No. 25-246

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

REPLY BRIEF FOR THE PETITIONER

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Cases:

Statutes:

Other Authorities:

INTRODUCTION

The State of Alaska buries its key concession at page fourteen. There it acknowledges the import of the decision below: that the Alaska Supreme Court did indeed bless the forfeiture of an airplane based on "one six-pack and . . . no related misconduct." Opp. 14. Far from a "fact-bound" application of an uncontroversial legal rule (Opp. 1), that decision reflects a stark break with the excessive-fines standard of this Court and many others. A key input for any excessive-fines analysis is "the gravity of the defendant's offense." *United States* v. *Bajakajian*, 524 U.S. 321, 336-37 (1998). But where other courts "review the specific actions of the violator rather than [take] an abstract view of the violation," *Thomas* v. *County of Humboldt*, 124 F.4th 1179, 1193 (9th Cir. 2024) (citation omitted), the Alaska Supreme Court inverts that premise.

The State denies the split, but its own account confirms how far afield the decision below strayed. The State insists, for example, that there remain "factual disputes regarding the extent of Jouppi's culpability and related wrongdoing." Opp. 2. But if that's true, it's only because the extent of Ken Jouppi's culpability did not matter under the Alaska Supreme Court's standard. In denying that the Eleventh Circuit's approach is similarly inverted, moreover, the State mistakes dissents for concurrences and concurrences for majorities. Only thus can it portray lower-court precedent as anything but fractured.

The need for the Court's intervention is acute. "For good reason, the protection against excessive fines has been a constant shield throughout Anglo-American history." *Timbs* v. *Indiana*, 586 U.S. 146, 153 (2019). Under a standard like Alaska's, however, it is no shield, but a blank check for the government. The facts here prove the point. A plane for a six-pack. Twenty-seven years since

the Court's first and last decision addressing the standard for securing the right to be free from excessive fines, this case presents a clean, compelling candidate for review.

ARGUMENT

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

Many state and federal courts have adopted an excessiveness standard whose premise is "defendant-culpability focused, rather than centered on the severity of the crime in the abstract." *Commonwealth* v. *1997 Chevrolet*, 160 A.3d 153, 189 (Pa. 2017). Meanwhile, a minority of courts—most notably, the Alaska Supreme Court and the Eleventh Circuit—start from a different premise, evaluating the gravity of a defendant's offense at an extraordinary level of generality. The State appears not to contest our account of the majority view (Opp. 20) but instead strains to harmonize that approach with the standard of Alaska and the Eleventh Circuit. Those efforts are unavailing.

1. In denying the split, the State maintains that the Alaska Supreme Court "applied the same rule that Jouppi advocates for." Opp. 20. But the court's opinion speaks for itself: Everything it said about the gravity of Jouppi's offense would apply equally to any other person defending against the forfeiture statute—from the fact that the statute was violated at all ("[h]e knowingly transported a six-pack of alcohol . . . "); to a rote comparison of the plane's value with "the maximum fine that could have been imposed" on a worst-case offender; to an evaluation of harm based, not on the record, but on "legislative history." App. 20a, 23a, 25a n.94. The upshot: one red flag after another that the court's standard "center[s] on the severity of the crime in the abstract." *1997 Chevrolet*, 160 A.3d at 189;

see also Opp. 19-20 (granting that Pennsylvania's standard differs from Alaska's).

The State's brief confirms that flawed premise. As the State acknowledges, for instance, the Alaska Supreme Court accepted that Jouppi "had no related misconduct." Opp. 14. This Court and many others treat that fact as "highly relevant to the determination of the gravity of [a defendant's] offense." *United States* v. *Bajakajian*, 524 U.S. 321, 338 n.12 (1998); *see*, *e.g.*, *State* v. *Timbs*, 134 N.E.3d 12, 37 (Ind. 2019). In Alaska? "[N]ot particularly relevant." App. 26a.

Along similar lines, the State observes that the Alaska Supreme Court's standard measures the value of the challenged forfeiture against the "maximum fine" that could have been imposed. Opp. 14. Yes—and other courts reject that rote approach. *E.g.*, *1997 Chevrolet*, 160 A.3d at 187, 190; *State* v. *Real Prop.*, 994 P.2d 1254, 1259, 1260-61 (Utah 2000). A "maximum statutory penalty" might offer insight about the culpability in the abstract of "those who commit the worst variants of the crime." *State* v. *Timbs*, 169 N.E.3d 361, 375 (Ind. 2021) (citation omitted). But it conveys little about "an individual offender's culpability or the gravity of the actual offense giving rise to forfeiture." *von Hofe* v. *United States*, 492 F.3d 175, 187 (2d Cir. 2007).

The State contends that the Alaska Supreme Court's standard is not as abstract as it may seem, but merely reflects due consideration of "the legislature's objectives." Opp. 2. Yet while "the statute's purpose" (Opp. 15) may inform the analysis of the gravity of a defendant's offense, it is not the *entirety* of the analysis. Were the standard otherwise, Hosep Bajakajian himself would have lost. Pet. 27-28. And again, that is where Alaska sets itself apart. As the State notes, courts like Indiana's, Utah's, Pennsyl-

vania's, and D.C.'s—plus federal courts like the Ninth Circuit—acknowledge that criminal laws address "problems of 'great civic concern' involving public health and safety." Opp. 19. But their standard nonetheless "place[s] its primary emphasis on the culpability of [the defendant] himself," not "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). Only thus can courts fulfill the Excessive Fines Clause's basic promise: ensuring that no one fine "greatly outweighs [the defendant's] particular contribution" to "multi-faceted problems." *Id.* at 566. Under Alaska's standard, meanwhile, it suffices to declare that alcohol abuse is a grave social ill to justify forfeiting an airplane for a six-pack.

Similarly unpersuasive are the State's assertions that "[t]he purported split simply reflects natural differences among cases" and that such "[v]ariation . . . is inevitable." Opp. 17. In fact, the defect in the standard developed below is that variation is *not* inevitable. For unlike in other jurisdictions, "the specific actions of the violator" simply don't factor into Alaska's analysis. *Thomas* v. *County of Humboldt*, 124 F.4th 1179, 1193 (9th Cir. 2024) (citation omitted). Nor does the State deny that defendants who prevailed in Indiana, D.C., Utah, and elsewhere would surely have lost under the standard of Alaska. Like alcohol abuse (Opp. 4-6, 28), drug abuse, too, has "broad-scale effect[s]" on society. *Real Prop.*, 994 P.2d at 1260. As does prostitution. *1995 Toyota Pick-Up*, 718 A.2d at 566. And Bank Secrecy Act violations. *Bajakajian*, 524 U.S. at 350-51 (Kennedy, J., dissenting). Even speeding. Nat'l Highway Traffic Safety Admin., *The Economic and Societal Impact of Motor Vehicle Crashes, 2019 (Revised)* 125-26 (Feb. 2023). Yet many courts follow *Bajakajian* even so: "focusing on the specific harms of specific acts" and evaluating how the defendant compares "to other potential

violators" of the statute. *Timbs*, 169 N.E.3d at 373, 375 (citation omitted).

Not in Alaska. And the State itself cements the contrast. Even after the Alaska Supreme Court's decision, the State maintains that there remain "factual disputes regarding the extent of Jouppi's culpability and related wrongdoing." Opp. 2. If that's true, though, it's only because the extent of Jouppi's culpability *did not matter* under the Alaska Supreme Court's standard. That is precisely the defect that sets it apart.[*]

2. As with the Alaska Supreme Court, so with the Eleventh Circuit. In the State's telling, the Eleventh Circuit's excessiveness standard considers not "the gravity of an offense in the abstract" but "the facts of [the] particular case." Opp. 15, 16. Yet the State's account of the court's marquee excessive-fines decision belies that wishful thinking. In upholding a $12.2 million penalty for FBAR violations, the State explains, the Eleventh Circuit in *United States* v. *Schwarzbaum*, 127 F.4th 259 (2025), marched through its analysis at the same level of abstraction as the Alaska Supreme Court. The court first reasoned that Isac Schwarzbaum fell "squarely in the [FBAR statute's] crosshairs" because he violated the statute "willful[ly]"—a fact true of any violator. Opp. 16 (citation omitted). The court then compared Schwarz-

[*] As the State notes, the court separately remarked that Jouppi did not "produce any evidence that the forfeiture deprived him of his livelihood." Opp. 14. This petition does not present a question about whether or how the Excessive Fines Clause should account for a defendant's livelihood. Rather, it concerns the standard for evaluating the gravity of the defendant's offense (Pet. i)—a first-order question unrelated to the defendant's economic circumstances. *State* v. *Timbs*, 134 N.E.3d 12, 36-37 (Ind. 2019) (noting that "the owner's economic means" may inform courts' evaluation, not of "the severity of the underlying offenses," but of "the punishment's magnitude").

baum's penalty to the maximum "potential jail terms" that could have been imposed had he been convicted criminally. Opp. 16. No matter that he was not even criminally charged. No matter that he lacked the mens rea to have violated the criminal statute at all. Pet. 26. Lastly, the harm caused: that unreported bank accounts in general can "impact the American economy and may be related to a variety of illegal actions." Opp. 16. (No matter that Schwarzbaum's money was not "believed to be from illegal sources or used for a criminal purpose." Pet. 26 (citation omitted).)

One formidable litigant has received the message loud and clear. For FBAR penalties lower than the colossal ones visited on Schwarzbaum, the Department of Justice now maintains that any excessive-fines defense is foreclosed. *Schwarzbaum*'s logic, says the DOJ, "applies equally to all civil FBAR penalties that are based on reckless or otherwise willful violations"—i.e., every conceivable violation the statute covers. U.S. Br. at 61, *United States* v. *Niksich*, No. 24-12882 (11th Cir. Feb. 24, 2025).

The State nonetheless asserts that nothing is amiss. Yet Eleventh Circuit judges have long been sounding the alarm. Judge Newsom, with Judge Jordan, has criticized the circuit's "hyper-deferential posture toward Congress's judgments about excessiveness." *Yates* v. *Pinellas Hematology & Oncology, P.A.*, 21 F.4th 1288, 1318 (11th Cir. 2021) (concurring opinion). In that same case, Judge Tjoflat registered his *dissent* from the majority's proportionality standard—not a concurrence, as the State implies (Opp. 15)—in which he advocated a more defendant-focused analysis. *Yates*, 21 F.4th at 1334 (opinion concurring in part and dissenting in part) ("[A]t common law, the inquiry into excessiveness hinged on an analysis of an individual defendant with individual characteristics and

an individual crime."). Where the State recites that "[t]he Eleventh Circuit follows *Bajakajian*" loyally (Opp. 15), at least one lower court warns that the circuit's precedent has "eliminat[ed] much of the check . . . upon the power to fine the People." *Robson 200, LLC* v. *City of Lakeland*, 593 F. Supp. 3d 1110, 1121 (M.D. Fla. 2022) (Mizelle, J.). As for the State's claim that another circuit (the Eighth) has looked to the Eleventh "for the proposition that 'substantial deference' to the legislature does not mean 'undue deference'"? Opp. 16-17. In truth, the Eighth Circuit cited a concurrence—Judge Newsom's, criticizing the precedent of his home court. *United States ex rel. Grant* v. *Zorn*, 107 F.4th 782, 800 (8th Cir. 2024), *cert. denied*, 145 S. Ct. 2812, 2816 (2025); *see also id.* at 800 n.5 ("Unlike the Eleventh Circuit, we are not bound by our precedents to maintain a 'hyper-deferential posture toward Congress's judgments about excessiveness.'" (quoting *Yates*, 21 F.4th at 1318 (Newsom, J., concurring))). When it comes to the Excessive Fines Clause in the Eleventh Circuit, the only observer who thinks all's well is Alaska.

B. The decision below is erroneous.

The State devotes much attention to its view that "[t]he Alaska Supreme Court decision was correct." Opp. 25. The merits, of course, can await merits briefing, but one point bears mention: Most of the State's defense of the decision below advances reasoning conspicuously absent from the decision below. A full page tars Jouppi for what the State calls his "related misconduct." *E.g.*, Opp. 25-26. Yet, the State concedes, the Alaska Supreme Court took for granted that Jouppi "*had* no related misconduct." Opp. 14 (emphasis added). Then come two pages on another factor "not considered by the Alaska Supreme Court" (Opp. 29): the notion that classifying property as an "instrumentality" affords special leeway to confiscate

it criminally. Opp. 29-31. Not only is that theory nowhere in the decision below, but the Alaska Supreme Court repudiated it. App. 13a. As has this Court. *Bajakajian*, 524 U.S. at 333-34.

C. The question presented is important and warrants review in this case.

The question presented is important, and this case is an ideal one for resolving it.

1. The State nowhere denies the importance of the question presented but maintains that this case "would be an odd vehicle" to address it because the case involves a criminal forfeiture, not a civil one. Opp. 24. The State nowhere denies, however, that "[s]tate and federal courts alike rightly understand *Bajakajian*'s proportionality standard to apply not just to criminal-court sanctions, but to civil forfeitures as well." Pet. 31-32. Congress agrees. 18 U.S.C. § 983(g). The point is not that this case is a "vehicle through which to address any concerns about civil forfeitures" (Opp. 24), but that the Excessive Fines Clause's applicability to many abuse-prone economic sanctions reinforces the significance of the question presented.

The State also volunteers that Alaska has abolished "[c]ommon law civil in rem forfeiture actions . . . if used instead of a criminal proceeding." Opp. 24 (citation omitted). Why that fact diminishes the importance of the question presented is left unsaid. At all events, statutory civil forfeitures remain securely on Alaska's books. *E.g.*, Alaska Stat. § 04.16.220(d)(2).

2. The State raises several vehicle concerns. None has merit.

a. The State asserts that the record is "underdeveloped," that Jouppi failed to carry various burdens, and

that "there are factual disputes regarding the extent of [his] culpability and related wrongdoing." Opp. 2, 23-24. Simultaneously, however, the State acknowledges that none of those perceived issues affected the decision below. The Alaska Supreme Court took as its premise that Jouppi's "culpability extended only to one six-pack and that he had no related misconduct." Opp. 14. Full stop. It then applied a standard under which a six-pack can beget an airplane forfeiture. Far from being "fact-bound" (Opp. 1), the decision below tees up the question presented on grounds fit for a law-school hypothetical.

b. Likewise unfounded is the State's suggestion that Jouppi "fought against the creation of a complete factual record." Opp. 24. It is true that at sentencing, Jouppi objected to hearsay witnesses offered by the State. But as the State clarified that same day, the opportunity to further develop the record on the *excessive-fines* issue was tabled for a separate hearing. R. p. 695 ("[State]: So the Court needs to make a finding that the imposition of a forfeiture of this plane is not grossly disproportionate to the defendant's offense. The Court can't make that finding based on the record that it's developed at this sentencing hearing."). And at that later hearing, the State waived its right to present witnesses. Tr. Vol. II 225 (4/24/2018 Hrg.). Nothing about Jouppi's sentencing objections poses any obstacle to this Court's review, and the State nowhere argues otherwise.

c. The State contends that this case is an unsuitable vehicle because, in the State's view, Jouppi would lose on remand even were this Court to agree that the Alaska Supreme Court's standard is unsound. Opp. 23-24. But this Court regularly corrects errors of law without addressing whether the petitioner will ultimately win their case. *E.g.*,

Groff v. *DeJoy*, 600 U.S. 447, 473 (2023). Nowhere does the State explain why this case is different.

That usual practice would have special virtue here, moreover, where Jouppi might well prevail under the proper standard. The State salts its brief with allegations of "related misconduct." Opp. 26. But a "context-specific application" (*Groff*, 600 U.S. at 473) of the excessiveness standard on remand would as likely showcase governmental overreach as misconduct by Jouppi. The State notes, for example, that Jouppi was separately charged with "felony importation" based on a different passenger's wrongdoing. Opp. 7 n.1. Unmentioned: that the court dismissed the charge on Jouppi's motion. Order Granting Motion to Dismiss Indictment, No. 4FA-13-00267CR (Aug. 6, 2013). The State advises that Jouppi later pleaded to a "lower charge." Opp. 7 n.1. Unmentioned: that the charge was not bootlegging, but failing to ensure the passenger's alcohol was correctly labeled. Alaska Stat. § 04.16.125. The State alludes to a man who reportedly told undercover officers that he had "ten times" brought alcohol aboard Jouppi's plane. Opp. 8. Unmentioned: testimony casting doubt on the man's account, including that he later confessed that he'd been "trying to be cool." R. p. 643. The State avers that Jouppi "adopt[ed] willful blindness as a business model." Opp. 24. Unmentioned: that Jouppi's discomfort with dragnet luggage searches reflected, not solicitude for bootleggers, but concern for the dignity of his many law-abiding passengers. Pet. 9. The State recounts that a trooper "described three prior instances in which Jouppi flew alcohol into different local option communities." Opp. 8. Unmentioned: the absence of any evidence Jouppi knew about the alcohol—a question the prosecutor insisted "doesn't matter." R. p. 608.

Of course, the facts are for another day. What matters now is the standard the Alaska Supreme Court adopted—one under which the Excessive Fines Clause offers no protection against confiscating an airplane based on "one six-pack and . . . no related misconduct." Opp. 14. As for the State's claim that "the Alaska Supreme Court likely 'would have reached the same conclusion'" (Opp. 24) had it used the correct standard, there's only one way to find out.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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NOVEMBER 24, 2025