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 PETER FLORES, KELSEY SHEPHERD, AND STACEY JOHNSON AS AMICI CURIAE IN SUPPORT OF PETITIONER

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INTEREST OF AMICI CURIAE[1]

Amici are healthcare professionals who accepted grants from the federal government through the National Health Service Corps Loan Repayment Program in exchange for their work in medically underserved communities. Each has faced or now faces an unconstitutionally excessive fine because they were unable to satisfy the Program's terms. Each sought to return the full grant, but the government refused to accept the money. Instead, the government uniformly imposed treble damages. It refused to consider individual culpability or conduct related to the alleged failure to comply. Two amici managed to settle with the government only after filing legal challenges. The third recently filed suit to challenge the penalty as an excessive fine in violation of the Eighth Amendment. That case remains pending.

Amici agree with Petitioner that this Court should reverse the decision below. They write separately to address (1) what happens when a federal agency chooses not to conduct an individualized assessment of culpability when imposing statutory penalties; and (2) the need to make clear that the constitutionality of a punitive fine depends on individual culpability—not the generalized social ills that motivated legislation. These issues are of crucial importance to amici, who have suffered under the

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[1] No counsel for any party authored this brief in whole or in part, and no person or entity other than *amicus curiae* or its counsel made a monetary contribution to fund the brief's preparation or submission.

imposition of unconstitutional fines and been forced to seek court intervention. The Court's holding will also apply to amicus Kelsey Shepherd's pending challenge to the excessive fine assessed against her.

SUMMARY OF ARGUMENT

Proportionality drives the application of the Excessive Fines Clause, and proportionality necessarily demands an individualized inquiry. *Bajakajian* considered proportionality by assessing the fine imposed in the specific context of the petitioner's conduct—what he had done, the harm he caused, and whether he was the intended target of the statute he violated. *United States v. Bajakajian*, 524 U.S. 321, 337–40 (1998). The Alaska Supreme Court did the opposite, assessing the forfeiture of Petitioner Ken Jouppi's plane against aggregate harms of alcohol abuse across Alaska, ignoring Petitioner's specific conduct, and making no finding as to the particular harm caused.

Amici's experiences offer concrete examples of what happens when a federal agency ignores individual circumstances as a matter of policy. The Health Resources and Services Administration (the "Agency"), which sits within the United States Department of Health and Human Services, administers the National Health Service Corps ("NHSC") Loan Repayment Program (the "Program"). The Program awards grants to healthcare professionals in exchange for their agreement to work for two or more years at an NHSC-approved site. If individual healthcare professionals are unable to perform the service obligation in full, the Program offers two options. Participants must either find another job at a qualifying site—which, because of the limited positions offered by the Program, is often hundreds of miles from the original site. Or participants must pay back to the Program not just the remaining grant principal but also an extraordinary penalty, calculated under a rigid formula, of three or more times the original grant principal. Although the Secretary of Health and Human Services has discretion to grant full or partial waivers of both the service obligation and the penalty, the Program interprets any nonperformance, no matter the reason for it, as requiring imposition of the treble-plus penalty.

As one federal district court observed, the Agency makes "no effort to consider an individual Program participant's circumstances or culpability." *Johnson v. Becerra*, 674 F. Supp. 3d 949, 958 (D. Mont. 2023). Like the State of Alaska in this case, the Agency defends the formula and resulting fine by pointing to the generalized harm of provider shortages across the country rather than the particularized harm of the participants' alleged failure to perform or their individual culpability in the purported breach.

According to the Agency, so long as Program participants remain alive and physically able to work, their individual circumstances are immaterial to determining any penalties imposed. For example, after accepting a $75,000 grant, Michigan-based mental health counselor Kelsey Shepherd changed employers, taking a similar position that was closer to home and allowed her to manage health challenges and family obligations. Though she informed the Agency about this change, it nonetheless disbursed the grant funds, subsequently determined her new position did not qualify, and then placed Kelsey in collections for more than $370,000, with additional interest accruing daily. This amount includes the original grant—which Kelsey previously sought to return—plus a penalty of nearly $270,000. Similarly, for his $25,000 grant, Brooklyn-based social worker Peter Flores faced roughly $72,000 in penalties on top of interest accruing daily—and a remaining grant principal of $22,000—for accepting a promotion in the same hospital system, where he continued to serve the same patient population. Finally, Stacey Johnson, a nurse practitioner in Montana, lost her job amid a whistleblower dispute, attempted to return her $50,000 grant to the federal government within ten days of receipt, and continued working in the same underserved community. The Agency refused to accept repayment and imposed more than $135,000 in penalties in addition to returning the $37,000 in remaining grant principal.

Without clarification that individual culpability is the key to assessing constitutional financial penalties, federal agencies have license to ignore the individual and punish the category. But the Excessive Fines Clause is meant to protect individuals from financial ruin at the hands of government. Penalties must be proportional to culpability and harm. Amici's experiences illustrate why.

ARGUMENT

I. The Agency routinely imposes penalties subject to the Excessive Fines Clause.

The Excessive Fines Clause reaches civil penalties and exactions no less than criminal fines and forfeitures. *See, e.g.*, *Hudson v. United States*, 522 U.S. 93, 103 (1997) ("The Eighth Amendment protects against excessive civil fines, including forfeitures."). That is because "'[t]he notion of punishment . . . cuts across the division between the civil and the criminal law,'" so that "the question is not . . . whether [the penalty] is civil or criminal, but rather whether it is punishment." *Austin v. United States*, 509 U.S. 602, 609–10 (1993) (citation omitted)).

Although the Excessive Fines Clause applies to all financial punishments—whether criminal or civil, administrative or regulatory—the Agency ignores it as a matter of course. Congress expressly designed the Program's penalty formula to punish a particular type of person who benefits from the Program and then absconds from service. The Agency, however, inflexibly punishes participants without regard for or consideration of individual culpability. Its approach is unconstitutional—and shows why the Excessive Fines Clause must, consistent with this Court's precedent, continue to require that fines be proportional to an individual's violation.

A. The NHSC penalty scheme is punitive.

A penalty is subject to the Excessive Fines Clause "if it constitutes punishment even in part." *Bajakajian*, 524 U.S. at 331 n.6. A civil sanction is punishment whenever it "can only be explained as also serving either retributive or deterrent purposes." *Austin*, 509 U.S. at 621 (citation omitted). The statutory formula at 42 U.S.C. § 254*o*, which governs Program participants' breach, is intentionally punitive, serving both retributive and deterrent functions. *See* 42 U.S.C. § 254*o*; 133 Cong. Rec. H23617-23618 (Sept. 9, 1987) ("[W]hat we want to do is to take the few who are abusing the system and make sure we get on them . . . and let us make them pay.").

The Emergency Health Personnel Act of 1970 first established the NHSC to offer scholarships to students who promised to work for an agreed-upon term in medically underserved areas. Pub. L. 91-623 (Dec. 31, 1970), 84 Stat. 1868. The NHSC's mission includes "[s]trengthening and growing our primary care workforce" and "build[ing] healthy communities by supporting qualified health care providers dedicated to working in areas of the United States with limited access to care." National Health Service Corps Mission, Work, and Impact, Health Res. & Serv. Admin., https://nhsc.hrsa.gov/about-us (last visited Sept. 7, 2026). In 1987, Congress expanded NHSC programming to include loan repayment grants. *See* 42 U.S.C. § 254*l*-1. Through this Program, the Agency offers loan repayment grants to healthcare professionals who work at Agency-approved facilities.

Congress designed the penalty scheme to deter participants from taking the loan repayment grant and then intentionally abandoning their service commitment. *See* 133 Cong. Rec. H23617-23618 (Sept. 9, 1987) ("It is not to cast dispersions [*sic*] on the program or the physicians who contribute so much every single day but on the ones who are the rotten apples in that barrel."). Section 254*o* entitles the government to seek $7,500 per month of unperformed service, plus interest accruing daily at the maximum federal rate. 42 U.S.C. § 254*o*(c). The statute also entitles the government to collect a minimum of $31,000 for even a day of unperformed service. Neither Congress nor the Agency make any connection, however, between the penalties the formula authorizes and the costs incurred when a participant is unable to complete their service obligation. *See Bajakajian*, 524 U.S. at 329 ("Deterrence . . . has traditionally been viewed as a goal of punishment, and forfeiture of the currency here does not serve the remedial purpose of compensating the Government for a loss.").

Moreover, the Agency benefits directly from recovering outsized penalties. *See generally* 42 U.S.C. § 254*o*-1 (establishing a fund through which money collected for breaches is allocated to the Agency); *cf. Harmelin v. Michigan*, 501 U.S. 957, 978 n.9 (1991) ("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 . . . [F]ines are a source of revenue. As we have recognized in the context of other constitutional provisions, it makes sense to scrutinize governmental action more closely when the State stands to benefit."); *Toth v. United States*, 143 S. Ct. 552, 553 (2023) (Gorsuch, J., dissenting from denial of certiorari) (noting that a narrow application of the Excessive Fines Clause "incentivizes governments to impose exorbitant civil penalties as a means of raising revenue").

The resulting penalty imposes greater than treble damages on the participant. *See, e.g.*, Mem. of Law in Supp. of Mot. to Stay Agency Decision or, in the Alternative, a Prelim. Inj. at 13, *Flores v. Kennedy*, No. 1:26-cv-02019-ALC (S.D.N.Y. Apr. 24, 2026), Dkt. No. 16 ("The Agency has assessed over $72,000 in penalties against Peter on just $22,427 in outstanding liability."). Treble damages are "essentially punitive in nature," *Vt. Agency of Nat. Res. v. United States ex rel. Stevens*, 529 U.S. 765, 784–85 (2000), because "[t]he very idea of treble damages reveals an intent to punish past, and to deter future, unlawful conduct," *Tex. Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 639 (1981); *see also State Farm Mut. Auto. Ins. v. Campbell*, 538 U.S. 408, 425 (2003) (even where egregious conduct warrants punitive damages, "few awards exceeding a single-digit ratio between punitive and compensatory damages . . . will satisfy due process"). Worse still, in some cases, the formula-driven penalty is far greater. *See, e.g.*, Compl. ¶ 10, *Clements v. Becerra*, No. 2:24-cv-00567-RAH-SMD (M.D. Ala. Sept. 5, 2024), Dkt. No. 1 ("The damages amount equals, at minimum, <u>10.77 times</u> the principal.").

Courts of appeals have thus recognized Section 254*o*'s punitive character. *United States v. St. Thomas*, 966 F.2d 476, 480 (9th Cir. 1992) (describing the penalty as "a heavy one, far exceeding the actual monetary loss to the United States"); *Tanko v. United States*, 428 F.3d 730, 733 (8th Cir. 2005) (referring to the penalty as "severe and onerous"); *United States v. Melendez*, 944 F.2d 216, 219 (5th Cir. 1991) (likening the penalty to "liquidated damage[s]" and describing it as "punitive"). The exactions are completely untethered from actual loss suffered.

B. The Agency applies the penalty scheme to punish innocent participants.

The Agency regularly punishes individual healthcare providers who continue to offer critical services in their respective communities, pointing to the existence of medically underserved areas nationwide. The Agency punishes them by imposing more-than-treble damages even when they bear little to no responsibility for an alleged breach.

In fact, the Agency agrees the formula serves "dual goals" of deterrence and—without evidence—compensation to the Program for loss of services in underserved areas. Defs.' Br. in Supp. on Mot. for Summ. J. at 26, *Johnson v. Becerra*, No. 4:22-cv-00055-BMM (D. Mont. Jan. 17, 2023), Dkt. No. 38. The Agency applies the formula to punish participants, and to "disincentiviz[e]" others "from reneging on their service obligations." *Id.* It thus concedes that the penalties do not "solely . . . serve a remedial purpose." *Austin*, 509 U.S. at 621.

Yet Section 254*o* does not direct the Agency to exact the maximum penalty in every case. Congress authorized the Secretary of Health and Human Services to "provide for the partial or total waiver or suspension of any obligation of service or payment by [a participant] whenever compliance by the individual is impossible or would involve extreme hardship to the individual and if enforcement of such obligation with respect to any individual would be unconscionable." 42 U.S.C. § 254*o*(d)(2). Under the implementing regulations, "[c]ompliance . . . will be considered impossible if the Secretary determines . . . that the participant suffers from a physical or mental disability resulting in the permanent inability of the participant to perform the service or other activities which would be necessary to comply with the obligation." 42 C.F.R. § 62.12(c). It also contemplates the terminal illness of an immediate family member. *Id.*

The Agency refuses to consider relevant circumstances, demonstrating the extreme unfairness and inflexibility that results without an individualized inquiry. The statutory scheme requires the Secretary to consider not only "impossibility" but also "extreme hardship" and "unconscionab[ility]" when deciding whether to waive a service obligation. But, under the regulations, the Secretary considers only the participant's present and future earning potential and ability to work. 42 C.F.R. § 62.12(d).

The Secretary has interpreted this provision to require the participant to "suffer from a physical or mental disability which permanently prevents her from performing her obligations" and having "a positive monthly cash flow." United States' Br. in Supp. of its Cross-Mot. for Summ. J. & Opposing Pl.'s Mot. for Summ. J. at 14–15, *Johnson v. Becerra*, No. 4:22-cv-00055-BMM (D. Mont. Jan. 17, 2023), Dkt. No. 38 (citation omitted). In other words, the Agency imposes the highest penalties authorized by statute without considering culpability or individual circumstance outside of a participant's death or extreme injury. The Agency even has pursued many participants through bankruptcy, suggesting that complete financial ruin is not enough. *See, e.g.*, *United*

States v. Kephart, 170 B.R. 787, 792–93 (W.D.N.Y. 1994) (although a scholarship recipient in a program subject to the same penalty provision was likely unable to "discharge her debt entirely . . . at [her] present rate of income," a five-year partial-discharge plan in bankruptcy was "too short and favorable" to the recipient).

Punishment in the form of a financial penalty, fee, fine, or sanction is by no means inherently unconstitutional. But assessing such an exaction while ignoring individual culpability is. "Protection against excessive punitive economic sanctions secured by the [Excessive Fines] Clause is . . . fundamental to our scheme of ordered liberty and deeply rooted in this Nation's history and tradition." *Timbs v. Indiana*, 586 U.S. 146, 154 (2019) (cleaned up).

C. The Agency imposes the penalty regardless of individual culpability.

Like Petitioner in this case, amici and other Program participants face categorical penalties entirely divorced from their individual conduct and culpability.

Congress designed Section 254*o* to calculate a participant's liability using a single input and a multiplier: the number of months of service left unperformed. Despite its authority to partially or fully waive both service obligations and penalties for alleged breach, the Agency relies on this formula without inquiring into a participant's fault—or even whether their ability to comply with the service obligation was completely outside their control. *See contra Bajakajian*, 524 U.S. at 334 ("The amount of the forfeiture must bear some relationship to the gravity of the offense that it is designed to punish.”).

Consider, for example, when the only two supervising physicians at a clinic in rural Alabama became unavailable—the result of death and retirement—and the Program participant could no longer legally serve at the clinic. *See* Compl. ¶¶ 4, 37, *Clements*, No. 2:24-cv-00567-RAH-SMD. Although she had only recently been awarded a loan repayment grant, the participant had already worked at the clinic for six years. *Id.* ¶¶ 1–8. The Agency imposed more than $215,000 in penalties on top of a grant principal of less than $25,000. It only granted the participant’s request for a waiver after she challenged the fine in federal court. *Id.* ¶¶ 8–10; Notice of Voluntary Dismissal, *Clements v. Becerra*, No. 2:24-cv-00567-RAH-SMD (M.D. Ala. Dec. 9, 2024), Dkt. No. 22.

Nor does the Agency credit participants who make immediate efforts to return a grant principal upon learning they will be unable to adhere to Program requirements. In fact, the Program regularly rejects efforts to return grant funds. *See, e.g.*, *id.* ¶ 5 (describing participant’s effort to return the money, including overnighting a check to the Agency upon request); *Johnson*, 674 F. Supp. 3d at 953 (participant’s attempt to return grant funds ten days after dispersal rejected by the Agency). And even though Congress purportedly designed the provision to deter highly compensated medical professionals from pocketing grant funds and walking away from underserved communities, the Agency makes no attempt to assess whether participants are actually the intended targets of the penalty scheme, refusing even to consider whether a participant continues to serve the very population the Program exists to reach. *Compare* 133 Cong. Rec. H23617-23618 (Sept. 9, 1987) ("We are talking about the couple who does not want to pay, where they pay their maid more than it costs to repay their loan; the doctor with his $200,000 income who welshed on his deal . . . the ones who are the rotten apples.") *with Johnson*, 674 F. Supp. 3d at 958 (observing that participant remained in the same community and had alleged that she continued to provide medical services to mostly low-income patients).

Program participants receive fewer protections than those convicted of crimes. 18 U.S.C. § 3572 mandates that when imposing a fine for criminal conduct courts consider, among other factors, a defendant's ability to pay, the burden the fine would place on the defendant and their dependents, the nature of their offense, and whether restitution will be made. 18 U.S.C. § 3572(a); *see contra* Federal Defs.' Br. Opposing Mot. for Prelim. Inj. at 20, *Johnson v. Becerra*, No. 4:22-cv-00055-BMM (D. Mont. Sept. 2, 2022), Dkt. No. 14 (government arguing that "[u]nder the regulations, only extreme personal problems are considered such as physical or mental disability and terminal illness").

The Agency has adopted a generalized, abstract approach even though Section 254*o* permits it to assess individual fault and harm. This choice by a federal agency shows why federal agencies, as well as courts, need clarity that the Excessive Fines Clause requires an individualized inquiry of fault when imposing financial penalties.

II. The Agency's generalized approach produces grossly disproportionate penalties.

Amici's experiences show the Agency's non-case-specific approach in action. Amici are healthcare professionals who entered into agreements in good faith and with the belief that they would fulfill their service obligations. To a person, they conducted themselves with honesty and openly communicated with the Agency. Each promptly sought to return the grants awarded to them—in full. Yet, the Agency exacted treble-plus damages against each without consideration of the facts and circumstances they faced. All were forced to seek court intervention to obtain relief.

A. Kelsey Shepherd

Kelsey is a licensed professional counselor in Spring Lake, Michigan. In 2022, after more than two years serving children in crisis, families in poverty, and adults with severe mental illness and addiction at a community behavioral health clinic in Muskegon, she accepted a $75,000 loan repayment grant to continue serving full-time at the same clinic or another qualifying site for an additional three years.

Kelsey lives with relapsing-remitting multiple sclerosis ("RRMS") and narcolepsy, she and her husband recently became parents, and she helps care for a mother with Parkinson's and a grandfather in hospice. Even after she began experiencing symptoms of narcolepsy, management at the Muskegon clinic continued to require that she take overnight shifts despite the danger to her health. During this same period, her mother's Parkinson's worsened and her grandfather's condition declined as well, requiring that Kelsey give more time and support to her family. Facing new health challenges, caregiving obligations, and no flexibility at work, Kelsey needed to find a job closer to home and to her own healthcare providers.

Fortunately, Kelsey was able to find a position with a nonprofit behavioral health provider minutes from her home. The patient population and provider profile was so similar to those of the Muskegon clinic that some of Kelsey's patients followed her to the new clinic. When she began working at the Spring Lake clinic, it was listed as an approved site in the Agency's online portal, and Program staff told her it might qualify for her service obligation.

Kelsey was in active communication about her circumstances and her transition with the Agency. She diligently pursued clarity for the next three years—the same length as her service contract. Not until August 2025 did she finally learn that the Spring Lake clinic would not qualify as a Program site. Right away, Kelsey offered to return the grant—every dollar of the $75,000. The Agency refused to accept it.

Instead, the Agency declared her in breach of their agreement and assessed roughly $270,000 in penalties—about 3.6 times the original grant—plus interest at the maximum federal rate of 9.375 percent. Kelsey cannot return to her position in Muskegon due to her health and family obligations. Even if she could, her former position has been filled, and the clinic is no longer listed as a qualifying Program site. No service-qualifying positions are available near Spring Lake.

Before deciding Kelsey's waiver request—the exclusive mechanism available for administratively challenging the penalties assessed against her—the

Agency sent the debt to collections. It then garnished her federal tax refund.

B. Peter Flores

Peter is a licensed clinical social worker who has spent his entire career in the NYU Langone hospital system serving the Sunset Park community in Brooklyn. In 2023, after working at NYU Langone for six years, he accepted a $25,000 loan repayment grant from the Program in exchange for continuing part-time clinical work for two years. Within a few months, Peter was promoted to a supervisory role that allows him to continue to treat many of the same patients. He also oversees the psychiatric emergency room and has helped to expand crisis-response and mobile-crisis services for the same population. Only after accepting the promotion did Peter learn that his new position would not qualify for the Program agreement.

Right away, Peter tried to return the award. The Agency refused to accept the money. Instead, it declared him in breach and assessed roughly $73,000 in penalties on a $25,000 award, plus interest accruing daily at the maximum federal rate of 12.5 percent. The interest alone totaled over $12,500 in a single year—equivalent to one year's worth of his grant—and kept climbing, increasing by more than $16,000 while the Agency sat on Peter's requests to return the money and/or to waive his service obligation. By the time he filed his complaint challenging the penalty as excessive, the Agency claimed that Peter owed more than $90,000 in penalties and interest for a $25,000 grant that he had tried to return. Peter committed no crime. But if he had instead been convicted of stealing $25,000 from the government, Peter's maximum statutory fine would have been $50,000. *See* 18 U.S.C. § 641; 18 U.S.C. § 3571(d).

In denying Peter's request to waive his service obligation, the Agency weighed no facts bearing on his culpability or on the harm, if any, he caused. It did not consider the fact that he stayed with the same employer, in the same shortage area, working with the same patient population. It did not consider that he promptly offered to return the grant in full or that he attempted to forgo the promotion to return to his previous position, only to find that it had already been filled. The Agency only determined that Peter was "physically able" to work as a social worker and had "future earning potential." For these two reasons, it concluded that the penalty would not cause "extreme hardship" or offend "equity and good conscience." Compl. ¶¶ 39, 41, *Flores v. Kennedy*, No. 1:26-cv-02019-ALC (S.D.N.Y. Mar. 12, 2026), Dkt. No. 6.

When Peter challenged the denial of his waiver request in court, the Agency argued that his promotion harmed all "individuals whose ability to secure primary health care is hampered." Defs.' Br. Opp. Mot. for Prelim. Inj. at 10, *Flores v. Kennedy*, No. 1:26-cv-02019-ALC (S.D.N.Y. May 15, 2026), Dkt. No. 26. But his previous position was already filled—and Peter remained serving the same population as when he accepted the grant. The Agency ignored Peter's contributions as an individual healthcare professional committed to his community, focusing exclusively on how allowing Peter to return the funds would purportedly result in the "defanging" of the Program's "incentive structure." *Id.* at 16–17. The Agency advanced no evidence of this harm and never acknowledged Peter's repeated attempts to affirmatively abide by the Program requirements.

C. Stacey Johnson

Stacey is a family nurse practitioner who accepted a $50,000 grant to serve in Great Falls, Montana in 2020. Stacey was forced to leave her Program-approved position because staying would have required her to violate the law and her ethical obligations. As soon as it became clear that she needed to leave her position, Stacey immediately reached out to the Program, asking to return the $50,000 grant. This was only ten days after the grant had been disbursed to her. The Agency refused to take it, and the grant remained untouched in a separate account for the next three years. Meanwhile the Agency assessed a $135,000 penalty plus daily interest at the maximum federal rate of 9.375 percent.

Stacey could not leave Great Falls. She wanted to stay in her community to continue treating low-income and rural patients. When Stacey's challenge reached federal court, the court did what the Agency had not. It applied the *Bajakajian* factors and found Stacey's culpability to be "minimal." *Johnson*, 674 F. Supp. 3d at 957. It observed that her breach "involved no violation . . . of any civil or criminal law." *Id.* And the court noted that she had "attempted to return the funds," *id.*, and caused the government "no direct financial loss," *id.* at 958. The court rejected the government's bid to justify the penalty by the program's generalized, nationwide purpose of "curing the maldistribution of medical care in the nation." *Id.* at 958.

On the record before it, the court denied the parties' cross motions for summary judgment, holding that the penalty "potentially" violated the Eighth Amendment and requesting supplemental briefing to further assess harm and culpability. *Id.* at 959. The Agency ultimately settled Stacey's claims.

D. A universal penalty scheme

The Agency charges Program participants with the aggregate harm of a nationwide healthcare provider shortage without regard for any individual's fault or the specific harm they cause. One participant, for example, reasonably believed she had completed her service obligation when she reached the end date communicated by the Agency. Weeks after her last day, however, the Agency informed her that her end date had changed. She now faces the statutory minimum $31,000 penalty, adjusted for time served, for less than a month of remaining service obligation. Another participant worked for nearly 16 months in a service-qualifying position in an urban area before the Agency informed her that none of her time counted because an administrator had mistakenly designated her contract as a rural one. In each instance, the Agency has assessed a formula indifferent to fault—including its own.

The Alaska Supreme Court made the same error in the decision below. Disregarding *Bajakajian*'s instruction, the court measured the forfeiture of petitioner's plane against "alcohol abuse in rural Alaska" writ large and charged the aggregate harms of alcohol abuse to a man convicted of allegedly knowing about a passenger carrying a six-pack onto his plane. Mirroring this approach in its consideration of Program participants' waiver requests, the Agency likewise fails to honor the important balancing that the Excessive Fines Clause requires.

III. A requirement to assess individualized culpability would safeguard participants' rights under the Excessive Fines Clause.

"The touchstone of the constitutional inquiry under the Excessive Fines Clause is the principle of proportionality: The amount of the forfeiture must bear some relationship to the gravity of the offense that it is designed to punish." *Bajakajian*, 524 U.S. at 334. When the Court applied that principle in *Bajakajian,* it looked to the defendant's individual actions. The Court asked whom his offense harmed (only the government, and only "minimal[ly]"), *id.* at 339, and whether his conduct related to "other illegal activities," *id.* at 337–38. And it specifically contrasted his wrongdoing against the general harms the criminal statute sought to prevent. *Id.* at 338 (looking to whether the defendant "fit into the class of persons for whom the statute was principally designed," and concluding that he did not: "[h]e is not a money launderer, a drug trafficker, or a tax evader.").

Nevertheless, since *Bajakajian*, "a patchwork of inconsistent tests" has arisen in federal courts across the country. David Pimentel, *Forfeitures and the Eighth Amendment: A Practical Approach to the Excessive Fines Clause as a Check on Government Seizures*, 11 Harv. L. & Pol'y Rev. 541, 543–44 (2017).

The Excessive Fines Clause imposes an important "limit[] [on] the government's power to extract payments, whether in cash or in kind, as punishment for some offense." *Bajakajian*, 524 U.S. at

328 (quoting *Austin*, 509 U.S. at 609–10). But without clarity, the protection the Excessive Fines Clause has long guaranteed becomes contingent on whether the federal government chooses to honor it. As amici's experiences demonstrate, clarity is necessary to protect NHSC participants from excessive fines.

CONCLUSION

The judgment of the Supreme Court of Alaska should be reversed. And the Court should hold that the Excessive Fines Clause requires courts and administrative bodies alike to conduct an individualized assessment of the gravity of the offense committed by a specific individual when imposing punitive financial sanctions.

Respectfully submitted,

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