
In the
United States Court of Appeals
For the Tenth Circuit

MICHELLE HOUCKS *ET AL.*,
Petitioner-Appellants,

v.

UNITED GOVERNMENT OF WYANDOTTEE COUNTY AND KANSAS CITY, KANSAS, *ET*
AL.,
Defendants-Appellees.

On Appeal from the United States District Court
for the District of Kansas
Honorable Judge Toby Crouse
23-cv-02489-TC

**MOTION FOR LEAVE TO FILE AMICUS
BRIEF OF ROC NATION LLC, BARRY SCHECK - INNOCENCE
PROJECT, JUSTICE STRIKEFORCE, KANSAS COALITION AGAINST
SEXUAL AND DOMESTIC VIOLENCE, MIDWEST INNOCENCE
PROJECT, MORE², IMPACT STRATEGIES, TERENCE CRUTCHER
FOUNDATION, THE GATHERING FOR JUSTICE, AND UNTIL
FREEDOM, AS AMICUS CURIA IN SUPPORT OF
PLAINTIFFS/APPELLANTS**

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Roc Nation, LLC, Innocence Project, Justice Strikeforce, Kansas Coalition Against Sexual and Domestic Violence, Midwest Innocence Project, MORE², IMPACT Strategies, Terence Crutcher Foundation, The Gathering For Justice, and Until Freedom (collectively “Amici”), respectfully move this Court for leave to file the attached amicus curiae brief in support of Plaintiffs-Appellants’ brief requesting reversal of the District Court’s Order and remanding for further proceedings pursuant to Federal Rule of Appellate Procedure 29(a)(2) and Tenth Circuit Rule 29.

Legal Standard

“Federal courts have discretion in allowing participation as amicus curiae.” *N.M. Oncology & Hematology Consultants*, 994 F.3d 1166, 1175 (10th Cir. 2021). Under Federal Rule of Appellate Procedure 29(b)(3), a motion seeking leave to participate as amicus must state the movant’s interest, “why an amicus brief is desirable,” and “why the matters asserted are relevant to the disposition of the case.” Fed. R. App. P. 29(b)(3). Moreover, Tenth Circuit Rule 29.2 requires that the amicus brief “contain a statement of all parties’ positions on the relief requested or why the moving party was unable to learn the parties’ positions.” Tenth Cir. R. 29.2.

Counsel for Plaintiffs-Appellants have consented to the filing of Amici’s attached amicus curiae brief.

Movants' Interest

This brief filed by Amici, including Roc Nation LLC, Dentons US LLP, and nine additional civil rights organizations, demonstrates the commitment to exposing systemic abuse, amplifying the voices of survivors, and holding law enforcement and government institutions accountable. Amici are dedicated to protecting and enforcing constitutional rights, particularly for communities historically marginalized by entrenched systems of power.

Amici have a strong interest in ensuring that Section 1983 of the Civil Rights Act, 42 U.S.C. § 1983—one of the most vital civil rights statutes in American law—remains a meaningful vehicle for redress when state officials violate federal constitutional rights. Amici are particularly concerned that state statutes of limitations is being misapplied to unjustly time-bar continuing violations of abuse, government cover-ups, and deeply entrenched institutional misconduct.

Desirability of an Amicus Brief

The proposed *amicus curiae* brief provides comprehensive legal and historical context for Section 1983, highlighting that equitable tolling and the continuing violation doctrine should apply where victims of systemic abuse and intimidation by law enforcement were prevented from coming forward due to credible, long-term threats. The proposed amicus curiae brief highlights the injustice of allowing state statutes of limitations to bar meritorious federal civil rights claims. By amplifying

the voices of survivors of abuse and drawing on persuasive legal authority, the proposed amicus seeks to ensure access to justice for marginalized communities, especially when the injustice is perpetrated by the government. Moreover, the proposed brief provides the historical background of Section 1983 to protect federal civil rights by providing individuals with remedies with state and local governments and officials violate such rights, and the inclusion of the Notwithstanding Clause to ensure Section 1983 was not preempted by state law.

Relevance to the Disposition of the Case

The matters asserted in the amicus brief are relevant to the disposition of this case because it sheds light on the dangers of allowing local procedural rules to eclipse federally protected rights of the Appellants. The district court's ruling effectively forecloses Appellants from even reaching discovery, despite extensive allegations of sexual violence, threats, and corruption spanning decades. *Amici* believe that the federal courts must reclaim the full preemptive force Congress intended when it enacted § 1983 in 1871, especially in cases—like this one—that reflect the very evils that statute was meant to confront. As such, Amici's proposed brief provides the legal and historical context to aid the Court in making its decision.

Conclusion

For the foregoing reasons, Amici respectfully requests that this Court grant leave to file the attached amicus curiae brief in this matter.

Date: August 6, 2025

Respectfully submitted,

/s/ Mark P. Johnson

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CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limit of Fed. R. App. P. 29(a)(5) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f) and 10th Cir. R. 32(B), this document contains 622 words according to the word count function of Microsoft Word 365.

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Date: August 6, 2025

/s/ Mark P. Johnson

CERTIFICATE OF SERVICE

I hereby certify that on August 6, 2025, a true and accurate copy of the foregoing proposed brief was electronically filed with the Court using the CM/ECF system. Service on counsel for all parties will be accomplished through the Court's electronic filing system.

/s/ Mark P. Johnson

Date: August 6, 2025

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1(a), Roc Nation LLC (“Roc Nation”) states that it is a corporation organized under the laws of Delaware with its principal place of business in New York, New York. Roc Nation does not have a parent company and no publicly held corporation owns 10% or more of Roc Nation’s stock.

Innocence Project, Justice Strikeforce, Kansas Coalition Against Sexual and Domestic Violence, Midwest Innocence Project, MORE², IMPACT Strategies, Terence Crutcher Foundation, The Gathering for Justice, and Until Freedom are professional associations and/or 501(c)(3) organizations, do not have parent corporations, are not publicly traded companies, and no publicly held corporation owns 10% or more of their stock.

INTEREST OF AMICI CURIAE¹

This brief is filed by Amici, including Roc Nation and its philanthropist division, Team Roc, and eight additional civil rights advocates, legal scholars, public interest organizations, and justice-focused philanthropies, all united in their commitment to exposing systemic abuse, amplifying the voices of survivors, and holding law enforcement and government institutions accountable. Amici are dedicated to protecting and enforcing constitutional rights, particularly for communities historically marginalized by entrenched systems of power.

Amici have a strong interest in ensuring that the Section 1983 of the Civil Rights Act, 42 U.S.C. § 1983—one of the most vital civil rights statutes in American law—remains a meaningful vehicle for redress when state officials violate federal constitutional rights. Amici are particularly concerned that state statutes of limitations is being misapplied to unjustly time-bar continuing violations of abuse, government cover-ups, and deeply entrenched institutional misconduct.

¹ No party's counsel authored this brief in whole or in part; no party or party's counsel contributed money intended to fund this brief, and no person other than amici curiae, their members, and their counsel contributed money to fund this brief. Amici files this brief with its Motion for Leave pursuant to Fed. R. App. 29(a)(2).

This case exemplifies the dangers of allowing local procedural rules to eclipse federally protected rights. The district court's ruling effectively forecloses the Plaintiffs from any form of redress, preventing them from even reaching discovery, despite extensive allegations of sexual violence, threats, and corruption spanning decades. *Amici* believe that the federal courts must reclaim the full preemptive force Congress intended when it enacted Section 1983 in 1871, especially in cases—like this one—that exemplify the very evils the statute was intended to combat.

Amici include:

- Angela T. Rye, Esq., Principal/CEO, IMPACT Strategies
- Barry Scheck, Co-founder & Special Counsel, Innocence Project, and Professor of Law, Cardozo School of Law
- Kansas Coalition Against Sexual and Domestic Violence
- Justice Strikeforce
- MORE²
- Roc Nation
- The Gathering for Justice
- Terence Crutcher Foundation
- Until Freedom

SUMMARY OF THE ARGUMENT

Statutes of limitations should not be an obstacle allowing manifest injustice to stand when there are ways to reconcile the functions of statutes of limitations with the interests of justice in holding wrongdoers accountable. This case involves a pattern of corruption between a local government and certain individual wrongdoers,

who carried out a pattern of physical violence, rape, and threats and actions coordinated through a network of private and state enablers. The Plaintiffs, victims of these despicable actions and threats, predominantly working-class Black women, deserve to have their day in court and to be heard. The district court below has denied them Plaintiffs this opportunity through an erroneous application of the applicable statutes of limitations and refusal to employ equitable tolling.

Evil in the form of Roger Golubski cast a long shadow over Kansas City, Kansas. Golubski, one of the ring leaders of this longstanding reign of terror, was found dead from a self-inflicted gunshot wound on December 2, 2024. Golubski was a detective for the Kansas City, Kansas (“KCK”) Police Department (“KCKPD”), and over his decades long career, abused the power of his position to oversee a state-run protection racket on behalf of violent gangs and criminals in the city who sold illegal drugs and trafficked women. In exchange for enabling and defending these criminal enterprises, Golubski, was provided access to trafficked women, paid protection, money, and was offered and received contraband. *See* Complaint ¶¶ 28, 35, *Michelle Houcks, et al., v. Unified Government of Wyandotte County and Kansas City, Kansas, et al.*, No. 23-cv-02489-TC (D. Kan. Mar. 21, 2025), ECF No. 1 (“Compl.”).

Golubski’s horrific crimes against countless women, dubbed “Golubski’s Girls” in KCK, Compl. ¶ 43, typically came with credible fear of reprisal. Some

examples include his rape of Michelle Houcks in September 1992, after which he taunted her, asking “who would believe you over me” and telling her to “keep her mouth closed.” Compl. ¶¶ 56-68. Then, two months later after the rape, Golubski tracked Houcks down to ascertain whether she revealed details of the attack to anyone. During that encounter, Golubski warned Houcks that if she opened her mouth, he would har her and her family. To underscore his threat, Golubski specifically mentioned Houck’s brother’s full name and threatened to arrest him on trumped up charges if she spoke about the rape. Compl.¶ 69.

Another example of Golubski’s abuse and threats includes his treatment of Sandra Newsom, the mother of a murder victim. During the investigation of Newsom’s son’s death, “officer” Golubski gallingly made unwanted sexual advances to her after showing up at her home unannounced, Compl.¶¶ 91-103. Golubski’s threats and exercise of his vast power over Plaintiffs extended well beyond the walls of their homes in which he violated them. Indeed, when Sandra Newsom later appeared in court to assist, Lamonte McIntyre, the man she believed was wrongfully convicted of her son’s murder, Golubski was there and taunted her with a wink. Compl. ¶ 110. At that time, Newsome was unaware that Golubski, and his co-defendants were the ones that conspired to kill her son, and that Golubski framed McIntyre in order to protect the actual murderer because the killed was part of the criminal enterprise Golubski enabled. Compl. ¶ 106-109.

In another example of Golubski's horrific conduct, from 1994 to 2012, Golubski actively stalked Niko Quinn, a young woman who was the first cousin of Newsom's son, and eventually sexually assaulted her too. Compl. ¶¶ 139, 149. In 2012, after Quinn testified to assist in the exoneration of McIntyre, Golubski tracked her down to tell her that he was "mad at [her] because [she] told on [him]." Compl. ¶ 152.

Golubski also brutally raped Ophelia Williams in August 1999, and when she threatened to report the rape, Golubski responded, "Report me to who? The police? I am the police." The Golubski menacingly told her that he would "see her later." Compl. ¶ 167. William's victimization did not end there. Shockingly, Golubski proceeded to rape Williams many more times each time while wearing his KCKPD uniform, displaying the power of his position and, more to the point, his power over her. Compl. ¶¶ 174-176. Williams was terrified of Golubski and fearful that if she told anyone what occurred, Golubski would kill her or harm her sons. *Id.*

Despite the vast and disproportionate power dynamic between Golubski and Plaintiffs, and their justified fear of him as the reason these horrific incidents were not reported and adjudicated promptly, the district court dismissed the complaint, finding that the statute of limitations was not tolled. However, a more reasoned view of the statutes of limitations is that it did not start running until Golubski's suicide on December 2, 2024, when Golubski was no longer a threat and impideiment to

Plaintiffs' access to justice. Even assuming that the statute of limitations began to run before Golubski's suicide, they should have been tolled in the interest of justice such that this case could still be heard.

The Tenth Circuit should follow the Second Circuit and hold that the statute of limitations should be equitably tolled in cases where a defendant, especially on acting under the color of law, threatens to retaliate against a plaintiff if she files a claim against him. Here, decades of institutional harm including ignored reports, cover-ups, and the enabling of threats and intimidation by Golubski against Plaintiffs and his other victims make it inequitable to not consider these facts in evaluating the statute of limitations and the capacity for Plaintiffs' claims to be heard.

Moreover, Plaintiffs' claims outline a continuing violation based on the threats and intimidation that Golubski perpetrated against Plaintiffs until his death on December 2, 2024. The correct legal and equitable outcome is to allow for these claims to be brought after his death with the statute of limitations beginning to run at that point, considering the clear and real threat he posed to Plaintiffs which he used to dissuade them from bringing these claims while he was alive.

Notwithstanding the above arguments, the statute of limitations and equitable tolling for Section 1983 claims should be applied liberally in light of the federally protected rights guaranteed by the Civil Rights Act. Such liberal application would promote the goals of equity and justice by allowing Plaintiffs' claims to be heard.

Such approach will further promote the original intent of Congress to ensure Section 1983 is not trumped by state action by including the Notwithstanding Clause, which was omitted from the current statute by a mere clerical error. This Court has a unique opportunity to join a growing chorus of voices within the judiciary calling for the omission of the Notwithstanding Clause to be remedied, and amici respectfully request the Court do so, and in the process, provide due process to Plaintiffs by allowing them to adjudicate the harms perpetrated against them.

ARGUMENT

I. Even if the Statute of Limitations Began to Accrue Before Golubski's Death, Equitable Tolling and Equitable Estoppel Apply

Even if the statute of limitations began to accrue before Golubski's death on December 2, 2024, the doctrines of equitable tolling and equitable estoppel apply because Golubski and his co-defendants' coercive and harassing conduct necessitates the application of both doctrines.

Equitable tolling provides for certain circumstances where the statute of limitations period will be stopped from running. To prevail on an equitable tolling claim, "a litigant must prove (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstances stood in his way." *Chance v. Zinke*, 898 F.3d 1025, 1034 (10th Cir. 2018). As an example, in *Korgan v. Hansen*, the court found that the statute of limitations was tolled from March 19, 2020 through April

14, 2021 due to the COVID-19 pandemic. *Korgan v. Hansen*, 2022 U.S. Dist. LEXIS 174163, at *2–4 (D. Kan. Sept. 26, 2022).

The Tenth Circuit should join the Second Circuit in holding that the statute of limitations period is equitably tolled where a defendant makes credible and unrelenting threats against a plaintiff if she files a claim. *See Doe v. United States*, 76 F.4th 64, 72 (2d Cir. 2023); *but cf. Steven v. Toyota Motor Sales United States*, 2019 U.S. Dist. LEXIS 189227, at *14 (D. Kan. Oct. 30, 2019) (holding that a party who waits more than twenty-five years after receiving a threat to bring a suit has not been pursuing his rights diligently, unlike here where Plaintiffs were continuously threatened by Golubski’s continued threats and power of position and authority in the community). The Second Circuit, has recognized that “[w]hether a plaintiff faced extraordinary circumstances depends not on “the uniqueness of a party's circumstances” or the outrageousness of what they endured, “but rather . . . the severity of the obstacle impeding compliance with a limitations period” and that “[a]mong the extraordinary reasons that may justify equitable tolling of a statute of limitations is a defendant's efforts to threaten or retaliate against a plaintiff if she files a claim against him.” *Doe*, 76 F.4th 64, 72 (2d Cir. 2023); *see also Davis v. Jackson*, No. 15-cv-5359 (KMK), 2016 U.S. Dist. LEXIS 136034, 2016 U.S. Dist. LEXIS 136034, at *37 (S.D.N.Y. Sept. 30, 2016) (holding that an inmate may show extraordinary circumstances for purposes of equitable tolling where they allege

specific facts showing that a reasonable fear of retaliation by their jailers prevented them from filing a timely complaint). In *Doe*, the Second Circuit held that where an ICE agent, over the course of seven years, sexually abused Doe, an undocumented immigrant, such repeated abuse gave Doe a “specific and credible basis for retaliation” from the ICE agent, constituting an extraordinary circumstance. *Doe*, 76 F.4th 64, 72 (2d Cir. 2023). The court specifically noted that Doe endured violent sexual abuse over a period of seven years from a government official who had threatened to hasten the deportation of her and her family members, and the ICE agent, even after the sexual abuse stopped, threatened to kill Doe if she spoke out. *Id.*

Here, equitable tolling applies because, like the ICE agent who perpetrated sexual abuse against Doe, Golubski used systematic, illegal violence to place Plaintiffs in such a state of terror that they feared retaliation from Golubski and his co-defendants if they were to speak out. Golubski, like the ICE agent, was in a unique position to make good on his threats, emphasizing the credible nature of the threats against Plaintiffs’ lives. Just as the Second Circuit noted that the ICE agent in *Doe* was acting from a position of power to impede Doe from coming forward, and as such constituted an extraordinary circumstance such that the statute of limitations should be equitably tolled, so too here should the Court find that the statute of limitations should be equitably tolled, particularly given that Golubski, a

member of law enforcement in the Kansas community, exercised his position of power to silence Plaintiffs. Even worse, his co-defendants, including the KCPD, merely protected Golubski's atrocities and encouraged him to act with impunity—leaving the women with even more fear of Golubski's threats if they dared spoke up.

Plaintiffs' fears were not theoretical, they were grounded in a deeply disturbing reality. Like Doe, Plaintiffs were the subject of stalking, sexual abuse, and threats for years from members of law enforcement. Plaintiffs discuss the lengths at which they were harassed, including having Golubski showing up at their homes misrepresenting that the visit was for official police business, stalking Plaintiffs' in random locations, threatening to murder Plaintiffs if they ever discussed the rapes and sexual assaults, suggesting that their bodies would never be found. The threat of retaliation here, like the type of retaliation that the Second Circuit has recognized in *Doe*, constitutes extraordinary circumstances such that the statute of limitations should to be equitably tolled to allow for Plaintiffs' claims to proceed.

Second, equitable estoppel applies to prevent a party from asserting a defense, such as the statute of limitations, due to their own actions. Kansas law applies to whether Plaintiffs are entitled to equitable estoppel. Under Kansas law, the doctrine of equitable estoppel applies where “another party, by acts, representations, admissions, or silence when that other party had a duty to speak, induced the party

asserting estoppel to believe certain facts existed.” *Mut. Life Ins. Co. of N.Y. v. Bernasek*, 682 P.2d 667, 730 (Kan. 1984). The party arguing estoppel applies must “show that the party reasonably relied and acted upon such belief and would now be prejudiced if the other party were permitted to deny the existence of such facts.” *L. Ruth Fawcett Tr. v. Oil Producers Inc. of Kan.*, 507 P.3d 1124, 1144 (Kan. 2022).

Here, the doctrine of equitable estoppel applies because a pattern of institutional harms enabled Defendants, including Golubski’s, misconduct. These institutional harms include ignored reports, cover-ups, and decades of impunity that show Plaintiffs have met each of the elements above.

First, Defendants, as government officials and law enforcement, acted, represented, admitted or remained silent when they had a duty to speak. Second, Defendants’ intimidating conduct induced Plaintiffs to believe certain facts existed. Defendants’ conduct consisted of repeatedly threatening their victims, including Plaintiffs, that if they ever spoke up about the violations, they or their families would be killed, harmed, or have false convictions pinned on them. Defendants’ intimidation of Plaintiffs is evident from the sexual advances made towards Plaintiffs, including the repeated threats made against Plaintiffs. These threats against Plaintiffs made them fear for their safety, and for their family’s safety as well. And these threats were credible. The threats came directly from members of law enforcement, from those who swore to serve and protect. Defendants’ threats

forced Plaintiffs into silence out of fear of coming forward against those who were supposed to protect Plaintiffs.

Lastly, Plaintiffs would now be prejudiced because they would be forced into silence to allow the statute of limitations period to foreclose their claims. If Defendants are permitted to deny the existence of the threats and duress Defendants purposefully placed Plaintiffs under, this would effectively hand Defendants a wrongfully obtained advantage, rewarding them for their threats in forcing Plaintiffs into silence.

Congress rendered state statutes of limitations without effect in Section 1983 claims by expressly preempting any state law that purports to limit Section 1983. Municipalities are liable when official policies or widespread customs result in constitutional violations. *Monell v. Dep. of Social Servs.*, 436 U.S. 658, 690 (1978). Here, the Defendants, the Unified Government of Wyandotte County and Kansas City, Kansas, should be held liable for the constitutional violations they have enabled. Plaintiffs' claims allege more than mere misconduct. Plaintiffs' Complaint alleges a pattern of institutional failures that enabled Defendants' crimes. And despite acknowledging the systemic nature of these claims, the District Court's decision to deny Plaintiffs even the opportunity to obtain discovery into their claims is unjust given that Plaintiffs' ability to come forward was delayed by the coercive and retaliatory actions of Defendants. Plaintiffs' inability to come forward was an

orchestrated and calculated move by Defendants. In fact, the District Court noted in their memorandum and Order, commenting on the egregious conduct presented in this case, remarked how “[t]he complaint describes serious official misconduct, including allegations that law enforcement 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 relief may be granted says nothing about the merits of the claims.” Order at 3, *Michelle Houcks, et al., v. Unified Government of Wyandotte County and Kansas City, Kansas, et al.*, No. 23-cv-02489-TC (D. Kan. Mar. 21, 2025), ECF No. 49. The extent of the coercion and the retaliatory actions by Defendants is the very reason why Plaintiff should prevail on the statute of limitations and equitable tolling and equitable estoppel arguments notwithstanding the preemption doctrine.

In fact, Kansas’s own Congressman, David Perley Lowe, warned that state-sanctioned or state-ignored violence requires federal intervention. David Perley Lowe, Remarks on the Floor of the House of Representatives (Mar. 31, 1871), in Cong. Globe, 42d Cong., 1st Sess. 374 (“[I]f the rights of citizenship may be denied without redress, if the Constitution may not be enforced, if life and liberty may not be effectively protected, then, indeed is our civil Government a failure, and instead of enjoying liberty regulated by law, its subjects may live only by the sufferance of lawless and exasperated conspirators.”). The Court here has a unique opportunity to

intervene where local systems fail. The local systems failed Plaintiffs as they failed to protect Plaintiffs from state-sanctioned violence, including Golubski stalking, sexually abusing, and threatening Plaintiffs into silence. To name a few, Golubski threatened to “take Quinn’s children away,” “falsely accused [Williams’ sons] [] of murder to protect organized criminals and to gain access to [Williams] so he could rape and sexually assault her,” and forced Miller to remain in an interrogation room until after two in the morning after identifying her father’s body at the morgue which was “so badly burned that it was unidentifiable.” Golusbkis made it clear the Plaintiffs had no savior from his abuse and declared “Report me to who? The police? I am the police.” The extent of this coercion and retaliation means that Plaintiffs prevail on the equitable tolling and estoppel arguments on the merits notwithstanding the preemption doctrine.

II. The Statute of Limitations Did Not Start to Run Until Golubski Killed Himself

Plaintiffs’ complaint illustrates a pattern of coercion and intimidation which was effective until the day Golubski took his own life and neutralized his capacity to threaten each of the Plaintiffs. The district court below lamented by quoting language from precedent that “while [it] found no legal avenue . . . through which Plaintiffs could bring their claims, [it took] no great comfort in that conclusion.” *Alexander v. Oklahoma*, 382 F.3d 1206, 1220 (10th Cir. 2004). While recognizing

Plaintiffs claims may well be meritorious, the district court concluded in a tone of regret that the statute of limitations bars Plaintiffs' claims from being heard, and its hands are simply tied by procedure in this regard. Such a conclusion is premature: there do exist legal avenues to get Plaintiffs their day in court in accordance with the applicable of statute of limitations, namely, the "continuing violations" doctrine, which is not discussed in the briefing nor the decision below.²

The "continuing violations" doctrine allows, where a tort is not a discrete event but an ongoing course of conduct, for the statute of limitations for that tort to not accrue until the tortious conduct concludes. *Id.* at 280. Essentially, where an instance of misconduct precipitates a series of events of misconduct, and only some of the later portions of that misconduct stretch into the limitations period, the "continuing violations" doctrine allows for the entire course of conduct to be prosecuted in a civil suit. *Id.*

The Tenth Circuit has assumed (but not decided) that the "continuing violations" doctrine applies to Section 1983 claims. *See Kelly v. Schnurr*, 2024 U.S. App. LEXIS 23797, at *6 (Sept. 19, 2024). And a large majority of other circuits have decided that the doctrine does apply to Section 1983 claims. *See Connell v. Bd. of Selectmen*, 2000 U.S. App. LEXIS 12292, at *6 (1st Cir. June 2, 2000); *Shomo*

² *See generally* Kyle Graham, *The Continuing Violations Doctrine*, 43 Gonz. L. Rev. 271 (2008).

v. City of N.Y., 2009 U.S. App. LEXIS 23076, at *7 (2d Cir. Aug. 13, 2009); *Soppick v. Borough of W. Conshohocken*, 118 F. App'x 631, 635 (3d Cir. 2004); *Depaola v. Clarke*, 884 F.3d 481, 486 (4th Cir. 2018); *Heath v. Bd. of Supervisors for the S. Univ. & Agric. & Mech. Coll.*, 850 F.3d 731, 739 (5th Cir. 2017); *Katz v. Beverly Hills*, 677 F. App'x 232, 236 (6th Cir. 2017); *CSC Holdings, Inc. v. Redis*, 309 F.3d 988, 992 (7th Cir. 2002); *Bird v. State*, 935 F.3d 738, 746 (9th Cir. 2019). This Court has stated that in continuing violation cases, “the statute of limitations does not begin to run until the wrong is over and done with,” and that “the doctrine cannot be employed where the plaintiff's injury is definite and discoverable, and nothing prevented the plaintiff from coming forward to seek redress.” *Kelly*, 2024 U.S. App. LEXIS 23797, at *6 (*quoting Tiberi v. CIGNA Corp.*, 89 F.3d 1423, 1430-31 (10th Cir. 1996) (internal quotations omitted)). There is relatively little Tenth Circuit precedent analyzing the continuing violation doctrine in a case similar to this one, but this case is easily distinguished from the ones where this Court refused to extend statutes of limitations based on this doctrine due to a lack of the necessary factual conditions.

Take *Kelly v. Schnurr*, for example. In *Kelly*, the plaintiff was an inmate who claimed his continuing injury warranting an extension of the statutes of limitations was a 2019 placement in administrative segregation, along with 2020 and 2021 disciplinary reports. *Id.* at *3. He commenced his action more than two years after

the last of these events in June 2023, and the Court held there was not a continuing injury because his only continuing violation alleged was a stigma or attack on his character flowing from these events, which the Court determined was a continual ill effect as opposed to continual unlawful acts. *Id.* at *6-7. Thus, the Court in *Kelly* noted that “[Kelly did] not argue that anything kept him from seeking redress for those actions within the limitations period.” *Id.* at *6.

The facts here, by contrast, are plainly different from those in *Kelly* and other Tenth Circuit cases involving the continuing violation doctrine. Indeed, the fundamental difference is that Golubski’s actions constituted a campaign of intimidation and threats that were not a mere “continual ill effect” of an initial wrong, but rather *ongoing unlawful acts* that stretched well into the applicable limitations period. These are acts and not mere effects of conduct because Golubski’s actions (and his position as an influential member of the police force, the body with the monopoly on the *legitimate* use of violence) while the threat was active constituted a renewal of the threat each day. These threats in fact continued to be credible until the day he took his own life. The Tenth Circuit has recognized in other contexts that threats and intimidation can constitute a continuing violation for the purposes of extending the statute of limitations: in *Gray v. Phillips*, it recognized that where employees who have faced adverse employment decisions remain employed by their discriminatory employer, they may feel threatened by the discriminatory policies

and practices of their employer and be deterred from filing an EEOC charge within the statute of limitations, and that courts have considered this type of intimidation a continuing violation and allowed for filing of charges past what the limitations period would be if it simply began at the point of the adverse employment decision. 858 F.2d 610, 614 (1988).

Further, the Tenth Circuit in *Kelly* stated that the doctrine “cannot be employed where the plaintiff’s injury is definite and discoverable, and nothing prevented the plaintiff from coming forward to seek redress,” 2024 U.S. App. LEXIS 23797, at *6, which suggests that if there were anything keeping Kelly from seeking redress for the defendants in his case’s unlawful actions against him, the result may have been different, and this case presents different circumstances from *Kelly* such that a different outcome is warranted.

For each of the claims against Golubski, he made broad threats and waged a campaign of intimidation against Plaintiffs including his stalking of and making repeated threatening sexual advances towards Quinn between 1994 and 2012, Compl. ¶¶ 139, 149, 152; seeking out Houcks to threaten her brother if she ever said anything in the months after he raped her in 1992, Compl. ¶¶ 56-68; winking at Newsom to remind her of the power he held over her and her son’s case when she testified about McIntyre’s wrongful conviction, Compl. ¶¶ 91-103, 110; or his chilling warning to Williams when she suggested she’d report him, “Report me to

who, the police? I am the police.” Compl. ¶ 167. These are not threats which dissipate after an arbitrary two years. Rather, when a powerful government agent makes such a threat, one instance can be good enough to keep someone quiet for a lifetime. The nature of threats or intimidation is that, depending on the context, a threat can still exist long after an overt act is made to express a specific threat. *See Gray*, 858 F.2d at 614. The types of threats constituted by Golubski here are arguably much more severe and pervasive than the scenario suggested by the court in *Gray*, in which a discriminatory employer’s policies making an employee afraid to file a charge related to a discriminatory employment action would warrant the statute of limitations would be extended due to a continuing violation for reasonable fear that one would be fired. Similarly, that statute of limitations should be extended because Plaintiffs would have reasonable fear of being physically attacked, sexually assaulted, or imprisoned, whether by Golubski personally or one of his cronies.

Hypothetically, if a police officer showed up at someone’s house one night and told that person to *never* leave town ever or file a lawsuit against them, but then never appeared again to reiterate that threat to them, the threat might still reasonably be credible more than two years after the police officer’s visit; the only way to find out would be to leave town or file the lawsuit and test that threat, exposing oneself to grave danger. Therefore, a threat or intimidation is not a mere residual effect of

a bad act like the harm to the plaintiff in *Kelly*'s reputation; it is an ongoing bad act that continues every day that the threat remains credible.

To hold otherwise would create an incentive for bad actors to make such threats, since doing so creates the possibility for them to *completely* escape liability, so long as their victims can remain scared for at least two years after the threat was made. The ambiguity in case law in this area poses a unique opportunity for the Tenth Circuit to make clear the remedies that victims of crimes such as those described in Plaintiffs' complaint have available to them, as opposed to resigning itself to its hands being tied by unfortunate precedent. Failing to apply the "continuing violations" doctrine to the facts of this case would signal to would-be corrupt public officials that it is in their best interest to threaten and intimidate their victims, as this is not something that the law will provide any practical tools to their victims to gain redress for, even (and especially) many years into the future, due to short statutes of limitations.

III. Federal Courts Should Realign Section 1983 With its Original Intent by Applying A Liberal Application of State Procedural Rules To Allow Plaintiffs to Pursue Their Claims on the Merits

The Court's ruling effectively allows state procedural barriers to override federal civil rights protections. Section 1983 is a cornerstone of federal civil rights law enacted to preempt state law and broaden the protections of federally protected civil rights. Section 1983 provides for monetary damages and injunctive relief

against state and local governments and their employees. To have a valid Section 1983 claim, a plaintiff must plead that they were subjected to conduct that violated their constitutional rights by someone acting under the color of state law and the conduct deprived the plaintiff of rights, privileges, or immunities guaranteed under the U.S. Constitution or federal law. Section 1983 protects against a wide variety of abuse, including but not limited to, violations of the Fourth Amendment's protection against unreasonable searches and seizures and the use of excessive force, the Eighth Amendment right to not be subjected to cruel and unusual punishment, and the Fourteenth Amendment procedural and substantive due process and equal protection guarantees. Section 1983 is monumental in redressing the violations of individual rights by law enforcement.

While Section 1983 does not have a statutory statute of limitation, federal courts have applied the personal injury statute of limitations of the forum state in which it sits. *Wallace v. Kato*, 549 U.S. 384, 387, 127 S. Ct. 1091, 1094 (2007) (“Section 1983 provides a federal cause of action, but in several respects relevant here federal law looks to the law of the State in which the cause of action arose. This is so for the length of the statute of limitations: It is that which the State provides for personal-injury torts.”). This borrowing of the state statute of limitations undisputably results in inconsistencies in the applicability and redressability of Section 1983 claims across the nation. Despite suing for relief under the same federal

statute, plaintiffs may face different procedural rules that may block their right to relief under Section 1983, not due to the merits of their case, but the procedural rules of a state statute of limitations. For example, while a plaintiff in Kansas faces a two-year statute of limitation for her Section 1983 claim, a similarly situated plaintiff filing in New York has the benefit of another year and can bring her claim within three years. Both claims can have the same allegations, the same federally violated constitutional rights, and the same accrual date, yet the Kansas plaintiff must face a shorter time to bring her claim. Such inconsistency creates an unfair advantage for individuals in states with longer applicable statute of limitations and increases the risk of inequal redress for Section 1983 claims.

Section 1983 was enacted as part of the Civil Rights Act of 1871 during the Reconstruction period following the ending of the Civil War. While the Fourteenth Amendment was intended to guarantee equality and protection against African Americans following the end of slavery and the inequal and segregated Southern States, the effectiveness of the Fourteenth Amendment diminished in the face of the Ku Klux Klan's reign of terror in the southern states.³ State governments and officials made minimal attempts to enforce the guarantees of the Fourteenth

³ David H. Gans, *Repairing Our System of Constitutional Accountability: Reflections of the 150th Anniversary of Section 1983*, <https://cardozolawreview.com/repairing-our-system-of-constitutional-accountability-reflections-on-the-150th-anniversary-of-section-1983/>.

Amendment, and in some instances aided in its violation: “While murder is stalking abroad in disguise, while whippings and lynchings and banishment have been visited upon unoffending American citizens, the local administrations have been found inadequate or unwilling to apply the proper corrective....Immunity is given to crime, and the records of the public tribunals are searched in vain for any evidence of effective redress.”⁴ Then Kansas Congressman David Perley Lowe warned at the time that such state-sanctioned violence required federal intervention. On the floor of the House of Representatives he declared: “Immunity is given to crime, and the records of the public tribunals are searched in vain for any evidence of effective redress. If there is no remedy for this, if the rights of citizenship may be denied without redress, if the Constitution may not be enforced, if life and liberty may not be effectively protected, then, indeed, is our civil Government a failure, and instead of enjoying liberty regulated by law, its subjects may live only by the sufferance of lawless and exasperated conspirators.”⁵ In the face of the lack of enforcement of the Fourteenth Amendment and the continued constitutional violations, Congress passed the Civil Rights Act of 1871 as a remedy.

While the Act’s main objective was to curb the violence and atrocities committed by the Ku Klux Klan, Section 1983 of the Act specifically provided

⁴ *Id.*

⁵ Hon. David Perley Lowe, Remarks on the Floor of the House of Representatives (Mar. 31, 1871), in *Cong. Globe*, 42d Congr., 1 st Sess. 374.

individuals an avenue to sue state and local officials for the violation of their federal civil rights. To cement federal intervention and protection of federal civil rights in light of the state-sanctioned violence, Congress included the “Notwithstanding Clause” in the original drafted version Section 1983. The Notwithstanding Clause made officials liable for the deprivation of constitutional rights, privileges, and immunities “any such law, statute, ordinance, regulation, custom, or usage of the State to the contrary notwithstanding.” 17 Stat. 13; 42 Cong. Ch. 22. As such, the Notwithstanding Clause made clear the Congressional intent that the federal rights under Section 1983 were not to be trumped by state procedural laws, including statutes of limitations.

This Notwithstanding Clause was *accidentally omitted* during the 1874 codification process—a clerical error that has never been corrected in the U.S. Code, despite its immense legal significance.⁶ This clerical error was not an attempt to reduce the substantive law of Section 1983, but was merely an attempt at condensing and consolidating the large volume of statutes. *Id.* This omission has operated to become a procedural roadblock for individuals with meritorious claims as defendants and federal courts rely on state statute of limitations to block access to

⁶ Brief For the Institute for Justice as Amicus Curiae Supporting Respondent, Health and Hospital Corporation of Marion County, *et al.*, v. *Talevski*, *Personal Representative of the Estate of Gorgi Talevski, deceased*; Jacob Harcar, *The Original Meaning of Section 1983 and Official Immunity*, 73 U. KAN. L. REV. 357 (November 2024).

justice for individuals seeking retribution from the state and local officials who violated their constitutional rights. Such a result defies the statute's original meaning and intent of Section 1983 and is contrary to the constitutional principles of federal supremacy and preemption.

Under the Supremacy Clause of the U.S. Constitution, federal law trumps state law. U.S. Const. Article VI, Clause 2. Similarly, under federal preemption doctrine, in instances in which state law conflicts with federal law, federal law must govern. *See Glacier Nw., Inc. v. Int'l Bhd. of Teamsters Local Union No. 174*, 598 U.S. 771, 776, 143 S. Ct. 1404, 1410 (2023) (“It is a bedrock rule, of course, that federal law preempts state law when the two conflict.”). This principle was deemed so important to Congress when enacting Section 1983 to bolster the enforcement of the guarantees of the Fourteenth Amendment, that the originally enacted provision of Section 1983, before it was *accidentally* omitted, explicitly displaced any and all state law that was contrary to Section 1983. Consequently, allowing a state's statute of limitation and equitable estoppel doctrines to govern principles of federal law and block access to remedies for violation of federal law is incompatible with the original intent of the Civil Rights Act of 1871, the Supremacy Clause of the U.S. Constitution, and federal preemption doctrine.

This historical intent supports a liberal application of doctrines such as the continuing violation doctrine and equitable tolling. Many constitutional injuries

occur over extended periods of time or are concealed through official misconduct. The continuing violation doctrine recognizes that when constitutional harms are part of an ongoing pattern, courts should view them as one cumulative violation that tolls the statute of limitations. Similarly, equitable tolling is appropriate where extraordinary circumstances – such as concealment, retaliation, or trauma – prevent a timely filing. These doctrines are essential mechanisms to ensure that victims of constitutional abuses are not deprived of redress because of technical procedural bars. Interpreting Section 1983 in a manner that rigidly applies state statutes of limitations periods, without regard to these remedial doctrines, undermines Congress’ purpose in enacting the statute.

The applicable statute of limitation for Section 1983 should be re-visited and re-aligned with Congress’ original intent to supersede state action and law and to ensure fairness and consistency to similarly situated plaintiffs across the country seeking relief under the same federal statute. As such, this Court should revisit the application of the statute of limitations and principles of equitable tolling and the continuing violation doctrine, to realign it with Congress’s original intent: to ensure the uniform and robust federal protection of constitutional rights, unimpeded by inconsistent state procedural law.

Rightfully so, there have been calls to realign the current Section 1983 precedent with its original intent and purpose. For example, Judge Don Willett of

the Fifth Circuit criticized qualified immunity as a “judge-created doctrine” that “excuses constitutional violations by limiting the statute Congress passed to redress constitutional violations,” echoing Chief Justice Marshall’s warning that the United States “cease[e] to deserve” the title of a government of laws, when there is no remedy for a legal right. *Zadeh v. Robinson*, 928 F.3d 457, 480-481. Judge Adalberto Jordan of the Eleventh Circuit echoed this concern, writing “judicially-created qualified immunity jurisprudence is far removed from the principles existing in the early 1870’s, when Congress enacted what is now 42 U.S.C. § 1983.” *Sosa v. Martin Cnty.*, 57 F.4th 1297, 13049 (Jordan, J., concurring). Justice Sonia Sotomayor of the U.S. Supreme Court has likewise warned that the doctrine has become an “absolute shield” for government officials, rendering constitutional protections hollow. *Kisela v. Hughes*, 584 U.S. 100, 109 (Sotomayor, J., dissenting). The message of these judicial opinions is clear – modern application of Section 1983 has strayed far from Section 1983’s original remedial purpose, and a course correction is long overdue.

Section 1983 should regain its position as a federal law not impeded by the inequitable application of state procedural barriers that strip civil rights intended to be protected and guaranteed to all individuals regardless of inconsequential differences such as the state in which they live. This matter is a prime example of why such change is needed to protect against the abuse and violation of federal civil rights at the hands of law enforcement. Here, the Court is in the position to prevent

further inequity that arises from the current Section 1983 regime. The Court should apply the continuing violation doctrine and equitable tolling principles liberally in light of the federal protections guaranteed to be protected by the Act. The historical background of the enactment of Section 1983 and the inclusion of the notwithstanding clause supports such an application of the continuing violation doctrine and the application of equitable tolling to ensure civil liberties are being protected against the abuse of state sanctioned acts the Court.

CONCLUSION

This Court should reverse the district court's Order dismissing the Complaint and remand for further proceedings.

Date: August 6, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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Date: August 6, 2025

/s/ Mark P. Johnson

CERTIFICATE OF SERVICE

I hereby certify that on August 6, 2025, a true and accurate copy of the foregoing proposed brief was electronically filed with the Court using the CM/ECF system. Service on counsel for all parties will be accomplished through the Court's electronic filing system.

/s/ Mark P. Johnson

Date: August 6, 2025