

No.

IN THE SUPREME COURT OF THE UNITED STATES

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SHAIN GORDON SHAW, PETITIONER,

v.

STATE OF FLORIDA, RESPONDENT.

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*ON PETITION FOR A WRIT OF CERTIORARI TO  
THE FOURTH DISTRICT COURT OF APPEAL OF FLORIDA*

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**PETITION FOR A WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

1. Whether the state court erred in upholding, contrary to *U.S. v. Bajakajian*, 524 U.S. 321 (1998), and the Excessive Fines Clause, a mandatory fine pursuant to a statute that does not allow any proportionality considerations?

2. Whether the state court erred in affirming, contrary to the holdings of the supreme courts of other states and the Excessive Fines Clause, fines and surcharges imposed under statutes that do not allow consideration of the defendant's ability to pay?

## LIST OF PARTIES

Shain Gordon Shaw, Petitioner

State of Florida, Respondent

## RELATED PROCEEDINGS

Nineteenth Judicial Circuit of Florida:

*State v. Shaw*, 43-2022-CF-001028B.

Fourth District Court of Appeal of Florida:

*Shaw v. State*, 418 So. 3d 183, 185–86 (Fla. 4th DCA 2025).

Supreme Court of Florida:

*Shaw v. State*, 2025 WL 3707590 (Dec. 22, 2025)(not reported in Southern Reporter)

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PETITION FOR A WRIT OF CERTIORARI

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Shain Gordon Shaw respectfully petitions for a writ of certiorari to review the judgment of the Fourth District Court of Appeal of Florida in this case.

OPINION BELOW

The decision of Florida's Fourth District Court of Appeal is reported as : *Shaw v. State*, 418 So. 3d 183, 185–86 (Fla. 4th DCA 2025) .

## JURISDICTION

Florida's Fourth District Court of Appeal issued its written opinion affirming Petitioner's conviction and sentence (4D2024-1010) on August 13, 2025. A2-4.

Petitioner sought review in the state's highest court – the Supreme Court of Florida. On December 22, 2025 the Supreme Court of Florida declined to review the case (FLSC 2025-1430). A5-6. This Court has jurisdiction under 28 U.S.C. § 1257(a).

On March 27, 2026 a letter from the Clerk's office reflects that the petition had been postmarked on March 17, 2026 and had been received on March 24, 2026 and a corrected petition must be submitted within 60 days.

## CONSTITUTIONAL AND STATUTORY PROVISIONS

### The Eighth Amendment:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

### The Fourteenth Amendment:

#### Section 1

... . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of

life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 893.135, Florida Statutes (2022):

(1)(b)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 14 grams or more of ... cocaine, as described in s. 893.03(2)(a)4. ... commits a felony of the first degree, which felony shall be known as “trafficking in cocaine,” punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of \$50,000.

\*\*\*\*\*

(1)(c)4.a. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of:

....

(III) Fentanyl, as described in s. 893.03(2)(b)9.;...

or

(VII) A mixture containing any substance described in sub-sub-paragraphs (I)-(VI),

....commits a felony of the first degree, which felony shall be known as “trafficking in dangerous fentanyl or fentanyl analogues,” punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

b. If the quantity involved under sub-subparagraph a.:

(I) Is 4 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and shall be ordered to pay a fine of \$50,000.

Section 938.04, Florida Statutes (2022):

938.04 Additional cost with respect to criminal fines.— In addition to any fine for any criminal offense prescribed by law, including a criminal traffic offense, and in addition to the cost imposed pursuant to the provisions of s. 318.14(10), there is hereby established and created as a court cost an additional 5-percent surcharge thereon which shall be imposed, levied, and collected together with such fine or cost imposed pursuant to s. 318.14(10). The additional court cost created under this section shall be remitted to the Department of Revenue for deposit in the Crimes Compensation Trust Fund created by s. 960.21.

STATEMENT OF THE CASE

Petitioner was charged in Florida's Nineteenth Judicial Circuit in 2022 with: trafficking in cocaine-28 grams or more (§ 893.135(1)(b)1(a) and trafficking in fentanyl- 4 grams or more but less than 14 grams (§ 893.135(1)(c)4(b) and other counts. A2-3.

Petitioner entered an open plea to the charges. He was sentenced to 13.5 years in prison on two of the counts (R97) and to five years in prison on the remaining counts R98.

The trial court ordered the defendant to pay two \$50,000 fines, pursuant to section 893.135, Florida Statutes, plus a \$2,500 surcharge A3. The court also imposed a public defender fee of \$100

and ordinance costs A3.

The defendant appealed. The defendant subsequently filed a motion to correct sentencing errors, including arguing that the \$52,915 and \$52,565 fines imposed were excessive. A3. The trial court granted the motion in part and denied it in part. The trial court denied the defendant's request to strike the \$50,000 fines and surcharges A3. Petitioner's motion argued the assessments were imposed under statutes that violate the Excessive Fines Clause of the federal constitution in that they are mandatory and have no provision for consideration of individualized proportionality, and no provision of consideration of a defendant's ability to pay. Under rule 3.800(b)(2), a defendant may challenge a fine or cost for the first time in a post-sentencing motion to correct sentence. *See Ellzey v. State*, 158 So. 3d 688, 691 (Fla. 1st DCA 2015); *Shaw v. State*, 418 So. 3d 183, 185–86 (Fla. 4th DCA 2025), (rejecting on the merits arguments where issue was raised for first time on rule 3.800(b)(2) motion), *rev. denied* No. SC2025-1430, 2025 WL 3707590 (Fla. Dec. 22, 2025). The same is true for challenges to the constitutionality of sentencing statutes. The state supreme court has held that a rule 3.800(b) motion is an appropriate vehicle raising a challenge to the

constitutionality of a sentencing statute. *See Jackson v. State*, 983 So. 2d 562, 572–73 (Fla. 2008) (stating claims that may be raised via rule 3.800(b) include “that a sentencing statute was unconstitutional”). Further, a sentence imposed pursuant to an unconstitutional sentencing provision constitutes fundamental error and hence may be raised for the first time on appeal. *State v. Johnson*, 616 So. 2d 1, 3–4 (Fla. 1993) (holding defendant could raise for the first time on appeal challenge to constitutionality of habitual offender statute).

After the trial court denied the motion, Petitioner made the same arguments in the appellate court. A2-4.

The Fourth District Court of Appeal rejected Petitioner’s arguments and held the mandatory fines did not violate the Eighth Amendment Excessive Fines Clause and affirmed:

The defendant also argues the \$50,000 fines violate the eighth amendment’s excessive fines clause. The State responds the fines and surcharges are mandatory and need not be orally pronounced. The State further responds the fines are not excessive. We agree with the State..... Here, both \$50,000 fines are mandatory per the respective cocaine and fentanyl trafficking statutes. See §§ 893.135(1)(b)(1)(a) and 893.135(1)(c)(4)(b), Fla. Stat. (2022). .... And, we have previously upheld the constitutionality of similar fines against a constitutionally excessive challenge. See *Stephenson v. State*, 368 So. 3d

5, 6 (Fla. 4th DCA 2023) (citing *Gordon v. State*, 139 So. 3d 958, 964 (Fla. 2d DCA 2014)). We therefore affirm.

A3-4.

Petitioner sought review in the state's highest court – the Supreme Court of Florida. On December 22, 2025 the Supreme Court of Florida declined to review the case. A5-6.

Petitioner now seeks review in this Court.

### REASONS FOR GRANTING THE PETITION

#### FLORIDA'S MANDATORY FINE AND SURCHARGE STATUTES VIOLATE THE EXCESSIVE FINES CLAUSE.

The Excessive Fines Clause arises from the common law. *See U.S. v. Bajakajian*, 524 U.S. 321, 335–36 (1998) (discussing common law background of Excessive Fines Clause); *City of Seattle v. Long*, 493 P.3d 94, 111–13 (Wash. 2021) (detailing common law leading up to adoption of Excessive Fines Clause).

In the present case, mandatory fines totaling over \$100,000, with additional mandatory surcharges were imposed on Petitioner, an indigent, for small amounts of controlled substances.

The fines were imposed under sections 893.135(1)(b)(1)(a) and 893.135(1)(c)(4)(b), Fla. Stat. (2022) which require mandatory fines.

Surcharges were imposed under section 938.04, Florida

Statutes, which provides that: “In addition to any fine for any criminal offense prescribed by law, ... there is hereby established and created as a court cost an additional 5-percent surcharge thereon which shall be imposed.”

Florida appellate courts have held such mandatory fines and surcharges for drug trafficking do not violate the Excessive Fines Clause. In this case the Fourth District Court of Appeal upheld fines imposed for trafficking in cocaine and fentanyl and held the mandatory fines did not violate the Eighth Amendment Excessive Fines Clause:

The defendant also argues the \$50,000 fines violate the eighth amendment’s excessive fines clause. The State responds the fines and surcharges are mandatory and need not be orally pronounced. The State further responds the fines are not excessive. We agree with the State..... Here, both \$50,000 fines are mandatory per the respective cocaine and fentanyl trafficking statutes. See §§ 893.135(1)(b)(1)(a) and 893.135(1)(c)(4)(b), Fla. Stat. (2022). .... And, we have previously upheld the constitutionality of similar fines against a constitutionally excessive challenge. See *Stephenson v. State*, 368 So. 3d 5, 6 (Fla. 4th DCA 2023) (citing *Gordon v. State*, 139 So. 3d 958, 964 (Fla. 2d DCA 2014)). We therefore affirm.

A3-4; *Shaw v. State*, 418 So. 3d 183, 185–86 (Fla. 4th DCA 2025), *rev. denied* No. SC2025-1430, 2025 WL 3707590 (Fla. Dec. 22, 2025).

These statutes are unconstitutional under the Excessive Fines Clause because they provide for no individualized assessment of whether the fine is disproportionate to the defendant's crime and do not provide for any consideration of the defendant's ability to pay.

There must be individualized determination of the proportionality of the fine

In *U.S. v. Bajakajian*, 524 U.S. 321 (1998), the defendant was arrested while trying to leave the country with \$357,144 in cash. He was charged with, and plead guilty to, the federal crime of failure to report exported currency. *Id.* at 327.

The relevant statute provided that the sentencing court "shall order that the person forfeit to the United States any property, real or personal, involved in such offense, or any property traceable to such property." *Id.* at 325 (quoting 18 U.S.C. § 982(a)(1)).

The district court ruled that the forfeiture amount violated the Excessive Fines Clause and reduced the amount to \$15,000. *Id.* at 326. On appeal by the government, the judge's ruling was affirmed by the Ninth Circuit. *Id.* at 326-27. This Court granted review and also ruled for the defendant.

Although the forfeiture was required by statute, the Court held

it violated the Excessive Fines Clause: “The question in this case is whether forfeiture of the entire \$357,144 that respondent failed to declare would violate the Excessive Fines Clause of the Eighth Amendment. We hold that it would, because full forfeiture of respondent’s currency would be grossly disproportional to the gravity of his offense.” *Bajakajian*, 524 U.S. at 324. (Bajakajian did not contest imposition of the \$15,000 forfeiture actually imposed. Hence, the Court stated: “Our holding ... reflects no judgment” as to the constitutionality of \$15,000 assessment actually imposed. *Id.* at 337 n.11.)

The Court said it was “irrelevant whether respondent’s currency is an instrumentality; the forfeiture is punitive, and the test for the excessiveness of a punitive forfeiture involves solely a proportionality determination.” *Id.* at 333–34.

“In applying this standard, the district courts in the first instance, and the courts of appeals, reviewing the proportionality determination *de novo*, must compare the amount of the forfeiture to the gravity of the defendant’s offense. If the amount of the forfeiture is grossly disproportional to the gravity of the defendant’s offense, it is unconstitutional.” *Id.* at 336–37.

Thus, under *Bajakajian* a forfeiture or fine may be disproportionate and excessive even though the defendant violated the statute authorizing it. A court may not merely mechanically apply the statute — the constitution requires an individualized determination in each case.

In this case, an assessment totaling over \$100,000 was imposed on Petitioner. The assessment was grossly disproportional to offenses involving low level drug sales.

The Florida statutes in this case do not allow any individualized determination of proportionality. *Shaw*, 418 So. 3d at 185–86 (summarizing case law and holding that drug offense fines are mandatory). Hence, they are unconstitutional under *Bajakajian*, as are the resulting assessments imposed on Petitioner.

There must be individualized determination of the defendant's ability to pay.

Ability to pay was not at issue in *Bajakajian* as the defendant never raised that issue: “Respondent does not argue that his wealth or income are relevant to the proportionality determination or that full forfeiture would deprive him of his livelihood, and the District Court made no factual findings in this respect.” *Id.* at 340 n.15

(internal citation omitted).

The Court noted, however, that the Excessive Fines Clause arose from the common law requirement that a fine or forfeiture “should not deprive a wrongdoer of his livelihood.” *Id.* at 335.

In *Timbs v. Indiana*, 586 U.S. 146 (2019), the Court held that the Excessive Fines Clause applies to the states through the Fourteenth Amendment.

The Court notes that the Excessive Fines Clause incorporates the common law rule that economic sanctions must both “be proportioned to the wrong” and “not be so large as to deprive [an offender] of his livelihood.” *Id.* at 151 (quoting *Browning-Ferris v. Kelco*, 492 U.S. 257, 271 (1989)).

Blackstone wrote that at common law no one “shall have a larger amercement imposed ... than his circumstances or personal estate will bear.” 4 William Blackstone, *Commentaries on the Laws of England* \*372 (1769). (An “amercement” was “a fine or penalty.” AMERCEMENT, *Black’s Law Dictionary* (12th ed. 2024).)

This principle was well-established by the time of *Jones v. Commonwealth*, 5 Va. 555, 557–58 (Va. 1799). A jury had ordered four persons to pay a joint fine. After the death of one of the four,

the others claimed the assessment should be reversed because they should be required to pay only amounts in accord with their estate (that is, their ability to pay). Judges Roan and Carrington held that the assessment had to be reversed. Judge Roan wrote that conclusion was “bottomed upon an article of *magna charta*, that fines be imposed *secundum quantitatem delicti salvo contenemento*,” and supported “by the clause of the bill of rights prohibiting excessive fines and the act of 1786 founded on the spirit of it and providing, that the fine should be according to the degree of the fault and the estate of the offender.” *Id.* at 556–57. (“According to the degree of the fault and the estate of the offender” is a translation of the Latin phrase.) Judge Carrington wrote: “It is said, that in every information or indictment the fine or amercement ought to be according to the degree of the fault and the estate of the defendant.” *Id.* at 557.

The third member of the court, President Pendleton agreed as to the law, but dissented as to the result, writing that the jury had made its decision based on each individual’s “ability to pay.” *Id.* at 560.

After *Timbs*, some courts have found unconstitutional

mandatory fines under statutes that do not provide for assessment of the defendant's ability to pay. *See State v. Gibbons*, 545 P.3d 686 (Mont. 2024) (finding statute facially unconstitutional to the extent that whenever the sentencing judge imposes a mandatory minimum \$5,000 fine for fifth or subsequent DUI conviction, the statute does not allow the judge to consider "the proportionality factors protecting an offender from excessive fines"); *City of Seattle v. Long*, 493 P.3d 94, 112–13 (Wash. 2021) (holding a court considering whether a fine is constitutionally excessive should consider ability to pay and surveying case law nationwide).

On the other hand, the Seventh Circuit has declined to consider ability to pay, saying that *Timbs* did not decide that issue. *Grashoff v. Adams*, 65 F.4th 910, 921 (7th Cir. 2023). The Ninth Circuit has likewise held that *Timbs* "left the question open," adding: "We, too, decline Pimentel's invitation to affirmatively incorporate a means-testing requirement for claims arising under the Eighth Amendment's Excessive Fines Clause." *Pimentel v. City of Los Angeles*, 974 F.3d 917, 925 (9th Cir. 2020).

Others have expressed uncertainty as to whether *Timbs* requires such considerations. *See Raftery v. State Bd. of Ret.*, 263

N.E.3d 833, 845 n.14 (Mass. 2025) (discussing *Timbs* and noting divergence of opinions interpreting *Bajakajian* ); *Yates v. Pinellas Hematology & Oncology, P.A.*, 21 F.4th 1288, 1320–24 (11th Cir. 2021) (Newsom, J., concurring) (same).

Petitioner submits that this Court should accept jurisdiction and resolve this conflict regarding whether a court must consider the defendant’s ability to pay under the Excessive Fines Clause.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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