

No. 25-246

In the Supreme Court of the United States

KENNETH JOHN JOUPPI, PETITIONER

v.

STATE OF ALASKA

On Writ of Certiorari
to the Supreme Court of Alaska

BRIEF FOR THE 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.

PARTIES TO THE PROCEEDING

Petitioner is Kenneth John Jouppe. Respondent is the State of Alaska.

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INTRODUCTION

This case presents a threshold question concerning the standard for whether a fine or forfeiture violates the Eighth Amendment's Excessive Fines Clause. For over a decade, the State of Alaska has been trying to forfeit bush pilot Ken Jouppi's 1969 Cessna airplane. The basis: One of Jouppi's passengers had beer in her luggage, and the State maintained that one six-pack, at least, would have been visible to Jouppi. For certain Alaskan villages, it's a crime to bring in alcohol. And when the means of importation is an airplane, the plane is subject to forfeiture. No matter that the offense is a misdemeanor. As here. No matter that the pilot is a first-time offender. As here. No matter that the alcohol is a six-pack of Budweiser. As here. No matter that it belonged to a customer. As here. The result: an airplane forfeited for a six-pack.

The Excessive Fines Clause was built for cases like this. Below, however, the Alaska Supreme Court upheld Jouppi's forfeiture—and it did so on the back of a basic methodological error. As this Court has recognized, a forfeiture (or pecuniary fine) “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 precedent, history, and the Clause’s basic function confirm that the gravity of a defendant’s offense is to be evaluated, not purely in the abstract, but with reference to the defendant’s own wrongdoing. Viewed purely in the abstract, after all, the societal harm of even the most trivial infraction will dwarf any fine or forfeiture imaginable. Think speeding. Or jaywalking. Or vagrancy. History’s most notorious fines, in fact, were justified in this very way, from the Star Chamber to the Black Codes.

The Alaska Supreme Court replicated precisely that starting-gate error. The court accepted that Jouppi’s “culpability extended only to one six-pack and that he had no related misconduct.” Br. in Opp. 14; *see also, e.g.*, Pet. App. 20a, 24a-25a. Yet its evaluation of the offense’s gravity proceeded wholly in the abstract. It asserted that, categorically, Alaska’s dry-village misdemeanor offense is “more serious” than the federal felony at issue in *Bajakajian*. Its analysis of the harm Jouppi caused looked exclusively to legislative history discussing the costs of alcohol abuse in general. That the value of his airplane was “only” nine and a half times the maximum theoretical fine sealed the deal. No matter that the maximum fine was established for worst-case violators of a host of disparate crimes—from unlicensed medicine to bestiality. Under such a standard, little wonder the court proceeded to bless the forfeiture of an airplane for a six-pack.

Seven years ago, this Court confirmed that the Excessive Fines Clause secures a right that is “‘fundamental to our scheme of ordered liberty,’ with ‘dee[p] root[s] in [our] history and tradition.’” *Timbs v. Indiana*, 586 U.S. 146, 149 (2019). Yet in Alaska, it is unclear what fine or forfeiture would ever be excessive. Under this Court’s standard, for instance, Hosep Bajakajian prevailed; under Alaska’s, he surely would have lost. Likewise for the driver of Justice Breyer’s hypothetical Bugatti, forfeited for going five miles over the speed limit. Tr. 43-44, *Timbs v. Indiana* (No. 17-1091). Only by accounting for the gravity of the defendant’s own wrongdoing can the Excessive Fines Clause secure the right it was understood to protect. The Alaska Supreme Court’s standard breaks with that centuries-old principle. Its error should be corrected, its judgment reversed, and the case remanded for it to evaluate Jouppi’s forfeiture anew.

OPINIONS BELOW

The opinion of the Alaska Supreme Court (Pet. App. 1a-29a) is reported at 566 P.3d 943. The opinion of the Alaska Court of Appeals (Pet. App. 30a-63a) is reported at 519 P.3d 653. The trial court's order (Pet. App. 152a-69a) is not reported.

JURISDICTION

The Alaska Supreme Court entered judgment on April 18, 2025. On June 26, 2025, Justice Kagan extended the time within which to file a petition for a writ of certiorari to September 2, 2025. The petition for a writ of certiorari was filed on August 29, 2025, and granted on July 20, 2026. This Court's jurisdiction rests on 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

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

STATEMENT

1. In the 1980s, the State of Alaska authorized municipalities and villages to declare themselves "dry villages." Those that do so can select among a patchwork of regulatory options. Some regulate only the sale of alcohol, limiting it to restaurants, package stores, and the like. Alaska Stat. § 04.11.491(a)(2)-(3), (b)(2). Others prohibit selling alcohol but not possessing it. *Id.* § 04.11.491(a)(1), (b)(1). Still others ban the sale, importation, and possession of alcohol altogether. *Id.* § 04.11.491(a)(5), (b)(4); *see generally* Kristen A. Ogilvie, *Unintended Consequences of Local Alcohol Restrictions in Rural Alaska*, 17 J. Ethnicity in Substance Abuse 16 (2018).

For those most restrictive villages, it is a state-level crime to “knowingly send, transport, or bring an alcoholic beverage” there. Alaska Stat. § 04.11.499(a). The resulting penalties depend primarily on the amount of alcohol and whether the defendant is a repeat offender. Transporting 10.5 liters of spirits or 12 gallons of beer is a class C felony, as is any third offense (or more). On the less serious end of the spectrum, first-time offenders who transport less than the quantities of alcohol above face a class A misdemeanor. *Id.* § 04.16.200(e)(1)-(3). For them, the minimum sentence is three days’ imprisonment and a \$1,500 fine. *Id.* § 04.16.200(g)(1)(A).

And, potentially, forfeiture. Using an airplane to transport the alcohol subjects the plane to mandatory forfeiture, “regardless of whether the conviction is a misdemeanor or felony or is the defendant’s first conviction.” Pet. App. 22a; Alaska Stat. § 04.16.220(a)(3)(C), (i)(2).

2. Now 83 years old, petitioner Ken Jouppi has been fascinated with flying since childhood. After serving four years in the Air Force, mainly as a mechanic for B-52s, he got his pilot’s license in the late 1960s. In the late ’70s, he moved to Alaska. R. pp. 99, 675.¹

For those who love flying, there’s no better place. Ever since Captain James Martin first flew an open-cockpit biplane over Fairbanks in 1913 (helped by his wife and fellow pilot, Lily), aviation has held a special place in Alaska’s heritage. Ken Jouppi fit right in. Starting out, he flew for a small company out of Ketchikan, working with the U.S. Forest Service, flying charters, and occasionally piloting medevac and search missions. R. pp. 676-77. In time, he started his own company (“KenAir”), and for

¹ “R.” refers to the trial-court record on file with the Alaska Court of Appeals, Case No. A-13147.

years, he made a living using his 1969 Cessna U206D as a one-man air-taxi service, shuttling tourists and locals alike over the Alaskan wilderness.

Jouppi knew of Alaska's dry-village system and would not deliberately fly alcohol illegally. *See, e.g., Horner v. State*, No. A-9329, 2008 WL 314164, at *1 (Alaska Ct. App. Feb. 6, 2008) (noting that Jouppi had assisted police). But nor would he preemptively rifle through passengers' luggage to hunt for alcohol. No law required him to search their belongings, and, in his view, it would be "invasive and demeaning" to do so. R. pp. 154, 677-78.

On the morning of April 3, 2012, he was scheduled to fly a repeat passenger from Fairbanks to the village of Beaver—a fully "dry" village that bans selling, importing, and possessing alcohol. Along with many other groceries, Jouppi's passenger had three cases' worth of beer in her luggage. She herself was not a drinker. But she was traveling to Beaver to spend her birthday with her husband, who worked there; the beer (Budweiser and Bud Light) was for him. 8/22/2013 Tr. 247-48, 256.

As Jouppi finished loading the plane, state troopers arrived, searched it, and found the beer. While Jouppi insisted he had no idea there was any beer in his passenger's luggage, the officers maintained that one six-pack, at least, was visible in a shopping bag. So the State charged Jouppi, his company, and the passenger with the misdemeanor offense of knowingly transporting an alcoholic beverage into a dry community. The passenger pleaded guilty. Jouppi and the company went to trial and were found guilty by way of a general verdict form that made no finding on how much alcohol he knew was aboard his plane. Pet. App. 5a. The trial judge imposed the minimum executed sentence allowed by statute: a \$1,500 fine for Jouppi (and another \$1,500 for his company) and three

days' imprisonment. Pet. App. 5a ("The court sentenced Jouppi to 180 days in jail with 177 suspended, a \$3,000 fine with \$1,500 suspended, and three years of probation."); *see also* R. p. 686 ("Mr. Jouppi, I learned by reading 33 letters that he's 70 years old and he has a stellar criminal record. Clean.").

3.a. Much more was to come: For the past fourteen years, the State has been pursuing Jouppi's plane through *in personam* criminal forfeiture. (The plane belonged to Jouppi, not his company. Pet. App. 6a.) At first, the trial court held that the forfeiture was not authorized by statute. The plane hadn't flown a foot toward Beaver, the court reasoned, so it did not "transport or facilitate the transportation of . . . alcoholic beverages imported into a" dry village. Alaska Stat. § 04.16.220(a)(3)(C). The State appealed, and the Alaska Court of Appeals reversed, holding that the statute mandates forfeiture "regardless of whether the alcoholic beverages are actually transported toward their destination." *State v. Jouppi*, 397 P.3d 1026, 1033 (2017).

b. On remand, the trial court held a hearing on whether the forfeiture was an unconstitutionally excessive fine. The court ruled that it was.

The court first concluded that Jouppi's *in personam* criminal forfeiture is a fine under the Excessive Fines Clause. Pet. App. 156a; *see also Alexander v. United States*, 509 U.S. 544, 558-59 (1993). The court then held that the forfeiture was unconstitutionally excessive. Much like this Court in *United States v. Bajakajian*, the trial court "assess[ed] the gravity" of Jouppi's "actual conduct" against the severity of the forfeiture. Pet. App. 160a. On the punishment side of the ledger, the forfeiture was a severe economic sanction. Pet. App. 163a ("The court concludes that the plane is worth \$95,000."). On the

other side of the ledger, Jouppi’s culpability relative to other potential violators of the statute was low. The criminal statute “recognize[s] a hierarchy of seriousness among . . . offenses,” yet the airplane-forfeiture provision applies “with equal force to all.” Pet. App. 160a-61a. And while Jouppi’s conduct was “serious,” it “was not nearly as egregious as other conduct that could result in mandatory forfeiture of a plane under the applicable statutes.” Pet. App. 168a.

“The gravity of the harm” was likewise “low relative to other AS 04.11.499(a) offenses.” Pet. App. 161a. Jouppi “was convicted of a class A misdemeanor,” the court reasoned, and even among misdemeanors, “[o]ne could imagine more egregious” ones. Pet. App. 161a, 168a. The passenger’s alcohol was not “wine or distilled spirits,” but “two cases of Budweiser beer, and four six packs of sixteen ounce cans of Budweiser and Bud Light beer.” Pet. App. 159a. The court even put a thumb on the government’s side of the scale and “[a]ssume[d]” without deciding that Jouppi’s “culpability extends to all of the alcohol on the aircraft, and not merely the six beers that were in plain view.” Pet. App. 160a-61a. Even on that assumption, the total amount of beer was “still well within the limit set forth in” the statute’s misdemeanor tier. Pet. App. 161a. Consistent with the passenger’s testimony, moreover, the beer “could have plausibly all been intended for [her] personal consumption, or her family’s personal consumption.” Pet. App. 160a. The court found it “easy to imagine much more egregious AS 04.11.499(a) violations” and held that “the forfeiture is an excessive fine, and hence unconstitutional.” Pet. App. 161a, 169a.

c. The State appealed again, and the court of appeals vacated the trial court’s judgment. Pet. App. 30a-63a. The court shared the trial court’s view that the excessiveness

standard rightly focuses on “the particular facts of Jouppi’s case and his specific level of culpability.” Pet. App. 56a. In the court of appeals’ view, however, the trial court’s factual findings were “incomplete.” Pet. App. 43a. Rather than assuming without deciding that Jouppi’s culpability extended to all of the passenger’s beer, the trial court should have resolved whether his crime “was, in substance, attempting to bring [only] a six pack of beer to a local option community.” Pet. App. 43a (citation omitted; alteration in original). The trial court also should have “address[ed] whether Jouppi’s violation of the bootlegging statute was related to, or comprised part of, other illegal activities” (Pet. App. 44a) and “made clearer findings regarding the extent of the harm caused by Jouppi’s illegal conduct.” Pet. App. 46a. The court of appeals thus remanded.

d. The Alaska Supreme Court granted review and vacated the court of appeals’ judgment. Pet. App. 1a-29a. Where the court of appeals called for further fact-finding, the supreme court held that forfeiting Jouppi’s airplane was constitutional “as a matter of law.” Pet. App. 2a.

Throughout, the court made plain that its analysis was premised on Jouppi’s having violated the dry-village statute only as to one “six-pack of beer.” Pet. App. 24a-25a; *see also* Br. in Opp. 14 (agreeing that the court took as given that Jouppi’s “culpability extended only to one six-pack and that he had no related misconduct”). From that starting point, the court developed an excessiveness standard that reflected a wholly abstract view of Jouppi’s crime. The court acknowledged, for example, that “Jouppi was convicted of only one instance of alcohol importation unconnected to other criminal activity.” Pet. App. 19a. But the court considered it “not particularly relevant whether Jouppi’s offense was part of a larger pattern of

criminal activity” because, whatever the degree of his wrongdoing, “a pilot knowingly transporting a passenger’s alcohol to a dry village is precisely the kind of person and conduct that the legislature was concerned about.” Pet. App. 26a. The court also asserted that Jouppi “was clearly within the class of persons targeted by the statute” because the statute applied to him (Pet. App. 20a)—a characteristic true of anyone punished under it.

More followed along similar lines. The court compared the value of Jouppi’s plane to the \$10,000 maximum fine allowed by statute (Pet. App. 23a)—a maximum reserved for “the worst type of offender ‘within the group of persons committing the offense in question.’” *Hintz v. State*, 627 P.2d 207, 210 (Alaska 1981). That the plane’s value was “only” nine and a half times that theoretical maximum, the court remarked, “suggests that the forfeiture is not grossly disproportional.” Pet. App. 23a. In evaluating “the nature and extent of the harm caused by the defendant’s offense,” Pet. App. 24a, the court then looked, not to the harm Jouppi caused, but to “the harm . . . addressed in the legislative history of the forfeiture provision” decades ago, Pet. App. 25a n.94. Having done so, it saddled Jouppi with the ills of alcohol abuse statewide: “increased crime,” “alcoholism,” “fetal alcohol spectrum disorder,” “substantial costs on public health and the administration of justice,” and “death.” Pet. App. 24a.

The court closed by spelling out the breadth of its reasoning: “It is clear to us,” the court stated, “that the legislature determined that the harm from even a six-pack of beer knowingly imported into a dry village is severe enough to warrant forfeiture of an aircraft.” Pet. App. 25a. On that basis, the court “h[e]ld that the forfeiture of Jouppi’s airplane is not grossly disproportional to the gravity of the offense for which he has been convicted and,

therefore, the forfeiture does not violate the Excessive Fines Clause of the Eighth Amendment.” Pet. App. 27a.

SUMMARY OF ARGUMENT

In determining whether a fine contravenes the Excessive Fines Clause, courts must consider the offense’s gravity, not purely in the abstract, but by reference to the defendant’s own wrongdoing. At every turn, the Alaska Supreme Court broke with that standard. The result of that error speaks for itself: an airplane, forfeited for a six-pack.

A. Text, precedent, history, and the Excessive Fines Clause’s basic function combine to show that a fine’s excessiveness must be evaluated, not purely in the abstract, but with reference to the gravity of the defendant’s misconduct.

1. Textually, the Excessive Fines Clause’s “touchstone” is “the principle of proportionality.” *United States v. Bajakajian*, 524 U.S. 321, 334 (1998). The word *excessive* communicated that principle in 1791, and does so today. In this way, the Excessive Fines Clause more obviously reflects “the centrality of proportionality” (*id.* at 335) than does the Cruel and Unusual Punishments Clause that follows it. Where the Court has long divided on whether that latter Clause enshrines any proportionality principle at all, there has been no such controversy over the Excessive Fines Clause.

2. As the Court has recognized, a forfeiture (or pecuniary penalty) violates the Excessive Fines Clause if it is “grossly disproportional to the gravity of a defendant’s offense.” *Id.* at 334. And the Court’s precedent supplies the natural way to evaluate the gravity of a defendant’s offense—not purely in the abstract, but with reference to the defendant’s own conduct. That principle is reflected

in the Court's leading excessive-fines decision and in its later precedent. Most state and federal courts to have considered the issue also start from that same premise.

3. A millennium of history bears out that understanding of the excessiveness standard. Time and again, England's monarchs magnified small offenses into great ones. Time and again, Parliament (and before that, the barons) responded by demanding that fines be proportioned to the defendant's own wrongdoing. Magna Carta is among the most famous instances, guaranteeing that "[a] free man shall be amerced for a small fault only according to the measure thereof, and for a great crime according to its magnitude." The Crown's relentless campaigns to circumvent that protection often captured in miniature the question presented here. During the worst of the Star Chamber years, for instance, Charles I's retainers justified crushing fines by portraying minor offenses in impossibly abstract terms. Less pliable jurists insisted on a different approach: "not to make faults where they are not, nor to make them greater than in themselves they are." Civil war, regicide, the Restoration, and another round of abusive Stuart fines culminated in the Bill of Rights of 1689, with its explicit prohibition on excessive fines.

A century later, much the same language would be added to the U.S. Constitution. As in England, protection against "excessive fines" was well understood in America to demand that a defendant's wrongdoing be determined with reference to "the real measure of his own offence." In the nineteenth and early twentieth centuries, the Black Codes and the peonage system once again spotlighted the principle's importance, as Southern States set about "fining the freed people to the full extent of the law for petty offences" either to extort them when they could pay or to auction them into debt-slavery when they could not.

4. An Excessive Fines Clause that measures an offense’s gravity only in the abstract is a clause that secures no protection against excessive fines. In the abstract, the societal harm of even the most trivial infraction will dwarf any fine imaginable. In 2019 alone, 2,000 people died because they failed to wear seatbelts, at an estimated societal cost of \$11 billion. Speeding statistics are worse. Even so, forfeiting every car going a mile over the speed limit—or every car with an unbelted occupant—surely would be “grossly disproportional to the gravity of the defendant’s offense.” *Bajakajian*, 524 U.S. at 337. For evaluating the gravity of the defendant’s offense means accounting for the gravity of the defendant’s *own* offense. And again, history highlights the point. From the Star Chamber to the Black Codes, the most notorious fines were justified by viewing defendants’ wrongdoing at the highest possible level of generality. Only by accounting for a defendant’s own misconduct can the Excessive Fines Clause secure the fundamental right it was ratified to protect.

Judges perform this task in other contexts day in and day out. In the federal system, for example, mandatory pecuniary criminal fines are not common, and district courts must evaluate the circumstances of the offense before imposing fines. The Excessive Fines Clause does not, of course, require calibrating fines to what the judge views as the perfect degree of severity. But the defendant’s own misconduct is part of the gross-disproportionality inquiry, and courts are well equipped to evaluate it. These principles have special urgency for modern-day forfeitures, moreover, which present almost every hazard the Excessive Fines Clause exists to check—from perverse financial incentives to often-haphazard mismatches between crime and punishment.

B. Along every metric, the Alaska Supreme Court’s standard evaluated Ken Jouppi’s offense purely in the abstract. According to the court, Jouppi was “clearly within the class of persons targeted by the statute” because the statute applied to him, a characteristic true of anyone convicted under it. Categorically, the court asserted that misdemeanor dry-village offenses are “more serious” than the federal felony at issue in *Bajakajian*. As for the harm caused, the court looked to “the harm . . . addressed in the [statute’s] legislative history.” The court then looked to the maximum fine authorized for class A misdemeanors, established for the worst-case offenders across an array of disparate crimes. Having attributed to Jouppi the ills of alcohol abuse statewide, the court then upheld the forfeiture of his airplane for a six-pack. Its methodological error should be corrected, its judgment reversed, and the case remanded for evaluation of Jouppi’s forfeiture anew.

ARGUMENT

A. A fine’s excessiveness is evaluated, not purely in the abstract, but by reference to the gravity of the defendant’s misconduct.

The Eighth Amendment forbids excessive fines, and this Court has recognized proportionality as the touchstone: A fine violates the Excessive Fines Clause if it is grossly disproportional to the gravity of the defendant’s offense. The Court’s precedent also supplies the natural way to evaluate the offense’s gravity: not purely in the abstract, but with reference to the defendant’s own wrongdoing. A millennium of history fortifies that precedent. And history further illustrates that the proposition is as common-sense as it is important. For viewed purely in the abstract, the societal harm of even the most minor infraction will dwarf any fine imaginable. Only by evaluating “the real measure of [the defendant’s] own offence” (to

quote one Founding-era jurist) can the Excessive Fines Clause secure the right the People ratified it to protect.

1. The text of the Excessive Fines Clause makes proportionality its touchstone.

“Protection against excessive punitive economic sanctions” is “both ‘fundamental to our scheme of ordered liberty’ and ‘deeply rooted in this Nation’s history and tradition.’” *Timbs v. Indiana*, 586 U.S. 146, 154 (2019). In large part, that is because, “uniquely of all punishments,” fines present a special risk of abuse. *Harmelin v. Michigan*, 501 U.S. 957, 979 n.9 (1991) (opinion of Scalia, J.). Most punishments cost governments money to impose. Not fines: They “are a source of revenue.” *Id.*; *see also Timbs*, 586 U.S. at 154. In turn, they pose a singular danger of being “imposed in a measure out of accord with the penal goals of retribution and deterrence.” *Harmelin*, 501 U.S. at 979 n.9 (opinion of Scalia, J.); *see also R. v. Mosley*, 111 Eng. Rep. 499, 500 (K.B. 1835) (Denman, C.J.) (“[I]t is impossible not to look with jealousy at fines which are imposed by the steward for the benefit of the lord.”). It is against this backdrop that the Eighth Amendment singles out fines for special mention: “They cannot be excessive.” *Tyler v. Hennepin County*, 598 U.S. 631, 650 (2023) (Gorsuch, J., concurring).

Since the 1790s and before, the text of the Excessive Fines Clause has been understood to cement “the centrality of proportionality to the excessiveness inquiry.” *United States v. Bajakajian*, 524 U.S. 321, 335 (1998). Then as now, *excessive* meant “beyond the common measure or proportion” and “beyond the bounds of justice.” 1 Noah Webster, *American Dictionary of the English Language* (1828) (citing Excessive Bail Clause as usage example); *see also* 1 Samuel Johnson, *A Dictionary of the English Language* (4th ed. 1773) (similar). The

Clause’s text, moreover, traces directly to the English Bill of Rights, “which itself formalized a longstanding English prohibition on disproportionate fines.” *Timbs*, 586 U.S. at 160 (Thomas, J., concurring in the judgment).

In this way, the textual provenance for a proportionality standard is far more straightforward for the Excessive Fines Clause than for the neighboring Cruel and Unusual Punishments Clause. For the Cruel and Unusual Punishments Clause, the Court has long fractured over whether any proportionality limit obtains at all. *Harmelin*, 501 U.S. at 966-85 (opinion of Scalia, J.); *Ewing v. California*, 538 U.S. 11, 32 (2003) (Thomas, J., concurring in the judgment). The Excessive Fines Clause has generated no such controversy. Given its text, “[t]he touchstone of the constitutional inquiry under the Excessive Fines Clause is the principle of proportionality.” *Bajakajian*, 524 U.S. at 334; *see also id.* at 348 (Kennedy, J., dissenting) (accepting that the Clause embodies a form of proportionality principle); *cf. Alexander v. United States*, 509 U.S. 544, 558 n.3 (1993) (noting, for *in personam* forfeiture, that “[q]uestions of proportionality . . . should be dealt with directly and forthrightly under the Eighth Amendment”).

2. Precedent confirms that the gravity of a defendant’s offense is evaluated with reference to his or her own wrongdoing.

a. As the Court recognized in 1998, a forfeiture (or pecuniary fine or penalty) violates the Excessive Fines Clause if it is “grossly disproportional to the gravity of a defendant’s offense.” *Bajakajian*, 524 U.S. at 334.² The

² The Court in *Bajakajian* agreed unanimously that *in personam* forfeitures are “fines” within the meaning of the Excessive Fines Clause. 524 U.S. 321, 328, 333-34 (1998); *id.* at 349 (Kennedy, J., dissenting); *see generally* 1 Joel Prentiss Bishop, *Commentaries on the*

offense’s gravity is half the equation, and this Court’s precedent supplies the natural way to gauge it: not purely in the abstract, but with reference to the defendant’s own misconduct.

Bajakajian shows the standard in practice. Hosep Bajakajian committed a felony by knowingly failing to report that he was carrying more than \$10,000 out of the country. *Id.* at 324-25. Under the Bank Secrecy Act, one part of his sentence was automatic: forfeiture of every unreported dollar—\$357,144. *Id.* at 325-26. And in the resulting excessive-fines challenge, a main ground of dispute involved the level of generality for determining “the gravity of [Bajakajian’s] crime.” *Id.* at 339. For the government, the inquiry was abstract and categorical. “The circulation of unreported cash throughout the world facilitates money laundering, tax evasion, and other illicit conduct,” the government explained. U.S. Br. at 12, *United States v. Bajakajian*, 524 U.S. 321 (1998) (No. 96-1487). And at scale, those crimes “produced ‘debilitating effects . . . on Americans and on the American economy.’” *Id.* at 3 (quoting H.R. Rep. No. 91-975 at 12 (1970)). The dissent, too, invoked “organized crime, drug trafficking, money

Criminal Law § 629, at 645 (2d ed. 1858) (noting that “[t]here are no precedents for a general practice of sentencing prisoners to forfeit particular articles of property,” but that “such forfeitures are sometimes required by statutes; and they rest on the same reasons as fines” (footnote omitted)). Civil forfeitures are likewise subject to the Excessive Fines Clause when they are at least partly punitive. *Bajakajian*, 524 U.S. at 331 n.6 (“[W]e have held that a modern statutory forfeiture is a ‘fine’ for Eighth Amendment purposes if it constitutes punishment even in part, regardless of whether the proceeding is styled *in rem* or *in personam*.” (citing *Austin v. United States*, 509 U.S. 602, 621-22 (1993))); accord *Leonard v. Texas*, 580 U.S. 1178, 1179 (2017) (statement of Thomas, J., respecting denial of certiorari) (“Modern civil-forfeiture statutes are plainly designed, at least in part, to punish the owner of property used for criminal purposes.”).

laundering, and other crimes” writ large as justifying Congress’s “blanket punishment” for all willful reporting violations. 524 U.S. at 351, 353 (Kennedy, J., dissenting).

The Court rejected that framing, focusing instead on locating Bajakajian himself on the statute’s spectrum of culpability. The Court began with his conduct. His “crime was solely a reporting offense,” and the money “the proceeds of legal activity.” *Id.* at 337-38 (majority opinion). That his violation “was unrelated to any other crime” was also “highly relevant.” *Id.* at 338 n.12. So was his relatively lenient sentencing-guidelines range, which, the Court remarked, refuted the government’s emphasis on the maximum theoretical fines and prison terms Congress had authorized. *Id.* at 338-39 & 339 n.14. That the guidelines maximums were so much lower “undercuts any argument based solely on the statute.” *Id.* at 339 n.14. For “they show[ed] that [Bajakajian’s] culpability relative to other potential violators of the reporting provision—tax evaders, drug kingpins, or money launderers, for example—is small indeed.” *Id.*

The Court turned next to harm—not harm from Bank Secrecy Act violations in the abstract, but “[t]he harm that [Bajakajian] caused.” *Id.* at 339. By that measure, the harm was “minimal.” *Id.* His “[f]ailure to report his currency affected only one party, the Government, and in a relatively minor way,” the Court reasoned; he “caused no loss to the public fisc.” *Id. Contra* U.S. Br. at 3, *Bajakajian, supra* (emphasizing “[h]undreds of millions in tax revenues” diverted by offshore transactions as a whole (quoting H.R. Rep. No. 91-975 at 12 (1970))). All told, forfeiting Bajakajian’s \$357,144 bore “no articulable correlation to any injury suffered by the Government” and was “grossly disproportional to the gravity of his offense.” 524 U.S. at 339-40.

In the decades since, most courts to have considered *Bajakajian* have correctly distilled its central teaching: “The 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); *see also United States v. Beecroft*, 825 F.3d 991, 1001 (9th Cir. 2016) (O’Scannlain, J.) (evaluating offense’s gravity by focusing “especially” on indicia “reflect[ing] the particular circumstances of [the defendant’s] crimes”). At times, the lower courts’ precise formulations of the excessiveness standard vary. But most derive from *Bajakajian* the same premise: An offense’s gravity is determined, not purely in the abstract, but with reference to “an individual offender’s culpability” and “the gravity of the actual offense giving rise to forfeiture.” *von Hofe v. United States*, 492 F.3d 175, 187 (2d Cir. 2007); U.S. Br. in Opp. at 7, *Cheeseman v. United States*, 562 U.S. 1060 (No. 09-1470) (“In determining the gravity of the defendant’s crime—the benchmark against which to measure the magnitude of the forfeiture at issue—the Court in *Bajakajian* considered a number of factors related both to the statutory prohibition involved and to the culpability of the particular defendant.”).³

³ *See also, e.g., State v. Timbs*, 169 N.E.3d 361, 373 (Ind. 2021) (“In *Bajakajian*, the Supreme Court pointed out that currency-reporting crimes might generally include serious violations by ‘tax evaders, drug kingpins, or money launderers’ but did not impute to the defendant the offenses of others and rather considered what specific harms his specific acts had caused.”); *Commonwealth v. 1997 Chevrolet*, 160 A.3d 153, 189 (Pa. 2017) (“Our Court . . . , in adopting the *Bajakajian* gross disproportionality construct, characterized the high Court’s approach as defendant-culpability focused, rather than centered 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) (“In judging the gravity of the offense, the Court placed

b. *Bajakajian* is not an outlier in considering the defendant’s own misconduct. For even deplorable crimes, the Court has recognized the Excessive Fines Clause as a check on economic sanctions untethered to the defendant’s specific wrongdoing. Take *Paroline v. United States*, 572 U.S. 434 (2014). At issue there was 18 U.S.C. § 2259(a)—the restitution provision covering many child sexual-abuse offenses—and whether it limits restitution to losses proximately caused by the particular defendant’s offense of conviction. The Court held that it does, and the Court reinforced its statutory interpretation with the Excessive Fines Clause. Doyle Paroline had been convicted of the serious crime of possessing child pornography, including two images of one child’s abuse. *Id.* at 441. Through Section 2259(a), the government sought to make him pay for an even more serious set of harms: that specific child’s entire losses attributable to the worldwide trade in all the images depicting her abuse. *Id.* at 441-43. Yet the Court rejected that view. The text did not support it, and so broad a restitution regime would raise “a real question” under the Excessive Fines Clause: “whether holding a single possessor liable for millions of dollars in losses collectively caused by thousands of independent actors might be excessive and disproportionate in these circumstances.” *Id.* at 456. The Court thus read the statute

its primary emphasis on the culpability of Bajakajian himself rather than on the severity of the crime in the abstract.”); *Yskamp v. DEA*, 163 F.3d 767, 773 (3d Cir. 1998) (noting that “[e]ven before the *Bajakajian* opinion,” the Third Circuit had “look[ed] at the overall circumstances, including seriousness of the offense and personal benefit or culpability, to decide excessiveness”); see generally Pamela S. Karlan, “Pricking the Lines”: *The Due Process Clause, Punitive Damages, and Criminal Punishment*, 88 Minn. L. Rev. 880, 901 (2004) (“[T]he Court seems to analyze the gravity of Bajakajian’s offense solely from a retributivist perspective—asking how much harm his particular violation of the statute caused.”).

to authorize only “restitution in an amount that comports with the defendant’s relative role in the causal process that underlies the victim’s general losses.” *Id.* at 458.

Elsewhere, too, the Court has held that “the degree of reprehensibility of the defendant’s conduct” is “[p]erhaps the most important indicium” of whether a punitive economic sanction is excessive. *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 575 (1996). As in excessive-fines cases, so in due-process ones: The Court’s precedent trains chiefly on the seriousness of the specific defendant’s wrongdoing. *E.g., id.* at 575-76, 580; *see also Cooper Indus., Inc. v. Leatherman Tool Grp., Inc.*, 532 U.S. 424, 435 (2001). Whether the Due Process Clause limits excessiveness at all has been a matter of some controversy. But either way, it would be anomalous for a defendant’s “degree of reprehensibility” to be deeply rooted enough to inform the Due Process Clause’s protections against punitive-damages awards (*Gore*, 517 U.S. at 575 & n.24) but not the more textually explicit guarantee in the Excessive Fines Clause. *Cf. TXO Prod. Corp. v. All. Res. Corp.*, 509 U.S. 443, 471 (1993) (Scalia, J., concurring in the judgment) (reasoning that due process imposes no limit on excessive economic sanctions precisely because such a limit would make the Excessive Fines Clause “superfluous”).

3. History reinforces the Court’s precedent.

Centuries of English and American history bear out *Bajakajian*’s understanding of the excessiveness standard.

a. In England, the Crown time and again magnified small offenses into great ones to fill its coffers and punish its enemies. Time and again, Parliament (and before that, the barons) insisted that fines must be proportioned to the defendant’s own wrongdoing.

Magna Carta. Saxon England had long sought to align wrongs and monetary sanctions, often in exacting detail. *E.g.*, *The Laws of the Earliest English Kings* 5-17 (F.L. Attenborough ed. & trans., 1922). But with the Norman Conquest, “the old system of penalties, which ensured equality between crime and punishment, suddenly disappeared.” Anthony F. Granucci, “*Nor Cruel and Unusual Punishments Inflicted:*” *The Original Meaning*, 57 Calif. L. Rev. 839, 845 (1969). Amercements took their place, the precursor to the modern fine. And soon enough, the royal house began exploiting amerancements for the benefit of the royal treasury, making “free use of the notion that many of the smaller offences . . . put the whole of the offender’s chattels at the king’s mercy.” 2 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I*, at 514 (2d ed. 1898).

The Charter of Liberties of Henry I, dating to 1100, codified an early if begrudging check on runaway fines, and it did so with a simple mandate: enshrining case-specific proportionality by tethering amerancements (or, more precisely, pledges for amerancements) to “the measure of the offence.” *Timbs*, 586 U.S. at 160 (Thomas, J., concurring in the judgment) (citation and emphasis omitted). *Magna Carta* made the point again a century later. “A free man shall be amerced for a small fault only according to the measure thereof,” it proclaimed, “and for a great crime according to its magnitude.” *Id.* (quoting *Magna Carta*, ch. 20 (1215), in A. Howard, *Magna Carta: Text & Commentary* 42 (rev. ed. 1998)). Parliament fortified the protection a third time sixty years after that, providing that a malefactor’s fine be set “according to the quantity of his Trespass.” The First Statute of Westminster, 3 Edw. I, ch. 6 (1275), in 1 Statutes of the Realm 28 (reprint 1963).

In centuries to come, English judges enforced this principle rigorously, accounting for the “circumstances of the particular case” in setting the monetary sanction. 2 Pollock & Maitland, *supra*, at 514; *see also* *Timbs*, 586 U.S. at 161 (Thomas, J., concurring in the judgment). Officials who persisted in imposing amercements “without weighing the trespass” or “specifying the manner or quality of the contempt” were assailed for betraying Magna Carta. *See The Mirror of Justices*, 7 Selden Society 1, 178 (1895). Even peasants spoke up. One fourteenth-century petition survives in which “the poor tenants of Bocking” complained that their lord’s bailiff “refused to accept” amercements set “according to the extent of their trespass” and “increased their burdens twofold or even threefold . . . against all reason and the Great Charter.” John F. Nichols, *An Early Fourteenth Century Petition from the Tenants of Bocking to Their Manorial Lord*, 2 Econ. Hist. Rev. 300, 305-06 (1930). His lordship’s reply? That “in future he would not suffer such evil to be done to any tenant of the vill.” *Id.*

Charles I and the Star Chamber. In the 1600s, the depredations of the House of Stuart spurred Parliament to enact even more concrete protections against abusive fines. Ordinarily, Parliament’s power over the purse meant the Crown had to call it into session regularly. Yet Charles I dissolved Parliament for over a decade, resorting instead to fines to keep his treasury afloat. *See* 1 *The Fairfax Correspondence: Memoirs of the Reign of Charles the First* 209-14 (G.W. Johnson ed., 1848). Throughout, the gulf between offense and penalty widened. In enforcing the king’s forestry laws, for instance, “the smallest encroachments on the part of the citizens were noticed and punished by exorbitant fines.” 1 François Guizot, *History of the English Revolution. From the Accession of Charles I*, at 73 (L.H.R. Coutier

trans., 1838). And the Star Chamber perfected the method: Inflate the gravity of minor offenses, then fine accordingly.

Methodologically, the Star Chamber's technique was much the same as the Alaska Supreme Court's below, as one of the era's best-known cases illustrates. In 1633, lawyer Henry Sherfield was tried for breaking small parts of a parish-church window. The stained glass, he said, portrayed "divers falsities and absurdities" that he thought idolatrous, and he had believed himself authorized to replace it with a clear pane. *Proceedings in the Star-Chamber against Henry Sherfield* (1633), 3 T.B. Howell, *State Trials* 519, 521-22 (1816). It "was one of the meanest Windows in the said church," with "all the glass at first . . . worth but 40s. [shillings] and all that was taken down by this Defendant, was not worth more than 18*d* [pence]." *Id.* at 525. But Charles's attorney-general magnified the offense beyond recognition. Sherfield's act "is the highway to pull all out of order with their reformation," he maintained, for "[i]f it should be lawful for private men to do thus much, what will they do next?" They might "take away our churches also; this must be next." *Id.* at 538. They might "pull down all cathedral churches." *Id.* at 539. Indeed, "an insurrection may come of it." *Id.* at 538.

The Star Chamber's handling of the sentence reflected, in miniature, the question presented here. The judges agreed unanimously that Sherfield had broken the law. On punishment, however, they split. Several voted for a lower fine, or none at all, given the particular circumstances of his offense. "In my Sentence," said one, "I shall endeavour to keep a good rule, which is this, not to make faults where they are not, nor to make them greater than in themselves they are." *Id.* at 546. For these judges, Sherfield's offense was the product of "a little indiscreet

zeal.” *Id.* at 545; *see also id.* at 555 (“[Y]et there is difference between a fault done of zeal, and the same thing done out of malice.”). It was “the first offence that ever you heard of him.” *Id.* at 545. That he acted “[p]rivately and without noise” was likewise “a diminution of his fault, for secret evils are not so bad as when they are openly done.” *Id.* at 555. And while “the not doing of this thing in a right manner, maketh it an evil,” it was “not so great an evil . . . as by our sentence to ruin him.” *Id.* at 547. One judge put the principle in Magna Carta’s words: “I shall ever hold this rule, to judge and inflict punishment, ‘secundum quantitatem delicti.’” *Id.* at 545.

On the other side sat the king’s most notorious retainers—Lord Cottington, Bishop Laud, and Lord Wentworth among them—who thought the correct focus was not on this particular church window, but churches across the realm. Lord Cottington echoed the attorney-general on “insurrection,” recasting Sherfield’s broken window as having “touched upon the regal power, and encroached upon the hierarchy of the bishops, who have their authority from the king.” *Id.* at 541. Bishop Laud proclaimed that Sherfield behaved “in contempt, at least in neglect of the Church’s authority, and the authority of the king’s majesty; for the church derive their authority from the king . . .” *Id.* at 550. They pressed for a fine of £1,000—twice the next-highest sum proposed. *Id.* at 541, 553-54. Under the Star Chamber’s protocols, the court entered a split-the-difference fine of £500 (*id.* at 562), over \$80,000 today.

Sherfield’s case was no outlier. Others fared even worse and became martyrs in the coming clash between Crown and Parliament. William Prynne, for example, was prosecuted for penning a screed against stage-plays “although he knew well, that his majesty’s royal queen, lords

of the counsel, &c.” indulged in them. *Proceedings against William Prynne in the Star-Chamber* (1634), 3 T.B. Howell, *State Trials* 561, 563 (1816). In the Star Chamber, his volume was portrayed as shaking society’s very foundations. “Mr. Prynne would have a new government,” pronounced Lord Cottington, “he would have a new church, he would have new laws, new entertainment, God knows what he would have; a new king he would have, and have all the people of his mind, to be discontented with their king and government.” *Id.* at 575. He was fined £5,000 and sentenced to life imprisonment, with both ears cropped.

On the brink of civil war, Parliament intervened. In May 1641, Parliament forced the execution of one of the Star Chamber’s most despised members, the Earl of Strafford (formerly Lord Wentworth). The court itself was abolished two months later, for visiting “an intolerable burthen [on] the Subjects” and “inflict[ing] heavier punishments th[a]n by any Law is warranted.” 16 Car. I, ch. 10 (1641), in 5 Statutes of the Realm 110-12 (reprint 1963). That autumn, Parliament’s “Grand Remonstrance” specifically cited the court’s “extravagant censures” and “grievous fines,” imposed “where there hath been no offence, or very small.” The Grand Remonstrance ¶ 37 (1641), reprinted in *The Constitutional Documents of the Puritan Revolution, 1625–1660*, at 212-13 (S.R. Gardiner ed., 3d rev. ed. 1906).

The Late Stuarts and the English Bill of Rights.

The same evils resurfaced a generation later under Charles’s sons, Charles II and James II, who resorted once more to “ruinous fines.” Lois G. Schworer, *The Declaration of Rights, 1689*, at 91 (1981). Exacerbating matters, courtiers often were granted a monetary stake in the fines, leading them to “put pressure on the bench

to set the fine at a large figure.” *Id.* at 96. And as in the 1630s, the surest sign of abuse was the same: the gulf between the seriousness of minor crimes and the size of crippling fines. In 1680, a House of Commons committee reviewed the fines imposed by the King’s Bench and reported “that the quality of the offence, and the ability of the person found guilty, have not been the measures that have determined the quantity of many of these fines.” *Proceedings against Lord Chief Justice Scroggs before the Privy Council* (1680), 8 T.B. Howell, *State Trials* 163, 187 (1816). The following year, the Commons as a whole tried (unsuccessfully) to impeach the court’s Lord Chief Justice, based in part on his “notorious[] depart[ure] from all rules of justice and equality, in the imposition of fines upon persons convicted of misdemeanors.” *Id.* at 199. According to the articles of impeachment, Scroggs and his fellow judges imposed fines with no “regard to the nature of the offences,” thereby resurrecting “all the mischiefs and excesses of the court of Star-Chamber.” *Id.*

Matters deteriorated quickly. “In the 1680’s the use of fines ‘became even more excessive and partisan,’ and some opponents of the King were forced to remain in prison because they could not pay the huge monetary penalties that had been assessed.” *Browning-Ferris Indus. of Vt., Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 267 (1989) (quoting Schworer, *supra*, at 91). And once again, these abuses pitted against one another two opposing views of how to evaluate an offense’s gravity.

The Earl of Devonshire’s case—one of the most famous of the decade—crystallized the methodological conflict. At the Palace of Whitehall in the spring of 1687, Lord Devonshire struck a certain Colonel Thomas Culpepper, “who had formerly affronted the said earl.” *The Case of William Earl of Devonshire* (1687), 11 T.B. Howell, *State*

Trials 1353, 1354 (1816). The earl pleaded guilty, and the King's Bench imposed on him a staggering fine: £30,000. *Id.* at 1357. Much like Sherfield's broken window, Lord Devonshire's blow became a *cause célèbre*. In "haranguing" the earl before sentencing, the presiding judge portrayed his assault on Colonel Culpepper in abstract and apocalyptic terms: "[T]o strike in the king's palace was little less, or next door to pulling the king out of his throne." *Id.* at 1366. The earl's defenders, meanwhile, looked to "the true nature of my lord Devonshire's offence." *Id.* at 1365. "I think no man can altogether excuse my lord Devonshire" for his "inconsiderate rash act," wrote his ally Lord Delamer. *Id.* at 1363. But because the circumstances of his misconduct were not "thoroughly considered," "the punishment and offence don't in any measure bear proportion." *Id.* at 1365, 1366; *see also id.* at 1363 ("[T]he law . . . has ever looked upon an over-rigid prosecution of the guilty to be no less tyranny than the prosecution of the not guilty . . .").

Given this experience, Parliament paid careful attention to the sovereign's power to fine after James II fled the following year. In one of its first acts, the House of Lords extinguished Lord Devonshire's £30,000 fine, denouncing it as "excessive and exorbitant, against Magna Charta, the common right of the subject, and against the law of the land." *Id.* at 1370. To ensure that England's "Religion Lawes and Liberties might not againe be in danger of being Subverted," Parliament then enacted a Bill of Rights whose protections spoke explicitly to fines: "[E]xcessive Baile ought not to be required nor excessive Fines imposed nor cruell and unusuall Punishments inflicted." 1 Wm. & Mary, 2d Sess., ch. 2 (1689), in 6 Statutes of the Realm 142-45 (reprint 1963). And the lesson of 1689 was well-taken: By the mid-eighteenth century, a prosecuting attorney in County Kildare could confidently state

that fines must needs be “greater or less in proportion to the nature of the offence,” such that “every thing is proper to be laid before the Court, that may be an ingredient in their consideration for the imposing [of] that fine.” *Trial of the Earl of Anglesea* (1744), 18 T.B. Howell, *State Trials* 197, 199 (1816); *see also id.* at 200 (court, concurring).

b. Across the Atlantic, the same understanding of the protection against excessive fines took root in America.

The Colonies and the New Nation. Like their fellow subjects in England, the colonists well understood the threat posed by exorbitant fines. William Penn’s “Frame of Government of Pennsylvania” provided “[t]hat all fines shall be moderate, and saving men’s contenements, merchandize, or wainage.” Frame of Government of Pennsylvania, Laws Agreed Upon in England, &c, art. XVIII (1682), in 5 *Federal and State Constitutions* 3061 (F. Thorpe ed., 1909). A century later, the Virginia Convention adopted a Declaration of Rights that drew verbatim from the English model in proclaiming that “excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” Va. Const., Bill of Rights § 9 (1776). Virginia’s language soon became the Nation’s, with the ratification of an Eighth Amendment “based directly on . . . the Virginia Declaration of Rights.” *Timbs*, 586 U.S. at 164-65 (Thomas, J., concurring in the judgment) (citation omitted).

From the start, judges recognized that a fine’s potential excessiveness turns on the circumstances of the defendant’s wrongdoing. A “fine or amercement ought to be according to the degree of the fault and the estate of the defendant,” wrote Judge Paul Carrington, of Virginia, in 1799. *Jones v. Commonwealth*, 5 Va. 555, 557 (discussing the Virginia Declaration of Rights). For “it is clear,” he

reasoned, that the “makers of the [Virginia] constitution, as well as the Legislature contemplated, that no addition, under any pretext whatever was to be imposed, upon the offender, beyond the real measure of his own offence.” *Id.* at 557-58. Judge Carrington well knew of what he wrote; he had served on the committee that drafted Virginia’s Declaration of Rights a quarter-century before. Hugh Blair Grigsby, *The Virginia Convention of 1776*, at 99-100 (1855).

Judge Carrington was far from alone in his understanding of the phrase “excessive fines.” “[E]arly Americans had an expansive understanding of relevant factors when it came to the fair imposition of fines, including consideration of facts related to the offense—like the amount of harm caused—as well as offender characteristics related to culpability.” Beth A. Colgan, *Reviving the Excessive Fines Clause*, 102 Calif. L. Rev. 277, 324 (2014). Thus, “[b]oth statutory and court records indicate that the severity of the offense and the harm caused were routinely considered in determining the appropriate fine.” *Id.* at 325; *see also Bullock v. Goodall*, 7 Va. 44, 49 (1801). Blackstone, too, counseled that “[t]he *quantum* . . . of pecuniary fines neither can, nor ought to be, ascertained by any invariable law.” 4 William Blackstone, *Commentaries* *378. As he explained, courts would “tax and moderate the general amercement according to the particular circumstances of the offence and the offender.” *Id.* at *379 (*italics omitted*); *see also* Thomas M. Cooley, *Constitutional Limitations* 328-29 (1868). In discussing the Excessive Fines Clause specifically, one early commentator even hypothesized the sort of blanket economic sanction imposed on petitioner here. “[I]f a law should be passed,” he wrote, “requiring a specified and very heavy fine to be imposed in all cases of crimes of any particular class, and allowing the judge no discretion, though the offence in

some cases might be very slight, it cannot be doubted that such a law would be contrary to the spirit of the constitution.” Benjamin L. Oliver, *The Rights of an American Citizen* 185 (1832).

The Black Codes and the Peonage System. In the years before the Fourteenth Amendment’s ratification, the Southern States proved the importance of excessive-fines protections by breaching them relentlessly. In defeat, the former Confederacy turned immediately to fines to re-subjugate the newly freed slaves. As in Charles I’s day, the formula was simple. Seize on (or invent) offenses “of the slightest magnitude.” *Timbs*, 586 U.S. at 168 (Thomas, J., concurring in the judgment) (citation omitted). Impose crushing fines. Then extort the defendants for the money or auction them off to white landowners who would pay the debt. *See id.* at 153 (majority opinion). Freedmen’s Bureau records expose a system as ruthless as anything in Stuart England. Months after the war ended, for instance, Alfred Jefferson—a seventeen-year-old freedman in Florida—was fined \$200 and costs for “riding a horse belonging to his employer without the permission of the owner.” Ltr. from Lt. F. Grossmann to Lt. J.H. Lyman (Oct. 19, 1866), microformed on M1869, Roll 3, at 712 (Nat’l Archives & Recs. Admin.). A year’s wages for a freedman ran about \$140. Finding of Bvt. Lt. Col. William H.H. Beadle in the case of B.M. Richardson (Mar. 28, 1866), microformed on M843, Roll 31 (Nat’l Archives & Recs. Admin.). “Being unable to pay th[e] fine,” a Bureau officer recounted, “[Jefferson] was sold at public outcry to Mr. Allen Thomas of Bradford County who became responsible for the fine and who now claims the services of Alfred Jefferson for three years.” Ltr. from Lt. F. Grossmann, *supra*.

Similar reports flooded in from across the South. In September 1865, the Bureau warned the mayor of Selma, Alabama, that “[s]trong complaints are made at this office of excessive fines imposed upon colored persons by you, [and] that the City is receiving a large revenue from this source.” Ltr. from Office of Assistant Comm’r for Ala. to Mayor of Selma (Sept. 11, 1865), microformed on M809, Roll 1, vol. 1, at 29 (Nat’l Archives & Recs. Admin.). In 1866, a Bureau official reported from Jackson County, Florida, that local authorities “have no conscience against arresting and fining the freed-people to the full extent of the law for petty offences.” Ltr. from Capt. C.M. Hamilton to Maj. S.L. McHenry (July 31, 1866), microformed on M1869, Roll 3, at 1046 (Nat’l Archives & Recs. Admin.). Even in federally run freedmen’s settlements, fines could be “harsh, unjust, and extortionate.” Proceedings of a Court of Inquiry Convened to Investigate Charges Against Edward Fitz (Apr. 16, 1866), microformed on M1909, Roll 64, Target 17, at 686 (Nat’l Archives & Recs. Admin.). As one resident of a North Carolina enclave summed up: “heavy fines for small crimes.” *Id.* at 687.

Abusive fines would persist long after the Fourteenth Amendment took effect, fueling the peonage system under which Southern whites kept black citizens in bondage. African Americans continued to be charged with “trivial offences,” fined severely, then auctioned to the highest bidder when they could not pay. Mary Church Terrell, *Peonage in the United States: The Convict Lease System and the Chain Gangs*, Nineteenth Century and After, July-Dec. 1907, at 306, 312-13. Some of these debt-slaves would never be free. Writing in 1907, activist Mary Church Terrell had “no doubt whatever that there are scores, hundreds perhaps, of coloured men in the South to-day who are vainly trying to repay fines and sentences

imposed upon them five, six, or even ten years ago.” *Id.* at 313.

4. *Unless the standard accounts for the defendant’s own wrongdoing, the Excessive Fines Clause protects no one.*

a. The precedent and history above reflect a common-sense proposition: An Excessive Fines Clause that measures the gravity of an offense only in the abstract guarantees no protection at all against excessive fines. In the abstract, *any* offense—no matter how minor—can be said to cause grave societal harm. In 2019 alone, over 2,000 people were killed and 46,000 seriously injured because they failed to wear seatbelts, “costing society \$11 billion.” Nat’l Highway Traffic Safety Admin., *The Economic and Societal Impact of Motor Vehicle Crashes, 2019 (Revised)* 3 (2023). That same year, speeding-related accidents caused 10,192 fatalities, nearly 500,000 non-fatal injuries, and \$46 billion in economic costs. *Id.* at 125-26. In the abstract, those harms would dwarf any single vehicle forfeiture—even of a Bugatti. Tr. 43-44, *Timbs v. Indiana* (No. 17-1091). Yet if a State were to forfeit every car with an unbelted occupant? Or every car that goes a mile over the limit? Those forfeitures, surely, would be “grossly disproportional to the gravity of the defendant’s offense.” *Bajakajian*, 524 U.S. at 337. Why? Because evaluating “the gravity of the defendant’s offense” means accounting for the gravity of *this* defendant’s offense.

Now, a Bugatti hypothetical might feel fanciful. But it illustrates an important point. Many of history’s most notorious fines (to say nothing of the forfeiture here) were justified by portraying the defendant’s wrongdoing at stratospheric levels of abstraction. Sherfield’s window? Insurrection. Lord Devonshire’s fisticuffs? Lèse-majesté.

Even the proponents of the Black Codes cast their “stringent laws” as responding to the ills of “vagrancy and idleness” writ large, which, unchecked, would “overrun” the South “with dissolute and abandoned characters, to the great detriment of the public weal.” An Act Providing for the Punishment of Vagrants, 1865-66 Va. Acts ch. 28, at 91. Only with “*an iron will and the strong hand of power*” could a State lift this “dark pall”—by targeting “*the idler and the vagrant*” with unpayable fines and forced labor. Benjamin G. Humphreys, *Message of the Governor of Mississippi* (Nov. 20, 1865), reprinted in *Report of the Joint Committee on Reconstruction, Arkansas - Georgia - Mississippi - Alabama* 183 (1866).

Nothing about that technique was peculiar to the Star Chamber or the Black Codes. Described in terms sufficiently general, every offense can be called a great detriment to the public weal. “[A]ll crimes” can be said to “have a negative impact in some general way to society.” *Commonwealth v. 1997 Chevrolet*, 160 A.3d 153, 190 (Pa. 2017). Speeding. Jaywalking. Loitering. Currency-reporting violations. But that the government has an interest in regulating or prohibiting certain behaviors cannot in itself “validate any fine amount that [the government] might arbitrarily impose.” *Pimentel v. City of Los Angeles*, 115 F.4th 1062, 1069 (9th Cir. 2024), *cert. denied*, 145 S. Ct. 2735 (2025). Otherwise, “no fine—no matter how sizable or disproportionate—would ever violate the Excessive Fines Clause because the government always has an interest in enforcing its laws.” *Id.* That caution has special urgency in modern times, moreover, as governments generate “more and more . . . laws bearing more and more extravagant punishments.” *Sessions v. Dimaya*, 584 U.S. 148, 184 (2018) (Gorsuch, J., concurring in part and concurring in the judgment). Against this backdrop, the Excessive Fines Clause can serve its function only if the

gravity of a defendant's offense is evaluated, not purely in the abstract, but by reference to his or her own misconduct.

That is also a task for which courts are well-suited. In meting out punishments more broadly, trial judges “make any number of factual determinations and conduct an ‘individualized assessment based on the facts presented.’” *United States v. Doctor*, 842 F.3d 306, 316 (4th Cir. 2016) (Wilkinson, J., concurring). It is judges’ everyday business to navigate criminal statutes that “encompass a vast range of very different kinds of underlying conduct.” *United States v. Booker*, 543 U.S. 220, 250-51 (2005). It is just as much their business to evaluate the harm caused by the defendants before them, the gravity of their misconduct, and how they compare to other violators of the statute. *Bajakajian*, 524 U.S. at 337-40; *see also Booker*, 543 U.S. at 251 (“Judges have long looked to real conduct when sentencing.”). In the federal system, in fact, mandatory pecuniary fines are relatively rare (*e.g.*, 21 U.S.C. § 844(a)), and district judges are required by statute to evaluate “the nature and circumstances of the offense and the history and characteristics of the defendant” and many other considerations before imposing pecuniary fines. 18 U.S.C. § 3553(a)(1); *see also* 18 U.S.C. § 3572. The point is not that the Excessive Fines Clause requires adjusting fines or forfeitures to what the judge views as the Platonic ideal. The Clause forbids fines that are “grossly disproportional to the gravity of the defendant’s offense”; it does not demand “strict” proportionality. *Bajakajian*, 524 U.S. at 336-37. Even so, the Clause secures a fundamental right. It calls for a real standard. And as the Court in *Bajakajian* recognized, that standard is guided by the gravity of the defendant’s own misconduct.

b. These principles have added force for modern-day forfeiture regimes—civil and criminal alike—which present almost every hazard the Excessive Fines Clause exists to check. Whether civil or criminal, the severity of modern-day forfeitures often bears “no articulable correlation” to the gravity of the owner’s misconduct. *Bajakajian*, 524 U.S. at 340. Even within a single incident, there is no guarantee the hammer will fall on the most culpable. Here, for instance, Ken Jouppi’s passenger knew about all her Budweiser products and meant to bring them, by plane, to her husband in a dry village. Her sentence? Three days in jail and a \$1,500 fine. Judgment, *State v. Nicholia*, No. 4FA-12-03226CR (Alaska Dist. Ct. July 19, 2013); *see also* R. p. 69. Over a decade later, meanwhile, Jouppi—her taxi-driver—faces forfeiture of his airplane over one six-pack of that beer. Simply, any relationship between crime and forfeiture can be “merely coincidental.” *Austin v. United States*, 509 U.S. 602, 622 n.14 (1993). A car for some candies.⁴ A yacht for a blunt.⁵ A Cessna for a six-pack.

Worse still, officials have every incentive to deploy forfeitures “in a measure out of accord with the penal goals of retribution and deterrence.” *Harmelin*, 501 U.S. at 979 n.9 (opinion of Scalia, J.). The property often goes to the very agencies that seize it. *Culley v. Marshall*, 601 U.S. 377, 405 (2024) (Sotomayor, J., dissenting); *see also* Inst. for Just., *Policing for Profit: The Abuse of Civil Asset Forfeiture* 12 (4th ed. 2026) (“This financial incentive . . . is also present in criminal forfeiture laws.”). At least one State even gives individual prosecutors a personal

⁴ Pls.’ Mot. Summ. J., *State v. Jaynes*, No. 49D01-1111-MI-043642, 2012 WL 12974140 (Ind. Super. Ct. May 23, 2012).

⁵ *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 693 (1974) (Douglas, J., dissenting in part).

financial stake in their forfeitures. *See* Br. of Appellant, *Sparger-Withers v. Taylor*, No. 24-1367 (7th Cir. Apr. 22, 2024) (appeal pending). And as in seventeenth-century England, so in twenty-first-century America: These “financial incentive[s]” inevitably “influence which laws police enforce, how they enforce them, and who they enforce them against”—with officials’ seeing in “low-level” offenses the promise of high-dollar fines. *Culley*, 601 U.S. at 405-06 (Sotomayor, J., dissenting); *see also id.* at 396 (Gorsuch, J., concurring). In words that might well make a Restoration courtier blush, modern-day officials have described forfeited property as “little goodies” and “a gold mine.” Laura Sullivan, *Police Can Seize and Sell Assets Even When the Owner Broke No Law*, NPR (Nov. 10, 2014), <https://tinyurl.com/ytnj52nx>. And often, those hardest hit are not the well-to-do, but people of more modest means. *Leonard v. Texas*, 580 U.S. 1178, 1180 (2017) (statement of Thomas, J., respecting denial of certiorari).

The trajectory of modern forfeiture drives home the point. Criminal forfeitures were vanishingly rare in America until the 1970s and ’80s. *See* S. Rep. No. 91-617, at 79 (1969) (cited by *Bajakajian*, 524 U.S. at 332 n.7); *see also* p. 15 n.2, *supra*. As for civil forfeitures, for much of the Nation’s history they existed in something of a legal backwater, mainly the preserve of “admiralty, customs, and revenue.” *Culley*, 601 U.S. at 398 (Gorsuch, J., concurring); *see also* Rufus Waples, *A Treatise on Proceedings in Rem* 22 (1882) (“It will be readily perceived that in a great proportion of causes *in rem*, there would be no means of making a personal citation upon the owner of the *res*.”). Only in recent decades did forfeitures explode nationwide—and only after enforcement agencies gained a monetary stake. David B. Smith, *Prosecution and Defense of Forfeiture Case* ¶ 1.01, at 1-8-1-14.6 (rev. May

2026). Between the perverse incentives and the sheer happenstance of what gets taken (and from whom), the danger of gross disproportionality is thus particularly acute for modern forfeitures.⁶

B. The Alaska Supreme Court’s judgment should be reversed.

So far, much of this brief may sound largely self-evident. The Court’s decision in *Bajakajian* can be understood *only* as evaluating the gravity of Hosep Bajakajian’s crime by considering his own misconduct. 524 U.S. at 337-40 & nn.12, 14. Whatever their other differences, most state and federal courts to have addressed the issue start from that same 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). Nearly a millennium of history backs up this approach and offers a rogues’ gallery showing why it matters.

Add the decision below to that list of cautionary tales. At every turn, the Alaska Supreme Court evaluated Ken Jouppi’s wrongdoing at a stratospheric level of abstraction. Nothing in its decision rehabilitates that approach. Its judgment should be reversed and the case remanded for the court to apply an excessiveness standard free of that threshold methodological error.

1. Throughout, the Alaska Supreme Court’s standard looked, not at the measure of Ken Jouppi’s own wrongdoing, but at the offense purely in the abstract. For

⁶ In recent decades, certain civil-penalty regimes have likewise proven susceptible to disproportionality and abuse. *See generally Toth v. United States*, 143 S. Ct. 552 (2023) (Gorsuch, J., dissenting from the denial of certiorari).

example, the court asserted that Jouppi was “clearly within the class of persons targeted by the statute” because the statute covers “airplane owners and pilots who knowingly facilitate the importation of alcohol for consumption in a dry village.” Pet. App. 20a. Put differently, the statute applied to him. But of course it did. The Bank Secrecy Act’s felony-reporting-violation statute applied to Hosep Bajakajian too. That’s why he (like Jouppi) found himself raising an excessive-fines argument in the first place; in the main, the Excessive Fines Clause “*presume[s]* that some crime [or other violation] was committed that caused harm and for which penalties may be imposed.” *United States v. \$11,500.00*, 869 F.3d 1062, 1074 n.8 (9th Cir. 2017). With that as a given, the question becomes whether “the amount of the forfeiture is grossly disproportional to the gravity of the defendant’s offense.” *Bajakajian*, 524 U.S. at 337. As discussed, history and precedent make clear that that question is answered, not purely in the abstract, but with reference to the defendant’s own misconduct.

That is doubly true where the penal statute is capaciously broad. The statute under which Jouppi was convicted, for instance, casts an extraordinarily “wide net.” *State v. Jouppi*, 397 P.3d 1026, 1033 (Alaska Ct. App. 2017). Yet the airplane-forfeiture provision applies with undifferentiated force “to all.” Pet. App. 161a (trial court). For every other vehicle type, forfeiture is reserved for recidivists, felony probationers, and people transporting at least twice the amount of alcohol presumed to be for barter or sale. Alaska Stat. § 04.16.220(i)(2); *see also id.* § 04.11.010(c). Not so for airplanes. *Id.* § 04.16.220(i)(1). For airplanes, the statute mandates forfeiture for the incorrigible recidivist and the first-time offender. For the highest felony and the lowest misdemeanor. For the pallet stack of whiskey and the six-pack of Budweiser. Pet.

App. 22a; *see also* Pet. App. 51a (court of appeals) (remarking that there is no “explicit explanation” for “why the legislature chose to create different rules for the forfeitures of aircraft versus the forfeitures of vehicles and watercraft”). Given that breadth, the fact that such an expansive statute applied to Jouppi says little about the gravity of his misconduct. Even as the statute is designed, moreover, using an airplane does not make a violation more serious; either way, it’s the same misdemeanor. Rather, whether and against whom the forfeiture provision applies turns on the happenstance of who *owns* the plane. That is how Jouppi’s passenger could be sentenced to \$1,500 in fines and three days in jail while Jouppi stands to lose his \$95,000 aircraft.

The rest of the Alaska Supreme Court’s standard was of a piece. Categorically, the court classed misdemeanor offenses under Alaska Statute 04.11.499(a) as “more serious than Bajakajian’s” federal felony. Pet. App. 19a-20a. *But cf.* U.S. Br. at 32, *Bajakajian, supra* (“Congress viewed willful violations of the reporting requirement as a serious offense[.]”). As for the harm caused, more of the same: The court looked, not to the harm caused by Jouppi, but to “the harm . . . addressed in the legislative history of the forfeiture provision” decades ago. Pet. App. 25a n.94. From that level of generality, it saddled Jouppi with the social ills of alcohol abuse statewide. Increased crime. Public-health costs. Death. Pet. App. 24a. Once more, that macro-level approach is precisely what the government urged in *Bajakajian* and precisely what the Court did not apply. *See* p. 17, *supra*.

The last of the Alaska Supreme Court’s considerations further betrays its root error. The court compared by rote the value of Jouppi’s airplane to “the maximum fine that could have been imposed.” Pet. App. 23a.

Because the plane’s value was “only” nine and a half times the maximum theoretical fine, the court reasoned, “this factor suggests that the forfeiture is not grossly disproportional.” Pet. App. 23a. Yet the fact that Alaska’s legislature set a \$10,000 maximum fine for all class A misdemeanors says little about the gravity of *Jouppi’s* wrongdoing. That maximum (now \$25,000) was enacted to capture the State’s theoretical worst-case misdemeanants—and it covers a vast array of crimes that include not just Jouppi’s, but selling alcohol to a minor; the unauthorized practice of law, medicine, or osteopathy; domestic violence in the presence of a child; reckless endangerment; second-degree stalking; indecent exposure to a child; criminal trespass; first-degree child endangerment; publicizing explicit images of a child online; misconduct involving a corpse; and bestiality. *See* Alaska Stat. §§ 04.16.052, 08.08.230, 08.64.360, 11.41.240, 11.41.250, 11.41.270, 11.41.460, 11.46.320, 11.51.100, 11.61.116, 11.61.130, 11.61.140. That a worst-case animal abuser, or corpse abuser, or faux-osteopath could merit a \$10,000 fine sheds no light on “the gravity of [Jouppi’s] crime” or whether forfeiting an airplane for a six-pack is excessive. *Bajakajian*, 524 U.S. at 339. And once again, the Court rejected the same maneuver in *Bajakajian*, focusing less on Bajakajian’s theoretical statutory maximums and more on his individualized guidelines range. *Id.* at 338-39 & 339 n.14; *see also* p. 5, *supra* (noting that Jouppi was fined only \$1,500).

At base, every lens the Alaska Supreme Court used viewed the gravity of Jouppi’s offense purely in the abstract. Only thus could the court hold that “the illegal importation of even a six-pack of beer causes grave societal harm” and that forfeiting Jouppi’s airplane “does not violate the Excessive Fines Clause.” Pet. App. 24a, 27a. Under the Alaska Supreme Court’s standard, in fact, the

same would be said of Hosep Bajakajian's forfeiture. Like Ken Jouppi, Bajakajian was "within the class of persons targeted by the statute." Pet. App. 20a. Bank Secrecy Act violations, in the aggregate, can be said to cause "grave societal harm." Pet. App. 24a; *see also* 524 U.S. at 351 (Kennedy, J., dissenting). And proportionally, Bajakajian's forfeiture was far nearer his theoretical maximum fine (\$357,144 compared to \$250,000) than was Jouppi's (\$95,000 compared to \$10,000). (Even when mandatory, the Guidelines left judges discretion to depart upward to statutory maximums in limited circumstances. *Booker*, 543 U.S. at 234.)

Which spotlights the core defect in Alaska's standard. Because the standard evaluates the offense's gravity purely in the abstract, it is hard (or impossible) to imagine an excessive-fines claim that *wouldn't* fail. Of course alcohol abuse writ large is a problem. The same could be said of the clandestine exportation of currency. And speeding. "At some great height . . . almost any state action might be said to touch on 'one or another of the fundamental concerns of government: public health and safety, public peace and order, defense, revenue.'" *Yellowbear v. Lampert*, 741 F.3d 48, 57 (10th Cir. 2014) (Gorsuch, J.). And from that great height, the societal harm of even the most trivial infraction will dwarf any fine imaginable. Simply, the Alaska Supreme Court's standard undercuts the Excessive Fines Clause's most basic promise: that when confronted with the formidable power of the State, the individual shall be fined for a small fault only according to the measure thereof and for a great one according to its magnitude.

2. The Alaska Supreme Court appears to have labored under the impression that its plane-for-a-six-pack standard was compelled by deference it owed to the

legislature. Pet. App. 17a-18a, 22a, 25a. Quoting *Bajakajian*, the court observed that “judgments about the appropriate punishment for an offense belong in the first instance to the legislature.” Pet. App. 22a (quoting 524 U.S. at 336). But all manner of judgments belong in the first instance to legislatures. Judgments about sign codes. About public schools. About cross-border currency movements. About hotel-guest records. Firearms. Trademarks. Raisins. Yet ordinarily, when those judgments intrude on individual rights secured by the Constitution, “courts do not simply defer to legislative fiat.” *United States v. Duarte*, 137 F.4th 743, 799 (9th Cir. 2025) (Vandyke, J., concurring in the judgment in part and dissenting in part), *cert. denied*, 607 U.S. ____ (2026); *see also Kelo v. City of New London*, 545 U.S. 469, 517-18 (2005) (Thomas, J., dissenting) (“[I]t is most implausible that the Framers intended to defer to legislatures as to what satisfies the Public Use Clause, uniquely among all the express provisions of the Bill of Rights.”); *cf. McDonald v. City of Chicago*, 561 U.S. 742, 790 (2010) (plurality opinion). And that principle applies with special force for the Excessive Fines Clause, since “it makes sense to scrutinize governmental action more closely when the State stands to benefit.” *Timbs*, 586 U.S. at 154 (quoting *Harmelin*, 501 U.S. at 979 n.9 (opinion of Scalia, J.)).

Contrary to the Alaska Supreme Court’s assumption, nothing in this Court’s decision in *Bajakajian* casts doubt on these principles. To the extent the Court in *Bajakajian* assumed that a measure of deference should attach to legislatively set fines and forfeitures (524 U.S. at 336), that deference was accounted for in the Court’s construing the word “excessive,” not to require strict proportionality, but to forbid gross *disproportionality*. *Id.* at 336-37. Nothing in that standard calls for “apply[ing] deference anew in each case to the legislatively enacted fine

range.” *Robson 200, LLC v. City of Lakeland*, 593 F. Supp. 3d 1110, 1120 (M.D. Fla. 2022) (Mizelle, J.); *see also Bajakajian*, 524 U.S. at 348 (Kennedy, J., dissenting) (“The majority’s assessment of the crime accords no deference, let alone substantial deference, to the judgment of Congress.”). Certainly nothing supports the sort of all-thumbs-on-the-scale standard Alaska developed.

Nor did the Court’s reference in *Bajakajian* to the Cruel and Unusual Punishments Clause change the analysis. Pet. App. 17a-18a. The Court of course drew on the gross-disproportionality concept that has at times appeared in Cruel and Unusual Punishments Clause precedent, particularly decisions concerning prison terms. *Bajakajian*, 524 U.S. at 336. But the Alaska Supreme Court seemingly believed the two Clauses are interchangeable (Pet. App. 18a), and that belief was mistaken. For one thing, it would render the Excessive Fines Clause superfluous. “[A] fine is a punishment for some offense,” after all, so a one-to-one overlap between “excessive” and “cruel and unusual” would “mean that the Excessive Fines Clause provides no protection different from the Cruel and Unusual Punishments Clause.” *State v. Timbs*, 134 N.E.3d 12, 38 (Ind. 2019); *see also Harmelin*, 501 U.S. at 978 n.9 (opinion of Scalia, J.). Even without the history detailed above, such a reading would run counter to basic interpretive principles. *See, e.g., Alexander*, 509 U.S. at 558 (vacating decision that “failed to distinguish between” the Clauses and “lumped the two together”).

The Court’s application of its standard in *Bajakajian* cements the point. In the cruel-and-unusual-punishments context, for instance, the Court has at times suggested that “one could argue without fear of contradiction by any decision of this Court that for crimes concededly classified and classifiable as felonies,” the term of years

imposed “is purely a matter of legislative prerogative.” *Rummel v. Estelle*, 445 U.S. 263, 274 (1980). *But see id.* at 274 n.11 (seeming to walk back that proposition); *Solem v. Helm*, 463 U.S. 277, 289 n.14 (1983) (noting that “[t]he Court . . . merely recognized that the argument was possible” and “we find it meritless”); *see generally Lockyer v. Andrade*, 538 U.S. 63, 72 (2003) (“[O]ur precedents in this area have not been a model of clarity.”). *Bajakajian*’s standard is unmistakably different. In applying the Excessive Fines Clause to the forfeiture imposed for Bajakajian’s felony, the Court looked to “the harm that [he] caused,” his “minimal level of culpability,” his “culpability relative to other potential violators,” and other particulars of his offense. *Bajakajian*, 524 U.S. at 337-40 & n.14. In considering the offense’s gravity, in short, the Court considered the defendant’s own misconduct. The Alaska Supreme Court’s standard does not. And as this case illustrates, that error badly degrades a Bill of Rights protection that “has been a constant shield throughout Anglo-American history.” *Timbs*, 586 U.S. at 153.

CONCLUSION

The judgment of the Alaska Supreme Court should be reversed and the case remanded for further proceedings.

Respectfully submitted.

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