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

REPLY BRIEF FOR THE PETITIONERS

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ARGUMENT

I. The Circuits Are Divided on the Question Presented.

The courts of appeals disagree about whether a plaintiff can be awarded prejudgment interest for noneconomic damages. Respondent fails to show otherwise.

The Third, Fourth, and Tenth circuits do not allow prejudgment interest for noneconomic damages; the Seventh Circuit and seven others do. In the First Circuit, a plaintiff's entitlement to such interest is, at best, in doubt.

In the Third Circuit, courts will not add prejudgment interest to awards of noneconomic damages, full stop. In *Poleto v. Consolidated Rail Corp.*, 826 F.2d 1270 (3d Cir. 1987), that circuit stated that noneconomic damages are not eligible for prejudgment interest because they "do not compensate for market-induced harms." *Id*. at 1278 n.14. Respondent's attempt to relegate this holding to mere dicta, Br. Opp. 13, fails. Simply put, respondent's request for prejudgment interest would have been flatly rejected in the Third Circuit. *See Nance v. City of Newark*, 501 F. Appx. 123, 130-31 (3d Cir. 2012) (citing *Poleto* and remanding for district court to determine whether award included any past economic damages on which prejudgment interest should be awarded); *Dennis v. City of Philadelphia*, No. 18-2689, 2024 WL 4008747, at *1-2 (E.D. Pa. Aug. 30, 2024) (citing *Poleto* and stating that prejudgment interest awards are "only appropriate for past economic harm"); *McKenna v. City of Philadelphia*, Nos. 98-5835, 99-1163, 2009 WL 2230771, at *2 (E.D.

Pa. July 24, 2009) (citing *Poleto* and stating that "[c]ourts in this circuit have . . . consistently granted pre-judgment interest only on damage awards for economic losses"); *Lohman v. Borough*, No. 3:05-CV-1423, 2008 WL 2697309, at *2 (M.D. Pa. July 1, 2008) (citing *Poleto* and finding that prejudgment interest could be awarded on only the plaintiff's economic damages). Respondent identifies no contrary results in the Third Circuit.

Respondent would fare no better in the Fourth Circuit, under *Gilliam v. Allen*, 62 F.4th 829 (4th Cir. 2023). Respondent's attempt to marginalize this case as "fact-record focused," Br. Opp. 12, ignores the key principles on which the court expressly relied. The court reversed the award of prejudgment interest based on the noneconomic nature of the plaintiffs' damages. The court stated that the plaintiffs presented evidence that their injuries spanned from the time of their wrongful arrests into the future, that the plaintiffs "did not explicitly allege nor raise in substance any claim nor provide any proof for loss of use of money," and that the plaintiffs' "damages amorphously aggregated over the course of time." *Gilliam*, 62 F.4th at 849. The court stated that it would have allowed prejudgment interest "[i]f the court had been able to conclude that the jury award did not fully compensate the plaintiffs," *id*. at 849; Br. Opp. 12, but *only* if the plaintiffs' damages had been economic, such as the kind that may arise from "the failure to satisfy a contractual obligation to pay money," *Gilliam*, 62 F.4th at 849. Like respondent, the plaintiffs in *Gilliam* had no such economic damages.

The Tenth Circuit has also made known that it would not favor claims like respondent's for prejudgment interest. In *White v. Chafin*, 862 F.3d 1065 (10th Cir. 2017), the court endorsed the view that noneconomic damages are a poor fit for prejudgment interest because they continue "over an undefined period" and "the jury could ascertain the amount from a sense of how much the damages are worth at the time of trial." *Id*. at 1069. When reaching its conclusion, the court expressly rejected the argument that "a plaintiff is entitled to compensation for a delay in paying noneconomic damages" and declined to follow a Ninth Circuit decision that held that prejudgment interest may be awarded on noneconomic damages, *Barnard v. Theobald*, 721 F.3d 1069 (9th Cir. 2013). *White*, 862 F.3d at 1068-69.

Finally, respondent would face, at minimum, an uphill battle in the First Circuit. That circuit has hesitated to add prejudgment interest to noneconomic damages in section 1983 cases. *Blackburn v. Snow*, 771 F.2d 556, 573 (1st Cir. 1985) (remanding for more specific findings on need for prejudgment interest where award was based on intangible loss); *Heritage Homes of Attleboro, Inc. v. Seekonk Water District*, 648 F.2d 761, 764 (1st Cir. 1981) (agreeing that prejudgment interest is required when injuries are not intangible); *Furtado v. Bishop*, 604 F.2d 80, 97 (1st Cir. 1979) (stating that prejudgment interest will not always be necessary to fully compensate plaintiffs for intangible injuries).

Thus, respondent's claim for prejudgment interest would come out differently depending on the circuit.

Whether prejudgment interest is available for noneconomic damages should not depend on geography; awarding prejudgment interest for noneconomic damages is wrong everywhere. This court's review is warranted to resolve the conflict.

II. This Case Presents an Appropriate Question and Strong Vehicle for Resolving It.

Respondent challenges the framing of the question presented, attacking it as "enormously broad," Br. Opp. 10, and "fatally overbroad," and accusing the City of challenging "every federal statute at once," Br. Opp. 15. There are two critical flaws in this response. First, the City, as petitioner, can frame the question presented "as broadly or as narrowly" as it sees fit. *Yee v. City of Escondido*, 503 U.S. 519, 535 (1992). And, of course, the broader the application, the more cases that are impacted by a circuit split and an incorrect court of appeals decision.

Second, Bolden incorrectly describes the question presented as attacking multiple statutes. But the question presented does not pose a matter of statutory interpretation at all; it addresses prejudgment interest for noneconomic damages when a statute is silent on the matter, and federal common law is applied to fill in the gap. *See, e.g.*, *Thomason v. Aetna Life Insurance Co.*, 9 F.3d 645, 647 (7th Cir. 1993).

Respondent insists that whether prejudgment interest may be awarded will always depend on "the particular statutory context," so the question of whether prejudgment interest should be awarded for noneconomic damages "is context-specific." Br. Opp. 15. But none of the cases he cites supports the principle that context matters when it comes to prejudgment interest for noneconomic damages. Indeed, none even concerned the availability of prejudgment interest for noneconomic damages. *See West Virginia v. United States*, 479 U.S. 305 (1987) (prejudgment interest for economic damages in the form of delayed payment of a contractual obligation to the United States); *General Motors Corp. v. Devex Corp.*, 461 U.S. 648 (1983) (prejudgment interest for statutory damages for patent infringement); *Rodgers v. United States*, 332 U.S. 371 (1947) (prejudgment interest for monetary penalties). And the myriad problems with awarding prejudgment interest on noneconomic damages, which we identify in the petition and discuss below, do not depend on the statutory context.

To be sure, the propriety of awarding prejudgment interest for noneconomic damages often arises in cases like this one, where the plaintiff sues under section 1983. That is because section 1983 cases have long lifespans, Brief for International Municipal Lawyers Association as Amicus Curiae Supporting Petitioners at 7, and commonly seek noneconomic damages, *see Memphis Community School District v. Stachura*, 477 U.S. 299, 307 (1986) (compensatory damages in section 1983 cases may include intangible damages such as impairment of reputation, personal humiliation, and mental anguish and suffering). The problems involved in awarding prejudgment interest for noneconomic damages are therefore often felt most acutely in the section 1983 context.[1]

And this court's intervention on the question presented becomes more critical by the day. Awards for noneconomic damages continue to balloon. In addition to the awards we referred to in our petition, Pet. 18-19, several more multi-million dollar awards for noneconomic damages have been issued in just the last few months. *See Orellana Castaneda v. County of Suffolk*, No. 17-cv-4267 (E.D.N.Y. June 24, 2026) ($112 million); *Morant v. City of New Haven et al.*, No. 3:22-cv-00630 (D. Conn. May 29, 2026) ($38 million); *Mitchell v. Bartik*, No. 20 C 3119 (N.D. Ill. May 26, 2026) (more than $52 million); *Fulton v. Bartik*, No. 20 C 3118 (N.D. Ill. May 4, 2026) (more than $52 million); *Clark v. Kentucky et al.*, No. 3-13-cv-00419 (W.D. Ky. April 29, 2026) (more than $24 million). With awards at these levels, respondent's assertions that prejudgment interest only "fractionally affects the total award" and "surely cannot be the budget-buster petitioners portray," Br. Opp. 17, are detached from reality. When baseline jury awards are in the tens of millions of dollars, prejudgment interest awards add millions more. Local

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[1] In addition, this Court may limit or rephrase the question presented if deemed appropriate. *See Lebron v. National Railroad Passenger Corp.*, 513 U.S. 374, 382 (1995) (question that is subsidiary to the question presented and dependent on many of the same facts is included in the question presented); *Yee*, 503 U.S. at 535 (Court may rephrase question presented). Thus, the Court could decide to limit the question presented to cases brought under section 1983, since the claims here were brought under that statute.

governments already face difficult budgeting decisions and operate within tight financial constraints. Brief for International Municipal Lawyers Association as Amicus Curiae Supporting Petitioners at 7. Adding millions in prejudgment interest to already back-breaking damages awards strains limited budgets and injects immense uncertainty into financial planning.

Respondent attempts to minimize the importance of the question presented by pointing out that plaintiffs sometimes bring state law claims alongside federal claims, and prejudgment interest under state law is "independently available." Br. Opp. 17. But the notion that state laws will somehow lessen the impact of prejudgment interest awards under federal law is pure conjecture. And, in fact, many states do not allow prejudgment interest to be awarded for noneconomic damages, or curtail its availability. *See, e.g.*, *Bosem v. Musa Holdings, Inc.*, 46 So. 3d 42, 46 (Fla. 2010) (prejudgment interest not allowed for personal injury damages); *Harford County v. Saks Fifth Avenue Distribution Co.*, 923 A.2d 1, 13 (Md. 2007) (prejudgment interest not allowed in tort cases for intangible damages); *Greater Westchester Homeowners Association v. City of Los Angeles*, 603 P.2d 1329, 1338 (Cal. 1979) (prejudgment interest not allowed for "noneconomic aspects of mental and emotional injury"); Mont. Code Ann. § 27-1-210 (prejudgment interest not allowed on pain and suffering, mental anguish or suffering, and other intangible injuries); 735 Ill. Comp. Stat. 5/2-1303 (under Illinois law, government entity not liable for prejudgment interest in action brought directly or vicariously against it by the injured party); Ind. Code § 34-51-4-4 (no prejudgment interest imposed on state or any political subdivision). The question presented is highly consequential for plaintiffs and defendants across the nation.

III. The Decision Below is Wrong.

Like the Seventh Circuit in the decision below, respondent fails to grapple with the qualities of noneconomic damages that make them incompatible with prejudgment interest. He ascribes no significance to the point that economic damages can be measured by some objective yardstick, but noneconomic damages, in contrast, are "highly subjective." *Gonzalez v. United States*, 681 F.3d 949, 953 (8th Cir. 2012). In fact, it is "impossible to determine the exact value" of pain and suffering. *Bickel v. Korean Air Lines Co.*, 96 F.3d 151, 156 (6th Cir. 1996). The acceptable range for an award is "enormous." *Gonzalez*, 681 F.3d at 953. Noneconomic damages are a "rough and awkward proxy" for the harm suffered. *Limone v. United States*, 579 F.3d 79, 105 (1st Cir. 2009).

Although the law accepts the fiction that money will stand in for a plaintiff's intangible harm, pretending that prejudgment interest can be calculated on top of an amount that is already the product of a speculative exercise creates additional layers of fiction that cannot stand.

One layer of fiction is the notion that a defendant who must pay noneconomic damages at the end of a trial has been holding the plaintiff's money – or as respondent puts it, the plaintiff has given the defendant a "nonconsensual loan," and now the defendant must pay it back. Br. Opp. 17. But a defendant in this scenario is not holding any of the plaintiff's money. Petitioner here did not take one penny of Respondent's money to use during the litigation. In other words, when damages are noneconomic, there is no actual loss of use of money due when a claim accrues – which is all that prejudgment interest is meant to compensate for. *See West Virginia*, 479 U.S. at 310 n.2.

A second layer of fiction is that prejudgment interest is necessary to provide full compensation. Br. Opp. 20. Juries are routinely instructed to fashion awards that fully compensate plaintiffs, and juries do so in present-day dollars. *See* Model Civil Jury Instructions for the District Courts of the Third Circuit 4.8.1 (2026) (award amount that will fairly compensate "for any injury" the plaintiff sustained); Pattern Jury Instructions (Civil Cases) for the Fifth Circuit 15.2 (2020) (determine an amount "that is fair compensation for all of [plaintiff's] damages") Federal Civil Jury Instructions of the Seventh Circuit 7.26 (2017) (determine amount of money "that will fairly compensate Plaintiff for any injury that you find he sustained"); Manual of Model Civil Jury Instructions for the District Courts of the Eighth Circuit 4.70 (2021) (award plaintiff amount of money "that will fairly compensate the plaintiff for any damages you find the plaintiff sustained"); Manual of Model Civil Jury Instructions for the Ninth Circuit 5.2 (2026) (consider mental, physical, and emotional pain and suffering experienced and that with reasonable probability will be experienced in the future); Civil Pattern Jury Instructions for the Eleventh Circuit 5.13 (2025) (assess monetary amount that preponderance of evidence justifies as full and reasonable compensation "for all of [the plaintiff's] damages"). The jury was instructed to provide full compensation in this case. R. 599 at 43. And, of course, juries are presumed to follow instructions. *CSX Transportation, Inc. v. Hensley*, 556 U.S. 838, 841 (2009). No additional amount is needed to make a plaintiff whole.

Indeed, as we explained in our petition, Pet. 15, juries already account for the passage of time in their awards.[2] Juries adjust awards based on inflation or even "changing attitudes towards certain types of official misconduct." *Bell v. Williams*, 108 F.4th 809, 832 (9th Cir. 2024). Adding prejudgment interest results in overpayment – in effect, it provides a windfall to plaintiffs and imposes a penalty for defendants. That is at odds with a fundamental principle of prejudgment interest: it is not awarded as a penalty. *City of Milwaukee v. Cement Division, National Gypsum Co.*, 515 U.S. 189, 197 (1995).

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[2] Respondent states that the City forfeited this argument. Br. Opp. 27 n.7. The City, however, argued in its reply brief in the court of appeals that "juries factor in the time that a plaintiff had to wait for compensation." 7th Cir. Dkt. 44 at 12. Moreover, once a federal claim is properly presented, a party can make any argument in support of that claim and is not limited to the precise arguments it made below. *Yee*, 503 U.S. at 534.

The third layer of fiction is about math: prejudgment interest cannot be calculated for noneconomic damages without engaging in mathematical make-believe. The prejudgment interest formula, R. 680 at 6, assumes that the loss accrued at regular intervals over a set period. Noneconomic damages, meanwhile, "amorphously aggregate[] over the course of time," *Gilliam*, 62 F.4th at 849, and it is "difficult to determine when any particular increment of intangible loss arose," *Greater Westchester Homeowners Association*, 603 P.2d at 1338. The "fixed accrual date" of a claim that Bolden points to, Br. Opp. 28, is useful for calculating a statute of limitations. But treating the date of respondent's release as the date that all his emotional suffering came to bear is at odds with actual human experience.

Respondent accuses the City of trying to resurrect the discarded distinction between liquidated and unliquidated damages. Br. Opp. 29. That misrepresents petitioner's position and betrays a misunderstanding of unliquidated damages for economic injuries. In *Funkhouser v. J.B. Preston Co.*, 290 U.S. 163 (1933), a case that involved only economic damages, this Court held that prejudgment interest may be awarded for both liquidated and unliquidated damages. *Id*. at 168; *see also Kansas v. Colorado*, 533 U.S. 1, 10 (2001). Liquidated damages are "contractually stipulated as a reasonable estimation of actual damages to be recovered by one party if the other party breaches." Black's Law Dictionary (12th ed. 2024). That is, liquidated damages are damages that are agreed upon before a lawsuit is ever filed. Unliquidated damages are established by a judge or jury. *Id*. Since *Funkhouser* and *Kansas* both involved economic damages only, the Court had no reason to consider the problems created with extending prejudgment interest to noneconomic damages, even if they could also be characterized as unliquidated.

Moreover, a jury deciding unliquidated economic damages will base them on concrete values. For example, in an employment case, evidence can be presented about the number of days that backpay is owed or to show the amount the plaintiff would have earned per day. The jury will award an amount that can generally be traced to numerical values in the evidence presented. And a court can use those values to assess whether prejudgment interest has already been included. *See, e.g*., *Thorncreek Apartments III, LLC v. Mick*, 886 F.3d 626, 638 (7th Cir. 2018) (comparing evidence presented to ultimate award to determine that prejudgment interest was not already included); *Gierlinger v. Gleason*, 160 F.3d 858, 874-75 (2d Cir. 1998) (comparing evidence presented on loss of back wages to size of award to determine prejudgment interest was not included). This is not possible where noneconomic damages are concerned. They are, as we have explained, amorphous – there is no market rate for pain and suffering that can be broken down into a daily rate or similar numerical values.

In short, the courts need not abandon any settled principles pertaining to unliquidated economic damages to conclude that prejudgment interest should not be available for noneconomic damages.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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