No. 25-246

In the Supreme Court of the United States

KENNETH JOHN JOUPPI, PETITIONER

v.

STATE OF ALASKA

On Writ of Certiorari
to the Supreme Court of Alaska

REPLY BRIEF FOR THE PETITIONER

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INTRODUCTION

Below, the Alaska Supreme Court accepted that "the 'touchstone' of the excessiveness inquiry is proportionality." At the same time, however, the court developed a standard that writes the "gravity of the defendant's offense" (*United States* v. *Bajakajian*, 524 U.S. 321, 337 (1998)) out of the analysis. That error warrants reversal.

The State devotes much of its response to a theory the decision below did not adopt and that contradicts the State's own cert-stage framing of the question presented. The State's top-line argument now is that the Excessive Fines Clause imposes no proportionality check at all on any forfeiture of property used in an offense. But the Court rejected that workaround decades ago. "[T]he test for the excessiveness of a punitive forfeiture," the Court has held, "involves solely a proportionality determination." *Id.* at 333-34. And analogies to historical *in rem* "instrumentality" forfeitures—the keystone of the State's argument here—are "inapposite" and "irrelevant" and "indicate nothing about the proportionality" of modern punitive ones. *Id.* at 330, 333, 340-41. As for the federal government's submission, every one of its examples of extreme eighteenth-century forfeitures culminated in the government's dropping the case and returning the vessel.

On the question presented, the State has less to say. It concedes (Br. 27) that "[a]n Excessive Fines Clause analysis requires an examination of a defendant's culpability." But it maintains (Br. 41-42) that courts cannot conduct that examination when a fine is set by statute; if a defendant falls within the class lawmakers meant to "target," that ends the analysis. That view captures the Alaska Supreme Court's error perfectly. Under any statute, every convicted defendant will be "within the class of persons targeted by the statute." Pet. App. 20a. Indeed,

the decision below could not have been clearer: However minor the misconduct, what matters is the harm "addressed in the legislative history." Pet. App. 25a n.94. Under the standard below, the gravity of the offense is the same whether you're dealing kilos of cocaine or giving your spouse an Ambien. Or, in Alaska, whether your offense involves sixty pallets of whisky or a six-pack of Budweiser. So long as the legislature "reasonably" thought its statute addressed a serious problem (Resp. Br. 39), the defendant's particular wrongdoing is irrelevant.

The State's arguments spotlight that standard's flaws. According to the State, what the Excessive Fines Clause demands is not that courts evaluate the defendant's offense based on "the facts of [the] particular case," *Bajakajian*, 524 U.S. at 337 n.10, but that judges somehow divine what subclass of defendants lawmakers subjectively wanted to target—then defer. Resp. Br. 34. How that standard is supposed to work is anyone's guess; how it can be squared with the notion of a Bill of Rights is similarly unanswerable. The correct approach is the simpler one: Facts matter, and a court evaluating "the gravity of the defendant's offense" must consider, not just the offense in the abstract, but the defendant's own misconduct.

ARGUMENT

I. The State's bid to exempt its forfeiture from any proportionality standard lacks merit.

The State leads with a theory the Alaska Supreme Court did not adopt. Where that court acknowledged (correctly) that "the 'touchstone' of the excessiveness inquiry is proportionality," Pet. App. 16a, the State now advances a different position: Across the board, legislatures may impose "mandatory forfeiture of the instruments of crimes without running afoul of the Excessive Fines Clause"—proportionality be damned. Resp. Br. 18; U.S.

Br. 13 ("Forfeiture of an instrumentality of a crime does not depend on an assessment of the value of the property or the relation between that value and the offender's conduct."). Because Jouppi's airplane was linked to an offense (so the argument goes), its forfeiture necessarily comports with the Excessive Fines Clause—however minor the offense, however great the forfeiture.

First off: The Court need not entertain this theory unless it's so inclined. At the certiorari stage, the State's own framing of the question presented acknowledged that "[a] forfeiture violates the Excessive Fines Clause if it is 'grossly disproportional to the gravity of a defendant's offense.'" Br. in Opp. i. The airplane's use in an offense was merely "[a]n additional factor" in the analysis (Br. in Opp. 29)—not, as the State says now, the *entire* analysis. Below, moreover, the State's argument differed again: It maintained that Jouppi's forfeiture "falls outside the Eighth Amendment" altogether. State's Alaska Sup. Ct. Br. 24. *But see* Br. in Opp. 31 ("The forfeiture at issue is subject to the Eighth Amendment[.]"). Square corners, it seems, are for pilots, not prosecutors.

Rule 15.2 aside, the State's theory is foreclosed by precedent, unsupported by history, and unworkable in practice.

A. For modern punitive forfeitures, the Court has rejected as "irrelevant" analogies to historical *in rem* forfeitures.

1. *Bajakajian* forecloses the State's theory. There, much like here, the federal government pursued a criminal *in personam* forfeiture, 524 U.S. at 328; invoked "historic forfeitures of property tainted by crime," *id.* at 329; and argued that, for "instrumentalities of crime," the Excessive Fines Clause requires no "additional inquiry into the culpability of the owner or the property's economic

value." U.S. Br. at 11, *United States* v. *Bajakajian*, 524 U.S. 321 (1998) (No. 96-1487). The Court rejected that argument root and branch. Historical *in rem* forfeitures rested on "the fiction that the action was directed against 'guilty property,'" not "the offender himself." 524 U.S. at 330. Sound or not, the Court reasoned, that fiction meant those forfeitures "were viewed as nonpunitive" and thus "outside the domain of the Excessive Fines Clause." *Id.* at 331. Criminal *in personam* forfeitures, meanwhile, descend from "a different historical tradition": They "have historically been treated as punitive" and are a relative novelty in our legal system. *Id.* at 332 & n.7.[1]

Given that disconnect, the government's "instrumentality" analogy missed the mark. "Instrumentalities," the Court explained, is shorthand for the "'guilty property'" historically "forfeited in civil *in rem* proceedings." *Id.* at 333. But when the government seeks "to punish" someone—by, for example, "proceeding against him criminally"—any guilty-property fiction collapses; the forfeiture is "clearly punishment" targeting a person. *Id.* at 333, 344. It is thus "irrelevant" whether the property can be termed "an instrumentality." *Id.* at 333. "[T]he forfeiture is punitive" regardless, and "the test for the excessiveness of a punitive forfeiture involves solely a proportionality determination." *Id.* at 333-34.

2. The State's efforts to circumvent *Bajakajian*'s reasoning fail. At the certiorari stage, the State admitted

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[1] Speaking only through a one-judge opinion from Alaska's intermediate court, the State suggests (Br. 3-5) that *in personam* forfeitures were as common in Alaska as *in rem* forfeitures. That is incorrect: Much like the early statutes discussed in *Bajakajian*, the cited nineteenth-century statutes were understood as authorizing *in rem* forfeitures. *See, e.g.*, *The Louisa Simpson*, 1 Alaska Fed. 50 (D. Or. 1871).

that *Bajakajian* held "irrelevant whether the currency was an 'instrumentality'" because the forfeiture was *in personam*. Br. in Opp. 3-4. Today? Crickets. Its only attempt to distinguish *Bajakajian* is to assert that the "history of forfeiture of *vessels* is distinct from forfeitures of currency." Resp. Br. 22. But the line that matters is between punitive forfeitures and non-punitive ones, not between dollar bills and sailing ships. Every time *in rem* forfeitures were raised in *Bajakajian*—goods (*Harford*), ships (*The Palmyra*), automobiles (*Van Oster*), land (*Dobbins's Distillery*)—the Court set them aside. Because "they were not considered . . . punishment for an offense," the Court reasoned, they "indicat[ed] nothing about the proportionality of the punitive forfeiture at issue here." 524 U.S. at 340-41 (citing *id.* at 330-32, discussing ships, cars, and land). *Contra* U.S. Br. 21.

The federal government fares no better. It notes that Bajakajian's cash would not have qualified as an instrumentality in any event. U.S. Br. 18. But either way, the Court was clear: When a forfeiture is punitive it is "irrelevant whether [the property] is an instrumentality." 524 U.S. at 333. The federal government also notes (Br. 19-20) that *Bajakajian* characterized certain early monetary penalties as non-punitive too, citing their "remedial purpose of reimbursing the Government." 524 U.S. at 342. But that a *second* analogy failed does not muddy the Court's twice-stated rejection of the government's reliance on early *in rem* forfeitures.

3. Lower courts have taken this Court at its word, another point the State leaves unmentioned. Every court of appeals and state high court to consider the issue applies

a proportionality standard to punitive forfeitures—including of property connected to a crime.[2]

Against all this, the State invokes (Br. 22-24, 39-40) Justice Scalia's suggestion that, for *in rem* forfeitures, the excessive-fines standard might look simply to "what property has been 'tainted' by unlawful use." *Austin* v. *United States*, 509 U.S. 602, 627 (1993) (opinion concurring in part and concurring in the judgment). Left unmentioned: that even under Justice Scalia's view, the standard would likely be "different" for "*in personam* forfeitures." *Id.* For "monetary fine[s]," he remarked, "the touchstone is value of the fine in relation to the offense"—and precedent "indicate[s] that the same is true for *in personam* forfeiture." *Id.* (citing *Alexander* v. *United States*, 509 U.S. 544, 558 (1993)). Unsurprisingly, neither the State nor the federal government identifies any decision adopting their proportionality-free standard. Elsewhere, in fact, the Solicitor General has freely acknowledged *Bajakajian*'s import: Even for property involved in a crime, the Excessive Fines Clause measures "the magnitude of the forfeiture" against "the gravity of the defendant's crime," including "the culpability of the particular defend-

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[2] *E.g.*, *United States* v. *45 Claremont St.*, 395 F.3d 1, 6 (1st Cir. 2004); *von Hofe* v. *United States*, 492 F.3d 175, 184 (2d Cir. 2007); *Yskamp* v. *DEA*, 163 F.3d 767, 773 (3d Cir. 1998); *United States* v. *Ahmad*, 213 F.3d 805, 815 n.4 (4th Cir. 2000); *United States* v. *415 E. Mitchell Ave.*, 149 F.3d 472, 477-78 (6th Cir. 1998); *United States* v. *Dodge Caravan*, 387 F.3d 758, 762-63 (8th Cir. 2004); *United States* v. *Ferro*, 681 F.3d 1105, 1115 (9th Cir. 2012); *United States* v. *Wagoner Cnty. Real Est.*, 278 F.3d 1091, 1100-01 nn.7-8 (10th Cir. 2002); *United States* v. *817 N.E. 29th Dr.*, 175 F.3d 1304, 1309-10 (11th Cir. 1999); *15th Cir. Drug Enf't Unit ex rel. Richardson* v. *$20,771*, 878 S.E.2d 868, 877-78 (S.C. 2022); *State* v. *Timbs*, 134 N.E.3d 12, 26 (Ind. 2019).

ant." Br. in Opp. at 7, *Cheeseman* v. *United States*, 562 U.S. 1060 (No. 09-1470).

B. History reinforces the Court's reasoning.

1. The State and the federal government observe that historical statutes authorized *in rem* forfeitures of vessels and call it "willfully blind" to apply *Bajakajian*'s standard against those "volumes of history." U.S. Br. 18, 20. That is wrong twice over.

a. The State cites no instance of its historical laws' being used to forfeit anything as valuable as an airplane for anything as minor as a six-pack. Meanwhile, *all four* of the federal government's examples of extreme forfeiture actions (Br. 14-15) ended with the government's dropping the case and returning the ships. Kevin Arlyck, *The Founders' Forfeiture*, 119 Colum. L. Rev. 1449, 1493 & n.259 (2019) (*Ship Mary*); Order on Petition of William Provost (D.N.Y. 1792), Order on Petition of Elijah Pell (D.N.Y. 1793), and *The Alfred* (D.N.Y. 1795), all microformed on M886, Roll 1, at 118-19, 128-29, 180-81, 189-90, 309-11, 314-16 (Nat'l Archives & Recs. Admin.). And not because the owners were necessarily blameless: In Provost's case, Secretary Hamilton forfeited the alcohol ($14.84) but released the ship ($2,000). As the government's own source explains, Founding-era practice reflected "strong proportionality considerations" for *in rem* forfeitures. Arlyck, *supra*, at 1495.

b. Whatever the status of historical *in rem* forfeitures, moreover, analogies to them were understood to carry no weight for forfeitures openly imposed as punishment. "[D]isguise the matter as we may," wrote Joel Prentiss Bishop, "if the intent which the owner of property carries in his bosom is the gist of the thing on which the forfeiture turns, then the question is one of the criminal law, and the forfeiture is a penalty imposed for crime."

1 *Commentaries on the Criminal Law* 395 (3d ed. 1865). Criminal sentences "to forfeit particular articles of property," he added, "rest on the same reasons as fines." *Id.* at 402. Rufus Waples agreed: Using *in rem* forfeiture as "a disguised method of punishing for crime" would be unprecedented. *A Treatise on Proceedings in Rem* 28 (1882).

2. Equally misplaced is the federal government's view that, because early Americans sometimes half-implied that the guilty-property fiction masked "latent penal objectives," historical *in rem* forfeitures bless modern criminal ones. U.S. Br. 17, 20. Again, *Bajakajian* says differently, relying on the very Justice Story quote the government surgically rearranges for the opposite proposition. U.S. Br. 17. The government's claim (Br. 17) that "the *in rem/in personam* distinction makes no difference here" cuts against it also: Because modern *in rem* and *in personam* forfeitures generally are "designed to punish the offender," *both* are subject to the Excessive Fines Clause "regardless of whether the proceeding is styled *in rem* or *in personam*." *Bajakajian*, 524 U.S. at 331 n.6, 332; *Austin*, 509 U.S. at 621-22 (holding that the Clause applies to *in rem* forfeitures that are at least partly punitive). Or even take the government on its own terms. If everyone quietly thought the guilty-property fiction was fraudulent, the answer would not be to extend that fraud to undisputedly punitive forfeitures, but—in an appropriate case—to revisit decisions resting on it.

C. The State's instrumentality model invites confusion and abuse.

Practical considerations confirm the point. The State would replace *Bajakajian*'s standard with a proportionality-free inquiry into "whether forfeited property 'has a close enough relationship to the offense' to be an

instrumentality." Resp. Br. 23. But what is "close enough"? The State says "a building where 'an isolated drug sale happens to occur'" is not, Resp. Br. 39, yet an airplane with a six-pack is. But why? The building facilitates the drug sale much as the plane facilitates the alcohol offense. Or must property be "indispensable" to the crime? Resp. Br. 40. If so, that would be news to the jurisdictions that routinely forfeit property involved in offenses but not indispensable to them. And it would exempt Jouppi's plane here; goods reach Beaver by river barge too.

For its part, the federal government suggests (Br. 13) that *Bajakajian*'s standard rewards offenders who "use a Lamborghini" instead of a "jalopy." But that otherwise-identical offenses can yield "dramatic variations in the value of conveyances" forfeited is reason to question forfeiture statutes, not the Constitution's checks on them. *Austin*, 509 U.S. at 621. Nor is the Excessive Fines Clause reserved for the Lamborghini set. For one thing, the offense's gravity is only half the proportionality inquiry; the other half is the magnitude of the fine. *Bajakajian*, 524 U.S. at 334. And on that separate question—not at issue here (Cert. Reply 5)—several courts consider "the owner's economic means" "relative to the property's value." *State* v. *Timbs*, 134 N.E.3d 12, 36 (Ind. 2019); *Timbs* v. *Indiana*, 586 U.S. 146, 152 (2019) (noting open question). For another, the remedy need not be all-or-nothing; in federal courts, for instance, forfeitures may be "reduce[d]" rather than eliminated "as necessary to avoid a violation of the Excessive Fines Clause." 18 U.S.C. § 983(g)(4).

Meanwhile, the State's proportionality-free standard invites abuse; for civil and criminal forfeitures alike, "[o]ne can easily imagine cases in which Justice Scalia's

freestanding instrumentality approach could lead to results that would seem grossly unfair." *United States* v. *25 Sandra Ct.*, 135 F.3d 462, 465-66 (7th Cir. 1998). In *Bajakajian*, the government conceded that the approach might allow forfeiting "the Taj Mahal" if used to sell a "teaspoon of marijuana." Tr. at 13-14, *United States* v. *Bajakajian* (No. 96-1487). In *Timbs*, Indiana conceded that an only-just-speeding Bugatti would be a forfeitable "instrumentality" of speeding. Tr. at 43-45, *Timbs* v. *Indiana* (No. 17-1091). Nor are those hypotheticals so far-fetched. In 2015, for instance, the government seized a new pickup for exporting "munitions of war"—in the form of five lawfully owned bullets and a magazine, unwittingly left in the console. *Serrano* v. *CBP*, 975 F.3d 488, 493 (5th Cir. 2020). If the Court entertains the State's instrumentality theory at all, it should be rejected.

II. On the question presented, the judgment below should be reversed.

"If the amount of [a] forfeiture is grossly disproportional to the gravity of the defendant's offense, it is unconstitutional." *Bajakajian*, 524 U.S. at 337. Our position—like most courts'—is that evaluating the gravity of a defendant's offense includes considering his specific actions, not taking a purely abstract view of the crime. The standard below does the opposite.

A. A fine's excessiveness is evaluated, not purely in the abstract, but by reference to the gravity of the defendant's misconduct.

Text, precedent, history, and the Clause's function confirm that a fine's excessiveness must be evaluated with reference to the defendant's own misconduct. Whoever sets a fine, whatever purpose it serves, whatever form it takes, the Clause measures it against "the gravity of the

defendant's offense"—which requires evaluating what the defendant did.

1. The State concedes (Br. 27) that "[a]n Excessive Fines Clause analysis requires an examination of a defendant's culpability." Yet it argues courts cannot undertake that analysis when fines are set by law. *E.g.*, Resp. Br. 33. Each permutation of this argument fails.

a. The State's main theme is that, given legislative "primacy," fines set by law deserve substantial deference. Resp. Br. 32.[3] That bears little on the question presented. Whatever deference *Bajakajian* contemplated was built into its interpreting "excessive," not as requiring strict proportionality, but as forbidding gross *dis*proportionality. 524 U.S. at 336-37. The Court nowhere suggested that the defendant's specific actions were irrelevant to "the gravity of [his] offense." *Id.* at 337. Rather, the Court presupposed that "factual findings" inform the inquiry, *id.* at 336-37 n.10, then spent pages situating Bajakajian at the low end of the statute's spectrum of culpability, *id.* at 337-40. Little wonder most courts read the standard as "look[ing] at the overall circumstances, including seriousness of the offense and personal benefit or culpability." *Yskamp* v. *DEA*, 163 F.3d 767, 773 (3d Cir. 1998).

The State denies that *Bajakajian* stands for any such thing. On the State's telling, this Court invalidated Bajakajian's forfeiture, not because his misconduct was minor, but because Congress didn't *truly* mean to "target[]" low-level offenders like him. Resp. Br. 42. Because Alaska's legislature *really* meant to target low-level

[3] Elsewhere, the federal government has gone further, demanding deference for fines calculated by the Executive Branch and *not* mandated by statute. *See generally* Appellant's Br. at 51-54, *United States* v. *Saydam*, No. 26-503 (9th Cir. May 15, 2026).

offenders, the State says, that ends the analysis. Resp. Br. 34, 41-42.

That reading blinks reality. As here, Bajakajian's offense of conviction covered relatively minor violations; those committed "while violating another law of the United States" carried double the maximum fine and prison term under an adjoining sub-provision. *Bajakajian*, 524 U.S. at 350 (Kennedy, J., dissenting) (citation omitted). Yet the forfeiture provision covered all, major and minor alike. 18 U.S.C. § 982(a)(1) (1988 & Supp. V 1993). As the Court recognized, Congress thus "did not view the reporting offense" as "trivial," even for Bajakajian. 524 U.S. at 339 n.14. Even so, while legislatures certainly may set mandatory penalties, U.S. Br. 23, they cannot override the Constitution's guarantee that, in any particular case, excessive fines shall not be imposed.

Nor is it clear how courts are meant to execute the (decidedly *un*deferential) task the State envisions: reading statutes and divining what subset of textually covered defendants lawmakers subjectively wanted to "target[]." Resp. Br. 41. Evidently, Bajakajian was not such a defendant. Yet even today, the federal government pursues crippling fines for *less* serious reporting missteps—all while insisting the Excessive Fines Clause poses no obstacle. *E.g.*, Def.'s Opp. Mot. Summ. J. at 32-33, *United States* v. *Chen-Baker*, No. 22-cv-256 (W.D.N.Y. Oct. 22, 2025) (Doc. 43-1) (challenging $108,000 in penalties for non-willful reporting errors, corresponding to $25 in late taxes). And of course, all this distracts from the most obvious point: Governments' desire for excessive fines, even if deeply felt, is precisely what the Clause exists to check.

b. The State also errs in discounting history. For centuries, abusive economic sanctions have been inflated by "mak[ing] faults where they are not" or "mak[ing] them

greater than in themselves they are." *Proceedings in the Star-Chamber against Henry Sherfield* (1633), 3 T.B. Howell, *State Trials* 519, 546 (1816). Against that backdrop, excessive-fines protections ensured that fines would be imposed only "according to the degree of the fault." *Jones* v. *Commonwealth*, 5 Va. 555, 557 (1799) (Carrington, J.).

The State dismisses that history because fines often were set by "individual officials," not legislatures. Resp. Br. 25 (emphasis omitted). But the Founding generation well understood that excessive-fines protections would check legislatures as well. *See Harmelin* v. *Michigan*, 501 U.S. 957, 975-76 (1991) (opinion of Scalia, J.); *Timbs*, 586 U.S. at 165-67 (Thomas, J., concurring in the judgment). And by 1868, scores of abusive fines were enshrined in legislation that even the State recoils at defending.

c. The State further argues that considering the facts of a defendant's wrongdoing is unadministrable and "an intrusion." Resp. Br. 31 (citation omitted). But in other contexts, judges perform that task every day. Pet. Br. 34. *Bajakajian* likewise contemplated that, in applying the Excessive Fines Clause, courts would analyze "the facts of a particular case." 524 U.S. at 336-37 n.10. And for decades, most courts have done so (Pet. 16-23), with no ill effects that the State has identified.

d. Nor does it follow that because severe prison terms have survived Cruel and Unusual Punishments challenges, "the same deference" applies to fines. Resp. Br. 33. The State observes (Br. 31) that *Bajakajian* drew its standard from Cruel and Unusual Punishments precedents. 524 U.S. at 336. That analogy, however, explains the Court's "reject[ing] a 'strict proportionality' standard"; it did not require courts "to apply deference anew in each case." *Robson 200, LLC* v. *City of Lakeland*, 593 F.

Supp. 3d 1110, 1120 (M.D. Fla. 2022). Moreover, such an approach would be uniquely ill-suited for the Excessive Fines Clause. Pet. Br. 42-43.

More broadly, the State's argument is non-responsive to the question presented. The State calls prison-term cases "instructive" but never says *how*, beyond insisting that the Excessive Fines Clause sets a "high hurdle" for relief. Resp. Br. 32. And perhaps it does; even courts on petitioner's side of the split describe prevailing defendants as "the unusual [ones] who c[an] overcome the high hurdle of showing gross disproportionality." *State* v. *Timbs*, 169 N.E.3d 361, 376 (Ind. 2021). But that says nothing about whether courts should evaluate the offense's gravity purely in the abstract or with reference to the defendant's specific wrongdoing.

2. The federal government admits that "individualized circumstances of an offender's conduct can be relevant"—but not, it hastens to add, when an "objective[]" of forfeiture is to "depriv[e] him of the instruments of the offense." U.S. Br. 8, 22. On that view, forfeiting property (however valuable) for use in a crime (however minor) is necessarily proportioned to the "incapacitative rationale" of "preventing its use for further crimes." U.S. Br. 30. If that sounds like the government's failed bid in *Austin* to exempt forfeitures from the Excessive Fines Clause entirely, that's because it is. U.S. Br. at 23, 32, *Austin* v. *United States*, 509 U.S. 602 (1993) (No. 92-6073). Wrong then, wrong now. The Clause forbids a forfeiture that incapacitates out of all proportion, just as it forbids one that punishes out of all proportion. And whether a forfeiture does so turns on what the defendant did. In real-world terms, moreover, the government's incapacitative rationale rings especially hollow; in one of the only other publicly covered cases involving dry-village airplane

forfeitures, the State returned the plane to the defendant after leveraging a $35,000 pay-out. Kyle Hopkins, *Pilot Pleads Guilty in Bootlegging Case*, Anchorage Daily News (June 13, 2008), https://tinyurl.com/4h3jwpzt.

The State also insists that not just "the harm caused," but also the harm "*threatened*" factors into the analysis. Resp. Br. 35 (citation omitted). No quarrel there; *Bajakajian* considered the potential for harm "had [Bajakajian's] crime gone undetected." 524 U.S. at 339. The point is not that Jouppi's offense was "harmless" (Resp. Br. 43); in the main, the Excessive Fines Clause "*presume[s]* that some crime was committed that caused harm." *United States* v. *$11,500.00*, 869 F.3d 1062, 1074 n.8 (9th Cir. 2017). But potential harm, like actual harm, varies with the defendant's wrongdoing—except under the decision below. Pet. App. 25a n.94.

The State's drunk-driving analogy (Br. 36) illustrates the point. Most drunk-driving offenses risk grave harm. (Though in Alaska, drunk drivers, like drunk pilots, face mandatory forfeiture only upon a third conviction. Alaska Stat. §§ 28.35.030(b)(3), (n)(5).) But here, too, culpability and risk can vary—say, a tipsy patron who sleeps it off in his back seat in a State where that counts as a DUI. *See United States* v. *McFarland*, 369 F. Supp. 2d 54, 58-59 (D. Me. 2005). Even the State's chief drunk-driving case applied nothing like the standard below. *State* v. *O'Malley*, 206 N.E.3d 662, 686 (Ohio 2022).

3. The federal government dwells on the form of the fine, observing (Br. 28-29) that many historical abuses involved monetary fines, not forfeitures. But as the Court has explained—in a case involving property used in criminal activity—"*in personam* criminal forfeiture . . . is clearly a form of monetary punishment no different, for Eighth Amendment purposes, from a traditional 'fine.'"

Alexander, 509 U.S. at 558. Moreover, the government pressed the same cash/in-kind distinctions in *Austin*. *E.g.*, U.S. Br., *Austin*, *supra*, at 15, 26. As Justice Scalia pinpointed then, however, "for the Eighth Amendment to limit cash fines while permitting limitless in-kind assessments would make little sense, altering only the form of the Star Chamber abuses." *Austin*, 509 U.S. at 624 (opinion concurring in part and concurring in the judgment). Now, the government outright embraces that result: A "$95,000 monetary fine" might be excessive, but forfeiting Jouppi's airplane (whatever its value) is not. U.S. Br. 30.

The State notes that some dangers of civil forfeiture are absent from criminal forfeiture. Resp. Br. 29, 40-41. But others are very much present, including grossly disproportional fines. Worse, every principle the State urges would apply equally to the civil forfeitures it disclaims. As for its assurance (Br. 5) that civil forfeitures are rare in Alaska, that (a) is unfalsifiable, given Alaska's distinction as one of the three worst States for forfeiture transparency; and (b) ignores the civil forfeitures routed through federal agencies, which channel millions of dollars in revenue back to Alaska law enforcement. Inst. for Just., *Policing for Profit: The Abuse of Civil Asset Forfeiture* 54, 82 (4th ed. 2026). Regardless, the standard here will apply nationwide.

B. The Alaska Supreme Court's judgment should be reversed.

The decision below evaluated the gravity of Ken Jouppi's offense purely in the abstract—in terms equally applicable to every potential violator of the statute. That cannot be squared with the Excessive Fines Clause.

1. To start, the State says (Br. 2) that the question presented "fights a strawman" because the court below analyzed Jouppi's "actual circumstances." Presumably,

this Court "'necessarily considered and rejected'" that contention "in granting certiorari." *Stolt-Nielsen S.A.* v. *AnimalFeeds Int'l Corp.*, 559 U.S. 662, 670 n.2 (2010); Cert. Reply 2. It is equally misplaced now. Every consideration the Alaska Supreme Court cited applies equally to Jouppi and to every violator of the statute. Every convicted defendant is "within the class of persons targeted by the statute." Pet. App. 20a. On the court's six-pack premise, every violation has "the potential to cause the exact harm targeted by the law." Resp. Br. 43; Pet. App. 24a. A standard that cashes out identically for every offender is one that evaluates the offense "purely in the abstract." Pet. i.

2. The State's defense of the judgment below confirms the methodological error.

a. The State stresses that alcohol abuse is a real problem in Alaska. Undisputed. Pet. Br. 41. The question is whether it matters to the excessive-fines analysis if an offender is Al Capone or Ken Jouppi. The State and the decision below say *no*. That is the error meriting reversal.

Shot through the State's brief (*e.g.*, at 44-45) is the related assumption that violations of this particular statute are so categorically serious that the degree of a defendant's wrongdoing cannot possibly matter. Of course, the statute belies that assumption—not least because it classifies Jouppi's variant as a misdemeanor. More to the point, that assumption is the error below, repackaged. Under the decision below, once a State shows that the legislature "reasonably" thought a statute addressed a serious problem (Resp. Br. 39), the defendant's particular wrongdoing is irrelevant. Consider the State's own example. Obviously "[a] marijuana trafficker cannot challenge his conviction on the grounds that marijuana is harmless." Resp. Br. 46. But in terms of the gravity of the offense, a

grandma with a gummy in her nightstand is not remotely comparable to the trafficker.

Except that, under the standard below, she is. Why not forfeit her home for the gummy? Or a car for "the remains of a marijuana cigarette in the ashtray"? *United States* v. *1986 Mercedes Benz*, 846 F.2d 2, 4 (2d Cir. 1988). Why not forfeit the pickup for a forgotten bullet at the border? Just as the federal government theorizes (Br. 27) that a six-pack might "whet[] a recovering alcoholic's taste for liquor," a gunman could steal the bullet and fire the shot that sparks a cartel war. For that matter, why not forfeit the family minivan because Dad packs one of his prescription Ambien for Mom? Or their home, if he hands her the pill indoors? Each involves a felony: distributing a Schedule IV drug—and amid a prescription-drug-abuse epidemic. How do any of those cases differ from this one? And if they don't (and, plainly, they don't), how can the standard below square with text, precedent, history, and the Excessive Fines Clause's basic function?

Or take low-level speeding and seatbelt violations, which likewise carry "the potential to cause the exact harm targeted by the law." Resp. Br. 43. Why wouldn't exorbitant fines and forfeitures for those offenses pass muster below? The State offers only that such punishments might not be "rational." Resp. Br. 43 (citation omitted). But setting aside that rational-basis review is not for fundamental rights, why *wouldn't* they be rational? Above fifteen miles per hour, "small changes in speed yield relatively large increases in risk" of pedestrian injury and death. Brian C. Tefft, *Impact Speed and a Pedestrian's Risk of Severe Injury or Death*, AAA Foundation for Traffic Safety 12 (2011). So why couldn't cash-strapped cities do just what Justice Breyer hypothesized in *Timbs*? And why be sure one never would? Vehicles are

a tempting source of revenue. And it's hardly unheard-of for senior officials to pressure prosecutors to "increase forfeiture income" to hit "budget target[s]." Mem. from William P. Barr, Acting Deputy Att'y Gen., to all U.S. Attorneys (July 18, 1990), https://tinyurl.com/56rt9t4k.

At base, the State submits that "Alaska is different." *Sturgeon* v. *Frost*, 577 U.S. 424, 438 (2016). In many ways it is; its independent streak drew Ken Jouppi there five decades ago. But not in its relation to the Constitution, whose incorporated protections have "the same meaning in all parts of the United States." *Wolford* v. *Lopez*, 609 U.S. 185, 206 (2026). And under the standard below, it is hard to imagine any fine anywhere that would be excessive. Conspicuously, the State itself identifies none—besides Hosep Bajakajian's and the literal Black Codes. *But cf. State* v. *Manuel*, 20 N.C. 144, 161-63 (1838) (rejecting state-law excessive-fines challenge to early Black Code, using reasoning much like Alaska's).

b. The State's remaining arguments reduce to one theme: carte blanche.

The State claims (Br. 43) that "*mens rea* acts as a guardrail" against excessive fines. That is no truer here than in *Bajakajian*. There, the forfeiture involved a specific-intent felony. *See* 524 U.S. at 325. Here, the State maintains that Jouppi's misdemeanor can rest merely on his not performing dragnet searches—even with "no actual knowledge of any alcohol" in passengers' luggage. State's Alaska Sup. Ct. Br. 27. Simply, the scienter for a misdemeanor says little about whether a $95,000 forfeiture is excessive.

The Alaska Supreme Court's reliance on maximum fines is of a piece. The State notes (Br. 16, 46) that Jouppi's plane was worth "only" 9.5 times the $10,000 maximum fine. But Bajakajian's forfeiture ($357,000) was

just 1.4 times his maximum fine ($250,000), never mind the five-year maximum prison term. Pet. Br. 40-41. That ratio did not scuttle his claim for an obvious reason: "The statutory maximum" is "designed as an outer limit on the punishment available" and "does not necessarily reflect an individual offender's culpability or the gravity of the actual offense giving rise to forfeiture." *von Hofe* v. *United States*, 492 F.3d 175, 187 (2d Cir. 2007). Hence why *Bajakajian* looked to the individualized Guidelines range, not a one-size-fits-all maximum. Pet. Br. 40.

Consistent with the rest of its standard, moreover, the Alaska Supreme Court's focus on maximum theoretical fines leaves it to legislatures to decide "what a fine should be *and* whether it's excessive." *Yates* v. *Pinellas Hematology & Oncology, P.A.*, 21 F.4th 1288, 1318 (11th Cir. 2021) (Newsom, J., concurring). Today, for instance, Alaska's maximum misdemeanor fine is not $10,000, but $25,000. Input that variable into the standard below (9.5 × $25,000) and a $237,500 airplane could be forfeited. Meanwhile, the *corporate* maximum is $500,000. So had KenAir LLC owned the plane—rather than Ken Jouppi, human—the standard below would reflexively bless forfeiting a $4,750,000 aircraft over the same six-pack.

c. Finally, the State tars Jouppi. Having acknowledged that the decision below took as its premise that "his culpability extended only to one six-pack and that he had no related misconduct" (Br. in Opp. 14), the State now declares that "Jouppi's crime was *not* flying in 'a six-pack'" and insinuates recidivism. Resp. Br. 1 (emphasis added), 47 n.6. *But see* Cert. Reply 10. Having conceded below that "jurors could have found that Jouppi had actual knowledge of the six-pack and no willful blindness as to the remaining alcohol" (State's Alaska Sup. Ct. Br. 28), it now dwells on that other alcohol. Resp. Br. 1, 44. Having

waived the chance to present evidence of related misconduct at the excessive-fines hearing—despite the trial court's invitation (Tr. Vol. II 192-95 (4/19/2018 Hrg.))—it now claims it tried to do just that. Resp. Br. 15. *But see* Cert. Reply 9.

Even the State, it seems, thinks facts should matter more than they do under the decision below. On that much we agree. And it is not "glib" to describe that decision accurately: an airplane for a six-pack. Nor is this a laughing matter for Ken Jouppi. No less than the State, he appreciates the importance of dry-village laws. R. p. 678; Pet. Br. 5. Yet for years, the State put him in an impossible bind. On pain of "willful blindness" accusations, it left him—an aging bush pilot—to play detective: to confront and search suspected criminals on isolated airstrips, with neither the authority nor the protections of law enforcement. When he did identify bootleggers, authorities were as likely as not to treat him as a nuisance. R. pp. 677-78. Adding injury to insult, the State has now spent fourteen-and-a-half years gunning for his airplane. And under the Alaska Supreme Court's standard, any jurisdiction can do the same and worse for violating virtually any law on the books. The Excessive Fines Clause demands more: It asks not what the worst violator of a statute might deserve, but what Jouppi actually did—"the real measure of his own offence." *Jones*, 5 Va. at 558 (Carrington, J.).

CONCLUSION

The judgment below should be reversed and the case remanded for further proceedings.

Respectfully submitted.

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NOVEMBER 4, 2026