

No. 22-177

In the Supreme Court of the United States

MONICA TOTH, PETITIONER

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the First Circuit

PETITION FOR REHEARING

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(1)

Monica Toth respectfully petitions under Rule 44.2 for rehearing of the Court’s January 23, 2023 order denying her petition for a writ of certiorari. Substantial grounds not previously presented—and postdating her petition’s first distribution—merit reconsideration of the denial. Last month, the Court granted review in *Tyler v. Hennepin County*, No. 22-166 (Jan. 13, 2023). As one of its two questions presented, the petition in *Tyler* asks whether a home-equity forfeiture “is a fine within the meaning of the Eighth Amendment.” The petition in *Toth* raises much the same question as to a civil monetary penalty. In holding the Eighth Amendment inapplicable to Toth’s penalty, in fact, the First Circuit below cited the Eighth Circuit’s decision in *Tyler. United States v. Toth*, 33 F.4th 1, 17 (1st Cir. 2022) (citing *Tyler v. Hennepin County*, 26 F.4th 789, 794 (8th Cir. 2022)). In circumstances like these, the Court often holds petitions for certiorari to allow for the possibility of a GVR order, and petitions for rehearing have been granted to facilitate such GVRs. That course is appropriate here also. This petition for rehearing should be granted (or held pending the decision in *Tyler*), and Toth’s petition for certiorari should be considered for a GVR once *Tyler* has been decided.

1. Monica Toth’s petition for certiorari presents the question whether certain “civil penalties imposed under [the Bank Secrecy Act] . . . are subject to the Eighth Amendment’s Excessive Fines Clause.” Pet. i. The petition for certiorari in *Tyler* presents a similar constitutional question: whether forfeiture of a taxpayer’s home equity “is a fine within the meaning of the Eighth Amendment.” *Tyler* Pet. at i. Were the Court to address that question in *Tyler*, the court of appeals’ decision in *Toth* would be a strong candidate for a GVR. If, for example, the Court were to hold in *Tyler* that a home-equity forfeiture is a fine under the Eighth Amendment, that decision

would almost certainly abrogate the First Circuit’s reasoning in *Toth*. Were *Tyler* to hold that the home-equity forfeiture is *not* a fine, the Court’s reasoning still could cast doubt on *Toth*. A GVR might be warranted, too, were the decision in *Tyler* to distinguish Eighth Amendment fines from Fifth Amendment takings—the two alternatives raised by the *Tyler* petition. *Tyler* Pet. at i. However *Tyler* is decided, there is a real likelihood that the Court’s reasoning will address the Excessive Fines Clause in a way that supports a GVR in *Toth*. See *Lawrence v. Chater*, 516 U.S. 163, 167 (1996) (per curiam) (noting that a GVR may be proper when an intervening decision yields “a reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration”); see also *id.* at 180 (Scalia, J., dissenting) (“This is undoubtedly the largest category of ‘GVRs’ that now exists.”).

In circumstances like these, petitions for certiorari “regularly” are held to allow for the possibility of a GVR, *id.* at 181 (Scalia, J., dissenting), and petitions for rehearing have been granted to facilitate such GVRs.* A similar

* See, e.g., *Kent Recycling Servs., LLC v. Army Corps of Eng’rs*, 578 U.S. 1019 (2016) (mem.) (granting rehearing of denial of certiorari and GVR’ing in light of *Army Corps of Engineers v. Hawkes Co.*, 578 U.S. 590 (2016)); *Liberty Univ. v. Geithner*, 568 U.S. 1022 (2012) (mem.) (granting rehearing and GVR’ing in light of *National Federation of Independent Business v. Sebelius*, 567 U.S. 519 (2012)); *Melson v. Allen*, 561 U.S. 1001 (2010) (mem.) (granting rehearing and GVR’ing in light of *Holland v. Florida*, 560 U.S. 631 (2010)); *Soto v. United States*, 543 U.S. 1117 (2005) (mem.) (granting rehearing and GVR’ing in light of *United States v. Booker*, 543 U.S. 220 (2005)); *Hitchcock v. Florida*, 505 U.S. 1215 (1992) (mem.) (granting rehearing and GVR’ing in light of *Espinosa v. Florida*, 505 U.S. 1079 (1992)); *Florida v. Rodriguez*, 461 U.S. 940 (1983) (mem.) (granting rehearing and GVR’ing in light of *Florida v. Royer*, 460 U.S. 491

course is warranted here. Both *Tyler* and *Toth* present questions about the scope of the Excessive Fines Clause. The lower courts in both cases addressed a similar body of Eighth Amendment precedent. Compare *Tyler v. Hennepin County*, 505 F. Supp. 3d 879, 895-97 (D. Minn. 2020), *aff'd*, 26 F.4th 789, *with Toth*, 33 F.4th at 15-18. In rejecting Monica Toth’s excessive-fines defense, the First Circuit below even cited the Eighth Circuit’s opinion in *Tyler*. 33 F.4th at 17; *see also Toth* Cert. Reply 5 n.1 (noting First Circuit’s analogy to tax penalties). A decision addressing the Excessive Fines Clause in *Tyler* thus would very likely justify a GVR here. *Cf. Toth v. United States*, 598 U.S. ___, ___ (2023) (slip op. at 2) (Gorsuch, J., dissenting from the denial of certiorari) (observing that the decision below “is difficult to reconcile with our precedents”). To allow for that possibility, the appropriate course would be to grant this petition for rehearing or, at a minimum, hold it until *Tyler* has been decided.

2. As noted above, the excessive-fines question in *Tyler* is one of two questions on which the Court granted review. *Tyler* Pet. at i (raising Takings Clause in the first question presented). That fact does not detract from the suitability of the approach detailed above. Even were the Court to conclude that the home-equity forfeiture in *Tyler* is a Fifth Amendment taking, the Court’s opinion still may distinguish takings from fines in a way that calls into question the First Circuit’s decision below. This petition for rehearing should thus be granted (or held pending the decision in *Tyler*). If the decision in *Tyler* implicates the Excessive Fines Clause, Toth’s petition for certiorari should then be considered for a GVR.

(1983)); *see generally* Stephen M. Shapiro et al., *Supreme Court Practice* § 15.6(b), pp. 15-19 to 15-21 (11th ed. 2019).

* * *

The petition for rehearing should be granted.

Respectfully submitted.

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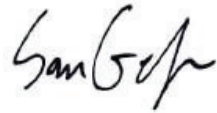
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FEBRUARY 17, 2023

CERTIFICATION OF COUNSEL

As counsel of record for petitioner, I certify that this petition for rehearing is restricted to the grounds specified in Rule 44.2 and is presented in good faith and not for delay.

A handwritten signature in black ink, appearing to read "Sam B. Gedge". The signature is fluid and cursive, with the first name "Sam" and last name "Gedge" clearly distinguishable.

SAMUEL B. GEDGE
Counsel for Petitioner

FEBRUARY 17, 2023