No. 22-468

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

BRIEF IN OPPOSITION

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Cases

TABLE OF AUTHORITIES—Continued

Page

TABLE OF AUTHORITIES—Continued

Page

TABLE OF AUTHORITIES—Continued

Constitutional Provisions

Federal Statutes

TABLE OF AUTHORITIES—Continued

Page

State Statutes

INTRODUCTION

Daniel J. Altstatt owns real property located at 4432 H Street, Sacramento, California. Since June 4, 2014, the City of Sacramento's (the "City's") Community Development Department has had a pending code compliance case, due to the condition of the property. Between June 4, 2014, and December 12, 2017, the City received numerous complaints from Mr. Altstatt's neighbors regarding his property, a next-door neighbor describing it as a harborage for rats. Despite the City's extensive enforcement efforts, Mr. Altstatt maintained his property as a public nuisance for more than three years. On March 11, 2020, the trial court entered judgment against Mr. Altstatt.[1] The judgment included a permanent injunction against Mr. Altstatt and ordered him to pay two civil penalties, each in the amount of $250 per day, commencing on November 2, 2014, and continuing through December 12, 2017.[2]

Mr. Altstatt now seeks review of the California Court of Appeal's decision affirming the trial court's

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[1] Mr. Altstatt misattributes the delay in requesting a default judgment to the City. Pet. 6. His own actions and frivolous filings caused the delay. Clerk's Tr. 00137.

[2] It is erroneous to assert that the City sought "to run up its penalties and force a sale" of Mr. Altstatt's property. Pet. 6. Under the Sacramento City Code, any person who maintains a public nuisance or hazardous or unsanitary premises is subject to a civil action to abate or enjoin the nuisance or condition and is liable for civil penalties for each day the violations continue. Sacramento, Cal., City Code §§ 8.04.080(B), 8.100.170(A). As Mr. Altstatt did not remedy the violations for more than three years, the trial court awarded civil penalties accordingly. Pet. App. 2.

default judgment. Because there is no dispute that the Excessive Fines Clause applies to the states nor any conflict between the Excessive Fines Clause and the California Court of Appeal's decision, there is no good reason for this Court to grant certiorari.

STATEMENT OF THE CASE

On September 30, 2014, the City issued Mr. Altstatt a "Notice and Order to Clean, Remove, Repair and/or Cease a Public Nuisance." Pet. App. 38-42. Mr. Altstatt did not appeal that notice and order.[3]

Almost a year later, and after extensive enforcement efforts, the City filed a complaint against Mr. Altstatt seeking an injunction, abatement of the public nuisance, and civil penalties. Pet. App. 19-35. The City's complaint alleged causes of action for public nuisance, substandard housing, and blight. Pet. App. 26-30. Rather than respond to the complaint or remedy the public nuisance, Mr. Altstatt elected to delay the City's action by twice frivolously removing the action to the United States District Court, Eastern District of California, under 28 U.S.C. 1441(d).[4] Mr. Altstatt's first attempt to remove was on October 14, 2016.[5] Clerk's Tr. 00109. The district court issued an

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[3] Mr. Altstatt contends that "he disputed the assertions and characterization" of the notice and order. Pet. 5. However, Mr. Altstatt never filed an appeal. Clerk's Tr. 00602.

[4] In his notice of removal for *City of Sacramento v. Altstatt*, No. 2:16-cv-02449, Mr. Altstatt argued that 28 U.S.C. 1441(d) was applicable because he is a "foreign state."

[5] Filing a notice of removal in the trial court divests the state trial court of jurisdiction until such time as the case is remanded

order remanding the case on January 19, 2017. Mr. Altstatt appealed that order on February 8, 2017. On May 16, 2017, the Ninth Circuit summarily affirmed the district court's remand order.[6] Mr. Altstatt's second attempt to remove was on February 13, 2018.[7] Clerk's Tr. 00110. On January 2, 2019, the district court, once again, remanded back to the trial court. Thereafter, to further delay the City's action, on May 30, 2019, Mr. Altstatt improperly filed an automatic stay in the trial court based on Mr. Altstatt's bankruptcy proceeding in the United States Bankruptcy Court for the Eastern District of California, *In re Daniel James Altstatt*, No. 19-23422-B-13J.[8] Ultimately, the Bankruptcy Court terminated the automatic stay on September 5, 2019. Clerk's Tr. 00111.

Although Mr. Altstatt repeatedly attempted to delay the City's action, he never filed an answer in the trial court; instead, he filed nonsensical challenges to

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by the federal court. *See* 28 U.S.C. 1446(d); *see also Murray v. Ford Motor Co.*, 770 F.2d 461, 463 (5th Cir. 1985).

[6] In the two-sentence order the Ninth Circuit found that "the questions raised in this appeal are so insubstantial as not to require further argument" and affirmed the remand order of the district court. *City of Sacramento v. Altstatt*, No. 17-15232.

[7] In his notice of removal for *City of Sacramento v. Altstatt*, No. 2:17-cv-02029, Mr. Altstatt again argued that 28 U.S.C. 1441(d) was applicable because he is a "foreign state."

[8] 11 U.S.C. § 362(a) dictates that an automatic stay arises once a bankruptcy case is filed and prevents any actions in connection with their petition claims against the debtor, property of the debtor, or property of the estate.

the government's jurisdiction.[9] For example, he contended that neither the laws of United States of America nor the State of California, or a political subdivision thereof, apply to him.[10] Clerk's Tr. 00276-77. Accordingly, the trial court entered Mr. Altstatt's default on February 1, 2018, and issued a default judgment in favor of the City on March 11, 2020. Clerk's Tr. 00110, 00210, 00622-24.

REASONS TO DENY THE PETITION

There is no question what 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." (U.S. Const. amend. VIII.) Nor is it questioned that the Due Process Clause of the Fourteenth Amendment makes the Eighth Amendment's prohibition against excessive fines and cruel and unusual punishments applicable to the States, including California. *Cooper*

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[9] In the trial court Mr. Altstatt contended that, because "it has not been proved that any constitution operates on [Mr. Altstatt], then it follows that the legislature created under the power of said constitution does not operate on [Mr. Altstatt]"; and that, "[s]ince it has not been proven that any legislature operates on [Mr. Altstatt], then it follows that any/all codes/titles/statutes/rules and regulations promulgated by such legislature also cannot be proved to operate on [Mr. Altstatt], and absent a proving on the record that your constitution operates on [Mr. Altstatt], the court does not have subject matter jurisdiction." Clerk's Tr. 00033.

[10] In summary, Mr. Altstatt mistakenly believes he is a "sovereign citizen." However, it is well-established that such arguments are nonsensical and wholly without merit. *See, e.g., United States v. Weast* 811 F.3d 743 746 (5th Cir. 2016); *United States v. Mitchell* 405 F.Supp.2d 602, 606 (D. Md. 2005).

Indus. v. Leatherman Tool Group, Inc., 532 U.S. 424, 433 (2001); *see also Timbs v. Indiana* 139 S. Ct. 682 (2019).

This Court has already interpreted the Excessive Fines Clause to apply to civil fines. *Hudson v. United States* 522 U.S. 93, 103 (1997) ("the Eighth Amendment protects against excessive civil fines"). Courts have further extended the Eight Amendment's proscription against excessive fines to city ordinances that impose fines on violators. *Singh v. City of Oakland* 295 Fed. Appx. 118, 120 (9th Cir. 2008) (implying that a complaint may allege that a city ordinance imposing excessive fines violates the Eighth Amendment); *Towers v. City of Chicago* 173 F.3d 619, 624 (7th Cir. 1999) (holding that Excessive Fines Clause of Eighth Amendment applied to a city ordinance imposing fines on violators); *De Weese v. Palm Beach*, 812 F.2d 1365 (11th Cir. 1987) (applying the Eighth Amendment to an ordinance imposing fines on violators).

A. This Court has Already Firmly Established the Gross Disproportionality Standard and the Guideposts for Applying It.

Before *United States v. Bajakajian*, 524 U.S. 321 (1998), this Court had "little occasion to interpret, and ha[d] never actually applied, the Excessive Fines Clause." *Id.* at 327. When faced squarely with how to "articulate[] a standard for determining whether a punitive forfeiture is constitutionally excessive," this Court made clear that a forfeiture violates the Excessive Fines Clause if it is "grossly disproportionate to the gravity of a defendant's offense." *Id.* at 334. It appears that, in Mr. Altstatt's view, a court must recite that language – verbatim – and failure to do so means

this Court should grant review because the courts below are confused. But *Bajakajian* did not dictate the gross disproportionality standard needed to be recited nor did it leave lower courts to grasp in the dark when the time came to apply it. Rather, it provided two general "considerations" and several fact-specific guideposts to inform lower courts' analyses. *Bajakajian*, 524 U.S. at 336-40.

First, the Court extended its jurisprudence regarding the Cruel and Unusual Punishments Clause to the Excessive Fines Clause, emphasizing that "judgments about the appropriate punishment for an offense belong in the first instance to the legislature." *Id.* at 336. The Court also cautioned that "any judicial determination regarding the gravity of a particular [] offense will be imprecise." *Id.* Taken together, these principles militate against any idea of "strict proportionality between the amount of a punitive forfeiture and the gravity of a criminal offense," and in favor of the more flexible "gross disproportionality" standard instead. *Id.*

Second, the Court addressed how to apply the gross disproportionality test. Rather than announcing the overall standard for Excessive Fines Clause challenges and remanding for the lower court to apply it in the first instance, *Bajakajian* determined that the specific forfeiture in question "would violate the Excessive Fines Clause." 524 U.S. at 337. The Court looked at the harshness of the penalty, the nature and severity of the offense, and the degree of culpability involved. *Id.* at 337-40. It emphasized the weightiness of a $357,114 forfeiture where there was "no correlation between the amount forfeited and the harm that the Government would have suffered had the crime

gone undetected." *Id.* at 339. The forfeiture stemmed from a pure "reporting offense" that was "unrelated to any other illegal activities," and the harm from the offense was "minimal." *Id.* at 337-38. And finally, the fact that the "respondent [did] not fit into the class of persons for whom the statute was principally designed," together with a comparison of the $357,114 forfeiture to the maximum fine of $5,000 and sentence of six months, "confirm[ed] a minimal level of culpability." *Id.* at 339. Extrapolating from the Court's guidance, every gross disproportionality challenge requires "case specific" analysis. The lack of a checklist to guide every gross disproportionality challenge does not make the factors the Court did rely on any less instructive. Indeed, the fact-intensive nature of these challenges cautions against any "magic words" approach – which might artificially limit a courts' consideration of the full circumstances bearing on the gross disproportionality analysis in a particular case. After all, where judicial determinations are intrinsically "imprecise," *Bajakajian*, 524 U.S. at 336, the lack of a rigid test is an advantage, not a drawback.

This Court has thus articulated consistent and workable standards to apply in Excessive Fines Clause cases. There is no need to revisit the issue here.

B. State and Federal Courts Apply *Bajakajian* Consistently.

There is no evidence that courts struggle to apply *Bajakajian*. If anything, there is remarkable unity among state and federal courts. Courts consistently use the gross disproportionality standard to resolve various types of Excessive Fines Clause challenges, and they apply that standard in like fashion. There is no meaningful division among courts that *Bajakajian* controls Excessive Fines Clause challenges.

Notably, *Bajakajian* involved a criminal forfeiture, which meant the Court had no occasion to hold that the gross disproportionality standard governs non-forfeiture cases. Even so, as discussed below, lower courts are overwhelmingly united on this issue and apply the same test in non-forfeiture cases, i.e., whether the penalty or forfeiture was "grossly disproportional to the gravity of [the] offense" *Bajakajian*, 524 U.S. at 324.

One exception is the Fifth Circuit's decision in *Newell Recycling Co. v. E.P.A.*, 231 F.3d 204 (5th Cir. 2000). There, the Fifth Circuit declined to acknowledge *Bajakajian's* applicability to civil penalties, reasoning instead that "[n]o matter how excessive (in lay terms) an administrative fine may appear, if the fine does not exceed the limits prescribed by the statute authorizing it, the fine does not violate the Eighth Amendment." *Id.* at 210. This decision takes to the extreme the weight other courts lend legislative determinations. For example, the Eleventh Circuit has explained that, "if the value of forfeited property is within the range of fines prescribed by Congress, a strong presumption arises that the forfeiture is

constitutional." *United States v. 817 N.E. 29th Drive, Wilton Manors, Fla.*, 175 F.3d 1304, 1309 (11th Cir. 1999) (footnote omitted). While most courts, like the Eleventh Circuit, apply this presumption within the *Bajakajian* framework, the Fifth Circuit stands alone in deeming it conclusive, even where it may result in gross disproportionally.

Newell offers no reason for this Court to grant the Petition. It was decided more than twenty years ago, and it remains the outlier today. Nor is this the right case to evaluate *Newell's* holding, even if the Court were inclined to do so, the parties agree that *Bajakajian* controls. Thus, even assuming *Newell* was wrongly decided, this is the wrong case by which to correct it. *See*, *e.g.*, *Timbs v. Indiana*, 139 S. Ct. 682, 690 (2019) (declining to consider an issue that "would lead us to address a question neither pressed nor passed upon below").

The shallowness of the split over whether *Bajakajian* applies, and the inadequacy of this case to address it, is particularly relevant because Mr. Altstatt's entire argument as to why "the question presented is one of great legal and practical importance," Pet. 19 (capitalization altered), turns on his assertion that there is "confusion among state courts and federal circuits" regarding whether they are bound by *Bajakajian*." Pet. 20.

This Court's recent decision in *Timbs* does not alter this calculus. Mr. Altstatt argues that "a consistent nationwide approach to the Excessive Fines Clause is needed after *Timbs*" or "the federal courts' confusion over what the Excessive Fines Clause requires will only metastasize to the state courts if left unchecked."

Pet 19. However, like many States, California treated the Excessive Fines Clause as incorporated long before *Timbs*. *See People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.*, 124 P.3d 408, 421 (Cal. 2005). Moreover, *Timbs* does not confuse courts when it comes to applying *Bajakajian*, as its holding was unaffected by *Timbs* and remains good law; the States that did not previously look to federal law can do so now.[11]

Furthermore, there is no material division among the near entirety of courts that apply *Bajakajian*. State and federal courts consider the same general factors when determining whether a civil penalty, civil forfeiture, or criminal forfeiture is grossly disproportionate. The Petition seizes on variations in phrasing and the different ways that courts organize the relevant factors as evidence of division. *See, e.g.*, Pet. 19 ("This is significant because the *R.J. Reynolds* factors are different, and do not include all of the considerations prescribed by *Bajakajian*."). Yet, for a fact-specific inquiry, like gross disproportionality, it is hardly surprising to find some variation around the edges. The important question is whether courts agree on the nature of factors that bear on the analysis, not whether they use identical language to describe them. And the answer to that fundamental question is "yes." In the two decades since *Bajakajian*,

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[11] Even if *Timbs* leaves some questions unresolved, this is the wrong case by which to address them. *Timbs* did not determine whether a different standard may govern civil forfeiture cases – particularly civil in rem forfeitures like those at issue in *Austin v. United States*, 509 U.S. 602 (1993). The Court declined Indiana's invitation to overrule *Austin* in *Timbs*, and as a civil penalties case, this case is certainly not an appropriate vehicle by which to revisit that question.

courts have coalesced around three general factors: (1) the harshness of the penalty; (2) the seriousness of the offense; and (3) the defendant's culpability. Agreement around these specific factors is no accident – the principles flow directly from *Bajakajian*. *See* 524 U.S. at 337-40.

State Courts of Last Resort

California. Contrary to Mr. Altstatt's contention, different wording aside, the Supreme Court of California is consistent with *Bajakajian* in *People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.*, 124 P.3d 408, 421 (Cal. 2005). There, the court considered the harshness of the penalty in terms of the defendant's ability to pay and by comparing it to the penalties imposed in other States. *See id.* (citing *Bajakajian*, 524 U.S. at 337-38). The State's high court also looked to the harm caused and its "relationship…[to] the penalty." *Id.* Finally, the court considered "the defendant's culpability." *Id.*

Georgia. In *Howell v. State*, 656 S.E.2d 511 (Ga. 2008), the Georgia Supreme Court considered three factors: the court reviewed the "harshness of the penalty," the "inherent gravity of the offense," and "whether the criminal activity… was extensive," *id.* at 512 (citation omitted).

Illinois. In *People ex rel. Hartrich v. 2010 Harley-Davidson*, 104 N.E.3d 1179 (Ill. 2018), the court considered "the harshness of the penalty" and the "gravity of the offense." *Id.* at 1184 (citation omitted). There is also no substantive difference between asking "whether the [unlawful] conduct… was extensive," *id.* (citation omitted) and reviewing the extent of the defendant's culpability.

Massachusetts. *Maher v. Ret. Bd. of Quincy*, 895 N.E.2d 1284 (Mass. 2008) illustrates that the Supreme Judicial Court of Massachusetts addresses both "the maximum penalties authorized by the Legislature," *id.* at 1291 (citing *Bajakajian*, 524 U.S. at 337-39), and the defendant's culpability, *id.* (considering "circumstances of [the defendant's] offenses" and relationship to "any other illegal activities"). In addition, *Maher* also made clear that the court considers whether the unlawful act is "serious in nature," or, in other words, that Massachusetts considers the same general factors as its sister States. *Id.*

Minnesota. The Supreme Court of Minnesota also considers these factors when determining whether a civil penalty constitutes an excessive fine. In *Wilson v. Comm'r of Revenue*, 656 N.W.2d 547 (Minn. 2003), the court compared the civil penalty with "fines imposed for the commission of other offenses in the same jurisdiction" and "in other jurisdictions." *Id.* at 555. It also expressly considered "the gravity of the offense." *Id.* Although *Wilson* did not specifically mention the defendant's culpability, the court considered relative culpability for violations of similar provisions when determining what weight it should give to the "disparity in liability" for these similar offenses. *Id.* at 556.

New York. The Court of Appeals of New York breaks out the harshness of the penalty into multiple subfactors: the value of the property forfeited, the maximum punishment that could have been imposed, and the defendant's economic circumstances. *See City of Nassau v. Canavan*, 802 N.E.2d 616, 622 (N.Y. 2003). The court also considers "the seriousness of the offense" and the actual and potential harm "had the defendant not been caught." *Id.*

Pennsylvania. The Supreme Court of Pennsylvania continues the pattern. *See Commonwealth v. Real Prop. & Improvements Commonly Known As 5444 Spruce St., Phila.*, 832 A.2d 396, 402 (Pa. 2003). The court considers "the penalty imposed as compared to the maximum penalty available," *id.* – that is, the harshness of the penalty. The court also considers the "harm resulting from the crime charged," *id.*, or the seriousness of the offense. Finally, the court considers "whether the violation was isolated or part of a pattern of misbehavior," *id.*, i.e., the defendant's culpability.

Utah. Finally, the Supreme Court of Utah looks to the same factors, as well. *See State v. Real Prop. at 633 E. 640 N., Orem, Utah*, 994 P.2d 1254, 1259 (Utah 2000). The court considers multiple sub-factors when "determin[ing] the forfeiture's harshness": its objective and subjective value, the hardship it imposes on the defendant, and "the comparative punishment factor." *Id.* The court also reviews "the gravity of the particular offense," *id.*, and "the defendant's culpability" *id.*

Federal Courts of Appeals

Decisions from each of the federal courts of appeals are consistent with those of State courts of last resort – relying on the same three general factors to apply *Bajakajian's* gross disproportionality standard to the specific facts before them.

First Circuit. In *United States v. Heldeman*, 402 F.3d 220, 223 (1st Cir. 2005), the court considered the harshness of the penalty relative to applicable sentencing guidelines. *See id.* (citing *Bajakajian*, 524 U.S. at 337-40). The court also reviewed the

seriousness of the offenses in terms of "the harm caused by the defendant," and asked "whether the defendant falls into the class of persons at whom the criminal statute was principally directed" to assess culpability. *Id.*

Second Circuit. Using a similar approach to the First Circuit, the Second Circuit considers "the maximum sentence and fine that could have been imposed," the "essence of the crime," and "whether the defendant fits into the class of persons for whom the statute was principally designed." *United States v. Viloski*, 814 F.3d 104, 110 (2d Cir. 2016) (citation omitted).

Third Circuit. The Third Circuit's non-precedential decision in *United States v. Young*, 618 F. App'x 96 (3d Cir. 2015) follows the usual pattern. The court phrased harshness of the forfeiture as "the maximum fine authorized by statute and the sentencing guidelines which are associated with the offense or offenses," seriousness of the offense as "the nature of the offense or offenses," and culpability as "whether the defendant falls into the class of persons for whom the statute was designed." *Id.* at 97.

Fourth Circuit. The Fourth Circuit's factors consider various sub-factors organized around three themes: the "amount of the forfeiture and its relationship to the authorized penalty," "the nature and extent of the criminal activity," and the defendant's "level of culpability." *United States v. Jalaram, Inc.*, 599 F.3d 347, 355-56 (4th Cir. 2010) (citing *Bajakajian*, 524 U.S. at 337-39).

Fifth Circuit. Only the Fifth Circuit does not consider these factors. Yet, as discussed above, this result stems from the court's more fundamental holding that a fine within legislative limits "does not violate the Eighth Amendment" – in other words, there is inattention to gross disproportionality. *Newell*, 231 F.3d at 210.

Sixth Circuit. As with the Third Circuit, a non-precedential decision from the Sixth Circuit considers factors including "the potential fine under the advisory Guidelines range, the maximum sentence and fine that could have been imposed," and the "nature of the offense." *United States v. Zakharia*, 418 F. App'x at 422 (citations omitted). The court also reviews facts that underscored the defendant's culpability, including "gravely undermin[ing] the judicial process" by lying under oath and otherwise causing 'significant harm," *id.* – and relied on a precedential opinion establishing that culpability is part of the Sixth Circuit's test, *id.* (citing *United States v. Ely*, 468 F.3d 399, 403 (6th Cir. 2006)).

Seventh Circuit. For its part, the Seventh Circuit draws its test directly from *Bajakajian* and the Second Circuit, using the same analysis discussed above in *Vilosky*. See *United States v. Malewicka*, 664 F.3d 1099, 1104 (7th Cir. 2011) (citing *Bajakajian*, 524 U.S. 337-39; *United States v. Varrone*, 554 F.3d 327, 331 (2d Cir. 2009)).

Eighth Circuit. In *United States v. Aleff*, 772 F.3d 508 (8th Cir. 2014), the Eighth Circuit analyzed "the sanctions in other cases for comparable misconduct," the "relationship between the penalty and the harm,"

and "the reprehensibility of the defendant's conduct." *Id.* at 512 (citation omitted).

Ninth Circuit. The Ninth Circuit phrases its consideration of the harshness of the penalty as "other penalties that may be imposed for the violation." *United States v. $132,245.00 in U.S. Currency*, 764 F.3d 1055, 1058 (9th Cir. 2014) (citation omitted). The court describes the seriousness of the offense as "the nature and extent of the crime" and "the extent of the harm caused," and it analyzes culpability by asking "whether the violation was related to other illegal activities." *Id.* (citation omitted).

Tenth Circuit. The Tenth Circuit considers the harshness of the penalty in several ways, including by comparing the penalty to the statutory maximum penalty and relevant sentencing guidelines. *United States v. Wagoner Cty. Real Estate*, 278 F.3d 1091, 1100 (10th Cir. 2002) (citing *Bajakajian*, 524 U.S. at 337-38). It also views "the extent of the criminal activity" and "the harm caused to other parties" – or the seriousness of the offense – and "related illegal activities." *Id.*

Eleventh Circuit. Using now-familiar language, the Eleventh Circuit analyzes "other penalties authorized by the legislature," "the harm caused by the defendant," and "whether the defendant falls into the class of persons at whom the criminal statute was principally directed." *United States v. Seher*, 562 F.3d 1344, 1371 (11th Cir. 2009) (citation omitted).

* * *

The repeated refrains from State and federal appellate courts reveal common factors informing the gross

disproportionality analysis that come straight from *Bajakajian* – and underscore that "gross disproportionality" has proven a workable standard. Tellingly, Mr. Altstatt does not explain how the result here would have differed had the California Court of Appeal cited to *Bajakajian* directly, rather than *R.J. Reynolds*, which cites to and is consistent with *Bajakajian.* Different terms to explain courts' rationales only matter if they lead to different outcomes in similar cases. The variations Mr. Altstatt highlights in his Petition do not reach that level. Indeed, most courts freely recognize that the factors they name are not set in stone, and that listing certain factors does not bar consideration of others in appropriate cases. *See*, *e.g.*, *Aleff*, 772 F.3d at 512 ("[p]roportionality is determined by a variety of factors, including [exemplar factors]"); *Canavan*, 802 N.E.2d at 622 (introducing test with the phrase, "we consider such factors as"). Because courts are neither confused nor divided over how to apply *Bajakajian*, there is no need for this Court to grant review.

C. The Decision of the California Court of Appeal is not in Conflict with the Excessive Fines Clause.

With no meaningful division over the proper application of the gross disproportionality standard in Excessive Fines Clause cases, the Petition becomes essentially a request for error-correction. Yet, viewed through either *Bajakajian's* or *R.J. Reynolds'*s lens, the two $250 daily penalties, for the duration of the public nuisance, are not grossly disproportional to Mr. Altstatt's violations of law. Indeed, multiple factors confirm that Mr. Altstatt's penalty was anything but grossly disproportional to his offense.

First, Mr. Altstatt was violating the law for more than three years and was on notice of his obligation to ensure that his property was not a public nuisance – he admits he received the City's Notice and Order to Clean, Remove, Repair and/or Cease a Public Nuisance as early as September 2014, a year prior to the City initiating its civil action in the trial court. Pet. 4. Further, Mr. Altstatt's pattern of violations weakens his argument because, for more than three years – after the City initiated its action in the trial court – nothing in his conduct demonstrated that he would be willing to comply with the laws of the City. Instead, he sought to frivolously delay the action and divest the trial court of jurisdiction through sham removal proceedings and automatic stays. The imposition of a "per day" civil penalty is justified to deter gross abuses of the law from those who expose the public to unnecessary health and safety risks.

Second, Mr. Altstatt's violations were not harmless misconduct: as the court below found, Mr. Altstatt was culpable and maintained a public nuisance that was injurious and a threat to the health and safety of the residents of the City of Sacramento for 1136 days. Clerk's Tr. 00599-603, 00622-24.

Third, each daily civil penalty assessed was $250 dollars per day, which is the minimum under the City's ordinance, per violation, for a total of $500 per day. Clerk's Tr. 00623. By comparison, each such penalty is one-fourth of the daily penalty amount the California Court of Appeal found constitutional in *City & Cnty. of San Francisco v. Sainez*, 92 Cal.Rptr.2d 418, 431, (Cal. App. 1st Dist. 2000); *see also United States v. Hines*, 88 F.3d 661 (8th Cir. 1996) (holding that a fine that "is well within the statutory maximum" is

"not excessive, in violation of Eighth Amendment" even if it amounts to the defendant's entire yearly income). More broadly, the civil penalties imposed are proportional when compared to similar laws. *See e.g.,* Tucson, Ariz., Code of Ordinances § 16-48 (authorizes a $100 to $2,500 civil sanction for each day the violation exists); San Jose, Cal., Code of Ordinances § 1.08.015 (authorizes a civil penalty not to exceed $2,500 for each day the violation continues); Boston, Mass., Municipal Code § 16-57.6 (authorizes a $300 penalty for non-criminal citations for each day the violation persists); Houston, Tex., Code of Ordinances §§ 10-451(d), 10-458 (authorize a $50 to $2,000 penalty for each day the violation continues.).

The California Court of Appeals correctly concluded that there is no evidence to show an Eighth Amendment violation, despite its truncated analysis. The penalty is justified by the "correlation between the amount [penalized] and the harm," *Bajakajian*, 524 U.S. at 339, as well as the penalty's similarity to those authorized in the majority of States. The state court correctly determined that the civil penalty was not grossly disproportionate to Mr. Altstatt's repeated and continuous violations of the City's law. In short, this case presents no important and unresolved question of federal law nor any error to correct.

CONCLUSION

The petition should be denied.

Respectfully submitted,

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January 17, 2023