

No. 26-349

IN THE
Supreme Court of the United States

SAMUEL BANKMAN-FRIED,
Petitioner,
v.

UNITED STATES,
Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Second Circuit**

**BRIEF OF *AMICUS CURIAE*
DUE PROCESS INSTITUTE
IN SUPPORT OF PETITIONER**

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QUESTIONS PRESENTED

1. In a prosecution under the "fraudulent inducement" theory of fraud--under which it is irrelevant whether victims suffered any financial losses--when, if ever, may the trial court admit evidence indicating whether the victims suffered such losses?

2. Does the Eighth Amendment permit forfeiture or other criminal fine that destroys any future prospect of earning a livelihood?¹

¹ This brief addresses only the second question presented.

TABLE OF CONTENTS

QUESTIONS PRESENTED	i
TABLE OF AUTHORITIES	iii
INTEREST OF AMICUS CURIAE	1
SUMMARY OF ARGUMENT	1
ARGUMENT	3
I. LIVELIHOOD-DESTROYING FORFEITURES AND FINES ARE A RECURRING PROBLEM	3
II. APPLICATION OF THE "ABILITY TO EARN A LIVELIHOOD" EXCESSIVE FINES STANDARD CAN HAVE A LIFE-CHANGING IMPACT	9
III. THE HISTORY OF THE EXCESSIVE FINES CLAUSE AND CONTEMPORARY CRIMINAL JUSTICE POLICY SUPPORT INTERPRETING THE CLAUSE TO PROHIBIT LIVELIHOOD- DESTROYING FORFEITURES AND FINES.....	11
CONCLUSION.....	13

TABLE OF AUTHORITIES

CASES

<i>Browning-Ferris Industries v. Kelco Disposal</i> , 492 U.S. 257 (1989).....	2, 11, 12
<i>Timbs v. Indiana</i> , 586 U.S. 146 (2019).....	11
<i>United States v. Bajakajian</i> , 524 U.S. 321 (1998).....	2, 9, 10, 11, 13
<i>United States v. Hatum</i> , 969 F.3d 1156 (11th Cir. 2020)	6, 7, 8
<i>United States v. Hatum</i> , 2026 U.S. App. LEXIS 927 (11th Cir. Jan. 14, 2026).....	7
<i>United States v. King</i> , 231 F. Supp.3d 872 (W.D. Okla. 2017)	2, 9, 10
<i>United States v. Levesque</i> , 546 F.3d 78 (1st Cir. 2008)	2, 9, 12, 13
<i>United States v. Viloski</i> , 814 F.3d 104 (2d Cir. 2016)	10
<i>Yates v. Pinellas Hematology & Oncology</i> , <i>P.A.</i> , 21 F.4th 1288 (11th Cir. 2021).....	10, 12

CONSTITUTION, STATUTES, AND RULES

U.S. Const. Amend. VIII	1, 2, 8, 11, 12, 13
18 U.S.C. § 982	6
18 U.S.C. § 1963	6
Sup. Ct. R. 37	1

OTHER AUTHORITIES

English Bill of Rights (1689).....	2
Magna Carta (1215)	2
Virginia Declaration of Rights (1776)	11
Beth A. Colgan & Nicholas M. McLean, <i>Financial Hardship and the Excessive Fines Clause: Assessing the Severity of Property Forfeitures After Timbs</i> , 129 Yale L.J.F. 430 (2020).....	5, 12
Alexandra Shookhoff, Robert Constantino & Evan Elkin, <i>Sentences After Sentencing: The Unintended Sentence of Criminal Justice Debt</i> , 24 Fed. Sent. R. 62 (October 2011).....	12
Nicholas M. McLean, <i>Livelihood, Ability to Pay, and the Original Meaning of the Excessive Fines Clause</i> , 40 Hastings L.Q. 833 (2013).....	12

INTEREST OF AMICUS CURIAE²

Due Process Institute is a nonprofit, bipartisan public interest organization that seeks to ensure fairness in the criminal justice system. The Eighth Amendment's prohibition on excessive fines is a critical component of that fairness. Due Process Institute supports an interpretation of the Excessive Fines Clause that both ensures proportionality between the financial sanction and the offense and protects the offender's ability to earn a livelihood when he or she reenters society.

SUMMARY OF ARGUMENT

1. Petitioner's \$11 billion forfeiture money judgment destroys his ability to earn a living after he completes his prison sentence and returns to society. He will never be able to pay the debt, and the government's collection efforts (or the ever-present threat of those efforts) will make it impossible for him to escape poverty and become a productive citizen. Nor is petitioner's predicament unique; many federal and state defendants face forfeitures and fines that deny them a livelihood and haunt them until death.

2. Interpreting the Excessive Fines Clause to prohibit forfeitures and fines that make it impossible to earn a living will have a life-changing impact on offenders facing significant financial

² Under Sup. Ct. R. 37.6, counsel for amicus curiae states that no counsel for a party authored this brief in whole or in part, and that no person other than amicus or its counsel made a monetary contribution to the preparation or submission of this brief. Counsel further states that amicus curiae gave each party timely notice under Sup. Ct. R. 37.2 of its intention to file this brief.

sanctions. Such a limit will, in the words of one federal court, produce penalties that "put [the offender] in the service of the government for a time but not forever." *United States v. King*, 231 F. Supp. 3d 872, 1006 (W.D. Okla. 2017). The livelihood protection limit will, for many offenders, mark the difference between a lifetime of poverty and a meaningful chance to reintegrate into society's financial mainstream.

3. To interpret the Excessive Fines Clause, this Court looks to the "origins of the Clause and the purposes which directed its Framers." *Browning-Ferris Industries v. Kelco Disposal*, 492 U.S. 257, 264 n.4 (1989). The history of the Clause, running from the Magna Carta through the English Bill of Rights to early state constitutions and on to the Eighth Amendment, shows that it both ensures proportionality between the fine and the offense, *see United States v. Bajakajian*, 524 U.S. 321 (1998), and protects the offender's ability to earn a living, *see United States v. Levesque*, 546 F.3d 78 (1st Cir. 2008). The livelihood protection guarantee serves the core criminal justice purposes of rehabilitating the offender and reintegrating him or her safely and productively into society.

ARGUMENT

I. LIVELIHOOD-DESTROYING FORFEITURES AND FINES ARE A RECURRING PROBLEM.

The Bureau of Prisons projects that Samuel Bankman-Fried will be released on Christmas Day 2043.³ He will be fifty-one years old. He will owe the government roughly \$11 billion, minus whatever pittance the BOP has deducted over the years from his inmate account under the Inmate Fiscal Responsibility Program. He presumably will have few or no assets; whatever he has not already surrendered to pay FTX's investors the government will have seized and sold.

How does the middle-aged Bankman-Fried earn a livelihood? If he takes a job, the government will garnish his wages. If he opens a bank account, the government will seize it. If he starts a business, the government will confiscate its earnings and assets. If he receives a gift or an inheritance, the government will take that too. And even if the government, through mercy or inadvertence, permits Bankman-Fried to make a living, he can never plan ahead financially, because at any moment the government could decide to take everything.

Bankman-Fried's case may seem unique, because of the sheer size of the forfeiture money judgment. But it has become common for the government to request, and courts to impose, forfeitures and fines so enormous that the defendant

³ See <https://www.bop.gov/inmateloc/>.

has no possibility of earning a livelihood upon release from prison. In *United States v. Gilbert T. Lopez, Jr.*, Case No. 4:09-cr-342 (S.D. Tex.), for example, the defendant was convicted for his role in a fraud committed by Robert Allen Stanford. Lopez was an accountant who served as controller and chief accounting officer at one of Stanford's companies. During the years of his employment there, he earned an average of \$218,000 per year.⁴ The district court sentenced him to 20 years in prison and imposed a forfeiture money judgment of \$2,034,065,453, representing funds diverted to Stanford's personal use.⁵ Such a staggeringly large judgment meant that Lopez would face a lifetime of debt to the government.

As a third example, a recent case in the Northern District of California involved a defendant, Ruthia He, who founded a telehealth company that treated patients who potentially had ADHD. She was convicted of conspiracy to distribute controlled substances and other offenses on the theory that the platform's prescribing practices were not consistent with the usual course of medical practice--initial evaluations were too brief, follow-up appointments did not occur with sufficient frequency, and so on. By the time of sentencing, Ms. He's net worth, according

⁴ *United States v. Lopez*, Case No. 13-20115 (5th Cir.), Brief for the Defendant-Appellant Gilbert T. Lopez, Jr. at 65 (Dec. 9, 2013).

⁵ *United States v. Gilbert T. Lopez, Jr.*, Case No. 4:09-cr-342, Order of Forfeiture Imposing Money Judgment, Doc. 1214 (S.D. Tex. Feb. 15, 2013); *id.*, Judgment in a Criminal Case at 7, Doc. 1225 (Feb. 22, 2013). President Biden commuted Lopez's sentence of imprisonment on December 12, 2024, but left the other components of his sentence in place. *Id.*, Executive Grant of Clemency at 12, Doc. 1603.

to the probation department, was about \$1.2 million. The district court imposed a forfeiture money judgment of more than \$91 million, based on the company's gross revenue during the period of the alleged conspiracy, along with a \$1 million fine.⁶ When the defendant completes her sentence and attempts to reenter society, she will, like Bankman-Fried and countless others, struggle to earn a livelihood under the weight of the massive judgment.

Not every livelihood-destroying forfeiture involves a multi-million or multi-billion-dollar money judgment. For defendants of little means, even a forfeiture or fine of a few thousand dollars can make earning a livelihood impossible. And forfeitures of property--homes, farms, vehicles, equipment, and tools, for example--can likewise cripple a defendant's ability to earn a living. *See, e.g.,* Beth A. Colgan & Nicholas M. McLean, *Financial Hardship and the Excessive Fines Clause: Assessing the Severity of Property Forfeitures After Timbs*, 129 Yale L.J.F. 430, 439-47 (2020) (describing the life-altering effects of vehicle and other property forfeitures).

Livelihood-destroying forfeitures and fines will continue absent action from this Court. The federal forfeiture statutes provide powerful tools to implement enormous financial penalties. Some of

⁶ *United States v. Ruthia He*, Case No. 3:24-cr-00329, Amended Order of Forfeiture, Doc. 731 (N.D. Cal. Aug. 31, 2026). The district court has not yet determined the amount of restitution, but the government has requested approximately \$5.5 million. *Id.*, United States' Memorandum Regarding Restitution, Doc. 742 (Sept. 16, 2026). The conviction and forfeiture order in *He* are currently on appeal to the Ninth Circuit. Undersigned counsel represents Ms. He.

those statutes require forfeiture not only of direct or indirect "proceeds" of a criminal offense and money or property "traceable to" those proceeds, but also of money or property "involved in" the offense, *e.g.*, 18 U.S.C. § 982(a)(1), or that "facilitate[s]" the offense, *id.* §§ 982(a)(6)(A)(ii)(II), 982(a)(8)(B). The RICO forfeiture statute goes even farther, requiring forfeiture of (among other things) any "interest in" the alleged RICO enterprise (which can include, for example, a corporation or other business) and any "property or contractual right of any kind affording a source of influence over" the enterprise. 18 U.S.C. § 1963(a). These forfeiture provisions are mandatory; they are in addition to restitution; and they apply even if the defendant no longer possesses the money or property at issue and even if the defendant has repaid the victim of the offense in full. Moreover, if the particular property subject to forfeiture is no longer available, the government can obtain a money judgment for its full value (as it did here and in *Lopez* and *He*) or pursue substitute assets unconnected to the offense.

The forfeiture in *United States v. Hatum*, 969 F.3d 1156 (11th Cir. 2020), illustrates the breadth and power of federal forfeiture. Hatum pled guilty to money laundering conspiracy, based on so-called "mirror" transactions. Hatum's U.S. companies would send phony invoices to his Panama company. The Panama company would use the invoices to draw against its line of credit at a Panama bank. It would wire the money to the U.S. companies, which would return it by check to the Panama company. The Panama company would then deposit the checks at the Panama bank, replenishing the line of credit with

interest. Neither the Panama bank nor anyone else lost money in these circular transactions. Hatum himself made no money from them.

The government initially sought a forfeiture money judgment of \$20,852,000 under 18 U.S.C. § 982(a)(1), representing the total amount "involved in" the round-trip transactions (\$10,426,000 for the Panama to U.S. leg and another \$10,426,000 for the return trip to Panama). It later settled on \$10,426,000 as the proper forfeiture, treating each round trip as one transaction. The district court refused to order any forfeiture, because the money had already been returned to the Panama bank with interest. The court noted that if forfeiture were mandatory, it would apply the Excessive Fines Clause and order a money judgment of \$520,000--\$10,000 for each of 52 transactions.

The government appealed and the Eleventh Circuit reversed. The court held that forfeiture under § 982(a)(1) is mandatory for all funds "involved in" the money laundering transactions, regardless of whether the money had been returned to the Panama bank. *Hatum*, 969 F.3d at 1162, 1164-65. It upheld the forfeiture of substitute assets, since the money involved in the transactions was no longer in Hatum's possession. *Id.* at 1166-67. And the court of appeals rejected the district court's Excessive Fines analysis. *Id.* at 1167-69. On remand, the district court entered a forfeiture money judgment of \$10,426,000. Hatum appealed, and the court of appeals affirmed. *United States v. Hatum*, 2026 U.S. App. LEXIS 927 (11th Cir. Jan. 14, 2026) (per curiam), *petition for writ of certiorari filed*, No. 26-320 (Sept. 8, 2026).

Hatsum neatly encapsulates the features of federal forfeiture that make it such a powerful tool in the hands of prosecutors: it reaches not only "proceeds," but other categories of property as well; it is mandatory; it must be ordered even when the defendant has returned the funds at issue to the alleged victim; and if the money or property to be forfeited is no longer available, substitute assets unconnected to the crime can be confiscated in its stead.

Year in and year out, the federal government employs the broad forfeiture statutes to rake in billions of dollars.⁷ The states confiscate at least \$300 million to \$350 million annually and probably more.⁸ With this powerful government incentive to forfeit money and other property, only strict enforcement of the Eighth Amendment will protect the ability of criminal defendants and others to earn a living and participate in the national economy.

⁷ See <https://www.justice.gov/afp/deposits> (listing Department of Justice Asset Forfeiture Program receipts by year).

⁸ Institute for Justice, *Policing for Profit* (4th ed. 2026), available at <https://ij.org/report/policing-for-profit-4/>.

II. APPLICATION OF THE "ABILITY TO EARN A LIVELIHOOD" EXCESSIVE FINES STANDARD CAN HAVE A LIFE-CHANGING IMPACT.

When courts treat the ability to earn a livelihood as a discrete limit on fines and forfeitures under the Excessive Fines Clause, the result can be life-changing for the offender. *United States v. King*, 231 F. Supp. 3d 872 (W.D. Okla. 2017), illustrates this point. Defendants were convicted of offenses arising from operation of an online sports betting platform. The government sought a forfeiture money judgment of more than \$231,000,000 against all defendants, who ranged from the owner and CEO of the platform to runners who collected and paid out money to bettors and agents who supervised them. *Id.* at 882, 918, 922.

Following an evidentiary hearing, the district court found the evidence supported a money judgment of roughly \$12,000,000. *Id.* at 995. For the owner and CEO, it imposed that judgment in full. *Id.* at 999. For the runners and agents, however, it considered both the Eighth Amendment proportionality standard in *United States v. Bajakajian*, 524 U.S. 321 (1998), and the separate ability to earn a livelihood limit in *United States v. Levesque*, 546 F.3d 78 (1st Cir. 2008). *See King*, 231 F. Supp. 3d at 904.

The court's analysis of agent Paul Tucker shows its approach. It first determined how much of the \$12 million total was foreseeable to Tucker, given his mid-level role, and found he was responsible for forty percent, or slightly more than \$5 million. *Id.* at

1004. Turning to proportionality under *Bajakajian*, the court reduced this figure by ten percent, to about \$4.5 million. *Id.* at 1005. Finally, the court addressed Tucker's ability to earn a living. It noted Tucker's age (fifty-one), his financial status ("a significant negative net worth"), and his "diminished earning capacity." *Id.* at 1005-06. The court concluded that a \$200,000 money judgment "will put Tucker . . . significantly under water on Day 1. But he has the ability and skills needed to work himself out of the hole beginning on Day 2. A forfeiture money judgment in that amount will be sufficient to put Tucker in the service of the government for a time but not forever." *Id.* at 1006.

King thus shows the dramatic effect of treating ability to earn a livelihood as a discrete Excessive Fines Clause limit on forfeitures and fines. If the district court had imposed the judgment that proportionality analysis alone required--about \$4.5 million--Tucker would have been "in the service of the government . . . forever." That is the Eleventh Circuit's approach; in that Circuit, a court must "blind[itself] to the effect of a fine on a defendant's livelihood." *Yates v. Pinellas Hematology & Oncology, P.A.*, 21 F.4th 1288, 1321 (11th Cir. 2021) (Newsom, J., concurring). If the court had followed the Second Circuit's approach in *United States v. Viloski*, 814 F.3d 104 (2d Cir. 2016), it would have considered the effect of a multi-million-dollar judgment on Tucker's livelihood in conducting the *Bajakajian* proportionality analysis, but it would not have viewed a forfeiture that prevented Tucker from earning a living as a discrete violation of the Excessive Fines Clause. Under *Viloski*, therefore, a court could have given

Tucker's ability to earn a livelihood less weight than its assessment of his culpability and the other factors outlined in *Bajakajian* and left him a pauper for life. According to the Second Circuit, the Excessive Fines Clause condones such a result, as Bankman-Fried's case illustrates.

III. THE HISTORY OF THE EXCESSIVE FINES CLAUSE AND CONTEMPORARY CRIMINAL JUSTICE POLICY SUPPORT INTERPRETING THE CLAUSE TO PROHIBIT LIVELIHOOD-DESTROYING FORFEITURES AND FINES.

To interpret the Excessive Fines Clause, this Court "look[s] to the origins of the Clause and the purposes which directed its Framers. The applicability of the Eighth Amendment always has turned on its original meaning, as demonstrated by its historical derivation." *Browning-Ferris Industries v. Kelco Disposal*, 492 U.S. 257, 264 n.4 (1989) (quotation omitted). Courts and scholars have thoroughly traced the "historical derivation" of the Excessive Fines Clause. The Clause was drawn almost verbatim from § 9 of the 1776 Virginia Declaration of Rights. Section 9 of the Virginia Declaration, in turn, came from the 1689 English Bill of Rights. And the excessive fines provision of the English Bill of Rights traces back to the Magna Carta. In this Court's paraphrase, the Magna Carta required that "amercements (the medieval predecessors of fines) should be proportioned to the offense *and that they should not deprive a wrongdoer of his livelihood.*" *Bajakajian*, 524 U.S. at 335 (emphasis added); *see, e.g., Timbs v. Indiana*, 586 U.S. 146, 151-52 (2019)

(same); *Browning-Ferris Industries*, 492 U.S. at 271 (Magna Carta "requir[ed] that the amercement not be so large as to deprive him of his livelihood").

English law carried the protection of an offender's livelihood from Magna Carta to the English Bill of Rights, and the American colonists adopted that understanding as well. *See, e.g., Yates*, 21 F.4th at 1322-23 (Newsom, J., concurring) (tracing these developments); *Levesque*, 546 F.3d at 83-85 (same); Nicholas M. McLean, *Livelihood, Ability to Pay, and the Original Meaning of the Excessive Fines Clause*, 40 Hastings Const. L.Q. 833, 854-72 (2013) (tracing the protection of livelihood from the Magna Carta through the English Bill of Rights and early state constitutions and into the Excessive Fines Clause of the Eighth Amendment).

This history powerfully supports interpreting the Excessive Fines Clause to prohibit forfeitures and fines that prevent an offender from earning a livelihood. That interpretation not only respects this Court's reliance on the "origins of the Clause and the purposes which directed its Framers," *Browning-Ferris Industries*, 492 U.S. at 264 n.4; it also harmonizes with a central purpose of criminal punishment: rehabilitating the offender and reintegrating him or her into society. *See Colgan & McLean, supra*, 129 Yale L.J.F. at 436-37 (exorbitant forfeitures and fines may interfere with offender's rehabilitation and obligations to the criminal justice system); Alexandra Shookhoff, Robert Constantino & Evan Elkin, *Sentences After Sentencing: The Unintended Sentence of Criminal Justice Debt*, 24 Fed. Sent. R. 62 (Oct. 2011) ("Financial penalties

often turn into unmanageable debts that interfere with reentry and rehabilitation because of the financial and emotional strain on economically unstable individuals, as well as the criminal and civil consequences of failure to pay.").

The *Levesque* interpretation of the Excessive Fines Clause is correct, as a matter of both the Framers' original intent and contemporary criminal justice policy. In addition to the proportionality principle addressed in *Bajakajian*, the Clause embodies a discrete prohibition on livelihood-destroying forfeitures and fines.

CONCLUSION

The Court should grant the petition for writ of certiorari and, on consideration of the merits, hold that the Eighth Amendment prohibits a forfeiture or fine that destroys any future prospect of earning a livelihood.

Respectfully submitted,

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