No. 25-246

IN THE

Supreme Court of the United States

KENNETH JOHN JOUPPI,

Petitioner,

v.

STATE OF ALASKA,

Respondent.

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

BRIEF IN OPPOSITION

STEPHEN J. COX
Attorney General
TAMARA E. DELUCIA
Chief Assistant Attorney General
DONALD E. SODERSTROM
Assistant Attorney General
Counsel of Record
STATE OF ALASKA
OFFICE OF CRIMINAL APPEALS
310 K Street, Suite 702
Anchorage, AK 99501
(907) 269-6260
donald.soderstrom@alaska.gov

Counsel for Respondent

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QUESTION PRESENTED

A forfeiture 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). This standard is based on the recognition that "judgments about the appropriate punishment for an offense belong in the first instance to the legislature" and that "any judicial determination regarding the gravity of a particular offense will be inherently imprecise." *Id*. at 336 (citations omitted).

The question presented is whether the Alaska Supreme Court properly applied these principles, and the various factors *Bajakajian* considered, to the facts of petitioner's case.

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INTRODUCTION

Alaska faces unique difficulties in combating alcohol abuse and its consequences. Many remote communities in Alaska have limited law enforcement resources to respond to, for example, alcohol-fueled domestic violence. They also lack the public health resources to address other problems associated with alcohol abuse. Accordingly, the Alaska Legislature gave communities the option to ban alcohol. Given that many communities are accessible primarily by air, the legislature provided that any airplane used to illegally import alcohol into a dry community was subject to forfeiture.

In 2004, Beaver—a community off the road system and home to fewer than 100 people—voted to ban the possession, sale, and importation of alcohol. Kenneth Jouppi and his company, Ken Air, LLC, chose to ignore this decision, and they were convicted of alcohol importation for attempting to fly a passenger's alcohol to the community. The Alaska Supreme Court rejected an Excessive Fines Clause challenge to the forfeiture statute's application here. That fact-bound decision does not merit this Court's review.

Courts across the country apply a multi-factor test to determine whether a fine or forfeiture is grossly disproportional to the gravity of the offense. Jouppi does not claim that the four-part standard applied by the Alaska Supreme Court is wrong, only that the court misapplied settled law by giving too much weight to some factors and not enough weight to others. Such a request for error correction is not a ground for certiorari. *See* Sup. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of . . . the misapplication of a properly stated rule of law."). In an attempt to overcome this, Jouppi contends that the decision below widens a split

of authority by viewing the gravity of his offense "in the abstract" rather than on the facts of his case. But no such split exists, and the Alaska Supreme Court reached its conclusion by reviewing the specific facts of Jouppi's case alongside the legislature's objectives. That is how other courts have addressed similar claims, and that is what is required by *United States v. Bajakajian*, 524 U.S. 321 (1998).

This case is a poor vehicle to address Jouppi's concerns surrounding *civil* forfeiture. Pet. 3 (quoting *Sessions v. Dimaya*, 584 U.S. 148, 184 (2018) (Gorsuch, J., concurring in part and concurring in the judgment)). This is not a civil forfeiture case, it is a criminal case where Jouppi's culpability was proved to a jury beyond a reasonable doubt. Moreover, Alaska has abolished civil forfeiture if used in lieu of a criminal proceeding. Alaska Stat. § 09.55.700. Additionally, there are factual disputes regarding the extent of Jouppi's culpability and related wrongdoing. The Alaska Court of Appeals would have remanded the case for further factfinding, and the Alaska Supreme Court reached its conclusion by assuming disputed facts in Jouppi's favor.

In the end, the Alaska Supreme Court faithfully applied *Bajakajian* to the limited record before it. The petition should be denied.

STATEMENT

A. Legal Background

In *United States v. Bajakajian*, this Court held that a criminal *in personam* forfeiture is a "fine" within the meaning of the Excessive Fines Clause, which provides that "excessive fines [shall not be] imposed." 524 U.S. at 327-34 (quoting U.S. Const. amdt. VIII). The Court further ruled that a forfeiture is unconstitutional if it

is "grossly disproportional to the gravity of a defendant's offense." *Id*. at 334. Two considerations guide this standard. First, "judgments about the appropriate punishment for an offense belong in the first instance to the legislature." *Id*. at 336 (citing *Solem v. Helm*, 463 U.S. 277, 290 (1983); *Gore v. United States*, 357 U.S. 386, 393 (1958)). Second, "any judicial determination regarding the gravity of a particular criminal offense will be inherently imprecise." *Id*.

The defendant in *Bajakajian* failed to report that he was transporting more than $10,000 in currency when he tried to leave the country. *Bajakajian*, 524 U.S. at 324-25. The district court found that the entire amount of cash at issue—$357,144—was subject to forfeiture because it was "involved in" the offense. *Id*. at 325-26. The court found that the funds were not connected to any other crime, and the failure to report stemmed from "cultural differences" and "distrust for the Government." *Id*. at 326. The court believed that forfeiture of the full amount would be "extraordinarily harsh," so it ordered forfeiture of $15,000, which was three times the maximum fine under the Sentencing Guidelines. *Id*. at 326. The Ninth Circuit affirmed. 84 F.3d 334 (1996).

This Court first rejected the Government's argument that forfeiture of the entire amount was comparable to traditional civil *in rem* forfeitures that are not subject to the Excessive Fines Clause, as those forfeitures were limited to "the property actually used to commit an offense." *Id*. at 333 n.8 (citing *Austin v. United States*, 509 US. 602, 627-28 (1993) (Scalia, J., concurring in part and concurring in judgment)). Because the Government proceeded against the defendant *in personam* rather than against the currency *in rem*, the Excessive Fines Clause applied;

it was irrelevant whether the currency was an "instrumentality" (although the currency was not an instrumentality in any event). *Id*. at 333-34 & n.9.

Applying the gross disproportionality standard, the Court observed that the defendant's crime was "solely a reporting offense," as it would have been legal to transport the currency had it been reported. *Id*. at 337. Further, the cash was unrelated to other illegal activities, and the defendant was not Congress's target: "Whatever his other vices, respondent does not fit into the class of persons for whom the statute was principally designed: He is not a money launderer, a drug trafficker, or a tax evader." *Id*. at 338. The Court added that the maximum sentence under the Sentencing Guidelines was six months and a $5,000 fine, which "confirm[ed] a minimal level of culpability." *Id*. at 338-39. Other penalties authorized by Congress were "certainly relevant," but the Guidelines subjected the defendant to only a fraction of the maximum statutory penalty. *Id*. at 339 n.14. On top of that, the harm caused by the offense was "minimal," as the failure to report "affected only one party, the Government, and in a relatively minor way." *Id*. at 339. "Had [Bajakajian's] crime gone undetected, the Government would have been deprived only of the information that $357,144 had left the country." *Id*.

B. Facts and Procedural History

1. Alcohol abuse is not unique to Alaska, but Alaska faces unique difficulties combating it. Many remote communities are accessible primarily by air, and "the great distances, inclement weather, and lack of police services increase the dangers of alcohol abuse." *Burnor v. State*, 829 P.2d 837, 841 (Alaska Ct. App. 1992). The Alaska Legislature found that rural communities often lack law enforcement and health care facilities,

and neither the state government nor local governments could afford the economic costs associated with alcohol abuse. 1986 Alaska Sess. Laws ch. 80, § 1 (legislative findings). A series of studies in the 1970s led the legislature to adopt "local option" laws that allow voters to prohibit the possession, sale, or importation of alcohol in a community.

One study found that "64% of all criminal homicides, 34% of all forcible rape cases, and 41% of aggravated assault cases have been linked to alcohol abuse." *Abraham v. State*, 585 P.2d 526, 532 n.19 (Alaska 1978) (quoting National Council on Alcoholism, *Executive Summary of Alcohol Misuse and Alcoholism in Alaska*). Nonetheless, alcohol-related misdemeanors had the greatest financial impact on the criminal justice system, representing 77% of the cost of alcohol-related law enforcement, prosecution, court resources, and corrections resources. *Id*.

Other studies showed that Alaska's "rate of death due directly to alcoholism increased 153% from 1959 to 1975, and Alaska's alcoholism mortality rate in 1975 was 418% higher than the national average." *Harrison v. State*, 687 P.2d 332, 335 (Alaska Ct. App. 1984) (citing Analysis of Alcohol Problems Project, *Working Papers: Descriptive Analysis of the Impact of Alcoholism and Alcohol Abuse in Alaska, 1975*, vol. V at 14 (1977)). In rural areas, nearly 80% of violent crimes and more than half of property crimes were committed under the influence of alcohol. *Id*. at 335 (citing Alaska Judicial Council, *Alaska Felony Sentences: 1976-1979* at 45-48, 65-67 (1980)). The economic cost of alcohol abuse in 1975 was $131.2 million, *id*., and a modern study estimates the cost at over $2 billion. McDowell Group, prepared for Alaska Mental Health Trust Authority,

The Economic Costs of Alcohol Misuse in Alaska: 2019 Update (Jan. 2020).

In the wake of alcohol's destructive cost, the legislature followed a recommendation to allow rural villages to control alcoholic beverages. *Harrison*, 687 P.2d at 335 (citing Governor's Commission on the Administration of Justice, *Standards and Goals for Criminal Justice* at 41 (1976)). A majority of voters in a municipality or established village may vote to prohibit the sale, importation, and possession of alcohol to various degrees. Alaska Stat. § 04.11.491; *see also* Alaska Stat. § 04.11.493 (majority may vote to change local option); Alaska Stat. § 04.11.495 (majority may vote to remove local option).

A person commits the crime of importation if the person knowingly "send[s], transport[s], or bring[s]" alcohol into a local option community, or if the person attempts or solicits another to do so. Alaska Stat. § 04.11.499(a), (c). The offense is a misdemeanor if the quantity is less than 12 gallons of malt beverages (or lower quantities of wine or distilled spirits); the offense is a felony if the quantity is greater or the defendant has prior convictions. Alaska Stat. § 04.16.200(e). The law originally gave judges discretion to forfeit aircraft, watercraft, and motor vehicles used to commit the crime, but in 2004 the legislature amended the forfeiture statute to require forfeiture of aircraft. 2004 Alaska Sess. Laws ch. 124, § 11.

2. In 2004, the residents of Beaver voted to prohibit the possession, sale, and importation of alcohol. In April 2012, Helen Nicholia booked passage to Beaver with Kenneth Jouppi and his company, Ken Air, LLC. Jouppi and his company were under investigation, however, and Alaska State Troopers had a warrant for

his airplane.[1] The troopers waited until Jouppi loaded the plane and was about to take off before stopping him and serving the warrant. Pet. App. 33a. The troopers found nine gallons of beer on board. The troopers seized the plane and the beer, and Jouppi flew Nicholia to Beaver that same day on his second plane. Pet. App. 27a.

Jouppi, his company, and Nicholia were charged with misdemeanor importation. Nicholia pleaded guilty, and Jouppi and his company proceeded to trial.

The troopers testified that they "observed Jouppi opening and closing [Nicholia's] boxes and bags, and redistributing their contents to fill up the containers." *State v. Jouppi*, 397 P.3d 1026, 1029 (Alaska Ct. App. 2017). Some boxes were still open as Jouppi loaded them onto the plane. *Id*. When the troopers stopped the plane, they saw a six-pack of beer in plain view in a plastic grocery bag. *Id*. One trooper described how Jouppi would "have to be blind not to know what was on [the plane], and absolutely ignoring whatever he was putting in that airplane. . . . [P]ilots with that bad of eyesight just don't fly." *Id*. Jouppi, by contrast, claimed that he was not aware of any alcohol because Nicholia's cargo was in closed boxes and his policy was to avoid checking his passengers' cargo. 8/21/2013 Tr. 282-83, 287.

The jury was instructed that to be convicted Jouppi and his company had to act "knowingly" or with "deliberate ignorance" with respect to the alcohol on

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[1] The original investigation led to indictments for felony importation for Jouppi and his passenger on a previous flight. See R. 109. Jouppi pleaded guilty to a lower charge in *State v. Jouppi*, No. 4FA-13-00267CR. Jouppi's passenger in that case pleaded guilty to felony importation in *State v. Gray*, No. 4FA-13-00266CR.

board and "intentionally" with respect to its importation. R. 141-53.[2] The jury rejected Jouppi's defense and convicted him and his company.

At sentencing, Jouppi objected to a witness who would have testified about Jouppi's other misconduct and its impact around the State; Jouppi was concerned that the witness's testimony might affect Jouppi's pending felony case. R. 593. The court sustained Jouppi's objection but allowed troopers to testify about their investigation. One trooper described three prior instances in which Jouppi flew alcohol into different local option communities. R. 602-18. The second trooper had been working undercover as a pilot when a passenger wanted to fly five totes to an area between two local option communities. When asked if the totes contained alcohol, the passenger said he had made the trip ten times with Ken Air. R. 626-30.

In his sentencing remarks, the trial judge found that Jouppi "chose to ignore" Beaver's prohibition, R. 683, and that photos belied Jouppi's claim that the boxes had been closed with their flaps folded in. R. 685-86. Instead, "Jouppi chose not to see what was clearly visible … [and] he hurriedly packed the airplane because he, in fact, really did know what was in the box, and he wanted to get his plane in the air quickly so he could earn his fare." R. 686. Jouppi faced a minimum sentence of three days and a $1,500 fine and a maximum sentence of one year in jail and a $10,000 fine. Alaska Stat. § 04.16.200(g)(1)(A). The judge sentenced Jouppi to 180 days in jail with 177 suspended, a $3,000 fine with $1,500 suspended, and three years of probation. Pet. App. 5a.

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

The court initially ordered forfeiture of the airplane as required by statute, then declined because the alcohol never arrived in Beaver. The Alaska Court of Appeals reversed, holding that the statute requires forfeiture regardless of whether alcohol arrives at its intended destination. *Jouppi*, 397 P.3d at 1034-35.

3. On remand, Jouppi argued that forfeiture of the airplane would amount to an unconstitutional excessive fine. Following an evidentiary hearing, the district court made three clear factual findings: Jouppi owned the airplane, the airplane was worth $95,000, and there were nine gallons of beer on board. Pet. App. 168a. The court equivocated over Jouppi's culpability but "assume[d], without deciding, that defendants' culpability extends to all of the beer." Pet. App. 160a. While Jouppi's offense was "serious," it was "easy to imagine much more egregious" violations, and the harm was "low relative to other [importation] offenses." Pet. App. 161a. These observations and the $10,000 maximum fine Jouppi faced led the court to conclude that forfeiture would be unconstitutional. Pet. App. 168a.

4. On appeal, the Alaska Court of Appeals concluded that the district court's findings were incomplete or incorrect under *Bajakajian*. For example, the district court did not resolve whether Jouppi was aware of all the beer or only the six-pack, it did not consider whether the statute was aimed at offenders like Jouppi, it failed to address whether Jouppi's offense was related to other illegal activities, and it "refused to hear evidence on this issue." Pet. App. 44a-48a. The district court also did not consider the harm that would have been caused if Jouppi had not been stopped. Pet. App. 46a. The court of appeals acknowledged that forfeiture can be harsh, but the

history of Alaska's statute shows that the legislature intended it to be so. Pet. App. 48a-51a. The court remanded the case for additional factfinding and a fuller application of *Bajakajian*.

5. The Alaska Supreme Court vacated the court of appeals' judgment and held that forfeiture of Jouppi's airplane did not violate the Excessive Fines Clause. Pet. App. 1a-29a. The court noted *Bajakajian*'s two guiding principles: the legislature is primarily responsible for determining the appropriate penalties for criminal offenses, and judicial determinations about the gravity of an offense will be imprecise. Pet. App. 17a. Accordingly, a court may only find a penalty unconstitutional if it is "grossly" disproportional to the gravity of an offense—a standard that this Court has stated is highly deferential. Pet. App. 17a-18a (citing *Solem v. Helm*, 463 U.S. 277, 290 n.16 (1983); *Rummel v. Estelle*, 445 U.S. 263 (1980)).

Relying on decisions from across the country, the court identified four non-exclusive "*Bajakajian* factors" that guide the proportionality inquiry:

> (1) the nature and extent of the defendant's crime and its relation to other criminal activity, (2) whether the defendant falls among the class of persons for whom the statute was principally designed, (3) the other penalties that might be imposed on the defendant under the applicable provisions of law, and (4) the nature and extent of the harm caused by the defendant's offense.

Pet. App. 18a-19a (citations omitted). The court applied each of these factors by comparing Jouppi's conduct to this Court's discussion in *Bajakajian*.

First, the court considered "the nature and extent of the defendant's crime and its relation to other criminal activity." Pet. App. 19a. Jouppi's offense was more serious than Bajakajian's failure to report because Jouppi "knowingly transported a six-pack of alcohol in plain view while acting in his professional capacity as the operator of an air taxi company and the pilot of the airplane." Pet. App. 20a.

Second, the defendant in *Bajakajian* did not fall within the class of persons for whom the reporting statute was designed: money launderers, drug traffickers, and tax evaders. Pet. App. 20a (citing 524 U.S. at 338). In contrast, Jouppi was "clearly within the class of persons targeted by the statute: airplane owners and pilots who knowingly facilitate the importation of alcohol for consumption in a dry village." Pet. App. 20a. The legislature emphasized this by targeting aircraft over other types of conveyances. Pet. App. 21a-22a.

Third, the court compared the forfeiture to other potential penalties. In *Bajakajian*, the government sought a forfeiture more than 70 times the maximum fine for the offense, whereas Jouppi's airplane was only 9.5 times the maximum fine. Pet. App. 23a. This suggested that the forfeiture was not grossly disproportional. Pet. App. 23a (citing *United States v. Castello*, 611 F.3d 116, 123 (2d Cir. 2010) (upholding forfeiture over 40 times the maximum fine); *United States v. Mackby*, 339 F.3d 1013, 1016-19 (9th Cir. 2003) (upholding civil forfeiture approximately 10 times maximum fine); *United States v. Rafael*, 282 F. Supp. 3d 407, 413 (D. Mass. 2017) (same); *United States v. Finazzo*, 2014 WL 3818628, at *34-35 (E.D.N.Y. Aug. 1, 2014) (same)).

Fourth, the court considered the "nature and extent of the harm caused by the defendant's offense." Pet. App. 24a. In *Bajakajian*, the defendant's failure to report currency was minimal because it merely deprived the Government of information about an otherwise legal act. Pet. App. 24a (citing 524 U.S. at 339). The nature and extent of harm caused by Jouppi's illegal alcohol smuggling was far greater:

> Alcohol abuse in rural Alaska leads to increased crime; disorders, such as alcoholism; conditions, such as fetal alcohol spectrum disorder; and death, imposing substantial costs on public health and the administration of justice. Within this context, it is clear that the illegal importation of even a six-pack of beer causes grave societal harm. This factor strongly suggests that the forfeiture is not grossly disproportional.

Pet. App. 24a. The court concluded that "the forfeiture of Jouppi's airplane is not grossly disproportional to the gravity of his offense." Pet. App. 24a.

Finally, the court determined that no remand for further fact-finding was necessary. First, Jouppi was "clearly" within the class of offenders targeted by the statute, so no additional findings were needed on that issue. Pet. App. 25a. Second, although the trial court never determined whether Jouppi's culpability extended to all the beer, it would make no difference even if Jouppi was only responsible for one six-pack. "It is clear to us 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." Pet. App. 25a. Third, it was "not particularly relevant whether Jouppi's offense was part of a larger pattern of criminal activity

because 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." Pet. App. 26a. Fourth, even assuming a forfeiture cannot deprive a person of his livelihood, Jouppi failed to show that the forfeiture did so. Pet. App. 26a-27a. The court did not reach the State's argument that partial forfeiture would be appropriate if full forfeiture was unconstitutional. Pet. App. 3a.

REASONS FOR DENYING THE PETITION

I. There is no split of authority.

Jouppi does not contest the multifactor test used by the Alaska courts below, but he claims that in applying that test the Alaska Supreme Court improperly viewed the gravity of the offense in the abstract rather than based on the facts of Jouppi's case. That is incorrect. The Alaska Supreme Court properly looked at the facts of this case as well as the Alaska Legislature's goals in enacting the forfeiture statute. The Eleventh Circuit's forfeiture opinions, which Jouppi also criticize, likewise look to both the specific facts and the legislature's objectives. Jouppi has therefore failed to show that either court gives inadequate weight to an owner's particular circumstances or that a genuine split of authority exists.

1. Relying on *Bajakajian*, the Alaska Supreme Court stated that "whether a fine is constitutionally excessive calls for the application of a constitutional standard to the facts of a particular case." Pet. App. 10a (quoting *Bajakajian*, 524 U.S. at 337 n.10).

Applying this principle, the court considered the gravity of "*Jouppi's* alcohol importation offense," Pet. App. 10a (emphasis added), or "*his* offense," Pet. App. 16a, 24a (emphasis added). The court tied each

Bajakajian factor to Jouppi personally, including his role, his *mens rea*, and the value of his airplane. Pet. App. 19a-27a. The court even assumed—in Jouppi's favor—that his culpability extended only to one six-pack and that he had no related misconduct. The court considered the $10,000 maximum fine Jouppi himself faced, not the $50,000 fine he would have faced if he had prior convictions or if he had been carrying twelve gallons of beer instead of nine. Alaska Stat. § 04.16.200(h) ($10,000 minimum fine for felony importation); Alaska Stat. § 12.55.035(b)(4) ($50,000 maximum fine for class C felony). And because the plane was held in Jouppi's name rather than his company's, the court did not consider the $500,000 maximum fine that his co-defendant, Ken Air, LLC, faced in this very case. Alaska Stat. § 12.55.035(c)(1)(B).[3] Indeed, the court was willing to assume that a forfeiture could not constitutionally deprive Jouppi of his livelihood. Pet. App. 26a. Jouppi simply failed to produce any evidence that the forfeiture deprived him of his livelihood. Pet. App. 27a. Far from suggesting a reluctance to consider the facts of each case, this confirms a willingness to do so. Jouppi obtained few factual findings, and the Alaska Supreme Court fully considered the limited factual findings before it.

2. Considering the facts of an individual case does not mean ignoring the "broad authority that legislatures necessarily possess in determining the types and limits of punishments for crimes." *Bajakajian*, 524 U.S. at 336. Indeed, the Court suggested that its reasoning in *Bajakajian* might have been different if Bajakajian had been involved with the serious crimes Congress was trying to address, like money laundering, drug

[3] Organizational defendants are subject to higher fines because they do not face the prospect of jail time.

trafficking, or tax evasion. *Id.* at 338. The Court could not determine whether Bajakajian was Congress's intended target without first considering the statute's purpose.

The Eleventh Circuit follows *Bajakajian*. In an early post-*Bajakajian* case, the court acknowledged that Congress and the Sentencing Commission are competent to make policy decisions regarding appropriate fines. *United States v. 817 N.E. 29th Drive*, 175 F.3d 1304, 1309 (11th Cir. 1999). Nonetheless, the court recognized its "duty under the Eighth Amendment independently to examine fines for excessiveness." *Id*. at 1310. The court considered the claimant's circumstances before concluding that forfeiture was not excessive. *Id*. However, the court rejected the argument that forfeiture would impose a "special hardship" due to the claimant's unique financial circumstances. *Id*. at 1311. More recently, the author of *817 N.E. 29th Drive* stated that excessiveness hinges on "an analysis of an individual defendant with individual characteristics and an individual crime." *Yates v. Pinellas Hematology & Oncology, P.A.*, 21 F.4th 1288, 1334 (11th Cir. 2021) (Tjoflat, J., concurring in part and dissenting in part). Two other judges similarly suggested that courts should consider an offender's personal circumstances to determine whether a fine or forfeiture would deprive him of his livelihood. *Id*. at 1318-24 (Newsom, J., joined by Jordan, J., concurring). To the extent Jouppi relies on these judges' observations, concurring opinions such as these do not create a circuit split.

Just this year, the Eleventh Circuit reiterated that it does not view the gravity of an offense in the abstract. The district court found that Isac Schwarzbaum acted with "willful blindness" or "recklessness" when

he failed to report foreign bank accounts to the IRS for three years. *United States v. Schwarzbaum*, 127 F.4th 259, 268 (11th Cir. 2025). On appeal, the Eleventh Circuit considered whether the fines were excessive "as applied to Schwarzbaum himself," and it "engage[d] in a careful investigation of the FBAR [Report of Foreign Bank and Financial Accounts] penalties assessed against Schwarzbaum's accounts, one by one." *Id*. at 276. The court concluded that the statutory penalties were excessive for smaller accounts but not for larger accounts. *Id*. at 277-80. For accounts whose balances were unknown, Schwarzbaum simply failed to establish excessiveness. *Id*. at 280.

Unlike the defendant in *Bajakajian*, Schwarzbaum was "precisely" the type of defendant the penalties were aimed at, *id*. at 281, and his own willful blindness placed him "squarely in the [FBAR statute's] crosshairs." *Id*. at 282 (citation omitted). The potential criminal fines paled in comparison to the civil penalties, but the potential jail terms showed the seriousness of the offense. *Id*. at 282-83 (citing *Bittner v. United States*, 598 U.S. 85, 103 (2023) (each report carries "the possibility of a $250,000 fine and five years in prison")). And the harm caused by nonreporting is serious, as secret foreign bank accounts impact the American economy and may be related to a variety of illegal actions. *Id*. at 283. The court reiterated that it was not considering a "hypothetical" penalty, but "only whether the penalties *here* are grossly disproportionate as applied to Schwarzbaum." *Id*.

Like the Alaska Supreme Court, the Eleventh Circuit considers the facts of a particular case in an as-applied challenge. Indeed, the Eighth Circuit relied on the Eleventh Circuit's decision in *Yates* for the proposition that "substantial deference" to the

legislature does not mean "undue deference." *United States ex rel. Grant v. Zorn*, 107 F.4th 782, 800 (8th Cir. 2024). Any variations among decisions occur *because* courts are considering the unique circumstances of each case.

3. The purported split simply reflects natural differences among cases—even cases involving the same statutory offense. For example, the Seventh Circuit reached different conclusions about two defendants who structured currency transactions to avoid reporting requirements. Compare *United States v. Malewicka*, 664 F.3d 1099 (7th Cir. 2011) ($279,500 forfeiture not excessive when defendant committed multiple violations), with *United States v. Abair*, 746 F.3d 260 (7th Cir. 2014) (reversing conviction on other grounds and suggesting that forfeiture of $67,000 proceeds from sale of home may be excessive for "a one-time offender who committed an unusually minor violation … not tied to other wrongdoing").

Variation among cases is inevitable. Some cases involve instrumentalities, while others involve proceeds or other property, or a monetary fine for a civil violation. Some owners develop extensive factual records, and others do not. *See United States v. Wagoner Cnty. Real Estate*, 278 F.3d 1091, 1102 (10th Cir. 2002) (district court failed to make sufficient findings for review). Some statutes have a clear legislative purpose, and others have none. For example, in *Pimental v. City of Los Angeles*, 115 F.4th 1062, 1065 (9th Cir. 2024) (*Pimental II*), the City "provided no evidence" and did not rebut testimony that a fee "was established solely to fill up the City's coffers." Cases involving such failures of proof do little to bolster claims of a circuit split.

Some factors are better suited to examination of the facts of a particular case. For example, the extent of a crime and the offender's culpability depend on "the specific actions of the violator" rather than an "abstract view of the violation." *Thomas v. County of Humboldt*, 124 F.4th 1179, 1193 (9th Cir. 2024). Likewise, "[t]he determination of the maximum fine must be made on a case-by-case basis." *United States v. $100,348.00 in U.S. Currency*, 354 F.3d 1110, 1123 (9th Cir. 2004). On the other hand, a court need not spend much time contemplating legislative policy when a defendant's offense is serious on its own facts. *United States v. Jalaram, Inc.*, 599 F.3d 347, 356-57 (4th Cir. 2010) ("Because Jalaram's offense was serious and its individual culpability significant, it cannot meet its burden.").

Alaska's home circuit has noted that courts may consider "how the violation erodes the government's purposes for proscribing the conduct" alongside "the specific actions of the violator." *Pimental v. City of Los Angeles*, 974 F.3d 917, 923 (9th Cir. 2020) (*Pimental I*); *see also United States v. $132,245.00 in U.S. Currency*, 764 F.3d 1055, 1058 (9th Cir. 2014) ("We refuse to second-guess Congress's determination that bulk cash smuggling is a serious crime."); *United States v. Mackby*, 339 F.3d 1013, 1018-19 (9th Cir. 2003) (government suffered "harm to the administration and integrity of Medicare"); *Vasudeva v. United States*, 214 F.3d 1155, 1161 (9th Cir. 2000) (trafficking in food stamps is serious even if retailers do not redeem the stamps). Contrary to Jouppi's claims, the Ninth Circuit considers a statute's purpose as well as the facts of a particular case.

Other federal courts are in accord, considering both the statutory purpose and the circumstances of the

offender. *See, e.g., United States v. Facteau*, 89 F.4th 1, 44-45 (1st Cir. 2023) (considering "the culpability of the individual defendant" as well as the "damage to the government's regulatory interests"); *von Hofe v. United States*, 492 F.3d 175, 186-87 (2d Cir. 2007) (an offense may be serious even if the offender's conduct is "difficult to quantify in objective terms"); *Yskamp v. DEA*, 163 F.3d 767, 773 (3d Cir. 1998) (upholding forfeiture of $950,000 plane used to transport cocaine; acknowledging deference to legislature while considering "overall circumstances" and the owner's lack of precautions to prevent illegal use); *United States v. Wallace*, 389 F.3d 483, 487 (5th Cir. 2004) (upholding forfeiture of $30,000 plane after considering owner's culpability as well as Congress's intent to forfeit unregistered aircraft regardless of whether they are used to carry illegal drugs); *United States v. Carpenter*, 317 F.3d 618, 628 (6th Cir. 2003), *opinion reinstated in relevant part*, 360 F.3d 591 (6th Cir. 2004) (gravity of manufacturing marijuana did not depend solely on the small amount recovered, but on the enterprise if law enforcement had not intervened and the "well-documented negative effects of drug manufacture and distribution").

State courts also consider "the seriousness of the statutory offense" as well as "the seriousness of the specific crime committed." *State v. Timbs*, 169 N.E.3d 361, 373-74 (Ind. 2021) (*Timbs III*) ("distributing or possessing even small amounts of drugs threatens society"); *see also State v. Real Property at 633 East 640 North*, 994 P.2d 1254, 1260 (Utah 2000) (considering the "broad-scale effect of drug trafficking on society" and the cost to the criminal justice system); *One 1995 Toyota Pick-Up Truck v. District of Columbia*, 718 A.2d 558, 566-66 (D.C. 1998) (noting problems of "great civic concern" involving public health and safety). *But see*

Commonwealth v. 1997 Chevrolet, 160 A.3d 153, 190 (Pa. 2017) ("generic considerations of harm" are "largely unhelpful" because "all crimes have a negative impact in some general way to society").

4. Because the Alaska Supreme Court applied the same rule that Jouppi advocates for, there is no reason to believe this case would have been decided differently if it had been heard in another jurisdiction. Jouppi cites several Ninth Circuit decisions, but merely for the generic proposition that courts should look to the facts of the defendant's case. See Pet. 15, 20-21. He does not point to the actual decisions in those cases, none of which shows that the Ninth Circuit would have ruled in Jouppi's favor had Jouppi's case been before that court.

For example, in one case the Ninth Circuit reversed a motion to dismiss, finding that plaintiffs alleged a "plausible" claim under the Excessive Fines Clause. *Thomas*, 124 F.4th at 1192-94. In another case, the Ninth Circuit upheld a fine because the defendant "acted with reckless disregard as to the source of the [unreported] funds," *$100,348.00 in U.S. Currency*, 354 F.3d at 1123, the same type of analysis that the Alaska Supreme Court conducted when it determined that Jouppi "knowingly transported a six-pack of alcohol in plain view." Pet. App. 20a. Nor does a case explaining that a forfeiture is "not trivial," because "neither were [the defendant's] crimes," *United States v. Beecroft*, 825 F.3d 991, 1001 (9th Cir. 2016), conflict with the decision that "the illegal importation of even a six-pack of beer [to local option communities] causes grave societal harm." Pet. App. 24a. The Ninth Circuit has observed that courts should not put the full responsibility of a social problem on each 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. But such cautions say little about the effect that alcohol importation has on small and isolated communities that have voted to prohibit alcohol, or whether the forfeiture of the instrument used to commit the crime is grossly disproportional to the offense.

Likewise, the comparison between the forfeiture of Jouppi's airplane and Tyson Timbs's Land Rover does not hold up. Pet. 3, 31. The State of Indiana filed a civil forfeiture action against the $35,000 Land Rover Timbs used to illegally buy and sell narcotics. The Indiana Supreme Court eventually affirmed the trial judge's conclusion that forfeiture would be unconstitutional. *Timbs III*, 169 N.E.3d 361. The court applied a three-part test that included multiple subparts. *Id*. at 368-69. In doing so, the court noted the extensive findings about Timbs's "journey through addiction, recovery, and reintegration, as well as the hardships created by the State's seizure of his vehicle" and concluded that Timbs had "met the high burden of showing gross disproportionality." *Id*. at 370-71. But the court emphasized the narrowness of its decision:

> To be sure, the Land Rover's forfeiture is not unconstitutional just because Timbs was poor. Or because he suffered from addiction. Or because he dealt drugs to an undercover officer and not someone who would use them. And it's not simply because the vehicle's value was three-and-a-half times the maximum fine for the underlying offense. Or because he received the minimum possible sentence for his crime and wasn't a sophisticated, experienced dealer. Or because the car, his only asset, was essential to him reintegrating into

> society to maintain employment and seek treatment. Rather, it's the confluence of **all** these facts that makes Timbs the unusual claimant who could overcome the high hurdle of showing gross disproportionality.

Id. at 376.

Here, in contrast, Jouppi was a career pilot and a business owner who intentionally aided his customers to import alcohol to dry communities "so he could earn his fare." R. 686. Jouppi flew his passenger to Beaver that same day on his second plane, and the trial court allowed Jouppi to keep possession of the first plane throughout most of the appellate proceedings. R. 505-06, 524-25. This case does not approach the confluence of factors that existed in *Timbs*.

Nor has Jouppi shown that his case would be resolved differently anywhere else. Alcohol abuse is a serious problem in rural Alaska, and airplanes are sometimes the only realistic means to commit the crime of alcohol importation. In contrast, a personal vehicle's contribution to the offense of soliciting prostitution is to cause traffic congestion and noise, *One 1995 Toyota Pick-Up Truck*, 718 A.2d at 563, and the offense itself has "historically been treated as a minor crime." *Id*. at 565. Although real property may be an instrumentality of an offense, an airplane is more instrumental to importation than a home is to drug possession. *Real Property at 633 East 640 North*, 994 P.2d at 1257 (assuming that real property was an instrumentality). This is not a case where the government sought to forfeit the home and personal vehicle of a woman based on the actions of her adult son. *1997 Chevrolet*, 160 A.3d at 158-59. Jouppi was convicted for his own knowing and intentional

misconduct, and forfeiture removes the business asset that was the means used to commit the offense.

II. This case is a poor vehicle for review.

Jouppi argues that this case is an ideal vehicle for review because it involves "the forfeiture of an airplane for a six-pack." Pet. 33. But the Alaska Supreme Court assumed that Jouppi was responsible only for a six-pack because the record was incomplete, even though it was Jouppi's burden to create a record and prove a constitutional violation. The Indiana Supreme Court correctly noted that "if an owner does not make certain showings on these matters, the court may determine that the owner failed to show gross disproportionality." *State v. Timbs*, 134 N.E.3d 12, 36 (Ind. 2019) (*Timbs II*). *See also State v. O'Malley*, 206 N.E.3d 662, 672 (Ohio 2022) (defendant must produce evidence that statute is unconstitutional as applied).

The district court initially found that Jouppi knew exactly what he loaded onto his plane, R. 686, and then vacillated over the issue a few years later. Pet. App. 160a. The court of appeals recognized that the record was incomplete, Pet. App. 44a-48a, and the Alaska Supreme Court held that Jouppi failed to meet his burden even assuming facts in Jouppi's favor. Pet. App. 25a-26a. Given this underdeveloped record, this case is a poor candidate for review.

There is no reason to think that Jouppi could make the factual showings on which his claim rests were this Court to reverse and remand. Not only has Jouppi already failed to make such a showing, the evidence is against him. The idea that Jouppi only knew about a six-pack is a fallback position Jouppi adopted after the trial judge and jury rejected his defense, and it is contrary to his own testimony disavowing knowledge

of *any* alcohol. Jouppi also testified that he consciously avoided checking his passengers' cargo, 8/21/2013 Tr. 271, and sometimes he did not even get their names, R. 641, adopting willful blindness as a business model and helping alcohol flow into local option communities. On the *Bajakajian* factor of related misconduct, the State showed that Jouppi transported his passengers' alcohol on other occasions. R. 602-41. Jouppi objected to additional evidence of his related misconduct and its effect on Alaskans precisely because he was worried about his pending felony importation case. R. 593. Although Jouppi now argues that courts must consider the unique facts of each case, he fought against the creation of a complete factual record. Because the Alaska Supreme Court likely "would have reached the same conclusion" on a full evidentiary record, certiorari is unwarranted. *See, e.g., Hittson v. Chatman*, 576 U.S. 1028 (2015) (Ginsburg, J., concurring in the denial of certiorari).

Finally, Jouppi argues that this "Court's intervention is urgently needed now, . . . , in an era of 'more and more civil laws bearing more and more extravagant punishments.'" Pet. 3 (quoting *Sessions v. Dimaya*, 584 U.S. 148, 184 (2018) (Gorsuch, J., concurring in part and concurring in the judgment)). *See also* Pet. 31-32 (discussing concerns with "civil forfeitures"). But, of course, this case does not involve a civil forfeiture; it involves a criminal forfeiture imposed after Jouppi and his company were convicted by a jury. Indeed, in Alaska "[c]ommon law civil in rem forfeiture actions are abolished if used instead of a criminal proceeding." Alaska Stat. § 09.55.700. This case would be an odd vehicle through which to address any concerns about civil forfeitures.

III. The Alaska Supreme Court decision was correct.

The Alaska Supreme Court applied *Bajakajian* at every step and concluded that Jouppi "failed to establish that forfeiture would be unconstitutionally excessive." Pet. App. 2a. The court applied four factors derived from *Bajakajian*, factors with which Jouppi takes no issue:

> (1) the nature and extent of the defendant's crime and its relation to other criminal activity, (2) whether the defendant falls among the class of persons for whom the statute was principally designed, (3) the other penalties that might be imposed on the defendant under the applicable provisions of law, and (4) the nature and extent of the harm caused by the defendant's offense.

Pet. App. 18a-19a. Jouppi has not shown any error in the Alaska Supreme Court's application of those factors.

1. Jouppi's offense was serious and related to other criminal activity. The Alaska Supreme Court noted that Jouppi acted knowingly and in his professional capacity as a pilot and business owner, and there was alcohol in plain view. Pet. App. 19a-20a. Thus, his offense was more serious than in *Bajakajian*, where the defendant merely failed to report cash due to fear stemming from cultural differences. Pet. App. 19a.

The court reached this conclusion even without considering the evidence that Jouppi consciously avoided searching passengers' cargo. Jouppi saw the alcohol in this case, but his general policy of willful blindness weighs against him. *Cf. Global-Tech Appliances, Inc. v. SEB S.A.*, 563 U.S. 754, 766 (2011) ("[P]ersons who know enough to blind themselves to

direct proof of critical facts in effect have actual knowledge of those facts."); *United States v. Castello*, 611 F.3d 116, 121-23 (2d Cir. 2010) (defendant's repeated omissions "enabled his customers to commit various acts of fraud"); *United States v. Collado*, 348 F.3d 323, 327 (2d Cir. 2003) (willful blindness does not entitle owner to avoid forfeiture); *United States v. Ahmad*, 213 F.3d 805, 816 (4th Cir. 2000) (defendant structured transactions to avoid reporting requirement).

It was also Jouppi's burden to show that he had no related misconduct. *See United States v. Jose*, 499 F.3d 105, 112 (1st Cir. 2007) ("Although it is true that the district court did not expressly find that the funds *were* related to illegal activities, it is Jose who bears the burden of showing that the forfeiture is unconstitutional."); *United States v. $132,245 in U.S. Currency*, 764 F.3d 1055, 1058 n.1 (9th Cir. 2014) (defendant "has the burden of showing that the money is not connected to other illegal activity"). Jouppi cannot make that showing, as his related misconduct is what led to the charges in this case—Jouppi was not caught because of his passenger, his passenger was caught because she hired Jouppi.

2. The statute targets persons like Jouppi. The defendant in *Bajakajian* did not fit into "the class of persons for whom the statute was principally designed." 524 U.S. at 338. In contrast, Jouppi was precisely the type of person for whom Alaska's forfeiture statute was designed. Jouppi was the owner and sole pilot for a company that flew into local option communities. If the statute does not apply to Jouppi, it is difficult to imagine who its target might be.

Moreover, it is not realistic (perhaps impossible) to walk, or even to drive, to many local option communities, and for that reason the legislature targeted

airplanes over other conveyances like the family car. *Cf. Timbs II*, 134 N.E.3d at 30 ("the distance Timbs drove to the sale may have been short, and perhaps Timbs could have walked"). "The legislature's differential treatment suggests that it viewed the gravity of aircraft-facilitated importation as more severe than other methods of unlawful importation." Pet. App. 22a. It is reasonable to require forfeiture of property that, in many cases, is necessary to commit the crime—especially when Jouppi did just that.

3. The statutory penalties show that the offense is serious. Courts often compare the value of forfeitable property to the maximum fine for an offense. In addition to forfeiture, Jouppi faced a minimum sentence of three days and a $1,500 fine. Alaska Stat. § 04.16.200(g)(1)(A). This is more than some felons face in Alaska, as there are few mandatory fines and a first-time class C felony carries a range of zero to two years. Alaska Stat. § 12.55.125(e)(1). Jouppi's maximum possible sentence was one year, Alaska Stat. § 12.55.135(a), and a $10,000 fine, Alaska Stat. § 12.55.035(b)(5) (2012). A ratio of less than ten to one between the property's value and the maximum fine is not grossly disproportional. *See, e.g., Castello*, 611 F.3d at 123 (40 times); *United States v. Cheeseman*, 600 F.3d 270, 284-85 (3d Cir. 2010) (7 to 70 times the Guideline range and 2 times the statutory maximum); *United States v. Mackby*, 339 F.3d at 1016-19 (10 times); *O'Malley*, 206 N.E.3d at 677 (11 times). Courts should also remember that the legislature might have imposed a higher fine or additional jail time if forfeiture were not mandatory. *O'Malley*, 206 N.E.3d at 680-85. And here, the imposition of a suspended fine, half a year of suspended jail time, and three years of probation shows that Jouppi's offense was not at the low end of importation offenses.

Additionally, the jury convicted Jouppi's company, which faced a maximum fine of $500,000. Alaska Stat. § 12.55.035(c)(1). An airplane is likely to be a business asset, and a businessman should not be able to make himself and his company forfeiture-proof by holding assets in his own name.

4. Alcohol importation to Alaska's dry communities causes serious harm. The same problems that spurred the local option laws in 1980 continue today: "increased crime; disorders, such as alcoholism; conditions, such as fetal alcohol spectrum disorder; and death, imposing substantial costs on public health and the administration of justice." Pet. App. 24a. Such health and safety concerns are "far greater" than the loss of information at issue in *Bajakajian*. Pet. App. 24a. Regardless of the amount of alcohol Jouppi was aware of, the result would have been the same if he had not been stopped: all the alcohol on board would have arrived in Beaver. Pet. App. 46a; *cf. Bajakajian*, 524 U.S. at 339 (considering harm if defendant had succeeded); *The Emily*, 22 U.S. 381 (1824) (affirming forfeiture of slave ships that had been fitted out but had not left port); *Timbs III*, 169 N.E.3d at 375 (drug-dealing was not "victimless" merely because sales were to an undercover officer). An offender is no less culpable simply because police intervene.

Nor is the harm at issue solely the harm springing from alcohol arriving in a dry community. Smuggling is an inherently difficult offense to detect, and law enforcement must patrol Alaska's vast wilderness. *Cf. Cook County v. United States ex rel. Chandler*, 538 U.S. 119, 130-31 (2003) (injury to the government includes the costs of detection and investigation). Jouppi's business practices also give him an unfair advantage over other charter companies. Pet. App. 44a. Jouppi

has not shown that forfeiture is grossly disproportional to the gravity of his offense.

5. An additional factor, not considered by the Alaska Supreme Court, also weighs in favor of forfeiture here. The Alaska Supreme Court recognized that under *Bajakajian* the forfeiture of an instrumentality is subject to the Eighth Amendment if the State proceeds *in personam*. Pet. App. 12a-16a. The court did not further analyze the property's relation to the crime except to note that the legislature specifically targeted airplanes over other conveyances. Pet. App. 21a-22a. But even in an *in personam* proceeding, a close relationship between the property and the offense suggests that forfeiture is not excessive. *See Austin*, 509 U.S. at 627 (Scalia, J., concurring in part and concurring in judgment) ("Scales used to measure out unlawful drug sales, for example, are confiscable whether made of the purest gold or the basest metal."); *von Hofe v. United States*, 492 F.3d 175, 184 (2d Cir. 2007) (considering "the property's role in the offense"); *O'Malley*, 206 N.E.3d at 679 ("[I]t would defy common sense for us to ignore the fact that the General Assembly's directive is aimed at the vehicle used to commit the offense.").

An "instrumentality" is property that was historically subject to *in rem* forfeiture as "the actual means by which an offense was committed." *Bajakajian*, 524 U.S. at 333 n.8 (citing *Austin*, 509 US. at 627-28 (Scalia, J., concurring in part and concurring in judgment)). The Court has distinguished between unreported cash, which is not an instrumentality, and a vehicle used to transport goods, which is. "Cash in a suitcase does not facilitate the commission of [a failure to report] as, for example, an automobile facilitates the transportation of goods concealed to avoid taxes." *Bajakajian*, 524 U.S.

at 334 n.9. Unlike the cash, the automobile is "the actual means by which the criminal act is committed." *Id*.

Instrumentalities may be forfeited on the theory that "the property, whether or not illegal or dangerous in nature, is hazardous in the hands of this owner because either he uses it to commit crimes, or allows others to do so." *United States v. Ursery*, 518 U.S. 267, 294 (1996) (Kennedy, J., concurring). True instrumentality forfeitures were considered nonpunitive and therefore "outside the domain of the Excessive Fines Clause." *Bajakajian*, 524 U.S. at 331 (citing *The Palmyra*, 12 Wheat. 1, 14-15 (1827); *Dobbins's Distillery v. United States*, 96 U.S. 395 (1877); *Origet v. United States*, 125 U.S. 240 (1888); *Van Oster v. Kansas*, 272 U.S. 465 (1926); *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 683-84 (1974); *Taylor v. United States*, 44 U.S. 197, 210 (1845)).

Forfeiture of an airplane is comparable to forfeitures of ships, which have been authorized for hundreds of years. *See, e.g., C.J. Hendry Co. v. Moore*, 318 U.S. 133, 138 n.3 (1943) ("Statutory provision for the forfeiture of nets or boats used in unlawful fishing may be found as early as 1285."); *The Palmyra*, 12 Wheat. at 14. After purchasing Alaska, the Federal Government wasted no time enacting and enforcing alcohol laws in the territory, including the forfeiture of ships carrying alcohol to Alaska. § 4, 15 Stat. 240, 241 (1868); *The Louisa Simpson*, 15 F. Cas. 953 (D. Or. 1871) (ship was forfeited for carrying distilled spirits). Federal law authorized the forfeiture of aircraft used to violate customs or public health laws in Alaska well before statehood. Compiled Laws of Alaska (1949), § 32-1-8. The law at issue here follows those that have been "a fixture of Alaska law for over 150 years." Pet. App. 66a (Mannheimer, J., concurring in part and dissenting in part).

The forfeiture at issue is subject to the Eighth Amendment because the State proceeded *in personam*, but the statute only reaches the instrumentality of the offense. The nature of the property and the history of similar forfeitures weigh against Jouppi's claim.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

STEPHEN J. COX
Attorney General
TAMARA E. DELUCIA
Chief Assistant Attorney General
DONALD E. SODERSTROM
Assistant Attorney General
Counsel of Record
STATE OF ALASKA
OFFICE OF CRIMINAL APPEALS
310 K Street, Suite 702
Anchorage, AK 99501
(907) 269-6260
donald.soderstrom@alaska.gov

Counsel for Respondent

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