

No. 23-30230

**United States Court of Appeals
for the Fifth Circuit**

ANTHONY MONROE,

Plaintiff-Appellant,

v.

TERRY CONNER, in his individual capacity as a law enforcement officer with Louisiana State Police; RICHARD MATTHEWS, in his individual capacity as a law enforcement officer with the Louisiana State Police; LAMAR DAVIS, in his official capacity as the Superintendent of the Louisiana State Police; CHAVEZ CAMMON, in his official capacity as records custodian,

Defendants-Appellees.

On Appeal from the United States District Court
for the Western District of Louisiana
No. 5:21-cv-04063 (Hon. Elizabeth E. Foote)

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CERTIFICATE OF INTERESTED PERSONS

Monroe v. Conner, No. 23-30230

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Fifth Circuit Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal:

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Dated: July 20, 2023

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STATEMENT REGARDING ORAL ARGUMENT

Plaintiff-Appellant respectfully submits that oral argument would materially assist the Court's disposition of this appeal. This case presents important questions concerning constitutional and federal law. If the Court decides to have oral argument, a junior associate attorney of Latham & Watkins LLP would conduct the argument.

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INTRODUCTION

Hours before dawn on November 29, 2019, Appellant Anthony Monroe (“Mr. Monroe”) had just finished a work shift and was driving home. Before Mr. Monroe could reach his house, he was pulled over by a Louisiana State Police (“LSP”) officer, Appellee Richard Matthews, for no justifiable reason. Mr. Monroe—an elderly African American—understood it was imperative to be cautious and compliant in this police encounter. Nevertheless, Appellee Matthews, later joined by two other LSP officers, viciously escalated what they later claimed to be a routine traffic stop by brutally beating Mr. Monroe to the brink of death. Over Mr. Monroe’s screaming that he could not breathe, he suffered blows to the face and was pinned to the ground with the full body weight of the LSP officers on him. The LSP officers caused Mr. Monroe to experience a heart attack; caused his lower legs to swell to the size of his thighs; caused permanent injuries to his shoulders and arms; and fractured both of his wrists. To add insult to injury, Mr. Monroe is facing fabricated criminal charges from the incident.

Within two years of this traumatic attack, Mr. Monroe filed this action, asserting both federal civil rights claims and state law claims, including claims for aggravated assault and battery. In almost every other state, Mr. Monroe’s federal civil rights claims would receive an evaluation on the merits. But, according to the district court, that is not the case in Louisiana, which has a one-year residual

limitations period that bars Mr. Monroe's federal civil rights claims. This application of Louisiana law shields Appellees from having to answer on the merits for their violation of federal civil rights law, while leaving Mr. Monroe to seek only partial redress in state court for aggravated tort claims arising from the same brutal attack that forms the basis for his civil rights claims. The district court's ruling is erroneous under the United States Constitution's Supremacy Clause, Section 1983's legislative history, and the Supreme Court's Section 1983 jurisprudence.

The Reconstruction Era, a time of civil unrest and racial hatred, prompted Congress to design a civil rights statute, 42 U.S.C. § 1983, to hold state actors accountable for violating an individual's constitutional rights. Because Section 1983 lacks a statute of limitations provision, federal courts generally borrow limitations periods from state law. But in selecting a limitations period, federal courts must assess the "predominance of the federal interest" and may apply state law "only if it is not inconsistent with the Constitution and laws of the United States." *Burnett v. Grattan*, 468 U.S. 42, 48 (1984) (internal quotation marks omitted) (citing 42 U.S.C. § 1988(a)).

Here, the district court did not address this important limitation under Section 1988. Instead, the district court incorrectly concluded that the Supreme Court has provided a straightforward directive to blindly borrow the general or residual statute

of limitations for personal injury actions when considering Section 1983 claims. That is not the law.

To reverse the district court's judgment, this Court must decide whether Louisiana's one-year statute of limitations period contravenes Section 1983's federal interests. It does. In practice, the application of Louisiana's one-year limitations period for Section 1983 claims overwhelmingly deprives federal civil rights plaintiffs of their day in court, particularly those who have suffered violence at the hands of the police. Moreover, the one-year prescriptive period has a discriminatory effect in that it cuts off access to federal court, while allowing equivalent state law claims to proceed under a longer, two-year limitations period. Thus, pursuant to Section 1988, Louisiana's residual one-year limitations period cannot apply here because its application is inconsistent with the federal interests underpinning Section 1983.

There are more suitable prescriptive periods that are consistent with the goals of Section 1983, including Louisiana's two-year statute of limitations for acts of violence and the four-year limitations period set forth in 28 U.S.C. § 1658. Indeed, one Louisiana district court has held that Louisiana's two-year limitations period applies to Section 1983 claims premised on aggravated tort causes of action. *Rodgers v. Gusman*, No. 2:16-CV-16303, 2019 WL 3333106, at *8 (E.D. La. July 24, 2019) (denying summary judgment on aggravated assault and battery claims

brought pursuant to Section 1983 because the two-year prescriptive period under Art. 3493.10 could apply). Accordingly, the district court’s judgment must be reversed.

STATEMENT OF JURISDICTION

The district court had jurisdiction under 28 U.S.C. §§ 1331, 1343(a)(3), and 1367(a). The district court entered final judgment on March 9, 2023. ROA.601. Mr. Monroe timely filed a notice of appeal on April 10, 2023. ROA.643. This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

Whether the district court erred in holding that Mr. Monroe’s Section 1983 claims are barred by Louisiana’s one-year, residual prescriptive period.

STATEMENT OF THE CASE

A. Statutory Background

Weeks after President Ulysses S. Grant addressed Congress about the “breakdown of law and order in the Southern states” amid the Reconstruction era, Congress enacted Section 1983 as part of the Civil Rights Act of 1871. Pub. L. No. 42-22, § 1, 17 Stat. 13 (1871) (codified as amended at 42 U.S.C. § 1983); *Briscoe v. LaHue*, 460 U.S. 325, 337 (1983). Legislators, worried about “the ineffectiveness of state law enforcement and [an] individual’s federal right to ‘equal protection of the laws,’” sought to eradicate racial and class oppression. *Briscoe*, 460 U.S. at 338.

Congress intended for Section 1983 to douse the “reign of terror imposed by the Klan upon black citizens and their white sympathizers in the Southern States.” *Baxter v. Bracey*, 140 S. Ct. 1862, 1862 (2020) (Thomas, J., dissenting from denial of certiorari) (quoting *Briscoe*, 460 U.S. at 337) (internal quotation marks omitted). And, more broadly, Section 1983 sought to end state-sanctioned racialized terror by authorizing private civil rights actions against state actors who violate the U.S. Constitution and federal laws.

In addition, Congress enacted Section 1985, which created a remedy for persons injured by a conspiracy to deprive them of “the equal protection of the laws” or “equal privileges under the laws.” Pub. L. No. 42-22, § 2, 17 Stat. 13 (1871) (codified as amended at 42 U.S.C. § 1985). Relevant here, Section 1985(3) provides a cause of action for race-based conspiracy victims whose right of interstate travel has been impaired. *Griffin v. Breckenridge*, 403 U.S. 88, 106 (1971). Sections 1983 and 1985, along with the other sections of the Civil Rights Act of 1871, charge federal courts with protecting constitutional liberties threatened by executive, legislative, or judicial state actors. *Mitchum v. Foster*, 407 U.S. 225, 238–43 (1972). Thus, the Supreme Court has given these provisions “a sweep as broad as [their] language.” *Griffin*, 403 U.S. at 97.

Although dormant for years following Reconstruction, Sections 1983 and 1985 now serve as two of the most important federal civil rights remedies for police

brutality victims. Neither, however, has an express statute of limitations. The Supreme Court has accordingly addressed that gap in several opinions.

The Supreme Court first tackled the issue in *Burnett*, 468 U.S. at 42, a case involving employment discrimination. There, the Court directed federal courts to follow Section 1988’s three-prong test. The first two steps are simple: (1) search for a federal law suitable to carry the civil rights provision into effect, and if no rule exists, (2) consider applying state law. *Id.* But the final step requires a federalism inquiry: determine whether the state law is consistent with the federal interests of the United States Constitution and its laws. *Id.* The Court described the “central objective of the Reconstruction-Era civil rights statutes” as “ensur[ing] that individuals whose federal constitutional or statutory rights are abridged may recover damages or secure injunctive relief.” *Id.* at 55 (citations omitted).

The Supreme Court next addressed the issue in *Wilson v. Garcia*, a police brutality case like Mr. Monroe’s. 471 U.S. 261 (1985). There, the Court clarified that state personal injury limitations periods are the most appropriate analog to apply in Section 1983 cases. The *Wilson* Court noted that since Section 1983 is “a uniquely federal remedy” having “no precise counterpart in state law,” a state’s choice of a limitations period only roughly approximates the policy weighing of protecting federal rights and promoting repose. *Id.* at 271. This approach only “minimiz[es] the risk that the choice of a state statute of limitations would not fairly serve the

federal interests vindicated by [Section] 1983.” *Id.* at 279. It does not guarantee that the state statute of limitations is always the correct limitations period to use in a Section 1983 case.

Finally, in *Owens v. Okure*, another police brutality case, the Supreme Court determined the proper limitations period to use where a state provides multiple personal injury statutes. 488 U.S. 235 (1989). Facing two New York statutes—a three-year residual personal injury limitation and a one-year intentional torts limitation—the *Owens* Court declared that “general or residual” personal injury limitations periods are most analogous to Section 1983 claims. *Id.* at 251. In reaching that conclusion, the Court considered the practicalities of federal civil rights litigation: “[i]njuries to personal 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.” *Id.* at 238 (citations and internal quotation mark omitted). Notably, the justices affirmed that a “3-year period of limitations ‘more faithfully represents the federal interest in providing an effective remedy for violation of civil rights than does the restrictive one-year limit.’” *Id.*

B. Factual Background

1. Appellee Matthews Effected A Pretextual Traffic Stop And Deliberately Fabricated An Attempted Assault To Arrest And Escalate The Force Used Against Mr. Monroe

On November 29, 2019, after finishing his work shift at Eldorado Casino in Shreveport, Louisiana at around 4:00 a.m., Mr. Monroe was driving towards his home on I-20 when he noticed an LSP officer, Appellee Matthews, following him. ROA.108. Appellee Matthews followed Mr. Monroe for several minutes on I-20, and continued to do so as Mr. Monroe turned off I-20 onto Traffic Street, which curved underneath the I-20 bridge. ROA.108. Given the early hour, the I-20 underpass was especially dark, and no other cars nor people were present. ROA.108. For reasons unknown to Mr. Monroe, as he began driving under the bridge, Appellee Matthews suddenly turned on his police lights. ROA.108.

Mr. Monroe reasonably did not feel safe pulling over underneath the bridge in the dark after 4:00 a.m. ROA.108. Because Mr. Monroe knew the area had a history of police violence against African American victims and had seen many news stories in the last year detailing LSP officers' illegal targeting and assaults of African Americans, Mr. Monroe feared that—in this dark and secluded area—he would become another victim of police brutality. ROA.109. Mr. Monroe accordingly calmly drove for less than one minute out from underneath the bridge to the first

well-lit area where he could safely pull over, which was the Boomtown Casino, located at 300 Riverside Drive in Bossier City, Louisiana. ROA.109.

Appellee Matthews exited his police cruiser and walked up to Mr. Monroe's car, while Mr. Monroe remained inside his vehicle. ROA.109. Without justifying his stop of Mr. Monroe, Appellee Matthews, with his hand on his gun, immediately demanded that Mr. Monroe exit his vehicle. ROA.109. Terrified by what might happen to him if he got out of his vehicle for this unexplained stop, Mr. Monroe remained in his truck and called his mother on his cell phone. ROA.110. Through his rolled-down window, Mr. Monroe repeatedly asked why he had been pulled over. ROA.110. Appellee Matthews, in violation of standard practice, provided no valid explanation and continued to demand that Mr. Monroe exit the truck. ROA.110. Appellee Matthews claimed Mr. Monroe was driving 45 miles per hour in a 25 miles per hour zone, but Mr. Monroe knew that claim was false; indeed, this pretextual traffic violation was dismissed by the district attorney on September 3, 2020. ROA.110 n.8.

Through the window, Mr. Monroe informed Appellee Matthews that he had high blood pressure, that he feared for his health, and that he did not want to be handcuffed because of his medical conditions. ROA.110. Appellee Matthews assured Mr. Monroe that he did not plan to handcuff him. ROA.111. Mr. Monroe's

mother, who was still on the phone, told Mr. Monroe to get out of the vehicle so as not to give the officer a reason to shoot him. ROA.110.

When Mr. Monroe exited his vehicle, Appellee Matthews told Mr. Monroe that his arrest had to be done “the hard way.” ROA.111. Appellee Matthews then grabbed Mr. Monroe’s wrists and pulled Mr. Monroe’s hands towards Appellee Matthews’ own throat to fabricate an assault and resist of arrest. ROA.111. Mr. Monroe pulled his hands away from Appellee Matthews, who then said, “I got you now,” before he drew his gun and pointed it at Mr. Monroe. ROA.111. Appellee Matthews had his body camera turned off during this exchange, ensuring there would be no footage. ROA.111. Mr. Monroe, in fear that Appellee Matthews was trying to shoot and kill him, cowered back into his vehicle. ROA.111.

2. Appellee LSP Officers Together Violently Beat Mr. Monroe, Causing A Heart Attack, Bone Fractures, And Permanent Physical And Emotional Injuries

When Appellees Terry Conner and John Doe arrived at the scene, Appellee Matthews turned his body camera on, and the three officers (the “Appellee Officers”) demanded Mr. Monroe exit his vehicle. ROA.112. Mr. Monroe’s mother, who was still on the phone with Mr. Monroe, told him to exit the truck to avoid being shot by the officers. ROA.112. Once Mr. Monroe exited his vehicle, Appellee Officers arrested Mr. Monroe without reading him his *Miranda* rights and without providing a reason for his arrest when asked. ROA.112.

Together, all three officers violently slammed an already restrained Mr. Monroe to the concrete ground, face down on the street, without provocation or justification. ROA.112. All three Appellee Officers together kneeled on Mr. Monroe's back and legs, placing their entire collective weight on him. ROA.112. The Appellee Officers began beating Mr. Monroe while he was helpless and unable to breathe. ROA.112. They continued beating him and suffocating him with the weight of their bodies despite his cries for help that he could not breathe, and despite Appellee Matthews being aware of Mr. Monroe's heart condition. ROA.112. One of the Appellee Officers kneeled Mr. Monroe in the kidney so violently that it caused Mr. Monroe to urinate involuntarily. ROA.113.

While on the ground and under the weight of three officers, Mr. Monroe felt his chest tighten with extreme pain and discomfort. ROA.113. This pain persisted throughout the subsequent 45-minute ride in a police car where he went in and out of consciousness. ROA.113. Mr. Monroe later learned from Louisiana State University Health Shreveport ("LSU Health") that he had suffered a heart attack during the beating he endured at the hands of LSP. ROA.113.

At Benton Jail, the police denied Mr. Monroe proper medical treatment and refused to take Mr. Monroe to LSU Health for his injuries despite Mr. Monroe begging the officers for such care. ROA.114. Mr. Monroe had to wait for his neighbor to pick him up at Benton Jail and drive him to the Emergency Room at

LSU Health in order to receive proper medical care. ROA.114. At LSU Health, Mr. Monroe learned that he had suffered fractures in both of his wrists and significant injuries to his shoulders and arms. ROA.114. Mr. Monroe's doctor kept him in the Emergency Room for two nights until he could be admitted to the hospital because the doctor feared he may die from the bodily fluid build-up and bloating directly caused by the Appellee Officers' violent beating. ROA.114. Mr. Monroe was later declared disabled. ROA.114.

As a result of the Appellee Officers' actions, Mr. Monroe has been permanently and irreparably damaged. ROA.115. Mr. Monroe was diagnosed with post-traumatic stress disorder from the emotional and psychological trauma that resulted from the incident. ROA.115. He also witnessed the stress and harm that the ordeal inflicted on his mother, who had been on the phone with him at the time of the beating. ROA.115. After the attack on Mr. Monroe, his mother suffered a major stroke and 13 minor strokes from the stress caused by her son's illegal arrest and beating, and she later passed away. ROA.115. Because of the fabricated criminal charges issued against him by his attackers, Mr. Monroe could no longer maintain his dealer's license and was fired from his job of over twenty years as a casino dealer at Eldorado Casino. ROA.115.

3. Mr. Monroe's Beating Stems From Appellee Lamar Davis's—The LSP Superintendent—Actions And Inactions

The Appellee Officers' unlawful actions could have been prevented had they been properly supervised. ROA.115. Appellee Lamar Davis ("Appellee Davis") is the current LSP Superintendent, whose position requires him to lead LSP and be principally responsible for supervising, investigating, and decertifying all LSP officers, including the Appellee Officers. ROA.135–36. The Superintendent's duties also include supervising, training, and regularly reviewing the Appellee Officers' amount of force used (if any) when making arrests, including Mr. Monroe's arrest. ROA.358. Appellee Davis knew that LSP officers, including the Appellee Officers, were using an unlawful amount of force when making arrests and knew that the officers could seriously injure or kill citizens when doing so. ROA.358. Just six months prior to Mr. Monroe's assault, Ronald Greene was killed by LSP officers during an arrest and brutal attack by LSP. ROA.133. Even after Mr. Monroe's beating and the killing of Ronald Greene by LSP officers, Appellee Davis still has not taken adequate corrective actions to properly supervise, train, and decertify LSP officers. ROA.359.

The DOJ recently announced its investigation into LSP policies, training, supervision, force investigations, and systems of accountability after Ronald Greene's arrest and murder, illuminating the lack of corrective actions taken by LSP after Mr. Greene's death. ROA.359.

4. Mr. Monroe Made Multiple Public Records Requests In Order To Prepare His Complaint, But LSP Failed To Comply With Those Requests

Appellee Lieutenant Colonel Chavez Cammon was the Custodian of Records for LSP (“Custodian”) at the times relevant to this lawsuit. ROA.394. Under Article XII, § 3 of the Louisiana Constitution and the Public Records Law (“Records Law”), La. Rev. Stat. Ann. § 44:31, *et seq.*, a person has the right to examine public documents. ROA.396. After the violent beating, Mr. Monroe’s counsel served the Custodian a Public Records Request (“Request”) on July 26, 2021, which consisted of seventeen enumerated categories of documents. ROA.396. On August 17, 2021, LSP produced just one document in response to Mr. Monroe’s seventeen enumerated Requests. ROA.396. The document was redacted and contained LSP’s standard use of force policy. ROA.396. LSP did not explain why redactions were made, nor the legal basis for withholding other responsive documents, which were required to be produced by the Records Law. ROA.396.

On September 20, 2021, Mr. Monroe’s counsel filed a second Request, again listing the seventeen record requests, and demanded that LSP either produce all responsive documents or explain its basis for withholding documents. ROA.397. Nearly four months later, Mr. Monroe received a written response to his first Request, in which LSP provided a document describing the basic training schedule of a police academy cadet. ROA.397. Mr. Monroe again contacted LSP on October

13, 2021 and October 18, 2021, but received no additional records before Mr. Monroe's Amended Complaint was filed. ROA.397.

LSP failed to comply with Mr. Monroe's multiple Public Records Requests for information regarding the circumstances of his beating to obtain further evidence for this action. ROA.397. LSP has failed to provide an explanation for why it has not produced these documents. ROA.397. The Louisiana Office of Legal Affairs has also failed to certify that any of the requested public records are not available as required under La. Rev. Stat. Ann. § 44:33, nor that any of the requested public records are not under its custody or control as required under La. Rev. Stat. Ann. § 44:34. ROA.397. To date, Mr. Monroe has not received any other documents responsive to his Requests aside from the redacted training document and police cadet schedule. ROA.397. Mr. Monroe never received any body camera footage from the night of the incident. ROA.397.

C. Procedural Background

1. Mr. Monroe's Complaint

On November 24, 2021, one year and eleven months following the attack, Mr. Monroe sought relief in the U.S. District Court for the Western District of Louisiana for (i) excessive force in violation of 42 U.S.C. § 1983; (ii) conspiracy in violation of 42 U.S.C. §§ 1983 and 1985; (iii) failure to supervise, investigate, and decertify officers under *Monell* in violation of 42 U.S.C. § 1983; (iv) aggravated

assault in violation of L.A. Rev. Stat. § 14:37; (v) aggravated battery in violation of L.A. Rev. Stat. § 14:34; and (vi) violation of the Louisiana Constitution and the Records Law, La. Rev. Stat. Ann § 44:31, for the Custodian’s refusal to comply with properly served document requests. ROA.105.

2. Appellees’ Motions To Dismiss

Appellees Matthews, Conner, and Davis each separately moved to dismiss Mr. Monroe’s Complaint as time barred under Louisiana’s residual one-year statute of limitations period. ROA.601. Appellee Cammon moved to dismiss under Federal Rule of Civil Procedure 12(b)(6), exclusively addressing the alleged Public Records Law violation. ROA.603.

3. The District Court Dismisses Mr. Monroe’s Complaint, With Prejudice In Part And Without Prejudice In Part

On March 9, 2023, the district court entered a memorandum order granting the Appellees’ motions to dismiss, and dismissing Mr. Monroe’s federal law claims with prejudice. ROA.607–09. Citing to its earlier decision in *Brown v. Pouncy*, 631 F.Supp.3d 397, 2022 WL 4594557 (W.D. La. Sept. 29, 2022), the court declared that it was bound by Supreme Court authority to apply the residual state limitations period to Section 1983 actions, which is one year in Louisiana. ROA.601. The court acknowledged that Louisiana’s one-year prescriptive period is “atypical and relatively brief,” but noted that because “courts in each of Louisiana’s federal

districts agree that it applies to Section 1983 actions,” it would “neither stray from precedent nor contradict its prior rulings.” ROA.607.

The court declined to exercise supplemental jurisdiction over Mr. Monroe’s state law claims, and dismissed the claims without prejudice. ROA.608. The court “observe[d] that interpretation and application of Louisiana’s various prescriptive periods to plaintiff’s state law claims remains an issue within the particular province and expertise of the state courts.” ROA.608 (quoting *Williams v. Ouachita Par. Sheriff’s Dep’t*, No. 3:17-CV-0060, 2017 WL 4401891, at *4 (W.D. La. Aug. 28, 2017), *report and recommendation adopted*, No. CV 17-0060, 2017 WL 4399277 (W.D. La. Oct. 3, 2017) (internal quotation marks omitted)).

Accordingly, Mr. Monroe’s state law claim alleging a violation of Louisiana’s Public Records Law was likewise dismissed without prejudice, and Appellee Cammon’s motion to dismiss was denied as moot, because the court declined to exercise supplemental jurisdiction over Mr. Monroe’s claims arising under state law. ROA.608. Mr. Monroe filed a timely notice of appeal on April 10, 2023. ROA.643–44.

SUMMARY OF ARGUMENT

The district court erroneously applied Louisiana’s residual one-year limitations period to Section 1983 actions. Louisiana’s “rare” one-year personal injury statute of limitation—tied as the nation’s shortest with Kentucky and

Tennessee—is inconsistent with the federal interests underlying Section 1983. Under the Supreme Court’s decision in *Owens*, district courts are required to look to the “general or residual” personal injury statute of limitations in deciding the limitations period applicable to Section 1983 claims. *Owens*, 488 U.S. at 242. But “before borrowing a state statute of limitations . . . , a court must ensure that it ‘afford[s] a reasonable time to the federal claimant.’” *Id.* at 251 n.13 (quoting *Burnett*, 468 U.S. 42 at 61 (Rehnquist, C.J., concurring)). Here, Mr. Monroe asks this Court to decide whether Louisiana’s one-year limitations period contravenes Section 1983’s federal interests. The answer is yes. Louisiana’s one-year limitation period is inconsistent with Section 1983’s federal interests because it (1) discriminates against federal Section 1983 plaintiffs, (2) intentionally closes the door on police brutality claims, and (3) fails to consider the practical difficulties of federal civil rights litigation.

First, as applied to Mr. Monroe’s case, Louisiana’s one-year statute of limitations discriminates against “crimes of violence” victims perpetuated by state actors responsible for protecting the public. In Louisiana, civil rights plaintiffs alleging “crimes of violence” against state actors have two years to file aggravated tort claims in state court. But if the same “crime of violence” victims file in federal court under Section 1983, they have only one year.

Second, the Louisiana legislature’s discriminatory intent is overt. The state consistently refuses to extend the general statute of limitations, while extending the limitations period for more particularized state offenses—*e.g.*, tort claims for crimes of violence. Because Louisiana courts have interrupted *Owens* as requiring application of the state’s one-year general personal injury limitations period in Section 1983 cases—tied as most restrictive in the country—the Louisiana legislature has an incentive to keep this period short while extending others. The legislature’s oppressive intent has accomplished its goal of preventing Section 1983 victims from timely filing suit in court, thus leaving state actors unaccountable for their unconstitutional conduct.

Third, Louisiana’s one-year statute of limitations fails to consider the practical, traumatizing difficulties unique to Section 1983 victims. At bottom, Louisiana’s two-year limitations period for crimes of violence provides a reasonable timeframe for federal claimants to bring Section 1983 claims. This more particularized limitations period represents a suitable replacement for the restrictively short one-year prescriptive period. Applying the two-year limitations period would faithfully promote the federal interests underlying Section 1983, while respecting the state court’s role as the “final arbiter of state law.” Alternatively, the four-year statute of limitations under 28 U.S.C. § 1658 is another appropriate limitations period for Section 1983 claims.

Because both Louisiana's two-year limitations period and Section 1658's four-year limitations period are appropriate replacements that faithfully serve the federal interests underlying Section 1983, the district court erred in applying Louisiana's restrictively short one-year limitations period that contravenes the federal interests underlying Section 1983.

STANDARD OF REVIEW

The district court granted the Appellees' motions to dismiss under Federal Rule 12(b)(6). As such, the district court's judgment is reviewed de novo, accepting all well-pleaded facts as true and viewing those facts in the light most favorable to the plaintiff. *Meador v. Apple, Inc.*, 911 F.3d 260, 264 (5th Cir. 2018). Thus, this Court must accept all of the factual allegations in the Complaint as true in determining whether Mr. Monroe has stated a plausible claim. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *In re Katrina Canal Breaches Litig.*, 495 F.3d 191, 205 (5th Cir. 2007).

Further, the question of whether a district court properly applied the correct statute of limitations is a legal conclusion that is reviewed de novo. *See United States v. Irby*, 703 F.3d 280, 283 (5th Cir. 2012).

ARGUMENT

I. Louisiana’s One-Year General Statute of Limitations Is Inapplicable Under *Burnett* Because It Undermines Section 1983’s Federal Interests

Under Section 1988(a), courts are prohibited from applying state laws that are “inconsistent with the Constitution and laws of the United States.” § 1988(a). This “predominan[t] . . . federal interest” is most evident in Section 1983 cases, as Congress urgently called on federal courts to hold state officials accountable with that legislation. *Burnett v. Grattan*, 468 U.S. 42, 48 (1984); *see also Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 685 (1978) (“Congress, in enacting § [1983], intended to give a broad remedy for violations of federally protected civil rights.”).

Because Section 1983 lacks a statute of limitations provision, a state limitations period inconsistent with Section 1983’s underpinning federal interests is inapplicable to Section 1983 litigation. *Burnett*, 468 U.S. at 50 (stating that an appropriate limitations period for Section 1983 “must be responsive to the[] characteristics of litigation under the federal statute”); *Wilson*, 471 U.S. at 279 (“The characterization of all § 1983 actions as involving claims for personal injuries minimizes the risk that the choice of a state statute of limitations would not fairly serve the federal interests vindicated by § 1983.”); *see also Arnold v. Duchesne Cnty.*, 26 F.3d 982, 985 (10th Cir. 1994) (“[W]e must consider whether [a state statute of limitations] provides ‘the most appropriate limiting principle’ and is

consistent with federal law and policy.” (citation omitted) (quoting *Wilson*, 471 U.S. at 268)).

As a threshold matter, the district court here erroneously ignored the law that a state limitations period—inconsistent with federal law or policy—may not be applied in Section 1983 cases. *See Wilson*, 471 U.S. at 266–67; *Owens*, 488 U.S. at 239. Before applying Louisiana’s restrictive one-year limitations period, the district court should have “ensure[d] that it ‘afford[s] a reasonable time to the federal claimant.’” *Owens*, 488 U.S. at 251 n.13 (quoting *Burnett*, 468 U.S. 42 at 61 (Rehnquist, C.J., concurring)). Instead, the district court relied on an incomplete statement of law: “When ‘considering § 1983 claims,’ courts ‘should borrow the general or residual statute [of limitations] for personal injury actions.’” ROA.592 (quoting *Owens*, 488 U.S. at 249–50).

As Mr. Monroe’s case demonstrates, the district court erred by not considering a limitations period that would afford Mr. Monroe reasonable time to vindicate his Section 1983 claims. Louisiana’s one-year residual statute of limitations contravenes Section 1983’s federal interests for three primary reasons.¹ **First**, Louisiana discriminatorily applies a restrictively short one-year limitations period to Section 1983 claims while allowing more time for the filing of equivalent state law

¹ For the same reasons, application of Louisiana’s limitations period contravenes the same federal interests underpinning Section 1985.

claims. **Second**, there is evidence that Louisiana’s legislature maintains the one-year limitations period to deliberately bar police brutality victims from their rights under Section 1983. **Third**, application of Louisiana’s one-year limitations period to Section 1983 claims has the practical effect of frustrating Section 1983 plaintiffs’ ability to bring such claims. Thus, the district court erred in applying Louisiana’s one-year statute of limitations to Mr. Monroe’s Section 1983 claim.

A. Louisiana Law Discriminates Against Federal Section 1983 Claimants By Time-Barring Federal Claims One Year Earlier Than Equivalent State Claims Involving Crimes of Violence

Rather than holding state officials accountable for police brutality, Louisiana law discourages and hinders civil rights victims from timely filing Section 1983 claims in Louisiana federal court. This deliberate obstruction contravenes Section 1983’s purpose—to entrust federal courts “as guardians of the people’s federal [civil] rights.” *Mitchum v. Foster*, 407 U.S. 225, 242 (1972); *see also Burnett*, 468 U.S. at 53 (“The goals of the federal [civil rights] statutes are compensation of persons whose civil rights have been violated, and prevention of the abuse of state power.”). Louisiana’s “rare” one-year limitations period is tied with only two other states as the nation’s most restrictive, with “[t]he vast majority of other states” adopting periods of at least two years. ROA.592.

Louisiana’s restrictively short one-year limitations period has a discriminatory effect on Section 1983 claims. Louisiana federal courts apply the

state’s one-year statute of limitations period to Section 1983 claims, whereas under Louisiana law, individuals have two years to file suit for equivalent claims, *i.e.*, “[d]elictual actions” arising from “a crime of violence.” La. Civ. Code Ann. art. 3493.10. The Supreme Court has warned against this type of discrimination that bars a federal claim before an equivalent state claim. *See Burnett*, 468 U.S. at 60–61 (Rehnquist, C.J., concurring) (“Plainly, if the state statute of limitations discriminates against federal claims, such that a federal claim would be time-barred, while an equivalent state claim would not, than the state law is inconsistent with federal law.”); *see also Felder v. Casey*, 487 U.S. 131, 141 (1988) (finding a notice provision discriminatory because it extinguished a federal civil rights claim in four months compared to equivalent state intentional tort claim’s two-year provision).

Because Louisiana’s one-year limitations period cuts Mr. Monroe’s access to federal court one year before his state claim for the same incident, the one-year period impermissibly discriminates against Section 1983 claims.

B. The Louisiana Legislature Consciously Seeks to Prevent Plaintiffs from Bringing Police Brutality Claims

The statutory backdrop illuminates Louisiana’s conscious efforts to prevent plaintiffs from bringing Section 1983 claims based on police brutality. Louisiana’s discriminatory behavior towards police brutality claims is clearly shown by the state legislature’s decision to extend the statute of limitations period to selective claims. In one such instance, the Louisiana legislature extended the statutes of limitations

for “crimes of violence,” including aggravated assault and aggravated battery, from one year to two years. 1999 La. Acts 832 (S.B. 156) (codified as amended at La. Civ. Code Ann. art. 3493.10). This decision was made to give victims of such crimes more time to address potential civil or criminal proceedings, recognizing that the discovery associated with litigation following abuse can be traumatic.² Although such crimes of violence encompass the crimes inflicted against Mr. Monroe, Mr. Monroe’s Section 1983 claims are purportedly time-barred by the restrictively shorter one-year residual prescriptive period. ROA.333.

Furthermore, the Louisiana legislature has expanded statute of limitations periods for other tort claims, including child abuse and sexual assault. *See, e.g.*, 1988 La. Acts 676 (H.B. 724) (codified as amended at La. Civ. Code Ann. art. 3496.1); 2016 La. Acts 629 (H.B. 556) (codified at La. Civ. Code Ann. art. 3496.2). Louisiana expanded the limitations period for these tort claims because the legislature recognized that these victims must also take time to process their trauma, and the extension provided victims “a chance to recover and still have time to file suit.” *See* Meeting of S. Judiciary A Comm., 2016 Reg. Sess., Minutes at 5–6 (La.

² *See* Meeting of H. Civ. Law & Procedure Comm., 1999 Reg. Sess., Archived Video 22:28–24:12 (La. June 7, 1999), *available* at https://house.louisiana.gov/H_Video/VideoArchivePlayer?v=house/1999/jun/0607_99_CL (statement of State Sen. Lentini in support of S.B. 156) (“[O]ften times the criminal case cannot be resolved within a year . . . once the suit is filed, the defendant . . . would then have an opportunity to engage in discovery, which could be of a harassing nature to the victim or the victim’s family. So in this limited case, crimes of violence get two years because most cases, criminal cases, should be resolved within the two year period.”).

May 17, 2016) (discussing H.B. 556, which extended the statute of limitations period for victims of sexual assault an additional two years).

Nonetheless, when faced with attempts to extend the statute of limitations for similar claims against police officers, the Louisiana legislature has responded differently. It has rejected attempts to increase the one-year residual limitations period due to apparent fears that doing so will allow persons currently silenced to file Section 1983 actions against police. The legislative evidence demonstrates as much. When a proposal was raised to extend the one-year residual limitations period in 2016, former Louisiana State Senator Daniel Martiny unashamedly indicated that such a change would affect unconstitutional policing lawsuits brought in federal court; he proclaimed that “90% of what I do for a living is defend police departments,” indicating a bias in favor of LSP officers and against victims of police brutality, such as Section 1983 plaintiffs. Meeting of Sen. Judiciary A Comm., 2016 Reg. Sess., Archived Video 1:58:15–35 (La. Apr. 12, 2016), *available at* https://senate.la.gov/s_video/videoarchive.asp?v=senate/2016/04/041216JUDA_0.

The former State Senator’s statement exposes the Louisiana legislature’s preferential treatment toward police officers and its intent to limit civil rights claims by adhering to a restrictively short one-year limitations period. As further evidence of this preferential treatment, the final proposed bill extended the one-year residual limitations period but included an explicit carveout limiting claims brought against

the State of Louisiana “or one of its departments, agencies, offices, or political subdivisions” to a one-year statute of limitations period. *See* Louisiana Legislative Fiscal Office, *Fiscal Note on S.B. 83* (Apr. 25, 2016), <http://www.legisl.la.gov/legis/ViewDocument.aspx?d=997064>. Presumably, understanding that such a carve out was unconstitutional based on the United States Court of Appeals Tenth Circuit decision in *Arnold*, the bill never passed.³

The Louisiana legislature’s hostile treatment toward federal civil rights claims for police brutality is squarely inconsistent with both Congress’s and the Supreme Court’s intention to provide Section 1983 plaintiffs with sufficient time to seek justice for civil rights violations. *See Owens*, 488 U.S. at 238 (endorsing the Second Circuit’s view that a “3-year period of limitations more faithfully represents the federal interest in providing an effective remedy for violations of civil rights than does the restrictive one year limit”) (citation and quotation marks omitted)). Indeed, the Tenth Circuit similarly rejected the Utah legislature’s enactment of a specific statute of limitations for Section 1983 actions where there was evidence that the legislature sought “to reduce the number of such lawsuits.” *Arnold*, 26 F.3d at 988-89 (inferring that intent from a senator’s remarks regarding the “proliferation” of

³ *See Arnold v. Duchesne Cnty.*, 26 F.3d 982, 987–88 (10th Cir. 1994) (rejecting a two-year limitations period for Section 1983 actions that “was at least partially motivated by the ‘proliferation’ of section 1983 lawsuits . . . to reduce the number of such lawsuits, a purpose which would clearly contradict section 1983’s broad remedial objectives”).

Section 1983 lawsuits, “especially in our prisons”). The Tenth Circuit held that the Utah legislature’s decision to pass a two-year statute of limitations for Section 1983 claims to replace the four-year residual limitations period that previously applied “usurped the role of federal law by substituting its own judgment about the competing policies behind the statute of limitations for section 1983 actions.” 26 F.3d at 987.

By discriminating against federal civil rights actions involving police brutality, Louisiana’s legislature has similarly “substitut[ed] its own judgment about the competing policies behind the statute of limitations for section 1983 actions,” contrary to the “purpose and nature” of Section 1983. *Id.* The discriminatory intent behind Louisiana’s one-year limitations period for Section 1983 claims serves as an additional reason the Court should reject the limitations period as plainly inconsistent with the federal interests underpinning Section 1983.

C. Louisiana’s Residual Limitations Period Does Not Account for the Practicalities of Litigating Police Brutality Claims

Application of Louisiana’s one-year residual period to Section 1983 claims also has the practical effect of thwarting a plaintiff’s ability to bring a successful police brutality claim. The “central objective” of police brutality claims is “ensur[ing] that individuals whose federal constitutional or statutory rights are abridged may recover damages or secure injunctive relief.” *Burnett*, 468 U.S. at 55; *see also Owens*, 488 U.S. at 235 n.11 (emphasizing that Section 1983’s primary

purpose is to provide a remedy “against those who representing a State in some capacity were unable or unwilling to enforce a state law”) (quoting *Monroe v. Pape*, 365 U.S. 167, 175–76 (1961)). Furthermore, *Burnett* held that a state statute of limitations must recognize the “practicalities that are involved in litigating federal civil rights claims.” 468 U.S. at 50.

Louisiana’s statute of limitations fails to do just that—its one-year residual period does not account for the practicalities of litigating a federal police brutality claim. Like other victims of police brutality, Mr. Monroe cannot reasonably be expected to file his claim within one year in light of the substantial trauma he incurred from his arrest. Social science has shown that victims often struggle to report misconduct in the aftermath of their abuse, which validates the difficulties victims of police brutality encounter when trying to bring a Section 1983 claim. *See generally* 9 Martin S. Greenberg & R. Barry Ruback, *After the Crime: Victim Decision Making*, PERSPECTIVES IN LAW & PSYCHOLOGY 1–15 (1992) (explaining that after suffering trauma, victims often struggle in deciding whether they should report the crime). Furthermore, trauma is heightened for victims in cases involving police brutality against people of color. *See* Jordan E. DeVlyder et al., *Elevated Prevalence of Suicide Attempts Among Victims of Police Violence in the USA*, 94 J. OF URBAN HEALTH 629 at 631 (2017) (finding that “[p]olice victimization was broadly more common among racial/ethnic minorities” and that such victimization

are strongly associated with suicide attempts). From the moment Mr. Monroe was pulled over in the deserted, dimly-lit alley, he was scared for his life. All of Mr. Monroe's fears were quickly realized when Appellee Matthews deliberately pulled Mr. Monroe's hands towards Mr. Matthews' own throat—a fabricated scene that served as a pretext for Appellee Matthews to instigate severe violence against Mr. Monroe. ROA.111. Appellee Matthews' display of unprovoked violence caused Mr. Monroe significant physical trauma, nearly cost him his life, and continues to haunt Mr. Monroe to this day because of the severe post-traumatic stress disorder and permanent injuries he developed from these events. ROA.360.

Moreover, the Appellee Officers' baseless criminal charges against Mr. Monroe for "resisting arrest" led to Mr. Monroe losing his long-time job and imposed another obstacle to Mr. Monroe litigating his police brutality claim. Mr. Monroe retained an attorney to help clear his name against the false criminal charges. ROA.328.

All of these factors have created substantial obstacles and delays for Mr. Monroe in vindicating his rights against Appellees. Louisiana's statute of limitations effectively requires all of the following to be accomplished within a short one-year time frame: process a traumatic event perpetuated by individuals responsible for protecting and serving the public; recover from emotional and physical injuries; fight false criminal charges; and obtain counsel, who must then have sufficient time to

investigate the civil rights allegations at issue (including interviewing witnesses and seeking public records) and research all the necessary qualified immunity and *Heck* applicable case law at issue, all prior to drafting and filing a federal complaint. That requirement is entirely inconsistent with the federal interests underpinning Section 1983 because 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.” *Burnett*, 468 U.S. at 50.

In sum, Louisiana discriminatorily applies a prohibitively short limitations period to Section 1983 claims while allowing more time for the equivalent state law claims. The intent and effect of applying the one-year limitations period are to bar police brutality victims from vindicating their constitutional rights under Section 1983. Thus, the district court erred in applying Louisiana’s one-year prescriptive period to Mr. Monroe’s Section 1983 claims.

II. The Two-Year Prescriptive Period Supplied By Louisiana Civil Code Article 3493 Gives This Court An Appropriate Analogue And Should Apply To Mr. Monroe’s Police Brutality Claim

Louisiana federal district courts, including the one here, have all failed to apply the framework supplied by Section 1988 in determining the appropriate state statute of limitations for Section 1983 claims. That approach is excusable in the vast majority of states with residual limitations period of longer duration. But in Louisiana, the mechanical application of the one-year limitations period without

considering whether it is consistent with the interests underpinning Section 1983 is clear error. That consideration is required under federal law and Supreme Court precedent.

A. The Supreme Court’s Test In *Burnett* Still Applies

In *Burnett*, the Supreme 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.” 468 U.S. at 55. The *Burnett* Court made it clear that any determination of an appropriate limitations period must account for the “practicalities that are involved in litigating federal civil rights claims.” *Id.* at 50. Borrowing directly from the language of Section 1988, the federal statute governing procedures in “[p]roceedings in vindication of civil rights,” the Supreme Court outlined a three-part framework for identifying an applicable statute of limitations for civil rights statutes. 42 U.S.C. § 1988.

First, *Burnett* counsels federal courts to “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 47–48 (quoting 42 U.S.C. § 1988). Second, only if no suitable federal rule exists, courts should undertake the second step of considering state common law. The third step, which “asserts the predominance of the federal interest,” operates as a check on the second step—state law may only be applied so

long as it is not “*inconsistent* with the Constitution and laws of the United States.” *Id.* (emphasis added). At the time *Burnett* was decided, there were no applicable federal laws that would provide a statute of limitations for Section 1983 actions, and thus the courts borrowed from state law as Section 1988 directed.

Following *Burnett*, the Supreme Court in *Owens* sought to provide a rule that offers predictability without undercutting the efficacy of Section 1983. However, *Owens* did not overrule *Burnett*. Where, as here, a state limitations periods does not account for the “practicalities” of litigating a Section 1983 claim, *Burnett* must guide this Court in determining the appropriate limitations period.

Accordingly, this Court must analyze any “borrowed” state law limitations statute under the three-step framework set forth in Section 1988. *Burnett* at 47; *see also* ROA.329–31. The third step of Section 1988 requires that the limitations period borrowed from state law be reasonable and consistent with the purpose of the federal law. *Owens*, 488 U.S. at 239. In other words, the state statute of limitations must not frustrate or interfere with the purpose of Section 1983: “deterrence and compensation.” *See Bd. of Regents of the State of N.Y. v. Tomanio*, 446 U.S. 478, 479 (1980).

The Fifth Circuit and Louisiana district courts,⁴ however, have mechanically and inappropriately applied Louisiana’s one-year prescriptive period for personal injury actions, La. Civ. Code Ann. art. 3492, without analyzing whether that limitations period is appropriate under the third step of Section 1988. This application fails the crucial third step of Section 1988—it impermissibly frustrates the purpose of Section 1983’s goals and policies.

Applying Louisiana’s one-year statute of limitations fails to consider “the practicalities that are involved in litigating federal civil rights claims,” serving to discriminate against Section 1983 claims as demonstrated by the testimony on the Louisiana legislative floor as recently as 2016. *See supra* at 26-27. *See also Burnett*, 468 U.S. at 50 (borrowing a state statute of limitations is “inappropriate” if it does not consider “practicalities” as well as “policies that are analogous to the goals of the Civil Rights Act”). Section 1983 claims are necessarily complex and difficult to investigate, particularly in cases like Mr. Monroe’s, where LSP purposely withheld critical evidence by refusing to comply with properly served Requests under the

⁴ *See, e.g., Elzy v. Roberson*, 868 F.2d 793, 794 (5th Cir. 1989); *Stringer v. Town of Jonesboro*, 986 F.3d 502, 509–10 (5th Cir. 2021); *Campos v. City of Natchitoches*, 795 F. App’x 933, 935 (5th Cir. 2020); *Treadwell v. St. Tammany Par. Jail*, 599 F. App’x 189, 190 (5th Cir. 2015); *Lane v. La Dep’t of Corr.*, No. 5:17-547, 2021 WL 5285853 at *1 (W.D. La. Nov. 12, 2021); *Blake v. Brown*, No. 3:21-02046, 2021 WL 5985181 at *4 (W.D. La. Dec. 1, 2021); *Williams v. Ouachita Par. Sheriff’s Dep’t*, No. 3:17-0060, 2017 WL 4401891, at * 3–4 (W.D. La. Aug. 28, 2017); *Winstel v. City of Shreveport*, No. 5:12-2617, 2013 WL 4888614, at *3–4 (W.D. La. Sept. 11, 2013); *Savoy v. St. Landry Parish Council*, No. 6:08-232, 2009 WL 4571851, at *3 (W.D. La. Dec. 1, 2009); *Diaz v. Guynes*, No. 2:13-4958, 2015 WL 1897630, at *2 (E.D. La. Apr. 27, 2015).

Public Records Act. *See* ROA.15–18. Further, this prohibitively short limitations period forces victims of police brutality, like Mr. Monroe, to pursue litigation while recovering from brutal injuries and fighting baseless criminal charges.

As the *Burnett* Court noted, “[l]itigating a civil rights claim requires considerable preparation.” 468 U.S. at 50. This preparation includes securing counsel or preparing to proceed *pro se*, drafting pleadings “that meet the requirements of federal rules,” assessing the measure of damages, paying a substantial filing fee or preparing additional supporting papers for a request to proceed in forma pauperis, and filing and serving a complaint. *Id.* at 50–51. In practice, civil rights victims like Mr. Monroe are denied adequate time to search for counsel, conduct an investigation, and build a case against powerful state actors.

By applying the one-year statute of limitations, the district court ignored all of these practicalities and frustrated the purpose of Section 1983. The error warrants reversal of the district court’s order dismissing Mr. Monroe’s claims as time-barred. At a minimum, this Court should reverse and remand this case to the district court with instructions to conduct the third step of the *Burnett* framework after the parties have had an opportunity to conduct fact and expert discovery on the issue of whether Louisiana’s one-year limitations period contravenes the federal interests underpinning Section 1983.

B. Under *Burnett*, Louisiana’s Two-Year Prescriptive Period Provides An Appropriate Analogue And Should Govern Section 1983 Claims Predicated On Police Brutality

Because the one-year statute of limitations period is unlawful, this Court should instead apply the two-year Louisiana prescriptive period for crimes of violence, including aggravated assault and battery, which Mr. Monroe properly pled in his Complaint. Neither the Supreme Court nor the Fifth Circuit has addressed the remedy to be provided when a state statute of limitations that would otherwise apply to Section 1983 claims is found to run afoul of the third step of Section 1988. In the absence of controlling law, the Court should subject Mr. Monroe’s Section 1983 claims to the two-year statute of limitations for a crime of violence. *See, e.g., Burnett*, 468 U.S. at 54 (noting that if a statute is “abbreviated” because “it effectuates [a] narrower state goal, a federal court should look elsewhere in state law for an appropriate limitations period”). Applying the two-year crime of violence statute of limitations to Mr. Monroe’s Section 1983 claims would alleviate the discriminatory application of Louisiana’s one-year statute of limitation to only federal claims. And Mr. Monroe’s violent, unprovoked beating is undoubtedly accurately characterized as a “crime of violence,” which is defined as an offense that includes an element of “the use, attempted use, or threatened use of physical force against the person or property of another, and that, by its very nature, involves a substantial risk that physical force against the person or property of another may be

used in the course of committing the offense or an offense that involves the possession or use of a dangerous weapon.” La. Rev. Stat. Ann. § 14:2. Indeed, aggravated battery and aggravated assault are both listed as examples of crimes of violence. When the Appellee Officers slammed Mr. Monroe to the ground, kneeled on him with the full weight of their bodies, violently beat Mr. Monroe, and twisted his arms with enough force to result in fractures, Appellees committed offenses against Mr. Monroe that involved physical force, while carrying dangerous weapons.

Mr. Monroe’s Complaint asserts claims for aggravated assault and aggravated battery that are subject to Louisiana Civil Code article 3493.10’s two-year statute of limitations. These aggravated tort claims arise out of the same set of facts as those underlying Mr. Monroe’s federal claims under Section 1983. Accordingly, Mr. Monroe’s excessive force claims brought under Section 1983 should be subject to Louisiana’s two-year statute of limitations, because his “damages [were] sustained as a result of an act defined as a crime of violence.” La. Civ. Code Ann. art. 3493.10. Indeed, application of Louisiana’s two-year statute of limitations to Section 1983 claims is not without precedent in this circuit. In *Rodgers v. Gusman*, the district court denied summary judgment on aggravated assault and battery claims brought pursuant to Section 1983 because the two-year statute of limitations for crimes of violence could properly apply. 2019 WL 3333106, at *6.

III. Alternatively, The Four-Year Statute Of Limitations Supplied By 28 U.S.C. Section 1658 Applies

Should this Court decide that the two-year statute of limitations does not apply to Mr. Monroe’s claims, the catch-all statute of limitations established in 28 U.S.C. § 1658 is an analogue from which this Court can supply an appropriate four-year statute of limitations for Section 1983 claims. Section 1658 provides that “[e]xcept as otherwise provided by law, a civil action arising under an Act of Congress enacted after the date of the enactment of this section may not be commenced later than 4 years after the cause of action accrues.” 28 U.S.C. § 1658(a). While Section 1658 does not apply retroactively on its own, under the *Burnett* framework, it may be appropriately referenced as a federal analogue that supplies a four-year limitations period where a state statute of limitations contravenes federal interests—as is precisely the case here.

The district court considered only the retroactivity language in granting the dismissal of Mr. Monroe’s Section 1983 claims, and did not address Section 1658 within the context of the *Burnett* framework. ROA.606. The first prong of *Burnett* instructs a court to first look to federal law “so far as such laws are suitable to carry [Section 1983] into effect.” 468 U.S. at 48. As discussed above, Louisiana’s one-year statute of limitations frustrates the purpose of Section 1983 by failing to provide civil rights litigants with enough time to bring police brutality claims. Section 1658’s four-year period, by contrast, would provide enough time for plaintiffs to

plead Section 1983 claims and is far more “suitable” to carry Section 1983 “into effect.” *Id.* By providing a four-year timeframe as the federal residual limitations period, Congress recognized that there was a need to provide sufficient time to bring federal claims without an express limitations period. *See, e.g., Occidental Life Ins. Co. of Cal. v. EEOC*, 432 U.S. 355, 367 (1977) (“State limitations periods will not be borrowed if their application would be inconsistent with the underlying policies of the federal statute.”).

Accordingly, should this Court decline to apply the two-year Louisiana statute of limitations period, it should alternatively apply Section 1658’s four-year limitations period pursuant to the third step of the *Burnett* framework.⁵

CONCLUSION

For the foregoing reasons, this Court should find that Louisiana’s one-year residual prescriptive period is inconsistent with the federal interests underpinning Section 1983. Pursuant to Section 1988 and Section 1983 jurisprudence, this Court should look to Louisiana Civil Code Article 3493 as an appropriate analogue and apply the two-year prescriptive period to Mr. Monroe’s Section 1983 claims. In the

⁵ Should the Court decline to reject Louisiana’s one-year limitations period, the Court should find that Mr. Monroe’s Section 1983 and 1985 claims do not accrue until resolution of the criminal proceedings against him. Under the Supreme Court’s decision in *McDonough v. Smith*, Mr. Monroe’s civil claims necessarily amount to a challenge against the validity of the criminal proceedings against him. 139 S. Ct. 2149, 2157–58 (2019) (if a plaintiff’s Section 1983 claim challenges “the validity of the criminal proceedings,” the claim does not accrue until resolution of that criminal proceeding in the plaintiff’s favor).

alternative, this Court should apply the four-year statute of limitations supplied by 28 U.S.C. § 1658 to Mr. Monroe's claims. Because Mr. Monroe's Complaint was filed within two years, this Court should reverse the district court's dismissal of Mr. Monroe's claims as untimely. Alternatively, this Court should reverse and remand this case to the district court with instructions to conduct the third step of the *Burnett* framework after the parties have had an opportunity to conduct fact and expert discovery on the issue of whether Louisiana's one-year limitations period contravenes the federal interests underpinning Section 1983.

Dated: July 20, 2023

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CERTIFICATE OF SERVICE

I hereby certify that on July 20, 2023, the foregoing brief was electronically filed with the United States Court of Appeals for the Fifth Circuit through the Court's CM/ECF system. All parties are represented by registered CM/ECF users and will be served by the CM/ECF system.

/s/ Jason M. Ohta

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I hereby certify (i) the required privacy redactions have been made pursuant to Rule 25.2.13; (ii) the electronic submission is an exact copy of the paper document pursuant to Rule 25.2.1; and (iii) the document has been scanned for viruses using Microsoft Defender and is free of viruses.

Dated: July 20, 2023

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CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limitations of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 8,812 words, excluding the parts exempted by Federal Rule of Appellate Procedure 32(f) and Fifth Circuit Rule 32.2.

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Dated: July 20, 2023

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