No. 22-AA-833

DISTRICT OF COLUMBIA COURT OF APPEALS

EBOSELE OBOH,

Petitioner,

v.

D.C. DEPARTMENT OF BUILDINGS,

Respondent.

ON PETITION FOR REVIEW FROM A DECISION OF THE OFFICE OF ADMINISTRATIVE HEARINGS (No. DCRA-IC-1429-22)

BRIEF OF AMICI CURIAE LEGAL AID OF THE DISTRICT OF COLUMBIA AND THE AMERICAN CIVIL LIBERTIES UNION OF THE DISTRICT OF COLUMBIA IN SUPPORT OF PETITIONER AND URGING REVERSAL IN PART

Arthur B. Spitzer (No. 235960)
American Civil Liberties Union
Foundation of the District of Columbia
915 15th Street, NW – 2nd floor
Washington, DC 20005
202-457-0800
aspitzer@acludc.org

Counsel for Amicus Curiae ACLU

Jonathan H. Levy (No. 449274)
Alec Sandler‡
Legal Aid of the District of Columbia
1331 H Street NW, Suite 350
Washington, DC 20005
(202) 628-1161
jlevy@legalaiddc.org

Counsel for Amicus Curiae Legal Aid

‡ Not yet admitted to the Bar of the District of Columbia but admitted to practice law in another jurisdiction. Practicing law in the District of Columbia pursuant to D.C. Court of Appeals Rule 49(c)(8)(A) under the supervision of Legal Aid attorneys admitted to the D.C. Bar and in good standing.

RULE 28(a)(2)(A) STATEMENT

Legal Aid of the District of Columbia and the American Civil Liberties Union of the District of Columbia are both nonprofit corporations. They have no parent corporations, subsidiaries, or stockholders.

Amici certify that the following listed parties appeared on this appeal:

Appellant, Jonathan Hawkes Raynor, represents himself. Appellee, Yale Steam Laundry Condominium Association is represented by Laura M.K. Hassler. Amicus Curiae Legal Aid of the District of Columbia is represented by Jonathan H. Levy and Alec Sandler on appeal. Amicus Curiae American Civil Liberties Union Foundation of the District of Columbia is represented by Arthur B. Spitzer on appeal.

There are no additional parties or amici.

TABLE OF CONTENTS

Page(s)

TABLE OF AUTHORITIES

Cases

Statutes, Regulations and Rules

* Authorities principally relied upon are marked with an asterisk.

INTERESTS OF AMICI CURIAE

Legal Aid of the District of Columbia is the oldest general civil legal services program in the District. Legal Aid's mission is to "provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs." Legal Aid By-Laws, art. II, § 1. Legal Aid's Barbara McDowell Appellate Advocacy Project has participated in over 200 cases before this Court both as counsel for individual litigants and as amicus curiae. Legal Aid has a particular interest in the subject of this brief because the double-fine penalty is particularly harsh for low-income individuals. They are both least likely to be able to afford the penalty and more likely to have it imposed, as their mail service is often less reliable and their ability to respond to a Notice of Infraction frequently impaired for a variety of reasons.

The American Civil Liberties Union of the District of Columbia is a nonprofit District of Columbia membership corporation dedicated to defending and expanding the rights of people who live, work, and visit the District of Columbia. Founded in 1961, it has often represented parties, and filed *amicus* briefs, in cases involving the protection of constitutional rights in the District of Columbia, including many cases in this Court.

Legal Aid filed a motion to participate as *amicus* on February 6, 2023. The ACLU filed a similar motion on February 24, 2023. Both motions remain pending.

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SUMMARY OF THE ARGUMENT

This *amicus* brief does not address the propriety of the underlying fine of $8,856 as stated in the Notice of Infraction dated February 22, 2022. Record Tab 2.[1] Instead, *Amici* address the part of the Final Order that imposes a "penalty equal

[1] It is, however, worth noting that the Notice of Infraction provides no basis for determining how this amount was determined. The Notice describes two separate infractions for building without a permit, one of which is for interior and one of which is for exterior. Record Tab 1, at 10. Each infraction cites to "12-A

to twice the amount of the fine, in addition to the fine itself," for "fail[ing] to answer [the Notice of Infraction] by the deadline." Record Tab 1, at 2 & 5 (citing D.C. Code §§ 2-1801.04(a)(2) & 2-1802.02(f)). The imposition of that penalty is unconstitutional for three closely related reasons. First, it violates the Excessive Fines provision of the Eighth Amendment, which requires that any penalty be proportional to the gravity of the offense at issue. Here the offense of failing to answer the Notice of Infraction by the deadline is trivial and caused no appreciable harm. The $17,712 penalty imposed for this failure is wildly disproportional and therefore unconstitutional. Second, due process forbids grossly excessive civil penalties, and, for largely the same reasons that the penalty here is excessive under the Eighth Amendment, its imposition is also a denial of due process. Third, the penalty fails the rational basis test imposed by the Fifth Amendment. It irrationally treats differently respondents who submit a blank answer and those who submit no answer. And it penalizes respondents who fail to timely answer with fines ranging from $100 to over $100,000 without a rational basis for that enormous difference.

DCMR §§ 105.1 and 105.1.1" as bases, indicates no "Previous Infractions Committed," and lists a "Fine for Infraction" of "$4,428.00." *Id.* The cited regulation simply states that a property owner shall apply for the required permits before altering or repairing a building or structure. 12-A DCMR § 105.1.1. In turn, 16 DCMR § 3306.1.1(a) makes it a "Class 1 infraction" to violate 12-A DCMR §§ 105.1 and 105.1.1. And the fine for a first-time Class 1 infraction is $2,000. 16 DCMR § 3201.1(a)(1). The fines in the Notice of Infraction thus appear to be more than double what is authorized.

ARGUMENT

I. THE DOUBLE PENALTY VIOLATES THE EIGHTH AMENDMENT'S PROHIBITION ON EXCESSIVE FINES.

A. The Eight Amendment Applies to the District of Columbia.

The Eighth Amendment applies to the government of the District of Columbia. *See, e.g., One 1995 Toyota Pick-up Truck v. District of Columbia*, 718 A.2d 558 (D.C. 1998). Accordingly, the District is prohibited from imposing "excessive fines," as constitutionally defined. The penalty at issue here is a prohibited excessive fine.

B. The Double-Fine Penalty is a "Fine" Subject to the Eighth Amendment.

The penalty at issue here is a fine covered by the Excessive Fines Clause of the Eighth Amendment. Whether a sanction is a fine for this purpose "depends not on its outward characterization as either civil or criminal, but rather on whether it is a form of punishment." *One 1995 Toyota*, 718 A.2d at 560 (citing *Austin v. United States*, 509 U.S. 602, 610 (1993) and *United States v. Bajakajian*, 524 U.S. 321, 327-28 (1998)). Moreover, "a civil sanction that cannot fairly be said solely to serve a remedial purpose, but rather can only be explained as also serving either retributive or deterrent purposes, is punishment, as we have come to understand the term." *United States v. Halper*, 490 U.S. 435, 448 (1989); *accord Timbs v. Indiana*, 139 S. Ct. 682, 690 (2019) (reaffirming this "at least partially punitive" rule).

The double-fine penalty in D.C. Code § 2-1801.04(a)(2) appears to be exclusively retributive and deterrent, but, at any rate, at least partially serves those purposes and therefore constitutes punishment. The reason the penalty is imposed is a respondent's "fail[ure] to answer a notice of infraction within the [specified] time." D.C. Code § 2-1801.04(a)(2). But, as explained in greater detail below, that failure causes little or no harm, and therefore the penalty of over $17,000 imposed here cannot be considered in any way – much less entirely – remedial. Instead, the penalty is a punishment for the respondent's actions, whether intentional, negligent, or entirely innocent. *See Austin v. United States*, 509 U.S. 602, 615 (1993) (forfeiture that constitutes a punishment for negligence is a "punishment" subject to the Eighth Amendment). The statutory language is also instructive here, as it refers to the sanction as a "penalty" rather than as compensation. *Compare* D.C. Code § 2-1801.04(a)(2) (referring to the sanction at issue here as a "penalty"); *and* Record Tab 1, at 12 (referring to the sanction as an "additional penalty"), *with Collins v. SEC*, 736 F.3d 521 (D.C. Cir. 2013) (applying Eighth Amendment to "civil penalty" imposed by SEC).

Although much of the case law in this area involves civil forfeitures or fines/penalties that are related or adjacent to criminal wrongdoing, the Eighth Amendment also applies to penalties – like the double fine here – not associated with any underlying criminal activity. In *Pimentel v. City of Los Angeles*, 974 F.3d 917,

922 (9th Cir. 2020), for example, the court held that the Eighth Amendment's Excessive Fines Clause applied generally to civil "fines imposed by state and local authorities," including fines for parking violations. For example, in *Union Square Supply Inc. v. De Blasio*, 572 F. Supp. 3d 15, 24-26 (S.D.N.Y. 2021), the Court applied the Eighth Amendment's Excessive Fines Clause to a monetary penalty imposed under a civil anti-price-gauging law, despite noting that these were "civil penalties, rather than criminal fines." *See also Wemhoff v. City of Baltimore*, 591 F. Supp. 2d 804, 808-09 (D. Md. 2008) (analyzing for excessiveness under the Eighth Amendment overall fine for parking violation plus late fees); *Leon v. Hayward Building Department*, No. 17-CV-02720-LB, 2017 U.S. Dist. Lexis 120006, 2017 WL 3232486 (N.D. Cal. July 31, 2017) (applying the Eighth Amendment's Excessive Fines Clause to "zoning fines" unrelated to any criminal activity); *United States ex rel. Stearns v. Lane*, No. 2:08-CV-175, 2010 U.S. Dist. Lexis 96981, 2010 WL 3702538 (D. Vt. Sept. 15, 2010) (treble damages and civil penalties on top of actual damages of $828 in overcharged rent would violate the Eighth Amendment's Excessive Fines Clause).

It is also important to note that, while late *payments* of fines do harm the government, the penalty at issue here is for a late *answer*, not a late *payment* of the

underlying fine.[2] Paying the underlying fine and answering the Notice of Infraction are independent acts. Although a respondent can pay and answer simultaneously, they can also pay before or after submitting an answer, pay without answering, or answer without paying. The penalty here is solely based on the independent fact of whether (or when) a respondent *answers* a Notice of Infraction and does not turn in any respect on whether (or when) a respondent *pays* the underlying fine. In other words, the penalty here is solely about whether (and when) the agency receives a particular piece of paper called an "answer." Separate provisions, with their own penalties, including interest (at 1.5% monthly or 18% annually), the suspension of licenses, and the inability to get new permits, apply for failure to timely pay the underlying fine. *See* D.C. Code §§ 2-1802.03(f) & (i)(1), 2–1802.04; 12-A DCMR §§ 105.3.2 & 105.7; Record Tab 1, at 2, 4. Under these provisions, the failure to timely answer is punished far more harshly than the failure to pay timely; a respondent who answers the Notice of Infraction on time but pays ten years later owes less in total than a respondent who answers the Notice of Infraction one day late but pays immediately.

[2] Late fees must still comply with the Eighth Amendment in that they must be proportional to the offense. *See Pimentel v. City of Los Angeles*, 974 F.3d 917, 925 (9th Cir. 2020) (city must justify a late fee equal to the amount of the underlying parking ticket under the Eighth Amendment).

C. The Double-Fine Penalty Violates the Eighth Amendment Because It is Grossly Disproportional to the Gravity of the Proscribed Conduct.

1. The Failure to Answer the Notice of Infraction is a Trivial "Offense."

"The touchstone of the constitutional inquiry under the Excessive Fines Clause is the principle of proportionality," meaning that the amount of the sanction "must bear some relationship to the gravity of the offense that it is designed to punish." *United States v. Bajakajian*, 524 U.S. 321, 334 (1998) (citing *Austin v. United States*, 509 U.S., at 622-623, and *Alexander v. United States*, 509 U.S. 544, 559 (1993)). More specifically, a monetary sanction is unconstitutional if it is "grossly disproportional" to the gravity of the proscribed conduct. *E.g.*, *id.*; *One 1995 Toyota*, 718 A.2d at 561.

Here, the proscribed conduct is the "fail[ure] to answer a notice of infraction within the [specified] time." D.C. Code § 2-1801.04(a)(2). This is a minor – indeed trivial – offense. It is not a crime. It is not even an infraction. It is a paperwork issue. Nor does it demonstrate any culpable state of mind. While such a failure certainly could be knowing and willful, it could also be the result of simple negligence, or involve no culpable mental state whatsoever. For example, such a failure could occur when, as alleged here, the Notice of Infraction was never received through no fault of the respondent.

Perhaps most importantly, the failure to answer a Notice of Infraction within the specified time causes no harm whatsoever. The submission of an answer benefits the respondent, not the government. Its purpose is to inform the District which of three possible answers the respondent gives to the Notice: "admit," "admit with explanation," or "deny." The failure to submit an answer simply deprives the District of knowledge of which of these three options the respondent prefers.

The very same "harm" occurs when a respondent submits an answer but fails (whether intentionally or negligently) to check one of the boxes indicating "admit," "admit with explanation," or "deny" as occurs when the respondent entirely fails to submit any answer in the allotted time. But the regulations treat these situations dramatically differently. When a response is not submitted (or is late), the regulations treat that failure as "admit[ting] the infraction and further call for an additional penalty of double the original fine (resulting in a triple total fine). D.C. Code § 2- 1801.04(a)(2). But when a timely answer is submitted without checking one of the boxes, the regulations call for *no* penalty and the response is simply treated as "deny" (unless the respondent also pays the fine, in which case the response is treated as "admit"). D.C. Code § 2-1802.02(b) ("A respondent who responds to a notice of infraction but fails to indicate whether the respondent admits, admits with explanation, or denies the infraction shall be considered to have admitted the infraction if the respondent pays the appropriate fine and penalties, and shall

otherwise be considered to have denied the infraction."). There is no cost to the District of a late (or never) filed answer to a Notice of Infraction; the District can simply wait for the due date to pass and then act as if an answer has been filed with an "admit" or "deny" as appropriate.

Generally, the failure to challenge an adverse government action is not penalized. For example, if the government had filed a civil complaint against Mr. Oboh seeking $8,856 in damages, the filing of an answer to that complaint would have been for Mr. Oboh's benefit, to allow him to contest the claim. Had he not done so, a default judgment for the amount sought could have been imposed, but there would have been no additional penalty for Mr. Oboh's failure to file an answer on time or at all. *See* SCR-Civil 55. And in a criminal case, even when a defendant, knowingly, willfully, and defiantly refuses to respond to a complaint by entering a plea, there is similarly no penalty imposed because there is no harm caused. The court simply enters a "not guilty" plea on the defendant's behalf and proceeds accordingly. *See* SCR-Crim. 11(a)(4) ("Failure to Enter a Plea. If a defendant refuses to enter a plea . . . the court must enter a plea of not guilty."). Similarly, when a respondent fails (for whatever reason) to timely answer a Notice of Infraction, no harm is caused, and there is no logical reason to impose a penalty.

In sum, the failure to answer a Notice of Infraction is an act (or failure to act) that indicates no harmful mental state and that causes no harm to the District

government or to anyone or anything. Similar failures to respond are often met with no penalty (albeit leaving intact the obligation to pay the underlying fine). Accordingly, the high double-fine penalty of $17,712 here (beyond the underlying fine of $8,856, for a total of $26,568) is "grossly disproportional" to the gravity of Mr. Oboh's failure to answer.

2. The Gravity of the Failure to Answer the Notice of Infraction is Less than Other Offenses Which do not Justify a Penalty of Even Less than $17,000.

It is, of course, difficult to determine the proportionality between a financial sanction and a non-financial offense – like the failure to answer here – but this Court has made such a determination before, in a case that proves the unconstitutionality of the sanction here. In *One 1995 Toyota Pick-up Truck v. District of Columbia*, 718 A.2d 558 (D.C. 1998), this Court analyzed the constitutionality of the civil forfeiture of an automobile valued at $15,500 as a punishment for a first offense of sexual solicitation. At the time, sexual solicitation was criminally punishable by up to a $300 fine, although the automobile owner in *One 1995 Toyota*, was only fined half that amount. This Court concluded that forfeiture of the automobile violated the Eighth Amendment, largely because the value of the forfeited vehicle was 50 times the maximum fine for the criminal offense and 100 times the actual fine imposed. *Id.* at 566. Here, the failure to answer a Notice of Infraction is not criminal or subject to any separate fine, so the ratio here is infinite. To be sure, that does not

mean that the Eighth Amendment forbids all financial penalties for non-criminal acts. But it does demonstrate that the penalty was unconstitutionally high – as it exceeded the penalty struck down in *One 1995 Toyota* for an offense of greater gravity. The penalty here cannot be affirmed consistent with *One 1995 Toyota* because: (1) *One 1995 Toyota* holds that a forfeiture of the automobile at issue is grossly disproportional to the offense of sexual solicitation; (2) the offense of sexual solicitation (a crime) is of greater gravity than the offense of failure to answer a Notice of Infraction (not a crime); (3) the value of the automobile in *One 1995 Toyota* was approximately $15,500 – less than the value of the penalty at issue here ($17,712); and (4) therefore the penalty here is grossly disproportional to the offense of failure to answer a Notice of Infraction.

The offense of sexual solicitation is clearly one of greater gravity than failing to answer a Notice of Infraction because the former is criminal (punishable by a fine of up to $300 at the time of *One 1995 Toyota*, and now by a fine of up to $500 fine and 90 days imprisonment, *see* 718 A.2d at 595 n.3 & 565; D.C. Code §§ 22-2701(b)(1)(A) & 22-3571.01(b)(3)) while the latter is not criminal at all. Even the types of misconduct somewhat analogous to failure to answer a Notice of Infraction that *are* criminal or punishable with fines carry smaller punishments than the sexual solicitation at issue in *One 1995 Toyota* and therefore would not justify the penalty imposed on Mr. Oboh here. For example, if failure to answer a Notice of Infraction

were itself an infraction (it is not), it would fall within the category of "[i]nfractions that collectively create a nuisance but individually do not pose a threat to the health, safety, or welfare of persons within the District of Columbia." 16 DCMR § 3200.1(e), which are subject to a maximum fine of just $50, 16 DCMR § 3201.1(e)(1). At the federal level, 13 U.S.C. § 221(a) makes it a crime to fail to respond to a census survey. This is a form of failure to respond to an official notice, but unlike the failure to answer a Notice of Infraction, the failure to respond to a census survey harms the government by withholding needed information and is therefore criminalized. Nonetheless, this offense carries a maximum fine of only $100. *Id*.

In this context, it is crucial to note that the gravity of a failure to report or give notice is *not* tied to the value of the unreported item. This was the Supreme Court's determination in *United States v. Bajakajian*, 524 U.S. 321 (1998), which held unconstitutional the forfeiture of the entire amount of currency that the owner unlawfully failed to report as he attempted to leave the country. Although the failure to report in *Bajakajian* was both criminal and willful, the constitution still required that any penalty be proportional to the gravity of the offense itself, which was *not* tied to the potentially unlimited amount of money that went unreported. *Id.* at 337-338. Accordingly, the penalty here must be viewed in proportion to the offense –

the failure to answer the Notice of Infraction – and not to the underlying building code infractions or to the fine for those underlying infractions.

More applicably here, in *Bajakajian*, the Supreme Court keyed on the fact that "[t]he harm that respondent caused was also minimal" because "[t]here was no fraud," "no loss to the public fisc," and, even if the failure to report had gone undetected, the government would merely have been deprived of "information." *Id.* at 339. All these statements are true here, except that the harm here is even less than in *Bajakajian*. Here, there is no evidence of fraud, but unlike in *Bajakajian*, there is also no evidence of criminality of any kind and no evidence of any culpable mental state. Here, as in *Bajakajian*, there is no loss to the public fisc. And here, unlike in *Bajakajian*, the government has no actual need for the information that it was arguably deprived of – namely Mr. Oboh's choice of answer to the Notice of Infraction. The gravity of the offense here is thus dramatically lower than in *Bajakajian*.[3]

[3] It is also worth noting that whether a penalty is unconstitutionally excessive turns in part of the ability of the person or entity subject to that penalty to pay it. *See, e.g.*, *United States v. Viloski*, 814 F.3d 104, 111 (2d Cir. 2016); *United States v. Levesque*, 546 F.3d 78, 83 & n.4 (1st Cir. 2008); *United States v. Lippert*, 148 F.3d 974, 978 (8th Cir. 1998). Of course, here, there was no opportunity for such an inquiry, and the record does not contain sufficient information regarding Mr. Oboh's ability to pay.

II. THE DOUBLE PENALTY IS SUFFICIENTLY ARBITRARY TO VIOLATE DUE PROCESS.

Even if the penalty here were not a "fine" subject to the restrictions of the Eighth Amendment, it would still have to comply with due process requirements, and it does not do so. Just as excessive fines violate the Eighth Amendment, other excessive penalties violate due process. *See State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408, 417 (2003) ("To the extent an award is grossly excessive, it furthers no legitimate purpose and constitutes an arbitrary deprivation of property."); *May v. Nationstar Mortgage., LLC*, 852 F.3d 806, 815 (8th Cir. 2017) ([T]he Due Process Clause . . . prohibits 'grossly excessive civil punishment.'") (quoting *Trickey v. Kaman Industrial Technologies Corp.*, 705 F.3d 788, 802 (8th Cir. 2013)). The inquiry under the Due Process Clause is essentially the same as under the Excessive Fines Clause. The operative question is whether the penalty is grossly excessive in relation to the government's legitimate interests in imposing it. *See BMW of North America, Inc. v. Gore*, 517 U.S. 559, 568 (1996). Here, the purpose of the penalty is to encourage Mr. Oboh to timely answer the Notice of Infraction, punish him for failing to do so, and deter him (and others) from doing so in the future. As explained above, the government's interest in all of these things is minimal, if it exists at all. The $17,712 penalty is therefore grossly excessive in comparison and violates due process.

III. THE DOUBLE PENALTY IS UNCONSTITUTIONAL BECAUSE IT IS NOT RATIONALLY RELATED TO A LEGITIMATE PUBLIC PURPOSE.

The rational basis test (applicable to the States through the Fourteenth Amendment and to the Federal and District governments through the Fifth Amendment) requires all legal classifications to "bear[] some fair relationship to a legitimate public purpose." *Plyler v. Doe*, 457 U.S. 202, 216 (1982) (quoted *in In re R.M.G.*, 454 A.2d 776, 785 n.11 (D.C. 1982)). Although this is not a rigorous test, it is not met here.

A. There is no Legitimate Public Purpose for Treating Respondents who Answer a Notice of Infraction One Day Late Differently from Respondents who Timely Provide a Blank Answer.

The penalty imposed here is the result of two statutory distinctions, neither of which bears a fair relationship to a legitimate public purpose. First, the statute distinguishes between (1) a respondent who timely answers a Notice of Infraction without specifying "admit," "admit with explanation," or "deny" from (2) a respondent who answers a Notice of Infraction late or not at all. The former category is treated as having timely responded "deny," D.C. Code § 2-1802.02(b), while the latter category is treated as having admitted the claim and is further subject to the double penalty at issue in this case, D.C. Code § 2-1801.04(a)(2). While it is true that these two categories are factually distinct, they are not different in a way that justifies different treatment. The harm caused by these two categories of respondent

is identical; each fails to timely notify the government whether they "admit," "admit with explanation," or "deny" the allegations in the Notice of Infraction. There is no rational basis for treating them differently. This demonstrates that the double penalty "bear[s] no reasonable relationship to any valid state objective." *Lindsey v. Normet*, 405 U.S. 56, 76-77 (1972).

The situation here is analogous to one in which wedding guests are asked to send in a response card checking a box to indicate whether they would like beef, chicken, or fish for dinner. That is rationally related to a legitimate interest of the host. And if a response card does not have a box checked, it is rational for the host to simply impose a default choice – chicken, perhaps. But what if a response card is received late or not at all? In that situation, it would be rational for the host to act the same as if a blank card were received and to default to chicken. It might even be rational – although rather harsh – to not provide any dinner to a guest who failed to timely return the dinner choice card. But what would be completely irrational is to not feed that guest and, in addition, insist that they pay for two additional guests' dinners as a penalty. Yet that last scenario is the analogy of the double penalty imposed on Mr. Oboh here.

B. There is no Legitimate Public Purpose for Setting the Amount of the Penalty at Double the Underlying Fine.

The amount of the penalty imposed on Mr. Oboh – $17,712 – was calculated by doubling the amount of the underlying fine imposed on him for failing to obtain

a building permit for interior and exterior work. *See* Record Tab 1, at 10; D.C. Code § 2-1801.04(a)(2). But a similarly situated respondent who failed to answer a Notice of Infraction with a lower underlying fine might face a penalty of $100 or less, and, given that there could be multiple fines of up to $20,000 each, the penalty can be in the tens or hundreds of thousands of dollars; there is no maximum penalty. *See* 16 DCMR § 3201.1. Thus, the penalty for failing to timely answer a notice of infraction can vary by three or more orders of magnitude (100,000 %) despite the fact that the offense – and the harm caused – is always the same, namely depriving the government of the knowledge of how the respondent chooses to answer the Notice of Infraction. Whatever the government's legitimate purpose in obtaining answers to Notices of Infraction, the fact that the penalty can vary so wildly demonstrates that the amount of the penalty not rationally related to that purpose.

This point is illustrated in two ways by *Bajakajian*, which involved a failure to report, similar to the failure to answer at issue here. First, although the failure to report in *Bajakajian* was far more serious than the failure to answer here (as it was criminal and punishable by up to a $5,000 fine and six months' imprisonment under the sentencing guidelines), the forfeiture ultimately allowed was only $15,000 – approximately 4% of the $357,144 that Mr. Bajakajian failed to report – which is far less than the 200% penalty at issue here. *See* 524 U.S. at 324-27, 337-38. Second, the Supreme Court made clear that the gravity of the offense of failure to report was

not tied to the amount of money that went unreported. *See id.* at 340-344; *accord id*. at 339 ("It is impossible to conclude, for example, that the harm respondent caused [by failing to report $ 357,144] is anywhere near 30 times greater than that caused by a hypothetical drug dealer who willfully fails to report taking $12,000 out of the country in order to purchase drugs."). Similarly, here, it is impossible to conclude that the harm caused by Mr. Oboh's failure to answer his Notice of Infraction was more than 88 times greater than that caused by a hypothetical respondent who fails to answer a Notice of Infraction with only a $100 underlying fine.

CONCLUSION

For the foregoing reasons, the penalty of $17, 712 imposed on Mr. Oboh under D.C. Code § 2-1801.04(a)(2) must be reversed.

Respectfully submitted,

Arthur B. Spitzer /JHL
Arthur B. Spitzer (No. 235960)
American Civil Liberties Union
Foundation of the District of Columbia
915 15th Street, NW – 2nd floor
Washington, DC 20005
202-457-0800

aspitzer@acludc.org

Counsel for Amicus Curiae ACLU

Jonathan H. Levy
Jonathan H. Levy (No. 449274)
Alec Sandler‡
Legal Aid of the District of Columbia
1331 H Street NW, Suite 350
Washington, DC 20005
Tel: (202) 628-1161
Fax: (202) 727-2132
jlevy@legalaiddc.org

Counsel for Amicus Curiae Legal Aid

‡ Not yet admitted to the Bar of the District of Columbia but admitted to practice law in another jurisdiction. Practicing law in the District of Columbia pursuant to D.C. Court of Appeals Rule 49(c)(8)(A) under the supervision of Legal Aid attorneys admitted to the D.C. Bar and in good standing.

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing *Amici Curiae* Brief to be delivered electronically through this Court's e-filing system on February 28, 2023, to:

Caroline Van Zile
Caroline.vanzile@dc.gov

Stacey Anderson
Stacey.anderson2@dc.gov

And by first-class mail, postage pre-paid to:

Ebosele Oboh
6301 9th Street, NW
Washington DC 20011

/s/ *Jonathan H. Levy*
Jonathan H. Levy