No. 25-246

IN THE

Supreme Court of the United States

KENNETH JOHN JOUPPI,

Petitioner,

v.

STATE OF ALASKA,

Respondent.

On Writ of Certiorari to the Supreme Court of Alaska

BRIEF OF THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Legislative Materials

Other Authorities

INTEREST OF *AMICUS CURIAE*[*]

The National Association of Criminal Defense Lawyers (NACDL) is a nonprofit voluntary professional bar association founded in 1958 that works on behalf of criminal-defense attorneys to ensure justice and due process for individuals accused of crime or misconduct. NACDL is the only nationwide professional bar association for public defenders and private criminal-defense lawyers. It has a national membership of several thousand direct members and approximately 40,000 affiliated members, who include private criminal-defense lawyers, public defenders, military-defense counsel, law professors, and judges. NACDL is dedicated to advancing the proper, efficient, and just administration of justice. The organization files numerous *amicus* briefs each year in the United States Supreme Court and other federal and state courts, seeking to assist in cases that present issues of broad importance to criminal defendants, criminal-defense lawyers, and the justice system as a whole.

This case presents a question of substantial importance to NACDL members and their clients because it concerns whether courts may impose severe monetary punishments only when a defendant's own conduct and culpability warrant them, or may instead base them on abstract assessments of offense gravity. NACDL members routinely represent defendants

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[*] Pursuant to Rule 37.6, *amicus* affirms that no counsel for a party authored this brief in whole or in part, and that no person other than *amicus* or its counsel made any monetary contributions intended to fund the preparation or submission of this brief.

facing forfeitures and other financial penalties, and so have a particular interest in ensuring that the Excessive Fines Clause remains a meaningful constitutional constraint on punishment, grounded in individualized culpability and administrable standards.

INTRODUCTION AND SUMMARY OF ARGUMENT

The question presented is whether the Excessive Fines Clause permits a court to uphold the forfeiture of a defendant's property by measuring the gravity of a broad class of offenses and the associated social harms. It does not. The Clause requires courts to conduct a proportionality inquiry anchored in the defendant's actual conduct, personal culpability, and actual or intended harm. *See United States v. Bajakajian*, 524 U.S. 321, 334, 338–39 (1998); *Timbs v. Indiana*, 586 U.S. 146, 151–53 (2019). Courts may not substitute an abstract assessment of the generalized social harms associated with other commissions of the statutory offense.

Ken Jouppi's case exemplifies the point. Jouppi, a pilot and operator of an air-taxi service in Alaska, loaded a customer's luggage (which contained a single visible six-pack of Budweiser) onto his plane headed to a dry village. For that, he was charged, tried, and convicted of the misdemeanor offense of knowingly transporting an alcoholic beverage into a dry community. In sentencing him, the trial court viewed the quantity and circumstances as bearing on the actual harm, while on appeal the Alaska Supreme Court treated the broader harms of alcohol abuse in rural Alaska as the relevant context. That court also dismissed as irrelevant that Jouppi was a first-time offender whose conduct was not part of any larger pattern of criminal activity and held that remand for individualized findings was unnecessary because such findings could not change its conclusion. That abstract approach ultimately upheld the forfeiture of Jouppi's *airplane* over a passenger's six-pack of beer.

That result cannot be squared with the Clause's history or this Court's precedents. The Excessive Fines Clause emerged from a long history of governmental abuse of financial penalties. It was designed in relevant part here to keep punishment proportionate and to prevent the State from wielding fines or forfeitures as unchecked instruments of power or revenue. In *Bajakajian*, this Court applied that principle by focusing on the harm the defendant actually caused and his minimal culpability—not on the worst conduct that the reporting statute might reach. 524 U.S. at 338–39. The same individualized focus follows from the broader constitutional principle that punishment must reflect personal guilt.

The judgment below should thus be reversed. First, history and modern practice show why courts must enforce the Clause against financial sanctions that governmental actors have incentives to impose and retain. Second, the Clause's proportionality requirement is a specific application of the criminal law's bedrock rule that punishment must track the individual offender's conduct, intent, role, and actual harm; the Alaska Supreme Court instead relied on generalized social harms arising from other ways of committing the offense. Third, a defendant-specific inquiry is not only constitutionally required but workable: courts can apply familiar, objective factors, and must account for the real-world consequences of forfeiting property used in a person's livelihood. That rule protects meaningful judicial review, fair plea advice, and the constitutional line between punishment for one's own wrongdoing and punishment for society's broader problems.

ARGUMENT

The Eighth Amendment's Excessive Fines Clause asks what *this defendant* did, how culpable *he* was, what harm *his conduct* caused, and whether the punishment imposed is grossly disproportionate to his offense. It does not permit courts to justify punishment based on other ways the offense can be committed and the social problems that arise from the activity criminalized. By replacing individualized proportionality review with an abstract assessment of a statute's social objectives, the Alaska Supreme Court severed punishment from culpability. The Clause's history, this Court's precedents, and the practical realities of modern financial sanctions all reinforce the same rule: punishment must reflect the defendant's own conduct, culpability, and harm, not broader ills caused by others.

The judgment below should be reversed.

I. The Excessive Fines Clause Exists to Prevent Governments from Using Forfeiture and Monetary Sanctions as Instruments of Unchecked Punishment.

The Excessive Fines Clause's origins trace to the longstanding Anglo-American demands that financial punishment be proportionate and leave the wrongdoer able to pursue his livelihood going forward. But modern fine and forfeiture regimes, especially those tied to governmental revenue, construct the incentives for abuse that the Clause was designed to check. Thorough judicial review is necessary to enforce the Clause as an independent limit on monetary sanctions.

A. The History of the Excessive Fines Clause Reflects Concerns About Governmental Abuse of Financial Penalties.

1. The prohibition on excessive fines reflects two longstanding demands: the need for proportional punishment and the need to leave wrongdoers a path to pursuing their livelihoods after release from prison. This case concerns only the former protection.[1]

The protection against disproportionate fines "has been a constant shield throughout Anglo-American history," tracing back at least to Magna Carta's command that a free man be amerced "after the manner of the fault" and "after the greatness thereof." *Timbs*, 586 U.S. at 151, 153 (cleaned up). Parliament carried that principle forward in the English Bill of Rights, which declared that "excessive Bail[] ought not to be required[,] nor excessive Fines imposed[,] nor

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[1] A fine may be proportionate to the offense and yet unconstitutional because it destroys the offender's livelihood. *See United States v. Levesque*, 546 F.3d 78, 83–84 (1st Cir. 2008) ("[T]he notion that a forfeiture should not be so great as to deprive a wrongdoer of his or her livelihood is deeply rooted in the history of the Eighth Amendment."); *see also* Nicholas M. McLean, *Livelihood, Ability to Pay, and the Original Meaning of the Excessive Fines Clause*, 40 Hastings Const. L.Q. 833, 835–38, 847–50 (2013). That distinct protection is not directly at issue here, where the challenge rests on proportionality alone.

cruel[] and unusual[] Punishments inflicted." Bill of Rights, 1 W. & M. Sess. 2, c. 2 (Eng. 1689).

The American guarantee preserved that protection. The Excessive Fines Clause was "based directly" on Virginia's Declaration of Rights, which adopted the English Bill of Rights' language verbatim. *Solem v. Helm*, 463 U.S. 277, 285 n.10 (1983). As this Court explained, "there can be no doubt that [Virginia's] Declaration of Rights guaranteed at least the liberties and privileges of Englishmen." *Id.* (cleaned up).

Nor was that commitment limited to Virginia. Pennsylvania had guaranteed decades before the Founding that "[a]ll fines shall be moderate." Pa. Frame of Govt., Laws Agreed Upon in England, Art. XVIII (1682), in 5 *Federal and State Constitutions* 3061 (Francis Thorpe ed., 1909). And by the time the Eighth Amendment was drafted "[i]n 1787, the constitutions of eight States—accounting for 70% of the U.S. population—forbade excessive fines." *Timbs*, 586 U.S. at 152 (citing Steven G. Calabresi, Sarah E. Agudo & Kathryn L. Dore, *State Bills of Rights in 1787 and 1791: What Individual Rights Are Really Deeply Rooted in American History and Tradition?*, 85 S. Cal. L. Rev. 1451, 1517 (2012)).

These provisions reflected more than a concern for individual liberty. They also guarded the proper relationship between citizens and government by requiring punishment to be proportionate to the offense. Thomas Jefferson described the principle in 1779: once a person has "suffer[ed] a punishment in proportion to his offence," he is entitled to protection from "all greater pain"; the legislature must therefore arrange crimes and punishments on a corresponding scale. Thomas Jefferson, *A Bill for Proportioning Crimes and Punishments in Cases Heretofore Capital* (1779), *reprinted in* 2 *The Papers of Thomas Jefferson* 492–504 (Julian P. Boyd ed., 1950). The Excessive Fines Clause reflects the principle of proportionality between offense and punishment that Jefferson described.

2. The Clause also serves a structural anti-abuse function. It prevents governments from turning financial sanctions into instruments of unchecked power—whether by imposing property penalties broader than the underlying wrongdoing or by benefiting directly from enforcement. Courts have repeatedly recognized that danger. *See, e.g.*, *Timbs*, 586 U.S. at 154 (explaining that "fines may be employed 'in a measure out of accord with the penal goals of retribution and deterrence,' for 'fines are a source of revenue,' while other forms of punishment 'cost a State money'" (citation omitted)); *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 81 (1993) (Thomas, J., concurring in part and dissenting in part) ("[L]ike the majority, I am disturbed by the breadth of new civil forfeiture statutes … which subject[] to forfeiture all real property that is used, or intended to be used, in the commission, or even the facilitation, of a federal drug offense."); *United States v. All Assets of Statewide Auto Parts*, 971 F.2d 896, 905 (2d Cir. 1992) ("We continue to be enormously troubled by the government's increasing and virtually unchecked use of the civil forfeiture statutes and the disregard for due process that is buried in those statutes.").

The Clause's structural solution to that concern is rooted in historical experience. In early England, crimes were violations of the "King's Peace," and "[f]ines were paid to the king, who made a profit from providing justice." Linda B. Deutschmann & Aaron Young, *Crime and Delinquency*, in *Social Problems: A Case Study Approach* 69–70 (Norman A. Dolch et al. eds., 2d ed. 2007). The Founders distrusted concentrated prosecutorial power, and that distrust "gradually evolved" to include concerns about fee-based enforcement. *See* Jonathan Barth, *Criminal Prosecution in American History: Private or Public?*, 67 S.D. L. Rev. 119, 149–72 (2022). By the latter half of the nineteenth century, the public had become particularly leery of a system that "induce[d] [prosecutors] to earn fees by multiplying frivolous prosecutions and technical violations of the laws," 28 Cong. Rec. 2395 (1896), prompting calls to Congress for federal prosecutors be "wholly paid by salaries" instead, U.S. Dep't of Justice, *Annual Report of the Attorney General of the United States* 17 (1873). *See also* 28 Cong. Rec. 2396 (1896) (predicting that ending the fee system would eliminate "the great and constantly increasing number of frivolous and unwarranted prosecutions set on foot by greedy and avaricious officials and professional prosecutors and informers to get fees"). This Court has recognized the same constitutional danger: an enforcement officer who "stands to profit economically from [the] enforcement of the [law]" labors under an impermissible financial bias. *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 249–50 (1980).

As Justice Scalia explained, "There is good reason to be concerned that fines, uniquely of all punishments, will be imposed in a measure out of accord with the penal goals of retribution and deterrence. Imprisonment, corporal punishment, and even capital punishment cost a State money; fines are a source of revenue." *Harmelin v. Michigan*, 501 U.S. 957, 978 n.9 (1991) (Scalia, J., announcing judgment). When the government stands to financially benefit from a punishment, "it makes sense to scrutinize governmental action more closely." *Id.*

That is true for both civil and criminal forfeiture. At the federal level, for example, the Department of Justice Assets Forfeiture Fund receives deposits from civil and criminal forfeitures alike, ensuring that the revenue incentive operates identically regardless of the proceeding's label. 28 U.S.C. § 524(c)(4)(A) ("There shall be deposited in the Fund … all amounts from the forfeiture of property under any law enforced or administered by the Department of Justice[.]"). The Excessive Fines Clause protects against those incentives just the same, as it prohibits extracting payments "as punishment for some offense," regardless of whether the proceeding carrying that label is civil or criminal. *Austin v. United States*, 509 U.S. 602, 610 (1993) ("[T]he question is not … whether forfeiture … is civil or criminal, but rather whether it is punishment."); *see also Alexander v. United States*, 509 U.S. 544, 558–59 (1993) (holding that in personam criminal forfeiture "is clearly a form of monetary punishment no different, for Eighth Amendment purposes, from a traditional 'fine'" and remanding for proportionality review under the Excessive Fines Clause). Thus, the "touchstone" remains "the principle of proportionality." *Bajakajian*, 524 U.S. at 334.

B. Modern Fine and Forfeiture Practices Recreate the Abuses the Clause Was Meant to Prevent.

The modern landscape demonstrates the need for the Excessive Fines Clause's protections. Fine-and-forfeiture regimes create powerful incentives for governments to expand financial sanctions, reviving in practice the revenue-driven model that the Framers rejected. "[T]here is a 'realistic possibility' that forfeiture officials' judgment 'will be distorted by the prospect of institutional gain'—the more revenues they raise, the more revenues they can spend." *Harjo v. City of Albuquerque*, 326 F. Supp. 3d 1145, 1151 (D.N.M. 2018) (quoting *Marshall*, 446 U.S. at 251); *see also Culley v. Marshall*, 601 U.S. 377, 396 (2024) (Gorsuch, J., concurring) (noting that "law enforcement agencies have become increasingly dependent on the money they raise from civil forfeitures").

The numbers bear out those incentives: Fine-and-forfeiture systems funnel proceeds directly to the agencies that enforce them. Only six States and the District of Columbia direct civil-forfeiture proceeds to neutral funds. Lisa Knepper et al., *Policing for Profit: The Abuse of Civil Asset Forfeiture* 13 (4th ed. 2026), https://perma.cc/DQ72-DWBW. In 32 other States and the Federal Government, law-enforcement-controlled funds receive between 90% and 100% of those proceeds. *Id.* In the remaining 12 States, law enforcement gets 45% to 80%. *Id.* In fiscal years 2017 and 2018, fines and forfeitures provided over half of general-fund revenues in 80 jurisdictions, provided over 20% of general-fund revenues in another 284 jurisdictions, and accounted for more than 10% of general-fund revenues in nearly 600 other jurisdictions. Mike Maciag, *Addicted to Fines: A Special Report*, Governing (Aug. 16, 2019), https://perma.cc/S7CA-SXV8; *see also* Ram Subramanian et al., *Revenue Over Public Safety: How Perverse Financial Incentives Warp the Criminal Justice System* 12 & n.119, Brennan Ctr. for Just. (July 6, 2022), https://perma.cc/7322-P3CU.

In some jurisdictions, seized assets have dwarfed the offices they fund. For example, fines amounted to 1,507% of the prosecutor's budget in Reeves County, Texas and 205% in Hill County, Texas. *See* Subramanian, *supra*, at 9; *see also Leonard v. Texas*, 137 S. Ct. 847, 848 (2017) (Thomas, J., statement respecting the denial of certiorari) ("[C]ivil forfeiture has in recent decades become widespread and highly profitable.… This system—where police can seize property with limited judicial oversight and retain it for their own use—has led to egregious and well-chronicled abuses."); Brian D. Kelly, *Fighting Crime or Raising Revenue?* 15–16, Inst. for Just. (June 7, 2019), https://perma.cc/8UML-GGAB (finding increased forfeiture activity when local budgets are strained).

Because forfeiture proceeds are often discretionary, they can fund initiatives never approved through the ordinary appropriations process. "[F]unds obtained through forfeiture are often discretionary for agencies, giving them wide berth to spend as they please. This self-funding, where agencies can acquire and spend funds outside the normal legislative appropriations process, subverts the legislature's power of the purse." Knepper, *supra*, at 12. One police chief put it plainly:

forfeiture money is "kind of like pennies from heaven—it gets you a toy or something that you need." Subramanian, *supra*, at 10 n.93 (quoting Chief Kenneth M. Burton of Columbia, Missouri).

The incentive is strongest where municipalities cannot readily raise revenue through taxation. Missouri has required a citywide referendum for municipal tax increases since 1980, while fines and fees remain within municipal discretion. Walter Johnson, *Ferguson's Fortune 500 Company*, The Atlantic (Apr. 26, 2015). For example, Ferguson, Missouri collected only $68,000 annually in property taxes from the local headquarters of a Fortune 500 company, while making fine revenue "a top priority for law enforcement" and setting revenue targets based on budgetary need rather than public safety. U.S. Dep't of Justice C.R. Div., *Investigation of the Ferguson Police Department* 2, 9–15 (Mar. 4, 2015). Reliance on fines can also track poverty: in the St. Louis area, municipalities relied on fines more heavily as their wealth declined. Thomas Harvey et al., *Municipal Courts White Paper* 9–12, ArchCity Defenders (2014), https://perma.cc/PW5Y-L8CX.

These political and economic incentives are difficult to correct through ordinary political processes. Tax increases provoke organized opposition; people exposed to criminal fines and forfeitures are a diffuse constituency, and many are disenfranchised by the convictions that expose them to punishment. Legislatures can therefore raise revenue through monetary sanctions at comparatively little political cost.

The costs extend beyond the people who pay. Revenue-driven enforcement can distort governmental priorities, undermine public safety, and erode confidence in the justice system. *See* Subramanian, *supra*, at 13 n.151 (citing study that found a statistically significant negative correlation between the share of revenue generated by fines, fees, and forfeitures and clearance rates for violent and property crimes); *see also* Knepper, *supra*, at 7 ("[N]early half of forfeitures" in surveyed states "occur without anyone—let alone the owner—being convicted of a crime. And available data suggest many forfeitures stem from opportunistic seizures rather than deliberate investigations aimed at rooting out criminal activity."). Courts, legislators, and commentators have repeatedly documented these abuses. *See, e.g.*, *Leonard*, 137 S. Ct. at 848 (Thomas, J., statement respecting the denial of certiorari); *Federal Asset Forfeiture: Uses and Reforms: Hearing Before the Subcomm. on Crime, Terrorism, Homeland Security, and Investigations of the H. Comm. on the Judiciary*, 114th Cong. 1, 3 (2015) (statement of Chairman James Sensenbrenner) (describing the government's "seiz[ure] [of] billions of dollars of cash and property from Americans, often without charging them with a crime").

None of this denies that the harms these statutes target are real, or that legislatures may weigh those harms in setting penalties. But that does not justify imposing a fine based on others' conduct. The Eighth Amendment exists to ensure that the penalty imposed on a defendant remains proportionate to "the gravity of the *defendant's* offense," not to the conduct of others. *Bajakajian*, 524 U.S. at 337 (emphasis added).

Courts are charged with enforcing those proportional limits, but the Alaska Supreme Court failed to perform that judicial task here.

II. The Excessive Fines Clause Protects Against Punishment Based on Abstract or Hypothetical Offense Conduct Rather Than Individual Culpability.

A product of its history, the Excessive Fines Clause demands a focus on the object of punishment: the defendant's *own* conduct and *own* culpability. The Alaska Supreme Court's reliance on conduct and harms caused by others cannot satisfy that defendant-specific command.

A. Individual Culpability Is a Bedrock Principle of Our Criminal Justice System.

The Excessive Fines Clause flows from the principle that "[t]he amount of [a] forfeiture must bear some relationship to the gravity of [a defendant's] offense." *Bajakajian*, 524 U.S. at 334. That proportionality principle underlies nearly every aspect of our criminal justice system, from sentencing factors and mitigation to affirmative defenses and scienter. Across decades, doctrines, and defendants, this Court has consistently reaffirmed the "fundamental premise … that individuals are accountable only for their own criminal acts"—and that punishment must reflect an individualized inquiry into the "personal guilt" of the offender. *See Carmona v. Ward*, 439 U.S. 1091, 1096 (1979) (Marshall, J., dissenting from denial of certiorari); *Scales v. United States*, 367 U.S. 203, 224–25 (1961) ("In our jurisprudence guilt is personal," and punishment must bear a "substantial" "relationship" to "the concept of personal guilt.").

At the foundation of that inquiry is the defendant's specific, voluntary conduct. *See* Model Penal Code § 2.01(1) ("A person is not guilty of an offense unless his liability is based on conduct that includes a voluntary act or the omission to perform an act of which he is physically capable."). Imposing criminal sanctions based on the criminal conduct of others (absent a specific legal relationship giving rise to vicarious liability, *see id.* § 2.06) is anathema to foundational notions of justice. *See Elfbrandt v. Russell*, 384 U.S. 11, 17–19 (1966) (A law that "rests on the doctrine of 'guilt by association'" and is not "narrowly drawn to define and punish specific conduct" "cannot stand"). Punishment must instead be tailored to the defendant's actual role and behavior.

The individual's conduct before and after an offense matters as well. Criminal history, remorse, and restitution are staples of criminal sentencing. *See* U.S. Sentencing Guidelines §§ 3E1.1, §4A1.1, 5K1.1. Substantial assistance can merit express departures from what would otherwise be a statutory minimum penalty. *See* 18 U.S.C. § 3553(e). And post-conviction conduct can likewise affect the sentence a defendant actually serves—through institutional good time credits, program completion, second-look policies, and similar programs. *See id.* §§ 3582(c)(1)(A), 3621(e)(2)(B), 3624(b); U.S. Sentencing Guidelines § 1B1.13; *see also* Sara Cohbra & Becky Feldman, *The Second Look Movement: An Assessment of the Nation's Sentence Review Laws*, The Sentencing Project (2025), https://perma.cc/VAY5-JDBR. These considerations reflect the ordinary judgment that punishment should respond to the individual before the court, not merely to the category of offense.

Other circumstances may further reduce or increase personal blameworthiness. Defenses such as entrapment, self-defense, duress, and necessity bear directly on culpability and therefore on the punishment an offense warrants. *See* Paul H. Robinson, 2 *Criminal Law Defenses* §§ 124, 132–34, 177, 209 (2026). Such factors directly impact a defendant's degree of personal culpability and the concomitant measure of punishment that it warrants. *See, e.g.*, Act of Feb. 15, 1779, 1779 Vt. Acts & Resolves 153–54 (carveout for punishment for manslaughter "in the just and necessary defence of … life, or the life of any other").

Intent is another central measure of culpability. Criminal law generally requires proof of a guilty mind. *See Elonis v. United States*, 575 U.S. 723, 734 (2015) (In general, "a guilty mind is 'a necessary element in the indictment and proof of every crime.'" (citation omitted)). The notion that punishment mirrors intent stems from the "intense individualism" of the Founding Era, *see Morissette v. United States*, 342 U.S. 246, 251–52 (1952), when legislatures recognized that the motivation for a crime often is just as important a measure of culpability as the crime itself. *See, e.g.*, Act of Aug. 4, 1790, ch. 35, 1 Stat. 156, 170 (recognizing exception to forfeiture requirement for accidents or mistakes); Act of Feb. 1779, 1779 Vt. Acts & Resolves 99 (penalty reduced in light of subjective belief of a legal right to act). Today, that concept is so engrained in our jurisprudence that courts will typically "interpret[] criminal statutes to include broadly applicable scienter requirements, even where the statute by its terms does not contain them." *United States v. X-Citement Video, Inc.*, 513 U.S. 64, 70 (1994).

Beyond conduct and intent, individual characteristics likewise bear on culpability. This Court has recognized that disabilities in areas of reasoning, judgment, and impulse control are "factors which may call for a less severe penalty." *Moore v. Texas*, 581 U.S. 1, 12 (2017). Relatedly, juvenile offenders exhibit "diminished culpability" such that "they are less deserving of the most severe punishments." *Miller v. Alabama*, 567 U.S. 460, 471 (2012). More generally, a sentencing court must be able to consider the offender's history and characteristics and any mitigating circumstances. *See* 18 U.S.C. § 3553(a)(1) (directing sentencing courts to consider of "the history and characteristics of the defendant").

Throughout these precedents, the principle is the same: punishment must be calibrated to the individual's degree of personal culpability. Assessing personal culpability requires consideration of a range of penologically significant factors, including specific offense conduct, mitigating circumstances, pre- and post-conviction conduct, intent, and individual characteristics such as age, personal history, and diminished capacity. American jurisprudence reflects a long recognition that each of those considerations is highly relevant to a defendant's degree of criminal responsibility and, by extension, the punishment that might equitably be imposed on them in response. A proportionality inquiry that excludes those considerations and instead relies on the conduct of others is punishment by abstraction.

B. The Excessive Fines Clause Requires Meaningful Proportionality Review.

This Court's decision in *Bajakajian* provides a vital measurement to assess the constitutionality of monetary punishments. There, the Court recognized that the Clause prohibits fines "grossly disproportional to the gravity of a defendant's offense." *Bajakajian*, 524 U.S. 321, 334 (1998). Critically, the Court did not consider the "offense" at issue in the abstract. The defendant, Hosep Bajakajian, was stopped at the airport while attempting to leave the United States while lawfully carrying $357,144 in currency, and was subsequently convicted of failing to report that money to U.S. customs agents. *Id.* at 325–26. While the Court recognized that such currency-reporting requirements might theoretically encompass major violations by "tax evaders, drug kingpins, or money launderers," it nonetheless focused on "[t]he harm that *respondent* caused" through his specific misconduct. *Id.* at 338–39 (emphasis added). The Court noted that Bajakajian's hesitation to disclose money to authorities stemmed from "cultural differences" and a "distrust for the Government" stemming from his heritage as a member of the Armenian minority in Syria. *Id.* at 326. Finding that he had exhibited only "a minimal level of culpability," the Court held that forfeiture of the entire amount would be unconstitutionally excessive relative to the measure of his personal fault. *Id.* at 337–39; *see also State v. Timbs* (*Timbs II*), 169 N.E.3d 361, 373 (Ind. 2021) (recognizing, on remand from this Court's decision in *Timbs v. Indiana*, that *Bajakajian* "did not impute to the defendant the offenses of others and rather considered what specific harms his specific acts had caused").

That focus on individual culpability was employed more recently in *Timbs v. Indiana*. *See* 586 U.S. 146 (2019). In that case, the State of Indiana seized Tyson Timbs's Land Rover following his convictions of dealing in a controlled substance and conspiracy to commit theft. *Id.* at 148–49. The trial court found that the forfeiture had been "grossly excessive" under the Excessive Fines Clause but the Indiana Supreme Court reversed, concluding that the Clause did not apply to the States. *Id.* This Court reversed, concluding that the Clause is incorporated against the States through the Fourteenth Amendment. *Id.* at 149–50. In reaching that holding, the Court emphasized that the Excessive Fines Clause is historically rooted in the principle that a person should be fined only "after the manner of [his] fault." *Id.* at 151. On remand, the Indiana Supreme Court applied that principle to conclude that the forfeiture of Timbs's SUV was grossly disproportionate to "the gravity of the underlying offenses and the owner's culpability for the property's criminal use." *Timbs II*, 169 N.E.3d at 367. Those distinctly offender-specific considerations illustrate what has always been implicit in this Court's precedent: the Excessive Fines Clause guarantees every defendant the right to challenge his fine as grossly disproportional as applied to him based on a case-by-case assessment of the factors bearing on his culpability, rather than the abstract harms associated with the broader category of offense.

The overwhelming majority of courts applying *Bajakajian* have (correctly) interpreted it to require this individualized culpability assessment. Federal courts of appeals have emphasized that a proportionality determination must be made "on a case-by-case basis" and that "[t]he culpability of the offender should be examined specifically, rather than examining the gravity of the crime in the abstract." *United States v. $100,348.00 in U.S. Currency*, 354 F.3d 1110, 1123 (9th Cir. 2004) (citation omitted); *accord Pimentel v. City of Los Angeles*, 974 F.3d 917, 923 (9th Cir. 2020) ("It is critical … that the court review the specific actions of the violator rather than by taking an abstract view of the violation."); *United States v. Facteau*, 89 F.4th 1, 45 (1st Cir. 2023) (Courts must focus on "the culpability of the individual defendant"), *cert. denied*, 145 S. Ct. 137 (2024); *Yskamp v. DEA*, 163 F.3d 767, 773 (3d Cir. 1998) (similar). State courts have resoundingly reached the same conclusion. *See, e.g., One 1995 Toyota Pick-Up Truck v. District of Columbia*, 718 A.2d 558, 565 (D.C. 1998) (noting that "the [*Bajakajian*] Court placed its primary emphasis on the culpability of Bajakajian himself rather than on the severity of the crime in the abstract); *Commonwealth v. 1997 Chevrolet*, 160 A.3d 153, 189 (Pa. 2017) (excessiveness standard is "defendant-culpability focused, rather than centered on the severity of the crime in the abstract."). To impose punitive violations in the abstract without consideration of individual culpability would be tantamount, these courts have reasoned, to "placing full responsibility for the 'war on drugs' on the shoulders of every individual claimant." *United States v. 38 Whalers Cove Drive*, 954 F.2d 29, 37 (2d Cir.), *cert. denied*, 506 U.S. 815 (1992). The Excessive Fines Clause—and our country's longstanding tradition of personal accountability for criminal misconduct in which it is rooted—demands greater tailoring.

C. The Alaska Supreme Court's Approach Conflicts with This Court's Precedent Connecting Individualized Punishment with Individual Fault.

The Alaska Supreme Court's decision focused on the broad scope of Mr. Jouppi's offense, divorced from his individualized conduct. The court acknowledged that Jouppi's offense was a misdemeanor but treated the circumstances of his violation as "not particularly relevant," including whether his conduct was part of a broader pattern of criminal activity. App. 26a. Rather than tailor punishment to personal culpability based on Jouppi's characteristics, mitigating circumstances, and conduct before, during, and after the offense, the court zoomed out to a stratospheric level of abstraction. It noted that Jouppi, solely by virtue of his violation, fell within the "*class* of persons targeted by the statute." App. 20a (emphasis added). It overlooked the (*de minimis*) harm caused by Jouppi's specific conduct in favor of highlighting the general consequences of "[a]lcohol abuse in rural Alaska," App. 24a—a consideration many steps removed from almost transporting a customer with a single visible six-pack of beer. Finally, it held that remand was unnecessary because "*any*" findings by the trial court would not alter its conclusion that the forfeiture was not grossly disproportional. App. 25a (emphasis added). Those features reveal a purely categorical inquiry, not the case-specific assessment *Bajakajian* requires.

By minimizing the "relevan[ce]" of individualized culpability determinations, *see* App. 26a, the decision below conflicts with this Court's jurisprudence specifically interpreting the Excessive Fines Clause. Like Bajakajian and Timbs, Jouppi's offense conduct was exceedingly minor relative to the scope of behavior covered by his statute of violation. Yet rather than faithfully apply *Bajakajian*'s defendant-specific proportionality analysis (which considered, among other things, the defendant's unique cultural background and specific misconduct), the Alaska Supreme Court eschewed customized assessments in favor of an abstract review of the means-end fit between the underlying statute and the conduct of others and broad societal ills it seeks to address. In doing so, it paid minimal attention to the actual characteristics of the offender and circumstances of the offense—the foundational components of culpability. *Compare* App. 26a (finding it "not particularly relevant whether Jouppi's offense was part of a larger pattern of criminal activity"), *with Bajakajian*, 524 U.S. at 337 n.12 (finding it "highly relevant" that defendant's offense is "unrelated to any other crime").

If condoned here, the Alaska Supreme Court's approach would allow the State to justify an otherwise excessive forfeiture solely by identifying a serious problem and placing the defendant within the statute's target class. That is consideration of legislative purpose to the exclusion of all else, not proportionality review. Such an approach cannot be squared with the Excessive Fines Clause, which requires a court to ask what *this* defendant did, how culpable *he* was, what harm *his* conduct caused, and whether the punishment imposed is grossly disproportionate to *his* offense. Because the decision below refused to conduct any meaningful individualized inquiry here, it should be reversed. Moreover, the court's exclusive reliance on broad social consequences is incompatible with the constitutional premise that individuals are accountable only for their own criminal acts. The key question is the gravity of Jouppi's offense and his culpability, not the gravity of alcohol abuse throughout rural Alaska.

III. A Defendant-Specific Proportionality Rule Is More Administrable and Better Reflects Real-World Punishment.

A defendant-specific rule is not only compelled by the Excessive Fines Clause's text, history, and precedent; it also is both more principled and more workable.

A. Clear, Administrable Standards Are Essential to Meaningful Eighth Amendment Review.

Any judgment about the gravity of an offense "will be inherently imprecise," but that imprecision does not authorize courts to abandon constitutional criteria. *Bajakajian*, 524 U.S. at 336. It instead underscores the need for a disciplined inquiry grounded in facts courts routinely evaluate in criminal cases. A defendant-specific review supplies that discipline: it asks what the defendant did, what he intended, what role he played, what harm resulted, and what other circumstances bear on the sanction. By contrast, an abstract-gravity inquiry invites courts to select among hypothetical harms and policy judgments that provide no consistent measure of the punishment's severity.

Courts can apply a nonexclusive set of familiar factors: the defendant's actual conduct; *mens rea*; whether the conduct was completed or attempted; the quantity involved; the defendant's role; actual or intended harm; prior record; any connection to broader criminal activity; the applicable statutory fine range; other sanctions imposed; and the forfeiture's effect on the defendant's livelihood. These factors do not create a rigid formula. Rather, they ensure that the proportionality judgment remains anchored to the offender and offense before the court, as the Clause requires.

Jouppi's case shows why those factors matter; properly applied, they would not lead to the illogical analysis undertaken by the Alaska Supreme Court. The Alaska Supreme Court concluded that "only one instance" of a passenger carrying six beers into a dry village, "unconnected to other criminal activity," is "more serious than" removing $357,144 from the United States without the federal government's knowledge—even though neither case involved proof of "a nefarious purpose." App. 19a–20a; *Bajakajian*, 524 U.S. at 337–38. But unlike *Bajakajian*, where the Court found the harm "minimal," the State's theory here depended on harm that was entirely hypothetical. *See* App. 24a. The hypothetical harm also "caused no loss to the public fisc"; to the extent any financial consequence exists, it arose only because the State chose to prosecute and seek forfeiture. *Bajakajian*, 524 U.S. at 339.

An abstract-gravity rule like the one applied by the Alaska Supreme Court also undermines the protections afforded to defendants in the criminal justice system. Defense counsel must advise clients about plea offers and the likely consequences of conviction. That advice becomes unreliable if forfeiture exposure depends on broad social harms that the defendant did not admit, the jury did not find, and the defendant's conduct did not cause. A defendant-specific rule, by contrast, lets counsel and courts assess consequences using facts tied to the charged conduct and the defendant's culpability.

This case is illustrative. The state trial court judge concluded that harm was minimal because the beer on Mr. Jouppi's airplane was of such a small quantity that it could have been for the passenger's sole consumption or that of the passenger's family. App. 46a–47a. The Alaska Supreme Court nevertheless upheld the constitutionality of the forfeiture of Jouppi's airplane "as a matter of law" by looking beyond the facts of his offense and focusing on the generalized harms from alcohol abuse—crime, death, and public-health costs—across rural Alaska. App. 2a, 24a. The difference is not a mere disagreement about a marginal fact; it is the predictable consequence of two fundamentally different methods. One examines the offense proved. The other substitutes the conduct of others and generalized social ills. Without a defendant-specific rule, forfeiture exposure becomes unpredictable and plea advice becomes guesswork.

B. An Abstract-Gravity Rule Is Also Ill-Suited to Assessing Impacts on a Defendant's Livelihood.

Individualized review also allows courts to consider the actual consequences that a monetary punishment will have for a particular defendant. Though not at issue in this case because the Jouppi challenges only the gross disproportionality of the forfeiture of his plane, a large fine or forfeiture may also threaten a defendant's livelihood.

For example, forfeited property can itself be a livelihood asset. Courts have recognized that property may support the defendant's primary source of income. *See e.g.*, *United States v. 427 & 429 Hall St.*, 74 F.3d 1165, 1172 (11th Cir. 1996) (recognizing that "the legitimate businesses that [the defendant] ran off the property … were his primary source of livelihood"). The same is true of vehicles, equipment, and other property used in a person's occupation. Losing such an asset can eliminate work, force high-cost borrowing, or destabilize a household in ways the asset's nominal market value does not capture. Aliza M. Tresser, *Towing After Timbs: Why Vehicle Impoundment Violates the Excessive Fines Clause*, 58 Colum. J.L. & Soc. Probs. 1, 3 (2024) (discussing "a woman who would lose her job if she did not get her car back in time to go to work but who did not have the nearly $900 it would cost; a father who desperately needed to pick up his children; a small business owner whose business relied on his then-impounded truck and who took out a payday loan with 50% interest to retrieve the truck after losing four days of income from the tow").

A forfeiture in the form of a money judgment can also be so large that it puts the defendant perpetually in debt for the rest of his life, no matter how much money he might ever obtain by any legal means in the future. As a result, the defendant can lose any ability to earn a living ever again

Courts cannot assess a forfeiture's effect on a defendant's livelihood accurately without considering the property's function in the defendant's life and other individualized aspects of the defendant's financial situation. The Court should not sanction a method of assessing the gross disproportionality that diverges from the individualistic way the Eighth Amendment requires fines to be tested to avoid destroying a defendant's livelihood.

* * *

The Excessive Fines Clause requires courts to evaluate the conduct that gave rise to the sanction, the defendant's culpability, the actual or intended harm, and the punishment's real-world effect on the particular defendant. That rule preserves the judiciary's historical role as a check on legislative and executive overreach and ensures that the Excessive Fines Clause remains a constitutional limit, not a paper tiger that allows the imposition of punishment based solely on society's broader ills.

CONCLUSION

For these reasons, this Court should reverse the judgment of the Supreme Court of Alaska.

Respectfully submitted,

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