See* 11th Cir. R. 36-2.

and that the money involved in the transactions "was not connected to any illegal activity." *Id.* Similar facts led the Supreme Court in *Bajakajian* to conclude that forfeiture of $357,144, the amount of money the defendant failed to declare to customs inspectors, would be unconstitutionally excessive. See *Bajakajian*, 524 U.S. at 337–39, 118 S. Ct. at 2038–39. By contrast, the greater harm from money laundering is usually obvious: criminals launder money to cover up their criminal conduct, and society suffers "when criminally derived funds are laundered to allow the criminal unfettered, unashamed and camouflaged access to the fruits of those ill-gotten gains." *United States v. O'Kane*, 155 F.3d 969, 972–73 (8th Cir. 1998). So, in *Martin*, this Court approved of the district court's calculation of the "harm" as equaling the amount the defendant laundered through the 97 different monetary transactions for which he was convicted. 320 F.3d at 1226–27. Our Court said that calculating the harm simply based on the value of the stolen check that gave rise to these transactions would not take full stock of the harm to society. Id. at 1227. In such a case, society has an interest in redressing "the injection of illegal proceeds into the stream of commerce." *Id.* (quotation marks omitted). Similarly, when a laundering scheme covers up the movement of drug money, the conduct "is harmful in and of itself." *United States v. Chaplin's, Inc.*, 646 F.3d 846, 853 (11th Cir. 2011).

On remand, the District Court will have an opportunity to make detailed findings regarding the quantum of harm caused by Mr. Waked. When it does, it must consider the adverse impact on society that money laundering generally has as well as the specific conduct that Mr. Waked engaged in. Only after making those findings will the court be able to determine the constitutional contours of the forfeiture judgment against Mr. Waked.

V.

Although we reverse the District Court's denial of the government's motion for forfeiture, we do not set the amount of the forfeiture required. The District Court has not conducted any factfinding to that effect, nor has it had the opportunity to conduct a proper constitutional analysis. The District Court must be given an opportunity to do so in the first instance.

REVERSED IN PART, VACATED IN PART, AND REMANDED.

LAGOA, Circuit Judge, concurring in part and dissenting in part:

Because the statutory language in 18 U.S.C. § 982(a)(1) and 28 U.S.C. § 2461(c) is mandatory, leaving no discretion to the district court, I concur with the majority opinion that the district court must enter a forfeiture money judgment against Mr. Waked and that such judgment must reflect the total money laundered through Mr. Waked's conspiracy. *See, e.g.*, *United States v. Hernandez*, 803 F.3d 1341, 1343 (11th Cir. 2015) (discussing the mandatory nature of 28 U.S.C. § 2461(c)); *United States v. Fleet*, 498 F.3d 1225, 1229 (11th Cir. 2007) (interpreting "shall order" language in 21 U.S.C. § 853(p)). Furthermore, the text of § 982(a)(1) and our precedent leave no question that the amount subject to forfeiture in this case includes the amount laundered by Mr. Waked, even if he paid those funds back to the bank. *See* 18 U.S.C. § 982(a)(1) (requiring forfeiture of "any property . . . involved in such offense"); *United States v. Seher*, 562 F.3d 1344, 1368 (11th Cir. 2009); *see also United*

States v. Bermudez, 413 F.3d 304, 306 (2d Cir. 2005) (finding that § 982(a)(1), read in conjunction with § 982(b)(2), allows for forfeiture of assets "up to the amount laundered … even if he never retained those funds"). I respectfully disagree, however, with the majority's discussion in Parts III(C) and IV of the opinion. The government has not yet sought substitute asset forfeiture. Similarly, the district court has not yet made the factual findings for it to conclude whether or not the forfeiture amount is excessive under the Eighth Amendment. Because it is premature for this Court to reach either of those issues on this appeal, I respectfully dissent from those portions of the majority opinion.

I. Substitute Asset Forfeiture Pursuant to 21 U.S.C.§ 853(p)

The government has three, nonexclusive avenues for forfeiture relief against Mr. Waked. *See generally United States v. Candelaria–Silva*, 166 F.3d 19, 42 (1st Cir. 1999) (discussing three types of forfeiture relief against a criminal defendant). First, the government may seek an in personam forfeiture money judgment against the defendant. *United States v. Elbeblawy*, 899 F.3d 925, 940–41 (11th Cir. 2018) (upholding district court's authority to enter forfeiture money judgments). Second, the government may seek direct forfeiture of specific property made forfeitable by statute. *See* 18 U.S.C. § 982(a)(1), (b)(1); 21 U.S.C. § 853(a). Third, in the absence of directly forfeitable property, the government may seek forfeiture of other property belonging to the defendant—that is, substitute property—by meeting the requirements of 21 U.S.C. § 853(p). *See* 18 U.S.C. § 982(b)(1).

These three separate forms of forfeiture relief are reflected in the Rules of Criminal Procedure. A preliminary order of forfeiture must include the amount of any money judgment, direct the forfeiture of specific property, and, "*if the government has met the statutory criteria*," direct forfeiture of any substitute property. Fed. R. Crim. P. 32.2(b)(2)(A) (emphasis added). If the government subsequently identifies substitute property subject to forfeiture under applicable statutes, it may move for a new or amended order of forfeiture. Fed. R. Crim. P. 32.2(e). Put simply, substitute asset forfeiture and forfeiture money judgments are separate forfeiture remedies. The latter is not dependent on the existence of forfeitable substitute property or the government's entitlement under § 853(p). *See United States v. Lo*, 839 F.3d 777, 792 (9th Cir. 2016) ("[W]here the government does not seek substitute property under Rule 32.2(e), but seeks only 'a money judgment as a form of criminal forfeiture under Rule 32.2(b),' those requirements [of § 853(p)] are inapplicable.").

Here, the government sought a forfeiture money judgment against Mr. Waked. It did not request relief under § 853(p)—the substitute asset forfeiture provision—in its initial and subsequent motions and memoranda nor did it identify specific substitute property to be forfeited. Specifically, the government stated that "[b]ecause the United States has not, as of this date, identified specific property to forfeit, it seeks a money judgment in" the total amount laundered by Mr. Waked. The government mentioned the statutes governing substitute asset forfeiture only in later briefing, and did so only to support its argument that the district court could (and must) enter a forfeiture money judgment even though Mr. Waked returned all laundered funds to the bank.

Specifically, the government argued that "[t]he exemption in Section 982(b)(2) on forfeiting substitute assets would make no sense if Section 982(a)(1) limited forfeiture only to the amount of funds that a defendant had retained for himself." Moreover, in those filings, the government reiterated that it was seeking entry of an in personam forfeiture money judgment against Mr. Waked. Similarly, at the hearing on the government's forfeiture motion, the government pointed to the substitute asset forfeiture provisions to address the district court's main concern that it may be improper to order forfeiture of property that is no longer with the defendant. Thus, throughout the proceedings before the district court, the government maintained that it sought a forfeiture money judgment "in an amount equal to the amount of money that was involved in the money laundering offense."

On appeal, the government does not take the position that it is entitled to a forfeiture money judgment against Mr. Waked under § 853(p) and § 982(b)(2) as a form of substitute asset forfeiture. Rather, the government acknowledges that the money judgment is a means for the government to memorialize Mr. Waked's forfeiture obligations so that it can later target substitute assets to satisfy that judgment. As it did below, the government discusses § 853(p) and § 982(b)(2) only to demonstrate that Congress, by incorporating substitute asset relief and providing a safe harbor for low-level laundering intermediaries, expressed an intent to hold large-scale money launderers liable for the total amount laundered, even if they do not retain the laundered proceeds. The government further clarifies its position by noting that a money judgment is necessary because it would "allow[] the government to enforce that judgment by attempting to locate substitute property belonging to Waked up to the value of that money judgment."

The majority opinion, however, suggests that substitute asset forfeiture is available to the government and rejects Mr. Waked's argument that the bank is not a third-party transferee for purposes of § 853(p)(1)(B). The majority's conclusion appears to stem from the notion that the government based its entitlement to forfeiture, at least in part, on the substitute asset forfeiture provisions. As discussed above, the record is clear that the government moved for only a money judgment. More importantly, such a conclusion would blend two separate forfeiture remedies, and relieve the government from complying with the requirements of § 853(p) while depriving Mr. Waked of the opportunity to contest them.

I agree that the government is entitled to a forfeiture money judgment in the amount of the money laundered by Mr. Waked, *see* 18 U.S.C. § 982(a)(1), and that nothing in § 853(p) affects the district court's obligation to enter the requested money judgment. But any additional questions relating to entitlement to substitute asset forfeiture are not before this Court. Once the district court enters the requested money judgment, the government may seek forfeiture against substitute property owned by Mr. Waked, if any. If it chooses to proceed against such substitute property, the government would have to move under Rule 32.2 and meet the relevant statutory requirements by a preponderance of the evidence. *See United States v. Hasson*, 333 F.3d 1264, 1278–79 (11th Cir. 2003). This has not happened yet, and I therefore would not address any issues relating to that process in this appeal.

II. The Eighth Amendment Analysis

In a footnote, the district court stated that the forfeiture amount requested by the government was constitutionally excessive under the Eighth Amendment because Mr. Waked's criminal activity caused little harm. The district court noted that, "if it were required to impose one, a forfeiture money judgment of $520,000 would be appropriate ($10,000 for each of the 52 transactions in this case)." In response, the majority applies this Court's excessive fine test in *United States v. Sperrazza*, 804 F.3d 1113 (11th Cir. 2015), and concludes that the district court erred in finding that any forfeiture money judgment beyond $520,000 would be unconstitutional under the Eighth Amendment.[10]

[10] The majority characterizes the district court's footnote as an alternative holding. However, the sole issue before the district court was whether entry of a forfeiture money judgement was mandatory. Nowhere in its footnote does the district court contend that the Eighth Amendment precludes *entry* of a forfeiture money judgment against Mr. Waked. Instead, the district court's brief Eighth Amendment discussion begins with "[e]ven if the Court were required to impose a forfeiture money judgment" and concludes with what amount "would be appropriate." This statement is dictum, not a holding. *See Edwards v. Prime, Inc.*, 602 F.3d 1276, 1289 (11th Cir. 2010) ("All statements that go beyond the facts of the case—and sometimes, but not always, they begin with the word 'if'—are dicta."); *see also In re BFW Liquidation*, 899 F.3d 1178, 1186 (11th Cir. 2018) (noting that a statement constitutes dictum, not a holding, if it is unnecessary to the results of the case). The only holding by the district court pertains to the entry of a forfeiture money judgment against Mr. Waked. Until the district court enters a money judgment against Mr. Waked and decides

Sperrazza requires us to consider "(1) whether the defendant falls into the class of persons at whom the criminal statute was principally directed; (2) other penalties authorized by the legislature (or the Sentencing Commission); and (3) the harm caused by the defendant." *Id.* at 1127 (quoting *United States v. Browne,* 505 F.3d 1229, 1281 (11th Cir. 2007)). The second prong of that inquiry, which could afford a forfeiture order a strong presumption of constitutionality, see United States v. Dicter, 198 F.3d 1284, 1292 (11th Cir. 1999), requires a specific factual finding in this case.[11] The maximum fine available against Mr. Waked depends on the total "amount of the criminally derived property involved in" Mr. Waked's offenses. 18 U.S.C. § 1957(b)(2); *accord* U.S.S.G.§ 5E1.2(c).

This Court recognizes that the district court is the best forum to decide and weigh the various fact-based considerations that drive the excessive fine analysis. *See*, *e.g.*, *Seher*, 562 F.3d at 1371 (remanding Eighth Amendment issue to the district court for factual findings because this Court did not have a clear factual basis for evaluating whether forfeiture of certain assets would constitute an excessive fine); *United States v. Land, Winston County*, 163 F.3d 1295, 1303 (11th Cir. 1998) (remanding Eighth

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whether to limit the amount based on the Eighth Amendment, there is no holding on that issue for us to review.

[11] As well, the third prong, *i.e.*, the harm caused by Mr. Waked's conduct, also requires specific factual findings that should be better developed in the district court before reaching this Court. *See, e.g.*, *Sperrazza*, 804 F.3d at 1128 (considering evidence regarding the purpose of, and indirect harm caused by, the defendant's criminal conduct).

Amendment issue to the district court ["b]ecause the issue of excessive fines may depend on various factors and conduct with which the district court is more familiar than this court"). This allocation of fact-finding reflects this Court's limited role in reviewing forfeiture orders for constitutional excessiveness: "rather than strict proportionality, we review fines only for gross disproportionality." *United States v. Chaplin's, Inc.*, 646 F.3d 846, 851 (11th Cir. 2011).

As the majority acknowledges, the district court has not made findings of fact as to the total amount laundered by Mr. Waked. And it follows that the district court has not made the factual findings required by Sperrazza based on that total amount. Thus, absent clear determinations from the district court, I believe that the proper procedure is to remand to the district court to provide it the opportunity to make the findings relevant to the excessive fine analysis and for this Court to defer its discussion until it is presented with those findings. Otherwise, by deciding a legal issue based on as-yet-not-made factual de-terminations, this Court risks issuing an advisory opinion "that merely opine[s] on 'what the law would be upon a hypothetical state of facts.'" *Gagliardi v. TJCV Land Trust*, 889 F.3d 728, 733 (11th Cir. 2018) (quoting *Chafin v. Chafin*, 568 U.S. 165, 172, 133 S.Ct. 1017, 185 L.Ed.2d 1 (2013)).

For the foregoing reasons, I concur in reversing the order denying a forfeiture money judgment to the government, but I would defer discussion on substitute asset forfeiture and the Eighth Amendment until those issues properly reach this Court.

APPENDIX D

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

Criminal Case No. 15-20189-CR-Scola

UNITED STATES OF AMERICA,

Plaintiff,

v.

NIDAL WAKED HATUM,

Defendant.

Filed April 10, 2018

ORDER ON GOVERNMENT'S REQUEST
FOR ENTRY OF FORFEITURE
MONEY JUDGMENT

The Court held a hearing on April 6, 2018 to determine whether a forfeiture money judgment should be entered against the Defendant and, if so, to determine the appropriate amount of the forfeiture money judgment. The Government filed its forfeiture memorandum [ECF No. 367], the Defendant filed his response [ECF No. 372] and the Government replied [ECF No. 373]. After considering the arguments of the parties and relevant legal authorities, and based upon the unique facts of this case, the Court finds the Government is not entitled to the entry of a forfeiture money judgment.

At the outset, the Court acknowledges that forfeiture is a mandatory part of a defendant's sentence under 18 U.S.C. § 982(a)(1) and 28 U.S.C. § 2461 and that it has the authority to enter a forfeiture money judgment pursuant to Fed. R. Crim. P. 32.2(b)(1) and (c)(1) and *United States v. Honeycutt*, 137 S.Ct. 1626 (2017) and *United States v. Padron*, 527 F.3d 1156, 1162 (11th Cir. 2008).

The forfeiture statute in this case, 18 U.S.C. § 982(a)(1), states:

The Court, in imposing sentence on a person convicted of an offense in violation of section 1956, 1957, or 1960 of this title, shall order that the person forfeit to the United States any property, real or personal, involved in such offense, of any property traceable to such property. (Emphases added

The forfeiture statute in this case, 18 U.S.C. § 982(a)(1), states:

> The Court, in imposing sentence on a person convicted of an offense in violation of section 1956, 1957, or 1960 of this title, shall order that the person forfeit to the United States any property, real or personal, involved in such offense, of any property traceable to such property. (Emphases added)

18 U.S.C. § 982(b)(2) expressly authorizes the forfeiture of all of the money laundered by the defendant, even if he retained none of it for himself, so long as he conducted three or more separate transactions involving a total of $100,000 in a 12 month period.

So, why then, is the Court not imposing a forfeiture money judgment? The purpose of forfeiture is to ensure that criminals do not retain money for themselves and to punish defendants by transferring ill-gotten gains to the United States. *See United States v. Browne*, 505 F.3d 1229, 1280–81 (11th Cir. 2007); *United States v. Paley*, 442 F.3d 1273, 1278 (11th Cir. 2006). In this case, all of the funds that were laundered were returned to the bank, with interest.

There are no laundered funds that were retained by the Defendant or any other co-conspirator to be forfeited.

Accordingly, it is hereby ORDERED that no forfeiture money judgment shall be entered and the Court VACATES the Preliminary Order of Forfeiture [ECF No. 354] entered on December 18, 2017.[1]

DONE and ORDERED at Miami, Florida, on April 9, 2018.

/s/ Robert N. Scola, Jr.
Robert N. Scola, Jr.
United States District Judge

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[1] Even if the Court were required to impose a forfeiture money judgment, the amount requested by the Government, $20,852,000, is excessive. *See United States v. Bajakajian*, 524 U.S. 321, 337 (1998); *United States v. Ramirez*, 421 Fed. Appx. 950, 952 (11th Cir. 2011). Since all of the funds were returned to the bank with interest, little harm was caused by the Defendant. Using the reasoning and methodology of Ramirez, the Court finds that even if it were required to impose one, a forfeiture money judgment of $520,000 would be appropriate ($10,000 for each of the 52 transactions in this case).

APPENDIX E

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

Criminal Case No. 15-20189-CR-Scola

UNITED STATES OF AMERICA,

Plaintiff,

v.

NIDAL WAKED HATUM,

Defendant.

Filed Sep. 16, 2022

FINAL ORDER OF FORFEITURE

This matter is before the Court upon motion of the United States of America (the "United States" or "Government") for an order of forfeiture against Defendant Nidal Ahmed Waked Hakum. (ECF No. 410.) The Defendant responded, opposing the motion. (ECF No. 414.) Thereafter, the Government replied. (ECF No. 416.) The Court entered an Amended Preliminary Order of Forfeiture on January 13, 2022 (ECF No. 424) and heard oral argument from the parties regarding the amount of the forfeiture money judgment to be entered pursuant to the Amended Preliminary Order of Forfeiture. After careful consideration of the briefs, the record, and the relevant legal authorities, the Court grants the motion (ECF No. 410) and finds, by a preponderance of the evidence, that the appropriate amount of the forfeiture money judgment under 18 U.S.C. § 982(a)(1) is $10,426,000.

BACKGROUND

On October 19, 2019, the Defendant pled guilty to Count One of the Indictment charging him with conspiring to commit money laundering in violation of 18 U.S.C. § 1956(h). Pursuant to 18 U.S.C. § 982(a)(1), the Defendant is required to forfeit to the United States any property involved in such offense or property traceable to such property. This Court previously entered a Preliminary Order of Forfeiture (ECF No. 354) that is final as to the Defendant. Fed. R. Crim. P. 32.2(b)(4)(A). It provides that "the Government may move at any time to amend this order when . . . prepared to establish the amount of a money judgment by a preponderance of the evidence." (*Id.* at 2.)

The Government seeks the imposition of a money judgment for forfeiture in the amount of $10,426,000, asserting that such an amount is appropriate because that is the amount of money that the Defendant undisputedly transferred into the United States. (Mot. at 2.) The Defendant argues that the imposition of such a money judgment for forfeiture would violate the Eighth Amendment's prohibition on excessive fines. (Def.'s Resp. at 5.)

LEGAL STANDARD

The imposition of a money judgment for forfeiture is mandatory under 18 U.S.C. § 982(a)(1). *United States v. Waked Hatum*, 969 F.3d 1156, 1162 (11th Cir. 2020), *cert. denied*, SC20-1370, 2021 WL

4507648 (Oct. 4, 2021). A court ordering forfeiture under 18 U.S.C. § 982(a)(1) must determine the appropriate amount of a money judgment by a preponderance of the evidence. *Id.* (citing *United States v. Hasson*, 333 F.3d 1263, 1277 (11th Cir. 2003).

The Eighth Amendment to the United States Constitution "prohibits the 'imposition of excessive fines.'" *Id.* at 1166. The Eleventh Circuit evaluates three factors to determine if the imposition of a fine is excessive: "(1) whether the defendant falls into the class of persons at whom the criminal statute was principally directed; (2) other penalties authorized by the legislature (or the Sentencing Commission); and (3) the harm caused by the defendant." *Id.* (quoting *United States v. Sperrazza*, 804 F.3d 1113, 1127–28 (11th Cir. 2015)).

ANALYSIS

A. *Amount of Forfeiture*

The amount in bank-fraud proceeds that the Defendant transferred into the United States is undisputed: $10,426,000 in U.S. currency. *Waked Hatum*, 969 F.3d at 1161 (11th Cir. 2020); see also (Forfeiture Hr'g Tr., ECF No. 383, at 9 (prosecutor discussed, without objection, that "the loan amounts were the $10 million.")). As part of his laundering conspiracy, the Defendant sent approximately $10,426,000 to his two Miami-based companies, Star Textile Manufacturing and Global World Import & Export, which was simultaneously or almost simultaneously sent back to Vida Panama, Z.L., S.A., his Panamanian based corporation. (Presentence Investigation Report ("PSR") ¶¶ 20, 26, ECF No. 350.) The Defendant agreed in the Factual Proffer and again when pleading guilty that he moved the same funds from Panama to Miami and almost simultaneously back to Panama. (Factual Proffer, ECF No. 343 at 1–2; Change of Plea Hr'g Tr., ECF No. 347 at 23–24.) The sentencing record confirms that the Defendant laundered the $10,426,000. The Defendant did not specifically object to the statement in the PSR that he had laundered $10,426,000. (PSR Addendum at 2, ECF No. 350.) Consequently, this fact was deemed admitted. *E.g.*, *United States v. Bennett*, 472 F.3d 825, 832 (11th Cir. 2006).

The amount sought for forfeiture, $10,426,000, is the corpus of bank fraud proceeds actually laundered and involved in the laundering scheme. It is subject to mandatory forfeiture under 18 U.S.C. § 982(a)(1). *Waked Hatum*, 969 F.3d at 1162–63 (holding "that the money Mr. Waked laundered was property 'involved in' his offense" and that forfeiture under § 982(a)(1) is mandatory). Thus, the Court must impose a forfeiture money judgment against the Defendant in the amount of $10,426,000 in U.S. currency. Fed. R. Crim. P. 32.2(b)(2); *see also Waked Hatum*, 969 F.3d at 1164 (citing *United States v. Elbeblawy*, 899 F.3d 925, 940–41 (11th Cir. 2018); *United States v. Seher,* 562 F.3d 1344, 1355, 1373–74 (11th Cir. 2009); *United States v. Puche*, 350 F.3d 1137, 1153 (11th Cir. 2003)).

B. *Eighth Amendment Excessiveness*

"A criminal forfeiture money judgment is intended to punish," and, therefore, constitutes a fine under the Eighth Amendment. *Id.* at 1167. But, a "punitive forfeiture" only violates the Eighth Amendment "if it is grossly disproportionate to the gravity of an offender's offense." *Id.* (quoting *United States v. Bajakjian*, 524 U.S. 321, 328 (1998)). To determine if a punitive forfeiture violates the Eighth Amendment's Excessive Fines Clause, courts in the Eleventh Circuit evaluate three factors. *Id.*

1. *Whether the Defendant Falls into the Class of Persons at Whom the Statute Was Principally Directed*

First, the Court must determine whether the Defendant is "within the class of persons whom" the statute—here, the money laundering statute, 18 U.S.C. § 982(a)(1)—was "meant to cover." *Id.* The Eleventh Circuit has determined that the Defendant is within the class of persons the money laundering statute meant to cover. *Id.* (holding that the Defendant "was a sophisticated party who carried out a multi-million-dollar money laundering scheme over the course of several years."). Therefore, this factor is satisfied.

2. *Other Penalties Authorized*

Second, the Court must evaluate "whether the order of forfeiture is excessive in relation to the other penalties authorized by Congress and the Sentencing Commission." *Id.* (quoting *Sperrazza*, 804 F.3d at 1127. The money laundering statute authorizes the imposition of a fine and a prison sentence. Id. at 1168; 18 U.S.C. § 1957(b)(1), (2). The statute itself authorizes a court to impose a fine of "not more than twice the amount of the criminally derived property involved in the transaction." 18 U.S.C. § 1957(b)(2). Because the Court has determined that the amount of money actually laundered was $10,426,000, the statute would allow the imposition of a fine up to $20,852,000. *Id.*; *see also Waked Hakum*, 969 F.3d at 1168. Further, the PSR recommended a sentencing range of 41-51 months imprisonment based on the

Sentencing Guidelines, and the Court actually imposed a sentence of 27 months. (Judgment, ECF No. 359.)

At the hearing on the final forfeiture order, the Defendant cited a number of cases in support of his arguments that the imposition of the $10,426,000 forfeiture amount would be excessive. *United States v. O'Kane*, 155 F.3d 969, 971 (8th Cir. 1998); United States v. Martin, 320 F.3d 1223, 1225–26 (11th Cir. 2003); *United States v. Christo*, 129 F.3d 578, 579 (11th Cir. 1997). The Defendant argues that, because the courts in those cases did not impose forfeiture judgments, it would be excessive to impose a forfeiture judgment here.

Each of those cases cited, however, are distinguishable from the present circumstances. In *O'Kane*, the defendant's sentencing range was 10-16 months, and the court actually sentenced the defendant to five months' imprisonment and five months home confinement. 155 F.3d at 971. Further, the defendant's "total fraud" in *O'Kane* only amounted to $304,667. *Id.* In *Martin*, the defendant's total fraud in money laundering transactions reached $1,055,050.08, and that defendant's sentencing range was much lower than Waked's. 320 F.3d at 1225. Finally, in *Christo*, the Eleventh Circuit held that "insufficient evidence exist[ed] to support a finding that money laundering was the object of the conspiracy" and remanded the case for resentencing based on that ruling. 129 F.3d at 581. Such a holding is clearly inapposite here, where the Defendant has pleaded guilty to money laundering.

In light of the maximum potential fine of $20,852,000, the sentencing range of 41-51 months, and the Court's actual sentence of 27 months, the

Court finds that the $10,426,000 amount of forfeiture is within the range of other penalties authorized by Congress and the Sentencing Commission. *Waked Hakum*, 969 F.3d at 1168; 18 U.S.C. § 1957(b)(1), (2).

3. *The Harm Caused by the Defendant*

Third, the Court must consider the harm caused by the Defendant, both to the victim and to society as a whole. *Waked Hakum*, 969 F.3d at 1169–70. While the Defendant's actions in this case may have caused little to no harm to the victim bank, the Eleventh Circuit has repeatedly held that the harm from the crime of money laundering "does not generally fall upon an individual, but falls upon society in general." *Id.* at 1170 (quoting *Martin*, 320 F.3d at 1227). More specifically, money laundering "harms society by impeding law enforcement's efforts to track ill-gotten gains." *Martin*, 320 F.3d at 1227. Where a defendant's conduct imposes such harm on society, courts in the Eleventh Circuit typically uphold forfeitures as constitutional. *See*, *e.g.*, *United States v. Chaplin's, Inc.*, 646 F.3d 846, 852–55 (11th Cir. 2011) (affirming forfeiture order as not excessive where defendant was a "money launderer" and the conduct at issue "was not a mere reporting violation.").

Here, the Defendant laundered a total of $10,426,000, over the course of roughly a decade, in a series of transactions of varying amounts of money. (PSR ¶¶ 14–20.) Like the defendant in Martin, who engaged in 97 separate transactions each identified as money laundering, the Defendant's actions in this case caused the same harms to society. 320 F.3d at 1227. Therefore, the forfeiture amount of $10,426,000 is not excessive and does not violate the Eight Amendment.

CONCLUSION

Accordingly, based on the foregoing, the evidence of the record, and for good cause shown, the motion is GRANTED, and it is hereby ORDERED that:

1. This Order incorporates and adopts the terms from the Preliminary Order of Forfeiture (ECF No. 354) and the Amended Preliminary Order of Forfeiture (ECF No. 424).

2. Pursuant to 18 U.S.C. § 982(a)(1) and Rule 32.2 of the Federal Rules of Criminal Procedure, a forfeiture money judgment in the amount of $10,426,000 in U.S. currency is hereby entered against the Defendant.

3. The United States is authorized to conduct any discovery that might be necessary to identify, locate, or dispose of forfeited property, and to resolve any third-party petition, pursuant to Rule 32.2(b)(3), (c)(1)(B) of the Federal Rules of Criminal Procedure and 21 U.S.C. § 853(m).

4. The Court shall retain jurisdiction in this matter for the purpose of enforcing this Order, and pursuant to Rule 32.2(e)(1) of the Federal Rules of Criminal Procedure, shall amend this Order, or enter other orders as necessary, to forfeit additional specific property when identified.

DONE AND ORDERED in Miami, Florida, on September 16, 2022.

/s/ Robert N. Scola, Jr.
Robert N. Scola, Jr.
United States District Judge

APPENDIX F

FEDERAL STATUTES

18 U.S.C. § 982. Criminal forfeiture

(a)(1) The court, in imposing sentence on a person convicted of an offense in violation of section 1956, 1957, or 1960 of this title, 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.

(2) The court, in imposing sentence on a person convicted of a violation of, or a conspiracy to violate—

(A) section 215, 656, 657, 1005, 1006, 1007, 1014, 1341, 1343, or 1344 of this title, affecting a financial institution, or

(B) section 471, 472, 473, 474, 476, 477, 478, 479, 480, 481, 485, 486, 487, 488, 501, 502, 510, 542, 545 555, 842, 844, 1028, 1029, or 1030 of this title, shall order that the person forfeit to the United States any property constituting, or derived from, proceeds the person obtained directly or indirectly, as the result of such violation.

(3) The court, in imposing a sentence on a person convicted of an offense under—

(A) section 666(a)(1) (relating to Federal program fraud);

(B) section 1001 (relating to fraud and false statements);

(C) section 1031 (relating to major fraud against the United States);

(D) section 1032 (relating to concealment of assets from conservator, receiver, or liquidating agent of insured financial institution);

(E) section 1341 (relating to mail fraud); or

(F) section 1343 (relating to wire fraud), involving the sale of assets acquired or held by the 1 Federal Deposit Insurance Corporation, as conservator or receiver for a financial institution or any other conservator for a financial institution appointed by the Office of the Comptroller of the Currency, or the National Credit Union Administration, as conservator or liquidating agent for a financial institution, shall order that the person forfeit to the United States any property, real or personal, which represents or is traceable to the gross receipts obtained, directly or indirectly, as a result of such violation.

(4) With respect to an offense listed in subsection (a)(3) committed for the purpose of executing or attempting to execute any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent statements, pretenses, representations, or promises, the gross receipts of such an offense shall include any property, real or personal, tangible or intangible, which is obtained, directly or indirectly, as a result of such offense.

(5) The court, in imposing sentence on a person convicted of a violation or conspiracy to violate—

(A) section 511 (altering or removing motor vehicle identification numbers);

(B) section 553 (importing or exporting stolen motor vehicles);

(C) section 2119 (armed robbery of automobiles);

(D) section 2312 (transporting stolen motor vehicles in interstate commerce); or

(E) section 2313 (possessing or selling a stolen motor vehicle that has moved in interstate commerce);

shall order that the person forfeit to the United States any property, real or personal, which represents or is traceable to the gross proceeds obtained, directly or indirectly, as a result of such violation.

(6)(A) The court, in imposing sentence on a person convicted of a violation of, or conspiracy to violate, section 274(a), 274A(a)(1), or 274A(a)(2) of the Immigration and Nationality Act or section 555, 1425, 1426, 1427, 1541, 1542, 1543, 1544, or 1546 of this title, or a violation of, or conspiracy to violate, section 1028 of this title if committed in connection with passport or visa issuance or use, shall order that the person forfeit to the United States, regardless of any provision of State law—

(i) any conveyance including any vessel, vehicle, or aircraft used in the commission of the offense of which the person is convicted; and

(ii) any property real or personal—

(I) that constitutes, or is derived from or is traceable to the proceeds obtained directly or indirectly from the commission of the offense of which the person is convicted; or

(II) that is used to facilitate, or is intended to be used to facilitate, the commission of the offense of which the person is convicted

(B) The court, in imposing sentence on a person escribed in subparagraph (A), shall order that the person forfeit to the United States all property described in that subparagraph.

(7) The court, in imposing sentence on a person convicted of a Federal health care offense, shall order the person to forfeit property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense.

(8) The court, in sentencing a defendant convicted of an offense under section 1028, 1029, 1341, 1342, 1343, or 1344, or of a conspiracy to commit such an offense, if the offense involves telemarketing (as that term is defined in section 2325), shall order that the defendant forfeit to the United States any real or personal property—

(A) used or intended to be used to commit, to facilitate, or to promote the commission of such offense; and

(B) constituting, derived from, or traceable to the gross proceeds that the defendant obtained directly or indirectly as a result of the offense.

(b)(1) The forfeiture of property under this section, including any seizure and disposition of the property and any related judicial or administrative proceeding, shall be governed by the provisions of section 413 (other than subsection (d) of that section) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853).

(2) The substitution of assets provisions of subsection 413(p) shall not be used to order a

defendant to forfeit assets in place of the actual property laundered where such defendant acted merely as an intermediary who handled but did not retain the property in the course of the money laundering offense unless the defendant, in committing the offense or offenses giving rise to the forfeiture, conducted three or more separate transactions involving a total of $100,000 or more in any twelve month period.

21 U.S.C. § 853. Criminal forfeitures

(a) Property subject to criminal forfeiture

Any person convicted of a violation of this subchapter or subchapter II punishable by imprisonment for more than one year shall forfeit to the United States, irrespective of any provision of State law—

(1) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation;

(2) any of the person's property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation; and

(3) in the case of a person convicted of engaging in a continuing criminal enterprise in violation of section 848 of this title, the person shall forfeit, in addition to any property described in paragraph (1) or (2), any of his interest in, claims against, and property or contractual rights affording a source of control over, the continuing criminal enterprise.

The court, in imposing sentence on such person, shall order, in addition to any other sentence imposed pursuant to this subchapter or subchapter II, that the person forfeit to the United States all property described in this subsection. In lieu of a fine otherwise authorized by this part, a defendant who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

(b) Meaning of term "property"

Property subject to criminal forfeiture under this section includes—

(1) real property, including things growing on, affixed to, and found in land; and (2) tangible and intangible personal property, including rights, privileges, interests, claims, and securities.

(c) Third party transfers

All right, title, and interest in property described in subsection (a) vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (n) that he is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.

(d) Rebuttable presumption

There is a rebuttable presumption at trial that any property of a person convicted of a felony under this subchapter or subchapter II is subject to forfeiture under this section if the United States establishes by a preponderance of the evidence that—

(1) such property was acquired by such person during the period of the violation of this subchapter or subchapter II or within a reasonable time after such period; and

(2) there was no likely source for such property other than the violation of this subchapter or subchapter II.

(e) Protective orders

(1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) for forfeiture under this section—

(A) upon the filing of an indictment or information charging a violation of this subchapter or subchapter II for which criminal forfeiture may be ordered under this section and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

(B) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that—

(i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered:

Provided, however, That an order entered pursuant to subparagraph (B) shall be effective for not more than ninety days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A) has been filed.

(2) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than fourteen days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time and prior to the expiration of the temporary order.

(3) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.

(4) ORDER TO REPATRIATE AND DEPOSIT.—

(A) IN GENERAL.—Pursuant to its authority to enter a pretrial restraining order under this section, the court may order a defendant to repatriate any property that may be seized and forfeited, and to deposit that property pending trial in the registry of the court, or with the United States Marshals Service or the Secretary of the Treasury, in an interest-bearing account, if appropriate.

(B) FAILURE TO COMPLY.—Failure to comply with an order under this subsection, or an order to repatriate property under subsection (p), shall be punishable as a civil or criminal contempt of court, and may also result in an enhancement of the sentence of the defendant under the obstruction of justice provision of the Federal Sentencing Guidelines.

(f) Warrant of seizure

The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant. If the court determines that there is probable because to believe that the property to be seized would, in the event of conviction, be subject to forfeiture and that an order under subsection (e) may not be sufficient to assure the availability of the property for forfeiture, the court shall issue a warrant authorizing the seizure of such property.

(g) Execution

Upon entry of an order of forfeiture under this section, the court shall authorize the Attorney General to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. Following entry of an order declaring the property forfeited, the court may, upon application of the United States, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the United States in the property ordered forfeited. Any income accruing to or derived from property ordered forfeited under this section may be used to offset ordinary and necessary expenses to the property which are required by law, or which are necessary to protect the interests of the United States or third parties.

(h) Disposition of property

Following the seizure of property ordered forfeited under this section, the Attorney General shall direct the disposition of the property by sale or any other commercially feasible means, making due provision for the rights of any innocent persons. Any property right or interest not exercisable by, or transferable for value to, the United States shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with him or on his behalf be eligible to purchase forfeited property at any sale held by the United States. Upon application of a person, other than the defendant or a person acting in concert with him or on his behalf, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm, or loss to him.

(i) Authority of the Attorney General

With respect to property ordered forfeited under this section, the Attorney General is authorized to—

(1) grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this subchapter, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this section;

(2) compromise claims arising under this section;

(3) award compensation to persons providing information resulting in a forfeiture under this section;

(4) direct the disposition by the United States, in accordance with the provisions of section 881(e) of this title, of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons; and

(5) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

(j) Applicability of civil forfeiture provisions

Except to the extent that they are inconsistent with the provisions of this section, the provisions of section 881(d) of this title shall apply to a criminal forfeiture under this section.

(k) Bar on intervention

Except as provided in subsection (n), no party claiming an interest in property subject to forfeiture under this section may—

(1) intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or

(2) commence an action at law or equity against the United States concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.

(*l*) Jurisdiction to enter orders

The district courts of the United States shall have jurisdiction to enter orders as provided in this section without regard to the location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section.

(m) Depositions

In order to facilitate the identification and location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the United States, the court may, upon application of the United States, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under Rule 15 of the Federal Rules of Criminal Procedure.

(n) Third party interests

(1) Following the entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the

property in such manner as the Attorney General may direct. The Government may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.

(2) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may, within thirty days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

(3) The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

(4) The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within thirty days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

(5) At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf, and cross-examine witnesses who appear at the

hearing. The United States may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

(6) If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that—

(A) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

(B) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section;

the court shall amend the order of forfeiture in accordance with its determination.

(7) Following the court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in paragraph (2) for the filing of such petitions, the United States shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

(*o*) Construction

The provisions of this section shall be liberally construed to effectuate its remedial purposes.

(p) Forfeiture of substitute property

(1) In general

Paragraph (2) of this subsection shall apply, if any property described in subsection (a), as a result of any act or omission of the defendant—

(A) cannot be located upon the exercise of due diligence;

(B) has been transferred or sold to, or deposited with, a third party;

(C) has been placed beyond the jurisdiction of the court;

(D) has been substantially diminished in value; or

(E) has been commingled with other property which cannot be divided without difficulty.

(2) Substitute property

In any case described in any of subparagraphs (A) through (E) of paragraph (1), the court shall order the forfeiture of any other property of the defendant, up to the value of any property described in subparagraphs (A) through (E) of paragraph (1), as applicable.

(3) Return of property to jurisdiction

In the case of property described in paragraph (1)(C), the court may, in addition to any other action authorized by this subsection, order the defendant to return the property to the jurisdiction of the court so that the property may be seized and forfeited.

(q) Restitution for cleanup of clandestine laboratory sites

The court, when sentencing a defendant convicted of an offense under this subchapter or subchapter II involving the manufacture, the possession, or the possession with intent to distribute, of amphetamine or methamphetamine, shall—

(1) order restitution as provided in sections 3612 and 3664 of title 18;

(2) order the defendant to reimburse the United States, the State or local government concerned, or both the United States and the State or local government concerned for the costs incurred by the United States or the State or local government concerned, as the case may be, for the cleanup associated with the manufacture of amphetamine or methamphetamine by the defendant, or on premises or in property that the defendant owns, resides, or does business in; and

(3) order restitution to any person injured as a result of the offense as provided in section 3663A of title 18.