

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 RESPONDENT

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QUESTION PRESENTED

Whether the criminal forfeiture of an airplane used by a convicted defendant to knowingly transport alcohol into a dry village in Alaska violates the Excessive Fines Clause.

PARTIES TO THE PROCEEDINGS

Petitioner is Kenneth Jouppi. Respondent is the State of Alaska.

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INTRODUCTION

For more than a half century, Alaska has tried to stop the destruction caused by alcohol in its isolated, rural communities. When alcohol was legalized following statehood, it ripped through remote villages. Alcohol-related murders, violence, and accidents skyrocketed, with Alaska's alcohol-related mortality rate soaring to 418% above the national average. Local villages were largely defenseless. A typical village has no police or emergency medical services and is inaccessible by road. When an alcohol-fueled event occurs, the victims often have nowhere to turn.

To address this crisis, the Alaska legislature authorized rural communities to prohibit the sale and importation of alcohol. When villages adopt these restrictions, the State enforces them. And it does so in predictable ways. In remote villages, alcohol often arrives by plane. So, when the State charges and convicts a pilot for knowingly transporting alcohol into a dry community, the law requires the forfeiture of the airplane. By mandating forfeiture, the law prevents the airplane from being used again to import alcohol and deters others from doing the same.

Petitioner Kenneth Jouppi was convicted of knowingly transporting alcohol into the tiny and remote village of Beaver, where Jouppi knew alcohol was banned. Jouppi's crime was not flying in "a six-pack." *Contra* Pet-Br.2. Jouppi loaded two cases of beer and four six-packs of 16-ounce beers on his plane destined for a village of a mere 48 people with no roads in or out and no emergency medical services. Because of his criminal conviction, state law required forfeiture of the plane.

As the Alaska Supreme Court correctly held, this forfeiture did not violate the Excessive Fines Clause. The Alaska legislature made a reasonable judgment to mandate forfeiture to stop the scourge of alcohol-induced injuries and crimes in Alaska's most isolated villages. Jouppi fell within the class of defendants principally targeted by the law. And the alcohol he would have willingly flown to Beaver had the potential to cause the exact harms feared by the legislature.

In his brief, Jouppi fights a strawman, insisting that the Alaska Supreme Court considered his offense "purely in the abstract." Pet-Br.39-40. But the Alaska Supreme Court held the forfeiture of *Jouppi's* airplane was constitutional as applied to *Jouppi's* actual circumstances. As the court observed, Jouppi attempted to transport alcohol into a dry community. Whether he knew about every case of beer he loaded onto his plane or just the clearly visible six-pack, the constitutional analysis is the same. Faced with tragedy after tragedy in Alaska's remote villages, the Alaska legislature was well within reason to conclude that convicted defendants found beyond a reasonable doubt to have knowingly violated Alaska law could have their airplanes—the undisputed instrumentality of that crime—forfeited.

Alaska's forfeiture regime is not unusual or extreme. At the Founding, Congress required the forfeiture of ships used to commit a host of crimes, including customs fraud, piracy, and the slave trade. Congress imposed similar punishments in Alaska when it became a territory. Forfeiture of ships was the prescribed punishment for the illegal killing of fur-bearing animals and the importation of alcohol. Those laws, like Alaska's now, deterred hard-to-detect

crimes and incapacitated criminals from using the vessel to repeat the offense.

Nothing in our Constitution requires the Alaska legislature to sit on its hands, allowing pilots who knowingly transport alcohol into dry villages to keep their planes and do it again later. The judgment below should be affirmed.

STATEMENT OF THE CASE

A. The Historical Use of Forfeiture in Alaska

With more land than Texas, California, and Montana combined, Alaska has never been easy to govern. Since territorial days, Alaska has been a “vast and thinly populated region where it is difficult for law enforcement officers to detect and prevent smuggling and poaching.” App.77a. Its geography has long presented an “open invitation to smugglers, as well as those who would poach Alaska’s fish, game, birds, and marine mammals.” App.77a. The “legislative response to this problem—virtually from the time the United States first acquired Alaska in 1867—has been to enact laws that call for the forfeiture of the marine vessels and (later) the aircraft used to commit smuggling and poaching offenses.” App.77a.

Since Alaska’s first years as a U.S. territory, criminal punishments have included forfeiture of the instrumentalities used to commit those crimes. For example, Congress immediately prohibited the unauthorized hunting of fur-bearing animals in Alaska. Act of July 27, 1868, ch. 273, § 6, 15 Stat. 240, 241. In addition to fines and imprisonment, the law mandated that “all vessels ... found engaged in violation of [the law] shall be forfeited.” *Id.* Two years later, Congress prohibited the unauthorized killing of certain seals on

islands near Alaska and again mandated that “all vessels ... whose crews are found engaged in any violation of [this law] shall be forfeited to the United States.” Act of July 1, 1870, ch. 189, § 5, 16 Stat. 180, 181.

The federal government’s use of forfeiture in Alaska continued into the next century and up to statehood. *See* App.78a-80a. Various laws authorized these types of forfeitures through both civil *in rem* and criminal *in personam* proceedings. App.80a; *see, e.g.*, Act of July 1, 1943, ch. 183, §5, 57 Stat. 301, 304-05 (requiring forfeiture of “boats, aircraft, wagons or other vehicles” used to violate anti-poaching laws, either “upon conviction of the offender” or through an *in rem* proceeding). Forfeiting the means by which poaching and smuggling occurred was seen as essential to “deter[ring] the violation of th[e]se laws.” App.77a.

With respect to alcohol specifically, Congress took immediate measures to keep alcohol and other contraband out of Alaska. Congress gave the President the power to “prohibit the importation ... of fire-arms, ammunition, and distilled spirits into [the] territory.” Act of July 27, 1868, §6, 15 Stat. at 241. To enforce the prohibition, Congress mandated that any vessel used to violate the law “shall be forfeited” when the value of the contraband on board exceeded \$400. *Id.*; *see, e.g., The Louisa Simpson*, 1 Alaska Fed. 50, 62 (D. Or. 1871) (forfeiting vessel whose captain traded “liquor to the Alaska Indians, in Kotzebue Sound, for the furs, etc., found on the schooner, contrary to law, as he well knew”). As in previous revenue laws, the \$400 threshold served to ensure that the ship owner knew or had reason to know about the contraband, because “[w]ithout the connivance of the master, goods to the amount

of \$400 can hardly be smuggled from the ship.” *The Harmony*, 11 F. Cas. 556, 558 (C.C.D. Mass. 1812) (Story, J.). Through statehood, the United States continued to “emplo[y] both *in rem* forfeitures and *in personam* forfeitures of vessels and (later) airplanes to punish and deter the smuggling of alcoholic beverages.” App.82a.

Today, Alaska continues to use forfeiture to deter crime and prevent repeat offenders. But the form that forfeiture proceedings take has changed over time. Alaska has abolished “[c]ommon law civil in rem forfeiture actions ... if used instead of a criminal proceeding.” Alaska Stat. §09.55.700. Although certain statutory civil in rem procedures remain on the books, this type of forfeiture is almost never used in practice. *See* H. Judiciary Comm. Meeting, 29th Leg., 2d Sess. (Apr. 4, 2016), perma.cc/L3JT-TMJ9. Instead, Alaska uses criminal forfeiture, which, unlike civil forfeiture, requires the State to prove the defendant’s guilt beyond a reasonable doubt. *See Culley v. Marshall*, 601 U.S. 377, 395 (2024) (Gorsuch, J., concurring). Criminal forfeiture laws like Alaska’s enjoy “broad [public] support.” Okla. Governor Stitt Amicus Br. 9-10.

B. The Alcohol Crisis in Rural Alaska

Scattered throughout Alaska are about 225 isolated villages, each with an average population of just 300 people. Most villages are not connected to the road system and are reachable only by airplane, boat, or snowmachine. Alaska Natives, the indigenous peoples of Alaska, comprise a majority of the rural population. *See A Framework to Assess the Affordability of Residential Water and Sewer Rates in Rural Alaska*, Alaska Dep’t of Env’t Conservation 13 (2020), perma.cc/32DH-CPF8. Residents of these villages

regularly endure bone-chilling conditions unimaginable to most in the lower 48. *See, e.g.*, Daily Situation Report (Jan. 2, 2026), perma.cc/7TKU-EBAV (warning residents in the Central Copper Valley to expect “wind chills as low as 55 to 65 below zero”). Most villages have no police department, no fire station, and no emergency medical services. *Village Public Safety Officers*, Dep’t of Public Safety, perma.cc/YY3Y-6RDX.

For most of Alaska’s territorial history, village councils used their authority under the Indian Reorganization Act to prohibit alcohol in the rural villages. *See* M. Berman, *Alcohol Control by Referendum in Northern Native Communities: The Alaska Local Option Law*, 54 Arctic 77, 78 (Mar. 2001). But when Alaska joined the Union in 1959, “village councils found they could not enforce rules keeping alcohol out of their communities because there were no state laws against importation or possession.” *Id.* Unlike tribes in the lower 48, most Alaska Natives lack reservations and thus depend on the State to enforce local laws. *See Yellen v. Confederated Tribes of Chehalis Rsrv.*, 594 U.S. 338, 342-43 (2021).

“As alcohol flowed more freely in rural areas during the next two decades, alcohol-related health problems grew rapidly among the Native population.” Berman, *supra*, 77. Individuals in rural communities were especially vulnerable to alcohol abuse due to “the great distances” from emergency medical services, “inclement weather,” and “lack of police services.” *Burnor v. State*, 829 P.2d 837, 840-41 (Alaska Ct. App. 1992). This growing crisis “spawned a grassroots movement calling for a change in policy.” Berman, *supra*, 79. “Village councils and elders, allied with

clergy, social service professionals, and law enforcement personnel serving rural Alaska, began to advocate [for] a comprehensive state response.” *Id.*

Between 1976 and 1980, the Alaska legislature received a series of state-sponsored studies that “highlighted the massive problems that alcoholism and alcohol-related crime posed for the State of Alaska and, particularly, rural Alaska.” App.48a. Between 1959 and 1975, “Alaska’s rate of death due directly to alcoholism increased 153%” and Alaska’s alcoholism mortality rate was “418% higher than the national average.” *Harrison v. State*, 687 P.2d 332, 335 (Alaska Ct. App. 1984). Studies found a “significant relationship between the use of alcohol and criminal behavior,” especially in rural areas of the State, where “77.9% of violent crimes and 55.6% of property crimes were committed under the influence of alcohol.” *Id.* Over 30% of the State’s criminal-justice budget was devoted to addressing alcohol-related crimes. *Abraham v. State*, 585 P.2d 526, 532 n.19 (Alaska 1978).

Faced with these devastating findings, the Alaska legislature in 1980 adopted a “local option” law authorizing villages to prohibit alcohol in their communities. Under the new law, villages could vote to prohibit the “sale and importation of alcoholic beverages” in their community. Alaska Stat. §04.11.496(a) (1980). If the referendum passed, then the state law prohibited any person from “knowingly send[ing], transport[ing], or bring[ing] alcoholic beverages into the ... village.” *Id.* §04.11.496(b). To “give teeth” to the will of the electorate, App.86a, the new law gave sentencing courts the authority to order the forfeiture of any “aircraft, vehicles, or vessels used to transport, or facilitate the transportation of ... alcoholic beverages

imported into [the] village.” Alaska Stat. §04.16.220(a)(3) (1980).

Rural villages responded immediately. They held elections and adopted the alcohol prohibitions authorized by the law. *See Report to the Alaska Legislature, Joint Special Committee on Local Option Laws 24* (Mar. 1986) (“1986 Report”). Many residents, however, soon “grew frustrated when they found that their efforts were not succeeding in eradicating alcohol abuse from their communities.” Berman, *supra*, 80. “A principal issue of dissatisfaction” was the “difficulty of enforcing the importation ban with the very limited local police presence in rural Alaska.” *Id.*

In 1986, a committee funded by the Alaska legislature submitted a report with shocking findings about continued alcohol abuse in rural Alaska. Throughout the State, villages were being “terrorized by alcohol abusers.” *1986 Report* 1. Nearly every rural village examined by the committee reported significant alcohol-induced problems:

- In Aniak (pop. 475), 95% of the crime was alcohol-related and alcohol was involved in 100% of the violent crimes.
- In Akiachak (pop. 438), alcohol was the “number one cause of death for native people.” Many people had “committed suicide while intoxicated” and others had “gotten drunk, disappeared, and ha[d] never been found.”
- In Emmonak (pop. 567), it was “rare that a serious crime, such as sexual assault or homicide, occur[ed] without the involvement of alcohol.” There were “alcohol-related deaths, drownings and suicides” and women were

“beaten and bec[a]me rape and incest victims because of alcohol in the home and in the village.”

- In Toksook Bay (pop. 333), the “biggest problem [was] the number of people dying alcohol-related deaths [through] accidents, drownings[,] and murders.” Families had been “burned out of their homes in alcohol-related fires.”
- In Nunapitchuk (pop. 641), “[a]lcohol-related drownings [were] a particular problem,” as were deaths in alcohol-related fires.
- In Bethel (pop. 4,432), of 150 deaths investigated by troopers, “75 were alcohol-related: 24 were drownings, 11 were suicides, and 15 were ‘very violent, vicious homicides.’”
- In Togiak (pop. 513), “close to 100% of the police cases [were] alcohol-related,” including “suicides in the village” and people being “frozen to death while intoxicated.”
- In Selawik (pop. 545), of the 82 people brought before the magistrate in 1985, “all had been drinking at the time of committing the offense.”

Id. at 32-54. The list went on. *See id.* 32-61. As one village public safety officer reported, he had seen “3 good friends die from drownings, ... six in plane crashes, ... one person who was murdered, ... [and] six rape victims ... all were alcohol related.” *Id.* at 2. The sad reality was that “whenever alcohol is imported into the village, the whole village goes on an alcohol binge.” *Id.* The legislature was urged to use “[e]very

possible tool” available to “comba[t] the threat posed by alcohol.” *Id.* at 109.

Responding to these findings, the Alaska legislature in 1986 empowered local villages to ban the possession of alcohol (and not merely restrict its sale and importation). Alaska Stat. §04.11.498(a) (1986). Among its findings, the legislature concluded that “the dangers resulting from alcohol abuse are particularly acute in rural areas of the state because the communities are small, isolated, without adequate law enforcement, without adequate health care facilities, and populated by people who are closely related and interdependent.” 1986 Alaska Sess. Laws, ch. 80, §1(6).

In the decades that followed, there was growing evidence that the local-option law was working and that residents in dry villages had “dramatically benefited from reduced alcohol availability.” M. Landen, *Alcohol-Related Injury Death and Alcohol Availability in Remote Alaska*, 278 JAMA 1755, 1758 (1997). In contrast with dry villages, those that allowed alcohol had “higher rates of both total injury death and alcohol-related injury death among Alaska Natives,” particularly due to “motor vehicle injury, homicide, and hypothermia.” *Id.* at 1757; *see also* D. Wood, *Local Alcohol Prohibition, Police Presence, and Serious Injury in Isolated Alaska Native Villages*, 101 Addiction 393, 394, 398 (2006) (collecting studies).

Even so, alcohol continued to reach villages that had banned it. Most villages “lack[ed] a local police presence to properly enforce local prohibitions,” Wood, *supra*, 395, and the State could not fully meet every local village’s law-enforcement needs, *see* Alaska Jud. Council, *A Directory of Dispute Resolution in Alaska*

Outside Federal and State Courts, 8 n.13 (Mar. 1999), perma.cc/LE8Z-44R7. Alcoholism continued to be an “endemic condition that ravage[d] individuals, families[,] and communities in rural, particularly Native, Alaska.” Alaska Commission on Rural Governance and Empowerment, *Final Report to the Governor* 12 (June 1999), perma.cc/W87R-AG8J.

The Alaska legislature responded. Legislators introduced legislation to stiffen the penalties by mandating forfeiture of vehicles and airplanes used to knowingly violate the local-option law. *See* H.B. 65, 23d Leg., 1st Sess. (Alaska 2003); *see* Letter from Alaska Ass’n of Chiefs of Police in Support of HB 65 (Apr. 29, 2003), perma.cc/H7US-N9Z8 (noting that villages were “frustrat[ed] with enforcement of the law” and urging the legislature to “creat[e] even more deterrence for someone who is contemplating importation of alcohol into a ‘dry village’”).

The Alaska legislature *unanimously* adopted these reforms in 2004. *See* 2004 Alaska Sess. Laws, ch. 124, §11; 2004 Alaska House Journal 4175; 2004 Alaska Senate Journal 3647. For vehicles and watercraft used to knowingly transport alcohol into a dry community, forfeiture became mandatory in specified circumstances (*e.g.*, for repeat offenders). Alaska Stat. §04.16.220(i)(2). The court may decline to forfeit a vehicle or watercraft if it is a family’s sole means of transportation and, among other things, an innocent family member depends on the vessel. *Id.* §04.16.220(j). Aircraft were treated more strictly. If a pilot violates the law by knowingly flying alcohol into a dry community, forfeiture of the aircraft is mandatory. *Id.* §04.16.220(i)(1).

Today, more than 100 communities in rural Alaska have voluntarily chosen to restrict the possession or importation of alcohol. Alcoholic Beverages Control Board, *Schedule of Local Option Communities* (Mar. 13, 2024), perma.cc/YSK3-AQE5. This fact is widely known. Every pilot should understand that “landing with alcohol aboard in villages which prohibit alcohol **may result in confiscation of their aircraft.**” *Flying in Alaska*, Alaska Dep’t of Transp., perma.cc/8CFM-UAC6 (emphasis in original). Despite these bans, villages continue to report that “95 percent of all crimes in rural Alaska can be attributed to alcohol.” *Hearing before the S. Committee on Indian Affairs*, 117th Cong. 104 (Dec. 8, 2021); *see id.* at 137 (similar).

C. The Remote Village of Beaver, Alaska

Fourteen miles south of the Arctic Circle, deep in Alaska’s remote interior, lies the village of Beaver. The village is home to a mere 48 people. Alaska, *2020 Census Data for Redistricting: Beaver ANVSA*, perma.cc/XHG9-5YXC. There are no roads in or out of Beaver. In the winter, temperatures regularly plummet more than 50 degrees below zero. *See Beaver Quick Facts*, Tanana Chiefs Conference, perma.cc/EB38-YJC7. If a medical emergency arises, the nearest hospital is in Fairbanks, over 100 miles of wilderness away. In Beaver, “[a]ll it takes is one little mistake” to ruin a life. K. Johnson, *On Alaska’s Coldest Days, a Village Draws Close for Warmth*, N.Y. Times (Jan. 31, 2017).

Before 2004, Beaver allowed alcohol in the village, but attitudes changed as alcohol arrived “bottle by bottle, via airplane, snowmachine, and boat.” J. Gay, *Death Spurs Village to Ban Booze*, Anchorage Daily

News (Aug. 15, 2004). On December 10, 2003, 21-year-old Arvin Petruska, a resident of Beaver, died after a night of drinking, having passed out outdoors where the temperature had fallen to 18 below zero. Petruska’s death was a turning point, galvanizing the village to call for a referendum to prohibit alcohol and its importation into the community. The referendum passed the following year by a vote of 17-11. Following the election, the village “told the airlines that fly into Beaver not to haul anyone who is carrying booze.” *Id.* At the time, the village recognized that it was “going to be hard” to enforce the law and that the new rules would not work if “individuals within the village ... continue to bring in alcohol.” *Id.*

D. Procedural History

On April 3, 2012, Kenneth Jouppi arrived at the Fairbanks Airport to fly a passenger to Beaver. App.32a. Also at the airport were Alaska state troopers, who had a warrant to search Jouppi’s plane. The State had been investigating Jouppi and his company, Ken Air, LLC, after receiving information that Jouppi had repeatedly transported passengers with alcohol to local-option communities. Tr.18:17-19:4; 29:4-30:4 (Oct. 17, 2013); *State v. Jouppi*, 397 P.3d 1026, 1028 (Alaska Ct. App. 2017).¹

Troopers watched Jouppi load his plane with various boxes and bags. Tr.18:12-19:5 (Aug. 20, 2013). As Jouppi started the engine and prepared to take off, the

¹ Following his conviction here, Jouppi pleaded guilty in a different case for an earlier incident for transporting alcohol by common carrier into a local-option area. *State v. Jouppi*, No. 4FA-13-00267CR (July 22, 2014); see Alaska Stat. §04.16.125. His conviction was set aside following his completion of probation.

troopers approached the plane, directed Jouppi to shut off the engine, and then executed the search warrant. Looking through the plane’s windows, the troopers could see “beer in a plastic grocery bag sitting unsecured in the plane.” App.33a. A six-pack of 16-ounce beers was in “plain sight, obvious to any observer.” App.33a, 156a; Tr.167:22-168:4 (Aug. 20, 2013). According to one trooper, Jouppi would “have to be blind not to know what was on [the plane].” *Jouppi*, 397 P.3d at 1029. Jouppi told the troopers that he knew Beaver was a dry village but denied knowing that alcohol was aboard. R.107.² The troopers ultimately found 72 beers—two cases of beer and four six-packs of 16-ounce cans, totaling nine gallons—among the boxes and bags that Jouppi had loaded into the plane. App.20a, 32a-33a, 159a.

Jouppi was charged with knowingly transporting alcohol into a local-option community. App.33a; see Alaska Stat. §04.11.499(a). Because the law prohibits transporting any alcohol into a dry village, the State did not need to prove the amount of alcohol Jouppi knowingly transported. *Id.* §04.16.200(e)(1). Following a jury trial, Jouppi was found guilty and sentenced to 180 days in jail with 177 suspended, fined \$3,000 with \$1,500 suspended, and given three years of probation. App.5a. The sentencing court found that Jouppi knowingly “chose to defy [Beaver’s] no[-]alcohol mandate so that he could earn a fare.” R.686. Jouppi “chose not to see what was clearly visible,” and he “hurriedly packed the airplane because he, in fact, really did know what was in the box, and he wanted to get his plane in the air quickly so that it would

² “R.” refers to the record before the Alaska Court of Appeals, Case No. A-13147.

escape detection.” R.686. Though the court initially concluded that the statute did not require forfeiture because Jouppi was stopped before he could transport alcohol to Beaver, that judgment was reversed on appeal. *Jouppi*, 397 P.3d at 1031-35; see Alaska Stat. §04.11.499(c)(3) (“transport” includes “attempting” to transport alcohol).

On remand, the State proffered that Jouppi had previously engaged in similar conduct. App.44a. By “purposely turning a blind eye to this illegal activity,” Jouppi could charge passengers “hundreds of dollars more than [his] competitors” for each trip. App.44a. The district court declined to receive testimony on these issues, however, concluding that such evidence was irrelevant and that the existing record established that forfeiture of Jouppi’s airplane would violate the Excessive Fines Clause. App.44a-45a.

The Alaska Court of Appeals vacated the trial court’s decision. According to the appellate court, the forfeiture should not have been deemed unconstitutional without more factual findings, including whether Jouppi’s crime was part of a larger pattern of illegal conduct and whether forfeiture would deprive Jouppi of his livelihood. App.45a-46a, 51-53a. Judge Mannheimer dissented in part. Providing an extensive historical analysis of the Excessive Fines Clause and Alaska’s local-option law, Judge Mannheimer concluded that the record was sufficient to show that forfeiture of the airplane was constitutional. App.64a-151a.

The Alaska Supreme Court reversed. Applying *United States v. Bajakajian*, 524 U.S. 321 (1998), the court held that Jouppi failed to establish that forfeiture would be unconstitutionally excessive.

App.2a-3a. Jouppi “knowingly transported” alcohol, including “a six-pack of alcohol in plain view,” he fell “within the class of persons targeted by the statute,” the value of Jouppi’s airplane was “only 9.5 times the maximum fine that could have been imposed,” and illegal alcohol transportation causes immense criminal and social harms in rural Alaska. App.19a-24a. Additional factual findings would not change the outcome. App.25a. Whether Jouppi had knowledge of “all 72 beers” he loaded onto his plane or just the six-pack, the quantity would not change the constitutional analysis because the legislature, faced with decades of alcohol-induced crime and death in Alaska’s rural communities, determined forfeiture of aircraft was warranted for any violation of the law once proved beyond a reasonable doubt. App.25a. Nor would the forfeiture deprive Jouppi of his livelihood. The testimony established Jouppi was “pretty much retired,” owned a second airplane, and would “probably just sell” the one that was used in the crime. App.26a-27a.

SUMMARY OF THE ARGUMENT

The Eighth Amendment prohibits “excessive fines.” An excessive fine “surpass[es] the usual, the proper, or a normal measure of proportion.” *Bajakajian*, 524 U.S. at 335. Since the Founding, Congress has ordered the forfeiture of vessels used in crimes, including customs fraud, the slave trade, piracy, and more. These laws were critical to stripping offenders of the means to repeat crimes and deterring future violations.

In the modern era, civil forfeiture has grown in ways that many find troubling. But not all forfeiture is the same. Criminal forfeiture (like here) occurs only after a defendant has been found guilty of a crime. It

thus provides the due-process protections that civil forfeiture might not.

State legislatures are tasked with determining punishments for convicted defendants, and their determinations must receive “substantial deference.” *Id.* at 336. When a convicted defendant fits within the class of persons targeted by the law and he caused the same potential for harm feared by the legislature, it is not a court’s role to second-guess the legislature’s determination that forfeiture of the instrumentality of his offense is warranted. Courts that respect these decisions are not assessing the gravity of an offense “purely in the abstract.” Pet-Br.13. They are refusing to override reasoned determinations by the people’s representatives about how best to stop crime.

Here, the forfeiture of Jouppi’s plane was not “excessive.” For more than a half century, Alaska has been combatting the scourge of alcohol abuse in its rural communities. To protect its villages, Alaska followed a formula as old as the Founding: mandatory forfeiture of a vessel used to knowingly commit a crime. Alaska’s law prevents convicted offenders from using an airplane to once again fly alcohol into a dry village and deters others from doing the same.

Jouppi insists that the Alaska Supreme Court refused to consider Jouppi’s “own wrongdoing.” Pet-Br.32. Not so. The court reviewed and considered all the facts that led up to Jouppi’s conviction for knowingly transporting alcohol into a dry village. Jouppi’s actions fell squarely within the conduct targeted by the law, and he threatened to cause the same harm feared by the legislature. Whether Jouppi knew about all or just some of the nine gallons of beer he loaded

onto his plane does not change the constitutional analysis.

Those most affected by Jouppi's crime do not find this forfeiture excessive. The Alaska legislature unanimously agreed that the best way to enforce local bans was by mandating the forfeiture of the airplane used to knowingly bring alcohol into the community. And the residents of the remote village of Beaver voted to ban the importation of alcohol into their community. These were reasonable decisions that fall squarely within the powers of the people's representatives and the people themselves. The judgment below should be affirmed.

ARGUMENT

I. Legislatures may require convicted defendants to forfeit the undisputed instrumentality of a crime without violating the Excessive Fines Clause.

The Eighth Amendment provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." This case presents the question of whether the criminal forfeiture of an airplane used by a convicted defendant to knowingly transport alcohol into a dry village in Alaska violates the Excessive Fines Clause. The text, history, and this Court's precedent provide the answer. A legislature can protect its citizens through the mandatory forfeiture of the instruments of crimes without running afoul of the Excessive Fines Clause.

A. The forfeiture of vessels used to commit crimes has a long history and tradition.

1. Since the Founding, Congress has authorized the forfeiture of vessels used to commit crimes. In

1789, Congress passed a law targeting customs fraud by punishing individuals who received a refund on duties by purporting to export goods from the United States only to return with the goods to a different place in the United States. *See* Act of July 31, 1789, ch. 5, §34, 1 Stat. 29, 46. The law mandated that “all persons concerned therein, shall, on indictment and conviction thereof, suffer imprisonment for a term not exceeding six months.” *Id.* The law also imposed forfeiture of the ship used in the crime: “[A]ll such goods, wares and merchandise shall be subject to seizure and forfeiture, together with the vessel from which such goods shall be landed, and the vessels or boats used in landing the same.” *Id.*

A few years later, Congress enacted the Neutrality Act of 1794 to keep private citizens from entangling the United States in foreign wars. *See* Act of June 5, 1794, ch. 50, 1 Stat. 381. Congress made it unlawful to, among other things, fit out “any ship or vessel with intent that such ship or vessel shall be employed in the service of any foreign prince or state” to commit hostilities against a country “with whom the United States are at peace.” *Id.* §3, 1 Stat. at 383. Those found in violation of the law faced up to \$5,000 in fines and three years in prison. *Id.* Congress likewise mandated forfeiture of the ship used in the crime, ordering that “every such ship or vessel with her tackle, apparel and furniture together ... shall be forfeited.” *Id.*; *see also* Act of April 20, 1818, ch. 88, §3, 3 Stat. 447, 448 (similar).

Congress similarly employed forfeitures to prevent the importation of enslaved persons. In 1800, Congress made it “unlawful for any citizen of the United States or other person residing therein, to

serve on board any vessel of the United States employed or made use of in the transportation or carrying of slaves.” Act of May 10, 1800, ch. 51, §2, 2 Stat. 70, 70. When any such ship was captured, Congress ordered that “every person found on board of such vessel” was to be “apprehend[ed] and take[n] into custody” so they could be “proceeded against in due course of law.” *Id.* §4, 2 Stat. at 71. Congress also mandated that “such vessel, together with her tackle, apparel and guns ... shall be forfeited.” *Id.*

When Congress later enacted a complete ban on the importation of enslaved persons into the United States, it imposed additional mandatory and severe penalties. Act of March 2, 1807, ch. 22, 2 Stat. 426, 426-28. Congress ordered that if “any ship or vessel shall be found ... within the jurisdictional limits of the United States” having enslaved persons on board for the purpose of selling them in the United States, “every such ship or vessel, together with her tackle, apparel, and furniture ... shall be forfeited.” *Id.* §7, 2 Stat. at 428. In addition, any “captain, master, or commander of every such ship or vessel, ... shall be deemed guilty of a high misdemeanor, and shall be liable to be prosecuted” and, upon conviction, pay fines up to \$10,000 and be imprisoned up to four years. *Id.*

Congress likewise ordered the forfeiture of ships engaged in piracy. Congress passed the Piracy Act of 1819 to “protect the commerce of the United States and punish the crime of piracy.” Act of March 3, 1819, ch. 77, 3 Stat. 510. Through the law, Congress authorized United States vessels to “seize, take, and send into any port of the United States” any vessel engaged in “piratical aggression.” *Id.* §2, 3 Stat. at 512-13. The law provided that such ships “may be adjudged and

condemned,” and any person on board subsequently found guilty of piracy “shall, upon conviction[,] ... be punished with death.” *Id.* §§4-5, 3 Stat. at 513-14.

The purpose of these forfeiture provisions was undeniable: to “take from the offender the means required to enable him to perpetrate the mischief.” *The Slavers (Sarah)*, 69 U.S. 366, 371 (1864). Seizing ships that were used in crimes served a critical purpose by “removing from circulation the ‘instrumentalities’ of lawbreaking conduct—such as ships used in the slave trade—and thereby potentially reducing the incidence of future violations.” K. Arlyck, *The Founders’ Forfeiture*, 119 Colum. L. Rev. 1449, 1502 (2019). It also served as a “means of deterring such conduct in the future.” *Id.*

The punishments were harsh—intentionally so. For instance, vessels engaged in the slave trade were typically worth between £10,000 and £24,000—the equivalent of \$1.6 and \$3.8 million today. N. Radburn, *Traders in Men: Merchants and the Transformation of the Transatlantic Slave Trade* 211 (2023); Eric W. Nye, *Pounds Sterling to Dollars: Historical Conversion of Currency*, perma.cc/YB9M-722G. Despite the value of these ships—indeed, arguably because of their value—they were subject to mandatory forfeiture to stop repeat violations of the Nation’s laws.

Courts did not hesitate to enforce the laws, even if it resulted in a harsh punishment. This Court held that a sailor and others could have their wages withheld from the sale of a ship if they had reason to know that the ship would be used for the slave trade. *The St. Jago de Cuba*, 22 U.S. 409, 414-15, 419 (1824). That strict punishment was allowed given that “[t]he general policy of the law is[] to discountenance every

contribution, *even of the minutest kind*, to this traffic in our ports.” *Id.* at 415 (emphasis added). In a later case, a ship owner tried to avoid forfeiture on the grounds that the ship had not yet taken any enslaved persons aboard. *The Catharine*, 25 F. Cas. 332, 338-39 (C.C.D.N.Y. 1840). The court rejected that argument, holding that “[i]n the execution of these laws (the suppression of the slave trade), no vigilance can be excessive.” *Id.* The forfeiture “penalty was incurred, and the forfeiture attached from the very inception of the voyage, if it was commenced for the purpose of taking on board and transporting slaves.” *Id.* at 341.

2. This history of forfeiture of *vessels* is distinct from forfeitures of currency, such as that in *Bajakajian*. Section 10 of the English Bill of Rights—the Excessive Fines Clause’s origin—was a rebuke of “huge monetary penalties” assessed by the King’s judges against his enemies. *Browning-Ferris Indus. of Vt., Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 267 (1989). For those monetary penalties, “the touchstone is value of the fine in relation to the offense.” *Austin v. United States*, 509 U.S. 602, 627-28 (1993) (Scalia, J., concurring in part and concurring in the judgment). By contrast, for punitive forfeitures of vessels and other instrumentalities of crime, the touchstone is whether the forfeiture is limited to the property “‘tainted’ by unlawful use.” *Id.* at 627.

In *Bajakajian*, the currency that the government seized was not an “instrumentality of the offense” because it did not “facilitate the commission of [the] crime.” 524 U.S. at 334 n.9. After all, Bajakajian’s crime was a “reporting offense,” namely the failure to report to government officials that he intended to transport more than \$10,000 out of the country. *Id.* at

337. This Court drew a distinction between the forfeiture of cash for Bajakajian’s failure to report and forfeiture of “an automobile [that] facilitates the transportation of goods concealed to avoid taxes,” which would be an instrumentality as “the actual means by which the criminal act is committed.” *Id.* at 334 n.9. As the dissent recognized, all appeared to agree that “the car plays an important enough role to justify forfeiture.” *Id.* at 347 (Kennedy, J., dissenting); *accord Austin*, 509 U.S. at 628 (Scalia, J., concurring in part and concurring in the judgment) (asking whether forfeited property “has a close enough relationship to the offense” to be an instrumentality).

The history of currency forfeitures, relevant in *Bajakajian*, is more mixed than the history of vessel forfeitures relevant here. As this Court observed in *Bajakajian*, the First Congress authorized forfeitures of property for violations of customs laws. 524 U.S. at 340-44. But those forfeitures “were considered not as punishment for an offense, but rather as serving the remedial purpose of reimbursing the Government” for actual *monetary* losses “accruing from the evasion of customs duties.” *Id.* at 343. The Court deemed that history insufficiently analogous to establish that Bajakajian’s forfeiture of more than \$350,000 was constitutional, where Bajakajian’s duty to the Government was only a duty to report and not a duty to pay. *Id.* at 340-44.

But the seizure of instrumentalities of crimes, especially vessels used to commit crimes, has a different history. While vessels were forfeited for customs crimes, they were also forfeited for crimes unrelated to “reimbursing the Government” for monetary losses, *id.* at 343, such as fitting out other nations’ ships,

engaging in the slave trade, and piracy, *supra* 18-22. This type of forfeiture has a unique and longstanding history, unlike other property that is subject to forfeiture today. *Id.*; see also *Culley*, 601 U.S. at 399 (Gorsuch, J., concurring) (“Admiralty statutes regularly authorized ... forfeiture of ‘the instrument[s] of the offence,’ say, a ship used to engage in piracy.”); *Leonard v. Texas*, 137 S. Ct. 847, 849 (2017) (Thomas, J., respecting the denial of certiorari) (Forfeiture law “typically covered only the instrumentalities of the crime,” such as “the vessel used to transport the goods.”).

To be sure, forfeitures of the instrumentalities of crimes historically may have occurred in civil *in rem* proceedings against the property itself, *Bajakajian*, 524 U.S. at 340, though there is evidence that some such forfeiture actions were also “in the nature of criminal proceedings,” *Leonard*, 137 S. Ct. at 849 (Thomas, J., respecting the denial of certiorari). But a subset of those civil *in rem* forfeitures are sufficiently punitive to trigger the Excessive Fines Clause. *Austin*, 509 U.S. at 621-22. Nothing in the Excessive Fines Clause suggests the constitutional analysis is different for criminal proceedings involving the forfeiture of instrumentalities of crimes. The constitutional touchstone is whether the “confiscated property has a close enough relationship to the offense.” *Id.* at 628 (Scalia, J., concurring in part and concurring in the judgment). This history of forfeiting vessels used for criminal activity has strong “legal significance” as to the meaning of the Excessive Fines Clause today. *United States v. Rahimi*, 602 U.S. 680, 737 (2024) (Barrett, J., concurring).

3. In the face of this tradition, Jouppi spills much ink walking through various examples of excessive

finer in England and at the Founding. See Pet-Br.20-32. But these historical examples merely confirm that “economic sanctions [must] be proportioned to the wrong.” *Timbs v. Indiana*, 586 U.S. 146, 151 (2019). Beyond that, they provide little insight into whether the forfeiture of Jouppi’s plane—like any other vessel that is the actual instrumentality used to commit criminal offenses—was constitutional. Instead, Jouppi’s cited authorities involve *individual officials* empowered to pick their own punishments and who abused that power to impose a penalty incommensurate with the gravity of the offense.

In England, the fines assailed as excessive involved justices, sheriffs, bailiffs, stewards, and others “who amerce men at fixed sums according to their will,” which allowed them to “increase and decrease the amercements at pleasure.” 7 *The Mirror of Justices* 178 (Selden Soc’y ed. 1895). As to the ruinous fines imposed by the Star Chamber and King’s Bench in the 1600s, under English law, these “discretionary fines” also typically involved a law “directing such an offence to be punished by fine, in general, without specifying the certain sum.” 4 W. Blackstone, *Commentaries on the Laws of England* 372 (1769). Those cases are not analogous to the circumstances here, where Alaska’s legislators chose forfeiture as the necessary punishment by statute. Such legislative determinations warrant substantial deference. *Infra* 30-33.³

³ Some historical sources criticized fines that are “so large as to deprive [an offender] of his livelihood.” *Browning-Ferris*, 492 U.S. at 271; see 4 W. Blackstone, *Commentaries on the Laws of England* 371 (“[W]hat is ruin to one man’s fortune, may be matter of indifference to another’s.”). Here, there is no dispute

Jouppi's cited historical materials from the Early Republic are likewise inapplicable. In *Jones v. Commonwealth*, a jury had imposed a "joint fine" on three people, rather than "assess[ing] each offender ... for his own offence only." 5 Va. 555, 557-58 (1799). *Bull-ock v. Goodall* involved an excessive fine that was entirely within the "discretion of the Court." 7 Va. 44, 49 (1801). To be sure, as an early American commentator hypothesized, a law "imposing a ruinous fine *upon an inconsiderable offence*" may be unconstitutional. B. Oliver, *The Rights of an American Citizen* 185 (1832) (emphasis added). But the key question is which conduct proscribed by the people's representatives in a legislature can be deemed "inconsiderable." *Id.* Jouppi's historical examples provide no answer as to the Alaska legislature's decision here.

Of course, legislatures are not above scrutiny. Monetary penalties, resembling those imposed by the King's judges and rejected in the English Bill of Rights, may require examination of the "value of th[at] fine in relation to the offense." *Austin*, 509 U.S. at 627; see, e.g., *Bajakajian*, 524 U.S. at 337. Consider the infamous Black Codes, which imposed "draconian fines" to "replicate ... a system of involuntary servitude" and were unquestionably unconstitutional. *Timbs*, 586 U.S. at 153; *id.* at 167-69 (Thomas, J., concurring). Likewise, modern civil *in rem* forfeiture has come under scrutiny for taking property from "innocent owner[s]" who did not know about or consent to the conduct that caused the property to be taken." *Culley*, 601 U.S. at 394 (Gorsuch, J., concurring).

that the forfeiture of one of Jouppi's two airplanes would not jeopardize his livelihood. See App.27a; Cert-Reply.5 n.*.

But Alaska's prohibition on the importation of alcohol into its most rural villages is not analogous to the examples marshaled by Jouppi. Importing alcohol into a dry village is not an inconsiderable offense, and the law's self-evident purpose is to protect vulnerable residents of rural villages from the crimes, violence, and accidents caused by alcohol abuse.

B. The demanding burden of proof in criminal forfeiture proceedings protects innocent property owners from wrongful forfeiture.

An Excessive Fines Clause analysis requires an examination of a defendant's culpability, *Bajakajian*, 524 U.S. at 339, and legislatures can ensure that the toughest penalties are applied to the most culpable offenders. One way is through the offender's *mens rea*. "Most would agree that negligent conduct is less serious than intentional conduct." *Solem v. Helm*, 463 U.S. 277, 293 (1983). "Historically," criminal law was "based upon a theory of punishing the vicious will." *Morissette v. United States*, 342 U.S. 246, 250 n.4 (1952). This "vicious will" could be punished because the offender was "a free agent confronted with a choice between doing right and doing wrong and choosing freely to do wrong." *Id.*

In the forfeiture context, an offender's decision to act knowingly and intentionally has long confirmed the appropriateness of a forfeiture. Most notably, the First Congress (at Alexander Hamilton's urging) authorized the Treasury Secretary to return property seized for "unintentional violations of the law." Arlyck, *supra*, 1482. If the Secretary determined that the violation was not the result of "wilful negligence or any intention of fraud," he could remit the penalty

in whole or in part. Act of May 26, 1790, ch. 12, §1, 1 Stat. 122, 122-23.

Similarly, when Alexander Hamilton was reviewing the appropriateness of a forfeiture scheme enforcing the distilled spirits law, he relied on the law’s *mens rea* requirement to justify the scheme. Under the law, for any spirits produced in the United States that were removed from a distillery without being properly branded and certified, Congress mandated that any “horses or cattle, with the carriages” and any “vessel or boat with its tackle” that were used to violate the law “shall be forfeited.” Act of March 3, 1791, ch. 15, §§14, 19, 1 Stat. 199, 202-04. Echoing the Excessive Fines Clause, Hamilton told Congress that the forfeiture of any “ship or vessel, and of the wagon or other instrument of conveyance” that was used to violate the law was appropriate because “[p]enalties like these for *wilful and fraudulent breaches* of an important law[] cannot truly be deemed either unusual or excessive.” Alexander Hamilton, Report on the Difficulties in the Execution of the Act Laying Duties on Distilled Spirits (Mar. 5, 1792), in 11 *The Papers of Alexander Hamilton* 82-83 (1966) (emphasis added).

Still today, this focus on a defendant’s knowing *mens rea* is a hallmark of *in personam* criminal forfeiture, the procedure that Alaska followed here. For criminal forfeiture, the government “must comply with strict procedural rules and prove the defendant’s guilt beyond a reasonable doubt.” *Culley*, 601 U.S. at 395 (Gorsuch, J., concurring). The government also typically must prove that it has “probable cause to seize the person for a specific crime and therefore to hold any property related to that crime.” *Id.* at 404 (Sotomayor, J., dissenting).

In some civil forfeiture proceedings, by contrast, the government may “obtain forfeiture of the property even when the owner is personally innocent.” *Leonard*, 137 S. Ct. at 847 (Thomas, J., respecting the denial of certiorari). The government can “simply take the property and later proceed to court to earn the right to keep it under a far more forgiving burden of proof.” *Culley*, 601 U.S. at 395 (Gorsuch, J., concurring). And because “the law enforcement entity responsible for seizing the property often keeps it,” civil forfeiture has in recent decades become “highly profitable.” *Leonard*, 137 S. Ct. at 848 (Thomas, J., respecting the denial of certiorari). For these reasons, modern civil forfeiture has been heavily criticized, including by Jouppi and his amici. Pet-Br.35-37; *see, e.g.*, Okla. Governor Stitt Amicus Br. 2; Cato Amicus Br. 18-22.

But criminal forfeiture requires a demanding burden of proof, which ensures a tighter link to a defendant’s knowingly culpable conduct. The government must generally prove “both a culpable *mens rea* and a criminal *actus reus*.” *United States v. Apfelbaum*, 445 U.S. 115, 131 (1980); *see United States v. Liquidators of Eur. Fed. Credit Bank*, 630 F.3d 1139, 1150 (9th Cir. 2011) (“To achieve criminal forfeiture, the government must prove culpability beyond a reasonable doubt.”). That is why the Institute for Justice and other proponents of property rights strongly advocate for “ending civil forfeiture and replacing it with criminal forfeiture that follows the defendant’s conviction of the underlying crime.” *Criminal Forfeiture Process Act*, Institute for Justice, perma.cc/Q4W9-JKNQ; *see, e.g.*, *Testimony of D. McGuire*, ACLU of Connecticut (July 13, 2017), perma.cc/AE8G-KMWZ (supporting

proposed legislation to “ban[] civil asset forfeiture altogether, in favor of keeping only criminal forfeiture”).

C. A legislature’s determination of the gravity of a criminal offense is entitled to substantial deference.

1. In *Bajakajian*, the Court stressed that “judgments about the appropriate punishment for an offense belong in the first instance to the legislature.” 524 U.S. at 336. The fixing of a punishment for a crime “involves a substantive penological judgment that, as a general matter, is ‘properly within the province of legislatures, not courts.’” *Harmelin v. Michigan*, 501 U.S. 957, 998 (1991) (Kennedy, J., concurring in part) (quoting *Rummel v. Estelle*, 445 U.S. 263, 275-76 (1980)). Any determinations about the “nature and purposes of punishment for criminal acts implicate difficult and enduring questions respecting the sanctity of the individual, the nature of law, and the relation between law and the social order.” *Id.* The “responsibility for making these fundamental choices and implementing them lies with the legislature.” *Id.*; see *Gore v. United States*, 357 U.S. 386, 393 (1958) (“Whatever views may be entertained regarding severity of punishment, whether one believes in its efficacy or its futility, ... these are peculiarly questions of legislative policy.”).

Given the legislature’s primacy in this field, this Court has a “longstanding” “tradition of deferring to state legislatures in making and implementing” these types of “policy decisions.” *Ewing v. California*, 538 U.S. 11, 24 (2003) (plurality opinion). Courts thus must grant “substantial deference to the broad authority that legislatures necessarily possess in determining the types and limits of punishments for

crimes.” *Harmelin*, 501 U.S. at 999 (Kennedy, J., concurring in part). The same “substantial deference” applies in Excessive Fines cases such as this one. *Bajakajian*, 524 U.S. at 336.

To be sure, “substantial deference,” *id.*, is not blind deference. The Excessive Fines Clause stands as a bulwark against government overreach, and legislatures are not immune from its oversight. *See, e.g., Timbs*, 586 U.S. at 153 (discussing the Black Codes used to “subjugate newly freed slaves”). But when the legislature makes a reasonable judgment about the gravity of a knowing criminal offense, that determination should not be lightly disturbed.

In practice, this deference means a forfeiture should fail the “gross disproportionality principle” “only in the ‘exceedingly rare’ and ‘extreme’ case.” *Lockyer v. Andrade*, 538 U.S. 63, 73 (2003) (quoting *Harmelin*, 501 U.S. at 1001 (Kennedy, J., concurring in part)); *see Rummel*, 445 U.S. at 272 (“exceedingly rare”); *Ewing*, 538 U.S. at 21 (same). Any more relaxed standard risks “an intrusion into the basic line-drawing process that is ‘properly within the province of legislatures, not courts.’” *Hutto v. Davis*, 454 U.S. 370, 374 (1982).

That a legislature has chosen harsh and compulsory penalties does not change the analysis. “Severe mandatory penalties ... are not unusual in the constitutional sense, having been employed in various forms throughout our Nation’s history.” *Harmelin*, 501 U.S. at 994-95; *id.* at 1006 (Kennedy, J., concurring in part) (same). The Crimes Act of 1790, for example, mandated a death sentence for a host of crimes, including piracy and the counterfeiting of public securities. *See* Act of April 30, 1790, ch. 9, 1 Stat. 112, 112-15.

This Court thus has repeatedly upheld severe, mandatory punishments against Eighth Amendment challenges. And this Court has said those Eighth Amendment authorities upholding those severe punishments are instructive for Excessive Fines cases. *Bajakajian*, 524 U.S. at 336.⁴ In *Rummel*, the Court upheld a life sentence for a defendant who stole \$120 when it was his third offense. 445 U.S. at 265-66. In *Harmelin*, this Court upheld a life sentence without the possibility of parole for a defendant found in possession of 672 grams of cocaine. 501 U.S. at 961. In *Ewing*, it upheld a 25-year sentence under a recidivism statute for a defendant who stole three golf clubs. 538 U.S. at 18-20 (plurality opinion). And in *Lockyer*, it upheld a 50-year sentence under the same recidivism provision for a defendant who stole nine videotapes. 538 U.S. at 66-68; *see also Hutto*, 454 U.S. at 371 (upholding a 40-year sentence and \$20,000 fine for a defendant in possession of nine ounces of marijuana).

In these cases, the Court emphasized the primacy of the legislature to set the appropriate penalty for criminal offenses and the high hurdle for proving an Eighth Amendment violation. *Rummel*, 445 U.S. at 275-76; *Harmelin*, 501 U.S. at 998-99 (Kennedy, J., concurring in part); *Ewing*, 538 U.S. at 25 (plurality opinion); *Lockyer*, 538 U.S. at 76; *Hutto*, 454 U.S. at

⁴ Jouppi tries to dissuade this Court from looking to its precedents interpreting the Eighth Amendment’s “cruel and unusual punishments” clause. *See* Pet-Br.43-44. But *Bajakajian* expressly “adopt[ed] the standard of gross disproportionality articulated in our Cruel and Unusual Punishments Clause precedents,” pointing to *Solem* and *Rummel* as examples of its application. 524 U.S. at 336. *Bajakajian* forecloses any attempt to discount these decisions here. *Id.*

374-75. These same principles apply to the Excessive Fines Clause. *See Bajakajian*, 524 U.S. at 336. Here too, the Alaska legislature’s response to decades of alcohol-related offenses merits the same deference.

D. The Excessive Fines Clause does not require a case-by-case approach that disregards legislative determinations that the gravity of an offense warrants forfeiture of the instrumentality of that offense.

1. Jouppe insists that courts cannot evaluate the gravity of an offense “purely in the abstract.” Pet-Br.13. If Jouppe means that courts must look beyond the four corners of the statute that was violated, then of course that is true. *Bajakajian* already makes that clear. The Court considered the nature and purpose of the offense in *Bajakajian*—“solely a reporting offense,” where it was still permissible to transport currency abroad. 524 U.S. at 337. And the Court considered “the class of persons for whom the statute was principally designed”—“money launderer[s],” “drug trafficker[s],” and “tax evader[s].” *Id.* at 338. With those additional considerations, the Court concluded that Bajakajian’s failure to report could not be punished with a monetary fine exceeding \$350,000, while reserving whether a lesser fine would be constitutional. *Id.* at 337-39 & n.11.

But *Bajakajian* was not an invitation for courts to second-guess a legislature’s determination that the gravity of an offense warrants forfeiture of the instrumentality of the offense. Pet-Br.34-36. The Court has long recognized that “Eighth Amendment judgments should not be, or appear to be, merely the subjective views of individual Justices.” *Rummel*, 445 U.S. at

274. Proportionality review must be informed by “objective factors to the maximum possible extent.” *Harmelin*, 501 U.S. at 1000 (Kennedy, J., concurring in part). An “open-ended, multi-factor Eighth Amendment inquiry” would lead to a “lack of consistency and structure.” *United States v. Chandler*, 36 F.3d 358, 369 (4th Cir. 1994) (Wilkinson, J., concurring). It would “invite a grand ‘balancing test in which unweighted factors mysteriously are weighed.’” *June Med. Servs. v. Russo*, 591 U.S. 299, 348 (2020) (Roberts, C.J., concurring in the judgment). Worse, a multi-factor “framework is so unpredictable that it fails to provide meaningful protection[,]” because the outcome will “depen[d] heavily on which factors the judge considers and how much weight he accords each of them.” *Crawford v. Washington*, 541 U.S. 36, 63 (2004).

In *Bajakajian*, the Court’s focus was whether the defendant “fit into the class of persons for whom the statute was principally designed.” 524 U.S. at 338. That focus respected the legislative deference that undergirds the gross disproportionality standard. Once the legislature makes a judgment to outlaw certain conduct, that judgment by the people’s representatives gets deference. The question that remains for courts is whether the defendant falls within the class of persons for whom the statute was principally designed. If he does, the defendant faces a heavy burden proving that the forfeiture is unconstitutional. *Harmelin*, 501 U.S. at 998-99 (Kennedy, J., concurring in part); *Rummel*, 445 U.S. at 274-76.

2. The Court in *Bajakajian* also assessed the harm caused by the defendant as part of the gross disproportionality analysis. Bajakajian’s crime was “solely a

reporting offense,” and the “[f]ailure to report his currency affected only one party, the Government, and in a relatively minor way.” 524 U.S. at 337, 339. “Had his crime gone undetected, the Government would have been deprived only of the information that \$357,144 had left the country.” *Id.* The Court thus found the harm caused by his reporting offense to be “minimal.” 524 U.S. at 339.

Pointing to *Bajakajian*, Jouppi appears to believe that the gravity of an offense is low unless actual harm (a death, a violent act, and the like) materializes. Pet-Br.39. But since the Founding, Congress has ordered the forfeiture of vessels used to commit crimes regardless of whether the harms were actually realized. *E.g.*, Act of June 5, 1794, ch. 50, §3, 1 Stat. at 383 (requiring forfeiture when there was an “intent that such ship or vessel” be used to commit hostilities against another nation). As the history shows, often “the evil to be corrected relates to apparent danger, rather than to actual injury sustained.” J. Bishop, *Commentaries on the Criminal Law*, §682 (1868); *e.g.*, *Minor v. State*, 605 A.2d 138, 141 (Md. 1992) (“It is the reckless conduct and not the harm caused by the conduct, if any, which the statute was intended to criminalize.”). There is “no doubt that preventing danger to the community is a legitimate regulatory goal.” *United States v. Salerno*, 481 U.S. 739, 747 (1987).

When assessing the gravity of the harm, then, a court is not limited to only actual harm the defendant perpetrated before he was caught. The court must also consider the “harm caused or *threatened* to the victim or society.” *Solem*, 463 U.S. at 292 (emphasis added); see *TXO Prod. Corp. v. All. Res. Corp.*, 509 U.S. 443, 460 (1993) (plurality opinion) (court must “consider

the magnitude of the *potential harm* that the defendant's conduct" could have caused if "the wrongful plan had succeeded," as well as the "possible harm to other victims that might have resulted if similar future behavior were not deterred").

Consider this country's long battle to stop drunk driving. Many States authorize the forfeiture of cars when their drivers are repeatedly found guilty of drunk driving. *See, e.g.*, Ariz. Rev. Stat. §28-1384(A) ("If a person is convicted ..., the court ... shall order the motor vehicle owned and operated by the person at the time of the offense forfeited."). The forfeiture of the car in these circumstances has the obvious benefit of "mak[ing] it harder for those inclined to drink and drive on a regular basis to commit those offenses in the future." *State v. O'Malley*, 206 N.E.3d 662, 671 (Ohio 2022).

But whether the driver actually kills someone or only risks killing someone does not change the constitutional analysis. Because the drunk driver "plays Russian roulette every time he or she drives on the road," *id.* at 684, a legislature could reasonably determine that *any* drunk driving is dangerous enough to warrant forfeiture of the car. *See County of Nassau v. Canavan*, 802 N.E.2d 616, 622 (N.Y. 2003) ("Given the gravity of the crime of drunk driving, it is difficult to imagine that forfeiture of an automobile for such a crime could ever be excessive."). Nothing in the Constitution precludes legislatures from designing penological schemes to stop dangerous activity before it kills by requiring forfeiture of the undisputed instrumentality of a crime.

II. The Alaska Supreme Court should be affirmed.

Applying these principles here, the forfeiture of Jouppi's plane was not unconstitutionally "excessive." Following a long history and tradition of forfeiting vessels used to perpetrate criminal offenses, the Alaska legislature made a reasonable judgment that forfeiture was appropriate for convicted defendants who knowingly used their airplanes to transport alcohol into dry villages. Jouppi fell within the class of defendants principally targeted by the law, and his offense had the potential to cause the precise harm the legislature sought to prevent. And it is undisputed that the forfeiture of one of Jouppi's planes would not deprive him of his livelihood. None of Jouppi's supposed mitigating circumstances alters the constitutional analysis.

A. Alaska's criminal forfeiture regime is consistent with history and tradition.

1. To start, all should agree that Alaska's justification for its forfeiture regime was "no pretext." *Ewing*, 538 U.S. at 26 (plurality opinion); see *BMW of N.A., Inc. v. Gore*, 517 U.S. 559, 568 (1996) ("[T]he federal excessiveness inquiry appropriately begins with an identification of the state interests that [the law] is designed to serve."). When Alaska adopted the local-option law, it was faced with "massive problems [from] alcoholism and alcohol-related crime," most prominently in "rural Alaska." App.48a; *supra* 5-11. Alcohol was killing Alaskans at a rate 418% higher than the national average. *Harrison*, 687 P.2d at 335. In rural areas, nearly 80% of violent crimes were committed by people who were under the influence. *Id.* In village after village, residents were being "terrorized by alcohol

abusers.” *1986 Report* 1; *supra* 8-9. The State’s interest in stopping the crimes and violence ravaging its villages is undeniable. *Cf. Michigan Dep’t of State Police v. Sitz*, 496 U.S. 444, 451 (1990) (“No one can seriously dispute the magnitude of the drunken driving problem or the States’ interest in eradicating it.”).

To save its villages, the Alaska legislature reasonably decided that tough measures were needed. Its forfeiture regime was “justified by [Alaska’s] public-safety interest in incapacitating and deterring” those who would fly alcohol into dry villages. *Ewing*, 538 U.S. at 29 (plurality opinion). Incapacitation and deterrence are both legitimate government objectives.

When a person knowingly flies alcohol into a dry village, the forfeiture of his airplane “serves significant governmental purposes” by incapacitating the defendant from using the instrument to commit future crimes. *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 679 (1974). The airplane “ha[s] been used—and may be used again—in violation of [Alaska’s alcohol] laws.” *Id.* at 686-87. Forfeiture of the airplane “fosters the purposes served by the underlying criminal statut[e]” by “preventing further illicit use of the conveyance.” *Id.* This decision “reflects a rational legislative judgment, entitled to deference.” *Ewing*, 538 U.S. at 30 (plurality opinion).

In addition, Alaska’s local-option law deters criminal activity by providing “clear notice of the severe consequences that attach to” importing alcohol into a dry community. *Harmelin*, 501 U.S. at 1008 (Kennedy, J., concurring in part). This tough penalty “give[s] force to one of the first purposes of criminal law—deterrence.” *Id.* The difficulty of detecting alcohol smugglers in Alaska’s vast and thinly populated

territory also favors a strict forfeiture regime. *Supra* 3, 10-11. Crimes that are “significantly more difficult to detect may warrant substantially higher penalties.” *Harmelin*, 501 U.S. at 989 (opinion of Scalia, J.); see *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 494 (2008) (similar).

Importantly, Alaska did not reflexively leap to mandatory forfeiture in 2004. It had more than two decades of a “history of noncompliance with known statutory requirements.” *BMW*, 517 U.S. at 585; *supra* 7-11. This experience proved definitively that a “lesser deterrent would [not] adequately protect[]” Alaskans from the scourge of alcohol abuse. *Id.* at 584; see *Birchfield v. North Dakota*, 579 U.S. 438, 448, 465 (2016) (States and the federal government reasonably “toughened drunk-driving laws” after concluding that prior laws were “insufficient” to address the problem.). To stem the flow of alcohol into dry villages, the Alaska legislature reasonably determined that stiffer penalties were needed.

2. The Alaska legislature’s forfeiture regime is not novel. The “[f]orfeiture of vehicles [and other modes of transportation] bearing smuggled goods is one of the time-honored methods adopted by the government for the repression of the crime of smuggling.” *Gen. Motors Acceptance Corp. v. United States*, 286 U.S. 49, 56 (1932). As explained, Congress has long authorized the forfeiture of ships and airplanes that were used to commit crimes. *Supra* 18-22; App.77a-80a. And here, there is a strong “relationship between the forfeited property and the offense.” *Austin*, 509 U.S. at 623 n.15. Unlike, say, a building where “an isolated drug sale happens to occur,” Jouppe’s airplane here was unquestionably the “instrumentality of the offense.” *Id.*

at 627-28 (Scalia, J., concurring in part and concurring in the judgment). Beaver sits more than 100 miles of forested wilderness from Fairbanks, inaccessible by any road system. Jouppi’s airplane was indispensable to transporting the alcohol to Beaver. The airplane thus has a direct “relationship to the offense.” *Id.*

Although Jouppi criticizes modern *civil* forfeiture regimes, he wisely levels no such criticism against Alaska’s *criminal* forfeiture process here. *See* Institute for Justice, *supra*. Whereas civil forfeiture has fewer procedural protections and may allow the government to seize innocent owners’ property, *see Culley*, 601 U.S. at 395 (Gorsuch, J., concurring), Alaska afforded Jouppi all the due-process protections guaranteed by the Constitution. Alaska Stat. §04.16.220(i)(1); *see also id.* §09.55.700 (“Common law civil in rem forfeiture actions are abolished if used instead of a criminal proceeding.”). And while modern civil forfeiture law can give a financial incentive to law enforcement agencies to seize property, *see Culley*, 601 U.S. at 396 (Gorsuch, J., concurring), no such incentive existed here. Any revenue from a forfeiture of Jouppi’s plane will go to the State’s general fund, not the prosecutors or the state troopers who enforced the law. Alaska Stat. §04.16.220(h).⁵ So while this Court may someday need to examine whether “the profound changes in civil forfeiture practices ... in recent decades comport with the Constitutio[n],” *Culley*, 601

⁵ Although Alaska law provides an exception for local municipalities that help with an arrest or conviction, Jouppi’s case involved only state troopers. *See* Alaska Stat. §04.16.220(k); *supra* 13-14.

U.S. at 403 (Gorsuch, J., concurring), that is not this case.

B. Jouppi fell within the class of persons principally targeted by the Alaska legislature and he threatened to cause the same harm the law sought to prevent.

1. Jouppi never disputes that he falls within the “class of persons for whom the statute was principally designed.” *Bajakajian*, 524 U.S. at 338; *see* Pet-Br.38, 41. For good reason. “[A] pilot knowingly transporting a passenger’s alcohol to a dry village is precisely the kind of person and conduct that the legislature was concerned about.” App.26a; *see Jouppi*, 397 P.3d at 1033 (Alaska legislature sought to punish “middlemen who, at some stage, knowingly transport the alcoholic beverages toward the unlawful destination—even though these middlemen may not have initiated the sending of the beverages”). That the Alaska legislature was targeting people like Jouppi is strong evidence that forfeiture of the airplane is not grossly disproportionate.

Setting aside Jouppi’s forfeiture “would require rejection not of the judgment of a single jurist ..., but rather the collective wisdom of the [Alaska] Legislature and, as a consequence, the [Alaska] citizenry.” *Harmelin*, 501 U.S. at 1006 (Kennedy, J., concurring in part). It would also override the people most affected by the law—the residents of Beaver who voted to ban the importation of alcohol into their village. Indeed, the 2004 law mandating forfeiture of Jouppi’s aircraft was bipartisan and *unanimous*: 20 senators, 40 representatives, and the governor all agreed that forfeiture was appropriate in this context. *Supra* 11;

see also supra 12 (more than 100 villages in Alaska, including Beaver, have held elections banning alcohol under the local-election law).

Jouppi dismisses the “class of persons” consideration as nothing more than “the statute appl[ying] to him.” Pet-Br.38. But that distorts the inquiry. The question is whether Jouppi fits within the class of persons for whom the law was “principally designed.” *Bajakajian*, 524 U.S. at 338. Contrast Jouppi with Mr. Bajakajian. There, the federal law was “principally designed” to detect a more specific type of criminal—“a money launderer, a drug trafficker, or a tax evader”—and Bajakajian was none of those things. 524 U.S. at 338. But here, the mandatory-forfeiture provision targeted pilots and owners (Jouppi was both) who knowingly transport alcohol into a dry community. *See* App.26a; Alaska Stat. §04.16.220(i) (“Upon conviction ..., the court shall, subject to remission to innocent parties[,] order the forfeiture of [the] aircraft.”); *see also 1986 Report* 2 (reporting that the local-option law “cannot be enforced most of the time,” as “booze comes in ... mixed with groceries shipped into the community by friend or relative”).

Jouppi criticizes the local-option law for casting a “wide net” by mandating forfeiture of airplanes but creating exceptions for vehicles and watercraft. Pet-Br.38. Under the law, vehicles and watercraft used to violate the law may be exempted when they are the “sole means of transportation for a family residing in a village” or were used by a first-time offender who commits a misdemeanor violation. *See* Alaska Stat. §04.16.220(i)-(j). But the Constitution does not force the Alaska legislature to take an all-or-nothing approach. The Alaska legislature reasonably limited

mandatory forfeiture to airplanes—the most effective instrumentality for flying alcohol into Alaska’s most rural villages and a mode of transportation that is unlikely to deprive an innocent family of their sole means of transportation.

Importantly, *mens rea* acts as a guardrail under Alaska’s criminal forfeiture scheme. The law does not impose strict liability. If a passenger brings alcohol onto a plane without the pilot’s knowledge, the plane will not be forfeited. Instead, the pilot must “knowingly” transport alcohol into the dry village. Alaska Stat. §§04.11.499(a), 04.16.220(i)(1). Even then, if the pilot and the owner are not the same, the owner may avoid forfeiture if he shows he had “no actual knowledge or reasonable cause” to believe that the plane would be used to violate the law. Alaska Stat. §04.16.220(e)(2). But here, Jouppi was a knowing owner, convicted of using his own plane to knowingly transport alcohol into a dry community.

2. Jouppi thinks his crime was harmless. But the Alaska legislature disagreed. His conduct had the potential to cause the exact harm targeted by the law. The legislative record is replete with evidence of what happens when alcohol comes into a dry village. *Supra* 7-10. There thus is a “direct nexus” between Jouppi’s crime—bringing alcohol into a community—and fatal accidents and crimes of violence. *Harmelin*, 501 U.S. at 1003 (Kennedy, J., concurring in part). Unlike Jouppi’s “fanciful” laws, like the mandatory forfeiture of “every car that goes a mile over the limit,” Pet-Br.32, the Alaska legislature’s punishment scheme here “reflects a rational legislative judgment, entitled to deference,” *Ewing*, 538 U.S. at 30 (plurality opinion).

In Jouppi's case, state troopers found two cases of beer and four six-packs of 16-ounce beers on his plane (nine gallons total), which the passenger said was destined for one person (her husband). Tr.258:12-24 (Aug. 22, 2013); *cf.* 1986 Report 52 n.38 (recounting how there were "two sober adults for the entire week" in a village after "alcohol came in on [a] plane"). At sentencing, the court made clear that it believed that Jouppi knew about all 72 beers on the plane. The six-pack of beer was "clearly visible," and it was Jouppi who loaded the grocery boxes containing the other 66 beers onto the plane. R.686; App.159a. Jouppi had "hurriedly packed the airplane because he, in fact, really did know what was in the box, and he wanted to get his plane in the air quickly so that it would escape detection." R.686. At the forfeiture hearing, the judge "assumed, without deciding, that Jouppi's culpability extended to all of the beer on the airplane." App.7a (cleaned up).

The Alaska Supreme Court found no need for additional factual findings on the number of beers Jouppi knew about because it was clear that "even a six-pack of beer" warrants forfeiture. App.24a. After all, six 16-ounce beers are more than enough to make the average person substantially intoxicated. *See The Basics: Defining How Much Alcohol is Too Much*, Nat'l Inst. on Alcohol Abuse and Alcoholism, perma.cc/NNR2-NGA5. Consuming just one alcoholic beverage doubles a person's risk of injury, rising steadily with each successive drink. *See C. Cherpitel, Relative Risk of Injury from Acute Alcohol Consumption: Modeling the Dose-Response Relationship in Emergency Department Data from 18 Countries*, 110 *Addiction* 279, 282 (2015) (estimated odds ratio for injury was 4.6 for three drinks, 5.7 for four drinks, 6.7

for five drinks, 7.5 for six drinks, 8.3 for seven drinks, and 9.0 for eight drinks). Grieving families know all too well the damage this amount of beer (or less) can cause. *See, e.g., Kotarek v. Commonwealth*, 2014 WL 4520459, at *1-2 (Ky. Ct. App. Sept. 12, 2014) (defendant drank four to six beers over four hours, then drove and struck a 13-year-old girl from behind, killing her); *Commonwealth v. Filoma*, 943 N.E.2d 477, 479-80 (Mass. App. Ct. 2011) (defendant drank four to six beers while watching the Super Bowl, then drove his SUV through a crowd, striking five pedestrians and killing one).

That this crime happened in Alaska also matters. Enabling alcohol abuse in, say, Washington, D.C. is not the same as doing so in Beaver, Alaska. Washington, D.C. has 13 hospitals; Beaver has none. Washington, D.C. has more than 3,000 police officers; Beaver has none. Jouppi's glib slogan of an "airplane for a six-pack," Pet-Br.2, ignores not only the actual quantity of alcohol but also the reality of where that contraband was going and the damage it could cause when it got there. *Cf. Harmelin*, 501 U.S. at 988 (opinion of Scalia, J.) ("The members of the Michigan Legislature, and not we, know the situation on the streets of Detroit.").

Jouppi complains that he should not be "saddled ... with the social ills of alcohol abuse statewide." Pet-Br.39. But the catastrophic problems with alcohol abuse are why the legislature enacted the law in the first place. To Jouppi, it seems that none of these problems can be placed at his feet unless the alcohol he was delivering *actually* caused the violent crimes, domestic abuse, and tragic accidents that the Alaska legislature was trying to prevent. But that is not how

criminal law has ever functioned. A marijuana trafficker cannot challenge his conviction on the grounds that marijuana is harmless or his actions did not hurt anyone. Alaska has a “compelling interest in creating effective deterrents” so that individuals “do not become a threat to others in the first place.” *Birchfield*, 579 U.S. at 465 (cleaned up).

Jouppi disagrees with the Alaska Supreme Court’s decision to compare the value of the plane to the maximum available fine. Pet-Br.39-40. But this mode of analysis further confirmed the appropriateness of the forfeiture, even assuming that it was required for instrumentalities of an offense. *But see Austin*, 509 U.S. at 627 (Scalia, J., concurring in part and concurring in the judgment) (“Scales used to measure out unlawful drug sales ... are confiscable whether made of the purest gold or the basest metal.”). In *Bajakajian*, the government sought forfeiture of \$357,144—over 70 times the maximum fine of \$5,000 under the Sentencing Guidelines. 524 U.S. at 337-38. Here, the Alaska legislature set the then-applicable maximum fine for a class A misdemeanor violation of the local-option law at \$10,000, a significantly smaller 9.5 to 1 ratio to the value of the airplane, App.23a; *see* Alaska Stat. §12.55.035(b)(5) (currently \$25,000 maximum for such violations).

Jouppi complains that the maximum fine for violating the local-option law is the same as other offenses like first-degree child endangerment, second-degree stalking, and publicizing explicit images of a child online. Pet-Br.40. But that’s the point. That the legislature authorized the same maximum penalties for bringing alcohol into a dry village as these other serious crimes shows how seriously the legislature

views the offense. *See also* App.34a (Jouppi faced up to one year of imprisonment).

C. The Alaska Supreme Court was not required to override the legislature’s judgment based on Jouppi’s supposed mitigating circumstances.

In the end, Jouppi wants this Court to give him a do-over. He does not ask this Court to find that forfeiture of his airplane was excessive. Instead, he urges the Court to remand the case so the Alaska Supreme Court can “review [his] specific actions” rather than “tak[e] an abstract view” of his crime. Pet-Br.37. As best the State can tell, Jouppi wants the Alaska Supreme Court to consider that his crime was a misdemeanor, that no one was harmed because of his actions, and that there was no factual finding on whether Jouppi knew about all 72 beers that Jouppi himself loaded into his plane. Pet-Br.37-41.⁶

As an initial matter, the Alaska Supreme Court already considered these issues. Jouppi just disagrees with its conclusion. That Jouppi’s offense was a misdemeanor did not matter because “whether the conviction is a misdemeanor or felony,” it was clear that the legislature “viewed the gravity of aircraft-facilitated importation as more severe than other methods of unlawful importation.” App.22a. That was evident in the legislature’s decision to mandate forfeiture of any airplane used in an offense. App.22a. Additional

⁶ Jouppi criticizes the Alaska legislature for imposing forfeiture for both the “incorrigible recidivist and the first-time offender.” Pet-Br.38. But Jouppi does not press the issue, presumably because he pleaded guilty to an earlier violation of the local-option law. *Supra* 13 n.1.

factual finding also was unwarranted. Whether Jouppi knew about 72 beers, 6 beers, or somewhere in between, “the illegal importation of even a six-pack of beer causes grave societal harm.” App.24a. Compared with the harm in *Bajakajian*, the “nature and extent of harm caused by Jouppi’s illegal alcohol smuggling [was] far greater,” as “[a]lcohol abuse in rural Alaska leads to” a host of crimes, violence, and public-health disorders. App.24a. And the Alaska legislature reasonably mandates forfeiture of the instrumentality of that offense to stop those harms.

Jouppi repeatedly insists that the Alaska Supreme Court evaluated the gravity of his offense “purely in the abstract,” whereas this Court examined Bajakajian’s offense with “reference to [Bajakajian’s] own wrongdoing.” Pet-Br.13, 16. But the factual differences in the two cases make clear that the courts’ analyses were the same. In *Bajakajian*, the Court did not “saddle [the defendant] with the ... ills” of “money laundering, tax evasion, and other illicit conduct,” Pet-Br.9, 16, because Bajakajian was not in the class of people targeted by the law. His crime was just a “reporting offense” and his actions were never going to injure anyone. 524 U.S. at 337. If Bajakajian *had been* a “money launderer, a drug trafficker, or a tax evader,” *id.* at 338, then of course this Court would have considered the harms from laundering money, trafficking in drugs, and evading taxes. So too here. Jouppi was within the class of persons principally targeted by the statute and, unlike Bajakajian, knowingly threatened the *exact harm* the Alaska legislature sought to prevent.

More fundamentally, what Jouppi seeks is a world in which courts routinely engage in case-by-case,

second-guessing of a legislature’s scheme to determine whether forfeiture of an instrument of a crime is really warranted. Pet-Br.19. To Jouppi, it can never be enough that a defendant is convicted of a knowing criminal offense; that he fits within the class of pilots that the law was designed to stop; that he threatened to cause the same harm targeted by the legislature; and that the airplane was the instrumentality of the crime. Instead, Jouppi would have courts weigh an indefinite number of factors each time to determine the appropriate punishment.

Here, the people of Beaver, in the wake of the death of one of its young residents, voted to ban alcohol in their village. And the Alaska legislature, after a decades-long fight combatting alcohol-related violence, crime, and death in rural Alaska, unanimously adopted a reasonable scheme of deterrence and incapacitation to address the crisis. When assessing that decision, it is “enough that the State of [Alaska] has a reasonable basis for believing that” the punishment it selected—the forfeiture of airplanes convicted defendants have used to knowingly transport alcohol into dry villages—“advances the goals of its criminal justice system in any substantial way.” *Ewing*, 538 U.S. at 28 (plurality opinion) (cleaned up). Nothing in Jouppi’s particular circumstances warrants overturning the determinations of the Alaska legislature and the residents of Beaver.

CONCLUSION

The judgment should be affirmed.

Respectfully submitted,

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