

No. 24-16

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In the  
Supreme Court of the United States

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ANTHONY MONROE,  
*Petitioner,*

v.

TERRY CONNER, ET AL.,  
*Respondents.*

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ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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**REPLY BRIEF FOR PETITIONER**

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**TABLE OF CONTENTS**

	<b>Page</b>
TABLE OF AUTHORITIES .....	ii
INTRODUCTION .....	1
ARGUMENT .....	2
I.    The Fifth Circuit’s Erroneous One-Year-Is- Enough Rule Can Only Be Overturned By This Court .....	2
II.   The Question Presented Is Exceptionally Important And Affects Civil Rights Claimants In Multiple Jurisdictions .....	7
III.  This Case Is An Ideal Vehicle .....	9
CONCLUSION .....	13

**TABLE OF AUTHORITIES**

**Page(s)**

**CASES**

<i>Ballard v. Burton</i> , 444 F.3d 391 (5th Cir. 2006).....	11
<i>Burnett v. Grattan</i> , 468 U.S. 42 (1984).....	2, 3, 6
<i>Bush v. Strain</i> , 513 F.3d 492 (5th Cir. 2008).....	11
<i>Chardon v. Fernandez</i> , 454 U.S. 6 (1981).....	5
<i>Felder v. Casey</i> , 487 U.S. 131 (1988).....	3
<i>Gonzalez v. Trevino</i> , 602 U.S. 653 (2024).....	4
<i>Heck v. Humphrey</i> , 512 U.S. 477 (1994).....	1, 11
<i>Johnson v. Railway Express Agency, Inc.</i> , 421 U.S. 454 (1975).....	5, 6
<i>Joseph v. Bartlett</i> , 981 F.3d 319 (5th Cir. 2020).....	11
<i>Lawrence v. Jefferson Parish Public Defenders</i> , No. 20-cv-1615, 2022 WL 16739519 (E.D. La. Nov. 7, 2022) .....	4

**TABLE OF AUTHORITIES—Continued**

	<b>Page(s)</b>
<i>Owens v. Okure</i> , 488 U.S. 235 (1989).....	1, 3, 6, 7
<i>Puderer v. Cain</i> , 830 F. App'x 458 (5th Cir. 2020) .....	9
<i>Wilson v. Garcia</i> , 471 U.S. 261 (1985).....	2, 7

**STATUTES**

28 U.S.C. § 1658.....	6
42 U.S.C. § 1988(a).....	1, 2

**OTHER AUTHORITIES**

Richard A. Webster, <i>You Have One Year to Sue a Cop for Abuse. Civil Rights Firms Want to Change That</i> , Verite News (Oct. 11, 2023), <a href="https://veritenews.org/2023/10/11/civil-rights-firms-challenge-one-year-deadline-to-sue-police">https://veritenews.org/2023/10/11/civil-rights-firms-challenge-one-year-deadline-to-sue-police</a> .....	4
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## INTRODUCTION

This Court should grant review. Respondents have no good argument that an outlier one-year limitations period is consistent with the federal interests underpinning Section 1983—the question at the heart of the inquiry mandated by 42 U.S.C. § 1988(a) and left open in *Owens v. Okure*, 488 U.S. 235, 251 n.13 (1989). Nor do respondents dispute that the numerous obstacles that Section 1983 claimants must navigate can sometimes make it impossible to meet an extreme one-year filing deadline. Instead, respondents principally say (at 17-19) that this does not matter—*any* limitations period will do. That is a radical departure from this Court’s existing precedent. More importantly, it provides no basis for this Court to leave the question unresolved—particularly because the one-year limit threatens the availability of Section 1983 relief for millions of people in affected jurisdictions.

Without any good answer on the merits, respondents contrive two supposed vehicle problems. Their first claim (at 12)—that the Fifth Circuit “did not squarely answer” the question presented—makes no sense. The applicability of the one-year limitations period was the *only* question the Fifth Circuit addressed in this case, and it was outcome-determinative. And respondents’ second theory (at 11-12)—that if they lose this case they might win on remand under *Heck v. Humphrey*, 512 U.S. 477 (1994)—is makeweight. Neither court below addressed *Heck*; it poses no bar to the Court resolving the question presented; and it doesn’t bar Mr. Monroe’s claim in any event.

In reality, this case is an ideal vehicle for resolving the question left unanswered by *Owens*. The Court should grant review and ensure that victims of constitutional violations in Louisiana, Kentucky, Tennessee, and Puerto Rico have the same fair opportunity to obtain relief as all others across the country.

## ARGUMENT

### **I. The Fifth Circuit's Erroneous One-Year-Is-Enough Rule Can Only Be Overturned By This Court**

1. The Fifth Circuit's rule improperly discounts the federal interests protected by Section 1983 and warrants this Court's review. As the petition explains (at 14-18), the one-year limitations period flunks the third step of Section 1988(a)'s framework, which requires that any borrowed state law "is not 'inconsistent with the Constitution and laws of the United States,'" because such a short period is incompatible with the "practicalities that are involved in litigating federal civil rights claims" under Section 1983. *Burnett v. Grattan*, 468 U.S. 42, 47-48, 50 (1984) (quoting 42 U.S.C. § 1988(a)).

Respondents do not seriously refute that analysis. They do not even attempt to show that the outlier one-year limitations period "will not frustrate or interfere with the implementation of national policies." *Wilson v. Garcia*, 471 U.S. 261, 269 n.18 (1985). Nor do they try to defend the Fifth Circuit's inapt analogies to Section 1986 or this Court's prior decisions regarding state tolling provisions in cases filed by prisoners. *See* Pet. 18-19.

Instead, respondents primarily argue (at 4, 18-19) that statutes of limitations are inherently

“arbitrar[y]” and that states should be free to make whatever “policy choices” they want when establishing limitations periods. But as applied to Section 1983 cases, not any statute of limitations will do. Virtually all other states have concluded that at least two years is necessary to give victims sufficient time to prepare and file their claims. *See* Pet. 25-27. Moreover, respondents’ theory that states should have unbridled discretion to pick even an arbitrarily short limitations period ignores the critical role that federal courts play in ensuring that any borrowed state law is not “inconsistent with federal interests.” *Owens*, 488 U.S. at 251 n.13. Respondents seem to believe that any limitations period, no matter how short, would “invariably” satisfy Section 1988(a). Opp. 17-18. That cannot be right.

Respondents’ extreme position also downplays the practical obstacles that can render a one-year limitations period virtually impossible to satisfy. *See* Pet. 14-18. This Court disfavors the borrowing of overly “truncated” limitations periods from state law precisely “because such statutes inadequately accommodate the complexities of federal civil rights litigation and are thus inconsistent with Congress’s compensatory aims.” *Felder v. Casey*, 487 U.S. 131, 139-40 (1988). Reflexively applying a one-year limitations period ignores those complexities, which can include (1) recovering from injuries; (2) grasping the “constitutional dimensions of the tort” against the plaintiff, *Owens*, 488 U.S. at 238; (3) undertaking “considerable [pre-suit] preparation” securing qualified counsel or preparing to proceed *pro se*, *Burnett*, 468 U.S. at 50-51; (4) conducting a pre-filing investigation; (5) identifying “Doe” defendants (if needed); and (6) preparing and serving the complaint.

This case perfectly demonstrates these practicalities. Mr. Monroe faced multiple obstacles to filing a Section 1983 suit within one year, including physical injuries, emotional trauma, and criminal charges arising from the incident, which in turn required him to obtain legal counsel, fulfill bond conditions, and manage collateral consequences on his employment. Even the Fifth Circuit was “sympathetic to Monroe’s plight.” Pet. App. 5a; see also *Lawrence v. Jefferson Par. Pub. Defenders*, No. 20-cv-1615, 2022 WL 16739519, at \*2 n.14 (E.D. La. Nov. 7, 2022) (recognizing “challenges imposed by the one-year statute of limitations for Section 1983 plaintiffs”).

And Mr. Monroe’s case is not unusual. Of more than 400 police-brutality cases brought to the American Civil Liberties Union of Louisiana in a recent 18-month period, 30% fell outside the statute of limitations.<sup>1</sup> Amici further detail the barriers to filing civil rights claims within one year based on their experience representing individual victims. For example, the Institute of Justice highlights the circumstances in *Gonzalez v. Trevino*, 602 U.S. 653 (2024), a First Amendment retaliatory-arrest case that “would have been impossible to bring within one year of [plaintiff Sylvia Gonzalez’s] arrest.” IJ Amicus Br. 10. The legal team in that case spent six months alone negotiating with the county to review arrest records, manually copying the paper-only records, and assessing whether others had been arrested for

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<sup>1</sup> Richard A. Webster, *You Have One Year to Sue a Cop for Abuse. Civil Rights Firms Want to Change That*, Verite News (Oct. 11, 2023), <https://veritenews.org/2023/10/11/civil-rights-firms-challenge-one-year-deadline-to-sue-police>.



the same conduct—a requirement for a retaliatory arrest claim. *Id.* at 2-3, 10-11; *see also id.* at 12 (citing other cases requiring extensive pre-filing investigation and research). These examples demonstrate that one-year statutes of limitations are inconsistent with the complexities of filing Section 1983 claims and thus fail the borrowing framework under Section 1988(a).

2. Respondents also offer a handful of other arguments purportedly justifying a one-year limitations period. These fail as well.

Respondents claim (at 20) that this Court has implicitly approved borrowing one-year statutes of limitations in two decisions—*Chardon v. Fernandez*, 454 U.S. 6 (1981), and *Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454 (1975)—that happened to involve such time limits. But these decisions predate this Court’s precedents setting out the framework for borrowing residual limitations periods. And neither case addressed the appropriate length of a borrowed limitations period: *Chardon* was a four-paragraph opinion about when a limitations period begins running, 454 U.S. at 6-8, and *Johnson* concerned whether filing a Title VII claim tolls a Section 1981 claim, 421 U.S. at 463.

*Johnson* in fact reaffirms that when courts interpret federal civil rights statutes, “considerations of state law may be displaced *where their application would be inconsistent with the federal policy underlying the cause of action.*” *Id.* at 465 (emphasis added). Just as in *Owens*, the *Johnson* Court specifically declined to decide whether the “application of [a] one-year limitation period to federal civil rights actions is an impermissible

discrimination against the federal cause of action.” *Id.* at 462 n.7. That is precisely the situation here.

Equally unavailing is respondents’ reliance (at 18) on Justice Rehnquist’s concurrence in *Burnett*. True, that concurrence questioned the majority’s basic framework for borrowing state-law limitations periods under Section 1988(a). 468 U.S. at 57. But five years later, this Court unanimously reaffirmed that framework in *Owens*, 488 U.S. at 243, and declined to decide whether a one-year period satisfied it, *id.* at 251 n.13. To the extent respondents want to urge the Court to recalibrate this framework more fundamentally, that cuts in *favor* of review, not against it.

Respondents also speculate (at 4, 20-21) that if this Court agrees with Mr. Monroe, it would “destroy settled expectations” that defendants in Puerto Rico, Kentucky, and Tennessee may have in a one-year limitations period. But this Court in *Owens* expressly declined to resolve the question presented here—exactly the *opposite* of settling expectations. And respondents’ settled-expectations theory rests on a handful of cases from the First and Sixth Circuits that simply assume away the question presented. *See* Opp. 21. That is hardly a basis for establishing any sort of “settled expectations,” let alone expectations that should be insulated from this Court’s review. Regardless, the “expectations” themselves are absurd: State actors who commit civil rights abuses have no legitimate vested interest in escaping accountability once a one-year clock runs out.

Finally, respondents misconceive Mr. Monroe’s reference to 28 U.S.C. § 1658. *See* Opp. 21-23; Pet. 20. Mr. Monroe does not ask this Court to retroactively apply Section 1658 to Section 1983 claims. Instead,

he merely offers Section 1658 as a potential law to borrow in cases where (as here) the state statute of limitations contravenes federal interests at the third step of the Section 1988(a) analysis. *See* Pet. 20-21. Such borrowing does not render Section 1658 itself “retroactive.” Opp. 21-22.

Finally, respondents are wrong to argue (at 23) that applying Section 1658 in such cases lacks a “principled basis.” The Court’s guiding principle here is that the limitations period borrowed for purposes of adjudicating Section 1983 claims must align with “federal interests.” *Owens*, 488 U.S. at 251 n.13. In the rare situation where a given state-law limitations period is so short that it *undermines* those interests, it is both principled and just to consider alternative analogues in state and federal law, including Section 1658. To the extent that Respondents dispute that principle or the consideration of federal law analogues, this only shows the need for the Court to grant review and clarify the proper approach.

## **II. The Question Presented Is Exceptionally Important And Affects Civil Rights Claimants In Multiple Jurisdictions**

As the petition shows, and as an array of amici confirm, this question is exceptionally significant. Pet. 23-28; *see* IJ Amicus Br. 2-3; Orleans Public Defenders (OPD) Amicus Br. 3-8; Law Enforcement Action Partnership (LEAP) Amicus Br. 2. Section 1983 is one of the “most important, and ubiquitous, civil rights statute[s]” enacted by Congress. *Wilson v. Garcia*, 471 U.S. 261, 266 (1985). And as the Fifth Circuit stressed, it is up to “[this] Court” to “clarify how lower courts should” protect the interests underlying that statute from being “practical[ly]

frustrat[ed]” by a one-year limitations period. Pet. App. 4a-5a (citation omitted). Unless this Court grants review, claimants in three jurisdictions—which, collectively, are home to more than 14 million people and account for hundreds of Section 1983 claims per year, *see* Pet. 25-26 nn.5-7—may be wrongly deprived of their chance to vindicate their federal rights.

Respondents insist (at 14) that to show importance, Mr. Monroe must “concretely identify” examples of past claims found untimely. But they ignore that this case itself offers precisely such an example, *see supra* at 4. They also disregard the specific examples cited by amici, who concretely explain the practical difficulties of filing civil rights claims within a year. *See* IJ Amicus Br. 10-22; OPD Amicus Br. 3-8; LEAP Amicus Br. 3-12. And as respondents well know, the very nature of the problem here prevents “concrete” examples from surfacing in the case law. Plaintiffs do not usually choose to file time-barred suits, and the one-year limitations period undoubtedly deters individuals from filing Section 1983 claims in the first place.

Respondents themselves say that eliminating one-year limitations periods would trigger a “sea change in § 1983 litigation” and a “seismic shift for . . . litigants” in the relevant jurisdictions. Opp. 4, 21. That amounts to a concession that the one-year limitations period in place in these jurisdictions routinely prevents significant numbers of claimants from filing their claims in “concrete[]” cases.

Respondents also argue (at 14) that Louisiana’s statutory change to the one-year limitations period diminishes the need to resolve the question presented. Not so. A one-year limitations period

applies to *every* victim of a civil-rights violation in Louisiana who was injured before July 1, 2024—a class of claimants that includes Mr. Monroe himself. Pet. 3 n.1. So too for claimants and potential claimants from Puerto Rico, Kentucky, and Tennessee. Victims of unconstitutional state action in these states should receive the same fair chance to pursue Section 1983 relief as victims everywhere else. If anything, the fact that Louisiana lengthened its limitations period underscores the growing—and now near-universal—consensus that a one-year limitations period is too harsh.

Strikingly, respondents suggest (at 15-16) that a one-year limit is no big deal for federal civil rights claimants because they can always invoke equitable tolling. But respondents themselves recognize (at 16) that such tolling is available only in “extraordinary circumstances,” and no one thinks those circumstances encompass the (unfortunately) typical challenges associated with filing a federal civil rights claim within a year. *See, e.g., Puderer v. Cain*, 830 F. App’x 458, 458 (5th Cir. 2020) (stressing that equitable tolling applies only in “exceptional circumstances”); Appellee Br. 16, *Griffin v. City of New Orleans*, No. 15-30563 (5th Cir. 2015), 2015 WL 5774137 (arguing that equitable tolling applies only in “extraordinary” cases); *see supra* at 3-5. Equitable tolling is not a serious solution to the very real problems posed by applying an unfairly short one-year filing deadline.

### **III. This Case Is An Ideal Vehicle**

1. Unable to defend the decision below on its merits—or persuasively contest its importance—

respondents manufacture two purported vehicle problems. Neither holds water.

*First*, respondents claim (at 2, 12-14) that the Fifth Circuit “did not fully address” the question presented. This is wrong: The Fifth Circuit obviously “address[ed]” the question because it upheld the application of Louisiana’s one-year limitations period and affirmed the district court’s dismissal of Mr. Monroe’s claims as untimely. *See* Pet. App. 4a-5a. Indeed, whether it was proper to apply Louisiana’s one-year limitations period in adjudicating Mr. Monroe’s Section 1983 claim was the *only* issue decided by the district court, *id.* at 12a-13a, and the *only* issue decided by the Fifth Circuit, *id.* at 3a-5a.

Respondents cherry-pick quotes from the petition to suggest that Mr. Monroe argued that the Fifth Circuit “[largely sidestep[ped]’ the question [presented] altogether.” Opp. 12-13 (first alteration in original) (quoting Pet. 12). But that misrepresents the petition. Mr. Monroe argued that the Fifth Circuit’s decision “largely sidesteps the *analysis commanded by this Court’s decisions*” as to whether to borrow state law to adjudicate a Section 1983 claim, Pet. 12 (emphasis added), not that the court ignored the question presented altogether.

The Fifth Circuit’s misguided analysis was ultimately driven in part by a recognition that this Court—and “[o]nly” this Court—can “clarify how lower courts should evaluate practical frustration” in filing Section 1983 claims in the state-law borrowing analysis. Pet. App. 4a-5a (emphasis added) (citation omitted). That rationale underscores why this Court should *grant* the petition. And while respondents suggest (at 13-14) that this Court should let the issue percolate further in the lower courts, the current

regime is inflicting harm on victims of civil-rights violations *now*. There is no reason to wait.

*Second*, respondents urge the Court to look beyond the question presented and deny review because (in their view) Mr. Monroe’s claims will ultimately fail under *Heck v. Humphrey*, 512 U.S. 477 (1994). Opp. 11-12. This is untrue. Mr. Monroe’s case is *not* barred by *Heck* because his excessive force, conspiracy, and failure to supervise claims do not “collateral[ly] attack” his state-court convictions. *Id.* at 2. Those convictions—for resisting arrest and battery of a police officer—relate to facts that are separate from those underlying his Section 1983 claims. *See Joseph v. Bartlett*, 981 F.3d 319, 324, 342 (5th Cir. 2020). Indeed, Mr. Monroe’s claims are linked to actions by respondents that occurred *after* they subdued Mr. Monroe. *See* CA5 ROA 112-14. The Fifth Circuit has been clear that a criminal conviction does not preclude a Section 1983 excessive-force claim when (as here) the “excessive force occurred after the arrestee has ceased his or her resistance.” *Bush v. Strain*, 513 F.3d 492, 498 (5th Cir. 2008) (rejecting application of *Heck* in these circumstances); *Ballard v. Burton*, 444 F.3d 391, 398, 400-01 (5th Cir. 2006) (similar). *Heck* does not bar relief here.

Respondents’ *Heck* argument is also premature. Respondents do not claim—nor could they—that the potential *Heck* dispute would prevent this Court from addressing and resolving the threshold statute-of-limitations question presented in the petition. As respondents concede (at 12), neither lower court addressed the issue. At most, the undeveloped *Heck* issue is a question for consideration on remand, after this Court addresses the timeliness issue. It is not a reason to deny review.

2. On October 7, 2024, this Court denied certiorari in *Brown v. Pouncy*, No. 23-1332, which raised a similar question presented. That denial should not affect the Court’s treatment of this petition. The *Brown* respondents’ principal argument against certiorari was that the petitioner there had failed to properly preserve the one-year statute-of-limitations issue in the Fifth Circuit. *Brown* Opp. 4-7. And respondents in this case have noted that *Brown* suffered from major vehicle problems creating a “serious risk” that the Court would have had to “dismiss [the case] as improvidently granted.” Opp. 23-25.

The parties here agree that this case presents no such problems and thus offers a better vehicle than *Brown* for “address[ing] the issue presented.” *Id.* at 25 (“[I]f the Court is inclined to address the issue presented, it should take this case instead of . . . *Brown*.”). Mr. Monroe directly challenged the one-year statute-of-limitations below, and that issue was squarely decided by the Fifth Circuit. This Court should now address that important issue for itself.



**CONCLUSION**

The petition should be granted.

Respectfully submitted,

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