

No. 25-246

IN THE
Supreme Court of the United States

KENNETH J. JOUPPI,

Petitioner,

v.

ALASKA,

Respondent.

ON WRIT OF CERTIORARI TO
THE ALASKA SUPREME COURT

**BRIEF OF *AMICUS CURIAE*
LEGAL ENTERPRISE FOR NEUTRAL
STANDARDS (“LENS”) IN SUPPORT
OF RESPONDENT**

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QUESTION PRESENTED

Jouppi owned and piloted an aircraft loaded for a flight to Beaver, a roadless Alaska village that had voted to prohibit alcohol. Troopers stopped him before takeoff and found 72 beers, including a six-pack in plain view. The constitutional ruling rested on his attempt to transport at least that six-pack. Following his conviction, Alaska law required forfeiture of the \$95,000 aircraft, although the maximum cash fine for his offense was \$10,000.

The question is: may a court, reviewing an instrumentality forfeiture for gross disproportionality, credit the legislature's assessment of the harms and the defendant's actual conduct threatened, even without a separately identifiable injury and even when the property's value exceeds the maximum cash fine?

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INTEREST OF *AMICUS CURIAE*¹

The Legal Enterprise for Neutral Standards (“LENS”) is an independent legal research and appellate advocacy organization. LENS cares about the rule the Court adopts, not who wins, because that rule will decide the next case and every one after it. Clear rules are fair in themselves, even when they produce a harsh result in a particular case, because the law should apply the same way to the sympathetic and the unpopular, the powerful and the weak.

Jouppi’s six-pack and \$95,000 airplane make it easy for most people to take Jouppi’s side. But the way the narrative is being advanced does not change the rule. If courts (and legislators) cannot weigh the harm a crime threatened before it was completed, a drunk driver stopped before he hits anyone would be harmless, and any punishment would be constitutionally excessive. That cannot be right. LENS believes governments should be allowed, when the harms are rational, real, and uncontrived, to punish the instrumentalities used to cause them.

SUMMARY OF THE ARGUMENT

The Court should hold that a forfeiture may rest on the harm the defendant’s actual conduct threatened, even if no one was hurt, and that the instrumentality’s value alone does not make it excessive. Jouppi’s attempted delivery did not become

¹ No counsel for a party authored this brief in whole or in part, and no person other than amicus curiae and its counsel made a monetary contribution intended to fund the preparation or submission of this brief.

harmless merely because troopers stopped his plane. The Eighth Amendment counts the harm an offense threatens. Whether a delivery itself into a roadless, dry village is per se dangerous is a decision for the legislature, and unless that judgment is wholly untethered from reality, courts owe it substantial deference. Jouppi still answers only for what he actually did, not for what other offenders did. Finally, forfeiting instrumentalities is common, so the plane's value does not matter.

ARGUMENT

Jouppi's attempted delivery did not become harmless merely because troopers stopped his plane. The defendant in *Paroline* possessed "between 150 and 300 images of child pornography, two of which depicted the respondent victim." *Paroline v. United States*, 572 U.S. 434, 441 (2014). He pleaded guilty only to "possession of material involving the sexual exploitation of children," and no separate loss could be traced to him, yet the court still found he contributed to the plaintiff's continuing injury. *Id.* at 441, 456–57. The direct crime was committed only by the person who originally took the pictures, yet the law punishes everyone who has or continues to trade in those pictures. Nor is property which is used to commit a crime exempt just because it is expensive; a bank robber who utilizes a \$3 million Bugatti as his getaway car does not have a claim for its return just because the maximum cash fine applicable for his crime is less than the vehicle's total value. He chose the car, and one who deliberately treads "perilously close to an area of proscribed conduct shall take the

risk.” *Cf. Boyce Motor Lines, Inc. v. United States*, 342 U.S. 337, 340 (1952).

The defendant in *Bajakajian* willfully failed to report lawful currency, but he did “not fit into the class of persons for whom the statute was principally designed,” so his culpability and the harm he caused were both “minimal.” *United States v. Bajakajian*, 524 U.S. 321, 338–39 (1998). His money was “the proceeds of legal activity” meant “to repay a lawful debt,” and he could have taken every dollar out of the country simply by reporting it. *Id.* at 337–38. Jouppe, by contrast, was a pilot attempting to fly alcohol into a village that voted to ban it, which is exactly the conduct the statute targets. App. 24a–26a. Forfeiting the \$95,000 plane he was flying is not grossly disproportionate to flying alcohol into Beaver in violation of the statute.

I. Jouppe’s alcohol delivery is not harmless, even if stopped before it reaches its destination, just as a drunk driver arrested before he kills someone is not innocent.

The Eighth Amendment counts harm “threatened to the victim or society,” even before anyone is injured. *Solem v. Helm*, 463 U.S. 277, 292 (1983). In *Paroline*, the knowledge that her images were “circulated far and wide” “renewed the victim’s trauma,” even though the defendant himself never touched her. 572 U.S. at 439–41. The possessor of an existing image need not commit another physical assault to sustain the market that “drives production” or to extend the victim’s injury. *Id.* at 439–40.

The “cause of the victim’s general losses” was the continuing trade in her images, and the defendant was “a part of that cause.” *Id.* at 456. Although no one could identify “a discrete, readily definable incremental loss” attributable to him, his participation in the process causing those losses was “indisputable.” *Id.* at 456–57. Each participant helped in “sustaining and aggravating” the injury. *Id.* at 457.

The law routinely punishes dangerous conduct before anyone is “hurt.” Under 21 U.S.C. § 881(a)(4), an aircraft is forfeitable when it is merely “intended for use” to transport drugs, even if no drugs are ever delivered, and Congress “understood” that provision “as serving to deter and to punish.” *Austin v. United States*, 509 U.S. 602, 620, 622 (1993). Likewise, a commercial pilot who “operates . . . a common carrier while under the influence of alcohol” faces up to fifteen years in prison, whether or not he ever crashes. 18 U.S.C. § 342. Three Northwest Airlines pilots convicted of flying a “commercial passenger airplane” while drunk “deplaned in Minneapolis” without incident, yet the Eighth Circuit affirmed their convictions and the limits on their flying because their conduct “resulted in a great risk to many lives.” *United States v. Prouse*, 945 F.2d 1017, 1020–21, 1026 (8th Cir. 1991).

Possession of enough cocaine to yield 32,500 to 65,000 doses “threatened to cause grave harm to society.” *Harmelin v. Michigan*, 501 U.S. 957, 1002 (1991) (Kennedy, J., concurring in part and concurring in judgment). Alcohol reaches a dry village the same way drugs reach users, one delivery at a time. Requiring each delivery to produce its own

identifiable injury would render the prohibition null where it matters most. Alaska’s legislature found 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.” Resp. Br. 10 (quoting 1986 Alaska Sess. Laws ch. 80, § 1(6)).

A related concern is that tolerated violations can encourage others to disregard the law. Six field experiments found that observing violations of one norm or legitimate rule made participants more likely to violate others. Kees Keizer, Siegwart Lindenberg & Linda Steg, *The Spreading of Disorder*, 322 Science 1681, 1681–85 (2008). Courts owe substantial deference here, because “judgments about the appropriate punishment for an offense belong in the first instance to the legislature.” *Bajakajian*, 524 U.S. at 336.

Jouppi’s shipment needed no audience to do harm. It would have increased the availability Beaver voted to restrict, and residents of dry villages “dramatically benefited from reduced alcohol availability.” Resp. Br. 10. That evidence does not depend on Jouppi inducing anyone else to break the law.

Cato and the Fines and Fees Justice Center argue that proportionality must rest on actual conduct, not “theoretical or potential harms.” Cato & FFJC Br. 11. An interrupted attempt is actual conduct, and its threatened harm does not disappear

because police intervene. The harm inquiry may consider what would have occurred “[h]ad [the] crime gone undetected.” *Bajakajian*, 524 U.S. at 339. Here, had Jouppi’s crime gone undetected, the alcohol would have landed in Beaver, which is the very outcome the law prohibits. Take the troopers out of the picture and change nothing else; all that is left is the delivery Jouppi was attempting, with no added conduct, imagined victim, or worst-case result.

II. Attempting to fly alcohol into a dry village is itself the harm, and the legislature can constitutionally punish Jouppi for that attempt alone.

Jouppi is answering for the alcohol he actually tried to deliver, not for every alcohol-related assault or death in Alaska; the consequences of that choice are his alone to bear. *Paroline* confirms the limit. Holding one possessor liable for millions in losses “collectively caused by thousands of independent actors” raised a “real question” of excessive punishment. *Paroline*, 572 U.S. at 456. The award therefore had to reflect the defendant’s “relative role in the causal process” underlying the victim’s losses. *Id.* at 458.

In *Paroline* the Court treated the defendant as “a part of the overall phenomenon that caused her general losses,” and not the whole of it. *Id.* at 456-57. The same logic applies here. If every participant had to cause a separate, identifiable injury, harms built from repeated violations would simply disappear, and if every participant answered for the whole harm, the smallest violation could justify the largest sanction.

All the court must do is identify the harm the law targets and connect it to what the defendant did, i.e., how much he carried, his role, and how he used his property. PLF warns against “tenuous, remote, or peripheral” causal links. PLF Br. 8. Here the link is anything but remote; Jouppi’s flight would have added alcohol to the supply Beaver forbade by statute.

Jouppi asks whether national traffic harms justify forfeiting “every car that goes a mile over the limit.” Pet. Br. 32. They do not, because the harm a court weighs is the harm the defendant’s own conduct threatened in its circumstances, and a mile over the limit on an empty highway threatens very little. That is why States utilize tiered enforcement and bigger tickets in construction zones and the like, even if no driver actually injures anyone; the same act can have different weight in different circumstances. Alaska may likewise weigh the danger of the delivery Jouppi attempted in Beaver, without waiting for that danger to become an assault, hospital visit, or death.

Pacific Legal Foundation is correct that individual culpability matters. PLF Br. 4–7. It then describes Jouppi’s conduct as “nonfeasance,” saying he “failed to discover” the six-pack. *Id.* at 9. The legislature can also say that failure to perform the required due diligence is a punishable failure in and of itself if it thinks the crime is severe enough. See *United States v. Balint*, 258 U.S. 250, 252–54 (1922) (permitting punishment of even unknowing violations to “stimulate proper care”).

In any case, the constitutional ruling concerns the delivery Jouppi actually attempted. App. 24a–25a.

Jouppi owned the aircraft, operated the air service, piloted the flight, knew Beaver was dry, and had the six-pack in plain view. App. 19a–27a, 32a–34a. Nor does the result turn on whether he knew about any of the beer as the legislature can punish accidents to “stimulate proper care” if the outcome is sufficiently severe and it needs to deter. *Balint*, 258 U.S. at 252–54.

A medical emergency in Beaver arises more than 100 miles from the nearest hospital, with no road out of the village. Resp. Br. 12. The consequences for bringing alcohol into a dry village is a decision for the legislature, and unless its judgment is wholly untethered from reality, courts should not involve themselves by predicting which injury this six-pack would cause.

Jouppi loaded the aircraft and started its engine. Resp. Br. 13–14. Troopers, not Jouppi, ended that flight. Jouppi’s role as the pilot of an actual alcohol delivery places him within the very class of actors the forfeiture provision targeted. App. 26a. The beer Jouppi actually tried to deliver, its destination, and his aircraft’s use bear on “the gravity of the defendant’s offense.” *Bajakajian*, 524 U.S. at 336–37.

Cato and the Fines and Fees Justice Center also propose a separate inquiry into the offender’s ability to support himself and his family, and the Eighth Amendment Scholars trace the historical

protection of an offender's means of subsistence. Cato & FFJC Br. 10–11, 14–18; Eighth Amendment Scholars Br. 20–22, 25–28.

The Alaska Supreme Court considered the protection and found that Jouppi had not shown that forfeiture would deprive him of his livelihood: he was largely retired, would probably sell the returned plane, and had another aircraft. App. 26a–27a. Jouppi also expressly excluded the livelihood issue from his petition. Cert. Reply Br. 5 n.*.

III. Jouppi's plane is not immune merely because it costs more than the maximum fine; a fine and a forfeiture serve different ends.

Alaska authorized a \$10,000 maximum fine and forfeiture of Jouppi's \$95,000 aircraft. App. 22a–23a. The fine does not exhaust the authorized punishment and what appears at first glance to be an imbalanced ratio does not per se make the punishment excessive. This Court has long recognized that forfeiture may punish more than the fine, without treating the fine as a ceiling. Forfeiture of a roughly \$1,000 car for a \$500-fine offense “can result in even greater punishment than the criminal prosecution.” *One 1958 Plymouth Sedan v. Com. of Pa.*, 380 U.S. 693, 701 (1965). That exclusionary-rule case recognized additional punishment, above and beyond the statutorily established limits, not a constitutional ceiling.

Unlike the currency in *Bajakajian*, Jouppi's aircraft supplied “the actual means by which an

offense was committed,” like a car transporting concealed goods. *Bajakajian*, 524 U.S. at 333 n.8, 334 n.9. Instrumentalities in particular warrant harsher punishment because they are enablers of more bad conduct, they make the offense possible or increase its reach. Forfeiture serves the law by “preventing further illicit use of the conveyance.” *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 686-87 (1974). Here, aircrafts are the means by which alcohol reaches a roadless village, and aircrafts can make that trip again and again. A cash fine leaves the plane available for the next flight; forfeiture takes it away and makes using valuable equipment to offend more costly.

Drug scales may be seized because they perform the same unlawful function “whether made of the purest gold or the basest metal” and bear a “close enough relationship to the offense.” *Austin*, 509 U.S. at 627–28 (Scalia, J., concurring in part and concurring in judgment). Forfeiting instrumentalities is common; “a long and unbroken line of cases holds that an owner’s interest in property may be forfeited by reason of the use to which the property is put.” *Bennis v. Michigan*, 516 U.S. 442, 446 (1996). It should not matter that there may be a large gap between the market value of the instrumentality and the crime itself; for an instrumentality, “the value of the property is irrelevant.” *Austin*, 509 U.S. at 627 (Scalia, J., concurring in part and concurring in judgment).

None of this exempts the forfeiture from review. Punitive instrumentality forfeiture still requires “a proportionality determination.”

Bajakajian, 524 U.S. at 333–34. The maximum fine is “relevant evidence” of gravity, not a cap. *Id.* at 339 n.14. Here, Jouppi attempted exactly the delivery the statute targets, his plane was the means of making it, and the legislature reasonably judged that delivery dangerous to a roadless, dry village. So forfeiting that plane is not grossly disproportionate, it is merely justice.

CONCLUSION

The judgment of the Alaska Supreme Court should be affirmed.

October 2026

Respectfully submitted,

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