

No. 23-6732

**IN THE
SUPREME COURT OF THE UNITED STATES**

SETH CONNOR WELLS,

Petitioner,

v.

FLORIDA,

Respondent.

**ON PETITION FOR WRIT OF CERTIORARI TO THE
FLORIDA SUPREME COURT**

**REPLY TO BRIEF IN OPPOSITION TO PETITION FOR
WRIT OF CERTIORARI**

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QUESTION PRESENTED

The Question Presented is whether the \$401,500 fee imposed on Mr. Wells as a “cost of incarceration” constitutes a fine subject to the Eighth Amendment. At this stage, the Petitioner is challenging the categorical, threshold ruling that costs of incarceration are not subject to Eighth Amendment review at all—not whether this particular fine is excessive. The resentencing doesn’t matter. Even if the specific fine changes, the categorical question remains.

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INTRODUCTION

The State seeks to avoid review of a simple question: Does the Excessive Fines Clause apply to Florida's costs of incarceration statute? Petitioner asserts that it does. The issue was well preserved in this case by presentation to the state appellate court. Petitioner respectfully requests the simple remedy that this Honorable Court remand the case with instructions to apply the Excessive Fines clause, as laid out in United States v. Bajakajian, 524 U.S. 321 (1998) and Timbs v. Indiana, 139 S. Ct. 682, 690 (2019), to Florida's cost of incarceration statute, or other such remedy as this Honorable Court deems appropriate.

JURISDICTION

The State’s literal reading of Section 1257(a)’s requirement of a “final judgment” is contrary to Cox Broadcasting, which recognized “situations in which the highest court of a State has finally determined the federal issue present in a particular case, but in which there are further proceedings in the lower state courts to come.” Cox Broadcasting Corp. v. Cohn, 420 U.S. 469, 477 (1975). Among other things, the Supreme Court has jurisdiction when “the federal issue, finally decided by the highest court in the State, will survive and require decision regardless of the outcome of future state-court proceedings.” Moore v. Harper, 600 U.S. 1, 16 (2023). This is such an issue: The Florida DCA held that “the Excessive Fines Clause does not pertain to the remedial costs required by the statute.” App. A at 23. That categorical ruling will survive whether the trial court adjusts the sentence or not. The DCA expressly held that the trial court has authority to “impose the same sentence” based solely on the upheld violation. App. A at 26. Nothing may change upon resentencing.

QUESTION NOT PRESENTED

As recited above, the Question Presented is whether the \$401,500 fee imposed on Mr. Wells as a “cost of incarceration” constitutes a fine subject to the Eighth Amendment. At this stage, the Petitioner is challenging the categorical, threshold ruling that costs of incarceration are not punitive, and thus not subject to Eighth Amendment review at all—not whether this particular fine is excessive. Therefore, the resentencing doesn’t matter. Even if the specific fine changes, the categorical question remains.

The State argues that not only is there no “final” judgment, but there is also no judgment, period. This is incorrect. The DCA affirmed the conviction for the curfew violation, and while it “remand[ed] for reconsideration” of the sentence, it did not vacate the sentence. App. A at 18. And as discussed, the DCA was clear that the trial court doesn’t have to change anything; it “remains within its discretion to revoke probation and impose the same sentence.” Id. Whatever happens on remand won’t affect the DCA’s categorical ruling that the Eighth Amendment doesn’t apply to these kinds of “costs of incarceration” fines. Whether the trial court imposes the same sentence or a different sentence, it is not going to do a proper Eighth Amendment analysis because of the DCA’s ruling.

CERTIORARI REVIEW IS WARRANTED

Supreme Court Rule 10 provides that cert. is warranted if the decision below (a) creates a Circuit split, (b) creates a split between state courts and/or Circuits, or (c) conflicts with Supreme Court precedent or raises an important unsettled question. The State addresses only (c), saying Goad did not create a conflict by holding that the fees are exempt from Eighth Amendment scrutiny because the costs of incarceration are “a civil remedy.” Goad v. Fla. Dep’t of Corr., 845 So. 2d 880, 884 (Fla. 2003). This is incorrect. Goad relied on Hudson v. United States, 522 U.S. 93 (1997), for the “clearest proof” rule and the proposition that civil penalties “may serve civil as well as criminal goals.” Goad, 845 So. 2d at 884. But Hudson was a double jeopardy case, in which the question is whether proceedings are civil or criminal. Hudson, 522 U.S. at 105. That is the wrong question under the Eighth Amendment: The Supreme Court made clear that sanctions can be punitive even if they are civil, not criminal. See Austin v. United States, 509 U.S. 602, 610 (1993) (“[T]he question is not . . . whether forfeiture . . . is civil or criminal, but rather whether it is punishment.”).

Goad purports to analyze punitiveness, but its analysis amounts to the conclusion that the costs of incarceration are simply remedial, and therefore not punitive. But again, the Supreme Court has made clear that this is not the right distinction: “We need not exclude the possibility that a forfeiture serves remedial purposes to conclude that it is subject to the limitations of the Excessive Fines Clause.” Austin, 509 U.S. at 610. Even if the costs of incarceration “serve some

remedial purpose,” they “can only be explained as also serving either retributive or deterrent purposes.” *Id.* at 621. After all, they are directly proportional to the prison sentence, which is obviously punitive, and they are imposed against Mr. Wells as a result of his conviction. See United States v. Bajakajian, 524 U.S. 321, 333 (1998) (“[T]he Government has sought to punish respondent by proceeding against him criminally, in personam.”). Thus, there is (c) a conflict between Florida law and Supreme Court precedent, on an issue of exceptional importance.

In addition, many states have jumped on the bandwagon and implemented cost of incarceration statutes. By 2022, forty-three states have enacted similar statutes as a means of recouping a portion of the funds expended on incarcerating those convicted of crimes. See Appendix A. As a matter of Constitutional consistency, it is important for this Court to recognize that costs of incarceration are subject to Eighth Amendment review.

MERITS

The State's attempt to distinguish Bajakajian is absurd on its face. The State tries to argue that, unlike the forfeiture in Bajakajian, "[i]n this case, no personal property or anything else of value has been taken from Petitioner's possession." BIO 13. That doesn't make any sense: \$400k+ of personal property is going to be taken from Mr. Wells.

Also in its Brief, the State addresses Timbs v. Indiana, 586 U.S. 146, 151 (2019). Timbs notes that ability-to-pay is an important consideration in these kinds of cases, and Florida's statute doesn't consider ability-to-pay at all and will bankrupt Mr. Wells upon release. See, e.g., Timbs v. Indiana, 586 U.S. 146, 151 (2019) (noting the Magna Carta prohibited fees "so large as to deprive [an offender] of his livelihood"). Indeed, Eighth Amendment excessiveness review is especially important for these kinds of "remedial" fines that the State uses to reimburse itself because the State has a perverse incentive to impose the maximum possible costs. See *id.* at 153 ("[F]ines may be employed in a measure out of accord with the penal goals of retribution and deterrence, for fines are a source of revenue, while other forms of punishment cost a State money.").

CONCLUSION

The simple remedy for this Court is to Grant Certiorari. The Statute is subject to the excessive fines clause of the Eighth Amendment of the United States Constitution. The issue was well preserved in this case by presentation to the state appellate court. Petitioner respectfully requests that this Honorable Court remand the case with instructions to apply United States v. Bajakajian, 524 U.S. 321 (1998) and Timbs v. Indiana, 139 S. Ct. 682, 690 (2019) to Florida's cost of incarceration statute, or other such remedy as this Honorable Court deems appropriate.

Respectfully submitted,

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APPENDIX A

| State | Cost | Statute |
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| Alabama | \$15 | <u>Rule 26</u> |
| Alaska | | |
| Arizona | No set fee. | <u>31-238. Incarceration costs</u> |
| Arkansas | \$40 Booking & Admin fee | <u>Arkansas Code 12-41-505</u> |
| California | | |
| Colorado | “requiring such person to pay the full cost of care incurred during such person’s sentence” | <u>CO Rev Stat § 17-10-103 (2021)</u> |
| Connecticut | No set fee. “The state shall have a claim against each inmate for the costs of such inmate's incarceration” | <u>Sec. 18-85a. Assessment for costs of incarceration</u> |
| Delaware | | |
| Florida | \$50 | <u>Section 960.293</u> |
| Georgia | | |
| Hawaii | NONE | |
| Idaho | \$25 | <u>Section 20-607</u> |
| Illinois | No set fee. “reimburse the county for the expenses incurred by their incarceration to the extent of their | <u>Corrections (730 ILCS 125/20) County Jail Act (from Ch. 75, par. 120) Sec. 20. Cost and expense; commissary fund</u> |

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| | ability to pay for such expenses.” | |
| Indiana | \$30; multiplied by each day or part of a day that the person is lawfully detained in a county jail or lawfully detained under IC 35-33-11-3 for more than six (6) hours. | <u>IC 36-2-13-15 Prisoners reimbursing counties for costs of incarceration</u> |
| Iowa | No set fee. Fee is set by the sheriff and varies from county to county to seek reimbursement from inmates who are convicted in State court. Ex. <u>Sioux County \$35 per day</u> <u>Wapello County \$25 per day</u> | <u>Ch. 36 JAILS AND MUNICIPAL HOLDING FACILITIES</u> <u>356.7 Charges for administrative costs and room and board — enforcement procedures</u> <u>356.30 Prisoner to pay for board — limitations.</u> |
| Kansas | No set fee. 19-1910 “When a prisoner is committed to a county jail in a criminal action, ... shall allow the sheriff reasonable charges for maintaining such prisoner.” 19-1930(d) ... may provide any inmate of the county jail who participates in a work | <u>19-1910. Cost of keeping prisoner under criminal process; costs paid by the state; reimbursement from prisoner.</u> <u>19-1930. County jails; U.S. prisoners, compensation for maintenance; payments by inmates to defray maintenance cost;</u> |

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| | release or job training program for which the inmate receives compensation shall be required to pay to the county an amount not exceeding \$20 per day ... Such resolution shall provide for reduction or waiver of such amount in instances in which payment would create undue hardship for an inmate.” | |
| Kentucky | \$50 (even if found not guilty or charges dropped) | <p>Ky. Rev. Stat. §441.265 https://casetext.com/statute/kentucky-revised-statutes/title-40-crimes-and-punishments/chapter-441-jails-and-county-prisoners/county-jail-budget-and-funding/section-441265-required-reimbursement-by-prisoner-of-costs-of-confinement-local-policy-of-fee-and-expense-rates-billing-and-collection-methods</p> <p>Note: <u>Kentucky Supreme Court ruling finds state jails can't take fees from inmates without a judge's order</u></p> |
| Louisiana | No set fee. Sheriff or the governing authority of any parish may collect reimbursement for the costs of room and board from any inmate incarcerated provided such | <u>RS15 §705</u> |

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| | reimbursement is approved by the judge who sentenced the inmate and provided the amount of such reimbursement is a uniform and reasonable. | |
| Maine | \$80 | <u>Me. Rev. Stat. Ann. tit. 17-A, § 1751</u> |
| Maryland | Max \$45 | <u>§9-402 Correctional Services</u> |
| Massachusetts | | |
| Michigan | Max \$60 | <u>Mich. Comp. Laws Serv. §801.83</u> |
| Minnesota | <p>No set fee. County board may require a fee to sheriff's department ... If the person is not charged, is acquitted, or if the charges are dismissed, the sheriff shall return the fee to the person at the last known address listed in the booking records.</p> <p>Dakota County Jail in Minn. \$25</p> | <p><u>641.12 COLLECTION OF FEES AND BOARD BILLS.</u></p> <p><u>Dakota Jail in Minn pay for stay</u></p> |
| Mississippi | Max \$20 | <u>Miss. Code Ann. § 47-5-901</u> |
| Missouri | Max \$37.50 | <u>221.105(3). Boarding of prisoners</u> |
| Montana | No set fee. If inmate has ability to pay, is | <u>Montana Code Title 7, Ch. 32-2245.</u> |

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| | liable for costs of confinement ordered by court and paid in advance of confinement and prior to payment of any fine. (daily rate of credit for incarceration must be established annually by the board of county commissioners by resolution. The daily rate must be equal to the actual cost incurred by the detention facility for which the rate is established) | |
| Nebraska | <u>Jail in Nebraska \$12 a day</u> | Correctional Facility Reimbursement Act |
| Nevada | \$25 | <u>NRS 211.350</u> |
| New Hampshire | NONE. They do not charge inmates anymore. They use a Cost of Care Reimbursement fund administered by the Commissioner of DOC. | <u>Section 622:58-a</u> <u>New Hampshire no longer charges inmates/former inmates for the cost of their incarceration, often called "pay to stay" policy. Rep. Gov. Chris Sununu signed a bill last week repealing a 1996 law.</u> <u>OLD LAW: NH Rev Stat § 622:55 (2015) no longer valid. (this law used to allow pay-to-stay)</u> |
| New Jersey | | |

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| New Mexico | Note: <u>Potales Jail allows inmates to pay \$273/day to serve their sentence away from other inmates + amenities</u> | |
| New York | | |
| North Carolina | | § 148-29?? https://www.ncleg.gov/Laws/GeneralStatutesTOC |
| North Dakota | Max \$20 | <u>12-44.1-18.2.</u> |
| Ohio | No set fee. Confinement fees should not "exceed the total amount that the prisoner is able to pay." Corrections Center of Northwest Ohio charges \$66.09 per day | <u>Section 2929.37</u> Link: <u>Prison Legal News</u> |
| Oklahoma | No set fee. JAIL FEES: court shall collect incarceration at jail costs by defendant determined by chief of police, county sheriff, or by contract amount | JAIL STATUTE: <u>Title 22, Ch.16 Sec. 979a</u> PRISON STATUTES: <u>Title 57, Ch. 2 Sec. 58</u> <u>Title 57, Ch.1 Sec. 17 (U.S. pays)</u> <u>Oklahoma DOC</u> |

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| | <p>PRISON FEES:</p> <p>Only inmates assigned to work release who receive paychecks are charged 50% of profits. No other inmates charged for incarceration other than \$4 medical co-pay</p> <p>“The U.S. shall be liable to pay for the support and keeping of said prisoners...”</p> | |
| Oregon | | |
| Pennsylvania | | |
| Rhode Island | | |
| South Carolina | | |
| South Dakota | | |
| Tennessee | If the department, upon completing the investigation, has good cause to believe that an inmate has sufficient assets to recover ... The | <u>TN Code § 41-21-905 (2020)</u> |

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| | attorney general shall seek to secure reimbursement for the expense to the state of Tennessee for the cost of care of that inmate. | |
| Texas | No set fee. The annual cost of incarceration of a person shall be computed using the average cost per day for imprisonment calculated by the Criminal Justice Policy Council | <u>Tex. Gov't Code Ann. § 501.019</u> |
| Utah | | |
| Vermont | | |
| Virginia | Max \$3 | <u>§ 53.1-131.3</u> |
| Washington | | |
| West Virginia | | |
| Wisconsin | No set fee. | <u>Wis. Stat. § 301.325 – Prisoner reimbursement to the state</u> |
| Wyoming | No set fee. The costs for room and board for each day of incarceration shall be an amount equal to the actual cost of the services as | <u>7-13-109. Payment of jail costs by inmate</u> |

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| | determined by the county sheriff. | |
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