In the

United States Court of Appeals

for the Seventh Circuit

No. 20-2739

SUSAN GRASHOFF,

Plaintiff-Appellant,

v.

DAVID J. ADAMS,*
Commissioner of the Indiana
Department of Workforce Development,

Defendant-Appellee.

Appeal from the United States District Court for the
Northern District of Indiana, Fort Wayne Division.
No. 1:19-CV-00276-HAB — **Holly A. Brady,** *Judge.*

ARGUED MAY 13, 2021 — DECIDED APRIL 18, 2023

Before SYKES, *Chief Judge*, and SCUDDER and KIRSCH, *Circuit Judges*.

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* Commissioner David Adams has been substituted for former Commissioner Frederick D. Payne, who resigned from office. *See* FED. R. APP. P. 43(c)(2).

SYKES, *Chief Judge*. Indiana provides weekly unemployment benefits to claimants who meet certain qualifications. People working part-time jobs qualify, but they must accurately report their income so the Indiana Department of Workforce Development can reduce the weekly payout accordingly. A claimant who knowingly fails to disclose earnings on a weekly application must repay all benefits received for that week and is subject to a civil penalty of 25% of that forfeited amount.

Susan Grashoff violated the reporting requirement by omitting her part-time income on 24 weekly applications. After an investigation, the Department determined that she knowingly violated the law and assessed a forfeiture and penalty totaling $11,190—the sum of all benefits she received for each of the 24 weeks, *see* IND. CODE § 22-4-13-1.1(a), plus the 25% penalty, *see id.* § 22-4-13-1.1(b). An administrative law judge affirmed the sanction, *see id.* § 22-4-13-1.1(c), and Grashoff did not seek state judicial review.

Instead, she filed this federal suit under 42 U.S.C. § 1983 alleging that the sanction violates the Eighth Amendment's Excessive Fines Clause. Ruling on cross-motions for summary judgment, the district court rejected the claim. The judge first addressed whether the forfeiture of benefits is properly classified as remedial or punitive. That's the first question in all excessive-fines cases: purely remedial sanctions are not subject to Eighth Amendment review. Grashoff argued that the forfeiture falls on the punitive side of the line because she remained eligible for *some* benefits during the 24-week period despite her part-time income. The judge rejected that argument and classified the entire forfeiture as remedial.

That left the 25% penalty, which everyone agreed is a punitive sanction subject to Eighth Amendment scrutiny. Applying the framework established in *United States v. Bajakajian*, 524 U.S. 321 (1998), the judge concluded that a 25% penalty is not grossly disproportionate to the seriousness of the reporting offense and thus is not unconstitutionally excessive.

Grashoff challenges both aspects of the decision below. We don't need to decide whether the judge correctly drew the remedial/punitive line. Grashoff concedes that at least part of the forfeiture—the difference between the benefits she received and the smaller amount she would have received had she reported her income—is purely remedial. The remaining forfeiture amount, even when considered together with the 25% penalty, is not a grossly disproportionate sanction for Grashoff's 24 knowing violations of the law.

Grashoff also contends that the Eighth Amendment inquiry must consider the sanctioned person's ability to pay. We can leave that legal question for another day. Grashoff has sufficient assets to pay this civil sanction.

I. Background

A. Statutory Background

Indiana's unemployment compensation system is administered by the state Department of Workforce Development and funded primarily by employer contributions. IND. CODE §§ 22-4-26-1, 22-4-10-1. Unemployed and "partially unemployed" claimants are eligible to receive benefits. *Id.* §§ 22-4-3-1 to -2. But income earned from part-time work is

"[d]eductible income" and reduces the claimant's benefit amount in a given week. *Id.* § 22-4-5-1.

The Department needs to know a claimant's exact income to ensure eligibility for benefits and to calculate the correct amount of the weekly benefit. When claimants underreport their income, they receive more money than they should and undermine the financial integrity of the fund. Indiana law directs the Department to determine and recover overpayments. *Id.* § 22-4-13-1.

The statutory scheme includes a provision addressing a claimant's "knowing" failure to disclose income that "would disqualify the individual for benefits" or "reduce the individual's benefits." § 22-4-13-1.1(a).[1] A knowing failure results in two civil consequences. First, the claimant forfeits "any benefits … that might otherwise be payable to the individual for any week in which the failure to disclose or falsification caused benefits to be paid improperly." *Id.* In other words, a knowing failure to report income during a weekly benefit period leads to the forfeiture of all benefits paid during that period. This money goes back into the unemployment fund.

Second, a knowing failure to report income is subject to a civil penalty. For a first-time violator, the penalty is 25% of the "benefit overpayment." § 22-4-13-1.1(b). The penalty jumps to 50% for the second violation and to 100% for each subsequent one. *Id.* The state deposits most of the money from these civil penalties into a fund for employment and

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[1] The Indiana legislature adopted some immaterial amendments to § 22-4-13-1.1 while this case has been pending. We use the version that was in effect at the time Grashoff applied for benefits.

training services, but 15% goes to the unemployment fund itself. *Id.* § 22-4-13-1.1(d). A claimant who knowingly violates the reporting requirement may also face criminal penalties. *See id.* § 22-4-34-4 (class C misdemeanor to knowingly violate the statutes concerning the unemployment-compensation system "except as otherwise provided"); *see also id.* § 35-43-5-7(a)(1), (b)(1) (level 6 felony to "knowingly or intentionally … obtain[] public relief or assistance by means of … [a] false or misleading oral or written statement … or other fraudulent means" when the "amount of public relief or assistance involved" is more than $750 but less than $50,000) (repealed July 1, 2021).[2]

B. Grashoff's Applications for Benefits

For decades Susan Grashoff worked at McDonald's, including as an assistant manager. Throughout her career she has also taught swimming lessons at her local YMCA, and she resumed that part-time work in 2010 to supplement her income from McDonald's. In late 2016 she lost her job at McDonald's. She applied for and received unemployment benefits starting in December of that year. She submitted 24 weekly claims from then until May 2017, and the Department paid her $373 for each of those weeks.

Grashoff continued to work at the YMCA during this period, earning a total of $2,828.75 from swimming lessons. But

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[2] Though this provision has been repealed, Indiana criminal law still covers similar conduct. A person who knowingly makes a false or misleading statement with the intent to obtain a "government[] or employment benefit to which the person is not entitled" commits a level 6 felony if the "pecuniary loss" is at least $750 but less than $50,000. IND. CODE § 35-43-5-4(a)(1), (b)(2).

she never disclosed this income to the Department when she submitted claims for benefits, so her payments were not reduced as they should have been. She failed to do so despite repeated warnings and instructions. For example, the online application includes a notice titled "IMPORTANT UNEMPLOYMENT INSURANCE INFORMATION," which reads in relevant part:

> I understand that I must report all earnings from employment or self-employment regardless of source, including … part-time employment … .
>
> … .
>
> I am aware that if I knowingly make any false statements or fail to provide required information, this could be considered as fraudulent behavior. If detected, this would require repayment of my unemployment benefits, will cause penalty and interest to be added to the overpaid amount, … and may lead to civil and/or criminal prosecution.

In addition, the application form requires claimants to certify that they have "reported any and all work, earnings, and self-employment activity for th[e] week" and "that all answers and information given in th[e] application for benefits are true and accurate." The online application form also contains a link to the Claimant Handbook, which claimants are required to read. The Handbook explains that a claimant "commit[s] fraud" by "[k]nowingly fail[ing] to report any earnings."

Grashoff did not follow these requirements, nor did she heed the repeated warnings. She checked "no" on each of the 24 weekly forms when asked whether she had worked that week. Moreover, she reported none of her YMCA earnings during this period, despite certifying each time that she had reported "any and all work[] [and] earnings … for th[e] week" and that "all answers and information given … [were] true and accurate." Grashoff received a total of $8,952 in benefits from her 24 claims. That amount would have been $6,123.25 had she complied with the law and truthfully reported her YMCA income.

The Department eventually discovered Grashoff's failure to disclose her earnings. After an investigation, the Department notified her that she forfeited and owed repayment of the full amount of $8,952 in benefits pursuant to section 1.1(a). The Department tacked on $2,238 under section 1.1(b), the provision authorizing a 25% penalty for first-time knowing violations of the reporting requirement. That brought the total sanction to $11,190.

Grashoff requested an administrative review. An ALJ agreed with the Department's determination that Grashoff had knowingly failed to report the income from her part-time job. Specifically, the ALJ found that Grashoff was "responsible for the falsely answered questions about her earnings" and had "fail[ed] to truthfully answer a direct and simple question about whether or not she was working." The ALJ thus affirmed Grashoff's liability for "all benefits received" and the "civil penalties assessed."[3]

[3] Grashoff was not criminally charged.

Grashoff did not seek further review under state law. She instead sued in federal court seeking declaratory and injunctive relief under § 1983. She alleged that the forfeiture and penalty provisions in sections 1.1(a) and (b) violate the Eighth Amendment's Excessive Fines Clause—both facially and as applied to her. (She no longer pursues her facial challenge, so we say no more about it.)

The case proceeded to cross-motions for summary judgment, and the judge entered judgment for the Department. She first held that section 1.1(a)—the forfeiture/repayment provision—is remedial rather than punitive and thus "avoids Eighth Amendment scrutiny." She then turned to the 25% penalty in section 1.1(b), which everyone agreed is a punitive sanction. The judge held that a penalty of 25% of the total forfeiture amount is not an excessive sanction for knowing violations of the reporting requirement. To reach that conclusion, the judge considered the factors outlined in *Bajakajian* and found that each one weighed against Grashoff.

II. Analysis

The Eighth Amendment prohibits the imposition of "excessive fines." U.S. CONST. amend. VIII. The Excessive Fines Clause applies to the states, *see Timbs v. Indiana*, 139 S. Ct. 682, 687 (2019), and we review de novo the judge's determination that the sanction imposed here does not violate it, *see United States v. Bernitt*, 392 F.3d 873, 880 (7th Cir. 2004) (citing *Bajakajian*, 524 U.S. at 336); *Towers v. City of Chicago*, 173 F.3d 619, 625 (7th Cir. 1999).

The analysis under the Excessive Fines Clause proceeds in two steps. The first is a threshold determination: Is the

sanction punitive or purely remedial? Because the Eighth Amendment "limits the government's power to extract payments … as *punishment* for some offense," *Austin v. United States*, 509 U.S. 602, 609–10 (1993) (quotation marks omitted), only punitive sanctions fall within its scope; purely remedial sanctions are not subject to Eighth Amendment scrutiny, *see Towers*, 173 F.3d at 624.

The inquiry does not depend on whether the sanction arises in the civil or criminal context; "civil sanctions can constitute punishment, and therefore are subject to the limitations of the Excessive Fines Clause, if they serve, at least in part, retributive or deterrent purposes." *Id.*; *see also Pimentel v. City of Los Angeles*, 974 F.3d 917, 921–22 (9th Cir. 2020) (explaining that the Ninth Circuit has applied the Excessive Fines Clause to "civil penalties imposed by federal law" and that *Timbs* "affirmatively opens the door for Eighth Amendment challenges to fines imposed by state and local authorities").

If the sanction is punitive, the next step is to determine whether it is "grossly disproportional to the gravity of [the] … offense." *Bajakajian*, 524 U.S. at 334. "The touchstone of the constitutional inquiry … is the principle of proportionality: The amount of the [fine] must bear some relationship to the gravity of the offense that it is designed to punish." *Id.* But proportionality review is conducted with two important background principles in mind: "judgments about the appropriate punishment for an offense belong in the first instance to the legislature," and judicial determinations of the seriousness of any particular offense "will be inherently imprecise." *Id.* at 336.

In *Bajakajian* the Supreme Court identified several factors that may help guide the proportionality determination. *Id.* at 337–39. We have distilled the Court's instructions into four general areas of inquiry. The first looks to the "essence of the [offense] and its relation to other criminal activity." *United States v. Malewicka*, 664 F.3d 1099, 1104 (7th Cir. 2011). The second asks whether the sanctioned person "fit[s] into the class of persons for whom the statute was principally designed." *Id.* The third considers the "maximum sentence and fine that could have been imposed" for like conduct. *Id.* As the Court explained in *Bajakajian*, legislative judgments about maximum sentences and fines for comparable offenses are "relevant evidence" when assessing the gravity of the offense. 524 U.S. at 339 n.14. The final factor is "the nature of the harm caused by the … conduct" that led to the sanction. *Malewicka*, 664 F.3d at 1104.

The *Bajakajian* factors come from a case about criminal forfeiture—that is, a punishment tied to a conviction for a crime—and most claims under the Excessive Fines Clause arise in that context. *See Pimentel*, 974 F.3d at 921. But the same basic framework applies here.

A. Punitive or Remedial?

As we've noted, it's undisputed that the 25% penalty under section 1.1(b) is punitive; it punishes claimants who knowingly fail to disclose their income. The parties also agree that of the $8,952 in forfeited benefits that Grashoff was ordered to repay, roughly $2,829—the amount that would have been deducted from her benefit payments had she reported her income as required—qualifies as a purely remedial recoupment of a benefits overpayment. So that part

of the forfeiture raises no Eighth Amendment concerns. Grashoff concedes as much.[4]

The parties disagree, however, on how to classify the balance of the forfeiture—the $6,123 in benefits that Grashoff would have received if, counterfactually, she had disclosed her YMCA income as required. The Department argues that this part of the forfeiture also qualifies as remedial because a claimant who knowingly fails to disclose income becomes ineligible for *any* benefits for that week by operation of section 1.1(a). In other words, Grashoff was not eligible to receive a single dollar during each of the 24 weeks for which she knowingly failed to report her YMCA earnings. On the Department's reasoning, the *entire* forfeiture is remedial because it recoups all wrongfully obtained benefits.

Grashoff sees things differently. She argues that a forfeiture of *all* benefits received is punitive because it strips her of benefits to which she would have been entitled had she complied with the law. That is, the Department would have paid out a reduced benefit of $6,123 if she had disclosed her income, so the only cost to the fund is the money she received above that amount—the $2,829 that would have been deducted based on her YMCA earnings. The rest of the forfeiture, she argues, serves only to punish misconduct and deter fraud.

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[4] Grashoff conceded this point in her opening brief. She tried to walk back the concession in her reply brief by suggesting that the entire forfeiture should be reviewed for excessiveness. That's too late to raise new arguments. *See Wonsey v. City of Chicago*, 940 F.3d 394, 398 (7th Cir. 2019) ("[A]rguments raised for the first time in a reply brief are waived.").

There's no need for us to resolve this dispute. Assuming for the sake of argument that Grashoff is right about how to draw the remedial/punitive line, the total sanction subject to Eighth Amendment scrutiny is $8,361: the penalty imposed under section 1.1(b) ($2,238) plus the portion of the total section 1.1(a) forfeiture that Grashoff insists is punitive ($6,123). And as we will explain, that sanction—$8,361—is not grossly disproportionate to Grashoff's offense.

B. Proportionality Analysis

The first *Bajakajian* factor—the "essence" of the underlying offense and its relation to other unlawful activities—weighs against Grashoff. Although the sanction at issue here is civil rather than criminal, the underlying violation of the law is significant. Grashoff knowingly failed to disclose her income on 24 applications for public benefits, and each time she falsely certified that she had reported her earnings and given truthful answers on her applications. Put another way, on 24 occasions Grashoff knowingly withheld information about her income to obtain a higher benefit from a limited fund meant to support economically vulnerable people in Indiana. This case is far afield from *Bajakajian*, where the essence of the offense—a single failure to report the transportation of more than $10,000 outside the United States—suggested that the forfeiture of over $357,000 was unconstitutional. *Bajakajian*, 524 U.S. at 325, 337–38.

Grashoff disagrees, characterizing her offense as a "single administrative violation" that resulted from her mistaken understanding of the reporting requirements. That flatly contradicts the ALJ's findings that Grashoff *knowingly* and *repeatedly* violated the reporting requirement. Grashoff tries to lump her 24 violations into one, but the "gravity of [her]

offenses does not diminish because [she] repeatedly committed the same offense." *Korangy v. FDA*, 498 F.3d 272, 278 (4th Cir. 2007). To the extent that Grashoff contends that she did not knowingly fail to report her earnings, the ALJ found otherwise. Grashoff did not seek judicial review of that determination, and she cannot use federal excessive-fines litigation to collaterally attack the ALJ's factual findings.

The second *Bajakajian* factor asks whether the sanctioned person fits within the "class of persons for whom the statute was principally designed." *Malewicka*, 664 F.3d at 1104. Grashoff clearly does. Section 22-4-13-1.1 generally protects the integrity and viability of Indiana's unemployment fund by recouping improperly paid benefits and punishing claimants who receive more than their proper share through their own fraud. Grashoff suggests that the benefits scheme is meant to help people like her, so applying § 22-4-13-1.1 against her is contrary to the overall statutory purpose. But the general purpose of providing benefits to unemployed people does not place Grashoff outside the intended scope of § 22-4-13-1.1, which is an antifraud provision that protects the fund's ability to pay benefits to legitimate claimants. Grashoff repeatedly and knowingly failed to disclose income that would have reduced her benefits, so she is squarely within the class of persons for whom this statute was principally designed. *See Bajakajian*, 524 U.S. at 336 ("[J]udgments about the appropriate punishment for an offense belong in the first instance to the legislature.").

The third factor "considers the maximum fine and sentence that could have been imposed." *Malewicka*, 664 F.3d at 1106. Grashoff was not criminally prosecuted, so she contends that it is improper to consider any criminal penalties

that might have been imposed. This argument misunderstands the relevance of this *Bajakajian* factor. The point is not to suggest that Grashoff would have been convicted if she had been criminally prosecuted. Rather, penalties for similar conduct are relevant evidence of legislative judgments about the seriousness of the offense. *Bajakajian*, 524 U.S. at 339 n.14.

Indiana's criminal penalties for conduct similar to Grashoff's demonstrate that the state takes this kind of public-benefits fraud seriously. A person commits a class C misdemeanor if he knowingly violates the statutes concerning the unemployment-compensation system, and "[e]ach day a violation continues constitutes a separate offense." § 22-4-34-4. A class C misdemeanor is punishable by a fine of up to $500 and imprisonment of up to 60 days, so stacking these offenses could lead to significant criminal liability. IND. CODE § 35-50-3-4. Further, at the time of Grashoff's 24 violations, it was a level 6 felony to "knowingly … obtain[] public relief or assistance by means of … [a] false or misleading oral or written statement[] … or other fraudulent means" when the public relief involved was over $750. *Id.* § 35-43-5-7(a)(1), (b)(1) (repealed July 1, 2021).[5] Level 6 felonies carry a maximum prison term of 30 months and a fine of up to $10,000. *Id.* § 35-50-2-7(b).

Indiana is not alone in viewing unemployment fraud as a serious offense. For example, Alaska penalizes unemployment-benefit claimants who knowingly make a material

[5] As described *supra* note 2, the Indiana legislature repealed this provision while this case has been pending, but the state's criminal laws still proscribe and punish this kind of public-benefits fraud. *See* § 35-43-5-4(a)(1), (b)(2).

false statement with the intent to defraud by rendering them ineligible for benefits for the weeks in which they made the false statements. ALASKA STAT. ANN. § 23.20.387. The claimant is also disqualified from receiving benefits for between 6 and 52 weeks, *id.*, and is liable for the benefits improperly paid and a penalty of 50% of such benefits, *id.* § 23.20.390(a), (f). If a Minnesota claimant receives an overpayment of benefits by making a false statement or representation, he must repay the money to which he was not entitled and pay a 40% penalty on that amount. MINN. STAT. ANN. § 268.18, subd. 1(a), subd. 2(a). He also may lose eligibility for unemployment benefits for up to two years, *id.* § 268.183(a), and is subject to criminal penalties of up to five years in prison and a $10,000 fine if he obtains overpayments between $1,000 and $5,000 by "intentional concealment of a material fact," *id.* §§ 268.182, subd.1(a); 609.52, subd. 3(3)(a).

In New Hampshire the knowing failure to disclose a material fact to increase unemployment benefits by more than $1,000 is a class A felony, which is punishable by up to 15 years in prison and a maximum fine of $4,000. N.H. REV. STAT. ANN. §§ 282-A:161(I); 651:2(II)(a), (IV)(a). Additionally, all benefits received for that week must be repaid, plus a 20% penalty. *Id.* § 282-A:163(II). A Colorado claimant who receives an overpayment of unemployment benefits because of his "false representation or willful failure to disclose a material fact … shall pay … the overpayment plus a [65%] monetary penalty." COLO. REV. STAT. ANN. § 8-81-101(4)(a)(II). And in Arizona *each* knowing failure to disclose a material fact to increase unemployment benefits is a class 6 felony, which carries up to a $150,000 fine and a maximum 18-month prison sentence. ARIZ. REV. STAT. ANN. §§ 23-785, 13-801, 13-702(D).

These legislative judgments about punishments for unemployment fraud provide clues about the nature and gravity of Grashoff's offense. Like other states, Indiana has deemed unemployment fraud to be a serious offense. The civil sanction imposed here reflects that judgment, which "belong[s] in the first instance to the legislature." *See Bajakajian*, 524 U.S. at 336.

The fourth factor directs us to consider the harm caused by Grashoff's conduct. *Towers*, 173 F.3d at 625; *see also Malewicka*, 664 F.3d at 1104. Her knowing nondisclosures led to monetary harm to the unemployment fund in the form of overpaid unemployment benefits. If unchecked and undeterred, this conduct would threaten the viability of this government-administered fund designed to help financially vulnerable unemployed people in Indiana.

Moreover, the harm from Grashoff's conduct goes beyond the overpayment of benefits. *See U.S. ex rel. Bunk v. Gosselin World Wide Moving, N.V.*, 741 F.3d 390, 409 (4th Cir. 2013) ("For purposes of our Eighth Amendment analysis, … the concept of harm need not be confined strictly to the economic realm."); *Yates v. Pinellas Hematology & Oncology, P.A.*, 21 F.4th 1288, 1316 (11th Cir. 2021) ("Fraud harms the United States in ways untethered to the value of any ultimate payment."). Fraud like hers complicates the administration of the fund. The Department must spend time and resources investigating fraud and, when detected, remedying it. Put differently, when some claimants don't comply with the baseline requirement to honestly report their income, it becomes harder to administer the fund and complicates the distribution of benefits to all claimants. *See Yates*, 21 F.4th at 1316 ("Fraud imposes costs … in the form of the

expense of the constant Treasury vigil [it] necessitate[s]." (alterations in original) (quotation marks omitted)); *United States v. Aguasvivas-Castillo*, 668 F.3d 7, 17 (1st Cir. 2012) (considering this *Bajakajian* factor and noting that food-stamp fraud "introduce[s] waste into the program").

Fraud also undermines the integrity of the fund and the public's faith in the state's ability to administer it efficiently and fairly. As other courts have noted when reviewing fines imposed under the False Claims Act, fraud "erodes the public confidence in the [g]overnment's ability to manage" the defrauded program. *United States v. Eghbal*, 548 F.3d 1281, 1285 (9th Cir. 2008); *see also Gosselin World Wide Moving*, 741 F.3d at 409 (noting that the "prevalence of defense contractor scams … shakes the public's faith in the government's competence"); *Yates*, 21 F.4th at 1316 ("[W]hen the [government] is defrauded, [it] has been damaged to the extent that such corruption causes a diminution of the public's confidence … ." (quotation marks omitted)). The same is true when claimants defraud the state's unemployment fund by underreporting income. These nonmonetary harms, "although not readily quantifiable, [are] certainly real and a legitimate subject of the [state's] concern." *Towers*, 173 F.3d at 625.

In sum, all the *Bajakajian* factors weigh against Grashoff. A sanction of $8,361 is not grossly disproportionate to the gravity of the offense that triggered it—here, unemployment fraud in the form of 24 knowing violations of the requirement to disclose income. Although the Excessive Fines Clause provides a constitutional limit, deference to legislative judgments about appropriate punishments is one of the guiding principles that the Supreme Court has identified. *See*

Bajakajian, 524 U.S. at 336, 339 n.14. In fixing the amount of the sanction for this type of fraud, Indiana's legislature "was entitled to take into consideration that the [statutory penalty] must perform a deterrent function." *Towers*, 173 F.3d at 626; *see also Disc. Inn, Inc. v. City of Chicago*, 803 F.3d 317, 320 (7th Cir. 2015) (finding no Excessive Fines Clause violation and noting that difficulties in detecting violations of the ordinance justified a higher fine for deterrence purposes). Additionally, the sanction increased in proportion to the number of fraudulent applications Grashoff submitted; had she committed less fraud and received fewer benefits for which she was ineligible, she would owe the Department less. The "articulable correlation" between the penalty and the harm that was lacking in *Bajakajian* is present here. *See* 524 U.S. at 340–41.

We recognize that $8,361 is not a small sum. But even if Indiana could recoup overpayments and effectively deter unemployment fraud with a lesser sanction, the Excessive Fines Clause does not require the state legislature to adopt an antifraud statute that penalizes claimants no more than necessary. Because this sanction is not grossly disproportionate to the gravity of Grashoff's offense, it is not unconstitutionally excessive.

C. Consideration of Individual Financial Circumstances

Grashoff also argues that the Eighth Amendment inquiry must consider her personal financial circumstances—essentially, her ability to pay. She contends that a sanction is more likely to be excessive if the sanctioned person has

limited means with which to pay it.[6] Grashoff points to the Clause's historical roots in the Magna Carta, which "required that economic sanctions … not be so large as to deprive [an offender] of his livelihood." *Timbs*, 139 S. Ct. at 687–88 (second alteration in original) (quotation marks omitted).

The Supreme Court has declined to address whether the sanctioned person's financial condition is relevant to the excessiveness inquiry. *See id.* at 688; *Bajakajian*, 524 U.S. at 340 n.15. So do we. Grashoff does not contest the Department's evidence that as of 2020, she had more than $500,000 in a retirement account—including about $12,000 in "Cash, Money Funds, [and] Bank Deposits"—and significant equity in her home. At the same time, she had relatively few liabilities: no credit-card balances, about $22,000 remaining on her mortgage, and a $12,000 obligation to her mother. Even if her personal circumstances are a relevant factor in the constitutional analysis, she has the ability to pay this sanction.

AFFIRMED

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[6] We note that even for courts that consider financial circumstances, it is not clear that a person's present ability to pay is relevant. *See United States v. Viloski*, 814 F.3d 104, 112 (2d Cir. 2016) (noting that "asking whether a forfeiture would destroy a defendant's *future* livelihood is different from considering as a discrete factor a defendant's *present* personal circumstances" because "hostility to livelihood-destroying fines is deeply rooted in our constitutional tradition[] [but] consideration of personal circumstances is not"); *United States v. Fogg*, 666 F.3d 13, 19 (1st Cir. 2011) (describing the district court's error in assessing whether the defendant "had the means to satisfy the judgment" rather than inquiring into whether his "post-incarceration livelihood would be imperiled by the forfeiture").