26-6042 ORIGINAL

Case No. _____

Supreme Court, U.S.
FILED
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SUPREME COURT OF THE UNITED STATES

FARRES ALKHAYER,

Petitioner,

v.

CITY OF NASHUA; NASHUA POLICE DEPARTMENT; and D&R TOWING,

Respondents.

Petition for a Writ of Certiorari to the

Supreme Court of the State of New Hampshire

PETITION FOR A WRIT OF CERTIORARI

Farres Alkhayer

162 Broad St.

Hollis, N.H. 03049

Phone: (603) 233-1073

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QUESTIONS PRESENTED

1. Whether due process permits a government to seize and continue retaining a vehicle without requiring competent evidence — beyond the citations themselves — that the alleged violations occurred.

2. Whether the Due Process Clause requires that a hearing on continued vehicle retention be accessible without prepayment of accruing towing and storage fees, where the owner's inability to pay those fees is the sole reason continued deprivation persists, and where no timely hearing of any kind is otherwise provided as of right.

3. Whether the "extraordinary situation" exception permitting vehicle seizure without a pre-deprivation hearing applies when the owner is present, offers immediate compliance with a less intrusive alternative, and no evidence shows an emergency, obstruction, or safety threat.

4. Whether the Excessive Fines Clause of the Eighth Amendment permits a municipality to seize and indefinitely retain an individual's vehicle — subject to open-ended, uncapped storage fees — as its enforcement mechanism for non-moving, non-safety parking citations totaling approximately $200.

PARTIES TO THE PROCEEDING

Petitioner Farres Alkhayer was the plaintiff-appellant below. Respondents City of Nashua, Nashua Police Department, and D&R Towing were the defendants-appellees below.

PROCEEDINGS IN THE LOWER COURTS

1. Alkhayer v. City of Nashua et al., No. 459-2025-CV-00114 (N.H. Cir. Ct., 9th Cir.—Dist. Div., Nashua). Petitioner filed an emergency petition for a writ of replevin on April 7, 2025. Following a final hearing, the Circuit Court (Major, J.) entered a Final Order dismissing the petition on May 23, 2025. Petitioner's subsequent post-judgment motions to reconsider and for rehearing were denied by order dated June 30, 2025.

2. Alkhayer v. City of Nashua & a, No. 2025-0421 (N.H.). The New Hampshire Supreme Court affirmed the Circuit Court's judgment by order dated April 22, 2026. Petitioner timely moved for reconsideration. The New Hampshire Supreme Court denied reconsideration on May 26, 2026.

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CITATIONS OF REPORTS

Farres Alkhayer v. City of Nashua, No. 2025-0421 (N.H. Apr. 22, 2026) (unpublished order affirming judgment).

JURISDICTION

The New Hampshire Supreme Court entered judgment on April 22, 2026, and denied Petitioner's timely motion for reconsideration on May 26, 2026. This Court has jurisdiction under 28 U.S.C. § 1257(a).

This petition is timely under 28 U.S.C. § 2101(c) and Sup. Ct. R. 13.3, because it is filed within 90 days after the denial of reconsideration.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment provides, in relevant part:

> *"[N]or shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1.*

The Eighth Amendment provides, in relevant part:

> *"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII.*

STATEMENT OF THE CASE

Petitioner owns a 2009 BMW 328i Convertible. On April 7, 2025, Nashua officials towed the vehicle from a public street based on alleged accumulated parking fines exceeding $200..

Petitioner was present at the scene and offered to move the vehicle approximately three feet into his private driveway. Officials rejected that alternative and proceeded with the tow. No witness testified that the vehicle blocked traffic, endangered public safety, interfered with emergency operations, or required immediate removal.

The City's case rested on seven parking tickets issued, and on the testimony of a Parking Enforcement Officer and a Police Officer, both offered through counsel's offers of proof rather than live, cross-examined testimony subject to a full evidentiary record on the validity of the underlying citations. Petitioner testified that he received only two tickets and disputed receiving the others.

After the tow, Petitioner could not regain possession because he lacked the funds required for towing, storage, fines, or bond, and no hearing on continued retention was available to him without first paying those charges. Storage fees continued to accrue daily throughout this period, with no cap tied to the amount of the underlying citations.

Petitioner filed a petition for a writ of replevin in the Circuit Court on April 7, 2025, arguing that the tow was unlawful because Petitioner offered an immediate, less-intrusive alternative and no exigency justified summary seizure. (This is the basis of Question 3.)

Following a final hearing on May 23, 2025, the Circuit Court entered a Final Order dismissing the petition, the court held that pre-deprivation process was not required and that Petitioner's presence-and-offer argument was "a clear misstatement of the law." The Circuit Court thus squarely decided the Question 3 issue, adversely to Petitioner.

Petitioner moved to reconsider and for rehearing, arguing, among other points: (1) that the court credited the City's uncross-examined offers of proof regarding the underlying tickets without requiring competent proof of their validity, and disputed that he had received or owed the full amount claimed (raising the Question 1 issue); (2) that the bond and prepayment conditions attached to any post-deprivation review rendered that review illusory for an owner who could not pay, citing Stypmann v. City & County of San Francisco, 557 F.2d 1338 (9th Cir. 1977), for the proposition that unjustified delay in a post-seizure hearing offends due process (raising the Question 2 issue); and (3) in a single sentence, that Nashua Ordinance § 320-89 is unconstitutional insofar as it authorizes towing for accumulated non-moving fines (touching the Question 4 issue, though without further development). The Circuit Court denied these motions by order dated June 30, 2025, without separately addressing the evidentiary-proof or financial-accessibility claims.

On appeal, Petitioner's brief to the New Hampshire Supreme Court preserved and developed each of these claims: Argument II argued the City failed to prove the underlying violations by competent evidence (Question 1); Argument V argued post-deprivation remedies were financially inaccessible (Question 2); and Argument I argued the

presence-and-offer facts removed the doctrinal basis for summary seizure (Question 3). The New Hampshire Supreme Court affirmed by a one-paragraph order dated April 22, 2026, without separately addressing the evidentiary-proof claim, the financial-accessibility claim, or the ordinance's constitutionality under the Excessive Fines Clause.

Petitioner timely moved for reconsideration, again pressing the evidentiary-proof and financial-accessibility claims as distinct from the general pre-deprivation-hearing question. The New Hampshire Supreme Court denied reconsideration on May 26, 2026, without addressing those claims.

REASONS FOR GRANTING THE WRIT

I. The Decision Below Permits Deprivation of Property Based Solely on the Seizing Government's Own Uncross-Examined Assertions, Without Requiring Proof That the Underlying Violation Occurred.

Due process requires a procedure for testing the factual basis of a deprivation before it is imposed. In Bell v. Burson, 402 U.S. 535, 539 (1971), this Court held that a property interest is "not to be taken away without that procedural due process required by the Fourteenth Amendment" and struck down a suspension scheme that excluded any hearing on fault. Here, the Circuit Court found the towing threshold met based entirely on the City's own summary, never requiring the City to establish that the underlying citations were validly issued.

II. The Decision Below Leaves a Person Unable to Prepay Towing and Storage Fees With No Hearing At All, a Gap This Court's Recent Civil-Forfeiture Precedent Does Not Resolve.

This Court held in Culley v. Marshall, 601 U.S. 377 (2024), that due process requires a timely forfeiture hearing but does not require a separate preliminary hearing. That holding presupposes that a timely hearing exists as of right. Nashua's ordinance provides no hearing at all unless the owner first pays the very fees he disputes, while storage charges accrue daily and without limit.

The Second Circuit recognized the distinct harm of unreviewed continued retention in Krimstock v. Kelly, 306 F.3d 40 (2d Cir. 2002), and the Ninth Circuit held in Stypmann v. City & County of San Francisco, 557 F.2d 1338, 1343 (9th Cir. 1977), that "a five-day delay in justifying detention of a private vehicle is too long," because "days, even hours, of unnecessary delay may impose onerous burdens upon a person deprived of his vehicle." Whether Culley's rule extends to a scheme that lacks any hearing mechanism absent prepayment — rather than one that merely declines to add a second hearing atop an existing one — is an open question this case squarely presents.

III. The Decision Below Applies the Exigency Exception to Summary Seizure Even Though the Owner Was Present and Offered Immediate Compliance.

The premise of exception to pre-deprivation process is absent where the owner stands at the scene with keys in hand. Fuentes v. Shevin, 407 U.S. 67, 90 (1972), confirms that summary seizure without notice or hearing must truly be unusual.

Petitioner offered to move his vehicle three feet onto private property before the tow proceeded; the City refused and proceeded regardless. The Circuit Court, relying on Sutton v. City of Milwaukee, 672 F.2d 644 (7th Cir. 1982), treated the ordinary rule for unattended or illegally parked vehicles as controlling without separately analyzing whether Petitioner's

presence and offer removed the doctrinal basis for the exception. Neither court below resolved that question.

IV. The Decision Below Permits an Uncapped, Indefinitely Accruing Financial Penalty for Non-Moving Parking Violations Without Any Proportionality Check.

The Excessive Fines Clause, incorporated against the States in Timbs v. Indiana, 586 U.S. 146 (2019), bars a fine or forfeiture that is "grossly disproportional to the gravity of a Timbs's offense." Here, approximately $200–250 in disputed non-moving citations produced the seizure of Petitioner's vehicle and open-ended, uncapped storage fees with no ceiling tied to the gravity of the underlying offense.

Petitioner raised the ordinance's constitutionality below, though only in a single sentence in his motion to reconsider, and neither court addressed it. This Court's review would resolve, for the first time, whether Bajakajian's proportionality principle constrains a municipality's use of vehicle seizure and open-ended storage charges to enforce non-moving, non-safety parking regulations.

WHEREFORE, Petitioner moves this honorable court to GRANT this petition.

Respectfully submitted,

Farres Alkhayer

August 24, 2026

