No. 20-999

IN THE

Supreme Court of the United States

LLOYD INDUSTRIES, INC.,
Petitioner,

v.

RONALD WATSON,
Respondent.

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

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

A jury determined that petitioner Lloyd Industries unlawfully terminated respondent Ronald Watson based on his race and awarded Mr. Watson compensatory and punitive damages. The district court reduced the punitive damages award to an amount five times the compensatory damages award. On appeal by Lloyd Industries, the Third Circuit affirmed.

The question presented is:

Did the court of appeals correctly conclude that the punitive damages award, as reduced by the district court, did not violate due process because it was not grossly disproportionate to the gravity of Lloyd Industries' offense?

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INTRODUCTION

A jury determined that petitioner Lloyd Industries terminated respondent Ronald Watson's employment based on his race and awarded Mr. Watson compensatory and punitive damages. Considering the reprehensibility of Lloyd Industries' conduct, the ratio between the compensatory and punitive damages, and the statutory cap on damages under Title VII of the Civil Rights Act of 1964, the district court rejected Lloyd Industries' argument that a punitive damages award was improper, but reduced the punitive damages award to comport with due process. The Third Circuit affirmed, determining that the reduced punitive damages award was not disproportionate to Lloyd Industries' conduct so as to be unconstitutional.

Lloyd Industries asks this Court to grant further review of this fact-based conclusion, contending that the Third Circuit treated the single-digit ratio between the punitive and compensatory damages as a "safe harbor" that "insulates a punitive damages award from meaningful constitutional scrutiny." Pet. i. Lloyd Industries' characterization of the Third Circuit's decision, however, is not supported by the court's opinion. The Third Circuit did not create a safe harbor for any punitive damages award that is a single-digit multiple of the compensatory damages award. The Third Circuit noted that the ratio here fell within this Court's guidance and explained that it was rejecting Lloyd Industries' argument that the award was unconstitutional because that argument "ignore[d] evidence of overtly racial bias that the jury found credible." Pet. App. 3a.

Lloyd Industries also contends that the Court should grant review to "rekindle" the "rule" that

"when compensatory damages are substantial, a 1:1 ratio is the outermost limit of the due process guarantee." Pet. i. Such a "rule," however, has never existed. Rather, this Court has "consistently rejected the notion that the constitutional line is marked by a simple mathematical formula." *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 582 (1996).

Finally, Lloyd Industries asks this Court to grant review to settle "confusion" in the lower courts about the role of the Title VII statutory cap in assessing the constitutionality of punitive damages in Section 1981 cases. Pet. i. But Lloyd Industries has not shown that any such confusion exists; indeed, the case law shows consistent treatment of the Title VII cap in Section 1981 cases. And contrary to Lloyd Industries' arguments, the district court did not afford the cap "little attention or significance." *Id.* at 30. Rather, based largely on the cap, the district court significantly reduced the punitive damages award.

Based on the facts and circumstances of this case, both the district court and court of appeals determined that the punitive damages award was constitutional. That determination is correct, and the Court should deny the petition.

STATEMENT OF THE CASE

A. Ronald Watson was hired by Lloyd Industries in December 2014 to work in the company's Montgomeryville, Pennsylvania plant. Pet. App. 17a. Mr. Watson worked as both a press punch operator and assembler, spending approximately forty percent of his time on assembly. *Id.* Mr. Watson was never written up for poor job performance at Lloyd Industries, and he received compliments from the shop steward for his work. *Id.*

During Mr. Watson's time working for Lloyd Industries, Mr. Watson, Shaun Mathis, and Shawn Broadnax were the only three black employees at the Montgomeryville plant. *Id*. at 14a. Around six months after Mr. Watson started work, Lloyd Industries hired a new plant manager, Thomas Prendergast. Mr. Prendergast was not friendly toward black employees; for example, he would not respond when Mr. Mathis said good morning but would respond to the non-black employees. *Id*. at 16a, 17a; 3d Cir. App. 348.

On October 29, 2015, Mr. Prendergast told Mr. Watson that he was laying him off. When Mr. Watson asked why, Mr. Prendergast nastily responded "because I can." Pet. App. 18a; 3d. Cir. App. 476. Mr. Watson then went to speak to William Lloyd, the owner of the company, who got in his face and told him to "just take the layoff, alright?" Pet. App. 18a.

That same week, Lloyd Industries also laid off or caused to resign the other two black employees at the plant. *Id*. at 14a. One, Mr. Mathis, had asked Mr. Prendergast if he could have a more flexible schedule so he could obtain a second job. Although other employees had been given flexibility in the past, Mr. Prendergast denied the request and reduced Mr. Mathis's hours, leading him to resign effective October 26, 2015. Pet. App. 16a; 3d Cir. App. 340–41, 346, 549. And on October 30, 2015, the day after it laid off Mr. Watson, Lloyd Industries laid off the other black employee, Mr. Broadnax. Pet. App. 14a; 3d Cir. App. 302. No non-black employees were laid off at that time. 3d. Cir. App. 549.

Under the collective bargaining agreement that applied at the plant, the principle of plant-wide seniority applied to layoffs. *Id*. at 185; Pet. App. 19a.

When he was terminated, Mr. Watson had more seniority than Steve Malloy, a white employee who worked as an assembler. Pet. App. 15a, 17a. When Mr. Malloy came to Mr. Watson's work area, Mr. Watson had to show him how to do the work. *Id.* at 17a. Nonetheless, Lloyd Industries laid off Mr. Watson, not Mr. Malloy.

After Mr. Watson was terminated, a white employee named Tom Malone, who previously worked in shipping and receiving, was assigned to operate his punch press machine. Mr. Lloyd testified that one reason he terminated Mr. Watson was to make room for Mr. Malone. *Id.* at 15a; 3d. Cir. App. 314.

After his termination, Mr. Watson filled out a grievance form with his union representative, but did not hear back about the union's investigation. He subsequently filed a racial discrimination complaint with the Pennsylvania Human Rights Commission. Pet. App.18a.

Mr. Watson was distraught and depressed after his termination. *Id.* He and his long-time partner had recently bought a house, and she had to rearrange her life and work extra shifts to cover for his job loss. *Id.* at 20a. He did not find another full-time job for another two-and-a-half years. *Id.* at 19a.

B. On March 8, 2017, Mr. Watson filed this case in the Eastern District of Pennsylvania, alleging that Lloyd Industries discriminated against him based on race, in violation of 42 U.S.C. § 1981 and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2.

The district court held a jury trial in November 2018. The jury found in favor of Mr. Watson and awarded him $50,000 in emotional damages, $49,960

in back pay, and $750,000 in punitive damages. Pet. App. 5a.

After the verdict, Lloyd Industries moved for judgment as a matter of law, a new trial, or remittitur. The district court denied the motion for judgment as a matter of law or a new trial, noting that "there was ample evidence from which a reasonable jury could conclude that Lloyd Industries' proffered reason for laying off Watson—a lull in work—was pretext for racial discrimination." *Id.* at 24a.[1] The district court also noted that Mr. Prendergast "had an aggressive, somewhat hostile, manner when he testified, which is not reflected in the transcript," and which may have warranted the jury to disbelieve his testimony and affected the punitive damages award. *Id.*

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[1] At trial, Mr. Lloyd also claimed (as Petitioner does here, *see* Pet. 4) that Mr. Watson had been a poor worker who would return from lunch with alcohol on his breath. Pet. App. 14a–15a. Mr. Watson testified, however, that he did not drink on the job, *id.* at 18a, and his partner of forty years confirmed that Mr. Watson drank only socially and did not come home smelling of alcohol, *id.* at 20a. Moreover, Mr. Lloyd admitted at trial that he would let Mr. Watson use heavy machinery after lunch and acknowledged that Mr. Watson was never disciplined for performance issues. *Id.* at 15a. Although Mr. Lloyd claimed that the lack of discipline was due to a policy not to write up employees, *id.*, the plant manager, Mr. Prendergast, testified otherwise, stating that the company wrote employees up after they received a verbal warning, *id.* at 20a–21a. In addition, one of the other former employees, Mr. Mathis, testified that he had received a write-up, *id.* at 16a, and documentation introduced at trial showed that employees at the plant had been terminated based on "write up slips," 3d Cir. App. 549. Particularly given the conflicting testimony, there was ample evidence for the jury to conclude that Mr. Lloyd's testimony about Mr. Watson's job performance and alcohol use was not credible and was pretextual.

C. After requesting and receiving supplemental briefing on damages, the district court affirmed the jury's compensatory damages award, but remitted the punitive damages. *Id*. at 10a–11a.

With respect to punitive damages, the district court explained that the "Due Process Clause of the Fourteenth Amendment prohibits the imposition of grossly excessive or arbitrary punishments on a tortfeasor." *Id*. at 8a (quoting *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 417 (2003)). To determine whether the punitive damages award was grossly excessive or arbitrary, the court examined three "guideposts" set forth in *Gore*, 517 U.S. at 575–86: "(1) [the] degree of reprehensibility of the defendant's conduct; (2) the ratio of actual harm to punitive damages; and (3) the comparison of punitive damages awarded to the civil or criminal penalties that could be imposed." Pet. App. 8a.

With regard to the first *Gore* guidepost, the court explained that its analysis was guided by five factors: whether

> (1) the harm caused was physical as opposed to economic; (2) the tortious conduct evinced an indifference to or reckless disregard of the health or safety of others; (3) the target of the conduct had financial vulnerability; (4) the conduct involved repeated actions or was an isolated incident; and (5) the harm was the result of intentional malice, trickery, or deceit, or mere accident.

Id. at 11a (quoting *CGB Occupational Therapy, Inc. v. RHA Health Servs., Inc.*, 499 F.3d 184, 190 (3d Cir. 2007) (quoting *State Farm*, 538 U.S. at 419)). The court found that Mr. Watson had demonstrated that

Lloyd Industries' behavior was reprehensible. Noting that racial discrimination is "illegal and repugnant," the court rejected Lloyd Industries' argument that no punitive damages were justified. *Id.* at 8a.

With regard to the second *Gore* guidepost—the ratio of actual harm to punitive damages—the district court noted that the punitive damages award was approximately 7.5 times the compensatory damages award. It explained that neither this Court nor the Third Circuit had adopted strict ratios for punitive awards but that, in *State Farm*, this Court had stated that, "in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process." *Id.* at 9a (quoting *State Farm*, 538 U.S. at 425). The district court also explained that *State Farm* observed that, "in an earlier case affirming a punitive damages award, the Court 'concluded that an award of more than four times the amount of compensatory damages might be close to the line of constitutional impropriety.'" *Id.* (quoting *State Farm*, 538 U.S. at 425 (discussing *Pac. Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 23 (1991))).

With regard to the third *Gore* guidepost—which compares punitive damages to penalties that can be imposed—the district court acknowledged that for an employer the size of Lloyd Industries, punitive and compensatory damages under Title VII would be capped at $50,000. *Id.* at 10a. The court stated that, although Congress chose not to impose a similar cap on damages under Section 1981, the fact that it had imposed that cap for damages under Title VII was "a significant consideration." *Id.*

In light of its analysis, the similarity between claims under Title VII and Section 1981, and the fact that the punitive damages award was fifteen times the cap on damages under Title VII, the district court determined that the jury's punitive damages award was excessive and did not comport with due process. *Id.* It concluded that a punitive damages award that was five times the compensatory damages award was "reasonable in light of the facts and circumstances of this case and comports with due process," *id.*, and, accordingly, reduced the punitive damages award to $500,000, *id.* at 3a; 3d Cir. App. 21.

D. Lloyd Industries appealed to the Third Circuit, which affirmed in an unpublished decision.[2] Reviewing the constitutionality of the punitive damages award *de novo*, the court of appeals determined that the award was not "so grossly disproportional to [Lloyd Industries'] conduct as to amount to a constitutional violation." Pet. App. 3a (internal quotation marks and citation omitted). The court noted that the ratio between the compensatory and punitive damages was "1:5, a single digit ratio, which falls within the Supreme Court's guidance." *Id.* (citing *State Farm*, 538 U.S. at 410). Moreover, the court explained that Lloyd Industries' argument that the punitive damages award was excessive "ignores evidence of overtly racial bias that the jury found credible." *Id.*

The court of appeals subsequently denied Lloyd Industries' petition for rehearing and rehearing en banc. *Id.* at 27a.

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[2] In its statement of the parties to the proceeding, Petitioner mistakenly states that Mr. Watson was an appellant in the court of appeals. Pet. ii. Mr. Watson was the appellee.

REASONS FOR DENYING THE WRIT

I. The decisions below are consistent with this Court's precedents.

This Court has recognized that "[p]unitive damages may properly be imposed to further … legitimate interests in punishing unlawful conduct and deterring its repetition." *Gore*, 517 U.S. at 568. "Only when an award can fairly be categorized as 'grossly excessive' in relation to these interests does it enter the zone of arbitrariness that violates" due process. *Id.*

In *Gore*, the Court set forth three "guideposts" for courts to consider in determining whether a punitive damages award is grossly excessive: "the degree of reprehensibility of the [defendant's misconduct]; the disparity between the harm or potential harm suffered by [the plaintiff] and his punitive damages award; and the difference between this remedy and the civil penalties authorized or imposed in comparable cases." 517 U.S. at 575.

The Court elaborated on these guideposts in *State Farm*, 538 U.S. 408. The Court set forth five factors for courts to consider in determining the defendant's reprehensibility. *Id.* at 419. It declined to impose a firm constitutional limit on the ratio between the harm or potential harm to the plaintiff and the punitive damages award, but it explained that "few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process." *Id.* at 425. And it determined that the lower court's analysis in the case before it, which had focused on out-of-state and dissimilar conduct, could not sustain a punitive damages award that was 14,500 times the "most relevant civil sanction." *Id.* at 428.

In this case, the district court expressly examined each of the three *Gore* guideposts. With respect to the first guidepost, the court specifically noted that its determination on reprehensibility was guided by the five factors set forth in *State Farm*. Pet. App. 11a. With respect to the second guidepost, the court quoted *State Farm*'s statement that few awards exceeding single-digit ratios will satisfy due process and its suggestion that the punitive damages award in a prior case, which had been more than four times the compensatory damages award, "might be close to the line of constitutional impropriety." *Id.* at 9a (quoting *State Farm*, 538 U.S. at 425). Turning to the third guidepost, the district court directly compared the punitive damages award to the cap on damages under Title VII, concluding, based largely on that comparison, that the punitive damages awarded by the jury were excessive. *Id.* at 10a. Based on its analysis, the district court concluded that a "punitive damages award that is five times the compensatory damages is reasonable in light of the facts and circumstances of the case," *id.*, and it reduced the punitive damages award to $500,000, *id.* at 3a; 3d Cir. App. 21.

The Third Circuit reviewed the district court's decision *de novo* and agreed that the reduced award comported with due process. Pet. App. 3a. Citing *State Farm*, the court of appeals explained that the ratio of compensatory to punitive damages fell within this Court's guidance. The court then further explained that Petitioner's argument that the award was unconstitutional "ignore[d] evidence of overtly racial bias that the jury found credible." *Id.*

Nonetheless, Petitioner asserts that the decisions below "conflict with this Court's precedents." Pet. 8.

According to Petitioner, by not explicitly discussing each of the three *Gore* guideposts and five reprehensibility factors, the court of appeals "rubber stamped" the district court's award, "effectively disregarded" the first and third guideposts, and "ignore[d] the reprehensibility guidelines." *Id.* at 17, 22, 23. That the court of appeals did not mechanically walk through each of the guideposts and factors, however, does not demonstrate that the court "abandon[ed] its function." *Id.* at 23. To the contrary, by explaining that it was rejecting Petitioner's argument that the punitive damages award was unconstitutional, which had included arguments about the three *Gore* guideposts and five reprehensibility subfactors, the court of appeals made clear that it disagreed with Petitioner that the award violated due process based on those considerations. Pet. App. 3a.

Likewise, the Third Circuit's recognition that the ratio of punitive damages to compensatory damages falls within this Court's guidance does not mean that the court "transform[ed] any single digit award into a safe harbor," "supplanting the other constitutional guideposts." Pet. 16, 17. The court of appeals did not affirm the award simply because it reflected a single-digit ratio. Rather, the court explained why it was rejecting Petitioner's argument that the award was grossly disproportionate to Petitioner's conduct: because that argument "ignore[d] evidence of overtly racial bias that the jury found credible." Pet. App. 3a.

The court of appeals' explanation demonstrates that, although it disagreed with Petitioner about the reprehensibility of Petitioner's conduct, the Third Circuit did not "effectively disregard" reprehensibility as a factor. Pet. 17; *see also* Pet. App. 8a (district court

opinion stating that racial discrimination is "repugnant" and concluding that Mr. Watson "demonstrated that Defendant's behavior was reprehensible"). And *State Farm*'s discussion of factors relevant to reprehensibility does not require courts to ignore the self-evidently reprehensible nature of certain behavior, such as intentional racial discrimination.

Petitioner contends that the decision below is part of a trend of lower courts "provid[ing] safe harbor to single-digit ratios and [] rubber-stamp[ing] all such ratios without performing a full review." Pet. 25. That courts do not always frame their opinions explicitly in terms of each guidepost and subfactor, however, does not demonstrate a failure to "conduct meaningful reprehensibility analyses." *Id*. at 19. Where a defendant's arguments are sufficiently meritless to be disposed of quickly, a relatively short decision does not indicate that the court abandoned its responsibility to undertake the required review. Nor does a court's decision to uphold a single-digit ratio award indicate that the court provides a safe harbor to single-digit awards. And although Petitioner quotes an article asserting a disparity in the way some lower courts have treated the second *Gore* guidepost, *see* Pet. 21–22 & nn.1–3 (comparing, *e.g.*, a decision of a district court in the Fifth Circuit with a subsequent Fifth Circuit decision), Petitioner does not contend that there is a split of authority between the Third Circuit and other courts of appeals in their treatment of punitive damages awards.

In this case, Lloyd Industries intentionally discriminated against Mr. Watson, a financially vulnerable man, acting with malice or reckless indifference to his federally protected rights. *See* 3d Cir. App. 46.

Lloyd Industries terminated Mr. Watson's employment, based on his race, depriving him of his source of income, during the same week that it terminated or caused to resign all of the black employees at the same plant. The district court reduced the amount of punitive damages to an amount only five times the compensatory damages, basing the reduced award on the "facts and circumstances of this case," and taking into account the cap on damages under Title VII. Pet. App. 10a. Under the circumstances here, the Third Circuit correctly concluded that the reduced punitive damages award was not grossly excessive in relation to Petitioner's wrongful conduct. *Id*. at 2a–3a. The Third Circuit's decision is consistent with this Court's precedent and correct, and the petition for review should be denied.

II. This Court should not adopt the bright-line 1:1 ratio suggested by Petitioner.

This Court has "consistently rejected the notion that the constitutional line is marked by a simple mathematical formula." *State Farm*, 538 U.S. at 424 (quoting *Gore*, 517 U.S. at 581); *see also id*. at 425 ("[T]here are no rigid benchmarks that a punitive damages award may not surpass."). Nonetheless, Petitioner asks this Court to grant review to "rekindle" the "rule" that "when compensatory damages are substantial, a 1:1 ratio is the outermost limit of the due process guarantee." Pet. i. But the sentence on which Petitioner relies for its argument—*State Farm*'s statement that, "[w]hen compensatory damages are substantial, then a lesser ratio [than those the Court had previously upheld], perhaps only equal to compensatory damages, can reach the outermost limit of the due process guarantee," 538 U.S. at 425—did not establish

a "rule" that a 1:1 ratio is the largest permitted in all cases involving substantial damages. To the contrary, this Court has consistently recognized that the precise award that is permissible depends on "the facts and circumstances of the defendant's conduct and the harm to the plaintiff." *Id.*; *see also Gore*, 517 U.S. at 581–82. Petitioner offers no reason why this Court should abandon its longstanding rejection of "a categorical approach" and adopt Petitioner's rule that a 1:1 ratio is the outermost limit in cases involving substantial damages, regardless of the egregiousness of the defendant's conduct. *Gore* 517 U.S. at 582. Moreover, if the Court were to consider adopting Petitioner's rule, it should do so in a case in which that rule would apply—that is, a case with a substantial compensatory damages award. This case, in which the compensatory damages were under $100,000, is not such a case. *See*, *e.g.*, *Haslip*, 499 U.S. at 24 & n.2 (upholding as constitutional a punitive damages award reflecting a 4.2:1 ratio where the compensatory damages were $200,000—over twice the compensatory damages at issue here).

III. The lower courts are not confused over the third *Gore* guidepost.

After considering the first two *Gore* guideposts, the district court stated that, under the third guidepost, it "must recognize the cap on punitive and compensatory damages under Title VII." Pet. App. 9a–10a. "While Congress chose not to impose a statutory cap on damages under § 1981," the court explained, "the fact that it has imposed this limit for the same behavior is a significant consideration." *Id.* at 10a. Based on its analysis, "the similarity between the Title VII and § 1981 claims," and the fact that the jury's punitive

damages award was "fifteen times the statutory cap on all damages under Title VII," the court concluded that the jury's punitive damages award was excessive and remitted the punitive damages from $750,000 to $500,000, reducing the ratio of punitive to compensatory damages from 7.5:1 to 5:1. *Id.*; 3d Cir. App. 21.

Accordingly, Petitioner's contention that the "third guidepost has been all but ignored," Pet. 29, has no support in this case, in which the district court considered the guidepost expressly. In fact, far from paying only "lip service to the third guidepost," *id.* at 30, the district court remitted the punitive damages award based largely on the comparison of the punitive damages award to the Title VII statutory cap.

Petitioner asserts that "the case law is in disarray regarding the force to be given to the [Title VII] statutory cap on damages." *Id.* at 29. Rather than demonstrating disarray, however, the cases Petitioner cites for that assertion, *Williams v. ConAgra Poultry Co.*, 378 F.3d 790, 798 (8th Cir. 2004), and *Bains LLC v. Arco Prods. Co.*, 405 F.3d 764, 777 (9th Cir. 2005), take similar approaches to the Title VII cap: Like the district court here, they view the cap as a useful comparator, while also recognizing that it does not apply to Section 1981. *See Williams*, 378 F.3d at 798 (explaining that it would "be inappropriate for the courts simply to extend the Title VII limitations to § 1981 cases under the guise of interpreting the Constitution," but that the comparison to Title VII is a "relevant consideration"); *Bains*, 405 F.3d at 777 (9th Cir. 2005) (stating that the Section 1981 cap is an "appropriate benchmark for reviewing § 1981 damage awards, even though the statute [does] not apply to § 1981 cases"); *see also Swinton v. Potomac Corp.*, 270

F.3d 794, 820 (9th Cir. 2001) (noting that the Title VII cap does not apply to Section 1981 cases, but that the difference between the punitive damages award and the Title VII cap weighed in favor of a reduction); *Kim v. Nash Finch Co.*, 123 F.3d 1046, 1068 (8th Cir. 1997) (considering the Title VII cap among other factors in holding that the punitive damages award, as remitted by the district court, was not excessive).

Citing *Bogle v. McClure*, 332 F.3d 1347 (11th Cir. 2003), which involved a Section 1983 claim, Petitioner suggests that the Eleventh Circuit takes a different approach than the Eighth and Ninth Circuits. *See* Pet. 33. *Bogle* agreed, however, that "a comparison to the Title VII cap may be instructive," though, as here and in the Eighth and Ninth Circuits, that court declined to hold that the Title VII cap applied to a claim that did not arise under Title VII. *Id.* at 1362. Furthermore, *Bogle* considered the Title VII cap and concluded that, although the punitive damages awarded were "more than the damages available under Title VII for analogous conduct, the difference [was] not enough, by itself, to suggest that the punitive damages award violates due process." *Id.* Citing *Bogle*, the Eighth Circuit's decision in *Williams*, and the Ninth Circuit's decision in *Swinton*, the Eleventh Circuit likewise considered the Title VII cap in a more recent Section 1981 case, *Goldsmith v. Bagby Elevator Co.*, 513 F.3d 1261, 1284–85 (11th Cir. 2008).

Petitioner also claims that lower courts' treatment of the Title VII cap cannot "be harmonized" because, after courts take the Title VII cap into account, the ratio between the resulting awards and the Title VII cap differs in different cases. *See* Pet. 34–35. The third *Gore* guidepost, however, is only one of several factors

that courts consider in determining whether a punitive damages award is excessive. The ratio between the Title VII cap and the ultimate punitive damages award may differ in different cases because of differences unrelated to the cap, such as differences in the reprehensibility of the defendant's conduct or in the amount of compensatory damages awarded. For example, Petitioner notes that, in *Bains*, the Ninth Circuit remanded for the district court to reduce the punitive damages to an amount 1–1.5 times the Title VII cap, whereas in *Williams*, the Eighth Circuit held that the punitive damages award had to be remitted to an amount four times the Title VII cap. In *Bains*, however, an amount 1.5 times the Title VII cap was nine times the compensatory damages, while in *Williams*, an amount four times the Title VII cap was equal to the compensatory damages.

Simply put, that different punitive damages awards are constitutional in cases with different facts and circumstances does not demonstrate confusion among the lower courts. *See TXO Prod. Corp. v. All. Res. Corp.*, 509 U.S. 443, 457 (1993) (plurality opinion) ("[A] jury imposing a punitive damages award must make a qualitative assessment based on a host of facts and circumstances unique to the particular case before it."). "Because no two cases are truly identical, meaningful comparisons of such awards are difficult to make." *Id.* "The precise award in any case … must be based upon the facts and circumstances of the defendant's conduct and the harm to the plaintiff." *State Farm*, 538 U.S. at 425. Here, based on the facts and circumstances of this case, the court of appeals correctly held that the district court's reduced punitive damages award was constitutional. No further review is required.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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