No. 17-22

# In the Supreme Court of the United States

FLOYD G. ELMORE,

*Petitioner*,

v.

HARBOR FREIGHT TOOLS USA, INC.,

*Respondent*.

*On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit*

## BRIEF IN OPPOSITION


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## QUESTION PRESENTED

Respondent restates the Question Presented as follows:

Whether the Court should grant review when: (1) the Complaint would not survive in any Circuit; (2) the difference among the Circuits regarding the particular §1981 section at issue is overstated, long-standing, and immaterial; and (3) the posited cause of action arises infrequently and is of diminished importance because it is, even where given its broadest scope, duplicative of state law torts.

## STATEMENT REQUIRED BY RULE 29.6

Respondent Harbor Freight Tools USA, Inc. is wholly owned by HFT Holdings, Inc., a privately held corporation.

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## INTRODUCTION

The Petition for a Writ of Certiorari presents no question worthy of this Court's review. The Petition rests on an asserted Circuit split regarding an allegedly recurring and important question of law—*i.e.*, whether an action under § 1981's "full and equal benefit of all laws and proceedings for the security of persons and property" provision requires "state action." The asserted split is overstated and long-standing. Moreover, such split is immaterial because Petitioner's claim would not survive under any Circuit's requirements for a claim under this provision.

Furthermore, the question presented is neither particularly recurring nor particularly important. There are in fact "few cases in [the 2nd] circuit or elsewhere that arise under the 'equal benefit' clause of § 1981." *Gignac v. Ontario Cnty*., 2012 WL 11348 *1 (W.D.N.Y.). Petitioner's attempt to suggest otherwise, by conflating all § 1981 claims, is misleading. Additionally, the purported legal importance of the issue is further diminished because, even when given its broadest scope, the prerequisite of an independent state law tort for a § 1981 claim makes the purported claim inherently duplicative.

Petitioner's policy argument—*i.e.*, § 1981's scope must be unnaturally stretched, lest discrimination go unpunished— is also misplaced. Indeed, it has already been rejected. *See Domino's Pizza, Inc., v. McDonald*, 546 U.S. 470, 479 (2006). The availability of other legal prohibitions against the same alleged conduct makes a strained reading of § 1981 unnecessary, even from a normative view of the law. *Id.* "The most important response, however, is that nothing in the text of § 1981

suggests that it was meant to provide an omnibus remedy for *all* racial injustice." *Id.*

## STATEMENT OF THE CASE

On "many occasions," Petitioner Floyd Elmore, an African-American, visited Respondent Harbor Freight's hardware store in Independence, Missouri. (Pet. App., 45a, at ¶¶ 8-10). During his visits, Mr. Elmore purchased "many items." (*Id*., App., 45a-46a, at ¶¶ 8-10). Mr. Elmore does not allege he experienced any problem during these pre-May 9, 2015 visits.

On May 9, 2015, Mr. Elmore entered a Harbor Freight store to look at jackhammers. (Pet. App., 45a, at ¶¶ 9-10). As with his other visits, Mr. Elmore experienced no problem while he looked at the jackhammers. To the contrary, Mr. Elmore was repeatedly assisted by a store employee without incident. (Pet. App. 45a-46a, at ¶¶ 11-18). Mr. Elmore thought one model was too light and another too heavy, and began leaving the store. (*Id*. at ¶¶ 18-19).

While Mr. Elmore was on his way out of the store, he was confronted by "the female manager of the store." (Pet. App., 46a, at ¶ 20). Mr. Elmore alleges the manager told him "I caught you stealing here earlier today and told you not to come back." (*Id.* at ¶ 20). Mr. Elmore denied that he was the person the store manager had earlier caught stealing. (*Id*. at ¶ 21). When the manager responded "I'll call the police", Mr. Elmore told her "Go ahead, call them." (*Id.* at ¶ 23). According to the Complaint, "the female manager" did then call the police. (*Id.* at ¶ 25).

According to Mr. Elmore, "At this point, the female manager's boyfriend or husband yelled at Elmore."

(Pet. App., 47a, at ¶ 24). Mr. Elmore does not allege the "boyfriend or husband" worked for Harbor Freight, and he does not allege the "boyfriend or husband" yelled anything related to race.

For unexplained reasons, after the "boyfriend or husband" yelled at him, Mr. Elmore then left the store, but shortly thereafter, returned to the store with his wife. (Pet. App., 47a, ¶ 26). After he returned to the store, Mr. Elmore claims "the manager's boyfriend/husband" made an obscene gesture ("the finger") toward them. (Pet. App., 47a, ¶ 26). Mr. Elmore does not allege the display of "the finger" has any racial connotation.

Mr. and Mrs. Elmore then waited outside the store. (Pet. App., 47a, ¶ 27).

Mr. Elmore does not complain about any other conduct by the store manager or her purported "boyfriend or husband."

According to Mr. Elmore, the Independence police arrived and asked "What's the problem here?" (Pet. App., 47a, ¶ 28-29). Mr. Elmore, who had chosen to wait, says he told the police what happened. The police also questioned "the female manager." (*Id.*). The police told him "'it was a civil matter' and he should leave." (*Id.*). That is all. Mr. Elmore makes no claim he was detained or interrogated about theft.

Mr. Elmore filed a lawsuit claiming Harbor Freight, motivated by his race, violated § 1981 by intentionally interfering with his right "to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens." 42 U.S.C. § 1981. Harbor Freight filed a Rule 12(b)(6) motion to

dismiss because a cause of action under that provision of § 1981, which is intended only to remove obstacles to equal participation in the legal system, requires state action.

The District Court dismissed the § 1981 claim. (Pet. App., 34a-42a). The Eighth Circuit affirmed. (*Id*. at. 1a-6a). "Because the state is the sole source of the law, it is only the state that can deny the full and equal benefit of the law." (*Id*. at 4a.) (quoting *Youngblood v. Hy-Vee Food Stores, Inc.*, 266 F.3d 851, 855 (8th Cir. 2001)). Mr. Elmore's petition for rehearing *en banc* was denied.

## REASONS FOR DENYING THE PETITION

### I. The Circuit Split Is Overstated, Long-standing, And Immaterial.

Petitioner's certiorari request largely relies on an asserted circuit split regarding the scope of § 1981's "full and equal benefit of all laws and proceedings for the security of persons and property" provision. The asserted circuit split, however, is overstated, long-standing, and, in any event, immaterial because Petitioner's Complaint would be dismissed under *every* Circuit's requirements for his putative cause of action. Thus, even if there was an issue worthy of the Court's attention, the case presents a poor vehicle for review.

#### A. The Courts Of Appeals Are In General Agreement That What The Provision Protects Is Equal Treatment In The Legal System.

The Circuits that have addressed the issue are in general agreement about what is protected by § 1981's

"full and equal benefit of all laws and proceedings for the security of persons and property" provision. The provision ensures equal treatment in the legal system itself.

> § 1981 was designed to remove obstacles to the full participation of blacks in the legal system . . . If the state enforces contracts among white persons, it has to give blacks the same benefit—and in the same way, giving equal damages for equal wrong done. If it affords tort remedies to whites, it must afford equal remedies to blacks. If it prosecutes crimes against whites in order to protect their persons and property, it must prosecute crimes against blacks.

*Palmer v. Bd. of Ed. Of Cmty. Unit Sch. Dist. 201-U, Will Cnty., Ill.*, 46 F.3d 682, 687 (7th Cir. 1995) (rejecting claim brought under "full and equal benefit" provision). *See also Bilello v. Kum & Go., LLC*, 374 F.3d 656, 661 (8th Cir. 2004) ("Because the state is the sole source of the law, it is only the state that can deny the full and equal benefit of the law.") (quoting *Youngblood*, 266 F.3d at 855); *Chapman v. Higbee Co.*, 256 F.3d 416, 421 (6th Cir. 2001) ("§ 1981 was designed to remove obstacles to full participation in the legal system and to provide blacks equal access to legal remedies and processes"), *rev'd on other grounds*, 319 F.3d 825 (6th Cir. 2003); *Shaare Tefila Congregation v. Cobb.*, 785 F.2d 523, 526 (4th Cir. 1986) ("The words 'full and equal benefit of all *laws and proceedings* for the security of persons and property' suggest a concern with relations between the individual and the state.") (internal punctuation and citation omitted), *rev'd on*

*other grounds*, 481 U.S. 615 (1987); *Mahone v. Waddle*, 564 F.2d 1018, 1029 (3d Cir. 1977) ("The state, not the individual is the sole source of law, and it is only the state acting through its agents, not the private individual, which is capable of denying to blacks the full and equal benefit of the law.").

### B. Of The Circuits That Have Addressed The Nature Of An Action Under The Provision, Only One Circuit Meaningfully Differs From The Others.

That generally recognized statutory purpose —*i.e.*, ensuring equal treatment in the legal system — is reflected in the Eighth Circuit's "state action" requirement. "Because the state is the sole source of the law, it is only the state that can deny the full and equal benefit of the law. Therefore, only state action can give rise to a cause of action under the full-and-equal-benefit clause." (Pet. App., 4a).

The other Circuits to have addressed the issue, save one, do not meaningfully differ in their conception of the cause of action.[1] The Third and Fourth Circuits explicitly agree that the nature of the cause of action requires "state action." *Brown v. Philip Morris Inc.*, 250 F.3d 789, 799 (3d Cir. 2001); *Mahone*, 564 F.2d at 1029-30 ("The words 'full and equal benefit of all laws and proceedings for the security of persons and property' . . . suggest a concern with relations between the individual and the state, not between two individuals."); *Shaare Tefila*, 785 F.2d at 525-26. In

[1] And the difference in the Second Circuit's conception is immaterial here. See, *infra*, II.C.

*Palmer,* the Seventh Circuit made clear its similar view by: (1) recognizing the provision "was designed to remove obstacles to the full participation of blacks in the legal system"; and (2) providing examples of prohibited conduct, all of which involve state action. 46 F.3d at 687. The Sixth Circuit does not expressly require state action, but recognizes its distinction is likely one without a difference. "A century of Fourteenth Amendment adjudication has … made it understandably difficult to conceive of what might constitute a deprivation of the equal protection of the laws by private persons." *Chapman*, 319 F.3d at 831 (internal punctuation and citation omitted).[2] Indeed, *Chapman* involved misconduct that "a reasonable jury could find . . . fairly attributable to the state." *Id.* at 834-35 (an off-duty sheriff's deputy, wearing his official sheriff's department uniform, badge, and side-arm detained and searched plaintiff). The Eighth Circuit has similarly suggested it would recognize a claim alleging misconduct attributable to the state. *See Bilello*, 374 F.3d at 661. Petitioner has made no such allegations.

Only the Second Circuit arguably views the cause of action more broadly, and it has done so since 2003 without creating an outcry or need for this Court's intervention. The Second Circuit concluded a plaintiff has a cause under § 1981 when he or she alleges the

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[2] Although it recognized the distinction was likely hypothetical, the Sixth Circuit declined to make "state action" an element of the cause of action. "There is nothing unworkable, however, about the proposition that a given statute may proscribe conduct beyond that which all of those persons the statute regulates are actually capable of engaging in." *Id.* at n. 2.

defendant, with a discriminatory purpose, violated a state law regarding the security of persons and property. *Phillip v. Univ. of Rochester*, 316 F.3d 291, 297-98 (2d Cir. 2003) (alleging false arrest and imprisonment, battery and excessive use of force, assault, and negligent infliction of emotional distress against university and its security guards); *Wong v. Mangone*, 450 Fed. Appx. 27, *30 (2d Cir. 2011) (alleging assault and battery against retired police officer who fought and detained plaintiff).[3] For almost 15 years, the Second Circuit's conception, which by definition makes the cause of action duplicative, has tolerably co-existed with the other Circuits'.

### C. Petitioner's Complaint Would Not Survive In Any Circuit.

Even if there were a circuit split deserving of this Court's attention, this case presents a poor vehicle to review it. The differences among the Circuits are immaterial because Petitioner's Complaint would fail under *every* Circuit's requirements for the cause of action. Moreover, Mr. Elmore has failed to plausibly allege even the most basic component of any § 1981 claim—–*i.e.,* intentional race discrimination.

First, Mr. Elmore has not alleged facts that would place him within any Circuit's iteration § 1981's "full and equal benefit of all laws and proceedings for the security of persons and property" provision. Mr. Elmore does not allege he was denied equal treatment in or by

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[3] Notably, in both *Phillip* and *Wong*, the defendants acted in a manner consistent with police officers, and played a role in the plaintiffs' arrest and detention by the police.

the legal system. Mr. Elmore does not allege that anyone created or maintained any obstacle to equal treatment by the legal system. Indeed, Mr. Elmore does not plausibly allege denial of any particular right, much less that he was denied it because of race. Moreover, Mr. Elmore does not allege inappropriate state action, whether by the state, or through private conduct attributable to the state. Consequently, Mr. Elmore's claim not only fails in the Eighth Circuit, but it also would have failed in the Third, Fourth, Sixth, and Seventh Circuits.

Mr. Elmore's claim would also fall short in the Second Circuit. To state a claim in the Second Circuit, Mr. Elmore would have had first to allege Harbor Freight committed an independently actionable violation of state law. *Phillip*, 316 F.3d at 297-98; *Murray v. NYC Dept. of Corr.*, 2016 WL 5928672 *4 (E.D.N.Y.) ("A violation of § 1981's equal benefit clause, however, requires that at least some of Defendants' challenged actions constituted a tort."); *Frierson-Harris v. Hough*, 2006 WL 298658 * 7 (S.D.N.Y.) (the Second Circuit "has never suggested that it would create a cause of action where none existed before"). But Mr. Elmore never alleged any such independent cause of action.

Although Mr. Elmore alleges Harbor Freight negligently trained and supervised its employees, even he admits those claims are not independent. His negligence claims circularly depend on a presupposition that § 1981 imposed a duty on Harbor Freight to refrain from the alleged misconduct. (Joint App., Case No. 16-1280, p. 52). Similarly, because negligent training and supervision claims are merely forms of

imputed liability, and there is no alleged employee misconduct aside from the § 1981 claim, his negligence claims are not separately actionable. *See Clevenger v. Howard*, 2015 WL 7738372 *5 (W.D. Mo.); *McHaffie By and Through McHaffie v. Bunch*, 891 S.W.2d 822825-26 (Mo. 1995). Because Mr. Elmore's claim "would create a cause of action where none existed before," it would also fail in the Second Circuit. *Frierson-Harris*, 2006 WL 298658 at *7.[4]

Second, Mr. Elmore's Complaint would also fail in every Circuit because it lacks plausible factual allegations to support his conclusion of racial animus. To survive a Rule 12(b)(6) motion, a § 1981 plaintiff must plead facts giving rise to a plausible inference the defendant's conduct was motivated by purposeful race discrimination. (Pet. App., 3a-4a); *Wong*, 450 Fed. Appx. at 2. "A claim has facial plausibility (only) when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "Threadbare recitals

[4] Furthermore, even if the negligence claims did not circularly depend on Mr. Elmore's § 1981 claim, he has not sufficiently alleged them. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Although long on conclusions, the Complaint is devoid of facts from which a court could reasonably find that Harbor Freight negligently trained or supervised anyone. *Id.*; *Clevenger*, 2015 WL 7738372 at *5 (citing *Iqbal*, 556 U.S. at 679). Indeed, most of the factual allegations are aimed at the manager's "boyfriend /husband." The Complaint is silent about any legal relationship between the "boyfriend/husband" and Harbor Freight, and equally silent as to how Harbor Freight could be liable for his conduct under Missouri law.

of the elements of a cause of action, supported by mere conclusory statements, do not suffice. *Id.*

Mr. Elmore alleges he is African-American, was wrongly accused, and was rudely treated. But Mr. Elmore alleges no facts to support his conclusion that he was accused or mistreated *because* of his race. It is simply not sufficient to plead "I am African-American, and I was mistreated, and therefore I conclude I was mistreated because I am African-American." For example, Mr. Elmore fails to allege the manager (or, for that matter, her supposed "boyfriend/husband") made derogatory racial comments, or treated him differently than a similarly situated person of another race. *See Hager v. Arkansas Dept. of Health*, 735 F.3d 1009, 1015 (8th Cir. 2013) (conclusory allegations of discrimination, without factual allegations of disparate treatment or facially discriminatory comments, fail to state a claim). "In support of his claim, [Mr. Elmore] merely alleges [his] protected class and harm by [Harbor Freight]. Standing alone, these facts do nothing to make the allegation of discrimination 'plausible' as required by *Iqbal*." *Hunter v. Anderson*, 2013 WL 3974342 *10 (D. Minn.).

## II. Petitioner Overstates The Importance Of The Legal Issue.

Mr. Elmore secondarily argues review should be granted because of the important and recurring nature of the underlying legal issue. Race discrimination is obviously offensive and an important issue. The legal issue presented, however, is neither particularly recurring nor particularly important.

### A. The Legal Issue Arises Infrequently.

Mr. Elmore misleads when he suggests the legal issue presented frequently arises.

In reality, there are "few cases in [the 2nd] circuit or elsewhere that arise under the 'equal benefit' clause of § 1981." *Gignac*, 2012 WL 11348 at *1. Mr. Elmore's suggestion to the contrary is based on irrelevant statistics regarding *all* § 1981 claims, not just claims under the specific § 1981 provision at issue in his lawsuit. Mr. Elmore acknowledges his conflation, but then attempts to minimize it by noting, without support, "many" cases are filed under mixed theories. Mr. Elmore does not say exactly how "many." But, whether filed separately or under mixed theories, the fact remains "few cases . . . arise under the 'equal benefit' clause." *Id.*

Moreover, Mr. Elmore ignores that the specific issue he presents—*i.e.,* whether "state action" is required—is material in only a subset of the already-small number of cases filed under the "equal benefit" clause. Some "equal benefit" cases, like Mr. Elmore's, fail for reasons unrelated to the "state action" issue. *See, e.g.*, *Murray*, 2016 WL 5928672 at * 4 (insufficient allegation of racial animus); *Gignac*, 2012 WL 113348 at *2 (insufficient evidence of racial animus); *Jones v. J.C. Penney's Dept. Stores, Inc.*, 2007 WL 1577758 at *18 (no independent tort); *Frierson-Harris*, 2006 WL 298658 at *7 (no independent tort).

### B. The Offensiveness Of Race-Based Conduct Does Not Make It Important To Grant Certiorari Review.

Mr. Elmore similarly overstates the importance of resolving the legal question he presents. Mr. Elmore suggests it is important to eliminate the "state action" requirement, lest offensive race-based conduct go unpunished. Mr. Elmore is mistaken.

At most, Mr. Elmore has plausibly alleged a case of mistaken identity, not intentional race discrimination. Accordingly, even in his own case, Mr. Elmore's premise of unpunished racial conduct is false.

Moreover, even if Mr. Elmore had made substantial allegations of racially-motivated conduct by Harbor Freight, it does not follow that such conduct must be prohibited by § 1981's "full and equal benefit of all laws and proceedings for the security of persons and property" provision. Indeed, this Court has already rejected Mr. Elmore's argument.

In *Domino's Pizza*, the plaintiff (like Mr. Elmore) argued, "[u]nless his reading of [§ 1981's contract provision] prevails . . ., many discriminatory acts will go unpunished." 546 U.S. at 479. This Court responded with two points, both equally applicable here. First, the Court pointed out that there are other laws and discrimination statutes that prohibit various offensive acts, including conduct that may be racially offensive. *Id.* That point is especially powerful here because, even under the Second Circuit's view of the provision, a claim for violation of the "full and equal benefit of all laws and proceedings for the security of persons and property" provision is, by definition, always duplicative

of an existing state law claim. *See, supra* at I.B. It cannot plausibly be argued there is some crucial societal need to provide an extra cause of action for the same conduct. Second, "[t]he most important response . . . is that nothing in the text of § 1981 suggests that it was meant to provide an omnibus remedy for *all* racial injustice." *Id.*

## III. The Complaint Was Correctly Dismissed.

Mr. Elmore is also incorrect about the merits of his Complaint and his "state action" argument. The Complaint was correctly dismissed.

The provision at issue guarantees "the right . . . to full and equal benefit of all laws and proceedings for the security of persons and property." Mr. Elmore appears to believe the provision provides a federal remedy for any conduct he finds racially offensive. But § 1981 is not "meant to provide an omnibus remedy for all racial injustice." *Domino's Pizza*, 546 U.S. at 479.[5] Moreover, the particular § 1981 provision at issue is limited to removing "obstacles to the full participation of blacks in the legal system." *Palmer*, 46 F.3d at 687; *Chapman*, 256 F.3d at 421. Mr. Elmore, however, has not alleged Harbor Freight somehow denied him full and equal treatment in the legal system. And even if he had alleged Harbor Freight denied him equal treatment in the legal system, Mr. Elmore has not sufficiently alleged any conduct by Harbor Freight was motivated by his race.

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[5] Perhaps the Second Circuit would have ruled differently in *Phillip* if, at the time, it had the benefit of this Court's admonition in *Domino's Pizza*.

Moreover, Mr. Elmore is wrong about the "state action" requirement.

First, the "state action" requirement logically follows from the purpose of the provision. Courts of Appeals agree that the provision "was designed to remove obstacles to full participation in the legal system and to provide blacks equal access to legal remedies and process, not to federalize private torts." *Chapman*, 256 F.3d at 422. *See also Palmer*, 46 F.3d at 687 ("§ 1981 was designed to remove obstacles to the full participation of blacks in the legal system."). And, as the Eighth Circuit has concluded: "Because the state is the sole source of the law, it is only the state that can deny the full and equal benefit of the law." (Pet. App., 4a.) (quoting *Youngblood*, 266 F.3d at 855 (2001)). The Third and Fourth Circuits agree with that logic. Although the Sixth Circuit has refused to include a "state action" requirement, even it does not quibble with the logic——*i.e.*, it is "difficult to conceive of what might constitute a deprivation of the equal protection of the laws by private person." 319 F.3d at 831. Indeed, the *Chapman* Court acknowledged the distinction it makes may be one that exists only hypothetically: "Dillard's argues that [discarding the state action requirement] renders the statute internally inconsistent by protecting against private impairment of rights that private actors cannot impair. . . . There is nothing unworkable, however, about the proposition that a given statute may proscribe conduct beyond that which all of those persons the statute regulations are actually capable of engaging in." *Chapman*, 319 at n. 2.

Second, nothing about the 1991 amendments to § 1981 obviates the need to allege "state action" to state

a claim under the "full and equal benefit of all laws and proceedings for the security of persons and property" provision. The 1991 amendments, including the addition of subsections (b) and (c), were wholly directed at a different aspect of § 1981(a)—*i.e.*, the prohibition against contract discrimination. The House Committee Report regarding the amendment was specifically entitled, "Restoring Prohibition Against All Racial Discrimination *in the Making and Enforcement of Contracts*." *See* H.R. Rep. 102-40(II), 35-37, 1991 U.S.C.C.A.N. 694, 728-731 (emphasis supplied). Moreover, it expressly states, "The Committee intends to prohibit racial discrimination in all *contracts*, both public and private." *Id.* (emphasis supplied). Moreover, nothing about subsection (c) alters the logic that "because the state is the sole source of the law, it is only the state that can deny the full and equal benefit of the law." (Pet. App., 4a). In the same way, subsection (c) cannot eliminate "state action" as a requirement for a cause under § 1981's prohibition against discrimination regarding "punishment, pains, penalties, taxes, licenses, and exactions." That provision by its nature also "necessarily involves state actors," *Bakrishnan v. Bd. of Sup. Of Louisiana State Univ.*, 452 Fed. Appx. 495, 498 (5th Cir. 2011).

Third, this Court and the Courts of Appeals have carefully delineated the application of § 1981's "contract" provision, including in the retail context. If a retail customer could file suit any time he or she claims to have been treated rudely because of his or her race, that jurisprudence would have been unnecessary and for naught. Indeed, if Mr. Elmore's reading prevails, § 1981 would become the very "omnibus

remedy for all racial injustice" that this Court has said it is not. *Domino's Pizza*, 546 U.S. at 479.

This Court should not spend its time reviewing a minor difference among the Circuits regarding a statutory provision that, even where given its broadest iteration, is both seldom-used and inherently duplicative. The inaptness of the case for review is further reinforced by the facts that Mr. Elmore's claim would not survive under any Circuit's requirements for his purported cause of action, and lacks any factual allegations of racial animus. Section 1981 is not intended to provide an "omnibus remedy for all racial injustice," even where it occurs. *Domino's Pizza*, 546 U.S. at 479. Mr. Elmore's attempt to turn the statute into a general civility code is particularly misplaced. *Lopez v. Target Corp.*, 676 F.3d 1230, 1235 (11th Cir. 2012) ("§ 1981 is not a general civility code").

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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