No. 25-246

In the Supreme Court of the United States

KENNETH JOHN JOUPPI,

Petitioner,

v.

STATE OF ALASKA,

Respondent.

On Writ of Certiorari to the Supreme Court of Alaska

BRIEF OF THE CATO INSTITUTE AND FINES AND FEES JUSTICE CENTER AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Whether, in determining whether a fine contravenes the Excessive Fines Clause, courts may consider the gravity of the underlying offense purely in the abstract or should consider the gravity of the specific defendant's wrongdoing.

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INTEREST OF *AMICI CURIAE*[1]

The Cato Institute is a nonpartisan public policy research foundation founded in 1977 and dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato's Project on Criminal Justice was founded in 1999, and focuses on the scope of substantive criminal liability, the proper and effective role of police in their communities, the protection of constitutional and statutory safeguards for criminal suspects and defendants, citizen participation in the criminal justice system, and accountability for law enforcement.

The Fines and Fees Justice Center ("FFJC") is a national center for advocacy, information, and collaboration on effective solutions to the unjust and harmful imposition and enforcement of fines and fees in state and local courts. FFJC's mission is to create a justice system that treats individuals fairly, ensures public safety, and is funded equitably. As a national hub for information, resources, and technical assistance on fines and fees, FFJC works with impacted communities, researchers, advocates, legislators, justice system stakeholders, and media across the nation. FFJC also provides *amicus curiae* assistance at the state and federal level in cases where issues of economic justice intersect with state and constitutional law.

Amici's interest in this case arises from their mission to prevent government overreach and ensure the protection of constitutional rights. The Eighth

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[1] Rule 37 statement: No part of this brief was authored by any party's counsel, and no person or entity other than *amici* funded its preparation or submission.

Amendment shields individuals from government abuse by prohibiting excessive fines. That right must be protected against government infringement.

SUMMARY OF ARGUMENT

For the last 14 years, 83-year-old Ken Jouppi has been trying to prevent the State of Alaska from forfeiting his airplane. Pet. Br. 4–6. Mr. Jouppi is an Air Force veteran and has been flying charter planes in Alaska since the 1970s. *Id.* Alaska has a number of villages and municipalities that are "dry," where the sale, importation, and even possession of alcohol is illegal. *Id.* at 3–4. Mr. Jouppi agreed to fly a customer to one of these locales, but the plane was stopped by police before takeoff—the passenger had packed alcohol in her luggage and carried three cases of Budweiser and Bud Light onboard to share with her husband on his birthday. *Id.* at 5. Mr. Jouppi was convicted of a misdemeanor, sentenced to the minimum three days in jail, and ordered to pay a $1,500 fine. *Id.* at 5–6. But Alaska also mandates forfeiture of any airplane used in connection with transporting alcohol to dry villages. *Id.* at 4, 6. Hence Mr. Jouppi has been fighting for the past decade and a half to save his $95,000 plane. *Id.* at 6.

The Eighth Amendment was designed to prevent this kind of abuse by limiting excessive fines. U.S. CONST. amend. VIII. Long before the United States was founded, the common law protected people from extreme monetary penalties. *See Timbs v. Indiana*, 586 U.S. 146, 151 (2019) ("The Excessive Fines Clause traces its venerable lineage back to at least 1215 . . . ."). The Framers understood the dangers of such abuse. *See Browning-Ferris Indus. v. Kelco Disposal, Inc.*, 492 U.S. 257, 267 (1989). But the Alaska Supreme Court's view is that challenges to excessive fines "should rarely succeed." Pet. App. 18a. This dismissive view led it to conclude that there is nothing excessive about the forfeiture of an airplane worth "only 9.5 times the maximum fine"—and over 60 times the fine actually imposed. *Id.* at 23a; *see* Pet. Br. 9. The decision below cannot be reconciled with this Court's precedent or the Excessive Fines Clause's original meaning.

When evaluating a punishment's excessiveness, the common law accounted for the circumstances of both the conduct at issue and the defendant. From Magna Carta through William Blackstone's time, the "concept of proportionality was far broader than just that between the punishment and severity of the offense." Beth A. Colgan, *Reviving the Excessive Fines Clause*, 102 CALIF. L. REV. 277, 322 (2014). Early American courts agreed, holding that fines should be proportioned "to the offense committed, the situation, circumstances, and character of the offender." *Commonwealth v. Morrison*, 9 Ky. 75, 99 (1819). Only ignoring this history allows courts to routinely impose excessive fines—as happened in this case. By focusing on "grave societal harms" rather than individual culpability, Alaska endorsed a fine that is undoubtedly excessive by common law standards. This Court should reverse.

Beyond the instant case, this Court should outline a clear standard for future cases. While this Court has heard a handful of Excessive Fines Clause cases, only once has it analyzed excessiveness. *See United States v. Bajakajian*, 524 U.S. 321 (1998). On the other occasions, it has left this work to a lower court. *See, e.g.*, *Timbs*, 586 U.S. 146. The absence of a clear standard has resulted in varied—and often incorrect—multifactor tests that pay little attention to precedent or the original meaning of the Excessive Fines Clause. This

Court should take the present case as an opportunity to outline a clear, common-law standard.

Failing to do so would leave ordinary people at continued risk of government abuse. The Framers "were aware . . . of the abuses" that arise when a sovereign collects fines for improper ends. *Browning-Ferris Indus.*, 492 U.S. at 267. These injustices persist. Billions of dollars have been generated for governments through civil and criminal forfeitures. David Pimentel, *Forfeitures and the Eighth Amendment: A Practical Approach to the Excessive Fines Clause as a Check on Government Seizures*, 11 HARV. L. & POL'Y REV. 541, 549 (2017). Because it is expensive and time-consuming for defendants to challenge forfeitures in court, successfully asserting Eighth Amendment rights is difficult—but it shouldn't be. This Court should reverse the decision below.

ARGUMENT

I. ALASKA'S ABSTRACT STANDARD FOR EXCESSIVENESS CONTRAVENES THE EIGHTH AMENDMENT'S ORIGINAL MEANING.

A. The Excessive Fines Clause reflects ancient legal protections.

The Eighth Amendment states: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. CONST. amend. VIII. This provision did not spark much discussion or debate when it was proposed, and "the word 'fine' was understood to mean a payment to a sovereign as punishment for some offense." *Browning-Ferris Indus.*, 492 U.S. at 265. As this Court's previous analyses of the Clause have noted, "[f]reedom from excessive fines was considered 'indisputably an ancient right.'"

Timbs, 586 U.S. at 163 (Thomas, J., concurring). It "was so well-entrenched that debate was not deemed necessary when the Amendment was brought to the floor of Congress." John T. Holden, *Exploring the "Excess" in Excessive: Reimagining the Eighth Amendment's Excessive Fines Clause in the Wake of* Stars Interactive, 65 ARIZ. L. REV. 877, 892 (2023).

Historical analysis has been central to every decision this Court has made regarding the Excessive Fines Clause. *See Browning-Ferris Indus.*, 492 U.S. at 264; *Bajakajian*, 524 U.S. at 335; Beth A. Colgan & Nicholas M. McLean, *Financial Hardship and the Excessive Fines Clause: Assessing the Severity of Property Forfeitures after* Timbs, 129 YALE L.J. F. 430, 434 (2020) ("The Court has repeatedly drawn on the Clause's historical roots."). In Alaska, however, history has been overlooked, undercutting the protection the Eighth Amendment affords. This Court should reverse the decision below to ensure that excessiveness is assessed in the way it was originally meant to be.

Excessive fines have been prohibited as far back as 1215, when Magna Carta constrained King John. *See Timbs*, 586 U.S. at 151 (majority op.). Magna Carta required amercements (fines) to "'be proportioned to the wrong' and 'not so large as to deprive [an offender] of his livelihood.'" *Id.* (quoting *Browning-Ferris Indus.*, 492 U.S. at 271). However, Magna Carta's promise was not consistently enforced, and excessive fines were regularly imposed during the reign of the Stuart kings, who "were criticized for using large fines to raise revenue." *Id.* at 152. The English Bill of Rights of 1689 responded to this oppression. *See* Margaret Meriwether Cordray, *Contempt Sanctions and the Excessive Fines Clause*, 76 N.C. L. REV. 407, 420 (1998).

By the time the Eighth Amendment was ratified, most of the States "had some equivalent of the Excessive Fines Clause . . . in their respective Declarations of Rights or State Constitutions." *Browning-Ferris Indus.*, 492 U.S. at 264. The Virginia Declaration of Rights borrowed heavily from the English Bill of Rights. *Timbs*, 586 U.S. at 152. In turn, the language of the Excessive Fines Clause was adopted verbatim from the Virginia enactment. *See* Holden, *supra*, at 893. Even though the prohibition against excessive fines was already widespread at the Founding, the Framers had a thorough "distrust of power, and they insisted on constitutional limitations against its abuse." *Weems v. United States*, 217 U.S. 349, 372 (1910). The Eighth Amendment was ratified because they "would take no chances." *Id.*

The original meaning of the phrase "excessive fines was—like the phrase 'cruel and unusual punishments'—understood to be linked in important ways to the meaning of analogous legal protections in English history." Nicholas M. McLean, *Livelihood, Ability to Pay, and the Original Meaning of the Excessive Fines Clause*, 40 HASTINGS CONST. L.Q. 833, 840 (2013). Relevant to this case, the Eighth Amendment incorporates an excessiveness inquiry tailored to the individual defendant's conduct and circumstances.

B. Excessiveness was originally determined with reference to the individual defendant's conduct.

Historical context makes it clear that excessiveness should be determined in relation to the defendant's circumstances, both in terms of conduct and economic means. Webster's 1828 Dictionary supplied several contemporaneous definitions of "excessive." In *United*

States v. Bajakajian, this Court cited the first of these: "beyond the common measure or proportion." *Bajakajian*, 524 U.S. at 335. The same dictionary contains a second definition: "beyond the bounds of justice, fitness, propriety, expedience, or utility; as excessive indulgence of any kind." NOAH WEBSTER, AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (1828) (italics omitted);[2] *see also* McLean, *supra*, at 838 n.14. Notably, the example Webster gives for this second definition is the Eighth Amendment. WEBSTER, *supra*. "Fitness" and "propriety" suggest a particularized inquiry.

Legal history does, too. Fines were calculated "according to the quantity of [one's] trespass." *Timbs*, 586 U.S. at 161 (Thomas, J., concurring). Courts took into account both "the magnitude and manner of th[e] offense," *id.* as well as the defendant's ability to pay. McLean, *supra*, at 865. The Clause's protection against excessive fines has traditionally included the right to be free from fines that would deprive an offender of his or her livelihood. *Browning-Ferris Indus.*, 492 U.S. at 271. Considering the defendant's ability to pay is a central aspect of a "long unbroken line of common law precedent" stretching from Magna Carta to early America and Blackstone. *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 35 (2022); *see* McLean, *supra*, at 865–70 (describing how a defendant's ability to pay was a common consideration in the colonial era). Encompassing both the conduct and the defendant, excessiveness accounted for particular circumstances.

Commenting on discretionary fines, Blackstone noted that the amount "of pecuniary fines neither can,

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[2] Available at https://tinyurl.com/nhkepzj2.

nor ought to be, ascertained by any invariable law." 4 WILLIAM BLACKSTONE, COMMENTARIES *378. To prevent arbitrary punishment, the amount of a fine "must frequently vary." *Id.* The assessment should consider "the aggravations or otherwise of the offense, the quality and condition of the parties, and . . . innumerable other circumstances." *Id.* Both Blackstone and Magna Carta understood proportionality to involve an inquiry "far broader than just that between the punishment and severity of the offense." Colgan, *supra*, at 322. Common-law courts considered the characteristics of a specific violation. *Id.* Early colonial courts likewise "did, in practice, tend to take into account individual characteristics of defendants when determining the level of fines." McLean, *supra*, at 867.

A focus on the defendant and his specific violation pervaded the common-law understanding of the prohibition against excessive fines.

C. Alaska's standard departs from the Excessive Fines Clause's original meaning.

Alaska is one of several jurisdictions that analyze excessiveness "in relation to the characteristics of the *offense*, not in relation to the characteristics of the *offender*." *United States v. 817 N.E. 29th Drive*, 175 F.3d 1304, 1311 (11th Cir. 1999) (emphasis added). This abstract standard ignores the individual defendant, his characteristics, and his specific violation, looking instead to social harm caused by offenders in the aggregate. Such a method is incompatible with the way the common law treated excessive fines—and how the Framers understood the Eighth Amendment.

To justify forfeiture of Mr. Jouppi's $95,000 airplane over a sixpack of beer, the Alaska Supreme

Court saddled him with all of the "grave societal harm[s]" that stem from alcohol abuse writ large—including alcoholism, fetal alcohol spectrum disorder, and death. Pet. App. 24a. It also tied his conduct to "substantial costs on public health and the administration of justice." *Id.* But Mr. Jouppi's own conduct bears little relation to these effects. Similarly to the petitioner in a previous case before this Court, who was not a "money launderer [or] drug trafficker," Mr. Jouppi is a senior citizen with "a stellar criminal record. Clean." Pet. Br. 6; *Bajakajian*, 524 U.S. at 338.

A $95,000 fine bears little to no resemblance to Mr. Jouppi's individual culpability. The decision below attempts to justify it based on harm unrelated to his own offense. That runs contrary to tradition: "early Americans had an expansive understanding of relevant factors when it came to the fair imposition of fines, including . . . the amount of harm *caused*." Colgan, *supra*, at 324 (emphasis added). Alaska's standard results in fines that lack particularity and so conflict with the Excessive Fines Clause's original meaning.

The Alaska Supreme Court's deliberate indifference concerning Mr. Jouppi's own conduct—not to mention its ahistoric deprivation-of-livelihood analysis (discussed below in Part II.B)—led it to endorse a forfeiture that would have been deemed unlawfully excessive at the Founding. Its decision should be reversed.

II. THIS COURT SHOULD OUTLINE A CLEAR EXCESSIVENESS STANDARD.

As this Court clarifies Excessive Fines Clause doctrine, it should recognize that this provision requires a two-pronged consideration: (1) whether the punitive fine is proportional to the gravity of the person's actions and, if so, (2) whether the punitive fine is proportional to the person's ability to pay it without depleting the ability to care for oneself or loved ones.

This is the same standard courts used to interpret the Virginia Declaration of Rights, from which the Eighth Amendment was taken verbatim. *See Timbs*, 586 U.S. at 164–65 (Thomas, J., concurring). The Virginia legislature ultimately codified this two-step approach, requiring that fines "ought to be according to the degree of the fault, *and* saving to the offender his contenement." McLean, *supra* at 869–70 (emphasis added).

A. Proportionality to the gravity of the offense must be based on the defendant's actual conduct, not theoretical or potential harms.

Despite the Eighth Amendment's venerable history, it took more than 200 years for this Court to interpret the Excessive Fines Clause. *Browning-Ferris Indus.*, 492 U.S. at 265. In the handful of excessive fines cases it has heard, only once has it discussed excessiveness in detail. *Bajakajian*, 524 U.S. at 334. However, "the *Bajakajian* opinion has resulted in some confusion." Colgan, *supra*, at 321. Lower courts have created various multifactor tests that depart from *Bajakajian* and fail to safeguard against excessive fines. This Court should instruct courts to follow the common-law approach and analyze excessiveness in relation to the defendant's particular culpability and circumstances.

This Court's Excessive Fines Clause precedent has focused largely on what that provision covers rather than on how to apply it. In *Browning-Ferris Industries*, this Court held that the Clause does not apply to punitive damage awards in cases between private parties. *Browning-Ferris Indus.*, 492 U.S. at 260. Later, this Court held that the Clause applies to *in rem* civil forfeitures and that *in personam* criminal forfeitures are no different from traditional fines. *Austin v. United States*, 509 U.S. 602, 604 (1993); *Alexander v. United States*, 509 U.S. 544, 588–89 (1993). Most recently, in *Timbs v. Indiana*, this Court incorporated the Excessive Fines Clause against the states through the Fourteenth Amendment. *Timbs*, 586 U.S. at 150 (majority op.). In each case, this Court declined to consider the nature of excessiveness.

The one exception came in *Bajakajian*. There, the government required a man to forfeit over $350,000 because he failed to report the cash he carried when leaving the country. *Bajakajian*, 524 U.S. at 324–25. The Court's reasoning focused on his specific violation, consistent with the Eighth Amendment's original meaning. *Id.* at 336–41 (taking into account the harm caused by the defendant compared to worst-case offenders like "tax evaders, drug kingpins, or money launderers").

But the *Bajakajian* Court did not clearly articulate the need to look at individual culpability, and jurisprudential confusion has followed. The Alaska Supreme Court's abstract standard for excessiveness flouts *Bajakajian*. One academic has argued that "the embrace of *individual* culpability . . . and a probing inquiry of excessiveness suggested in *Bajakajian* have been abandoned by lower courts." Yan Slavinskiy, *Protecting the Family Home by Reunderstanding* United

States v. Bajakajian, 35 CARDOZO L. REV. 1619, 1642 (2014) (emphasis added).

Even if this is hyperbole, there is strong evidence that courts have strayed. They have created a multitude of multifactor tests as they have derived factors from *Bajakajian*. *See, e.g.*, *State v. Timbs*, 134 N.E.3d 12, 26 (Ind. 2019). This has happened despite this Court expressly declining to adopt a "multifactor test," *see Austin*, 509 U.S. at 622, and *Bajakajian* itself undertaking a violation-centered analysis. While this Court "may have hoped that lower courts would sort out a reasonable and straightforward approach to applying [*Bajakajian*'s] 'grossly disproportional' test," they have failed to do so. Pimentel, *supra*, at 543. The Tenth Circuit uses a nine-factor test. *United States v. Wagoner Cnty. Real Est.*, 278 F.3d 1091, 1101 (10th Cir. 2002). The Sixth Circuit recognizes five factors. *United States v. Carpenter*, 317 F.3d 618, 627–28 (6th Cir. 2003). On remand from this Court, the Indiana Supreme Court used four factors. *Timbs*, 134 N.E.3d at 37. Its holding was largely consistent with the original meaning of the Eighth Amendment and *Bajakajian*, and Utah and Pennsylvania apply a similar test. *State v. Real Prop.*, 994 P.2d 1254 (Utah 2000); *Commonwealth v. 1997 Chevrolet*, 160 A.3d 153 (Pa. 2017). But the Alaska Supreme Court decision below uses yet another mélange of factors.

This patchwork of precedent leaves Americans at risk. In the 15 years after *Bajakajian* was decided, "only four courts of appeals applying *Bajakajian* found a forfeiture to be excessive." Pimentel, *supra*, at 544. The nation's courts are supposed to maintain constitutional rights as they were enacted, not develop creative jurisprudential glosses and regional variations. *See*

Bruen, 597 U.S. at 19 (doing away with lower courts' innovations in Second Amendment doctrine). Setting a clear standard will untangle inconsistencies and better protect ordinary people.

The common law provides such a standard, focused on individual culpability and ability to pay rather than crime in the abstract.

B. The standard for assessing personal economic circumstances should be whether the fine leaves one unable to care for oneself or one's family.

Although this Court has never directly held that economic circumstances are a necessary part of the Excessive Fines Clause standard, it has recognized that this factor has been a part of the calculation since Magna Carta. *Timbs,* 586 U.S. at 151. In *Bajakajian*, the Court clearly acknowledged that the historical underpinning of the Clause included a prohibition against a fine that was so large that it deprived a defendant of "his livelihood." *Bajakajian*, 524 U.S. at 335. Yet the Court withheld consideration of how the fine impacted the petitioner because he had not raised that issue below and the district court made no factual findings as to it. *Id.* at 340 n.15. Moreover, the Court had already found that the petitioner's fine was excessive in relation to the offense, so the individualized economic impact analysis was unnecessary.

As lower courts have struggled to apply *Bajakajian*, many have refused to consider economic circumstances, misinterpreting *Bajakajian* as rejecting their relevance. *United States v. 817 N.E. 29th Drive*, 175 F.3d 1304, 1311 (11th Cir. 1999) ("The Supreme Court . . . has made clear that whether a forfeiture is 'excessive' is determined . . . not by comparing the amount of the forfeiture to the amount of the owner's assets."); *Pimentel v. City of Los Angeles*, 115 F.4th 1062, 1072 (9th Cir. 2024) ("We . . . once again decline to incorporate a means-testing requirement for claims arising under the Excessive Fines Clause."); *United States v. Bikundi*, 926 F.3d 761, 796 (D.C. Cir. 2019) ("The Excessive Fines Clause does not make obvious whether a forfeiture is excessive because a defendant is unable to pay, and neither the Supreme Court nor this court has spoken on that issue.") (internal citations omitted). In each of these instances, the failure to consider the person's economic circumstance misunderstands *Bajakajian* and ignores the clear historical record indicating that they are a necessary part of the proportionality calculus.

This Court should not hold merely *that* courts have to consider economic circumstances—it should explain *how* courts ought to do so. Several lower courts that have considered the economic circumstances of an individual have done so in a way that strays from the original public meaning of the Eighth Amendment. At least two circuit courts, and the Alaska Supreme Court below, applied *Bajakajian*'s prohibition on a fine depriving someone of their "livelihood" by asking whether a fine made the person permanently insolvent or incapable of working in the future. *See United States v. Levesque*, 546 F.3d 78, 85 (1st Cir. 2008) ("a forfeiture could be so onerous as to deprive a defendant of his or her future ability to earn a living"); *United States v. Smith*, 656 F.3d 821, 828 (8th Cir. 2011) ("Even if it appears at the time of sentencing that Smith cannot satisfy the forfeiture in the future, there is always a possibility that he might legitimately come into money"); *Jouppi v. State*, 566 P.3d 943, 958

(Alaska 2025) (reasoning that because Mr. Jouppi had not presented evidence that the forfeiture of his plane forced him into retirement, he "failed to show that the forfeiture unconstitutionally burdened his livelihood."). This is not the standard set by the common law or the Eighth Amendment.

The original text of Magna Carta was written in Latin, with legal scholars and courts using a variety of translations since then. One version of the relevant provision this Court has previously quoted reads: "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;" *Timbs,* 586 U.S. at 160 (Thomas, J., concurring). The phrase "saving to him his contenement" has often been retranslated as not depriving someone of his "livelihood." *Browning-Ferris Indus.*, 492 U.S. at 271; *Bajakajian*, 524 U.S. at 335. *Timbs* recognized that the term "livelihood" (as used in *Browning-Ferris Indus.*) was equivalent to what Blackstone described thus: "no man shall have a larger amercement imposed upon him, *than his circumstances or personal estate will bear*." *Timbs*, 586 U.S. at 151 (majority op.) (emphasis added). This is in line with what jurists have understood the term to mean. Writing in 1711, Thomas Madox pointed to thirteenth-century understandings of the phrase as meaning, "Saving the maintenance of himself, his Wife and Children." McLean, *supra* at 856–67. Modern legal historian William McKechnie wrote of this term as leaving a person with enough money "sufficient for the sustenance of himself and those dependent on him." *Id.* at 855. Wharton's Law Lexicon of 1847 defined "contenement" as "that which is necessary for the support and maintenance of men, agreeably to their several qualities of life." *Id.* at 855 n.80.

Additionally, as Justice Thomas noted in *Timbs*, the House of Commons under King Charles II determined that the King's Bench "most notoriously departed from all Rules of Justice and Equality, in the Imposition of Fines upon Persons convicted of Misdemeanors without any Regard to the Nature of the Offences, *or the Ability of the Persons*." *Timbs*, 586 U.S. at 162 (Thomas, J., concurring) (emphasis added). On remand, the Indiana Supreme Court in that case concluded:

> To conduct a proportionality analysis at all, we need to consider the punishment's magnitude. And the owner's economic means—relative to the property's value—is an appropriate consideration for determining that magnitude. To hold the opposite would generate a new fiction: that taking away the same piece of property from a billionaire and from someone who owns nothing else punishes each person equally.

Timbs, 134 N.E.3d at 36.

Because the consequences of not paying a fine associated with criminal or traffic offenses are so great, those who cannot afford to do so often forgo critical family needs. One study looking at fine and fee debt over a ten-year period found that 51% of people with unpaid sanctions had to cut back on multiple essential needs: 27% reported housing hardship, 35% discussed their inability to obtain food, and 14% noted reduced access to medicine or healthcare. Wilson Ctr. for Sci. &

Just. & Fines & Fees Just. Ctr., *Debt Sentence: How Fines and Fees Hurt Working Families* (2023).[3] These are the kinds of deprivations that the Framers sought to avoid.

The historical record is clear as to what *contenement* (and by extension, *livelihood*) meant: the present ability to care for oneself and one's family.

III. CIVIL FORFEITURE, IN PARTICULAR, PRIORITIZES PROFIT OVER PUBLIC SAFETY.

The Constitution prohibits excessive fines "[f]or good reason." *Timbs*, 586 U.S. at 153. All fines, including forfeitures and financial penalties imposed by courts at sentencing, risk improper profiteering by governments. "Even absent a political motive, fines may be employed 'in a measure out of accord with the penal goals of retribution and deterrence,' for fines are a source of revenue, while other forms of punishment 'cost a State money.'" *Timbs,* 586 U.S. at 154 (quoting *Harmelin v. Michigan*, 501 U.S. 957, 978–79 & n.9 (1991)); *see also id.* (quoting *Harmelin*, 501 U.S. at 978 n.9 ("it makes sense to scrutinize governmental action more closely when the State stands to benefit")).

Unlike other forms of punishment, civil forfeiture is "punitive for those whose property is confiscated; and profitable for the government." *Timbs*, 134 N.E.3d at 21. "Unfortunately, most states and the federal government give law enforcement, both police and prosecutors, a large financial incentive to seize and forfeit property, whether civilly or criminally. In 32 states and at the federal level, between 90% and 100% of

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[3] Available at https://tinyurl.com/vsy7rds5.

proceeds go to funds controlled by law enforcement. Another 12 states award between 45% and 80% to law enforcement." Lisa Knepper et al., *Policing for Profit: The Abuse of Civil Asset Forfeiture*, INST. FOR JUST., at 13 (4th ed. 2026) (internal citation omitted).[4] This creates a perverse incentive for law enforcement to target crimes they know will result in forfeiture—one left unchecked in the absence of Eighth Amendment safeguards.

Examples abound. The U.S. Department of Justice's investigation into Ferguson, Missouri, found that over three years, the amount of the municipal budget that came from court-ordered fines and fees nearly doubled while "City and police leadership pressure[d] officers to write citations, independent of any public safety need, and rely on citation productivity to fund the City budget." U.S. DEP'T OF JUST. CIV. RTS. DIV., *Investigation of the Ferguson Police Department*, at 10 (2015).[5] Similarly, in Lexington, Mississippi, the Department found that "revenue from fines increased more than sevenfold" in just one year—most of the money going to fund the police department. U.S. DEP'T OF JUSTICE, *Investigation of the Lexington Police Department and the City of Lexington*, *Mississippi*, at 11 (2024).[6] In February 2026, the town of Brookside, Alabama admitted that its police department engaged in an intentional effort to use fines and forfeitures to raise revenue for the department that "likely interfered with the Town's obligation to administer justice equally under law." Unopposed Mot. for Prelim.

[4] Available at https://tinyurl.com/3ncddjw9.

[5] Available at https://tinyurl.com/5ewpukn3.

[6] Available at https://tinyurl.com/2ymemt89.

Approval of Class Settlement Agmt. at 11, *Colman v. Brookside*, No. 2:22-cv-423-AMM (N.D. Ala. Feb. 26, 2026).[7]

Civil forfeiture presents "a conflict of interest, if not a moral hazard." Pimentel, *supra*, at 550. Governments have captured billions of dollars through civil and criminal forfeiture. *Id.* Research has found that "when local budgets are tight, law enforcement agencies may ramp up forfeiture activity." Knepper et al., *supra*, at 12; *see also* Brian D. Kelly, *Fighting Crime or Raising Revenue? Testing Opposing Views of Forfeiture*, INST. FOR JUST., at 3 (2019).[8]

Profit incentives have resulted in some law enforcement agencies diverting resources away from "nonfinancial crimes" to "more lucrative drug cases" where forfeitures are more common and profitable. *Id.* Researchers have found that a 1% increase in local revenues from fines, fees, and forfeitures is associated with a 6.1% decrease in the violent crime clearance rate and an 8.3% decrease in the property crime clearance rate. Rebecca Goldstein et al., *Exploitative Revenues, Law Enforcement, and the Quality of Government Services,* URB. AFF. REV., at 4 (2018).[9]

The highest-netting civil forfeitures almost always involve corporate or financial regulations. Celine McNicholas et al., *Civil Monetary Penalties for Labor Violations are Woefully Insufficient to Protect Workers*, ECON. POL'Y INST. (July 15, 2021).[10] Civil penalties for

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[7] Available at https://tinyurl.com/n885e359.

[8] Available at https://tinyurl.com/vte23wc4.

[9] Available at https://tinyurl.com/2pdu68jm.

[10] Available at https://tinyurl.com/2f5axy6p.

violations under the Consumer Financial Protection Act "stretch well into the millions of dollars," whereas the "maximum penalty for a standard OSHA violation is well below 1% of the maximum insider trading penalty." *Id.* As a result, the government puts more resources toward collecting financial and corporate civil penalties rather than less-profitable civil penalties stemming from employment and safety regulations. *See generally* Lydia Beyoud, *SEC Would See Funding Boost in Biden's Budget Plan*, BLOOMBERG (Mar. 28, 2022).[11] In 2026, the SEC's enforcement budget was $607 million while OSHA's enforcement budget was just $243 million. *Compare* SEC, FY 2027 CONGRESSIONAL BUDGET JUSTIFICATION 8 (2026) (hereinafter "SEC BUDGET"), *and* DEP'T OF LAB., FY 2027 BUDGET IN BRIEF 27 (2026). In justifying its request for a larger enforcement budget in 2027, the SEC pointed to its success in obtaining monetary penalties and other relief in 85 percent of its enforcement actions. SEC BUDGET, *supra*, at 8, 47. The more money agencies collect, the bigger their budgets. They "select targets not because they are the worst violators, but for improper reasons such as agency or individual self-aggrandizement." Sonia A. Steinway, *SEC "Monetary Penalties Speak Very Loudly," But What Do They Say? A Critical Analysis of the SEC's New Enforcement Approach*, 124 YALE L.J. 209, 224 (2015).

Forfeiture distorts all levels of the criminal process. "The dollar value of forfeited property becomes a convenient way to measure the success of enforcement efforts in general *and* to distinguish between the performance of individual officers." David J. Fried,

[11] Available at https://tinyurl.com/ycket6yb.

Rationalizing Criminal Forfeiture, 79 J. CRIM. L. & CRIMINOLOGY 328, 362 (1988). Prosecutors are not immune to this in making charging decisions—even though "the appearance of distortion" in this context is "intolerable." *Id.* at 365. As long as the Excessive Fines Clause is not consistently enforced, the government has "an incentive to investigate criminal activity in situations involving valuable property" while ignoring crimes that do not "provide financial gain." *United States v. 6625 Zumirez Drive*, 845 F. Supp. 725, 735 (C.D. Cal. 1994).

Forfeiture leads law enforcement to engage in privateering instead of public safety. It is "routinely imposed and . . . routinely graver than [the] associated . . . misdemeanor crimes." *Sessions v. Dimaya*, 584 U.S. 148, 184 (2018) (Gorsuch, J., concurring). The Eighth Amendment should check this kind of abuse—whereas the standard followed by Alaska and other jurisdictions effectively neutralizes it.

CONCLUSION

Rejecting the abstract excessiveness standard applied below, and setting out the common-law one that should govern in its place, will help protect Americans' vehicles, homes, and money. This Court should reverse.

Respectfully submitted,

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