No. _____

IN THE
# Supreme Court of the United States

JARIUS BROWN,

*Petitioner*,

*v.*

JAVARREA POUNCY, ET AL.,

*Respondents.*

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

## PETITION FOR A WRIT OF CERTIORARI


David D. Cole
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
915 15th Street, NW
Washington, DC 20005

Nora Ahmed
ACLU FOUNDATION OF LOUISIANA
1340 Poydras Street
Suite 2160
New Orleans, LA 70112

Lauren Willard Zehmer
*Counsel of Record*
Michael X. Imbroscio
Sameer Aggarwal
COVINGTON & BURLING LLP
850 Tenth Street, NW
Washington, DC 20001
(202) 662-6000
lzehmer@cov.com

Caleb M. W. Ellis
COVINGTON & BURLING LLP
620 Eighth Avenue
New York, NY 10018

*Counsel for Petitioner*

## QUESTIONS PRESENTED

Because 42 U.S.C. § 1983 does not itself provide a statute of limitations, federal courts have borrowed from state law to determine the timeliness of Section 1983 claims, so long as those state limitations periods are consistent with federal law and policy. In *Owens v. Okure*, 488 U.S. 235 (1989), this Court expressly reserved the question of whether a one-year state limitations period would be inconsistent with the federal interests underlying Section 1983. This petition squarely presents that question. It also provides this Court the chance to revisit the fifty-state borrowing framework that allows states to frustrate plaintiffs' access to *federal* courts to litigate their *federal* civil rights claims.

Petitioner Jarius Brown was attacked by DeSoto Parish Sheriff's officers—suffering such severe injuries that he was hospitalized—and the two officers responsible have since pleaded guilty to federal criminal charges. The courts below, however, held his federal civil rights claim was time barred under Louisiana's one-year residual limitations period.

The questions presented are:

1. Is the application of a one-year residual personal injury statute of limitations to Section 1983 claims too short to be consistent with the federal interests underpinning the statute?

2. In looking for a "suitable" statute of limitations analogy for Section 1983 claims, does 28 U.S.C. § 1658's uniform federal limitations period more faithfully serve the federal interests underpinning Section 1983 than the current patchwork of fifty state laws?

## PARTIES TO THE PROCEEDINGS

Petitioner (plaintiff-appellant below) is Jarius Brown.

Respondents (defendants-appellees below) are Javarrea Pouncy, and John Does #1 and #2.

## STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

- *Brown v. Pouncy, et al.*, No. 22-30691 (5th Cir. Feb. 19, 2024) (affirming grant of motion to dismiss)
- *Brown v. Pouncy, et al.*, No. 21-cv-3415 (W.D. La. Sept. 29, 2022) (granting motion to dismiss)

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

## TABLE OF CONTENTS

**Page**

## TABLE OF AUTHORITIES

**Page(s)**

**Cases**

**Statutes**

**Other Authorities**

## PETITION FOR A WRIT OF CERTIORARI

Section 1983 "provides 'a uniquely federal remedy against incursions under the claimed authority of state law upon rights secured by the Constitution and laws of the Nation.'" *Wilson v. Garcia*, 471 U.S. 261, 271–72 (1985) (quoting *Mitchum v. Foster*, 407 U.S. 225 (1972)). Because Section 1983 does not itself include an express statute of limitations, this Court has directed courts to borrow from state law "so long as the chosen limitations period was consistent with federal law and policy." *Owens v. Okure*, 488 U.S. 235, 239 (1989).

This case presents the question this Court explicitly left open in *Owens*: whether a state's one-year statute of limitations is too short to be consistent with the federal law and policy animating Section 1983. This case also provides the Court with an opportunity to revisit the wisdom of the current disparate fifty-state borrowing framework now that Congress' enactment of Section 1658 provides a more predictable and uniform alternative for setting the limitations period for the Nation's central federal civil rights statute.

In September 2019, Jarius Brown was severely beaten by DeSoto Parish Sheriff's deputies after being taken into custody for nonviolent traffic offenses. The attack necessitated Mr. Brown's hospitalization and resulted in significant physical and mental trauma. Within two years of the attack, Mr. Brown sought redress under 42 U.S.C. § 1983—the principal federal remedy for holding state actors to account for the violation of his civil rights. Had Mr. Brown brought this action in almost any state other than Louisiana, his federal civil rights claims would have been timely. But

because Mr. Brown was attacked in Louisiana, he had only a single year to bring suit. Only two other states impose such a short statute of limitations.

Under this Court's decision in *Wilson*, because Section 1983 does not include its own statute of limitations, courts have been directed to borrow the state statute of limitations for personal injury actions. In *Owens*, the Court further clarified that, where a state has more than one potentially applicable statute of limitations for personal injury actions, the court should borrow the state's general, or "residual," personal injury statute of limitations. Louisiana is currently joined by only Kentucky, Tennessee, and Puerto Rico in limiting federal civil rights plaintiffs to a single year to bring claims under their personal injury or residual limitations period—the shortest such period in the Nation. For this reason, based solely on the fact that Mr. Brown was attacked in Louisiana, the Fifth Circuit affirmed the dismissal of his claim as time barred.

This Court has recognized, however, that there must be some limits on states' authority to constrain Section 1983 claims. Indeed, in *Owens*, the Court reserved the precise question this petition now presents: whether a one-year statute of limitations is too short to vindicate Section 1983's federal interests. *Owens*, 488 U.S. at 251 n.13.

*Owens* recognized there is some minimum amount of time that states must provide for victims of civil rights offenses to bring Section 1983 claims. As the Court has explained, Section 1983 actions, as a matter of course, require plaintiffs to marshal the resources necessary to prepare what are often complex federal

civil rights claims. *Burnett v. Grattan*, 468 U.S. 42, 50–51 (1984). In addition, plaintiffs who have been victimized by law enforcement—as is the case in many Section 1983 actions—face additional hurdles, including the need to process physical and mental trauma, navigate parallel criminal proceedings and incarceration, and overcome the fear of retaliation from the officers that abused them.

Because of these barriers, Louisiana's one-year residual personal injury statute of limitations has the practical effect of obstructing plaintiffs' ability to bring otherwise meritorious federal civil rights claims in a manner that Congress never countenanced. As a result, the one-year residual statute of limitations applied to Mr. Brown's civil rights claim is inconsistent with the federal interests underpinning Section 1983.

While the courts below were "sympathetic to the dilemma [Mr. Brown] and similarly situated plaintiffs face in Louisiana," App 24a, they determined that they were bound by *Owens*' general framework, concluding that "[o]nly the Supreme Court . . . can clarify how lower courts should evaluate practical frustration without undermining [*Owens'*] solution." App. 15a.

But that conclusion does not account for a significant change in federal law that bears on the appropriate statute of limitations for Section 1983 claims. Two years after *Owens* was decided, Congress passed 28 U.S.C. § 1658, which provides a prospective four-year catchall limitations period for federal civil actions that lack their own express statute of limitations. Before Section 1658, the three-part test outlined in 42 U.S.C. § 1988 forced the Court to adopt the state-law borrowing scheme that exists today. *See Burnett*,

468 U.S. 42; *Wilson,* 471 U.S. at 267–68; *Owens*, 488 U. S. at 239. Lacking an alternative federal standard at the time, the Court directed courts to borrow from state law despite the many apparent flaws with this system, including that it permits states to restrict federal remedies under a statute designed to shield citizens from state officers' misconduct. But because Congress has now enacted a general catchall statute of limitations in Section 1658, this Court can eliminate the fifty-state patchwork approach and replace it with a suitable federal solution that is uniform across the country *and* faithful to the federal interests underpinning Section 1983.

Because the application of Louisiana's one-year residual personal injury statute of limitations impermissibly curtailed Mr. Brown's civil rights, this Court should take this opportunity to answer the question left open in *Owens*—and to avail itself of the federal solution now available through Section 1658. In doing so, this Court can ensure that victims across all states have a fair opportunity to vindicate their federal civil rights.

## OPINION BELOW

The February 19, 2024, decision of the United States Court of Appeals for the Fifth Circuit (App. 1a–15a) is reported at 93 F.4th 331. The district court's September 29, 2022, memorandum ruling granting defendant's motion to dismiss (App. 16a–28a) is reported at 631 F. Supp. 3d 397.

## JURISDICTION

The Fifth Circuit entered judgment on February 19, 2024. App. 1a. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

## RELEVANT PROVISIONS

The relevant U.S. statutory provisions, 28 U.S.C. § 1658, 42 U.S.C. § 1983, and 42 U.S.C. § 1988, are reproduced at App. 29a–32a. Louisiana's residual personal injury prescriptive statute that was applied to Mr. Brown's claim, La. Civ. Code Ann. art. 3492, is reproduced at App. 33a.

## STATEMENT

### A. Statutory Background

The provision now codified as Section 1983 was adopted as the central enforcement mechanism of the Ku Klux Klan Act in the wake of the Civil War. *See Owens*, 488 U.S. at 249 n.11. Section 1983 provides a cause of action for "the deprivation of any rights, privileges, or immunities secured by the Constitution and laws" by any person acting "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory." 42 U.S.C. § 1983. Indeed, Section 1983 "provides 'a uniquely federal remedy against incursions under the claimed authority of state law upon rights secured by the Constitution and laws of the Nation.'" *Wilson*, 471 U.S. at 261 (citation omitted).

Since its enactment, Section 1983 has been the primary vehicle through which individuals hold state actors who have violated their civil rights accountable. But federal courts have often struggled with

Section 1983's lack of an express limitations period. This Court provided guidance on this issue in a trilogy of cases decided in the 1980s.

The first case was *Burnett v. Grattan*, 468 U.S. 42 (1984), where the Court underscored that the "central objective of § 1983" is "ensur[ing] that individuals whose federal constitutional or statutory rights are abridged may recover damages or secure injunctive relief." *Id.* at 55. While the Court did not supply a concrete rule addressing Section 1983's limitations period in all circumstances, it interpreted Section 1988 to prescribe a "three-step process." *Id.* at 47. Under that approach, federal courts first "look to the laws of the United States 'so far as such laws are suitable to carry [the civil and criminal civil rights statutes] into effect.'" *Id.* at 48. Second, "[i]f no suitable federal rule exists," courts consider "application of state 'common law, as modified and changed by the constitution and statutes' of the forum State." *Id.* Third, to ensure "the predominance of the federal interest: courts are to apply state law only if it is not 'inconsistent with the Constitution and laws of the United States.'" *Id.*

But *Burnett* did not resolve the lower courts' confusion, prompting this Court to return to the issue in *Wilson v. Garcia*, 471 U.S. 261 (1985). There, the Court held that Section 1983's statute of limitations was a federal question, and that all Section 1983 actions should be categorized as personal injury actions for the purpose of determining the appropriate limitations period. *See id.* at 268–69, 276. In doing so, *Wilson* sought to "minimize[] the risk that the choice of a state statute of limitations would not fairly serve the federal interests vindicated by § 1983." *Id.* at 279.

Nonetheless, lower courts continued to struggle with the fact that many states had multiple statutes of limitations for personal injury actions, any number of which could apply depending upon the nature of the federal claim. Confusion about which statute of limitations should govern Section 1983 claims persisted.

The Court therefore returned to this question in *Owens v. Okure*, 488 U.S. 235 (1989). There, the Court considered whether a Section 1983 claim brought in New York and arguably subject to a one-year statute of limitations for assault should instead be measured against New York's residual catchall personal injury statute of limitations of three years. The Second Circuit applied the residual limitations period, recognizing that a three-year limitations period "more faithfully represents the federal interest in providing an effective remedy for violations of civil rights than does the restrictive one year limit." *Okure v. Owens*, 816 F.2d 45, 49 (2d Cir. 1987). The court observed that "[i]njuries to personal rights" are not "necessarily apparent to the victim at the time they are inflicted" because "[e]ven where the injury itself is obvious, the constitutional dimensions of the tort may not be." *Id.* at 48.

This Court unanimously affirmed that decision and explained that, where a state law provides multiple statutes of limitation for personal injury actions, courts generally should borrow the general or residual personal injury statute of limitations. *Id.* at 250.

While the Court endorsed the Second Circuit's decision to use the three-year residual limitations period, it expressly noted that it "need not address [respondent's] argument that applying a 1-year

limitations period to § 1983 actions would be inconsistent with federal interests." *Id.* at 251 n.13. The Court thus signaled that there could be circumstances in which a state's statute of limitations is too short to be consistent with the federal interests underlying Section 1983, and it explicitly reserved the question of whether a one-year limitations period is too short.

In 1990, after *Owens* was decided, Congress enacted 28 U.S.C. § 1658, which adopted for the first time a *federal* catchall statute of limitations. Although Section 1658's four-year statute of limitations applies prospectively by its own force, nothing in the statute prevents courts from looking to Section 1658 as a "suitable" federal *analogue* under the three-step test in Section 1988 and *Burnett*. *See Burnett*, 468 U.S. at 47–48.

### B. Factual Background

On September 27, 2019, Mr. Brown was arrested by Louisiana State Police for nonviolent traffic offenses, after which he was transported to the DeSoto Parish Sheriff's office for booking. App. 39a. As a part of that process, Officers Javarrea Pouncy and DeMarkes Grant—one of the John Does in this case—(together, the "Officers") ordered Mr. Brown to disrobe and squat for a strip search. App. 40a. After complying with this order and undressing, Mr. Brown was violently attacked by the Officers, who, using excessive force, repeatedly punched Mr. Brown in the head, face, and stomach. App. 40a. Mr. Brown did not provoke the attack, nor did he pose a threat to the Officers. App. 41a.

Mr. Brown suffered severe injuries from the attack, including an orbital fracture on the left side of

his face, a fracture to his nose, and abrasions on his left eyelid. App. 42a. In the immediate aftermath, the Officers left Mr. Brown unattended in an unoccupied cell for several minutes. App. 40a–41a. Thereafter, Mr. Brown was transported to Ochsner LSU Health Shreveport-LA to receive medical care. App. 42a. The Officers remained present with Mr. Brown throughout his hospitalization. App. 42a. As a result of this attack, Mr. Brown suffered both physical and emotional trauma, and he has struggled to readjust to society ever since. App. 35a.

Subsequently, the Civil Rights Department of the U.S. Department of Justice investigated the attack against Mr. Brown. Following its investigation, the Government brought federal criminal charges against both Mr. Pouncy and Mr. Grant. Indictment, *United States v. Pouncy*, No. 5:23-cr-00210-SMH-MLH (W.D. La. Sept. 6, 2023), ECF 1; Bill of Information, *United States v. Grant*, No. 5:23-cr-00207-SMH-MLH (W.D. La. Aug. 28, 2023), ECF 1.

While Mr. Brown's appeal was pending, Mr. Grant pleaded guilty to one count of obstruction of justice in connection with the attack. Plea Agreement at 1–2, *United States v. Grant*, No. 5:23-cr-00207-SMH-MLH (W.D. La. Sept. 5, 2023), ECF 9. As a part of his plea agreement, Mr. Grant corroborated the factual account in Mr. Brown's complaint—acknowledging that the Officers repeatedly punched Mr. Brown using "lethal" force. Factual Basis for Plea at 3, *United States v. Grant*, No. 5:23-cr-00207-SMH-MLH (W.D. La. Sept. 5, 2023), ECF 9-2.

Most recently, on April 10, 2024, Mr. Pouncy also pleaded guilty to one count of deprivation of rights under color of law, in violation of 18 U.S.C. § 242. Plea Agreement at 1–2, *United States v. Pouncy*, No. 5:23-cr-00210-SMH-MLH (W.D. La. Apr. 10, 2024), ECF 27. In the accompanying factual basis for his plea—which also corroborated the facts alleged by Mr. Brown—Mr. Pouncy confirmed that the Officers used "lethal" force during the attack, and that this use of force was "unjustified." Factual Basis for Plea at 2–3, *United States v. Pouncy*, No. 5:23-cr-00210-SMH-MLH (W.D. La. April 10, 2024), ECF 27-2.

### C. Procedural Background

On September 24, 2021, less than two years after the attack, Mr. Brown brought a civil suit against the Officers in the U.S. District Court for the Western District of Louisiana under Section 1983 and La. Rev. Stat. 14:35. App. 18a.

On January 31, 2022, Mr. Pouncy moved to dismiss Mr. Brown's Section 1983 claim as time barred under Louisiana's one-year residual personal injury statute of limitations period for personal injury actions. App. 18a. *See* La. Civ. Code Ann. art. 3492. Invoking *Owens*, Mr. Pouncy asserted that Mr. Brown's Section 1983 claim should be governed by Louisiana's one-year statute of limitations, which had already run. App. 19a. In response, Mr. Brown noted that *Owens* expressly declined to determine whether a state's one-year residual statute of limitations is so short that it contravenes the federal interest underlying Section 1983. App. 23a. Additionally, Mr. Brown asserted that, under the three-part framework provided by Section 1988 and *Burnett*, Section 1658's

four-year catchall statute of limitations serves as a "suitable" rule for Section 1983 claims and should therefore provide the controlling limitations period. App. 23a–24a.

On September 29, 2022, the district court granted Mr. Pouncy's motion to dismiss, largely because it believed it was bound by *Owens*. App. 25a–26a. Even though *Owens* ostensibly controlled, the court explained that Louisiana's one-year prescriptive period is "a relative outlier" and that it was "sympathetic to the dilemma Brown and similarly situated plaintiffs face in Louisiana." App. 24a. Under this system, the victim of a state-defined "crime of violence" has two years to bring a state claim, but only one year to bring a federal claim for the same conduct, even though both claims rely on Louisiana's statutes of limitations. App. 21a–22a.

Mr. Brown timely appealed to the Fifth Circuit, raising the question left open in *Owens*: whether Louisiana's one-year residual personal injury statute of limitations impermissibly contravened federal interests. Brief for Plaintiff-Appellant at 23–31, *Brown v. Pouncy*, No. 22-30691 (5th Cir. Jan. 27, 2023), ECF 24-1. Mr. Brown maintained that Louisiana's one-year residual statute of limitations is inconsistent with the federal interests underpinning Section 1983 because it does not properly account for the practicalities of bringing a federal civil rights claim, especially police misconduct claims, which are at the heart of what Section 1983 was enacted to address. *Id.*

Mr. Brown also argued that Section 1988 and this Court's decision in *Burnett* instruct federal courts to first look to federal analogues or when state law does

not supply an adequate rule of decision. *Id.* at 31–35. Accordingly, Section 1658's four-year federal residual limitations period—which had not yet been enacted when *Owens* was decided—would properly accommodate Mr. Brown's and other Louisianans' civil rights claims, promoting the uniformity and predictability interests the Supreme Court has long prioritized. *Id.*

At oral argument before the Fifth Circuit, Judge Ho asked whether employing Section 1658's four-year catchall statute of limitations to Section 1983 claims would constitute a "more textual" approach. Specifically, he noted that "replacing the state by state strangeness with a uniform four year [limitations period]" would "seem[] to be more textual" than the patchwork approach supplied by *Owens*. Oral Argument at 15:30–16:58, *Brown v. Pouncy*, No. 22-30691 (5th Cir. Oct. 4, 2023).[1] He acknowledged that this case is a vehicle for "the Supreme Court to get back to the text" of Sections 1988 and 1658. *Id.* at 12:56–13:00.

On February 19, 2024, in a published opinion, the Fifth Circuit held that "precedent requires [it] to affirm" the district court's decision. App. 2a. While the court "read Supreme Court precedent, and our cases applying that precedent, to foreclose Brown's position," it acknowledged that, "[o]*nly the Supreme Court*, having already solved the problem of uncertainty in the absence of a federal limitations period for Section 1983 claims, *can clarify how lower courts should evaluate practical frustration* without undermining that solution." App. 15a (emphases added).

[1] https://www.ca5.uscourts.gov/OralArgRecordings/22/22-30691_10-4-2023.mp3.

Consistent with the Fifth Circuit's opinion, Mr. Brown's petition seeks the clarity that "[o]nly the Supreme Court" can supply.

On June 3, 2024, Louisiana enacted Act No. 423 ("Act 423"), which will replace the state's one-year residual statute of limitations with a two-year period. *See* 2024 La. Sess. Law Serv. Act 423 (H.B. 315) (West). Importantly though, Act 423 will only apply prospectively to injuries suffered after its effective date of July 1, 2024. That means that the Section 1983 claims brought by Mr. Brown—and those brought by similarly-situated civil rights plaintiffs in Louisiana as well as plaintiffs in Kentucky, Tennessee, and Puerto Rico—are still subject to a one-year limitations period. Louisiana's belated legislative amendment also does not address the fundamental problem that plaintiffs across the country remain beholden to state legislatures to determine their ability to bring *federal* civil rights claims.

## REASONS FOR GRANTING THE PETITION

### I. This Court Should Grant Certiorari to Decide Whether a One-Year State Limitations Period Is Inconsistent with the Federal Interests of Section 1983.

In the trio of cases ending with *Owens*, this Court addressed the issues raised by Section 1983's lack of an express limitations period by borrowing from state law. But the Court cautioned that a state limitations period could be so short as to be "inconsistent with [the] federal interests" that underpin Section 1983, and it noted that it was reserving the question of

whether a one-year period fit within that category. *Owens*, 488 U.S. at 251 n.13.

Louisiana's one-year period that applied to Mr. Brown's Section 1983 claim is indeed an outlier. Presently, only Louisiana, Kentucky, Tennessee, and Puerto Rico require Section 1983 plaintiffs to file their claims within a single year. By granting review here, this Court can address a substantial and important question of federal law: whether a one-year state statute of limitations impermissibly undermines Section 1983 by practically frustrating federal civil rights claims. Absent resolution, plaintiffs will remain subject to differential and disadvantaged access to the country's core federal civil rights remedy. Not to mention those who remain at the whim of state legislatures that have the ability to substantively affect federal constitutional rights if they decide to shorten the residual personal injury statute of limitations.

1. Mr. Brown's case gives this Court an opportunity to resolve the question it expressly reserved in *Owens*: whether a one-year limitations period is inconsistent with federal interests, as it does not properly account for the practicalities of preparing and filing a federal civil rights claim—a reality illustrated by Mr. Brown's own experience.

Section 1983 "provides a uniquely federal remedy against incursions upon rights secured by the Constitution and laws of the Nation, and is to be accorded a sweep as broad as its language." *Hardin v. Straub*, 490 U.S. 536, 539 n.5 (1998) (cleaned up). In *Owens* itself, the Court explained that the statute "was the product of congressional concern about the Ku Klux

Klan-sponsored campaign of violence and deception in the South . . . . [and, even more so,] the state officials who tolerated and condoned them." *Owens*, 488 U.S. at 249 n.11.

This Court has made clear that state procedural rules—such as statutes of limitations—cannot operate in a way that contravenes Section 1983's primary legislative purpose. *See id.*; *Burnett*, 468 U.S. at 53 ("To the extent that particular state concerns are inconsistent with, or of marginal relevance to, the policies informing the Civil Rights Act, the resulting state statute of limitations may be inappropriate for civil rights claims."). While certain state statutes of limitations may adequately safeguard the federal interests at stake, courts will not apply a state's limitations period if doing so "defeat[s] either § 1983's chief goals of compensation and deterrence or its subsidiary goals of uniformity and federalism." *Hardin*, 490 U.S. at 539; *see also Johnson v. Garrison*, 805 F. App'x 589, 593 (10th Cir. 2020) (holding that Oklahoma's lack of a tolling provision for Section 1983 cases was contrary to Section 1983's goals and the practicalities involved in litigating federal civil rights claims).

Against this backdrop, the Supreme Court decided *Owens* and determined that the operative limitations period for Section 1983 claims is the forum state's residual personal injury statute of limitations. While the Court stressed that the patchwork solution it fashioned would "promote predictability in all 50 states," it did so only in the absence of a viable federal solution. *Owens*, 488 U.S. at 243. To ensure that states could not use this borrowing scheme to undercut federal interests, the Court reserved its ability to assess

whether a state limitations period might be *too short* to accommodate federal interests. *Id.* at 251 n.13.

In reserving this question, the Court recognized that, so long as Section 1983 depends upon state procedural rules, federal courts—and, in particular, this Court—must act as a check on impermissible state legal regimes. Otherwise, states would be free to undermine the scope and efficacy of Section 1983, limiting federal civil rights plaintiffs' ability to seek redress from the very state actors that statute is designed to hold accountable. *Owens*, 488 U.S. at 249 n.11. Put differently, the "predictability" promoted by *Owens* was never meant to vitiate the requirement that a state statute of limitations "afford a reasonable time to the federal claimant." *Id.* at 251 n.13 (quoting *Burnett*, 468 U.S. at 61).

The one-year limitations period applied to Mr. Brown presents these exact concerns. In *Burnett*, this Court explained that "[a] state law is not 'appropriate' if it fails to take into account practicalities that are involved in litigating federal civil rights claims and policies that are analogous to the goals of the Civil Rights Acts." 468 U.S. at 50; *see also McDonald v. Salazar*, 831 F. Supp. 2d 313, 319 (D.D.C. 2011) ("A proper limitations provision must account for the characteristics of litigation under the analogous federal statute, including the policies underlying and the practicalities involved in litigating the federal cause of action."). Under that standard, a one-year residual personal injury statute of limitations, like the one Mr. Brown faces, simply does not provide claimants enough time to marshal the resources necessary to prepare a federal civil rights suit. Indeed, when the

Second Circuit decided between a three-year limitations period and a one-year period, it held that the three-year timeframe "more faithfully represents the federal interest in providing an effective remedy for violations of civil rights than does the restrictive one year limit." *Okure*, 816 F.2d at 49.

Federal civil rights plaintiffs face myriad practical hurdles to bringing a Section 1983 action. As this Court has recognized, "[l]itigating a civil rights claim requires considerable preparation." *Burnett*, 468 U.S. at 50. At the outset, a plaintiff must "recognize the constitutional dimensions of his injury," "obtain counsel, or prepare to proceed pro se," "conduct enough investigation to draft pleadings that meet the requirements of federal rules," "establish the amount of his damages, prepare legal documents, pay a substantial filing fee or prepare additional papers to support a request to proceed in forma pauperis, and file and serve his complaint." *Id.* at 50–51. And these steps all take time because injuries to civil rights are not "necessarily apparent to the victim at the time they are inflicted," and "even where the injury itself is obvious, the constitutional dimensions of the tort may not be." *Okure*, 816 F.2d at 48.

As further evidenced here, many Section 1983 plaintiffs, including those in police misconduct cases, face additional hurdles—such as recovering from physical and mental trauma, navigating parallel criminal proceedings while incarcerated, and fear of

retaliation from their abusers.[2] Where a state law limitations period is too short for police misconduct claims brought under Section 1983—perhaps the paradigmatic such claim—it can hardly be seen as sufficient for Section 1983 claims more generally.

2. The application of Louisiana law to Mr. Brown's federal action also underscores the challenges associated with allowing myriad, ever-changing state statutes of limitations to govern Section 1983 claims. Because state legislatures can change their personal injury limitations period at any time, civil rights plaintiffs are subject to the whims of their state legislatures' views of the proper sweep of their federal civil rights. Absent meaningful guidance from this Court, states are free to choose whichever limitations period they see fit without any limiting principles on their discretion.

Recent changes in Louisiana law highlight the shortcomings of the current system in which each state has complete autonomy to decide the operative limitations period that will apply to federal civil rights claims. While Louisiana extended the residual limitations period for future plaintiffs, the extension does not apply to Mr. Brown or any similarly situated

---

[2] *See* Martin S. Greenberg & R. Barry Ruback, *After the Crime: Victim Decision Making*, 1–15, *in* 9 *Perspectives in Law & Psychology* (1992) (noting that victims of abuse struggle to report subsequent to victimization); Dani Kritter, *The Overlooked Barrier to Section 1983 Claims: State Catch-All Statutes of Limitations*, Cal. L. Rev. Online (Mar. 2021), https://perma.cc/T645-PYPW (explaining that these symptoms are heightened for victims of police brutality).

plaintiffs who were injured prior to July 1, 2024. *See* 2024 La. Sess. Law Serv. Act 423, § 4.

By deciding to not apply Act 423 retroactively, Louisiana is refusing to provide relief for many civil rights plaintiffs, like Mr. Brown, who have already been injured and now seek to vindicate their federal rights. In fact, Louisiana's belated recognition that its limitations period was too short underscores that applying a one-year limitations period to Mr. Brown's Section 1983 claim was inconsistent with federal interests from the outset.

Mr. Brown and his fellow Louisianans are not the only citizens whose federal civil rights are unduly restricted. All civil rights plaintiffs in Kentucky, Tennessee, and Puerto Rico face the same fate as they too are constrained by a one-year limitations period. *See* Ky. Rev. Stat. Ann. § 413.140 (2021); Tenn. Code. Ann. § 28-3-104 (2021);[3] P.R. Laws Ann. tit. 31, § 5298(2). Absent guidance from this Court, federal

[3] Tennessee's one-year statute of limitations expressly carves out a separate limitations period for civil actions "brought under the federal civil rights statutes." Tenn. Code. Ann. § 28-3-104(a)(1)(B) (2021). Courts of appeals have struck down similar statutes from other states, recognizing that "[w]hile Congress permits federal courts to borrow state limitations periods, neither Congress nor the Supreme Court has authorized states to create limitations periods and exclusively applicable to section 1983 actions." *Arnold v. Duchesne Cnty.*, 26 F.3d 982, 989 (10th Cir. 1994). The Sixth Circuit has upheld the application of this specialized statute to Section 1983 claims because Tennessee's residual period is also one year. *See Dibrell v. City of Knoxville*, 984 F.3d 1156, 1161 (6th Cir. 2021) ("Because this statute also sets a one-year period, we need not consider which statute would apply if the two limitations periods differed.").

courts will continue to defer to these state limitations periods that fail to adequately serve Section 1983's federal interests. *See, e.g.*, *Stucker v. Louisville Metro Gov't*, No. 23-5214, 2024 WL 2135407, at *2 (6th Cir. May 13, 2024) (applying Kentucky's one-year statute of limitations to Section 1983 claim); *Bannister v. Knox Cnty. Bd. of Educ.*, 49 F.4th 1000, 1008 (6th Cir. 2022) (applying Tennessee's one-year statute of limitations to Section 1983 claim); *Alamo-Hornedo v. Puig*, 745 F.3d 578, 581 (1st Cir. 2014) (applying Puerto Rico's one-year statute of limitations to Section 1983 claim). This Court's review will therefore be important not just to Mr. Brown but also to millions of others whose federal civil rights are subject to an inadequate state-law limitations period.

Even when borrowing state statutes of limitations, this Court has explained that the controlling standard "is ultimately a question of federal law." *Wilson*, 471 U.S. at 269. While *Owens* sought to simplify the approach to Section 1983's statute of limitations question by designating a particular state-law provision, there are still fifty different legislatures and fifty different statutes that determine the amount of time plaintiffs have to bring their federal claims. Despite this patchwork system applying federal rights inconsistently, this Court has yet to provide guidance about the minimum limitations period for a Section 1983 claim. *See Owens*, 488 U.S. at 251 n.13. As such, there is nothing stopping the outlier states from continuing to apply a one-year limitations period; nor is there anything to prevent other states from *reducing* the amount of time Section 1983 claimants have to file their lawsuits. Federal civil rights plaintiffs therefore

face the perpetual risk that their home state can manipulate state procedural law to restrict their access to the federal courts for claims against state officials.

Current Section 1983 plaintiffs in Louisiana, like Mr. Brown, and all Section 1983 plaintiffs in Kentucky, Tennessee, and Puerto Rico, are bearing the brunt of their states' unfettered discretion. By granting certiorari, the Court can clarify that there are federal limitations on the states' ability to block access to federal courts for meritorious Section 1983 claims.

## II. The Four-Year Catchall Statute of Limitations Provided Under Section 1658 Gives This Court the Federal Solution It Lacked When *Owens* Was Decided.

This case also provides an opportunity to adopt a uniform *federal* statute of limitations for the federal remedy supplied by Section 1983. When *Burnett*, *Wilson*, and *Owens* were decided, federal law provided no adequate procedural rule that could have supplied a limitations period for Section 1983 claims. But in 1990, the year after *Owens* was decided, Congress enacted 28 U.S.C. § 1658, which provides a four-year catchall statute of limitations period for all newly enacted federal causes of action that lack their own specific limitations period.

This case presents the Court with the opportunity to recognize that this change in law should also change the controlling limitations period for Section 1983 claims. When the Court previously evaluated Section 1983's limitations period, it explained that Section 1988 "direct[s] federal courts to follow a three-step process" to supply the appropriate rule of decision. *Burnett*, 468 U.S. at 47 (citing 42 U.S.C. § 1988).

Under Section 1988, courts first "look to the laws of the United States 'so far as such laws are suitable to carry [the civil and criminal civil rights statutes] into effect.'" *Id.* at 48 (quoting 42 U.S.C. § 1988) (alteration in original).

If federal law is "suitable," then federal law controls and the court's job is done. *See id.*; *see also Wilson*, 471 U.S. at 268 (explaining steps two and three of Section 1988's framework "should not be undertaken before principles of federal law are exhausted"). Only if "no suitable federal rule exists" do courts proceed to the next steps: considering the application of the forum state's common law and determining whether state law "is not 'inconsistent with the Constitution and laws of the United States.'" *Burnett*, 468 U.S. at 48 (quoting 42 U.S.C. § 1988).

At the time of the Court's decision in *Burnett*, there was no "suitable" federal law to provide a limitations period for Section 1983 claims. 468 U.S. at 48–49. For instance, the Court held that twentieth century civil-rights laws cannot supply the limitations period for Section 1983 claims because those laws have "independen[t]" "remedial scheme[s]." *Id.* at 49 (discussing *O'Sullivan v. Felix*, 233 U.S. 318, 324–25 (1914), *Johnson v. Railway Express Agency*, 421 U.S. 454, 459–61 (1975), and *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 416–17 & n.20 (1968)). Because no federal law could supply the appropriate limitations period, *Burnett*, *Wilson*, and *Owens* interpreted Section 1988 to require that courts borrow from state law limitations periods to decide what is otherwise clearly a federal question. *See id.*; *Wilson*, 471 U.S. at 270.

Section 1658 now provides a federal solution to this problem. The enactment of this provision calls for a reevaluation of the central analysis under Section 1988, and conducting that analysis demonstrates that Section 1658 provides the limitations period for all Section 1983 claims across the Nation. It is far more consistent with the federal interests of Section 1983 to fill its missing gap with a uniform *federal* catchall statute of limitations than to borrow from a patchwork of fifty different states' residual personal injury limitations periods providing wildly divergent time periods for bringing suit. As the Court has explained, "[s]tate legislatures do not devise their limitations periods with national interests in mind. . . ." *Occidental Life Ins. Co. v. EEOC*, 432 U.S. 355, 367 (1977). As a result, "state statutes of limitations can be unsatisfactory vehicles for the enforcement of federal law." *DelCostello v. Int'l Bhd. of Teamsters*, 462 U.S. 151, 161 (1983).

While Section 1658 does not apply to Section 1983 claims by its own force, Section 1988 does not require that a federal statute be directly applicable. Indeed, the premise of the inquiry under Section 1988 is that there is no such directly applicable federal statute. Rather, Section 1988 directs courts to survey federal law more broadly to determine whether a "suitable" limitations period exists. And Section 1658 qualifies as a "suitable" federal provision because it represents Congress' determination of the appropriate balance between providing federal plaintiffs sufficient time to bring their claims and ensuring that all claims are brought in a timely manner. *See* Joseph E. Worcester, *A Dictionary of the English Language* 1444 (1860) (defining "suitable" as "[f]itting; fit; meet; conformable;

proper; appropriate; becoming; agreeable; answerable; convenient").[4]

As Judge Ho suggested at oral argument in the court below, relying on Section 1658 would be the "more textual" approach to determining the appropriate statute of limitations for Section 1983 claims. Judge Ho observed that "replacing the state by state strangeness with a uniform four year [limitations period]" would "seem[] to be more textual" than the current regime. Oral Argument, *supra*, at 15:30–16:58. As such, he recognized this case provides a vehicle for "the Supreme Court to get back to the text" of Sections 1988 and 1658. *Id.* at 12:56–13:00.

While federal courts currently employ a state-law borrowing regime based on steps two and three of Section 1988, the Court has always recognized that borrowing state law is an imperfect, second-best solution. As the Court has noted, "Congress surely did not intend to assign to state courts and legislatures a conclusive role in the formative function of defining and characterizing the essential elements of a federal cause of action." *Wilson*, 471 U.S. at 269. The state-

---

[4] Under the current system, state limitations periods do not apply to Section 1983 claims by their own terms either. *Wilson*, 471 U.S. at 269 ("Even when principles of state law are borrowed to assist in the enforcement of this federal remedy, the state rule is adopted as a federal rule responsive to the need whenever a federal right is impaired." (cleaned up)). Instead, they only apply because, before the enactment of Section 1658, they provided what this Court determined to be one "suitable," albeit imperfect, limitations period under Section 1988's and *Burnett*'s framework. But now, Section 1658 provides a far more "suitable" period.

borrowing scheme is a particularly odd fit for Section 1983 actions given that Section 1983 provides "'a uniquely federal remedy against incursions under the claimed authority of state law upon rights secured by the Constitution and laws of the Nation," and operates to "override certain kinds of state laws.'" *Id.* at 271–72 (citations omitted); *see also* Kimberly Norwood, *28 U.S.C. § 1658: A Limitation Period with Real Limitations*, 69 Ind. L.J. 477, 513–14 (1994) ("If . . . the ineffectiveness of state law was the reason for § 1983's enactment, there is little logic in allowing state law to govern how long the federal claim should survive."). In other words, the state-borrowing scheme empowers states to unduly restrict the sweep of Section 1983—the federal cause of action that itself serves as a check on state officials' exercise of their authority.

The years since *Burnett*, *Wilson*, and *Owens* have demonstrated that the state-borrowing scheme is a poor fit for Section 1983 claims. Federal courts initially struggled to determine the proper state-law analogue for Section 1983 claims. *See Owens*, 488 U.S. at 241–42. While *Owens* curbed some of the chaos by instructing that a state's residual statute of limitations periods governing personal injury actions controls, *see id.* at 245–48, it maintained a system in which access to Section 1983 varies from state to state.

This Court has previously stressed the virtue of the uniform application of federal law—including in the Section 1983 context—stating that "the federal interest in uniformity and the interest in having 'firmly defined, easily applied rules,' support the conclusion that Congress intended the characterization of § 1983

to be measured by federal rather than state standards." *Wilson*, 471 U.S. at 270; *see also Davies Warehouse Co. v. Bowles*, 321 U.S. 144, 155 (1944) ("It is, of course, true that uniform operation of a federal law is a desirable end, and other things being equal, we often have interpreted statutes to achieve it.") (collecting cases).

Applying Section 1658 as the appropriate reference point would ensure federal uniformity. And in light of Section 1658, courts are no longer forced to perpetuate an imperfect regime in which citizens in Maine and North Dakota have six years to vindicate their federal rights under Section 1983 while citizens in Louisiana, Kentucky, Tennessee, and Puerto Rico have only one year. Similarly, Plaintiffs (and defendants) would no longer be forced to navigate the differences and complexity of state law to determine what statute of limitations applies to their federal claims, including determining whether their state has a single or multiple personal injury limitations periods. The four-year residual limitations period that Congress provided in Section 1658 enhances predictability—"a primary goal of statutes of limitations," *Owens*, 488 U.S. at 240—while maintaining the national interest in the uniform application of federal law.

Despite Section 1658's status as a "suitable" federal solution under Section 1988, the Fifth Circuit concluded that it could not apply Section 1658 to Section 1983 claims without further direction from this Court. The Fifth Circuit concluded that, under *Burnett* and *Owens*, it was bound to continue applying the state-law borrowing framework because *Burnett* (decided before the enactment of Section 1658) "held that,

at Step One, federal law does not provide a statute of limitations for Section 1983 claims." App. 5a. Until this Court clarifies that Section 1658 now provides a "suitable" federal rule of decision for Section 1983 claims, the outdated interpretation of Section 1988 will continue to control across the Nation.

At a minimum, Section 1658 provides an alternative that courts can apply where a state's residual period fails the third step of Section 1988 because it is "'inconsistent with the Constitution and laws of the United States.'" *Burnett*, 468 U.S. at 48 (quoting 42 U.S.C. § 1988). Where, as here, a state's residual personal injury limitations period is either practically too short or discriminatory, courts need to find a more suitable alternative. Rather than search for yet another state limitations period, the answer is clear: Section 1658.

As explained above, one year does not provide federal plaintiffs with sufficient time to vindicate their federal rights—especially for a claim at the core of Section 1983 like Mr. Brown's. As a result, after analyzing Section 1988 under *Burnett* and *Owens*, a court would still be left without a limitations period to apply to these plaintiffs' Section 1983 claims. In these circumstances, Section 1658 represents Congress' determination of the appropriate limitations period where federal law has not otherwise provided a statute of limitations. Section 1658 thus serves as the correct limitations period and failsafe for plaintiffs, who have been stymied by a restrictive state law provision, to vindicate their important federal civil rights.

## III. The Application of Fifty Different State Statutes of Limitations Creates a Lack of Uniformity and Inequal Access to Federal Civil Rights Claims.

The Court should grant review because all fifty states (and federal territories) are effectively split about the appropriate statute of limitations for federal civil rights claims. Louisiana's current one-year residual personal injury statute of limitations exposes the reality that, under *Owens*, federal civil rights plaintiffs are afforded different access to a *federal* remedy for *federal rights violations* based solely on where they live. The current one-year period in Louisiana is tied for the shortest in the Nation. *See also* Ky. Rev. Stat. Ann. § 413.140 (2021); Tenn. Code. Ann. § 28-3-104 (2021); P.R. Laws Ann. tit. 31, § 5298(2). These limitations periods are a stark outlier from the nationwide median of three years, and mode of two years. *See* App. 44a–48a. If Mr. Brown had been attacked in almost any other state, he would have been given the opportunity to litigate his federal civil rights claim.

This lack of uniformity in the application of a federal remedy for the infringement of federal rights can only be corrected by this Court. For no reason other than geography, federal civil rights plaintiffs in the outlier states face an unreasonably short limitations period that effectively thwarts their ability to bring meritorious Section 1983 claims. That is true even though these plaintiffs face the same practical hurdles to bring their claims as their counterparts in nearly every other state.

There is no good reason that plaintiffs' access to a foundational federal cause of action should turn on

the benevolence of their state legislatures. *See Occidental Life Ins. Co.*, 432 U.S. at 367 ("State legislatures do not devise their limitations periods with national interests in mind."). As the Court has explained, "[t]he high purposes of [Section 1983] make it appropriate to accord the statute 'a sweep as broad as its language.'" *Wilson*, 471 U.S. at 272 (quoting *United States v. Price*, 383 U.S. 787, 801 (1966)). Indeed, it was designed to "override certain kinds of state laws"—not be constrained by them. *Id.* Instead of continuing to perpetuate the unjust and unnecessary split, the Court can use this case as a vehicle to recognize that federal law now provides a more "suitable" uniform statute of limitations for Section 1983 claims under Section 1658.

At minimum, all federal civil rights plaintiffs—regardless of geography—are entitled to a reasonably sufficient time to bring their claims. As almost all states have recognized, two years is the bare minimum necessary for such claims. While states can choose to provide longer limitations period, they must at least provide a limitations period that satisfies the threshold federal interests underlying Section 1983. Louisiana cannot escape this requirement by extending the statute of limitations for some classes of citizens while leaving others, like Mr. Brown, without any recourse to vindicate their federal civil rights claims. By granting review here, the Court can ensure the availability of Section 1983 to all Americans by recognizing a two-year floor beneath which outlier states may not curtail their residents' federal civil rights.

## IV. This Case Provides an Excellent Vehicle to Resolve Important Questions That This Court Will Have Limited Opportunities to Hear.

Mr. Brown's petition is an ideal vehicle to address the questions presented. The applicability of the one-year statute of limitations was the only issue raised in Mr. Brown's case and presented on appeal. There were no separate grounds to dismiss his claim. Moreover, there is not even a dispute as to the underlying facts now that both Defendants have since pleaded guilty to federal criminal charges arising from this attack. Plea Agreement, *United States v. Grant*, No. 5:23-cr-00207-SMH-MLH (W.D. La. Sept. 5, 2023), ECF 9; Plea Agreement, *United States v. Pouncy*, No. 5:23-cr-00210-SMH-MLH (W.D. La. April 10, 2024), ECF 27. Mr. Brown has been unable to pursue his claim for damages solely because his claim is subject to Louisiana's outlier statute of limitations. This case therefore leaves no doubt that meritorious Section 1983 claims are squeezed out under a one-year limitations period.

This case is also a clean vehicle to review the applicability of Section 1658. The question of Section 1658's reach was clearly presented to and considered by the district court and Fifth Circuit. *See* Brief for Plaintiff-Appellant at 31-35, *Brown v. Pouncy*, No. 22-30691 (5th Cir. Jan. 27, 2023), ECF 24–1. As Judge Ho observed at oral argument, Section 1658 is the "more textual" answer to Section 1988's framework. Oral Argument, *supra*, at 15:30–16:58. But only the Supreme Court can provide that solution. App. 15a.

Critically, the Court is unlikely to have many additional opportunities to address these questions. Because state law currently controls, only plaintiffs hailing from Kentucky, Tennessee, and Puerto Rico can bring challenges to the viability of a one-year residual personal injury statute of limitations as applied to their Section 1983 claims. As such, only the First and Sixth Circuits could even have a future opportunity to consider whether a one-year period is consistent with the federal interests underpinning Section 1983.

Even if the other Circuits confront *Owens*' open question, they may very well encounter the same challenge the Fifth Circuit faced where it recognized that the state law in question creates practical challenges for federal plaintiffs but concluded that "[o]nly the Supreme Court . . . can clarify how lower courts should evaluate practical frustration without undermining [*Owens*'] solution." App. 15a. As a result, it is exceedingly unlikely that the courts of appeals will ever disagree about *Owens*' open question—even though this Court has expressed skepticism that a one-year limitations period can satisfactorily promote the federal interests underpinning Section 1983. *See Owens*, 488 U.S. at 251 n.13.

To be clear, the fact that the issue raised by Mr. Brown is unlikely to present itself in another cert-worthy vehicle does not diminish the importance of the issue at stake. Currently, more than 16 million citizens in Louisiana, Kentucky, Tennessee, and Puerto Rico are uniquely disadvantaged in their ability to litigate their meritorious federal civil rights claims. With the opinion below serving as binding precedent in the Fifth Circuit and persuasive authority in the

First and Sixth Circuits, it is unlikely that future plaintiffs will be able to mount successful challenges to the outlier statutes of limitations absent this Court's intervention.

For these reasons, Mr. Brown's case presents a rare opportunity to resolve the question left open in *Owens* and to address whether Section 1658 supplies a more appropriate limitations period for Section 1983 claims. This Court can ensure that all federal civil rights victims, regardless of state, are guaranteed access to Section 1983's "uniquely federal remedy."

## CONCLUSION

The petition should be granted.

Respectfully submitted,

David D. Cole
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
915 Fifteenth Street, NW
Washington, DC 20005

Nora Ahmed
ACLU FOUNDATION OF LOUISIANA
1340 Poydras Street
Suite 2160
New Orleans, LA 70112

Lauren Willard Zehmer
*Counsel of Record*
Michael X. Imbroscio
Sameer Aggarwal
COVINGTON & BURLING LLP
850 Tenth Street, NW
Washington, DC 20001
(202) 662-6000
lzehmer@cov.com

Caleb M. W. Ellis
COVINGTON & BURLING LLP
620 Eighth Avenue
New York, NY 10018

*Counsel for Petitioner*

June 18, 2024