No. 18-266

In The
Supreme Court of the United States

THE DUTRA GROUP,

Petitioner,

v.

CHRISTOPHER BATTERTON,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF FOR RESPONDENT IN OPPOSITION

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Petitioner advocates a *per se* rule that an injured seaman can never recover punitive damages under the general maritime law doctrine of unseaworthiness, no matter how egregious a defendant shipowner's fault may be. Even if a shipowner made a callous decision to send a doomed rust-bucket to sea in hopes of collecting on its insurance policy, petitioner's proposed rule would deny sailors who survive the inevitable sinking of the vessel their right under the general maritime law to seek punitive damages—even for their employer's deliberate wrong-doing.

As the court below recognized, this Court in *Atlantic Sounding Co. v. Townsend*, 557 U.S. 404 (2009), has already announced the analytic framework that shows why petitioner must fail in its extraordinary effort to deny seamen asserting a well-established cause of action a remedy that has been available under the general maritime law for over two centuries. The *Townsend* Court also explained why *Miles v. Apex Marine Corp.*, 498 U.S. 19 (1990), the decision on which petitioner's argument entirely depends, cannot be read so broadly as petitioner contends. This Court should decline the invitation to revisit an issue that it has already resolved.

STATEMENT[1]

Respondent was injured in the course of his employment as a crew member of a dredge and two scows that petitioner owned and operated. While respondent was aboard the vessel *Scow 2*, petitioner was pumping pressurized air into the compartment below a hatch cover. When the air pressure rose to a dangerous level, the hatch cover blew open and crushed respondent's left hand. In the present action, he seeks maintenance and cure; damages for negligence under the Jones Act, 46 U.S.C. § 30104; and damages for the unseaworthiness of the vessel under general maritime law.[2]

Scow 2 was unseaworthy in multiple respects. The current petition centers on respondent's allegation that petitioner's reckless misconduct caused *Scow 2*'s unseaworthiness, thus permitting him to seek punitive damages. Petitioner moved to strike the punitive damages claim, arguing that *Miles* categorically precludes punitive damages in seamen's unseaworthiness actions. The district court denied that motion and certified its ruling for interlocutory appeal. The Ninth Circuit affirmed. The current petition followed.

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[1] In the present procedural posture, this Court must accept as true the facts as alleged by respondent. Because this is an interlocutory appeal, there has not yet been any judicial determination of the actual facts in the case.

[2] The "general maritime law" is judge-made law—a form of federal common law. *See generally, e.g.*, *East River Steamship Corp. v. Transamerica Delaval Inc.*, 476 U.S. 858, 864-865 (1986). The general maritime law is a subset of federal maritime law, which also includes statutory law (such as the Jones Act, 46 U.S.C. § 30104).

REASONS FOR DENYING THE PETITION

I. Review is Unwarranted Because This Court in *Townsend* Has Already Provided Adequate Guidance on the Availability of Punitive Damages Under the General Maritime Law.

Petitioner asks this Court to provide guidance "on how to reconcile this Court's decisions in *Miles v. Apex Marine Corp.*, 498 U.S. 19 (1990), and *Atlantic Sounding Co. v. Townsend*, 557 U.S. 404 (2009)." Pet. 2. But this Court has already done precisely that in *Townsend*. The *Townsend* employer, insisting that *Miles* had "limited recovery in maritime cases involving death or personal injury to the remedies available under the Jones Act and the Death on the High Seas Act [46 U.S.C. §§ 30301-08]," *Townsend*, 557 U.S. at 418, made almost exactly the same arguments that petitioner repeats here, including the argument that *Miles* precludes the availability of punitive damages in a personal-injury action under the general maritime law. This Court explicitly rejected that argument, explaining that "[the employer's] reading of *Miles* is far too broad." *Townsend*, 557 U.S. at 419. To be sure, the *Townsend* Court declared that "[t]he reasoning of *Miles* remains sound." *Id.* at 420. The "sound" reasoning, however, was the narrow reasoning that the *Miles* Court actually applied, not the "far too broad" reading of the decision that the *Townsend* employer advocated and that petitioner now repeats. As this Court explained:

> [A]pplication of [the *Miles*] principle here does not lead to the outcome suggested by [the

> employer]. . . . Unlike the situation presented in *Miles*, both the general maritime cause of action (maintenance and cure) and the remedy (punitive damages) were well established before the passage of the Jones Act. Also unlike the facts presented by *Miles*, the Jones Act does not address maintenance and cure or its remedy.

Id. (citation omitted). The *Townsend* Court accordingly established that *Miles* does not limit an injured seaman's available remedies when the relevant cause of action and remedy "were well established before the passage of the Jones Act," and the Jones Act does not address the cause of action or the remedy. Here it is beyond dispute that the cause of action (unseaworthiness) and the remedy (punitive damages) were both well-established before 1920, and that the Jones Act does not address either of them. There is no need for this Court to repeat its guidance and explain again how to reconcile *Miles* and *Townsend*.

Although most lower-court judges have correctly applied this Court's *Townsend* decision and recognized the limits on *Miles* as explained in *Townsend*, it is true that a plurality in the Fifth Circuit declined to follow *Townsend*'s guidance. *See infra* at 5-7. But this Court rarely exercises its certiorari power to correct the error of a single court of appeals, particularly the error in a plurality opinion. If the Court sees a need to reiterate its *Townsend* message, it would be more appropriate to wait for a case that repeats the Fifth Circuit plurality's

error. For the time being, it should permit respondent to proceed to the merits of his claims.

II. Respondent Overstates the Strength and Depth of the Conflict.

As petitioner recognizes, the conflict that it asks this Court to resolve "turns largely" on reconciling *Miles* and *Townsend*. Pet. 2. In the 9+ years since this Court decided *Townsend*, the question presented here has arisen in only three cases that reached the appellate courts. In each of those three cases, a majority of the appellate judges rejected the argument—which petitioner advances here—that *Miles* precludes the availability of punitive damages in "a personal injury suit alleging a breach of the general maritime duty to provide a seaworthy vessel." Pet. i.

A. A majority of the Fifth Circuit judges in *McBride* rejected the *Miles*-based argument that petitioner advances here.

In *McBride v. Estis Well Service, L.L.C.*, 768 F.3d 382 (5th Cir. 2014) (en banc), *cert. denied*, 135 S. Ct. 2310 (2015), and *cert. denied after remand sub nom. Touchet v. Estis Well Service, L.L.C.*, 138 S. Ct. 644 (2018), the en banc Fifth Circuit affirmed a district court decision denying punitive damages in an unseaworthiness action on both a wrongful-death claim and personal-injury claims. But a majority of the judges on that court still rejected the argument that petitioner advances here. Judge Davis, writing for the seven-member plurality on the present question, read

Miles very broadly to apply not only to the loss-of-society damages that were at issue in *Miles* but also to punitive damages, *see* 768 F.3d at 386-389, 390-391, and to apply not only in the wrongful-death context that provided the analytic foundation for *Miles* but also in the conceptually distinct personal-injury context, *see id.* at 388-389. He essentially limited *Townsend* to its facts, arguing that this Court's most recent punitive damages decision governed only maintenance-and-cure cases, not other cases under the general maritime law. *See id.* at 389-390.[3]

The six dissenting judges in *McBride* rejected almost every step in the plurality's reasoning. They would have followed this Court's guidance in *Townsend* to hold that punitive damages are available in appropriate circumstances in unseaworthiness cases. *See id.* at 404-419 (Higginson, J., dissenting); *id.* at 419-424 (Graves, J., dissenting). In addition, two judges who joined Judge Davis to form a majority on the wrongful-death claim explicitly disagreed with his reasoning on the personal-injury claims. *See id.* at 401-402 (Haynes, J., concurring in the judgment).[4] Judge

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[3] For the most part, the plurality opinion in *McBride* resurrected the discredited reasoning of the Fifth Circuit's previous en banc decision in *Guevara v. Maritime Overseas Corp.*, 59 F.3d 1496 (5th Cir. 1995) (en banc), *overruled*, *Atlantic Sounding Co. v. Townsend*, 557 U.S. 404 (2009). The only relevant aspect of the *Guevara* reasoning that the *McBride* plurality did not follow was *Guevara*'s conclusion that the analysis for unseaworthiness and maintenance-and-cure actions was the same. *See* 59 F.3d at 1504.

[4] Petitioner concedes that "two of the concurring judges perceived a possible distinction between wrongful death cases and personal injury cases." Pet. 9 n.3. What Judge Haynes actually

Haynes, writing for herself and Judge Elrod, explained that the reasoning in *Miles* was based entirely on the fact that wrongful-death remedies did not exist at common law but were created by statute, and thus *Miles* limited those remedies to what the legislature had created. But the *Miles* reasoning simply did not apply to personal-injury remedies, which were common-law creations. In sum, eight judges in *McBride* rejected the seven-judge plurality's view that *Miles* compelled the denial of punitive damages in a personal-injury action such as the one here.

B. The Washington Supreme Court unanimously rejected the *Miles*-based argument that petitioner advances here.

Last year, the Washington Supreme Court faced this issue in *Tabingo v. American Triumph L.L.C.*, 188 Wash.2d 41, 391 P.3d 434 (2017), *cert. denied*, 138 S. Ct. 648 (2018). The nine justices on that court unanimously held that punitive damages are available in appropriate circumstances to a seaman injured as a result of the unseaworthiness of the vessel on which he was employed. The *Tabingo* court carefully applied the analytic framework that this Court announced in *Townsend*. Specifically, the Washington Supreme Court noted that *Townsend* had stated three central points:

> (1) "punitive damages have long been available at common law," (2) "the common-law

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said was "I disagree with [the plurality's] conclusion." 768 F.3d at 401 (Haynes, J., concurring in the judgment). She perceived much more than "a possible distinction." She saw that the plurality's analysis was inconsistent with this Court's holdings.

> tradition of punitive damages extends to maritime claims," and (3) "there is no evidence that claims for maintenance and cure were excluded from this general admiralty rule."

Id. at 48, 391 P.3d at 438 (¶ 16) (quoting *Townsend*, 557 U.S. at 414-415). The first two points apply equally in the unseaworthiness context, so "[t]he only question [was] whether there is reason to believe that unseaworthiness is excluded from this 'general admiralty rule.'" *Id.* at 49, 391 P.3d at 438 (¶ 17) (quoting *Townsend*, 557 U.S. at 415). Following this Court's decisions, the *Tabingo* court concluded that "it is not excluded." *Id.* Actions for unseaworthiness date back to the 1870s, and Congress intended the Jones Act "to protect seamen as wards of admiralty and to expand protections rather than limit them." *Id.* at 49, 391 P.3d at 439 (¶ 19) (citing *Townsend*, 557 U.S. at 417).

Finally, the *Tabingo* court recognized that *Townsend* had explained why *Miles* was not controlling in the present context:

> While the [*Townsend*] Court stated that the "reasoning of *Miles* remains sound," it also noted that the reasoning in *Miles* is not universally applicable. Because the cause of action in *Townsend* and the remedy sought were both "well established before the passage of the Jones Act," and because Congress had not spoken directly to the issue, punitive damages for maintenance and cure were appropriate. The *Miles* rationale did not apply. We use that same reasoning here. Claims for unseaworthiness predate the Jones Act and are not based

> on a statutory remedy. Further, as noted in *Townsend*, the Jones Act does not directly address damages for general maritime claims. There is no other indication that unseaworthiness should be excluded from the general maritime rule. Because of this, *Miles* does not restrict a general maritime claim for unseaworthiness.

Id. at 51, 391 P.3d at 439-440 (¶ 24) (citations omitted) (quoting and citing *Townsend*, 557 U.S. at 420-421).

In sum, the *Tabingo* court considered substantially the same argument that petitioner makes here and unanimously rejected it.

C. The court below unanimously rejected the *Miles*-based argument that petitioner advances here.

Most recently, the court below unanimously held that punitive damages are available in general maritime unseaworthiness cases when the defendant's conduct is sufficiently egregious. The court below conscientiously followed *Townsend*'s guidance to reach that conclusion:

> The [*Townsend*] Court noted that "[h]istorically, punitive damages have been available and awarded in general maritime actions." It found "that nothing in *Miles* or the Jones Act eliminates that availability." Unseaworthiness is a general maritime action long predating the Jones Act.

Pet. App. 12a (footnotes omitted) (quoting *Townsend*, 557 U.S. at 407).

The court below seriously considered petitioner's *Miles*-based argument, but recognized that *Miles* was distinguishable—particularly in light of this Court's clarification that *Miles* is not so broad as the defendant-employer in *Townsend* had argued. Miles was a wrongful-death case, and the result turned on the "restrictive recoveries permitted for wrongful death" at common law; those limitations "have no application to general maritime claims by living seamen for injuries to themselves." Pet. App. 14a. Moreover, "*Miles* did not address punitive damages," *id.* at 13a, and "it is not apparent why barring damages for loss of society should also bar punitive damages," *id.* at 10a.

The court below was bound by its prior decision in *Evich v. Morris*, 819 F.2d 256, 258 (9th Cir. 1987) ("Punitive damages are available under general maritime law for claims of unseaworthiness."), which was not fundamentally inconsistent with *Miles*, but "under *Townsend*" the court "would reach the same conclusion *Evich* did, even if [it] were not bound by *Evich*." Pet. App. 15a.

* * *

Petitioner bases its argument for certiorari on a very weak conflict. It concedes that the issue is how to reconcile this Court's decisions in *Miles* and *Townsend*, but a majority of the judges in every appellate court to address that issue in the present context has explicitly rejected petitioner's argument. The Washington Supreme Court and the court below rejected it unanimously. The en banc Fifth Circuit rejected petitioner's

argument by a fractured 8-7 vote in which two of the eight judges concurred in the plurality's judgment. Petitioner does not present a strong or deep conflict.

III. Review in This Case Would Be Premature.

Even if this Court might be inclined once again to address the availability of punitive damages under the general maritime law, in answering the question presented here it would benefit from further percolation of the issue in the lower courts.

A. Few lower courts have addressed the question presented in this case, and no lower court has addressed the availability of punitive damages under the Jones Act in light of this Court's guidance in *Townsend*.

As noted above (*see supra* at 5-11), only three appellate courts have addressed the availability of punitive damages in unseaworthiness cases in light of this Court's guidance in *Townsend*. In each of those three cases, a majority of the judges—following *Townsend*—rejected the argument that petitioner makes here. That alone suggests that further review in this case is unwarranted, but petitioner faces an even more fundamental problem.

This Court could *affirm* the decision below without deciding whether punitive damages are available under the Jones Act. As explained below, *see infra* at 15-19, the general maritime law permits an award of punitive damages in an unseaworthiness case whether or not they are also available under the Jones Act. The

analysis required to affirm would be much the same as that employed by the *Townsend* Court, which held that the general maritime law permits an award of punitive damages in a maintenance-and-cure case whether or not they are also available under the Jones Act. The *Townsend* Court accordingly flagged the availability of punitive damages under the Jones Act as an open question that did not then need to be resolved. *See Townsend*, 557 U.S. at 424 n.12. The three-judge panel in *McBride* did the same thing, holding that the general maritime law permits an award of punitive damages in an unseaworthiness case whether or not they are also available under the Jones Act and thus declining to address the Jones Act question. *See McBride v. Estis Well Service, L.L.C.*, 731 F.3d 505, 518 n.16 (5th Cir. 2013) (superseded on rehearing en banc).

In contrast, this Court could not *reverse* the decision below unless it addresses that open question and concludes that punitive damages are unavailable under the Jones Act. Petitioner argues on the merits that *Miles* forecloses the availability of any remedy under the general maritime law's unseaworthiness doctrine that is not available under the Jones Act. *See, e.g.*, Pet. 12. In essence, petitioner argues that *Miles* "require[s] the narrowing of available damages to the lowest common denominator approved by Congress" in the Jones Act. *Cf. Townsend*, 557 U.S. at 424. For that *Miles*-based argument to succeed in foreclosing the availability of punitive damages here, however, petitioner must prove that punitive damages are not available under the Jones Act. In other words, the Court would need

to resolve the question that it left open in *Townsend*. *See* 557 U.S. at 424 n.12. In addressing that question, this Court would undoubtedly benefit from the well-considered views of the lower courts. But no lower court has yet discussed that issue in light of this Court's guidance in *Townsend*.

Courts holding that the general maritime law permits an award of punitive damages in an unseaworthiness case whether or not they are available under the Jones Act, such as the *Tabingo* court, had no need to discuss their availability under the Jones Act (just as this Court had no need to address the issue in *Townsend*). The court below had an additional reason why it was unnecessary to address the issue. In the Ninth Circuit, binding circuit precedent predating both *Miles* and *Townsend* holds that punitive damages are unavailable under the Jones Act. *See Kopczynski v. The Jacqueline*, 742 F.2d 555, 560-561 (9th Cir. 1984). And because the court below upheld the availability of punitive damages in unseaworthiness actions, notwithstanding their unavailability under the Jones Act, the panel had no need to consider whether *Kopczynski* remains valid in light of *Townsend*. Remarkably, the Fifth Circuit in *McBride* also failed to discuss the issue, even though the en banc court needed to decide that issue to reach its desired conclusion. The leading opinion simply asserts that punitive damages are unavailable under the Jones Act, citing pre-*Townsend* cases from other circuits with no independent analysis. *See McBride*, 768 F.3d at 390-391.

In sum, if this Court wishes fully to consider the arguments that might be relevant to its decision in this case, it would benefit from further percolation on issues that the lower courts have not addressed in light of *Townsend*. Until the lower courts have considered how the *Townsend* analysis affects prior decisions regarding the availability of punitive damages under the Jones Act, review by this Court would be premature.

B. This Court's resolution of the question presented may be irrelevant to the ultimate resolution of this case because the jury may decide not to award punitive damages.

Although this Court has jurisdiction under 28 U.S.C. § 1254(1) to review an interlocutory decision of a federal court of appeals, the Court's preference for reviewing final judgments is well-recognized and well-established. *See, e.g.*, STEPHEN M. SHAPIRO ET AL., SUPREME COURT PRACTICE 282-283 (10th ed. 2013) (collecting cases). That preference also makes sense. If a case is allowed to proceed to final judgment, subsequent developments may moot the question presented and make this Court's intervention unnecessary. In the present case, for example, respondent might not recover punitive damages in the district court, which would make the question presented here entirely academic. It is also noteworthy that petitioner would not suffer any substantial harm in waiting. The case would need to be tried on respondent's substantive claims in any event. And if respondent does recover punitive damages in the district court, petitioner would still be

entitled to appeal the decision, and to seek certiorari in this Court if the Ninth Circuit affirms the award. *See id.* at 285-286 (collecting cases). In the interests of judicial economy, certiorari should therefore be denied on this interlocutory appeal.

IV. The Court Below Correctly Held that Punitive Damages Are Available in General Maritime Law Actions, Including Actions for Breach of the Warranty of Seaworthiness.

This Court in *Townsend* established the appropriate framework to answer the question presented here. Whether an injured seaman can seek punitive damages for a shipowner's egregious fault in failing to provide a seaworthy vessel on which to work turns on (1) whether the cause of action (unseaworthiness) and (2) the remedy (punitive damages) preexisted the Jones Act, and (3) whether the Jones Act precludes the action or the remedy. *Townsend*, 557 U.S. at 420-421; *see also id.* at 414-415, 424.

On the first requirement, an injured seaman had a cause of action for unseaworthiness long before Congress passed the Jones Act in 1920. Even if the no-fault aspects of the unseaworthiness action were not widely recognized until the 1940s,[5] *see, e.g.*, *Seas Shipping Co. v. Sieracki*, 328 U.S. 85, 94-95 (1946); *Mahnich v. Southern Steamship Co.*, 321 U.S. 96, 100 (1944); *cf.* Pet. 19,

[5] In fact, this Court first recognized no-fault liability for unseaworthiness in *Carlisle Packing Co. v. Sandanger*, 259 U.S. 255, 259-260 (1922), which applied the pre-Jones Act general maritime law as it existed in 1917 (when the accident at issue occurred).

it is beyond dispute that by the late nineteenth century an injured seaman had a cause of action for unseaworthiness at least when the shipowner was negligent, and this Court explicitly recognized that cause of action in *The Osceola*, 189 U.S. 158, 175 (1903). The extent to which this Court expanded the scope of the unseaworthiness remedy in the 1940s is irrelevant in the present context, for it is undisputed that an injured seaman cannot seek punitive damages unless the defendant's conduct is more egregious than simple negligence. (In *Townsend*, this Court suggested that the prerequisite for punitive damages was "wanton, willful, or outrageous conduct." *Townsend*, 557 U.S. at 409.) In any unseaworthiness case in which punitive damages could possibly be awarded, the injured seaman would have had an action for unseaworthiness in the nineteenth century.

This Court resolved the second requirement in *Townsend*, when it held that "the remedy (punitive damages) [was] well established before the passage of the Jones Act." 557 U.S. at 420. Furthermore, *Townsend* puts the burden on petitioner to "identify any cases establishing that [punitive] damages were historically unavailable for breach" of the relevant duty, *id.* at 418, or to "explain why [relevant] actions should be excepted from [the] general rule," *id.* at 414 n.4. Petitioner cannot carry its burden because the evidence points to the availability of punitive damages in pre-Jones Act unseaworthiness cases.[6]

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[6] While none of the pre-Jones Act cases are models of doctrinal clarity, at least three awarded punitive damages for willful

This Court also resolved the third requirement in *Townsend*, when it held that the Jones Act did not eliminate pre-existing remedies available to seamen because "Congress was envisioning the continued availability of [the] common-law causes of action" that the *Osceola* Court had recognized. *Id.* at 416; *see also id.* at 417 ("[T]he Jones Act . . . 'was remedial, for the benefit and protection of seamen who are peculiarly the wards of admiralty. Its purpose was to enlarge that protection, not to narrow it.'") (quoting *The Arizona v. Anelich*, 298 U.S. 110, 123 (1936)).

Petitioner's reliance on *Miles* is unjustified. *Miles* held simply that this Court should not give seamen a more expansive remedy on a cause of action than Congress had authorized in an analogous statute when that cause of action did not exist before Congress passed the statute. Because the *Miles* plaintiff was asserting a wrongful-death claim, and maritime law did not recognize a cause of action for wrongful death until Congress created it in 1920, she should not recover more under the general maritime law than she could under the statute. And since loss-of-society damages

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unseaworthiness. *See The Rolph*, 293 F. 269 (N.D. Cal. 1923) (applying pre-Jones Act general maritime law), *aff'd*, 299 F. 52 (9th Cir. 1924); *The City of Carlisle*, 39 F. 807 (D. Ore. 1889); *The Troop*, 118 F. 769 (D. Wash. 1902), *aff'd*, 128 F. 856 (9th Cir. 1904). In *Townsend*, this Court recognized *The City of Carlisle* and *The Troop* as examples of cases in which punitive damages were awarded in pre-Jones Act maintenance-and-cure cases, *see* 557 U.S. at 414, but they were also unseaworthiness cases. In each of them, the vessel was unseaworthy for the same reason that the vessel in *Miles* was unseaworthy.

were unavailable under the relevant statute, she could not recover them under the general maritime law. *Miles* said nothing about non-fatal personal injury claims and it said nothing about punitive damages.

Petitioner's "far too broad" reading of *Miles* not only expands the case beyond what its reasoning can support, but it was also "directly rejected by this Court in *Norfolk Shipbuilding & Drydock Corp. v. Garris*, 532 U.S. 811, 818 (2001)," *Townsend*, 557 U.S. at 421, and again in *Townsend*, *see id.* at 419 (The "reading of *Miles* [that petitioner advocates here] is far too broad."). Petitioner repeatedly stresses that "[t]he reasoning of *Miles* remains sound," *see* Pet. 3, 10, 17, but no matter how often that phrase is repeated it is still the *Miles* Court's limited reasoning that is "sound," not petitioner's expansive reasoning that this Court rejected in *Townsend*.

Finally, petitioner's attempt to limit *Townsend* to its facts is unjustified. Although this Court was addressing a claim for punitive damages in the context of a maintenance-and-cure claim, it spoke broadly of actions under the general maritime law (as opposed to statutory actions), a category that includes both unseaworthiness and maintenance-and-cure actions. *See*, *e.g.*, *Townsend*, 557 U.S. at 411 (referring generally "to claims arising under federal maritime law"); *id.* at 420 (establishing a framework for decision in which the relevant issue is whether "the general maritime cause of action," of which "maintenance and cure" is merely one example, was "well established before the passage of the Jones Act"); *id.* at 424 (recognizing that "punitive

damages have long been an accepted remedy under general maritime law, and . . . nothing in the Jones Act altered this understanding"). Unlike *Miles*, the *Townsend* decision directly addresses the issue in this case—the availability of punitive damages. And unlike *Miles*, the reasoning in *Townsend* does not depend on the historical limitation of wrongful-death actions.

V. Petitioner Exaggerates the Importance of the Question Presented.

Petitioner presents a parade of horribles that would ensue if this Court does not reverse the judgment below—the collapse of the economy, the destruction of the environment, and the undermining of national security. *See* Pet. 25. Even if those claims were not self-evidently exaggerated, the evidence provided by decades of actual experience rebuts petitioner's claims.

Until some lower courts adopted a "far too broad" interpretation of this Court's decision in *Miles*, no lower court had held that punitive damages were unavailable in an action to recover for personal injuries suffered as a result of a breach of the general maritime law warranty of a seaworthy vessel. On the contrary, the pre-*Miles* decisions consistently held that punitive damages were available in an appropriate unseaworthiness case. *See, e.g.*, *Self v. Great Lakes Dredge & Dock Co.*, 832 F.2d 1540, 1550 (11th Cir. 1987) ("Punitive damages should be available in cases where the shipowner willfully violated the duty to maintain a safe and seaworthy ship."); *Evich v. Morris*, 819 F.2d

256, 258 (9th Cir. 1987) ("Punitive damages are available under general maritime law for claims of unseaworthiness."); *In re Merry Shipping, Inc.*, 650 F.2d 622, 623 (5th Cir. Unit B July 1981) ("[P]unitive damages may be recovered under general maritime law upon a showing of willful and wanton misconduct by the shipowner in the creation or maintenance of unseaworthy conditions."); *id.* at 626 ("[P]unitive damages may be recovered under general maritime law upon a showing of willful and wanton misconduct by the shipowner."); *In re Marine Sulphur Queen*, 460 F.2d 89, 105 (2d Cir. 1972) (dicta) (Punitive damages are permitted in an unseaworthiness case if "the defendant was guilty of gross negligence, or actual malice or criminal indifference which is the equivalent of reckless and wanton misconduct."). In the Ninth and Eleventh Circuits, those decisions have not been overruled, and the courts have continued to apply them. *See, e.g.*, *Wolf v. McCulley Marine Services, Inc.*, 2013 AMC 1768, 1776 (M.D. Fla. 2012) ("[P]unitive damages may be awarded in an unseaworthiness action when the plaintiff can prove 'wanton, willful, or outrageous conduct.'") (footnote omitted).

Indeed in *Miles* itself, the Fifth Circuit—in the decision that this Court affirmed—explicitly recognized that "[p]unitive damages are recoverable under the general maritime law 'upon a showing of willful and wanton misconduct by the shipowner' in failing to provide a seaworthy vessel," even though it held that loss-of-society damages were not recoverable. *Miles v. Melrose*, 882 F.2d 976, 989 (5th Cir. 1989) (quoting

Merry Shipping, 650 F.2d at 626) (footnote omitted), *aff'd sub nom. Miles v. Apex Marine Corp.*, 498 U.S. 19 (1990).

During the decades in which punitive damages were unquestionably available in unseaworthiness actions (a period extending to the present time in some circuits), no evidence suggests that they undermined national security, destroyed the environment, or sabotaged the economy. On the contrary, they provided an incentive for vessel owners to fulfill their general maritime law duty to furnish a seaworthy vessel so that their employees would have a safe place to work.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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