No. 22-30691

In the United States Court of Appeals
For the Fifth Circuit

JARIUS BROWN,
Plaintiff-Appellant,

v.

JAVARREA POUNCY; JOHN DOE #1, JOHN DOE #2,
Defendants-Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND PROPOSED BRIEF *AMICUS CURIAE* OF LAW ENFORCEMENT ACTION PARTNERSHIP

In support of Plaintiff-Appellant Jarius Brown and supporting reversal of the opinion below

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Clare Pastore
USC GOULD SCHOOL OF LAW
699 Exposition Blvd.
Los Angeles, CA 90089
(323) 821-4410
cpastore@law.usc.edu

Attorney for *Amicus Curiae* Law Enforcement Action Partnership

CERTIFICATE OF INTERESTED PERSONS

Pursuant to Fifth Circuit Rule 28.2.1, the undersigned counsel of record certifies that the following listed persons and entities, as described in the fourth sentence of Rule 28.2.1, have a 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:

1. **Plaintiff-Appellant:** Jarius Brown

2. **Defendant-Appellees**: Javarrea Pouncy; John Doe #1, John Doe #2

3. **Counsel for Plaintiff-Appellant**: Nora Ahmed, ACLU Foundation of Louisiana; Lauren Willard and Michael X. Imbroscio, Covington & Burling LLP

4. **Counsel for Defendant-Appellee** Javarrea Pouncy:

James Ashby Davis, Cook, Yancey, King & Galloway, APLC

5. ***Amicus Curiae*:** Law Enforcement Action Project (LEAP)

6. **Counsel for Law Enforcement Action Partnership:** Clare Pastore

SO CERTIFIED, this 2nd day of February, 2023

/s/ Clare Pastore
Attorney of Record for *Amicus Curiae*
Law Enforcement Action Partnership

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

Pursuant to Rules 27 and 29 of the Federal Rules of Appellate Procedure, the Law Enforcement Action Partnership (LEAP) respectfully moves for leave to file the attached brief as *Amicus Curiae* in support of Plaintiff-Appellant Jarius Brown, urging reversal of the decision below. Counsel for Plaintiff-Appellant consents to the filing of the *amicus* brief. Counsel for Defendants-Appellees declined to consent to the filing.

This Court should grant LEAP's motion to participate in this appeal. As explained in this motion, LEAP easily meets both requirements of Federal Rule of Appellate Procedure 29(a)(3) because LEAP's interest and expertise in ensuring police accountability is strong and because LEAP's proposed *amicus* brief will assist the Court in its consideration of the important issues raised by this appeal.

I. LEAP has a strong interest in this case.

LEAP is a nonprofit organization composed of police, prosecutors, judges, corrections officials, and other law enforcement veterans advocating for criminal justice and other reforms to make our communities safer and more just. LEAP was founded by five police officers and its speakers bureau today includes criminal justice professionals with collectively many dozens of years of experience in running police departments and other criminal justice agencies. LEAP speakers write, consult, and meet with advocacy groups, legislators, fellow officers, the media, and the public to

craft and support policies that increase safety and justice.

Police accountability is a central interest of LEAP. LEAP understands that accountability is essential for community trust and effective policing and that the failure to hold police accountable for misconduct undermines the ability of all police to do their jobs. Affording victims of police misconduct a reasonable opportunity to seek redress through Section 1983 litigation is key to this essential accountability.

This appeal is important to LEAP because it raises the critical issue of whether Louisiana's statute of limitations is so short as to undermine the goals of Section 1983 and foreclose this essential avenue of redress for police misconduct.

II. The proposed *amicus* brief is relevant and helpful to the Court.

Amici "often bring a perspective to the questions presented that is different from that of the parties and is valuable to the court's understanding of the ramifications of the legal rules it considers." Andrew Frey, *Amici Curiae: Friends of the Court or Nuisances?* 33 No. 1 Litig. 5 (2006). Thus, "general practice in the federal courts of appeals is to grant leave to file an amicus brief in most situations." John Harrington, Note, *Amici Curiae in the Federal Courts of Appeals: How Friendly Are They?* 55 Case W. Res. L. Rev. 667, 670 (2006). "Even when a party is very well represented, an amicus may provide important assistance to the court." *Neonatology Associates, P.A. v. CIR,* 293 F.3d 128, 132 (3d Cir. 2002) (Alito, J.).

LEAP's proposed brief provides this assistance, because in addition to

reflecting LEAP's decades of experience with criminal justice reform, it marshals and distills an authoritative body of social science evidence establishing the overwhelming connection between community trust and effective policing, and the indispensability of holding police accountable in building community trust. Moreover, LEAP's perspective, while shared by many criminal justice professionals who understand that policing is a relationship business, is perhaps unexpected for a law enforcement group. It is thus valuable in dispelling any reflexive notion that affording adequate redress to victims of police misconduct is bad for police, and indeed establishes precisely the opposite: that accountability fosters community trust, which in turn improves the success of policing. LEAP thus has "particular expertise not possessed by any party to the case" which can aid the Court. *Neonatology Associates*, 293 F.3d at 132.

Citing then-Judge Alito's *Neonatology Associates* opinion with approval, this Court has embraced the value of *amicus* briefing, agreeing with Judge Alito that it can form a critical part of the "strong (but fair) advocacy on behalf of opposing views [that] promotes sound decision making." *Lefebure v. D'Aquilla*, 15 F.4th 670, 675-76 (5th Cir. 2021), *quoting Neonatology Associates*, 293 F.3d at 131.

All conditions for *amicus* briefs under the Federal Rules of Appellate Procedure are satisfied here. Pursuant to Rule 29(a)(4)(E), *amicus* certifies that no party or party's counsel authored the proposed brief in whole or in part; no party or

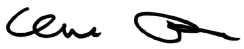
party's counsel contributed money intended to fund the brief's preparation or submission; and no person other than LEAP and its counsel contributed money intended to fund preparation or submission of the brief. The brief is timely filed within seven days of the filing of Plaintiff-Appellant's brief, as required by Federal Rule of Appellate Procedure 29(a)(6). The brief also complies with Federal Rule of Appellate Procedure 29(a)(5) since (according to the word count feature of Word), it contains 3854 words.

CONCLUSION

For all of the foregoing reasons, this Court should grant the motion for leave to file the proposed *amicus curiae* brief of Law Enforcement Action Partnership.

Dated: February 2, 2023

Respectfully submitted,



Clare Pastore
Counsel for *Amicus Curiae* Law Enforcement Action Partnership

CERTIFICATE OF COMPLIANCE

1. This motion complies with the type-volume limitation of Federal Rule of Appellate Procedure 29(a)(5) and Federal Rule of Appellate Procedure 32(a)(7)(B) because according to the word count feature of Microsoft Word, it contains 4043 words, excluding the parts exempted by Federal Rule of Appellate Procedure 32(f).

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionately spaced typeface using Microsoft Word in 14 point Times New Roman font.

Dated: February 2, 2023

/s/ *Clare Pastore*
_____

CERTIFICATE OF SERVICE

The undersigned certifies that on February 2, 2023, the foregoing motion was submitted to the office of the Clerk for the United States Court of Appeals for the Fifth Circuit for filing using the appellate CM/ECF system, which will transmit an electronic copy to all counsel of record in accordance with the Federal Rules of Civil Procedure.

/s/ *Clare Pastore*
_____

No. 22-30691

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For the Fifth Circuit

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No. 5:21-cv-3415

BRIEF *AMICUS CURIAE*
OF
LAW ENFORCEMENT ACTION PARTNERSHIP

In support of Plaintiff-Appellant Jarius Brown
and supporting reversal of the opinion below

Clare Pastore
USC GOULD SCHOOL OF LAW
699 Exposition Blvd.
Los Angeles, CA 90089
(323) 821-4410
cpastore@law.usc.edu

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James Ashby Davis, Cook, Yancey, King & Galloway, APLC

5. ***Amicus Curiae*:** Law Enforcement Action Project (LEAP)

6. **Counsel for Law Enforcement Action Partnership:** Clare Pastore

SO CERTIFIED, this 2nd day of February, 2023

/s/ Clare Pastore
Attorney of Record for *Amicus Curiae*
Law Enforcement Action Partnership

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, Law Enforcement Action Partnership certifies that it is not a publicly held corporation or other publicly held entity, it does not have a parent corporation, and that no publicly held corporation or other publicly held entity owns more than 10% of its stock.

Dated: February 2, 2023

Respectfully submitted,

By: /s/ *Clare Pastore*

Clare Pastore
USC Gould School of Law
699 Exposition Blvd.
Los Angeles, CA 90089
(213) 821-4410
cpastore@law.usc.edu

Counsel for *Amicus Curiae*
Law Enforcement Action Partnership

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INTEREST OF *AMICUS CURIAE*[1]

Law Enforcement Action Partnership (LEAP) is a nonprofit organization composed of police, prosecutors, judges, corrections officials, and other law enforcement veterans advocating for criminal justice and other reforms to make our communities safer and more just.

Police accountability is a central interest of LEAP. LEAP understands that accountability is essential for community trust and effective policing and that the failure to hold police accountable for misconduct undermines the ability of all police to do their jobs. Affording victims of police misconduct a reasonable opportunity to seek redress through Section 1983 civil rights litigation is key to this essential accountability. This appeal is therefore important to LEAP because it raises the critical issue of whether Louisiana's statute of limitations is so short as to undermine the goals of Section 1983 and foreclose this essential avenue of redress.

INTRODUCTION

This case will help determine whether victims of police misconduct in Louisiana are afforded a reasonable time to seek redress in court, as Congress

[1] *Amicus* certifies that no party's counsel authored this brief in whole or in part, no party or party's counsel contributed money intended to fund preparing or submitting this brief, and no person other than *Amicus*, its members, or its counsel contributed money intended to fund preparing or submitting this brief.

intended over a century and a half ago when it passed the Enforcement Act of 1871 (today codified in relevant part at 42 U.S.C. § 1983). Because of Louisiana's extremely short statute of limitations, Louisiana victims of police misconduct face unwarranted obstacles to vindication of their rights. As part of its central mission of making law enforcement more effective and accountable to the public it serves, and based on its decades of experience in policing and police reform, *Amicus Curiae* LEAP supports an interpretation of the statute of limitations for Section 1983 claims that will allow meritorious claims go forward, serving their purpose of deterring and recompensing civil rights violations and holding officials accountable. Such accountability is essential to maintaining the trust between citizens and communities that is the foundation of effective policing.

ARGUMENT

I. APPLYING A ONE-YEAR STATUTE OF LIMITATIONS TO POLICE MISCONDUCT CLAIMS PLACES A SIGNIFICANT AND UNWARRANTED BURDEN ON THE VINDICATION OF CIVIL RIGHTS, AND DOOMS MANY MERITORIOUS CLAIMS

A. There Are Many Reasons Civil Rights Claims Cannot Always Be Filed Quickly

Filing a civil rights claim is not easy. Section 1983 is a notoriously complex law, full of traps for the unwary. The Supreme Court recognized the difficulties of Section 1983 litigation in *Burnett v. Grattan*, 468 U.S. 42, 50-51 (1984):

> Litigating a civil rights claim requires considerable preparation. An injured person must recognize the constitutional dimensions of his injury. He must obtain counsel, or prepare to proceed pro se. He must conduct enough investigation to draft pleadings that meet the requirements of federal rules; he must also establish the amount of his damages, prepare legal documents, pay a substantial filing fee or prepare additional papers to support a request to proceed in forma pauperis, and file and serve his complaint. At the same time, the litigant must look ahead to the responsibilities that immediately follow filing of a complaint. He must be prepared to withstand various responses, such as a motion to dismiss, as well as to undertake additional discovery.

For persons injured in an encounter leading to a civil rights claim, the difficulty is magnified, since they may be dealing with physical or mental injury from the encounter, as well as loss of income if an injury caused absence from work. Resolving these issues will of necessity usually take priority over finding an attorney and considering litigation.

Likewise, the interplay of criminal proceedings with civil rights claims can cause delay in filing civil rights lawsuits, for both practical and legal reasons. The practical reason is that many attorneys will not take a civil rights case, even for investigation, while the potential plaintiff is facing criminal charges. This reluctance can stem from many sources: fear of retribution against an arrestee still facing charges, concern about complicating a criminal case with reciprocal civil discovery, and/or difficulty of conducting the pre-filing investigation necessary under Federal Rule of Civil Procedure 11 while a criminal proceeding is ongoing, among others.

The legal reason that criminal charges often delay the filing of civil rights cases is that many claims against police officers arise from the circumstances of an arrest. A plaintiff who brings a Section 1983 suit for malicious prosecution or false arrest must show that he or she obtained a "favorable termination" of the criminal prosecution. *Heck v. Humphrey*, 512 U.S. 477, 484 (1994). While the "favorable termination" requirement does not require an acquittal or other "affirmative indication" of innocence (*Thompson v. Clark*, __ U. S. __, 142 S.Ct. 1332, 1335 (2022)), it does require *some* termination of the proceedings, even if only by an unexplained dropping of the charges. *Id*. This process can readily take more than the one year Louisiana's statute of limitations affords for the Section 1983 claim.

B. In Cases Involving Doe Defendants, Plaintiffs Must Actually File Well Before the One-Year Statute Runs Out, Making the Limitations Period Even Shorter

Not only is it difficult for any plaintiff to marshal the resources necessary to file a civil rights claim within Louisiana's short statute of limitations, or to conclude criminal proceedings within that time, but for many victims, the statute is effectively even shorter because of the interplay of pleading rules with filing deadlines. When a plaintiff does not know the names of the defendants he wishes to sue, it is common to file the case against so-called "Doe defendants" whose names will be added once their identities are ascertained. This practice is frequently necessary in police misconduct litigation because officers do not always identify themselves to victims,

or victims may not know or recall the names of those involved, especially if the victim has suffered injury or trauma. These so-called "Doe defendant cases" have played an important role in the development of civil rights law. *See, e.g.*, *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971). Frequently it is only after a suit is filed and discovery can be undertaken that the identities of the officers involved can be ascertained.

The problem arises because of the time it can take to begin and conduct discovery, resolve discovery disputes, and receive the necessary identifying information to replace Doe defendants with the names of actual defendants. Under Federal Rule of Civil Procedure 26(d)(1), discovery in most cases cannot begin until the parties have conferred as required by Rule 26(f). Rule 26(f) requires that conference to take place no more than 21 days prior to the scheduling conference or scheduling order required under Rule 16(b), which in turn can occur as late as 90 days after service or 60 days after a defendant appears. Thus, for example, in a case filed June 1, it is likely that discovery cannot begin until August, and potentially not until much later if discovery disputes must be resolved or stays are sought as motions to dismiss are brought, as is common in civil rights litigation.

The interplay of these complex discovery timing rules with the statute of limitations is illustrated by a recent Fifth Circuit case, *Balle v. Nueces County*, 952 F.3d 552 (5th Cir. 2017). In that case, the plaintiff filed a Section 1983 suit over

injuries he allegedly sustained in custody. Not knowing the names of some of the medical personnel he alleged violated his rights, he named Doe defendants. 952 F.3d at 556. Seven months after filing the complaint, plaintiff amended to name the two medical professionals he had identified through discovery. *Id.* This Court affirmed the dismissal of these defendants, holding that the claims were barred by the statute of limitations and did not relate back to the original complaint under Rule 15(c)(1). *Id.* at 556-57. Rejecting plaintiff's plea for equitable tolling of the statute of limitations based on his lack of knowledge of the defendants' identities at the time of filing, the Fifth Circuit stated that "[Plaintiff]'s inability to determine the identities of the Jane Does before the limitations period had run was attributable to his own decision to file his suit so close to the end of the limitations period." *Id.* at 558. The lesson of *Balle* and similar cases is clear: plaintiffs who require discovery to identify responsible defendants must file significantly earlier than the already-short one-year statute of limitations allows. But individuals without lawyers are very unlikely to be aware of the intricacies of Doe pleading, so the interplay of the statute and the pleading rules functions as a trap for the unwary.

The combination of all of these factors (the inherent complexity of Section 1983 litigation, the difficulty of finding attorneys, the need to attend to medical, employment or other needs before turning to litigation, the "favorable termination" requirement for many cases, and the need to file early in a case requiring Doe

defendants) means that many civil rights plaintiffs with meritorious cases will simply never be able to assert them within the short time Louisiana's statute affords. This state of affairs is completely inconsistent with the Supreme Court's recognition that application of a state statute of limitations must be consistent with the goals of Section 1983. See, e.g., *Barnett*, 468 U.S. at 47, *quoting* 42 U.S.C. §1988 ("courts are to apply state law only if it is not inconsistent with the goals of Section 1983."). This court should interpret Louisiana's statute of limitations to allow a reasonable time for plaintiffs to file, consistent with the goals of Section 1983.

II. COMMUNITY TRUST, AND THEREFORE EFFECTIVE POLICING, IS UNDERMINED WHEN VICTIMS HAVE NO PATH TO REDRESS FOR CIVIL RIGHTS VIOLATIONS

The previous section discussed why civil rights plaintiffs often need more than a year to prepare and file their cases. *Amici* turn now from the effects of the short statute on individual civil rights victims to the consequences for the police themselves and the communities they serve of denying avenues of redress.

Modern policing theory recognizes that effective policing depends on cooperation between police and the communities they serve.[2] Cooperation comes in

[2] *See, e.g.*, Community Policing Consortium (made up of the International Association of Chiefs of Police, the National Sheriffs' Association, the Police Executive Research Forum, and the Police Foundation), Understanding Community Policing: A Framework for Action 7 (1994). *See also* David H. Bayley, *Law Enforcement and The Rule of Law: Is There a Tradeoff?* 2 Criminology & Pub. Pol'y 133, 142-43 (2002) (tracing the history of community policing); John E. Boydston et al., San Diego Community Profile: Final Report (1975) (detailing the benefits of tailoring policing strategies to needs of the particular communities served).

different forms, such as reactive use of police services, including making 911 calls or cooperating with investigations, proactive policing of neighborhoods by citizens, and deferring to the police's use of discretionary authority. Sunshine & Tyler, *The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing*, 37 Law & Soc. Rev. 513, 516-17 (2003). Unsurprisingly, research shows that when people view the police as legitimate and accountable to the public, they are more likely to cooperate with police by reporting crimes or volunteering their time to work with police in their communities. *Id.* at 524.

Researchers frequently gauge community cooperation by measuring residents' use of police services. Distrustful groups not only are less likely to use police services, but studies have also shown that this can lead to increased crime rates and citizens taking the law into their own hands. See, e.g., David Kirk & Andrew Papachristos, *Cultural Mechanisms and the Persistence of Neighborhood Violence,* 116 Am. J. Soc. 1190 (2011). *See also* Robert D. Putnam, Bowling Alone: The Collapse and Revival of American Community 301 (2000). In poor, minority communities, residents are more likely to have negative views of the criminal justice system, which "is widely believed to result in citizens withdrawing from the police, particularly by refusing to report crime to authorities."[3]

[3] Matthew Desmond, Andrew V. Papachristos, & David S. Kirk, *Police Violence and Citizen Crime Reporting in the Black Community*, 81 Am. Soc. Rev. 857, 858 (2016), *citing* Eric P. Baumer, *Neighborhood Disadvantage and Police Notification by Victims of Violence*, 40 Criminology 579 (2002).

A recent experimental study by the Yale Justice Collaboratory involving over 600 Black Americans confirmed this insight. Researchers tested the effects of various scenarios involving trust on community members' willingness to cooperate with police by presenting a scenario that respondents were to imagine was occurring in their own community. Thomas C. O'Brien, Tracey L. Meares, & Tom R. Tyler, *Reconciling Police and Communities with Apologies, Acknowledgements, or Both: A Controlled Experiment*, 687 Annals Am. Acad. Pol. & Soc. Sci. 202, 207-08 (2020). Respondents then reported how likely they were to cooperate with the police, including by answering questions from a police officer and calling the police to report a crime. *Id.* at 207-09. Respondents who reported that their own neighborhood police were not procedurally just (in other words, did not treat community members fairly), were less likely to cooperate with police than those who believed their neighborhood police were procedurally just. *Id.* at 209-10. Also, among those who did not view police favorably or as procedurally just, cooperation increased only when respondents were presented with the scenario where the police officer both acknowledged responsibility and apologized for community distrust. *Id.* Researchers found that for Black individuals, who experience and perceive lower levels of procedural justice in their interactions with police,[4] public

[4] Rob Voigt et al., *Language From Police Body Camera Footage Shows Racial Disparities in Officer Respect*, 114 Proceedings Nat'l Acad. Sci. 6521 (2017); Deby Dean, *Citizens' Ratings of the Police: The Difference Contact Makes*, 2 Law & Pol'y Q. 445 (1980); Darlene Walker et al., *Contact and Support: An Empirical Assessment of Public*

acknowledgement and apology from police leadership are both necessary for rebuilding the community's trust and encouraging the community members to cooperate with the police.[5]

Both research and experience show that when community members see civil rights violations go unremedied, their faith and trust in the police plummets. "When you have police officers who abuse citizens, you erode public confidence in law enforcement. That makes the job of good police officers unsafe." Anthony Stanford, *Copping Out: The Consequences of Police Corruption and Misconduct* 153 (2015) (quoting legal scholar and former U.S. Civil Rights Commission chair Mary Frances Berry). It is essential to the cooperation between citizens and police that those who experience civil rights violations by the police have a viable path to redress. Louisiana's extremely short statute of limitations forecloses this path in many instances.

III. WHEN INDIVIDUAL BAD ACTORS ARE NOT HELD TO ACCOUNT FOR MISCONDUCT, COMMUNITY TRUST AND EFFECTIVE POLICING ARE FURTHER ERODED

Not only does effective policing depend on community trust in general, but accountability for specific incidents of police wrongdoing is also essential to

Attitudes Toward the Police and the Court, 51 N.C. L. Rev. 43 (1972); David Bordua & Larry Tifft, *Citizens' Interviews, Organizational Feedback, and Police-Community Relations Decisions*, 6 Law & Soc. Rev. 155 (1971).

[5] O'Brien, Meares, & Tyler, *Reconciling Police and Communities, supra* at 210-12. *See also* Tom R. Tyler & Yuen J. Huo, Trust in the Law: Encouraging Public Cooperation with the Police and Courts (2002); Robert Davis, Assessing Police-Public Contacts in Seattle (2004).

building and maintaining that trust. As a Minnesota prosecutor recently explained, "[T]here is nothing worse for good police than a bad [officer] who doesn't follow the rules, who doesn't follow procedure, who doesn't follow training, who ignores the policies of the department." Zak Cheney-Rice, *This Not Justice. It's Self-Preservation.*, N.Y. Mag. (Apr. 20, 2021), quoting Minnesota prosecutor Steve Schleicher.

Holding officers accountable for civil rights violations helps build trust. As prosecutor Schleicher stressed in the 2021 trial of Officer Derek Chauvin for the murder of George Floyd, prosecution of Chauvin was "not an anti-police prosecution. . . it is a pro-police prosecution." *Id.* Not only building community trust in general but holding officers accountable for civil rights violations is essential to safe and effective policing.

A recent "natural experiment" in Chicago after the 2014 fatal police shooting of Laquan McDonald, an unarmed Black youth, illustrates the truth of the insight that accountability for individual instances of police wrongdoing is essential to community trust. After the release of the video of McDonald's death in November 2015, Chicago leaders established an independent Police Accountability Task Force, fired the police chief, and released hundreds of videos of police-citizen encounters. Tammy Rinehart Kochel & Wesley G. Skogan, *Accountability and Transparency as Levers to Promote Public Trust and Police Legitimacy: Findings from a Natural*

Experiment, 44 Policing 1046, 1048 (2021). The city leaders also supported a federal investigation into the Chicago Police Department ("CPD"), where the Department of Justice found that police misconduct, including the McDonald shooting, broke the trust between Chicago neighborhoods and police because systems "have allowed CPD officers who violate the law to escape accountability."[6] This breach in trust resulted in a rise in crime "erod[ing] CPD's ability to effectively prevent crime; in other words, trust and effectiveness in combating violent crime are inextricably intertwined." U.S. Department of Justice, Investigation of the Chicago Police Department, *supra* note 5 at 1-2. "Actions that make plain to the public that the police acted inappropriately may seem counterintuitive as a strategy to restore trust[,]" but by proactively making changes, government leaders embraced two key components of police accountability: answerability, showing the system could be hold itself accountable, and responsiveness, showing they acted out of concern for the public. Kochel & Skogen, *Accountability and Transparency as Levers to Promote Public Trust and Police Legitimacy, supra,* at 1048.

To study the real-world effects of these accountability measures, researchers surveyed 841 Chicago residents before and after the release of the McDonald

[6] United States Department of Justice, Civil Rights Division & United States Attorney's Office, Northern District of Illinois, Investigation of the Chicago Police Department 1, 25-26 (2017), (describing the shooting of McDonald in a list of "numerous incidents where CPD officers chased and shot fleeing persons who posed no immediate threat to the officers or the public"). *See also* Consent Decree, *Illinois v. Chicago*, No. 17-cv-6260, 2019 WL 398703 (N.D. Ill. Jan. 31, 2019); Morgan Winsor, *5 Takeaways From Scathing Department of Justice Report on Chicago Policing*, ABC News (Jan. 13, 2017).

shooting video and subsequent reform efforts. *Id.* at 1051. The participants were asked questions to measure their trust in Chicago police generally and in police working in their own neighborhoods, and their views on police legitimacy. *Id.* at 1051-54. The researchers found that Black residents showed increasing levels of trust, suggesting "[B]lacks responded favorably to local debates over police misconduct and reform, affirming the significance of the Task Force recommendations." *Id.* at 1055-56. Overall, respondents' trust in the Chicago police and their own neighborhood police increased over time after the reforms were instituted, showing that trust can be rebuilt through transparency and accountability measures. *Id.* at 1055.

These research findings are consistent with those in other cities looking to rebuild trust after accountability failures. For example, from 2006 to 2011, researchers surveyed nearly 4,000 citizens in a large Western city, covering the time period before, during and after the city made significant changes to its police accountability and oversight framework.[7] The city's original review board was underfunded, understaffed, and had weak investigatory powers, and even the local police union believed it was ineffective. *Id.* at 238. After a series of officer-involved

[7] Joseph De Angelis & Brian Wolf, *Perceived Accountability and Public Attitudes Toward Local Police*, 29 Crim. Just. Stud. 232, 238-39 (2016). The researchers do not identify the city, but include some demographic information, such as that the city has a population of over 250,000 people and one large municipal police department of about 1,000 sworn employees.

shootings of unarmed and mentally ill citizens, the city created a new oversight agency in 2005 and gave the new agency a larger budget and more staff members, including lawyers, community specialists, and an advisory board. *Id.* at 239. The agency's fundamental goal "was to increase the public's trust in local law enforcement by improving the transparency, thoroughness, [and] efficiency of investigations into community complaints and critical incidents." *Id.* Each year, researchers sent out a survey, which asked citizens about their satisfaction with police services, officer accountability, and community safety.

Over the five years of the study, respondents' "attitudes towards police accountability [were] not just the strongest but also the most consistent predictor of police satisfaction" each year. *Id.* at 247. When respondents indicated that they were satisfied with accountability efforts to control police conduct, they were more likely to rate police services positively. *Id.* at 246. In 2011, respondents showed a decline in perceived accountability and satisfaction with the police directly after the oversight agency published reports criticizing the city for "failing to adequately discipline officers who were alleged to have used excessive force." *Id.* at 247.

A somewhat older study in Milwaukee documents the same phenomenon. Between 2004 and 2010, researchers from Harvard, Yale, and Oxford Universities analyzed police-related 911 calls in Milwaukee. Matthew Desmond, Andrew V. Papachristos, & David S. Kirk, *Police Violence and Citizen Crime Reporting in the*

Black Community, 81 Am. Soc. Rev. 857, 861 (2016). Following a widely publicized local incident of police brutality, Milwaukee residents' 911 calls fell below expected rates, especially in Black neighborhoods. *Id.* at 866. (Fifty-six percent of the total loss in calls occurred in Black neighborhoods.) *Id.* at 868. Thus, instances of police misconduct not only can decrease trust and legitimacy, but "they also—by driving down 911 calls— thwart the suppression of law breaking, obstruct the application of justice, and ultimately make cities as a whole, and the black community in particular, less safe." *Id.* at 870.

Louisiana's extremely brief statute of limitations undermines this critical value of accountability: when citizens see that officers are not held accountable because victims cannot file cases quickly enough, community trust suffers.

IV. AFFORDING A REASONABLE TIME TO FILE SECTION 1983 CASES WILL FACILITATE MORE THOROUGH INTERNAL INVESTIGATIONS AND MAY THEREBY OBVIATE THE NEED FOR SOME CASES TO BE FILED AT ALL

Counterintuitively, allowing a more reasonable time for civil rights plaintiffs to file Section 1983 cases might actually result in *fewer* such cases being filed. This is because in many cases, especially those without significant personal injury or property damage, what civil rights victims primarily want is acknowledgment of the wrong done them and a promise that there will be consequences in the form of action taken against a wrongdoer or a change in policy. See, e.g. Brent T. White, *Say You're Sorry: Court-Ordered Apologies as a Civil Rights Remedy*, 91 Cornell L. Rev. 1261,

1271-72 (2006) (noting that scholarly literature as well as the author's experience with civil rights claimants documents the desire of litigants generally for acknowledgment and apology). In the civil rights context, this desire is often expressed by the filing of a complaint with the police department. In LEAP's experience, it is often the failure of police departments to take such complaints seriously that necessitates the filing of litigation: if the community trusts the police to investigate, report back on mistakes, and take corrective action, the need for litigation declines.

A very short statute of limitations undermines the effort to allow an internal process to reach a transparent and trustworthy result that might satisfy the victim. Research shows that police misconduct investigations can be lengthy and take more time than investigations into other issues, such as work performance. Thomas Mrozla, *Complaints of Police Misconduct*, 58 Soc. Sci. J. 286, 297 (2020). But with a one-year statute of limitations, victims cannot wait for the result of an internal investigation before deciding whether litigation is necessary. Thus, the short statute of limitations actually *necessitates* the filing of lawsuits that might otherwise be obviated if a robust internal investigation, and resulting accountability measures, were allowed to play out.

V. CONCLUSION

For all of the foregoing reasons, *Amicus* urges this Court to reverse the dismissal of this case.

DATED: February 2, 2023

Respectfully submitted,

Clare Pastore
Attorney for *Amicus Curiae*
Law Enforcement Action Partnership

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 29(a)(5) and Federal Rule of Appellate Procedure 32(a)(7)(B) because according to the word count feature of Microsoft Word, it contains 4043 words, excluding the parts exempted by Federal Rule of Appellate Procedure 32(f).

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionately spaced typeface using Microsoft Word in 14 point Times New Roman font.

Dated: February 2, 2023

/s/ *Clare Pastore*
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CERTIFICATE OF SERVICE

The undersigned certifies that on February 2, 2023, the foregoing motion was submitted to the office of the Clerk for the United States Court of Appeals for the Fifth Circuit for filing using the appellate CM/ECF system, which will transmit an electronic copy to all counsel of record in accordance with the Federal Rules of Civil Procedure.

/s/ *Clare Pastore*
_____