No. 24-5965

In the United States Court of Appeals for the Sixth Circuit

JENNIE V. WRIGHT, ON BEHALF OF HERSELF AS GUARDIAN AND NEXT FRIEND OF MINOR CHILDREN J.L. AND B.B.; SAUL WRIGHT ON BEHALF OF HIMSELF AS GUARDIAN AND NEXT FRIEND OF MINOR CHILDREN J.L. AND B.B.

Plaintiffs - Appellants,

v.

LOUISVILLE METRO GOVERNMENT; ERIC STAFFORD; TIMOTHY HUBER; TIMOTHY LIKSEY; DAVID EADES; KYLE SENG; STEVEN MACATEE,

Defendants - Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY, NO. 3:21-CV-00308-BJB

PRINCIPAL BRIEF FOR PLAINTIFFS - APPELLANTS

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January 17, 2025

CORPORATE DISCLOSURE STATEMENT

In accordance with Fed. R. App. P. 26.1 and 6 Cir. R. 26.1, Plaintiffs-Appellants Jennie and Saul Wright, Brendon Burnett, and Jawand Lyle are individuals.[1] Thus, they are not a subsidiary or affiliate of a publicly owned corporation, nor is there any publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome of this appeal.

[1] As explained further below, Brendon Burnett and Jawand Lyle are proper parties to this appeal.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules

Other Authorities

STATEMENT IN SUPPORT OF ORAL ARGUMENT

Appellants respectfully submit that oral argument would aid the Court in addressing important questions of law raised in this case, including whether substituting the names of previously unknown officers can relate back under Rule 15, and whether a one-year statute of limitations for actions under 42 U.S.C. § 1983—especially if it does not permit later substitution of unnamed officers—is inconsistent with the federal principles underlying Section 1983.

INTRODUCTION

In May 2020, Jennie and Saul Wright and their two great nephews were together in their home when six Louisville Metro Police Department ("LMPD") officers demanded they exit, ransacked their home, held them at gunpoint, and took them into custody. To seek redress for the physical and mental trauma resulting from this unlawful execution of a defective search warrant, the Wrights filed suit under 42 U.S.C. § 1983—the federal remedy purposely designed to hold state actors accountable for such civil rights violations.

Because the Wrights did not have access to the specific officers' identities when they filed their initial Complaint, they took steps after filing—while proceeding pro se—to try to uncover the officers' names, including through discovery and Kentucky's Open Records Act. After several denied and failed requests, the Wrights were able to identify the specific officers and substitute them in their Amended Complaint. Despite the Wrights' diligent efforts, the district court held their claims were untimely because the Amended Complaint did not "relate back" to the initial Complaint—a result that the district court itself acknowledged as "harsh."

The district court erred by dismissing the Wrights' Section 1983 claim as untimely in several different respects. The Wrights' Amended Complaint satisfies all of Rule 15's requirements to "relate back" to the initial Complaint. Most

relevantly, the officers that committed the unconstitutional invasion of the Wrights' home had—at all times—actual or constructive notice of the claims against them and substituting their names would cause no prejudice. The district court also overlooked that one of the plaintiffs—Brendon Burnett—timely filed all his claims against the officers (even without "relation back") because the statute of limitations was tolled while he was a minor.

The district court's holding imposes a Herculean task on civil rights plaintiffs like the Wrights to both file their Section 1983 claim *and* conduct all necessary post-complaint discovery to identify and substitute the officers' names within Kentucky's one-year statute of limitations. As the circumstances of this case demonstrate, Kentucky's one-year limitations period is simply too short for plaintiffs to effectively vindicate their important federal civil rights.

Since its inception, Section 1983 has been the primary vehicle by which Americans protect the rights afforded to them under the Constitution and laws of the United States. Central to Section 1983's promise is that the statute cannot be circumscribed by the state actors it is wielded against. Supreme Court precedent has therefore consistently demanded that the application of state limitations periods to Section 1983 claims must be consistent with the federal interests underpinning the statute. Kentucky, however, provides Section 1983 plaintiffs with only a single year to bring their claims. This outlier limitations period—tied as the shortest in the

nation with only Tennessee and Puerto Rico—ignores the practical realties of complex federal civil rights litigation that the Supreme Court identified in *Burnett v. Grattan*, 468 U.S. 42, 50-51 (1984). In *Owens v. Okure*, the Court expressly reserved the question of whether a one-year limitations period is too short to satisfy Section 1983's federal interests. 488 U.S. 235, 251 n.13 (1989). This Court can now recognize that the answer is yes. Applying Kentucky's one-year limitations period thwarts civil rights victims' ability to seek relief under Section 1983, especially if coupled with the district court's overly strict interpretation of Rule 15.

Instead of applying Kentucky's one-year limitations period, this Court should look to 28 U.S.C. § 1658, which provides a four-year residual statute of limitations for federal claims. Section 1658 is a far more suitable limitations period to borrow from for Section 1983, a uniquely *federal* remedy. Because the Wrights' Amended Complaint is timely—either as related back under Rule 15 or under Section 1658—this Court should reverse the district court's Order below.

STATEMENT OF JURISDICTION

The Wrights initially filed their Complaint in state court, raising claims for violation of their federal constitutional rights under 42 U.S.C. § 1983 and related state law claims. Complaint, RE 1-1, PageID #9-11. The Louisville Metro Government timely removed the case to federal court under 28 U.S.C. §§ 1441 and 1446. Notice of Removal, RE 1, PageID #1. The district court had jurisdiction to

consider the Wrights' claims under 28 U.S.C. §§ 1331 and 1367. The district court entered final judgment on September 19, 2024, and the Wrights timely appealed on October 21, 2024. Notice of Appeal, RE 80, PageID #515. This Court has appellate jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF ISSUES

1. Whether the Wrights' Amended Complaint relates back to their initial Complaint such that their claims against the Officers are timely.

2. Whether Brendon Burnett's claims against the Officers were additionally timely because the statute of limitations was tolled while he was a minor.

3. Whether Kentucky's one-year statute of limitations is inconsistent with the federal interests underlying Section 1983 such that it cannot apply to the Wrights' claims and that Section 1658 instead controls their claims as a more suitable federal limitations period.

4. Whether the Wrights sufficiently alleged that the Louisville Metro Government is liable for the Officers' actions.

STATEMENT OF THE CASE

A. Factual Background

On May 7, 2020 (several weeks after the onset of the COVID pandemic), officers with the Louisville Metro Police Department executed early-morning

searches on Columbia Street in Louisville, Kentucky. Jennie and Saul Wright lived at 1732 Columbia Street along with their two then-minor great-nephews, Jawand Lyle and Brendon Burnett, for whom the Wrights acted as guardians (collectively, the "Wrights").[2] They were all home that morning when LMPD Officers Eric Stafford, Timothy Huber, Timothy Liksey, David Eades, Kyle Seng, and Steven Macatee (collectively, the "Officers") ordered them outside and effectively ransacked their home while conducting a search for evidence based on a deficient sealed warrant. Complaint, RE 1-1, PageID #7-8; Amended Complaint, RE 42, PageID #217-220. The officers ordered Jawand and Brendon (then 16 and 15 years old, respectively) out of their home at gunpoint. Complaint, RE 1-1, PageID #6-7; Amended Complaint, RE 42, PageID #217. They also placed Saul and Jennie in handcuffs. Complaint, RE 1-1, PageID #7-8; Amended Complaint, RE 42, PageID #217-220.

The Wrights, who were only partially dressed, were detained while the officers extensively searched their home, damaging it in the process. Complaint, RE 1-1, PageID #7-8; Amended Complaint, RE 42, PageID #217-220. During the search, the officers repeatedly demanded that the residents of 1736 Columbia Street

[2] This brief's references to "the Wrights" generally refer to all four Plaintiffs: Jennie Wright, Saul Wright, Jawand Lyle, and Brendon Burnett. For arguments that only apply to a subset of Plaintiffs, this brief identifies them individually.

vacate the house, even though they were at the Wrights' home at 1732 Columbia Street. Complaint, RE 1-1, PageID #8. The officers neither recovered any evidence of illegal activity nor filed any criminal charges against the Wrights. Complaint, RE 1-1, PageID #7-8; Amended Complaint, RE 42, PageID #217-220. Officer Huber gave the Wrights a copy of the court order sealing the deficient warrant for their residence dated two days before the search. Amended Complaint, RE 42, PageID #218; Exhibit A to Amended Complaint, RE 42, PageID #222. And at some later time, LMPD provided the Wrights with a Seized Item Report documenting LMPD's removal of a DVR device from their home. Seized Item Report, RE 42, PageID #223.[3]

B. Procedural Background

On May 6, 2021, Jennie and Saul Wright, by counsel, filed a state court action on behalf of themselves and the two then-minors against the Louisville Metro Government, which includes LMPD, and unknown officers of the LMPD. Complaint, RE 1-1, PageID #6-12. They asserted federal claims under 42 U.S.C.

[3] On March 17, 2023, Jennie Wright met with the Office of Inspector General to complain about the May 7, 2020, search. That complaint led to in an Inspector General investigation that ultimately resulted in a formal report being issued on August 13, 2024. 10-IG-2023. The Inspector General Report indicated, among other things, that the Seized Item Report erroneously documented the removal of a firearm from the Wrights' residence and that the search warrant lacked specificity and the detail necessary to establish probable cause.

§ 1983 for violations of their federal constitutional rights, as well as several state law claims. *Id.*

Louisville Metro timely removed the action to federal court, Notice of Removal, RE 1, PageID #1, and then moved to dismiss the claims against it, which the district court granted. Mot. to Dismiss, RE 5, PageID #20; Order, RE 11, PageID #48. Jennie Wright, pro se, then filed both a notice of appeal from that dismissal as well as a motion for a certificate of appealability. Notice of Appeal, RE 13, PageID #57; Mot. for Cert. of Appeal, RE 14, PageID #68. The district court denied the motion, Order, RE 18, PageID #87-88, and this Court dismissed the pro se interlocutory appeal because it lacked appellate jurisdiction, Order, RE 20, PageID #102-105.

Soon thereafter, Jennie Wright filed additional papers pro se, including a motion for leave to file a supplemental pleading, which included a request to take discovery before the parties' Rule 26(f) conference. Mot. for Leave, RE 24, PageID #116.

Because of the pro se filings, the district court ordered clarification regarding the status of the Wrights' representation. Order, RE 25, PageID #122-123. In response, the Wrights' counsel stated he no longer represented them, and he orally (and successfully) moved to withdraw. Resp. of Plaintiffs' Former Attorney, RE 26, PageID #124-125; Order, RE 28, PageID #128-130. Jennie and Saul Wright

subsequently confirmed that they intended to proceed pro se. Order, RE 32, PageID #142.

The Wrights then submitted an Open Records Act request to Louisville Metro, Exhibit, RE 34-1, PageID #149-153, seeking public records that would identify the full names and badge numbers of those officers whose last names appeared on LMPD's Seized Item Report. *See* Exhibit, RE 34-2, PageID #150 (Open Records Act submission date of Feb. 28, 2023); *id.*, PageID #151 (public records sought). However, Louisville Metro denied that request stating there were "no responsive police reports for the" May 7, 2020 search by LMPD at 1732 Columbia Street. *Id.*, PageID #152, 153.

Two weeks after the Open Records Act denial, the Wrights moved pro se to compel the production of public records fully identifying the officers in question. Motion, RE 34, PageID #147-148.[4] They also simultaneously submitted pro se discovery requests to opposing counsel to attempt to secure admissions regarding certain facts. Request, RE 36-1, PageID #162-172. But Louisville Metro's attorney

[4] The magistrate judge incorrectly concluded that the motion to compel, Motion, RE 34, PageID #147-148, "was the only action taken by the Wrights prior to the expiration of the April 11, 2023 deadline for moving" the case "forward." Order, RE 37, PageID #177. As the record shows, the Wrights also, at a minimum, submitted an Open Records Act request and tendered formal (albeit procedurally deficient) discovery requests in an attempt to ascertain the unknown officers' identities.

sought a protective order regarding those discovery requests, asserting that the requests were "wholly improper" as the "'unknown officers' … remain unnamed and unserved." Motion, RE 36, PageID #159 (emphasis omitted). Defense counsel also raised a statute of limitations argument—ostensibly on behalf of those officers—despite reaffirming that "he [did] not represent [the] unknown or unnamed defendants" and could not "accept service of discovery requests on their behalf." *Id.*, PageID #159; *see also id.*, PageID #159-160 (raising statute of limitations argument for both state law claims and Section 1983 claims).

On April 28, 2023, the magistrate judge granted Jennie Wright's motion (filed almost five months earlier) seeking leave to take early discovery so that the Wrights may "discover the names and service addresses of the unknown officer defendants." Order, RE 37, PageID #178.

On June 13, 2023, the Wrights moved for leave to amend their Complaint to name Stafford, Huber, Liksey, Eades, Seng, and Macatee as the Officers, whose identities had previously been unknown. Motion, RE 39, PageID #189-190; Attached Am. Compl., RE 39-1, PageID #191-194; Signature Page, RE 39-4, PageID #197 (signature page signed by all four plaintiffs). The Wrights then moved for service of process by the U.S. Marshall because their attempt to serve the Officers by mail had been unsuccessful. Motion, RE 40, PageID #211.

The magistrate judge granted the motion to amend the complaint, Order, RE 41, PageID #214-216; Amended Complaint, RE 42, PageID #217-223, and it ordered that summons be issued for the Officers and served by the U.S. Marshall Service. Order, RE 41, PageID #216. The district court also directed the Wrights to submit a status report clarifying Jawand's and Brendon's "age and capacity," and how they "will proceed in this action." *Id.* The boys ultimately entered notices to proceed pro se. Notice of Appearance, RE 45, PageID #244-245; Order, RE 53, PageID #270; Status Report, RE 44, PageID #242 ("Both boys request to proceed as pro se plaintiffs.").

The Officers then moved to dismiss the Amended Complaint, arguing that the Wrights' claims were untimely, Mot. to Dismiss, RE 55, PageID #287-289, and they moved for a more definite statement seeking the dates of birth for Jawand and Brendon. Motion, RE 54, PageID #272-280.

While that dismissal motion remained pending, Jawand and Brendon filed partial mental health records evincing their respective birthdates. Exhibit, RE 60-3, PageID #393 (2004 birth year for Brendon); Exhibit, RE 60-4, PageID #407 (2003 birth year for Jawand). The Officers moved for judgment on the pleadings, but they specifically limited their statute of limitations argument to Jawand because "[t]here remain[ed] insufficient information in the record for a determination on the statute of limitations with respect to Brendon." Mot. for Judgment on Pleadings, RE 67-1,

PageID #421; *see also id.* ("This motion will therefore address the statute of limitations *only as it pertains to Lyle*.") (emphasis added).[5]

On September 19, 2024, the district court granted the Officers' motion to dismiss the Wrights' claims as untimely. Order, RE 78, PageID #512. The court's Order "dismissed all remaining claims" in the litigation, even though the statute of limitations defense had not been asserted with respect to Brendon's claims. *Id.*, PageID #513. As part of its Order, the district court denied as moot the Officers' motion for judgment on the pleadings as to Brendon's and Jawand's claims. *Id.* Final judgment was entered on September 19, 2024, dismissing the case, Judgment, RE 79, PageID #514, and a notice of appeal was timely filed on October 21, 2024, Notice of Appeal, RE 80, PageID #515-516.[6]

C. Statutory Background

After the Civil War, Congress passed the Ku Klux Klan Act, which included as its central enforcement mechanism the provision now codified as 42 U.S.C. § 1983. Pub. L. No. 42-22, § 1, 17 Stat. 13 (1871) (codified as amended at 42 U.S.C.

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[5] It appears that the Officers' sole argument in support of awarding judgment on the pleadings as to Brendon's claims was failure to state a claim. *Id.*, PageID #426-429.

[6] The Notice of Appeal, which was filed pro se, is signed by Jennie and Saul Wright. Notice of Appeal, RE 80, PageID #516. Although Jawand's and Brendon's names do not appear on the notice, the Wrights had been proceeding in this action collectively, led by Jennie and Saul as their guardians. Further, the Notice of Appeal pertained to the district court's entire order (dismissing all the Wrights' claims) and should be construed liberally. *See infra* at 31-32.

§ 1983). Section 1983 empowers citizens with a cause of action for "the deprivation of any rights, privileges, or immunities secured by the Constitution and laws" by any person acting "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory." 42 U.S.C. § 1983. For Congress, Section 1983 "was not directed at the [Klan] as much as at the state officials who tolerated and condoned them … [and who] were unable or unwilling to enforce a state law." *Owens*, 488 U.S. at 250 n.11 (citations omitted). Since its enactment, Section 1983 has become the principal civil remedy for the enforcement of federal constitutional and statutory rights. *See* Martin A. Schwartz, Section 1983 Litigation (3d ed. 2014).

Because Section 1983 lacks an express limitations period, subsequent Supreme Court precedent has attempted to address that omission. The issue was first taken up in *Burnett*, where the Supreme Court underscored that the "central objective of § 1983" is "ensur[ing] that individuals whose federal constitutional or statutory rights are abridged may recover damages or secure injunctive relief." 468 U.S. at 55. As such, the Court held that any limitations period that applied to Section 1983 cannot be considered "'appropriate' if it fails to take into account practicalities that are involved in litigating federal civil rights claims and policies that are analogous to the goals of the Civil Rights Acts." *Id.* at 50. Applying these standards, the Court held that a six-month limitations period was "manifestly inconsistent with

the central objective of the Reconstruction-Era civil rights statutes" and thus could not govern Section 1983 claims. *Id.* at 55.

This issue was next raised in *Wilson v. Garcia*, 471 U.S. 261 (1985). There, the Court held that Section 1983's statute of limitations was a federal question, and for that inquiry, Section 1983 actions should be categorized as personal injury actions. *Id.* at 268-69. *Wilson* directed federal courts to borrow and apply the most analogous state personal injury statute of limitations for Section 1983 claims. *See id.* at 275. In doing so, *Wilson* sought to "minimiz[e] the risk that the choice of a state statute of limitations would not fairly serve the federal interests vindicated by § 1983." *Id.* at 279. Still, *Wilson* overlooked the reality that many states had multiple statutes of limitations for personal injury actions, which often left lower courts struggling to determine which limitations period was appropriate.

Considering the continued confusion, the Supreme Court again revisited Section 1983's statute of limitations in *Owens*. At issue there was whether a New York plaintiff's claim against police officers who assaulted him should be subject to the one-year statute of limitations for assault or to New York's longer residual catch-all personal injury statute of limitations of three years. 488 U.S. at 236-37. On appeal, the Second Circuit applied the residual limitations period, recognizing that a "*3–year period of limitations more faithfully represents the federal interest* in providing an effective remedy for violations of civil rights *than does the restrictive*

one year limit" as "[i]njuries to personal rights are not necessarily apparent to the victim at the time they are inflicted … even where the injury itself is obvious, the constitutional dimensions of the tort may not be." *Okure v. Owens*, 816 F.2d 45, 48-49 (2d Cir. 1987) (emphasis added), *aff'd*, 488 U.S. 235 (1989).

The Supreme Court unanimously affirmed. It held that where a state law provides multiple statutes of limitation for personal injury actions, courts generally should borrow the general or residual statute of limitations. *Owens*, 488 U.S. at 250. While the Court endorsed the Second Circuit's decision to use the three-year residual limitations period, it expressly noted that it "need not address Okure's argument that applying a 1–year limitations period to § 1983 actions would be inconsistent with federal interests." *Id.* at 251 n.13. Thus, the substantive question of whether a one-year limitations period could be so short to offend federal law was explicitly left open by the Court.

SUMMARY OF ARGUMENT

The district court erred in dismissing the Wrights' Amended Complaint against the Officers as untimely for multiple, independent reasons.

First, the Wrights' Amended Complaint "relates back" to their initial Complaint for purposes of timeliness. The Amended Complaint meets all of Rule 15(c)'s enumerated requirements to "relate back." Rule 15(c)(1)(B) is satisfied because both the initial Complaint and Amended Complaint arise out of the Officers'

unlawful entry into the Wrights' home. The Officers also had actual or constructive notice of the Wrights' claims because they themselves committed the constitutional violations, they are employed by one of the other defendants (Louisville Metro), and they share the same counsel as the previously identified defendant. *Berndt v. Tennessee*, 796 F.2d 879, 884 (6th Cir. 1986). The Officers will not be prejudiced by having to defend against this suit, and there is no reasonable basis to suggest that the Wrights slept on their rights.

Moreover, the Wrights did not unduly delay in seeking the identities of those Officers who ransacked their home—they timely filed suit and then, on a pro se basis, attempted to pursue discovery and sought records under Kentucky's Open Records Act. Based on case law at the time they filed suit, the Wrights mistakenly believed that they would be entitled to substitute the Officers' names after the one-year limitations period. *See Berndt*, 796 F.2d at 884. In 2022, however, this Court clarified—in a case involving Michigan's three-year statute of limitations—that a plaintiff's lack of knowledge about a defendant's identity could not constitute a "mistake" for purposes of Rule 15. *Zakora v. Chrisman*, 44 F.4th 452, 482 (6th Cir. 2022). But this development in the law should not prevent the Wrights from litigating their claims on the merits, especially where such a result effectively precludes Section 1983 plaintiffs from relying on post-complaint discovery to uncover the names of perpetrators.

Second, the district court erred by dismissing Brendon Burnett's claim as untimely. Brendon's claims were tolled under Kentucky law until he reached the age of majority; therefore he had until one year after his 18th birthday to file his claims. Because the Wrights moved for leave to amend their Complaint before Brendon's 19th birthday, his claims are timely. Indeed, the Officers did not even challenge Brendon's claims on the basis of timeliness. And while his name is not expressly stated on the Notice of Appeal, this Court can consider Brendon's claims because Jennie and Saul Wright consistently represented his interests in the district court and the pro se Notice of Appeal should be construed liberally. *Smith v. Barry*, 502 U.S. 244, 248 (1992).

Third, the challenges the Wrights faced in pursuing their federal civil rights claims illustrate that Kentucky's outlier one-year statute of limitations is too short to effectively vindicate the federal interests underpinning Section 1983. The Supreme Court has made clear that courts should not apply a state limitations period that is inconsistent with the federal goals of that important statute. *Burnett*, 468 U.S. at 50. To this very point, the Supreme Court has explicitly reserved the question of whether a one-year limitations period is too short for Section 1983 claims. *Owens*, 488 U.S. at 251 n.13. This Court should recognize that it is. Providing civil rights plaintiffs with only one year fails to recognize the practical challenges that plaintiffs face. If plaintiffs like the Wrights are required to file a complaint early enough to allow time

for post-complaint discovery within the limitations period, plaintiffs will effectively have only a matter of weeks to rush to court (if that). Section 1983's strong interest in ensuring damages and injunctive relief for victims of civil rights violations demands more.

Applying Kentucky's one-year limitations period is further inappropriate now that Congress has enacted Section 1658, which creates a four-year catchall limitations period for federal claims. While Section 1658 does not apply to Section 1983 claims by its own terms, it does apply through the borrowing framework described in 42 U.S.C. § 1988 and *Burnett* because it provides a "suitable" federal rule. The Supreme Court's cases discussing Section 1983's limitations period all predate Congress' enactment of Section 1658. Section 1658 now provides a uniform federal solution that ends the disparate state-borrowing regime, which unfairly provides civil rights victims in Kentucky with significantly less time to bring their meritorious *federal* claims than their counterparts in almost every other state.

Fourth, the district court erred in dismissing the Wrights' claim against Louisville Metro under *Monell v. Department of Social Services of City of New York*, 436 U.S. 658 (1978). The Wrights' Complaint included sufficient allegations to survive a motion to dismiss. The Wrights' allegations are further corroborated by the U.S. Department of Justice's recent investigation into and report on LMPD concluding that LMPD has failed to adequately train and supervise its officers and

that LMPD has policies or customs of frequently violating citizens' Fourth Amendment rights when it conducts unlawful searches based on deficient search warrants. The Wrights' *Monell* claim against Louisville Metro should proceed to discovery.

STANDARD OF REVIEW

The grant of a motion to dismiss under Rule 12(b)(6) is reviewed de novo, accepting as true the complaint's well-pleaded allegations and drawing all reasonable inferences in the plaintiffs' favor. *Directv, Inc. v. Treesh*, 487 F.3d 471, 476 (6th Cir. 2007).

Additionally, documents filed pro se must be liberally construed, and "a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (cleaned up); *see also Boswell v. Mayer*, 169 F.3d 384, 387 (6th Cir. 1999) ("Pro se plaintiffs enjoy the benefit of a liberal construction of their pleadings and filings.").

While this Court generally does not consider issues not briefed in the district court, it does so in "exceptional cases or if failing to consider the argument would result in a plain miscarriage of justice." *United States v. Ellison*, 462 F.3d 557, 560 (6th Cir. 2006) (cleaned up). An issue may also be addressed "for the first time on appeal to the extent the issue is presented with sufficient clarity and completeness

and its resolution will materially advance the progress of litigation." *In re Morris*, 260 F.3d 654, 664 (6th Cir. 2001) (cleaned up).

ARGUMENT

I. The Wrights' Amended Complaint Relates Back to Their Initial Complaint.

The Wrights' claims against the Officers are timely because their Amended Complaint "relates back" to the initial Complaint. Even faced with the impermissibly short one-year statute of limitations for Section 1983 actions, the Wrights and their counsel brought their claims within a year of when the Officers ransacked their home. At that time, the Wrights and their counsel were not yet able to individually name the Officers in the Complaint. After subsequent attempts at discovery, the Wrights—proceeding pro se—were able to learn the Officers' identities and name them in an Amended Complaint.

Under Rule 15(c), an amended pleading can "'relate[] back' to the date of a timely filed original pleading," and thus be considered "timely even though it was filed outside an applicable statute of limitations." *Krupski v. Costa Crociere S.p.A.*, 560 U.S. 538, 541 (2010). As relevant here, Rule 15(c)(1)(C) provides that an amended pleading that "changes the party or the naming of the party against whom a claim is asserted" relates back if: (1) "Rule 15(c)(1)(B) is satisfied," and (2) "the party to be brought in by amendment": (i) "received such notice of the action that it will not be prejudiced in defending on the merits;" and (ii) "knew or should have

known that the action would have been brought against it, but for a mistake concerning the proper party's identity." Fed. R. Civ. P. 15(c)(1)(C).[7]

The Wrights' Amended Complaint meets all these criteria. *First*, Rule 15(c)(1)(B) is satisfied. That provision directs that the amended pleading must "assert[] a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading." Fed. R. Civ. P. 15(c)(1)(B).

Here, the initial Complaint and the Amended Complaint are both directly related to the Officers' entry into the Wrights' home on May 7, 2020. *Compare* Complaint, RE 1-1, PageID #8 (alleging Officers "searched the wrong house"), *with* Amended Complaint, RE 42, PageID #219 (alleging Officers "entered Plaintiffs' home with a fake search warrant"). In both pleadings, the Wrights recount that the alleged search warrant did not provide a valid basis to search their home, but the Officers nevertheless entered with weapons drawn and conducted a patently unreasonable search. Amended Complaint, RE 42, PageID #217-218. And the

[7] Rule 15(c)(1)(C) also directs that the "party to be brought in by amendment" must be served "within the period provided by Rule 4(m)." Fed. R. Civ. P. 15(c)(1)(C). That requirement is satisfied here. On September 8, 2023, the magistrate judge entered an order granting the Wrights' motion for leave to file the Amended Complaint and directing the U.S. Marshal Service to serve the Officers. Order, RE 41, PageID #216. The Officers were all served in late October 2023—within Rule 4(m)'s 90-day period. Summons, RE 47, 48, 49, 50, 51, 52, PageID #253, 256, 259, 262, 265, 268.

Wrights also detail the extensive damages they have suffered from this violation of their constitutional rights, including that Brendon and Jawand were enrolled in counseling and received treatment due to the trauma they experienced. Complaint, RE 1-1, PageID #8, ¶ 22; Amended Complaint, RE 42, PageID #219, ¶ 2.

Second, the Officers had notice of the Wrights' claims against them from the May 7 search. This Court has explained that Rule 15(c)'s notice requirement can be satisfied if the defendants have actual or constructive notice of the lawsuit. *Berndt*, 796 F.2d at 884 ("Rule 15(c) does not require that the new defendants received actual notice."); *see also Friedmann v. Campbell*, 202 F.3d 268, 1999 WL 1045281 at *2 (6th Cir. 1999) (unpublished) (discussing constructive notice). To determine whether defendants had constructive notice, courts consider several factors, including whether: "1) the new defendant[s] allegedly committed the unconstitutional acts; 2) the new defendant[s] worked for the original defendant; 3) the new and original defendants are represented by the same counsel; 4) the plaintiff is incarcerated; and 5) the plaintiff is proceeding pro se." *Friedmann*, 1999 WL 1045281 at *2 (citing *Berndt*, 796 F.2d at 882-84).

Nearly all these factors support a finding that the Officers had constructive notice of the Wrights' Section 1983 claims. The Officers are the individuals who violated the Wrights' federal constitutional rights when they unlawfully entered and searched the Wrights' home with a deficient warrant. And because they were

members of the LMPD, the Officers were all employees who worked for the original defendant—the Louisville Metro Government. The Officers have also shared counsel with the Louisville Metro Government; all defendants in this case have been represented by attorneys at the Jefferson County Attorney's Office. *See* Motion, RE 55, PageID #290.[8] As a result, the Officers' counsel "is likely to have communicated to [them] that [they] may very well be joined in the action." *Singletary v. Pa. Dep't of Corrs.*, 266 F.3d 186, 196 (3d Cir. 2001) (discussing "shared attorney" method of imputing notice); *see also Odum v. Knox Cnty.*, 902 F.3d 34, 1990 WL 57241 (6th Cir. 1990) (unpublished) (allowing relation back when "[t]he county and the sheriff were served with the complaint, which contained sufficient facts for them to discover the correct defendants with a minimal investigation, all the defendants have been represented by the same counsel, and defendants have alleged no specific prejudice to their defense"). The Wrights' pro se status in this litigation—including through their attempted discovery requests—also supports a finding of constructive notice here. *See Berndt*, 796 F.2d at 882 (explaining it "would be a miscarriage of justice"

[8] A few different attorneys from the Jefferson County Attorney's Office have represented Defendants at various points in this litigation. Roy C. Denny initially represented the Louisville Metro Government in its motion to dismiss and he continued to represent the Officers in their motion to dismiss. Motion, RE 5, PageID #25; Mot. to Dismiss, RE 55, PageID #290. Joseph R. Abney also represented the Officers, and he has continued to represent the Officers following Mr. Denny's withdrawal. Motion, RE 61, PageID #366-367.

to prevent pro se plaintiff "from seeking redress for his alleged injuries on a procedural defect"); *Friedmann*, 1999 WL 1045281, at *2 (discussing plaintiff's pro se status).

The Officers also will face no prejudice from having to defend this lawsuit on the merits. "[T]he primary purposes of limitations statutes" are "preventing surprises to defendants and barring a plaintiff who has slept on his rights." *Artis v. District of Columbia*, 583 U.S. 71, 91 (2018) (cleaned up). Here, neither of these concerns are present. The Officers cannot mount any credible argument that they were surprised to be named as defendants in this litigation. They entered the Wrights' home, and they likely knew that the Wrights had brought civil claims against the Louisville Metro Government and unnamed police officers (*i.e.*, the Officers) relating to that search. Nor have the Wrights slept on their rights. Despite Kentucky's unduly short one-year statute of limitations, the Wrights managed to file suit within that year. And after the Wrights' initial counsel no longer represented them, they attempted to prosecute their own claims pro se to determine the Officers' identities and amend their Complaint accordingly.

Relation back here is also "consistent with the purpose of relation back: to balance the interests of the defendant protected by the statute of limitations with the preference expressed in the Federal Rules of Civil Procedure in general, and Rule 15 in particular, for *resolving disputes on their merits*." *Krupski*, 560 U.S. at 550

(emphasis added). The rule seeks to prevent "a windfall for a prospective defendant who understood, or who should have understood, that he escaped suit during the limitations period only because the plaintiff misunderstood a crucial fact about his identity." *Id.* Here, the Officers knew or should have known that they were the proper defendants and thus should not be entitled to escape liability without having to defend these claims on the merits. As Justice Holmes explained, "*when a defendant has had notice from the beginning* that the plaintiff sets up and is trying to enforce a claim against it because of specified conduct, the reasons for the statute of limitations do not exist, and we are of the opinion that a liberal rule should be applied." *N.Y. Cent. & Hudson River R.R. Co. v. Kinney*, 260 U.S. 340, 346 (1922) (emphasis added); *see also* Wright & Miller, 6A Fed. Prac. & Proc. § 1498.3 (3d ed. 2024) ("[I]f the party to be added has reason to understand that it should have been named a defendant and [had] notice of the action, then an amendment adding that party will relate back.").

Finally, the Officers knew or should have known that the action would have been brought against them "but for a mistake concerning" their identity. Fed. R. Civ. P. 15(c)(1)(C). The Supreme Court has held that, for purposes of Rule 15(c), a "mistake" is "an error, misconception, or misunderstanding; an erroneous belief." *Krupski*, 560 U.S. at 548; *see also Zakora*, 44 F.4th at 481-82 (applying same definition).

Courts have held that a "plaintiff's lack of knowledge of a particular defendant's identity can be a mistake" under Rule 15 to relate back the substitution of a John Doe defendant. *Singletary*, 266 F.3d at 201 (citing *Varlack v. SWC Caribbean, Inc.*, 550 F.2d 171, 175 (3d Cir. 1977)). Such a conclusion makes good sense given that it is often difficult for plaintiffs to learn individual officers' identities before filing a complaint. Rule 15 can thus provide an opportunity for plaintiffs to correctly identify and substitute individually named defendants with the benefit of post-complaint discovery.

However, this Court recently held that "[a]n absence of knowledge about whom to sue is not a misunderstanding and thus is not a mistake for the purposes of Rule 15." *Zakora*, 44 F.4th at 482. The Wrights, however, filed their Complaint before *Zakora* was decided. Because they had no effective mechanism to obtain the Officers' identities from the Louisville Metro Government before initiating litigation, they had to rely on the post-complaint discovery process to uncover the Officers' real identities. At the time, they believed that existing precedent supported their ability to discover and substitute the John Doe officers even after the one-year limitations period. Some of this Court's cases had previously indicated that the mistaken identity prong would be "a patently factual inquiry" for the district court based on "guides" like whether the unknown officers "received constructive notice of the suit" (they did) and whether they "committed the illegal acts" (they did).

Berndt, 796 F.2d at 884.[9] And case law from other jurisdictions suggested that it is "not uncommon for victims of civil rights violations … to be unaware of the identity of the person or persons who violated those rights," and that "many plaintiffs cannot obtain this information until they have had a chance to undergo extensive discovery following institution of a civil action." *Singletary*, 266 F.3d at 201 n.5.

Applying this Court's 2022 decision in *Zakora*, the district court held that the Wrights' amended claims could not relate back to their initial claims that were filed in 2021. Order, RE 78, PageID #511-512. The Wrights' inability to predict this development in the law can qualify as a "mistake" under Rule 15. Indeed, several courts, including this Court, have observed that a mistake of law can constitute a "mistake." *Black-Hosang v. Ohio Dep't of Pub. Safety*, 96 F. App'x 372, 375 (6th Cir. 2004) (district court was "wrong" to conclude that "mistakes concerning the identity of the proper party under Rule 15(c)(3)(B) do not include a lawyer's mistake of law" (cleaned up)); *see also Woods v. Ind. Univ.-Purdue Univ. at Indianapolis*, 996 F.2d 880, 886-87 (7th Cir. 1993) ("'mistake' as used in Rule 15(c) applies to mistakes of law as well as fact" (citation omitted)); *Soto v. Brooklyn Corr. Facility*,

[9] At the time the Wrights filed their Complaint, there was an intra-circuit split on whether naming a previously unknown defendant outside the statute of limitations could satisfy Rule 15's mistaken identity prong. *Compare Berndt*, 796 F.2d at 884, *with Cox v. Treadway*, 75 F.3d 230, 239-40 (6th Cir. 1996). *Zakora* clarified that *Cox* is the controlling authority on that question.

80 F.3d 34, 37 (2d Cir. 1996) ("[Plaintiff] did not know that he needed to name individual defendants, and his failure to do so, under the circumstances of this case, can be characterized as a 'mistake' for purposes of Rule 15(c)(3).").

Additionally, if *Zakora*—which was decided in the context of Michigan's longer three-year limitations period—means that the Wrights must have filed their Complaint and obtained discovery all within Kentucky's one-year limitations period, that would unreasonably shorten an already too short statute-of-limitations for Section 1983 claims. *See infra* Part III. As the district court acknowledged, this "outcome may understandably appear harsh from the perspective of a *pro se* litigant who responds to an order to discover the identities of unknown officers." Order, RE 78, PageID #512. It is a high hurdle to ask plaintiffs to prepare and file a complaint with sufficient time left in the one-year clock to account for discovery into the identities of unknown officers, especially where proceeding pro se. As the Supreme Court has already made clear, a six-month limitations period for Section 1983 claims is "manifestly inconsistent with the central objective" of Section 1983. *Burnett*, 468 U.S. at 55. Permitting the Wrights to relate back their Amended Complaint against the Officers, who had knowledge of the claims against them and suffer no risk of prejudice, satisfies Rule 15's liberal spirit and preference to resolve claims on the merits. *United States v. Hougham*, 364 U.S. 310, 317 (1960) ("[T]he Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel

may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." (citation omitted)); *see also Morse v. McWhorter*, 290 F.3d 795, 800 (6th Cir. 2002) ("Rule 15 plainly embodies a liberal amendment policy.").

Zakora acknowledges that, even if plaintiffs' claims do not "relate back" under Rule 15, equitable tolling can "serve as an adequate safety valve for those plaintiffs with good excuses." 44 F.4th at 482. The Wrights acted diligently in attempting to pursue their claims against the Officers. Within the initial one-year period (during an unprecedented global pandemic), they realized the constitutional dimension of their claim, obtained counsel, and worked with their counsel to prepare the initial Complaint to initiate the suit. And after the one-year period, the Wrights assumed responsibility for their own representation and filed Open Records Act requests and several motions in the district court to attempt to obtain the Officers' identities. The many practical challenges that Section 1983 plaintiffs face make it incredibly difficult to understand their legal rights and bring their claims within one year—especially when they do not even know the defendants' identities. *See infra* at 35-37. Here, principles of equity and fairness require that this Court permit the Wrights to pursue their claims against the Officers.

II. The Statute of Limitations Was Tolled for Brendon Burnett's Claims While He Was A Minor.

Under Kentucky law, when a minor plaintiff has a claim under Section 1983, the statute of limitations is tolled until one year after the plaintiff reaches the age of majority. Specifically, Ky. Rev. Stat. Ann. § 413.170(1) provides:

> If a person entitled to bring any action mentioned in KRS 413.090 to 413.160 ... was, at the time the cause of action accrued, an infant ... the action may be brought within the same number of years after the removal of the disability ... allowed to a person without the disability to bring the action after the right accrued.

Courts have held that "[u]nder a plain reading of KRS 413.170(1), the statute of limitations would not run until one year after [minor plaintiffs] reached the age of eighteen." *T.S. v. Doe*, 2010 WL 3941868, at *2 (E.D. Ky. 2010) (holding complaint was served within limitations period when, "[a]t the time of the alleged constitutional violations, … Plaintiff K.S. was fourteen years of age, and J.S. was fifteen," and plaintiffs filed complaint within one year of reaching the age of eighteen).

Brendon Burnett was still a minor both when the Officers invaded his home and extricated him at gunpoint, and when the initial Complaint was filed on May 6, 2021. Under Kentucky law, the statute of limitations for his claim did not begin to run until his 18th birthday in October 2022. Because the Wrights' motion for leave to file their Amended Complaint was filed in June 2023—less than one year after

Brendon's 18th birthday—his claim is timely and the district court erred in dismissing it. *See* Motion, RE 39, PageID #189; Ky. Rev. Stat. Ann. § 413.170(1).

Additionally, the tolling period is not affected because Brendon was represented by his guardians before he reached the age of majority. Courts have observed that Section 413.170's "savings provision … has no exceptions for a committee, guardian or next friend," as that "interpretation would require th[e] Court to add an exception to the statute that the legislature did not provide." *Bradford v. Bracken Cnty.*, 767 F. Supp. 2d 740, 752-53 (E.D. Ky. 2011). That interpretation is consistent with that of the Kentucky Supreme Court, which "held that appointment of a representative for minor defendants, who are treated similarly to plaintiffs of unsound mind for tolling purposes does not change the usual tolling rule" that minors' claims are tolled until they reach the age of 18 under Section 413.170(1). *Green v. Floyd Cnty.*, 803 F. Supp. 2d 652, 654 (E.D. Ky. 2011) (citing *Newby's Adm'r v. Warren's Adm'r*, 126 S.W.2d 436, 438 (Ky. 1939) (cleaned up)). In other words, Brendon had one year after his 18th birthday to pursue his claims against the Officers, even though his guardians had represented his interests while he was a minor.

Even the Officers recognized the potential inapplicability of a statute-of-limitations defense against Brendon. *See* Motion, RE 67-1, PageID #421 ("The Amended Complaint was not timely filed with respect to Plaintiffs Jennie Wright,

Saul Wright, and Jawand Lyle" and noting there was "insufficient information in the record for a determination on the statute of limitations with respect to Brendan Burnett"). The district court did not address how the statute of limitations applied to Brendon and instead broadly held that the Amended Complaint, as it related to *all* of the Wrights, was filed after the statute of limitations had expired. *See* Order, RE 78, PageID #509. The district court thus separately erred by neglecting to address the grounds on which Brendon's claims—that the defendants did not challenge as untimely—were deficient. Because the Amended Complaint was filed within one year of Brendon turning 18, his claims against the Officers are timely under Kentucky law, and he should be permitted to litigate them on their merits.

This Court can consider Brendon's arguments even though he is not expressly named on the Notice of Appeal that was filed in the district court. Notice of Appeal, RE 80, PageID #515. On its face, the Notice of Appeal—which was filed pro se—references "the above-named plaintiffs," which appear to include Jennie and Saul Wright. *Id.* However, the Notice of Appeal also states more generally that the Wrights are appealing the Order "denying plaintiffs' Civil Rights Complaint," *i.e.*, denying leave to file the Amended Complaint, which does name Brendon. *Id.* "[A] notice of appeal should be given liberal construction," *JGR, Inc. v. Thomasville Furniture Indus., Inc.*, 550 F.3d 529, 532 (6th Cir. 2008), and that "principle applies especially to documents filed by pro se litigants," *United States v. Terrell*, 345 F.

App'x 97, 101 (6th Cir. 2009) (unpublished). Moreover, "the purpose of" the requirement that "a notice of appeal must specifically indicate the litigant's intent to seek appellate review" is "to ensure that the filing provides sufficient notice to other parties and the courts." *Smith*, 502 U.S. at 248. "Thus, the notice afforded by a document … determines the document's sufficiency as a notice of appeal." *Id.*

The Notice of Appeal should be construed liberally to include the entire Wright family—including Brendon and Jawand, who were both minors at the inception of this litigation, and only became adults while this litigation was pending and their guardians were proceeding pro se. Throughout this litigation, Saul and Jennie Wright frequently attempted to assert both their own rights and Brendon's and Jawand's. It is unreasonable to believe that they would have no longer attempted to protect their family's interests when they filed the Notice of Appeal that appealed the entirety of the district court's judgment below. This Court should liberally construe that notice and any imperfections should not "preclude" the Wrights "from resorting to the courts merely for want of sophistication" or lack of "familiarity with applicable legal principles." *Jourdan v. Jabe*, 951 F.2d 108, 110 (6th Cir. 1991). Construing the Notice of Appeal liberally also will not prejudice the Officers, as Brendon and Jawand have been engaged in the proceedings since the inception of this case, and the Officers cannot reasonably argue that they were "misled" by the Notice of Appeal. *Terrell*, 345 F. App'x at 102; *see also Smith*, 502 U.S. at 248

(construing pro se notice of appeal liberally when it provided proper notice to the litigants).

III. Kentucky's One-Year Statute of Limitations for Section 1983 Claims Is Inconsistent with the Federal Principles Underlying Section 1983.

Throughout this litigation, the Wrights—operating primarily in a pro se capacity—diligently pursued their constitutional rights as guaranteed by Section 1983. That statute "provides 'a uniquely federal remedy against incursions under the claimed authority of state law upon rights secured by the Constitution and the laws of the Nation.'" *Wilson*, 471 U.S. at 271-72 (quoting *Mitchum v. Foster*, 407 U.S. 225, 239 (1972)). But Section 1983 does not itself include an express statute of limitations, so federal courts have thus far borrowed limitations periods from state law "so long as the chosen limitations period was consistent with federal law and policy." *Owens*, 488 U.S. at 239.

Kentucky, however, has imposed a nearly insurmountable hurdle for the Wrights and other Section 1983 plaintiffs by giving them only one year to bring and perfect their federal civil rights claims. This outlier limitations period should not foreclose the Wrights' claim. It is not only inconsistent with the federal interests of Section 1983, but is also outdated now that Congress has enacted Section 1658, which provides a more suitable federal four-year limitations period. While this Court has held that "Section 1983 actions in Kentucky are limited by the one-year statute of limitations" in Ky. Rev. Stat. Ann. § 413.140, *Collard v. Ky. Bd. of*

Nursing, 896 F.2d 179, 182 (6th Cir. 1990), it has never considered whether that limitations period is consistent with Section 1983's federal interests. *See Brown v. Pouncy*, 93 F.4th 331, 337-38 (5th Cir. 2024) (indicating Sixth Circuit has not addressed this argument).

As explained above, the Wrights' Amended Complaint should be treated as timely under the relation-back (and equitable tolling) doctrine even under the one-year limitations period. If, however, Rule 15 does not permit the substitution of previously unknown officers' names—only identified through post-complaint discovery—that further confirms that Kentucky's one-year statute of limitations is simply too short to vindicate the important federal interests of Section 1983.

A. Kentucky's One-Year Statute of Limitations Is Too Short.

When discussing the statute of limitations for Section 1983 claims, the Supreme Court has recognized that a limitations period could be so short that it would undermine the federal interests secured by Section 1983. In *Burnett*, for example, the Court acknowledged that "[a] state law is not 'appropriate'" for purposes of Section 1983 "if it fails to take into account practicalities that are involved in litigating federal civil rights claims and policies that are analogous to the goals of the Civil Rights Acts." 468 U.S. at 50. And in *Owens*, the Court expressly reserved the question of whether "applying a 1-year limitations period to § 1983 actions would be inconsistent with federal interests." 488 U.S. at 251 n.13.

This Court should recognize that Kentucky's one-year limitations period cannot be reconciled with the federal interests underpinning Section 1983 and therefore cannot foreclose the Wrights' claims here. The "central objective" of Section 1983 is to "ensure that individuals whose federal constitutional or statutory rights are abridged may recover damages or secure injunctive relief." *Burnett*, 468 U.S. at 55; *see also Owens*, 488 U.S. at 249 n.11 (emphasizing that Section 1983's purpose is to provide a remedy "against those who representing a State in some capacity were unable or unwilling to enforce a state law" (quoting *Monroe v. Pape*, 365 U.S. 167, 175-76 (1961))).

But by providing federal civil rights plaintiffs with only one year to bring their claims, Kentucky's residual limitations period fails to provide sufficient time for plaintiffs to adequately pursue relief. Effectively litigating these types of cases—which can often be complex and involve high stakes—requires plaintiffs to take several tangible and time-consuming steps. As the Supreme Court observed, to bring a Section 1983 claim, a plaintiff must "recognize the constitutional dimensions of his injury," "obtain counsel, or prepare to proceed pro se," "conduct enough investigation to draft pleadings that meet the requirements of federal rules," "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." *Burnett*, 468 U.S. at 50-51. These steps

all take time because injuries to civil rights are not "necessarily apparent to the victim at the time they are inflicted," and "even where the injury itself is obvious, the constitutional dimensions of the tort may not be." *Okure*, 816 F.2d at 48.

This case itself illustrates the many challenges that civil rights plaintiffs face when attempting to litigate their claims. Following the Officers' unlawful entry into their home, the Wrights had to take several steps before they could bring their claims. For example, they had to spend time trying to understand the nature of their claims and then finding counsel who could help them advance those claims. Finding counsel for Section 1983 claims in Kentucky is particularly challenging given the limited number of attorneys willing to take on such cases and the costs of hiring paid counsel. *See, e.g.*, Joanna C. Schwartz, *Civil Rights Without Representation*, 64 Wm. & Mary L. Rev. 641, 650-52 (2023). And later, the Wrights faced even further challenges when they proceeded pro se. In addition to having to learn the laws and procedures, the Wrights had to overcome significant pushback when they attempted to determine the Officers' identities—Louisville Metro resisted the Wrights' Open Records Act requests, and the Wrights were therefore forced to file motions in district court seeking discovery. Not only did the Wrights have to take on these arduous tasks, but they had to do so while processing and addressing the physical and mental trauma they experienced from having a police squad unlawfully raid their home and hold them at gunpoint. And Jawand and Brendon were expected to do so

within just one year of their 18th birthdays. Civil rights plaintiffs cannot be expected to jump through all these hoops while also facing a one-year clock that is perilously ticking. *See Burnett*, 468 U.S. at 50-51.

Under the district court's interpretation of Rule 15, Kentucky's impermissibly short one-year statute of limitations is effectively shortened even further. As explained above, federal civil rights plaintiffs in Kentucky will need to rush to file a complaint within a matter of weeks if they need compulsory process to discover the names of unknown officers and amend their complaint before the limitations period expires. *See supra* at 27-28.

The interplay of these broad federal interests and state law is best crystallized by *Burnett*, which demands that state statutes of limitations "be responsive to these characteristics of litigation under" Section 1983 by "tak[ing] into account practicalities that are involved in litigating federal civil rights claims." *Burnett*, 468 U.S. at 50. The *Owens* Court recognized these potential challenges when it expressly left open the question of whether a one-year statute of limitations could be so short that it "would be inconsistent with federal interests." 488 U.S. at 251 n.13. And to the extent that *Owens* was motivated by establishing a rule that would promote predictability and uniformity in federal courts, it cannot be read as casting aside the primary federal interest embedded in Section 1983—allowing citizens to vindicate civil rights claims against state actors.

Indeed, in *Owens*, the Court considered whether to apply New York's more permissive residual statute of limitations (three years) or its more restrictive assault-specific statute of limitations (one year). Given the Supreme Court's recounting of the Second Circuit's observation that a "restrictive one year limit" for Section 1983 claims may not "faithfully represent[] the federal interest in providing an effective remedy for violations of civil rights," *Owens*, 488 U.S. at 238, it is difficult to imagine that the *Owens* Court would countenance an interpretation of its opinion that *restricts*, rather than enhances, plaintiffs' ability to vindicate their federal rights.

The conflict between Kentucky's one-year limitations period and Section 1983's federal interests is further evidenced by the fact that Kentucky's regime is a significant outlier. Kentucky is joined by only Tennessee and Puerto Rico in providing federal civil rights plaintiffs with a single year to file Section 1983 claims. *See* Tenn. Code Ann. § 28-3-104(a)(1)(A); P.R. Laws Ann. tit. 31, § 5298(2).[10] Had the Officers violated the Wrights' civil rights in nearly any other state, their claims would have been governed by a longer limitations period that could be reconciled with Section 1983's federal interests because it would provide more time to develop

[10] Tennessee's one-year statute of limitations expressly carves out a separate limitations period for civil actions "brought under the federal civil rights statutes." Tenn. Code. Ann. § 28-3-104(a)(1)(B). Because both statutes set a one-year limitations period, this Court has not addressed which one is controlling. *See Dibrell v. City of Knoxville*, 984 F.3d 1156, 1161 (6th Cir. 2021).

and investigate their claims before being forced to race to the courthouse. *See, e.g.*, Mich. Comp. L. § 600.5805(2) (three years); Mo. Rev. Stat. § 516.120(4) (five years); Me. Stat. tit. 14 § 752 (six years).

Until July 2024, Louisiana also provided civil rights plaintiffs with only one year to raise their Section 1983 claims. *See* La. Civ. Code Ann. Art. 3492. While that one-year timeframe was still in effect, the Fifth Circuit held that its limitations period did not violate the federal interests underpinning Section 1983. *Brown*, 93 F.4th at 337-38. But that decision was wrongly decided and does not control here. At oral argument, Judge Ho acknowledged that relying on Section 1658 would be the "more textual" approach to determining the appropriate statute of limitations for Section 1983 claims, and he observed that "replacing the state by state strangeness with a uniform four year [limitations period]" would "seem[] to be more textual" than the current regime. Oral Argument at 15:30-16:58, *Brown v. Pouncy*, No. 22-30691 (5th Cir. Oct. 4, 2023).[11] Even more relevantly, since *Brown* was decided, Louisiana itself recognized that one year is too short, as it extended its residual statute-of-limitations period that applies to Section 1983 claims to two years. *See* 2024 La. Sess. L. Serv. Act 423; La. Civ. Code Ann. Art. 3493.11.

[11] https://www.ca5.uscourts.gov/OralArgRecordings/22/22-30691_10-4-2023.mp3.

B. Section 1658 Provides the Controlling Statute of Limitations.

Kentucky's one-year statute of limitations also does not control the Wrights' case because subsequent changes to federal law have eliminated the need for courts to borrow states' limitations periods for Section 1983 claims. In 1990—after the Supreme Court's decision in *Owens*—Congress enacted Section 1658, which provides a four-year catchall limitations period for newly-enacted federal causes of action that lack their own specific limitations period.[12] While Section 1658 does not supply the limitations period for Section 1983 claims by its own force, it provides the appropriate rule under the three-step framework provided by Section 1988 and discussed by the Supreme Court in *Burnett*.

When the Supreme Court evaluated Section 1983's limitations period, it observed that Section 1988 "direct[s] federal courts to follow a three-step process" to supply the appropriate rule of decision. *Burnett*, 468 U.S. at 47 (citing 42 U.S.C. § 1988). Under Section 1988, courts first "look to the laws of the United States 'so far as such laws are suitable to carry [the civil and criminal civil rights statutes] into effect.'" *Id.* at 48 (quoting 42 U.S.C. § 1988) (alteration in original). If an analogous federal law is "suitable," the federal law supplies the answer and the court's job is done. *See id.*; *see also Wilson*, 471 U.S. at 268 (explaining steps two and three of

[12] Section 1658 was enacted in December 1990 and thus also post-dates this Court's decision in *Collard*. Whether Section 1658 provides a more suitable federal limitations analogue is an issue of first impression for this Court.

Section 1988's framework "should not be undertaken before principles of federal law are exhausted"). Only if "no suitable federal rule exists" do courts proceed to the next steps: considering the application of the forum state's common law and determining whether state law "is not 'inconsistent with the Constitution and laws of the United States.'" *Burnett*, 468 U.S. at 48 (quoting 42 U.S.C. § 1988).

At the time of the Court's decision in *Burnett* (and its subsequent decisions in *Wilson* and *Owens*), there was no "suitable" federal law to provide a limitations period for Section 1983 claims. *Burnett*, 468 U.S. at 48-49. The Court considered the suitability of twentieth century civil-rights laws, but ultimately held they could not supply the limitations period for Section 1983 claims because they had "independent[t]" "remedial scheme[s]." *Id.* at 49. Because no federal law could supply the appropriate limitations period, *Burnett*, *Wilson*, and *Owens* interpreted Section 1988 to require that courts borrow states' limitations periods to decide what is otherwise clearly a federal question. *See id.*; *Wilson*, 471 U.S. at 270.

Section 1658 now provides a federal solution. The enactment of this statute requires a reevaluation of the central analysis under Section 1988, which in turn counsels towards applying Section 1658 for all Section 1983 claims. It is more consistent with the federal interests of Section 1983—and with the text of Section 1988—to fill the missing gap with Section 1658's uniform *federal* catchall statute of limitations than to borrow from a patchwork of fifty different states' residual

personal injury limitations periods providing wildly divergent time periods for bringing suit. As the Supreme Court has explained, "[s]tate legislatures do not devise their limitations periods with national interests in mind…." *Occidental Life Ins. Co. v. EEOC*, 432 U.S. 355, 367 (1977). As a result, "state statutes of limitations can be unsatisfactory vehicles for the enforcement of federal law." *DelCostello v. Int'l Bhd. of Teamsters*, 462 U.S. 151, 161 (1983).

While Section 1658 states that it does not apply retroactively and thus does not govern Section 1983 claims by its own terms, Section 1988 does not require that a federal statute be *directly* applicable. Indeed, the premise of Section 1988's inquiry is that there is no such directly applicable federal statute. Rather, Section 1988 directs courts to survey federal law more broadly to determine whether a "suitable" reference point exists. And Section 1658 qualifies as a "suitable" federal provision because it represents Congress' determination of the appropriate balance between providing federal plaintiffs sufficient time to bring their claims and ensuring that all claims are brought in a timely manner. *See* Joseph E. Worcester, *A Dictionary of the English Language* 1444 (1860) (defining "suitable" as "[f]itting; fit; meet; conformable; proper; appropriate; becoming; agreeable; answerable; convenient").

Under the current borrowing system, state limitations periods do not apply to Section 1983 claims by their own terms either. *Wilson*, 471 U.S. at 269 ("Even when principles of state law are borrowed to assist in the enforcement of this federal

remedy, the state rule is adopted as a federal rule responsive to the need whenever a federal right is impaired." (cleaned up)). Instead, they only apply because, before the enactment of Section 1658, they provided what the Supreme Court determined to be one "suitable," albeit imperfect, limitations period under Section 1988's and *Burnett*'s third step. But now, Section 1658 provides a far more "suitable" period at the first step.

This Court recognizing that Section 1658 provides the controlling limitations period for Section 1983 claims would be fully consistent with Supreme Court precedent and with the text Congress has enacted. In *Burnett*, the Court explained that it had already considered (and rejected) arguments that any particular federal statute of limitations qualified as a "suitable" law and it was therefore "settled," as of 1984, that "federal courts will turn to state law for statutes of limitations in actions brought under these civil rights statutes." *Burnett*, 468 U.S. at 47. But the Supreme Court has never considered whether Section 1658 provides a "suitable" limitations period for Section 1983 claims, and there is nothing in *Burnett*—or any other Supreme Court decision—that suggests that the state-law borrowing framework must apply in perpetuity or that Congress could not pass a new law that would provide a "suitable" analogue. To the contrary, the Court has recognized that "Congress surely did not intend to assign to state courts and legislatures a conclusive

role in the formative function of defining and characterizing the essential elements of a federal cause of action." *Wilson*, 471 U.S. at 269.

Until the enactment of Section 1658 in 1990, however, there was no federal law that could supply the limitations period for Section 1983 claims. Now there is. Section 1658 permits federal courts to use a federal rule of decision to determine the sweep of Section 1983—the "uniquely federal remedy against incursions under the claimed authority of state law upon rights secured by the Constitution and laws of the Nation." *Wilson*, 471 U.S. at 271-72; *see also* Kimberly Norwood, *28 U.S.C. § 1658: A Limitation Period with Real Limitations*, 69 Ind. L.J. 477, 513-14 (1994) ("If … the ineffectiveness of state law was the reason for § 1983's enactment, there is little logic in allowing state law to govern how long the federal claim should survive.").

At a minimum, Section 1658 provides an alternative that courts can apply where a state's residual period fails the third step of Section 1988's framework because it is "'inconsistent with the Constitution and laws of the United States.'" *Burnett*, 468 U.S. at 48 (quoting 42 U.S.C. § 1988). Where, as here, a state's residual personal injury limitations period is practically too short to vindicate federal interests, courts need to find a more suitable alternative. Rather than search for yet another state limitations period, the answer is clear: Section 1658. As explained above, one year does not provide federal plaintiffs with sufficient time to vindicate

their federal rights. Therefore, at least with respect to civil rights victims stymied by an impermissibly short statute of limitations like Kentucky's, Section 1658 serves as the failsafe to ensure they can vindicate their important federal rights.

C. This Court Can Consider Whether Kentucky's One-Year Statute of Limitations Is Controlling Here.

The applicability of Kentucky's one-year statute of limitations to the Wrights' claims presents a pure question of law that this Court can properly consider at this stage. The district court's improper dismissal of the Wrights' claims has brought to the fore the underlying concerns regarding Kentucky's one-year limitations period. Because the Wrights were proceeding pro se below, their motions should be liberally construed to include the implicit argument that if they could not relate back the Amended Complaint to substitute the Officers' names, then Kentucky's one-year limitations period is practically too short to vindicate their important federal rights. *See Boswell*, 169 F.3d at 387 ("Pro se plaintiffs enjoy the benefit of a liberal construction of their pleadings and filings.").

In addition to the liberal construction required for pro se plaintiffs, this Court can also consider this issue on appeal as it involves a pure question of law. While "issues not presented to the district court but raised for the first time on appeal are not properly before the court," this Court has "deviated from the general rule in exceptional cases or particular circumstances or when the rule would produce a plain miscarriage of justice." *Foster v. Barilow*, 6 F.3d 405, 407 (6th Cir. 1993) (cleaned

up). One such exception is that this Court "may reach an issue if it 'is presented with sufficient clarity and completeness' for the court to resolve the issue," which "is most commonly applied where the issue is one of law, and further development of the record is unnecessary." *Id.* (quoting *Pinney Dock & Transport Co. v. Penn Cent. Corp.*, 838 F.2d 1445, 1461 (6th Cir. 1988)); *see also D.D. v. Scheeler*, 645 F. App'x 418, 423 (6th Cir. 2016) (considering the merits of a claim that was not raised before the district court where the issue had been briefed, "the factual record does not need expansion, and a decision on the merits will save judicial resources").

Those criteria are satisfied here. Now with the assistance of appellate counsel, the Wrights can raise the argument that their Section 1983 claims are timely because Kentucky's one-year statute of limitations should not control. *Cf. Lucas v. Chalk*, 785 F. App'x 288, 292 (6th Cir. 2019) (allowing plaintiff to amend complaint where "[w]ith the benefit of appellate counsel's briefing," court was "able to identify a crucial factual assertion that, if pled, would have saved the original pro se complaint from sua sponte dismissal"). No additional facts are required to recognize that a one-year limitations period is inconsistent with the federal interests underpinning Section 1983 or that Section 1658 provides the controlling limitations period under Section 1988's framework. *See Pinney Dock*, 838 F.2d at 1461 (considering issues that were "presented with sufficient clarity and completeness").

This Court has also articulated additional factors to guide the exercise of its discretion about whether to consider issues for the first time on appeal, including "whether the issue newly raised on appeal is a question of law, or whether it requires or necessitates a determination of facts;" and "whether failure to take up the issue for the first time on appeal will result in a miscarriage of justice or a denial of substantial justice." *Friendly Farms v. Reliance Ins. Co.*, 79 F.3d 541, 545 (6th Cir. 1996).

These factors, too, counsel towards consideration of Kentucky's one-year limitations period here. As noted, this issue presents a pure question of law, and a miscarriage of justice would result if this Court declines to consider the Wrights' arguments. The Wrights' constitutional rights were violated when the Officers unlawfully invaded and ransacked their home and detained them at gunpoint. Since that traumatizing event, the Wrights have made significant efforts to try to vindicate their rights, but those efforts have been thwarted by procedural roadblocks, including Kentucky's outlier one-year statute of limitations. The proper administration of justice requires that the Wrights have their day in court to litigate their claims against the Officers on their merits. *See Johnson v. Ford Motor Co.*, 13 F.4th 493, 504-05 (6th Cir. 2021) (considering in the first instance plaintiff's arguments about severe or pervasive racial harassment because plaintiffs "fully briefed the issue with sufficient clarity and completeness for [the court] to decide" (cleaned up)).

IV. The District Court Erred In Dismissing the Wrights' Claims Against Louisville Metro.

Within Kentucky's unreasonably short one-year limitations period, the only responsible party that the Wrights could readily identify for the unlawful invasion of their home was the Louisville Metro Government.[13] But the district court dismissed the Wrights' *Monell* claim against Louisville Metro based on its view that the Wrights' allegations were conclusory. Order, RE 11, PageID #48. That decision was erroneous. When considering the allegations of the entire Complaint in the light most favorable to the Wrights (as the Court must) along with facts subject to judicial notice, Louisville Metro is subject to liability because it inadequately trained its police officers and has a policy or custom of officers conducting unlawful searches.

The Wrights alleged that LMPD had a "policy, or custom regarding obtaining and executing a Search Warrant" that deprived them of their constitutional rights, that LMPD "failed to adequately train its officers" about search warrants, and that the unlawful polices "result in issuance of Search Warrants predominantly in African Americans' neighborhoods without the appropriate probable cause in an unreasonable manner." Complaint, RE 1-1, PageID #9-10. And these deficiencies

[13] The Wrights' naming of the Louisville Metro Government as a defendant necessarily includes claims based on constitutional violations by LMPD officers. *See Stucker v. Louisville Metro Gov't*, 2024 WL 2135407, at *12 (6th Cir. 2024) (considering LMPD officers' misconduct in claims brought against Louisville Metro).

in LMPD's training and policies impacted the Wrights, as the Officers "made materially false statements and admissions in obtaining the Warrant and its execution," "searched the wrong house," and "committed numerous careless and neglectful actions." *Id.*, PageID #8-9; *see also Sturgill v. Am. Red Cross*, 114 F.4th 803, 807-08 (6th Cir. 2024) ("[W]e must take care to read the complaint's allegations as a whole." (citation omitted)).

Contrary to the district court's characterization, these were not mere legal conclusions, but rather provided the basis for the Wrights' *Monell* claim sufficient to survive a motion to dismiss. Taken as a whole, the Wrights' allegations state a claim against Louisville Metro for inadequate training. *See Ouza v. City of Dearborn Heights*, 969 F.3d 265, 286-87 (6th Cir. 2020) (describing factors). While the district court claimed that "[t]he Wrights offer no allegations about how the alleged training failures led to their particular injuries," Order, RE 11, PageID #52, the causal relationship between the failure to train officers on how to properly execute warrants and the damage the Wrights suffered from the unlawful invasion of their home is apparent from the facts alleged in the Complaint. *See Haley v. City of Boston*, 657 F.3d 39, 52 (1st Cir. 2011) (reversing dismissal of inadequate training claim because "allegations paint an ugly but plausible picture," and "[i]f proven, that picture will support a finding of municipal liability"); *Flores v. City of S. Bend*, 997 F.3d 725, 733-34 (7th Cir. 2021) (allegations that city "acted with deliberate

indifference by failing to address the known recklessness of its police officers as a group" were "enough to survive a motion to dismiss").

Despite the district court faulting the Wrights for not providing details about the training the officers were or were not given, the Wrights are not required to have the facts to *prove* their claims—that is what the discovery process provides. And their allegations are now bolstered by a 2023 U.S. Department of Justice report following its investigation of Louisville Metro and the LMPD that opened after the March 13, 2020, shooting of Breonna Taylor—a report upon which this Court has previously relied when considering a *Monell* claim against Louisville Metro. U.S. Dep't of Justice, Civil Rights Div., *Investigation of the Louisville Metro Police Dep't & Louisville Metro Gov't* (Mar. 8, 2023), https://perma.cc/MH7S-A36V ("DOJ Report"); *Stucker*, 2024 WL 2135407, at *12.[14] That report—which postdated the Wrights' initial Complaint and the district court's Order dismissing their *Monell* claim—confirms the inadequacy of LMPD's training and supervision policies and practices, including that the "[f]ailures of leadership and accountability have allowed unlawful conduct to continue unchecked," that "officer misconduct too often goes

[14] In *Stucker*, this Court took judicial notice of the DOJ Report "because its sources cannot reasonably be question" and it "may be relevant to proving a policy or custom under a *Monell* claim." 2024 WL 2135407, at *12. The Wrights request that the Court do so again here.

unnoticed and unaddressed," and that "LMPD leaders have endorsed and defended unlawful conduct." DOJ Report at 1.

The LMPD's "systemic legal violations," DOJ observed, stem from LMPD's failure to "adequately support and supervise officers," "investigate and discipline officers for misconduct," and "provide sufficient external oversight." *Id.* at 73; *see also id.* at 27 (deficiencies in LMPD's search warrant practices, such as the "routine failure to demonstrate probable cause in warrant applications" are "the result of poor supervision and oversight within the agency, which enable errors to go uncorrected"). All told, as the DOJ Report confirms, there was every reason for the Wrights to question the adequacy of the training LMPD provided to its officers.

The same is true for the Wrights' claim that Louisville Metro has employed unlawful policies and customs. This Court could draw a plausible inference that the Officers' unlawful invasion of the Wrights' home was connected to LMPD's "policy, or custom regarding obtaining and executing a Search Warrant," and regarding "issuance of Search Warrants predominantly in African Americans' neighborhoods without the appropriate probable cause in an unreasonable manner." Complaint, RE 1-1, PageID #9-10. Based on those allegations, the Wrights should be permitted discovery to develop additional facts. *See Lipman v. Budish*, 974 F.3d 726, 748-49 (6th Cir. 2020) (reversing dismissal of *Monell* claim because "[a]t the motion-to-dismiss stage, without the benefit of discovery, the[] [alleged] facts are

enough to draw the reasonable inference that [unlawful] custom was widespread….").

These allegations, too, are readily supported by the 2023 DOJ Report. DOJ found that LMPD "engages in a pattern or practice of conduct that deprives people of their rights under the Constitution and federal law" by, among other things, "conduct[ing] searches based on invalid warrants" and "unlawfully discriminat[ing] against Black people in its enforcement activities." DOJ Report at 1-2, 22-27. And the LMPD's "search warrant practices disproportionately affect Black people." *Id.* at 38. These findings confirm the plausibility of the Wrights' allegations and that they should be permitted to advance to discovery.[15]

Finally, this Court can consider the Wrights' *Monell* claim even though the district court's *Monell* Order was not formally included on the Notice of Appeal. Notice of Appeal, RE 80, PageID #515. On its face, the Notice of Appeal—which was filed pro se—references "the order entered on [the] 19th day of September, 2024." *Id.* But the Notice of Appeal also states more generally that the Wrights appealed the Order "denying plaintiffs' Civil Rights Complaint," which includes their *Monell* claim. Indeed, the Wrights previously evidenced their clear intent to

[15] Alternatively, this Court could remand for the district court to consider the DOJ Report in the first instance. *See Stucker*, 2024 WL 2135407, at *13. If remanded, the court should also consider the subsequent Inspector General report that details the failings in this particular case. *See supra* n.3.

appeal the district court's *Monell* Order when they filed an interlocutory appeal of that Order, which this Court dismissed as premature. Notice of Appeal, RE 13, PageID #57-58; Order, RE 20, PageID #104-105. That claim is now ripe, and the Wrights' pro se Notice of Appeal should be read liberally to include all claims denied by the district court. *See United States v. Willis*, 804 F.2d 961, 963 (6th Cir. 1986) ("The federal courts of appeals have liberally construed the technical requirements for a notice of appeal" and "courts have been especially reluctant to enforce strictly the notice of appeal requirements when such notice is filed by a pro se appellant."). The Wrights should not be denied access to the courts because of their lack of "familiarity with applicable legal principles" and the technical requirements of a Notice of Appeal form. *Jourdan*, 951 F.2d at 110; *see also Smith*, 502 U.S. at 248 (construing pro se notice of appeal liberally when it provided proper notice to the litigants).

CONCLUSION

For the foregoing reasons, this Court should find that the Wrights' claims against the Officers are timely and that their claims against Louisville Metro can proceed. This Court should reverse the district court's dismissal of their claims.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, Corey M. Shapiro, hereby certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 12,921 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f); and this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2016 in 14-point, Times New Roman font.

Dated: January 17, 2025

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CERTIFICATE OF SERVICE

I, Corey M. Shapiro, hereby certify that on January 17, 2025, I caused copies of the Principal Brief for Plaintiffs - Appellants to be served by the Court's Electronic Case Filing System upon:

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ADDENDUM

Docket #	Description	Page ID #s
RE 1	Notice of Removal	1-4
RE 1-1	Complaint	5-14
RE 5	Motion to Dismiss for Failure to State a Claim	20-25
RE 11	Memorandum Opinion and Order Granting Defendants' Motion to Dismiss	48-55
RE 13	Notice of Appeal	57-58
RE 14	Motion for Certificate of Appealability	68-75
RE 18	Memorandum Opinion and Order Denying Motion for Certificate of Appealability	87-88
RE 20	Order of USCA Dismissing Case for Lack of Jurisdiction	101-105
RE 24	Motion for Leave to File Supplemental Pleading	115-121
RE 25	Order for Plaintiffs' Counsel to State Involvement in Case	122-123
RE 26	Response of Counsel to Status Request	124-126
RE 28	Order Granting Motion to Withdraw	128-130
RE 32	Order Deeming Plaintiffs' Motion for Summary Judgment Filed	142-144
RE 34	Motion to Compel	147-148
RE 34-1	Exhibit A, Motion to Compel	149-153
RE 34-2	Exhibit B, Motion to Compel	154
RE 36	Motion for Protective Order and Response to Motion to Compel	157-161
RE 36-1	Exhibit 1, Request for Admission	162-172
RE 37	Order Granting Motion for Leave to Take Early Discovery and Denying Motion to Compel	174-184
RE 39	Motion for Leave to Amend Complaint	189-190
RE 39-1	Attached Amended Complaint	191-194
RE 39-4	Signature Page to Amended Complaint	197
RE 40	Motion for Service of Process by United States Marshal	210-212
RE 41	Order Granting Motion for Leave to Amend Complaint	214-216
RE 42	Amended Complaint	217-223
RE 44	Status Report	242-243

RE 45	Notice to Proceed Pro Se by Brendon Burnett, Jawand Lyle	244-245
RE 47	Summons – David Eades	251-253
RE 48	Summons – Eric Stafford	254-256
RE 49	Summons – Timothy Huber	257-259
RE 50	Summons – Kyle Seng	260-262
RE 51	Summons – Timothy Liksey	263-265
RE 52	Summons – Steven Macatee	266-268
RE 53	Order Denying as Moot Motion to Appoint Counsel and Granting Motion for Service of Process	269-271
RE 54	Defendants' Motion for a More Definite Statement	272-278
RE 55	Motion to Dismiss for Failure to State a Claim	281-290
RE 60-3	Exhibit A to Motion to Appoint Counsel	392-405
RE 60-4	Exhibit B to Motion to Appoint Counsel	406-412
RE 61	Motion to Withdraw as Attorney	366-367
RE 67-1	Memorandum in Support of Motion for Judgment on the Pleadings	417-430