No. 25-246

IN THE

Supreme Court of the United States

KENNETH J. JOUPPI,

Petitioner,

v.

ALASKA,

Respondent.

On Writ of Certiorari to the
Supreme Court of Alaska

BRIEF OF NATIONAL TAXPAYERS UNION FOUNDATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

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.

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INTEREST OF *AMICUS CURIAE*[1]

Founded in 1973, the National Taxpayers Union Foundation (NTUF) is a non-partisan research and educational organization dedicated to showing Americans how taxes, government spending, and regulations affect everyday life. NTUF advances principles of limited government, simple taxation, and transparency on both the state and federal levels. NTUF's Taxpayer Defense Center advocates for taxpayers in the courts, producing scholarly analyses and engaging in direct litigation and *amicus curiae* briefs upholding taxpayers' rights, challenging administrative overreach by tax authorities, and guarding against unconstitutional burdens on interstate commerce.

Although this case presents the Court with a criminal forfeiture, the Eighth Amendment does not confine itself to criminal fines, applying to any exaction that constitutes "punishment." The Internal Revenue Code contains many penalty provisions, both civil and criminal, therefore the Court's holding here will have significant ramifications for taxpayers. Accordingly, *Amicus* has an institutional interest in this Court's decision.

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[1] Pursuant to Supreme Court Rule 37, counsel for *Amicus* represents that none of the parties or their counsel, nor any other person or entity other than *Amicus* or its counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

SUMMARY OF THE ARGUMENT

Beyond a beer run in a bush plane, this case has practical implications for criminal and civil penalties. The need, then, is for this Court to correct an error creeping into the analysis of the lower courts that doubly-defer to legislative pronouncements on the gravity of an offense.

The Eighth Amendment protects all citizens from excessive fines. *See*, *e.g.*, U.S. CONST. amend. VIII. Now is the time for the Court to clarify that *United States v. Bajakajian*, 524 U.S. 321 (1998), requires a simple, two-step approach to the Excessive Fines Clause. First, courts should independently assess the gravity of the individual's offense. Second, courts should determine whether the punishment is grossly disproportional to that offense.

Bajakajian's two-step allows for the judiciary to take an active role in protecting the fundamental right to be free of excessive fines. The United States inherited a long tradition of courts looking askew at ruinous fines, dating from the Magna Carta, to David Hume, and through the Fairfax Resolves. And a majority of the state constitutions at the Founding protected citizens from excessive fines. To remain true to this history, courts must remain guardians of the Excessive Fines Clause and cannot outsource their judgments to legislatures.

Here, the Alaska Supreme Court conflated these two steps, deferring to the legislature on weighing the gravity of the offense of having a six-pack in the cabin of a bush plane. In this case, the Alaska Supreme

Court erred by assuming, without warrant, that the legislative forfeiture determination reflected the gravity of the offense and deferring to that judgment.

In evaluating the gravity of the offense, courts should focus on the defendant's actions, rather than broader, aggregated societal harm articulated by the Alaska Supreme Court. The Eighth Amendment enshrines an *individual* right, and courts have historically focused on the individual's conduct in evaluating fines. Here, the Alaska Supreme Court erred by focusing on the harm from bootlegged alcohol in Alaska generally, rather than focusing on the particulars of Jouppi's conduct. No individual should shoulder the burden of liquor runs by all of society. Instead his punishment should reflect the crime he committed only.

These harms go beyond Alaska, beer, or small aircraft. Civil penalties have their own threat of excessive fines, particularly in tax law. The Internal Revenue Code is replete with provisions that function as strict liability with steep penalties attached. And this Court's continued engagement in home confiscation for tax sales also highlights the extreme punitive nature hidden in tax law.

The Court should reverse the Alaska Supreme Court and clarify the excessive fines analysis. In doing so it should hew close to its prior pronouncements in *Bajakajian* and articulate that the Eighth Amendment is best examined as-applied. Such case-by-case analysis should be a fresh look without over-deference to the Legislature.

ARGUMENT

I. THE EIGHTH AMENDMENT REQUIRES AN INDEPENDENT JUDICIAL ANALYSIS OF THE GRAVITY OF THE OFFENSE.

The Eighth Amendment prohibits "excessive fines imposed" for violations of the law. U.S. CONST. amend. VIII. Protection from excessive governmental fines is a fundamental individual right and is one of our oldest rights, dating from the Magna Carta and the English Bill of Rights. *See Timbs v. Indiana*, 586 U.S. 146, 151 (2019) (discussing roots of the clause in history and tradition). As with any right, but especially one tied to meting out justice, the judiciary has been the primary guardian of the Eighth Amendment's guarantees.

In *Bajakajian*, this Court outlined the duty of courts to invalidate fines and forfeitures that are "grossly disproportional to the gravity of the defendant's offense[.]" *See United States v. Bajakajian*, 524 U.S. 321, 337 (1998). The Court identified two principles guiding the implementation of the Excessive Fines Clause. First, "judgments about the appropriate punishment for an offense belong in the first instance to the legislature." *Id.* at 336. Second, the Court cautioned that "any judicial determination regarding the gravity of a particular criminal offense will be inherently imprecise." *Id.* These two factors led the Court to "adopt the standard of gross disproportionality," under which a fine or forfeiture is unconstitutional if it is grossly disproportional to the gravity of the defendant's offense. *Id.*

Now the Court should clarify that *Bajakajian* standard requires courts to engage in a two-step inquiry. First, a court should *independently* evaluate the gravity of the offense, relying on neither the executive nor legislative pronouncements. Second, the court should determine whether the imposed penalty is grossly disproportionate. By conflating these steps and deferring to the legislature throughout its analysis, the Alaska Supreme Court abdicated its duty to independently evaluate the gravity of Jouppi's offense, as required by the Eighth Amendment.

A. Judicial Protection from Excessive Fines is Deeply Rooted in American History and Tradition.

To be effectual, the Excessive Fines clause must operate independently from mere declaration of the Legislature. The legislative branch, in declaring the penalty for an offense, has already made its determination. But the freedom from excessive fines must be enforced by the judiciary.

As the *Timbs* Court recognized, the "Magna Carta guaranteed that '[a] Free-man shall not be amerced for a small fault, but after the manner of the fault; and for a great fault after the greatness thereof, saving to him his contenement ....'" *Timbs v. Indiana*, 586 U.S. 146, 151 (2019) (quoting the Magna Carta, § 20, 9 Hen. III, ch. 14, in 1 Eng. Stat. at Large 1, 5 (1225)) (brackets and ellipsis in *Timbs*).[2] This principle of proportionality in fines was reaffirmed in the First Statute of Westminster and the English Bill of Rights. *See*, *e.g.*, *Solem v. Helm*, 463 U.S. 277, 284–85, (1983) (discussing 3 Edw. I, ch. 6 (1275) and 1 W. & M., sess. 2, ch. 2 (1689)). Writing at the time of the Founding of the United States, David Hume examined the excesses of the English fines in the lead up to the Glorious Revolution. *See, e.g.*, David Hume, THE HISTORY OF ENGLAND Vol. VI, Chap. LXIX at 26 (1778)[3] (criticizing a case where a 100,000-pound fine was decreed despite "[b]y the law of England, ratified in the great charter, no fine or damages ought to extend to the total ruin of a criminal").

The Founders sought to protect citizens from excessive fines as part of the rights inherited from English law. George Mason wrote in 1766 that "[w]e claim Nothing but the Liberty & Privileges of Englishmen, in the same Degree, as if we had still continued among our Brethren in Great Britain." George Mason, Letter to the Committee of Merchants in London (June 6, 1766).[4] The Fairfax County Resolves asserted that "our Ancestors, when they left their native Land, and setled in America, brought with them (even if the same had not been confirmed

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[2] The National Archives provides a translated version of the Magna Carta, *available at*: https://www.archives.gov/exhibits/featured-documents/magna-carta/translation.html.

[3] *Available at*: https://davidhume.org/texts/h/vol6/full.

[4] *Available at*: https://www.consource.org/document/george-mason-to-the-committee-of-merchants-in-london-1766-6-6/.

by Charters) the Civil-Constitution and Form of Government of the Country they came from" which included "all it's Privileges, Immunities and Advantages." "Fairfax County Resolves, 18 July 1774," No. 1, *Founders Online,* National Archives.[5] George Washington would be tasked with presenting this set of Resolves to the Virginia General Assembly in Williamsburg. *See id*. No. 24.

At the time of the ratification of the Eighth Amendment, a majority of the state constitutions protected citizens from excessive fines. See, e.g., DEL. CONST., art. I, § 11 (1792); MD. CONST., Decl. of Rights, art. XXII (1776); MASS. CONST., pt. 1, art. XXVI (1780); N.H. CONST., pt. 1, art. 1, § XXXIII (1784); N.C. CONST., Decl. of Rights, art. X (1776); PA. CONST., art. IX, § 13 (1790); S.C. CONST., art. IX, § 4 (1790); VA. CONST., Bill of Rights, § 9 (1776). Vermont specified that "all fines shall be proportionate to the offences." VT. CONST., ch. II, § XXIX (1786).[6] And just a few months prior to ratification of the new Constitution, the Northwest Ordinance provided that "[a]ll fines shall be moderate; and no cruel or unusual punishments inflicted." Ordinance of 1787, § 14, art. 2 (1787).

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[5] *Available at*: https://founders.archives.gov/documents/Washington/02-10-02-0080.

[6] Only one state chose to remove an explicit constitutional protection against excessive fines prior to the ratification of the Eighth Amendment. Georgia's 1777 Constitution had an excessive fines clause, GA. CONST., art. LIX (1777), but its 1789 Constitution did not.

Not only were these protections enshrined in the federal and state constitutions, but they were also implemented and enforced by the judiciary, which rejected fines deemed excessive. *See* Amicus Br. of Professor Beth A. Colgan in Support of Petition for Certiorari at 14–20 (Oct. 17, 2025) (cataloging cases applying the protections against excessive fines). To remain true to this history, courts must remain guardians of the Excessive Fines Clause and cannot outsource their judgments to legislatures.

B. Courts Must Perform an Independent Assessment of the Gravity of an Offense.

In protecting the Eighth Amendment's guarantees, courts must perform their own analysis and should not simply defer to legislative penalties. But the lower courts are conflating the *Bajakajian* two-step to add deference to the legislature at both points in the analysis. Deference to legislative judgment in both steps creates circularity: a fine is unconstitutional if grossly disproportionate to the offense's gravity, yet the offense's gravity is judged by the magnitude of the fine the legislature imposed. Injecting deference twice is unworkable to fully effect the Eighth Amendment.

In evaluating the gravity of the offense, the *Bajakajian* Court considered primarily the culpability of the offender and the harm from the offense. *See Bajakajian*, 524 U.S. at 337–39. This Court expressly held that "other penalties that the Legislature has authorized are certainly relevant evidence" during the first step of the inquiry, but they cannot substitute for the court's independent judgment as to the gravity of an offense. *See id.* at 339 n.14. Having completed this initial analysis of the offender's conduct, a court then proceeds to step two and determines whether the legislatively set fine or forfeiture is grossly disproportional.

Some lower courts have fallen to the error of injecting deference at both steps of the *Bajakajian* analysis. For example, in an opinion upholding the forfeiture of property valued at $70,000 for the offense of selling sixty grams of cocaine, the Eleventh Circuit extended substantial deference to Congress in determining the gravity of the offense. *United States v. 817 N.E. 29th Drive, Wilton Manors, Fla.*, 175 F.3d 1304, 1309 (11th Cir. 1999). The Eleventh Circuit began by correctly articulating the *Bajakajian* standard that a forfeiture "is excessive if it is grossly disproportional to the gravity of a defendant's offense." *Id.* (quoting *Bajakajian*, 524 U.S. at 336) (internal quotations omitted). But after noting the difficulty in quantifying the gravity of an offense in monetary terms, the court held, with apparent relief, that "this task has already been performed by two very competent bodies"—Congress and the United States Sentencing Commission. *Id.* at 1309–10.

This method of weighing proportionality outsources the judiciary's job to other entities, which is not a part of the history or tradition of judicial independence in checking excessive fines. The Eleventh Circuit reasoned that "if the value of forfeited property is within the range of fines prescribed by Congress, a strong presumption arises that the forfeiture is constitutional." *Id.* at 1309. That means an excessive fine is always tied only to what the legislative branch determines, leaving the Eighth Amendment effectively toothless. Ultimately, the court of appeals concluded that the forfeiture of property valued at $70,000 was not disproportional to the offense's gravity because both the sentencing guidelines and statute allowed for a fine of up to $1,000,000. *See id.* at 1310. At no point did the court attempt to independently evaluate the gravity of the offender's conduct or whether it justified the forfeiture.

Similarly, the Alaska Supreme Court, while rightly rejecting the state's contention that it must defer to the legislature, deferred substantially to the statute's forfeiture scheme. *See Jouppi v. State*, 566 P.3d 943, 954–58 (Alaska 2025). The court accepted without enquiry the Legislature's distinction between aircraft, which are subject to mandatory forfeiture, and other methods of importation, which only require forfeiture when additional aggravating factors are present. *See id.* at 956. Not only did this inappropriately inject legislative deference into the gravity analysis, the court also simply assumed that the disparity reflected a legislative judgment about the severity of the offense: "[t]he legislature's differential treatment suggests that it viewed the gravity of aircraft-facilitated importation as more severe than other methods of unlawful importation." *Id.* The court did not consider whether the disparity might owe to other factors, such as the difficulty of detection, and did not inquire whether importation by aircraft is actually more severe than other methods.

The Alaska Supreme Court also uncritically accepted the statutory maximum fine of $10,000 for Jouppi's offense as the baseline when considering other penalties that could have been imposed, rather than the $3,000 fine ($1,500 of that suspended) initially imposed by the trial court. *See id.* at 949, 956–57. By uncritically accepting statutory penalties as reflective of gravity, the Alaska Supreme Court abdicated its judicial duty to weigh independently the gravity of Jouppi's offense.

Not only is deferring to the legislature in determining the gravity of an offense circular, but it is also often unhelpful to the inquiry. In setting monetary penalties, both criminal and civil, legislatures do not consider only the gravity of the offense—a multitude of other considerations also enter into the equation, such as deterrence, remediation, and administrability.[7] These factors are legitimate considerations, but they do not necessarily reflect the gravity of the offense. Consider again the distinction drawn by the Alaska legislature between importation by aircraft and importation by other means. *See* Alaska Stat. § 04.16.220(i). Aircraft are subject to mandatory forfeiture, while vehicles and watercraft are subject to mandatory forfeiture only if additional aggravating factors are present. *Id.* Even though the court explicitly noted that the legislature

[7] *See generally* Kenneth Mann, *Punitive Civil Sanctions: The Middleground Between Criminal and Civil Law*, 101 YALE L. J. 1795, 1814–36 (1992). Professor Mann details different approaches and purposes for non-incarceration penalties, including punishment, deterrence, and compensation.

adopted mandatory forfeiture of aircraft for the deterrent effect, the court nevertheless concluded that the "differential treatment" suggested that the legislature "viewed the gravity of aircraft-facilitated importation as more severe than other methods of unlawful importation." *Jouppi*, 566 P.3d at 956. Deterring importation is a legitimate legislative aim, but it does not necessarily reflect a legislative judgment that importation by aircraft is a graver crime than importation by boat or automobile. By uncritically accepting the "legislature's differential treatment" as evidence that "it viewed the gravity of aircraft-facilitated importation as more severe than other methods of unlawful importation," the Alaska Supreme Court failed to provide the level of judicial review required by the Eighth Amendment. Rather, it should have critically examined whether the mode of importation truly changes the severity of the offense.

C. Civil Penalties Carry the Same Eighth Amendment Concerns as Criminal Sanctions.

This Court has repeatedly held that the Excessive Fines Clause applies to both civil and criminal law: "[t]he notion of punishment, as we commonly understand it, cuts across the division between the civil and the criminal law." *Austin v. United States*, 509 U.S. 602, 610 (1993) (quoting *United States v. Halper*, 490 U.S. 435, 447–48 (1989)); *see also Hudson v. United States*, 522 U.S. 93, 103 (1997) (determining that "[t]he Eighth Amendment protects against excessive civil fines, including forfeitures"). That is because "[e]conomic penalties imposed to deter willful noncompliance with the law are fines by any other name." *Tyler v. Hennepin County*, 598 U.S. 631, 649–50 (2023) (Gorsuch, J., concurring). And since tax sales are such fines, "the Constitution has something to say about them: They cannot be excessive." *Id.* at 650. Yet tax law is replete with mounting fines dwarfing any back taxes owed.

Indeed, the word "fine" by its original meaning can include a civil penalty. In 1989 this Court found that the Excessive Fines Clause would not apply to private lawsuits with large damages awards issued by juries. *See Browning-Ferris Indus. of Vt., Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 260 (1989). But in doing so, *Browning-Ferris* recognized that "at the time of the drafting and ratification of the [Eighth] Amendment, the word 'fine' was understood to mean a payment to a sovereign as punishment for some offense." *Id.* at 265; *id.* at 265 n.6 (citing TIMOTHY CUNNINGHAM, A NEW AND COMPLETE LAW–DICTIONARY (unpaginated) (2d ed. 1771) which defined "fines for offences" as "amends, pecuniary punishment, or *recompence* for an offence committed against the King and his laws, or against the Lord of a manor.") (emphasis added).

While certainly present in the criminal realm, the problem of mixed legislative motives becomes thornier in the realm of civil penalties. In our tax system, a central aim of tax penalties is promoting voluntary compliance.[8] While this does not exclude

[8] *See* I.R.M. § 20.1.1.2 (Nov. 25, 2025) ("Penalties exist to encourage voluntary compliance by supporting the standards of

considerations like fairness and proportionality, it often includes factors that do not go to the gravity of the offense, such as the likelihood of detection.[9]

In some cases, this results in severe penalties for strict liability offenses. To take a single example, 26 U.S.C. § 6662(b)(6) applies an accuracy-related penalty to an underpayment attributable to "[a]ny disallowance of claimed tax benefits by reason of a transaction lacking economic substance[.]" Although the ordinary accuracy-related penalty is 20% of the underpayment, 26 U.S.C. § 6662(i)(1) increases the penalty "attributable to one or more nondisclosed noneconomic substance transactions" to 40% of the underpayment. Moreover, the typical good faith exception to the accuracy-related penalties is explicitly unavailable when an underpayment results from a transaction disallowed as lacking economic substance, whether it was disclosed or not. 26 U.S.C. § 6664(c)(2). Taken together, these provisions mean that a taxpayer, acting in good faith, may be subject to a 20 to 40% penalty when the IRS disallows a transaction for lacking economic substance. If courts uncritically defer to the legislature's penalty

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behavior required by the Internal Revenue Code."); NAT'L TAXPAYER ADVOC., 2024 ANN. REP. TO CONG. 118 (2024) ("Civil tax penalties historically have had a single purpose — to enhance tax compliance."); H.R. Conf. Rep. No. 101-386, at 661 (1989) (recommending that "the IRS should develop a policy statement emphasizing that civil tax penalties exist for the purpose of encouraging voluntary compliance").

[9] *See* Mark P. Gergen, *Uncertainty and Tax Enforcement: A Case for Moderate Fault-Based Penalties*, 64 TAX L. REV. 453, 457 n.7 (2010).

determinations in such a case, the Excessive Fines Clause essentially becomes a nullity.

This example also highlights another potential problem with deferring to legislative penalty determinations: for tax and reporting offenses, they are typically set at a percentage of unpaid or unreported amount. Generally, this furthers administrability and produces a penalty proportional to the loss to the government, but courts should not assume this to be true in every case. Especially in the case of reporting statutes, such as the one at issue in *Bajakajian*, the harm to the government is merely a loss of information and a percentage penalty is less likely to be proportional to the gravity of the offense. *See Bajakajian*, 524 U.S. at 339.

This Court's recent examinations of tax sales also implicate the need for Excessive Fines protections against the revenue agents. In *Tyler*, the county, "sold Geraldine Tyler's home for $40,000 to satisfy a $15,000 tax bill. Instead of returning the remaining $25,000, the County kept it for itself." *Tyler*, 598 U.S. at 634. While this case certainly implicated (and was resolved by) Takings Clause jurisprudence, *id*. at 647, the mere fact that a minor tax debt can snowball into losing one's home shows tax law's excessive fines issue. *See*, *e.g.*, *id*. 649–50 (Gorsuch, J., concurring). That was highlighted all the more by the facts of last Term's case of *Pung v. Isabella County*, 609 U.S. ___, 146 S.Ct. 1964 (2026). There a $2,000 debt resulted in the loss of a $200,000 home. *See id*. at 1967–68 (noting that the Pung family "owed $2,241.93 in real-property taxes" but the home was auctioned at tax sale for

$76,008 and resold for $195,000). Tax law—federal, state, and local—needs guidance on when tax penalties become excessive fines and unconstitutional.

In sum, courts should not defer to legislative penalty determinations when weighing the gravity of an offense in the Excessive Fines Clause analysis. Not only is legislative deference already built into the grossly disproportional standard, but legislatures must weigh many other factors in setting penalties, such as administrability and deterrent effects. Here, the Alaska Supreme Court did not engage in any independent inquiry into the gravity of Jouppi's offense and erred by granting uncritical deference to the statutory penalty regime.

II. THE GRAVITY OF THE OFFENSE SHOULD BE WEIGHED BY THE HARM CAUSED AND THE OFFENDER'S CULPABILLITY.

No individual American citizen can answer for all of societal ills caused in the aggregate by any particular offense. The Eighth Amendment protects individuals, and therefore the proper level of inquiry in an as-applied challenge is the harm from the individual's conduct, not the harm caused (theoretically or actually) by all offenders in the aggregate. This individual, case-by-case analysis allows for the citizen to invoke her fundamental rights and seek judicial review of the penalties imposed by the legislative branch.

This approach accords with the historical protections enforced by courts since the Magna Carta. As extensively detailed in Professor Colgan's *amicus* brief in support of c*ertiorari*, early constitutional treatises and cases emphasized the "peculiar circumstances of each case, the contrition or general good character of the offender." Amicus Br. of Professor Beth A. Colgan, at 9 (quoting BENJAMIN L. OLIVER, THE RIGHTS OF AN AMERICAN CITIZEN 185 (1832)). Similarly, courts considering as-applied challenges focused on the particular gravity of the individual conduct at issue and rejected attempts to aggregate the conduct of multiple offenders. *See id.* at 13–19 (collecting cases).

This Court's analysis in *Bajakajian* is faithful to this historical approach, evaluating the culpability of the defendant and the harm from his conduct. There, the defendant was convicted of willfully failing to report $357,144 in currency he was attempting to bring into the country. *See Bajakajian*, 524 U.S. at 337. This Court examined the specifics of the defendant's conduct, noting that the failure to report currency was "was unrelated to any other illegal activities" and that "[t]he money was the proceeds of legal activity and was to be used to repay a lawful debt." *Id.* at 338. This Court also identified and evaluated the harm, concluding that it was minimal—"[h]ad his crime gone undetected, the Government would have been deprived only of the information that $357,144 had left the country." *Id.* at 339. Nowhere did the Court consider the broader social harms of money laundering or drug trafficking.

Here, the Alaska Supreme Court erred by neglecting Jouppi's particular circumstances and evaluating the harm of the offense at the societal level. The court noted that "[a]lcohol 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." *Jouppi*, 566 P.3d at 957. Without denying the broader problem of alcohol abuse in Alaska, these ills cannot be laid at the feet of Jouppi and the single six-pack of beer for which he was convicted. While the Alaska Supreme Court's analysis may have been appropriate in the case of a facial challenge to the forfeiture regime, it was not appropriate for Jouppi's as-applied challenge.

The Alaska Supreme Court's aggregation analysis also lacks a limiting principle. Beyond beer in bush plane, the principle matters in other areas of life. Even small offenses, in the aggregate, may have a substantial effect on broader society, but such effects would not justify large individual punishments for minor infractions. For example, the Internal Revenue Service typically estimates the annual "tax gap" (the difference between what is owed in taxes and what is paid) in the hundreds of billions.[10] Certainly this aggregate harm cannot justify comparatively large penalties on individual taxpayers for small

[10] See I.R.S., Publ. 5869, FEDERAL TAX COMPLIANCE RESEARCH: TAX GAP PROJECTIONS FOR TAX YEARS 2020 AND 2021, 11 (Oct. 2024) (estimating the net tax gap for 2022 at $606 billion).

underpayments. The Court should unambiguously reject this aggregation approach and require an individualized analysis of the harm from the defendant's particular conduct.

CONCLUSION

For the foregoing reasons, *Amicus* respectfully requests that this Court reverse the decision below.

Respectfully submitted,

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