

ORIGINAL

OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE
THE SUPREME COURT
OF THE
UNITED STATES

CAPTION: RICHARD LYLE AUSTIN, Petitioner v. UNITED STATES

CASE NO: 92-6073

PLACE: Washington, D.C.

DATE: Tuesday, April 20, 1993

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1 IN THE SUPREME COURT OF THE UNITED STATES

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3 RICHARD LYLE AUSTIN, :
4 Petitioner :
5 v. : No. 92-6073
6 UNITED STATES :
7 - - - - - X

8 Washington, D.C.
9 Tuesday, April 20, 1993

10 The above-entitled matter came on for oral
11 argument before the Supreme Court of the United States at
12 1:10 p.m.

13 APPEARANCES:

14 RICHARD L. JOHNSON, ESQ., Sioux Falls, South Dakota; on
15 behalf of the Petitioner.
16 MIGUEL A. ESTRADA, ESQ., Assistant to the Solicitor
17 General, Department of Justice, Washington, D.C.; on
18 behalf of the Respondent.

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1 PROCEEDINGS

2 (1:10 p.m.)

3 CHIEF JUSTICE REHNQUIST: We'll hear argument
4 next in No. 92-6073, Richard Lyle Austin v. the United
5 States.

6 Mr. Johnson.

7 ORAL ARGUMENT OF RICHARD L. JOHNSON

8 ON BEHALF OF THE PETITIONER

9 MR. JOHNSON: Mr. Chief Justice, and may it
10 please the Court:

11 The issue in this case is whether the Eighth
12 Amendment and specifically the Excessive Fines Clause
13 applies to the concept of -- applies to the civil
14 forfeiture under 21 U.S.C., section 881(a)(4) and (a)(7).

15 Mr. Richard Lyle Austin is the owner of the
16 Garretson Body Shop and also the 1972 mobile home that
17 were seized by the Government under the -- these
18 appropriate statutes. The facts of the case show that he
19 transferred 2 grams of cocaine to someone in the body
20 shop, and that he obtained this from the mobile home. A
21 subsequent search of the mobile home and body shop
22 indicated there were small amounts of cocaine, some
23 paraphernalia, and some small amounts of marijuana.

24 Mr. Austin pled guilty in State court. He was
25 sentenced to 7 years. The Government seized his mobile

1 home and his body shop, which was his livelihood, and he
2 had been in the auto body shop for about 25 years. The
3 affidavit in the record indicates he intended to return to
4 that job, that type of living, the body-shop living, when
5 he got out of prison.

6 The district court granted summary judgment.
7 The court of appeals reluctantly affirmed indicating that
8 the technical legal distinctions regarding in personam and
9 in rem prohibited it from reaching the issue of the Eighth
10 Amendment applicability. It also indicated that clear
11 court decisions by this Court and other courts do not
12 require proportionality in the civil proceedings for the
13 forfeiture of property.

14 I want to make three points in this oral
15 argument. First is that where the Government stands to
16 gain monetarily the Excessive Fines Clause should apply
17 and Eighth Amendment proportionality should apply.
18 Secondly, the in rem fiction shouldn't bar the application
19 of the excessive fines/proportionality analysis when the
20 civil forfeitures are quasi-criminal or punishment in
21 actual character. Thirdly, under this Court's decisions
22 in Halper and Kennedy v. Mendoza-Martinez, those tests
23 actually show that this civil forfeiture is punishment.

24 First of all, regarding the first point, the
25 Court's decision in Browning v. Ferris provides a basis

1 for applying the Eighth Amendment Excessive Fines Clause
2 to civil actions and to forfeitures.

3 QUESTION: I thought we rejected the application
4 there.

5 MR. JOHNSON: You indicated that you rejected
6 the application to actions between private parties. You
7 left open the possibility that when the Government is
8 involved, that the Excessive Fines Clause could also be
9 applicable. And, in fact, you suggested in, I think, a
10 footnote quoting Halper that it might give rise to the
11 Eighth Amendment analysis when the Government stood to
12 gain punitive damages.

13 And in Justice O'Connor's concurring and
14 dissenting opinion, there was a substantial analysis of
15 the historical development of the Excessive Fines Clause
16 and the fact that fines and forfeitures are equivalent,
17 and that, in fact, the Eighth Amendment should apply to
18 civil actions.

19 Your quote in Browning v. Ferris regarding the
20 court of Vermont also indicated -- the Supreme Court of
21 Vermont also indicated that in certain circumstances you
22 felt that the Excessive Fines Clause or the Eighth
23 Amendment could be applicable.

24 In your case Harmelin v. Michigan, Justice
25 Scalia's footnote also indicated that it makes sense to

1 scrutinize governmental action more closely when the state
2 stands to benefit. It's clear that under 21 U.S.C.
3 881(a)(4) and (a)(7), the Government has stood to benefit.

4 We cite in our brief an article from Newsweek
5 which indicates that since 1985 the Government has
6 obtained about \$2.6 billion through this forfeiture
7 proceeding.

8 There's also a quote by the Director of the
9 Asset Forfeiture Branch of the Attorney General's Office.
10 It says that civil forfeiture is the goose that laid the
11 golden egg.

12 There's another quote also that we indicate from
13 a American Criminal Law Review article in which it
14 indicates that in August of 1990, the U.S. Attorney
15 General warned U.S. attorneys that the Department was far
16 short of its projected \$470 million in forfeiture deposits
17 and urged them to increase the efforts in order to make
18 the budget goal during fiscal year 1990. And this was in
19 August of 1990, and Mr. Austin's property --

20 QUESTION: What does this prove?

21 MR. JOHNSON: Well, it shows I think that there
22 should be some sort of check on the Government, just as
23 Justice Scalia says it makes sense to scrutinize
24 Government actions more closely. What it indicates is
25 that there is a possibility for overreaching.

1 QUESTION: And so, the Constitution
2 automatically erects a shield against it?

3 MR. JOHNSON: I think that the Constitution
4 protects individuals from Government overreaching if that
5 happens, if there's a possibility of it. And there is the
6 possibility of it under this forfeiture statute.

7 QUESTION: Well, what do you do with a case like
8 Calero-Toledo which says that even an innocent owner --
9 and no one contends, I take it, that your client is
10 innocent.

11 MR. JOHNSON: No.

12 QUESTION: Even an innocent owner can -- the
13 property can be taken under traditional forfeiture law.

14 MR. JOHNSON: Calero-Toledo needs to be
15 distinguished and possibly even looked at again I think.
16 Number one, in --

17 QUESTION: Well, what's the matter with it? It
18 always struck me as a perfectly good case.

19 MR. JOHNSON: Well, Calero-Toledo, the Eighth
20 Amendment wasn't raised. That would be one point.

21 Secondly, although Calero-Toledo indicates, as
22 you said, that in rem forfeiture really shouldn't deal
23 with the guilt or innocence of the owner, in fact, it does
24 establish an innocent owner exception.

25 And thirdly, forfeitures at the time of Calero-

1 Toledo weren't the same as they are now. The forfeitures
2 that the Government is having under 21 U.S.C. 881(a)(4)
3 and (a)(7) are far in excess of what was happening back at
4 the time of Calero-Toledo.

5 QUESTION: What difference does it make how much
6 money you're talking about if it's money being taken from
7 an innocent person? How can disproportionality have any
8 meaning once you acknowledge that the car or the ship or
9 the facility that belongs to a totally innocent person may
10 be taken? Even if it's only worth \$100, that's vastly
11 disproportionate to his guilt. I assume proportionality
12 means proportional to guilt.

13 MR. JOHNSON: Correct.

14 QUESTION: But all these in rem things at common
15 law could be imposed against a totally innocent person. I
16 think -- doesn't that conclusively establish that there's
17 no proportionality requirement for in rem takings?

18 MR. JOHNSON: I think that in rem forfeiture
19 under common law and as -- at the time that the Framers
20 knew it is different than the forfeiture that we're
21 experiencing today. I think that the cases established
22 that in rem forfeiture at that time was against ships,
23 dealt with piracy, dealt with violations of the customs
24 laws --

25 QUESTION: Cars.

1 MR. JOHNSON: Which are instrumentalities --
2 which can be instrumentalities of drug use, but when it
3 comes to someone's home or in this case the business,
4 these were incidental, in effect, to the drug use. In
5 other words, he could have transferred this drug use
6 anywhere, outside, in somebody's place.

7 QUESTION: Well, what if he did -- what if the
8 defendant just did business out of his house, the drug
9 business out of his house?

10 MR. JOHNSON: If there was -- if the house was
11 used specifically for that purpose, if it was -- if there
12 was a history --

13 QUESTION: Then no proportionality?

14 MR. JOHNSON: Then there should be
15 proportionality, but it should be analyzed under a series
16 of factors. That's what proportionality is as we advocate
17 it. There should be many factors or several factors that
18 are applied, factors such as the circuit courts have
19 applied in criminal forfeiture cases in order to determine
20 whether all of the property should be forfeited, whether
21 some of it should be forfeited, or whether none of it
22 should be.

23 QUESTION: I thought this particular statute
24 does provide a defense for innocent owners, does it not?

25 MR. JOHNSON: Yes, it does.

1 QUESTION: I mean, we're dealing here with what
2 could be characterized as a punitive sanction.

3 MR. JOHNSON: I believe that's true, yes. I
4 think that's an example of why it is a punitive sanction
5 because you do have the innocent owner defenses in both
6 (a) (4) and (a) (7).

7 We are asking that the Court apply
8 proportionality analysis to someone who is not innocent
9 like Mr. Austin.

10 QUESTION: You mean, if -- let's assume you have
11 a good, old -- the most old-fashioned old-fashioned in rem
12 forfeiture statute around. You forfeit the ship if it's
13 used for contraband. If Congress should enact a -- an
14 amendment to that statute that says, however, if the ship
15 belongs to an innocent person who didn't know it was being
16 used for contraband, it shall not be forfeited. That
17 would convert it to no longer a classic in rem forfeiture
18 and thereafter it would be subject to a proportionality
19 requirement.

20 MR. JOHNSON: I think that -- first of all, I
21 think Congress in a sense has enacted that type of law
22 under (a) (4).

23 QUESTION: I understand, but I understood your
24 argument to be that since an innocent person gets off in
25 this one, we should impose the proportionality requirement

1 because that renders it punishment, whereas the ordinary
2 in rem thing was not punishment.

3 MR. JOHNSON: That's correct. Yes, I believe -

4 - QUESTION: So, your answer to my hypothetical
5 would be yes, that if Congress got tender-hearted and
6 said, well, let's make an exception to our traditional in
7 rem forfeiture of pirate ships and we'll say if the owner
8 of the ship was innocent of the piracy, we won't forfeit
9 it. That would convert it suddenly to a punishment, and
10 if it was just a small-time pirate, you wouldn't be able
11 to take the ship even from the pirate --

12 MR. JOHNSON: Well, I think that would depend on
13 --

14 QUESTION: -- because that would be too much
15 punishment.

16 MR. JOHNSON: It could depend on the cases. I
17 guess it depends on the facts of the particular case.
18 That's what I would say.

19 QUESTION: It seems to me it's in rem whether or
20 not you decide to let the innocent person off. I don't
21 see how that makes a difference.

22 MR. JOHNSON: It can be in rem, but it can also
23 be punishment.

24 QUESTION: Well, is it punishment if the owner
25 has not engaged in punishable misconduct?

1 MR. JOHNSON: It would --

2 QUESTION: I mean, how --

3 MR. JOHNSON: It certainly would be punishment
4 then, yes. Obviously --

5 QUESTION: If the owner has not engaged in
6 punishable conduct.

7 MR. JOHNSON: If the owner has not engaged in
8 punishable conduct --

9 QUESTION: Then how would that be punishment?

10 MR. JOHNSON: Well, if the owner had not done
11 anything wrong and yet had the property seized and
12 forfeited, then obviously --

13 QUESTION: Yes.

14 MR. JOHNSON: -- that certainly would be
15 punishment to that particular person.

16 QUESTION: I wouldn't have thought so. It might
17 be a confiscation, but I -- it's a little hard to call it
18 punishment I would think.

19 MR. JOHNSON: If the person has done nothing
20 wrong it seems like, then it would be punishment if the
21 person would have their assets taken. I guess that's what
22 I would say.

23 The Excessive Fines Clause also should apply
24 because the Government is able to use this forfeiture
25 procedure without the traditional safeguards, procedural

1 safeguards, that would apply in most criminal cases. The
2 Government needs only to establish probable cause. It can
3 establish hearsay evidence, and then the claimant has the
4 burden to prove the claimant's innocence or some other
5 defense that might be applicable in the case.

6 QUESTION: Yes, but you would be making the same
7 argument if this forfeiture was done after a finding of
8 guilt beyond reasonable doubt.

9 MR. JOHNSON: That's true, yes. And the reason
10 is because --

11 QUESTION: Well, why don't we talk about the
12 case like that? You'd still be making the same argument.

13 MR. JOHNSON: Yes, I would. There was guilt in
14 this case. He pled guilty, and yet his involvement was
15 relatively minor. At least that's what the record seems
16 to indicate. And yet, he lost his home and he lost his
17 business, a business that he had been involved in -- not
18 that particular place, but he has been involved in that
19 business for 25 years.

20 QUESTION: How about somebody like Mr. Harmelin,
21 as we call them all Mister, in the drug case from Michigan
22 where he was convicted of a relatively minor offense,
23 possession I guess perhaps with intent to distribute, and
24 he was sentenced to life imprisonment? Surely, that's a
25 much more severe punishment than the loss of one's mobile

1 home, and yet we held that was not barred by the Eighth
2 Amendment.

3 MR. JOHNSON: That's true, you did. And I think
4 you felt that the States obviously had the right to enact
5 laws that were like that. And the other thing is, though
6 --

7 QUESTION: We felt the Constitution didn't
8 prohibit the States from doing that.

9 MR. JOHNSON: Yes, that's true, and -- but the
10 amount of drugs in that case was 600 and some grams I
11 believe too.

12 QUESTION: And yours was only 2 grams?

13 MR. JOHNSON: Only 2 grams, yes.

14 QUESTION: In your case, do you agree with the
15 correctness of the Government's statement that if your
16 client had been prosecuted federally, the fines could have
17 amounted to \$1 million?

18 MR. JOHNSON: Well, I think the statute probably
19 allows that, but that never would have happened.

20 QUESTION: Well, if it had happened, is the --
21 would the application of the statute be unconstitutional?

22 MR. JOHNSON: I think one could argue that that
23 would be an excessive fine for someone that -- who is in
24 forma pauperis. In my experience representing persons who
25 are -- under court appointment, the fine provision is

1 never used because they are not able to pay the fine.

2 QUESTION: I assume the higher the fine -- the
3 poorer you are, the easier it is to impose a higher fine.
4 To the extent you're insolvent, you don't pay it anyway.

5 MR. JOHNSON: Usually I think it would --
6 usually, at least in my experience, the fine is not
7 imposed if the person is not able to pay it.

8 QUESTION: Well, why -- what is the reason why
9 it's disproportionate here? Because there were only a
10 couple of grams involved? Why -- I mean, it's a violation
11 of the drug laws.

12 MR. JOHNSON: Right. There are a couple grams
13 involved. This was a first offense for him. He lost his
14 business, which was his means to earn a living, and he
15 lost his home.

16 QUESTION: Well, it depends entirely upon how
17 serious the society considers a drug offense to be I
18 suppose.

19 MR. JOHNSON: I think that's a factor, but also
20 we're asking the Court to take into consideration the
21 other factors, that someone who has lost everything they
22 have for a relatively minor offense --

23 QUESTION: Well, it's not relatively minor if
24 society really has its face set against drugs and has
25 provided for -- at the Federal level at least, for

1 penalties of the sort that has been mentioned. How can we
2 say it's relatively minor? I can only look to the Federal
3 statute and say, gee, at least the Federal Government
4 thinks this is very serious stuff. It's very harmful to
5 society.

6 MR. JOHNSON: It is harmful to society, and the
7 -- certainly the Government has to have laws which help it
8 in its war on drugs. But the other thing that's true is
9 that the full weight of the war on drugs shouldn't be
10 visited on one person for this particular offense.

11 QUESTION: Well, from the statistics you gave,
12 it isn't.

13 MR. JOHNSON: Well, that's true, but this person
14 lost everything because of it. So, from his point of
15 view, I think as the court of appeals alluded to, he lost
16 everything that he had. In a sense, from his point of
17 view, it has been visited on him.

18 QUESTION: He's at least able to start over
19 again in a way that Harmelin never was, spending the rest
20 of his life in jail.

21 MR. JOHNSON: That's true. That's true. Yes,
22 that's right.

23 QUESTION: Have you got any cases on your side?

24 MR. JOHNSON: Well, I think the Halper case is
25 on our side, at least as far as the punishment issue.

1 We're arguing mainly that the Eighth Amendment should
2 apply to this case.

3 QUESTION: Have you got any cases applying it to
4 the -- to civil cases?

5 MR. JOHNSON: The Whalers Cove case from the
6 Second Circuit applies it, although the Whalers Cove case
7 on the facts finds that it does not apply. And strictly
8 speaking I guess it was an Eighth Amendment application.
9 It said that the Excessive Fines Clause argument had been
10 abandoned. So, it applied I think the Cruel and Unusual
11 Punishment Clause and found that under the proportionality
12 analysis that it wouldn't make any difference.

13 QUESTION: But it applied the Eighth Amendment
14 anyway.

15 MR. JOHNSON: It applies the Eighth Amendment,
16 yes. But as far as the Excessive Fines Clause, it
17 doesn't. So, I don't think it's necessarily instructive
18 on that issue. This would be the first case that really
19 the Court has had to decide that applies the Excessive
20 Fines Clause to this type of --

21 QUESTION: Have you got any State supreme court
22 cases on your side?

23 MR. JOHNSON: No, not that have applied the
24 Excessive Fines Clause. No.

25 QUESTION: Or under their own constitutions?

1 MR. JOHNSON: Not that I'm aware of, Your Honor.
2 No.

3 The Halper case indicates that a civil sanction
4 that cannot fairly be said solely to serve a remedial
5 purpose, but rather can be explained only as also serving
6 either retributive or deterrent purposes, punishment, as
7 we have come to understand the term. I don't think
8 there's any question that civil forfeiture serves a
9 retributive or deterrent purpose in addition to whatever
10 remedial purpose it might serve. Because it also serves
11 that, it's punishment within the -- under the
12 understanding of that term. Because it is punishment, the
13 Excessive Fines Clause should apply.

14 The in rem/in personam distinction also should
15 not bar the Court from considering this issue. The
16 Court's past cases, first of all, are instructive. One
17 1958 Plymouth Sedan, Boyd v. the United States, U.S. v.
18 Coin and -- U.S. v. U.S. Coin and Currency all see through
19 the in rem/in personam distinction and apply the Fourth
20 Amendment and Fifth Amendment protections to in rem
21 actions.

22 The statute themselves, as I indicated,
23 establish that this is punishment rather than just
24 remedial. They have innocent owner exceptions. They're
25 tied to a violation of the criminal law punishable by more

1 than one year's imprisonment. There are procedures for
2 remission or mitigation of forfeiture, and they are based
3 on violations of the Controlled Substances Act.

4 QUESTION: What did the prior or the old law
5 mean when it defined the objective of the in rem action as
6 remedial? Remedial in the sense of removing an
7 instrumentality of the crime from the hands of criminals?

8 MR. JOHNSON: Yes, that was one of the --

9 QUESTION: Well, that's exactly what's being
10 done here, isn't it?

11 MR. JOHNSON: Well, I guess I'd argue that the
12 body shop and the mobile home were not instrumentalities.
13 They weren't specifically structured or designed for this
14 type of drug use. In other words, there wasn't a
15 manufacturing plant in there. There weren't secret
16 compartments. They weren't --

17 QUESTION: Well, ships were not necessarily
18 designed for smuggling either, but they were used for
19 that. And warehouses on Long Wharf in Boston weren't
20 necessarily built for smuggling, but that's what they were
21 used for, and they were forfeitable I suppose.

22 MR. JOHNSON: I think that in those cases too,
23 though, that the item was specifically used to store drugs
24 and it was used to transport drugs.

25 QUESTION: Well, the mobile home was being used

1 to store drugs, wasn't it?

2 MR. JOHNSON: Not --

3 QUESTION: I forget where the cocaine was found,
4 but I mean, there's a bag of cocaine either in the body
5 shop or the mobile home.

6 I mean, I just am finding the distinction based
7 on remedial versus punitive a pretty ethereal distinction,
8 and what bothers me about it is if we go your way on the
9 theory that there is, in effect, a punitive function going
10 on here by virtue of the innocent owner defense, then we
11 have to face the fact that despite that variation, we're
12 still dealing with two kinds of in rem actions, one
13 against the guilty owner and one all other varieties of in
14 rem action. And we would have put ourselves in the
15 position of saying that the guilty owner has a
16 proportionality objection. The innocent owner has none
17 whatsoever in those cases which make no distinction
18 between innocent and guilty owners.

19 And I suppose the next step down the road, if we
20 go your way, is going to be the due process argument, that
21 one cannot go against an innocent owner in an in rem
22 action simply because the Government has no justifiable
23 purpose under the Due Process Clause when at the same time
24 the guilty owner is allowed to contest it.

25 And it seems to me that you're setting us off on

1 rather a steep slope if we buy your argument, and I'm
2 trying to see if there's a way out of it.

3 MR. JOHNSON: Well, I guess I'm arguing that the
4 Excessive Fines Clause should apply to this forfeiture
5 whether the person is guilty or innocent. It's the
6 actions of the Government I think that should be
7 scrutinized under the Excessive Fines Clause.

8 QUESTION: Well, then do we take the next step
9 and say in the most garden variety of old-fashioned in rem
10 actions, there is likewise going to be a proportionality
11 defense, and in fact, it will always work I suppose
12 because the owner is always going to be innocent or
13 innocence is always going to be -- strike that. Guilt is
14 always going to be irrelevant.

15 MR. JOHNSON: I don't think guilt is irrelevant.
16 I think it's one of the factors.

17 QUESTION: Well, it's irrelevant under the
18 traditional in rem action as you were describing it.
19 You're saying it's remedial. It's not punitive.

20 Why isn't the proportionality argument, at least
21 as raised by a person who claims innocence and can show
22 innocence, always going to succeed?

23 MR. JOHNSON: Well, I don't know. I guess I
24 think that the --

25 QUESTION: Well, if I'm innocent, it's

1 disproportionate to take a nickel out of my pocket, isn't
2 it?

3 MR. JOHNSON: That's true, yes.

4 QUESTION: Then it's always going to succeed.

5 MR. JOHNSON: I don't know. I guess again it
6 depends on what the Court sees, the different factors.
7 But if a person is innocent and hasn't done anything, well
8 then certainly that should be a defense. It should be
9 something the Court should consider in deciding whether or
10 not it was proper to forfeit property or not.

11 QUESTION: Well, I suppose the Government can
12 always decide that certain property is malum in se. In
13 other words, it's contraband. It can be taken.

14 MR. JOHNSON: Yes.

15 QUESTION: It has no proper use or it's
16 dangerous to the public.

17 MR. JOHNSON: That's true.

18 QUESTION: I would think there would be many
19 reasons where you could take property even from someone
20 who's totally innocent.

21 MR. JOHNSON: Yes, that's true, especially if
22 the property is used -- has a specific purpose in
23 advancing the drug business. If it's specifically
24 designed, for example, to hide contraband or if it's
25 specifically used for nothing but the drug use, then --

1 QUESTION: But none of those categories would be
2 applicable to the property involved here.

3 MR. JOHNSON: I would say that's true, yes.
4 That's right.

5 QUESTION: Are you saying -- I want to -- I am
6 not -- I want to be sure I'm following your argument. Are
7 you saying the tests should be different depending on
8 whether the -- assume it's an instrumentality of the -- of
9 crime. On the one hand, you have an instrumentality can
10 be used for no lawful purpose, burglar tools or something
11 else, that that would have a different test than one where
12 you have an automobile and most of the time it's used for
13 perfectly legitimate driving, but on one or two occasions
14 it's involved in the drug trade. Are you saying there's a
15 different test depending on the character of the use of
16 that which is sought to be forfeited?

17 MR. JOHNSON: I think that's one of the factors
18 that should be taken into consideration I guess; that
19 among other factors, one of the factors should be is this
20 property used all the time for illegal purposes or is its
21 use incidental to the particular use -- illegal use.

22 QUESTION: And do you draw a distinction between
23 instrumentalities of crime and proceeds of illegal
24 activity?

25 MR. JOHNSON: I believe that proceeds of illegal

1 activity -- yes, that's correct.

2 QUESTION: And which do we have in this case?

3 MR. JOHNSON: Well, this is not proceeds or
4 instrumentalities I would say because these --

5 QUESTION: Then how did they get -- how could
6 they forfeit it if it isn't one or the other?

7 MR. JOHNSON: Because it's under the right to
8 forfeit homes and conveyances and businesses, real
9 property, whether it's --

10 QUESTION: Yes, but it's real property, homes,
11 et cetera that are used in the furtherance of the drug
12 trade, isn't it?

13 MR. JOHNSON: Yes, but I would argue that it's
14 not an instrumentality because it hasn't been specifically
15 adapted for that use, that it's -- the fact that it was
16 done in that particular place was incidental to it.

17 QUESTION: And you're, in effect, arguing we
18 should limit the historic law like illegal distilleries
19 and things like that to properties that had no legitimate
20 -- basically had no significant legitimate use. Is that
21 it?

22 MR. JOHNSON: I would say that those particular
23 items would be more likely to be forfeited than something
24 that had some legitimate use. I guess that's where this
25 analysis would come into play, this factor analysis.

1 QUESTION: Well, it would seem to me that if
2 they had no legitimate use, that it would always be
3 proportional to forfeit it. I don't know when you could
4 say it's disproportionate to take -- a \$1 million
5 distillery would be no different from a \$10 distillery as
6 far as I could see.

7 MR. JOHNSON: If it's always used for -- I guess
8 that kind of depends on what the property is, though. If,
9 let's say someone again has lost everything they have, if
10 it's their business or something like that, and if it's
11 not used, well then maybe there would be an argument that
12 it should not be forfeited.

13 QUESTION: Well, but if it's their business and
14 the only use is illegal, it's not the kind of business we
15 want to preserve.

16 MR. JOHNSON: That's true. If the sole use is
17 illegal, then it should be forfeited, yes.

18 I'll reserve the rest of my time for rebuttal.
19 Thank you.

20 QUESTION: Very well, Mr. Johnson.
21 Mr. Estrada.

22 ORAL ARGUMENT OF MIGUEL A. ESTRADA
23 ON BEHALF OF THE RESPONDENT

24 MR. ESTRADA: Thank you, Mr. Chief Justice, and
25 may it please the Court:

1 The issue in this case is whether the Eighth
2 Amendment requires that civil in rem forfeitures be
3 proportional to the criminal culpability of the owner of
4 the property. Seven of the eight courts of appeals that
5 have ruled on that question, including the court of
6 appeals in this case, have concluded that the Eighth
7 Amendment does not require that type of proportionality
8 review, and because the majority view is correct, the
9 judgment of the court of appeals in this case should be
10 affirmed.

11 QUESTION: Mr. Estrada, historically -- do you
12 know the answer to this? Historically at the time the
13 Eighth Amendment was adopted, was there such a thing as in
14 rem forfeiture of real property, or was it limited to
15 ships and personal property?

16 MR. ESTRADA: The -- there is no contemporary
17 case that we've been able to find in which a specific
18 issue was made of the fact. There is a case, Dobbins
19 Distillery, which is cited in our case, in which the claim
20 was raised specifically that real property in that case
21 could not be forfeited, and the Court dealt with the real
22 property in the case much as it had dealt with the claims
23 of ships and the like without giving any indication
24 whatsoever that the real estate, by virtue of being that
25 type of property interest, couldn't be forfeited under the

1 common law.

2 The statute in that --

3 QUESTION: In that case, Mr. Estrada, was it a
4 leasehold interest or a fee interest?

5 MR. ESTRADA: I think the fee interest was
6 forfeited. The facts of the case were that the claimant
7 had leased the interest to someone who then used it for
8 the purpose of a distillery business, and the person who
9 was so using it was putting it to a lawful use so long as
10 he kept records and paid taxes, which he failed to do.
11 Now, as a result of the acts of the lessee in not doing
12 what he was supposed to do, the property, including the
13 tract of land, was forfeited to the Government.

14 And the statute in that case was very clear that
15 the tract of land was to be forfeited. It was a statute
16 passed by Congress I believe on July 20, 1868 and is found
17 at 15 Stat., page 133. There was no indication in the
18 Court's -- in how the Court dealt with the case that it
19 thought of this as being in any way unusual.

20 QUESTION: Didn't they set aside -- I haven't
21 looked at the case for quite a while. Didn't they set
22 aside part of the forfeiture in that case?

23 MR. ESTRADA: That is not my recollection.

24 QUESTION: And your understanding is that even
25 though it was a leasehold, actually what was forfeited was

1 the fee interest in the property.

2 MR. ESTRADA: That is what -- how we read the
3 case, and the statute I think was very clear. It actually
4 made reference to the tract of land rather than to the
5 interest of the owner.

6 QUESTION: What's the name of the case, Mr.
7 Estrada?

8 MR. ESTRADA: Dobbins --

9 QUESTION: Dobbins?

10 MR. ESTRADA: -- Distillery, which is cited in
11 our brief, Mr. Chief Justice.

12 Now, this Court has long understood the Eighth
13 Amendment with its references to bail, fines, and
14 punishments, to be directed to the criminal law function
15 of the Government. And consistent with that
16 understanding, this Court in Brown and Ferris concluded
17 that the word fine, as used in that amendment and as
18 understood by the Framers, meant a payment to a sovereign
19 as punishment for some offense.

20 Our claim here is that civil in rem forfeitures
21 are not fines under the Eighth Amendment and do not
22 otherwise implicate the Eighth Amendment because they have
23 never been considered punishment for an offense.

24 QUESTION: Well, now, doesn't Halper indicate
25 that a civil pecuniary sanction, designed to be remedial,

1 can be punitive?

2 MR. ESTRADA: I think Halper indicates that
3 there are certain cases in which the Court will disregard
4 the label that Congress has chosen to put on a given
5 exaction, but under certain very limited circumstances.
6 Both Halper and the case of Bell v. Wolfish, which is
7 cited, do what is in essence an as-applied challenge to a
8 specific Government conduct; that is, a claim that even
9 though a statute is civil in the usual case, as applied in
10 the case, it should be considered forbidden punishment.

11 But in the type of as-applied challenge, both
12 Halper and Bell concentrated on the seventh Mendoza-
13 Martinez factor, which is whether the Government conduct
14 seems excessive in relation to the nonpunitive purpose as
15 being claimed for it.

16 The theory of both cases, which was a theory
17 that won in Halper and lost in Bell v. Wolfish, was that
18 if the Government exaction in the specific case is so
19 patently out of kilter with the stated nonpunitive
20 purpose, then the court may safely infer that the true
21 purpose was something else, i.e., the desire to use the
22 sanction in the specific case, not to further the purpose
23 of the statute, but to inflict what is, in essence,
24 punishment. Halper makes very clear that the road to that
25 level of -- lack of rationality is very long and there are

1 very few cases in which the specific invocation of --

2 QUESTION: Where it would meet the standard.

3 Well, should this case be subjected to a Halper inquiry do
4 you think?

5 MR. ESTRADA: I think every case in which the
6 Government conduct is challenged can be subjected to a
7 Halper inquiry. We think that this class of cases,
8 including this specific case, is of such a nature that the
9 inquiry should never be successful because since the whole
10 point of the in rem forfeiture statute is to make the
11 property unavailable for further unlawful use and to
12 compensate the victims of the unlawful use, it will never
13 be a case in which the specific invocation of the
14 forfeiture statute will exceed the bounds that the Court
15 outlined in Halper.

16 QUESTION: Well, we can accept in this case, can
17 we not, Mr. Estrada, that the purpose of the forfeiture
18 statute is supplementary to the criminal laws because it
19 deters and punishes?

20 MR. ESTRADA: I think you can certainly accept
21 that the civil forfeiture statute in this case is part of
22 a whole set of weapons, if you will, that Congress chose
23 to use for a very grave social issue, and we certainly
24 concede that it is part of the statute that certain owners
25 will be deterred from using the property in this way.

1 We do not agree with the claim that anytime
2 there is any element of deterrence in Government action,
3 that that automatically means that the action should be
4 set aside or that it should be examined under heightened
5 constitutional scrutiny, and we don't think --

6 QUESTION: Well, in addition to deterrence, it's
7 punishment, is it not, in the civil forfeiture context
8 that we have here?

9 MR. ESTRADA: We don't think that what we have
10 in this case, either as a general matter or in the
11 specific facts of this case, that we can call this
12 punishment in the constitutional sense, Justice Kennedy.

13 QUESTION: Well, in the brief that the Justice
14 Department filed in the Parcel of Land case that we
15 decided earlier this term, the Solicitor General is quoted
16 at length from the Senate committee report indicating that
17 the purpose of these laws would be to deter and punish
18 further because criminal sanctions were ineffective to
19 combat the drug trade. So, I just think that we ought to
20 recognize that the purpose of this law is to deter and
21 punish.

22 If we do recognize that, do you have a more
23 difficult case?

24 MR. ESTRADA: Yes, I think we would.

25 I just -- as a comment on that cite, it is often

1 the case that a word can be used by Members of Congress,
2 such as the word punish, in a sense which is broader than
3 the constitutional sense. And we think that even though
4 there are, in fact, some such statements in the
5 legislative record, that the structure of the statute, the
6 language of the statute, and the history of this type of
7 thing show that this is not punitive in the constitutional
8 sense. And as to that point, I think we would simply
9 point to the tests that this Court has followed in a case
10 like Mendoza-Martinez.

11 QUESTION: If we thought it was punishment, do
12 you lose?

13 MR. ESTRADA: Excuse me, Justice Stevens -- I
14 mean, Justice White. I'm sorry.

15 QUESTION: If we thought this was punishment,
16 this amounted to punishment, would you lose?

17 MR. ESTRADA: No. If you thought that this was,
18 in fact, punishment in the constitutional sense, there
19 would still be the claim as to whether it is excessive
20 punishment. The Eighth Amendment doesn't outlaw
21 punishment.

22 QUESTION: But you would say, however, that if
23 it is punishment, it is -- the Eighth Amendment is
24 applicable to civil cases.

25 MR. ESTRADA: Yes. I think it is true that

1 Congress cannot get out of the Eighth Amendment simply by
2 the label that it places on something. It is also --

3 QUESTION: Does it have to be some connection
4 with a criminal case?

5 MR. ESTRADA: Yes. I think this Court would
6 have to conclude under the tests that this Court has
7 always applied in similar inquiries like the Mendoza case
8 that in fact what this statute does is to inflict
9 punishment in the constitutional sense. And if that were
10 the case, then it would follow that you could, in fact,
11 look at what the Government is doing under the Eighth
12 Amendment.

13 Our principal claim in this case is that
14 something of this type, by reason of history and by reason
15 of the fact that the history still serves a purpose to
16 this day, should not be considered punishment in the
17 constitutional sense.

18 QUESTION: Do you think historically the
19 excessive fines notion applied at all in civil cases?

20 MR. ESTRADA: No. No, and I think when the
21 Court went over the history of the excessive fines
22 language in the Eighth Amendment in the Brown and Ferris
23 case, the Court concluded that to the Framers the
24 excessive fines -- that the fines that are mentioned in
25 the Eighth Amendment were payments to the sovereign as

1 punishment for some offense because then and now fines are
2 assessed in criminal cases.

3 QUESTION: So, the answer historically would be
4 if a fine is payable to the sovereign as a fine, if it's
5 as punishment, it doesn't make any difference that it's a
6 civil case.

7 MR. ESTRADA: That is right, Justice White.

8 I should say that in looking at the issue of
9 whether this is, in fact, punishment in the constitutional
10 sense, there are tests that this Court has always applied,
11 most notably the Mendoza-Martinez factors. And using that
12 very test, this Court only a few years ago ruled that a
13 very similarly worded in rem forfeiture statute was not
14 punishment under the Mendoza-Martinez factors. That case
15 is One Assortment of 89 Firearms, which is cited in our
16 brief, and in that case, the statute in question mandated
17 forfeiture of all firearms used or intended to be used in
18 violations of the Gun Control Act or any other criminal
19 law of the United States.

20 QUESTION: So, what if we say that we think this
21 is punishment contrary to your belief? Is there any
22 difference between saying it's an excessive fine or it's
23 cruel and unusual punishment?

24 MR. ESTRADA: We don't think that the
25 constitutional standard in that event would be

1 significantly different because in either case, you would
2 be looking at whether the Government exaction is extremely
3 out of kilter with what the Government is trying to do
4 with the exaction.

5 QUESTION: So, what would be the standard under
6 the excessive fines route if we said, well, this is
7 punishment, and so the Excessive Fines Clause applies?

8 MR. ESTRADA: We think that the standard would
9 be comparable to the standard that the Court used in
10 Harmelin, which is in the first instance to ask whether
11 the fine or the punishment is grossly disproportionate to
12 the gravity of the crime.

13 QUESTION: So, you do say that the standard
14 would be roughly the same --

15 MR. ESTRADA: Yes, we do, Justice White.

16 Our principal claim here is that this type of
17 conduct is not punishment, but even if it is, our
18 alternative claim is that under the Harmelin standard,
19 this conduct couldn't be found to meet the level of
20 excessiveness that would counsel setting it aside.

21 QUESTION: Mr. Estrada, historically did these
22 in rem forfeitures contain an exclusion for the property
23 of innocent persons?

24 MR. ESTRADA: Yes, Justice Scalia, in a very
25 limited sense. Not innocence of the crime as such. There

1 is an 1808 case written by Chief Justice Marshall that was
2 cited in this Court's opinion in Calero-Toledo, and the
3 name of the case is Peish v. Ware, which is cited at page
4 689 of Calero-Toledo and is reported at Fork Ranch 347.

5 That was a case in which a ship had been wrecked
6 on the coast of Delaware. The goods were taken to the
7 coast, and the Government brought a forfeiture action
8 claiming that shortly after the ship was shipwrecked, the
9 goods had been found in Delaware without tax stamps.

10 The Government lost that case, Chief Justice
11 Marshall saying what seemed to be a statement of the
12 common law of forfeiture, that a forfeiture wouldn't lie
13 at common law in a case where there was nothing that the
14 person, on whom the forfeiture would work, could have done
15 to keep it from happening. And we would take that as
16 being part of the common law of forfeiture.

17 This Court's case in Calero-Toledo cited that
18 and in addition said that invoking a forfeiture under
19 those facts would likely be a violation of due process.

20 In addition, footnote 27 in Calero-Toledo
21 pointed out -- excuse me -- that since 1790 the Federal
22 Government has had statutes that provide for the remission
23 of forfeitures as a matter of administrative grace when
24 the owner can show that he was without intent or without
25 willful negligence, and that goes back to 1790. We think

1 that Congress' decision to include something very much
2 like that in this statute, as a matter of statutory right
3 rather than as a matter of grace, really doesn't change
4 what the nature of the action --

5 QUESTION: It doesn't stop -- it doesn't turn it
6 from remedial into punitive.

7 MR. ESTRADA: Correct, because that has always
8 been there. Throughout the history since 1790, there have
9 been some statutes that actually vest that type of claim
10 with the court and there are some statutes now where a
11 claimant can go to a court and ask that the forfeiture be
12 mitigated rather than going to an agency, but that has
13 always been there since 1790. And making this a matter of
14 statutory right doesn't change the nature of the action.

15 QUESTION: Just looking at it from the other
16 side, that sort of provides an answer to the question that
17 I asked your brother, and that is, assuming we do find
18 that there's something punitive here and we don't classify
19 it as immune from review merely as a remedial forfeiture,
20 there seems then to be a historical basis for us not to
21 have to worry about the case of the truly innocent owner
22 subject to the classic historical forfeiture because that
23 person, based on your case from Fork Ranch, may very well
24 have had a defense to the forfeiture all along.

25 MR. ESTRADA: I think we have to -- yes, but I

1 think we have to distinguish two meanings of innocence in
2 this context. When the Court has always said that
3 innocence is not relevant, what it had meant as the cases
4 make clear is that you needn't be guilty of a crime.
5 However, it is still possible and, indeed, likely that you
6 haven't been very careful with your property.

7 QUESTION: In the case of the parents whose
8 child uses the house to store drugs that he sells on the
9 street, you would say if they had reason to know that he
10 was using them, their property would historically be -- on
11 historical grounds be subject to forfeiture in the absence
12 of any statutory defense; whereas, if they had not in any
13 way been negligent in failing to know of the fact that he
14 was using his room as a storehouse for the drugs he was
15 selling, they would have a defense.

16 MR. ESTRADA: Well, I think that that's not
17 necessarily the case because I think what Chief Justice
18 Marshall had in mind and what we have had through the
19 history is the imposition of a very high standard of care
20 --

21 QUESTION: A -- an affirmative obligation --

22 MR. ESTRADA: -- on the owner.

23 QUESTION: -- really to take --

24 MR. ESTRADA: Right, and --

25 QUESTION: -- to take care that it not be used.

1 MR. ESTRADA: Correct, and I think that that is,
2 in fact, what we think has historically justified civil
3 forfeitures. The civil forfeiture statutes go on the
4 really common sense premise that there are certain uses of
5 property that are so harmful and so socially undesirable
6 that the law must place every incentive on the owner of
7 the property to make sure, even if that takes taking
8 affirmative steps, that no one, whether the owner knows
9 about him or not, will inflict those harms on society with
10 the owner's property.

11 QUESTION: And that, of course, would be your
12 answer to the claim of the so-called innocent owner who
13 was merely negligent.

14 MR. ESTRADA: Right.

15 QUESTION: Yes.

16 MR. ESTRADA: Yes, and we would say that as a
17 historical matter, that person wouldn't have that type of
18 a claim because the whole point of having a remedy of this
19 type is to take note of the fact that there are certain
20 things that only an owner can do and only an owner can
21 take care of his property and make sure that it is not
22 broken into and turned into a crack house, for example.

23 QUESTION: But all that analysis, Mr. Estrada,
24 proceeds from the line of cases that essentially began
25 with forfeitures in the maritime area and forfeitures of

1 certain kind of chattel. But isn't it true that at early
2 common law, one of the benefits, at least to the nobles,
3 of classifying certain crimes as felony was so that they
4 could have forfeiture. Forfeiture was intricately bound
5 up with the definition of crime at a very early English
6 law, was it not?

7 MR. ESTRADA: Well, I think --

8 QUESTION: And didn't the Framers recognize
9 that?

10 MR. ESTRADA: There were two types of forfeiture
11 at early common law, Justice Kennedy. One of them was the
12 so-called forfeiture of estate, which really was in
13 personam and really only came into play when the
14 Government proved with a judgment of conviction that the
15 person had, in fact, been convicted of a crime.

16 The other type of forfeiture really didn't have
17 anything to do with the crimes that were hurting the
18 king's bench. It was in a completely different court
19 system, the Court of the Exchequer, and that type of
20 forfeiture, which is, in essence, what is at issue here,
21 didn't partake of the rationale that you just gave I
22 think.

23 QUESTION: It seems to me that the Framers were
24 concerned that the criminal laws not be used to impose
25 excessive punishments, and certainly in the early history

1 of England, that was true with reference to forfeitures
2 for felonies.

3 MR. ESTRADA: Right, but it is not the same type
4 of forfeiture that is at issue here, Justice Kennedy. If
5 this were a case in which the forfeiture could only be had
6 upon the conviction of a crime, we don't -- we would not
7 be here because we would concede that the essence of that
8 sort of action is on the person.

9 What we do have here is a statute that really
10 doesn't need the criminal law other than to state a --
11 other than to set a standard of conduct and, taking that
12 as the standard of conduct, then says if your property has
13 been used or is intended to be used for this purpose, then
14 we will make sure that that harm doesn't come to pass by
15 placing the property in the hands of someone who can give
16 surety to society as a whole that these harms won't
17 happen. And I think that's a very different type of
18 forfeiture than the forfeiture that you have in mind,
19 Justice Kennedy.

20 QUESTION: May I ask you a question, Mr.
21 Estrada? Your discussion of two kinds of innocence and
22 the different -- your colloquy with Justice Kennedy brings
23 this to mind.

24 In the Dobbins Distillery case that you
25 describe, the landlord knew that the property is going to

1 be used for a distillery and perhaps had a higher duty to
2 be sure they kept the records properly and so forth. But
3 you say you would apply the same standard in a case like
4 that as if just an ordinary landlord rented a flat
5 somewhere to a party and had no reason to believe it was
6 to be used for anything but a residence, and it turned out
7 that the tenant dealt in drugs in the flat without any
8 knowledge of the landlord.

9 Would you say that the fee interest of the
10 landlord would be forfeitable equally as -- on those facts
11 as in the distillery case?

12 MR. ESTRADA: Well, it would not happen under
13 this statute because of the --

14 QUESTION: No. I'm just talking about would the
15 constitutional objection -- if there was any
16 constitutional problem at all, would you say the analysis
17 would be the same --

18 MR. ESTRADA: Yes, although --

19 QUESTION: -- in a case where you know that it's
20 the kind of business that has special duties and special
21 concerns on the one hand, and just rent it as a residence
22 on the other?

23 MR. ESTRADA: I think the mode of looking at the
24 question would be the same in the sense that you would ask
25 the same questions, i.e., whether the owner did everything

1 that he physically could to ensure that this didn't
2 happen. I think if the owner, for example, never was
3 around to see all of the suspicious people come and go and
4 really made no effort whatsoever to stop by and look at
5 the property, it is possible that that person would lose.

6 Someone who did take those steps, we would think
7 that as a matter of common law, he would have exercised
8 every care that the law could ask of him. And if after
9 every care and physically -- and after physically doing
10 everything that he could, the harm still came to pass, we
11 would understand the common law as giving that person a
12 defense.

13 Unless the Court has any further questions,
14 we'll rely on our briefs.

15 QUESTION: Thank you, Mr. Estrada.

16 Mr. Johnson, you have 3 minutes remaining.

17 REBUTTAL ARGUMENT OF RICHARD L. JOHNSON

18 ON BEHALF OF THE PETITIONER

19 MR. JOHNSON: Thank you, Your Honor.

20 Counsel for the Government talks about the
21 Kennedy v. Mendoza-Martinez criteria. Applying that
22 criteria to this case, it's clear that the actions of the
23 Government in this case do constitute punishment.

24 First is whether it creates an affirmative
25 disability or restraint. Obviously, the loss of Mr.

1 Austin's business and his home was a disability on him.

2 Whether it historically has been regarded as
3 punishment. We'd argue that this type of forfeiture that
4 occurred in this case has historically been regarded as
5 punishment because we argue that it goes back to the time
6 of the Framers and prior to that what they understood as
7 punishment to be.

8 QUESTION: Would the answer on proportionality
9 be different if it was 600 grams instead of 2?

10 MR. JOHNSON: I would argue that that would be a
11 more -- that would be a factor which would be more
12 detrimental to Mr. Austin, obviously, yes. Yes. The
13 answer --

14 QUESTION: Even though he's deprived of his
15 entire livelihood.

16 MR. JOHNSON: If it was 600 grams, there's more
17 of a chance that probably the place was being used to
18 store drugs too. That very likely could be the case, but
19 again, that's a -- it's a -- an analysis that has to be
20 determined I think by the court in the first instance, by
21 the district court. In other words, all the factors have
22 to be taken into consideration.

23 The third factor is whether it comes into play
24 on a finding of scienter. In this case, the statutes
25 themselves indicate that scienter is a factor. In other

1 words, if the owner does not know of the drug use, then
2 it's a defense.

3 Four, whether the operation will promote the
4 traditional aims of punishment, retribution, and
5 deterrence. In fact, that is the case here too. This
6 civil forfeiture under 21 U.S.C. 881(a)(4) and (a)(7) does
7 promote --

8 QUESTION: So, the more lenient Congress is with
9 respect to the mental element, scienter, the more it is
10 criminal?

11 MR. JOHNSON: I don't think I'm saying that. I
12 guess --

13 QUESTION: Well, I thought you said that if the
14 statute provides that lack of scienter is a defense, then
15 that tends to make it a criminal statute. Did I
16 misunderstand?

17 MR. JOHNSON: Yes, that's true. Yes. In this
18 particular case --

19 QUESTION: So, the more lenient Congress is with
20 respect to the party involved, the more it's criminal
21 rather than civil. That strikes me as astounding.

22 MR. JOHNSON: Well, one of the factors of
23 whether or not it's punishment is whether or not scienter
24 is involved, and that -- in this particular case, if you
25 are an innocent owner, then that is a defense to the civil

1 forfeiture. So, that's -- that is one of the factors in
2 this case.

3 Next, whether the behavior to which it applies
4 is already a crime. As I indicated, the statutes do tie
5 the civil forfeiture to the violations of the controlled
6 drug statutes.

7 And I see my time is up. Thank you.

8 CHIEF JUSTICE REHNQUIST: Thank you, Mr.
9 Johnson.

10 The case is submitted.

11 (Whereupon, at 2:08 p.m., the case in the above-
12 entitled matter was submitted.)
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CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of

The United States in the Matter of: Case No. 92-6073

Richard Lyle Austin, Petitioner v. United States

and that these attached pages constitutes the original transcript of the proceedings for the records of the court.

BY *Lona M. May*

(REPORTER)