

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 *AMICI CURIAE*
WILLIAM P. BARR,
GREGG RENKES,
CRAIG W. RICHARDS, AND
TREGARRICK R. TAYLOR
IN SUPPORT OF RESPONDENT**

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Alaska Rural Just. & L. Enft Comm’n, <i>Report to the United States Congress and the Alaska State Legislature</i> (2012)	13
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- Alaska Dep't of Env't Conservation, *Interior Alaska Subarea Contingency Plan, Resources: Part One—Community Profiles* (Change 2, Mar. 2015). 6, 7
- Alaska Dep't of Health & Soc. Servs., Section of Epidemiology, *Health Impacts of Alcohol Misuse in Alaska* (2018) 17, 18
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- Associated Press, *Red Lake in a Remote Area of Northern Minnesota*, Minnesota Public Radio (Mar. 21, 2005).....31
- Beaver Village Council, *Community Plan* (2016).....6–7, 24
- Janice Wood, *Hualapai “Trespass” Pilot Reluctantly Enters Plea*, General Aviation News (Mar. 16, 2009).....31
- Kristen A. Ogilvie, *Unintended Consequences of Local Alcohol Restrictions in Rural Alaska*, 17 J. Ethnicity in Substance Abuse 16 (2018)...17, 19, 24
- Sectional Summary, CSSB 170(JUD), 23d Leg., 2d Sess. (Alaska Apr. 5, 2004).....29
- Tom Robertson, *Red Lake Tribe Faces Water Rights Challenge*, MPR News (Aug. 23, 2006) 31

INTEREST OF *AMICI CURIAE*¹

William P. Barr served twice as United States Attorney General, first under President George H.W. Bush and more recently under President Donald J. Trump. During his second tenure as Attorney General, he declared a law enforcement emergency in rural Alaska, citing, among other concerns, alcohol abuse and its relationship to violent crime and crimes against children. As the Nation's chief law enforcement officer, he also oversaw federal law enforcement responsibilities in Indian country.

Gregg Renkes, Craig W. Richards, and Tregarrick R. Taylor each served as Alaska Attorney General. Each led the department under different Alaska Governors and was responsible for prosecuting criminal offenses statewide and confronted the difficulties of enforcing the law across Alaska's vast territory, including in remote Alaska Native communities with limited law enforcement resources.

Those experiences give amici a distinct perspective. Amici have confronted the conditions under which crimes are investigated and prosecuted in remote communities and in jurisdictions where federal, State, and tribal law enforcement share responsibilities. Amici submit this brief to explain why the gravity of an offense cannot be measured without regard to the community in which the conduct occurs, the means used, or the law enforcement capacity to deter similar conduct and prevent resulting harm.

¹ No counsel for a party authored this brief in whole or in part, and neither a party nor its counsel funded the preparation or submission of this brief. Chenega Corporation, an Alaska Native village corporation, provided all funding for this brief.

INTRODUCTION AND SUMMARY

In 2012, the Alaska Native village of Beaver had 84 residents and zero law enforcement officers. When they need police help, Beaver residents must rely on State Troopers based in Fairbanks, roughly 110 miles away. Worse, those troopers must fly in, and response times are (understandably) slow. Such harsh realities prompted Beaver's residents to address one of the biggest risks to their small community by banning the sale, importation, and possession of alcohol.

Petitioner Kenneth Jouppi, who operated an air-taxi company out of Fairbanks, knew about Beaver's alcohol ban. Yet on the day he was arrested, one of his planes was bound for Beaver with 72 cans of beer aboard—nearly enough to give one can to every man, woman, and child residing there.

Thankfully, Alaska State Troopers in Fairbanks intercepted this bootleg shipment and seized Jouppi's plane. Their seizure was not happenstance. Alaska State Troopers had been investigating Jouppi after receiving information that he had repeatedly transported passengers with alcohol to communities that prohibit it. Resp. Br. 13.

In Jouppi's telling, Alaska took an airplane for a six-pack, thus violating the Excessive Fines Clause. But under *United States v. Bajakajian*, a punitive forfeiture violates the Excessive Fines Clause only if it is "grossly disproportional to the gravity of a defendant's offense." 524 U.S. 321, 334 (1998). And when calculating the gravity of an offense, context matters, abstractions do not. Six beers do not mean the same thing in a remote, dry Alaska Native village without ready access to law enforcement as in a city where alcohol is

sold in grocery stores and law enforcement is minutes away. Jouppi's offense was grave because he was undermining the policy choices of Beaver's residents, informed by the realities of village life, including an alcohol-related death in their small community. Gravity must be measured in context, not just by counting cans.

1. Beaver's isolation is central to the gravity of Jouppi's offense. Air travel is a principal means of reaching the village, and the same geography that motivates Beaver's alcohol ban also makes violations hard to police. Jouppi's own source reports that flights into dry villages are rarely scrutinized, luggage is not officially screened, and bootleggers commonly carry small quantities to avoid detection.

Nor can Alaska enforce Beaver's prohibition as though Beaver were an ordinary municipality. Federal law and Alaska's unusual jurisdictional history leave the State with substantial responsibility for criminal law enforcement in Alaska Native villages. At the same time, immense distances, severe weather, and sparse staffing constrain its ability to respond. Federal officials have repeatedly recognized the result of these circumstances: a rural Alaska public-safety crisis. In communities where police may be hours away, prevention and deterrence matter more.

2. Alaska is unusual, but it is not alone. Public Law 83-280, 67 Stat. 588 (1953) ("P.L. 280") assigns certain States a substantial criminal-enforcement role in many tribal communities. Congress has likewise recognized that sparse policing, large geographies, and complicated jurisdictional arrangements make criminal laws harder to enforce throughout Indian country. Jouppi's proposed rule would therefore reach far

beyond Beaver. It would systematically understate the gravity of offenses in the communities where deterrence and prevention matter most.

3. This Court’s precedents reject Jouppi’s narrow focus on a six-pack. *Solem v. Helm* directs courts assessing gravity to consider “the harm caused or threatened to the victim or society.” 463 U.S. 277, 292–94 (1983). *Harmelin v. Michigan* rejected an effort to characterize an offense as victimless because defendant’s conduct “threatened to cause grave harm to society.” 501 U.S. 957, 1002–04 (1991) (Kennedy, J., concurring in part and concurring in the judgment). And *Bajakajian* assessed gravity by asking what would have happened “[h]ad [the defendant’s] crime gone undetected.” 524 U.S. at 339. Those cases require consideration of a defendant’s particular conduct, the harm it threatened, and the circumstances that gave that threat meaning.

The means used to commit the crime matter too. Jouppi did not merely possess prohibited alcohol somewhere inside an airplane. His airplane was his means of accessing an isolated village that had voted to ban alcohol. Alaska’s Legislature treats aircraft used for such bootlegging strictly. Federal law reflects the same basic judgment: “[a]ny conveyance” used to attempt to introduce prohibited intoxicants into Indian country “shall be subject to seizure, libel, and forfeiture.” 18 U.S.C. § 3669. These judgments reflect the commonsense principle Jouppi seeks to erase: the gravity of an offense turns on contextual factors, including the property used to commit the crime.

* * *

The question in this case is not whether six beers, standing alone, could cause every alcohol-related harm in rural Alaska. The question is whether the Constitution requires a court to pretend that Jouppi's six beers were headed nowhere in particular, threatened nothing, and could have been conveyed by some other means. It does not.

ARGUMENT

I. An offense's gravity depends on the context of the community it threatens.

Jouppi asks the Court to calculate the gravity of his offense by weighing his commercial airplane against a six-pack and a misdemeanor. But gravity does not turn on the defendant's offense in isolation; it must include the harm it caused or threatened, and the circumstances under which the offense occurred. *Solem v. Helm*, 463 U.S. 277, 292 (1983) (to judge the gravity of an offense courts "measur[e] the harm caused or threatened to the victim or society"); *United States v. Bajakajian*, 524 U.S. 321, 337–39 (1998) (assessing gravity by examining the circumstances of the offense, including its relation to other illegal activity and the source and intended use of the currency, and the harm it caused). To accurately calculate the gravity of Jouppi's offense, then, a court must weigh Beaver's remote location and lack of local law enforcement, the conditions under which Alaska must ensure Beaver's public safety, Beaver's local vote in favor of prohibiting alcohol, and how Jouppi planned to transport bootleg alcohol into Beaver.

A. Beaver presents unique law enforcement challenges.

Context starts with place. Beaver is a small Alaska Native village on the north bank of the Yukon River, 13 miles south of the Arctic Circle and approximately 110 miles north of Fairbanks. Beaver Village Council, *Community Plan* 8 (2016). The Beaver Village Council describes its home as a “pristine wilderness setting” within the Yukon Flats National Wildlife Refuge, surrounded by boreal forest, wetlands, and abundant wildlife. *Id.* at 8–9. But that pristine setting comes with challenges: winter temperatures can reach 70 degrees below zero, and the surrounding landscape is marked by permafrost, sloughs, and portions of the Yukon River that are frozen over for much of the year. *Id.* at 9. Around the time of Jouppi’s offense, Beaver had just 84 residents, more than 95 percent of whom identified as Alaska Native. *Id.* at 13; Alaska Dep’t of Env’t Conservation, *Interior Alaska Subarea Continuity Plan, Resources: Part One—Community Profiles* B-12 (Change 2, Mar. 2015).

Beaver is not linked to the nearest city—Fairbanks—by road. Rather, “[p]rimary transportation into the village is by air,” using a State-owned gravel airstrip. Beaver Village Council, *supra*, at 20. Fuel, groceries, and other supplies arrive by air cargo or, during summer, by barge. *Ibid.* Beaver’s few miles of local roads—which principally connect homes, community facilities, the airstrip, and subsistence areas—are not paved. *Id.* at 20–21. This remoteness affects ordinary life in ways that can be difficult to comprehend. As of 2016, for instance, Beaver had no grocery store, requiring residents to pay to have groceries flown in from Fairbanks. *Id.* at 16.

Geography also limits Beaver’s access to emergency services. Residents needing a doctor, hospitalization, or dental care must fly to Fairbanks or Fort Yukon. Beaver Village Council, *supra*, at 22. Law enforcement faces the same obstacles. The State of Alaska’s community profile identifies Beaver as served by State Troopers in Fairbanks. Alaska Dep’t of Env’t Conservation, *supra*, at B-12. In 2016, Beaver reported that its resident Village Public Safety Officer (“VPSO”) had left in 2013 and had not been replaced.² Beaver Village Council, *supra*, at 22. Residents instead rely on State Troopers in Fairbanks. As a result, response times are often “extremely slow.” *Ibid.*

Beaver is not an anomaly in rural Alaska. Congress found in 2022 that “most Alaska Native villages are located in remote areas” that “are often inaccessible by road” and “have no local law enforcement presence.” Violence Against Women Act Reauthorization Act of 2022 (“VAWA 2022”), Pub. L. No. 117-103, div. W, tit. VIII, § 811(a)(2), 136 Stat. 840, 904 (2022). The Alaska Department of Public Safety thus bears “primary responsibility for law enforcement in rural Alaska.” *Id.* § 811(a)(3)(A), 136 Stat. at 904. But the Department’s resources are limited, with about “1 to 1.4 field officers per 1,000,000 acres.” *Ibid.*

A recent study by the U.S. Government Accountability Office sheds light on what those numbers mean

² VPSOs are State-certified unarmed peace officers and first responders who serve Alaska Native communities through a program operated by the Alaska Department of Public Safety in conjunction with regional intertribal organizations, nonprofits, and other entities. U.S. Gov’t Accountability Off. (“GAO”), GAO-26-107533, *Tribes in Alaska: More Clarity Needed on Concurrent Criminal Jurisdiction and Funding Opportunities* 13 (2026).

in practice. In one Western Alaska unit alone, 60 Troopers are responsible for more than 216,000 square miles—including more than 120 Alaska Native villages—or approximately one Trooper for every 3,601 square miles. GAO-26-107533, at 12–13. The VPSO program supplements that force, but it too is thinly spread: as of June 2025, 91 VPSOs served about 162 Alaska Native communities. *Id.* at 13. These VPSOs generally are not trained or equipped to address felony crimes. *Id.* at 16.

The result is a substantial law enforcement gap. The U.S. Attorney’s Office for the District of Alaska estimates that approximately one-third of Alaska Native villages lack local law enforcement personnel. *Id.* at 37. For tribal leaders in remote Western Alaska, that lack of coverage sometimes means waiting days for State Troopers to respond to emergencies. *Id.* at 38. Alaska Department of Public Safety officials independently identified Alaska’s vast distances and severe weather as limiting law enforcement presence and response times. *Id.* at 38–39. Compounding the issue, many Alaska Native villages are not connected to the road system at all, forcing residents and law enforcement to travel by plane, boat, snowmachines, or four-wheelers. *Id.* at 39–40.

All these circumstances should matter to the Court’s gravity analysis. They are not abstractions, and they are not background scenery. They determine what happens when conduct creates a need for immediate police or medical intervention. In an urban setting, police, backup officers, ambulances, hospitals, and other emergency resources may be minutes away. In Beaver and many other Alaska Native villages, limited law enforcement resources covering vast areas

can be days away, often traveling hundreds of miles by air to provide aid. Thus, the criminal conduct that might be common in other communities can threaten significant injury or death in these isolated Alaska villages with limited capacity to prevent, contain, or remedy alcohol-fueled tragedy. No gravity inquiry concerned with the harm an offense causes or threatens can treat those realities as irrelevant.

B. The State of Alaska bears substantial responsibility for criminal law enforcement in Alaska Native villages.

The conditions in remote Alaska Native villages would challenge any government. The vastness of the State—more than twice the size of Texas—and its many small, isolated communities present law enforcement challenges that simply dwarf available resources. In Alaska, the burden falls with particular force on the State, which acts as an indispensable provider of criminal law enforcement in Alaska Native villages. That role reflects Alaska’s unusual legal history.

In 1958, Congress brought Alaska within Public Law 280, which extends State criminal jurisdiction into Indian country. Pub. L. No. 85-615, 72 Stat. 545 (1958) (codified as amended at 18 U.S.C. § 1162(a)). But in 1971, passage of the Alaska Native Claims Settlement Act (“ANCSA”) transformed Alaska’s jurisdictional landscape. ANCSA revoked every existing Alaska reservation except the Annette Island Reserve and authorized the transfer of approximately 44 million acres in fee to State-chartered Alaska Native corporations. *Alaska v. Native Village of Venetie Tribal Gov’t*, 522 U.S. 520, 523–24 (1998). This Court later

held that lands transferred under ANCSA generally do not qualify as Indian country. *Id.* at 532–34. That holding confirmed ANCSA’s jurisdictional sea change. In Alaska, unlike most of Indian country, primary jurisdiction ordinarily rests with the State, rather than the federal government and tribes. *Id.* at 527 note 1, 532.

The practical consequences of the lack of tribal territorial jurisdiction in Alaska have been substantial. The President’s Commission on Law Enforcement explained that *Venetie* “placed an even greater responsibility on the state’s highly centralized law enforcement and criminal justice systems” and that State law enforcement and State courts play a “key role” in protecting public safety in Alaska Native villages. President’s Comm’n on Law Enft & Admin. of Just., *Final Report* 192–93 (2020). So while an Alaska Native village retains inherent criminal jurisdiction over Indians present in that village,³ the State enforces ordinary State criminal laws over non-Indian offenders.

This is consistent with the U.S. Department of the Interior’s position that recent federal developments have not created general tribal territorial jurisdiction in Alaska. In 1993, the Solicitor of the Interior

³ VAWA 2022 expands the jurisdiction described in 25 U.S.C. § 1304 by authorizing participating tribes to exercise special criminal jurisdiction over non-Indians, but only for specified “covered crimes” and subject to statutory limits. 25 U.S.C. §§ 1304(a)(5), 1305(c)–(d). Those covered crimes include domestic violence, sexual violence, child violence, stalking, sex trafficking, obstruction of justice, assaults on tribal justice personnel, and protection-order violations—not alcohol importation. *Id.* § 1304(a)(5). Congress expressly provided that VAWA does not “limit[], alter[], expand[], or diminish[]” Alaska’s criminal jurisdiction. *Id.* § 1305(i)(1).

concluded that ANCSA had largely removed the territorial base for tribal governmental authority and that Alaska tribes without territory generally lack authority over nonmembers absent congressional authorization. *Governmental Jurisdiction of Alaska Native Villages Over Land and Nonmembers*, Sol. Op. M-36975, at 129–31 (Jan. 11, 1993). M-36975 further concluded that there was “little or no basis” for an Alaska Native village to assert territorial jurisdiction over an Alaska Native allotment. *Id.* at 127–28. In 2024, the Solicitor of the Interior withdrew that portion of M-36975 and instead concluded that Alaska tribes are presumptively entitled to exercise jurisdiction over Alaska Native allotments. *Partial Withdrawal of Solicitor’s Opinion M-36975, Governmental Jurisdiction of Alaska Native Villages Over Land and Nonmembers, and Clarification of Tribal Jurisdiction Over Alaska Native Allotments*, Sol. Op. M-37079, at 1–2 (Feb. 1, 2024). In September 2025, the Deputy Secretary of the Interior rescinded M-37079 and reinstated M-36975 “in its entirety” as “binding and authoritative.” U.S. Dep’t of the Interior, *Withdrawal of Solicitor Opinion M-37079*, at 1–2 (Sept. 25, 2025). This restored the longstanding view that the federal government and tribes generally lack criminal jurisdiction over non-Indians in Alaska villages.

Under this legal regime, Congress’s efforts to address the law enforcement challenges in Alaska depend heavily on State participation. The unique jurisdictional landscape and limited law enforcement resources of the Bureau of Indian Affairs (“BIA”) result largely in the absence of federal assistance to Alaska Native villages, making it “critical for Tribes to leverage existing state law enforcement services.” GAO-26-

107533, at 34–35. Alaska, in turn, receives little federal funding for the public-safety and justice services it provides to federally recognized tribes and Alaska Native communities under its jurisdiction. *Id.* at 35. And the State cannot rely on a conventional county law enforcement network: Alaska has no elected sheriffs and no system of local jails. The Alaska Attorney General and Alaska State Troopers thus provide comprehensive law enforcement and prosecution services outside traditional city limits, including for both minor and major crimes in Alaska Native villages. *Id.* at 12–17, 36.

In sum, Alaska Native communities remain “largely dependent on Alaska State Troopers for public safety and law enforcement services.” GAO-26-107533, at 37. And their reliance interests are significant: the U.S. Attorney’s Office estimates that approximately one-third of Alaska Native villages lack local law enforcement personnel altogether. *Id.* In most cases where there is local assistance, it is in the form of a VPSO, not a State employee or law enforcement officer equipped and trained to handle felony-level crimes. GAO-26-107533, at 13, 16. The State therefore must protect communities separated from its troopers by immense distances, challenging geography, severe weather, and limited transportation infrastructure. *Id.* at 37–40. When a crime occurs in many Alaska Native villages, the State is expected to investigate, catch the offenders, and prosecute violations of law, all while providing the personnel and infrastructure necessary to protect the community.

**C. The federal government recognizes the
public safety crisis in rural Alaska.**

Both Congress and the Executive have repeatedly recognized the serious and persistent public-safety problem in rural Alaska.

Several statewide forums and commissions led to Congress creating the Alaska Rural Justice and Law Enforcement Commission, tasked with examining law enforcement, alcohol importation and interdiction, domestic violence and child abuse, and judicial services in rural Alaska. Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, div. B, tit. I, §§ 112(a)(2)(A), (a)(2)(B)(i)–(iv), 118 Stat. 3, 62 (2004). The Commission, co-chaired by Alaska Attorney General Gregg Renkes and the U.S. Attorney for the District of Alaska, Timothy Burgess, conducted 15 public hearings in 11 locations throughout the State taking oral and written testimony from individuals with substantial expertise and personal experience. Among its findings, the Commission highlighted that over 95 percent of Alaska Native crimes were linked or attributed to alcohol or substance abuse. Alaska Rural Just. & L. Enf't Comm'n, *Initial Report and Recommendations of the Alaska Rural Justice and Law Enforcement Commission* 40, 44–51, 54 note 102, 92 (2006). The Commission recommended changing State law to combat the importation of alcohol into dry Alaska rural villages. *Id.* at 40, 44–51, 57–59. In 2007 and 2008, the Alaska Legislature adopted many of these recommendations. Alaska Rural Just. & L. Enf't Comm'n, *Report to the United States Congress and the Alaska State Legislature* 8 (2012).

In 2019, the United States Attorney General William P. Barr formally declared a “law enforcement emergency in rural Alaska” under the Emergency Federal Law Enforcement Assistance Program and made \$6 million immediately available to Alaska to address the needs of Alaska Native villages. U.S. Dep’t of Just., *Attorney General William P. Barr Announces Emergency Funding to Address Public Safety Crisis in Rural Alaska* (June 28, 2019). In doing so, Attorney General Barr cited both Alaska’s crime rate and “the unique circumstances of Alaska’s geographical and jurisdictional landscape.” *Ibid.* The law enforcement challenges facing the State and remote Alaska Native communities were described as “complex, unique, and dire,” while residents were experiencing “extremely high rates of violence.” *Ibid.* The Attorney General further explained that Alaska’s “geographic isolation contributes to law enforcement problems not seen anywhere else in our Nation” and estimated that “one-third of Alaskan villages have no local law enforcement personnel at all.” *Ibid.*

Alcohol is a key part of rural Alaska’s public-safety crisis. Among DOJ’s announced priorities were reducing violent crime and sexual assault, cutting off illegal drugs, and “[a]ddressing the problem of alcohol abuse and its role in violent crime and crimes against children.” *Ibid.* The federal response thus treated alcohol-related harm as a source of the law enforcement emergency in rural Alaska.

Congress has reached the same conclusions about safety in rural Alaska. In VAWA 2022, Congress found that Alaska Native women were overrepresented among victims of domestic and sexual violence. It further found that most Alaska Native villages are

remote, are often inaccessible by road, and “have no local law enforcement presence.” Pub. L. No. 117-103, div. W, tit. VIII, § 811(a)(1)–(3), 136 Stat. at 904–05.

Congress attempted to address these issues by creating new mechanisms for intergovernmental coordination and additional tribal criminal authority. But the problems have persisted. In February 2026, the GAO reported that Alaska was among the States with the highest crime rates from 2018 through 2023. GAO-26-107533, at 23 & note 63. The disparities affecting Alaska Native communities were even more pronounced: American Indian and Alaska Native women accounted for nearly half of all crime victims for whom race and gender were reported. *Id.* at 23–24. And in Western Alaska—home to roughly half of Alaska Native communities—tribal citizens accounted for approximately 91 percent of reported felony sexual-assault victims. *Ibid.*

In response, the federal government has committed substantial resources. GAO calculated that three DOJ offices—the Office of Justice Programs, Office on Violence Against Women, and Office of Community Oriented Policing Services—awarded \$354.5 million in public-safety and justice grants to Alaska tribes and tribal organizations between fiscal years 2017 and 2024. *Id.* at 25. Yet GAO continued to identify high crime, limited law enforcement presence, inadequate infrastructure, and insufficient resources as significant public-safety challenges in Alaska Native communities. *Ibid.* DOJ’s 2026 Alaska Pilot Program framing paper likewise describes Alaska Native villages as presenting a “unique legal and geographic landscape” marked by “jurisdictional complexity, limited infrastructure, and resource constraints,” and

recognizes that many remote communities face serious fiscal and operational limitations. U.S. Dep’t of Just., *Framing Paper: Tribal Consultation on Implementation and Evaluation of Alaska Pilot Program Under VAWA 2022* 1–2 (2026). Congress even directed DOJ, in selecting participants for the program, to prioritize predominantly Alaska Native villages that lack a permanent State law enforcement presence. 25 U.S.C. § 1305(d)(3)(A)(i).

These repeated federal judgments confirm the weight the State has ascribed to the gravity of Jouppi’s offense. The State’s concerns are not speculative about what alcohol might do in the abstract. Federal officials have declared a law enforcement emergency in rural Alaska, Congress has legislated against the resulting public-safety conditions, and federal agencies continue to devote substantial resources to address the problem. Against that backdrop, the gravity of introducing bootleg alcohol into a remote Alaska Native village cannot be measured by counting cans of beer alone.

D. Beaver’s decision to prohibit alcohol multiplies the gravity of Jouppi’s offense.

Jouppi’s focus on six cans of beer strips his offense of the context that gives it meaning. Beaver’s alcohol ban was not imposed on the community by the State. Alaska law allows an established village, by popular vote, to decide whether and to what extent alcohol should be restricted. *See* Alaska Stat. §§ 04.11.491(b), 04.11.499(a). In 2004, Beaver voted in favor of “prohibit[ing] the sale, importation and possession of alcoholic beverages.” Alaska Div. of Elections, State-Conducted Local Election Results (July 9, 2004). Thus, the

restriction Jouppi violated was the community’s decision that alcohol should not be brought into Beaver. *See Jouppi v. State*, 566 P.3d 943, 948 note 2 (Alaska 2025) (describing Alaska’s local-option regime).

Beaver’s isolation gives its decision special force. As explained above, Beaver is not connected to Fairbanks by road and depends mostly on air transportation for emergency services and supplies. A ban on alcohol importation can thus do something that an ordinary restriction on sales cannot: materially limit the physical availability of alcohol in the community. But the same isolation also makes the prohibition difficult to enforce. As Jouppi’s own source points out, flights into dry villages “are not often scrutinized by law enforcement,” there is “no official screening of luggage,” and “most bootleggers import only small amounts of alcohol to remain undetected.” Kristen A. Ogilvie, *Unintended Consequences of Local Alcohol Restrictions in Rural Alaska*, 17 J. Ethnicity in Substance Abuse 16, 24 (2018); *see* Pet. Br. 3. So it does not matter whether Jouppi was knowingly transporting six cans of beer or 72 cans. Such small shipments are a known means of evading alcohol restrictions in remote villages.

Beaver’s decision to ban alcohol was hardly unreasonable. Alcohol is a psychoactive, addictive substance, and its misuse causes harms far beyond the drinker. Alaska’s Section of Epidemiology identifies among the acute consequences of excessive alcohol consumption motor-vehicle crashes and other injuries, domestic abuse, sexual assault, violent crime, suicide, and fatal overdose. Alaska Dep’t of Health & Soc. Servs., Section of Epidemiology, *Health Impacts of Alcohol Misuse in Alaska* 4 (2018). It likewise describes alcohol-use disorder as a progressive condition

involving tolerance, a compulsive need to drink, and an inability to stop. *Ibid.* Those harms have been especially severe in Alaska. The State reported that, from 2010 through 2016, alcohol-attributable causes killed more Alaskans than methamphetamine- and opioid-attributable causes combined. *Id.* at 3, 16.

The impacts of alcohol on Alaska Natives have been “disproportionately large.” *Id.* at 18. From 2010 through 2016, Alaska Natives accounted for 49 percent of the State’s alcohol-attributable deaths despite comprising just 15 percent of Alaska’s population. In 2016, their rate of alcohol-attributable mortality was more than seven times that of non-Alaska Natives—80.7 deaths per 100,000 persons compared with 11.4. *Id.* at 3.

The same State review found that local-option laws can reduce alcohol’s harms: it identified studies crediting the laws with reduced injury morbidity and mortality and improved public safety, including a study finding significantly lower risks of serious injury from assault and motor-vehicle collisions in dry Alaska Native villages compared to wet villages. *Id.* at 21. Beaver’s decision to prohibit alcohol thus addressed documented harms of particular consequence to similarly situated communities. But, consistent with Jouppi’s practice of transporting passengers with bootleg alcohol, he did not care. *See* Resp. Br. 13.

On the day of the offense, a customer chartered Jouppi’s air-taxi company to fly from Fairbanks to Beaver. Jouppi personally loaded cargo containing the equivalent of three cases of beer onto the airplane. *Jouppi*, 566 P.3d at 949; Pet. App. 4a–5a. These 72 cans of bootleg beer—at least six of which were plainly visible to Jouppi—were destined for Beaver. And

Jouppi acted “in his professional capacity as the operator of an air taxi company and the pilot of the airplane.” Pet. App. 20a.

The jury returned a general verdict and did not determine the quantity of alcohol for which Jouppi possessed the requisite knowledge. *Id.* at 5a–6a. The trial court later found him “willfully blind” to the six beers plainly visible in a grocery bag but did not determine his culpability for the remaining 66 beers aboard the aircraft. *Id.* at 7a, 25a–26a. Nor was Jouppi’s plane incidental. As Jouppi’s own source recognizes, small quantities carried on flights are particularly difficult for law enforcement to detect—to say nothing of Beaver’s residents, who have no law enforcement presence in their community. Ogilvie, *supra*, at 24.

* * *

The gravity of Jouppi’s offense cannot be calculated without accounting for the Beaver community. The law enforcement situation that led Beaver to ban alcohol is no abstraction. A court miscalculates the gravity of Jouppi’s offense if it focuses on counting cans while disregarding where those cans were headed, why alcohol was banned there, how that ban protects the community, and the means Jouppi used to get around the ban. Maybe bootlegging beer by plane is not that serious in some places, but in Beaver, it is.

II. Jouppi’s narrow gravity formula would undermine law enforcement efforts in other tribal communities.

A. Alaska is unusual, but it is not alone.

Alaska’s jurisdictional landscape is exceptional, but substantial State responsibility for criminal law enforcement in many tribal communities is not. Congress passed P.L. 280 over 70 years ago in response to what this Court has described as “the problem of lawlessness on certain Indian reservations, and the absence of adequate tribal institutions for law enforcement.” *Bryan v. Itasca Cnty.*, 426 U.S. 373, 379 (1976). P.L. 280’s solution was to confer on designated States criminal jurisdiction over offenses committed by or against Indians in Indian country (referred to as “mandatory P.L. 280 States”). In the areas covered by P.L. 280, a State has jurisdiction “to the same extent” as it does over offenses elsewhere within the State, and its criminal laws have “the same force and effect” there. 18 U.S.C. § 1162(a); *see also California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 207–08 (1987) (P.L. 280 grants States “broad criminal jurisdiction”).

Despite some changes over the years, P.L. 280 remains a major feature of Indian-country law enforcement today: the GAO recently reported that the P.L. 280 framework affects approximately 65 percent of federally recognized tribes and that, in mandatory P.L. 280 States, State authorities generally provide “law enforcement, courts, and corrections” rather than the federal government. GAO-26-107533, at 1.

P.L. 280 does not operate uniformly. Some States historically assumed only partial jurisdiction; State

jurisdiction has been retroceded in some places; and tribal criminal jurisdiction may operate concurrently with State jurisdiction. *See Washington v. Confederated Bands & Tribes of Yakima Indian Nation*, 439 U.S. 463, 471–74, 498–501 (1979). Still, P.L. 280 has resulted in State and local law enforcement agencies playing a significant role in enforcing criminal law in many tribal communities. In 16 States exercising mandatory or optional P.L. 280 jurisdiction, 93 State prosecutors’ offices reported jurisdiction over Indian-country felonies, and nearly three-quarters had prosecuted at least one such felony in 2007. U.S. Dep’t of Just., Bureau of Just. Stat., *State Prosecutors’ Offices with Jurisdiction in Indian Country, 2007*, at 1–2 (2011).

In short, P.L. 280 makes State criminal law and State enforcement a key part of public-safety architecture in many tribal communities. And while that arrangement does not precisely replicate the State’s role in rural Alaska, it shows that federal law has made State officials vital in promoting public safety in many tribal communities.

B. The practical conditions of State enforcement in tribal communities bear on an offense’s gravity.

Congress’s allocation of law enforcement responsibility for tribal communities to certain States is inextricably linked to the Excessive Fines Clause’s gravity inquiry in those communities. Where federal law assigns States a substantial role in protecting tribal communities, the practical conditions under which that responsibility must be discharged are an inherent part of the setting in which an offense occurs.

Underscoring this linkage, the Tribal Law and Order Act of 2010 (“TLOA”) found that the “complicated jurisdictional scheme” governing Indian-country crime “has a significant negative impact on the ability to provide public safety to Indian communities,” “has been increasingly exploited by criminals,” and “requires a high degree of commitment and cooperation among tribal, Federal, and State law enforcement officials.” Pub. L. No. 111-211, tit. II, § 202(a)(4), 124 Stat. 2258, 2262 (2010). Congress also found that fewer than 3,000 tribal and federal law enforcement officers patrolled more than 56 million acres of Indian country—less than half the law enforcement presence in comparable rural communities nationwide. *Id.* § 202(a)(3), 124 Stat. at 2262. Congress thus made increased coordination among federal, State, tribal, and local law enforcement agencies an express purpose of the Act. *Id.* § 202(b)(2), 124 Stat. at 2263. On top of that, Congress expressly authorized federal assistance for State, tribal, and local governments that enter cooperative agreements involving “mutual aid, hot pursuit of suspects, and cross-deputization”—all to “improv[e] law enforcement effectiveness,” “reduc[e] crime in Indian country and nearby communities,” and develop cooperative relationships that “effectively combat crime.” *Id.* § 222, 124 Stat. at 2272.

This Court likewise has recognized that State and tribal governments can and do share public-safety responsibilities. In *McGirt v. Oklahoma*, the Court observed that Oklahoma and its tribes had “proven they can work successfully together as partners,” including through hundreds of intergovernmental agreements addressing law enforcement and other regulatory matters. 591 U.S. 894, 937 (2020) (citation omitted).

Those arrangements, the Court explained, reflect a tradition of “comity and cooperative sovereignty.” *Ibid.* (internal quotation marks and citation omitted).

But assigning States responsibility under P.L. 280 does not supply the States personnel and resources. Just last year, the Senate Appropriations Committee observed that some States with large Indian populations have “no law enforcement presence in Tribal communities and Alaska Native Villages despite high crime rates,” even as P.L. 280 can limit those communities’ access to certain federal public-safety funding. S. Rep. No. 119-46, at 69 (2025). Congress identified the same problem in TLOA: too few officers operating within a “complicated jurisdictional scheme” spanning more than 56 million acres, making criminal laws substantially harder to enforce in Indian country. TLOA § 202(a)(3)–(4), 124 Stat. at 2262.

The Court’s proportionality cases permit those conditions to enter the excessive fines calculus. In *Harmon v. Michigan*, Justice Kennedy explained that deterrence is a legitimate penological objective and that “differing attitudes and perceptions of local conditions may yield different, yet rational, conclusions” about punishment for particular crimes. 501 U.S. 957, 999–1000 (1991) (Kennedy, J., concurring in part and concurring in the judgment). The Ninth Circuit applied the same basic principle in the excessive fines context in *Pimentel v. City of Los Angeles*, 974 F.3d 917 (9th Cir. 2020). There, the court sustained a parking fine in part because the sanction had to perform a “deterrent function” against traffic congestion “in one of the most congested cities in the country.” *Id.* at 924–25 (internal quotation marks and citation omitted). The offense in *Pimentel* was thus not assessed in a

vacuum. The conditions under which the law had to operate mattered.

Here, the conditions surrounding Beaver matter. The village has no resident law enforcement officer, and residents rely on State Troopers in Fairbanks, where response times can be “extremely slow.” Beaver Village Council, *supra*, at 22. That makes interdiction before bootleg alcohol reaches Beaver especially important: once it arrives, the officers responsible for enforcing the law are a plane ride away, and Alaska must allocate scarce rural law enforcement personnel and aircraft among competing emergencies and other public-safety demands. The problem is compounded because small quantities of alcohol carried on flights are particularly difficult to detect. Ogilvie, *supra*, at 24. The geography, absence of local law enforcement, and difficulty of detection are the conditions that make deterrence especially important. No gravity inquiry can ignore this reality.

III. Jouppi miscalculates the gravity of offenses in remote, vulnerable communities.

A. Gravity encompasses threatened harm, not merely materialized harm.

The context in which a crime is committed is also relevant to the gravity of an offense because the Court’s proportionality cases do not limit the gravity analysis to harms that have already materialized when law enforcement intervenes. To the contrary, *Bajakajian* derived its gross disproportionality standard from the Court’s Cruel and Unusual Punishments Clause precedents, including *Solem*. *Bajakajian*, 524 U.S. at 336 (citing *Solem*, 463 U.S. at 288). *Solem* instructs courts assessing gravity to consider “the harm

caused or threatened to the victim *or society*,” together with the offender’s culpability. 463 U.S. at 292–94 (emphasis added). And even those considerations are “by no means exhaustive.” *Id.* at 294.

Harmelin v. Michigan illustrates this point. There, the defendant characterized his cocaine-possession offense as nonviolent and victimless. 501 U.S. at 1002. Justice Kennedy rejected that description because the crime “threatened to cause grave harm to society.” *Ibid.* (Kennedy, J., concurring in part and concurring in the judgment). The gravity of the offense in *Harmelin* did not turn solely on the precise injuries the defendant had already inflicted on an identifiable victim. It also accounted for the violence, crime, and social harms the offender’s conduct threatened. *Id.* at 1002–04. And those threatened harms supported Michigan’s judgment that the offense warranted substantial punishment. *Ibid.*

Bajakajian employed the same type of analysis. In concluding that the defendant’s reporting offense caused minimal harm, the Court asked what would have happened “[h]ad his crime gone undetected.” 524 U.S. at 339. The answer favored the defendant: “the Government would have been deprived only of the information that \$357,144 had left the country.” *Ibid.* But the Court also emphasized that the defendant’s conduct was “unrelated to any other illegal activities” and that he was “not a money launderer, a drug trafficker, or a tax evader.” *Id.* at 338. Indeed, the Court contrasted his offense with that of “a hypothetical drug dealer who willfully fails to report taking \$12,000 out of the country in order to purchase drugs.” *Id.* at 339. That comparison is particularly relevant here: the Court in *Bajakajian* assessed gravity by

considering what the defendant's particular conduct threatened if enforcement failed. *See id.* at 338–39.

The principle that a gravity assessment should include threatened harm has particular force where a law is designed to prohibit conduct before a greater threatened harm fully materializes. When enforcement succeeds, it may limit the harm that ultimately occurs, but it does not erase the harm the offense threatened. Otherwise, the same intervention that prevents the threatened injury would artificially diminish the gravity of the offense.

The value of such preventive laws exposes another flaw in Jouppi's six-pack framing. Jouppi treats the harms threatened by his offense as *de minimis* because Alaska State Troopers intercepted the prohibited alcohol aboard his commercial aircraft before it reached Beaver. *See Jouppi*, 566 P.3d at 948–49. But the gravity inquiry should consider more: where the alcohol was headed, what prohibition the importation would have defeated, the harms that prohibition was designed to prevent, the community's capacity to prevent or contain those harms, and the means used to introduce the alcohol.

A rule that looks only to harm realized when law enforcement intervenes would systematically discount preventive offenses precisely when enforcement works. *Solem*, *Harmelin*, and *Bajakajian* all point the other way. And this distortion is especially serious in communities where law enforcement resources are limited and distance, severe weather, and reliance on aircraft can delay response. In those communities, deterrence necessarily carries greater weight because the law must often prevent worse conduct before scarce officers can be called upon to respond.

**B. Geography and enforcement conditions
can magnify the gravity of an offense.**

The threatened harm of an offense cannot be separated from the conditions in which the offense occurs. Congress has recognized as much in addressing public safety in tribal communities. In 2020, the Not Invisible Act, Pub. L. No. 116-166, 134 Stat. 766 (2020), directed the Secretary of the Interior to ensure that federal efforts addressing murder, trafficking, and missing Indians account for the “unique challenges of combating crime, violence, and human trafficking” faced by tribal communities and by tribal, federal, State, and local law enforcement. *Id.* § 3(a)(2), 134 Stat. at 766–67. The Act also required the Department of the Interior to report to Congress on those efforts and recommend ways to improve federal coordination. *Id.* § 3(b), 134 Stat. at 767.

BIA’s 2024 Not Invisible Act report highlighted the “unique challenges” faced by tribal communities. The BIA explained that inadequate staffing can impair investigations, and that “[p]olicing poses unique challenges to officers in Indian Country.” U.S. Dep’t of the Interior, *Coordination of Federal Efforts to Combat Violence Against Native People* 22 (Mar. 29, 2024). On larger reservations, “the geography of the service area and the distant locations of support services” contribute to longer police response times. *Ibid.*

These challenges are nothing new. In 1986, Congress enacted the Anti-Drug Abuse Act, which now includes provisions specifically providing targeted narcotics-enforcement assistance to the Tohono O’odham Tribe of Arizona because its reservation lies along the Mexican border; to the St. Regis Band of Mohawk

Indians of New York because its reservation lies along the Canadian border; to the Makah Indian Tribe of Washington because of its “proximity to international waters”; and to the Blackfeet Nation of Montana because its reservation also borders Canada. 25 U.S.C. § 2442(a)(1). Congress also directed the Department of the Interior to work with federal, State, tribal, and local authorities to interdict narcotics trafficking in Indian country. *Id.* § 2442(b)(1). Geography, in other words, is not merely abstract background. Congress has treated it as a circumstance that can alter both the opportunity for prohibited conduct and the demands placed on law enforcement. *See also* Drug Enf’t Admin., *2025 National Drug Threat Assessment* 68–69 (2025) (“remote, insular nature” of tribal communities can make it difficult for law enforcement “to investigate and respond quickly to crimes,” while the introduction and abuse of illicit substances contribute to crime, violence, and recurring dependency).

Simply put, local conditions play a role in accurately determining the harm that prohibited conduct threatens. A remote community with limited law enforcement capacity should not be treated as though it were a city where officers, courts, and other public-safety resources are minutes away. Nor does considering those circumstances attribute to Jouppi abstract societal harms untethered to his own conduct. It simply asks the commonsense question: What does the defendant’s own conduct threaten in the place where he chose to act?

All of this is why Beaver’s circumstances are relevant to gravity. Beaver is remote, law enforcement response is constrained, and the community has chosen

to prevent alcohol-related harms by prohibiting alcohol altogether. Those are not free-floating social problems to be laid at Jouppi's feet. They are circumstances that bear on what the unlawful introduction of alcohol into Beaver threatens and how readily the resulting harm can be prevented or contained. The Constitution does not require a court to pretend those circumstances do not exist.

C. The means used can increase gravity.

The conditions described above also make the means used to commit an offense relevant to its gravity. Recognizing that connection, the Alaska Legislature codified into law its judgment on how best to address the means of transportation for smuggling alcohol. Alaska law subjects aircraft, vehicles, and watercraft used to transport alcohol unlawfully into communities that prohibit its importation to forfeiture. Alaska Stat. § 04.16.220(a)(3)(C). But while vehicles and watercraft are mandatorily forfeited only in specified circumstances, the statute treats aircraft differently: once an aircraft is subject to forfeiture and the defendant is convicted, the court “shall” order its forfeiture. *Id.* § 04.16.220(i)–(j).

That distinction was deliberate and should be afforded deference. *See Bajakajian*, 524 U.S. at 336 (“judgments about the appropriate punishment for an offense belong in the first instance to the legislature”). The 2004 amendments to Alaska's bootlegging laws were expressly presented as helping dry villages combat bootlegging. Their summary explained that dry area protections were designed to “strengthen forfeiture law for vehicles, watercraft, and aircraft used to bootleg alcohol.” Sectional Summary, CSSB

170(JUD), 23d Leg., 2d Sess. 1 (Alaska Apr. 5, 2004). It repeatedly described the forfeitable property as the “means of transportation used in bootlegging.” *Ibid.* Alaska thus did not treat an aircraft as fortuitously associated with an alcohol offense: It is the means used to defeat a community’s alcohol prohibition that forfeiture attempts to address.

Even so, comparison with other jurisdictions confirms that Alaska’s approach is hardly extraordinary. *See Solem*, 463 U.S. at 291–92 (“courts may find it useful to compare the sentences imposed for commission of the same crime in other jurisdictions”). Federal law provides that “[a]ny conveyance” used to introduce or attempt to introduce intoxicants into Indian country where introduction is prohibited “shall be subject to seizure, libel, and forfeiture.” 18 U.S.C. § 3669. Congress deliberately broadened this provision—it was originally limited to “[a]utomobiles or any other vehicles” but later expanded to “any conveyance” to eliminate ambiguity about its scope. *See* 18 U.S.C. § 3669 (Historical and Revision Notes). And, similar to the Alaska regime, Section 1161 makes the federal seizure law turn on the choices of the relevant sovereigns: Section 3669 does not apply where the alcohol transaction complies with both State law and a duly adopted and federally certified tribal ordinance. 18 U.S.C. § 1161.

Tribal governments have made similar judgments. The Metlakatla Indian Community’s federally published Alcohol Possession Code declares as contraband any “airplane, boat, including fishing vessels, motor vehicle, or thing of any kind whatsoever” used in connection with violating its Law and Order Code. 73 Fed. Reg. 47,210, 47,212 (Aug. 13, 2008). The Red

Lake Band of Chippewa Indians likewise confiscated an aircraft after a nonmember pilot landed on Lower Red Lake and began fishing there unlawfully. Tom Robertson, *Red Lake Tribe Faces Water Rights Challenge*, MPR News (Aug. 23, 2006).⁴ The Band's chairman later explained that such confiscations were intended to deter others from encroaching on tribal waters. *Id.* Hualapai Indian Tribe similarly confiscated a powered paraglider following a flight over reservation land the Tribe treated as unauthorized. Janice Wood, *Hualapai "Trespass" Pilot Reluctantly Enters Plea*, General Aviation News (Mar. 16, 2009). The pilot later resolved the case by admitting to trespass and endangerment and paying a fine. *Id.*

Those examples do not prove that every jurisdiction would punish Jouppi as Alaska did. But they do not need to. *Solem* does not require uniformity. The examples instead show something more modest: treating an aircraft used to commit or facilitate a local offense as integral to that offense is not the constitutional anomaly that Jouppi claims.

Here, the connection between means and gravity is especially direct. Beaver is outside Alaska's interconnected road system and aircraft are a principal means of reaching it. Jouppi's plane was therefore not merely where the prohibited alcohol happened to be located. It was the means by which Jouppi could overcome a geographic barrier and carry alcohol into a community that had affirmatively voted to exclude

⁴ The pilot recovered his plane after six weeks of negotiations, \$4,000 in fines, and \$2,000 in legal fees. See Associated Press, *Red Lake in a Remote Area of Northern Minnesota*, Minnesota Public Radio (Mar. 21, 2005).

it—the community’s effort to protect against alcohol’s well-known harms. In assessing the gravity of Jouppi’s offense, the individualized inquiry requires attention to context. Jouppi demands its erasure.

CONCLUSION

Amici urge this Court to affirm the decision of the Alaska Supreme Court.

Respectfully submitted,

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October 13, 2026

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