

CIVIL ACTION NO. 5:21-cv-04063

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

ANTHONY MONROE,
Plaintiff,

v.

TERRY CONNER in his individual capacity as a law enforcement officer with the 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; Louisiana State Police; and DOES 1-10,
Defendants.

JUDGE ELIZABETH E. FOOTE
MAGISTRATE JUDGE HORNSBY

**BRIEF OF *AMICUS CURIAE* NATIONAL
POLICE ACCOUNTABILITY PROJECT, INC.
IN SUPPORT OF PLAINTIFF**

ELIZABETH HORN
Counsel of Record
AKERMAN LLP
100 North Main Street
Suite 2425
Winston-Salem, NC 27103
(336)-296-7111
elizabeth.horn@akerman.com

BRIAN S. FRASER
ANGAD SINGH BHAI
(admitted *pro hac vice*)
AKERMAN LLP
1251 Avenue of the Americas
37th Floor
New York, NY 10020
(212)-880-3800
brian.fraser@akerman.com
angad.bhai@akerman.com

Counsel for Amicus Curiae

TABLE OF CONTENTS

	<u>Page</u>
I. INTEREST OF AMICUS CURIAE	1
II. INTRODUCTION	2
III. ARGUMENT	3
a. Victims Of Police Misconduct Face Unique Challenges That Impair Their Ability To Bring A § 1983 Claim Within One Year	3
i. Challenges In Conducting Necessary Pre-Complaint Investigation	4
ii. Challenges In Finding And Securing Counsel	5
iii. Delays In Bringing §1983 Necessitated By Resolution Of Parallel Criminal Proceedings	6
b. The Harmful Act Itself Requires Time To Recover And Causes Deleterious Psychological And Emotional Effects, Which Further Delays Filing Suit	7
IV. CONCLUSION	9

TABLE OF AUTHORITIES

	<u>Page(s)</u>
Cases	
<i>Ashcroft v. Iqbal</i> 566 U.S. 662 (2009)	5
<i>Bell Atlantic Corp. v. Twombly</i> 550 U.S. 544 (2007)	5
<i>Burnett v. Grattan</i> , 468 U.S. 42, 48 (1984).....	2
<i>City of Riverside v. Rivera</i> , 477 U.S. 561, 577 (1986).....	5
<i>Johnson v. Ry. Exp. Agency, Inc.</i> , 421 U.S. 454, 465 (1975).....	2
<i>Monell v. Dep't of Soc. Servs. of City of New York</i> , 436 U.S. 658, 694 (1978).....	4
<i>Monroe v. Pape</i> , 365 U.S. 167 (1961).....	3
<i>Owens v. Okure</i> , 488 U.S. 235, 241 (1989).....	2
<i>Stringer v. Town of Jonesboro</i> , 986 F.3d 502, 509 (5th Cir. 2021)	3
<i>Wilson v. Garcia</i> , 471 U.S. 261, 280 (1985).....	2
Statutes	
§ 1 of the Enforcement Act of 1871.....	2
42 U.S.C. § 1988.....	1, 2
42 U.S.C. § 1983.....	<i>passim</i>
Other Authorities	
<i>Aggressive Policing and the Mental Health of Young Urban Men</i> , American Journal of Public Health 104, no. 12 at 2324 (Dec. 2014).....	8
<i>After Qualified Immunity</i> , 120 Colum. L. Rev. 309, 346 (2020)	6
<i>Front Loading and Heavy Lifting: How Pre-Dismissal Discovery Can Address the Detrimental Effect of Iqbal on Civil Rights Cases</i> , 14 Lewis & Clark L. Rev. 66, 92, 130 (2010)	5

H.R. Civ. L. and Proc. Comm., Meeting Minutes on H.B. 724, at 3 (La. May 10, 1988) 7

Hearing Before the H.R. Civ. L. and Proc. Comm. on H.B. 556, at 41:54 (La. April 12, 2016) 8

Hearing Before the H.R. Civ. L. and Proc. Comm. on S.B. 156, at 22:58 (La. June 7, 1999) 6, 7

Jordan DeVlyder, et. al, *Impact of Police Violence on Mental Health: A Theoretical Framework*, American Journal of Public Health 110, no. 11 (Nov. 1, 2020) 9

Litigating Police Misconduct Claims in North Carolina, 19 N.C. Cent. L.J. 113, 143 (1991)..... 5

Race Class, and Access to Civil Justice, 101 Iowa L. Rev. 1263 (2015)..... 8

Roger A. Hanson and Henry W.K. Daley, *Challenging the Conditions of Prisons and Jail: A Report on Section 1983 Litigation*, U.S. Department of Justice Office of Justice Programs Bureau of Justice Statistics, December 1994..... 3

Section 1983 Litigation: The Maze, the Mud, the Madness, 23 Wm. & Mary Bill Rts J. 913, 916 (2015) 5

The Overlooked Barrier to Section 1983 Claims: State Catch-All Statutes of Limitations, Calif. L. Rev. Online (Mar. 2021) 9

William H.J. Hubbard, *A Fresh Look at Plausibility Pleading*, 83 U. Chi. L. Rev. 693, 707 (2016) 5

I. INTEREST OF AMICUS CURIAE¹

National Police Accountability Project, Inc. ("NPAP") is a project of the National Lawyers Guild, which was founded in 1937 as the first racially integrated national bar association. In 1999, NPAP was created as a non-profit organization to protect the human and civil rights of individuals in their encounters with law enforcement and detention facility personnel. NPAP aims to promote the accountability of law enforcement officers and their employers for violations of the Constitution and the laws of the United States. To that end, the NPAP pursues litigation and advocacy efforts to remove procedural obstacles that unduly restrict the ability of individuals whose civil rights have been violated in order to enable them to seek redress for their injuries in the civil court system.

This case is of interest to NPAP because it raises questions regarding the time-consuming practical and trauma-related challenges individuals experience when attempting to bring a 42 U.S.C. § 1983 ("§ 1983") action in federal courts in Louisiana. NPAP has observed that Louisiana's one-year liberative prescriptive period applicable to § 1983 claims coupled with those challenges creates major barriers for its clients and undermines vindication of rights that § 1983 was specifically designed to secure, and further impedes police accountability. Although under 42 U.S.C. § 1988, courts are instructed to borrow and apply state statutes of limitations to § 1983 claims, courts may do so only if that application is not inconsistent with federal policy underlying those claims. As argued in this brief, applying Louisiana's limited one-year statute of limitations to § 1983 claims such as those brought by Mr. Monroe is inconsistent with the federal policy

¹ Amicus curiae states 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 curiae, their members, or their counsel contributed money intended to fund preparing or submitting this brief.

underlying those claims. Therefore, Louisiana's limited one-year statute of limitations should not bar Mr. Monroe's § 1983 claims.

II. INTRODUCTION

Congress passed § 1 of the Enforcement Act of 1871, today codified at 42 U.S.C. § 1983, to allow victims of civil rights abuses to prosecute claims against state actors in federal court rather than state court. § 1983 itself does not provide a statute of limitations. Rather, 42 U.S.C. § 1988 instructs federal courts to look to the most analogous state statute of limitations. In 1985, the Supreme Court attempted to clarify the application of 42 U.S.C. § 1988, holding that federal courts must follow the most analogous state statute of limitations pertaining to injuries to the rights of a person. *Wilson v. Garcia*, 471 U.S. 261, 280 (1985). Since then, however, where states had multiple statutes of limitations for personal injury actions, courts differed in their determination of which statute of limitations applied to § 1983 actions. *Owens v. Okure*, 488 U.S. 235, 241 (1989). Therefore, in 1989, the Supreme Court provided further clarification: in a state that has one or more statutes of limitations for certain enumerated intentional torts and a residual statute of limitations for all other personal injury actions, the residual or general personal injury statute of limitations applies. *Owens*, 488 U.S. at 236.

Critically, although 42 U.S.C. § 1988 instructs courts to borrow and apply state statutes of limitations to § 1983 actions, the Supreme Court has clearly stated that such application is permissible only if it is not "inconsistent with the federal policy" underlying the federal cause of action under consideration. *Johnson v. Ry. Exp. Agency, Inc.*, 421 U.S. 454, 465 (1975); *see also Owens*, 488 U.S. at 239 ("Title 42 U.S.C. § 1988 endorses the borrowing of state-law limitations provisions where doing so is consistent with federal law[.]"); *Burnett v. Grattan*, 468 U.S. 42, 48 (1984), *holding modified by Wilson v. Garcia*, 471 U.S. 261 (1985) (internal quotation and citation omitted) ("courts are to apply state law only if it is not inconsistent with the Constitution and laws

of the United States"). In Louisiana, where there is only one statute of limitations for personal injury actions, courts have held that the state's one-year personal injury statute of limitations applies to § 1983 actions. *Stringer v. Town of Jonesboro*, 986 F.3d 502, 509 (5th Cir. 2021).²

This brief argues that application of Louisiana's one-year statute of limitations for §1983 actions presents significant challenges that are specific to victims of police violence, resulting in an inability to obtain redress for civil rights violations and a perpetuation of police misconduct. Such application is inconsistent with the federal policy underlying § 1983 claims, which is to provide a federal remedy in federal court for violations of an individual's civil rights.³ Therefore, Louisiana's one-year statute of limitations should not bar Mr. Monroe's § 1983 claims.

III. ARGUMENT

a. **Victims Of Police Misconduct Face Unique Challenges That Impair Their Ability To Bring A § 1983 Claim Within One Year**

Plaintiffs in § 1983 actions face significant hurdles which underscore the compounding effect a one-year statute of limitations has on their ability to bring and prevail on a § 1983 claim. In particular, victims of police misconduct face unique challenges that impair their ability to timely file a § 1983 claim within one year.⁴ The Supreme Court has observed the practical difficulties plaintiffs like Mr. Monroe face when bringing a § 1983 claim:

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

² Notably, Louisiana is one of only three states that has a one-year statute of limitations on actions for personal injuries.

³ Specifically, the legislative purpose was to provide a federal remedy in federal court because the state governments and courts, "by reason of prejudice, passion, neglect, intolerance or otherwise," were unwilling to enforce the due process rights of Black Americans guaranteed by the 14th Amendment. *Monroe v. Pape*, 365 U.S. 167 (1961).

⁴ The legal and practical difficulties in successfully mounting a § 1983 claim are borne out by the statistics. A 1994 study of the disposition of 4,453 § 1983 suits filed in several states (including Louisiana) found that "[t]he most frequent manner of disposition [of a § 1983 suit] is a court dismissal of the case (74%) Twenty percent of the issues are disposed of by the court granting the motion of the defendant. Finally, four percent of the issues result in stipulated dismissal, and another two percent end in trial." Roger A. Hanson and Henry W.K. Daley, *Challenging the Conditions of Prisons and Jail: A Report on Section 1983 Litigation*, U.S. Department of Justice Office of Justice Programs Bureau of Justice Statistics, December 1994.

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.

Burnett, 468 U.S. at 50–51. And although pleading standards in federal courts are "liberally construed," "the administration of justice is not well served by the filing of premature, hastily drawn complaints." *Id.* at 50, fn. 13 (citing FRCP 11).

i. Challenges In Conducting Necessary Pre-Complaint Investigation

The challenges to filing suit begin as soon as the cause of action accrues. At the outset of the injury, plaintiffs may not have a clear picture of whether their civil rights or those of their family members were violated absent an investigation. However, the requisite pre-complaint investigation can be time-consuming. For example, plaintiffs may need to make records requests under the Freedom of Information Act and related state laws. Here, Mr. Monroe submitted public records requests in order to conduct pre-complaint investigation, but the responses to his requests were delayed and produced very limited and redacted information. ECF Doc No. 16, ¶¶ 85-94. To bring a § 1983 suit against a government agency, a plaintiff must prove that the challenged conduct was pursuant to a municipal policy. *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 694 (1978). Records of the kind that Mr. Monroe sought are critical to claims for *Monell* liability because they aid in the determination as to the existence of such a policy. Without more time, plaintiffs may not have meaningful access to these records.

Additionally, in order to survive a motion to dismiss under FRCP 12(b)(6), a complaint must meet a "plausibility" standard, but plaintiffs in § 1983 suits are relatively more disadvantaged in this regard than plaintiffs in other types of actions because of "information inequities" between

the parties in a § 1983 suit. For example, a plaintiff who is beaten by police officers may, like Mr. Monroe, be unable to identify all the individuals who are responsible for the injury. This information is in the sole possession of the defendants in such a suit, and plaintiff's counsel may be required to conduct pre-complaint discovery in order to obtain this and other information necessary to satisfy pleading standards.⁵ Accordingly, the importance of pre-complaint discovery, and the time needed to conduct it, is particularly heightened in § 1983 actions. Furthermore, pre-complaint investigation may entail conducting witness interviews and hiring experts, all of which are time-consuming, especially for an individual with limited financial resources or who may be incarcerated.⁶

ii. Challenges In Finding And Securing Counsel

Plaintiffs must also spend significant time looking for and securing counsel, especially in geographical areas, such as where Mr. Monroe resides, that are "civil legal resource deserts." In such areas, "great barriers to in-person legal services and online resources exist,"⁷ which further eats into the limited one-year time period to file a § 1983 suit. Other challenges in securing counsel include: (i) the difficulty in finding an attorney to take on a case with relatively lower potential damages, (ii) the difficulty in finding an attorney to take on a case *pro bono* due to a plaintiff's limited financial resources⁸ and (iii) the difficulty in finding an attorney outside of the jurisdiction

⁵ Suzette M. Malveux, *Front Loading and Heavy Lifting: How Pre-Dismissal Discovery Can Address the Detrimental Effect of Iqbal on Civil Rights Cases*, 14 Lewis & Clark L. Rev. 66, 92, 130 (2010); see also Karen Blum, *Section 1983 Litigation: The Maze, the Mud, the Madness*, 23 Wm. & Mary Bill Rts J. 913, 916 (2015) ("Municipal liability claims have become procedurally more difficult for plaintiffs to assert since the Court's imposition of a more stringent pleading standard in *Bell Atlantic Corp. v. Twombly* and *Ashcroft v. Iqbal*["].").

⁶ Michael Avery et. al., *Police Misconduct and Litigation*, 691-92 (3ed. 2021).

⁷ *Louisiana Justice for All: Report and Recommendations*, Louisiana Access to Justice Commission, 2020, p. 14. (<https://www.lsba.org/documents/News/ATJ/JFAFinalReport.pdf>).

⁸ *City of Riverside v. Rivera*, 477 U.S. 561, 577 (1986); Joanna Schwartz, *After Qualified Immunity*, 120 Colum. L. Rev. 309, 346 (2020); William H.J. Hubbard, *A Fresh Look at Plausibility Pleading*, [83 U. Chi. L. Rev. 693, 707 \(2016\)](#); Irving Joyner, *Litigating Police Misconduct Claims in North Carolina*, 19 N.C. Cent. L.J. 113, 143 (1991) (noting capacity to front costs is a common reason attorneys do not pursue police abuse cases).

of defendants which may be necessitated by conflicts of interest and political considerations. Overcoming all of these challenges specific to bringing a §1983 action is time-consuming.

iii. Delays In Bringing §1983 Necessitated By Resolution Of Parallel Criminal Proceedings

Plaintiffs alleging certain § 1983 claims also face unique dilemmas that further inhibit their ability to timely file suit under a one-year statute of limitations. For example, if an individual is subjected to false arrest, that individual may need to challenge the false arrest in their criminal proceeding and obtain resolution on that issue first, and only then file a § 1983 claim in federal court. Otherwise, the individual runs the risks attendant to parallel criminal and civil proceedings, which include self-incrimination in the civil proceeding in the course of attempting to prove the § 1983 claim that may then be offensively used by the State in the criminal proceeding. As a result, individuals are often counseled to wait to file suit until the criminal proceeding is resolved. However, during this waiting period, the one-year statute of limitations keeps running. This tension created by parallel proceedings and the one-year statute of limitations further contributes to individuals being deprived of their ability to vindicate their civil rights in federal court. Indeed, the Louisiana State Legislature has recognized and addressed the issue of parallel proceedings in the context of other torts. Specifically, "[The Louisiana State Legislature] also extended the one-year statute of limitations to two years (in S.B. 156) for victims of crimes of violence, so as to provide those victims with more time to deal with parallel criminal and civil proceedings"⁹ The time needed for victims of police misconduct to deal with parallel criminal and civil proceedings warrants at least the same level of recognition.

⁹ Hearing Before the H.R. Civ. L. and Proc. Comm. on S.B. 156, at 22:58 (La. June 7, 1999) (https://house.louisiana.gov/H_Video/VideoArchivePlayer?v=house/1999/jun/0607_99_CL).

As a consequence of the forgoing, by the time a potential plaintiff has gathered enough information to support their allegations, the limitations period may have already passed and they do not file suit. Cases that do get filed are ripe for dismissal before a plaintiff has a chance to prove their case despite the plaintiff having spent significant time and resources building a case, including conducting factual and legal research, obtaining counsel, hiring experts, researching defendants and filing a complaint. In both instances, the state actors who violate individuals' civil rights are not held accountable.

b. The Harmful Act Itself Requires Time To Recover And Causes Deleterious Psychological And Emotional Effects, Which Further Delays Filing Suit

As a result of physical injuries experienced by victims who attempt to seek relief under § 1983, time is needed to recover from the injuries, including hospital stay, physical therapy and other treatment. During this recovery period, victims may not have time to devote to searching for counsel, conducting pre-complaint investigation and generally building their case. Victims may also be unable to undertake necessary pre-complaint activities due to the emotional and mental effects of trauma following the injury. In fact, in other contexts, Louisiana has acknowledged and legislatively addressed the impact that recovery from injury-caused physical and mental trauma has on the time to file suit.

For example, "[t]he Louisiana State Legislature extended the one-year statute of limitations to three years (in H.B. 724) for victims of child abuse, so as to provide those victims 'a chance to recover and still have time to file suit.'"¹⁰ The State Legislature similarly "extended the one-year statute of limitations to two years (in S.B. 156) for victims of crimes of violence, so [those victims would] not have to face discovery associated with litigation after suffering trauma."¹¹ The State

¹⁰ H.R. Civ. L. and Proc. Comm., Meeting Minutes on H.B. 724, at 3 (La. May 10, 1988).

¹¹ Hearing Before the H.R. Civ. L. and Proc. Comm. on S.B. 156, at 22:58 (La. June 7, 1999) (https://house.louisiana.gov/H_Video/VideoArchivePlayer?v=house/1999/jun/0607_99_CL).

Legislature also "extended the one-year statute of limitations to three years (in H.B. 556) for victims of sexual assault, so as to provide those victims with more time to cope with the trauma of their situation before having to decide whether to pursue civil litigation."¹² Therefore, the Louisiana State Legislature has previously recognized the impact that the time needed for recovery has on the ability to timely file suit.

The time needed for victims of police misconduct, such as Mr. Monroe, to recover from the resulting trauma warrants at least the same level of recognition. Young Black men who report intrusive police contact display relatively higher levels of anxiety and trauma associated with those experiences, including symptoms of PTSD and emotional distress, subsequent to the contact.¹³ Empirical studies of the impact of negative interactions with police and other institutions perceived as legal in nature have also shown that these interactions lead Black individuals with lower incomes who have experienced them to avoid interaction with legal institutions altogether, including the civil justice system.¹⁴ Additionally, the same factors that lead any victim to delay reporting a crime may be particularly heightened in instances of police violence and seeking redress thereto because police violence is unique in nature. The uniqueness of police violence relative to other forms of violence may be identified using several factors distinct to police violence: police violence is state sanctioned; police are a pervasive presence; there exists limited options for recourse; police culture deters accountability; police violence alters deeply held beliefs;

¹² Hearing Before the H.R. Civ. L. and Proc. Comm. on H.B. 556, at 41:54 (La. April 12, 2016) (https://house.louisiana.gov/H_Video/VideoArchivePlayer?v=house/2016/apr/0412_16_CL); S. Judiciary A Comm., Meeting Minutes on H.B. 556, at 6 (La. May 17, 2016); Hearing Before the S. Judiciary A Comm. on H.B. 556, at 28:39, (La. May 17, 2016) (https://senate.la.gov/s_video/videoarchive.asp?v=senate/2016/05/051716JUDA_0).

¹³ Amanda Geller, et. al, *Aggressive Policing and the Mental Health of Young Urban Men*, American Journal of Public Health 104, no. 12 at 2324 (Dec. 2014); *see also* Dylan B. Jackson et. al, *Police Stops Among At-Risk Youth: Repercussions for Mental Health*, Journal of Adolescent Health (Sep. 6, 2019) (Young people in urban settings who have been subjected to intrusive police stops (such as Mr. Monroe) are more likely to experience symptoms of PTSD and emotional distress following the stop).

¹⁴ Sara Sternberg Greene, *Race Class, and Access to Civil Justice*, 101 Iowa L. Rev. 1263 (2015).

racial and economic disparities among those who are and are not exposed to police violence; police violence has a stigmatizing effect; and police are typically armed.¹⁵ Simply put, Mr. Monroe and victims similarly situated are not ordinary victims of personal injury.

But as long as it is applied, Louisiana's one-year statute of limitations on § 1983 claims leads to an inconsistent and unfair result: while victims of crimes of violence have two years to file suit, and victims of sexual assault or child abuse have three years to file suit, a plaintiff who sues a state or local official under § 1983 for assault, sexual abuse or abuse of a minor only has one year to file suit. This result "flies in the face of Louisiana's decision to give victims of serious offenses extra time to complete criminal proceedings and recover from their trauma before beginning a civil suit."¹⁶

IV. CONCLUSION

The unique circumstances of victims of police violence requires this Court to hold that application of Louisiana's one-year statute of limitations to § 1983 cases is inconsistent with federal policy underlying § 1983 claims and, therefore, should not bar Mr. Monroe's § 1983 claims.

Dated: June 17, 2022

Respectfully submitted,

By: /s/ Brian S. Fraser

Brian S. Fraser (*pro hac vice*)
Angad Singh Bhai (*pro hac vice*)
Akerman LLP
1251 Avenue of the Americas, 37th Floor
New York, NY 10020
(212)-880-3800
brian.fraser@akerman.com
angad.bhai@akerman.com

¹⁵ See Jordan DeVlyder, et. al, *Impact of Police Violence on Mental Health: A Theoretical Framework*, American Journal of Public Health 110, no. 11 (Nov. 1, 2020).

¹⁶ Dani Kritter, *The Overlooked Barrier to Section 1983 Claims: State Catch-All Statutes of Limitations*, Calif. L. Rev. Online (Mar. 2021) (<https://www.californialawreview.org/the-overlooked-barrier-to-section-1983-claims-state-catch-all-statutes-of-limitations/>).

/s/ Elizabeth Horn

Elizabeth Horn (LA Bar No.: 35829)

Akerman LLP

100 North Main Street

Suite 2425

Winston-Salem, NC 27103

(336)-296-7111

elizabeth.horn@akerman.com

*Counsel for Amicus Curiae National Police
Accountability Project, Inc.*