

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 FOR LEGAL SCHOLARS AS *AMICI*  
*CURIAE* IN SUPPORT OF PETITIONER**

---

ANTHONY J. DICK

*Counsel of Record*

THOMAS E. HOPSON

NICHOLAS J. GRANDPRE

JONES DAY

51 Louisiana Ave., NW

Washington, DC 20001

(202) 879-3939

ajdick@jonesday.com

---

*Counsel for Amici Curiae*

---

## TABLE OF CONTENTS

|                                                                                                                                | <b>Page</b> |
|--------------------------------------------------------------------------------------------------------------------------------|-------------|
| INTEREST OF <i>AMICI CURIAE</i> .....                                                                                          | 1           |
| INTRODUCTION AND SUMMARY OF<br>ARGUMENT .....                                                                                  | 2           |
| ARGUMENT .....                                                                                                                 | 4           |
| I.        THE EXCESSIVE FINES CLAUSE PROHIBITS<br>FINES THAT DEPRIVE DEFENDANTS OF THEIR<br>LIVELIHOODS. ....                  | 4           |
| A.        The Magna Carta Prohibited<br>Livelihood-Destroying Fines. ....                                                      | 4           |
| B.        The English Bill of Rights of 1689<br>Reaffirmed the Livelihood-Protection<br>Principle. ....                        | 8           |
| C.        American Colonists and the Founders<br>Preserved the Livelihood-Preservation<br>Principle. ....                      | 14          |
| II.        THIS COURT SHOULD GRANT REVIEW AND<br>HOLD THAT THE EXCESSIVE FINES CLAUSE<br>BARS LIVELIHOOD-DESTROYING FINES..... | 18          |
| CONCLUSION .....                                                                                                               | 22          |

## TABLE OF AUTHORITIES

|                                                                                                            | <b>Page(s)</b>    |
|------------------------------------------------------------------------------------------------------------|-------------------|
| <b>CASES</b>                                                                                               |                   |
| <i>Austin v. United States</i> ,<br>509 U.S. 602 (1993).....                                               | 4                 |
| <i>Browning-Ferris Indus. of Vt., Inc.</i><br><i>v. Kelco Disposal, Inc.</i> ,<br>492 U.S. 257 (1989)..... | 4-5, 7, 9, 12, 16 |
| <i>District of Columbia v. Heller</i> ,<br>554 U.S. 570 (2008).....                                        | 14                |
| <i>Edwards v. Hughs</i> ,<br>25 Eng. Rep. 146 (1726).....                                                  | 8                 |
| <i>Harmelin v. Michigan</i> ,<br>501 U.S. 957 (1991).....                                                  | 21                |
| <i>Impeachment of Sir Richard Bolton</i> ,<br>4 How. St. Tr. 51 (Parl. (Ire.) 1641).....                   | 9                 |
| <i>Indiana v. Timbs</i> ,<br>169 N.E.3d 361 (Ind. 2021).....                                               | 20                |
| <i>Jones v. Commonwealth</i> ,<br>5 Va. 555 (1799) .....                                                   | 16                |
| <i>Jouppi v. Alaska</i> ,<br>566 P.3d 943 (Alaska 2025) .....                                              | 22                |

|                                                                                        |                               |
|----------------------------------------------------------------------------------------|-------------------------------|
| <i>McDonald v. City of Chicago</i> ,<br>561 U.S. 742 (2010).....                       | 14                            |
| <i>Second Trial of Titus Oates</i> ,<br>10 How. St. Tr. 1227 (K.B. 1685).....          | 11                            |
| <i>Stokeling v. United States</i> ,<br>586 U.S. 73 (2019).....                         | 14                            |
| <i>Timbs v. Indiana</i> ,<br>586 U.S. 146 (2019).....                                  | 2, 4, 7-10, 12, 14, 16, 19-20 |
| <i>Trial of John Hampden</i> ,<br>9 How. St. Tr. 1054 (K.B. 1684).....                 | 10                            |
| <i>The Case of Earl of Devonshire</i> ,<br>11 How. St. Tr. 1353 (Parl. 1687).....      | 11                            |
| <i>United States v. Bajakajian</i> ,<br>524 U.S. 321 (1998).....                       | 2, 4, 7, 22                   |
| <i>United States v. Crooks</i> ,<br>2023 WL 3944547 (11th Cir. June<br>12, 2023) ..... | 19                            |
| <i>United States v. Dicter</i> ,<br>198 F.3d 1284 (11th Cir. 1999).....                | 3, 19                         |
| <i>United States v. Levesque</i> ,<br>546 F.3d 78 (1st Cir. 2008) .....                | 3, 18                         |
| <i>United States v. Viloski</i> ,<br>814 F.3d 104 (2d Cir. 2016) .....                 | 3, 19                         |

|                                                             |    |
|-------------------------------------------------------------|----|
| <i>United States v. Weems</i> ,<br>217 U.S. 349 (1910)..... | 11 |
|-------------------------------------------------------------|----|

|                                                                                                        |    |
|--------------------------------------------------------------------------------------------------------|----|
| <i>Yates v. Pinellas Hematology &amp;<br/>Oncology, P.A.</i> ,<br>21 F.4th 1288 (11th Cir. 2021) ..... | 16 |
|--------------------------------------------------------------------------------------------------------|----|

#### CONSTITUTIONAL AND STATUTORY AUTHORITIES

|                                                                |    |
|----------------------------------------------------------------|----|
| Del. Const. of 1776, Decl. of Rights, § 16.....                | 17 |
| Ga. Const. of 1777, art. LIX.....                              | 17 |
| Mass. Const. of 1780, pt. 1, art. XXVI .....                   | 17 |
| Md. Const. of 1776, Decl. of Rights,<br>§ XXII.....            | 17 |
| N.C. Const. of 1776, Decl. of Rights, § X .....                | 17 |
| N.H. Const. of 1784, art. 1, § XXXIII.....                     | 17 |
| N.Y. Charter of Liberties and Privileges<br>(1683).....        | 15 |
| 1787 N.Y. Laws 344 .....                                       | 17 |
| Pa. Const. of 1776, Plan of Gov't, § 29.....                   | 17 |
| Pa. Frame of Gov't, Laws Agreed Upon<br>in England (1682)..... | 15 |
| 1712 S.C. Acts 28 .....                                        | 15 |

|                                               |    |
|-----------------------------------------------|----|
| S.C. Const. of 1790, art. IX, § 4.....        | 17 |
| 1786 Va. Laws ch. 64, at 42 .....             | 16 |
| Vt. Const. of 1786, Plan of Gov't, § 29 ..... | 17 |

#### OTHER AUTHORITIES

|                                                                                                                                                      |        |
|------------------------------------------------------------------------------------------------------------------------------------------------------|--------|
| Anon., <i>A Letter to a Gentleman at<br/>Brussels, Containing an Account of<br/>the Causes of the Peoples Revolt from<br/>the Crown</i> (1689) ..... | 12     |
| 3 M. Bacon, <i>A New Abridgement of the<br/>Law</i> (1798).....                                                                                      | 13     |
| 4 W. Blackstone, <i>Commentaries</i> (1769) .....                                                                                                    | 13     |
| A. Boddupalli, <i>New Census Data Shows<br/>Fines and Fees Revenues Are Rising</i> ,<br>Tax Policy Ctr. (Sep. 15, 2026) .....                        | 20     |
| J. Chitty, <i>A Practical Treatise on the<br/>Criminal Law</i><br>(Philadelphia, I. Riley 1819).....                                                 | 13     |
| E. Coke, <i>The Second Part of the<br/>Institutes of the Laws of England</i><br>(London, E & R Brooke 1797) (1628).....                              | 6      |
| B. Colgan, <i>Reviving the Excessive Fines<br/>Clause</i> , 102 CAL. L. REV. 277 (2014) .....                                                        | 17, 20 |

|                                                                                                                                           |    |
|-------------------------------------------------------------------------------------------------------------------------------------------|----|
| B. Colgan, <i>The Burdens of the Excessive Fines Clause</i> , 63 WM. & MARY L. REV. 407 (2021) .....                                      | 6  |
| B. Colgan, <i>The Excessive Fines Clause: Challenging the Modern Debtors' Prison</i> , 65 UCLA L. REV. 2 (2018) .....                     | 20 |
| T. Cooley, <i>Constitutional Limitations</i> (1868).....                                                                                  | 17 |
| 2 T. Cunningham, <i>A New and Complete Law Dictionary</i> (2d ed. 1771) .....                                                             | 14 |
| <i>Dominus Rex v. Oates</i> , reprinted in 1 The Manuscripts of the House of Lords 1689-1690 (1889) .....                                 | 11 |
| J. Dummer, <i>A Defence of the New-England Charters</i> (1721) .....                                                                      | 15 |
| W. Eden, <i>Principles of Penal Law</i> (2d ed. 1771) .....                                                                               | 13 |
| W. Hudson, <i>A Treatise on The Court of Star Chamber</i> (1635), reprinted in 2 F. Hargrave, <i>Collectanea Juridica</i> 36 (1792) ..... | 9  |
| 14 Journal of the House of Lords: 1685-1691 (1767-1830).....                                                                              | 11 |

|                                                                                                                                         |     |
|-----------------------------------------------------------------------------------------------------------------------------------------|-----|
| K.J. Kesselring, <i>Conspiracy, Crime, and Conflict in the Court of Star Chamber</i> , 43 L. & HIST. REV. 693 (2025) .....              | 8   |
| 1 T. Madox, <i>The History and Antiquities of the Exchequer of the Kings of England</i> (2d ed., London, W. Owen & B. White 1769) ..... | 7   |
| Magna Charta, 9 Hen. III, ch. 14 (1225),<br>1 Stat. at Large 5 (1769) .....                                                             | 5-6 |
| F.W. Maitland, <i>Pleas of the Crown for the County of Gloucester</i> (1884) .....                                                      | 8   |
| <i>Mariland's Grevances Wiy The Have Taken Op Arms</i> (Beverly McAnear ed.) (1689), reprinted in<br>8 J. S. HIST. 392 (1942) .....     | 15  |
| C. Massey, <i>The Excessive Fines Clause and Punitive Damages: Some Lessons from History</i> , 40 VAND. L. REV. 1233 (1987) .....       | 4   |
| W.S. McKechnie, <i>Magna Carta: A Commentary on the Great Charter of King John</i> (2d ed. 1914) .....                                  | 5-6 |

|                                                                                                                                                 |                |
|-------------------------------------------------------------------------------------------------------------------------------------------------|----------------|
| N. McLean, <i>Livelihood, Ability to Pay, and the Original Meaning of the Excessive Fines Clause</i> , 40 HASTINGS CONST. L.Q. 833 (2013) ..... | 5-9, 16, 20-21 |
| M. O'Hear, <i>Can the Excessive Fines Clause Mitigate the LFO Crisis? An Assessment of the Caselaw</i> , 108 MINN. L. REV. 1171 (2024) .....    | 20             |
| B. Oliver, <i>The Rights of an American Citizen</i> (1832) .....                                                                                | 17             |
| L. Schworer, <i>The Declaration of Rights, 1689</i> (1981) .....                                                                                | 7-9            |
| J. Stinneford, <i>Experimental Punishments</i> , 95 NOTRE DAME L. REV. 39 (2019) .....                                                          | 14             |
| 4 H. Walter, <i>A History of England</i> (London, J.G. & F. Rivington 1834) .....                                                               | 9              |

**INTEREST OF *AMICI CURIAE*<sup>1</sup>**

*Amici curiae* are law professors who have prepared this brief to assist the Court with understanding the text, history, and purpose of the Eighth Amendment's prohibition on excessive fines. A complete list of *amici* is contained in Appendix A.

---

<sup>1</sup> No counsel for any party authored this brief in whole or in part and no entity or person, aside from *amici curiae* and their counsel, made any monetary contribution toward its preparation or submission. *See* Sup. Ct. R. 37.6. In accordance with Supreme Court Rule 37.2, counsel of record for all parties received notice of *amici*'s intention to file this brief at least 10 days prior to the due date.

## INTRODUCTION AND SUMMARY OF ARGUMENT

The Excessive Fines Clause limits the government’s power to extract payments from private parties as punishment for their alleged wrongdoing. This limitation is “deeply rooted in this Nation’s history and tradition.” *Timbs v. Indiana*, 586 U.S. 146, 154 (2019) (citation omitted). And as a historical matter, the limitation has always contained two distinct components: The first provides that all fines must be “proportioned to the wrong.” *Id.* at 151. And the second—at issue here—forbids fines that are “so large as to deprive [an offender] of his livelihood.” *Id.*

This second principle traces its venerable lineage back to the Magna Carta. In 1215, the English Crown committed to no longer fine offenders in amounts that would destroy their ability to earn a living. Instead, each fine was required to preserve each offender’s “contentment,” meaning the resources needed to sustain both the offender and his dependents. This principle was reaffirmed with the abolition of the Star Chamber in 1641 and the adoption of the English Bill of Rights in 1689. And the principle eventually crossed the Atlantic, where the Founding generation incorporated it into both the Excessive Fines Clause and the majority of early state constitutions. All along, the livelihood-preservation principle has operated independently from the separate rule—applied by this Court in *United States v. Bajakajian*, 524 U.S. 321 (1998)—that fines must be proportional to “the gravity of the defendant’s offense.” *Id.* at 336-37; *see also id.* at 340 n.15 (reserving whether the fine in *Bajakajian* would have “deprive[d the defendant] of his livelihood”).

Despite this history, the federal circuits are split on whether the Excessive Fines Clause protects against livelihood-destroying fines. There are three different approaches. *First*, the First Circuit has held that the Excessive Fines Clause bars fines that are “so great as to deprive a wrongdoer of his or her livelihood,” “regardless of the relationship between the [fine] and the gravity of the offense.” *United States v. Levesque*, 546 F.3d 78, 83-85 (1st Cir. 2008). *Second*, the Second Circuit has held that courts “may consider ... whether a forfeiture would deprive the defendant of his livelihood” as a “component of the proportionality analysis, not a separate inquiry.” *United States v. Viloski*, 814 F.3d 104, 111-12 (2d Cir. 2016); *see* Pet. App. 31a-32a. And *third*, the Eleventh Circuit forbids taking any account of “the personal impact of a forfeiture on the specific defendant.” *United States v. Dicter*, 198 F.3d 1284, 1292 n.11 (11th Cir. 1999).

This Court should grant certiorari and resolve this important conflict. While *amici* hold a range of views about the Excessive Fines Clause, they agree that the livelihood-preservation principle has deep roots in our constitutional history. *Amici* also agree that the principle is distinct from the proportionality principle at issue in both *Bajakajian* and *Jouppi v. Alaska*, No. 25-246 (cert. granted July 20, 2026); *see infra* at 22. And *amici* further agree that the livelihood-preservation principle provides essential protection to a wide range of civil and criminal defendants. Indeed, many defendants today face crippling fines that threaten a permanent deprivation of their ability to support themselves—a form of punishment persisting well beyond any period of incarceration. Today, as in 1215, such excessive fines are unconstitutional.

## ARGUMENT

### I. THE EXCESSIVE FINES CLAUSE PROHIBITS FINES THAT DEPRIVE DEFENDANTS OF THEIR LIVELIHOODS.

When interpreting the Excessive Fines Clause, this Court has long looked to history. *See Bajakajian*, 524 U.S. at 340-44; *Austin v. United States*, 509 U.S. 602, 606-14 (1993); *Browning-Ferris Indus. of Vt., Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 264-68 (1989). And here, the history of the Excessive Fines Clause makes clear that a fine is excessive when it would deprive a defendant of his ability to earn a living.

#### A. The Magna Carta Prohibited Livelihood-Destroying Fines.

The Excessive Fines Clause “traces its venerable lineage back to at least 1215,” when the Magna Carta limited the Crown’s ability to extract monetary payments from English subjects. *Timbs*, 586 U.S. at 151. The relevant provisions of the Magna Carta responded to the “use and abuse” of “amercements,” meaning payments that were “required of individuals who were ‘in the King’s mercy.’” *Browning-Ferris*, 492 U.S. at 269. Amercements were “the most common criminal sanction in 13th-century England.” *Id.* (citation omitted). But they were also “‘all-purpose’ royal penalt[ies],” *id.*, that were often used to punish conduct not constituting a crime, *see* C. Massey, *The Excessive Fines Clause and Punitive Damages: Some Lessons from History*, 40 VAND. L. REV. 1233, 1251-53 (1987). For present purposes, amercements are accurately described as the “medieval predecessors of fines.” *Bajakajian*, 524 U.S. at 335.

Through the Magna Carta, the barons at Runnymede cabined both the “circumstances under which a person could be amerced, and the amount of the amercement.” *Browning-Ferris*, 492 U.S. at 270. As relevant here, Chapter 14 of the Magna Carta provides:

A Free-man shall not be amerced for a small fault, but after the manner of the fault; and for a great fault after the greatness thereof, saving to him his contenement; (2) and a Merchant likewise, saving to him his Merchandise; (3) and any other’s villain than ours shall be likewise amerced, saving his wainage, if he falls into our mercy. (4) And none of the said amerciements shall be assessed, but by the oath of honest and lawful men of the vicinage.

*Id.* at 270 n.14 (quoting Magna Charta, 9 Hen. III, ch. 14 (1225), 1 Stat. at Large 5 (1769)).

A critical word in that provision is “contenement,” which “has been variously defined as [a person’s] ‘freehold,’ ‘tenement,’ or ‘countenance.’” N. McLean, *Livelihood, Ability to Pay, and the Original Meaning of the Excessive Fines Clause*, 40 HASTINGS CONST. L.Q. 833, 855 (2013). By providing that amercements could not deprive individuals of their contenement, the Magna Carta prevented depriving individuals of their livelihood. *See id.* at 855-56. In particular, the Magna Carta required leaving each offender with the resources “sufficient for the sustenance of himself and those dependent on him.” W.S. McKechnie, *Magna Carta: A Commentary on the Great Charter of King John* 293 (2d ed. 1914). As such, amercements could not push offenders “absolutely to the wall.” *Id.* at 287.

A similar protection was created by the prohibitions on depriving merchants of their “Merchandise” and “villain[s]” of their “wainage.” For this purpose, “[m]erchandise” meant either a merchant’s (i) “wares, the stock-in-trade without which the pursuit of his calling would be impossible,” or (ii) “his business itself, his position as merchant.” *Id.* at 289. Similarly, a “villain” was a kind of feudal serf, and the “wainage” referred to either (i) his “crops” and “tillage,” *id.* at 291, or (ii) “the furniture of his cart or wain,” McLean, *supra*, at 855 n.84 (quoting E. Coke, *The Second Part of the Institutes of the Laws of England* 28 (London, E & R Brooke 1797) (1628)). “Regardless of which etymology is correct, the overall livelihood-protection thrust of the [Magna Carta] remains apparent.” *Id.*

Moreover, the plain text of the Magna Carta makes clear that it places two independent limits on the size of amercements. *First*, Chapter 14 of the Magna Carta created an *offense*-based limit, providing that amercements must correspond to the “manner” or “greatness” of the offense. Magna Charta, 9 Hen. III, ch. 14 (1225). *Second*, the Magna Carta protected individuals’ “contenement,” “Merchandise,” and “wainage,” ensuring that no amercement would permanently destroy their means of sustenance. *Id.* As a matter of ordinary English, an amercement could satisfy that first limit (by being proportional to the gravity of the offender’s conduct) but flunk the second (by extracting the offender’s “contenement”). *Id.* So under the Magna Carta, the livelihood-preservation principle was an independent barrier against excessive fines. See McLean, *supra*, at 835, 863; B. Colgan, *The Burdens of the Excessive Fines Clause*, 63 WM. & MARY L. REV. 407, 424 (2021).

This Court has previously recognized this characteristic of the Magna Carta. For example, in *Browning-Ferris*, the Court explained that the document limited the “abuses [of amercements] in four ways,” including by “requiring that the amount of the amercement be proportioned to the wrong” and “requiring that the amercement not be so large as to deprive him of his livelihood.” 492 U.S. at 271 (citation omitted). Similarly, *Bajakajian* explained that, under the Magna Carta, “amercements ... should be proportioned to the offense and [] should not deprive a wrongdoer of his livelihood.” 524 U.S. at 335. *Timbs*, too, described the livelihood-preservation principle as an independent, standalone rule. *See* 586 U.S. at 151.

Moreover, there is abundant evidence that English law followed the livelihood-preservation principle in the years after the Magna Carta’s adoption. *See* McLean, *supra*, at 856. For example, fine rolls during the reign of King Henry III show penalties assessed “according to the manner of that trespass and the quantity of their goods, saving their contenment.” *Id.* (quoting For J. le Fraunceyes and His Associates, Fine Roll C 60/57, 44 Henry III (1259)). In addition, English law developed “a writ to enforce the concept of *salvo contenmento suo*,” which is Latin for saving his contenment. L. Schworer, *The Declaration of Rights, 1689*, at 91 (1981); *see also* McLean, *supra*, at 854. And as a practical matter, English courts routinely set amercements such that an offender could “sav[e] the Maintenance of himself, his Wife and Children.” 1 T. Madox, *The History and Antiquities of the Exchequer of the Kings of England* 678 (2d ed., London, W. Owen & B. White 1769).

And for good reason. Before the Magna Carta, English Lords “set such excessive and grievous [fines] on their Tenants ... [that] they used to seize the whole Profit of the Tenement.” McLean, *supra*, at 863 n.118 (quoting *Edwards v. Hughs*, 25 Eng. Rep. 146, 147-48 (1726)). The livelihood-preservation principle barred such arbitrary and profit-motivated punishments. *See id.* The principle also ensured that amerced offenders would retain “economic viability,” *id.* at 855-56—a consideration that remains important today, *see infra* at 19-21. These considerations do much to explain why there was “[v]ery likely ... no clause in Magna Carta more grateful to the mass of the people than that about amercements.” F.W. Maitland, *Pleas of the Crown for the County of Gloucester* xxxiv (1884).

In sum, a defining feature of the Magna Carta was protecting Englishmen against fines that would destroy their livelihoods. This protection existed independently from the Magna Carta’s prohibition on disproportional fines. And as discussed below, the protection had enduring influence on English law.

### **B. The English Bill of Rights of 1689 Reaffirmed the Livelihood-Protection Principle.**

That said, this influence was not always linear. By the seventeenth century, some English courts had disregarded the Magna Carta’s protections against excessive fines. Most infamous was the Court of Star Chamber, which was “[e]ssentially the monarch’s council acting in a judicial capacity.” K.J. Kesselring, *Conspiracy, Crime, and Conflict in the Court of Star Chamber*, 43 L. & HIST. REV. 693, 696 (2025); *see also Timbs*, 586 U.S. at 162 (Thomas, J., concurring in the

judgment). But English law eventually rebuked the Star Chamber's abuses, as well as the Stuart Kings' related departures from the Magna Carta. And in doing so, English law redoubled its commitment to the livelihood-preservation principle.

1. In the period before the English Civil War, the Star Chamber took "every opportunity [to] impos[e] such fines as should supply the king with a considerable revenue, in the absence of parliamentary grants." 4 H. Walter, *A History of England* 135 (London, J.G. & F. Rivington 1834). In particular, the Star Chamber "imposed heavy fines," often targeting "the king's enemies." Schwoerer, *supra*, at 91; *see also Browning-Ferris*, 492 U.S. at 267. The court's ruinous fines often led to "the destruction of the offender's estate and utter ruin of him and his posterity." W. Hudson, *A Treatise on The Court of Star Chamber* (1635), reprinted in 2 F. Hargrave, *Collectanea Juridica* 36 (1792).

Defenders of English liberty criticized the Star Chamber's abuses. For example, during a 1641 impeachment trial, one advocate exclaimed, "though Magna Charta be so sacred for antiquity ... it only survives in the Rolls, but is miserably rent and torn in the Practice. These words, '*salvo contenemento*,' live in the Rolls, but they are dead in the Star-chamber." *Impeachment of Sir Richard Bolton*, 4 How. St. Tr. 51, 53 (Parl. (Ire.) 1641) (argument). Another contrasted the Star Chamber's abuses with the prior practices of Archbishop of Canterbury John Whitgift, noting that "Arch-Bishop Whitgift did constantly in this Court maintain the Liberty of the Free-Charter, that none ought to be fined but *salvo Contenimento*." McLean, *supra*, at 857 (citation omitted).

The Star Chamber’s imposition of excessive fines was an important factor in Parliament’s 1641 decision to abolish the court altogether. Indeed, the abolishing statute “specifically prohibited any court thereafter from ... levying ... excessive fines.” *Timbs*, 586 U.S. at 162 (Thomas, J., concurring in the judgment) (citation omitted).

2. The reprieve from excessive fines was short-lived. In particular, the practice of “impos[ing] ruinous fines” resumed when the Stuart monarchy returned to power in 1660. *Id.* at 162. And from there, fines became a key “flashpoint in the constitutional and political struggles between the king and his parliamentary critics” “leading up to the Glorious Revolution.” *Id.* at 161.

Many of the most controversial fines in this period violated the livelihood-preservation principle. For example, in *The Trial of John Hampden*, the infamous Chief Justice of the King’s Bench George Jeffreys affirmed a £40,000 fine for a misdemeanor—“the most extravagant fine that had ever been set for a misdemeanor in that Court” and which “amounted ... to an imprisonment for life.” 9 How. St. Tr. 1054, 1054 (K.B. 1684); *see also Timbs*, 586 U.S. at 162 (Thomas, J., concurring in the judgment). Jeffreys rejected the defendant’s invocation of the Magna Carta—including its guarantee that “there should be a Salvo Contenemento in all fines”—on the tenuous theory that the Magna Carta’s protections did not apply to the category of “fines for great offences” against the Crown. *Hampden*, 9 How. St. Tr. at 1124-25; *see also Timbs*, 586 U.S. at 163 (Thomas, J., concurring in the judgment).

Several similar fines were overturned by Parliament. For example, in 1685, Jeffreys and the King's Bench fined Anglican cleric Titus Oates 2,000 marks (on top of other penalties) for spreading false reports of a Jesuit conspiracy against Charles II. *Second Trial of Titus Oates*, 10 How. St. Tr. 1227, 1315-17 (K.B. 1685). Oates petitioned Parliament to have his sentence overturned, characterizing his fine as "twice as much as [he] was worth, and therefore against Magna Charta." *Dominus Rex v. Oates*, reprinted in 1 The Manuscripts of the House of Lords 1689-1690, at 81 (1889). The House of Lords rejected his appeal, but several of its members dissented on the grounds that excessive fines may not be imposed. See 10 How. St. Tr. at 1325. And the House of Commons later sided with Oates, passing a bill "to reverse the two judgments against [him]." *Id.* at 1329.

The House of Lords took a more active role in the case of Lord Devonshire, who was fined £30,000 by the King's Bench "for an assault and battery." *United States v. Weems*, 217 U.S. 349, 376 (1910). On appeal, Devonshire invoked the livelihood-preservation principle. *The Case of Earl of Devonshire*, 11 How. St. Tr. 1353, 1362 (Parl. 1687). The House of Lords ultimately deemed his fine "excessive and exorbitant, against Magna Charta, the common right of the subject, and against the law of the land." *Weems*, 217 U.S. at 376. And the House of Lords took the same position when a defendant was fined £10,000 for sending seditious letters, insisting that "all Fines ought to be with a *Salvo Contenemento*, and not to the Parties Ruin." 14 Journal of the House of Lords: 1685-1691, at 210 (1767-1830), available at <https://tinyurl.com/ybueuwch>.

Commentators and Parliament alike decried these abusive fines. In 1680, a House of Commons committee found that “the Court of King’s Bench, in the Imposition of Fines on Offenders of late Years, hath acted arbitrarily, illegally, and partially.” *Timbs*, 586 U.S. at 162 (Thomas, J., concurring in the judgment) (citation omitted). Impeachment articles charged allies of the Stuart monarchy with imposing “Fines ... without any regard to the Nature of the Offences, or *the Ability of Persons*.” *Id.* (quoting 9 Journals of the House of Commons 692 (Dec. 23, 1680)) (emphasis added). And a 1689 commentator noted the “severe fines” imposed “contrary to *Magna Charta’s salvo contenimento, i.e., saving to them their livelihoods[.]*” Anon., *A Letter to a Gentleman at Brussels, Containing an Account of the Causes of the Peoples Revolt from the Crown* 6-7 (1689).

3. Against this backdrop, Section 10 of the English Bill of Rights reaffirmed the longstanding English prohibition on excessive fines. Like the Eighth Amendment to the U.S. Constitution, that Section provides that “excessive Bail ought not to be required, nor excessive Fines imposed; nor cruel and unusual Punishments inflicted.” *Browning-Ferris*, 492 U.S. at 266-67 (quoting 1 Wm. & Mary, 2d Sess., ch. 2, 3 Stat. at Large 440, 441 (1689)). As relevant here, that provision was “intended to curb the excesses of English judges,” including the imposition of “huge monetary penalties” that “opponents of the King” “*could not pay*.” *Id.* at 267 (emphasis added). In that respect, the English Bill of Rights reiterated the Magna Carta’s commitment to the livelihood-preservation principle.

Leading English commentators agreed on this critical point. For example, Blackstone explained that the Bill of Rights' prohibition on excessive fines was "declaratory ... of the old constitutional law." 4 W. Blackstone, *Commentaries* \*372 (1769). He emphasized that—under that law—no man should have "a larger amercement imposed upon him, than his circumstances or personal estate will bear." *Id.* at \*372. And he added that "it is *never* usual to assess a larger fine than a man is able to pay, without touching the implements of his livelyhood; but to inflict corporal punishment, or a stated imprisonment, which is better than an excessive fine, for that amounts to imprisonment for life." *Id.* at \*373 (emphasis added). Thus, the Crown's fining power was dependent on the "quality and condition of the parties," as "what is ruin to one man's fortune, may be matter of indifference to another's." *Id.* at \*371.

Other leading commentators similarly underscored the importance of the livelihood-protection principle. Matthew Bacon wrote that amercements "were always holden too grievous and excessive, if they deprived the offender of the means of his livelihood." 3 M. Bacon, *A New Abridgement of the Law* 186 (1798). William Eden instructed courts not "to take from [a defendant] the implements, and means of his profession, and livelihood; or ... deprive his family of their necessary support." W. Eden, *Principles of Penal Law* 65 (2d ed. 1771). Joseph Chitty pronounced that "[b]y the bill of rights ... it is never usual to assess a larger fine than the delinquent is able to pay without touching the means of his subsistence[.]" J. Chitty, *A Practical Treatise on the Criminal Law* 581 (Philadelphia, I. Riley 1819). And an "important"

1771 legal dictionary, *see District of Columbia v. Heller*, 554 U.S. 570, 581 (2008), under the definition of “fines for offences,” stated that “amercements ... were always held too grievous and excessive, if they deprived the offender of the means of his livelihood.” 2 T. Cunningham, *A New and Complete Law-Dictionary* (unpaginated) (2d ed. 1771). Critically, these commentators framed the livelihood-preservation principle as an *absolute* bar on livelihood-depriving fines, not merely one factor in a separate proportionality analysis.

### **C. American Colonists and the Founders Preserved the Livelihood-Preservation Principle.**

The livelihood-preservation principle crossed the Atlantic and became an essential component of American jurisprudence on punishment. After all, “[a]s English subjects, the colonists considered themselves to be vested with the same fundamental rights as other Englishmen.” *McDonald v. City of Chicago*, 561 U.S. 742, 816 (2010) (Thomas, J., concurring in part and concurring in the judgment). “Americans were [thus] steeped in the English constitutional writings of Coke and Blackstone,” so much so that they eventually “justified their break from England on the ground that the British refused to respect their longstanding common-law rights.” J. Stinneford, *Experimental Punishments*, 95 NOTRE DAME L. REV. 39, 57 (2019). Accordingly, when the colonists barred their newly formed governments from imposing excessive fines, it was only natural that they took the “old soil” of the livelihood-preservation principle with them. *Stokeling v. United States*, 586 U.S. 73, 80 (2019).

Indeed, colonial governments expressly articulated that principle, often drawing on language from the Magna Carta. For example, a Pennsylvania charter required “[t]hat all fines shall be moderate, and saving men’s contenements, merchandize, or wainage.” Pa. Frame of Gov’t, Laws Agreed Upon in England, art. XVIII (1682), *reprinted in* 1 B. Schwartz, *The Bill of Rights: A Documentary History* 132, 141 (1971). Similarly, a New York charter repeated Chapter 14 of the Magna Carta almost verbatim.<sup>2</sup> So too did an early South Carolina statute.<sup>3</sup> And during Maryland’s Revolution of 1689, which coincided with the Glorious Revolution, colonists condemned “[t]he Imposseinge Exessive fines Contrary to magna Charta without any respect had to the salvo Contenemento suo sibi therein Injoynd.” *Mariland’s Grevances Wiy The Have Taken Op Arms* (Beverly McAnear ed.), *reprinted in* 8 J. S. Hist. 392, 401 (1942). A prominent pamphleteer thus observed that “[t]he Subjects Abroad claim the Privilege of *Magna Charta*,” including the principle of “*salvo contenemento*.” J. Dummer, *A Defence of the New-England Charters* 22 (1721).

---

<sup>2</sup> N.Y. Charter of Liberties and Privileges (1683), *reprinted in* 1 Schwartz, *supra*, at 165 (providing that a “freeman Shall not be amerced for a small fault, but after the manner of his fault and for a great fault after the Greatnesse thereof Saveing to him his freehold, And a husbandman saveing to him his Wainage and a merchant likewise saveing to him his merchanize”).

<sup>3</sup> See 1712 S.C. Acts 28 (“[T]hat no City, Borough, nor Town, nor any man be amerced, without reasonable Cause, and according to the quantity of his Trespass; that is to say, every Free-man, saving his Freehold, a Merchant saving his Merchandise, a Villain saving his Waynage.”).

The Founding Generation shared the same commitment to the livelihood-protection principle. The clearest illustration of this commitment is the excessive fines clause of the Virginia Declaration of Rights, which “adopted verbatim the language of the English Bill of Rights.” *Browning-Ferris*, 492 U.S. at 266 (citation omitted). Indeed, the Virginia legislature implemented that protection against excessive fines by requiring that each “amercement ... be according to the degree of the fault, and saving to the offender his contenement.” 1786 Va. Laws ch. 64, at 42; *see also* McLean, *supra*, at 869-70. The Chief Justice of the Virginia Supreme Court described that protection as “bottomed upon [the] article of *magna charta*” that reflected the rule of “*salvo contenemento*.” *Jones v. Commonwealth*, 5 Va. 555, 556-57 (1799); *see also* McLean, *supra*, at 869-70. And in that same case, Judge Carrington similarly underscored that Virginia’s protection against excessive fines “embodied the traditional legal understanding that any ‘fine or amercement ought to be according to the degree of the fault and the estate of the defendant.’” *Timbs*, 586 U.S. at 165 (Thomas, J., concurring in the judgment) (quoting *Jones*, 5 Va. at 557).

That history carries particular weight here because the Eighth Amendment was “based directly” on that critical language in the Virginia Declaration of Rights. *Browning-Ferris*, 492 U.S. at 266 (citation omitted). Thus, the fact that the Declaration of Rights prevented livelihood-destroying fines strongly suggests that the Eighth Amendment does as well. *See Yates v. Pinellas Hematology & Oncology, P.A.*, 21 F.4th 1288, 1323 (11th Cir. 2021) (Newsom, J., concurring).

That said, Virginia was far from the only State to prohibit excessive fines. By 1791, ten state constitutions prohibited excessive fines.<sup>4</sup> And some states followed Virginia in enacting statutes that made the livelihood-protection principle explicit. For instance, in 1787, the New York legislature passed a statute requiring that any “fine or amercement shall always be according to the quantity of his or her trespass or offence *and saving to him or her, his or her contenment.*” 1787 N.Y. Laws 344-45 (emphasis added); *see also* B. Colgan, *Reviving the Excessive Fines Clause*, 102 CAL. L. REV. 277, 330-32 (2014) (collecting additional examples).

Against that backdrop, American commentators likewise understood the Excessive Fines Clause to bar livelihood-ruining fines. Most notably, Thomas Cooley wrote that each “fine should have some reference to the party’s ability to pay.” T. Cooley, *Constitutional Limitations* 328 (1868). Cooley explicitly invoked the “merciful spirit” of the Magna Carta, which “addresses itself to ... the American States through the [excessive fines] provision of their constitutions,” as well as the common-law rule barring fines “to the extent of the offender’s goods and chattels.” *Id.* at 329 (citation omitted); *see also* B. Oliver, *The Rights of an American Citizen* 185 (1832) (writing that a “man’s farm or stock in trade, ought never to be made a sacrifice, to the ruin of himself and the distress of his family”).

---

<sup>4</sup> *See* Del. Const. of 1776, Decl. of Rights, § 16; Ga. Const. of 1777, art. LIX; Md. Const. of 1776, Decl. of Rights, § XXII; N.C. Const. of 1776, Decl. of Rights, § X; Pa. Const. of 1776, Plan or Frame of Gov’t, § 29; Mass. Const. of 1780, pt. 1, art. XXVI; N.H. Const. of 1784, art. 1, § XXXIII; Vt. Const. of 1786, Plan or Frame of Gov’t, § 29; S.C. Const. of 1790, art. IX, § 4; *supra* at 16.

In short, from the Magna Carta to the English Bill of Rights, it was a settled principle of English liberty that no fine could deprive any wrongdoer of his livelihood. That principle made its way with full force across the Atlantic with the colonists. As is evident from early colonial charters, the Virginia Declaration of Rights, and similar Founding-era constitutions, the Excessive Fines Clause prohibits imposing fines that deprive defendants of their livelihood.

## **II. THIS COURT SHOULD GRANT REVIEW AND HOLD THAT THE EXCESSIVE FINES CLAUSE BARS LIVELIHOOD-DESTROYING FINES.**

Despite that history, the federal courts of appeals are deeply divided on whether the Eighth Amendment prohibits livelihood-destroying fines. That conflict has important implications for a wide range of both civil and criminal defendants. This Court should thus grant certiorari to resolve that conflict and hold that fines are unconstitutionally excessive when they would deprive defendants of their livelihood.

1. The federal courts of appeals have taken three positions on this question. *See* Pet. 25-28. To start, the First Circuit has held that the Excessive Fines Clause bars fines that are “so great as to deprive a wrongdoer of his or her livelihood,” “regardless of the relationship between the [fine] and the gravity of the offense.” *Levesque*, 546 F.3d at 83-85. In that respect, the First Circuit treats the livelihood-preservation principle as an independent limit on covered fines.

By contrast, the Second Circuit has held that courts “may consider ... whether the forfeiture would deprive the defendant of his livelihood” as a “component of the proportionality analysis,” rather than as a separate

limit on excessive fines. *Viloski*, 814 F.3d at 111-12. The Second Circuit has acknowledged that this holding “part[s] ways with the First Circuit.” *Id.* at 112 n.12. And the Second Circuit relied on that holding below, where it held that the Petitioner’s inability to satisfy an \$11 billion judgment “does not render a forfeiture that satisfies the *Bajakajian* factors grossly disproportionate and thus does not establish a constitutional violation.” Pet. App. 32a.

On the other end of the spectrum, the Eleventh Circuit does “not take into account the personal impact of a forfeiture on the specific defendant in determining whether the forfeiture violates the Eighth Amendment.” *Dieter*, 198 F.3d at 1292 n.11. The Eleventh Circuit has thus rejected all possible applications of the livelihood-preservation principle. *See id.*; *see also United States v. Crooks*, 2023 WL 3944547, at \*2 (11th Cir. June 12, 2023) (per curiam).

For the reasons that Petitioner has explained, this case squarely presents the above division between the First, Second, and Eleventh Circuits. *See* Pet. 25-28. The case is thus an appropriate vehicle for resolving that circuit split. *Id.* at 33-34. And for the reasons discussed above, this Court should resolve the split by adopting the First Circuit’s position—namely, that fines are unconstitutionally excessive when they would deprive defendants of their ability to earn a living. *See supra* at 4-18.

2. That holding would provide important protection to a wide range of civil and criminal defendants. “Perhaps because they are politically easier to impose than generally applicable taxes, state and local governments [] increasingly depend heavily on fines and fees as a source of general revenue.” *Timbs*, 586

U.S. at 154 (citation omitted). Indeed, state and local governments collected a total of “\$17.8 billion from criminal legal fines, fees, and forfeitures in fiscal year 2024.” A. Boddupalli, *New Census Data Shows Fines and Fees Revenues Are Rising*, Tax Policy Ctr. (Sep. 15, 2026), <https://tinyurl.com/4467f2dz>. That figure has increased substantially from the \$16 billion in fines, fees, and forfeitures that those same governments collected in 2019. See M. O’Hear, *Can the Excessive Fines Clause Mitigate the LFO Crisis? An Assessment of the Caselaw*, 108 MINN. L. REV. 1171, 1176 (2024). And in any event, the monetary fines imposed on any individual defendant can be sizable. See B. Colgan, *Reviving the Excessive Fines Clause*, *supra*, at 280, 285 (collecting examples).

Moreover, the failure to pay such fines itself carries significant costs. Defendants who cannot pay in full at sentencing may face burdens such as “monthly payment fees, collections costs, and interest, or probation fees where probation is imposed solely due to an inability to pay.” B. Colgan, *The Excessive Fines Clause: Challenging the Modern Debtors’ Prison*, 65 UCLA L. REV. 2, 48 (2018). These penalties can compound over time, “drag[ging] people further away from reintegration to civil society.” McLean, *supra*, at 887. And similar difficulties can arise when fines take the form of asset forfeiture. For example, in *Timbs*, the Indiana Supreme Court allowed the defendant to retain his vehicle (in part) because it was his “only asset” and thus “essential to him reintegrating into society to maintain employment and seek treatment.” *Indiana v. Timbs*, 169 N.E.3d 361, 376 (Ind. 2021). A contrary result, by contrast, would have deprived the defendant of his ability to earn a living.

There are good reasons to be concerned about such deprivations, even when the gravity of a defendant's offense is sufficiently serious as to warrant extended incarceration. For one, while imprisonment "cost[s] a State money[,] fines are a source of revenue." *Harmelin v. Michigan*, 501 U.S. 957, 978 n.9 (1991) (opinion of Scalia., J.). There is thus a risk that state and local governments will demand heightened fines because they "stand[] to benefit" from doing so. *Id.* In addition, saddling criminal defendants with significant fines hinders their ability to regain "economic viability" after a period of incarceration. McLean, *supra*, at 855-56. And that result, in turn, has the practical effect of extending criminal punishment long beyond a finite prison sentence.

Indeed, Petitioner has raised that exact concern in this case, arguing that his criminal fine will require him "to turn over every dime he might ever earn in the future to the government," even after completing his 25-year sentence. Pet. 35-36. That financial dilemma is not unusual. Today, as in 1215, there is a wide range of civil and criminal defendants who face livelihood-destroying fines, which deny them any legitimate means of earning a living even after they are released back into society. This Court should hold that all of those defendants have recourse under the Excessive Fines Clause.<sup>5</sup>

3. For avoidance of doubt, this petition presents a fundamentally different issue than *Jouppi v. Alaska*, No. 25-246. The central issue in *Jouppi* concerns the principle that fines should not be "grossly

---

<sup>5</sup> *Amici* take no position on whether the particular forfeiture order in this case violates the Excessive Fines Clause.

disproportional to the gravity of [a defendant's] offense." *Bajakajian*, 524 U.S. at 324. Specifically, *Jouppi* asks whether that proportionality analysis looks to "the gravity of the [defendant's] underlying offense purely in the abstract or should consider the gravity of the specific defendant's wrongdoing." Brief of Petitioner at i, *Jouppi*, No. 25-246 (Sep. 3, 2026). That case does not present any live issue concerning the livelihood-preservation principle. Indeed, the Alaska Supreme Court decision "assume[d], without deciding, that a forfeiture order cannot constitutionally deprive [the defendant] of his livelihood." *Jouppi v. Alaska*, 566 P.3d 943, 958 (Alaska 2025). For those reasons, this Court's decision to grant certiorari in *Jouppi* is no obstacle to granting certiorari on the distinct question here.

### CONCLUSION

This Court should grant the petition.

Respectfully submitted,

ANTHONY J. DICK  
*Counsel of Record*  
 THOMAS E. HOPSON  
 NICHOLAS J. GRANDPRE  
 JONES DAY  
 51 Louisiana Ave., NW  
 Washington, DC 20001  
 (202) 879-3939  
 ajdick@jonesday.com

OCTOBER 15, 2026

*Counsel for Amici Curiae*