**PUBLISHED**

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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**No. 24-1958**

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UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

RICHARD M. RUND,

Defendant – Appellant.

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INSTITUTE FOR JUSTICE,

Amicus Supporting Appellant.

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Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Michael Stefan Nachmanoff, District Judge. (1:23-cv-00549-MSN-IDD)

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Argued: September 10, 2025 Decided: September 4, 2026

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Before HARRIS and RUSHING, Circuit Judges, and FLOYD, Senior Circuit Judge.

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Affirmed by published opinion. Judge Rushing wrote the opinion, in which Judge Harris and Senior Judge Floyd joined.

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**ARGUED:** Stephen P. Kauffman, SKEEN & KAUFFMAN, LLP, Columbia, Maryland, for Appellant. Nishant Kumar, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Appellee. Samuel Bracken Gedge, INSTITUTE FOR JUSTICE,

Arlington, Virginia, for Amicus Curiae. **ON BRIEF:** Terry L. Goddard, Jr., James D. Skeen, SKEEN & KAUFFMAN, LLP, Columbia, Maryland, for Appellant. Clint Carpenter, Tax Division, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C.; Kelly O. Hayes, United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Greenbelt, Maryland, for Appellee. Michael Peña, INSTITUTE FOR JUSTICE, Austin, Texas, for Amicus Curiae.

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RUSHING, Circuit Judge:

The Internal Revenue Service assessed $2,915,633 in civil penalties against Richard Rund for willfully failing to report his interest in multiple foreign bank accounts over several years. When Rund did not pay, the Government brought this suit to reduce those penalties to judgment. After discovery, the district court granted the Government's motion for summary judgment and rejected Rund's defense that the penalties violated the Excessive Fines Clause of the Eighth Amendment to the United States Constitution. On appeal, Rund reiterates his constitutional challenge and also argues that summary judgment was not warranted on the issue of willfulness. We affirm.

I.

The Bank Secrecy Act of 1970 and its implementing regulations require U.S. persons with "a financial interest in, or signature or other authority over" foreign financial accounts exceeding a certain value to report the accounts to the IRS annually by filing a Report of Foreign Bank and Financial Accounts, commonly called an FBAR. 31 C.F.R. § 1010.350(a); *see* 31 U.S.C. § 5314; 31 C.F.R. § 1010.306(c). FBARs "are designed to help the government trace funds that may be used for illicit purposes and identify unreported income that may be subject to taxation." *Bittner v. United States*, 143 S. Ct. 713, 718 (2023) (internal quotation marks omitted). Any person who fails to file a required FBAR is subject to a maximum civil penalty of $10,000 or, if the failure was "willful," to a maximum civil penalty of the greater of $100,000 or 50% of the balance in the unreported financial account at the time of the violation. 31 U.S.C. § 5321(a)(5).

Richard Rund, a U.S. citizen and businessman, maintained a financial interest in, or authority over, more than a dozen foreign bank accounts that he failed to report as required for the years 2003 through 2008, 2013, and 2014. The violations can be grouped into four general categories. The first group consists of two personal accounts Rund owned at HSBC in Hong Kong. Rund reported the original HSBC account on FBARs for 2001 and some subsequent years. But he did not timely report this account on FBARs for 2004, 2006, 2007, or 2008. In 2008 he opened the second personal HSBC account, which he also failed to report.

The second group includes numerous business accounts at the Bank of East Asia in the name of two entities, FOB Instruments Ltd. and a company called York Luen. Rund set up FOB around 1999 and transferred ownership of York Luen to FOB as well as ownership of accounts and assets from a prior business he had owned. Rund structured FOB so that he "would not be a legal person for F.O.B. on the face" of things, which "could enable [him] a more favourable tax rate in [the] US." J.A. 477; *see* J.A. 476 (Rund explaining that he was "concern[ed] about the tax rate in [the] U.S." "for his offshore business"). At Rund's direction, he was designated the "Beneficial Owner" of 95% of the shares in FOB while a friend was named the "nominee for the Beneficial Owner." J.A. 434. Rund continued to manage FOB's business. He also continued to exercise control over the funds of FOB and York Luen by, for example, directing that certain amounts be transferred into a different bank account that he controlled. Although Rund knew about the FBAR requirements since at least 2002, he did not timely report these Bank of East Asia accounts on FBARs for 2003 through 2008.

The third category involves an account at UBS in Switzerland. Rund opened this account in 2003. He listed the account holder as Far East Ventures Ltd. (FEV), an entity incorporated in Mauritius, with no business activity beyond receiving $25,000 per month from FOB in order to avoid tax liability in Hong Kong. While Rund had "control over the funds" in the UBS account, J.A. 196, FEV was the named account holder "for US tax reasons," J.A. 82. Rund did not timely report the UBS account on FBARs for 2004 through 2008.

The fourth category concerns accounts at HSBC and China Construction Bank (CCB) in 2013 and 2014. Beginning in 2010, Rund participated in the IRS's Offshore Voluntary Disclosure Program, which allowed U.S. persons to belatedly disclose foreign accounts and income in exchange for receiving potentially reduced penalties. In applying to enter the program, Rund disclosed to the Government for the first time the UBS account held by FEV and some of the Bank of East Asia accounts of FOB and York Luen. Rund was removed from the program in 2016. While he was participating in the voluntary disclosure program, Rund opened two accounts at CCB in 2013. These accounts were in the name of York Luen; by this time, Rund was the sole director and owner of the company. Although Rund filed a timely FBAR for 2013, he omitted the CCB accounts. And he did not timely file an FBAR for 2014. Consequently, he failed to timely report the CCB accounts and his HSBC accounts for that year too.

Rund filed belated FBARs for some, but not all, of the accounts and years he had previously omitted. In 2016, he filed a belated 2014 FBAR and an amended 2013 FBAR disclosing the CCB accounts. In 2019, Rund filed FBARs for 2004, 2006, 2007, and 2008.

Even then, the belated FBARs were incomplete; they omitted several Bank of East Asia accounts completely as well as an HSBC account in 2008.

Throughout this time period, Rund experienced what he calls "compounding conditions" that caused him stress. For roughly a decade beginning in 2007, he was engaged in business litigation over FOB. Around 2006 or 2007, he was diagnosed with attention-deficit/hyperactivity disorder (ADHD). And in 2017 and 2018, he was treated for cancer. By 2021, these events and "IRS/tax issues" had caused him to feel depressed. J.A. 957.

Over the years, Rund's late and missing foreign account reports added up. The IRS identified 48 reporting deficiencies from 2003 to 2008 and 2013 to 2014. Having concluded that Rund's violations were willful, the IRS assessed $2,915,663 in civil penalties. The IRS determined the total penalty by calculating 50% of the highest aggregate balance of unreported accounts during the years under examination. It then allocated that total penalty pro rata across the years and accounts at issue, resulting in a penalty of approximately 14% of the account balance for each account in each year it was not properly reported.[1]

[1] When the IRS formally assessed Rund's total penalty, it mistakenly allocated $311,236 of that total to three HSBC accounts that Rund held in 2013 for which there was no violation. This error had the effect of reducing (by a total of $311,236) the amounts that should have been allocated among the accounts and years for which Rund actually committed violations. But it had no effect on the IRS's calculation of his total penalty. The Government acknowledged this discrepancy in the district court and explained that it did not change his total penalty, which remained $2,915,663. Rund did not dispute the Government's assertion. In his opening brief on appeal, Rund identifies this allocation error but presents no argument in support of his request that we reduce the judgment.

When Rund did not pay, the Government filed this civil action in the district court to reduce the penalties to judgment. 31 U.S.C. § 5321(b)(2). Rund contested the case on the merits and raised the Excessive Fines Clause in defense. After discovery, the Government moved for summary judgment, which the district court granted. The court concluded that, for each penalized account, the undisputed evidence showed that Rund "had a financial interest in the account which would subject him to FBAR requirements" and "knew of his reporting requirements and intentionally or recklessly disregarded them." *United States v. Rund*, 743 F. Supp. 3d 779, 791 (E.D. Va. 2024). As for the Excessive Fines Clause, the district court reasoned that it did not apply to civil FBAR penalties and that, even if it did, the penalties imposed here were not excessive.

The district court entered judgment against Rund in the amount of $2,915,663 plus interest and penalties. Rund appealed, and we have jurisdiction. *See* 28 U.S.C. § 1291.

II.

We review the district court's decision to grant summary judgment on Rund's liability for willful FBAR penalties de novo, "applying the same legal standards as the district court, and viewing all facts and reasonable inferences therefrom in the light most favorable to the nonmoving party," Rund. *Amazon.com, Inc. v. WDC Holdings LLC*, 155 F.4th 313, 323 (4th Cir. 2025) (internal quotation marks omitted). A court should grant summary judgment "if the movant shows that there is no genuine dispute as to any material

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Because Rund has forfeited any such argument, we do not address it. *See Grayson O Co. v. Agadir Int'l LLC*, 856 F.3d 307, 316 (4th Cir. 2017) ("A party waives an argument by failing to present it in its opening brief or by failing to develop its argument—even if its brief takes a passing shot at the issue." (internal quotation marks and brackets omitted)).

fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A fact is material if it "might affect the outcome of the suit under the governing law" and a genuine dispute exists when the evidence would allow "a reasonable jury [to] return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

Willfulness is the only element of liability that Rund contests on appeal. As both parties recognize, our Court established the standard for a willful FBAR violation in *United States v. Horowitz*, 978 F.3d 80 (4th Cir. 2020). There, the Court held that, "for the purpose of applying § 5321(a)(5)'s civil penalty, a 'willful violation' of the FBAR reporting requirement includes both knowing and reckless violations." *Id.* at 88. Recklessness, in the civil context, is "an objective standard," and a person is objectively reckless "'who acts or (if the person has a duty to act) fails to act in the face of an unjustifiably high risk of harm that is either known or so obvious that it should be known.'" *Id.* at 89 (quoting *Farmer v. Brennan*, 511 U.S. 825, 836 (1994)); *see id.* ("'It is the high risk of harm, objectively assessed, that is the essence of recklessness at common law.'" (brackets omitted) (quoting *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 69 (2007))). Thus, our Court held that, "when imposing a civil penalty for an FBAR violation, willfulness based on recklessness is established if the defendant '(1) clearly ought to have known that (2) there was a grave risk that an accurate FBAR was not being filed and if (3) he was in a position to find out for certain very easily.'" *Id.* (quoting *Bedrosian v. United States*, 912 F.3d 144, 153 (3d Cir. 2018)).

Applying this standard, the *Horowitz* Court held that the FBAR violations in that case were willful as a matter of law based on the defendants' recklessness. *Id.* at 89. At the outset, the Court rejected the defendants' asserted belief, based on conversations with friends, that they did not have to pay U.S. taxes on the interest earned in their foreign accounts. They knew that interest income is taxable and that foreign income is taxable, therefore an "exception for foreign interest income simply made no sense," and they were "reckless in failing to discuss" the question with their accountant. *Id.* At one point, their foreign account was identified by a number rather than their names and used the bank's "hold mail" service, which were both features that could facilitate concealing assets and "evince[d] more than mere negligence." *Id.* at 90. The defendants also signed tax returns stating that they had no foreign bank accounts. "That they repeatedly failed to review the returns with the care sufficient at least to discover their misrepresentation of foreign bank accounts, while nonetheless stating that the returns were accurate, was again an aspect of their recklessness." *Id.* Taking these circumstances together, our Court concluded that the defendants "clearly ought to have known that they were failing to satisfy their obligation to disclose their [foreign] accounts" and that "they were in a position to find out for certain very easily." *Id.* (internal quotation marks omitted). Despite "numerous red flags," they did not make "a simple inquiry to their accountant" or give "the minimal effort necessary to render meaningful their sworn declaration that their tax returns were accurate." *Id.* Accordingly, the Court affirmed summary judgment in the Government's favor regarding the willfulness of the defendants' FBAR violations.

Applying the *Horowitz* standard to the undisputed facts of this case, Rund's failure to file FBARs for the accounts and years at issue was willful as a matter of law. Evidence applicable to all accounts and years at issue, combined with evidence specific to individual accounts, establishes that Rund's failure to timely file accurate FBARs was at least objectively reckless because Rund "(1) clearly ought to have known that (2) there was a grave risk that an accurate FBAR was not being filed" in each instance and "(3) he was in a position to find out for certain very easily." *Id.* at 89 (internal quotation marks omitted). The evidence on which Rund relies does not demonstrate a dispute of material fact in this regard.

*All Accounts*: To begin, Rund *knew* about the FBAR requirement before he violated it for the first year at issue, 2003, because he had filed FBARs for earlier years. By contrast, in *Horowitz*, this Court concluded that the defendants "recklessly disregarded the FBAR filing requirement" despite evidence that they lacked "actual knowledge" of it. *Id.* at 86, 90 (internal quotation marks omitted). Moreover, the timely but incomplete FBARs that Rund did file for 2003 and some later years alerted him to the substance of the filing requirement. Directly below the line for Rund's signature, the FBAR form advised: "This form should be used to report a financial interest in, signature authority, or other authority over one or more financial accounts in foreign countries" unless "the aggregate value of the accounts did not exceed $10,000." J.A. 519.

The tax returns Rund filed for each of the years at issue also asked about foreign accounts and notified him of the potential obligation to file an FBAR. Those tax returns asked Rund whether he had "an interest in or a signature or other authority over a financial

account in a foreign country" and referred him to instructions about the FBAR obligation. J.A. 512. In his returns for 2005 through 2008, each of which he signed under penalty of perjury, Rund falsely answered "no" to the question whether he had an interest in a foreign account. *See Horowitz*, 978 F.3d at 90 (defendants' failure "to review the [tax] returns with the care sufficient at least to discover their misrepresentations of foreign bank accounts" was "an aspect of their recklessness").

Further, the evidence shows that Rund "was in a position to find out for certain very easily" whether accurate FBARs were being filed. *Id.* at 89 (internal quotation marks omitted). Rund consistently worked with tax professionals who assisted and advised him regarding his tax and reporting obligations. But there is no evidence that Rund told his tax professionals in the relevant years about the foreign accounts that he now claims he did not think he needed to report. *Cf. id.* (finding defendants reckless for "failing to discuss the [tax liability] question with their accountant" despite considering the question "significant enough to discuss with their friends").

Account-specific evidence further supports the conclusion that, for each account and year at issue, Rund clearly ought to have known there was a grave risk that an accurate FBAR was not being filed. *See id.*

*HSBC Accounts*: Consider his personal HSBC accounts. Rund did not timely file an FBAR reporting his original HSBC account for 2007 or 2008, despite having reported that same account on FBARs in prior years. So he knew, or clearly should have known, that failing to report the same account in later years presented, at the very least, a "grave risk that an accurate FBAR was not being filed," and he "was in a position to find out for

certain very easily." *Id.* (internal quotation marks omitted). The same holds true for the other HSBC accounts, given his similar relationship to them. Rund never filed an FBAR for 2008 reporting the personal HSBC account he opened that year. Nor did he timely report that account, or two other personal HSBC accounts, for 2014. At that time, he was participating in the IRS's voluntary disclosure program, which conditioned participation on providing "truthful, timely, and complete" information to the IRS regarding the participant's foreign accounts. J.A. 522. As the district court put it, "this was a time Rund should have been even more cognizant of his reporting requirements and careful with his omissions." *Rund*, 743 F. Supp. 3d at 792. The undisputed evidence establishes that Rund's failure to report his personal HSBC accounts for the penalized years was reckless.[2]

The evidence Rund identifies in response does not demonstrate a genuine dispute of material fact. First, he notes that he disclosed some of the HSBC accounts in at least one year before he then failed to report the same accounts in a later year, and he contends this shows he had "no motive to conceal" the accounts. Opening Br. 26. While a motive to conceal could be relevant to proving a willful FBAR violation, it is not necessary in every case because willfulness in the context of civil FBAR penalties includes recklessness. *See Horowitz*, 978 F.3d at 88. Even accepting that Rund had no motive to conceal these accounts, the Government's evidence conclusively establishes that he recklessly disregarded his obligation to report them.

[2] Rund argues that the Government has not proven he recklessly failed to report his original HSBC account for 2004 or 2005. But the Government did not assess a penalty for that account in 2004 or 2005. *See* J.A. 760–761. We therefore do not address his argument.

Second, Rund asserts in a general fashion that these omissions were caused by his "ADHD exacerbated by [the] [c]ompounding [c]onditions." Opening Br. 26. Yet as Rund also observes, "[d]espite his ADHD and these [c]ompounding [c]onditions, [he] managed to file timely and complete FBARs for the years 2009 to 2012." *Id.* at 17. He does not tether a specific impairment to any relevant time, nor does he offer any reason to think that his conditions affected select years or accounts more severely than others. And during the entire period he continued to file tax returns and work with tax preparers and advisors, demonstrating that he remained in a position to find out for certain if accurate FBARs were being filed. Rund's ADHD and compounding conditions do not undermine the Government's evidence of objective recklessness.

*Bank of East Asia Accounts*: Next consider the Bank of East Asia accounts. Rund's interest in these accounts was plain, and he structured his relationship to the accounts to avoid U.S. taxes, yet there is no evidence he mentioned these accounts to his tax preparers during the years the FBARs became due, despite his awareness of the FBAR requirement. While Rund did not formally own FOB or York Luen from 2003 to 2008, he was the "beneficial owner" of FOB, which owned York Luen, and the record shows he actually exerted control over those entities' funds. Moreover, Rund placed a friend as the "nominee" who held the companies' shares on Rund's behalf as the "beneficial owner" to "enable [Rund] a more favourable tax rate in [the] US." J.A. 477; *see* J.A. 476 (Rund explaining that he sought "to reduce [his] tax liability to [the] U.S. Government" for "his offshore business"). That Rund tailored his relationship to his businesses and their accounts specifically for U.S. tax avoidance made it especially important for him to inform

his tax preparers of those accounts to ensure proper reporting. By asking a professional, Rund could have very easily cleared up any uncertainty about his FBAR reporting obligations for these accounts. The absence of evidence that he did so under these circumstances evinces more than mere negligence.

Rund's evidence on this score does not reveal a genuine dispute of material fact about whether he recklessly disregarded his reporting obligations for these accounts. At his deposition, Rund was asked whether he remembered mentioning the Bank of East Asia accounts to his tax preparers or asking for advice about whether they needed to be reported, as he did with a different unrelated account. Rund responded: "I know that everybody knew about everything, my tax preparers, my - - I believe what happened is . . . that Stratos and that attorney said it has to be reported, . . . and that's why amended FBARs were filed by Stratos to include them." J.A. 334. The record shows that Stratos & Associates, PLLC first prepared Rund's taxes for the 2009 tax year. Rund's deposition testimony says nothing about whether he disclosed the Bank of East Asia accounts to his preparers before FBARs for the relevant years—2003 to 2008—were due. *See* J.A. 329 (Rund testifying that he "do[es] not remember what [he] said and what [he] didn't" to his tax preparers before 2009). Rund also directs our attention to his interrogatory responses. There, when asked to list the foreign financial accounts that he informed his tax preparers about, Rund instead answered that he "used professional return preparers" and he "honestly answered whatever questions and provided whatever documents these return preparers requested." J.A. 552. Critically, Rund does not identify any evidence from which a reasonable jury could infer that he disclosed the Bank of East Asia accounts to his tax professionals before

2009 and was advised *not* to file FBARs for those accounts. Indeed, the parties do not identify any evidence in the record about a preparer's response to such an inquiry or whether Rund followed the advice he received, if any. While we draw inferences from the evidence in favor of the nonmoving party at summary judgment, there must be evidence from which to draw such inferences. The evidence to support Rund's argument is absent.

*UBS Account*: Similar "red flags" apply to the UBS account in Switzerland. *Horowitz*, 978 F.3d at 90. Already aware of the FBAR requirement, in 2003 Rund opened the UBS account under FEV's name "for US tax reasons." J.A. 82. Rund admits that he had control over the funds in the UBS account, and he was the account's "beneficial owner[]" and the bank's "client." J.A. 82, 85. His knowledge that at least some foreign accounts must be reported on an FBAR, the obviousness of his financial interest in the UBS account, and the U.S. tax considerations that inspired him to name FEV as the account's owner should have spurred Rund to make "a simple inquiry to [his] accountant" about the account. *Horowitz*, 978 F.3d at 90. But there is no evidence that he did so, much less that he received and relied upon any professional advice that the UBS account did not need to be reported on an FBAR.

*CCB Accounts*: Finally, evidence specific to the CCB accounts in 2013 and 2014 further demonstrates Rund's willfulness in failing to timely file FBARs reporting these accounts. The CCB accounts were in the name of York Luen. By this time, Rund was the sole director and owner of York Luen. And by 2013, Rund had acknowledged that his failure to report York Luen's Bank of East Asia accounts for 2003 to 2008 violated his

FBAR obligations. In the face of this knowledge, his failure to report York Luen's CCB accounts on timely filed FBARs for 2013 and 2014 was at least reckless.

Rund contends that he didn't include the CCB accounts on a timely FBAR for 2013 because the accounts held proceeds from a sale of real property and he intended to reinvest those proceeds into other real estate, a transaction that he believed would defer tax liability. But Rund does not cite any evidence that he received (or reasonably relied upon) advice tying FBAR reporting obligations to reinvestment of real estate proceeds. And as the district court observed, even if Rund's obligation to report the CCB accounts for 2013 had turned on whether the funds were reinvested, by the time his 2013 FBAR was due (in June 2014), Rund would have known that he had not reinvested the funds in 2013. *Rund*, 743 F. Supp. 3d at 792. Moreover, at this time Rund was participating in the IRS's voluntary disclosure program and could have very easily found out for certain whether the CCB accounts should be disclosed.

* * *

Taking all of these circumstances together, the evidence indisputably establishes that Rund "clearly ought to have known" that there was, at minimum, a "grave risk" that he was failing to satisfy his obligation to disclose these accounts for the years at issue and he was "in a position to find out for certain very easily." *Horowitz*, 978 F.3d at 89 (internal quotation marks omitted). Rund's FBAR violations were therefore willful as a matter of law, and the district court correctly ruled on summary judgment that he is subject to enhanced civil penalties under Section 5321(a)(5)(C).

III.

We turn now to Rund's argument that the $2,915,633 civil penalty imposed against him violated the Excessive Fines Clause of the Eighth Amendment. The district court held that the Clause does not apply to civil penalties for willful FBAR violations and that, even if it did, the penalty imposed here would not violate the Clause's prohibition. We need not resolve whether the Excessive Fines Clause limits the Government's ability to collect civil FBAR penalties because, even assuming it does, the penalty assessed here is not unconstitutionally excessive.[3] The district court rejected Rund's excessiveness defense on summary judgment, and application of the Excessive Fines Clause to the summary judgment record presents a question of law that we review de novo. *See United States v. Jalaram, Inc.*, 599 F.3d 347, 351 (4th Cir. 2010) (citing *United States v. Bajakajian*, 524 U.S. 321, 336 & n.10 (1998)).

The Eighth Amendment dictates that "excessive fines" shall not be "imposed." U.S. Const. amend. VIII. The "touchstone of the constitutional inquiry under the Excessive Fines Clause is the principle of proportionality." *Bajakajian*, 524 U.S. at 334. A fine violates the Clause "if it is grossly disproportional to the gravity of a defendant's offense." *Id.* This standard is "highly deferential," *United States v. Blackman*, 746 F.3d 137, 144

[3] Our sister circuits disagree about whether civil FBAR penalties are fines subject to the Eighth Amendment. The First Circuit has held that the civil FBAR penalty is not a fine for Eighth Amendment purposes because it serves a remedial purpose and is not "tied to [a] criminal sanction." *United States v. Toth*, 33 F.4th 1, 16 (1st Cir. 2022). The Eleventh Circuit has held the opposite because civil FBAR penalties serve at least "'in part to punish.'" *United States v. Schwarzbaum*, 127 F.4th 259, 275 (11th Cir. 2025) (emphasis omitted) (quoting *Toth v. United States*, 143 S. Ct. 552, 553 (2023) (Gorsuch, J., dissenting from denial of certiorari)).

(4th Cir. 2014), because "judgments about the appropriate punishment for an offense belong in the first instance to the legislature," *Bajakajian*, 524 U.S. at 336.

In assessing whether a fine is grossly disproportional to the gravity of a defendant's offense, we consider factors like the nature and extent of the offense, its relation to other offenses, the harm it caused, and the penalties Congress has authorized. *See United States v. Ahmad*, 213 F.3d 805, 813, 816 (4th Cir. 2000); *see also Bajakajian*, 524 U.S. at 337–339; *Blackman*, 746 F.3d at 144; *United States ex rel. Bunk v. Gosselin World Wide Moving, N.V.*, 741 F.3d 390, 409 (4th Cir. 2013). Applying the gross disproportionality standard to the facts in the summary judgment record, we are satisfied that Rund's FBAR penalty is within constitutional bounds.

For willful violations of the FBAR reporting requirement, Section 5321 authorizes a civil penalty of "the greater of" $100,000 or 50% of "the balance in the account at the time of the violation." 31 U.S.C. § 5321(a)(5)(C), (D). The Government imposed a total penalty of $2,915,663 against Rund for more than 40 instances of willfully failing to report more than a dozen foreign accounts over the course of eight nonconsecutive years. The IRS determined the total penalty by calculating half of the highest aggregate balance of unreported accounts during the years under examination. (Here, 2014 was the year in which Rund's unreported accounts had the highest aggregate balance, so the IRS used that amount in its calculation.) It then allocated that total penalty pro rata across all the years and accounts at issue, resulting in a penalty of approximately 14% of the account balance

for each account in each year it was not properly reported.[4] Rund challenges the total $2.9 million penalty as excessive; he does not advance any excessiveness arguments about individual accounts or violations. Because both parties train their arguments solely on the total penalty assessed and do not present any arguments about particular accounts, we too focus our analysis on the total penalty and all reporting deficiencies in combination.[5]

Beginning with the nature and extent of the offense, Rund repeatedly and willfully failed to report multiple foreign bank accounts to the Government as required. Rund is subject to heightened penalties because he acted recklessly in disregarding the law which required him to report foreign bank accounts. *See* 31 U.S.C. § 5321(a)(5)(C), (D); *Schwarzbaum*, 127 F.4th at 281 ("Congress specifically reserved the severe penalties that [defendant] is subject to only for those who 'willfully' violated the statute." (quoting 31 U.S.C. § 5321(a)(5)(C)). His violations were not the result of reasonable mistakes or mere negligence; if they were, he would be subject to lesser penalties or no penalties at all. *See* 31 U.S.C. § 5321(a)(5)(B). And Rund violated the reporting requirement repeatedly over an extended period of time. Upwards of 40 times he willfully failed to report more than a

[4] As previously mentioned, in its formal assessment documents, the IRS misallocated $311,236 of the total penalty to accounts for which there was no violation in the relevant year. Reallocating the total penalty to compensate for that error would increase the penalty percentage to something more like 15.6% of the account balance for each account in each year it was not properly reported. This modest increase does not change our conclusion that the penalty is constitutionally permissible.

[5] The Eleventh Circuit has ruled that the excessive fines analysis for civil FBAR penalties "must proceed on an account-by-account basis in each year." *Schwarzbaum*, 127 F.4th at 276. We leave that question for another day because the parties here have focused exclusively on the total penalty imposed, and Rund's constitutional challenge to his total civil FBAR penalty fails on its own terms.

dozen foreign bank accounts over the course of eight nonconsecutive years. The size of the penalty Rund faces is in part a function of the number of times he failed to report his foreign accounts to the IRS as required. *Cf. Korangy v. FDA*, 498 F.3d 272, 278 (4th Cir. 2007) (finding fine not excessive, in part because "the amount of the penalty is the direct result of the number of individual offenses committed by [defendants]"). As we have recognized in other cases, repeated or prolonged offenses can justify higher fines than a solitary violation. *See Jalaram*, 599 F.3d at 356 (finding it important that "the criminal activity here spanned several months"); *Ahmad*, 213 F.3d at 816–818 (emphasizing that defendant's offenses were "repeated[]," not "isolated"). In this way, Rund's case is quite unlike *Bajakajian*, where the Supreme Court found a 100% forfeiture for "[a] single willful failure to declare" currency unconstitutionally excessive. 524 U.S. at 337 & n.12.

Although the record does not suggest that Rund's FBAR violations were "[]related to . . . other illegal activities" like money laundering or drug trafficking, *id.* at 338, there is evidence that his failure to report his foreign bank accounts corresponded with significantly underreporting his income on tax returns. This is another way in which Rund's reporting offenses differ from the offense in *Bajakajian*. The crime in that case was failure to report the removal from the United States of currency to which the Government could lay no claim. *Bajakajian*, 524 U.S. at 337–338. The defendant "owed no customs duties to the Government"; his crime "was simply failing to report the wholly legal act of transporting his currency." *Id.* at 338 n.13. Here, by contrast, Rund's failure to report his foreign bank accounts facilitated concealing taxable income from the Government. In this context, there is a "correlation" between the value of an unreported account—which dictates the size of

the penalty—and the risk of loss to the Government from nondisclosure. *Id.* at 339. As the unreported balance in an account increases, so does the potential tax loss to the Government. And so does the defendant's potential penalty, because Congress has tied "the size of the penalty to the size of the account." *Schwarzbaum*, 127 F.4th at 281. As the Eleventh Circuit has observed, this measure of proportionality also corresponds to the "increas[ed] incentiv[e] not to comply with the reporting requirements as the amounts in the concealed accounts . . . gr[o]w larger," thereby calibrating the deterrent effect of the FBAR penalty to the offense. *Id.*

Moving to the harm caused, beyond the loss of "information," the Government has identified lost tax revenue and investigation costs. *Bajakajian*, 524 U.S. at 339. As mentioned, Rund's FBAR violations corresponded with substantially underreporting his foreign income on his tax returns. The amount of tax loss is currently being litigated in the Tax Court, but the IRS has estimated that Rund underreported considerable income taxes associated with his unreported foreign account income, and he identifies no evidence in the summary judgment record to the contrary. In addition, Rund has acknowledged that the IRS expended sizeable resources to uncover the extent of his violations and the related lost tax revenue that it would not have spent if he had complied with his reporting obligations. Indeed, one purpose of the mandatory reporting scheme is to generate records "that are highly useful in . . . tax . . . investigations . . . or proceedings," saving the IRS these expenditures and facilitating correct and timely assessment and payment of tax revenues to the Government. 31 U.S.C. § 5311(a)(1).

Finally, the Government represents, and Rund does not dispute, that the maximum penalty authorized by Congress for Rund's FBAR violations is $9,842,840. The $2.9 million penalty the Government imposed, therefore, is approximately 30% of the statutory maximum.[6] Stated differently, the IRS assessed a penalty of roughly 14% to 16% of the account balance for each account in each year it was not properly reported. That penalty is much less than the maximum that Congress authorized: the greater of $100,000 or 50% per account. 31 U.S.C. § 5321(a)(5)(C), (D). Rund argues that his offenses fall on "the less serious end" of "the FBAR statute's broad spectrum of culpability" because of his ADHD and compounding conditions, because he filed untimely FBARs reporting some of his previously undisclosed foreign accounts, because he occasionally reported his HSBC accounts, and because the Government proved only recklessness, not knowing violations. Reply Br. 24–25. We think the Government's decision to impose a penalty far below the statutory maximum, even on foreign accounts that Rund never reported, adequately accounts for Rund's asserted mitigating facts. If Congress intended the maximum penalty to be reserved for the most egregious offenders, with lower penalties to be assessed against

[6] The Government also cites the penalties Congress authorized for criminal FBAR violations, which it claims could total "$2 million (or more)" in fines in Rund's case, not to mention a maximum of five years in prison for each deficient annual FBAR report. Resp. Br. 48–49; *see* 31 U.S.C. § 5322(a); *Bittner*, 143 S. Ct. at 725. We do not find the criminal penalties probative for evaluating Rund's "level of culpability." *Bajakajian*, 524 U.S. at 339. Criminal FBAR violations require a more culpable state of mind than civil violations—i.e., "that the defendant knew that his failure to file an FBAR was unlawful"—and proof beyond a reasonable doubt. *Horowitz*, 978 F.3d at 87. In Rund's case, the Government has not attempted to make either showing.

those less culpable, Rund's penalties land within the lower portion of the willful violator scale.

Ultimately, comparing the gravity of Rund's willful FBAR violations with the $2.9 million penalty the Government imposed, we are satisfied that such a penalty is not grossly disproportional to the gravity of his offenses.[7] Considering the nature and extent of his FBAR violations along with all the other relevant factors, a penalty in that range is not so disproportional as to exceed the Government's constitutional authority to punish. *See Schwarzbaum*, 127 F.4th at 283–284 (holding that the 50% penalties against the defendant in that case did not violate the Excessive Fines Clause). Accordingly, the district court did not reversibly err in rejecting Rund's excessiveness defense at summary judgment.

IV.

For the foregoing reasons, we affirm the district court's judgment. The undisputed evidence establishes that Rund's FBAR violations were willful as a matter of law. And the $2.9 million penalty the Government imposed does not violate the Excessive Fines Clause.

*AFFIRMED*

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[7] The Supreme Court recently granted certiorari in a case asking whether, in determining whether a fine contravenes the Excessive Fines Clause, a court may consider the gravity of the underlying offense purely in the abstract or should consider the gravity of the specific defendant's wrongdoing. *See Jouppi v. Alaska*, No. 25-246, 2026 WL 2082257 (U.S. July 20, 2026). We have conducted an individualized analysis of Rund's specific offenses, considering the totality of the circumstances in the record. If we were to examine the offense in the abstract, however, we would have no trouble finding that the penalty here is not grossly disproportional to the gravity of willful FBAR violations generally, which facilitate tax evasion, fraud, money laundering, terrorism financing, and other criminal activity. *See* 31 U.S.C. § 5311; *Schwarzbaum*, 127 F.4th at 283 (discussing the "vast" societal harm caused by "the use of secret foreign bank accounts" in the aggregate (internal quotation marks omitted)).