No. 25-1146

In the Supreme Court of the United States

DETECTIVE ANGELO PESAVENTO; POLICE OFFICER JAMES OLIVER; THE ESTATES OF DETECTIVES GEORGE KARL AND EDWARD SIWEK; and THE CITY OF CHICAGO,

Petitioners,

v.

EDDIE L. BOLDEN,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Under federal law, a plaintiff who recovers is entitled to the damages as of the date his claim accrued. Prejudgment interest compensates a successful plaintiff for the loss of the use of money owed as damages from the claim accrual date until judgment is entered. *West Virginia* v. *United States*, 479 U.S. 305, 310 n.2 (1987). A unanimous Seventh Circuit panel applied decades-old precedents to hold that no rule categorically prohibits the award of prejudgment interest on noneconomic damages such as pain and suffering.

The question presented is:

Whether federal courts are categorically barred from compensating a successful plaintiff for the loss of the use of money owed as damages for noneconomic injuries via an award of prejudgment interest.

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INTRODUCTION

Respondent Eddie Bolden spent 22 years in prison for crimes the State's courts acknowledge he did not commit. But Mr. Bolden had to wait another six years to obtain a judgment on multiple federal and state claims. He asked for—and the jury awarded—a multi-million-dollar verdict to compensate Mr. Bolden for the pain and suffering from his flawed criminal trial and 22 years of wrongful imprisonment. The district court then awarded prejudgment interest on those damages to compensate for the six additional years Mr. Bolden had to wait. Because "[Mr.] Bolden waited a long time to get his liberty[,] [a]nd he spent more time waiting for justice" (D. Ct. Doc. 730, at 4), the district court found it appropriate to award prejudgment interest to account for the delay in receiving the damages judgment. The Seventh Circuit—in line with decades of precedent and circuit consensus—agreed that the district court had discretion to award prejudgment interest on past noneconomic damages.

Nothing about that holding warrants review.

First, there is no split on the question presented, as the Seventh Circuit expressly recognized. No court of appeals has concluded that prejudgment interest on noneconomic damages is categorically unavailable for Section 1983 claims. Petitioners thus present a fatally overbroad question that would implicate prejudgment interest for the entirety of federal law—an analysis irreconcilable with this Court's context-specific framework for assessing the availability of prejudgment interest. But even for the untenably broad question presented, petitioners can identify only forty-year-old dicta from the Third Circuit even remotely suggesting prejudgment interest may be categorically unavailable on noneconomic damages. But stale dicta immaterial to the case's outcome does not demonstrate a circuit split—particularly not where every other circuit to have actually considered the question has come out the other way.

Second, this case is a poor vehicle for review. Petitioners ask the Court to determine whether prejudgment interest can be awarded on noneconomic damages for *any* federal claim. But this Court conducts a context-specific analysis to determine the availability of prejudgment interest, and the Court could not do this analysis for every possible federal claim. See *Rodgers* v. *United States*, 332 U.S. 371, 373 (1947). The Seventh Circuit did not consider the statute-specific analysis for Section 1983—because petitioners never advanced *that* argument.

Petitioners' presentation also confirms the lack of importance for the Court's intervention. In petitioners' own telling, juries can award amounts for delay on noneconomic damages. That being so, this Court's intervention would be immaterial—in future cases, juries could make the award, making any review of little utility for future cases. But that also makes no difference *here* because petitioners never suggested prejudgment interest needed to be decided by a jury, rather than the court.

Finally, the Seventh Circuit—like every other circuit to have squarely considered the question—was correct: Prejudgment interest is available—but not mandatory—for noneconomic damages, just as it is for economic damages in cases like this one. There is no across-the-board rule precluding interest on such damages, and prejudgment interest is appropriate in the Section 1983 context. Under federal law, a plaintiff who recovers damages is entitled to the damages as of the date his claim accrued, and prejudgment interest compensates the plaintiff for the period between his claim accruing and the entry of judgment. *West Virginia* v. *United States*, 479 U.S. 305, 310 n.2 (1987). Economic and noneconomic injuries that are reduced to a damages award are not different in any way material to this analysis. For either type of damages, prejudgment interest serves the same critical role in ensuring that plaintiffs are fully compensated for their injuries.

The petition should be denied.

STATEMENT

A. Legal background

While "Congress has enacted a statute governing the award of postjudgment interest in federal court litigation, *see* 28 U.S.C. § 1961, there is no comparable legislation regarding prejudgment interest." *City of Milwaukee* v. *Cement Div., Nat. Gypsum Co.*, 515 U.S. 189, 194 (1995). Prejudgment interest is, accordingly, "governed by traditional judge-made principles." *Ibid*. For prejudgment interest on federal claims, "this Court has fashioned rules which granted or denied interest on particular statutory obligations by an appraisal of the congressional purpose in imposing them and in the light of general principles deemed relevant by the Court." *Rodgers* v. *United States*, 332 U.S. 371, 373 (1947); see also *West Virginia,* 479 U.S. at 306.

"The essential rationale for awarding prejudgment interest is to ensure that an injured party is fully compensated for its loss." *City of Milwaukee*, 515 U.S. at 195. More specifically, "prejudgment interest serves to compensate for the loss of use of money due as damages from the time the claim accrues until judgment is entered, thereby achieving full compensation for the injury those damages are intended to redress." *West Virginia*, 479 U.S. at 310 n.2.[1]

Applying these principles to Section 1983 claims, courts of appeals have uniformly concluded that prejudgment interest is generally available.[2] This Court has explained that "the basic purpose of a [Section] 1983 damages award should be to compensate persons for injuries caused by the deprivation of constitutional rights." *Carey* v. *Piphus*, 435 U.S. 247, 254 (1978). The general "principle that a person should be compensated fairly for injuries caused by the violation of his legal rights" is therefore "the appropriate starting point for the inquiry." *Id.* at 257-258. And prejudgment interest is "an element of complete compensation." *Loeffler* v. *Frank*, 486 U.S. 549, 558 (1988) (quoting *West Virginia*, 479 U.S. at 310). Courts have generally treated the question of whether to award prejudgment interest on damages under Section 1983 as lying within the district court's or jury's discretion. See*, e.g., White* v. *Chafin*, 862 F.3d 1065, 1067 (10th Cir. 2017).

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[1] Given its underlying rationale, prejudgment interest is—uncontroversially—not available on future damages. See*, e.g.*, *Borges* v. *Our Lady of the Sea Corp.*, 935 F.2d 436, 445 (1st Cir. 1991) (collecting cases).

[2] See, *e.g.*, *Cordero* v. *De Jesus-Mendez*, 922 F.2d 11, 13 (1st Cir. 1990); *Miner* v. *City of Glens Falls*, 999 F.2d 655, 662 (2d Cir. 1993); *Savarese* v. *Agriss*, 883 F.2d 1194, 1207 (3d Cir. 1989); *Pressey* v. *Patterson*, 898 F.2d 1018, 1026 (5th Cir. 1990); *Thorncreek Apartments III, LLC* v. *Mick*, 886 F.3d 626, 637 (7th Cir. 2018); *Barnard* v. *Theobald*, 721 F.3d 1069, 1078 (9th Cir. 2013).

B. Factual background

Mr. Bolden served 22 years in prison for crimes Illinois courts have determined he did not commit.

In 1994, Chicago police officers arrested and charged Mr. Bolden with murder and attempted murder for a shooting on the City's south side. D. Ct. Doc. 671, at 2-4; *People* v. *Bolden*, 13 N.E.3d 786, 787-788, *as modified on denial of reh'g* (Ill. App. Ct. 2014). He was convicted and sentenced to life plus 30 years in prison. See D. Ct. Doc. 391, at 1, D. Ct. Doc. 671, at 4.

Twenty years later, an Illinois appellate court reversed his convictions. The court concluded that Mr. Bolden "made a substantial showing that his trial counsel committed unprofessional errors by failing to move to dismiss the indictment after police destroyed evidence that defense counsel requested in discovery, and when he failed to contact an alibi witness." *Bolden*, 13 N.E.3d at 795. These errors were prejudicial "[i]n light of the extremely thin case for the prosecution, [which was] based solely on the identification testimony of a single witness who did not know Bolden, and whose initial description of the shooter did not closely match Bolden's appearance." *Ibid*.

On remand, the state trial court held evidentiary hearings, vacated Mr. Bolden's convictions, and ordered a new trial. D. Ct. Doc. 671, at 5. The court also remarked on the weakness of the state's case against Mr. Bolden: "Upon a thorough examination of the trial record, this court determines that the evidence against petitioner was slight." *Ibid.*

In 2016, the state finally moved to dismiss all charges against Mr. Bolden. He was released from prison after 22 years. D. Ct. Doc. 671, at 6. Later that year, Mr. Bolden petitioned for and obtained a certificate of innocence from the State of Illinois (*ibid.*)—an official recognition from the state that "the petitioner [i]s innocent of all offenses for which he or she was incarcerated" (735 Ill. Comp. Stat. 5/2-702(b)).

C. Proceedings below

1. In 2017, Mr. Bolden sued the City of Chicago and several police officers involved in his arrest, raising federal and state claims. See, *e.g.*, D. Ct. Doc. 1. After motions practice, seven claims against the officers, including several under 42 U.S.C. § 1983, remained for trial. D. Ct. Doc. 671, at 6. Before the trial could commence, the case was reassigned, which delayed the trial. *Id.* at 6-7. The COVID-19 pandemic delayed it further. *Id.* at 7.

The 13-day trial finally took place in October 2021. D. Ct. Doc. 671, at 8. After hearing from 32 witnesses, the jury rendered a verdict for Mr. Bolden on all seven counts and awarded $25 million in compensatory damages. *Ibid.*[3] The jury had been instructed to consider damages for "[t]he physical and mental and emotional pain and suffering" and "[t]he loss of normal life that [Mr. Bolden] has experienced and is reasonably certain to experience in the future." D. Ct. Doc. 657, at 33. No party made any arguments about prejudgment interest to the jury (Pet. App. 11a), nor did the jury instructions address prejudgment interest (D. Ct. Doc. 657, at 9-37).

[3] The jury also awarded $200,000 in punitive damages, but those awards have since been waived by agreement of the parties. D. Ct. Doc. 769.

The City indemnified the officers. See D. Ct. Doc. 673. The district court entered final judgment in September 2022. D. Ct. Doc. 675.

2. Mr. Bolden then moved the district court for an award of prejudgment interest. D. Ct. Doc. 680.

The court noted that Mr. "Bolden regained his freedom in 2016," but the trial did not take place until October 2021. Pet. App. 25a. "Meanwhile, the delay of litigation imposed a cost." *Ibid*. After reviewing the jury instructions and the parties' arguments, the court found that the jury's damages award did not account for the cost of delay. *Id.* at 26a. The court "did not instruct the jury to award compensation for the time value of money since his release from prison," and Mr. Bolden's "counsel asked for compensation for the incarceration," not "for the wait after incarceration ended." *Id.* at 27a.

In light of these facts, the court acknowledged its discretion to award or not award prejudgment interest (Pet. App. 22a) but found "no reason to depart from the usual practice of awarding prejudgment interest" (*ibid.*). The court awarded prejudgment interest to account for the delay between the state's dismissal of charges against Mr. Bolden on April 19, 2016 (when, in the court's view, his claim accrued), and the entry of final judgment on September 30, 2022. Pet. App. 27a. The district court accordingly awarded $7,629,466.51 in prejudgment interest. *Id.* at 25a.[4]

3. Petitioners appealed the award of prejudgment interest, arguing both that prejudgment interest

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[4] Mr. Bolden has agreed to accept a reduced amount of prejudgment interest once the petitioners are ultimately deemed liable for paying such interest. See Pet. 6 n.2.

should not be available on noneconomic damages as a matter of law and that the district court abused its discretion in making the interest award in this case. Pet. App. 2a. The Seventh Circuit affirmed in relevant part and reversed the interest award only to the "extent it did not apportion past and future damages in calculating prejudgment interest on the jury's verdict." *Id*. at 18a.

The court rejected petitioners' argument that prejudgment interest is categorically unavailable on noneconomic damages (Pet. App. 10a), consistent with its precedent of "four decades" standing that prejudgment interest can be appropriately awarded on damages for noneconomic harms. *Id*. at 6a (citing *Hillier* v. *Southern Towing Co*., 740 F.2d 583 (7th Cir. 1984)). The court explained that "[t]here is nothing special about noneconomic damages exempting them from the principle that money today is worth more to the plaintiff than money tomorrow." *Id*. at 7a. Here, petitioners' "liability to [Mr.] Bolden under Section 1983 accrued the moment the State's charges against him were dismissed in April 2016," and "[h]ad Defendants immediately satisfied their obligation by handing Bolden a check as he stepped out of prison, he would have benefitted from this compensation sooner." *Ibid*. Prejudgment interest merely compensates Mr. Bolden for the lost use of the money owed to him, from the time the law deems that it was owed to him. Pet. App. 8a-9a.

While the Seventh Circuit's prejudgment interest law originated in admiralty, the court observed that "nothing about *Hillier*'s holding as to damages depended on unique principles of admiralty law." Pet. App. 8a. The court's approach was fully consistent with "[o]ther circuits" that "have reached th[e] same conclusion [about] awarding prejudgment interest on noneconomic damages outside admiralty." *Id*. at 8a (citing *Barnard* v. *Theobald*, 721 F.3d 1069, 1078 (9th Cir. 2013); *Thomas* v. *Texas Dep't of Crim. Just.*, 297 F.3d 361, 372 (5th Cir. 2002)). And while petitioners claimed to have authority from circuits pointing the other way, the court was "not convinced that" any other court had actually reached the opposite conclusion. *Id*. at 9a n.1.

After affirming the district court's conclusion that "[Mr.] Bolden could, as a matter of law, recoup prejudgment interest on his noneconomic damages," the court turned to "the question of whether choosing to award him this interest was an abuse of discretion." Pet. App. 10a. It rejected petitioners' first argument—that the jury had already fully compensated Mr. Bolden. *Id*. at 11a-12a. While an additional award would be inappropriate if "prejudgment interest was already 'baked in' to the verdict" (*id*. at 11a), the district court had reviewed the record and concluded that it was not (*id*. at 12a). Indeed, "[n]either side's counsel raised" the issue of prejudgment interest to the jury "and the court never instructed the jury on the concept." *Id*. at 11a. Nor was "the jury's verdict so large that 'only the supposition that the jury has compensated plaintiff for the time value of money can explain the result.'" Pet. App. 12a (quoting *Williamson* v. *Handy Button Mach. Co.*, 817 F.2d 1290, 1298 (7th Cir. 1987)). Even if the record was ambiguous on this point, petitioners offered nothing to demonstrate that the district court had abused its discretion in reaching the conclusion it did. *Ibid.*

The court further rejected petitioners' argument that the award of prejudgment interest was punitive, finding no support for the contention that the district court awarded prejudgment interest for a non-compensatory purpose. Pet. App. 16a-18a. And it rejected their arguments concerning the specific "method of calculating interest rates," which was "within the sound discretion of the district court." *Id*. at 17a.

The Seventh Circuit did accept one of petitioners' arguments: the record did not make clear whether the lump-sum jury award covered both past and future damages, and the parties agreed that prejudgment interest is available only for the former. Pet. App. 12a-13a. The court remanded for the district court to award prejudgment interest "on a prorated portion of the jury's verdict after determining the percentage attributable to past damages." Pet. App. 16a.

4. Petitioners sought panel and en banc rehearing. C.A. Doc. 59. For the first time, they raised the argument that *all* jury awards for noneconomic damages categorically "take into account the passage of time, and thus will include compensation for the time the plaintiff spent waiting for the judgment." *Id.* at 5 (emphasis added). The court denied rehearing with no dissent. Pet. App. 19a-20a. This petition followed.

REASONS FOR DENYING THE PETITION

Review is unwarranted. The petition asks an enormously broad question—petitioners apparently would have the Court decide if prejudgment interest for noneconomic damages is *ever* available, regardless of the cause of action. To start, there is no circuit conflict—not in the Section 1983 context, and not anywhere else, either. Nor is this an appropriate vehicle for review. The enormously broad question presented by petitioners contradicts how this Court has directed these questions to be resolved and, moreover, no issue of particular importance is present. Finally, the court of appeals—which agrees with every other court to address the issue—was correct to hold that prejudgment interest is available as an exercise of judicial discretion in appropriate cases, though it surely is not mandatory.

A. There is no circuit split warranting the Court's intervention.

The petition admits (at 10-11) that at least seven circuits agree with the Seventh Circuit that district courts may exercise discretion to award prejudgment interest on past noneconomic damages. Petitioners insist nonetheless (at 12) that the "circuits are divided on the answer to the question presented."

But not a single circuit has adopted petitioners' proposal to categorically bar prejudgment interest on noneconomic damages—in Section 1983 cases or more broadly. Instead, the courts broadly agree that prejudgment interest is available but discretionary. It is no surprise—and no reason for this Court's review—that courts exercising or reviewing exercises of that discretion on different factual records reach different results.

1. Petitioners reference only two Section 1983 cases in support of their supposed circuit split—but neither categorically barred prejudgment interest on noneconomic damages.

The Fourth Circuit in *Gilliam* v. *Allen*—in reasoning fully consistent with the Seventh Circuit's—reversed an award of prejudgment interest on pain and suffering damages because the jury had already accounted for the time value of money and, based on the particular factual record, it could not disaggregate future damages from past damages. 62 F.4th 829, 848-849 (4th Cir. 2023). Nothing in the Fourth Circuit's fact-record-focused decision suggested that prejudgment interest is categorically barred. Quite the contrary, the court expressly left room for prejudgment interest on the same damages had the record looked different: "If the court had been able to conclude that the jury award did not fully compensate the plaintiffs, it might have been able to consider prejudgment interest." *Id.* at 849.

The outcome would have been the very same in the Seventh Circuit. As the decision below noted, prejudgment interest is unavailable on future damages and would have been unavailable had the factual record reflected that the jury considered delay in fashioning its award. Pet. App. 9a, 11a-12a. The different outcome in the Fourth Circuit was merely the result of applying the same legal principles to a different record, not because of any disagreement as to the law.

The Tenth Circuit similarly reached a different outcome by applying the same settled rules to a different record. In *White* v. *Chafin*, the court observed that prejudgment interest is discretionary for all damages and held that the district court did not abuse its discretion on that record by refusing prejudgment interest on noneconomic damages. 862 F.3d 1065, 1068-1069 (10th Cir. 2017). There is no legal disagreement between *White* and the decision below; each addressed a district court's different chosen exercise of discretion on different factual records, with the Tenth Circuit affirming the district court's discretionary denial and the decision below affirming in part subject to potential apportionment. The courts simply reached different outcomes on different records.

2. With no contrary authority in the Section 1983 context, petitioners artificially broaden the question presented to cover *all* federal claims in one fell swoop. That choice renders the petition a poor vehicle. See *infra* at 15-18. But even under petitioners' broadest formulation, the assertion of a circuit split is illusory: all it cites is acknowledged dicta from a single, four-decade-old footnote. *Poleto* v. *Consolidated Rail Corp.*, 826 F.2d 1270, 1278 n.14 (3d Cir. 1987).

Although the Third Circuit suggested in a footnote that noneconomic damages should be excluded from prejudgment interest calculations (826 F.2d at 1278 n.14), its actual holding was that prejudgment interest was not available under the Federal Employers' Liability Act *at all*. 826 F.2d at 1279 ("We simply find evidence lacking that Congress intended prejudgment interest to accompany FELA awards."). As the decision below correctly observed (Pet. App. 9a), that footnote is nonbinding dictum. *Seminole Tribe of Fla.* v. *Florida*, 517 U.S. 44, 67 (1996) (defining dictum). In fact, only a single unpublished Third Circuit decision has ever cited the *Poleto* footnote. And in that case—*Nance* v. *City of Newark*, 501 F. App'x 123, 130-131 (3d Cir. 2012) (see Pet. 8)—the court acknowledged *Poleto*'s extensive "dicta" and remanded to the district court for a more careful exploration of the jury's award. *Nance*, 501 F. App'x at 130-131.

"[D]icta does not a circuit split make." *Pacific Coast Supply, LLC* v. *NLRB*, 801 F.3d 321, 334 n.10 (D.C. Cir. 2015). The fact that some district courts in the Third Circuit have treated *Poleto*'s dictum as binding does not make it so. Pet. 9 n.5 (citing *Dennis v.*

City of Phila., 2024 WL 4008747, at *1-2 (E.D. Pa. 2024); *Robinson* v. *Fetterman*, 387 F. Supp. 2d 483, 485 (E.D. Pa. 2005)).

3. No circuit's law holds that prejudgment interest is categorically unavailable for noneconomic damages, in the Section 1983 context or otherwise. The courts of appeals are instead entirely aligned on the other side of the ledger. In addition to the Seventh Circuit below, two other courts of appeals have authoritatively confirmed the availability of prejudgment interest on noneconomic damages in federal civil rights cases—but only where appropriate. *Thomas*, 297 F.3d at 372; *Barnard*, 721 F.3d at 1078; Pet. App. 6a-10a. And on petitioners' broader formulation—encompassing every conceivable federal claim—the lack of any division is even more stark. See *Borges* v. *Our Lady of the Sea Corp.*, 935 F.2d 436, 444 (1st Cir. 1991); *Petition of City of New York*, 332 F.2d 1006, 1008 (2d Cir. 1964); *Anderson* v. *Whittaker Corp.*, 894 F.2d 804, 807-810 (6th Cir. 1990); *Valley Line Co.* v. *Ryan*, 771 F.2d 366, 377 (8th Cir. 1985); *Deakle* v. *John E. Graham & Sons*, 756 F.2d 821, 833-834 (11th Cir. 1985).[5]

Every circuit to have actually considered any version of the question presented in a dispositive way is in agreement. Petitioners fail to raise any divergence among the circuits that warrants this Court's review.

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[5] Petitioners note (at 11) that several of these cases arose in admiralty. But the petition's expansive question presented does not distinguish admiralty; it asks whether prejudgment interest should be unavailable "as a matter of law" on *any* award of noneconomic damages. Any resolution of that question would necessarily answer the question for admiralty as well.

B. The petition is a poor vehicle to resolve a question that does not warrant review.

Not only is there no conflict to review, but the question presented is fatally overbroad. Moreover, under petitioners' own view of the merits, any decision from this Court would have minimal impact on the outcomes of cases.

1. The petition's question—whether prejudgment interest is categorically barred on *any* noneconomic damages—is fatally overbroad.

Whether and how courts award prejudgment interest on claims under federal law depends heavily on statutory context. Courts first assess whether Congress has spoken to the issue of prejudgment interest in the particular statutory context. See *West Virginia*, 479 U.S. at 308; *General Motors Corp.* v. *Devex Corp.*, 461 U.S. 648, 654 (1983). If not, the Court conducts "an appraisal of the congressional purpose" behind the statute and "in the light of general principles deemed relevant by the Court." *Rodgers*, 332 U.S. at 373. See also *West Virginia*, 479 U.S. at 306; *General Motors*, 461 U.S. at 654. The context-specific nature of the inquiry means that the question presented—which attempts to lump *all* potential federal law claims together—is not a proper question to ask. The Court *cannot* evaluate the propriety of prejudgment interest on noneconomic damages under putatively every cause of action, including every federal statute at once, because the Court has previously held that the inquiry is context-specific.

Petitioners purposefully did not raise a narrower question—such as whether prejudgment interest should be available on noneconomic damages in Section 1983 cases. They no doubt made that strategic decision aware that there is no circuit conflict regarding it. In all events, at most, *that* could be the only appropriate question to address—but it is not invoked here.

While it is clear that noneconomic damages are available in appropriate Section 1983 matters (see *infra* at 19), the Seventh Circuit did not resolve *that* question because petitioners did not raise it. The Court should not grant the petition on a question over which petitioners do not seek and have not sought review and which the court of appeals did not have occasion to squarely consider.

2. The petition also negates any claim of importance. Petitioners do not contest that a jury can compensate a plaintiff for noneconomic damages up to the point of judgment—in fact, they rely on this fact to argue that all awards of noneconomic damages already do so. Pet. 15-16. Petitioners object only to *calling* this "prejudgment interest." But petitioners' acceptance that juries *can* award damages to account for the delay in judgment (see Pet. 15-16) materially reduces the gravity of the issue presented here. Even as petitioners see it, Section 1983 claimants *can* be compensated for the delay in their recovery; the only question is *how* that is to occur.

That is to say, there is limited prospective importance of the issue presented. Petitioners do not claim that claimants are unable to claim this form of recovery in future cases. Rather, courts would simply instruct juries on the circumstances when they should separately calculate and award prejudgment interest. Thus, not only is there no conflict among the circuits, but resolving the question in petitioners' favor is not likely to have any material impact on the quantum of future awards.

In sum, petitioners apparently think this should be an issue for a jury, not a court. But petitioners never asked for the question of prejudgment interest to be put to the jury, instead of the court.

3. Petitioners' inability to identify any conflict among the circuits—particularly one that is recent—underscores that there is no issue important enough to warrant review. In most cases, prejudgment interest only fractionally affects the total award.[6] Additionally, in Section 1983 cases, like this one, plaintiffs will also bring state law claims—where prejudgment interest is governed by state law. An award of interest under state law is independently available. See *Freeman* v. *Package Mach. Co.*, 865 F.2d 1331, 1344-1345 (1st Cir. 1988); *Mallis* v. *Bankers Tr. Co.*, 717 F.2d 683, 692-694 (2d Cir. 1983).

4. Petitioners and their amicus finally suggest that plenary review is needed because of tight local government budgets and supposed "waste of resources" spent litigating prejudgment interest that, in the City's view, should not be available. Pet. 19. Neither argument is reason to grant review.

Prejudgment interest surely cannot be the budget-buster petitioners portray. The very theory of prejudgment interest is to compensate for *delay* in compensating the plaintiff for harm caused. A delayed payment to the plaintiff amounts to a nonconsensual loan from a successful plaintiff to the defendant. Pet. App.

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[6] In cases where the awards are overwhelmingly large, courts exercise discretion to deny or reduce interest. See *Gilliam*, 62 F.4th at 849-850.

4a-5a. Prejudgment interest makes sure that the plaintiff is compensated for the cost of this loan, "avoid[ing] unjust enrichment and disincentiviz[ing] foot-dragging in litigation." *Ibid*. Stated differently, the City, "[h]aving earned * * * [a] return for the duration of the litigation," is "in no position to complain when called on to pay prejudgment interest." *Matter of Oil Spill by Amoco Cadiz*, 954 F.2d 1279, 1332 (7th Cir. 1992). Petitioners' contrary argument is a recipe for inequity, as "[a]n injurer allowed to keep the return on this money has profited by the wrong." *Ibid.* Where a defendant holds onto amounts owed the day a claim accrued, equity requires the plaintiff to receive compensation for the amount the defendant earned that the plaintiff did not while the defendant held onto the money.

Petitioners' second argument (at 19)—that the Court should take the case because litigating this issue is a waste of resources given the City's view of the merits—is no independent reason to grant review. The decision below is correct (*infra* at 18-29), no court of appeals disagrees (see *supra* at 11-14), and the petitioners raise an improperly broad question (see *supra* at 13-15). No further review is warranted.

C. The decision below is correct.

The petition should additionally be denied because the decision below is correct. Prejudgment interest is not, as petitioners suggest, categorically barred on damages for noneconomic harms.

1. "The essential rationale for awarding prejudgment interest is to ensure that an injured party is fully compensated for its loss." *City of Milwaukee*, 515 U.S. at 195. The basic purpose of tort law is to "compensate persons for injuries." *Carey*, 435 U.S. at 254.

"[C]ompensatory damages" thus includes "not only out-of-pocket loss and other monetary harms, but also such injuries as 'impairment of reputation * * *, personal humiliation, and mental anguish and suffering.'" *Memphis Cmty. Sch. Dist.* v. *Stachura*, 477 U.S. 299, 307 (1986) (quoting *Gertz* v. *Robert Welch, Inc.*, 418 U.S. 323, 350 (1974)). Accord *Cooper Indus., Inc.* v. *Leatherman Tool Grp., Inc.*, 532 U.S. 424, 437 n.11 (2001) (noting that "pain and suffering are generally available as species of compensatory damages"). Compensatory damages are thus *all* damages "grounded in determinations of plaintiffs' actual losses," regardless of the precise nature of those losses. *Memphis Cmty. Sch. Dist.*, 477 U.S. at 307.

Because noneconomic damages are compensatory, they are deemed owed when a plaintiff's claim accrues. "By committing a tort, the wrongdoer creates an involuntary creditor." *Matter of Oil Spill by Amoco Cadiz*, 954 F.2d at 1331. "It may take time for the victim to obtain an enforceable judgment, but once there is a judgment the obligation is dated as of the time of the injury." *Ibid.* Once the law elects to compensate a harm—economic or noneconomic—with money damages (as it has for pain and suffering), a plaintiff holds an entitlement to that sum as of the date his claim accrued. See Michael S. Knoll, *A Primer on Prejudgment Interest*, 75 Tex. L. Rev. 293, 351-352 (1996) ("[I]t is not clear why prejudgment interest should be denied for nonpecuniary losses because both pecuniary and nonpecuniary losses are compensated for with monetary awards.").

When a judgment finally determines the value that makes the plaintiff whole, prejudgment interest then compensates for the delay in receiving that money—"thereby achieving full compensation for the injury those damages are intended to redress." *West Virginia*, 479 U.S. at 310 n.2. Noneconomic damages are no different from "economic" damages in any meaningful sense. "Whether the case is of the one class or the other, the injured party has suffered a loss which may be regarded as not fully compensated if he is confined to the amount found to be recoverable as of the time of breach and nothing is added for the delay in obtaining the award of damages." *Funkhouser* v. *J.B. Preston Co.*, 290 U.S. 163, 168 (1933).

There is thus no across-the-board rule barring prejudgment interest on noneconomic damages—just like pecuniary damages, noneconomic damages are money deemed owed to a plaintiff when his claim accrues, and so prejudgment interest compensates for the time the plaintiff had to wait to receive the owed funds. Awarding prejudgment interest thus accords with Congress's design of Section 1983. "[T]he basic purpose of a § 1983 damages award should be to compensate persons for injuries caused by the deprivation of constitutional rights." *Carey*, 435 U.S. at 254. The "compensatory damages" available under Section 1983 "include not only out-of-pocket loss and other monetary harms," but also a variety of noneconomic harms. *Memphis Cmty. Sch. Dist.*, 477 U.S. at 307. And "a monetary award does not fully compensate for an injury unless it includes an interest component." *Kansas* v. *Colorado*, 533 U.S. 1, 10 (2001). Just as with other statutes where "Congress's overriding purpose" was "affording [plaintiffs] complete compensation," it follows "that prejudgment interest should ordinarily be awarded" in Section 1983 cases, including on noneconomic damages. *General Motors*, 461 U.S. at 655.

2. Petitioners' counterarguments are wrong. All the reasons underlying prejudgment interest apply equally to economic and noneconomic damages—both of which are meant to compensate an injured party; noneconomic damages do not inherently include time delay; and the imprecision of an amount has never been reason to foreclose a plaintiff from accessing full compensation.

a. Petitioners suggest (at 14-15) that because noneconomic injuries "cannot be reversed with money" and noneconomic damages therefore "do not return lost money to the plaintiff," prejudgment interest does not serve a compensatory function on noneconomic damages. But "[t]here is nothing special about noneconomic damages exempting them from the principle that money today is worth more to the plaintiff than money tomorrow." Pet. App. 7a.

It is true, of course, that many injuries cannot be *literally* reversed by an award of damages. But that does not make the damages award any less compensatory. *Memphis Cmty. Sch. Dist.*, 477 U.S. at 307 ("compensatory damages" includes "not only out-of-pocket loss and other monetary harms, but also injuries such as 'impairment of reputation * * *, personal humiliation, and mental anguish and suffering.'" (quoting *Gertz*, 418 U.S. at 350)); *Cooper Indus.*, 532 U.S. at 437 ("pain and suffering are generally available as species of compensatory damages").

Prejudgment interest thus serves the same basic function in both economic and noneconomic damages cases. As this Court has explained, "[t]he essential rationale for awarding prejudgment interest is to ensure that an injured party is fully compensated for its loss." *City of Milwaukee*, 515 U.S. at 195. It serves that purpose by compensating "for the loss of use of money *due as damages* from the time the claim accrues until judgment is entered." *West Virginia*, 479 U.S. at 310 n.2 (emphasis added). Because a plaintiff is deemed to be owed money at the time his claim accrues, he has lost the use of that money regardless of the nature of the harm that gave rise to his entitlement. See *David* v. *Sirius Comput. Sols., Inc.*, 779 F.3d 1209, 1211 (10th Cir. 2015) (Gorsuch, J.) ("Compensatory damages, whether of the economic or noneconomic stripe, are designed to make the injured party whole. Prejudgment interest shares this same function, seeking to ensure tort victims are compensated for the loss associated with the delay in receiving payment occasioned by court proceedings.").

Petitioners suggest (at 12-13) a distinction because these principles were expounded in part in admiralty cases. But that is a distinction with no difference. "Full compensation has long been recognized as a basic principle of admiralty law." *City of Milwaukee*, 515 U.S. at 195-196. The principle that plaintiffs should be fully compensated is, in modern times, "not peculiar to courts of admiralty." *Lake Shore & M.S. Ry. Co.* v. *Prentice*, 147 U.S. 101, 108-112 (1893) (affirming jury instruction that plaintiff "was entitled to a verdict which would fully compensate him for the injuries sustained," including noneconomic harms); *Carey*, 435 U.S. at 254 ("The cardinal principle of damages in Anglo-American law is that of *compensation* for the injury caused to plaintiff by defendant's breach of duty") (quoting 2 F. Harper & F. James, Law of Torts § 25.1, p. 1299 (1956)). Because compensation is the goal of tort—just like admiralty—and because prejudgment interest plays a key role in ensuring full compensation, prejudgment interest can be warranted for both economic and noneconomic harms in tort as much as admiralty.

Finally, petitioners overlook a separate but important function of prejudgment interest: to "minimize a defendant's incentive to delay." *Thorncreek Apartments*, 886 F.3d at 637. Because that purpose is measured by a defendant's litigation conduct, it is indifferent to whether the plaintiff's loss is economic or noneconomic. From the moment petitioners' liability accrued, they held funds that the law treats as owed to Mr. Bolden. For every year the litigation dragged on, they retained the use of that money—in effect, an interest-free loan for the life of the case. Pet. App. 4a. Without prejudgment interest, petitioners' categorical rule would create a perverse incentive in Section 1983 cases, where the gravest constitutional injuries often produce primarily noneconomic damages: the longer the defendant can postpone judgment, the less costly the eventual award becomes in real terms.

Petitioners can disagree only by recasting prejudgment interest as "purely punitive." Pet. 17. But the argument that prejudgment interest somehow penalizes defendants for declining to settle or for delays outside their control is mistaken. First, those concerns are not tied at all to the noneconomic status of damages—they apply with equal force to "economic" damages for which prejudgment interest is concededly available. Nor can petitioners' concerns justify a categorical bar—they are fully addressed by equitable considerations that are always factored into the district court's discretion to reduce or deny prejudgment interest. If, for example, delay is attributable to a *plaintiff's* conduct, a court would be well within its discretion to deny or reduce prejudgment interest as a result.

Petitioners' argument rests on a fundamental mischaracterization of prejudgment interest. Stripping a wrongdoer of the time-value of money it withheld is not punitive—it prevents unjust enrichment from the defendant having held onto money found to have rightfully belonged to the plaintiff, and it is fully consistent with the compensatory character of prejudgment interest.

b. Petitioners next argue (at 15) that *all* "award[s] of noneconomic damages already include[] compensation for time the plaintiff had to wait for the award." But whether a jury has taken account of the time value of money is a case-specific factual judgment. In *this* case, the district court found that the jury had determined noneconomic damages as of the date Mr. Bolden was released—when his injury accrued—and not to the present. Pet. App. 26a-27a. Petitioners have no basis for resisting that conclusion on the facts of *this* case.

In some cases, the best conclusion based on the record may well be that the jury baked prejudgment interest into its award. See, *e.g.*, *Nutrition Mgmt. Servs. Co.* v. *Harborside Healthcare Corp.*, 181 F. App'x 315, 318 (3d Cir. 2006) (finding no abuse of discretion by district court in concluding that jury award includes prejudgment interest, where prejudgment interest was emphasized throughout trial and plaintiff presented jury with a damage figure that included interest). But in other cases—as here—the best conclusion is that the jury's award does not include prejudgment interest. See *Gierlinger* v. *Gleason*, 160 F.3d 858, 874-875 (2d Cir. 1998) (holding that district court abused its discretion in presuming that jury awarded prejudgment interest, given that it was not instructed to do so, the concept was not raised to the jury, and the award was not so large as to indicate that it had been included). Accord Pet. App. 11a-12a.

A court may of course deny or reduce prejudgment interest to avoid double recovery if the record shows the jury already considered delay in arriving at its award. But that is a record-specific inquiry, not grounds for a categorical rule for all noneconomic damages. Lower courts have rejected the rule petitioners advance—the Second Circuit, for example, has held that it is error to "presum[e] that the jury's award included prejudgment interest" absent some supporting evidence. *Gierlinger*, 160 F.3d at 874-875. Accord *Thorncreek Apartments*, 886 F.3d at 637 (noting presumption that prejudgment interest *is* available but that "the presumption flips" when the issue of interest is put before the jury).

Petitioners cite purportedly contrary authority, but no circuit has ever adopted an across-the-board presumption that noneconomic damages awards include prejudgment interest. In *Moore-McCormack Lines, Inc.* v. *Richardson*, the Second Circuit suggested that juries "usually make[] some allowance for loss caused by delay"—but then proceeded to hold that prejudgment interest was appropriate on the damages at issue at a slightly reduced rate. 295 F.2d 583, 594 (2d Cir. 1961). The Fourth Circuit in *Gilliam* v. *Allen* held that in that case it was "a fair assumption that the jurors understood themselves to be determining damages *at the then-present time*, thus implicitly or explicitly taking into account the fact that the plaintiffs had not had the benefit of their damages award for some years since their injuries were sustained"—but then explained that prejudgment interest would be appropriate if "the court had been able to conclude that the jury award did not fully compensate the plaintiffs." 62 F.4th 829, 848-849 (4th Cir. 2023).

Nor does the literature support petitioners' sweeping empirical claim. Their chief source—the "Rand Study"—is a 43-year-old preliminary report from a then-ongoing study, which stated based on data from one county from 1960-1979 that "on average" juries "increased awards over and above inflation * * * at a rate of 3.7 percent per year for the time between injury and trial." Stephen J. Carroll, Rand Corporation, *Jury Awards & Prejudgment Interest in Tort Cases*, at v (1983), perma.cc/46UG-MZCP. But the Rand Study's conclusion is an aggregate empirical observation about how juries in one jurisdiction behaved over two decades. Even if some juries sometimes or on average may account for delay in some contexts, that cannot prove that every jury in every noneconomic-damages case does so, as would be required to support petitioners' categorical rule. An understanding of what juries do on average does not answer the question of what a jury did in any particular case—or whether a district court abused its discretion in reaching a conclusion about that issue in any particular case.

Commentators have understood the Rand Study to show only that uninstructed juries did not "utilize their discretion in this matter very wisely or consistently." Michael J. Martin, *Prejudgment Interest: Implementing Its Compensatory Purpose*, 15 Loy. U. Chi. L. J. 541, 556 (1984). While juries "probably" factor in delay "in some cases," "there is no way to know how often, or in how many cases, let alone in which cases."

Restatement (Third) of Torts § 14 Reporter's Note e (Tentative Draft No. 1, Apr. 2022). That is a matter for jury instruction or damages presentations at trial, not grounds for a total bar on prejudgment interest that is sometimes necessary to make plaintiffs whole. Knoll, *supra*, at 352.

Because jury awards do not *categorically* account for delay, petitioners' argument is, at most, a critique of the district court's interpretation of the record in this particular case. But that record-specific inquiry, good for this case only, does not warrant review—especially when it is entirely divergent from the enormously (and improperly) broad question presented. It is enough to say that the Seventh Circuit's approach reflected the fair-minded conclusion that "it is probably more accurate to take juries at their word, and to assume that they are not awarding interest unless they have been instructed to do so." *Restatement (Third) of Torts* § 14 Reporter's Note e.[7]

c. Petitioners last argue (at 16) that noneconomic damages should be treated differently because "[i]ntangible harm does not accrue evenly," and so

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[7] Additionally, this argument does not support further review because it was not presented or addressed below. See, *e.g., CRST Van Expedited, Inc*. v. *EEOC*, 578 U.S. 419, 435 (2016) (noting that it is "not the Court's usual practice to adjudicate either legal or predicate factual questions in the first instance"); see *also Adarand Constructors, Inc.* v. *Mineta*, 534 U.S. 103, 110 (2001) (per curiam) ("[T]his is a court of final review and not first view."). The Seventh Circuit's review was limited to whether the district court *in this case* abused its discretion by concluding that the jury award excluded delay. Pet. App. 11a-12a. That is because petitioners did not raise the argument that *all* noneconomic damages awards include delay damages until their petition for rehearing. Compare C.A. Doc. 29, with C.A. Doc. 59.

"[c]alculating prejudgment interest * * * is a mathematical fiction." But the standard convention is to treat the entire past-damages amount as accruing at a single accrual date with interest running from that one date to judgment. *City of Milwaukee*, 515 U.S. at 196. In a wrongful conviction case like this one, the accrual date is fixed by law at favorable termination. *McDonough* v. *Smith*, 588 U.S. 109, 120 (2019). Given the existence of a fixed damages amount (the jury's award) and the fixed accrual date, calculation of prejudgment interest on noneconomic damages poses no more difficulty than it would for pecuniary harms.

Ultimately, "the need to rely on approximations does not distinguish this issue from many other issues in the calculation of tort damages." *Restatement (Third) of Torts* § 14 cmt. f. Noneconomic damages themselves are already an accepted legal approximation. Petitioners' argument thus proves too much. The law does not refuse to compensate pain, suffering, humiliation, or loss of normal life because those injuries cannot be valued with mathematical precision. *Story Parchment Co.* v. *Paterson Parchment Paper Co.*, 282 U.S. 555, 563 (1931) ("In such case, while the damages may not be determined by mere speculation or guess, it will be enough if the evidence show the extent of the damages as a matter of just and reasonable inference, although the result be only approximate.").

Once the jury has translated past intangible injury into dollars, prejudgment interest is not a "rate of return" on pain (Pet. 2); it is compensation for the delay in receiving the money that the law has deemed the plaintiff's compensation. That approximation is involved cannot justify a legal rule that all past noneconomic damages are interest-proof.

d. Finally, it bears emphasis that petitioners' argument (at 12) resting on a claimed "prevailing view" from "the early twentieth century" is out-of-step with a century of this Court's cases. Whatever prior practice, courts and commentators criticized any alleged distinction between ascertainable and unascertainable damages. See *Kansas*, 533 U.S. at 10 n.3 (collecting sources). Not providing prejudgment interest "fail[s] to acknowledge the compensatory nature of interest awards." *Ibid.* And "[p]rejudgment interest serves to compensate for the loss of use of money due as damages from the time the claim accrues until judgment is entered, thereby achieving full compensation for the injury those damages are intended to redress." *West Virginia*, 479 U.S. at 310 n.2.

By 1933, this Court had "allied itself with the evolving consensus" (*Kansas*, 533 U.S. at 10) and recognized that the "distinction * * * as between cases of liquidated and unliquidated damages, is not a sound one" (*Funkhouser*, 290 U.S. at 168). The Court's "cases since 1933 have consistently acknowledged that a monetary award does not fully compensate for an injury unless it includes an interest component." *Kansas*, 533 U.S. at 10. See *General Motors*, 461 U.S. at 655 n.10 ("The traditional view, which treated prejudgment interest as a penalty awarded on the basis of the defendant's conduct, has long been criticized on the ground that prejudgment interest represents 'delay damages' and should be awarded as a component of full compensation."); *West Virginia*, 479 U.S. at 310 n.2; *City of Milwaukee*, 515 U.S. at 195.

CONCLUSION

The Court should deny the petition.

Respectfully submitted.

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