No. 23-1332

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

REPLY BRIEF FOR PETITIONER

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INTRODUCTION

Respondent does not dispute that Mr. Brown's petition raises questions of "national importance" (BIO 6) that "only the Supreme Court" can answer, Pet. App. 15a. Although 42 U.S.C. § 1983 provides "a uniquely federal remedy," *Wilson v. Garcia*, 471 U.S. 261, 271 (1985), plaintiffs in a handful of outlier states are subject to an unreasonably short limitations period that thwarts their ability to vindicate their federal civil rights. As Mr. Brown and *amici* explain, one year is plainly insufficient to bring many of these complex and important claims. This Court has already recognized this concern by expressly reserving the first question presented in *Owens v. Okure*, 488 U.S. 235, 251 n.13 (1989). Now that Congress has enacted 28 U.S.C. § 1658, there is no longer a need to subject plaintiffs to a patchwork of different state limitations periods for *federal* civil rights claims. This case provides the Court the opportunity to consider Section 1658's impact on the limitations period governing Section 1983 claims.

Unable to deny the importance of the federal civil rights questions at stake, Respondent instead raises arguments about the underlying merits, attempts to manufacture vehicle issues where none exist, and appeals to principles of *stare decisis* to protect the reliance interests of civil rights abusers. But none of these diversions should prevent this Court from addressing the crucial questions presented and ensuring that Section 1983's remedy is equally available to all civil rights victims regardless of where they were abused.

ARGUMENT

I. The Questions Presented Merit the Court's Review.

Respondent does not dispute the national importance of the questions presented. Instead, he contends that certiorari is not warranted because, in his view, the Fifth Circuit "correctly decided this case" based on "the historical development of relevant law and jurisprudence in this area." BIO 8. But not only is Respondent wrong about the merits, his arguments confirm that this case provides the Court an opportunity to answer the question it reserved in *Owens* and to address the effect of Congress' enactment of Section 1658 on Section 1983 claims.

A. The Petition Raises Questions of National Importance.

A decision from this Court on the first question presented is critical to clarify the minimum time that Section 1983 plaintiffs deserve to raise their claims. As Mr. Brown and *amici* explain, a one-year statute of limitations is inconsistent with the federal interests underpinning this Nation's core federal civil rights remedy. *See, e.g.*, Pet. 13-21; Br. of Institute for Justice 6-13 ("IJ Br.").

The second question presented would allow this Court to decide whether all Section 1983 claims across the nation should be governed by the same federal limitations period, rather than the peculiarity of a state-by-state patchwork approach determining the sweep of the *federal* safeguard against state civil rights abuses. Borrowing Section 1658's catchall federal limitations period serves *all* of Section 1983's

goals: its "chief goals" of "compensation and deterrence" *and* its "subsidiary goals" of "uniformity and federalism." *Hardin v. Straub*, 490 U.S. 536, 539 (1998). Even if this Court decides that Section 1658 does not apply across the board, Section 1658 serves as a more suitable alternative where, as here, the state limitations period is impermissibly short. *See* Pet. 27.

The importance of the questions presented is underscored by the diverse array of *amici* supporting Mr. Brown's petition. The four amicus briefs highlight, among other things, the many steps litigants must take before bringing Section 1983 claims. IJ Br. 10-13 (explaining that it "would have been impossible" to bring the claims this Court decided in *Gonzalez v. Trevino*, 144 S.Ct. 1663 (2024), within one year); *see also* Br. of Orleans Public Defenders 4-5 ("OPD Br.") (outlining practical challenges for civil rights victims). They also describe the negative effects on communities when victims lack remedies for civil rights violations, including communities' increased distrust of police when accountability is stymied. Br. of Law Enforcement Action Partnership 12-19 ("LEAP Br."). And they warn about the danger of allowing states to "flip th[e] federal policy on its head" by providing a shorter limitations period for Section 1983 claims than the equivalent state-law claims. Br. of Public Justice 5.

B. Section 1983 Claims Should Not Be Subject to a One-Year Limitations Period.

Rather than challenge the importance of the questions, Respondent advances several arguments

defending the merits of the decision below. None is persuasive.

Respondent emphasizes Louisiana's history of using a one-year residual limitations period, and he suggests that Congress ratified that period to govern Section 1983 claims when it enacted the Civil Rights Acts of 1866 and 1871. BIO 8-10, 23-24. But Respondent's assertion rests on several flawed assumptions. For instance, he neglects that Section 1988's three-step framework first instructs courts to determine whether there is a "suitable" *federal* rule of decision before resorting to borrowing state law at step two. *See* 42 U.S.C. § 1988; *see also Burnett v. Grattan*, 468 U.S. 42, 47 (1984). Section 1658 now provides such a "suitable" federal rule. *See* Pet. 22-24.

Respondent's argument also implausibly assumes that Congress would have understood, in 1866 and 1871, that each state's residual personal-injury statute of limitations would govern Section 1983 claims—long before this Court established that rule in *Burnett*, *Wilson*, and *Owens*.

Respondent is also misguided when he suggests that Congress' use of a one-year limitations period for claims under 42 U.S.C. § 1986 means that one year must also be sufficient for Section 1983 claims. BIO 27-29. Section 1986 addresses a discrete type of claim involving conspiracy liability, which was a compromise reached after Congress rejected the controversial Sherman Amendment. *See Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 665-69 (1978) (discussing history of Sherman Amendment). The one-year statute of limitations in Section 1986 cabined the reach of a provision that imposed liability more broadly than

Section 1983 on persons that failed to prevent civil rights violations. The *lack* of such a comparably short limitations period in Section 1983 demonstrates that Congress did not believe that a one-year period would be appropriate for the core federal civil rights remedy for *direct* violations. And if Justice Rehnquist's concurrence in *Burnett* already decided that one year was sufficient for Section 1983 claims, BIO 24-25, there would have been no reason for the Court to expressly reserve this question in *Owens*, 488 U.S. at 251 n.13.

Nothing in the cases Respondent cites suggests that the Court has already decided that one year is a sufficient limitations period. In *O'Sullivan v. Felix*, for example, the Court merely considered the propriety of borrowing a state's limitation period in cases where a plaintiff seeks compensatory damages. 233 U.S. 318, 322-23 (1914). The Court did not purport to consider—much less decide—whether a one-year limitations period is consistent with Section 1983's federal interests. *See id.* Respondent also cites *Robertson v. Wegmann*, but there, the Court considered Section 1983's policies only with respect to Louisiana's *survivorship laws*. 436 U.S. 584, 591 (1978). The Court did not consider or address whether a one-year limitations period was reconcilable with Section 1983's policies of "compensation of persons injured by deprivation of federal rights and prevention of abuses of power by those acting under color of state law." *Id.* at 591-92.

Nor can Respondent find refuge in *Wilson*. He speculates that when the Court decided *Wilson*, "it could not have escaped the Court's attention that [its] holding applied to one-year statutes of limitations in

five jurisdictions." BIO 25. But nothing in *Wilson* addressed the propriety of a one-year limitations period, nor can Respondent's argument be squared with *Owens*' footnote three years later expressly reserving this question.

Without history or caselaw to support his arguments, Respondent suggests there is already "a high volume" of Section 1983 claims in Louisiana's federal courts. BIO 29-31. And this "high volume," he believes, "rebuts any notion" that a one-year limitations period is insufficient. *Id.*

Setting aside the noxious premise of this argument—that a meaningful number of civil-rights abuses currently being challenged in Louisiana means there must be no other transgressions—Respondent offers no factual basis to support his speculation. Mr. Brown's experience—and the experience of *amici*—make clear that one year is insufficient for many civil-rights plaintiffs, especially when they must recover from physical and mental trauma. *See* OPD Br. 7-8; LEAP Br. 19-20. A longer limitations period would also provide time for victims of civil rights violations to seek alternative remedies that may obviate the need for litigation, *see* LEAP Br. 19-20, and it would help ensure that the Section 1983 claims that do reach the courthouse are better developed as "[a]ttorneys will be better able to screen out unmeritorious cases," IJ Br. 24.[1]

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[1] Respondent also argues that statutes of limitations merely impose a deadline on claims (rather than eliminate them) and that they serve important purposes. BIO 26-27. But this Court has already recognized that a limitations period that is *too short* can

On the second question presented, Respondent's merits discussion mischaracterizes Mr. Brown's argument. BIO 21. Mr. Brown has always acknowledged that Section 1658 does not apply *directly* to Section 1983 claims by its own force. Pet. 23.[2] But the text of *Section 1988* directs courts to look for a "suitable" federal analogue—necessarily, in statutes that would otherwise not apply of their own force—for Section 1983 claims. Indeed, if other federal statutes applied by their own force, there would be no need to look for an analogue. Here, Section 1658 is a "suitable" analogue, even if it does not apply directly. *Id.* at 23-24.

Respondent appears to acknowledge this distinction (BIO 21), but he offers no real response. The *Burnett* Court established that Section 1988 supplies the correct framework to determine Section 1983's statute of limitations. 468 U.S. at 47-48. Thus, the Court's only task here is to determine whether Section 1658 provides a "suitable" analogue that displaces the state-law borrowing scheme—or at least provides an alternative where the state limitations period is impermissibly short.

In sum, not only are Respondent's merits arguments incorrect, but they do not address the central question here: whether this case is worthy of the Court's review. It is.

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be inconsistent with Section 1983's federal interests. *See Burnett*, 468 U.S. at 54-55.

[2] For that reason, the Court's decision in *Jones v. R.R. Donnelley & Sons Co.*, 541 U.S. 369 (2004), which discusses and interprets the text of Section 1658 when applied of its own force, has no impact on Mr. Brown's petition.

II. This Case Provides an Excellent Vehicle.

Without any compelling answer to the importance of the questions presented, Respondent manufactures purported vehicle issues—none of which would affect the Court's review.

A. Mr. Brown's Arguments Were Raised Below.

Respondent spends much of his brief incorrectly claiming that Mr. Brown waived his arguments below. BIO 4-7. But Respondent both mischaracterizes Mr. Brown's prior arguments and misinterprets basic waiver principles.

At every stage of this litigation, Mr. Brown has argued that his claims fall within the question reserved in *Owens* and therefore should not be barred by the one-year limitations period. Before the district court, Mr. Brown expressly argued that "Louisiana prescription period's conflict with the goals and practicalities of Section 1983 can and should be resolved—especially in light of cases like Mr. Brown's, where victims are practically unable to enforce their constitutional rights." 2022 WL 22864046, at *18 ("D.Ct. Br."). Similarly, he told the Fifth Circuit that *Owens*' open question "is squarely presented in this case," and "the answer is yes": a one-year limitations period "is inconsistent with the federal interests underpinning" Section 1983. Opening Br., 2023 WL 1374498, at *9-10 ("COA Br."); *see also* Reply Br., 2023 WL 3569947, at *4 (*Owens*' reserved question "indicates … that a one-year window may be too short for certain Section 1983 claims—especially those of greater legal complexity or that have certain practical difficulties to bring."). This is the same argument Mr. Brown now raises before this Court: that a one-year limitations

period is inconsistent with the federal interests underpinning Section 1983. Pet. 13-14.

The courts below not only considered *Owens*' open question, but also noted Mr. Brown's argument about it. The district court acknowledged that Mr. Brown argued "that applying Louisiana's residual prescriptive period is inconsistent with federal interests protected by Section 1983." Pet. App. 23a. And the Fifth Circuit said that Mr. Brown "argue[d] that Louisiana's one-year prescriptive period practically frustrates the ability to bring claims in contravention of the federal interests underlying Section 1983." Pet. App. 10a. Respondent is therefore wrong to suggest that this Court would decide this question as a court of "first view."

Mr. Brown also has consistently raised his argument that Section 1658's four-year limitations period provides a "suitable" analogue. He did so in the district court, D.Ct. Br. 20-22, and in the Fifth Circuit, COA Br. 28-35. The district court expressly addressed Mr. Brown's Section 1658 argument, and while the Fifth Circuit's opinion did not reference Section 1658, the panel discussed Section 1658 at oral argument. Oral Argument at 11:21-13:05; 15:03-16:52; 17:00-17:35; 40:07-41:18. Thus, Mr. Brown's argument was squarely presented and considered below.

Mr. Brown emphasized below the practicalities inherent in police misconduct cases like his own that make a one-year limitations period a substantial hurdle for those Section 1983 plaintiffs. Highlighting these concerns was appropriate because police misconduct claims are at the heart of what Section 1983 is intended to address. Pet. 11; COA Br. 23. If a one-

year limitations period is too short for the quintessential Section 1983 claim, it is too short generally. Pet. 17-18.

Contrary to Respondent's assertions (BIO 4-7), nothing in Mr. Brown's emphasis on police brutality claims constitutes waiver; his central argument below was the same as it is here. Mr. Brown, like any litigant, is entitled to further refine his arguments at each stage of litigation. As this Court has explained, "[o]nce a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below." *Yee v. City of Escondido*, 503 U.S. 519, 534 (1992). "A litigant seeking review in this Court of a claim properly raised in the lower courts thus generally possesses the ability to frame the question to be decided in any way he chooses, without being limited to the manner in which the question was framed." *Id.* at 535; *see also Lebron v. Nat'l R.R. Passenger Corp.*, 513 U.S. 374, 379 (1995) (Court is "free to address" any issue that was "addressed by the court below"). Respondent never suggests that Mr. Brown did not raise either of the claims he presents here. There is thus no real question that Mr. Brown's arguments have been preserved for this Court's review.

B. There Is No Reason to Delay the Court's Review.

Respondent also (briefly) argues there is a "vehicle problem" with Mr. Brown's first question presented because the answer to that question may be limited to a "finite number" of Louisianans going forward. BIO 7. Respondent does not dispute that Mr. Brown falls within this "finite" group or that resolving this question would affect thousands of current civil-rights

plaintiffs in Louisiana as well as Kentucky, Tennessee, and Puerto Rico. Instead, he asks the Court to disregard the denial of Mr. Brown's (and numerous others') ability to pursue federal civil rights claims because there *may* come another case from a different state with a similarly restrictive statute of limitations.

That is no reason to deny Mr. Brown's petition and delay resolution of the important questions presented. Mr. Brown deserves justice for the brutal attack he suffered at the hands of Respondent and another officer—both of whom have since pleaded guilty to federal criminal charges stemming from the incident. To vindicate his federal civil rights, Mr. Brown now raises two pressing questions for this Court's review. And the urgency of these questions is underscored by the many *amici* supporting Mr. Brown's petition. This is not the type of question that would benefit from further percolation in the lower courts. As the Fifth Circuit explained, "only the Supreme Court" can answer the questions presented here, and the time for that answer is now.

In his final attempt to dissuade this Court, Respondent argues that *stare decisis* principles counsel against review. BIO 32-37. He is mistaken. Neither of the questions presented in Mr. Brown's petition asks the Court to overrule any precedent. Indeed, the *Owens* Court expressly reserved the question of whether a one-year statute of limitations for Section 1983 claims is impermissibly short. By definition, deciding an *open* question does not require overruling *any* existing caselaw.

Stare decisis principles also do not apply where the Court revisits an issue in light of an intervening change in the law. Section 1658 was enacted after this Court's decision in *Owens*. The Court can recognize that Congress has now provided a "suitable" federal analogue for purposes of Section 1988's framework without overruling any prior case. Although parts of *Wilson*'s and *Owens*' holdings would no longer control, those decisions became outdated as soon as Congress enacted Section 1658 in 1990. Mr. Brown's petition merely asks the Court to give effect to this change in law.

Respondent also appeals to "reliance" interests as reasons to deny Mr. Brown's petition. BIO 33. But there can be no legitimate reliance interests for federal civil rights abusers. Certainly, any such "reliance" interests are insufficient to preserve the Court's existing Section 1988 framework that is no longer correct as a matter of federal law. *See, e.g.*, *Loper Bright Enters. v. Raimondo*, 144 S.Ct. 2244, 2272 (2024) (reliance interests insufficient when precedent "undermined the very 'rule of law' values that *stare decisis* exists to secure").

The Court has made clear that Section 1983 "is to be accorded a sweep as broad as its language." *Hardin*, 490 U.S. at 539 n.5 (cleaned up). No purported reliance interests of state officials seeking to evade Section 1983's reach can overcome its promise. *Cf. Brown v. Bd. of Educ.*, 347 U.S. 483, 494-95 (1954).

CONCLUSION

The petition should be granted.

Respectfully submitted,

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