No. 25-3065

IN THE

United States Court of Appeals for the Tenth Circuit

MICHELLE HOUCKS, ET AL.,
Plaintiffs-Appellants,

v.

UNIFIED GOVERNMENT OF WYANDOTTE COUNTY AND KANSAS CITY, KANSAS, ET AL.
Defendants-Appellees.

On Appeal from the U.S. District Court for the District of Kansas, No. 2:23-02489-TC-BGS
Hon. Judge Toby Crouse

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ORAL ARGUMENT REQUESTED

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

RULES

STATEMENT OF RELATED CASES

There are no prior or related appeals.

JURISDICTIONAL STATEMENT

The district court had jurisdiction over Plaintiffs' federal claims under 28 U.S.C. §1331. This Court has appellate jurisdiction under 28 U.S.C. §1291. On January 30, 2025, the district court issued its Memorandum and Order granting Defendants' 12(b)(6) motions to dismiss. App.II.164-77. On February 27, 2025, Plaintiffs filed a Motion for Relief from Final Order and to Certify Questions of State Law to the Kansas Supreme Court. App.II.178-89. On March 3, 2025, the district court issued its Order denying Plaintiffs' motion, disposing of all parties' claims. App.II.202-04. On April 21, 2025, Plaintiffs filed a notice of appeal. App.II.205. The appeal was timely under Fed. R. App. P. 4(a)(4)(A)(vi).

STATEMENT OF ISSUES

The issues in this appeal are:

1. Whether the district court erred by inverting the legal standard and weighing the Complaint's facts, where:

    A. Kansas law holds that equitable estoppel is a fact question; and

    B. The Complaint alleges Defendants' threats made them too afraid to come forward before Golubski was arrested,

        i. but the district court nevertheless decided Plaintiffs were not afraid *enough* to file sooner;

ii. the district court erroneously held a conspirator is not liable for the conduct of his co-conspirators, notwithstanding Kansas law to the contrary; and

iii. the district court completely invented new Kansas law, then faulted Plaintiffs for not providing authority identifying the district court's invention.

2. Whether the district court erred by applying Kansas' statute of limitations in light of Congress' abrogation of state laws that limit a victim's rights through the Notwithstanding Clause.

STATEMENT OF THE CASE

I. FACTUAL BACKGROUND[1]

1. Defendants operated a government-sanctioned protection racket

For decades, Black Americans in Kansas City, Kansas were terrorized by police engaged in a conspiracy to protect violent criminal gangs via a protection racket. App.I.027. Defendants were bribed with money, drugs, stolen goods, and access to vulnerable, trafficked girls and women. *Id.* In exchange, Defendants provided police protection, actively framing innocent people to protect illicit criminal operations. App.I.027-30. Emboldened by their government status and protection by co-conspirators, certain Defendants raped and sexually assaulted Plaintiffs and other women at will. *Id.* To coerce sex acts, they arrested innocent women and raped them, then avoided reports by threatening charges by prosecutors

[1] Facts are recited in the light most favorable to Plaintiffs, consistent with the applicable standard of review. *Mata v. Saiz*, 427 F.3d 745, 749 (10th Cir. 2005).

with whom Defendants had well known, nefarious connections. App.I.030-31. Meanwhile, other Defendants (including Police Chiefs), knew of and enabled the protection racket and the criminal conduct of police officers engaged in the conspiracy. *Id*. In short, Defendants were dirty cops using their badges to exploit Black women and skim financial profit from the gangs they protected. App.I.030.

Police misconduct was so notorious in the community that Defendants never even attempted to hide their misconduct. App.I.033. In fact, Defendants used their notoriety to promote and add credibility to their terroristic threats. App.I.030-31. The protection racket's open, notorious, and systemic violence provoked a state of terror, achieving control over the community and its will to resist. App.I.088.

More specifically, Defendants affirmatively induced Plaintiffs to delay bringing their claims and actively prevented Plaintiffs from asserting their claims. App.I.088. Defendants did so by: (1) claiming they would influence criminal matters; (2) making explicit and graphic threats, including murders and disappearances; (3) publicly parading innocent people, including Plaintiffs, around so they were seen as "rats" or "snitches;" (4) acting violently and unlawfully while displaying their police badges and firearms, affirming their power, emphasizing to Plaintiffs they were under the eye of rogue and violent government officials; (5) stalking Plaintiffs to demonstrate their omnipresence; (6) repeatedly telling Plaintiffs, while raping and sexually assaulting them, that no one would believe

them; (7) researching and tracking Plaintiffs, their families, and their homes, even after Plaintiffs moved to hide from Defendants, reaffirming neither Plaintiffs nor their families were safe; (8) threatening to "put a case" on Plaintiffs' family members; and (9) threatening to take away Plaintiffs' children. App.I.088-90.

Defendants intended to discourage and prevent Plaintiffs from making complaints or bringing their claims. App.I.091. Plaintiffs relied on Defendants' threats, believing Defendants had the power to harm them. App.I.090. Defendants were allowed to continue their conspiracy unpunished for decades, reinforcing Plaintiffs' belief that Defendants were above the law with the power to retaliate if any complaints were made. App.I.090. Thus, Defendants "stood in the way and prevented Plaintiffs from timely filing their claims because Plaintiffs were fearful for their lives, the lives of their families, and of Defendants' falsely convicting them for crimes they did not commit as retribution for speaking out." App.I.092.

2. Golubski raped Houcks: "Who would believe you over me?"

Late at night in 1992, Golubski approached Houcks in a community park, identified himself as a police officer, showed his badge with his holstered gun, and insisted he drive her home for her own safety. App.I.0033-34. But instead of driving

her home, Golubski kidnapped Houcks, drove her to a secluded field[2], and forced her out of his police car. App.I.034-35.

Golubski demanded oral sex. App.I.035. When Houcks did not immediately comply, he pushed her back into the car, gripping her throat. *Id.* Without removing his gun or badge, Golubski pulled out his penis. *Id.* When Houcks screamed "why are you doing this?", Golubski calmly replied, "because I can." *Id.* After Golubski raped her vaginally and anally, he forced her to perform oral sex. App.I.035-36.

While driving her back to the park, Golubski threatened "keep your mouth closed," and taunted "who would believe you over me?" App.I.036. The next day, Houcks went to a hospital for a rape kit, but when hospital staff informed her that they had called the police to make a report, Golubski's threats and the trauma caused Houcks to flee before police could arrive. App.I.036. The threats continued. *Id.*

Two months later, Houcks was walking down a street when Golubski confronted her; he knew her full name. *Id.* He demanded to know whether Houcks had kept her silence, and when she confirmed she had, Golubski said he knew her brother, using his full name, too. App.I.036-37. Golubski then threatened that if Houcks told anyone, something bad would happen to Houcks or her brother, and

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[2] This field was near the Delevan Apartments, App.I.034, the sex trafficking location in Golubski's second criminal case. *U.S. v. Brooks*, No. 22-cr-40086-TC, 2024 WL 3899032, at *5 (D. Kan. Aug. 22, 2024).

Golubski would "put a case" on her brother. App.I.037. During the entire interaction, a second officer sat in the passenger seat of the police car but never looked out the window or made eye contact with Houcks while Golubski threatened her. *Id.*

Golubski's threats worked; terrified, she concealed what he did to her. *Id.* Although she eventually told her mother she was raped, she lied and said it was two Black men, not Golubski. *Id.* For thirty years, Houcks remained silent about what Golubski did to her. *Id.*

3. Golubski sexually harassed Newsom after the protection racket ensured her son's murder: "You ever think about dating a white police officer?"

On April 15, 1994, Newsom's son was murdered in broad daylight on a busy neighborhood street. App.I.038. The murder was brazened and public but remains unsolved. *Id.* Why? Because Defendants and their protection racket were responsible for covering it up and framing an innocent man. *Id.* Defendants pinned the murder on LaMonte McIntyre, who was ultimately exonerated. App.I.044. Despite knowing his was innocent, Defendants needed McIntyre as their scapegoat to further the protection racket's interests. App.I.042-43. Thirty years later, despite being seen by and known to multiple eyewitnesses, Newsom's son's murderer has yet to be prosecuted. App.I.044-45.

Following her son's death, Golubski arrived at Newsom's home under the auspices of investigating the murder. App.I.041. Though uninvited, he settled in on

the porch with the apparent familiarity of an old friend. *Id.* Golubski ensured Newsom could see his badge and firearm. *Id.* Leering, now a foot apart, Golubski leaned in and asked Newsom: "By the way, what is a fine lady like you doin' sitting out here on a Friday night? It's a beautiful night." *Id*. He then ogled up and down her body, as if undressing her with his eyes. App.I.042.

Because of his positioning, Newsom was trapped and could not escape back into her home. *Id.* After minutes of silence, Golubski winked at Newsom, stating: "you ever think about dating a white police officer?" *Id.* In response to Newsom's "hell no," Golubski feigned an apology, but continued his leering and did not move. *Id.* Minutes passed in silence while Golubski stared at Newsom, who had nowhere to escape. *Id.* Even after finally getting up and leaving, Golubski sat in his car in front of her home before driving away. *Id.* Newsom sat on her porch in disbelief at Golubski's blatant sexual advance, brazenly leveraging her son's murder to force sexual favors from a grieving mother. *Id.*

The next time Newsom saw Golubski was before testifying in McIntyre's wrongful conviction case. App.I.044. As she walked into the courtroom to testify, Golubski made eye contact and winked at her, reinforcing her fear of his control and power of her and her son's case. *Id.*

4. Golubski and Ware exploited and coerced Quinn to commit perjury, sexually assaulted her: "I'll throw your Black ass in jail…you'll never see [your children] again."

Quinn knew about the protection racket from an early age. App.I.046. Family described Golubski to her as a dirty cop, and she watched while the police beat her mother when she was the victim of a kidnapping. *Id.* In 1986, Golubski raped her sister, Stacey, who was later murdered under suspicious circumstances. App.I.047.

Quinn was an eyewitness to Newsom's son's murder. App.I.047. Despite previously giving a detailed description of the murderer to police, Golubski, Ware, and others showed up at her home and attempted to coerce her to falsely identify McIntyre as the shooter *after* Defendants had already arrested him. App.I.047-48. Golubski's continued his pressure when he and then-prosecutor Terra Morehead[3] threatened that if Quinn did not comply with their demands to testify against McIntyre, they would ensure Quinn's children were taken away and that she would never see them again. App.I.048-49. Believing she had no choice, Quinn agreed to falsely identify McIntyre as the murderer. App.I.050.

Alone in a small witness room at the courthouse for McIntyre's prosecution, Golubski told Quinn he wanted to see her strip naked and dance on the table for him. App.I.050. Quinn's last desperate plea to avoid falsely identifying McIntyre was met

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[3] Morehead is now disbarred. *In re Morehead*, 546 P.3d 1227 (Kan. 2024).

with the threat, "I'll throw your Black ass in jail. I'll send them to get your kids, and you'll never see them again." App.I.051. After testifying an innocent man murdered her cousin because of these threats, Quinn walked home and attempted suicide. *Id.*

Golubski continued to actively stalk Quinn. App.I.051-52. Quinn had seen Golubski openly and notoriously hunt, abuse, and rape other Black women, who often turned up dead. App.I.052-54. Quinn repeatedly moved in attempts to flee Golubski, but he always hunted her down. App.I.052.

Then Golubski turned on Quinn, forcing her to follow him to an abandoned park. App.I.054-55. Although her memory of the attack is spotty, Quinn remembers a police nightstick and repeatedly pleading for Golubski to stop, crying out that it hurt. App.I.055. "Even to today, Quinn remains paralyzingly fearful that by revealing she was a victim of Golubski's sexual predilections, her and her children's safety are put into jeopardy." App.I.056.

5. Golubski leveraged the false arrest of Williams' twin sons for murder in order to serially rape and assault her: "Report me to who, the police? I am the police."

After an August 1999 gang double homicide, Golubski led a raid of Williams' home. App.I.057-58. Williams' three sons (twin fourteen-year-olds and a thirteen-year-old) were whisked away to the police station and interrogated without an adult or attorney. App.I.057. Meanwhile, and during a search of her home, Williams was forced to sit in her living room with her twelve-year-old daughter and endure

Golubski's sexual advances toward her *and* her daughter. App.I.057-58. The police coerced confessions from the twin boys, and Golubski used their charges to gain control of Williams to sexually abuse and enslave her. App.I.058.

Only days later, Golubski returned to Williams' home, where he repeatedly offered to help her sons as he touched her legs. App.I.059. When she rebuffed him, he immobilized her and raped her while commenting "you'll like it," "it'll only take a minute," and continuing to claim he could help her sons. *Id.* After finishing, he was cleaning himself with a paper towel in Williams' kitchen when Williams declared she would report him. *Id.* Golubski defiantly responded "Report me to who, the police? I am the police." *Id.* As he left—paper towel in hand—he ominously told Williams "I will see you later." *Id.*

Approximately a week later, Golubski returned to Williams' home and raped her again. App.I.059. The practice continued, repeatedly, for several **years**. *Id.* "Williams remained afraid that Golubski would shoot and kill her if she spoke out or told anyone…Even after her sons were sent to prison, Williams remained afraid that Golubski knew people in prison and could have her sons hurt. This fear continues to today." App.I.062.

During these rapes and sexual assaults, Golubski would remind Williams that he was going to help her sons, that he would speak to the prosecuting attorney, and "I can be a good friend of yours." App.I.060. During one encounter, Williams

threatened to bite Golubski's penis, to which Golubski threatened to shoot her. App.I.061. With his police firearm on his hip, Williams believed him. *Id.* During another rape, Golubski threatened she would disappear if she told anyone. App.I.062. Based on his repeated sexual assaults, his reputation in the community, and his control over her sons' safety, Williams believed his threats. *Id.*

6. Kill and Bye abused and sexually assaulted Miller: "I can turn off this camera, pull my pants down…Get on the desk."

On June 4, 2002, a 4:15 a.m. call woke Miller. App.I.062. The call told her that her father was dead and instructed her to immediately go to the morgue to identify the body. *Id.* When she arrived, Defendants Kill and Bye watched as the white sheet was removed, revealing an unidentifiable burned corpse. *Id.* Without consoling her, Bye and Kill took Miller to the police station, where they began to interrogate her. App.I.063. The officers took turns, falling into a tag-team pattern with a repeated cycle of questions, including whether she was in a sexual relationship with her father. *Id.* Despite repeated requests to leave, Defendants held Miller without advising her of her rights or offering a lawyer. *Id*.

The interrogation culminated in Kill rubbing her shoulders from behind, whispering, "If you get on this table, I can make it all go away." App.I.063-64. Moving to her front, he gestured to his penis and added, "I can turn off this camera, pull down my pants, and we can do what we need to do." App.I.064. Tapping his hand on the desk, he instructed "Get on the desk." *Id*. Miller coiled into the fetal

position and sobbed until Kill left the room, but the interrogation continued. *Id.* Defendants interrogated Miller for 19 straight hours before allowing her to leave. *Id.*

7. September 15, 2022: Golubski's Arrest and Criminal Charges

On September 15, 2022, the FBI arrested Golubski, charging him criminally for two rapes, one being Williams. App.I.045; App.I.090. His arrest, for the first time, caused Plaintiffs to believe it might be safe *enough* to finally come forward and assert their claims. App.I.090. Yet Plaintiffs continue to be threatened. Since filing this case, Plaintiffs' homes and cars have been broken into (without anything stolen or misplaced), and they have been personally confronted, emphasizing that they are still being watched by Defendants, "and warn[ing] them to stop their pursuit of justice for the wrongs committed against them and other victims." App.I.095.

II. PROCEEDINGS BELOW

Plaintiffs filed suit on November 3, 2023, and the matter was assigned to the same district court as Golubski's two criminal cases. App.I.009; *U.S. v. Golubski*, No. 22-cr-40055-TC, 2024 WL 1199256 (D. Kan. Mar. 20, 2024); *U.S. v. Brooks, et al.*, No. 22-cr-40086-TC, 2024 WL 3899032 (D. Kan. Aug. 22, 2024). All Defendants filed 12(b)(6) motions to dismiss, and the briefing was concluded on February 16, 2024. App.I.010.

On December 2, 2024, the morning of jury selection for the first of the two criminal cases (involving Golubski's rape of Williams, in which Houcks was a

"similar acts" witness), Golubski killed himself. *U.S. v. Golubski*, No. 5:22-cr-4005-TC, Doc. 178 (12/2/24). A month later, the district court issued its Memorandum and Order, dismissing all of Plaintiffs' claims as having been untimely filed. App.II.164-77. Aware of the facts of the case, the district court lamented the unjustness of a ruling (it concluded) was compelled by Kansas law:

> The Complaint describes serious official misconduct, including allegations that law enforcement officers systemically and repeatedly sexually assaulted Plaintiffs and framed their family members for crimes they did not commit. That the allegations fail to state a claim on which relief may be granted says nothing about the merits of the claims. Instead, as the Supreme Court has noted, "statutes of limitations often make it impossible to enforce what were otherwise perfectly valid claims"

App.II.176 (citation omitted).

Plaintiffs timely filed a motion for relief from the final order and a concurrent motion to certify state law questions to the Kansas Supreme Court. App.II.179-89. Every Defendant except Golubski responded to this motion. App.II.190. The day after Plaintiffs' reply, App.II.199-201, the district court denied Plaintiffs' request. App.II.202-04. Plaintiffs timely appealed. App.II.205.

STANDARD OF REVIEW

This Court reviews the district court's order granting a 12(b)(6) motion to dismiss de novo, accepting all well-pleaded facts as true and construing them in the light most favorable to Plaintiffs. *Albers v. Bd. of Cnty. Comm'rs of Jefferson Cnty., Colo.*, 771 F.3d 697, 700 (10th Cir. 2014). The same de novo standard is used when determining the applicability of a statute of limitations, *Fulghum v. Embarq Corp.*, 785 F.3d 395, 413 (10th Cir. 2015), and when interpreting a statute. *U.S. v. Acosta-Olivas*, 71 F.3d 375, 377 (10th Cir. 1995).

SUMMARY OF ARGUMENT

Issue I

Plaintiffs filed a comprehensive and detailed Complaint describing Defendants' threats and intimidation, designed to stop Plaintiffs from speaking out about the rapes, sexual assaults, wrongful imprisonment, and terrorism they experienced at Defendants' hands. Despite 127 pages and 536 paragraphs of facts, the district court found that Plaintiffs failed to allege they were afraid *enough* to delay filing their lawsuit.

Yet the district court did not find that Plaintiffs were never threatened, or that they were never afraid. The district court never articulated when or why any Plaintiffs' fear should have subsided; what event should have alleviated that fear; nor what date (prior to Golubski's September 2022 arrest) on which the statutory

time was deemed to have started ticking. Instead, it merely concluded, unlinked to any identified event, that Plaintiffs should have filed their claims earlier than they did. In doing so, the district court exceeded its well-established role on a 12(b)(6) motion, weighing Plaintiffs' facts and drawing inferences against them.

The district court also upended Kansas' conspiracy law and erroneously decided conspirators are not liable for the threats and intimidation of their co-conspirators. The district court rewrote Plaintiffs' Complaint, recasting their equitable estoppel claims as "estoppel by duress," then criticized Plaintiffs for not providing legal authority supporting this theory the district court—not Plaintiffs—invented. These errors, individually and concurrently, constitute reversible error that prejudiced Plaintiffs' ability to prosecute the claims they timely filed after Golubski was arrested by the FBI and criminally charged for raping Williams.

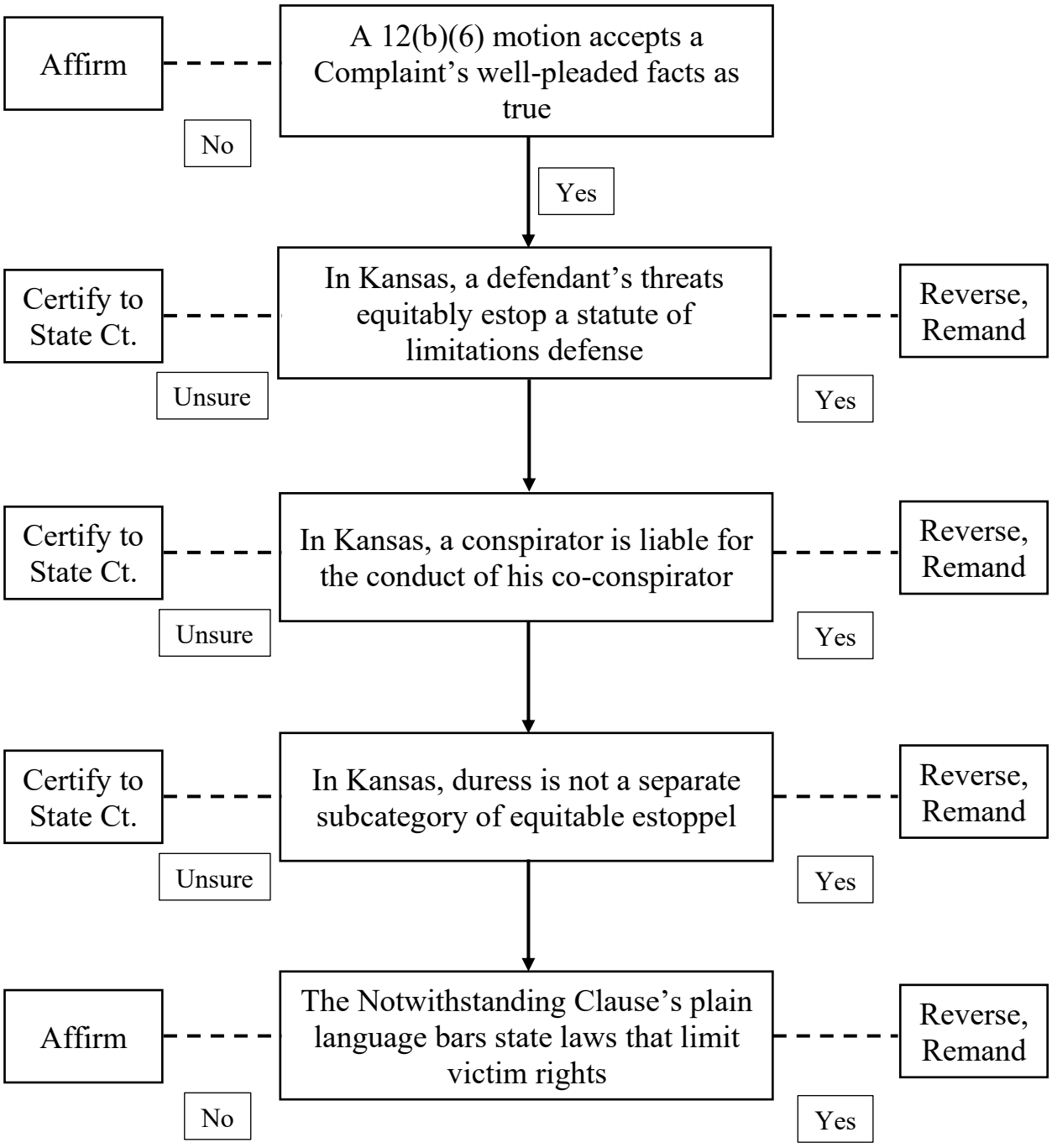
The unjustness of the decision is underscored by its inconsistency with the same district court's decision refusing to permit Golubski to avoid criminal liability based on the statute of limitations. In that criminal case, also applying §1983 law, the district court held that the statute of limitations would *not* permit Golubski to avoid *criminal* liability for his conduct. But the month after Golubski committed suicide (on the morning of jury selection for this first criminal case), the district court decided the exact opposite in this civil case.

Issue II

In the alternative, the district court erred in applying any state statute of limitations to bar claims under §1983. In 1871, when the 42nd Congress passed what later became codified as §1983 (a law passed to protect Blacks from constitutional violations by state and local governments), its plain language abrogated any state law that attempted to limit victim's rights. But when Congress' words were placed into the first compilation of federal law, this "Notwithstanding Clause" was omitted.

Rediscovery of this publication change is recent. As such, without knowledge of the Notwithstanding Clause, courts erroneously started injecting state laws into §1983 claims that effectively limit the remedies available to a victim under the statutes, including state immunity theories and state statutes of limitations. Given the newly discovered abrogation language of the Notwithstanding Clause, however, application of this state law to limit a victim's rights under §1983 is error.

Graphically, the issues before this Court are best summarized as follows:



ARGUMENT

I. THE DISTRICT COURT ERRED BY INVERTING THE LEGAL STANDARD AND WEIGHING THE COMPLAINT'S FACTS

Despite (i) the district court's obligation to accept Plaintiffs' facts as true and construe them in the light most favorable to them, and (ii) that equitable estoppel is a fact question under Kansas law, the district court inverted the legal standard, deciding that it did not believe Plaintiffs' claims of fear. This is error.

1. Equitable estoppel is a fact question under Kansas law.

This Court has long held that state law governs statutes of limitations for §1983 claims. *Fratus v. DeLand*, 49 F.3d 673, 675 (10th Cir. 1995). Kansas recognizes equitable estoppel as a bar to a statute of limitations. *L. Ruth Fawcett Tr. v. Oil Producers Inc. of Kan.*, 507 P.3d 1124, 1129 (Kan. 2022). "[W]hether estoppel is appropriate in a given situation raises a question of fact. And disputed questions of fact typically make summary judgment—as granted in the instant case—inappropriate." *Becker v. The Bar Plan Mut. Ins. Co.*, 429 P.3d 212, 219 (Kan. 2018) (emphasis added, internal citations omitted); *L. Ruth*, 507 P.3d at 1144 ("Whether equitable estoppel applies involves a question of fact").

Kansas cautions against applying equitable estoppel "in a formulaic manner," *L. Ruth*, 507 P.3d at Syl. ¶7, finding its application "must depend on its own facts." *Gas Serv. Co. v. Consol. Gas Utilities Corp.*, 65 P.2d 584, 592 (Kan. 1937); *Dunn v. Dunn*, 281 P.3d 540, Syl. ¶8 (Kan. Ct. App. 2012) ("Equitable estoppel generally

involves questions of fact and, when the facts are disputed…, summary judgment is inappropriate and the factual dispute must await resolution at trial" (emphasis added)); *Rockers v. Kan. Tpk. Auth.*, 991 P.2d 889, 894-95 (Kan. 1999). The facts required at the motion to dismiss stage are even lower, since Kansas is a notice pleading state requiring "liberal interpretation of the pleadings" and "rel[ying] on discovery to fill in gaps." *H.B. v. M.J.*, 508 P.3d 368, Syl. ¶¶2-3 (Kan. 2022).

This equitable estoppel law is not unique to Kansas. This Court recently reversed a district court's 12(b)(6) dismissal on statute of limitations grounds after "the proper application of Utah case law's fact-based analysis." *Bistline v. Parker*, 918 F.3d 849, 884 (10th Cir. 2019). The opinion "emphasize[d] that our decision to reverse the district court's dismissal on this matter is based on the exceedingly unusual nature of the fact scenario here." *Id.* at 886. An unusual fact scenario exists here, too. Plaintiffs were too fearful to accuse police officers of raping, sexually assaulting, and terrorizing them because of Defendants' repeated threats.

While review should be governed by the facts pleaded, it is notable that Plaintiffs' allegations are not unique to their Complaint. They are supported by *two* grand juries: *U.S. v. Golubski*, No. 22-CR-40055-TC, 2024 WL 3202345 (D. Kan. June 27, 2024) and *Brooks, et al.*, 2024 WL 3899032 (D. Kan. Aug. 22, 2024). They

are supported by extensive media reporting,[4] which earned a Pulitzer Prize.[5] They are supported by Golubski's suicide. *U.S. v. Golubski*, No. 5:22-cr-4005-TC, Doc. 178 (12/2/24); *State v. Frantz*, 521 P.3d 1113, 1130 (Kan. 2022) (after collecting cases, "[a]ssuming, without deciding, that evidence of suicide…can be probative of a witness' state of mind and may tend to establish a guilty conscience in certain circumstances").

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[4] *See, e.g.,* App.I.030 (*Ex-KCK cop Golubski had ties to criminals, prosecutors say. Was he their 'protector'?*, Kansas City Star https://www.kansascity.com/news/local/crime/article267104436.html#storylink=cpy);
App.I.047 (*Black women say KCKPD detective Roger Golubski prayed on them for decades. Stacey Quinn was one*, NPR https://www.kcur.org/news/2022-10-26/black-women-say-kckpddetective-roger-golubski-preyed-on-them-for-decades-stacey-quinn-was-one);
App.I.053 (*Murdered KCK prostitutes all connected to one man: police detective Roger Golubski*, The Kansas City Star https://www.kansascity.com/opinion/opn-columnsblogs/melinda-henneberger/article250297794.html; *Feds think KCK cop, 'a player in a much bigger operation, killed Rhonda Tribue himself*, The Kansas City Star https://www.kansascity.com/opinion/opn-columns-blogs/melindahenneberger/article257940788.html);
App.I.072 (*Kansas had to pass a law to tell cops they can't have sex with people they're arresting*, ViceNews https://www.vice.com/en/article/435ded/kansas-had-to-pass-a-law-to-tell-cops-theycant-have-sex-with-people-theyre-arresting);
App.I.079 (*Deeper than Golubski: A culture of corruption defined the Kansas City, Kansas Police Department*, NPR https://www.kcur.org/news/2022-11-23/deeper-than-golubski-aculture-of-corruption-defined-the-kansas-city-kansas-police-department) .

[5] App.I.065 (https://www.pulitzer.org/winners/melinda-henneberger-kansas-city-star).

Despite this overwhelming authority, the district court ignored Kansas law, weighed the Complaint, construed its facts against Plaintiffs, and decided the credibility of Plaintiffs' claims of fear. This is error.

2. The Complaint alleges that Defendants' threats, including murder, made Plaintiffs too afraid to come forward.

Simply put, "[t]his case involves a shocking and revolting episode in law enforcement." *Screws v. U.S.*, 325 U.S. 91, 92 (1945). The Complaint alleges that Defendants' repeated threats prevented Plaintiffs from filing their lawsuit sooner because they were too afraid to come forward before Golubski was arrested:

> 258. Despite a desire to diligently pursue their claims, Plaintiffs were prevented by Defendants' conduct.
> 259. Plaintiffs acted in reliance upon Defendants' representations and conduct in that they reasonably believed that if they pursued their claims, they and their family would be harmed, killed, or set up for a criminal matter for which they were innocent, or that Defendants would interfere with Plaintiffs' and their families' criminal matters.
> 260. Plaintiffs' reliance on Defendants' conduct and statements was reasonable, and as a direct result of each, Plaintiffs did not pursue their claims or otherwise publicize Defendants' conduct. This detrimental reliance and the duress exerted by Defendants meant that Plaintiffs kept quiet about Defendants' conduct for decades—even as news reports began surfacing. Indeed, particularly because after years of rumor, public discussion, even intensive news reporting, nothing happened and Detective Defendants remained open, notorious, and free, Plaintiffs believed Defendants were above the law and remained positioned to retaliate against them or their families if Plaintiffs did come forward with the truth of Defendants' conduct.
> 261. It was not until September 15, 2022, when the FBI arrested Golubski and criminal charges were brought that Plaintiffs believed it

> was safe *enough* for them to finally come forward and seek the assistance of counsel to assert these claims.

App.I.090 (emphasis in original).

The district court was obligated to accept these factual allegations and their logical inferences as true. *Kan. Penn Gaming, LLC v. Collins*, 656 F.3d 1210, 1214 (10th Cir. 2011). Despite this, the district court made the factual determination that Plaintiffs were not afraid *enough* to survive a 12(b)(6) motion. Yet the district court never identified *when* Plaintiffs' fear should have subsided, why it subsided, what event alleviated their fear, or a date when the statute of limitations began running again. In so ruling, the district court reversed the applicable legal standard, weighing the Complaint's factual allegations and their reasonable inferences *against* Plaintiffs.

A. Weighing the Complaint, the district court made the factual decision that it did not believe Plaintiffs were afraid *enough* to not file suit earlier

The district court, just like this Court now, was obligated to "accept all the well-pleaded allegations of the complaint as true and must construe them in the light most favorable to the plaintiff." *Pace v. Swerdlow*, 519 F.3d 1067, 1073 (10th Cir. 2008) (internal quotation omitted). Despite this clear requirement, the district court decided that notwithstanding the Complaint's allegations, Plaintiffs' fear was unreasonable. This factual decision making by the district court was clear error. As detailed above, the Complaint contains extensive facts detailing Defendants' threats and coercive conduct that prevented Plaintiffs from timely filing their claims. *E.g.*,

App.I.090. Despite this, the district court factually decided that Plaintiffs were nevertheless unreasonable in waiting. App.II.175. When did Plaintiffs' fear end? Were they supposed to call and ask if Defendants would still murder them if they filed suit? Under Kansas law, the reasonableness of Plaintiffs' fear is a fact question in the jury's exclusive province. *Becker*, 429 P.3d at 219.

The district court's erroneous decision ignored nearly century-old Kansas law defining the applicability of equitable estoppel. In *City of Chetopa v. Bd. of Comm'rs of Labette Cnty.*, 133 P.2d 174 (Kan. 1943), the Kansas Supreme Court held "**equitable estoppel** is a rule of justice which in its proper field **prevails over all other rules**. It is a rule of last resort, but when it is aroused into activity, it **stays the operation of other rules** which have not run their course, when to allow them to proceed further would be a greater wrong than **to enjoin them permanently**. It may, in proper cases, operate to cut **off a right or privilege conferred by statute or even by the Constitution**." *Id.* at 177 (emphasis added, quotation omitted).

If plaintiffs are not permitted to proceed, injustice is the result. As the Kansas Supreme Court stated in 1922: "Public policy should, and we think does, prevent such an injustice." *Cramer v. Kan. City Rys. Co.*, 211 P. 118, 121 (Kan. 1922). In *Robinson v. Shah*, 936 P.2d 784, 790 (Kan. Ct. App. 1997), Kansas applied equitable estoppel to toll a statute of limitations *and* statute of report. *Id.* at 791. After collecting cases where Kansas courts applied equitable estoppel, *Robinson* explained

"equitable estoppel has been frequently used to prevent a defendant from relying on the statute of limitations as a defense **where the defendant's** fraudulent or **wrongful conduct has caused the plaintiff not to file suit** within the period of the statute of limitations." *Id.* at 798 (emphasis added).

That is *precisely* the factual scenario alleged in the Complaint: Defendants' wrongful conduct (rape, sexual assault, intimidation, threats, and openly and notoriously displaying their power to ensure fear remained) prevented Plaintiffs from filing within two years. "We do not concede that the law is so unjustly weighted on the side of the wrongdoer." *Id.* at 791. Instead, Plaintiffs' case "exemplifies the kind of 'extraordinary circumstances' that, in the interests of justice, require equitable tolling." *Arce v. Garcia*, 434 F.3d 1254, 1265 (11th Cir. 2006).

However, rather than interpreting and applying Kansas' equitable estoppel law, the district court relied on factually dissimilar cases from other jurisdictions to support its decision: *Alexander v. Okla.*, 382 F.3d 1206, 1218-19 (10th Cir. 2004) (Oklahoma Tulsa Race Riots tolling case, holding defendants did not hide "essential information" about plaintiffs' claims); *Van Tu v. Koster*, 364 F.3d 1196, 1199–200 (10th Cir. 2004) (Utah exceptional circumstances case from the My Lai Massacre, holding poverty and Vietnam War did not toll statute for a case filed nearly 25.5 years after the Vietnam War ended); *Sarfati v. Antigua And Barbuda*, 923 F. Supp. 2d 72, 82 (D.D.C. 2013) (New York breach of contract case, decided at summary

judgment, holding plaintiff's "own actions belie his claims that fear caused the delay," because he sent timely written demands for payment of the debt); *Vergara v. City of Chicago*, 939 F.3d 882, 886 (7th Cir. 2019) (an Illinois case citing, contrary to Kansas law, Seventh Circuit authority that retaliation is not a basis for equitable tolling of employment claims). None of these cases apply Kansas law. None of these cases involve rape, sexual assault, and murder by the Plaintiffs' governments. Indeed, only one, *Vergara*, involves a police threat.

The district court's reliance on *Sarfati*, 923 F. Supp. 2d 72 is perhaps the most confounding, given its reliance on *Arce*, 434 F.3d 1254. There, the Eleventh Circuit affirmed a district court's equitable estoppel of a statute of limitations defense for claims arising out of a kidnapping that occurred 20 years before, and where the involved defendants had been in the U.S. for over 10 years. *Id.* at 1256 (plaintiffs kidnapped in 1979, 1980, and 1983 and moved to U.S. in 1983 and 1997; defendants were Minister of Defense from 1979-1989 and became permanent U.S. residents in 1989; lawsuit filed in 1999). *Arce*'s rational easily translates to this case about corrupt cops terrorizing a community:

> "The quest for domestic and international legitimacy and power may provide regimes with the incentive to intimidate witnesses, to suppress evidence, and to commit additional human rights abuses against those who speak out against the regime. Such circumstances exemplify 'extraordinary circumstances' and may require equitable tolling so long as the perpetrating regime remains in power."

Id. at 1262 (collecting cases thereafter).

The same is true here. Defendants' regime remained in power for decades, underscoring the need for equitable estoppel. Only after Golubski's arrest on September 15, 2022, did Plaintiffs dare to believe "it was safe *enough* for them to finally come forward and seek the assistance of counsel to assert these claims." App.I.090 (emphasis in original). Notwithstanding, Plaintiffs remain afraid today.

Indeed, the district court acknowledged the Complaint's facts contradicted its holding. App.II.173 ("*Contra* Doc. 23 at 5 (citing Doc. 1 at ¶¶ 256-257, 266)"). Yet the district court erroneously weighed those facts, deciding it did not believe Plaintiffs were afraid *enough* to justify application of the doctrine. *Id.* Without analysis, the district court summarily concluded: Defendants' threats "do not support the notion that Plaintiffs could **reasonably rely** on those statements to delay bringing their federal lawsuit for several decades" (emphasis added). Its use of "reasonably rely" underscores the error: the district court made the factual determination—at the 12(b)(6) stage—that Plaintiffs' allegations of fear from Defendants' threats to rape, sexually assault, falsely imprison, and murder were *unreasonable*. This is error.

The error is highlighted by common understanding that trauma often delays victims from coming forward—particularly after sexual crimes. *U.S. v. Harvel*, 115 F.4th 714, 724 (6th Cir. 2024) *cert. denied*, 145 S.Ct. 1439 (2025) ("when picking a limitations period for rape, legislators might consider that victims often wait to come

forward due to the trauma that the crime caused"); *U.S. v. Briggs*, 592 U.S. 69, 77 (2020) (Alito, J.) ("trauma inflicted by [rape and other sexual] crimes may impede the gathering of the evidence needed to bring charges. Victims may be hesitant for some time after the offense about agreeing to testify. Thus, under current federal law, many such offenses are subject to no statute of limitations").

To reach its ruling, the district court disregarded the Complaint's facts and made the factual determination that Plaintiffs' fear was unreasonable. This is error.

B. The district court erroneously held Kansas law requires that each co-conspirator make a direct threat

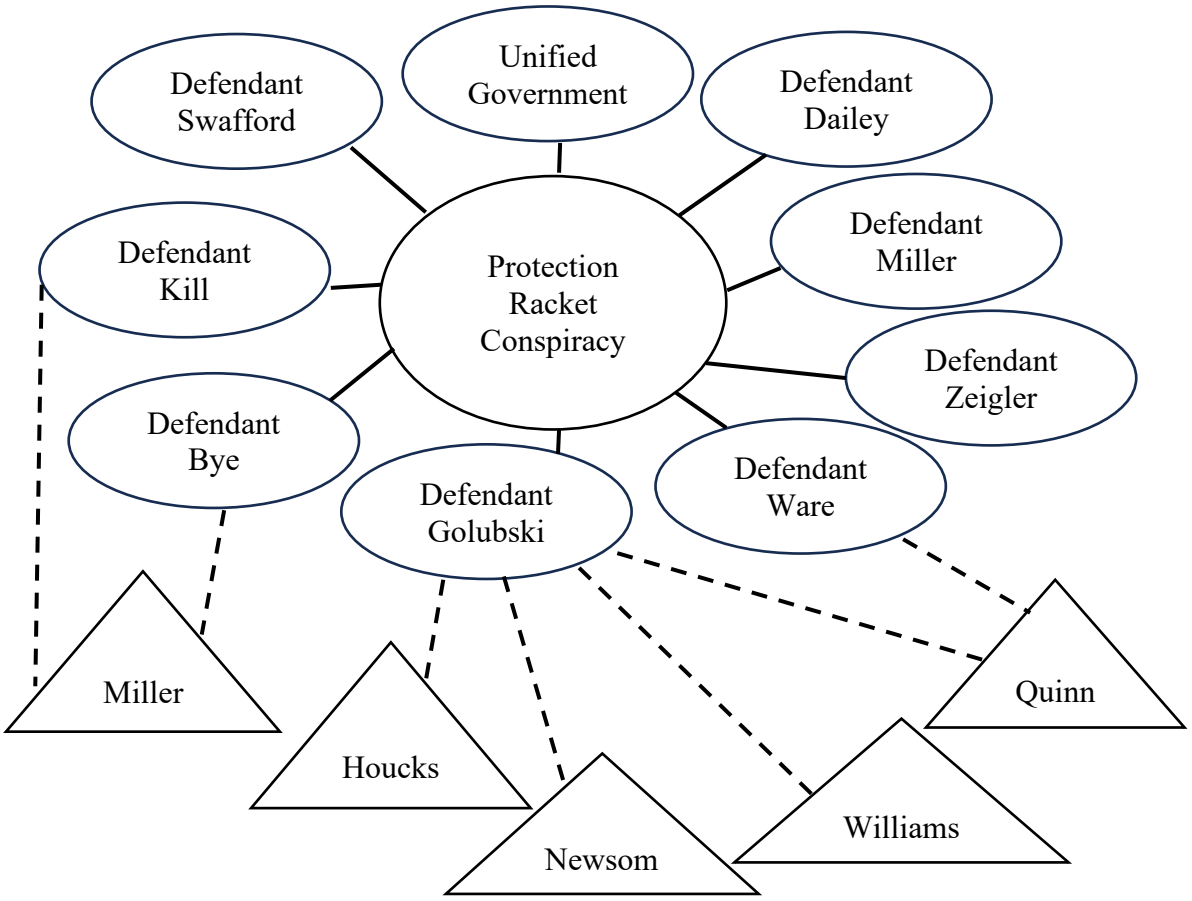
To dismiss all Defendants other than Golubski, the district court held that equitable estoppel could only apply to a conspirator who himself made a direct threat to Plaintiffs. App.II.175. To support this unprecedented interpretation of Kansas law, the district court's singular citation is the highly publicized Harvey Weinstein case. *Geiss v. Weinstein Co. Holdings LLC*, 383 F. Supp. 3d 156, 174-75 (S.D.N.Y. 2019). The Order fails to explain how the case supports its decision, but presumably the district court relied on the following statement by the New York judge:

> "Even if the doctrine of equitable estoppel extends to such circumstances, the doctrine's other requirements do not fall away: there must be threats or intimidation against each plaintiff by each defendant that plaintiff seeks to estop, the conduct must occur within the limitations period, and the plaintiff must bring suit within a reasonable period of time after the conduct ceases."

Id.

The district court's reliance on *Geiss* is erroneous for several reasons. Most obviously, the case applies New York, not Kansas law. Even more notably, *Geiss*' analysis of equitable estoppel does not involve a conspiracy allegation. *Id.* at 171. The opinion lacks any authority supporting its claim that equitable estoppel requires direct threats by each defendant against each plaintiff where a conspiracy claim is alleged. "Consequently, *Geiss* is an outlier…rejected by virtually every other court." *G.G. v. Salesforce.com, Inc.*, 76 F.4th 544, 565 n.20 (7th Cir. 2023) (discussing *Geiss'* "gloss on 'knowingly benefits'" thereafter collecting cases, including from CA1, CA11, and District of Colorado).

The district court's attempt to force an outlier, universally rejected New York case into this Kansas action runs headlong into Kansas' well-established, less stringent conspiracy law: "**Any act** done **by any conspirator** in furtherance of the common design and in accordance with the general plan **becomes the act of all**, and **each conspirator is responsible for such act**." *Brinker v. McCaslin*, 538 P.3d 1101, 1112 (Kan. Ct. App. 2023) (emphasis added). On this, Kansas law could not be clearer. Because of their conspiracy, any Defendant's threats became the threat of all, and each Defendant is responsible for every other Defendant's threats:



Regardless of whether *Geiss* accurately states New York law, it is immaterial in this Kansas case.

In Kansas, "not only is a conspirator liable for his own actions in the commission of a conspiracy, but he will also be held accountable for his co-conspirator's conduct." *Id*. This is long established in Kansas. *See, e.g.*, *Hokanson v. Lichtor*, 626 P.2d 214, 220 (Kan. Ct. App. 1981) (noting civil liability exists where "an act [is] done by one or more of the coconspirators pursuant to the scheme and in furtherance of the object" (quoting 15A C.J.S. Conspiracy §5, p. 606 (1967))). A threat by one conspirator is a threat by all.

C. The district court's "duress" analysis was a red herring

The district court, in effect, rewrote the Complaint and renamed Plaintiffs' equitable estoppel as "estoppel by duress." The district court then criticized Plaintiffs for failing to provide Kansas authority supporting this newly created subcategory of estoppel. But no such subcategory exists in Kansas law. Moreover, in minting this new Kansas law, the district court created an intra-district split. *Keith v. Werholtz*, No. 11-2281-KHV, 2012 WL 1059858, at *5 (D. Kan. Mar. 28, 2012) *aff'd sub nom. Keith v. Koerner*, 707 F.3d 1185 (10th Cir. 2013).

The district court also ignored Kansas duress law, which unsurprisingly also matches Plaintiffs' factual allegations. *Motor Equip. Co. v. McLaughlin*, 133 P.2d 149, Syl. ¶¶2-3 (Kan. 1943) (duress is a fact question for the jury, but "may be occasioned by threats of criminal prosecution and imprisonment…test is…whether the person threatened was deprived of the exercise of his free will and as a result thereof was induced to act to his detriment").

D. The district court confused "equitable tolling" with "equitable estoppel"

The district court also conflated "equitable tolling" with "equitable estoppel." Although the two "are often confused," "equitable tolling applies when the plaintiff is unaware of his cause of action, while equitable estoppel applies when a plaintiff who knows of his cause of action reasonably relies on the defendant's statements or conduct in failing to bring suit." *Est. of Amaro v. City of Oakland*, 653 F.3d 808, 814

(9th Cir. 2011) (internal quotations omitted); *accord* Black's Law Dictionary, Equitable Estoppel (12th ed. 2024) ("preventing one party from taking unfair advantage of another when, through false language or conduct, the person to be estopped has induced another person to act in a certain way, with the result that the other person has been injured in some way").

Plaintiffs have not claimed they were unaware that their civil rights were violated. Common sense says otherwise. Plaintiffs knew when Defendants raped them, sexually assaulted them, terrorized them, and otherwise abused them. Instead, Plaintiffs have alleged (deemed true at this point in the litigation), Defendants' threats and fear forced Plaintiffs to remain quiet. It was this fear, including Defendants' threats of *murder* that stopped Plaintiffs from filing suit. Should Defendants receive the benefits of a statute of limitations because they were successful in terrifying Plaintiffs into not filing suit within two years? Kansas law does not support such an inequitable result.

* * *

Accepting Plaintiffs' claims of fear as true and applying Kansas' estoppel law leads to one undeniable conclusion: the district court erred. The district court's order should be reversed and remanded back for discovery consistent with this Court's order.

II. THE DISTRICT COURT ERRED IN APPLYING KANSAS' STATUTE OF LIMITATIONS, BECAUSE CONGRESS ABROGATED STATE LAWS LIMITING VICTIM'S RIGHTS

Congressional legislation is presumed to retain then-existing common law, and "[i]n order to abrogate a common-law principle, the statute must 'speak directly' to the question addressed by the common law." *U.S. v. Texas*, 507 U.S. 529, 534 (1993) (quoting *Mobile Oil Corp. v. Higginbotham*, 436 U.S. 618, 625 (1978)). Here, Congress expressly abrogated any common law that might limit a victim's constitutional rights under §1983.

1. Congress abrogated state laws in §1983's original text

In 1871, Congress passed §1983 in response to rampant constitutional violations against former slaves during Reconstruction. Patrick Jaicomo and Daniel Nelson, *Section 1983 (Still) Displaces Qualified Immunity*, 49 Harv. J.L. & Pub. Pol'y at 38 n.201 (2026) (forthcoming)[6] (describing Reconstruction's fight against the South's "endless game of whack-a-mole, which the 1871 Congress hoped to end" with §1983). "The source of this section in the doings of the Ku Klux and the like is obvious, and acts of violence obviously were in the mind of Congress. Naturally Congress put forth all its powers." *U.S. v. Mosely*, 238 U.S. 383, 387 (1915) (Holmes, J.) (discussing analogous criminal statute). "As is well known, for many

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6 *Available at* https://ssrn.com/abstract=5124275.

years after Reconstruction, the Fourteenth Amendment was almost a dead letter as far as the civil rights of Negroes were concerned." *U.S. v. Price*, 383 U.S. 787, 801 n.9 (1966). The history influencing this legislation "cannot be ignored, unless we would risk throwing overboard what the nation's greatest internal conflict created and eight decades have confirmed, in **protection of individual rights against impairment by the states**." *Screws*, 325 U.S. at 119 (Rutledge, J., concurring in result) (emphasis added). "The history should not require retelling. But old and established freedoms vanish when history is forgotten." *Id.* at 120.

Because States could not be entrusted to enforce civil rights for newly freed slaves, Congress passed the Ku Klux Klan Act or the Civil Rights Act of 1871:

> "That any person who, under color of any law, statute, ordinance, regulation, custom, or usage of any State, shall subject, or cause to be subjected, any person within the jurisdiction of the United States to the deprivation of any rights, privileges, or immunities secured by the Constitution of the United States, shall, **any such law, statute, ordinance, regulation, custom, or usage of the State to the contrary notwithstanding**, be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress.

Ku Klux Klan Act of 1871, ch. 22, §1, 17 Stat. 13 (1871) (emphasis added). This emphasized "Notwithstanding Clause" was omitted by the Reviser of the Federal Statutes in the first compilation of federal law in 1874. Alexander A. Reinert, *Qualified Immunity's Flawed Foundation*, 111 Calif. L. Rev. 201, 207 (2023). As a

result, jurisprudence regarding statutes of limitations developed based on an erroneous understanding of Congressional intent, despite its plain language.

The impact of the failure to utilize Congress' actual language, Notwithstanding Clause intact, lowered citizens' rights from congressional intent. Originally, the Supreme Court determined that because Congress did not expressly create a statute of limitations in §1983, Congress must have intended courts to use each state's most analogous statutes of limitations. *Board of Regents v. Tomanio*, 446 U.S. 478, 483-84 (1980). Then, in 1985, "with hardly a backward look," the Supreme Court "le[ft] behind a century of precedent." *Wilson v. Garcia*, 471 U.S. 261, 283 (1985) (O'Connor, J., dissenting). Over 100 years after Congress passed the Civil Rights Act of 1871, courts were still inventing and changing how statutes of limitations were applied to constitutional violations. *Garcia v. Wilson*, 731 F.2d 640, 642-51 (10th Cir. 1984).

In 1985, without considering Congress' original language, Notwithstanding Clause intact, the Supreme Court predicted that if "the 42d Congress expressly focused on the issue decided today, we believe it would have characterized § 1983 as conferring a general remedy for injuries to personal rights." *Wilson*, 471 U.S. at 278. As a result, *Wilson* adopted the Tenth Circuit's change from each state's "most analogous" to its personal injury statute of limitations. *Id.* at 276. "In all, the Court

has perceived a need for uniformity and has simply seized the opportunity to legislate it." *Id.* at 284 (O'Connor, J., dissenting).

In affirming the Tenth Circuit's upending prior Supreme Court precedent, the Supreme Court relied on §1988's "three-step process" for applying statutory and common law. *Id*. at 267. But this too ignored Congress' plain language. First, §1983 must be "exercised and enforced in conformity with the laws of the United States," 42 U.S.C. §1988(a), which starts with the plain language of §1983 itself including its Notwithstanding Clause. Then—*and only if* federal law is (i) "not adapted to the object;" or (ii) "deficient in the provisions necessary to furnish suitable remedies and punish offenses against law"—state law can be used. *Id.* But even when state law *can* be used, it *cannot* be used where it is "inconsistent with the Constitution and laws of the United States." *Id.* None of these three steps are fulfilled by borrowing Kansas' statute of limitations.

A. State statutes of limitations fail to exercise and enforce §1983 in conformity with federal law

The "chief goals" of §1983 are compensation to victims and deterrence of constitutional violations, with "subsidiary goals of uniformity and federalism." *Hardin v. Straub*, 490 U.S. 536, 539 (1989). Applying different States' statutes of limitations frustrates all four goals. Indeed, the Notwithstanding Clause itself plainly prohibits limiting victims by any state's law. Jaicomo, 49 Harv. J.L. & Pub. Pol'y at 41 ("The Notwithstanding Clause was [Congress'] 'fail-safe way of ensuring that

§1983' would 'absolutely, positively prevail' over contrary state law, wherever, and whenever, its source" (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts*, 127 (2012))).

This also makes practical sense. State officials are obligated to support the Constitution because they "have an essential agency in giving effect to the federal Constitution." Federalist No. 44 (J. Madison). Thus, their violations of the Constitution should receive no protection, because otherwise "there can be no sanction for the laws but [by] force." Federalist No. 27 (A. Hamilton). "For it was abuse of basic civil and political rights, by states and their officials, that the Amendment and the enforcing legislation were adopted to uproot." *Screws*, 325 U.S. at 116–17 (Rutledge, J., concurring).

i. Plaintiffs' civil rights were violated yards away from Missouri's longer statute of limitations

This frustration of §1983's four goals is highlighted by the geography of this case. Plaintiffs' constitutional rights were violated in Kansas City, Kansas. But only a few yards away and across a river is Kansas City, Missouri, with its five-year statute of limitations. Mo. Rev. Stat. §516.120(4); *Farmer v. Cook*, 782 F.2d 780, 780 (8th Cir. 1986). Contemporaneously with the passage of §1983, the Supreme Court lamented such unjust results. *McCluny v. Silliman*, 28 U.S. 270, 274 (1830) ("To apply the regulations of the several states to such cases, would produce the absurdity and injustice of different laws, and different limitations existing in

different states"). Given the historical need for §1983, this contemporaneous authority is particularly instructive.

The variedness of statutes of limitations across the country underscores the departure from *McCluny* and the 42nd Congress' understanding of judicial interpretation and aims. *Compare* Tenn. Code. Ann. §28-3-104 (one-year Tennessee) *with* Kan. Stat. Ann. §60-513 (two-years Kansas) *with* Ark. Code Ann. §16-56-105 (three-year Arkansas) *with* Fla. Stat. §95.11 (four-years Florida) *with* Mo. Rev. Stat. §516.120 (five-years Missouri) *with* Me. Rev. Stat. Ann. tit. 14, §75 (six-years Maine).

Of course, if uniformity were the desire, *Wilson*, 471 U.S. at 284 (O'Connor, J., dissenting), a patchwork of 50 different statutes of limitations hardly a solution. This lack of uniformity is brought into focus by the yards separating Defendants' constitutional violations from Kansas' state line with Missouri. As a result of the district court's order, Plaintiffs have suffered just such an absurd result and its corresponding injustice.

ii. Inconsistently, the district court held Golubski could be criminally *prosecuted, but not* civilly *liable*

This civil case's companion criminal litigation also magnifies the failure to exercise and enforce §1983 in conformity with federal law. Golubski was federally indicted for violating Plaintiff Williams' civil rights under §1983's analogous criminal statute, 18 U.S.C. §242. *Golubski*, 2024 WL 1199256, at *1; App.I.045.

Comparing the results in this case with the criminal prosecution is uniquely relevant because "[t]he Supreme Court has long treated the elements and textual language of the two statutes—42 U.S.C. § 1983 and 18 U.S.C. § 242—similarly." *Golubski*, 2024 WL 3202345, at *7 (citing *Monroe v. Pape*, 365 U.S. 167, 171-87 (1961)).

In the criminal case, Golubski moved to dismiss the charges based on the same statute of limitations argument in this case—he raped Plaintiffs decades ago. *Golubski*, 2024 WL 3202345, at *2. In denying Golubski's motion, the district court (the very same district court as in this case) found that 18 U.S.C. §3281's unlimited statute of limitations period controlled. *Id.* In support, the district court confirmed its decision was supported by "[s]ound reasons…For one thing, it provides clarity as to which limitations period applies because it removes the possibility that ever-evolving precedent changes the applicable limitations period. Indeterminacy is antithetical to congressional purpose when enacting a limitations statute." *Id.* at *3 (citing *Briggs*, 592 U.S. at 74).

"The protections of the Constitution do not change according to the procedural context in which they are enforced—whether the allegation that constitutional rights have been transgressed is raised in a civil action or in a criminal prosecution, they are the same constitutional rights." *U.S. v. Reese*, 2 F.3d 870, 884 (9th Cir. 1993). Yet that is precisely what the district court's irreconcilable rulings did. Golubski was to be criminally tried for violating Williams' civil rights by raping her. But at the

same time, Williams was barred from maintaining a civil action for the very same civil rights violations through the very same rapes before the very same judge. The district court's use of Kansas' statute of limitations is inconsistent with federal law.

iii. This unjust and inconsistent result undercuts the justification for ever applying statutes of limitations

The unjust and inconsistent decision suffered by Plaintiffs also defies logic and undercuts against equitable justifications for statutes of limitations. For example, in *Wilson*, the majority justified applying a statute of limitations because "[j]ust determinations of fact cannot be made when, because of the passage of time, the memories of witnesses have faded or evidence is lost. In compelling circumstances, even wrongdoers are entitled to assume that their sins may be forgotten." *Wilson*, 471 U.S. at 271. But just four years later, in an opinion also authored by Justice Stevens, the Supreme Court noted "[t]he passage of time—during which memories may dim, witnesses depart, and evidence disappear—is not necessarily an advantage to the plaintiff…who shoulders the burden of proof, and there is a vast difference between preserving the right to file a complaint and convincing a trier of fact that the complaint's allegations are true." *Hardin*, 490 U.S. at 543 n.12.

Hardin's equitable considerations, not *Wilson*'s, should control the outcome in this case. The district court obviously believed that "just determinations of fact" could be made for criminal liability, and this companion civil case should be decided similarly. *Golubski*, 2024 WL 3202345, at *2.

Whether Plaintiffs can prove their allegations is their burden. And, indeed, any factual weighing of those allegations at a motion to dismiss stage is clear error. *Albers*, 771 F.3d at 700. Meanwhile, sufficient memories, witnesses, and evidence existed to support Golubski's criminal prosecution. First, take Golubski's suicide. *U.S. v. Golubski*, No. 5:22-cr-4005-TC, Doc. 178 (12/2/24); *Frantz*, 521 P.3d at 1130 (after collecting cases, "[a]ssuming, without deciding, that evidence of suicide…can be probative of a witness' state of mind and may tend to establish a guilty conscience in certain circumstances"). Second, Defendant Miller, a former police chief supervising Golubski, has publicly complained *to a newspaper reporter* that Golubski's suicide prevented Miller from testifying for Golubski. '*Y'all never monitored him and we were never safe': Golubski plays God one last time*, The Kansas City Star[7] (quoting Miller: "It would have been nice for that to come out in trial…with…hopefully a sketch artist").

How are civil remedies unavailable where criminal sanctions are available? Justice cannot entertain a bar on the courthouse doors for a civil matter where the same misconduct is being criminally prosecuted. This unjust and inconsistent result undercuts the justification for applying a statute of limitations at all.

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[7] *Available at* https://www.kansascity.com/opinion/opn-columns-blogs/melinda-henneberger/article296448699.html.

B. §1983 is adapted to its object and sufficient to furnish suitable remedies and punish offenses of constitutional violations

First, §1983 itself is adapted to the object of the law. As §1988 states, the object of the statutory scheme is "the protection of all persons in the United States in their civil rights, and for their vindication." 42 U.S.C. §1988(a). Congress' omission of a statute of limitations *furthers* this object, and limiting citizens' rights based on a state's statute of limitations *hinders* this object. This reality is bolstered when faced with the facts of this case, where the state actors actively threatened and coerced Plaintiffs to not file their lawsuits. Thus, the first element required before using state law under §1988 is not present.

Second, §1983 and its Notwithstanding Clause are not "deficient in the provisions necessary to furnish suitable remedies and punish offenses" of violations of Plaintiffs' constitutional rights. First, this factor focuses only "suitable remedies" and "punish[ing] offenses." Thus, a State's interest in *avoiding liability* is not a relevant factor. Second, a statute of limitations is an impediment to a victim's rights, not "necessary" for any "remedies." As a result, the second element required before using state law under §1988 is not present.

C. State statutes of limitations would be inconsistent with the Constitution and the laws of the United States.

Even if the foregoing were not true, state statutes of limitations cannot be used because doing so is inconsistent with the Constitution and U.S. laws. When creating

law, "Congress does not write upon a clean slate," and courts presume congressional intent to retain common law. *Texas*, 507 U.S. at 534. In 1871, Congress knew of judicial desire for statutes of limitations. *See, e.g., Adams v. Woods*, 6 U.S. 336, 342 (1805) (Marshall, J., complaining *in dicta* that an action on debt for penalties "might, in many cases, be brought at any distance of time," which "would be utterly repugnant to the genius of our laws"). Despite this hyperbole by Justice Marshall, Congress not only omitted a statute of limitations in §1983, its expressly abrogated any state law (statutory or common) to the contrary.

Congress' goal was enforcement of freed slaves' constitutional rights, not protection of state agents violating these rights. This framework aligns with the United States' long-standing belief that the English maxim "the king can do no wrong" has no place in our system of government—no man is above the law. *Langford v. U.S.*, 101 U.S. 341, 342-43 (1879). "To the extent the Reconstruction Congress even contemplated" a statute of limitation defense for violating constitutional rights "would apply to the Civil Rights Act of 1871, the Notwithstanding Clause would have sufficed to assuage those concerns." Reinert, 111 Cal. L. Rev. at 236.

The understanding that a government could not hide behind a statute of limitation for denying its citizens of their natural rights moved Jefferson's quill as some of King George III's cardinal sins. *The Declaration of Independence* (1776)

("He has dissolved representative houses repeatedly…He has refused for a long time"). Indeed, colonial delay in "throwing off such Government" was a justification for the merit of the cause, since "all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves." *Id.* One simply cannot argue that the Founding Fathers believed King George III was absolved for abuses occurring more one year ago in Kentucky. Ky. Rev. Stat. Ann. §413.140(1)(a); *Collard v. Ky. Bd. of Nursing*, 896 F.2d 179, 182 (6th Cir. 1990). Nor did the Reconstruction Congress intend §1983 to be limited by southern Tennessee's one year statute of limitations, but allow vindication of constitutional violations in northern Maine for six years. *Compare* Tenn. Code. Ann. §28-3-104; *Berndt v. Tenn.*, 796 F.2d 879, 883 (6th Cir. 1986) *with* Me. Rev. Stat. Ann. tit. 14, §752; *Small v. Inhabitants of the City of Belfast*, 796 F.2d 544, 546 (1st Cir. 1986).

Universally, a Notwithstanding Clause "clearly signals the drafter's intention," "supersede[s] all other laws," and "a clearer statement is difficult to imagine." *Cisneros v. Alpine Ridge Grp.*, 508 U.S. 10, 18 (1993) (internal quotations omitted) (collecting cases); *accord Brayman v. KeyPoint Gov't Sols., Inc.*, 83 F.4th 823, 834 (10th Cir. 2023). The Notwithstanding Clause means what it says: no state law (common or statutory) may limit a victim's right to vindicate their civil rights. "We would be lax in our duty if we did not give recognition also to the congressional purpose to override [statutes of limitations] when other considerations were thought

more compelling than the preservation of the status quo. *Shomberg v. U.S.*, 348 U.S. 540, 547–48 (1955) (holding deciding otherwise would "nullify this clear legislative purpose and render meaningless the 'notwithstanding language'"). Allowing States to hide behind statutes of limitations they create to shield their actors' constitutional violations is inconsistent with both the Constitution and federal law, including §1983's plain language.

In other more overt contexts, courts have repeatedly struck down self-serving statutes as unconstitutional. *Progress Dev. Corp. v. Mitchell*, 286 F.2d 222, 231 (7th Cir. 1961) (holding common law immunity not a shield to discrimination "to preclude Negroes from moving into an all-white community"); *McLaughlin v. Tilendis*, 398 F.2d 287, 290 (7th Cir. 1968) (holding Illinois Tort Immunity Act did not create absolute immunity for constitutional violations because it "would frustrate the very purpose of [§]1983"); *Martienz v. California*, 444 U.S. 277, 284 n.8 (1980) (refusing to apply California's absolute immunity statute because §1983 violations "cannot be immunized by state law" (quotation omitted)); *Howlett ex rel. Howlett v. Rose*, 496 U.S. 356, 377 (1990) (striking Florida statute attempting to "absolutely immune[ize]" state actors of §1983 violations); *Williams v. Marinelli*, 987 F.3d 188, 201 (2d Cir. 2021) (striking Connecticut attempt to recoup "at least 60%" of §1983 damage awards).

In *Almond v. Kent*, 459 F.2d 200 (4th Cir. 1972), the Fourth Circuit struck down a special one-year statute of limitations for personal injuries where the victim did not die. "Immediately following our decision in *Almond*, The Virginia General Assembly enacted an amendment to the statute construed in *Almond* which was approved March 15, 1973, and read in pertinent part: 'Notwithstanding any other provision of law to the contrary, ever action brought pursuant to the Civil Rights Act of 1871, 42 U.S.C. § 1983, shall be brought within one year next after the right to bring the same shall have accrued.'" *Johnson v. Davis*, 582 F.2d 1316, 1318 (4th Cir. 1978). The Fourth Circuit struck this law down too, finding Virginia "disregard[ed] the constitutional values to be protected" by §1983, *id.* at 1317, a federal statute that "should not be relegated in the Virginia scheme of limitation periods to a period of only one year." *Id.* at 1319.

These opinions underscore the inconsistency between State desires to limit their liability for constitutional violations and the Constitution and federal law's mandate for compensation and deterrence. *Owen v. City of Indep., Mo.*, 445 U.S. 622, 651 (1980) ("Moreover, § 1983 was intended not only to provide compensation to the victims of past abuses, but to serve as a deterrent against future constitutional deprivations, as well" (citations omitted)). The inequitable lesson taught by the district court's order is for state actors to ensure their threats are heinous enough to outlast that state's statute of limitations.

2. The Reviser of Statute's omission of the "Notwithstanding Clause" did not change Congress' abrogation of state common law

Unsurprisingly, the Reviser was not authorized to make any substantive changes or alter the scope of Congress' law. *Hauge v. Comm. for Indus. Org.*, 307 U.S. 496, 510 (1939) (noting Reviser changes were "not intended to alter the scope" of §1983); Revised Statutes of the United States, Preface, at v (1878) (stating Reviser had no authority to make substantive changes); Reinert, 111 Cal. L. Rev. at 236 n.238 (explaining §1983 was unaltered by Reiver's omission of Notwithstanding Clause); Jaicomo, 49 Harv. J.L. & Pub. Pol'y at 55-67 (in-depth research on the "'immaterial' omission of the Notwithstanding Clause" through the Revisers, Thomas Durant, Congress and its Revision Committee, and the Supreme Court).

Therefore, the Notwithstanding Clause's omission by the Reviser "changes nothing. The Notwithstanding Clause was never necessary for Section 1983's displacement of qualified immunity" or State statutes of limitations. Jaicomo, 49 Harv. J.L. & Pub. Pol'y at 69. Instead, the Notwithstanding Clause's omission—"a very important clause"—did not change the effect of §1983 because the "corrective character of the legislation" was preserved. *Civil Rights Cases*, 109 U.S. 3, 16-17 (1883); *accord Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 422 n.29 (1968) (noting omission of a Notwithstanding Clause was "immaterial" because it was designed to "emphasiz[e] the supremacy…over inconsistent state or local laws, if any. It was deleted, presumably as surplusage, in § 1978 of the Revised Statutes of 1874"). Not

only was the Reviser unauthorized to supplant Congress' language, the Supreme Court has held the omission of a Notwithstanding Clause could not change what Congress passed.

3. This issue—Congress' abrogation of state common law—has not been reviewed by this Court or the Supreme Court

At first blush, it might seem easy to defer consideration of the "seismic implications" of the discovery of the Notwithstanding Clause, claiming the status of mere "middle-management circuit judges [that] cannot overrule the Supreme Court." *Rogers v. Jarrett*, 63 F.4th 971, 981 (5th Cir.) (Willet, J., concurring), *cert denied* 144 S.Ct. 193 (2023). But this misses the point. "[T]he [Supreme] Court's misstep here is that it has entirely failed to grapple with the Civil Rights Act's enacted text." Reinert, 111 Cal. L. Rev. at 244.

This Court's ruling on the implications of the Notwithstanding Clause does not require overruling of any Supreme Court opinion. Instead, this unique case is akin to Congress changing a statute upon which a prior Supreme Court opinion was based. In such scenarios, the Supreme Court, this Court, and sister Circuits have modified the application of prior holdings, where necessary:

- Supreme Court: *Landgraf v. USI Film Products,* 511 U.S. 244, 250–251 (1994) (listing eight decisions legislatively overruled by the Civil Rights Act of 1991 and noting "§1981, expressly identifies as one of the Act's purposes 'to

respond to recent decisions of the Supreme Court by expanding the scope of relevant civil rights statutes in order to provide adequate protection to victims of discrimination'");

- *First*: *Harvey v. Johanns*, 494 F.3d 237, 241 (1st Cir. 2007) ("Congress responded swiftly and precisely" "to pull the legs out from under" a prior opinion);
- *Second*: *Rogers v. Consol. Rail Corp.*, 948 F.2d 858, 861 (2d Cir. 1991) ("Congress responded" to the Supreme Court "by passing a constitutional version of the law three months later," thereby superseding the opinion by statute);
- *Third*: *Francis v. Mineta*, 505 F.3d 266, 270 (3rd Cir. 2007) ("Congress responded by enacting" a new law);
- *Fourth*: *U.S. v. Guzman-Velasquez*, 919 F.3d 841, 845 (4th Cir. 2019) (same);
- *Fifth*: *Opulent Life Church v. City of Holy Springs, Miss.*, 697 F.3d 279, 289 (5th Cir. 2012) (same);
- *Sixth*: *Munaco v. U.S.*, 522 F.3d 651, 653 (6th Cir. 2008) (same);
- *Seventh*: *U.S. v. Cantrell*, 617 F.3d 919, 922 n.4 (7th Cir. 2010) (same);
- *Eighth*: *Close v. U.S.*, 679 F.3d 714, 718 (8th Cir. 2012) (same);
- *Nineth*: *Adams v. U.S.*, 420 F.3d 1049, 1052 (9th Cir. 2005) (same);
- *Tenth*: *Knox v. Bland*, 632 F.3d 1290, 1292 (10th Cir. 2011) (prior opinions "were abrogated by" statute);

- Eleventh: *Knight v. Thompson*, 797 F.3d 934, 943 (11th Cir. 2015) (Congress serially superseded Supreme Court opinions under "the adage 'where there's a will, there's a way'");
- D.C. Circuit: *United Am., Inc. v. N.B.C.-U.S.A. Hous., Inc. Twenty Seven*, 400 F. Supp. 2d 59, 64 (D.D.C. 2005) ("the winds of change have modified the statutory landscape"); and
- Federal Circuit: *Morgan v. Principi*, 327 F.3d 1357, 1361 (Fed. Cir. 2003) ("Congress responded to this court's entreaty" to pass a new law).

In short, this Court possesses authority to review §1983 with the benefit of the forgotten Notwithstanding Clause, treating the matter as if Congress had amended the statute. When the law changes, this Court is not bound by prior Supreme Court opinions analyzing the wrong law. Even a three-judge panel of this Court can reevaluate Tenth Circuit law without en banc review where there is a statutory change. *U.S. v. Jones*, 818 F.3d 1091, 1100 (10th Cir. 2016).

Alternatively, the Court possesses the ability to review the Notwithstanding Clause substantively under a "narrowing from below" theory. *Tyler v. Hillsdale Cnty. Sheriff's Dep't*, 837 F.3d 678, 704 n.1 (6th Cir. 2016) (Batchelder, J., concurring) (citing Richard M. Re, *Narrowing Supreme Court Precedent from Below*, 104 Geo. L.J. 921, 962–63 (2016)). "[L]ower courts sometimes narrow from below in order to provoke the [Supreme] Court to reconsider its own decisions. 104

Geo. L.J. at 925 (noting the Arizona Supreme Court's narrow interpretation of a widely followed Supreme Court ruling that "successfully prompted the Justices to reconsider a ruling that the Court itself has come to question").

As Professor Re states, "signals" are "deliberate views…with the apparent intention that lower courts will pick up the message. And the lower courts often do just that, sometimes even using the term 'signal.'" *Id.* at 942-44. Regarding the Notwithstanding Clause, Justice Sotomayor has lit a neon light, almost expressly requesting a circuit split. *Price v. Montgomery Cnty., Ky.*, 144 S. Ct. 2499, 2500 (2024) (Sotomayor, J., stmt. respecting denial of cert.); *accord Ziglar v. Abbasi*, 582 U.S. 120, 160 (2017) (Thomas, J., concurring in part) (criticizing qualified immunity jurisprudence caused judiciary to "substitute our own policy preferences for the mandates of Congress").

This Court has a well-established history of "reading signals" and "narrowing from below," even within §1983. Despite "150 years" of §1983 law and its "settled practice" of borrowing the statute of limitations from the most analogous state law, *Wilson*, 471 U.S. at 285, 282 (O'Connor, dissenting), *this Court* "reviewed the varying approaches" from Courts of Appeals and created its own methodology, thereby securing Supreme Court review. *Id.* at 265. *This Court* "determined to give en banc consideration to this case in order to harmonize our decisions in this area, resolve any inconsistencies, and establish a uniform approach to govern resolution

of this question in future cases." *Garcia*, 731 F.2d at 642. In doing so, just as Professor Re opined, *this Court* provoked Supreme Court review, its modification of established precedent was embraced, and the law was changed.

Justice Frankfurter said it best:

> the relevant demands of stare decisis do not preclude considering, for the first time thoroughly and in the light of the best available evidence of congressional purpose, a statutory interpretation which started as an unexamined assumption on the basis of inapplicable citations and has the claim of a dogma solely through reiteration. Particularly is this so when that interpretation, only recently made, was at its inception a silent reversal of the judicial history of the Civil Rights Acts for three quarters of a century.

Monroe, 365 U.S. at 220-21 (Frankfurter, J., dissenting in part), *overruled by Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658 (1978) (relying on Frankfurter dissent from *Monroe*). "Wisdom too often never comes, and so one ought not to reject it merely because it comes late." *Henslee v. Union Planters Nat. Bank & Tr. Co.*, 335 U.S. 595, 600 (1949) (Frankfurter, J., dissenting).

* * *

With the benefit of recent scholarship from Reinert, Jaicomo, and Nelson, predictions of Congress' thoughts from 1871 fall woefully short. Indeed, Congress' own words evidence its intent: using "sweeping language: 'Every person shall be liable.' To ensure courts would not disregard that text, they told courts: Every means every, *any contrary state law notwithstanding*—including" statutes of limitations.

Jaicomo, 49 Harv. J.L. & Pub. Pol'y at 72 (emphasis in original). With the rediscovery of these words, the judiciary is compelled to follow Congress' directive. This case should be reversed and remanded.

CONCLUSION

Based on the foregoing, the Complaint, Kansas law, and Congress' words all compel reversal of the district court's Order and remand for further proceedings.

Otherwise, §1983's "lofty words, however, are just that—pretty parchment promises—if the judicial fine print of madeup caveats, exceptions, and qualifiers ensures that abuses (and abusers) get a pass, even for the most egregious, conscious-shocking deprivations." *Wilson v. Midland Cnty., Texas*, 116 F.4th 384, 405 (5th Cir. 2024) (Willett, King, Elrod, Graves, Higginson, Douglas, JJ., dissenting).

Respectfully submitted,

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STATEMENT REGARDING ORAL ARGUMENT

Appellants respectfully request oral argument given that this case presents a question of first impression in this circuit, namely, whether the previously unknown and unanalyzed Notwithstanding Clause prevents state statutes of limitations from being applied to §1983 claims.

CERTIFICATE OF COMPLIANCE

I hereby certify that:

1. This brief complies with the type-volume limitations of Fed. R. App. P. 32(g)(1) because it contains 11,721 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. 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 Word for Microsoft 365 in Times New Roman 14-point font.

Dated: July 30, 2025

/s/ Quentin M. Templeton
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CERTIFICATE OF DIGITAL SUBMISSION

Pursuant to this Court's guidelines on the use of the CM/ECF system, I hereby certify that:

1. All required privacy redactions have been made;

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Dated: July 30, 2025

/s/ Quentin M. Templeton
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CERTIFICATE OF SERVICE

I hereby certify that on July 30, 2025, I electronically filed a true, correct, and complete copy of the foregoing Brief of Appellants with the Clerk of the County for the United States Court of Appeals for the Tenth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Dated: July 30, 2025

/s/ Quentin M. Templeton
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ADDENDUM

DOCUMENT DESCRIPTION	DKT. NO.	ADDENDUM NO.
MEMORANDUM AND ORDER	44	A
JUDGMENT IN A CIVIL CASE	45	B
ORDER	49	C
CIVIL RIGHTS ACT OF 1871, CH. 22, §1, 17 STAT. 13 (1871)	-	D

Addendum A

In the United States District Court
for the District of Kansas

Case No. 23-cv-02489-TC

MICHELLE HOUCKS, ET AL.,

Plaintiffs

v.

UNIFIED GOVERNMENT OF WYANDOTTE COUNTY AND KANSAS CITY, KANSAS, ET AL.,

Defendants

MEMORANDUM AND ORDER

Five Plaintiffs sued the Unified Government of Wyandotte County and Kansas City, Kansas and eight former or current police chiefs and detectives in their individual capacities under 42 U.S.C. § 1983, alleging that Defendants violated their constitutional rights. Doc. 1. Defendants moved to dismiss. Docs. 17 & 19. For the following reasons, Defendants' motions are granted.

I

A

A federal district court may grant a motion to dismiss for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). To survive a motion to dismiss for failure to state a claim, the complaint need only contain "a short and plain statement … showing that the pleader is entitled to relief" from each named defendant. Fed. R. Civ. P. 8(a)(2); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Two "working principles" underlie this standard. *Kan. Penn Gaming, LLC v. Collins*, 656 F.3d 1210, 1214 (10th Cir. 2011); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009). First, a court ignores legal conclusions, labels, and any formulaic recitation of the elements. *Penn Gaming*, 656 F.3d at 1214. Second, a court accepts as true all remaining

allegations and logical inferences and asks whether the claimant has alleged facts that make his or her claim plausible. *Id.*

A claim need not be probable to be considered plausible. *Iqbal*, 556 U.S. at 678. But the facts, viewed in the light most favorable to the claimant, must move the claim from conceivable to plausible. *Id.* at 678–80. The "mere metaphysical possibility that some plaintiff could prove some set of facts in support of the pleaded claims is insufficient; the complaint must give the court reason to believe that this plaintiff has a reasonable likelihood of mustering factual support for these claims." *Ridge at Red Hawk, L.L.C. v. Schneider*, 493 F.3d 1174, 1177 (10th Cir. 2007).

Plausibility is context specific. The requisite showing depends on the claims alleged, and the inquiry usually starts with determining what the plaintiff must prove at trial. *See Comcast Corp. v. Nat'l Ass'n of African Am.-Owned Media*, 589 U.S. 327, 332 (2020). In other words, the nature and complexity of the claim(s) define what plaintiffs must plead. *Cf. Robbins v. Oklahoma*, 519 F.3d 1242, 1248–49 (10th Cir. 2008) (comparing the factual allegations required to show a plausible personal injury claim versus a plausible constitutional violation with multiple defendants).

Ordinarily, a motion to dismiss is decided on the basis of the pleadings alone. *Smith v. United States*, 561 F.3d 1090, 1098 (10th Cir. 2009). But a "district court may consider documents referred to in the complaint if the documents are central to the plaintiff's claim and the parties do not dispute the documents' authenticity." *Alvarado v. KOB-TV, L.L.C.*, 493 F.3d 1210, 1215 (10th Cir. 2007) (citation and internal quotation marks omitted); *Waller v. City & Cnty. of Denver*, 932 F.3d 1277, 1282 (10th Cir. 2019).

This dispute implicates an affirmative defense. At the pleading stage, the defendant bears the burden of pleading affirmative defenses. *Gomez v. Toledo*, 446 U.S. 635, 640 (1980). A plaintiff need not anticipate those defenses in the complaint to survive a motion to dismiss. *Fernandez v. Clean House, LLC*, 883 F.3d 1296, 1298–99 (10th Cir. 2018). Sometimes, however, it is appropriate to dismiss a case based on an affirmative defense when the allegations in the complaint establish that the action is precluded, such as if the facts alleged establish that the cause of action is time barred. *Id.* But this is only appropriate "when the dates given in the complaint make clear that the right sued upon has been extinguished." *Schell v. Chief Just. & Justs. of Okla. Sup. Ct.*, 11

F.4th 1178, 1191 (10th Cir. 2021) (quoting *Aldrich v. McCulloch Props., Inc.*, 627 F.2d 1036, 1041 n.4 (10th Cir. 1980)). The mere absence of pertinent dates does not make it clear, on the pleading's face, that a statutory time bar has extinguished a cause of action. *See Bistline v. Parker*, 918 F.3d 849, 888–89 (10th Cir. 2019).

B

Plaintiffs are five individuals who encountered the Kansas City, Kansas Police Department and Defendants in various ways over the last three decades. Doc. 1 at ¶¶ 4, 16–20.[1] The same background context underlies each Plaintiff's claims. They allege that Defendants used their power and authority as police chiefs and detectives to maintain a system that protected criminal drug and trafficking operations in Kansas City, Kansas. *Id.* at ¶ 35. As part of this ongoing conduct, Defendants protected criminal operations by providing them notice in advance of police raids and by covering up murders that individuals involved in those operations committed. *Id.* at ¶¶ 5, 35, 215. They also allegedly used this power to sexually abuse and exploit black women or to allow other officers to do so without interfering. *Id.* at ¶¶ 45–55.

But the specific events giving rise to Plaintiffs' claims vary. Take Michelle Houcks first. Houcks alleges that Defendant Roger Golubski raped her in September 1992 after telling her he was a police officer and offering to give her a ride home. *Id.* at ¶¶ 59–66. During that incident, Golubski warned Houcks "to keep her mouth shut." *Id.* at ¶ 66. Two months later, Golubski approached Houcks in Kansas City, Kansas and threatened that "something bad would happen to her or her brother" if she did not stay quiet about what happened. *Id.* at ¶ 69. Houcks did not tell anyone about what happened until 2021, when the Kansas City Star published her story anonymously. *Id.* at ¶ 73.

Next is Plaintiff Sandra Newsom. Newsom's son Doniel Quinn was a victim of a double murder in April 1994. *Id.* at ¶¶ 75–78. Newsom was concerned that nobody from the Unified Government had informed her that her son had been murdered, so she attended a meeting to address her concerns. *Id.* at ¶¶ 79–90. A few days after the meeting, Golubski went to Newsom's house. *Id.* at ¶ 91. He made sexual comments to her and told her that he would update her on Doniel's

[1] All references to the parties' briefs are to the page numbers assigned by CM/ECF.

investigation. *Id.* at ¶¶ 95–101. Newsom alleges that Golubski framed Lamonte McIntyre, who was later exonerated, for her son's murder to protect the real culprits, a man known to her as a "drug kingpin," Cecil Brooks, and another man with the street name of "Monster," Neil Edgar Jr.[2] Doc. 1 at ¶¶ 52, 75, 107.

The next Plaintiff, Niko Quinn, focuses on her involvement as a witness to the same murder of Doniel Quinn. *See* Doc. 1 at ¶ 123. Ms. Quinn was present at the murder and described the shooter to police. *Id.* Officers, including Golubski and Dennis Ware, came to her house the next day and "attempted to force, or lead Quinn into, a false identification of McIntyre as the shooter." *Id.* at ¶ 125. A few days later, Golubski threatened Quinn not to tell anyone that she suspected "Monster," and not McIntyre, killed Doniel Quinn. *Id.* at ¶ 127. Within months, Quinn's family was contacted by Golubski and Assistant Prosecuting Attorney Terra Morehead, who stated that if Quinn did not call Morehead, "they would take Quinn's children away" and she would never see them again.[3] *Id.* at ¶ 130. Quinn alleges that Morehead repeatedly threatened to take Quinn's kids away and put her in jail if she did not falsely identify McIntyre as the individual who murdered Doniel. *Id.* at ¶¶ 131–137. After Quinn gave in and testified that McIntyre killed Doniel, Golubski "actively stalked" her until 2012, finding her at her home, in grocery stores, even in the middle of the night and in different locations. *Id.* at ¶ 139–140. Quinn also alleges that

[2] McIntyre was convicted of murdering Doniel Quinn and another individual Donald Ewing. *See State v. McIntyre*, 912 P.2d 156, 158–59 (Kan. 1996). After several attempts, McIntyre's sentence was vacated and the charges against him were dismissed. *See State v. McIntyre*, Case No. 94CR1213, Order Releasing Defendant From Custody and Dismissal of 94CR1213 (Wyandotte Cnty. Dist. Ct. Oct. 13, 2017). McIntyre then brought a civil suit against Golubski, the Unified Government, and several other individual defendants. *See McIntyre v. Unified Gov't of Wyandotte Cnty. & Kan. City, Kan.*, No. 18-2545, 2022 WL 2337735, at *1 (D. Kan. June 28, 2022) (considering civil claims that "defendants arrested, prosecuted and imprisoned Lamonte McIntyre for murders that he did not commit"). That suit was dismissed pursuant to the parties' voluntary agreement under Fed. R. App. P. 42(b). *McIntyre v. Golubski*, No. 22-3115, 2022 WL 17820087, at *1 (10th Cir. 2022).

[3] Disciplinary proceedings were initiated against Morehead. *In re Morehead*, 546 P.3d 1227,1227 (Kan. 2024). In April 2024, the Supreme Court of Kansas accepted Morehead's request to voluntarily surrender her Kansas law license under Supreme Court Rule 230(a), terminating any pending proceedings. *Id.*

Golubski threatened her to drop a complaint she had filed against an unidentified officer in 2000. *Id.* at ¶ 148. After that conversation, he sexually assaulted her. *Id.* at ¶¶ 149–150. In 2017, Quinn came forward and told McIntyre's family that her testimony was coerced, but she remained silent about the sexual assault because she feared for the safety of herself and her children. *Id.* at ¶¶ 141–150.

Then, the Complaint describes Ophelia Williams's claims. Williams alleges that "Golubski falsely accused [her] twin sons of murder to protect organized criminals and to gain access to her so he could rape and sexually assault her." *Id.* at 43. In August 1999, Williams's sons, Ronell and Donell, were investigated for a double murder of two individuals. *See id.* at ¶¶ 155–157. Officers, including Golubski, went to Williams's home to search for evidence of the crime. *Id.* at ¶¶ 159–160. Williams alleges that they did not find any evidence inside the home, but that officers stated they found shell casings in the back yard. *Id.* at ¶ 161. Ronell and Donell confessed to the murder in exchange for their younger brother's release. *Id.* at ¶ 162. Several days later, Golubski went to Williams's home and falsely told her that he was working on her sons' case and could help her. *Id.* at ¶ 164. Then, Golubski raped her. *Id.* at ¶¶ 165–166. He continued to come to her house and rape her multiple times a month for several years. *Id.* at ¶ 168. One day, Williams threatened to report Golubski, and he replied: "Report me to who, the police? I am the police." *Id.* at ¶ 167. On another day, he threatened to shoot Williams if she did not comply. *Id.* at ¶ 172. And on another, he told her that if she told anybody, "she would never be found again." *Id.* at ¶ 177. Williams did not tell anybody what happened because she "remained afraid that Golubski would shoot and kill her if she spoke out or told anyone about Golubski's conduct." *Id.* at ¶ 176.

The last plaintiff is Richelle Miller. Miller's claims stem from Defendants Michael Kill and Clayton Bye's conduct over a two-day period that started on June 4, 2002. *Id.* at ¶ 179. Miller received a call from the police department instructing her to come to a morgue, where Kill and Bye were waiting for her, to identify her father's body. *Id.* at ¶¶ 179–180. Seeing the body caused Miller to have a strong emotional response because it "was so badly burned that it was unidentifiable." *Id.* at ¶ 180. Then, Miller was taken to the police station, where Kill and Bye told her details of her father's death and interrogated her for nineteen hours, rotating so that only one officer was in the room with Miller at a time. *Id.* at ¶¶ 183–193. They did not let her leave, but she was never

"advised that she was a suspect in a criminal investigation" or allowed to contact an attorney. *Id.* at ¶¶ 185–186. At one point, Miller alleges that Kill demanded she have sex with him. *Id.* at ¶¶ 188–190. After that, the interrogation continued until 2:00 in the morning. *Id.* at ¶ 192.

Based on the events described above, Plaintiffs filed suit in November 2023. Doc. 1. The Complaint contains twenty-eight counts against some or all of the defendants, all arising under 42 U.S.C. § 1983. Each plaintiff brings a count alleging that one or more defendants deprived her of liberty without due process of law. Doc. 1 at ¶¶ 287–296 (Count 1), ¶¶ 329–339 (Count 6), ¶¶ 385–394 (Count 12), ¶¶ 439–449 (Count 18), ¶¶ 496–504 (Count 24). Each plaintiff also brings counts against all or some of the defendants for conspiring to violate her civil rights, failing to intervene in the deprivation, failing to supervise the individuals who carried out the deprivation, and maintaining a custom or policy that allowed the defendants' conduct to continue without reprisal. Doc. 1 at ¶¶ 297–328 (Counts 2–5), ¶¶ 353–384 (Counts 8–11), ¶¶ 407–438 (Counts 14–17), ¶¶ 464–495 (Counts 20–23), ¶¶ 505–536 (Counts 25–28). And three Plaintiffs—Quinn, Newsom, and Williams—bring an additional count of interference with the constitutional right to familial association. Doc. 1 at ¶¶ 340–352 (Count 7), ¶¶ 395–406 (Count 13), ¶¶ 450–463 (Count 19).

Defendants moved to dismiss Plaintiffs' claims. Docs. 17 & 19. Golubski contends that Plaintiffs' claims against him are time barred, and even if they are not, that several claims against him fail to plausibly allege Plaintiff's entitlement to relief.[4] Doc. 18. The other seven individual Defendants and the Unified Government also moved to dismiss, contending that Plaintiffs' claims are time barred, that Plaintiffs failed to state a claim entitling them to relief, and that the individual Defendants are entitled to qualified immunity. Doc. 19. Plaintiffs

[4] Golubski died on December 2, 2024. Doc. 43 (Suggestion of Death). Under Kansas law, Golubski's death does not extinguish Plaintiffs' claims against him. Kan. Stat. Ann. § 60-1801(a); *see also Grandbouche v. Clancy*, 825 F.2d 1463, 1465 (10th Cir. 1987) (holding that Section 1983 looks to state law for questions of survivorship). No party has filed a motion to substitute Golubski as a defendant, but the parties' time to do so has not yet expired. *See* Fed. R. Civ. P. 25(a)(1) (allowing ninety days for parties to file a motion to substitute a party after a suggestion of death is filed before a case can be dismissed due to a party's death). Accordingly, Golubski's motion will be decided on the merits.

opposed both motions, Docs. 23 & 24, to which Defendants replied, Docs. 25 & 26.

II

Plaintiffs' Complaint, on its face, shows that their claims are time-barred by the applicable two-year statute of limitations. And Plaintiffs did not identify any plausible legal basis to overcome that time bar under Kansas law. Accordingly, Defendants' motions to dismiss are granted.

A

Defendants contend that a two-year statute of limitations applies to Plaintiffs' claims. Doc. 18 at 9–10; Doc. 19 at 7–8. All of Plaintiffs' claims invoke 42 U.S.C. § 1983, which lacks a statute of limitations of its own. *Hardin v. Straub*, 490 U.S. 536, 538–39 (1989). Instead, "[l]imitations periods in [Section] 1983 suits are to be determined by reference to the appropriate state statute of limitations." *Fogle v. Pierson*, 435 F.3d 1252, 1258 (10th Cir. 2006) (quoting *Hardin*, 490 U.S. at 539). In this context, that means the underlying state's statute of limitations for personal injury torts. *See Wallace v. Kato*, 549 U.S. 384, 387 (2007). Kansas has one, K.S.A. § 60-513, and it provides two years in which to sue, *Levy v. Kan. Dep't of Soc. & Rehab. Servs.*, 789 F.3d 1164, 1172 (10th Cir. 2015). So Plaintiffs had two years to bring their claims after they accrued.[5]

Accrual for a Section 1983 claim "is a question of federal law that is not resolved by reference to state law." *Wallace*, 549 U.S. at 388. And under federal law, a Section 1983 claim accrues when "the plaintiff can file suit and obtain relief." *Id.* (citation omitted); *see also Smith v. City of*

[5] Defendants also argue that Kansas's ten-year statute of repose in Kan. Stat. Ann. § 60-513(b) applies to bar Plaintiffs' claims. Doc. 18 at 14–16; Doc. 19 at 11. Neither the Supreme Court nor the Tenth Circuit has decided whether Section 1983 claims borrow statutes of repose from state law like it does for state statutes of limitation. Because Plaintiffs have not alleged facts sufficient to overcome Kansas's two-year statute of limitations, it is unnecessary to determine the unsettled question of whether Kan. Stat. Ann. § 60-513(b) may apply to bar a Section 1983 claim. *See Smith v. TFI Fam. Servs., Inc.*, No. 17-2235, 2019 WL 6037380, at *6 (D. Kan. Nov. 14, 2019) (declining to decide "what effect, if any, the [statute of repose] might have had" on the plaintiff's Section 1983 claim because it was barred for other reasons).

Enid, 149 F.3d 1151, 1154 (10th Cir. 1998) (noting that Section 1983 claims alleging constitutional violations "accrue when the plaintiff knows or should know that his or her constitutional rights have been violated") (internal quotation marks omitted).

The Complaint, on its face, makes it clear that each of the plaintiff's claims accrued more than two years before they filed suit on November 3, 2023. *Fernandez*, 883 F.3d at 1299 (explaining that a claim should only be dismissed as untimely on a Rule 12(b)(6) motion when it is clear on the face of the complaint that the claims are time barred). All parties, Plaintiffs included, agree. Doc. 18 at 12–14; Doc. 23 at 7; Doc. 19 at 8–9; Doc. 24 at 3. As a result, all claims are time-barred.

B

Plaintiffs, though admitting the claims fall to the statute of limitations, focus their arguments on several bases to overcome that preclusion. None are viable under Kansas law.

First, Plaintiffs assert that Congress did not intend for state statutes of limitations to apply to Section 1983 claims. Doc. 1 at ¶¶ 277–285; Doc. 23 at 12–14; Doc. 24 at 6–7. That argument is without merit because it contravenes binding precedent that, for claims arising in Kansas, the two-year statute of limitations applies. *See Brown v. Unified Sch. Dist. 501, Topeka Pub. Schs.*, 465 F.3d 1184, 1188 (10th Cir. 2006). To the extent Plaintiffs think that position should be reconsidered, they may appeal to the Tenth Circuit and/or seek a petition for writ of certiorari. But in the district court, the law is plain. *See Millard v. Camper*, 971 F.3d 1174, 1177 (10th Cir. 2020) (reversing district court's ruling because it "contravenes binding Supreme Court and Tenth Circuit precedent"); *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 136 (2023) (explaining that lower courts must follow binding precedent and leave to the Supreme Court "the prerogative of overruling its own decisions").

Second, Plaintiffs claim that Kansas's equitable estoppel doctrine overcomes the two-year statute of limitations.[6] Doc. 1 at ¶¶ 254–276; Doc. 23 at 4–10; Doc. 26 at 2–4. State law applies to questions of equitable tolling and estoppel. *Hardin v. Straub*, 490 U.S. 536, 539 (1989); *Varnell v. Dora Consol. Sch. Dist.*, 756 F.3d 1208, 1212 (10th Cir. 2014). This is because "[i]n virtually all statutes of limitations the chronological length of the limitation period is interrelated with provisions regarding tolling, revival, and questions of application." *Hardin*, 490 U.S. at 539 (internal quotations omitted). Because federal law is already "relying on the State's wisdom in setting a limit," a Section 1983 suit also borrows state-law exceptions to that limit. *Bd. of Regents of Univ. of State of N.Y. v. Tomanio*, 446 U.S. 478, 485–86 (1980). Tolling and estoppel doctrines are necessarily part of the state's "value judgment concerning the point at which the interests in favor of protecting valid claims are outweighed by the interests in prohibiting the prosecution of stale ones." *Id.* (quoting *Johnson v. Ry. Express Agency, Inc.*, 421 U.S. 454, 463–64 (1975)). As a result, Section 1983 borrows state law exceptions to statutes of limitation "as long as that law is not inconsistent with federal law." *Hardin*, 490 at 538; *Alexander v. Oklahoma*, 382 F.3d 1206, 1217 n.5 (10th Cir. 2004). Both the Supreme Court and the Tenth Circuit have explained that generally applicable state tolling principles are not inconsistent with Section 1983's policies of compensation, deterrence, uniformity, and federalism. *Tomanio*, 446 U.S. at 486–92; *Alexander*, 382 F.3d at 1217 n.5. So, to overcome Kansas's two-year statute of limitations, Plaintiffs must have plausibly alleged an exception to that statute.

A party attempting to invoke equitable estoppel "must show that another party, 'by its acts, representations, admissions, or silence when it had a duty to speak, induced [the first party] to believe certain facts existed,' and also that the first party 'rightfully relied and acted upon such belief.'" *Liberty Mut. Fire Ins. Co. v. Woolman*, 913 F.3d 977, 994 (10th Cir. 2019) (quoting *Mut. Life Ins. Co. of N.Y. v. Bernasek*, 682 P.2d 667, 730 (Kan. 1984)) (alterations in original). In the context of a

[6] Plaintiffs have clarified that they are seeking to estop Defendants from relying on the statute of limitations and not, despite earlier suggestions, arguing that the limitations period has been tolled. *Compare* Doc. 1 at 75–83 (using the term "toll" but analyzing the elements of equitable estoppel), *with* Doc. 23 at 7 (clarifying that Plaintiffs seek to overcome Defendants' statute of limitations argument on equitable estoppel grounds), *and* Doc. 24 at 3–4 (same).

statute of limitations defense, equitable estoppel serves to preclude a defendant from relying on the defense when the defendant "has acted in such a fashion that his conduct is sufficient to lull his adversary into a false sense of security forestalling the filing of suit until after the statute [of limitations] has run." *Bell v. City of Topeka, Kan.*, 279 F. App'x 689, 693 (10th Cir. 2008) (quoting *Coffey v. Stephens*, 599 P.2d 310, 312 (Kan. 1979)).

A plaintiff must show that the defendant lied or misrepresented facts leading the plaintiff to believe he or she did not need to timely file a lawsuit. *L. Ruth Fawcett Tr. v. Oil Prods. Inc. of Kan.*, 507 P.3d 1124, 1145–46 (Kan. 2022); *Dunn v. Dunn*, 281 P.3d 540, 549–55 (Kan. Ct. App. 2012) (collecting cases over three decades). For example, the Kansas Supreme Court found that equitable estoppel was triggered when a defendant was improperly charging fees to a plaintiff's royalty payments but misrepresenting them as state tax deductions on the check stubs. *L. Ruth Fawcett Tr.*, 507 P.3d at 1145–46. The defendant could not rely on the statute of limitations because it was the defendant's misrepresentations that caused the plaintiff not to file suit before the statute of limitations expired. *Id.* This element requires the plaintiff to show that the defendant's actions misrepresented the truth for the purpose of inducing the plaintiff not to file a lawsuit. *See, e.g.*, *Bernasek*, 682 P.2d at 671 ("While actual fraud, bad faith or an attempt to mislead or deceive is not essential to create an equitable estoppel, it is necessary to show both misrepresentation and detrimental reliance to invoke the doctrine."); *see also Bouton v. Byers*, 321 P.3d 780, 792 (Kan. Ct. App. 2014) (explaining that courts often misstate the elements of promissory estoppel by including misrepresentation as an element because they are confusing it with the elements of equitable estoppel).

Plaintiffs identify two misrepresentations. First, they claim that Defendants misrepresented that they "were entering Plaintiffs' homes for official police business, including criminal investigations." Doc. 1 at ¶ 257(a). Second, they contend that Defendants "misrepresent[ed] an ability to influence criminal matters important to and involving Plaintiffs if Plaintiffs did not tell anyone or otherwise publicize Defendants' conduct," *id.* at ¶ 257(b).

These misrepresentations are insufficient to trigger equitable estoppel under existing Kansas case law. *Contra* Doc. 23 at 5 (citing Doc. 1 at ¶¶ 256–257, 266). They do not support the notion that Plaintiffs could reasonably rely on those statements to delay bringing their federal lawsuit for several decades. *See L. Ruth Fawcett Tr.*, 507 P.3d at

1145–46. Their argument would effectively abrogate the statute of limitations, permitting them "to avoid the limitations period for § 1983 claims indefinitely by alleging an episode of official intimidation." *See Vergara v. City of Chicago*, 939 F.3d 882, 887 (7th Cir. 2019) (finding that indefinitely prolonging equitable estoppel based on police officers' threats that intimidated plaintiffs into silence violated the important policies that warrant statutes of limitations); *Tomanio*, 446 U.S. at 478 (explaining these same policies underlying statutes of limitations).

Nor did Plaintiffs plausibly allege that Defendants were silent in the face of a duty to speak. *Contra* Doc. 23 at 5, 9; Doc. 24 at 4. They argue that Defendants had a duty "to protect and serve" because they were police officers. Doc. 1 at ¶ 257. Although silence can, in some instances, give rise to equitable estoppel under Kansas law, *Steckline Commc'ns, Inc.*, 388 P.3d 84, 91–92 (Kan. 2017), Plaintiffs' protect-and-serve argument does not create a cognizable duty sufficient to establish estoppel. *See Shaffer v. City of Topeka*, 57 P.3d 35, 39 (Kan. Ct. App. 2002) (holding that a government entity being sued had no duty to inform the plaintiff of the statute of limitations for his claim because it did not possess material knowledge regarding the time bar that the plaintiff could not independently discover). As a result, Plaintiffs have not alleged facts that fit into Kansas's existing estoppel framework.

The rest of Plaintiffs' allegations labeled "misrepresentations" are actually allegations of duress. In particular, Plaintiffs argue that Defendants' affirmative conduct of threatening to harm them or to influence legal matters if they filed suit or disclosed Defendants' conduct gives rise to equitable estoppel. Doc. 23 at 7–9 (citing ¶¶ 256–57, 266); Doc. 24 at 4–5 (same). They state that they wanted to pursue their claims but chose not to do so because if they did, they believed that "they and their family would be harmed, killed, or set up for a criminal matter for which they were innocent, or that Defendants would interfere with Plaintiffs' and their families' criminal matters." Doc. 1 at ¶ 259. Some jurisdictions recognize this concept as "estoppel by duress." *See, e.g.*, *Baye v. Diocese of Rapid City*, 630 F.3d 757, 761–62 (8th Cir. 2011) (defining "estoppel by duress" as when "a defendant who has continuously threatened or abused the plaintiff during the limitations period is estopped from raising the defense"). Plaintiffs have not provided authority suggesting either that the Kansas Supreme Court has previously or would likely recognize such a theory. *See Wallace*, 549 U.S. at 394 (explaining that tolling was not appropriate where "Petitioner has not brought to our attention, nor are we aware of, Illinois

cases providing tolling in even remotely comparable circumstances"); *see also Pehle v. Farm Bureau Life Ins. Co.*, 397 F.3d 897, 901–02 (10th Cir. 2005) (recognizing that when federal courts face unsettled questions of state law, they must predict state law but not "create or modify it").

But even if the Kansas Supreme Court would recognize these types of threats and intimidation as a basis to meet the first element of equitable estoppel, Plaintiffs' Complaint would be untimely still. Plaintiffs would have needed to allege facts that each Defendant threatened or intimidated Plaintiffs and that the threats continued until Plaintiffs filed their Complaint. *Alexander*, 382 F.3d at 1218–19 (explaining in the equitable tolling context that even if tolling were warranted at some point, the tolling stops when the exceptional circumstances have ended); *Baye*, 630 F.3d at 761–62 (declining to determine whether South Dakota courts recognized estoppel by duress because the threats in that case did not continue up to the point the plaintiff brought the action); *Rakes v. United States*, 442 F.3d 7, 26 (1st Cir. 2006) (explaining that estoppel by duress required continuous conduct by the same individual or entity responsible for the original tort); *Jaso v. The Coca Cola Co.*, 435 F. App'x 346, 358 (5th Cir. 2011) (finding that violent threats against a plaintiff to stop all lawsuits against the defendant did not toll the statute of limitations beyond when the last threat was made).

The first problem is that Plaintiffs do not plausibly allege facts that each Defendant threatened each of them. Two of the Plaintiffs, Newsom and Miller, for example, do not allege that any Defendant made an affirmative statement to them amounting to a threat that something bad would happen to them if they told anyone about the defendants' conduct or if they filed a lawsuit. The other three Plaintiffs—Houcks, Quinn, and Williams—only allege threats from Golubski and none of the other defendants. Doc. 1 at ¶¶ 66, 69, 130, 139–40, 148, 167, 177. As a result, all claims except Houcks's, Quinn's, and Williams's against Golubski would be time barred even if Kansas recognized estoppel based on threats. *See Geiss v. Weinstein Co. Holdings LLC*, 383 F. Supp. 3d 156, 174–75 (S.D.N.Y. Apr. 18, 2019) (explaining that the plaintiffs must allege threats by each defendant they seek to estop).

The other problem is that Plaintiffs do not provide authority supporting their contention that equitable estoppel could delay their claim for multiple decades. Houcks, Quinn, and Williams each allege that Golubski threatened that they or their families would be physically harmed or wrongfully incarcerated if they told anyone about Golubski's conduct. *See* Doc. 1 at ¶¶ 56–63, 114–52, 153–77. But the

last threat or intimidating conduct that any of the plaintiffs allege occurred in 2012. *Id.* at ¶ 139. So, even viewing the Complaint favorably, these plaintiffs still waited more than a decade to file suit. And they have identified no legal basis to justify their failure to file suit during that time. *See Alexander*, 382 F.3d at 1219 (finding that "an openly hostile racial environment, denial of responsibility by government officials, and the grand jury's exoneration of white rioters, and its indictment of African-American victims" justified tolling the statute of limitations but the plaintiffs' claims were barred because they filed their claims three decades after the extraordinary circumstances dissipated); *Van Tu v. Koster*, 364 F.3d 1196, 1199–1200 (10th Cir. 2004) (holding that tolling a *Bivens* claim for twenty-eight years was not justified "even if some degree of equitable tolling were appropriate" based on plaintiffs' circumstances).

The cases in other jurisdictions that have faced similar contentions have universally rejected the argument that equitable estoppel continues to preclude the statute of limitations from applying after the threats have ceased. *See, e.g.*, *Sarfati v. Antigua & Barbuda*, 923 F. Supp. 2d 72, 80 (D.D.C. 2013) (holding that general allegations of continued fear twelve years after threat abated was not sufficient to overcome statute of limitations on estoppel grounds); *Vergara*, 939 F.3d at 887 (concluding that a police officer's threats tolled the limitation for three and half years after the threats stopped). These cases suggest that the two-year statute of limitations would bar Plaintiffs' claims even if the Kansas Supreme Court recognized their asserted grounds for estoppel. Consequently, Plaintiffs' claims must be dismissed because the face of the Complaint makes it clear that their claims are time barred. *Fernandez*, 883 F.3d at 1299.

* * *

The Complaint describes serious official misconduct, including allegations that law enforcement officers systemically and repeatedly sexually assaulted Plaintiffs and framed their family members for crimes they did not commit. That the allegations fail to state a claim on which relief may be granted says nothing about the merits of the claims. Instead, as the Supreme Court has noted, "statutes of limitations often make it impossible to enforce what were otherwise perfectly valid claims. But that is their very purpose, and they remain as ubiquitous as the statutory rights or other rights to which they are attached or are applicable." *United States v. Kubrick*, 444 U.S. 111, 125 (1979); *see also Alexander*, 382 F.3d at 1220 ("While we have found no legal avenue

exists through which Plaintiffs can bring their claims, we take no great comfort in that conclusion.").

III

For the foregoing reasons, Defendants' Motions to Dismiss, Docs. 17 & 19, are GRANTED.

It is so ordered.

Date: January 30, 2025

s/ Toby Crouse
Toby Crouse
United States District Judge

Addendum B

In the United States District Court
for the District of Kansas

Case No. 2:23-cv-02489-TC-BGS

MICHELLE HOUCKS, SAUNDRA NEWSOM,
NIKO QUINN, OPHELIA WILLIAMS,
RICHELLE MILLER,

Plaintiffs

v.

UNIFIED GOVERNMENT OF WYANDOTTE COUNTY
AND KANSAS CITY, KANSAS,
THOMAS DAILEY, JAMES SWAFFORD, RONALD MILLER,
ROGER GOLUBSKI, TERRY ZEIGLER, MICHAEL KILL,
CLAYTON BYE, AND DENNIS WARE,

Defendants

JUDGMENT IN A CIVIL CASE

☐ Jury Verdict. This action came before the Court for a jury trial. The issues have been tried and the jury has rendered its verdict.

☒ Decision by the Court. This action came before the Court. The issues have been considered and a decision has been rendered.

Pursuant to the Court's Memorandum and Order filed on January 30, 2025, this case is dismissed in favor of Defendants.

Date: January 30, 2025

SKYLER B. O'HARA
CLERK OF THE DISTRICT COURT

By: s/ Traci Anderson
Deputy Clerk

Addendum C

In the United States District Court
for the District of Kansas

Case No. 23-cv-02489-TC

MICHELLE HOUCKS, ET AL.,

Plaintiffs

v.

UNIFIED GOVERNMENT OF WYANDOTTE COUNTY AND KANSAS CITY, KANSAS, ET AL.,

Defendants

ORDER

Plaintiffs Michelle Houcks, Saundra Newsom, Niko Quinn, Ophelia Williams, and Richelle Miller sued the Unified Government of Wyandotte County and Kansas City, Kansas and eight former or current police chiefs and detectives. Doc. 1. Defendants' motions to dismiss, Docs. 17 & 19, were granted on statute of limitations grounds. Doc. 44. Plaintiffs then moved for relief from the final judgment dismissing their claims and sought to certify questions of state law to the Kansas Supreme Court. Doc. 46. For the following reasons, their motion is denied.

1. Plaintiffs first request reconsideration of the Memorandum and Order dismissing their Complaint. Doc. 46 at 4. Reconsideration of a final judgment may be warranted because of "mistake, inadvertence, surprise, or excusable neglect." Fed. R. Civ. P. 60(b)(1); *Commonwealth Prop. Advocs., LLC v. Mortg. Elec. Registration Sys., Inc.*, 680 F.3d 1194, 1200 (10th Cir. 2011). A court may also grant relief from a final judgment for "any other reason" to ensure justice is done. Fed. R. Civ. P. 60(b)(6). But such relief shall be granted "only in extraordinary circumstances and only when necessary to accomplish justice." *Shields v. Pro. Bureau of Collections of Md., Inc.*, 55 F.4th 823, 830 (10th Cir. 2022) (internal quotation marks omitted). Importantly, motions to reconsider are not "a second chance for the losing party to make its strongest case or to dress up arguments that previously failed." *Voelkel v. Gen. Motors*

Corp., 846 F. Supp. 1482, 1483 (D. Kan. 1994), *aff'd*, 43 F.3d 1484 (10th Cir. 1994).

Plaintiffs have not justified their request for reconsideration. They contend that they sufficiently pled facts giving rise to equitable estoppel under Kansas law, their arguments were incorrectly framed as estoppel by duress, the dismissal conflicts with Kansas conspiracy law, and Kansas's equitable estoppel doctrine does not support applying any time bar to Plaintiffs' claims. Doc. 46 at 4–6. But Plaintiffs had the opportunity to address each of these arguments when they responded to Defendants' motions to dismiss. *See Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000) (explaining that Rule 60(b) motions "are inappropriate vehicles to reargue an issue previously addressed … when the motion merely advances new arguments, or supporting facts which were available at the time of the original motion"). Plaintiffs have not provided any colorable claim that the dismissal of their Complaint was the result of mistake, inadvertence, surprise, or excusable neglect. Nor have they shown the type of extraordinary circumstances that justify reconsideration "only when necessary to accomplish justice" under Rule 60(b)(6). *See Beugler v. Burlington N. & Santa Fe Ry. Co.*, 490 F.3d 1224, 1229 (10th Cir. 2007) (finding that an argument based on evidence that was mostly known or discoverable to the parties before their motions were filed was not the type of exceptional circumstance contemplated by Rule 60(b)); *Zurich N. Am. v. Matrix Serv., Inc.*, 426 F.3d 1281, 1293 (10th Cir. 2005) (denying motion to reconsider where the movant did not provide any "definite, clear or unmistakable error").

2. Plaintiffs alternatively seek to certify four questions to the Kansas Supreme Court. Doc. 46 at 2; *see generally* Kan. Stat. Ann. § 60-3201. In sum, they want the Kansas Supreme Court to answer whether and to what extent Kansas law recognizes estoppel by duress, how equitable estoppel is applied when a complaint alleges a conspiracy, how long equitable estoppel applies to a claim after a defendant threatens to retaliate against a plaintiff for filing suit—if such a theory is recognized at all—and how facts should be construed in the context of equitable estoppel. Doc. 46 at 2.

The decision to certify implicates the judgment of two courts. First there is the certifying federal court. The Tenth Circuit directs courts to consider whether the allegedly unsettled question of state law "may be determinative of the case at hand," and, if so, whether it is "sufficiently novel that we feel uncomfortable attempting to decide it without further guidance." *Morgan v. Baker Hughes Inc.*, 947 F.3d 1251, 1258 (10th

Cir. 2020); *see also Pehle v. Farm Bureau Life Ins. Co.*, 397 F.3d 897, 901–02 (10th Cir. 2005) (directing federal courts to predict state law when the state's supreme court has not directly addressed the question at issue). *Id.* But a federal court's decision to certify a question is only half the battle because the Kansas Supreme Court has the discretion to answer (or decline to answer) a question certified to it by a federal court when the state-law question "may be determinative of the cause then pending in the certifying court and as to which it appears to the certifying court there is no controlling precedent" in Kansas appellate courts." Kan. Stat. Ann. § 60-3201.

Plaintiffs have not shown that certification is appropriate. To begin with, they did not seek to certify any questions of state law until after they received an adverse decision dismissing their claims. *See* Doc. 44. Seeking certification at this stage seems like an end-run around the ordinary appellate process. The Tenth Circuit has denied certification for this reason alone. *Enfield v. A.B. Chance Co.*, 228 F.3d 1245, 1255 (10th Cir. 2000); *Boyd Rosene & Assocs., Inc. v. Kan. Mun. Gas Agency*, 178 F.3d 1363, 1364–65 (10th Cir. 1999) (collecting Tenth Circuit cases declining to certify questions of state law that were sought only after the district court issued an adverse decision against the movant).

In addition, the issues identified by Plaintiff do not meet the test of novelty and determinability. That is because the novel questions (e.g., estoppel by duress) would not be determinative of Plaintiff's claim because of the delay. Doc. 44 at 12–13. And any case-determinative issues are not so novel that a federal district court sitting in Kansas cannot predict how the Kansas Supreme Court would likely rule. *See Soc. of Lloyd's v. Reinhart*, 402 F.3d 982, 1002 (10th Cir. 2005) (finding it unnecessary to certify a question of state law when there was "no unusual difficulty" in predicting what the Kansas Supreme Court would decide); *Kan. Jud. Rev. v. Stout*, 519 F.3d 1107, 1119 (10th Cir. 2008) (explaining that federal courts should not invoke certification any time they encounter an unsettled question of state law). .

For the foregoing reasons, Plaintiffs' Motion for Relief from Final Order and to Certify Questions of State Law to the Kansas Supreme Court, Doc. 46, is DENIED.

It is so ordered.

Date: March 21, 2025

s/ Toby Crouse
Toby Crouse
United States District Judge

CHAP. XXII. — *An Act to enforce the Provisions of the Fourteenth Amendment to the Constitution of the United States, and for other Purposes.* April 20, 1871.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person who, under color of any law, statute, ordinance, regulation, custom, or usage of any State, shall subject, or cause to be subjected, any person within the jurisdiction of the United States to the deprivation of any rights, privileges, or immunities secured by the Constitution of the United States, shall, any such law, statute, ordinance, regulation, custom, or usage of the State to the contrary notwithstanding, be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress; such proceeding to be prosecuted in the several district or circuit courts of the United States, with and subject to the same rights of appeal, review upon error, and other remedies provided in like cases in such courts, under the provisions of the act of the ninth of April, eighteen hundred and sixty-six, entitled "An act to protect all persons in the United States in their civil rights, and to furnish the means of their vindication"; and the other remedial laws of the United States which are in their nature applicable in such cases.

Any person under color of any law, &c. of any State, depriving another of any right, &c. secured by the Constitution of the United States, made liable to the party injured.

Proceedings to be in the courts of the United States.

1866, ch. 31. Vol. xiv. p. 27.

SEC. 2. That if two or more persons within any State or Territory of the United States shall conspire together to overthrow, or to put down, or to destroy by force the government of the United States, or to levy war against the United States, or to oppose by force the authority of the government of the United States, or by force, intimidation, or threat to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof, or by force, intimidation, or threat to prevent any person from accepting or holding any office or trust or place of confidence under the United States, or from discharging the duties thereof, or by force, intimidation, or threat to induce any officer of the United States to leave any State, district, or place where his duties as such officer might lawfully be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or to injure his person while engaged in the lawful discharge of the duties of his office, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duty, or by force, intimidation, or threat to deter any party or witness in any court of the United States from attending such court, or from testifying in any matter pending in such court fully, freely, and truthfully, or to injure any such party or witness in his person or property on account of his having so attended or testified, or by force, intimidation, or threat to influence the verdict, presentment, or indictment, of any juror or grand juror in any court of the United States, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or on account of his being or having been such juror, or shall conspire together, or go in disguise upon the public highway or upon the premises of another for the purpose, either directly or indirectly, of depriving any person or any class of persons of the equal protection of the laws, or of equal privileges or immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State from giving or securing to all persons within such State the equal protection of the laws, or shall conspire together for the purpose of in any manner impeding, hindering, obstructing, or defeating the due course of justice in any State or Territory, with intent to deny to any citizen of the United States the due and equal protection of the laws, or to injure any person in his person or his property for lawfully enforcing the right of any person or class of persons to the equal protection of the laws, or by force, intimidation, or threat to prevent any citizen of the United States lawfully entitled to vote from giving his support or advocacy in a lawful

Penalty for conspiring by force to put down the government of the United States, &c.;

or to hinder the execution of any law of the United States;

or to seize any property of the United States;

or to prevent any person from holding office, &c. under the United States;

or to induce any officer to leave the State, &c.;

or to injure him in person or property while doing, or to prevent his doing, his duty;

or to prevent any party or witness from attending court or testifying therein;

or to injure him for so attending or testifying;

or to influence the conduct of any juror;

or to injure any juror on account of his acts, &c.

Penalty for conspiring or going in disguise upon the public highway, &c. to deprive any person or class of equal rights, &c. under the laws;

or to prevent the State authorities from protecting all in their equal rights.

Penalty for conspiring to obstruct, &c. the

due course of justice, &c. in any State with intent to deny to any citizen his equal rights under the law; or, by force, &c. to prevent any citizen entitled to vote from advocating in a lawful manner the election of any person, as, &c.

Courts.

Punishment.

manner towards or in favor of the election of any lawfully qualified person as an elector of President or Vice-President of the United States, or as a member of the Congress of the United States, or to injure any such citizen in his person or property on account of such support or advocacy, each and every person so offending shall be deemed guilty of a high crime, and, upon conviction thereof in any district or circuit court of the United States or district or supreme court of any Territory of the United States having jurisdiction of similar offences, shall be punished by a fine not less than five hundred nor more than five thousand dollars, or by imprisonment, with or without hard labor, as the court may determine, for a period of not less than six months nor more than six years, as the court may determine, or by both such fine and imprisonment as the court shall determine. And if any one or more persons engaged in any such conspiracy shall do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby any person shall be injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the person so injured or deprived of such rights and privileges may have and maintain an action for the recovery of damages occasioned by such injury or deprivation of rights and privileges against any one or more of the persons engaged in such conspiracy, such action to be prosecuted in the proper district or circuit court of the United States, with and subject to the same rights of appeal, review upon error, and other remedies provided in like cases in such courts under the provisions of the act of April ninth, eighteen hundred and sixty-six, entitled "An act to protect all persons in the United States in their civil rights, and to furnish the means of their vindication."

Any conspirator doing, &c. any act in furtherance of the object of the conspiracy, and thereby injuring another, to be liable in damages therefor.

Proceedings to be in courts of the United States.

1866, ch. 31. Vol. xiv. p. 27.

What to be deemed a denial by any State to any class of its people of their equal protection under the laws.

SEC. 3. That in all cases where insurrection, domestic violence, unlawful combinations, or conspiracies in any State shall so obstruct or hinder the execution of the laws thereof, and of the United States, as to deprive any portion or class of the people of such State of any of the rights, privileges, or immunities, or protection, named in the Constitution and secured by this act, and the constituted authorities of such State shall either be unable to protect, or shall, from any cause, fail in or refuse protection of the people in such rights, such facts shall be deemed a denial by such State of the equal protection of the laws to which they are entitled under the Constitution of the United States; and in all such cases, or whenever any such insurrection, violence, unlawful combination, or conspiracy shall oppose or obstruct the laws of the United States or the due execution thereof, or impede or obstruct the due course of justice under the same, it shall be lawful for the President, and it shall be his duty to take such measures, by the employment of the militia or the land and naval forces of the United States, or of either, or by other means, as he may deem necessary for the suppression of such insurrection, domestic violence, or combinations; and any person who shall be arrested under the provisions of this and the preceding section shall be delivered to the marshal of the proper district, to be dealt with according to law.

When the due execution of the laws, &c. is obstructed by violence, &c. the President shall do what he may deem necessary to suppress such violence, &c.

Persons arrested to be delivered to the marshal.

What unlawful combinations to be deemed a rebellion against the government of the United States.

SEC. 4. That whenever in any State or part of a State the unlawful combinations named in the preceding section of this act shall be organized and armed, and so numerous and powerful as to be able, by violence, to either overthrow or set at defiance the constituted authorities of such State, and of the United States within such State, or when the constituted authorities are in complicity with, or shall connive at the unlawful purposes of, such powerful and armed combinations; and whenever, by reason of either or all of the causes aforesaid, the conviction of such offenders and the preservation of the public safety shall become in such district impracticable, in every such case such combinations shall be deemed a rebellion against the government of the United

States, and during the continuance of such rebellion, and within the limits of the district which shall be so under the sway thereof, such limits to be prescribed by proclamation, it shall be lawful for the President of the United States, when in his judgment the public safety shall require it, to suspend the privileges of the writ of habeas corpus, to the end that such rebellion may be overthrown: *Provided*, That all the provisions of the second section of an act entitled "An act relating to habeas corpus, and regulating judicial proceedings in certain cases," approved March third, eighteen hundred and sixty-three, which relate to the discharge of prisoners other than prisoners of war, and to the penalty for refusing to obey the order of the court, shall be in full force so far as the same are applicable to the provisions of this section: *Provided further*, That the President shall first have made proclamation, as now provided by law, commanding such insurgents to disperse: *And provided also*, That the provisions of this section shall not be in force after the end of the next regular session of Congress.

During such rebellion, and within certain limits, the President may suspend the writ of habeas corpus.

Provisions of act 1863, ch. 81, § 2, Vol. xii. p. 755, made applicable hereto.

Proclamation to be first made, &c.

Vol. i. p. 424. Vol. xii. p. 282. See pp 949-954.

This section not to be in force after, &c.

SEC. 5. That no person shall be a grand or petit juror in any court of the United States upon any inquiry, hearing, or trial of any suit, proceeding, or prosecution based upon or arising under the provisions of this act who shall, in the judgment of the court, be in complicity with any such combination or conspiracy; and every such juror shall, before entering upon any such inquiry, hearing, or trial, take and subscribe an oath in open court that he has never, directly or indirectly, counselled, advised, or voluntarily aided any such combination or conspiracy; and each and every person who shall take this oath, and shall therein swear falsely, shall be guilty of perjury, and shall be subject to the pains and penalties declared against that crime, and the first section of the act entitled "An act defining additional causes of challenge and prescribing an additional oath for grand and petit jurors in the United States courts," approved June seventeenth, eighteen hundred and sixty-two, be, and the the same is hereby, repealed.

Certain persons not to be jurors in certain cases.

Jurors to take oath.

False swearing in taking this oath to be perjury.

Repeal of first section of act 1862, ch. 103. Vol. xii. p. 430.

SEC. 6. That any person or persons, having knowledge that any of the wrongs conspired to be done and mentioned in the second section of this act are about to be committed, and having power to prevent or aid in preventing the same, shall neglect or refuse so to do, and such wrongful act shall be committed, such person or persons shall be liable to the person injured, or his legal representatives, for all damages caused by any such wrongful act which such first-named person or persons by reasonable diligence could have prevented; and such damages may be recovered in an action on the case in the proper circuit court of the United States, and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in such action: *Provided*, That such action shall be commenced within one year after such cause of action shall have accrued; and if the death of any person shall be caused by any such wrongful act and neglect, the legal representatives of such deceased person shall have such action therefor, and may recover not exceeding five thousand dollars damages therein, for the benefit of the widow of such deceased person, if any there be, or if there be no widow, for the benefit of the next of kin of such deceased person.

Any person knowing that certain wrongs are about to be done, and having power to prevent, &c., neglects so to do, and any such wrong is done, is made liable for all damages caused thereby.

Suits therefor in courts of the United States.

Who may be joined as defendants.

Limitation.

If death is caused by such wrongful act, the legal representatives of deceased may maintain action, &c. and for whose benefit.

SEC. 7. That nothing herein contained shall be construed to supersede or repeal any former act or law except so far as the same may be repugnant thereto; and any offences heretofore committed against the tenor of any former act shall be prosecuted, and any proceeding already commenced for the prosecution thereof shall be continued and completed, the same as if this act had not been passed, except so far as the provisions of this act may go to sustain and validate such proceedings.

Former laws, &c. not repealed, &c.

Former offences to be prosecuted.

APPROVED, April 20, 1871.