No. 25-7192

IN THE

Supreme Court of the United States

SHAIN GORDON SHAW,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

On Petition for a Writ of Certiorari to Florida's Fourth District Court of Appeal

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Petitioner pled guilty to trafficking fentanyl and cocaine and received statutorily mandated fines of $50,000 for each conviction. He then challenged those fines as excessive under the Eighth Amendment. When a person challenges a fine as excessive under the Eighth Amendment, courts must determine whether "it is grossly disproportional to the gravity of a defendant's offense." *United States v. Bajakajian*, 524 U.S. 321, 334 (1998). The questions presented are:

1. Whether Sections 893.135(1)(b)(1)(a) and 893.135(1)(c)(4)(b)(I), Florida Statutes, which require sentencing courts to impose $50,000 fines for trafficking certain amounts of cocaine and fentanyl, are per se unconstitutional because they do not permit a sentencing court to consider proportionality *before* imposing a fine.

2. In determining whether a fine is excessive, are courts required to consider a defendant's ability to pay or whether the fine would deprive the defendant of his livelihood?

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STATEMENT

1. The Eighth Amendment prohibits the imposition of "excessive fines." U.S. Const. amend. VIII. The Excessive Fines Clause applies to the States. *Timbs v. Indiana*, 586 U.S. 146 (2019).

In *United States v. Bajakajian*, this Court first "articulated a standard for determining whether a [fine] is constitutionally excessive." 524 U.S. 321, 334 (1998). The Court held that "a punitive forfeiture violates the Excessive Fines Clause if it is grossly disproportional to the gravity of a defendant's offense." *Id.* It stressed, however, that "judgments about the appropriate punishment for an offense belong in the first instance to the legislature," and "any judicial determination regarding the gravity of a particular criminal offense will be inherently imprecise." *Id.* at 336.

In applying the gross disproportionality standard to Bajakajian himself, the Court reviewed several factors, including the nature of the offense, whether he fit into the class of persons for whom the statute was principally designed, the maximum sentence he could have received under the guidelines and therefore his culpability, and the harm he caused. *Id.* at 337–40. The Court did not purport to foreclose the consideration of other factors, but it expressly reserved the question of whether a defendant's ability to pay or whether a fine would deprive a defendant of his livelihood was relevant to the proportionality determination. *Id.* at 340 n.15; *see also Timbs*, 586 U.S. at 151–52.

2. Petitioner Shain Gordon Shaw sold drugs to an undercover police officer on two separate days.[1] Pet. App. 2. As relevant, he was charged with two trafficking charges under Section 893.135, Florida Statutes, for trafficking both cocaine (28 grams or more) and fentanyl (four grams or more but less than 14 grams). *Id.* at 3. The trial court accepted Petitioner's open plea; imposed a prison sentence of 13.5 years; and ordered Petitioner to pay two $50, 000 fines under Section 893.135. *Id.*

Petitioner appealed his sentence and filed a motion in the trial court to correct sentencing errors, arguing (as pertinent) that the fines were excessive under the Eighth Amendment of the U.S. Constitution. *Id.* The trial court denied his request to strike the $50,000 fines as excessive. *Id.*

Florida's Fourth District Court of Appeal affirmed, explaining that it had "previously upheld the constitutionality of similar fines against a constitutionally excessive challenge." *Id.* at 3–4 (citing *Stephenson v. State*, 368 So. 3d 5, 6 (Fla. 4th DCA 2023) & *Gordon v. State*, 139 So. 3d 958, 964 (Fla. 2d DCA 2014)).

Petitioner sought discretionary review in the Florida Supreme Court, but the Florida Supreme Court declined to accept jurisdiction. Pet. App. 5.

Petitioner now seeks this Court's review.

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[1] The State charged Petitioner with multiple crimes in two separate cases; the Petition involves only the sentence entered in one of those cases. Pet. App. 2.

REASONS FOR DENYING THE PETITION

Petitioner has not established any conflict with this Court's excessive fines precedents: The Court has never held that mandatory fines are per se unconstitutional, and Petitioner identifies no case that has so held. Nor has Petitioner described any disagreement in the lower courts worthy of this Court's review. A few circuits and state courts allow consideration of whether a fine would deprive a defendant of his livelihood (while only one circuit does not), though no federal circuit has ever held a fine unconstitutional for that reason. Unless and until a square and entrenched conflict develops such that Petitioner would clearly be entitled to relief in some jurisdictions but not others, certiorari is not warranted. It is impossible to know, moreover, whether *this* Petitioner would be deprived of his livelihood based on the fines imposed, as the trial court made no factual findings on that issue—making this a poor vehicle. And in any event, Florida's Fourth District Court of Appeal correctly held that the fines imposed were not grossly disproportionate to Petitioner's serious drug trafficking offenses (including for trafficking fentanyl).

I. THE DECISION BELOW DOES NOT CONFLICT WITH THIS COURT'S EXCESSIVE FINES JURISPRUDENCE.

Petitioner does not contend that the lower courts are divided on whether sentencing courts must conduct an individualized determination of a fine's proportionality before imposing a fine. Instead, he argues that under *United States v. Bajakajian*, 524 U.S. 321 (1998), mandatory fines are per se unconstitutional. Pet. 11 ("The Florida statutes in this case do not allow any individualized determination of proportionality. Hence, they are unconstitutional . . . .").

But *Bajakajian* did not come close to holding that all mandatory fines are unconstitutional. After all, "judgments about the appropriate punishment for an offense belong in the first instance to the legislature." *Bajakajian*, 524 U.S. at 336. Instead, the Court held that when faced with an argument that a fine is excessive under the Eighth Amendment, a court "must compare the amount of the [fine] to the gravity of the defendant's offense." *Id.* at 336–37. Only "[i]f the amount of the [fine] is grossly disproportional to the gravity of the defendant's offense" is the fine "unconstitutional." *Id.* at 337. So when analyzing a challenge to a fine as excessive, courts must consider proportionality. But *Bajakajian* does not hold that legislatures cannot mandate the imposition of fines. Instead, that judgment is left to legislatures in the first instance, with the availability of judicial review of as-applied challenges in cases where a defendant claims that the mandatory fine would amount to disproportionate punishment given the nature of the offense.

In other words, nowhere did *Bajakajian* purport to hold that statutes imposing mandatory fines, without sua sponte individualized proportionality review in every case, are per se unconstitutional. Nor has Petitioner identified any case applying *Bajakajian* as he interprets it or holding that mandatory fines are per se unconstitutional. And Petitioner does not even attempt to argue that the lower courts are divided on the point. As a result, certiorari is not warranted on this issue.

To the extent that Petitioner's complaint is that the Fourth District Court of Appeal did not conduct the required proportionality analysis, that too is mistaken. In addressing Petitioner's challenge, the court below explained that it had "previously upheld the constitutionality of similar fines against a constitutionally excessive challenge." Pet. App. 3–4. In support, the court cited *Stephenson v. State*, 368 So. 3d 5, 6 (Fla. 4th DCA 2023) and *Gordon v. State*, 139 So. 3d 958, 960 (Fla. 2d DCA 2014), which *Stephenson* had itself relied on. In both cases, Florida district courts of appeal addressed excessiveness challenges to fines levied under Section 893.135, the statute here. In *Gordon*, the defendant was fined a total of $600,000 for trafficking, and for conspiracy to traffic, 28 grams to 30 kilograms of oxycodone. 139 So. 3d at 959–60. The Second District carefully analyzed the fines against the standard set forth in *Bajakajian* and concluded that the fines were not grossly disproportionate. *Id.* at 960–64. In *Stephenson*, the defendant challenged his $210,000 fines for trafficking drugs as excessive and, relying on *Gordon*, the Fourth District rejected his challenge. 368 So. 3d at 6.

Here, although the Fourth District's opinion contained little analysis, the court assessed whether Petitioner's two $50,000 fines—far less than those levied in *Gordon* or *Stephenson*—were grossly disproportionate and appropriately concluded that they were not. Pet. App. 3–4. That individualized consideration of proportionality is all that *Bajakajian* requires. If Petitioner's argument is instead that the state court's opinion did not contain sufficient analysis, that also does not warrant this Court's review—*Bajakajian* did not mandate some unspecified level of detail in an opinion addressing an excessive fines challenge. *See also Herb v. Pitcairn*, 324 U.S. 117, 126 (1945) (explaining that the Court's "power is to correct wrong judgments, not to revise opinions").

At bottom, the standard for analyzing excessive fines challenges has been well-settled since *Bajakajian* was decided. Petitioner identifies no court holding that sentencing courts, rather than courts adjudicating excessive fines challenges, must conduct *Bajakajian*'s proportionality review before imposing a mandatory fine. The Fourth District concluded that Petitioner's fines were not grossly disproportionate under this Court's well-settled standard. And Petitioner does not even argue that courts elsewhere are applying *Bajakajian* such that his challenge would have succeeded in any other court.

II. THE LOWER COURTS ARE NOT INTRACTABLY DIVIDED ON THE ABILITY-TO-PAY ISSUE.

As for the ability to pay issue, Petitioner conflates two distinct issues: (1) Whether statutes imposing mandatory fines that preclude a sentencing court from considering a defendant's ability to pay before imposing a fine are per se unconstitutional; and (2) whether courts addressing excessive fines challenges to fines already imposed must consider a defendant's ability to pay. It is unclear whether Petitioner seeks this Court's review of the first issue or the second, but neither is certworthy.

A. The lower courts are not divided on whether mandatory statutory fines that do not permit consideration of a defendant's ability to pay at the time the fine is imposed are constitutional.

Statutes imposing mandatory fines are not per se unconstitutional, and Petitioner has not identified any dissension on that point. Petitioner first asserts that the Montana Supreme Court has held that statutes imposing mandatory fines "that do not provide for assessment of the defendant's ability to pay" are unconstitutional. Pet. 14 (citing *State v. Gibbons*, 545 P.3d 686 (Mont. 2024)). But that holding from *Gibbons* was overruled on the same day that Petitioner filed his petition. *State v. Cole*, 585 P.3d 955, 963 (Mont. 2026) ("We therefore overrule *Gibbons*'s holding that § 61-8-731(3), MCA (2019), is facially unconstitutional" and "[n]othing in our Opinion changes a defendant's ability to challenge a mandatory minimum fine as unconstitutionally excessive as applied to the defendant's particular circumstances, including the defendant's ability to pay.").

Likewise, the other state supreme court that Petitioner relies on did not hold that statutes imposing mandatory fines are unconstitutional. Instead, in *City of Seattle v. Long*, the Washington Supreme Court held that "courts considering whether a fine is constitutionally excessive should also consider a person's ability to pay." 493 P.3d 94, 114 (Wash. 2021); *accord State v. Martin*, 354 A.3d 1075, 1089–90 (Me. 2026); *Colorado Dep't of Lab. & Emp. v. Dami Hosp., LLC*, 442 P.3d 94, 101 (Colo. 2019);

Commonwealth v. 1997 Chevrolet & Contents Seized from Young, 160 A.3d 153, 189 (Pa. 2017). In other words, some state supreme courts hold that *Bajakajian*'s proportionality analysis does or may include consideration of a defendant's ability to pay. Petitioner has not identified any case holding that statutes not allowing sentencing courts to consider ability to pay *before* imposing a statutorily mandated fine are unconstitutional. Instead, the cases on which he relies teach that courts addressing excessive fines challenges *after* a fine is imposed may consider ability to pay. Put differently, they do not hold that mandatory fines are per se unconstitutional.

B. The federal circuits agree that ability to pay is not a consideration under *Bajakajian*, although some permit consideration of whether a fine would deprive the defendant of his livelihood.

Even to the extent that Petitioner argues that the lower courts are split on the second issue—whether *Bajakajian*'s proportionality analysis involves the consideration of a defendant's ability to pay—Petitioner is wrong.

This requires a little unpacking. Several circuits have drawn a distinction between a defendant's *present ability to pay* a fine and whether a fine would *deprive the defendant of his future livelihood in the future*. *E.g.*, *Pimentel v. City of Los Angeles*, 115 F.4th 1062, 1073 (9th Cir. 2024) ("our sister circuits have noted that a deprivation of livelihood is distinct from a present inability to pay"), *cert. denied sub nom. City of Los Angeles, California v. Pimentel*, 145 S. Ct. 2735 (2025); *Grashoff v. Adams*, 65 F.4th 910, 921 n.6 (7th

Cir. 2023) ("We note that even for courts that consider financial circumstances, it is not clear that a person's present ability to pay is relevant."); *United States v. Fogg*, 666 F.3d 13, 19 (1st Cir. 2011) ("the court mistakenly inquired as to whether [the defendant] had the means to satisfy the judgment and never reached the actual inquiry . . . of whether [the defendant's] post-incarceration livelihood would be imperiled by the forfeiture"). That accords with *Bajakajian*'s discussion of the issue. *Bajakajian*, 524 U.S. at 335 ("Similarly, Magna Charta . . . required only that amercements (the medieval predecessors of fines) should be proportioned to the offense and that they should not deprive a wrongdoer of his livelihood."). And because fines are intended to be punitive, a defendant's inability to pay a particular fine when imposed is not an appropriate consideration.

No circuit holds that courts considering an excessive fines challenge must consider a defendant's ability to pay. Two circuits (CA7, CADC) have declined to opine on the issue. Two circuits (CA3, CA4) have expressed doubt about whether it is a factor but have not ruled it out. Two circuits have ruled it out as a consideration (CA9, CA11), while one of those has also ruled out consideration of whether a fine would deprive the defendant of his livelihood (CA11). And at most three circuits (CA1, CA2, CA8) permit the consideration of whether a fine would deprive a defendant of his livelihood in the future—*not* the defendant's present ability to pay. But none of those three have actually held that a fine is excessive for that reason. As in *Bajakajian* itself, though, this case contains no factual findings that would permit this

Court to assess whether Petitioner's fines were excessive under that standard, leaving no occasion for the Court to resolve the legal question.

- The Seventh Circuit and the D.C. Circuit—like this Court in both *Bajakajian* and *Timbs*—have declined to opine on the issue. *Grashoff*, 65 F.4th at 921 ("The Supreme Court has declined to address whether the sanctioned person's financial condition is relevant to the excessiveness inquiry. So do we." (citation omitted)); *United States v. Bikundi*, 926 F.3d 761, 796 (D.C. Cir. 2019) ("The Excessive Fines Clause does not make obvious whether a forfeiture is excessive because a defendant is unable to pay, and '[n]either the Supreme Court nor this court has spoken' on that issue."); *see also Raftery v. State Bd. of Ret.*, 263 N.E.3d 833, 845 n.14 (Mass. 2025) (declining to reach the issue).

- The Third Circuit and the Fourth Circuit have expressed doubt that ability to pay is a consideration but have not ruled it out. *United States v. Bennett*, 986 F.3d 389, 400 (4th Cir. 2021) (explaining that "we have never expressly considered a defendant's means in evaluating the proportionality of a forfeiture judgment" but "to the extent that it is an appropriate consideration, it is merely one factor to be weighed with all other factors"); *United States v. Lessner*, 498 F.3d 185, 206 (3d Cir. 2007) ("even if a defendant's hardship is a proper consideration, *contra* [*United States v. Dubose*, 146 F.3d 1141, 1146 (9th Cir. 1998)], neither the lump-sum payments nor the post-incarceration monthly payments imposed here exceed Lessner's ability to pay").

- The Ninth Circuit has held that ability to pay is not a part of the proportionality analysis. *Pimentel*, 115 F.4th at 1072 ("We, too, once again decline to incorporate a means-testing requirement for claims arising under the Excessive Fines Clause."). Meanwhile, the Eleventh Circuit has held that whether a fine would deprive a defendant of his livelihood is not part of the inquiry. *United States v. Dicter*, 198 F.3d 1284, 1292 n.11 (11th Cir. 1999) (rejecting argument about effect of forfeiture on livelihood, explaining that "we do not take into account the personal impact of a forfeiture on the specific defendant in determining whether the forfeiture violates the Eighth Amendment"); *see also United States v. 817 N.E. 29th Drive, Wilton Manors, Fla.*, 175 F.3d 1304, 1311 (11th Cir. 1999) ("excessiveness is determined in relation to the characteristics of the offense, not in relation to the characteristics of the offender").

- The First Circuit and the Second Circuit allow the consideration of whether a fine would *deprive the defendant of his livelihood*, not his present ability to pay, although their approaches differ slightly. *United States v. Viloski*, 814 F.3d 104, 111 (2d Cir. 2016) ("when analyzing a forfeiture's proportionality under the Excessive Fines Clause, courts may consider—in addition to the four factors we have previously derived from *Bajakajian*—whether the forfeiture would deprive the defendant of his livelihood, i.e., his 'future ability to earn a living'" (citation omitted)); *United States v. Levesque*, 546 F.3d 78, 85 (1st Cir. 2008) ("it is not inconceivable that a forfeiture could be so onerous as to deprive a defendant of his or her future ability to earn a living, thus implicating the historical concerns underlying the Excessive Fines Clause," but "a defendant's inability to satisfy a forfeiture at the time of conviction, in and of itself, is not at all sufficient to render a forfeiture unconstitutional, nor is it even the correct inquiry"). In the Second Circuit, however, "courts need not consider this . . . factor in all cases"—instead, "the proportionality determination required by *Bajakajian* is sufficiently flexible to *permit* such consideration." *Viloski*, 814 F.3d at 112 (emphasis added). And neither the First Circuit nor the Second Circuit have ever held that a fine is excessive because it would deprive the defendant of his livelihood; as the First Circuit has explained, "the bar for a forfeiture order to be unconstitutionally excessive on livelihood-deprivation grounds is a high one." *United States v. Chin*, 965 F.3d 41, 58 (1st Cir. 2020).

The law in the Eighth Circuit is somewhat unclear. The Eighth Circuit has stated a few times that proportionality "is determined by a variety of factors, including . . . the defendant's ability to pay," but like the First and Second Circuits it has never held that a fine is excessive on that basis. *E.g.*, *Grant on behalf of United States v. Zorn*, 107 F.4th 782, 798 (8th Cir. 2024), *cert. denied*, 145 S. Ct. 2812 (2025), *and cert. denied sub nom. Zorn v. Grant*, 145 S. Ct. 2816 (2025). *But see United States v. Al Sharairei*, 130 F.4th 656, 667 (8th Cir. 2025) ("But a 'defendant's inability to satisfy a forfeiture at the time of conviction, in and of itself, is not at all sufficient to render a forfeiture unconstitutional, nor is it even the correct inquiry.' Rather, the Excessive Fines Clause is violated when the forfeiture amount is disproportionate to the gravity of the offense, not to the defendant's financial circumstances." (citations omitted)).

- Finally, as discussed above, some state supreme courts have held that ability to pay is a part of the *Bajakajian* analysis. *See supra* at x.

So the lay of the land is as follows. No circuit split exists on whether courts can impose mandatory fines without considering ability to pay. No circuit holds that courts must consider a defendant's present ability to pay, while a few state supreme courts hold that it is an appropriate consideration. A couple of circuits hold that when a defendant challenges a fine as excessive, the reviewing court may consider whether a fine would deprive the defendant of his livelihood, while only one circuit has held that courts may not consider that factor. And several more circuits have not yet definitively resolved the issue.

These minor differences in approach cry out for further percolation. The lower courts have not definitively taken sides on whether the appropriate consideration is a defendant's present ability to pay or the effect of a fine on a defendant's livelihood in the future. And while a few circuits disagree on whether the effect on a defendant's livelihood is an appropriate consideration, no circuit has held that a fine has crossed the threshold and is unconstitutional because it would deprive a defendant of his livelihood. In other words, in no circuit has this disagreement ever had any real-world effect. As for state courts, *Timbs*—incorporating the Excessive Fines Clause against the States—was decided only seven years ago; allowing state supreme courts more time to fully flesh out the arguments on both sides of the issues would be prudent. *See Gonzalez v. United States*, 145 S. Ct. 529, 533 (2025) (Sotomayor, J., respecting denial of certiorari) (recognizing "need for percolation").

Finally, this case is a poor vehicle for this Court to address this issue. As in *Bajakajian*, the trial court here "made no factual findings" as to whether the fines "would deprive [Petitioner] of his livelihood." 524 U.S. at 340 n.15. Although Petitioner is indigent, the record contains no evidence of his future earnings capacity or the effect the fines would have on his livelihood after he is released from prison. Any consideration of whether this issue is part of the constitutionally required analysis should take place in a case where, at least, the record is clear about whether a particular fine would deprive the petitioner's livelihood.

III. THE DECISION BELOW WAS CORRECT.

Certiorari is also unwarranted because the decision below was correct. Unlike Bajakajian himself ("not a money launderer, a drug trafficker, or a tax evader," who failed to report removal of currency from the United States), Petitioner "fit[s] into the class of persons for whom the statute was principally designed": drug traffickers. *Id.* at 338. It is "clear that the legislature saw the offense [Petitioner] committed, that of being a middleman [drug trafficker], as a significant crime." *Gordon*, 139 So. 3d at 961; *see* R.176 (Petitioner describing himself as a "middleman" in the drug transaction). So "it follows that the [Florida] legislature would assign a significant fiscal penalty to the crime in order to further disincentivize it." *Gordon*, 139 So. 3d at 961.

The other penalties authorized by the legislature are also significant: a mandatory prison sentence of three years for his cocaine offense, Fla. Stat. § 893.135(1)(b)(1)(a), and a mandatory prison sentence of seven years for his fentanyl offense, Fla. Stat. § 893.135(1)(c)(4)(b)(I). Unlike in *Bajakajian*, where the maximum sentence under the Sentencing Guidelines was six months, 524 U.S. at 338, the penalties for Petitioner's crimes confirm a high level of culpability.

And the harm caused by Petitioner was far from minimal. Again, unlike in *Bajakajian*, "[h]ad his crime gone undetected," *id.* at 339, the harm could have been disastrous and even fatal. Fentanyl has contributed to tens of thousands of overdose deaths annually in the United States, while cocaine is also responsible for many overdose deaths—and that is all setting aside the violence associated with drug trafficking. The Florida legislature acted well within its broad authority to penalize Petitioner's serious drug trafficking offenses with long prison sentences and large fines.

In all, Florida's Fourth District Court of Appeal correctly held that Petitioner's fines were not grossly disproportionate to his offense and were thus constitutional.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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July 6, 2026