

**In the
Supreme Court of the United States**

KENNETH J. JOUPPI,

Petitioner,

v.

ALASKA,

Respondent.

On Writ of Certiorari to the Supreme Court of Alaska

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INTEREST OF THE *AMICI CURIAE*

Amici curiae are former presidentially appointed United States Attorneys from three different Administrations and 11 different judicial districts.¹ Each has experience prosecuting crimes in “Indian country,” as defined by 18 U.S.C. § 1151. Specifically:

- Michael W. Cotter was appointed by President Barack Obama as United States Attorney for the District of Montana and served from 2009 to 2017.
- Barry R. Grissom was appointed by President Barack Obama as United States Attorney for the District of Kansas and served from 2010 to 2016.
- John W. Huber was appointed by President Barack Obama and re-appointed by President Donald Trump as United States Attorney for the District of Utah and served from 2015 to 2021.
- David C. Iglesias was appointed by President George W. Bush as United States Attorney for the District of New Mexico and served from 2001 to 2007.
- Joe Kelly was appointed by President Donald Trump as United States Attorney for the District of Nebraska and served from 2018 to 2021.

¹ No counsel for any party authored this brief in whole or in part, and no person other than *amici curiae* or their counsel made a monetary contribution to the preparation or submission of this brief.

- Mark A. Klaassen was appointed by President Donald Trump as United States Attorney for the District of Wyoming and served from 2017 to 2021.
- Brian J. Kuester was appointed by President Donald Trump as United States Attorney for the Eastern District of Oklahoma and served from 2017 to 2021.
- Wendy J. Olson was appointed by President Barack Obama as United States Attorney for the District of Idaho and served from 2010 to 2017.
- Robert G. McCampbell was appointed by President George W. Bush as United States Attorney for the Western District of Oklahoma and served from 2001 to 2005.
- Bryan D. Schroder was appointed by President Donald Trump as United States Attorney for the District of Alaska and served from 2017 to 2021.
- R. Trent Shores was appointed by President Donald Trump as United States Attorney for the Northern District of Oklahoma and served from 2017 to 2021.
- Danny C. Williams, Sr. was appointed by President Barack Obama as United States Attorney for the Northern District of Oklahoma and served from 2012 to 2017.

As former United States Attorneys, *Amici* have developed and implemented public safety initiatives impacting tribal communities and/or Alaska Native villages. Moreover, *Amici* have themselves prosecuted

and/or supervised the prosecution of violent crimes in Indian country, including homicide, sexual assault, and domestic violence. In doing so, *Amici* developed a unique understanding of the tragic nexus between substance abuse and violence in Native American and Alaska Native communities. *Amici* understand the gravity of the crime committed by Petitioner because of its impact on a small, rural, and remote indigenous community. As a result of their collective experience, it is the position of the *Amici* that the forfeiture of Petitioner's plane is not an excessive fine because it is proportional to the gravity of the offense he committed. The *Amici* respectfully submit this brief to offer former federal prosecutors' perspectives on why the conveyance of alcohol into an Alaska Native community that voted to exclude it is a serious offense and why the judgment in this case is a proportionate one.

SUMMARY OF THE ARGUMENT

Petitioner argues the confiscation of a \$95,000 airplane is disproportionate to his crime of transporting allegedly only a six-pack of beer. He argues that the gravity of his offense must be evaluated by reference to his own wrongdoing and that blanket confiscation of an aircraft transporting *any* amount of alcohol to a dry village violates the Excessive Fines Clause. In addition to incorrectly downplaying his own wrongdoing in this case, Petitioner's argument also ignores the important public safety interests served by the Alaska statutory scheme, which recognizes the danger that even small

amounts of alcohol may pose in remote Alaska villages and the need to deter such conduct.

Petitioner is a commercial air-taxi operator who loaded nine gallons of beer into his aircraft for delivery to Beaver, a Gwich'in village of fewer than 100 people on the Yukon River. The residents of Beaver, which may be reached only by air, had voted to prohibit the importation of alcohol. The jury found that Petitioner knowingly allowed beer onto his aircraft for the flight to Beaver, and the trial court found that at least a six-pack sat in plain view of Petitioner in an open grocery bag. Pet. App. 4a–5a, 7a, 33a. The Supreme Court of Alaska held that the forfeiture the legislature has mandated for aircraft transporting any amount of alcohol into a dry village is not grossly disproportional to its gravity. That judgment is correct for at least four reasons.

First, the Alaska Legislature's decision to require forfeiture of aircraft used to carry any amount of alcohol into dry villages was not an arbitrary one. It was based on decades of studies documenting that alcohol drives most violent crime in rural Alaska. The statute was refined in 2004 to adopt a tiered scheme that reserves mandatory forfeiture of cars and boats for aggravated cases while treating aircraft differently. With this distinction, the legislature recognized that aircraft provide the only way to reach remote—and particularly vulnerable—villages like Beaver. Thus, preventing importation of alcohol by air is essential. *Bajakajian* instructs that judgments about the appropriate punishment for an offense belong to the legislature in the first instance. *United States v. Bajakajian*, 524 U.S. 321, 336 (1998). Here, the Alaska Legislature exercised its judgment to

address proven public safety concerns, and that judgment is entitled to deference.

Second, the forfeiture of conveyances used to introduce liquor into a Native community is not a new concept. Congress has provided for it since the Trade and Intercourse Act of 1834, and it remains federal law today, 18 U.S.C. § 3669, without regard to quantity. Because most Alaska Native villages are not Indian country, Alaska's local-option statutes perform in Alaska the important function federal law performs elsewhere.

Third, the harm factor in *Bajakajian* asks about the harm an offense causes and threatens, not the price of the contraband. Nine gallons of beer is a different quantity in a village of 80 people than in a city of 8,000, and the record shows that Petitioner's practice of not looking at what his passengers carried was known in the villages he served and had consequences there. Measured against that harm, the loss of the aircraft is severe but not grossly disproportional, and the ratio between the forfeiture and the authorized fines falls within the range this Court and the lower courts have sustained.

Finally, the rule Petitioner asks the Court to adopt would deprive dry villages of the one sanction that reaches the people with the means to defeat their choice. The judgment should be affirmed.

ARGUMENT

I. Petitioner committed a serious offense that threatened public safety and violated the will of the Alaska Legislature and the Village of Beaver.

The proportionality inquiry requires consideration of the gravity of the offense at issue. *Bajakajian*, 524 U.S. at 334, 337–39. Here, the gravity of Petitioner’s offense cannot be overstated.

A. The Alaska Legislature’s judgment rests on a well-documented public-safety crisis and is entitled to substantial deference.

The Alaska Legislature first enacted the local option and forfeiture provisions in 1980 following a series of studies illustrating the strong connection between alcohol-consumption and crime in rural Alaskan villages. These studies, which are collected in the opinions below, Pet. App. 83a–87a, found that in rural Alaska, alcohol was linked to

- 77.9% of violent crimes;
- 64% of criminal homicides;
- 34% of forcible rapes;
- 41% of aggravated assaults; and
- 55.6% of property crimes.

See Harrison v. State, 687 P.2d 332, 335–36 (Alaska App. 1984) (citing *Alaska Felony Sentences: 1976–1979*, at 45–48, 65–67 (1980)); *Abraham v. State*, 585 P.2d 526, 532 n.19 (Alaska 1978) (citing report of the National Council on Alcoholism).

When the legislature expanded the local option in 1986, including adding the forfeiture provisions, it included a series of findings in the session law itself, concluding that the dangers of alcohol abuse were particularly acute in rural Alaska Native communities because they are small and remote, often lack adequate health care and law enforcement, and cannot absorb the economic costs of alcohol abuse. SLA 1986, ch. 80, § 1; Pet. App. 86a–87a, subsections (2), (6), & (8).

Alaska’s local-option law has been effective in increasing public safety. A study published in the *Journal of Studies on Alcohol* in 2000 found that Alaska Native communities that banned alcohol had markedly lower rates of homicide and accident-related deaths than comparable communities that did not. Matthew Berman, Teresa Hull & Philip May, *Alcohol Control and Injury Death in Alaska Native Communities: Wet, Damp and Dry Under Alaska’s Local Option Law*, 61 J. Stud. Alcohol 311 (2000). A later study reported that the rates of serious injury resulting from assault, motor-vehicle collisions, and “other causes” were lower in dry villages than in communities that continued to permit alcohol. Darryl S. Wood & Paul J. Gruenewald, *Local Alcohol Prohibition, Police Presence and Serious Injury in Isolated Alaska Native Villages*, 101 Addiction 393 (2006).

None of these studies are surprising to the *Amici*. Their experiences as prosecutors in Indian country are consistent with these findings. For example, alcohol played a role in the great majority of domestic violence and sexual-assault cases their offices prosecuted that involved Native perpetrators and/or

victims. And alcohol-fueled crimes in general are a significant problem throughout Indian country.

But compared to the districts in which the non-Alaskan *Amici* served, alcohol poses an even greater threat to remote Alaska Native communities. As the Alaska Legislature recognized, the isolation of the villages exacerbates the impact of alcohol-induced violence and accidents. Adequate healthcare is often not available in rural Alaska. Moreover, many of the communities lack regular access to law enforcement. See Indian Law & Order Comm’n, *A Roadmap for Making Native America Safer* ch. 2 (2013). In 2019, an investigation by the Anchorage Daily News and ProPublica found that one in three communities in Alaska had no local law enforcement. K. Hopkins, *Lawless*, Anchorage Daily News (May 16, 2019). Of those unprotected villages, 70 were large enough in population to have both a school and a post office. *Id.* Yet village residents who fell victim to a crime were forced to wait for help to arrive by plane, boat, all-terrain vehicle, or snowmobile. *Id.* Thus, for rural Alaska Native communities, “unlike most anywhere else in the United States, emergency help is hours or even days away.” *Id.*

The Alaska Legislature recognized that although remote villages can ban alcohol from their communities, this ban is only effective if it can be enforced. Because many villages lack the law enforcement personnel needed to enforce the ban or address the impacts of alcohol after it arrives, there is even greater need to stop alcohol from entering dry villages in the first place. Thus, the legislature amended the statute to provide the ability to stop the

importation of alcohol into the villages by confiscating aircraft, vessels, and vehicles used to subvert the ban.

In this amendment, the legislature recognized the heightened threat aircraft pose to rural communities. The legislature singled out aircraft for mandatory forfeiture while conditioning the forfeiture of vehicles and watercraft on aggravating circumstances. Pet. App. 20a–22a. The more remote a village is, the more vulnerable it is to the impact of alcohol *and* the more likely it is that alcohol will arrive via air. The pilot who carries it is the gatekeeper, and a legislature that places its strongest sanction at the gate has responded to the problem rationally.

B. Local option is the Village’s own act of self-governance.

A dry village is dry because its residents voted to make it so. Alaska Stat. § 04.11.491. Beaver’s ban was not imposed from Juneau; it is the community’s own judgment about how best to protect itself. When a pilot from Fairbanks carries alcohol into Beaver, he does more than violate a state statute. He overrides a decision the community made for itself, and the harm that flows from that violation falls directly on community members. Prosecutors who work with tribal communities understand the difference between a regulatory violation and a violation of a community’s self-determination. The Alaska Legislature understood it, too: the forfeiture provision was enacted, in Judge Mannheimer’s words, “to give teeth” to the communities’ efforts. Pet. App. 86a. Petitioner’s conduct defied those community efforts, and the seriousness of the penalty should reflect the gravity of his crime.

“[J]udgments about the appropriate punishment for an offense belong in the first instance to the legislature,” *Bajakajian*, 524 U.S. at 336, and reviewing courts “should grant substantial deference to the broad authority that legislatures necessarily possess in determining the types and limits of punishments for crimes.” *Solem v. Helm*, 463 U.S. 277, 290 (1983). That deference is owed most where, as here, the legislature has acted on a record of local harm and tailored the punishment to the threats presented in a unique environment. This is particularly true where the local community has expressly invoked the protection offered by the statute. Courts sitting far from rural Alaska are poorly positioned to second-guess these decisions.

II. Federal law has long required forfeiture of conveyances used to introduce liquor into Native communities.

A. Congress has authorized forfeiture of such conveyances since 1834.

“The protection against excessive fines has been a constant shield throughout Anglo-American history.” *Timbs v. Indiana*, 586 U.S. 146, 153 (2019). This Court has looked to historical practice in considering whether violations of the Excessive Fines Clause have occurred. *See Bajakajian*, 524 U.S. at 330–32, 335; *Austin v. United States*, 509 U.S. 602, 611–18 (1993). Such practice supports the forfeiture provisions adopted by the Alaska Legislature here.

From the early days of the Republic, Congress prohibited the introduction of liquor into Indian

country. The Trade and Intercourse Act of 1834 made it unlawful to introduce liquor or wine into Indian country and authorized officers to search the “boats, stores, packages, and places of deposit” of any person suspected of doing so and to seize, for forfeiture, any liquor or wine found. Act of June 30, 1834, ch. 161, § 20, 4 Stat. 729, 732. Like the Alaska statute, the Act was later amended to extend the forfeiture to “the boats, teams, wagons, and sleds used in conveying” liquor and wine. Act of March 15, 1864, ch. 33, 13 Stat. 29. That policy has remained in force for nearly two centuries. Today, it is codified in 18 U.S.C. §§ 1154 and 1156, which criminalize dispensing or possessing intoxicants in Indian country, and in 18 U.S.C. § 3669, which provides that any conveyance used by any person “in introducing or attempting to introduce intoxicants into the Indian country” is “subject to seizure, libel, and forfeiture.” The federal statute, like Alaska’s, applies to *any* quantity of alcohol.

The federal scheme rests on the judgment the Alaska Legislature later made for itself: that the conveyance should be forfeited because it makes the introduction of alcohol into an isolated community possible, and future alcohol transfers cannot occur in a vehicle that has been forfeited. A sanction Congress has imposed without interruption since the Lincoln Administration, and that this Court has treated as unremarkable, is not the sort of penalty the Eighth Amendment was ratified to forbid.

**B. Alaska’s local-option statutes perform
in Alaska the function federal law
performs elsewhere.**

The federal statutes criminalizing the importation of alcohol into Indian country have limited reach in

Alaska. In *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520 (1998), this Court held that lands conveyed under the Alaska Native Claims Settlement Act are generally not “Indian country” within the meaning of 18 U.S.C. § 1151. Like Beaver, Venetie is a Gwich’in village in interior Alaska. Based on this ruling, the federal prohibition on introducing liquor into Indian country, and the federal forfeiture that accompanies it, do not protect most Alaska Native villages. However, the State’s local-option law does. It gives a village the authority to adopt, by vote, the same protection Congress has extended to tribal communities elsewhere, and its forfeiture provision supplies the same enforcement mechanism. The statutes at issue are Alaska’s counterpart to longstanding federal law and incorporate remedies that have been imposed for similar crimes for almost two centuries.

Forfeiture of a conveyance used to carry contraband is among the oldest forms of forfeiture in the United States. See *Bennis v. Michigan*, 516 U.S. 442, 446–49 (1996); *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 680–86 (1974). The Court need not decide whether every such forfeiture survives Eighth Amendment scrutiny to conclude that this one does.

III. Measured against the harm the offense threatens, forfeiture of Petitioner's aircraft is not grossly disproportional.

A. The gravity of the offense turns on the harm it threatens, not the market value of the contraband.

The retail value of the alcohol on Petitioner's plane says little about the gravity of his offense. What matters is what his conduct threatened: the transportation of alcohol into a community that has determined, based on its own experience and circumstances, that it cannot safely bear the harms associated with it. That approach tracks *Bajakajian*, which rejected any "inherent proportionality" between the dollar amount involved in an offense and the harm it causes. 524 U.S. at 339.

There, the Court found the harm caused by the offense to be "minimal" because the defendant's conduct "affected only one party, the Government, and in a relatively minor way." *Id.* The Court identified several other features that made the offense minimally harmful: it was "solely a reporting offense," unrelated to any other illegal activity, and the defendant was not among the offenders the statute was "principally designed" to reach. *Id.* at 337–38.

The offense here bears none of those features. It is not a technical reporting violation affecting the Government alone. Rather, it is the knowing introduction of alcohol into a community that deliberately chose to prohibit it—the precise conduct the statute was designed to reach. *See* Alaska Stat. § 04.11.499(a), (c)(3). The harms the legislature

identified, which include violence, injury, and death, are particularly severe in small, remote villages, where limited police and medical resources leave communities less able to prevent or respond to them. *See* Pet. App. 24a-25a, 86a-87a. The gravity of Petitioner’s offense therefore lies not in the value of the contraband, but in the substantial harm his conduct threatened to bring into the community.²

Nor can the quantity of alcohol be assessed apart from the community for which it was destined. Seventy-two cans of beer may be insignificant against the population and infrastructure of Fairbanks. But in Beaver—a village of less than 100 people—the same quantity represents a substantial supply. Beaver’s isolation compounds the consequences: there are no roads in or out of the village, and the nearest hospital is in Fairbanks, more than 100 miles away. Resp. Br. at 12. These circumstances bear directly on the harm the legislature—and Beaver itself—sought to prevent and thus on the gravity the State reasonably attributed to the transportation of alcohol into such a community.

Finally, Petitioner was squarely within the category of offenders the statute was designed to

² That troopers intercepted the alcohol before the aircraft left Fairbanks does not diminish the gravity of the offense. *Bajakajian* itself measured harm by asking what the offense would have accomplished had it succeeded, observing that if the defendant’s crime had “gone undetected, the Government would have been deprived only of the information that \$357,144 had left the country.” 524 U.S. at 339. And critically, Petitioner’s offense of conviction includes attempted delivery, not merely completed delivery. Alaska Stat. § 04.11.499(c)(1), (3). An offense stopped at the airstrip is therefore no less grave than one completed.

reach. Troopers watched him open and close boxes while loading the aircraft, with a six-pack of beer sitting unsecured in a grocery bag and plainly visible through the plane's window. Pet. App. 4a, 33a. The jury was instructed that knowledge includes deliberate ignorance, and it convicted him on these facts. Pet. App. 5a. A pilot who chooses to remain ignorant of his cargo becomes the carrier of choice for passengers who intend to bring alcohol into a dry community. The forfeiture provision was intended to stop this conduct by targeting people like Petitioner who facilitated the transport of alcohol into dry villages and eliminating the means by which they could accomplish it.

B. The ratio between the forfeiture and the authorized penalties is within the range courts have sustained.

The Alaska Legislature did not leave forfeiture to the happenstance of an individual sentencing decision. It made forfeiture of aircraft mandatory when the statutory conditions are met, reflecting its judgment that removing the means of transportation is necessary to deter the very conduct at issue here. The statute's history reinforces that judgment. See Pet. App. 20a–22a. And the ratio of forfeiture to the authorized penalties at issue here falls comfortably within the range that courts applying *Bajakajian* have sustained.

Indeed, Petitioner's aircraft was worth approximately nine and a half times the \$10,000 maximum fine Petitioner faced. Pet. App. 7a n.10. The forfeiture in *Bajakajian*, by contrast, was more than 70 times the maximum fine under the Sentencing Guidelines. 524 U.S. at 338–39 & n.14. The

comparison is starker still for KenAir, Petitioner’s co-defendant and the company that operated the aircraft, which faced a maximum fine of \$500,000—more than five times the value of the plane. Pet. App. 7a n.10. Courts applying *Bajakajian* have sustained forfeitures at—and above—the ratio presented here. See Pet. App. 23a n.89 (collecting cases, including *United States v. Castello*, 611 F.3d 116, 123 (2d Cir. 2010), and *United States v. Mackby*, 339 F.3d 1013, 1016–19 (9th Cir. 2003)).

Moreover, Petitioner’s sentence included jail time, a \$3,000 fine with \$1,500 suspended, three years of probation, and other conditions prohibiting him from carrying alcohol into any dry village. Pet. App. 5a. The court specifically stated that it did not impose forfeiture alongside these penalties lightly. *Id.* The forfeiture therefore was not an anomalous punishment imposed alongside an otherwise minimal sentence, unlike in *Bajakajian*, where the maximum available penalties “confirm[ed] a minimal level of culpability.” 524 U.S. at 339.

**C. The record does not show that
forfeiture deprived Petitioner of his
livelihood.**

Bajakajian did not reach whether a forfeiture’s effect on the defendant’s livelihood bears on proportionality. 524 U.S. at 340 n.15. But even if it does, the record provides no basis for finding that the forfeiture deprived Petitioner of his livelihood. Petitioner owned a second aircraft, also used by his company, and flew it to Beaver on the same day the first was seized. Pet. App. 27a. And at a post-conviction evidentiary hearing, Petitioner testified that he was “pretty much retired” and would

“probably just sell” the aircraft if it were returned to him. Pet. App. 26a-27a. Livelihood therefore lends no support to a finding of gross disproportionality.

IV. Petitioner’s proposed rule would disable the sanction that protects dry villages.

Petitioner argues the Alaska Supreme Court “viewed the gravity of [his] error purely in the abstract,” and he (incorrectly) characterizes his error as merely transporting a six-pack of beer. Pet. Br. 40. According to Petitioner, forfeiture is impermissible under the statute if the amount of alcohol to be transported is low enough. Rather than the brightline and no-exceptions policy enacted by the Alaska Legislature and embraced by the people of Beaver, Petitioner’s rule would leave open the question of how much alcohol is enough to warrant confiscation. Such a rule would tell every operator who flies into a dry village that transporting a six pack—or maybe two or three—risks only minor punishment, not confiscation of their aircraft. It would tell every village that a major sanction it relied on when it voted to go dry is no longer available. It would convert a mandatory forfeiture into a mandatory evidentiary hearing about how much is too much alcohol and what a passenger did, or could have done, with it. And it would do so on the premise that a court in Washington or Anchorage is better placed than the Alaska Legislature and the voters of Beaver to weigh the danger of 72 beers—or even a six-pack—in a remote village of less than 100 people.

This Court has not read the Excessive Fines Clause to require such a result. The Clause guards against fines that are “grossly disproportional to the

gravity of a defendant's offense." *Bajakajian*, 524 U.S. at 334. The Court has emphasized that successful proportionality challenges outside the capital punishment context should be "exceedingly rare," *Rummel v. Estelle*, 445 U.S. 263, 272 (1980); see *Solem*, 463 U.S. at 290 n.16. The forfeiture of an aircraft used by a commercial pilot to carry alcohol into a community that lawfully excluded it—under a statute that has required such a forfeiture for decades and that mirrors a federal policy nearly two centuries old—is neither rare nor aberrational. It is the sanction the people most affected have chosen, applied to the people best positioned to prevent the harm.

Amici do not suggest that the Clause has no application to forfeitures or that a legislature may declare any property used in any offense forfeitable without limit. *Timbs* settled that the Clause applies to the States, and *Bajakajian* settled that it has content. The point is narrower. Where a legislature has acted on a documented record of harm to protect a vulnerable population, has calibrated its remedy across offenses and conveyances, has preserved protection for innocent owners, and has chosen a sanction with deep roots in the Nation's law, the Eighth Amendment does not permit a court to displace that judgment because the offender's contraband, viewed in isolation, may appear small. The Supreme Court of Alaska applied *Bajakajian* faithfully and reached the correct result.

CONCLUSION

The Court should affirm the decision below.

Respectfully submitted,

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