No. _____

In The

Supreme Court of the United States

DANIEL JAMES ALTSTATT,

Petitioner,

v.

CITY OF SACRAMENTO,

Respondent.

On Petition For A Writ Of Certiorari To The Court Of Appeal Of California

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Following the Court's ruling in *Timbs v. Indiana*, 139 S. Ct. 682 (2019), which held that the Excessive Fines Clause of the Eighth Amendment is incorporated against the states via the Fourteenth Amendment, does a state court err by failing to apply any of the factors set out in *United States v. Bajakajian*, 524 U.S. 321 (1998) in evaluating whether a civil penalty is unconstitutionally excessive?

PARTIES TO THE PROCEEDINGS

Petitioner is defendant Daniel James Altstatt. Respondent is the City of Sacramento, a municipal corporation.

RELATED PROCEEDINGS

U.S. District Court for the Eastern District of California:

City of Sacramento v. Altstatt, No. 2:16-cv-02449

City of Sacramento v. Altstatt, No. 2:17-cv-02029

Altstatt v. City of Sacramento, No. 2:18-cv-00150

U.S. Court of Appeals for the Ninth Circuit:

Altstatt v. City of Sacramento, No. 18-16422

Altstatt v. City of Sacramento, No. 18-16395

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INTRODUCTION

In 2019, this Court held for the first time that the Eighth Amendment's "protection against excessive fines . . . is fundamental to our scheme of ordered liberty, with deep roots in our history and tradition," and thus applies to the states through the Fourteenth Amendment. *Timbs v. Indiana*, 139 S. Ct. 682, 686–87 (2019) (cleaned up). This ruling could not have been more timely: In recent years, states have enacted "more and more civil laws bearing more and more extravagant punishments," such that "[t]oday's 'civil' penalties include confiscatory rather than compensatory fines. . . ." *Sessions v. Dimaya*, 138 S. Ct. 1204, 1229 (2018) (Gorsuch, J., concurring in part and concurring in the judgment). With this protection now incorporated by the Fourteenth Amendment, there can no longer be any "daylight between the federal and state conduct it prohibits or requires." *Id.* at 687. State courts must apply the Excessive Fines Clause as this Court would.

The California courts below apparently did not get the memo. Faced with Petitioner's challenge under *Timbs* to a $568,000 civil penalty imposed by the City of Sacramento for keeping cars and "junk" in his enclosed, private backyard, the California courts failed to apply *any* of the factors that this Court set forth as relevant to determine whether a fine violates the Excessive Fines Clause in *United States v. Bajakajian*, 524 U.S. 321, 337–40 (1998). The massive fine imposed on Petitioner for his minor, harmless offense threatens to leave him homeless and penniless; he has no means

to pay the City half a million dollars except by selling his home. And yet the courts below did not apply the minimum constitutional scrutiny prescribed by *Bajakajian* and thus required of state courts by *Timbs*. For that reason alone, the Court should grant certiorari and summarily vacate the decision below. *See Caetano v. Massachusetts*, 577 U.S. 411, 412 (2016) (summarily reversing state court decision that "contradict[ed] this Court's precedent").

At the very least, this Court should grant certiorari to resolve the split among federal and state appellate courts, exemplified by the decision below, over how courts are to apply the Excessive Fines Clause. Even before *Timbs*, the federal courts splintered on whether and how to apply the *Bajakajian* factors. *See* David Pimentel, *Forfeitures and the Eighth Amendment: A Practical Approach to the Excessive Fines Clause as a Check on Government Seizures*, 11 HARV. L. & POL'Y REV. 541, 543 (2017) (noting a "patchwork of inconsistent tests . . . emerged in the various circuits" after *Bajakajian* "and only muddled the issue"). Now, following *Timbs*, that division is spreading among the states, with some concluding they are bound to apply the *Bajakajian* factors and others, like the courts below, concluding they are not. *Compare, e.g.*, *Ex parte Dorough*, 773 So. 2d 1001, 1004–05 (Ala. 2000), *and State v. Anderson*, 256 A.3d 981, 989 (N.J. 2021), *with, e.g.*, *State v. Ber Lee Yang*, 452 P.3d 897, 901–04 (Mont. 2019), *and* App. 10–11. Such fundamental division among the state and federal courts regarding this core constitutional right is intolerable after *Timbs*.

The Court should grant certiorari—if not summarily vacate the decision below—to resolve the California state courts' conflict with this Court's precedents, and those of numerous other federal and state appellate courts, regarding this "fundamental" constitutional right. *Timbs*, 139 S. Ct. at 686–87.

OPINIONS BELOW

The opinion of the California Court of Appeal (App. 5–16) and the order of the California Supreme Court denying review (App. 18) are both unreported.

JURISDICTION

On August 17, 2022, the California Supreme Court denied review of the California Court of Appeal's opinion below. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Eighth Amendment to the U.S. Constitution provides:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

STATEMENT

1. Petitioner Daniel J. Altstatt is 84 years old. A retired mechanical engineer, he enjoys working on vehicles at his Sacramento home, which he inherited from his parents in 1981 and has been in his family since 1951. As part of this hobby, he kept several vehicles on his driveway and in his backyard, which is encircled by a six-foot privacy fence.

In 2014, one of Mr. Altstatt's neighbors complained to the City of Sacramento about a vehicle parked in Mr. Altstatt's backyard. So began the City of Sacramento's interest in Mr. Altstatt's home. Because Mr. Altstatt inherited his home from his parents, his property had not been reassessed for tax purposes for decades, pursuant to Article XIIIA of the California Constitution, which was enacted by Proposition 13 in 1978. *See Nordlinger v. Hahn*, 505 U.S. 1, 5 (1992). The City therefore collected far less in annual property taxes from Mr. Altstatt than it would if the house were sold.

On September 30, 2014, the city issued code violations for the vehicles, alleging they were inoperable, and also issued violations for other items in Mr. Altstatt's fenced backyard, such as car parts, propane tanks, and fruit that had fallen from his orange and grapefruit trees. App. 38, 40–41. The City's Notice of Violation ordered Mr. Altstatt to (1) "cease parking any and all vehicles on unimproved surface," (2) "remove, repair, or put in enclosed structure" all "inoperative . . . vehicle(s)," (3) "remove or enclose" all "junk, trash and debris," and (4) "please mow/cut down tall grass [and]

remove fruit that is laying [sic] on the ground." App. 40–41. The City's Notice did not identify any of these conditions as causing any particular harm. *Id.*

Mr. Altstatt disputed the assertions and characterizations in the Notice of Violation, while also working to remove the vehicles and other items from his backyard. However, due to his age and fixed income, he was unable to do so to the City's satisfaction until 2017. App. 2.

2. On September 29, 2015, the City filed a complaint for preliminary injunction, abatement, civil penalties and equitable relief in the Superior Court of California for the County of Sacramento. App. 19. The complaint alleged causes of action for public nuisance and violations of the Sacramento City Code. App. 19. In its prayer for relief, the City sought, *inter alia*, (1) preliminary and permanent injunctions requiring Mr. Altstatt to correct the violations, (2) daily civil penalties of $250–$25,000 for each day "continuing through the date of judgment or the date Defendant complied, whichever is sooner," and (3) payment of "Community Development Department fees, costs and penalties . . . [of] no less than $7,470.00." App. 31–35.

Mr. Altstatt was not able to afford a lawyer and so proceeded *pro se* in the California Superior Court. He unsuccessfully contested the court's personal jurisdiction over him, and twice attempted to remove the case to federal court, and therefore did not answer the City's complaint. App. 6.

However, as the California Court of Appeal later stated, "It is undisputed the City did not request entry of default and obtain a default judgment within the time prescribed by [California's] rules." App. 14. Under the California Rules of Court, "the plaintiff must file a request for entry of default within 10 days after the time for service has elapsed," and then "must obtain a default judgment within 45 days after the default was entered," or face possible sanctions. App. 13–14. (quoting California Rules of Court, rule 3.110(g)–(h)). The complaint was filed on September 29, 2015, and so the City was required under these rules to obtain any default judgment by January 2016. This is significant because the City's complaint sought civil penalties for each day "continuing through the date of judgment or the date Defendant complied, *whichever is sooner*." App. 34 (emphasis added). Complying with the deadlines regarding default judgments therefore would have required the City to stop additional penalties from accruing after January 2016. But the City did not request entry of default until 2018, and did not request default judgment until 2019, long after the alleged violations were corrected. *See* App. 6–7. By doing so, the City could both run up its penalties and force a sale—and reassessment for tax purposes—of Mr. Altstatt's property.

Nevertheless, the trial court entered default judgment on March 11, 2020. App. 1. Although the California procedural rules had required the City to obtain a default judgment (and thus "stop the meter" with regard to the daily penalties) by January 2016, the court

imposed two daily penalties of $250 each (totaling $500 per day) through December 12, 2017—nearly two years later. App. 2. The civil penalties imposed by the trial court totaled $568,000, over half of which accrued after the City's deadline to obtain default judgment. App. 2. The court also ordered Mr. Altstatt to pay $5,000 in attorney's fees. App. 4.

3. Mr. Altstatt timely appealed the default judgment, arguing that the civil penalties were constitutionally excessive in violation of the Excessive Fines Clause of the Eighth Amendment. App. 6.

On May 18, 2022, the California Court of Appeal affirmed the judgment. App. 5–16. The court first rejected any facial challenge to the penalties because "similar penalties were upheld" in a 2000 ruling by another district of the California Court of Appeal. App. 10 (citing *City and County of San Francisco v. Sainez*, 77 Cal.App.4th 1302, 1321–23 (Cal. Ct. App. 2000)). Then, turning to an as-applied analysis, the court set out the excessiveness standard used by the California Supreme Court in *People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.*, 124 P.3d 408, 421 (Cal. 2005), which involves different factors from the ones this Court applied in *Bajakajian*. App. 10–11. But the Court of Appeal did not apply either set of factors. Instead, it affirmed because, due to the default judgment, there were "no factual findings to consider," App. 10, and thus, it said, Mr. Altstatt failed to apply the *R.J. Reynolds* factors to "any facts associated with his case." App. 11. The court did not address whether it was able or required to remand for further fact-finding regarding

the constitutional excessiveness of the penalties in this situation.

The California Court of Appeal denied rehearing on June 10, 2022. App. 17. The Supreme Court of California denied Mr. Altstatt's petition for review on August 17, 2022. App. 18. The constitutionality of the penalties as applied to Mr. Altstatt thus evaded substantive review.

REASONS FOR GRANTING THE PETITION

Despite this Court's recent ruling in *Timbs v. Indiana*, 139 S. Ct. 682 (2019), the courts below failed to consider any of the factors this Court previously identified as relevant in determining whether a fine is excessive, *see United States v. Bajakajian*, 524 U.S. 321, 337–40 (1998). This court's intervention is warranted to correct the below courts' conflict with this Court's precedents on this important issue of law, which has split state and federal courts alike.

A. The decision below conflicts with this Court's precedents.

1. In 2019, this Court held for the first time that the Eighth Amendment's "protection against excessive fines . . . is fundamental to our scheme of ordered liberty, with deep roots in our history and tradition." *Timbs*, 139 S. Ct. at 686–87 (cleaned up). It was already settled law that the Excessive Fines Clause

applies to civil penalties. *Hudson v. United States*, 522 U.S. 93, 103 (1997). The courts below were thus required to apply the Excessive Fines Clause to the civil penalties in this case as this Court would: "[I]f a Bill of Rights protection is incorporated, there is no daylight between the federal and state conduct it prohibits or requires." *Timbs*, 139 S. Ct. at 687.

This Court has only once addressed how the Excessive Fines Clause applies in practice: In *Bajakajian*, the Court held that "a punitive forfeiture violates the Excessive Fines Clause if it is grossly disproportional to the gravity of a defendant's offense." 524 U.S. at 334. To determine whether the forfeiture was "grossly disproportional," the Court considered four factors:

(1) the property owner's culpability;

(2) whether the "violation was unrelated to any other illegal activities";

(3) what other penalties may be imposed for the offense; and

(4) the extent of the harm caused by the offense.

524 U.S. at 337–40; *see also Pimentel v. City of L.A.*, 974 F.3d 917, 921 (9th Cir. 2020) (restating *Bajakajian* factors). Considering these four factors together, the Court found the forfeiture ($357,144 in cash) was "grossly disproportional" to the crime of which Bajakajian was convicted (failure to report that he was transporting more than $10,000 in currency, as required by federal law). *Bajakajian*, 524 U.S. at 324.

Since then, federal courts applying the Excessive Fines Clause have looked first and foremost to the four *Bajakajian* factors. In fact, the Ninth Circuit has held that "*Bajakajian*'s four-factor analysis . . . govern[s] municipal fines," specifically. *Pimentel*, 974 F.3d at 922. The *Bajakajian* analysis has also been expressly adopted by at least two other federal circuits, *United States v. Varrone*, 554 F.3d 327, 331–33 (2d Cir. 2009); *United States v. Hatum*, 969 F.3d 1156, 1167 (11th Cir. 2020), and most state courts to consider the issue, *e.g.*, *Ex parte Dorough*, 773 So. 2d 1001, 1004–05 (Ala. 2000); *Howell v. State of Ga.*, 656 S.E.2d 511, 512 (Ga. 2008); *State v. Timbs*, 134 N.E.3d 12, 35–39 (Ind. 2019); *State v. O'Malley*, 2022-Ohio-3207, ¶ 49 (Ohio 2022); *State v. Anderson*, 256 A.3d 981, 989 (N.J. 2021); *Commonwealth v. 5444 Spruce St.*, 832 A.2d 396, 402–03 (Pa. 2003); *State v. Truman Mortensen Family Tr.*, 8 P.3d 266, 273 (Utah 2000); *State v. Grocery Mfrs. Ass'n*, 502 P.3d 806, 812 (Wash. 2022); *Dean v. State*, 736 S.E.2d 40, 49–50 (W. Va. 2012).

2. In this case, the California Court of Appeal broke with this Court, the Ninth Circuit, and many other states' courts of last resort by failing to identify, consider, or weigh *any* of the *Bajakajian* factors.

First, the California Court of Appeal did not identify the *Bajakajian* factors in the first place. Instead, it cited a different set of factors announced by the California Supreme Court in *People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.*, 124 P.3d 408, 421 (Cal. 2005). App. 10–11.

Second, having failed to identify the considerations this Court recognized as relevant in *Bajakajian*, the courts below undertook no analysis of those factors. App. 10–11. They did not consider the nature and extent of the underlying offense, *i.e.* the seriousness of keeping "junk" on one's enclosed, private property. They undertook no analysis of whether Mr. Altstatt's alleged "offense" was related in any way to other illegal activity. They did not consider "whether other penalties may be imposed for the offense." And they did not address what harm, if any, Mr. Altstatt's alleged conduct caused or might have caused to the City or anyone else. Nor did the courts below apply the *R.J. Reynolds* factors, for that matter. *Id.*

This total failure to scrutinize the constitutionality of the $568,000 penalty was contrary to *Bajakajian*, as well as the precedents of several federal circuit courts and state courts of last resort that have held that the *Bajakajian* factors *must* be considered. For example, in *Pimentel* the Ninth Circuit vacated the district court's decision imposing a late fee on a parking fine because "the district court did not apply the *Bajakajian* factors," and remanded for the district court "to determine under *Bajakajian* whether the late payment penalty . . . [wa]s grossly disproportional to the offense." 974 F.3d at 925. Likewise, in *Varrone* the Second Circuit expressly held that "both the district court and this Court *must* carefully consider the four *Bajakajian* factors *together* to determine whether the forfeiture amount is constitutionally excessive." 554 F.3d at 331–33 (emphases added) (vacating forfeiture

where the district court "neither evaluated the *Bajakajian* factors nor made factual findings regarding those factors"); *see also United States v. Hatum*, 969 F.3d 1156, 1167 (11th Cir. 2020) (trial court erred "by considering only one of the enumerated factors . . . in performing the excessiveness analysis"); *Anderson*, 256 A.3d at 989 ("The federal Excessive Fines Clause and *Bajakajian*'s analysis bind the states. . . ."); *Ex parte Dorough*, 773 So. 2d at 1004–05 (remanding because the trial court did not "undertake the proportionality analysis established in *Bajakajian*"); *Commonwealth v. 5444 Spruce St.*, 832 A.2d 396, 402–03 (Pa. 2003) (reversing and remanding to determine proportionality "in light of *Bajakajian*").

The Eighth Amendment guarantees the same level of protection in California's courts. Its prohibition of excessive fines is "fundamental to our scheme of ordered liberty," *Timbs*, 139 S. Ct. at 686–87 (cleaned up), and "a core right worthy of constitutional protection," *id.* at 698 (Thomas, J., concurring). "This right to be free from excessive governmental fines is not a relic relegated to the period of parchments and parliaments, but rather it remains a crucial bulwark against government abuse." *Pimentel*, 974 F.3d at 925. As this Court made clear in *Timbs*, California state courts are no less bound than the Ninth Circuit to uphold this "crucial bulwark against government abuse." *Id.* The Court should summarily vacate the decision below on this basis alone. *See Caetano*, 577 U.S. at 412.

3. The default in the trial court below does not excuse the appellate courts' failure to enforce the

Eighth Amendment according to this Court's precedents. Instead of applying the *Bajakajian* factors, or remanding for the trial court to do so, the Court of Appeal affirmed because Mr. Altstatt had not made a "factual argument" applying the *R.J. Reynolds* factors to "any facts associated with his case." App. 10–11. But, according to the Court of Appeal, there were "no factual findings to consider." App. 10. That was because the amount of the penalties was not fixed until the trial court entered judgment. Once that occurred, Mr. Altstatt timely appealed the judgment and challenged the now-fixed penalties under *Timbs*. There was no opportunity in the trial court to develop facts bearing on the excessiveness of the penalties once the amount of the penalties was set by the judgment. *See* App. 10.

Because the trial court had no occasion to review the penalties for excessiveness in the first instance, due process required the appellate court to provide it. *See Ohio ex rel. Bryant v. Akron Metro. Park Dist.*, 281 U.S. 74, 80 (1930). Even if such review was truly impossible on the record before the California Court of Appeal, the Eighth Amendment still required it. Otherwise, excessive fines that are fixed for the first time in the judgment would be effectively insulated from judicial review. The court should have remanded for further fact-finding to enable the necessary constitutional scrutiny. Instead, it simply affirmed.

On this point, the decision below conflicts with the decisions of multiple federal circuits, including the Ninth Circuit, and the courts of many other states. When other appellate courts have found the record

insufficient to apply the necessary analysis, they have generally remanded for further fact-finding; they do not abdicate their duty to ensure that the punishment meted out by the state does not exceed constitutional limits. In *Pimentel*, for example, the Ninth Circuit refused to "endorse the [district] court's conclusion that the late fee does not constitute an excessive fine" on an incomplete appellate record. 974 F.3d at 925 (remanding for the district court to apply *Bajakajian*). The Second Circuit did the same in similar circumstances in *Varrone*. There, the court found the record was insufficient to evaluate the Eighth Amendment claim because it "lack[ed] factual development by the district court regarding three of the *Bajakajian* factors." 554 F.3d at 332–33. The court therefore *vacated* the district court's order of forfeiture and remanded for "the district court to determine whether the forfeiture amount is constitutionally excessive, considering the *Bajakajian* factors." *Id.* at 333.[1] Remand is necessary in

[1] Remand is overwhelmingly the preferred approach of most state and federal courts in this situation. *See*, *e.g.*, *Hatum*, 969 F.3d 1156; *United States v. Beecroft*, 825 F.3d 991, 1002 (9th Cir. 2016); *United States v. Xuong Lam*, 515 F. App'x 691, 692 (9th Cir. 2013); *United States v. Seher*, 562 F.3d 1344, 1371 (11th Cir. 2009); *United States v. Dodge Caravan Grand Se/Sport Van*, 387 F.3d 758, 764 (8th Cir. 2004); *United States v. Wagoner Cnty. Real Estate*, 278 F.3d 1091, 1102 (10th Cir. 2002); *Wright v. Riveland*, 219 F.3d 905, 918–19 (9th Cir. 2000); *Schmitz v. N.D. State Bd. of Chiropractic Exam'rs*, 974 N.W.2d 666, 675-76 (N.D. 2022); *Grocery Mfrs. Ass'n*, 461 P.3d at 353; *Colo. Dep't of Labor & Emp't, Div. of Workers' Comp. v. Dami Hosp., LLC*, 442 P.3d 94, 103 (Colo. 2019); *Timbs*, 134 N.E.3d at 39; *Dean*, 736 S.E.2d at 51; *5444 Spruce St.*, 832 A.2d at 402–03; *Ex parte Dorough*, 773 So. 2d at 1004–05.

such circumstances to ensure that excessive fines do not escape constitutional scrutiny, and defendants are not denied due process, simply because their amounts were set for the first time in the judgment.

A procedurally analogous case illustrates how a limited remand ensures proper regard for the defendant's fundamental rights to due process and to be free of excessive fines. In *City of Phila. v. Neely*, 263 A.3d 72 (Pa. Commw. Ct. 2021), an intermediate Pennsylvania court considered an Excessive Fines challenge on appeal from a default judgment and held that the default judgment "d[id] not alter [its] analysis." *Id.* As here, the complaint had sought to impose a daily fine, within a statutory range, running to a then-undetermined date. *Id.* As in this case, the total amount of the fine was thus not "in fact reduced to a sum certain" until the trial court entered the default judgment. *Id.* And, like here, the trial court did not consider whether the fines were excessive when it entered the default judgment. *Id.* The Pennsylvania appellate court vacated and remanded "as to the amount of the fine." *Id.* "Even though [defendant] failed to establish facts entitling him to open the default judgment, we conclude that, at a minimum, the trial court was required to analyze separately the issues bearing on the propriety of the fine amount, taking evidence if necessary." *Id.* Due regard for Mr. Altstatt's fundamental rights required nothing less in this case.

On remand, Mr. Altstatt would have presented compelling evidence that the penalties totaling $568,000—76 times greater than the $7,470 in

"Community Development Department fees, costs and penalties" that the City has already collected from him—are excessive. First, the alleged violation was minor: Mr. Altstatt kept items that the City deemed "junk" or "debris"—*e.g.*, scrap metal and inoperable cars—on his lawn outside his house, enclosed within a privacy fence. App. 40–41. Second, the keeping of such items is not related to any other illegal activity that states might seek indirectly to punish or deter, and the City's complaint did not allege otherwise. Third, such conduct is not punishable by any non-economic criminal sanctions, such as jail time, and the City has already collected "Community Development Department fees, costs and penalties" totaling $7,470 from Mr. Altstatt. *See* App. 34. And fourth, there would have been no evidence that Mr. Altstatt's conduct was more than minimally harmful, if at all, or caused any specific harm to the City or anyone else. The City's complaint did not allege any specific or actual harm from Mr. Altstatt's peaceful use of his own property. App. 19–35. The Court should clarify that the Eighth Amendment guarantees defendants like Mr. Altstatt careful judicial review of such factors—whether it be on appeal or on remand.

4. Even if the Court was not required to remand to allow for an application of *Bajakajian*, the record before it was sufficient at least to analyze one portion of the penalties: the portion that accrued as a result of the City's strategic delay and disregard for the

procedural rules (comprising over half of the total).[2] It is undisputed—and the Court of Appeals expressly found—that the City did not timely seek entry of default or default judgment. App. 14. In fact, it was late by *years* on both counts. *See* App. 6–7, 13–14. As the court noted, Mr. Altstatt expressly raised this issue in his opening brief. App. 13–14. The Court therefore had these facts squarely before it, and yet did not evaluate them under *Bajakajian*.

Had it done so, the City's actions (or inaction) to maximize the penalties would have shown the penalties to be excessive. Clearly, the City did not view the alleged "public nuisance" as a serious offense, or one that caused any appreciable harm, since it declined to seek a default judgment—which would have included an injunction against the conduct it purportedly sought to end—for *years*. The City apparently preferred to allow the alleged "nuisance" to continue unabated so that it could maximize the penalties and force a sale that would allow it to reassess the property value for tax purposes. This also indicates that the "violation was unrelated to any other illegal activities" that the City might have sought to prevent. *Bajakajian*, 524 U.S. at 338. The fact that the penalties were worth more to the City than ending the alleged nuisance they were ostensibly imposed to punish is stark evidence that the penalties are grossly disproportional to the alleged offense or any harm therefrom, and were instead animated by a suspect motive to

[2] The trial court assessed penalties for a period of about 37 months, about 23 of which were after January 2016. App. 2.

generate revenue. *City of Seattle v. Long*, 493 P.3d 94, 114 (Wash. 2021) ("Courts scrutinize 'governmental action more closely when the State stands to benefit.'" (quoting *Harmelin v. Michigan*, 501 U.S. 957, 978 n.9 (1991))); *cf. State v. Timbs*, 169 N.E.3d 361, 367 (Ind. 2021) (stating the Excessive Fines Clause "is a vital backstop for those instances where 'the punishment is more criminal than the crime'"). Yet the courts below failed to apply even the minimum *Bajakajian* scrutiny to these undisputed facts.

The Court's silence on this issue is especially surprising because the Court pointedly faulted Mr. Altstatt—a *pro se* defendant in danger of losing his home—for not adhering strictly to the procedural rules. *See* App. 9–10, 12. If either party deserved some leniency with regard to the intricacies of civil procedure, it should have been the *pro se* defendant and holder of the constitutional right, Mr. Altstatt. But the court put its thumb on the opposite scale: it excused the government's reckless disregard for the deadlines regarding defaults, allowing the City to rack up additional penalties by sitting on its hands. This is exactly the sort of revenue-seeking abuse that this Court identified as animating the Excessive Fines Clause. *Timbs*, 139 S. Ct. at 689. The decision below will only embolden the City and other local governments to repeat this tactic.

B. The question presented is one of great legal and practical importance.

1. A consistent nationwide approach to the Excessive Fines Clause is needed after *Timbs*. Even following *Bajakajian*, courts expressed confusion about what factors to consider. *See Long*, 493 P.3d at 111 (discussing "'patchwork' of tests in the federal circuits"). After *Timbs*, the federal courts' confusion over what the Excessive Fines Clause requires will only metastasize to the state courts if left unchecked.

The California Court of Appeal's decision below is a prime example. The court apparently believed that it should apply the factors identified by the California Supreme Court prior to *Timbs* in *R.J. Reynolds*. App. 10–11. This is significant because the *R.J. Reynolds* factors are different, and do not include all of the considerations prescribed by *Bajakajian*:

***Bajakajian* factors**[3]	***R.J. Reynolds* factors**
The nature and extent of the underlying offense	The defendant's culpability
Whether the underlying offense related to other illegal activities	The relationship between the harm and the penalty
Whether other penalties may be imposed for the offense	The penalties imposed in similar statutes
The extent of the harm caused by the offense	The defendant's ability to pay

[3] These are the *Bajakajian* factors as they have been glossed and enunciated by the Ninth Circuit and other courts. *See Pimentel*, 974 F.3d at 921.

While some of the factors are similar, none of them are identical. For example, the defendant's subjective culpability for an offense is not the same thing as the objective "nature and extent" of the offense (although it may be a facet of it). And while the *R.J. Reynolds* test involves an additional factor (ability to pay), it lacks a factor concerning the extent of the harm caused by the offense, a critical factor in *Bajakajian* itself. The court below was thus prepared to apply an analysis that does not include all of the factors this Court identified as relevant in *Bajakajian*. Other California courts are sure to be similarly confused in the future.

The below courts' reliance on *R.J. Reynolds* instead of *Bajakajian* is just one example of the confusion among state courts and the federal circuits. Some courts have rightly held that, following *Timbs*, they are bound to apply the *Bajakajian* factors. *E.g.*, *Anderson*, 256 A.3d at 989; *Ex parte Dorough*, 773 So. 2d at 1004–05. Others, like the court below, have concluded they are not so bound. *E.g.*, *State v. Ber Lee Yang*, 452 P.3d 897, 901–04 (Mont. 2019) (adopting test set by Montana statute that focuses primarily on ability to pay); *Jensen v. 1985 Ferrari—Plt 391-957*, 949 N.W.2d 729, 740–41 (Minn. Ct. App. 2020) (declining to alter test developed under Minnesota law in light of *Timbs*). Further, many courts have identified additional, non-*Bajakajian* factors that may render a fine excessive, such as the individual's ability to pay or whether the sanction will destroy the individual's livelihood, *e.g.*, *Grocery Mfrs.*, 502 P.3d at 812; *Timbs*, 134 N.E.3d at

36–37; *United States v. Viloski*, 814 F.3d 104, 111 (2d Cir. 2016).

At the very least, the Court should take this opportunity to clarify that, under *Timbs*, state and federal courts alike must consider, at minimum, all of the *Bajakajian* factors. If the appellate record is insufficient to conduct this minimum analysis, then a limited remand—not a rubber stamp—is necessary.

2. The protection afforded by the Excessive Fines Clause is more vital today than ever. This Court has observed that courts scrutinize "governmental action more closely when the State stands to benefit." *Harmelin*, 501 U.S. at 978 n.9. Nowhere is that skepticism more apt than in the context of the Excessive Fines Clause, which developed in part as a bulwark against revenue-seeking abuses. *See Timbs*, 139 S. Ct. at 689; *Browning-Ferris Indus. v. Kelco Disposal*, 492 U.S. 257, 275 (1989) (noting the ancient right to be free from excessive amercements developed in response to uses of "the civil courts to extract large payments or forfeitures for the purpose of raising revenue or disabling some individual").

As this Court has recognized, "[t]his concern is scarcely hypothetical." *Timbs*, 139 S. Ct. at 689. States and municipalities today "increasingly depend heavily on fines and fees as a source of general revenue." *Id.* (quoting Br. of ACLU *et al.* as *amici curiae* at 7 ("Perhaps because they are politically easier to impose than generally applicable taxes, state and local governments nationwide increasingly depend heavily on fines

and fees as a source of general revenue.")). The predictable result has been "more and more civil laws bearing more and more extravagant punishments." *Sessions v. Dimaya*, 138 S. Ct. 1204, 1229 (2018) (Gorsuch, J., concurring in part and concurring in the judgment) ("Today's 'civil' penalties include confiscatory rather than compensatory fines. . . ."). Draconian housing code enforcement is one frontier in the nationwide trend toward "taxation by citation"[4]—especially, it seems, in California.[5]

The incentives facing local governments are clearly perverse when Americans are being threatened with homelessness and financial ruin for such minor

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[4] *See generally* Dick M. Carpenter II *et al.*, *The Price of Taxation by Citation* (INST. FOR JUST. Oct. 2019), https://ij.org/wp-content/uploads/2019/10/Taxation-by-Citation-FINAL-USE.pdf.

[5] *See*, *e.g.*, Teresa Clift, "Exclusive: California Cities Took Over Their Houses, Then A Private Company Drove Them Into Debt," SACRAMENTO BEE (Sept. 25, 2022), https://www.sacbee.com/news/local/article265457561.html; Lauren Hepler, "'They're trying to steal my house': a Berkeley family's $1.1 million city renovation nightmare," S.F. CHRONICLE (Feb. 27, 2022), https://www.sfchronicle.com/eastbay/article/Berkeley-home-renovation-receivership-16948814.php; Sonia Waraich, "Property owners sue Humboldt County for improper cannabis fines, enforcement" EUREKA TIMES-STANDARD (Oct. 5, 2022), https://www.times-standard.com/2022/10/05/property-owners-sue-humboldt-county-for-improper-cannabis-fines-enforcement/; Joe Nelson, "Elderly Norco man could lose home after 14-year legal battle over code violations," THE PRESS ENTERPRISE (May 31, 2021), https://www.pressenterprise.com/2021/05/31/elderly-norco-man-could-lose-home-after-14-year-legal-battle-over-code-violations/; *see also* Jacob Sullum, "100K for parking on your own property . . . and other town-code outrages," N.Y. POST (July 13, 2021), https://nypost.com/2021/07/13/100k-for-parking-on-your-own-property-and-other-town-code-outrages/.

offenses as keeping cars on their yards. A jurisprudence that cannot name this as excessive has gone far astray of the original meaning of the Eighth Amendment. Faithful application of this Court's precedents is needed to correct the moral hazard posed by runaway fines, penalties, and forfeitures, and provide a sane limit on how much punishment states can heap upon peaceful, well-intentioned homeowners like Mr. Altstatt.

CONCLUSION

The petition should be granted.

Respectfully submitted,

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