No. _____

In the Supreme Court of the United States

KENNETH JOHN JOUPPI, PETITIONER

v.

STATE OF ALASKA

On Petition for a Writ of Certiorari
to the Supreme Court of Alaska

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The "touchstone of the constitutional inquiry under the Excessive Fines Clause" is that the amount of the fine "must bear some relationship to the gravity of the offense that it is designed to punish." *United States* v. *Bajakajian*, 524 U.S. 321, 334 (1998). Below, the Alaska Supreme Court upheld the forfeiture of petitioner's $95,000 airplane because, the court reasoned, petitioner knew that one of his passenger's grocery bags contained a six-pack of Budweiser.

In so holding, the court captured vividly a lower-court conflict over the standard for evaluating the gravity of a property owner's offense under the Excessive Fines Clause. Aligning with the Eleventh Circuit, the Alaska Supreme Court examined the gravity of the defendant's offense at a stratospheric level of abstraction. Meanwhile, the federal circuit in which Alaska sits—in line with many other state and federal courts—holds that "[i]t is critical" to "review the specific actions of the violator rather than by taking an abstract view of the violation."

The question presented is whether, in determining whether a fine contravenes the Excessive Fines Clause, courts may consider the gravity of the underlying offense purely in the abstract or should consider the gravity of the specific defendant's wrongdoing.

RELATED PROCEEDINGS

Supreme Court of Alaska:

Kenneth John Jouppi v. *State*, No. S-18598 (Apr. 18, 2025)

State v. *Kenneth John Jouppi*, No. S-18637 (Apr. 18, 2025)

Alaska Court of Appeals:

State v. *Kenneth John Jouppi*, No. A-13147 (Sept. 23, 2022)

State v. *Kenneth John Jouppi and Ken Air, LLC*, Nos. A-11819, A-11829, A-11830 (May 12, 2017)

District Court of Alaska, Fourth Judicial District:

State v. *Kenneth John Jouppi*, No. 4FA-12-3228CR (May 3, 2018) (trial-court order on remand)

State v. *Kenneth John Jouppi*, No. 4FA-12-3228CR (Dec. 18, 2013) (original trial-court judgment)

State v. *Ken Air, LLC*, No. 4FA-12-3659CR (May 3, 2018) (trial-court order on remand)

State v. *Ken Air, LLC*, No. 4FA-12-3659CR (Dec. 18, 2013) (original trial-court judgment)

State v. *Helen Celia Nicholia*, No. 4FA-12-3226CR (July 19, 2013) (passenger's trial-court judgment)

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INTRODUCTION

This case presents a threshold question concerning the standard for whether a fine or forfeiture contravenes the Eighth Amendment's Excessive Fines Clause. For over a decade, the State of Alaska has been trying to forfeit bush pilot Ken Jouppi's 1969 Cessna airplane. The basis: One of Jouppi's passengers had beer in her luggage, and the State maintained that one six-pack, at least, would have been visible to Jouppi. For certain Alaskan villages, it's a crime to bring in alcohol. And when the means of importation is an airplane, the plane is subject to forfeiture. No matter that the offense is a misdemeanor. As here. No matter that the pilot is a first-time offender. As here. No matter that the alcohol is a six-pack of Budweiser. As here. No matter that it belonged to a customer. As here. The result: an airplane forfeited for a six-pack.

The Excessive Fines Clause was built for cases like this.

In holding otherwise "as a matter of law," the Alaska Supreme Court broke with this Court's precedent and with that of many lower courts. "[A] punitive forfeiture," this Court has held, "violates the Excessive Fines Clause if it is grossly disproportional to the gravity of a defendant's offense." *United States* v. *Bajakajian*, 524 U.S. 321, 334 (1998). And in evaluating the gravity of the offense, many courts—including Alaska's home circuit—start from a shared premise: "It is critical" to "review the specific actions of the violator rather than by taking an abstract view of the violation." *Thomas* v. *County of Humboldt*, 124 F.4th 1179, 1193 (9th Cir. 2024) (citation omitted). Starting from that same premise, in fact, the Indiana Supreme Court on remand in *Timbs* v. *Indiana* "focus[ed] on the specific harms of specific acts" and held

that forfeiting Tyson Timbs's Land Rover was excessive. *State* v. *Timbs*, 169 N.E.3d 361, 373 (2021); *see also* *Timbs* v. *Indiana*, 586 U.S. 146 (2019).

With the decision below, the Alaska Supreme Court adopted a minority view and embraced a fundamentally different standard: It examined the gravity of Ken Jouppi's offense in paradigmatically abstract terms. It dismissed as "not particularly relevant whether Jouppi's offense was part of a larger pattern of criminal activity"—despite this Court's describing as "highly relevant" whether a defendant's offense "was unrelated to any other crime." *Bajakajian*, 524 U.S. at 338 n.12. It compared the airplane's value to the very sort of theoretical statutory-maximum sentences this Court in *Bajakajian* abjured. It ignored the "extent of the harm caused by Jouppi's illegal conduct" in favor of "the harm . . . addressed in the legislative history" decades before. Only thus could it hold that "the illegal importation of even a six-pack of beer causes grave societal harm" and that forfeiting Jouppi's airplane "does not violate the Excessive Fines Clause."

The split is real, and it is a compelling one for this Court's intervention. Given the Ninth Circuit's longstanding view of the Excessive Fines Clause, Alaska's contrary standard "pits a highest state court against the court of appeals whose circuit includes that state." Stephen M. Shapiro et al., *Supreme Court Practice*, 4-72 (11th ed. 2019). Fines and forfeitures in Alaska are thus subject to two different Eighth Amendment regimes depending on whether the forum is state court or federal. That conflict also promises different real-world outcomes. Under the defendant-focused standard of federal courts like the Ninth Circuit and state courts like Indiana's, Pennsylva-

nia's, D.C.'s, and Utah's, Jouppi's forfeiture almost certainly would not have been upheld. Meanwhile, forfeitures that those courts have invalidated would surely be blessed in Alaska. Tyson Timbs, for instance, unquestionably would have lost his Land Rover had he been in Alaska instead of Indiana. For that matter, Hosep Bajakajian would have lost his $357,000. Justice Breyer could well have lost his (hypothetical) Bugatti. Tr. 43-44, *Timbs* v. *Indiana* (No. 17-1091) ("[Court]: So what is to happen if a state needing revenue says anyone who speeds has to forfeit the Bugatti, Mercedes, or a special Ferrari or even jalopy? (Laughter.)"). The scope of a Bill of Rights protection should not vary radically based on geography. Yet Alaska's plane-for-a-six-pack standard conflicts starkly with the standard articulated in *Bajakajian* and recognized by many courts nationwide.

The Court's intervention is urgently needed now, moreover, in an era of "more and more civil laws bearing more and more extravagant punishments." *Sessions* v. *Dimaya*, 584 U.S. 148, 184 (2018) (Gorsuch, J., concurring in part and concurring in the judgment). Only once (in *Bajakajian*) has the Court considered the standard for determining whether a fine is excessive. In the twenty-seven years since, some courts—like Alaska's—have locked themselves into a "hyper-deferential" standard that provides virtually no check on exorbitant fines. *Yates* v. *Pinellas Hematology & Oncology, P.A.*, 21 F.4th 1288, 1318 (11th Cir. 2021) (Newsom, J., joined by Jordan, J., concurring). Many others have become mired in "disorder," with "a patchwork of inconsistent tests" and "a large degree of uncertainty regarding current excessive fines jurisprudence." *See* p. 30, *infra*. And all the while, enforcement agencies "increasingly depend heavily on fines

and fees as a source of general revenue." *Timbs*, 586 U.S. at 154 (citation omitted); *see also Culley* v. *Marshall*, 601 U.S. 377, 405-06 (2024) (Sotomayor, J., dissenting); *Toth* v. *United States*, 143 S. Ct. 552, 553 (2023) (Gorsuch, J., dissenting from denial of certiorari) (noting that unwarranted narrowing of the Excessive Fines Clause "incentivizes governments to impose exorbitant civil penalties as a means of raising revenue").

This case offers the rare clean vehicle for the Court to correct the course in a narrow but important way. The decision below implicates a critical first-order question: not the virtues of one multi-factor test over another, but, more fundamentally, whether courts should evaluate the gravity of a defendant's offense in the abstract or should instead evaluate the specific defendant's wrongdoing. This issue goes to the core of the Excessive Fines Clause's guarantee. It is a pure question of law. It is presented squarely—the decision below cleared aside all possible fact disputes—and it can be addressed narrowly. Doing so would not only reorient jurisdictions like Alaska, but also provide much-needed direction for courts nationwide. The petition should be granted.

OPINIONS BELOW

The opinion of the Alaska Supreme Court (App. 1a-29a) is reported at 566 P.3d 943. The opinion of the Alaska Court of Appeals (App. 30a-63a) is reported at 519 P.3d 653. The order of the trial court (App. 152a-69a) is not reported.

JURISDICTION

The Alaska Supreme Court entered judgment on April 18, 2025. On June 26, 2025, Justice Kagan extended

the time within which to file a petition for a writ of certiorari to September 2, 2025. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION 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

A. Background

"Protection against excessive punitive economic sanctions" is "both 'fundamental to our scheme of ordered liberty' and 'deeply rooted in this Nation's history and tradition.'" *Timbs* v. *Indiana*, 586 U.S. 146, 154 (2019). "[U]niquely of all punishments," fines stand to make governments money, in turn raising special risk of being "imposed in a measure out of accord with the penal goals of retribution and deterrence." *Harmelin* v. *Michigan*, 501 U.S. 957, 979 n.9 (1991) (opinion of Scalia, J.); *see also R.* v. *Mosley*, 111 Eng. Rep. 499, 500 (K.B. 1835). It is against this backdrop that the Eighth Amendment singles out fines for special mention: "They cannot be excessive." *Tyler* v. *Hennepin County*, 598 U.S. 631, 650 (2023) (Gorsuch, J., concurring).

As this Court articulated in 1998, "[t]he touchstone of the constitutional inquiry under the Excessive Fines Clause is the principle of proportionality." *United States* v. *Bajakajian*, 524 U.S. 321, 334. A fine is unconstitutionally excessive "if it is grossly disproportional to the gravity of a defendant's offense," *id.*, and isolating "the gravity of the defendant's offense" (*id.* at 337) is particularly

critical when the penalizing statute applies with equal force to a wide range of misconduct.

The Court's analysis in *Bajakajian* well illustrates the standard in practice. The statute Hosep Bajakajian violated requires people to submit a report before bringing more than $10,000 into or out of the country. The accompanying penalty provisions mandate forfeiture of all unreported currency—for Bajakajian, $357,144. That provision reaches all sorts of offenders. And given that sweep, the Court's excessive-fines analysis focused on locating Bajakajian—specifically—on the statute's broad spectrum of culpability. The Court first considered the gravity of his particular misconduct. His "crime was solely a reporting offense," the Court observed, and his money "was the proceeds of legal activity." *Id.* at 337-38. That his violation "was unrelated to any other crime" was also "highly relevant." *Id.* at 338 n.12. The Court also looked to his (relatively lenient) sentencing-guidelines range, which, the Court remarked, refuted the government's emphasis on the maximum theoretical punishments set by Congress. *Id.* at 339 & n.14. "That the maximum fine and Guideline sentence to which [he] was subject were but a fraction of the penalties authorized," the Court reasoned, "undercuts any argument based solely on the statute." *Id.* at 339 n.14. For "they show that [his] culpability relative to other potential violators of the reporting provision—tax evaders, drug kingpins, or money launderers, for example—is small indeed." *Id.*

The Court also evaluated "[t]he harm that [Bajakajian] caused." *Id.* at 339. Here, too, the Court homed in on the man: It focused, not on the generalized harms of Bank Secrecy Act violations in the abstract, but on the harm caused by Bajakajian himself. *Id.* On the record

before it, the Court concluded, that harm was "minimal." *Id.* All told, forfeiting Bajakajian's $357,144 bore "no articulable correlation to any injury suffered by the Government" and was "grossly disproportional to the gravity of his offense." *Id.* at 339-40.

In the decades since, many courts—though not all—have faithfully distilled *Bajakajian*'s central teaching: "It is critical," as the Ninth Circuit recently put it, "that the court review the specific actions of the violator rather than by taking an abstract view of the violation." *Thomas* v. *County of Humboldt*, 124 F.4th 1179, 1193 (2024) (citation omitted); *see generally* Pamela S. Karlan, *"Pricking the Lines": The Due Process Clause, Punitive Damages, and Criminal Punishment*, 88 Minn. L. Rev. 880, 901 (2004) ("[T]he Court seems to analyze the gravity of Bajakajian's offense solely from a retributivist perspective—asking how much harm his particular violation of the statute caused.").

B. Facts and procedural history

1. In the 1980s, the State of Alaska authorized municipalities and villages to declare themselves "dry villages." Since then, some have voted simply to regulate the sale of alcohol, limiting it to restaurants, package stores, and the like. Alaska Stat. § 04.11.491(a)(2), (3). Others prohibit selling alcohol but not possessing it. *Id.* § 04.11.491(a)(1). Still others select a more stringent level of restriction: banning the sale, importation, and possession of alcohol altogether. *Id.* § 04.11.491(a)(5); *see generally* Kristen A. Ogilvie, *Unintended Consequences of Local Alcohol Restrictions in Rural Alaska*, 17(1) J. Ethnicity in Substance Abuse 16-31 (2018).

For these most restrictive villages, it is a state-level crime to "knowingly send, transport, or bring an alcoholic beverage" there. Alaska Stat. § 04.11.499(a). The resulting penalties depend primarily on the amount of alcohol and whether the defendant is a repeat offender. Transporting 10.5 liters of spirits or 12 gallons of beer is a class C felony. Two-time recidivists face class C felony charges too, no matter the quantity involved. On the less serious end of the spectrum, first-time offenders who transport less than the quantities of alcohol above are guilty of only a class A misdemeanor. *Id.* § 04.16.200(e)(1)-(3). For that first-time offender, the minimum sentence is three days' imprisonment and a $1,500 fine. *Id.* § 04.16.200(g)(1)(A).

And, potentially, forfeiture. Using a plane to transport the alcohol subjects the plane to mandatory forfeiture—no matter the quantity and no matter the seriousness of the offense. *Id.* § 04.16.220(a)(3)(C). Airplanes are "always subject to mandatory forfeiture under the statute, regardless of whether the conviction is a misdemeanor or felony or is the defendant's first conviction." App. 22a.

2. Now 82 years old, petitioner Ken Jouppi has been fascinated with flying since childhood. After serving four years in the Air Force, mainly as a mechanic for B-52s, he got his pilot's license in the late 1960s. In the late '70s, he moved to Alaska. R. p. 99.[1]

For those who love flying, there's no better place. Ever since Captain Joseph Martin first flew an open-cockpit biplane over Fairbanks in 1913 (helped by his wife and fellow pilot, Lily), aviation has held a special place in Alaska's heritage. Ken Jouppi fit right in. Starting out, he

[1] "R." refers to the trial-court record on file with the Alaska Court of Appeals, Case No. A-13147.

flew for a small company out of Ketchikan, working with the U.S. Forest Service, flying charters, and occasionally piloting medevac and search missions. R. pp. 676-77. In time, he started his own company ("KenAir"), and for years, he made a living using his 1969 Cessna U206D as a one-man air-taxi service, shuttling tourists and locals alike over the Alaskan wilderness.

As a pilot, Jouppi knew of Alaska's dry-village system, and he would not deliberately fly alcohol illegally. But nor would he preemptively rifle through passengers' luggage to hunt for alcohol. No law required him to search their belongings, and, in his view, it would be "invasive and demeaning" to do so. R. pp. 154, 677-78.

On the morning of April 3, 2012, he was scheduled to fly a repeat passenger from Fairbanks to the village of Beaver—a fully "dry" village that bans selling, importing, and possessing alcohol. Along with many other groceries, Jouppi's passenger had three cases of beer packed in her luggage. She herself was not a drinker. But she was travelling to Beaver to spend her birthday with her husband, who worked there; the beer (Budweiser and Bud Light) was for him. 8/22/2013 Tr. 247-48, 256.

As Jouppi was loading the plane, state troopers arrived on scene, searched it, and found the beer. While Jouppi insisted he had no idea there was any beer in his passenger's luggage, the officers maintained that, at a minimum, one six-pack of Budweiser was visible in a shopping bag. So the State charged Jouppi, his company, and the passenger with the misdemeanor offense of knowingly transporting an alcoholic beverage into a dry community. The passenger pleaded guilty. Jouppi and the company went to trial and were found guilty by way of a

verdict that expressed no finding on how much alcohol he knew was aboard his plane. App. 5a. The trial judge imposed the minimum executed sentence allowed by statute: a $1,500 fine for Jouppi (and another $1,500 for his company) and three days' imprisonment. App. 5a ("The court sentenced Jouppi to 180 days in jail with 177 suspended, a $3,000 fine with $1,500 suspended, and three years of probation."); *see also* R. p. 686 ("Mr. Jouppi, I learned by reading 33 letters that he's 70 years old and he has a stellar criminal record. Clean.").

3.a. Much more was to come: For the past thirteen years, the State has been pursuing Jouppi's plane through *in personam* criminal forfeiture. (The plane belongs to Jouppi, not his company. App. 6a.) At first, the trial court held that the forfeiture was not authorized by the statute. The plane hadn't flown a foot toward the village of Beaver, the court reasoned, so it could not be said to have "transport[ed] or facilitate[d] the transportation of . . . alcoholic beverages imported into a" dry village. Alaska Stat. § 04.16.220(a)(3)(C). The Alaska Court of Appeals disagreed, construing the statute to mandate forfeiture "regardless of whether the alcoholic beverages are actually transported toward their destination." *State* v. *Jouppi*, 397 P.3d 1026, 1033 (2017).

b. On remand, the trial court held a hearing on whether the forfeiture amounted to an unconstitutionally excessive fine. The court then ruled that it did. *See generally* App. 154a-55a (detailing that the federal excessive-fines issue was raised before sentencing in 2013 and renewed on remand in 2017).

As an initial matter, the court concluded that Jouppi's *in personam* criminal forfeiture is a fine under the

Excessive Fines Clause. App. 156a; *see also Alexander* v. *United States*, 509 U.S. 544, 558 (1993). The court then held that the forfeiture was unconstitutionally excessive. Much like this Court in *United States* v. *Bajakajian*, the trial court "assess[ed] the gravity" of Jouppi's "actual conduct" against the severity of the forfeiture. App. 160a. On the punishment side of the ledger, forfeiting Jouppi's airplane was a severe economic sanction. App. 163a ("The court concludes that the plane is worth $95,000."). On the other side of the ledger, his "culpability relative to other potential violators of the [statute]" was low. *See United States* v. *Bajakajian*, 524 U.S. 321, 339 n.14 (1998). The criminal statute, the trial court remarked, "recognize[s] a hierarchy of seriousness among . . . offenses," yet the airplane-forfeiture provision applies "with equal force to all." App. 160a-61a. And while Jouppi's conduct was "serious," it "was not nearly as egregious as other conduct that could result in mandatory forfeiture of a plane under the applicable statutes." App. 168a.

"The gravity of the harm" was likewise "low relative to other AS 04.11.499(a) offenses." App. 161a. Jouppi "was convicted of a class A misdemeanor," the court reasoned, and even among the universe of misdemeanors, "[o]ne could imagine more egregious" ones. App. 161a, 168a. The passenger's alcohol was not "wine or distilled spirits," but "two cases of Budweiser beer, and four six packs of sixteen ounce cans of Budweiser and Bud Light beer." App. 159a. The court even put a thumb on the government's side of the scale and "assume[d]" without deciding that Jouppi's "culpability extends to all of the alcohol on the aircraft, and not merely the six beers that were in plain view." App. 161a; *see also* App. 160a. Even on that assumption, the total amount of beer was "still well within

the limit set forth in" the misdemeanor-tier of the statute. App. 161a. Consistent with the testimony of Jouppi's passenger, moreover, the beer "could have plausibly all been intended for [her] personal consumption, or her family's personal consumption." App. 160a. The court found it "easy to imagine much more egregious AS 04.11.499(a) violations" and held that "the forfeiture is an excessive fine, and hence unconstitutional." App. 161a, 169a.

c. The State appealed, and the court of appeals vacated the trial court's judgment. App. 30a-63a. The court shared the trial court's view that the excessiveness standard rightly focuses on "the particular facts of Jouppi's case and his specific level of culpability." App. 56a. In the court of appeals' view, however, the trial court's factual findings were "incomplete." App. 43a. Rather than assuming without deciding that Jouppi's culpability extended to all of the beer in his passenger's luggage, the trial court should have resolved whether his crime "was, in substance, attempting to bring [only] a six pack of beer to a local option community." App. 43a (citation omitted; alteration in original). The trial court also should have "address[ed] whether Jouppi's violation of the bootlegging statute was related to, or comprised part of, other illegal activities." App. 44a. And the trial court should have "made clearer findings regarding the extent of the harm caused by Jouppi's illegal conduct." App. 46a. The court of appeals thus remanded for further proceedings.[2]

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[2] One member of the panel issued an 83-page separate opinion expressing his view that certain *in personam* criminal forfeitures are immune from review under the Excessive Fines Clause. App. 64a-151a (Mannheimer, J., concurring in part and dissenting in part). As that judge acknowledged, however, "*Bajakajian* holds that the excessive fines clause *does* govern all *in personam* forfeitures." App.

d. The Alaska Supreme Court granted review and vacated the court of appeals' judgment. App. 1a-29a. Where the court of appeals called for further fact-finding, the supreme court held unanimously that forfeiting Jouppi's airplane was constitutional "as a matter of law." App. 2a.

Throughout, the court made plain that its analysis was premised on Jouppi's having violated the dry-village statute only as to one "six-pack of beer." App. 24a; *see also* App. 20a, 25a. With that as its starting point, the court then developed an excessiveness standard that reflected a paradigmatically abstract view of Jouppi's crime. The court acknowledged, for example, that "Jouppi was convicted of only one instance of alcohol importation unconnected to other criminal activity." App. 19a. But the court considered it "not particularly relevant whether Jouppi's offense was part of a larger pattern of criminal activity" because, whatever the degree of his wrongdoing, "a pilot knowingly transporting a passenger's alcohol to a dry village is precisely the kind of person and conduct that the legislature was concerned about." App. 26a. The court also asserted that Jouppi "was clearly within the class of persons targeted by the statute" because the statute applied to him (App. 20a)—a characteristic true of anyone punished under it.

More followed along similar lines. The court compared the value of Jouppi's plane to the $10,000 maximum fine allowed by statute (App. 23a)—a maximum reserved for "the worst type of offender 'within the group of persons committing the offense in question.'" *Hintz* v. *State*, 627

131a. The judge's additional views about civil *in rem* forfeitures (which this case is not) are likewise foreclosed by precedent. App. 126a (acknowledging as much).

P.2d 207, 210 (Alaska 1981). That the plane's value was "only" nine and a half times that theoretical maximum, the court remarked, "suggests that the forfeiture is not grossly disproportional." App. 23a. In evaluating "the nature and extent of the harm caused by the defendant's offense," App. 24a, the court then looked, not to the harm caused by Jouppi, but to "the harm . . . addressed in the legislative history of the forfeiture provision" decades ago, App. 25a n.94. Having done so, it saddled Jouppi with the ills of alcohol abuse statewide: "increased crime," "alcoholism," "fetal alcohol spectrum disorder," "substantial costs on public health and the administration of justice," and "death." App. 24a.

For the avoidance of doubt, the court closed by spelling out the breadth of its reasoning: "It is clear to us," the court stated, "that the legislature determined that the harm from even a six-pack of beer knowingly imported into a dry village is severe enough to warrant forfeiture of an aircraft." App. 25a. On that basis, the court "h[e]ld that the forfeiture of Jouppi's airplane is not grossly disproportional to the gravity of the offense for which he has been convicted and, therefore, the forfeiture does not violate the Excessive Fines Clause of the Eighth Amendment." App. 27a.[3]

[3] The court's decision is a final judgment under 28 U.S.C. § 1257(a). Based on that decision, the court of appeals confirmed that "there are no further issues to be resolved," Order 1, No. A-13147 (Alaska Ct. App. May 9, 2025), and the trial court entered an order for forfeiture. Order for Forfeiture of Airplane, No. 4FA-12-03228CR (Alaska Dist. Ct. June 17, 2025).

REASONS FOR GRANTING THE PETITION

In upholding the forfeiture of an airplane for a six-pack, the decision below encapsulates a division in the lower courts over how to evaluate the gravity of a defendant's offense under the Excessive Fines Clause. Most courts, following this Court's lead, share the same premise: that the standard focuses, not on the gravity of the offense in the abstract, but on the actual defendant's conduct. The Alaska Supreme Court, meanwhile, hews to a minority view that instead looks to the gravity of the defendant's offense at a stratospheric level of generality. That standard contravenes this Court's precedent and the text and history of the Excessive Fines Clause. The question presented is important—not least because Alaska's standard conflicts with that of its home circuit—and this case is an ideal vehicle in which to resolve it.

A. The decision below sharpens a conflict over the standard for whether a fine is excessive.

In assessing the gravity of a defendant's offense—a key input for any excessive-fines case—many state and federal courts agree that the standard looks to "the specific actions of the violator rather than . . . taking an abstract view of the violation." *Pimentel* v. *City of Los Angeles*, 974 F.3d 917, 923 (9th Cir. 2020). Aligning with the Eleventh Circuit, the decision below embraced a different approach: one that examines the gravity of the defendant's offense purely in abstract terms. The result: a near-dispositive thumb on the government's side of the scale and a blank check for forfeitures like the one below.

1. Four state high courts and most federal courts of appeals agree that the gravity of a defendant's offense must be evaluated by reference to his or her specific culpability.

a. The decision below splits most strikingly with the decisions of the Indiana Supreme Court following this Court's remand in *Timbs* v. *Indiana*. As the Court is aware, Tyson Timbs pleaded guilty to a relatively low-level drug offense and received a modest sentence: home detention, probation, and addiction treatment. 586 U.S. 146, 148-49 (2019). Alongside that, however, Indiana also sought to forfeit his Land Rover, recently purchased for $42,000. *Id.* at 149. Following this Court's intervention (on whether the Excessive Fines Clause applies to the States), the Indiana Supreme Court issued two opinions marking out the "analytical framework" for evaluating whether a forfeiture is unconstitutionally excessive. *State* v. *Timbs*, 134 N.E.3d 12, 21 (2019); *State* v. *Timbs*, 169 N.E.3d 361 (2021).

In evaluating the gravity of Timbs's offense, the Indiana Supreme Court took its cue from this Court's decision in *United States* v. *Bajakajian*, 524 U.S. 321 (1998). As a general matter, the court acknowledged, drug offenses (like most crimes) "threaten[] society." *Timbs*, 169 N.E.3d at 373. But for purposes of assessing the excessiveness of a specific forfeiture, the court emphasized that "focusing on the specific harms of specific acts" is most "in line with the Supreme Court's reasoning in *United States v. Bajakajian*." *Id.* "In *Bajakajian*," after all, this Court had "pointed out that currency-reporting crimes might generally include serious violations by 'tax evaders, drug kingpins, or money launderers.'" *Id.* Yet in evaluating the gravity of Bajakajian's offense, this Court "did not

impute to [him] the offenses of others," but "rather considered what specific harms his specific acts had caused." *Id.*

The Indiana Supreme Court followed suit: Applying a "fact intensive" standard, *id.* at 368, it concluded that "the severity of [Timbs's] underlying offense" was "minimal," *id.* at 375. While Timbs was undisputedly an addict, the record showed that he "wasn't a drug 'kingpin.'" *Id.* at 374. He had sold only a small quantity of drugs—and only at the behest of undercover officers. *Id.* at 375-76. Those transactions were not part of a broader dealing operation. And he received a "minimum sentence" in his criminal case—far below "the maximum statutory penalty" reserved for "those who commit the worst variants of the crime." *Id.* at 375 (quoting *Timbs*, 134 N.E.3d at 37). On this record, the court reasoned, "it follows that Timbs . . . committed a crime that was much less severe 'relative to other potential violators.'" *Id.* (quoting *Bajakajian*, 524 U.S. at 339 n.14). All told, "the seriousness of Timbs's specific crime, for which he received the minimum possible sentence; the harm caused by dealing two grams of heroin to an undercover police officer; and the relationship of the dealing to Timbs's earlier actions in purchasing drugs to feed his addiction" combined to confirm "the minimal severity of Timbs's offense." *Id.* at 376.

b. In focusing on the specific defendant's culpability, the Indiana Supreme Court embraced a standard shared by at least three other state high courts.

In 2017, the Pennsylvania Supreme Court articulated a standard that aligns with Indiana's and cannot be reconciled with Alaska's. *Commonwealth* v. *1997 Chevrolet*, 160 A.3d 153. Under *Bajakajian*, the court reasoned, the

excessiveness standard is "defendant-culpability focused, rather than centered on the severity of the crime in the abstract." *Id.* at 189. Thus, the court looked, not to the "maximum authorized sentence" in a vacuum, but to how that theoretical maximum compares to "the actual penalty imposed (sentence, fine) upon the offender giving rise to the forfeiture." *Id.* at 190. "[T]he regularity of the criminal conduct must be considered" as well, the court added, "including whether the illegal acts were isolated or frequent, constituting a pattern of misbehavior." *Id.* Likewise for "the actual harm resulting from the crime charged," which, the court explained, focuses on the harm caused by the defendant, not the "generalized harm to society" of crime writ large. *Id.* at 192; *see also id.* (remanding for trial court to determine whether Excessive Fines Clause precluded forfeiting elderly woman's home and minivan based on son's marijuana dealing).

The Utah Supreme Court embraced the same framework in holding excessive the forfeiture of a home based on the owner's commission of low-level drug offenses. *State* v. *Real Prop.*, 994 P.2d 1254 (2000). In "gauging the gravity of the offense," the court construed *Bajakajian* as focusing on the specific defendant's level of culpability. *Id.* at 1259. The court acknowledged, for example, "the broad-scale effect of drug trafficking on society." *Id.* at 1260. But even so, the court focused on the seriousness of the particular defendant's wrongdoing. "Measured by any standard," the court reasoned, "[her] drug operation was small, involving possession of less than two pounds of marijuana for sale in an eighteen month span." *Id.* And, as in *Bajakajian*, her modest criminal sentence reinforced that her culpability was low compared to other potential violators of the statute. *Id.* at 1259. At the same

time, the court explicitly rejected the government's comparison of the forfeited property to the "'maximum possible penalties.'" *Id.* at 1260. Those "theoretical figures" have "limited relevance in determining proportionality," the court wrote, since "two separate individuals, convicted of an 'identical' crime may receive vastly different sentences based on inherently individualized facts." *Id.* at 1259-60, 1261. Comparing the $80,000 value of the defendant's home against the relatively minor gravity of her offenses, the court "conclude[d] that there is a gross disproportionality here under the standards set forth in *Bajakajian*, and the forfeiture cannot be sustained." *Id.* at 1261.

The standard of the D.C. Court of Appeals is similarly keyed to the specific defendant's wrongdoing. In considering the forfeiture of a vehicle for the owner's solicitation of prostitution, the court read *Bajakajian* as "plac[ing] its primary emphasis on the culpability of Bajakajian himself rather than on the severity of the crime in the abstract." *One 1995 Toyota Pick-Up Truck* v. *District of Columbia*, 718 A.2d 558, 565 (D.C. 1998). While the court acknowledged that "the maximum penalty authorized by the legislature" is "one indicium of the gravity of a criminal offense," it highlighted that "the actual penalty range applicable to the particular defendant" is a better indicator of their wrongdoing. *Id.* at 565 n.16. Unlike the Alaska Supreme Court, moreover, the D.C. Court of Appeals refused to ascribe to a single defendant the ills of prostitution District-wide. As with any crime, the court reasoned, prostitution presents "multi-faceted problems"—from traffic congestion to depressed property values to reduced quality of life more broadly. *Id.* at 566. In evaluating the excessiveness of one forfeiture, however, the court

held that a single property owner "can not be made to bear grossly disproportionate responsibility for the problem of prostitution in the District" as a whole. *Id.* As with Hosep Bajakajian, the court concluded, "[t]he forfeiture here impose[d] punishment on [the defendant] which greatly outweighs his particular contribution to these multi-faceted problems." *Id.*

c. Most federal courts of appeals to have engaged with the question start from a similar premise: The gravity of a defendant's offense is determined, not in the abstract, but by reference to the specific defendant's actions.

In Alaska's home circuit, the federal courts hold that "[i]t is critical . . . that the court review the specific actions of the violator rather than by taking an abstract view of the violation." *Thomas* v. *County of Humboldt*, 124 F.4th 1179, 1193 (9th Cir. 2024) (citation omitted). For federal courts in Alaska, therefore, "[t]he culpability of the offender should be examined specifically, rather than examining the gravity of the crime in the abstract." *United States* v. *$100,348.00*, 354 F.3d 1110, 1123 (9th Cir. 2004) (citation omitted). These courts evaluate where a specific defendant falls on the "gravity spectrum" compared to other potential violators. *Id.* Rather than comparing the value of forfeited property to the maximum theoretical sentence, these courts follow *Bajakajian*'s lead in "giv[ing] greater weight" to guidelines ranges, which "take into account the specific culpability of the offender." *Id.* at 1122; *see also United States* v. *Beecroft*, 825 F.3d 991, 1001 (9th Cir. 2016) (O'Scannlain, J.) (singling out guidelines as "especially instructive as they reflect the particular circumstances of [the defendant's] crimes"). And—again contra the Alaska Supreme Court—federal courts in the Ninth Circuit are admonished to "*not* put

'full responsibility for the "war on drugs" on the shoulders of every individual claimant.'" *United States* v. *6380 Little Canyon Rd.*, 59 F.3d 974, 986 n.13 (9th Cir. 1995), *abrogated in part on other grounds by Bajakajian*, 524 U.S. at 333-34.

Nor is the Ninth Circuit an outlier in this regard. The circuits' precise formulations and applications of the excessive-fines standard vary, sometimes in important ways. (More on that below, pp. 29-31.) But most start from the shared premise above: The gravity of an offense is to be determined with reference to "the culpability of the individual defendant." *United States* v. *Facteau*, 89 F.4th 1, 45 (1st Cir. 2023) (citation omitted), *cert. denied*, 145 S. Ct. 137 (2024). "Even before the *Bajakajian* opinion," for instance, the Third Circuit had "look[ed] at the overall circumstances, including seriousness of the offense and personal benefit or culpability, to decide excessiveness." *Yskamp* v. *DEA*, 163 F.3d 767, 773 (1998). In upholding forfeiture of an unregistered airplane, the Fifth Circuit undertook a similarly defendant-focused analysis, emphasizing that the defendant "owned the airplane for some seven years without registering it," that the registration failure reflected no "mere spur of the moment lapse in judgment," and that the out-of-date registration on file (to a state agency) "increased the damage to the integrity of federal aviation safety and security systems" because the agency of record could "engage in low-level flight, below radar coverage, without attracting a law enforcement response." *United States* v. *Wallace*, 389 F.3d 483, 487 (2004).[4]

[4] For pecuniary fines (though not for forfeitures), the Fifth Circuit has adopted an unreasoned, blanket rule that a fine "does not violate

Along similar lines is the Sixth Circuit, which has rejected as an "oversimplified approach" merely comparing the value of a forfeiture to the maximum statutory fine. *United States* v. *Carpenter*, 317 F.3d 618, 627 (2003), *opinion reinstated in relevant part*, 360 F.3d 591 (2004). The Seventh Circuit has voiced "serious doubts that the forfeiture of [a] home's entire $67,000 value comports with the 'principle of proportionality'" based on the actions of the specific defendant—"at most a one-time offender who committed an unusually minor violation of the structuring statute not tied to other wrongdoing." *United States* v. *Abair*, 746 F.3d 260, 268 (2014). And last year, the Eighth Circuit likewise stressed that "the 'most important indicium'" in its analysis is "the reprehensibility of the defendant's conduct." *United States ex rel. Grant* v. *Zorn*, 107 F.4th 782, 800 (2024), *cert. denied*, Nos. 24-549, 24-845 (June 23, 2025); *see also United States* v. *Jalaram, Inc.*, 599 F.3d 347, 357 (4th Cir. 2010) (concluding that defendant's "offense was serious and its individual culpability significant"); *von Hofe* v. *United States*, 492 F.3d 175, 187 (2d Cir. 2007) ("The statutory maximum, designed as an outer limit on the punishment available, does not necessarily reflect an individual offender's culpability or the gravity of the actual offense giving rise to forfeiture."); *United States* v. *Wagoner Cnty. Real Est.*, 278 F.3d 1091, 1101 (10th Cir. 2002) (noting that evaluating "the severity of the offense" includes such considerations as "the nature and scope of the illegal

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the Eighth Amendment—no matter how excessive the fine may appear—if it does not exceed the limits prescribed by the statute authorizing it." *Cripps* v. *La. Dep't of Agric. & Forestry*, 819 F.3d 221, 234 (2016).

operation at issue" and "the value of any contraband involved in the offense" (citation omitted)).

2. The decision below joins the Eleventh Circuit in evaluating the gravity of the offense in purely abstract terms.

a. The Alaska Supreme Court stands in contrast. Its standard looks, not to the culpability of the person before it, but to the culpability of an abstract violator of the statute—the theoretical worst-case offender.

Each of what the court described as its "factors" illustrates that premise. App. 18a. Where other courts have cautioned that "the maximum statutory penalty for an offense suggests the appropriate sentence for those who commit the worst variants of the crime," *Timbs*, 134 N.E.3d at 37, the Alaska Supreme Court compared by rote the value of Jouppi's airplane to "the maximum fine that could have been imposed" on a worst-case violator, App. 23a. Nowhere did it consider the sentence Jouppi himself received—not the maximum or anything close, but the minimum executed fine and jail term permitted by law. Under the standard of Indiana, Pennsylvania, Utah, and D.C., that consideration would have signaled a level of culpability "much less severe 'relative to other potential violators'" of the statute. *Timbs*, 169 N.E.3d at 375. Under Alaska's standard? Irrelevant.

In similar vein, the Alaska Supreme Court's standard nowhere accounts for how the defendant's violation "compare[s] to other variants of the offense." *Timbs*, 134 N.E.3d at 37. The court assumed, for instance, that Jouppi's culpability extended to one six-pack of beer alone. App. 24a-25a. Yet under the Alaska Supreme Court's standard, it does not matter that a property

owner's offense is conspicuously "at the low end of the severity spectrum." *United States* v. *3814 NW Thurman St.*, 164 F.3d 1191, 1198 (9th Cir. 1999). Nor does the court's standard consider "the relationship of the offense to other criminal activity." *Timbs*, 169 N.E.3d at 374. Quite the opposite: The court repudiated that consideration. It acknowledged that "Jouppi was convicted of only one instance of alcohol importation unconnected to other criminal activity." App. 19a. Yet it wrote off as "not particularly relevant whether Jouppi's offense was part of a larger pattern of criminal activity." App. 26a. For, whatever the gravity of his offense, "a pilot knowingly transporting a passenger's alcohol to a dry village is precisely the kind of person and conduct that the legislature was concerned about." App. 26a.

As for the harm caused: more of the same. Unlike the courts above, the Alaska Supreme Court looked, not to the harm caused by Jouppi, but to "the harm . . . addressed in the legislative history of the forfeiture provision" decades ago. App. 25a n.94. From that level of generality, it saddled Jouppi with the social ills of alcohol abuse writ large. Increased crime. Public-health costs. Death. App. 24a. Only thus could the court conclude that "the illegal importation of even a six-pack of beer causes grave societal harm" and "strongly suggests that the forfeiture is not grossly disproportional." App. 24a.

b. The Eleventh Circuit, too, has trended toward evaluating the gravity of defendants' offenses in impossibly abstract terms. Starting in the late '90s, the Eleventh Circuit maintained that "excessiveness is determined in relation to the characteristics of the offense, not in relation to the characteristics of the offender." *United States* v. *817 N.E. 29th Drive*, 175 F.3d 1304, 1311 (1999). Since

then, the court has increasingly bound itself to a mode of analysis much like Alaska's. The outcome is much the same as well: reducing an enumerated constitutional protection to a "hyper-deferential" check on government overreach. *Yates* v. *Pinellas Hematology & Oncology, P.A.*, 21 F.4th 1288, 1318 (11th Cir. 2021) (Newsom, J., joined by Jordan, J., concurring); *see also Robson 200, LLC* v. *City of Lakeland*, 593 F. Supp. 3d 1110, 1120-22 (M.D. Fla. 2022) (criticizing the Eleventh Circuit's precedent as inconsistent with *Bajakajian*).

A recent Eleventh Circuit decision shows the standard in practice. Earlier this year, the court upheld $12.2 million of a $12.5 million penalty for a defendant's failure to file foreign-bank-account reports, or "FBARs." *United States* v. *Schwarzbaum*, 127 F.4th 259, 265 (11th Cir. 2025). For "willful" FBAR violations, the government can impose civil penalties totaling half the balance of unreported funds. *Id.* And like the forfeiture provision in *Bajakajian*—and the one here—the FBAR penalty regime has been construed to capture a wide range of wrongdoers, from knowing and deliberate violators to the merely reckless. *Id.* at 282 n.7.

In upholding the $12.2 million penalty in *Schwarzbaum*, the Eleventh Circuit anticipated the Alaska Supreme Court with a standard that evaluates the gravity of the defendant's offense purely in abstract terms. The court asserted that Isac Schwarzbaum fell "squarely in the [FBAR statute's] crosshairs" because the statute applied to him, a fact equally true in *Bajakajian* and in almost every case where the Excessive Fines Clause is implicated. *Id.* at 282 (citation omitted). Nowhere did the court's standard account for the fact that Schwarzbaum's *mens rea* was on the low end of the spectrum—reckless,

not knowing or deliberate. *Id.* at 267. Nor did the court's standard account for the fact that Schwarzbaum had no "intention of evading United States tax reporting requirements." *Id.* at 266. Nor did it matter that the unreported funds were not "believed to be from illegal sources or used for a criminal purpose." Ex. 1 to U.S. Mot. for Judgment at 4, *United States* v. *Schwarzbaum*, No. 18-cv-81147 (S.D. Fla. Sept. 15, 2022) (Doc. 152-1). Rather than evaluate where Schwarzbaum landed on the spectrum of "potential violators of the reporting provision," *Bajakajian*, 524 U.S. at 339 n.14, the Eleventh Circuit confirmed that the provision applied to him and left it at that.

The rest of the court's analysis was of a piece. Again like the Alaska Supreme Court, the Eleventh Circuit compared Schwarzbaum's penalty to the maximum sentence that a criminal FBAR defendant could theoretically face: several tiers of $250,000 criminal fines plus three consecutive five-year prison terms. *Schwarzbaum*, 127 F.4th at 282-83. In this way, the court looked to the very statutory maximums this Court in *Bajakajian* abjured. 524 U.S. at 339 n.14 ("That the maximum fine and Guideline sentence to which respondent was subject were but a fraction of the penalties authorized . . . undercuts any argument based solely on the statute . . . ."). And it did so even though Schwarzbaum himself did not in fact violate the comparator criminal statute. *Compare* 127 F.4th at 282 n.7, *with id.* at 267. In "consider[ing] the harm caused by the defendant," *id.* at 283, the Eleventh Circuit then repeated its level-of-generality error for a final time. Rather than evaluating the harm caused by Schwarzbaum, the court resorted to commentary in the 1970 legislative record to the effect that foreign accounts can be used to further "organized criminal operations," "evade income taxes,"

violate securities laws, and launder "illegally obtained monies." *Id.* (citation omitted). The very legislative history invoked in *Bajakajian*—by the dissent. 524 U.S. at 351 (Kennedy, J., dissenting).

B. The decision below is erroneous.

The Alaska Supreme Court's standard contravenes this Court's precedent and the Excessive Fines Clause's text and history.

1. *Bajakajian*'s fundamental lesson is straightforward: In assessing the gravity of a defendant's offense, courts should evaluate the actions of the person before them. The Alaska Supreme Court's standard breaks with this mode of analysis at every turn. The court dismissed as "not particularly relevant whether Jouppi's offense was part of a larger pattern of criminal activity" (App. 26a)—despite this Court's describing as "highly relevant" whether a defendant's offense "was unrelated to any other crime." *Bajakajian*, 524 U.S. at 338 n.12. It compared the airplane's value to the very sort of maximum sentences *Bajakajian* eschewed. *Compare id.* at 339 n.14, *with* App. 23a ("[T]he value of Jouppi's airplane is only 9.5 times the maximum fine that could have been imposed."). It ignored that, with a six-pack violation to his name, Jouppi's "culpability relative to other potential violators" of the statute was glaringly "small indeed." *Bajakajian*, 524 U.S. at 339 n.14. And it turned its back on the "extent of the harm caused by Jouppi's illegal conduct" in favor of "the harm . . . addressed in the legislative history" decades before. App. 25a n.94 (citation omitted).

At base, the Alaska Supreme Court's standard looks less like that of *Bajakajian*'s majority and far more like that of its dissent. On the Alaska court's reasoning, in fact,

Hosep Bajakajian himself would have lost. Like Ken Jouppi, Bajakajian was "within the class of persons targeted by the statute." App. 20a. Bank Secrecy Act violations—in the abstract—likewise could be said to cause "grave societal harm." App. 24a; *see also* 524 U.S. at 351 (Kennedy, J., dissenting). And proportionally, Bajakajian's forfeiture was far nearer his maximum statutory fine ($357,114 compared to $250,000) than was Jouppi's ($95,000 compared to $10,000). Boxes checked. That Alaska's standard would almost surely support a reversal in *Bajakajian* rather than the Court's affirmance spotlights how far afield the decision below strayed.

2. Alaska's standard contravenes text and history as well. Ratified with the Anglo-American legal tradition in mind, the Excessive Fines Clause would have been well understood in 1791 (and later) to denote "excessive" in relation to the specific defendant's wrongdoing. In fact, that premise dates to 1215, when Magna Carta pronounced that "[a] free man shall be amerced for a small fault only according to the measure thereof, and for a great crime according to its magnitude."

The Great Charter's guarantee claimed renewed urgency centuries later, following the depredations of the Stuart kings. With the enactment of the English Bill of Rights in 1689, Parliament resolved itself to permit fines only "according to the quantity and quality of [the offender's] misdeeds." Historical Manuscripts Comm'n, *The Manuscripts of the House of Lords*, 1690-1691, at 104 (1892). As Matthew Bacon would later recount, judges' power to fine had to be guided by their duty "to make it adequate to the Offence," taking into "Consideration . . . the Baseness and Enormity, and dangerous Tendency of it," along with the "Malice, Deliberation and

Wilfulness with which it was committed" and "the Age, Quality, and Degree of the Offender, &c." 2 *A New Abridgement of the Law* 517 (4th ed. 1778).

Across the Atlantic, the same understanding took root in America. A "fine or amercement ought to be according to the degree of the fault and the estate of the defendant," wrote Judge Carrington, of Virginia, in 1799. *Jones* v. *Commonwealth*, 5 Va. 555, 557. "[I]t is clear," he reasoned, that the "makers of the [Virginia] constitution, as well as the Legislature contemplated, that no addition, under any pretext whatever was to be imposed, upon the offender, beyond the real measure of his own offence." *Id.* at 557-58; *Timbs*, 586 U.S. at 152 (discussing Virginia's Declaration of Rights). Nor was Judge Carrington alone in this view. Simply, the Excessive Fines Clause conceived of by the Alaska Supreme Court—one indifferent to the degree of a defendant's "offence and injury"—would have been unrecognizable to those who ratified it. *Bullock* v. *Goodall*, 7 Va. 44, 49 (1801) (Pendleton, J.).

C. The question presented raises an issue of national importance, and this case is an ideal vehicle for addressing it.

The question presented implicates the Constitution's most textually explicit check on extravagant economic sanctions—including both civil and criminal forfeitures. It has great legal and practical importance, and this case is a perfect vehicle in which to consider it.

1. Like other Bill of Rights guarantees, the Eighth Amendment's "[p]rotection against excessive punitive economic sanctions" is "both 'fundamental to our scheme of ordered liberty' and 'deeply rooted in this Nation's history and tradition.'" *Timbs*, 586 U.S. at 154. With only one

precedent from this Court giving shape to the excessiveness standard, however, twenty-seven years' worth of lower-court decisions have staked out "a patchwork of inconsistent tests" even among the federal courts of appeals catalogued above. 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, 543-44 (2017). Often, it's hard to discern whether or not one court's multi-factor test differs materially from another's. And with many such cases appearing highly fact-bound, suitable vehicles for this Court's review are rare. Meanwhile, the lower courts' increasingly baroque tests risk losing sight of "[t]he touchstone of the constitutional inquiry": "The amount of the forfeiture must bear some relationship to the gravity of the offense that it is designed to punish." *Bajakajian*, 524 U.S. at 334. The upshot? Nationwide, "a large degree of uncertainty regarding current excessive fines jurisprudence." *1997 Chevrolet*, 160 A.3d at 178. Or more colorfully: "a quagmire." Beth A. Colgan, *Reviving the Excessive Fines Clause*, 102 Calif. L. Rev. 277, 295 n.92 (2014); *see also id.* at 295 ("The jurisprudence has created disorder in the lower courts and left jurists feeling hamstrung." (footnotes omitted)).

Against that backdrop, the decision below implicates a critical first-order question: not the relative virtues of one multi-factor test over another, but, more fundamentally, whether the courts should evaluate the gravity of a defendant's offense purely in the abstract or should evaluate the specific defendant's wrongdoing. Refocusing the lower courts on that baseline inquiry would not only correct jurisdictions like Alaska and the Eleventh Circuit, but also offer an important data point for the many courts

whose buildup of multi-factor tests risks "muddl[ing] the issue." Pimentel, *supra*, 11 Harv. L. & Pol'y Rev. at 543-44. And as the decision below highlights, the question presented goes to the core of the Excessive Fines Clause's proportionality guarantee. If "[t]he culpability of the offender . . . [is] examined specifically," *$100,348.00*, 354 F.3d at 1123 (citation omitted), the Excessive Fines Clause is well-designed to check exorbitant economic sanctions on an as-applied basis. If, in contrast, the gravity of a defendant's offense is evaluated purely in the abstract—asking whether a crippling forfeiture *could* be valid for an imagined worst-case offender—the Clause secures at best notional protection for the flesh-and-blood people invoking it.

This case shows the stakes. On Alaska's standard, forfeiting an airplane over a six-pack "clearly" comports with the Excessive Fines Clause. App. 25a. And it's unclear what forfeiture wouldn't. Tyson Timbs unquestionably would have lost had he been in Alaska instead of Indiana. Likewise for the homeowner in Utah. And the vehicle owner in D.C. And Hosep Bajakajian. That the Alaska Supreme Court's standard would yield different outcomes in all those cases spotlights not just the importance of the split, but that Alaska's approach degrades a Bill of Rights protection that "has been a constant shield throughout Anglo-American history." *Timbs*, 586 U.S. at 153.

2. The Court's intervention is urgently needed now, in an era of "more and more civil laws bearing more and more extravagant punishments." *Sessions* v. *Dimaya*, 584 U.S. 148, 184 (2018) (Gorsuch, J., concurring in part and concurring in the judgment). State and federal courts alike rightly understand *Bajakajian*'s proportionality standard to apply not just to criminal-court sanctions, but

to civil forfeitures as well. *Timbs*, 134 N.E.3d at 26 (cataloguing authority). And as Justice Scalia remarked in the early '90s, the fact that "fines are a source of revenue" gives "good reason to be concerned that [they], uniquely of all punishments, will be imposed in a measure out of accord with the penal goals of retribution and deterrence." *Harmelin* v. *Michigan*, 501 U.S. 957, 979 n.9 (1991) (opinion of Scalia, J.).

Those concerns have only multiplied in the decades since, as all levels of government "increasingly depend heavily on fines and fees as a source of general revenue." *Timbs*, 586 U.S. at 154 (citation omitted). Nationwide, police departments rely on fines and forfeitures for their budgets. So, too, do prosecutors. In the most extreme instances, individual prosecutors are even given a personal financial stake in their forfeiture cases. *Sparger-Withers* v. *Taylor*, No. 21-cv-2824, 2024 WL 473719 (S.D. Ind. Feb. 7, 2024), *appeal pending*, No. 24-1367 (7th Cir.).

In turn, those bearing the brunt are most often our Nation's most vulnerable, "the poor and other groups least able to defend their interests." *Leonard* v. *Texas*, 580 U.S. 1178, 1180 (2017) (statement of Thomas, J., respecting the denial of certiorari). Five Members of the Court commented on this phenomenon just last year. *Culley* v. *Marshall*, 601 U.S. 377, 397 (2024) (Gorsuch, J., concurring); *id.* at 406-07 (Sotomayor, J., dissenting). More than ever, the Excessive Fines Clause stands as a key check on the power to punish. With a standard like Alaska's, however, it serves as no check at all.

3. This case is an ideal vehicle in which to decide the question presented. Each level of the Alaska judiciary addressed the excessiveness issue. Under the trial court's

view, Ken Jouppi prevailed; under the state supreme court's, he lost "as a matter of law." App. 2a. And as this petition comes to the Court, it is the rare excessive-fines case with no factual wrinkles. Having cleared the table of all possible fact disputes, the Alaska Supreme Court teed up the question presented perfectly: It deployed a standard that looked to the gravity of the defendant's crime only at the highest level of abstraction. Few excessive-fines cases will present the issue so sharply; a decision upholding the forfeiture of an airplane for a six-pack is a self-recommending candidate for review. The petition should be granted, the Alaska Supreme Court's starting-gate misconception corrected, and the case remanded for further proceedings.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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