

**NONPRECEDENTIAL DISPOSITION**

To be cited only in accordance with FED. R. APP. P. 32.1

**United States Court of Appeals****For the Seventh Circuit****Chicago, Illinois 60604**

Submitted March 28, 2025\*

Decided March 31, 2025

**Before**FRANK H. EASTERBROOK, *Circuit Judge*KENNETH F. RIPPLE, *Circuit Judge*MICHAEL Y. SCUDDER, *Circuit Judge*

No. 22-3151

LLOYD SELLERS,  
*Plaintiff-Appellant,**v.*MILWAUKEE COUNTY and DAVID  
CLARK,  
*Defendants-Appellees.*Appeal from the United States District  
Court for the for the Western District of  
Wisconsin.

No. 20-cv-214

James D. Peterson,  
*Chief Judge.*

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\* The appellees were not served with process and are not participating in this appeal. We have agreed to decide the case without oral argument because the brief and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

## ORDER

Invoking 42 U.S.C. § 1983, Lloyd Sellers sued Milwaukee County and its sheriff in 2020, alleging that they violated Sellers' constitutional rights over 25 years earlier, in 1994. He accuses them of implementing a practice of detaining people arrested without a warrant, like him, for more than 48 hours before taking the arrestees to a judge for a probable-cause hearing. Because Sellers filed this suit long past the expiration of the statute of limitations, the district court correctly dismissed it. We thus affirm.

We recount the facts alleged in the complaint and accept as true the well-pleaded allegations. *See Esco v. City of Chicago*, 107 F.4th 673, 678 (7th Cir. 2024). Sellers was arrested without a warrant on October 31, 1994, during a murder investigation. Under a practice of Milwaukee County, the sheriff did not bring Sellers to a magistrate judge for over three days, until November 3, at which time a judge ordered him detained for trial. A jury later convicted him of homicide, and he was sentenced to life in prison.

Over 25 years later, Sellers sued Milwaukee County and its sheriff over the County's alleged practice of keeping warrantless arrestees in jail without a probable-cause hearing occurring within 48 hours of arrest. *See Monell v. Department of Social Services*, 436 U.S. 658 (1978). This practice, Sellers says, violated his rights to due process and equal protection under the Fourteenth Amendment based on the Supreme Court's decision in *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991).

The district court screened Sellers' complaint, *see* 28 U.S.C. § 1915A, and notified Sellers that, among other defects, his suit was likely barred by the affirmative defense of the statute of limitations. It ordered him to show cause why it should not dismiss his suit, and after Sellers failed to persuade the court, it dismissed the case. We review a dismissal at screening *de novo*. *See Balle v. Kennedy*, 73 F.4th 545, 557 (7th Cir. 2023).

Dismissal was correct. A plaintiff need not anticipate or rebut a statute-of-limitations defense in his complaint. *See Sabo v. Erickson*, 128 F.4th 836, 842 (7th Cir. 2025) (en banc). But dismissal is appropriate if, as here, the allegations in the complaint make the statute of limitations an impenetrable bar to recovery. *Milchtein v. Milwaukee Cnty.*, 42 F.4th 814, 822 (7th Cir. 2022). Federal law determines when a § 1983 claim accrues. *See Wallace v. Kato*, 549 U.S. 384, 387 (2007). Under federal law, Sellers's claim accrued when he knew or should have known that the defendants violated his constitutional rights. *Milchtein*, 42 F.4th at 822. The claim thus accrued (and the limitations period began to run), at the latest, on November 3, 1994—when Sellers received his probable-cause hearing more than 48 hours after his warrantless arrest. For

§ 1983 claims, federal courts borrow the forum state's statute of limitations for personal-injury claims. *See Wallace*, 549 U.S. at 387. (The forum state here is Wisconsin.) Under Wisconsin's law in effect in 1994, Sellers had six years to sue once his claim accrued. WIS. STAT. § 893.53 (1994). (The statute of limitations was shortened in 2018 to three years. *See Cielak v. Nicolet Union High Sch. Dist.*, 112 F.4th 472, 477 (7th Cir. 2024).) So, the six-year limitations period expired in November 2000—nearly 20 years before he sued.

Sellers offers two arguments on appeal; neither one persuades us. First, he maintains that his claim did not accrue until February 2020, when he initially learned about *County of Riverside v. McLaughlin* and believed that Milwaukee's practice in 1994 contravenes *Riverside's* holding. This argument misses the mark. Whether Sellers knew of a particular legal principle when his injury occurred does not affect accrual; only Sellers's knowledge of his injury—which occurred in 1994—matters. *See Tobey v. Chibucos*, 890 F.3d 634, 646 (7th Cir. 2018).

Alternatively, for the first time on appeal, Sellers invokes equitable tolling to avoid the bar of the statute of limitations. Under Wisconsin law, whose equitable-tolling rules govern here, *Wallace*, 549 U.S. at 394, equitable tolling may apply if Sellers alleges that his failure to meet the filing deadline was out of his control, *see State ex rel. Davis v. Cir. Ct. for Dane Cnty.*, 4 N.W.3d 273, 280 (Wis. 2024); *State ex rel. Griffin v. Smith*, 677 N.W.2d 259, 269 (Wis. 2004). Sellers appears to suggest that Milwaukee County had concealed its practice of delaying probable-cause hearings of arrestees for more than 48 hours. This argument is unavailing for two reasons. First, when the district court gave Sellers an opportunity to explain why the limitations bar did not apply, he had to develop a contention about concealment then, if he wanted to preserve it for appeal. *See O'Gorman v. City of Chicago*, 777 F.3d 885, 890 (7th Cir. 2015). Sellers did not do so. Instead, he limited his argument to his assertion that he had just recently learned about *Riverside*. In any event, once he knew in 1994 that the County had delayed his hearing, he was on notice of the County's possible practice. As a result, for a court to consider applying equitable tolling based on the alleged concealment, Sellers had to argue that it was beyond his control to investigate the possible practice. *See Davis*, 4 N.W.3d at 280. But even on appeal he does not contend that, during the two decades after 1994, he tried to investigate and the County shut him down or an investigation was otherwise beyond his control. Equitable tolling thus cannot save his belated claim.

AFFIRMED