No. _____

In The Supreme Court of the United States

THE RETAIL PROPERTY TRUST,

Petitioner,

v.

NASSAU COUNTY DEPARTMENT OF ASSESSMENT, JAMES E. DAVIS, AS ACTING COUNTY ASSESSOR, THE NASSAU COUNTY LEGISLATURE and THE COUNTY OF NASSAU,

Respondents.

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

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PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

To raise revenue, a local government transformed a rarely-enforced $500 fine into a multimillion-dollar fine under the guise of seeking a better compliance rate and more accurate assessment data for property owners. The result was the issuance of a $4.8 million fine to Petitioner without any prior notice or opportunity to challenge it. In upholding the Constitutionality of the fine, the Second Circuit's decision below ruled on two important Constitutional questions in a manner conflicting with this Court's precedent and the decisions of multiple Circuit Courts. The questions presented are:

Whether, when determining if a civil fine violates the Excessive Fines Clause under *United States v. Bajakajian*, a court may evaluate the gravity of the underlying offense purely in the abstract (as the Second Circuit did below), or must instead consider the gravity of the specific defendant's conduct (as six other Circuit Courts have held)?

Whether the availability of a state remedy entirely forecloses a procedural due process claim under 42 U.S.C. § 1983 (as the Second Circuit held below), or whether, consistent with this Court's decisions in *Zinermon v. Burch* and *Knick v. Township of Scott*, a plaintiff challenging an official government action may bring a procedural due process claim irrespective of available state remedies (as four other Circuit Courts have held)?

PARTIES TO THE PROCEEDINGS

Petitioner The Retail Property Trust was the Plaintiff in the United States District Court for the Eastern District of New York and the Plaintiff-Appellant in the United States Court of Appeals for the Second Circuit.

Respondents the County of Nassau, its Department of Assessment, the Acting County Assessor James E. Davis, and the Nassau County Legislature (collectively, "the County") were the Defendants in the United States District Court for the Eastern District of New York and were the Defendants-Appellees in the United States Court of Appeals for the Second Circuit.

CORPORATE DISCLOSURE STATEMENT

The Retail Property Trust is a Massachusetts Business Trust duly organized and existing under and by virtue of the laws of Massachusetts. Simon Property Group, L.P. is the majority beneficial owner of The Retail Property Trust. Simon Property Group, Inc., a publicly held corporation (SPG), is the general partner of Simon Property Group, L.P.

RELATED PROCEEDINGS

The proceedings identified below are directly related to the above-captioned case in this Court.

Retail Prop. Tr. v. Nassau Cnty. Dep't of Assessment, No. 25-907, 185 F.4th 316 (2d Cir. 2026) (Wesley, Sullivan, and Menashi, JJ.).

Retail Prop. Tr. v. Nassau Cnty. Dep't of Assessment, 17-cv-2193 (JS)(AYS), 2025 WL 5153006 (E.D.N.Y. Mar. 28, 2025) (Seybert, J.).

Retail Prop. Tr. v. Nassau Cnty. Dep't of Assessment, 17-cv-2193 (JS)(AYS), 2024 WL 4664644 (E.D.N.Y. Aug. 21, 2024) (Shields, M.J.)

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PETITION FOR WRIT OF CERTIORARI

This case presents fundamental questions regarding the standard for when a fine violates the Eighth Amendment's Excessive Fines Clause, and whether the failure to provide notice or an opportunity to challenge the fine violates procedural due process irrespective of the availability of state remedies. On December 19, 2013, Nassau County, desperate to raise revenue, amended its Annual Statement of Income and Expense Law (the "ASIE Law" or the "Law"), to transform the fine for non-compliance from a mere $500 fine into a multimillion dollar penalty for commercial property owners like Plaintiff-Petitioner, The Retail Property Trust (the "Trust"), which owns and operates Roosevelt Field Mall, the second-largest retail shopping mall in the State of New York. Originally enacted in 1984, the ASIE Law provided *for decades* a mere $500 fine for non-compliance. Despite achieving a high rate of compliance when it enforced the Law, the County *exponentially* increased the fine overnight under the guise of seeking a better compliance rate and more accurate assessment data. The result was the issuance of a $4.8 million fine to the Trust – thousands of times greater than the fines issued for the very same non-compliance in the year prior – without any prior notice or an opportunity for the Trust to challenge the fine, despite the County's own rules requiring notice and a hearing.

The Excessive Fines Clause and the Due Process Clause were enacted precisely to protect against such injustice.

With respect to the Excessive Fines Clause, the Second Circuit broke with this Court's precedent and that of numerous Circuit and state high courts. "[A] punitive forfeiture," this Court has held, "violates the Excessive Fines Clause if it is grossly disproportional to the gravity of a defendant's offense." *United States v. Bajakajian*, 524 U.S. 321, 334 (1998). And in evaluating the gravity of the offense, many courts start from the shared premise that: "[i]t is critical" to "review the specific actions of the violator rather than by taking an abstract view of the violation." *Thomas v. County of Humboldt*, 124 F.4th 1179, 1193 (9th Cir. 2024) (citation omitted). Based on that shared premise, the Indiana Supreme Court on remand from this Court in *Timbs v. Indiana* recently "focus[ed] on the specific harms of [the defendant's] specific acts", and held that the fine at issue there was excessive. *State v. Timbs*, 169 N.E.3d 361, 373 (Ind. 2021); *see also Timbs v. Indiana*, 586 U.S. 146 (2019).

With the decision below, the Second Circuit has adopted a minority view and embraced a fundamentally different standard: it examined the gravity of the offense in highly abstract terms and divorced from the facts of the case. It dismissed as irrelevant the fact that the Trust's non-compliance with the ASIE Law was merely a "reporting offense" (just like *Bajakajian*), which did not involve any "illegal activities of any kind" — despite this Court's describing as "highly relevant" whether a defendant's offense "was unrelated to any other crime." *Bajakajian*, 524 U.S. at 338 n.12. It compared the value of the fine to the fair market value of the

underlying property, despite the complete lack of any connection between the two for assessing the gravity of the offense or the proportionality of the fine. It disregarded that the ASIE Law requires the disclosure of the Trust's most confidential and proprietary information, including Roosevelt Field Mall's rent rolls, and that the County lacks adequate safeguards to ensure the confidentiality of such data.

The court also ignored the undisputed lack of any harm caused by the Trust's non-reporting of its admittedly "useless" income and expense data ("ASIE data"), instead giving complete deference to the ASIE Law's "purported goal of protecting the public fisc by helping the County develop more accurate assessments." App. 18a. Only then could it hold that the overnight transformation of a $500 fine into a multimillion fine for the non-submission of "useless" data complies with the Excessive Fines Clause. The Second Circuit's departure from *Bajakajian*, and its conflicting precedent with other Circuit Courts and state high courts, presents a compelling basis for this Court's intervention.

So, too, does the Second Circuit's departure from this Court's established procedural due process analysis. With regard to the Due Process Clause, the Second Circuit held that the mere existence of post-deprivation state judicial remedies (i.e., an Article 78 claim) necessarily forecloses any procedural due process claims in federal court.

However, this Court has repeatedly held that litigants do not need to pursue state remedies before asserting constitutional claims in federal court. *Knick v. Twp. of Scott*, 588 U.S. 180, 194 (2019). Although this Court recognized a narrow exception to the principle for certain types of due process claims in *Parratt v. Taylor*, 451 U.S. 527 (1981), it has since made clear that *Parratt's* state remedies requirement applies only to due process claims challenging rogue government employee actions. *Parratt* does not apply where, like here, a claimant challenges official government action for which pre-deprivation process is possible. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 426 (1982); *Gregory v. Town of Pittsfield*, 470 U.S. 1018, 1022 (1985) (O'Connor, J., joined by Marshall, J., and Brennan, J., dissenting from denial of certiorari) (arguing that the *Parratt* rule should not apply where "the deprivation involved [ ] did not result from the unauthorized conduct of individual employees, but instead reflected the town's policy").

In this case, the Trust's procedural due process claim challenges the official deprivation of property pursuant to established state procedures where the County was in a position, and indeed, required under its own rules, to provide pre-deprivation notice and a hearing, but failed to do so. In holding that the mere availability of a state remedy bars the Trust's procedural due process claim, the decision below conflicts with this Court's own refusal to interpose such a state remedies barrier to Constitutional claims seeking relief in federal court from due process

violations. *See Logan*, 455 U.S. at 426; *Zinermon v. Burch*, 494 U.S. 113, 132 (1990).

Indeed, under the unreasonably broad state remedies rule applied below, almost *all* property-based procedural due process claims are now barred in federal courts within the Second Circuit. *See* 185 F.4th at 330 n.6 ("Because the availability of [Article 78] guarantees that a property owner will not be fined without notice and an opportunity to be heard … [it] therefore satisfies the Due Process Clause"). The same rule applies in the Eleventh Circuit. *See McKinney v. Pate*, 20 F.3d 1550, 1562-63 (11th Cir. 1994) (en banc) ("[O]nly when the state refuses to provide a process sufficient to remedy the procedural deprivation does a constitutional violation actionable under section 1983 arise."). Such a preclusive jurisdictional regime conflicts with this Court's seminal precedent holding that Section 1983 provides a federal remedy for unconstitutional actions, and "the fact that it is also a violation of state law does not make it any the less a federal offense." *Screws v. United States*, 325 U.S. 91, 108-13 (1945). Consequently, this case also presents a compelling basis for the Court's intervention on procedural due process grounds. Accordingly, the Petition should be granted.

OPINIONS BELOW

The decision below of the United States Court of Appeals for the Second Circuit is reported at 185 F.4th 316 (2d Cir. 2026) (App. 1a). The District Court's Memorandum and Order Denying Plaintiff's Motion

for Summary Judgment and Granting Defendants' Motion for Summary Judgment is not reported, but is available at 2025 WL 5153006 (App. 31a). The Magistrate Judge's Report and Recommendation is not reported, but is available at 2024 WL 4664644 (App. 79a).

JURISDICTION

The District Court had jurisdiction over this case under 42 U.S.C. § 1983 and 28 U.S.C. § 1331. The Second Circuit issued its decision affirming the judgment of the District Court on August 6, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS AT ISSUE

The Eighth Amendment to the United States Constitution provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

The Fourteenth Amendment to the United States Constitution states, in relevant part: "nor shall any State deprive any person of life, liberty, or property, without due process of law[.]"

42 U.S.C. § 1983 provides, in relevant part:

> Every person who, under color of any statute, ordinance, regulation, custom,

> or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . .

STATEMENT OF THE CASE

A. Nature Of The Case.

The Trust brought this action to address the County's unconstitutional and arbitrary conduct in enforcing the ASIE Law. Enacted in 1984, the original version of the law (the "Prior ASIE Law") provided for a mere fine of $500 for non-compliance, enforcement of which resulted in significant compliance. Since its amendment in December 2013, however, the ASIE Law now provides for draconian penalties for non-compliance, which are based on the "fair market value" of the property.

In particular, in December 2016, the Trust, which owns and operates Roosevelt Field Mall, a large shopping mall located in the County, was assessed ***nearly $4.8 million in fines*** by the County for not submitting Annual Survey of Income and Expense statements ("ASIE Statements") for 2013 and 2014. In assessing such excessive fines, the County did not

provide the required notices or an opportunity to cure or challenge the purported violations *before* the fines were imposed. Perhaps even more egregious, by the time it assessed the fines, the County knew that it would never use, and never could use, the ASIE data, and imposed the fines merely to generate revenue for the County.

The original purpose of the law was to collect data for statistical analysis and modeling in order to assist the County in obtaining more accurate assessed values for Class IV income-producing properties in the County. The ASIE Law requires the disclosure of a commercial property owner's income and expense information, and in particular, its rent rolls, which for property owners like the Trust, constitute highly sensitive trade secret information.

The ostensible purpose of increasing the penalties for violations of the ASIE Law in December 2013 (i.e., to achieve a better compliance rate and obtain more data for such assessment use), was mere subterfuge. Indeed, throughout the course of discovery, it was revealed that the 2013 and 2014 ASIE data was completely unusable for any purpose – and that any such data for Roosevelt Field Mall specifically, could never be used for the stated purpose. Despite knowing this, the County still imposed penalties on the Trust of nearly $4.8 million for the non-submission of ASIE Statements in 2013 and 2014. The imposition of these excessive and grossly disproportional penalties violated the Trust's rights under the United States Constitution to be free

from excessive fines and also violated the Trust's procedural due process rights.

Moreover, while the County repeatedly represented to the Trust and the public that the ASIE data was adequately safeguarded to protect the confidentiality of the ASIE data, this too proved to be untrue. In fact, discovery revealed that the purportedly confidentially-maintained ASIE data was neither encrypted nor significantly protected from unauthorized disclosure, and the County system that maintained this data suffered from numerous technical weaknesses, which admittedly permitted unauthorized individuals to access the system. This was especially concerning for the Trust, as the unauthorized disclosure of its most sensitive financial information, including Roosevelt Field Mall's rent rolls, would cause the Trust tremendous economic and competitive harm. For these reasons, the Trust brought this action against the County on April 11, 2017 (A-1, A-743)[1] to vindicate its rights: (i) to be free from excessive fines (U.S. CONST. amend. VIII; N.Y. CONST. art. 1, § 5); (ii) for violations of its procedural and substantive due process rights (U.S. CONST. amend. XIV; N.Y. CONST. art. 1, § 6); and (iii) for relief under Article 78 of New York's CPLR.

[1] "A-" refers to the Joint Appendix on file with the United States Court of Appeals for the Second Circuit, No. 25-907.

B. Relevant Procedural History.

On October 27, 2017, the County filed a motion to dismiss the Trust's complaint. App. 32a. On January 25, 2018, the District Court (Bianco, J.) denied the County's motion to dismiss, and issued an oral decision from the bench. *Id*. Discovery thereafter commenced, and on December 1, 2023, the parties filed cross-motions for summary judgment. App. 32a-33a.

On August 21, 2024, Magistrate Judge Shields, on referral from Judge Seybert, issued a Report and Recommendation recommending that: (i) Defendants' motion for summary judgment be granted; (ii) Plaintiff's motion for summary judgment be denied; and (iii) the Court decline to exercise supplemental jurisdiction over Plaintiff's state law claims. App. 79a. Following the issuance of the Report and Recommendation, and Plaintiff's objections thereto, the District Court issued a Memorandum and Order on March 28, 2025: (i) overruling Plaintiff's objections to the Report and Recommendation; (ii) adopting the Report and Recommendation in its entirety; and (iii) directing the clerk to enter judgment in favor of the County. App. 31a. On March 31, 2025, the clerk entered Judgment in favor of Defendants. (A-32).

On April 9, 2025, the Trust filed a Notice of Appeal. (A-32). On August 6, 2026, after argument and briefing, the Second Circuit affirmed the District Court's Memorandum and Order in a reported decision, 185 F.4th 316, (Wesley, Sullivan, and

Menashi, Circuit Judges, with Judge Wesley concurring in part by separate written opinion). App. 1a. In particular, the Second Circuit held:

(i) the Excessive Fines Clause shields both individuals and business entities, including trusts and corporations, from excessive fines;

(ii) the $4.8 million fine imposed on the Trust for the non-submission of ASIE data did not violate the Excessive Fines Clause, even though the data was admittedly useless and the prior fine that existed for decades was only $500 yet achieved high compliance when actually enforced;

(iii) the Trust's procedural due process rights were not violated, even though the $4.8 million fine was imposed without prior notice or an opportunity to challenge the fine before it was imposed;

(iv) the $4.8 million fine did not violate the Trust's substantive due process rights; and

(v) the District Court purportedly did not err in declining to exercise supplemental jurisdiction over the Trust's state law claims due to the dismissal of the Trust's federal claims.

App. 1a.

C. Prior ASIE Law.

In 1984, the Prior ASIE Law mandated that upon request of the Board of Assessors, commercial property owners were required to submit a statement of all income derived from and all expenses attributable to the operation of such property. App. 81a. The failure to provide such a statement upon request resulted in the imposition of a fine of $500. App. 81a.

The enforcement of the $500 fine led to a high rate of compliance with the financial disclosure requirements. *Id*. Specifically, it resulted in an increase in compliance from 44% to 82%. App. 82a. However, the high rate of compliance also resulted in a considerable diminishment of the revenue stream for the County. (A-2593).

D. Passage Of The ASIE Law.

As a result, on December 9, 2013, the County considered enacting the ASIE Law, which would result in an exponential increase in the penalty structure for violations of the law. App. 82a. In considering passage of the ASIE Law, one legislator questioned whether the County would actually do something with the ASIE data or if the County was merely putting another onus on businesses without having any impact on the accuracy of assessed values. (A-2594). Although no assurances were provided, and no studies were presented showing any correlation between an exponentially enhanced penalty structure

and increased compliance, the County enacted the ASIE Law. (A-2595).

E. Pertinent Terms Of The ASIE Law

The new penalty structure for the ASIE Law, which became effective on December 27, 2013, provides that owners of Class IV properties in the County who fail to file ASIE Statements are subject to penalties ranging from 0.25% up to 0.75% of the "fair market value" of the property, which penalty can become a lien on the real property and "may be collected, sold, enforced or foreclosed in any manner provided by law." App. 83a.

The ASIE Law also permits "the publication of statistics" and disclosure of "aggregate income and expense information." *Id*. For the Trust's property (and the other regional malls), this could include publication "of any metric that you want", including that "malls run from X to Y income per square foot." (A-2596). Such "publication of statistics", particularly as applied to Roosevelt Field Mall, would mean the publication of the Trust's most sensitive trade secret information, which would cause the Trust material loss of its economic and property rights. (A-2598).

F. The Amnesty Law And False "Compliance" Rates.

On November 21, 2016, the County adopted a local law providing partial "amnesty" for violations of the ASIE Law (the "Amnesty Law"). App. 85a. The Amnesty Law allowed owners that allegedly failed to

comply with the ASIE Law to pay 75% of the assessed fine in order to be deemed "compliant." *Id*. Notably, a property owner was not required to submit any ASIE data in order to become "compliant" with the ASIE Law. *Id*.

As a result, while the compliance rate with the ASIE Law for the 2013 and 2014 tax years increased after the passage of the Amnesty Law (from 56% and 66%, respectively, to 71% and 73%, respectively), these "compliance rates" were not compliance through the submission of ASIE Statements, but rather, "compliance" through the payment of the "amnesty" amounts of the fines. (A-2597).

The intention behind the enactment of the Amnesty Law was thus not to increase compliance with the submission of ASIE data, but rather to generate revenue, with the County anticipating raising $36 million alone from the ASIE Law *in just one year*. *Id*.

G. The Trust Is Penalized For Non-Compliance With The ASIE Law Without Receiving Prior Notice Or An Opportunity To Challenge The Fine.

On December 19, 2016, the Trust received two letters from the County, both of which were entitled "Failure to File Your Income and Expense Statement". App. 86a. The letters stated:

> You have failed to file the required income and expense statement for the

> years identified in the box above [2013 and 2014]. In accordance with Section 6-30.0, the Nassau County assessor has determined that a civil penalty in the total amount of 4,752,045 dollars ($4,752,045), has been imposed upon you because of your failure to satisfy the filing requirement.

Id.

As part of the Assessor's Rules, the County was required to send a letter to the Trust, giving it notice and an opportunity to challenge the penalties *before* they were imposed (a "Cure or Be Heard Letter"). (A-2600–2601). However, the Trust never received any such letter. App. 87a. The County's failure to send the Trust such a letter was not merely an isolated incident, but rather, was part of the County's systemic failures to properly mail such notices to Class IV property owners. (A-2606).

H. The County Lacked Any Mailing Procedures For Cure Or Be Heard Letters.

The County admittedly did not have any "procedure in place to memorialize the fact" that a Cure or Be Heard Letter was ever mailed to the Trust or any other Class IV property owners, "like an affidavit, or something, internally." App. 87a. The County also lacked "evidence of receipt" of any Cure or Be Heard Letters by the Trust or any of the other Class IV property owners. *Id.*

The County provided no evidence to show that its unwritten and ambiguous mailing "procedures" were in fact sufficient to ensure the delivery of any Cure or Be Heard Letters. (A-2604). Indeed, the County's representatives did not even know whether any Cure or Be Heard Letters were provided to the United States Post Office for mailing. (A-2603).

While the County's practice of sending out penalty letters in 2016 (which included the penalty amounts and the amnesty penalty amounts) was "very precise" to ensure that such letters were sent to "each and every parcel that did not file", its efforts to send out the Cure or Be Heard Letters were not "precise", resulting in the sending of 1,871 Penalty Letters for the failure to file 2013 ASIE data, but only 1,591 Cure or Be Heard Letters. (A-2604).

As a result, numerous Class IV property owners notified the County that they "never received notice for 2013 or 2014 that [they] had to file in the first place, nor did [they] receive that that [they were] late". App. 87a. The County even admitted that 11% of the Cure or Be Heard Letters were returned as undelivered due to "bad addresses," and that in some years, the return rate was as high as 20%. App. 59a. But despite the pervasiveness of the problem, when Class IV property owners sought a hearing and asserted that they had not received any Cure or Be Heard Letters prior to the imposition of penalties under the ASIE Law ("ASIE penalties"), the County refused to give these property owners an opportunity to cure or be heard. (A-2607).

I. The ASIE Data For 2013 And 2014 Was Useless And Could Never Have Been Used For Any Purpose.

The County contended that the ASIE Law is purportedly "related to a legitimate government purpose, which is the evaluation of property for real estate tax purposes." (A-2596). However, according to the vendor retained by the County to conduct the first systematic review of property assessments in the County since 2011 (the "Vendor"), the ASIE data "wasn't useful" for such assessment purposes. App. 89a. As the Vendor explained, because there was an assessment freeze in place at the time the 2013 and 2014 ASIE data was sought, the ASIE data would never have been useful in any County-wide reassessment because it was too dated. *Id.*

The ASIE data for Roosevelt Field was particularly useless for any County-wide reassessment because the reassessment of this property, as well as the handful of other malls in the County, could not be done using ASIE data at all. App. 19a; 48a. Moreover, the County never even processed the ASIE data or organized it into a useable form. (A-2609). In fact, the ASIE data was completely incomprehensible. App. 89. As a result, the ASIE data for 2013 and 2014 was indisputably unusable for any purpose, and has never been used in any respect. *Id.* Thus, by the time the County sought to impose the nearly $4.8 million fine against the Trust for non-compliance with the ASIE Law, the County was fully

aware that the ASIE data was totally unusable and was not going to be used for any purpose. *Id*.

Additionally, the County was informed by no later than December 2017 that its computer modeling system needed to be revised before a reevaluation could take place. (A-1371). Ultimately, the Vendor for the County-wide reassessment performed the reassessment without the use of any ASIE data. App. 89a.

J. The True "Purpose" Of The ASIE Law Was Revenue Generation.

The County did not deny that the true purpose of the ASIE Law was to increase revenue for the County through the imposition of ASIE penalties. (A-2612). Indeed, the total amount of penalties assessed against income-producing property owners in the County for non-compliance with the ASIE Law in 2013 and 2014 alone was tens-of-millions of dollars. (A-2613). This is why the County enacted the Amnesty Law in 2016 to allow owners that allegedly failed to comply with the ASIE Law to pay 75% of the assessed fine in order to be deemed "compliant" without submitting any ASIE data: the true purpose of the ASIE Law was to generate revenue, not help the County produce "more accurate assessments." (A-2612–2613).

REASONS FOR GRANTING THE PETITION

A. The Second Circuit's Decision Below Conflicts With This Court's Decision in *Bajakajian* As Well As Decisions From The First, Third, Sixth, Seventh, Eighth, And Ninth Circuits Over The Standard For Determining Whether A Fine Is Excessive Under The Eighth Amendment.

In upholding the issuance of a $4.8 million fine for the non-reporting of "useless" ASIE data, the decision below encapsulates a division in the lower courts over how to evaluate the gravity of a defendant's offense under the Excessive Fines Clause. Most courts, following this Court's lead, share the same premise: that the standard focuses not on the gravity of the offense in the abstract, but on the actual defendant's conduct. The Second Circuit's decision, however, follows a minority view that instead looks to the gravity of the defendant's offense at a stratospheric level of generality. That standard contravenes this Court's precedent as well as the history of the Excessive Fines Clause. The question presented here is important, especially in the face of "state and local governments nationwide increasingly depend[ing] heavily on fines and fees as a source of general revenue." *Timbs*, 586 U.S. at 154. In fact, this case presents an ideal *companion vehicle* in which to address the issue.

On July 20, 2026, this Court granted certiorari to address the very same question in the criminal

forfeiture context. *See Jouppi v. Alaska*, Docket No. 25-246, --- S.Ct. ----, 2026 WL 2082257 (Oct. Term, July 20, 2026). In *Jouppi*, the defendant's airplane, valued at $95,000, was taken by the State of Alaska as punishment for the misdemeanor offense of transporting a six-pack of beer to a "dry village." This Court granted certiorari to examine whether the Eighth Amendment's Excessive Fines Clause should be applied "purely in the abstract" or by reference to a criminal defendant's specific wrongdoing.

Granting certiorari here would allow the Court to examine the very same issue in the civil fine context. Although this Court has held that the Excessive Fines Clause reaches civil sanctions that are at least partly punitive, *Austin v. United States*, 509 U.S. 602, 609-10 (1993), it has never addressed how *Bajakajian*'s gravity-of-the-offense inquiry applies to a civil monetary fine imposed by a local government, as *Bajakajian*, like *Jouppi*, involved a criminal forfeiture. Being able to broadly address this issue in both the criminal and civil contexts is especially salient now, as "at practically every turn, the circuit courts have adopted narrowing interpretations of *Bajakajian*, which have largely negated the practical significance of the Eighth Amendment ban on excessive fines." Michael O'Hear, *The Excessive Fines Clause in the Federal Courts: A Quarter-Century of Narrowing*, 12 TEX. A&M L. REV. 761 (2025). Accepting certiorari here would therefore bolster this Court's recent acceptance of certiorari in *Jouppi*, and would allow the Court a combined, and more robust, vehicle in which to squarely address

whether the Excessive Fines Clause should be applied purely in the abstract or by reference to the specific wrongdoing of the individual or entity in question – regardless of whether the fine arises in the criminal or civil contexts.

Additionally, the circumstances of this case, like those in *Jouppi*, show how far some courts – like the Second Circuit – have strayed from *Bajakajian*. In *Jouppi*, an airplane was forfeited for a six-pack of beer. In this case, the penalty for failing to provide "useless" data changed overnight from a $500 fine into a $4.8 million fine solely to generate revenue for a local government. Both situations call for this Court's intervention.

1. Six Circuit Courts Agree That The Gravity Of The Offense Must Be Evaluated In Relation To The Specific Level Of Culpability Of The Defendant.

As the Ninth Circuit has explained, "[i]t is critical . . . that the court review the specific actions of the violator rather than by taking an abstract view of the violation." *Thomas v. County of Humboldt*, 124 F.4th 1179, 1193 (9th Cir. 2024) (citation omitted). As such, the Court stated that: "[t]he culpability of the offender should be examined specifically, rather than examining the gravity of the crime in the abstract." *United States v. $100,348.00*, 354 F.3d 1110, 1123 (9th Cir. 2004) (citation omitted). Thus, in the Ninth Circuit, the focus is where a specific defendant falls on the "gravity spectrum" compared to other potential

violators. *Id*. Rather than comparing the value of the fine to the maximum theoretical penalty, courts in the Ninth Circuit follow *Bajakajian's* lead in "tak[ing] into account the specific culpability of the offender." *Id*. at 1122; *see also United States v. Beecroft*, 825 F.3d 991, 1001 (9th Cir. 2016) (O'Scannlain, J.). And federal courts in the Ninth Circuit are admonished to "*not* put full responsibility for the 'war on drugs' on the shoulders of every individual claimant." *United States v. 6380 Little Canyon Rd.*, 59 F.3d 974, 986 n.13 (9th Cir. 1995), abrogated in part on other grounds by *Bajakajian*, 524 U.S. at 333-34.

Other Circuits follow a similar approach: the gravity of the offense is to be determined by reference to "the culpability of the individual defendant." *United States v. Facteau*, 89 F.4th 1, 45 (1st Cir. 2023) (citation omitted), cert. denied, 145 S. Ct. 137 (2024). "Even before the *Bajakajian* opinion," for instance, the Third Circuit had "look[ed] at the overall circumstances, including seriousness of the offense and personal benefit or culpability, to decide excessiveness." *Yskamp v. DEA*, 163 F.3d 767, 773 (3d Cir. 1998). Likewise, the Seventh Circuit has voiced "serious doubts that the forfeiture of [a] home's entire $67,000 value comports with the 'principle of proportionality'" based on the actions of the specific defendant—"at most a one-time offender who committed an unusually minor violation of the structuring statute not tied to other wrongdoing." *United States v. Abair*, 746 F.3d 260, 268 (7th Cir. 2014). Notably, the court observed that a reporting offense like the one at issue in *Bajakajian* and here

can warrant a large fine only where the "amount is sufficiently related to the 'quality and quantity' of the [wrongful] conduct." *Id.* at 267.

Along similar lines, the Sixth Circuit has rejected as an "oversimplified approach" merely comparing the value of a forfeiture to the maximum statutory fine. *United States v. Carpenter*, 317 F.3d 618, 627 (6th Cir. 2003), *opinion reinstated in relevant part*, 360 F.3d 591 (6th Cir. 2004). Additionally, in 2024, the Eighth Circuit stressed that "the 'most important indicium'" in its analysis is "the reprehensibility of the defendant's conduct." *United States ex rel. Grant v. Zorn*, 107 F.4th 782, 800 (8th Cir. 2024), cert. denied, Nos. 24-549, 24-845 (June 23, 2025).

In fact, in the criminal forfeiture context, the Second Circuit has even recognized the importance of evaluating "an individual offender's culpability or the gravity of the actual offense giving rise to forfeiture." *von Hofe v. United States*, 492 F.3d 175, 187 (2d Cir. 2007) ("The statutory maximum, designed as an outer limit on the punishment available, does not necessarily reflect an individual offender's culpability or the gravity of the actual offense giving rise to forfeiture."). Yet in the civil fine context, the Second Circuit's decision below *embraces the opposite approach* of considering only the gravity of the underlying offense purely in the abstract and without reference to the actual context of the case (i.e., where a $500 fine became a multimillion fine overnight and where the ASIE data itself was admittedly completely

useless for any purpose at the time the fine was imposed).

2. Three State High Courts And The D.C. Court of Appeals Agree That The Gravity Of The Offense Must Be Evaluated In Relation To The Specific Culpability Of The Offender.

The decision below splits most strikingly with the decisions of the Indiana Supreme Court following this Court's remand in *Timbs v. Indiana*. In that matter, the defendant pleaded guilty to a low-level drug offense and received a modest sentence: home detention, probation, and addiction treatment. 586 U.S. 146, 148-49 (2019). However, Indiana also sought forfeiture of the defendant's $42,000 Land Rover. *Id.* at 149. Following this Court's intervention confirming that the Excessive Fines Clause applies to the States, the Indiana Supreme Court issued two opinions setting forth the "analytical framework" for evaluating whether a fine is unconstitutionally excessive. *State v. Timbs*, 134 N.E.3d 12, 21 (Ind. 2019); *State v. Timbs*, 169 N.E.3d 361 (Ind. 2021).

In evaluating the gravity of the offense, the Indiana Supreme Court followed *Bajakajian*, 524 U.S. 321 (1998). As a general matter, the court acknowledged, drug offenses (like most crimes) "threaten[] society." *Timbs*, 169 N.E.3d at 373. But for purposes of assessing the excessiveness of a specific forfeiture, the court emphasized that "focusing on the specific harms of specific acts" is most "in line with the

Supreme Court's reasoning in *United States v. Bajakajian*." *Id*.

The Utah Supreme Court embraced a similar approach in holding that the forfeiture of a home was excessive based only on the owner's low-level drug offenses. *State v. Real Prop.*, 994 P.2d 1254 (Utah 2000). In "gauging the gravity of the offense," the court construed *Bajakajian* as focusing on the specific defendant's level of culpability. *Id*. at 1259. The court acknowledged, for example, "the broad-scale effect of drug trafficking on society." *Id*. at 1260. But even so, the court focused on the seriousness of the particular defendant's wrongdoing. "Measured by any standard," the court reasoned, "[her] drug operation was small, involving possession of less than two pounds of marijuana for sale in an eighteen month span." *Id*. And, as in *Bajakajian*, the defendant's minor criminal sentence reinforced that her culpability was low compared to other potential violators. *Id*. at 1259. At the same time, the court rejected the government's comparison of the forfeited property to the "'maximum possible penalties.'" *Id*. at 1260. Those "theoretical figures" have "limited relevance in determining proportionality," the court wrote, since "two separate individuals, convicted of an 'identical' crime may receive vastly different sentences based on inherently individualized facts." *Id*. at 1259-60, 1261. Comparing the $80,000 value of the defendant's home against the relatively minor gravity of her offenses, the court "conclude[d] that there is a gross disproportionality here under the standards set forth in *Bajakajian*, and the forfeiture cannot be sustained." *Id*. at 1261.

The Pennsylvania Supreme Court also embraced a similar approach in evaluating the gravity of the offense, explaining: "we find generic considerations of harm to be largely unhelpful in this regard, as all crimes have a negative impact in some general way to society." *Commonwealth v. 1997 Chevrolet & Contents Seized from Young*, 160 A.3d 153 (Pa. 2017). Under *Bajakajian*, the court stated, the excessiveness standard is "defendant-culpability focused, rather than centered on the severity of the crime in the abstract." *Id.* at 189. Thus, the court looked, not to the "maximum authorized sentence" in a vacuum, but to how that theoretical maximum compares to "the actual penalty imposed (sentence, fine) upon the offender giving rise to the forfeiture." *Id.* at 190. Notably, the court explained that "the regularity of the criminal conduct must be considered, including whether the illegal acts were isolated or frequent, constituting a pattern of misbehavior." *Id.* Likewise, the court stated that the "the actual harm resulting from the crime charged, beyond a generalized harm to society," must be considered, as well as "the culpability of the property owner." *Id.* at 192.

Additionally, the standard articulated by the D.C. Court of Appeals focuses on the specific defendant's wrongdoing. The court read *Bajakajian* as "plac[ing] its primary emphasis on the culpability of Bajakajian himself rather than on the severity of the crime in the abstract." *One 1995 Toyota Pick-Up Truck v. District of Columbia*, 718 A.2d 558, 565 (D.C. 1998). Moreover, the D.C. Court of Appeals refused to

ascribe to a particular defendant the ills of the crime generally. As with any crime, the court reasoned, it presents "multi-faceted problems"— from traffic congestion to depressed property values to reduced quality of life more broadly. *Id.* at 566. In evaluating the excessiveness of the fine, however, the court held that a single property owner "can not be made to bear grossly disproportionate responsibility for the problem" as a whole. *Id*. As in *Bajakajian*, the court concluded that: "[t]he forfeiture here impose[d] punishment on [the defendant] which greatly outweighs his particular contribution to these multi-faceted problems." *Id*.

3. The Second Circuit's Decision Below Creates An Erroneous And Conflicting Standard For Evaluating The Gravity Of The Offense In Relation To The Defendant's Wrongdoing.

Bajakajian's fundamental lesson is straightforward: in assessing the gravity of the offense, courts must evaluate the specific actions of the party that was fined. The Second Circuit's decision below effectively eviscerates this analysis by examining the gravity of the offense purely in the abstract as opposed to considering the gravity of the specific defendant's wrongdoing within the context of the case.

In particular, with respect to the first *Bajakajian* factor, the essence of the crime and its relation to other criminal activity, the Second Circuit

below dismissed that the essence of the Trust's "offense" was solely a reporting offense, which this Court in *Bajakajian* found to reflect a minimal degree of culpability. App. 18a. The Second Circuit similarly disregarded that the Trust was not involved in any illegal activities of any kind, although this factor was deemed of critical importance in *Bajakajian*. App. 18a-19a. Instead, the court focused on the Trust's "willful" violation of the reporting requirements of the ASIE law – even though *Bajakajian* also involved the "willful" violation of reporting requirements in that case. *Id.*

With respect to the second *Bajakajian* factor, whether the defendant fits into the class of persons for whom the statute was principally designed, the Second Circuit entirely disregarded that the Trust's ASIE data indisputably could never have been used to value large shopping malls like Roosevelt Field, since those properties must necessarily be valued on an individual basis. App. 19a. Thus, the Second Circuit ignored that the very data it held contained "potentially useful information" (App. 22a), which the Trust purportedly deprived the County of, could never, in fact, have been used at all for the stated purpose set forth in the ASIE law (or for any other purpose), as the County's own Vendor confirmed. (A-2608). Thus, just as in *Bajakajian*, the data that was not reported to the government here was of no use in any respect. *Id.*

With regard to the third *Bajakajian* factor, the maximum fine that could have been imposed, the

Second Circuit dismissed as irrelevant the fact that, for 29 years, the non-reporting of ASIE data was punishable only by a $500 fine that was rarely even enforced, which suddenly turned into a $4.8 million fine overnight when the County became desperate to raise revenue. In doing so, the court erroneously held that "the third *Bajakajian* factor requires us to consider the maximum penalty available under the current statutory framework" – *a ruling that was never made in Bajakajian*. App. 19a-20a. Moreover, even taking into account the ASIE Law's current framework of scaling the fine to the fair market value of the property, the $4.8 million fine that was assessed here was, in fact, the maximum possible fine that could have been imposed on the Trust. App. 99-100a. Further, scaling the fine to the fair market value of the property finds no support in this Court's proportionality analysis in *Bajakajian*, which looks to assess the culpability of the defendant in relation to the amount of the fine, not the amount of the fine in relation to the fair market value of the property. Further, the notion that ASIE data somehow becomes more important, justifying a larger fine, merely when it involves a more valuable property like Roosevelt Field Mall, lacks any support either in precedent or in the record. Quite the contrary, the record demonstrates that, for the highest value income-producing properties such as Roosevelt Field Mall, ASIE data is *useless* because it can *never* be used to assess such properties or any others.

Finally, with respect to the fourth *Bajakajian* factor, the nature of the harm caused by the

defendant's conduct, the Second Circuit entirely ignored the actual circumstances of this case, which conclusively showed that the County was not deprived of any useful information, as the Trust's ASIE data was admittedly "useless" for all purposes. Instead, the court only spoke in generalities about how the ASIE Law focuses "on collecting financial information from property owners to help the County produce 'more accurate assessments.'" 185 F.4th at 329. Only speaking in such generalities, divorced from the record in this case, could the court conclude that "the Trust thwarted the statute's purpose, deprived the government of potentially useful information, and risked draining the public coffers." *Id.*

With the decision below, the Second Circuit virtually ensured that no civil fine in the Second Circuit will be found unconstitutionally excessive in relation to the underlying offense. The decision stands with a minority of other Circuits and state high courts, which have embraced a highly abstract approach to evaluating Excessive Fines Clause cases, in contravention of this Court's decision in *Bajakajian*. The split is real, and it is a compelling one for this Court's intervention.

Together with *Jouppi*, this Court can restore the core of the Excessive Fines Clause's guarantee in both the criminal and civil contexts. Accordingly, the Petition should be granted.

B. The Second Circuit's Decision Below Conflicts With This Court's Decisions In *Knick* And *Zinermon* As Well As Decisions From The Fourth, Eighth, Ninth, and Tenth Circuits In Improperly Denying Procedural Due Process Claimants A Federal Forum.

This Court previously confirmed that "plaintiffs may bring constitutional claims under § 1983 without first bringing any sort of state lawsuit, even when state court actions addressing the underlying behavior are available." *Knick*, 588 U.S. at 194 (internal quotation marks omitted); *see also Zinermon*, 494 U.S. at 124 ("overlapping state remedies are generally irrelevant to the question of the existence of a cause of action under § 1983"); *McNeese v. Board of Ed. for Community Unit School Dist. 187*, 373 U.S. 668, 672 (1963) (observing that it would defeat the purpose of § 1983 "if we held that assertion of a federal claim in a federal court must await an attempt to vindicate the same claim in a state court"); *Monroe v. Pape*, 365 U.S. 167, 183 (1961) ("The federal remedy is supplementary to the state remedy, and the latter need not be first sought and refused before the federal one is invoked.").

In *Patsy*, this Court examined the legislative histories of both Section 1983 and its precursor, Section 1 of the Civil Rights Act of 1871. *Patsy v. Bd. of Regents of Florida*, 457 U.S. 496, 504 (1982). The Court determined that these statutes were enacted to "'throw open the doors of the United States courts'" to

parties that have suffered a violation of their constitutional rights and "provide these individuals immediate access to the federal courts … notwithstanding any provision of state law to the contrary." 457 U.S. at 504 (citation omitted). If a plaintiff were required to first exhaust state remedies, Section 1983's "purpose would be frustrated." *Id.* at 511; *Mitchum v. Foster*, 407 U.S. 225, 242 (1972) ("[t]he very purpose of § 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights—to protect the people from unconstitutional action under color of state law, 'whether that action be executive, legislative, or judicial.'").

1. *Parratt* Articulated A Specific Exception To The "No Exhaustion" Rule In Cases Challenging "Random" Deprivations By The State.

In *Parratt*, this Court carved out a specific exception to the general "no exhaustion" rule for instances in which due process claims challenge "a random and unauthorized act by a state employee." *Zinermon*, 494 U.S. at 129. *Parratt* involved a prisoner's claim that prison officials had deprived him of property without due process by negligently losing his hobby kit. The Court initially observed that "the necessity of quick action by the State or the impracticality of providing any meaningful predeprivation process, when coupled with the availability of some meaningful means by which to assess the propriety of the State's action at some time

after the initial taking, can satisfy the requirements of procedural due process." *Parratt*, 451 U.S. at 539. Emphasizing that the deprivation in *Parratt* was "a tortious loss [resulting from] a random and unauthorized act by a state employee," the Court concluded that "[i]t is difficult to conceive of how the State could provide a meaningful hearing before the deprivation." *Id.* at 541. Based on this reasoning, the Court held that the plaintiff in *Parratt* was required to use available post-deprivation state remedies before he could raise a federal due process claim.

In *Hudson v. Palmer*, 468 U.S. 517 (1984), another prisoner case, the Court extended *Parratt*'s reasoning beyond the context of negligent employee conduct to cases involving unauthorized, *intentional* deprivations of property by state employees. The Court emphasized that the "underlying rationale of *Parratt* is that when deprivations of property are effected through random and unauthorized conduct of a state employee, predeprivation procedures are simply 'impracticable' since the state cannot know when such deprivations will occur." *Id.* at 533. The Court then merely extended the rule to intentional random and unauthorized conduct of a state employee, explaining: "We can discern no logical distinction between negligent and intentional deprivations of property… The state can no more anticipate and control in advance the random and unauthorized intentional conduct of its employees than it can anticipate similar negligent conduct." *Id.* The *Hudson* court thus held that "an unauthorized intentional deprivation of property by a state

employee does not constitute a violation of the procedural requirements of the Due Process Clause . . . if a meaningful postdeprivation remedy for the loss is available." *Id.*

Thus, this Court has sought to limit *Parratt*'s state remedies requirement to due process cases involving *unpredictable and random* government employee actions, for which pre-deprivation process *is impossible*. *Zinermon*, 494 U.S. at 138 n.20 (*Parratt* and *Hudson* "do not stand for the proposition that in every case where a deprivation is caused by an 'unauthorized … departure from established practices,' state officials can escape § 1983 liability simply because the State provides tort remedies."); *Williamson Cnty. Reg'l Plan. Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 195 n.14 (1985) ("*Parratt* does not extend to situations . . . in which the deprivation of property is effected pursuant to an established state policy or procedure, and the State could provide predeprivation process." (citation omitted)). In *Knick*, the court reaffirmed *Parratt*'s limited reach, grounding *Parratt* in the fact that it was not "possible for a State to provide pre-deprivation due process for the unauthorized act of a single employee." 588 U.S. at 196. The *Knick* Court contrasted the "unauthorized employee action" in *Parratt* to a "taking of property *by the government*," confirming that the latter situation is not subject to *Parratt*. *Id.* (emphasis in original).

2. The Second Circuit's Decision Below Conflicts With Decisions From The Fourth, Eighth, Ninth, and Tenth Circuits.

The Second Circuit's decision flatly contradicts this Court's precedent in holding that the availability of state law remedies (i.e., an Article 78 claim) affords "adequate" procedural due process. 185 F.4th at 330 ("Given the availability of [such] Article 78 procedures, which can be invoked before actual prejudice arises (indeed, before the fine is ever collected)… the process afforded here is 'adequate.'") (citations omitted). As the Ninth Circuit has observed, the notion that a due process claim fails when there is "an adequate state judicial review process" is "inconsistent with relevant Supreme Court authority". *Clements v. Airport Auth. of Washoe Cnty.*, 69 F.3d 321, 333 n.17 (9th Cir. 1995).

Yet the Second Circuit has now held that the mere existence of an available state remedy entirely forecloses a procedural due process claim – even where it challenges an official government action. In so holding, the court cited "the familiar factors set forth in *Mathews v. Eldridge*: (1) 'the private interest' of the plaintiff; (2) 'the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards'; and (3) 'the Government's interest.'" 185 F.4th at 329 (citing 424 U.S. 319, 335 (1976)). With respect to the second factor, the Second Circuit explained that it "weighs

dispositively in favor of the government… when plaintiffs have timely access to the remedies available under Article 78 – an all-purpose statute that provides both a hearing and a means of redress for petitioners." 185 F.4th at 329 (citations omitted). As such, the court held that merely because "the property owner may [] seek an injunction preventing enforcement of the fine under Article 78… the process afforded here is 'adequate.'" *Id.* Consequently, the Second Circuit overlooked this Court's precedent that a party may assert a federal due process claim challenging an official government action *without regard to the availability of post-deprivation state remedies*. *Logan*, 455 U.S. at 426; *Knick*, 588 U.S. at 196.

In contrast, the Fourth, Eighth, Ninth and Tenth Circuits have adopted a narrow view of the role of state post-deprivation remedies involving procedural due process claims, which is in line with this Court's precedent. In *Plumer v. Maryland*, 915 F.2d 927 (4th Cir. 1990), the Fourth Circuit agreed that "the *Parratt/Hudson* doctrine is restricted to cases where it truly is impossible for the state to provide predeprivation procedural due process before a person unpredictably is deprived of his liberty or property through the unauthorized conduct of a state actor." *Id.* at 930. The *Plumer* court then held that "when a state government can and does provide a predeprivation hearing and charges its employees with effecting the deprivation complained of, the availability of an adequate state postdeprivation remedy does not, standing alone, satisfy the Due

Process Clause." *Id*. at 931; *see also*, *Fields v. Durham*, 909 F.2d 94, 97 (4th Cir. 1990) (the *Parratt/Hudson* state remedies rule applies only in a "narrow class of cases" where "the state cannot foresee, and thus cannot avert through implementation of prescriptive procedures, the deprivation in issue").

Like the Fourth Circuit, the Eighth Circuit has adopted a narrow view of the role of state remedies in procedural due process matters. In *Keating v. Nebraska Public Power District*, 562 F.3d 923 (8th Cir. 2009), the Eighth Circuit considered a due process claim alleging that state officials failed to provide notice or a hearing before ordering agricultural landowners to cease drawing water. The court explained that "it is not necessary for a litigant to have exhausted available *postdeprivation* remedies when the litigant contends that he was entitled to *predeprivation* process." *Id.* at 929 (citing *Zinermon*, 494 U.S. at 132). "[A]ppellants' failure to exhaust postdeprivation remedies does not affect their entitlement to predeprivation process[.]" *Id.*; *see also*, *Christiansen v. W. Branch Cmty. Sch. Dist.*, 674 F.3d 927, 936 (8th Cir. 2012) ("Christiansen's complaint also alleges the denial of *pre-termination* process and, under *Keating*, the district court should not have dismissed such claims on the basis of Christiansen's failure to pursue post-termination remedies.").

The Tenth Circuit's decisions also limit the state remedies requirement in due process cases. In *Lavicky v. Burnett*, 758 F.2d 468 (10th Cir. 1985), the Tenth Circuit considered a due process claim

asserting that a local prosecutor instructed law enforcement officials to allow a third party to take parts from a seized pickup truck without a hearing. The court held that "[t]hese actions constitute an intentional deprivation that may not be characterized as random. . . . This action, planned and authorized, is not the sort of action for which postdeprivation process will suffice." *Id.* at 473 (citing *Logan*, 455 U.S. at 436-37); *see also*, *Wolfenbarger v. Williams*, 774 F.2d 358, 365 (10th Cir. 1985) (a seizure of property "planned and authorized" by a local official "cannot be characterized as random or unauthorized. . . . *Parratt* and *Hudson* do not apply"); *Winters v. Bd. of Cnty. Comm'rs*, 4 F.3d 848, 857 (10th Cir. 1993) ("Available postdeprivation procedures are insufficient to neutralize a due process violation when the action is planned and authorized.").

Likewise, several Ninth Circuit decisions have limited the state remedies requirement in due process cases. *See Zimmerman v. City of Oakland*, 255 F.3d 734, 739 (9th Cir. 2001) (holding that the availability of adequate postdeprivation remedies for an allegedly improper seizure did not foreclose a due process claim challenging the adequacy of the procedures under which the seizures occurred); *Clements*, 69 F.3d at 333 (holding that the existence of state remedies was not a bar to the viability of a due process claim alleging bias in an employment termination hearing process).

The Second Circuit's decision conflicts with the approaches taken by the Fourth, Eighth, Ninth and Tenth Circuits in holding that there can be no

procedural due process claim "when plaintiffs have timely access to [state] remedies". 185 F.4th at 329 (citations omitted). The Court should therefore grant the Petition to hold that due process claimants like the Trust may challenge official government actions in federal court without regard to the availability of state remedies.

CONCLUSION

For all of the foregoing reasons, the Petition should be granted. In the alternative, the Court should hold this Petition pending its decision in *Jouppi v. Alaska*, No. 25-246, and then grant the Petition, vacate the judgment below, and remand for further consideration in light of that decision.

Respectfully submitted,

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