No. 23-1332

In The
Supreme Court of the United States

JARIUS BROWN,

Petitioner,

v.

JAVARREA POUNCY, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF THE INSTITUTE FOR JUSTICE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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Interest of Amicus Curiae[1]

The Institute for Justice (IJ) is a nonprofit public interest law firm committed to defending the essential foundations of a free society by securing greater protection for individual liberty. Central to that mission is promoting government accountability for constitutional violations by government actors. The Institute for Justice pursues these goals in part through its Project on Immunity and Accountability, which seeks to decrease procedural barriers that insulate government defendants that violate individuals' rights from lawsuit. IJ also pursues these goals through affirmative litigation on behalf of individuals whose constitutional rights have been violated by government officials at all levels.

The Project on Immunity and Accountability is founded on a simple idea: If we the people must follow the law, our government must follow the Constitution. But a tangled web of legal doctrines effectively places government officials above the law by making it nearly impossible for individuals to hold them accountable for even bad faith violations of constitutional rights. Too short statutes of limitations often aggravate this problem. Since often the only way to enforce the Constitution is through the courts, these overlapping doctrines make the Constitution an empty promise by firmly shutting the courthouse doors. Accordingly, the Project seeks to challenge

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[1] No counsel for a party authored this brief in whole or in part, and no person other than amicus curiae or its counsel made a monetary contribution to fund the preparation or submission of this brief. Amicus curiae noticed all parties of its intent to file this brief ten days before its filing.

judge-made procedural barriers that erode individuals' constitutional rights through litigation, legislative advocacy, and public education.

As a civil rights organization that regularly sues government officials for violating individuals' federal constitutional rights, IJ also has an unparalleled depth of experience working up viable Section 1983 cases. Because our cases often bring cutting-edge constitutional claims, they often require months-long case development. And so, we have a practical understanding of the challenges resulting from too short limitations periods and overlapping procedural barriers.

Summary of Argument

The Court should grant certiorari in this case. And it should hold that a one-year statute of limitations is too short to vindicate the federal interests expressed in Section 1983.

Congress enacted Section 1983 as a bulwark against government abuse. But over the intervening decades, the Court has imposed increasingly restrictive procedural barriers on civil rights plaintiffs. Those barriers make bringing meritorious claims a more difficult and time-consuming process. Plaintiffs in jurisdictions with one-year statutes of limitations for Section 1983 claims face an untenable choice: invest the requisite time in developing their claims and risk the limitations period expiring or file their claims quickly and risk being dismissed for some other deficiency. Given all the procedural barriers the Court has imposed since Congress enacted Section

1983, one-year statutes of limitations are too short to fulfill Section 1983's broad remedial purpose. See *Wood* v. *Strickland*, 420 U.S. 308, 322 (1975).

Section 1983 is the primary mechanism for civil rights plaintiffs to vindicate their rights. But too short statutes of limitations compound the difficulties created by the proliferation of judicially imposed procedural barriers. In our experience at the Institute for Justice, perfecting Section 1983 claims requires extensive pre-filing factual development and legal research. IJ attorneys regularly spend months preparing our cases to ensure that our clients' claims can survive procedural defenses. That work may include things like fighting over public records requests to support our allegations. Our win before this Court earlier this year illustrates this: To plausibly allege that municipal officials retaliated against Sylvia Gonzalez for her political speech, we spent about six months negotiating with the county to review arrest records and determine whether others had been arrested for similar conduct. See generally *Gonzalez* v. *Trevino*, 602 U.S. ___, 144 S. Ct. 1663 (2024) (per curiam). But such difficulties aren't unique to Sylvia's case.

Overlapping procedural barriers imposed by the Court make bringing claims much harder by heightening the burden on plaintiffs pre-filing. Because of their prevalence in Section 1983 litigation, here we focus on two such barriers: qualified immunity and municipal liability.

First, qualified immunity. Modern qualified immunity doctrine displaces the strict liability regime

that existed when Section 1983 was enacted, presenting significant difficulties for plaintiffs faced with one-year limitations periods. Since the Court created modern qualified immunity in 1982, see *Harlow* v. *Fitzgerald*, 457 U.S. 800 (1982), it has increasingly put the burden on civil rights plaintiffs to show that their rights are clearly established. See *District of Columbia* v. *Wesby*, 583 U.S. 48, 63 (2018) ("[E]xisting law must have placed the constitutionality of the officer's conduct beyond debate." (quotation omitted)). This atextual and ahistorical gloss on Section 1983 forces civil rights plaintiffs to do extensive research before filing in anticipation of a qualified immunity defense. Plaintiffs must be prepared to respond to a motion to dismiss by having developed arguments that the violation was clearly established in factual circumstances nearly identical to their own case.

Second, municipal liability. To adequately plead municipal liability, plaintiffs must often show a policy or custom of unconstitutional behavior so pervasive as to constitute deliberate indifference. *Connick* v. *Thompson*, 563 U.S. 51, 61–62 (2011). This is a daunting standard for a plaintiff to meet before discovery. Essentially, a plaintiff must prove a policy or custom just to proceed past a motion to dismiss. See, *e.g.*, *R.A.* v. *City of New York*, 206 F. Supp. 3d 799, 803–804 (E.D.N.Y. 2016) (dismissing municipal liability claim because of insufficient evidence to plead a policy or custom). On top of that, some circuits have begun erroneously importing the clearly-established-law requirement from qualified immunity into municipal liability cases. *E.g.*, *Bustillos* v. *El Paso Cnty. Hosp. Dist.*, 891 F.3d 214,

222 (5th Cir. 2018). Because of these requirements, bringing a municipal liability claim within a one-year limitations period is nearly impossible. Plaintiffs must spend months collecting evidence to support their allegations long before the case has been filed or any discovery has taken place.

A one-year statute of limitations does not account for the practical difficulties created by procedural barriers for civil rights plaintiffs. The overlap of too short statutes of limitations and such procedural barriers threatens to defeat otherwise meritorious claims. And it does so with little justification: The judiciary is often concerned that increasing access to courts will cause a deluge of unmeritorious litigation, but that's not a realistic concern here. Cf. Theodore Eisenberg & Stewart Schwab, *The Reality of Constitutional Tort Litigation*, 72 Cornell L. Rev. 641, 693–695 (1987) (noting that concerns over exploding civil rights litigation are refuted by national filing data). Clarifying that a one-year statute of limitations is too short will not increase unmeritorious litigation and may have the opposite effect as diligent attorneys will have more time to vet out groundless claims. And experience shows that federal courts in jurisdictions with statutes of limitations longer than one year are able to manage their dockets, suggesting concerns about over-burdened courts are ill-founded.

Argument

I. Congress Enacted Section 1983 to Ensure Government Accountability, but the Judiciary's Subsequent Imposition of Procedural Barriers Makes Bringing Claims Within One Year Much Harder.

When a government official violates an individual's constitutional rights, the primary remedy available is a lawsuit under 42 U.S.C. § 1983. Section 1983 was enacted to ensure that victims of rights violations would have a federal forum available. But in the intervening decades the Court has imposed additional procedural barriers that make bringing claims a more difficult and time-consuming process. Too short limitations periods for Section 1983 claims compound the problem: Plaintiffs must prepare procedurally complicated cases very quickly.

A. Judicially imposed procedural barriers contradict Section 1983's broad remedial purpose.

Statutes of limitations applied to Section 1983 claims must account for its remedial purpose of ensuring that victims of government abuse have a federal forum available. To vindicate the federal interests expressed in Section 1983, limitations periods must provide sufficient time for plaintiffs to prepare their claims.

Section 1983 created a mechanism for victims to recover for federal rights violations. During Reconstruction, the Ku Klux Klan overwhelmed legal institutions in the South, terrorizing freedmen and

Republicans with impunity. See Robert J. Kaczorowski, *Federal Enforcement of Civil Rights During the First Reconstruction*, 23 Fordham Urb. L.J. 155, 156–157 (1995). See also Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863–1877*, at 425–444 (1988) (cataloguing Klan violence). Because local and state law enforcement officers were often the same Klansmen that carried out these campaigns of terror, Congress sought to enact statutes providing federal remedies. Kaczorowski, *supra*, at 157–158 (also discussing the statute creating the Department of Justice). Section 1983 "was designed primarily in response to the unwillingness or inability of the state governments to enforce their own laws against those violating the civil rights of others." *District of Columbia* v. *Carter*, 409 U.S. 418, 426 (1973). It was "remedial" and intended to "aid [in] the preservation of human liberty and human rights." *Lake Country Ests., Inc.* v. *Tahoe Reg'l Plan. Agency*, 440 U.S. 391, 400 n.17 (1979) (quoting Cong. Globe, 42nd Cong., 1st Sess., App. 68 (1871)).

Enacted as part of the Civil Rights Act of 1871 (also known as the Ku Klux Klan Act), it created a private cause of action against any "person who, under color of any [law] of any State * * * subjects * * * any * * * person * * * to the deprivation of any rights, privileges, or immunities secured by the Constitution." 42 U.S.C. § 1983. It fundamentally altered the authority of the federal courts to address civil rights abuses. Section 1983 "opened the federal courts to private citizens, offering a unique federal remedy against incursions under the claimed authority of state law upon rights secured by the

Constitution and laws of the Nation." *Mitchum* v. *Foster*, 407 U.S. 225, 239 (1972). "The very purpose of § 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights—to protect the people from unconstitutional action under color of state law, whether the action be executive, legislative, or judicial." *Id.* at 242 (quotation omitted). See also *Monroe* v. *Pape*, 365 U.S. 167, 180 (1961) ("[O]ne reason [Section 1983] was passed was to afford a federal right in federal courts because * * *state laws might not be enforced and claims of citizens to the enjoyment of rights, privileges, and immunities guaranteed by the Fourteenth Amendment might be denied by the state agencies.").

Section 1983 continues to be the primary mechanism for victims of government abuse to vindicate their rights in a federal forum. It's the basis of many of this Court's landmark decisions vindicating constitutional rights: equal protection in *Brown* v. *Board of Education* and *SFFA* v. *UNC*, gun rights in *District of Columbia* v. *Heller* and *NYSRPA* v. *Bruen*, property rights in *Fuentes* v. *Shevin* and *Cedar Point Nursery* v. *Hassid*, and free speech in *Tinker* v. *Des Moines Independent Community School District* and *Citizens United* v. *FEC*. Put simply, the "high purposes of this unique remedy make it appropriate to accord the statute a sweep as broad as its language." *Wilson* v. *Garcia*, 471 U.S. 261, 272 (1985) (quotation omitted). But despite this, the Court has repeatedly imposed greater procedural barriers on Section 1983 claims—atextually limiting the statute's broad remedial reach.

In the decades since Congress enacted Section 1983, the Court has imposed additional procedural barriers on victims of rights abuses. The proliferation of these added barriers makes bringing meritorious claims harder—requiring additional pre-filing case development as plaintiffs are forced to preempt a myriad of potential defenses that government defendants now have at their disposal. Cf. *Burnett* v. *Grattan*, 468 U.S. 42, 51 (1984) ("[A civil rights plaintiff] 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."). Bringing a civil rights lawsuit within a too short limitations period was already difficult. But these procedural barriers make it more so.

B. Overlapping procedural barriers make bringing claims within a one-year limitations period extremely difficult.

Section 1983 is a bulwark against government abuse. But over the last six decades the Court has imposed procedural barriers—all untethered from the text and history of the statute—that make it harder for victims of abuse to bring their claims, despite their merit. Today, these procedural barriers are among the practicalities that "[a]n appropriate limitations period must be responsive to." *Id.* at 50. These doctrines overlap in ways that make it extremely difficult for victims of government officials' abuse to prepare their claims within one year.

The Court should grant cert in this case because a one-year statute of limitations is too short to enforce the federal interests expressed in Section 1983. A one-year statute of limitations "fails to take into account practicalities that are involved in litigating federal civil rights claims." *Ibid.* Our experience at the Institute for Justice confirms this. We often spend months preparing our Section 1983 cases to ensure that the claims of our clients—all victims of egregious government abuse—aren't dismissed on procedural grounds. Many of our cases, even ones that are ultimately successful before this Court, could not be brought within a one-year limitations period.

Just this term, the Court heard a First Amendment case that shows how untenable a one-year limitations period is. This Court recently ruled for Sylvia Gonzalez, a grandmother that sought to give back to her community by serving on the City Council. *Gonzalez* v. *Trevino*, 602 U.S. ___, 144 S. Ct. 1663 (2024) (per curiam). But Sylvia's opposition to the city manager put her in the crosshairs of the mayor and others, who conspired to have her arrested on trumped-up charges. With IJ's help, Sylvia sued for First Amendment retaliatory arrest. The case would have been impossible to bring within one year of Sylvia's arrest.[2]

Claims for retaliatory arrest when there is probable cause require plaintiffs to present objective evidence that others similarly situated were not arrested for engaging in similar behavior. *Nieves* v.

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[2] Texas has a two-year limitations period. Tex. Civ. Prac. & Rem. Code § 16.003.

Bartlett, 587 U.S. 391, 407–408 (2019). Meeting this threshold requirement required months of work. On top of the extensive case development and vetting that IJ usually does, here we also needed to invest time in making sure we could plausibly allege Sylvia met *Nieves*'s standard. That required spending months negotiating with Bexar County to collect data about arrests. And because Bexar County only had paper records, we had to physically go to the records office to photocopy the relevant documents. This process alone took around six months.

It would have been impossible to collect this evidence and adequately prepare other aspects of the case within a one-year limitations period. On top of the objective evidence requirement, the complaint also had to anticipate a myriad of other procedural barriers that are common in Section 1983 litigation—things like qualified immunity and municipal liability. Unsurprisingly, when the defendants moved to dismiss Sylvia's claim, they not only argued that Sylvia couldn't meet the objective evidence requirement. They also argued that her claims were foreclosed by other procedural barriers. See *Gonzalez* v. *City of Castle Hills*, 2021 WL 4046758, at *6–11 (W.D. Tex. Mar. 12, 2021) (addressing qualified immunity and municipal liability defenses). Bringing procedurally complicated cases like Sylvia's requires time to develop theories and facts, and to research likely defenses. In this respect, Sylvia's case is not unique.

At IJ, we often spend months preparing to respond to procedural defenses before filing the complaint. Besides contending with procedural barriers like

plausibility pleading that affect all plaintiffs, diligent attorneys bringing Section 1983 claims must also anticipate responding to barriers specific to civil rights litigation. We often have to do things like fight over public information request productions to support allegations of patterns of unconstitutional behavior. See generally, *e.g.*, Complaint, *Taylor* v. *Nocco*, No. 8:21-cv-00555 (M.D. Fla. filed Mar. 10, 2021) (relying on public records request productions to allege municipal policy of using flawed algorithm to identify potential future violators and then harass them out of the county through code enforcement and other means). Or we may have to establish that challenged conduct falls within the color-of-law requirement. See, *e.g.*, *Mohamud* v. *Weyker*, 2024 WL 1125536, at *8 (D. Minn. Mar. 25, 2024) (finding allegation that officer acted under color of both state and federal law unfounded) (appeal filed). To overcome these types of barriers, we often spend a lot of time before filing doing things like legal research or fact development by reviewing bodycam footage or interviewing witnesses. For example, in one case that we expected would involve *Heck*-bar issues,[3] we reviewed nearly 500 letters, over 200 pages of invoices, and over 230 pages of timesheets to support our allegations that a county prosecutor's office allowed an assistant prosecutor to moonlight as a law clerk to the same judges that heard his cases for nearly two decades. When bringing procedurally

[3] We were right. This case is currently before the en banc Fifth Circuit on whether *Heck*'s favorable termination requirement applies to non-custodial plaintiffs without access to a habeas remedy. See *Wilson* v. *Midland County*, 92 F.4th 1150 (2024) (granting en banc review).

complicated civil rights cases, there is no substitute for the time spent perfecting claims.

Our experience shows that difficulties imposed on civil rights plaintiffs by the proliferation of procedural barriers impact a wide variety of claims. Although the underlying dispute here arises from an incident of police brutality, too short statutes of limitations and other procedural barriers impact a much broader set of cases. Petitioners are correct to note that claims of police brutality may involve specific concerns that make those claims particularly hard. But procedural barriers to Section 1983 lawsuits shield a much broader set of claims. Cf. Jason Tiezzi et al., *Unaccountable: How Qualified Immunity Shields a Wide Range of Government Abuses, Arbitrarily Thwarts Civil Rights, and Fails to Fulfill Its Promises*, Inst. for Just. (Feb. 7, 2024), at 23 ("[O]nly 23% of the [federal qualified immunity appeals] we studied fit the classic mold of police accused of excessive force, showing that qualified immunity shields a far broader range of government defendants and conduct than many people think."). See also *id.* at 16 (non-law enforcement or prison official defendants in federal qualified immunity appeals "tended to be mayors or city managers; university or school officials; prosecutors or judges; and child protective service workers").

When Section 1983 was enacted, it was intended to ensure that victims of abuse could access a federal forum to vindicate their rights. But the imposition of judicially created procedural barriers makes it much harder for plaintiffs to bring their claims within too short limitations periods. Doctrines like the *Nieves*

objective evidence or *Heck* favorable termination requirements or plausibility pleading for discrimination or failure-to claims, mean that civil rights plaintiffs and their attorneys must do months of work long before suing.

The judicially imposed procedural barriers that Section 1983 plaintiffs face are many. But two warrant special attention because of their prevalence in Section 1983 litigation: qualified immunity and municipal liability. Neither of these doctrines were anticipated when Section 1983 was enacted, nor when statutes of limitations became a prominent feature of our legal system. Cf. Tyler T. Ochoa & Andrew J. Wistrich, *The Puzzling Purposes of Statutes of Limitations*, 28 Pac. L.J. 453, 454 (1997) (noting the long history of time limits). See also *M'Cluny* v. *Silliman*, 28 U.S. (3 Pet.) 270 (1830) (first decision holding forum state's limitations period applied to action arising under a federal statute without a limitations period (applying the Judiciary Act of 1789)). Both doctrines force civil rights plaintiffs and their attorneys to invest ever-greater resources into pre-filing case development for fear that their meritorious claims will be dismissed, all while the limitations period ticks away.

Qualified immunity. Modern qualified immunity doctrine places civil rights plaintiffs at a systematic disadvantage.[4] It protects government

[4] Perhaps no doctrine has recently received more criticism than qualified immunity. See William Baude, *Is Qualified Immunity Unlawful*?, 106 Calif. L. Rev. 45, 48 (2018) (noting qualified immunity has "come under increasing outside criticism"). A

officials—even those acting in bad faith with premeditation—from liability unless a plaintiff can show that at the time of the violation it was "clearly established" that those precise actions were unconstitutional. This forces plaintiffs to draft their complaints with these concerns in mind. The resulting difficulties are aggravated by very short statutes of limitations as plaintiffs are forced to conduct even more extensive factual and legal research in anticipation of a qualified immunity defense.

Under modern qualified immunity doctrine, it is now not enough for a plaintiff to plead that a government official violated their constitutional rights. From the outset of the case, the plaintiff must also anticipate how to respond to a defense of qualified immunity. Cf. *Johnson* v. *Mosely*, 790 F.3d 649, 653 (6th Cir. 2015) ("[P]laintiff bears the burden of showing that defendants are not entitled to

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comprehensive discussion of the issues with qualified immunity is beyond the scope of this brief. But suffice it to say, there are strong arguments that the doctrine cannot be justified in law, history, or policy. See generally, *e.g.*, Jason Tiezzi et al., *Unaccountable: How Qualified Immunity Shields a Wide Range of Government Abuses, Arbitrarily Thwarts Civil Rights, and Fails to Fulfill Its Promises,* Inst. for Just. (Feb. 7, 2024); Alexander A. Reinert, *Qualified Immunity's Flawed Foundation*, 111 Calif. L. Rev. 201 (2023); Joanna C. Schwartz, *Qualified Immunity's Boldest Lie*, 88 U. Chi. L. Rev 605 (2021); Jay Schweikert, *Qualified Immunity: A Legal, Practical, and Moral Failure*, Cato Inst. (Sept. 14, 2020); Joanna C. Schwartz, *The Case Against Qualified Immunity*, 93 Notre Dame L. Rev. 1797 (2018); *Baxter* v. *Bracey*, 140 S. Ct. 1862 (2020) (Thomas, J., dissenting from denial of certiorari); *Kisela* v. *Hughes*, 584 U.S. 100, 121 (2018) (Sotomayor, J., dissenting); *Ziglar* v. *Abbasi*, 582 U.S. 120, 156–160 (2017) (Thomas, J., concurring).

qualified immunity."). This requires extensive preparation: Complaints must anticipate arguments that there is no clearly established law in the jurisdiction or that—even if there is clearly established law—the facts in the case are not similar enough to previous cases to put an official on notice that their conduct was wrongful.

A properly pled complaint anticipating a qualified immunity defense often requires months of pre-filing case development and legal research. In jurisdictions where the statute of limitations is very short, a plaintiff may not have the luxury of investing that much time before the limitations period expires—putting them at risk that their meritorious claims may be dismissed before any factual development. Considering that just recognizing the viability of a claim and developing a productive lawyer-client relationship take time, also needing to be prepared to respond to a qualified immunity defense makes bringing a claim within a year nearly impossible. In the context of modern qualified immunity doctrine, a one-year statute of limitations does not reflect the federal interests expressed in Section 1983. Cf. *Lake Country Ests.*, 440 U.S. at 399–400 ("[Section] 1983 must be given a liberal construction.").

Statutes of limitations applied to Section 1983 claims should reflect its remedial purpose, but the overlap of too short limitations periods and qualified immunity prevents that by atextually and ahistorically insulating government officials from liability. Qualified immunity in no way resembles the legal landscape when Congress enacted Section 1983. Before the Court's creation of qualified immunity in

1982, government workers were subject to strict liability for their unconstitutional acts, even when those acts were good-faith errors. See *Little* v. *Barreme*, 6 U.S. (2 Cranch) 170 (1804). Historically, the Court could "only look to the questions, whether the laws had been violated; and if they were, justice demand[ed], that the injured party should receive a suitable redress." *The Apollon*, 22 U.S. (9 Wheat.) 362, 367 (1824). As Justice Thomas has noted, "[i]n the early Republic, an array of writs allowed individuals to test the legality of government conduct by filing suit against government officials for money damages payable by the officer." *Tanzin* v. *Tanvir*, 592 U.S. 43, 49 (2020) (cleaned up). It was against this backdrop of strict liability that Congress enacted Section 1983.

The Court's subsequent creation of qualified immunity has displaced this strict liability regime, making it increasingly difficult to bring claims against government officials quickly. Starting in 1967, the Court abandoned strict liability and began creating broad immunities to official liability, including qualified immunity. At first, the Court articulated a defense of "good faith and probable cause." *Pierson* v. *Ray*, 386 U.S. 547, 556 (1967). The defense required officers to show they acted in good faith and reasonably because "[a]ny lesser standard would deny much of the promise of § 1983," especially considering its "categorical remedial language." *Wood*, 420 U.S. at 322. But this changed in 1982 when the Court decided *Harlow* v. *Fitzgerald*, the genesis of modern qualified immunity.

In *Harlow* v. *Fitzgerald*, the Court entitled all government officials to qualified immunity by default.

Setting aside the clear text of Section 1983, the Court relied on policy concerns—litigation costs—to hold that "government officials * * * generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person should have known." *Harlow*, 457 U.S. at 818. There "the Court completely reformulated qualified immunity along principles not at all embodied in the common law." *Anderson* v. *Creighton*, 483 U.S. 635, 645 (1987). And this reformulation has continued as the Court has repeatedly narrowed the contours of "clearly established" law. Compare *id.* at 640 ("The contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right."), with *Wilson* v. *Layne*, 526 U.S. 603, 617 (1999) (requiring "controlling authority in the[] jurisdiction at the time of the incident" or "a consensus of cases of persuasive authority"), and *Mullenix* v. *Luna*, 577 U.S. 7, 12 (2015) ("Th[e] inquiry must be undertaken in light of the specific context of the case, not as a broad general proposition." (cleaned up)). Today, for a plaintiff to prevail, he must show that it's "beyond debate" that the violation is clearly established in the relevant circuit—and some even question whether circuit precedent is enough. *Wesby*, 583 U.S. at 63. See also *Boyd* v. *McNamara*, 74 F.4th 662, 672 (5th Cir. 2023) (Oldham, J., concurring in part and dissenting in part) ("But the Supreme Court has never authorized [relying on circuit precedent to clearly establish the law]."). This means that plaintiffs must invest a lot of time conducting legal research to ensure that they can argue—from the earliest stages of litigation—that the violation was clearly established.

For civil rights plaintiffs, the practical consequences of *Harlow* and its progeny are significant: They must invest time preparing to respond to a qualified immunity defense—usually needing to identify cases with nearly identical facts (even before there's been any factual development through discovery) to meet the atextual and ahistorical "clearly established" standard. And when the applicable statute of limitations is only one year, they must do so quickly or lose their federal forum.

Municipal liability. Municipalities are proper defendants under Section 1983 when the claims arise from a "policy or custom" that caused the constitutional violation, *Monell* v. *Dep't of Soc. Servs.*, 436 U.S. 658, 690, 694 (1978), but pleading municipal liability is a difficult and time-consuming hurdle for plaintiffs to overcome. Most municipal liability cases involve claims of unconstitutional "practices so persistent and widespread as to practically have the force of law." *Connick*, 563 U.S. at 61. That means that plaintiffs must plausibly allege a persistent pattern of unconstitutional action before discovery—something that will usually take months of research and is untenable within a one-year limitations period.

Municipal liability claims often include things like negligent hiring or failure to train or supervise. But because the Court sometimes views such claims as "tenuous," it has imposed the "stringent standard" of "deliberate indifference." *Ibid.* (discussing failure to train). In such cases, the "city's policy of inaction" must be so extreme that it "is the functional equivalent of the decision by the city itself to violate the Constitution." *Id.* at 61–62 (cleaned up). And so,

the Court generally requires a "pattern of similar constitutional violations" because "[w]ithout notice" of the constitutional deficiency, the "decisionmakers can hardly be said to have deliberately chosen [the] program that will cause violations of constitutional rights." *Id.* at 62.

For a plaintiff seeking to bring a Section 1983 claim against a municipality, the Court's requirement that a "policy or custom" caused the violation presents an obvious difficulty:

> Before getting to discovery—where a plaintiff might be able to unearth evidence about prior misconduct or hiring decisions—they must first set out sufficient facts that state a 'plausible' entitlement to relief * * * . It is not enough to say that there is an unconstitutional policy, practice, or custom. The plaintiff also has to include evidence of a policy on its face, or a decision to hire someone whose past conduct made it highly likely that they would violate the Constitution in the manner that they did, or past incidents of misconduct so similar that they made the need for additional training or supervision obvious. But at the complaint drafting stage, a person who claims their rights have been violated does not have access to evidence of internal policies, or hiring decisions, or past allegations and investigations of misconduct. That is precisely what discovery is for.

Joanna Schwartz, *Shielded: How the Police Became Untouchable* 108 (2023). Plaintiffs often attempt to plead a pattern of unconstitutional behavior by citing other evidence, but that may not be enough. See, *e.g.*,

Plowright v. *Miami-Dade County*, 102 F.4th 1358, 1370–1371 (2024) (affirming dismissal of municipal liability claim because a newspaper article detailing five incidents of shooting family pets and quoting a senior department official on the need to train on dealing with pets could not establish policy or custom); *R.A.*, 206 F. Supp. 3d at 803–804 (dismissing municipal liability claim because neither nine complaints in a personnel file nor seven newspaper articles were sufficient to establish a policy or custom of sexual misconduct). It's precisely because of these stringent requirements that IJ attorneys often spend months fighting over public records requests, traveling across the country to interview witnesses or collect physical documents, or even conducting empirical studies to support our claims. But these aren't the only difficulties.

Relying on the text and history of Section 1983, the Court has rejected the application of qualified immunity to municipalities. *Owen* v. *City of Independence*, 445 U.S. 622, 650 (1980). But some circuits import qualified immunity principles into municipal liability claims, applying a clearly-established-law inquiry. See *Bustillos*, 891 F.3d at 222; *Szabla* v. *City of Brooklyn Park*, 486 F.3d 385, 393 (8th Cir. 2017) (en banc); *Hagans* v. *Frankling Cnty. Sheriff's Off.*, 695 F.3d 505, 511 (6th Cir. 2012); *Joyce* v. *Town of Tewksbury*, 112 F.3d 19, 23 (1st Cir. 1997) (en banc). This means that plaintiffs in some parts of the country—including in all jurisdictions with one-year limitations periods for Section 1983

claims[5]—must not only contend with the inherent difficulties of stating a claim for deliberate indifference without having gone through discovery. They must also invest time framing their claims to overcome a clearly-established-law defense.

Bringing claims of municipal liability within one year is nearly impossible considering these requirements. To state a claim that's likely to survive a motion to dismiss, the plaintiff needs to conduct extensive factual and legal research—essentially proving a pattern of unconstitutionality before receiving any discovery. In our experience, that often requires that plaintiffs and their attorneys spend months collecting evidence through public records requests, on-the-ground investigation, or other means. And, like with qualified immunity, the plaintiff may also need to contend with the clearly-established-law standard. For at least some plaintiffs, one year will not be enough.

* * *

Qualified immunity and municipal liability exemplify how judicially imposed procedural barriers make bringing Section 1983 claims within one year nearly impossible, but they are not the only barriers. Sometimes they overlap with more claim-specific concerns like the *Nieves* standard or the *Heck* bar. Other times, they aggravate more general litigation concerns by, for example, effectively heightening the plausibility pleading standard. When a statute of limitations is very short, these types of procedural

[5] *See* Ky. Rev. Stat. Ann. § 413.140; Tenn. Code Ann. § 28-3-104; P.R. Laws Ann. tit. 31, § 5298(2).

barriers—none of which reflect Section 1983's textual command or were envisioned when the statute was enacted—interact to foreclose plaintiffs' meritorious claims as untimely.

II. Clarifying that a One-Year Statute of Limitations is Too Short Won't Create Additional Unmeritorious Litigation.

Too short statutes of limitations incentivize attorneys to move fast, not smart. Very short statutes of limitations force attorneys to file cases quickly for fear that, if they do not, then their claims will be foreclosed. Attorneys have an ethical obligation to zealously represent their clients, and that includes the obligation to bring claims before the limitations period expires. The overlap of too short limitations periods and other procedural barriers disproportionately affects those lawyers most adamant about satisfying their diligence obligations. When a statute of limitations is very short, diligent attorneys are forced to bring cases quickly—before they've had a sufficient opportunity to vet them. When attorneys have sufficient time to vet and perfect their cases, everyone wins: Victims of egregious government abuse have their day in court—vindicating their constitutional rights and enforcing the promise of Section 1983. And, at the same time, weak claims are better vetted and kept out of court.

Anecdotally, it makes sense that too short limitations periods may lead to more unmeritorious litigation. Much of litigators' work takes place pre-filing, when they are vetting cases, researching the issues, and drafting the complaint. Attorneys

representing civil rights plaintiffs generally spend a lot of time vetting cases. And, in fact, diligent civil rights attorneys account for the many procedural hurdles that they'll face when bringing a claim. Cf. Alexander A. Reinert, *Does Qualified Immunity Matter?*, 8 U. St. Thomas L.J. 477, 492 (2011) ("[Attorneys] confirmed that concerns about the qualified immunity defense play a substantial role at the screening stage."). For more careless attorneys, a short statute of limitations isn't a deterrent to filing an unmeritorious claim because they'd have little reason to vet the case anyway. Too short limitations periods create more unmeritorious litigation because diligent attorneys have insufficient time to screen out unsubstantiated claims or to resolve claims through alternative means.

Holding a one-year limitations period is too short for Section 1983 claims will not cause a deluge of unmeritorious litigation. Based on our experience, it seems likely that the opposite will be true: Attorneys will be better able to screen out unmeritorious cases. Experience also confirms that there is little reason to worry holding that a one-year limitations period is too short would lead to more cases. Most jurisdictions' residual personal injury limitations periods exceed one year, sometimes by a lot. See, *e.g.*, Me. Stat. tit. 14, § 752 (six years). But federal courts in those jurisdictions are just as capable of managing their dockets as the small minority with one-year limitations periods.

Conclusion

Too short statutes of limitations erode the federal interests expressed in the text of Section 1983. Worse still, the proliferation of overlapping judicially created procedural barriers since Section 1983 was enacted makes it even harder for plaintiffs to bring their claims within tight limitations periods. These difficulties compound, depriving individuals with meritorious claims—of many kinds—of a federal forum.

The Court should grant the petition for certiorari.

Respectfully submitted,

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