

No. 25-246

In the Supreme Court of the United States

KENNETH J. JOUPPI,

Petitioner,

v.

STATE OF ALASKA,

Respondent.

**On Writ of Certiorari to the
Supreme Court of Alaska**

**BRIEF OF *AMICI CURIAE* FLORIDA
AND FIVE OTHER STATES IN
SUPPORT OF RESPONDENT**

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INTEREST OF *AMICI CURIAE*

 *Amici Curiae* States of Florida, Georgia, Kansas, Louisiana, Nebraska, and Oklahoma routinely bring criminal forfeiture actions to remove from criminal hands the tools of criminal enterprise. Forfeiture protects citizens by depriving offenders of the means to repeat their crimes. Because it aims to remove the instrumentalities of crimes, forfeiture uniquely makes it harder for criminals to continue violating state laws.

This case bears directly on *Amici* States’ ability to use forfeiture to protect their citizens. Jouppi’s position, if adopted, would require states to expend more resources and clear unnecessarily high hurdles when seeking to establish a forfeiture’s proportionality. But neither the Constitution’s text nor historical forfeiture practice nor this Court’s precedents impose such a hurdle. And for good reasons. *Amici* therefore respectfully ask this Court to affirm.

SUMMARY OF ARGUMENT

Kenneth Jouppi’s fine was not excessive. He used his plane to transport alcohol bound for an Alaska village that had chosen to prohibit it, and in doing so subjected his plane to forfeiture. Pet. App. 3a–5a. Under the Excessive Fines Clause, the question is whether that forfeiture was “grossly disproportional to the gravity of [his] offense.” *United States v.ajakajian*, 524 U.S. 321, 334 (1998). Jouppi argues that courts must assess his “own wrongdoing” rather than evaluate the offense “purely in the abstract.” Pet. Br. 13. That’s a false choice.

The Court’s cases already require some abstraction—identifying the kind of harm the forfeiture statute targets and considering the potential harm an offender could cause. The Alaska Supreme Court followed binding precedent and correctly used the appropriate level of abstraction to answer those questions. And the plane’s direct role in the offense makes it a classic instrumentality of the crime, suggesting that its forfeiture was presumptively proportional.

For decades, alcohol abuse has scourged Alaskan communities. For example, as of 2025, “3,000 American Indian or Alaska Native” minors aged 12 to 17 suffered from alcohol use disorder.¹ For adults 18 and older, that number is 130,000.² To further quantify the harms of alcohol, consider that in Alaska roughly 562 people die each year due to excessive alcohol use.³ And around the time of Jouppi’s crime, excessive alcohol consumption cost Alaska approximately \$900 million.⁴

To address this crisis, the Alaska legislature allows communities within the state to ban the importation or possession of alcohol. Alaska Stat.

¹ *Alcohol Use Disorder (AUD) in the United States: Age Groups and Demographic Characteristics*, Nat’l Inst. on Alcohol Abuse & Alcoholism, <https://perma.cc/S8EV-GSEZ> (last updated Aug. 2025).

² *Id.*

³ *Alcohol Abuse Statistics*, Nat’l Ctr. for Drug Abuse Stat., <https://perma.cc/GCC7-NUHN> (last visited Oct. 7, 2026).

⁴ *Id.*

§ 04.11.491(a)(5) (2025). Indeed, the legislature originally passed this law in response to reports and studies revealing that excessive alcohol consumption, especially in rural communities, significantly contributed to crime across the state. Pet. App. 20a–21a.

The communities that ban the importation or possession of alcohol, known as “dry villages,” are often in remote areas with limited medical and law-enforcement resources. One such village is Beaver, Alaska, where fewer than 100 people live. Beaver has banned possessing, selling, and importing alcohol.

At the time of the crime, Jouppi operated an air-taxi company. Pet. App. 3a–4a. He was preparing to fly a passenger to Beaver when Alaska State Troopers observed him loading his passenger’s cargo onto his plane. Pet. App. 32a–33a. Just before takeoff, troopers stopped him and found nine gallons of beer on the plane. Pet. App. 33a.

Jouppi and his company were charged with misdemeanor importation. Pet. App. 33a. At trial, troopers testified that at least one six-pack of beer was in plain view, but Jouppi testified that he was unaware of any alcohol on the plane. Pet. App. 4a, 153a–54a. The jury ultimately found him guilty, determining that he either knew about or was deliberately ignorant of the alcohol. Pet. App. 5a.

During sentencing, the state trial court found that Jouppi was “willfully blind” as to the visible six-pack. Pet. App. 7a. It therefore sentenced him to 180 days (177 suspended) and a \$3,000 fine (\$1,500 suspended). Pet. App. 5a. As to the plane, the trial court ultimately decided against forfeiture. Pet. App. 6a. But

the Alaska Supreme Court disagreed, concluding that Jouppi's fine (including forfeiture of the plane) was not excessive. Pet. App. 29a. Jouppi petitioned for a writ of certiorari, which this Court granted.

The Court should affirm. Under *United States v. Bajakajian*, “a punitive forfeiture violates the Excessive Fines Clause if it is grossly disproportional to the gravity of a defendant’s offense.” 524 U.S. at 334. Two considerations support the Alaska Supreme Court’s conclusion that forfeiture of Jouppi’s plane satisfies that standard.

First, Jouppi’s insistence that a court may focus only on his “own wrongdoing” is incomplete. To properly assess whether a fine is excessive, a court must distill the essential features of a criminal’s wrongdoing to determine whether the offender belongs to the class the statute principally targets. It must also assess the potential harm of his conduct: what *might* have happened had the crime gone undetected, and whether that potential harm matches the danger the statute addresses. The Alaska Supreme Court rightfully did both. It matched the potential harm of Jouppi’s own wrongdoing—smuggling alcohol into a dry village—to the danger Alaska’s dry-village law targets.

Second, property forfeiture is presumptively proportional when the forfeited property was an instrumentality of the crime. Our history strongly supports this presumption. The Court should give that history effect when applying the gross-disproportionality standard.

Because the Alaska Supreme Court’s decision respected both those principles, the Court should affirm.

ARGUMENT

I. The Alaska Supreme Court did not evaluate Jouppi’s conduct “purely in the abstract.”

The Eighth Amendment prohibits imposing “excessive fines.” Forfeitures are “‘fines’ if they constitute punishment for an offense.” *Bajakajian*, 524 U.S. at 328. And “a punitive forfeiture violates the Excessive Fines Clause if it is grossly disproportional to the gravity of a defendant’s offense.” *Id.* at 334.

Jouppi’s fine was not excessive. The court properly considered the kind of conduct he committed and the harm it could cause. He argues that courts must evaluate an offense “not purely in the abstract, but with reference to the defendant’s own wrongdoing.” Pet. Br. 13. That focus still requires identifying the class of wrongdoing and assessing potential harm—both abstract inquiries that use the offender’s conduct as a reference point. And those inquiries operate under a deferential gross-disproportionality standard, not a demand for precisely calibrated punishment. The Alaska Supreme Court followed that approach. And Jouppi’s historical examples and objections to the decision below do not establish otherwise.

A. The Court’s cases ask the abstract question of whether the offender belongs to the group the statute targets.

To Jouppi, courts must make a binomial choice between evaluating harm with reference to specific wrongdoing or pure abstraction. Pet. Br. i. Yet the

alternatives are not so finely distinct. Controlling authority from this Court demands some abstraction. *Bajakajian* asked whether an offender belonged to “the class of persons for whom the statute was principally designed.” 524 U.S. at 338. That question requires a court to distill the essential features of the offender’s own wrongdoing and compare them with the conduct the statute principally targets. The offender’s specific circumstances form a reference point, but his criminal conduct must then be situated within the broader class of persons the statute seeks to regulate. In this case—those who traffic alcohol into Alaska’s dry villages.

Statutes necessarily group different acts by shared features. *Bajakajian*, for its part, involved a statute targeting the “money launderer,” “drug trafficker,” or “tax evader.” *Id.* An offender’s circumstances will differ, but a court identifies the kind of wrongdoing that places them within (or without) the class. And even among those who commit the same category of wrongdoing, the offenders will have varying degrees of culpability. The currency-reporting statute in *Bajakajian* covered those who failed to report \$10,001 in currency alongside those who failed to report \$1,000,000. *See id.* at 324–25. Alaska’s alcohol-smuggling statute similarly covers different quantities of alcohol. But determining the shared features the statute targets necessarily requires some abstraction.

Other features of the gross-disproportionality test also require abstraction. The Constitution doesn’t require strict proportionality or a unique punishment for every imaginable offense variation. Because of that inherent variability, *Bajakajian* emphasized two

important principles. First, “judgments about the appropriate punishment for an offense belong in the first instance to the legislature.” *Id.* at 336. Second, “any judicial determination regarding the gravity of a particular criminal offense will be inherently imprecise.” *Id.* Courts therefore owe substantial deference to the legislature’s judgment, even when reasonable minds may disagree about the appropriate punishment. *See id.* Both principles focus on abstract questions rather than the defendant’s own wrongdoing. Jouppi, for his part, all but acknowledges this by demanding only that a court consider wrongdoing “not *purely* in the abstract.” Pet. Br. 13 (emphasis added).

B. Courts must engage in abstraction to outline the potential harm of an offender’s conduct.

Identifying the group the statute targets solves one-half of the equation. A court must also consider “the gravity of the defendant’s offense.” *Bajakajian*, 524 U.S. at 337. But that too requires some abstraction. The gravity of an offender’s own wrongdoing includes its potential harm. Courts can assess gravity by “measuring the harm caused or threatened.” *Solem v. Helm*, 463 U.S. 277, 292–93 (1983). That requires asking what might have happened had the conduct gone undetected, using its essential features to identify the possible consequences. The inquiry begins with the offender’s wrongdoing as a reference point, but then considers the harms that could have followed. Again, that necessarily requires some abstraction.

No one could doubt the harms associated with alcohol abuse. At the national level, almost 500 Americans die each day because of excessive alcohol use.⁵ And almost 10% of Americans aged 12 and older suffer from Alcohol Use Disorder.⁶ Alaska tragically has the third-highest rate of all states for alcohol-related deaths per 10,000 adults, with a rate of 10.15.⁷ This correlates to an average 562 annual deaths caused by excessive alcohol use.⁸ And in 2018, the estimated cost of alcohol misuse in Alaska was \$2.4 billion.⁹

The Alaskan legislature justified the statute based on those harms, but those harms obviously do not arise every time someone imports alcohol. Potential harm requires considering a chain of events that may or may not follow from the offender's own wrongdoing. If alcohol reaches a dry village, generally someone must consume it before its effects can contribute to injury, crime, or other harm. A court cannot know which consequence will follow in a particular case. It can, however, identify the potential harm of the prohibited transportation and determine whether that

⁵ *Alcohol Abuse Statistics*, Nat'l Ctr. for Drug Abuse Stat., <https://perma.cc/GCC7-NUHN> (last visited Oct. 7, 2026).

⁶ *Id.*

⁷ *Id.* Only New Mexico and Wyoming have higher rates, with 12.86 and 10.23, respectively.

⁸ *Id.*

⁹ McDowell Grp., *The Economic Costs of Alcohol Misuse in Alaska: 2019 Update* 1 (2020). This cost includes those associated with productivity loss, traffic collisions, criminal justice, public assistance, and health care. *Id.*

harm matches the danger the statute targets. Uncertainty about the precise outcome makes the inquiry hypothetical; it does not, however, make it guesswork. Nor does it mark some arbitrary judicial departure from analyzing an offender’s own wrongdoing.

Rummel v. Estelle, 445 U.S. 263 (1980), illustrates the point. *Rummel* involved a financial crime, and the Court observed that if the defendant “attempted to defraud his victim of \$50,000, but had failed, no money whatsoever would have changed hands; yet [he] would be no less blameworthy, only less skillful, than if he had succeeded.” *Id.* at 276. That assessment relied on a hypothetical loss, not the consummated fraud (which never happened). Potential harm belonged in the assessment because it is a logical consequence of the defendant’s wrongdoing.

The plane forfeiture doesn’t become excessive merely because Jouppi was “less skillful” and got caught before his crime caused its reasonably foreseeable harms. *Id.* The happenstance of being apprehended doesn’t diminish culpability.

The Alaska Supreme Court did nothing more in its analysis of Jouppi’s crime.

C. The gross-disproportionality test is extremely deferential.

For defendants, the gross-disproportionality standard is demanding by design. *Bajakajian* “adopt[ed] the standard of gross disproportionality articulated in our Cruel and Unusual Punishments Clause precedents.” *Bajakajian*, 524 U.S. at 336. Jouppi concedes that the standard is so demanding that “the Court has long fractured over whether any

proportionality limit obtains at all,” in those cases. Pet. Br. 15 (citing *Harmelin v. Michigan*, 501 U.S. 957, 966–85 (1991) and *Ewing v. California*, 538 U.S. 11, 32 (2003) (Thomas, J., concurring in the judgment)).

Consider, for example, the punishment scheme in *Ewing*, which permitted the same sentence for murder and a recidivist who stole three golf clubs. 538 U.S. at 28 (plurality opinion). There, the Supreme Court acknowledged Ewing’s sentence was “a long one,” “[b]ut it reflects a rational legislative judgment, entitled to deference, that offenders who have committed serious or violent felonies and who continue to commit felonies must be incapacitated.” *Id.* at 30.

Yet Jouppi’s theory would subject fines to far greater constitutional exactions than the punishment this Court blessed in *Ewing*—life imprisonment for golf club theft. In reality, Jouppi’s proportionality concerns pale in comparison. To be sure, Jouppi considers the forfeiture of his plane “excessive.” But Ewing, no doubt, thought a lifetime of imprisonment was an excessive price to pay for stealing three golf clubs from a pro shop. The forfeiture statute here, in Jouppi’s view, is “capaciously broad” and casts “an extraordinarily wide net” because a plane is subject to forfeiture whether the pilot was smuggling one tall boy or three barrels of beer. Pet. Br. 38 (cleaned up). And, he argues, a pilot can forfeit his plane for transporting a six-pack, but an automobile’s driver only forfeits his car if he carries more than 12 gallons of beer. *See* Alaska Stat. § 04.16.220(i) (2025).

But this is Alaska, where many communities are only reachable by plane. And Alaska’s legislature—

no less than the one in *Ewing*—made “a rational legislative judgment, entitled to deference,” that pilots transporting alcohol by plane to remote, dry villages represent an acute danger to Alaskans’ well-being. *Ewing*, 538 U.S. at 30.

Jouppi’s plane-automobile comparisons in the statute fall far short of showing gross disproportionality. The Cruel and Unusual Punishments cases illustrate the magnitude of the required showing: The proportionality principle would apply to the “extreme example” of making “overtime parking a felony punishable by life imprisonment.” *Id.* at 21 (quoting *Rummel v. Estelle*, 445 U.S. 263, 274 n.11 (1980)). Jouppi’s claims simply are not on that same level.

D. The Alaska Supreme Court correctly applied the gross-disproportionality test.

Given that some abstraction is required, Jouppi’s version of the question presented is a false choice. The better question is: How much abstraction is too much? A closer look at Jouppi’s argument reveals that his criticisms apply only when a court evaluates wrongdoing at what he terms “the highest possible level of generality.” Pet. Br. 12. By that, he seems to mean what would be the extreme, worst-case scenario that could arise if *everyone* broke the law in question. Yet that’s not what the Alaska Supreme Court did here, so Jouppi’s criticism accomplishes little.

1. Jouppi’s historical examples are inapt.

Jouppi offers historical examples of courts leaning into the worst-case scenario to justify a harsh punishment, *see* Pet. Br. at 22–32, but those examples only

vindicate the Alaska Supreme Court’s far more nuanced analysis.

Take the case of Henry Sherfield, who broke a pane of a church’s stained-glass window. The lords in the Star Chamber invoked the consequences that would result if *no one* had to obey the church’s authority: “[A]n insurrection may come of it.” Pet. Br. 23–24 (quoting *Proceedings in the Star-Chamber against Henry Sherfield* (1632) in 3 T.B. Howell, *State Trials* 538 (1816)).

Or take the punishment of William Prynne, who authored a critique of stage plays despite knowing the queen favored them. Pet. Br. 24–25. The lords again feared that if *no one* had to obey the crown’s dictate, “Mr. Prynne would have a new government.” Pet. Br. 25 (quoting *Proceedings against Wm. Prynne, esq. in the Star-Chamber* (1632) in 3 T.B. Howell, *State Trials* 575 (1816)).

Consider yet another. Lord Devonshire battered a Colonel in the king’s palace. If *everyone* behaved that way in the palace, it would be akin to “pulling the king out of his throne.” Pet. Br. 27 (quoting *The Case of William Earl of Devonshire* (1687) in 11 T.B. Howell, *State Trials* 1366 (1816)).

Jouppi’s examples from history show that only these extreme justifications done at the highest level of generality make a fine excessive. That’s no surprise given what the cases examining gross disproportionality have said. See *Ewing*, 538 U.S. at 21.

2. *The Alaska Supreme Court did not justify the forfeiture at the highest level of generality.*

But that is not what happened here. The legislature identified a particular kind of wrongdoing—bringing alcohol into a community that has chosen to exclude it—in light of the dangers that community has identified concerning alcohol. Alaska Stat. § 04.11.491(a)(5) (2025). Jouppi violated the law, and Alaska’s approach doesn’t resemble a tyrannical authority justifying any punishment at stratospheric levels of generality.

Jouppi first argues that the Alaska Supreme Court deviated from analyzing his “own wrongdoing” and instead considered his offense “purely in the abstract,” when it found that he “was ‘clearly within the class of persons targeted by the statute.’” Pet. Br. 38 (quoting Pet. App. 20a). But *Bajakajian* asked courts to identify the features of the targeted class and consider if an offender’s wrongdoing matches. *See Bajakajian*, 524 U.S. at 336–38. And although the answer to *Bajakajian*’s question tends to suggest Jouppi’s fine was not excessive, he counters that the Court could have said the same thing in *Bajakajian*: The statute at issue “applied to Hosep Bajakajian too.” Pet. Br. 38.

Nonsense. *Bajakajian* did not ask merely whether the statute applied to the defendant. It asked whether he belonged to “the class of persons for whom the statute was principally designed.” *Bajakajian*, 524 U.S. at 338. And the answer was no: His reporting violation did not situate him alongside a “money launderer,” “drug trafficker,” or “tax evader.” *Id.*

Here, Alaska targets a narrow group, one to which Jouppi belongs. The law applies to those who use “aircraft, vehicles, or vessels” to transport alcoholic beverages into dry villages. Alaska Stat. § 04.16.220(a)(3) (2025).

Jouppi admits he violated the statute, but protests that “the airplane-forfeiture provision applies with undifferentiated force ‘to all.’” Pet. Br. 38 (citation omitted). If by “all” Jouppi means “all pilots smuggling alcohol into dry villages in Alaska,” he’s right. But that’s hardly the “expansive statute” Jouppi makes it. Pet. Br. 39. The Alaska Supreme Court did exactly what it was supposed to do: It identified a reasonably sized class of people the statute targeted and determined that Jouppi belonged in it.

Jouppi protests that the Alaska Supreme Court committed its next error of pure abstraction when it deemed him culpable for “the harm . . . addressed in the legislative history of the forfeiture provision,” and, consequently, for all “the social ills of alcohol abuse statewide.” Pet. Br. 39. Of course, nearly every criminal convicted of nearly every offense could lodge the same complaint.

But even so, the Alaska Supreme Court did no such thing. Like the Court in *Bajakajian*, it identified the harms at which the statute was aimed—“crime,” “disorders,” “[medical] conditions,” “death,” and “substantial costs” relating to “public health and the administration of justice.” Pet. App. 24a. The legislative history made the targeted harms apparent, and, again, “Jouppi [was] plainly within the class of offenders it targeted.” *Id.* at 25a n.94. It did not “saddle[] Jouppi with the social ills of alcohol abuse statewide.”

Pet. Br. 39. Rather, Jouppi's wrongdoing matched the statute's target. He loaded alcohol onto an aircraft bound for Beaver, a village that had chosen to prohibit alcohol.

As the above establishes, a court for forfeiture purposes need not myopically focus on the defendant's own wrongdoing. Indeed, this Court requires precisely what the Alaska Supreme Court did: consider the somewhat abstract questions of what harm the statute targets, and whether the essential features of a defendant's wrongdoing match that targeted harm. Even if it is error for a court to consider wrongdoing at the highest possible level of generality, that didn't happen here. If *Bajakajian* is an example of Jouppi's preferred "standard in practice," Pet. Br. 16, then he has no basis for criticizing the Alaska Supreme Court's decision.

II. The plane was an instrumentality of the crime, which supports the holding that the forfeiture was not grossly disproportionate.

Our nation's established history of forfeiting offending property—instrumentalities of the crime—supports that holding. The Court's modern cases do not prohibit considering the property's connection to the offense. Here, the plane was the means Jouppi used for the prohibited transport. The Court should affirm and recognize that forfeiture of a classic instrumentality is presumptively proportional.

A. Instrumentality forfeitures have a long and storied history.

Since the founding, our law has allowed governments to seek forfeiture of property used as instrumentalities of crimes. The property itself, being used to perpetrate a crime, was considered to have committed the offense. See *Austin v. United States*, 509 U.S. 602, 624–25 (1993) (Scalia, J., concurring in part and concurring in the judgment). “English Law provid[ing] for statutory forfeitures of offending objects used in violation of the customs and revenue laws” reflects this theory that property can be tainted by crime. *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 682 (1974). And the Colonies, “before the adoption of the Constitution,” enforced this type of English forfeiture against commodities and vessels. *Id.* at 683; see also *C.J. Hendry Co. v. Moore*, 318 U.S. 133, 139, 140 n.4, 143 (1943). Indeed, even after adoption of the Excessive Fines Clause, American courts commonly ordered and upheld forfeiture of vessels used to violate the law.

Remarkably salient is one early example. In *Phile v. The Ship Anna*, 1 U.S. (1 Dall.) 197 (Pa. Ct. Com. Pl. 1787), a vessel had transported “forty two hampers of porter . . . without being first duly entered at the Collector’s office.” *Id.* at 197. The ship’s manifest had declared only twenty hampers. *Id.* at 205. The judge explained that this was not “a hard nor a novel case,” and that “[i]f the Legislature has thought proper to subject the owners to this forfeiture, we must submit.” *Id.* at 207. The jury then found in favor of forfeiture. *Id.* at 208.

Later cases continued to follow this approach. A 1799 revenue act required vessels to have permits to dock in American ports if carrying foreign goods exceeding \$400 in value. *See The Harmony*, 11 F. Cas. 556, 557 (C.C.D. Mass. 1812) (No. 6081). Under this statute, Justice Story, while riding circuit, upheld the forfeiture of a vessel docked in Boston that had received foreign goods from a British ship while in American waters. *Id.* at 557–59.

Early Congresses, when prohibiting the African slave trade, decided that vessels used in the trade should be forfeited. *Cf. The St. Jago de Cuba*, 22 U.S. (9 Wheat.) 409, 409–14 (1824); *The Catharine*, 25 F. Cas. 332, 338 (C.C.D.N.Y. 1840) (No. 14,755). And courts routinely upheld forfeiture of the vessels even when they did not arrive in Africa or pick up slaves. *See The Catharine*, 25 F. Cas. at 341. In *The Catharine*, for instance, the court ordered forfeiture upon a showing that the vessel had set sail for Africa with the purpose of transporting slaves. *Id.* at 339–41.

Forfeiture of vessels importing alcohol into Alaska has also been part of this long, historical use of forfeiture. Soon after the United States purchased Alaska, Congress passed an act governing “customs, commerce, and navigation” in the territory, and the President, pursuant to the act, promulgated an executive order prohibiting the importation of “distilled spirits into or within the territory of Alaska.” *See The Louisa Simpson*, 15 F. Cas. 953, 954 (D. Or. 1871) (No. 8533). In 1870, a vessel docked at an Alaskan port traded alcohol and other goods to the residents there. *Id.* at 957. A trial court upheld forfeiture of the vessel and her cargo. *Id.* at 958.

Forfeiture for alcohol-related offenses extended beyond ships. In *Dobbins’s Distillery v. United States*, 96 U.S. 395, 396–97 (1877), the owner of property leased it to a company that, without the owner’s knowledge, operated a distillery and intended to conceal its revenue. An act of Congress “attache[d] the offence to the distillery” and further provided that “the distillery . . . shall be forfeited to the United States.” *Id.* at 400–01.

These early cases establish important principles. Forfeiting a vessel smuggling alcohol was an ordinary and expected feature of the law. See *The Ship Anna*, 1 U.S. at 207 (“[I]n England it has long existed, and before the revolution it was known in Pennsylvania.”). It didn’t matter whether the vessel reached its destination. *The Catharine*, 25 F. Cas. at 339–41. And such forfeiture practices continued after the Fourteenth Amendment’s passage in cases with facts similar to those here. See *The Louisa Simpson*, 15 F. Cas. at 957–58. These principles were not limited to ships. See *Dobbins’s Distillery*, 96 U.S. at 400–401.

B. The Court should consider that Jouppi’s plane was an instrumentality of his crime.

The Court’s decisions in *Austin* and *Bajakajian* do not require it to disregard the relationship of an instrumentality and the offense. First, in *Austin* the Court found that “civil *in rem* forfeitures are fines for purposes of the Eighth Amendment when they are at least partially punitive.” *Timbs v. Indiana*, 586 U.S. 146, 155 (2019). Second, in *Bajakajian*, the Court found that “a punitive forfeiture violates the Excessive Fines Clause if it is grossly disproportional to the gravity of a defendant’s offense.” 524 U.S. at 334.

If most *in rem* forfeitures and all punitive forfeitures apply the gross-disproportionality test, what is left of the historic instrumentality test? The Court has never “rule[d] out the possibility that the connection between the property and the offense may be relevant . . . in determining whether the forfeiture . . . [is] excessive.” *Austin*, 509 U.S. at 623 n.15. The Court has cautioned not to rely on the “technical distinction between proceedings *in rem* and proceedings *in personam*.” *Austin*, 509 U.S. at 615 n.9. And a government may “effectively merg[e] the *in rem* forfeiture proceeding with the *in personam* criminal proceeding” where the statute “maintains traditional *in rem* forfeiture’s focus on tainted property.” *Honeycutt v. United States*, 581 U.S. 443, 453 (2017).

Answering the question presented in Jouppi’s favor, however, might close the door that *Austin* left open and leave centuries of our legal tradition behind. Jouppi’s forfeiture here has the hallmarks of a civil *in rem* forfeiture. It fits squarely into the “guilty property” category as an instrumentality of the crime. That is because “instrumentality” “fairly characterizes property that historically was subject to forfeiture because it was the actual means by which an offense was committed.” *Bajakajian*, 524 U.S. at 333 n.8 (cleaned up). And “[i]nstrumentality forfeitures have historically been limited to the property actually used to commit an offense and no more.” *Id.*

Alaska’s forfeiture statute applies only to property used to commit the crime. Under the statute, “aircraft, vehicles, or vessels used to transport or facilitate the transportation of . . . alcoholic beverages imported into a municipality or established village in

violation of [the dry-village statute]” “are subject to forfeiture.” Alaska Stat. § 04.16.220(a), (a)(3), (a)(3)(C) (2025). The statute is consistent with Alaska’s general move away from civil forfeiture. See Alaska Stat. § 09.55.700 (2025) (“in rem forfeiture actions are abolished if used instead of a criminal proceeding”). And the airplane at issue here was “the actual means by which an offense was committed.” *Bajakajian*, 524 U.S. at 333 n.8. It was the very plane Jouppi was going to fly to Beaver with alcohol, before troopers stopped him.

The Court should hold that when, as here, the forfeiture involves a classic instrumentality of the crime, the forfeiture should be viewed as presumptively proportional. The traditional inquiry would not entail “determining the appropriate value of the penalty in relation to the committed offense, but by determining what property has been ‘tainted’ by unlawful use.” *Austin*, 509 U.S. at 627 (Scalia, J., concurring in part). After all, “[s]cales used to measure out unlawful drug sales, for example, are confiscable whether made of the purest gold or the basest metal.” *Id.* *Bajakajian* doesn’t preclude this approach because there, “[t]he currency in question [was] not an instrumentality,” but merely “the subject of the crime of failure to report.” *Bajakajian*, 524 U.S. at 334 n.9. Jouppi’s plane was the means of the crime. That direct relationship, reinforced by the historical treatment of vessels used for unlawful transport, supports a presumption of proportionality.

CONCLUSION

The Court should affirm the decision of the Alaska Supreme Court. 

October 13, 2026

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