No.

IN THE

Supreme Court of the United States

JUSTIN HERRERA,

Petitioner,

v.

TERESA CLEVELAND, SAMUEL DIAZ, AND ENRIQUE MARTINEZ,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Federal Rule of Civil Procedure 15(c)(1)(C) provides that when a plaintiff files an amended complaint changing the name of a defendant, that amendment relates back to the date of the original complaint if the newly named defendant (1) "received such notice of the action that it will not be prejudiced in defending on the merits" and (2) "knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity."

The question presented is:

Does Rule 15(c)(1)(C) categorically exclude relation back if the plaintiff initially used John Doe placeholders in the complaint due to inadequate knowledge regarding the defendants' names?

RELATED PROCEEDINGS

Herrera v. Cleveland, No. 20-2076 (7th Cir.) (judgment entered Aug. 6, 2021)

Cleveland v. Herrera, No. 20-8015 (7th Cir.) (permission to appeal pursuant to 28 U.S.C. § 1292(b) granted June 11, 2020)

Herrera v. Cleveland, No. 18-CV-6846 (N.D. Ill.) (motion to dismiss denied April 1, 2020, and motion to certify for interlocutory appeal granted May 6, 2020)

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INTRODUCTION

For 55 years, Federal Rule of Civil Procedure 15(c) has provided that when a plaintiff amends her complaint to change the defendant's name, that amendment relates back to the date of the original complaint if the newly named defendant (1) received notice of the action such that he will not be prejudiced in defending on the merits and (2) knew or should have known that the action would have been brought against him, but for a mistake concerning the proper party's identity. Fed. R. Civ. P. 15(c)(1)(C).

For nearly 30 of those years, the courts of appeals have been divided over the Rule's application when the plaintiff uses John Doe placeholders in her original complaint and then substitutes in the proper defendants once she obtains their names. Six circuits hold that the substitution of a named defendant for a Doe defendant never relates back under Rule 15(c)(1)(C) because the plaintiff's initial use of a Doe placeholder indicates inadequate knowledge rather than a "mistake." Two circuits have rejected this approach as improperly imposing a state of mind requirement on the plaintiff when the Rule's text and purpose focus solely on the defendant's notice and knowledge that he should have been named as the proper party to the suit. The split is so well estab-

lished that it appears in over a dozen law review articles,[1] civil procedure treatises,[2] and law school textbooks.[3]

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[1] *See, e.g.*, Meg Tomlinson, Note, Krupski *and Relation Back for Claims Against John Doe Defendants*, 86 Fordham L. Rev. 2071, 2084-96 (2018); Edward F. Sherman, *Amending Complaints to Sue Previously Misnamed or Unidentified Defendants After the Statute of Limitations Has Run: Questions Remaining from the* Krupski *Decision*, 15 Nev. L.J. 1329, 1337-38 (2015); Brian J. Zeiger et al., *A Change to Relation Back*, 18 Tex. J. C.L. & C.R. 181, 186-94 (2013); Stacy H. Farmer, Comment, *The United States Supreme Court in* Krupski v. Costa Crociere, S.p.A. *Creates Additional Ambiguity in the Relation Back Doctrine*, 35 Am. J. Trial Advoc. 207, 215-16 (2011); Robert A. Lusardi, *Rule 15(c) Mistake: The Supreme Court in* Krupski *Seeks to Resolve a Judicial Thicket*, 49 U. Louisville L. Rev. 317, 333 (2011); Howard M. Wasserman, *Civil Rights Plaintiffs and John Doe Defendants: A Study in Section 1983 Procedure*, 25 Cardozo L. Rev. 793, 818 (2003); Rebecca S. Engrav, Comment, *Relation Back of Amendments Naming Previously Unnamed Defendants Under Federal Rule of Civil Procedure 15(c)*, 89 Calif. L. Rev. 1549, 1570-73 (2001); Steven S. Sparling, Note, *Relation Back of "John Doe" Complaints in Federal Court: What You Don't Know Can Hurt You*, 19 Cardozo L. Rev. 1235, 1245 (1997).

[2] *See, e.g.*, James Moore & Kevin Shirey, *Moore's Federal Rules Pamphlet, Part I: Federal Rules of Civil Procedure* 220-21 (2021); Steven S. Gensler & Lumen N. Mulligan, *Federal Rules of Civil Procedure, Rules and Commentary* 451 (2020); 6A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 1498.3 (3d ed. 2010); Jack H. Friedenthal et al., *Civil Procedure* 322-23 (6th ed. 2021).

[3] *See, e.g.*, A. Benjamin Spencer, *Civil Procedure: A Contemporary Approach* 508-517 (6th ed. 2021); Stephen N. Subrin et al., *Civil Procedure: Doctrine, Practice, and Context* 319-27 (6th ed. 2020); Joseph W. Glannon et al., *Civil Procedure: A Coursebook* 600 (3d ed. 2017).

In 2010, this Court issued a decision that many lower courts understood to resolve the issue in favor of the minority side of the split. *Krupski v. Costa Crociere S. p. A.*, 560 U.S. 538 (2010), holds that Rule 15(c)(1)(C) "asks what the prospective *defendant* knew or should have known" within the statute of limitations, "not what the *plaintiff* knew or should have known at the time of filing her original complaint." *Id.* at 548 (emphasis in original). In the years that followed, dozens of district court decisions concluded that *Krupski* abrogated the majority circuit rule barring relation back for Doe substitutions based on the plaintiff's state of mind. *Infra* pp. 18-22.

Over the last few years, however, four of the circuits on the majority side of the split have recommitted to their position that Rule 15(c)(1)(C) excludes Doe substitutions, most recently the Seventh Circuit in the decision below. The split is thus now entrenched and in need of this Court's resolution.

This Court's review is especially warranted because the majority position conflicts with Rule 15(c)'s text and purpose. As the Court explained in *Krupski*, the phrase "a mistake concerning the proper party's identity" is not a separate state of mind requirement imposed on the plaintiff, but a dependent clause describing the defendant's knowledge that he is the proper party to the suit. 560 U.S. at 548-50. Where the plaintiff uses a Doe placeholder, it plainly signals that she intends to sue the person whose actions the complaint attributes to the Doe defendant, but she lacks the necessary information to properly name him. If that person has timely notice of the suit and

recognizes or should recognize himself as the Doe defendant, Rule 15(c)(1)(C)'s requirements are satisfied.

The majority reading also errs by defining "mistake" to exclude pleading deficiencies resulting from lack of knowledge rather than accident. As *Krupski* explains, the word "mistake" includes "'a wrong action or statement proceeding from faulty judgment, *inadequate knowledge*, or inattention[.]'" 560 U.S. at 548-49 (quoting *Webster's Third New International Dictionary* 1446 (2002) (emphasis added)). Doe placeholders are a convention used by plaintiffs when they have no choice but to name the wrong defendant because they lack knowledge as to the proper defendant's identity. The fact that the plaintiff realizes she is unable to name the proper defendant does not make naming the wrong defendant any less of a mistake.

Rule 15(c)(1)(C)'s textual focus on the defendant's knowledge, rather than the plaintiff's state of mind, is consistent with its purpose: "to balance the interests of the defendant protected by the statute of limitations with the preference expressed in the Federal Rules of Civil Procedure in general, and Rule 15 in particular, for resolving disputes on their merits." *Krupski*, 560 U.S. at 550. Categorically excluding Doe substitutions from relation back provides an unwarranted "windfall," *id.*, for defendants who knew full well within the notice period that they were the proper parties to the suit. And it creates perverse incentives: A plaintiff who names only the state as the defendant, or who names the wrong state officers in the original complaint, can pursue relation back to substitute in the names of the correct state officers,

but a plaintiff who more cautiously uses Doe placeholders until she can confirm the correct state officers' identities cannot. Perversely, under the majority rule, a plaintiff who is unsure of the names of the individuals who injured her is better off taking her best guess at the defendants' names than she is signaling her uncertainty with Doe placeholders.

The question presented is exceptionally important, arising in hundreds of cases involving a wide range of subject matters. *Infra* pp. 34-36. And it is squarely raised by the decision below with no vehicle problems. The Court should take this opportunity to resolve the division of authority and ensure that the lower courts are applying Rule 15(c)(1)(C) in accord with its text and purpose, with common sense, and with this Court's precedent.

OPINIONS AND ORDERS BELOW

The opinion of the court of appeals is reported at 8 F.4th 493 (7th Cir. 2021). Pet. App. 1a-12a. The opinion of the district court denying respondents' motion to dismiss is unreported and available at 2020 WL 1548954 and entry 54 on the docket for *Herrera v. Cleveland*, No. 18-CV-06846 (N.D. Ill. Apr. 1, 2020). Pet. App. 13a-19a.

The order of the court of appeals granting respondents' petition for permission to appeal under 28 U.S.C. § 1292(b) is unreported and appears as entry 5 on the docket for *Cleveland v. Herrera*, No. 20-8015 (7th Cir. June 11, 2020). Pet. App. 20a-21a. The district court's minute order granting respondents' motion to certify for interlocutory appeal is unreported and appears as entry 58 on the docket for *Herrera v. Cleveland*, No. 18-CV-06846 (N.D. Ill. May 6, 2020). Pet. App. 22a.

JURISDICTION

The Seventh Circuit entered judgment on August 6, 2021. Pet. App. 1a. On October 26, 2021, Justice Barrett extended the time within which to file a petition for a writ of certiorari to and including November 19, 2021. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

Federal Rule of Civil Procedure 15(c)(1) provides:

When an Amendment Relates Back. An amendment to a pleading relates back to the date of the original pleading when:

> (A) the law that provides the applicable statute of limitations allows relation back;
>
> (B) the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading; or
>
> (C) the amendment changes the party or the naming of the party against whom a claim is asserted, if Rule 15(c)(1)(B) is satisfied and if, within the period provided by Rule 4(m) for serving the summons and complaint, the party to be brought in by amendment:
>
> (i) received such notice of the action that it will not be prejudiced in defending on the merits; and
>
> (ii) knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity.

STATEMENT OF THE CASE

1. In October 2016, petitioner Justin Herrera was in pretrial detention at the Cook County Jail in Chicago, Illinois. Pet. App. 2a. After a court appearance, he was placed in a holding cell with a group of other detainees to await escort back to their usual cells. Pet. App. 14a-15a. Three correctional officers were assigned to monitor the holding cell. Pet. App. 3a. One detainee began to threaten Herrera, accusing him of

affiliation with a rival gang. Pet. App. 2a. As the situation intensified, Herrera banged on the cell door and called to the officers for help, alerting them he was in danger. *Id.* One officer approached the cell to observe the situation but then walked away, disregarding Herrera's request for protection. *Id.* Once the officer was gone, the aggressive detainee and eight others attacked Herrera. *Id.* Herrera continued calling for help during the assault, but none of the officers responded. Pet. App. 15a.

After the assault, an officer returned to remove Herrera from the cell. Pet. App. 2a. Although Herrera suffered severe injuries, the officers waited two hours before taking him to the jail's health clinic, and an additional six hours before transporting him to a hospital. *Id.*

2. In October 2018, within the two-year statute of limitations provided by Illinois law, Herrera filed a pro se complaint against the three officers assigned to monitor the holding cell at the time of the attack. Pet. App. 3a. He alleged due process violations under 42 U.S.C. § 1983 based on the officers' failure to protect him from the assault and their delay in getting him medical care for his injuries. Pet. App. 1a, 3a.

Because he did not know the officers' names, Herrera listed three "John Doe" defendants as nominal placeholders in the complaint until he could determine their identities. Pet. App. 3a. The district court added the Cook County sheriff, who supervised the officers, as a nominal defendant and directed the U.S. Marshal to serve him. *Id.* The court denied Herrera's request for the appointment of counsel. *Id.*

Herrera sent two letters to the sheriff requesting the "name, badge number, and the rank" of the officers assigned to supervise the holding cell when he was assaulted. Pet. App. 3a-4a. The sheriff provided sufficient information for Herrera to identify two of the three intended defendants. Pet. App. 4a. Based on Herrera's inability to identify the third officer from the information provided to him, the district court concluded that Herrera "could not effectively prosecute the case because he was incarcerated" and appointed counsel to represent him. Pet. App. 16a.

In October 2019, Herrera filed an amended complaint naming respondents Teresa Cleveland and Samuel Diaz as two of the Doe officers. *Id.* After further discovery by his counsel, Herrera filed a second amended complaint in December 2019 naming respondent Enrique Martinez as the third officer. *Id.*

3. The officers moved to dismiss the suit as time barred because Herrera did not correctly name them until after the statute of limitations had run. Pet. App. 4a. Respondents argued that Rule 15(c)(1)(C)'s requirements for relation back were not satisfied because Herrera's use of Doe placeholders resulted from lack of knowledge and thus failed to qualify as a "mistake" for Rule 15(c)(1)(C) purposes. Pet. App. 4a, 18a.

The district court denied the motion. The court acknowledged Seventh Circuit precedent holding that Doe substitutions never relate back under Rule 15(c)(1)(C) because no "mistake" occurs where "the plaintiff simply lacks knowledge concerning, or is ignorant of, the identity of the prospective defendant." Pet. App. 17a (citing *Hall v. Norfolk S. Ry. Co.*, 469

F.3d 590, 596 (7th Cir. 2006)). The district court concluded, however, that *Hall* had been abrogated by this Court's more recent decision in *Krupski v. Costa Cociere S.p.A.*, 560 U.S. 538, 541 (2010)). Pet. App. 17a-18a.

The district court explained that it agreed with the "many courts in this district" that had concluded that the Seventh Circuit's prior rationale for barring Doe substitutions from relation back—i.e., that plaintiffs used Doe placeholders due to lack of knowledge rather than error—could not be reconciled with *Krupski*'s instruction that relation back under Rule 15(c)(1)(C) "'depends on what the party to be added knew or should have known, not on the amending party's knowledge or its timeliness in seeking to amend the pleading.'" Pet. App. 17a-18a (quoting *Krupski*, 560 U.S. at 541). Noting the absence of any evidence indicating that respondents lacked timely notice of the complaint or failed to understand that they were the proper defendants to the suit, the district court denied respondents' motion to dismiss. Pet. App. 18a-19a.

4. The district court granted respondents' motion to certify an interlocutory appeal under 28 U.S.C. § 1292(b), and the Seventh Circuit accepted the appeal. Pet App. 20a-22a. The Seventh Circuit then reversed the district court's ruling regarding Rule 15(c)(1)(C). The court of appeals acknowledged that it was "difficult to reconcile the result in *Hall* … with *Krupski*," yet concluded that this irreconcilability did "not change *Hall*'s persuasiveness in its discussion of John Doe cases." Pet. App. 9a. The court reasoned that "[n]aming a John Doe defendant as a nominal

placeholder is not a wrong action proceeding from inadequate knowledge," but rather "a proper action on account of inadequate knowledge," and accordingly not a "mistake" for Rule 15(c) purposes. Pet. App. 10a.

Having found that the amendments substituting in respondents as defendants did not relate back, the Seventh Circuit remanded to the district court to determine whether "extraordinary circumstances" warranted equitable tolling of the statute of limitations. Pet. App 11a.

REASONS FOR GRANTING THE PETITION

I. There Is A Widely Acknowledged And Deeply Entrenched Circuit Split Over The Question Presented

Rule 15(c)(1)(C)'s application to Doe substitutions has divided the courts of appeals for nearly three decades, with six circuits now holding that such substitutions are categorically excluded from relation back because they reflect the plaintiff's inadequate knowledge rather than a "mistake," and two circuits allowing relation back so long as the defendant had timely notice that he should have been named as the proper party but for the plaintiff's lack of knowledge regarding his identity.

As explained below, there initially was some indication that this Court's 2010 decision in *Krupski* would prompt the circuits on the majority side of the split to reconsider their precedent on this issue. But four of those circuits have now recommitted to their position that Rule 15(c)(1)(C) categorically excludes

Doe substitutions, thereby entrenching the split and warranting this Court's intervention.

A. Origins of the split

The operative language in Rule 15(c) originated in 1966 as a response to the "recurring problem" of individuals naming the wrong defendant when suing government actors. *Krupski*, 560 U.S. at 550.[4] The Rules Committee made the provision applicable in non-government suits as well, but noted that its primary purpose was to allow relation back when "the government was put on notice [of the lawsuit] within the stated period," even if the plaintiff failed to name the correct government actor as a defendant. Fed R. Civ. P. 15, advisory committee's note to 1966 amendment.

In 1977, the Third Circuit became the first court of appeals to consider the Rule's application where a plaintiff initially uses a John Doe placeholder indicating lack of knowledge as to the proper defendant's identity. *See Varlack v. SWC Caribbean, Inc.*, 550 F.2d 171 (3d Cir. 1977). The plaintiff in *Varlack* filed a personal injury suit after sustaining injuries in an altercation with a restaurant manager, naming the restaurant and an "Unknown Employee" as the defendants. The Third Circuit held that the plaintiff's subsequent amendment of his complaint to name the employee related back under Rule 15(c) because the

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[4] This language was designated as Rule 15(c)(3) until 2007, when the Rules Committee renumbered it as (c)(1)(C) in a purely stylistic amendment. *See Krupski*, 560 U.S. at 551 n.4. For simplicity, we refer to the provision as Rule 15(c)(1)(C) throughout this petition.

employee knew he was the intended individual defendant: He testified before the district court that he understood "the phrase 'Unknown Employee' referred to him, even though it didn't use his name, and that if his name had been captioned he would have been one of the persons sued." *Id.* at 675. The court found this testimony "manifestly a sufficient basis on which the district court could conclude that the final condition for relation back under Rule 15(c) was satisfied." *Id.*

In a series of decisions in the 1990s, however, the Second, Fifth, Sixth, Seventh, and Eleventh Circuits disagreed. In contrast to the Third Circuit's focus on the defendant's knowledge, these courts viewed the word "mistake" in Rule 15(c) as a separate requirement directed at the plaintiff's state of mind. And because the use of Doe placeholders indicates the plaintiff's "lack of knowledge of the proper party" rather than a "misnomer," they reasoned, no "mistake" occurred that would allow relation back. *Worthington v. Wilson*, 8 F.3d 1253, 1256-57 (7th Cir. 1993) (internal quotation marks omitted); *see also Barrow v. Wethersfield Police Dep't*, 66 F.3d 466, 469-70 (2d Cir. 1995), *modified*, 74 F.3d 1366 (2d Cir. 1996); *Cox v. Treadway*, 75 F.3d 230, 240 (6th Cir. 1996); *Jacobsen v. Osborne*, 133 F.3d 315, 320-22 (5th Cir. 1998); *Wayne v. Jarvis*, 197 F.3d 1098, 1103-04 (11th Cir. 1999), *overruled on other grounds by Manders v. Lee*, 338 F.3d 1304 (11th Cir. 2003).[5]

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[5] The Tenth Circuit later joined this side of the split. *Garrett v. Fleming*, 362 F.3d 692, 696-97 (10th Cir. 2004).

In a 2001 decision by Chief Judge Becker, the Third Circuit acknowledged that its decision in *Varlack* ran counter to the "bulk of authority from other Courts of Appeals tak[ing] the position that the amendment of a 'John Doe' complaint … does not meet the 'but for a mistake' requirement." *Singletary v. Pa. Dep't of Corr.*, 266 F.3d 186, 200 (3d Cir. 2001). Chief Judge Becker described the majority approach as "highly problematic" and urged the Rules Committee to clarify the availability of relation back for Doe substitutions.[6] *Id.* at 190 n.5. He emphasized that "fairness to the defendants is accommodated in the other requirements" of the rule, namely that "the to-be-added defendants had timely notice of the lawsuit and knew that the lawsuit was really meant to be directed at them." *Id.* The decision reaffirmed the Third Circuit's position that "lack of knowledge of a particular defendant's identity can be a mistake," although it found no relation back in that case because the newly added defendant lacked notice that he was the intended party. *Id.* at 201-02.

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[6] The Rules Committee considered Chief Judge Becker's recommendation, but ultimately passed a motion to remove further work on Rule 15(c) from its agenda in 2006. The Committee explained that it "had not found any significant problems with the current rule in practice." Comm. on Rules of Practice & Procedure, Judicial Conferences of the United States, *Minutes: June 22-23*, at 21 (2006), https://www.uscourts.gov/sites/default/files/fr_import/ST06-2006-min.pdf. As described *infra* pp. 17-23, 34-36, over the last decade the significance of the problem has become undeniably clear; the Committee has not, however, revisited the issue.

The Third Circuit again reaffirmed the *Varlack/Singletary* rule in *Garvin v. City of Philadelphia*, 354 F.3d 215, 222, 228 (3d Cir. 2003). *See, e.g.*, *Smith v. City of Philadelphia*, 363 F. Supp. 2d 795 (E.D. Pa. 2005) (applying *Varlack*, *Singletary*, and *Garvin* to allow relation back for a Doe substitution where the defendants had timely notice and knowledge they were the intended parties). And in *Arthur v. Maersk*, 434 F.3d 196, 208-09 (3d Cir. 2006), the Third Circuit extended *Singletary*'s reasoning to apply in any case where the plaintiff initially failed to name the proper defendant due to inadequate knowledge rather than a misnomer. *See id*. at 208 ("A 'mistake' is no less a 'mistake' when it flows from lack of knowledge as opposed to inaccurate description.").

In 2007, the en banc Fourth Circuit joined the Third Circuit's side of the split. In *Goodman v. Praxair*, 494 F.3d 458 (4th Cir. 2007) (en banc), the plaintiff initially brought his breach of contract suit against Praxair, Inc., and later amended the complaint to name the correct defendant, Praxair Services, Inc. The defendants argued that because the plaintiff "fully intend[ed] to name the original defendant …, no 'mistake' as anticipated by Rule [15(c)(1)(C)] had been made." *Id.* at 469. "[T]he mistake," they argued, "must be a mistake of corporate identity or a misnomer, not one based on a lack of knowledge or poor strategy." *Id.*

The Fourth Circuit rejected the defendants' position. *Id.* at 469-70. Acknowledging that "the 'but for a mistake' language in Rule 15[(c)(1)(C)] has led to differing interpretations by the courts," the court

aligned with the Third Circuit's position that the "reference to 'mistake' in Rule 15[(c)(1)(C)], while alluding by implication to a circumstance where the plaintiff makes a mistake …, explicitly describes the *type of notice or understanding* that the *new party* had." *Id.* at 470 (emphasis in original). The Fourth Circuit specifically noted that its position ran counter to "the majority of courts" that do "not permit substitution for 'Doe' defendants" under Rule 15(c)(1)(C). *Id.* The court explained that "the text of [the Rule] does not support [the majority circuits'] parsing of the 'mistake' language," and that many of the Doe substitution cases could have reached the same result by focusing instead on the newly named defendants' notice and knowledge. *Id.* at 470-71. In particular, using Doe placeholders is not a mistake that itself puts the proper defendants on notice that they were the intended party, as required for relation back. *Id.* at 471.[7]

In short, the Fourth Circuit concluded, "the 'mistake' language is textually limited to describing the notice the new party had, requiring that the new party have expected or should have expected, within the limitations period, that it was meant to be named

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[7] *See also id.* at 472-73 ("This is not to say that a plaintiff may name any party within the limitations period with the hope of amending later, perhaps after discovery. Rather it is to say that the 'mistake' language is not the vehicle to address those concerns. In the cases of concern, most notably the cases of 'Doe' substitutions, the notice and prejudice requirements … adequately police this strategic joinder practice.").

a party in the first place." *Id.*; *see also Robinson v. Clipse*, 602 F.3d 605, 610 (4th Cir. 2010) (same).

B. The division of authority persists post-*Krupski*

In 2010, this Court granted review in *Krupski v. Costa Crociere S. p. A.*, 560 U.S. 538 (2010), "to resolve tension among the Circuits over the breadth of Rule 15(c)(1)(C)(ii)." *Id.* at 546. Krupski brought suit for injuries she sustained on a cruise ship, initially naming "Costa Cruise" as the defendant. *Id.* at 543. After the statute of limitations had run, she amended the complaint to name the proper defendant, Costa Crociere S. p. A. *Id.* at 544. The Eleventh Circuit held that the amendment did not relate back because Krupski knew within the statute of limitations that Costa Crociere was the correct defendant, and therefore her failure to name Costa Crociere as a party was not a "mistake" for Rule 15(c)(1)(C)'s purposes, but rather a deliberate decision to delay correcting the complaint. *Id.* at 546.

This Court unanimously reversed. The Court held that "[b]y focusing on Krupski's knowledge, the Court of Appeals chose the wrong starting point." *Id.* at 548. "Rule 15(c)(1)(C)(ii) asks what the prospective *defendant* knew or should have known" within the notice period, "not what the *plaintiff* knew or should have known at the time of filing her original complaint." *Id.* (emphasis in original). The Court explained that disallowing relation back for a prospective defendant who knew "he escaped suit during the limitations period only because the plaintiff misunderstood a crucial fact about his identity" would be a "windfall" for

the defendant, inconsistent with the Rule's purposes. *Id.* at 550. Focusing on the defendant's notice, rather than the plaintiff's state of mind, the Court concluded, is more consistent with "the purpose of relation back: to balance the interests of the defendant protected by the statute of limitations with the preference expressed in the Federal Rules of Civil Procedure in general, and Rule 15 in particular, for resolving disputes on their merits." *Id.*

In the years that followed, dozens of decisions from district courts across the country concluded that *Krupski* abrogated the majority circuit rule categorically disallowing relation back for Doe substitutions, including over fifteen decisions within the Seventh Circuit alone.[8] Likewise, in this case, the district

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[8] *See, e.g., Bilik v. Hardy*, No. 12-CV-04532, 2019 WL 4735394, at *4 (N.D. Ill. Sept. 27, 2019); *McWilliams v. City of Chicago*, No. 14-CV-3902, 2018 WL 4404653, at *4 (N.D. Ill. Sept. 17, 2018); *Miller v. Panther II Transp., Inc.*, No. 16-CV-04149, 2018 WL 3328135, at *6 (S.D. Ind. July 6, 2018); *Brainer v. Dart*, No. 16-CV-6013, 2018 WL 1519154, at *4 (N.D. Ill. Mar. 28, 2018); *Haroon v. Talbott*, No. 16-CV-04720, 2017 WL 4280980, at *7 (N.D. Ill. Sept. 27, 2017); *Clair v. Cook County*, No. 16-CV-1334, 2017 WL 1355879, at *4 (N.D. Ill. Apr. 13, 2017); *Moore v. Cuomo*, No. 14-CV-9313, 2017 WL 3263483, at *5 (N.D. Ill. Aug. 1, 2017); *Williams v. City of Chicago*, No. 14-CV-6959, 2017 WL 1545772, at *3 (N.D. Ill. Apr. 28, 2017); *Klinger v. City of Chicago*, No. 15-CV-1609, 2017 WL 736895, at *5 (N.D. Ill. Feb. 24, 2017); *Ayoubi v. Basilone*, No. 14-CV-0602, 2016 WL 6962189, at *4 (N.D. Ill. Nov. 28, 2016); *Ryan v. City of Chicago*, No. 15-CV-9762, 2016 WL 6582570, at *2 (N.D. Ill. Nov. 7, 2016); *Cheatham v. City of Chicago*, No. 16-CV-3015, 2016 WL 6217091, at *3 (N.D. Ill. Oct. 25, 2016); *Karney v. City of Naperville*, No. 15-CV-4608, 2016 WL 6082354, at *9 (N.D. Ill. Oct. 18, 2016); *White v.*

(cont'd)

court reasoned that the Seventh Circuit's pre-*Krupski* precedent barring relation back for *Doe* substitutions was no longer good law after *Krupski*. *See* Pet. App. 17a-18a.

In the Second Circuit, numerous judges in the Eastern and the Southern Districts of New York also reached this conclusion. *See, e.g., DaCosta v. City of New York*, No. 15-CV-5174, 2017 WL 5176409, at *16 (E.D.N.Y. Nov. 8, 2017) ("The guidance of the Second Circuit Court of Appeals [regarding relation back in the context of a John Doe pleading] after *Krupski* … seems too narrow …."); *Roland v. McMonagle*, No. 12-CV-6331, 2014 WL 2861433, at *4 n.3 (S.D.N.Y. June 24, 2014) (Second Circuit precedent "defin[ing] 'mistake' in terms of what the plaintiff—rather than the prospective defendant—knew or should have known … has been abrogated by [*Krupski*]").[9]

Meanwhile, in 2011, the Fourth Circuit issued an unpublished decision reaffirming its position in *Goodman* that Rule 15(c)(1)(C) allows relation back for Doe substitutions when the newly named defendant had timely notice of the suit and understood he would

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City of Chicago, No. 14-CV-3720, 2016 WL 4270152, at *18-20 (N.D. Ill. Aug. 15, 2016); *Brown v. Deleon*, No. 11-CV-6292, 2013 WL 3812093, at *4-6 (N.D. Ill. July 18, 2013); *Solivan v. Dart*, 897 F. Supp. 2d 694, 701 (N.D. Ill. 2012).

[9] *See also, e.g.*, *Smith v. City of New York*, 1 F. Supp. 3d 114, 120-21 (S.D.N.Y. 2013); *Bishop v. Best Buy, Co. Inc.*, No. 08-CV-8427, 2010 WL 4159566, at *2-3 (S.D.N.Y. Oct. 13, 2010); *Abdell v. City of New York*, 759 F. Supp. 2d 450, 457 (S.D.N.Y. 2010).

have been named as the proper defendant if the plaintiff had known his identity. The court observed that *Goodman*'s focus on "the notice to the new party and the effect on the new party that the amendment will have" had been confirmed by *Krupski*. *Everett v. Prison Health Servs.*, 412 F. App'x 604, 606 n.3 (4th Cir. 2011) (affirming the district court's disallowance of relation back based not on "an assessment of the knowledge possessed" by the plaintiff, but the newly named defendant's lack of notice). The Third Circuit has also cited *Singletary* favorably post-*Krupski* for the proposition that Rule 15(c)(1)(C) "may be satisfied" when a plaintiff "seek[s] to substitute a named defendant for a John Doe defendant in the original complaint." *Wadis v. Norristown State Hosp.*, 617 F. App'x 133, 136 (3d Cir. 2015).

And in over two dozen decisions since *Krupski*, district courts in the Third and Fourth Circuit have continued to apply *Varlack*/*Singletary* and *Goodman*, respectively, to allow or disallow relation back for Doe substitutions based on the defendant's notice and knowledge, not the plaintiff's state of mind.[10] Some of

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[10] In the Third Circuit, *see, e.g.*, *Scanlon v. Lawson*, No. 16-CV-4465, 2020 WL 605041, at *10 (D.N.J. Feb. 6, 2020); *Averill v. Jones*, No. 12-CV-599, 2019 WL 3804686, at *3, *5 (D. Del. Aug. 13, 2019); *Biaggi-Pacheco v. City of Plainfield*, No. 16-CV-3511, 2019 WL 413543, at *5 (D.N.J. Jan. 31, 2019); *Lopez v. Bucks County*, No. 15-5059, 2016 WL 3612056, at *5 (E.D. Pa. July 5, 2016); *Wallace v. Houston*, No. 12-CV-820, 2015 WL 877887, at *3 (D. Del. Feb. 26, 2015); *Sacko v. Trs. of the Univ. of Pa.*, No. 14-CV-831, 2014 WL 5297992, at *1-3 (E.D. Pa. Oct. 15, 2014); *Montanez v. York City*, No. 12-CV-1530, 2014 WL 671433, at *3-4 (M.D. Pa. Feb. 20, 2014); *Moreno v. City of Pittsburgh*, No. 12-

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CV-615, 2013 WL 3816666, at *2-4 (W.D. Pa. July 22, 2013); *Ferencz v. Medlock*, 905 F. Supp. 2d 656, 666-68 (W.D. Pa. 2012); *Ballard v. Williams*, No. 10-CV-1456, 2012 WL 6138224, at *4-5, *8 (M.D. Pa. Dec. 11, 2012); *Bryant v. Vernoski*, No. 11-CV-0263, 2012 WL 1132503, at *2-3 (M.D. Pa. Apr. 4, 2012); *Blaylock v. Guarini*, No. 09-CV-3638, 2011 WL 1670956, at *1-2 (E.D. Pa. May 2, 2011); *Jamison v. City of York*, No. 09-CV-1289, 2010 WL 3923158, at *5 (M.D. Pa. Sept. 30, 2010); *Edwards v. Middlesex County*, No. 08-CV-06359, 2010 WL 2516492, at *5 (D.N.J. June 14, 2010).

In the Fourth Circuit, *see, e.g.*, *Rumble v. 2nd Ave. Value Stores*, 442 F. Supp. 3d 909, 917-18 (E.D. Va. 2020); *McGraw v. N.C. Dep't of Corrs.*, No. 19-CV-3116, 2020 WL 5632957, at *6-7 (E.D.N.C. Sept. 21, 2020); *Moran v. Polk County*, No. 18-CV-300, 2020 WL 9893041, at *5 (W.D.N.C. July 17, 2020); *Williams v. W. Va. Div. of Corr.*, No. 19-CV-00496, 2020 WL 748873, at *2 (S.D.W. Va. Feb. 13, 2020); *Gelin v. Baltimore County*, No. 16-CV-3694, 2017 WL 3868530, at *4 (D. Md. Sept. 5, 2017); *Burruss v. Riley*, No. 15-CV-00065, 2017 WL 880890, at *2 (W.D. Va. Mar. 3, 2017); *Cadmus v. Frederick County Sheriff's Off.*, No. 15-CV-00053, 2016 WL 5231823, at *7-9 n.13 (W.D.W. Va. Sept. 20, 2016); *Smith v. Ray*, No. 08-CV-281, 2011 WL 13371166, at *3-4 (E.D. Va. June 2, 2011); *Vandegrift v. City of Roanoke Sheriff's Off.*, No. 10-CV-00054, 2011 WL 889392, at *2-3 (W.D. Va. Mar. 15, 2011); *McDaniel v. Maryland*, No. 10-CV-00189, 2010 WL 3260007, at *5-6 (D. Md. Aug. 18, 2010); *see also Evans v. Martin*, No. 12-CV-03838, 2014 WL 2591281, at *5 (S.D.W. Va. June 10, 2014) (applying *Goodman* to allow relation back for a Doe plaintiff substitution).

Two post-*Krupski* district court decisions in the Fourth Circuit have applied the majority rule, but both appear to be based on error rather than any intentional rejection of *Goodman*. *See Touko v. United States*, No. 20-CV-1113, 2021 WL 2685328, at *5 (D. Md. June 29, 2021) (not acknowledging *Goodman*); *Vaughan v. Foltz*, No. 16-CV-61, 2019 WL 1265055, at *9 (E.D.N.C. Mar. 19, 2019) (relying on *Goodman* for opposite of its holding).

these decisions specifically note that *Krupski*'s reasoning confirms their controlling circuit precedent. *See, e.g.*, *Rumble*, 442 F. Supp. 3d at 917-18 ("To allow relation back where, as here, a plaintiff names a defendant within the Rule 4(m) service period after filing an original Complaint against John Doe is fully consistent not only with Fourth Circuit precedent, but also with the Supreme Court's analysis of relation back under Rule 15(c)(1)(C) in *Krupski*.").

In 2017, however, the Eighth Circuit doubled down on its categorical exclusion of Doe substitutions under Rule 15(c)(1)(C). *See Heglund v. Aitkin County*, 871 F.3d 572, 579-80 (8th Cir. 2017). The court acknowledged *Krupski*'s holding that relation back depends on the defendant's knowledge, not the plaintiff's, but nonetheless concluded that Rule 15(c)(1)(C)'s knowledge requirement is not satisfied in Doe substitution cases because a plaintiff's use of Doe placeholders is "an intentional misidentification, not an unintentional error." *Id.* at 580.

In 2019, the Second Circuit followed suit. The court acknowledged "substantial disagreement in the district courts in this Circuit" over whether *Krupski* "implicitly overruled" its decisions excluding Doe substitutions from Rule 15(c)(1)(C), but concluded that its precedent remained good law. *Ceara v. Deacon*, 916 F.3d 208, 212-13 (2d Cir. 2019).[11] The Fifth Circuit

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[11] The Sixth Circuit also reached this conclusion in an unpublished decision. *See Smith v. City of Akron*, 476 F. App'x 67, 69-70 (6th Cir. 2012).

has also continued to follow its precedent barring relation back for Doe substitutions, without any discussion of *Krupski*. *See Winzer v. Kaufman County*, 916 F.3d 464, 470-71 (5th Cir. 2019); *Balle v. Nueces County*, 952 F.3d 552, 557-58 (5th Cir. 2017).

In the decision below, the Seventh Circuit became the fourth court of appeals to recommit post-*Krupski* to categorically excluding relation back for Doe substitutions under Rule 15(c)(1)(C), reasoning that "suing a John Doe is a conscious choice, not an inadvertent error." Pet. App. 10a.

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Nearly three decades have passed since the circuits first divided over the question presented, and it is now readily apparent that *Krupski* will not align them. This Court's intervention is necessary to resolve the split and bring uniformity to Rule 15(c)(1)(C)'s application by the lower courts.

II. The Majority Circuits' Position On The Question Presented Is Wrong

The question presented also warrants this Court's review because the majority reading of Rule 15(c)(1)(C) conflicts with the Rule's text and purpose and draws illogical lines that create perverse incentives.

A. The majority position conflicts with Rule 15(c)(1)(C)'s text

1. Rule 15(c)(1)(C) permits relation back where the newly named defendant: (1) "received such notice of the action that it will not be prejudiced in defending

on the merits" and (2) "knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity." The majority reading of this language rests on two textual errors: First, it treats the "but for a mistake" clause as a state of mind requirement imposed on the plaintiff, when it should be treated as a description of the defendant's knowledge that he was the proper party to the suit. Second, it improperly narrows the definition of "mistake" to exclude circumstances where the plaintiff knows she has not named the proper defendant but lacks the information necessary to correct the problem. We address each error in turn.

First, as this Court explained in *Krupski*, the word "mistake" is located within a provision focused on the defendant: Did the *defendant* receive notice of the lawsuit in time to avoid any prejudice, and did the *defendant* understand that he was the proper party to the claims? *Krupski*, 560 U.S. at 548 (Rule 15(c)(1)(C) asks "what the prospective *defendant* knew or should have known during the Rule 4(m) period, not what the *plaintiff* knew or should have known at the time of filing [her] original complaint") (emphasis in original); *see also Goodman*, 494 F.3d at 472 (the provision is "textually limited to the notice the *new* party had") (emphasis added). In other words, "a mistake concerning the proper party's identity" is not a separate requirement imposed on the plaintiff, but a dependent clause describing the defendant's knowledge that he is the proper party.

Indeed, *Krupski* flatly rejected an interpretation of Rule 15(c)(1)(C) that denied relation back based on

the plaintiff's state of mind: "By focusing on [the plaintiff's] knowledge, the Court of Appeals chose the wrong starting point." *Krupski*, 560 U.S. at 548. Instead, the court instructed, "the question under Rule 15(c)(1)(C)(ii) is what the prospective defendant reasonably should have understood about the plaintiff's intent in filing the original complaint against the first defendant." *Id.* at 553-54. And where the plaintiff uses a Doe placeholder, it plainly signals that she intends to sue the person whose actions the complaint attributes to the Doe defendant, but she lacks the necessary information to properly name him. Where the newly named defendant has timely notice of the suit and can ascertain from the allegations that he is the proper defendant, Rule 15(c)(1)(C)'s knowledge requirement is satisfied.

Second, the majority reading errs by defining "mistake" to exclude pleading deficiencies resulting from lack of knowledge rather than accident. As *Krupski* explains, the word "mistake" includes "'a wrong action or statement proceeding from faulty judgment, *inadequate knowledge*, or inattention.'" *Id.* at 548-49 (emphasis added) (quoting *Webster's Third New International Dictionary* 1446 (2002)). When plaintiffs use a John Doe placeholder, they name the wrong defendant due to inadequate knowledge. The Third Circuit made this point in explaining its rejection of the majority rule: "[A] 'mistake' is no less a 'mistake' when it flows from lack of knowledge as opposed to inaccurate description. Both errors render the plaintiff unable to identify the potentially liable party and unable to name that party in the original complaint. Thus, both errors constitute a 'mistake concerning the identity of

the proper party.'" *Arthur*, 434 F.3d at 208 (internal citations omitted).

2. The Seventh Circuit offered three reasons for disallowing relation back for Doe substitutions, none of which is persuasive. First, the court reasoned that because plaintiffs name Doe defendants "knowing full well the factual and legal differences between the nominal defendant and the proper defendant," such an "intentional and informed decision cannot amount to a mistake." Pet. App. 9a. As just explained, however, Rule 15(c)(1)(C) focuses on the defendant's knowledge, not the plaintiff's state of mind. The only relevant inquiry is whether the defendant understood or should have understood from the complaint that he "should have been named as a defendant but for an error." *Krupski*, 560 U.S. at 548. And what a defendant knows when he sees a Doe placeholder describing his own conduct is that he should have been named as the defendant but for the plaintiff's inability to correctly name him—an error she could not avoid due to her lack of information regarding his identity. That is all Rule 15(c)(1)(C)'s knowledge prong requires.

Second, the Seventh Circuit distinguished the plaintiff in *Krupski* as having "no idea she lacked knowledge of the proper defendant's identity," while plaintiffs who initially name Doe defendants are "fully aware that [they] lack adequate information to ascertain the [correct defendants'] identities." Pet. App. 9a. Here the court of appeals simply misconstrued the facts of *Krupski*. The newly named defendant claimed that Krupski *did* know it was the proper defendant because it was listed as the carrier on her ticket and because the carrier told her it was the

proper defendant within the notice period. 560 U.S. at 542-43. The defendant argued that under those circumstances, Krupski made a "deliberate choice" not to name the proper defendant in the suit. *Id.* at 549. This Court rejected that argument as irrelevant, holding that because the defendant recognized that Krupski had sued the wrong party, it knew that it should have been named "but for a mistake concerning the proper party's identity." *Id.* at 557. If, as this Court held, the knowledge requirement is satisfied under those circumstances, it is certainly satisfied where the newly named defendant recognizes that the plaintiff intended to sue him but had to name a Doe defendant due to inadequate knowledge. Unlike Krupski, Herrera had no "choice" at all in failing to name respondents in the original complaint—his use of Doe placeholders was forced error resulting from lack of information.

Finally, the Seventh Circuit reasoned that the dictionary definition of "mistake" in *Krupski* requires that a "wrong action" proceed from the plaintiff's inadequate knowledge, whereas naming a Doe defendant is "a proper action on account of inadequate knowledge." Pet. App. 10a. But listing "John Doe" as the defendant when that is not the defendant's name is just as wrong as any other misidentification of the proper defendant; the only difference is that using the name "John Doe" is a convention that helpfully signals the plaintiff's inadequate knowledge to the court, and potentially to the proper defendant if he receives notice of the suit.

Ironically, in circuits following the majority rule, using a Doe placeholder is *more* wrong because it

shuts the plaintiff out from pursuing relation back, making the "proper action" to misidentify the defendant so that relation back remains an option. In any event, as discussed below, *infra* pp. 30-32, it would be nonsensical to disallow relation back because the plaintiff followed the established practice of using a Doe placeholder rather than taking her best guess at the defendant's name, and nothing in the text of Rule 15(c) compels that result. Both are actions that wrongly identify the defendant due to inadequate knowledge and thus fall squarely within *Kruspki*'s definition of "mistake."

B. The majority position conflicts with Rule 15(c)(1)(C)'s purpose

The circuits adopting the majority reading of Rule 15(c)(1)(C) have also failed to account for the Rule's purposes: "to balance the interests of the defendant protected by the statute of limitations with the preference expressed in the Federal Rules of Civil Procedure in general, and Rule 15 in particular, for resolving disputes on their merits." *Krupski*, 560 U.S. at 550; *see also Schiavone v. Fortune*, 477 U.S. 21, 27 (1986) ("The principal function of procedural rules should be to serve as useful guides to help, not hinder, persons who have a legal right to bring their problems before the courts.").

This balancing is reflected in Rule 15(c)(1)(C)'s textual focus on the defendant's knowledge rather than the plaintiff's state of mind: Relation back is allowed only when the newly named defendant had timely notice of the lawsuit and knew he was the proper defendant, and therefore is unprejudiced by

the amendment adding him as a party. *Krupski*, 560 U.S. at 550. Imposing an additional state of mind requirement on the plaintiff would serve no purpose beyond providing "a windfall for [the] prospective defendant" who escapes suit despite knowing full well within the notice period that he was the proper defendant to the suit. *Id.*; *see also Singletary*, 266 F.3d at 202 n.5 (permitting relation back for Doe substitutions does not "risk unfairness to defendants" because their interests are "accommodated by the [notice and knowledge] requirements"); *Goodman*, 494 F.3d at 470 (defending the Fourth Circuit's reading of Rule 15(c)(1)(C) as "serving the policies of freely allowing amendment and at the same time preserving to new parties the protections afforded by statutes of limitations").

The majority reading of Rule 15(c)(1)(C) thus conflicts with the Rule's aim of "prevent[ing] parties against whom claims are made from taking unjust advantage of otherwise inconsequential pleading errors to sustain a limitations defense." Fed. R. Civ. P. 15, advisory committee's note to 1991 amendment.

Rule 15(c)(1)(C)'s drafting history confirms the inconsistency between the majority reading and the Rule's purposes. Before the 1966 amendment adding the language at issue to Rule 15(c), the government could secure dismissal of a lawsuit any time the plaintiff named the wrong government actor as defendant, regardless of whether the right government actor had timely notice that it was the proper defendant to the suit. *See Krupski*, 560 U.S. at 550-51. Concluding that this practice allowed the government "to defeat unjustly the claimant's opportunity to prove his case,"

the Rules Committee rewrote Rule 15(c) to clarify that the "policy of the statute limiting the time for suit … would not have been offended by allowing relation back" when the defendant "was put on notice of the claim within the stated period." Fed. R. Civ. P. 15, advisory committee's note to 1966 amendment.

In other words, the 1966 amendment "brought relation back into line with [statutes of] limitations by making notice to the target defendant the theoretical touchstone of both." Wasserman, *supra* note 1, at 814. Categorically disallowing Doe substitutions under Rule 15(c) regardless of the proper defendant's notice or knowledge revives the problem the 1966 amendments were intended to resolve: government actors avoiding suit based on pleading deficiencies that caused them no prejudice, thereby "defeat[ing] unjustly the claimant's opportunity to prove his case." Fed. R. Civ. P. 15, advisory committee's note to 1966 amendment.

C. The majority position leads to illogical results and perverse incentives

In departing from Rule 15(c)'s text and purpose, the majority approach draws illogical lines. As Chief Judge Becker observed in *Singletary*, "it makes no sense to allow plaintiffs who commit … clear pleading error[s] to have their claims relate back, while disallowing such an option for plaintiffs who, usually through no fault of their own, do not know the names of individuals who violated their rights." 266 F.3d at 202 n.5.

Making matters worse, the majority approach creates a host of perverse incentives: Relation back is

available for plaintiffs who simply name the state as the defendant in the original complaint and then later add the proper individual state actors, but not for plaintiffs who include Doe placeholders in their original complaint to partially identify the proper individual defendants.[12] Likewise, a plaintiff who names the wrong state officer in the original complaint can pursue relation back to substitute in the name of the correct state officer, but a plaintiff who more cautiously uses a Doe placeholder until she can confirm the correct state officer's identity cannot. The upshot is that, under the majority rule, a plaintiff who is unsure of the name of the individual who injured her is better off taking her best guess at the defendant's name than she is signaling her uncertainty with a Doe placeholder.

This distortion of expectations conflicts not only with the Rules' "reject[ion]" of "pleading [as] a game of skill in which one misstep may be decisive," *Schiavone*, 477 U.S. at 27, but with the judiciary's interest in encouraging transparency by parties. Doe placeholders are a valuable mechanism for signaling to courts that the plaintiff does not yet have the information necessary to identify the proper defendants to the suit. No good would have come from Herrera forgoing that signaling mechanism and instead naming the Cook County Jail as the sole defendant in his original complaint, or simply offering his best guess at the names of the officers guarding his cell on the day he was attacked—yet, under the Seventh Circuit's rule, that is precisely what he needed to do to preserve the

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[12] *See generally* Zeiger, supra note 1, at 196.

possibility of relation back. Where a plaintiff's lack of knowledge leaves her with no option to name the proper defendant, surely the practice of using a Doe placeholder to convey her uncertainty better comports with the interests served by Rule 15(c) than naming the wrong defendant. *See* Fed. R. Civ. P. 1 (the Rules "should be construed … to secure the just, speedy, and inexpensive determination of every action and proceeding").

Finally, the majority approach suffers from administrability problems. When correctly construed, Rule 15(c)(1)(C)'s "emphasis on notice, rather than on the type of 'mistake' that has occurred, saves the courts … from an unguided and therefore undisciplined sifting of reasons for an amendment." *Goodman*, 494 F.3d at 473; *cf. Glint Factors v. Schnapp*, 126 F.2d 207, 210 (2d Cir. 1942) (Clark, J., concurring) (arguing, with respect to different language, that "a subjective test of amendment under Rule 15(c) … is [n]either applicable or workable"). Rule 15(c)'s inquiry into the defendant's notice and knowledge ensures that relation back is permitted only when the defendant's interests in repose are adequately protected. The majority reading's imposition of an additional, counter-textual inquiry into the plaintiff's state of mind is an unnecessary and conceptually perilous distraction.

* * *

Twenty years ago, Chief Judge Becker observed that "[a]ll of the commentators who address this issue (at least those that we found in our research) call for Rule [15(c)(1)(C)] to allow relation back in cases in

which a 'John Doe' complaint is amended to substitute real defendants' names." *Singletary*, 266 F.3d at 201 n.5. That drumbeat has continued with more recent scholarship describing the majority reading as "disingenuous,"[13] driven by "a crabbed reading of the rule,"[14] an "excessively formalistic interpretation that is not mandated by the rule's text,"[15] "hard to justify" after *Krupski,*[16] "offend[ing] the purpose of relation back doctrine,"[17] and "contradicting the notion that stringent procedure should not defeat substance."[18] Yet four of the courts of appeals have now disregarded *Krupski*'s rationale and refused to revisit their flawed approach to relation back for Doe substitutions. This Court should intervene to ensure that Rule 15(c)(1)(C)'s application by the lower courts aligns with its text and purpose, and with common sense.

III. The Question Presented Is Exceptionally Important And Squarely Raised By The Decision Below

The exceptional importance of the question presented is reflected in the countless number of cases raising it: The over 70 decisions cited in this petition

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[13] Zeiger, *supra* note 1, at 196.

[14] Lusardi, *supra* note 1, at 339.

[15] Tomlinson, *supra* note 1, at 2102.

[16] Sherman, *supra* note 1, at 1346.

[17] Farmer, *supra* note 1, at 226.

[18] Wasserman, *supra* note 1, at 798.

are a small fraction of the Westlaw search results for cases involving Rule 15(c)(1)(C)'s application to Doe substitutions, and there are presumably many more where no decision ever issued because binding circuit precedent settled the question. Indeed, it is hard to think of a circuit split that has impacted more litigants than the one presented here.

Unsurprisingly, a substantial majority of these decisions involve individual plaintiffs suing government actors for unlawful conduct—precisely the situation that Rule 15(c)(1)(C) was amended in 1966 to address. *See supra* pp. 29-30. Relation back is exceptionally important in these lawsuits because of the profound asymmetry created by the government's control over the information needed to identify public employees by name and the limited ability of individual plaintiffs to obtain that information before filing suit. As Chief Judge Becker observed in *Singletary*, "[i]t is certainly not uncommon for victims of civil rights violations (e.g., an assault by police officers or prison guards) to be unaware of the identity of the persons or persons who violated those rights. This information is in the possession of the defendants, and many plaintiffs cannot obtain this information until they have had the chance to undergo extensive discovery, and hope that they can determine the assailants' names before the statute of limitations expires." 266 F.3d at 202 n.5.

The circuit split's impact also extends well beyond civil rights plaintiffs. The availability of relation back

for Doe substitutions has come up in litigation involving consumer tort claims,[19] employment disputes,[20] products liability,[21] and even securities fraud.[22] In all of these contexts, the majority rule shuts plaintiffs out of court regardless of their diligence or the legitimacy of their claims, and regardless of whether the correct defendants knew full well within the statute of limitations that they would have been named to the suit if the plaintiff had been able to ascertain their identities. This widespread and highly problematic practice warrants the Court's intervention.

Finally, the Seventh Circuit's decision below squarely raises the question presented, making it an ideal vehicle for this Court's review. And because the lower courts elevated the issue via 28 U.S.C. § 1292(b)'s interlocutory appeal mechanism for orders "involv[ing] a controlling question of law as to which there is substantial ground for difference of opinion," the decision is also an unusually clean vehicle addressing solely the question presented. The Court should take this opportunity to resolve the division of

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[19] *See, e.g.*, *Varlack*, 550 F.2d at 175; *Ferreira v. Marriott Int'l Hotels, Inc.*, 504 F. Supp. 3d 35, 38 (D.R.I. 2020); *Swartz v. Gold Dust Casino, Inc.*, 91 F.R.D. 543, 544 (D. Nev. 1981).

[20] *See, e.g., Wiggins v. Kimberly-Clark Corp.*, 641 F. App'x 545, 548 (6th Cir. 2016).

[21] *See, e.g.*, *Aslanidis v. U.S. Lines, Inc.*, 7 F.3d 1067, 1075 (2d Cir. 1993); *Watson v. Unipress, Inc.*, 733 F.2d 1386, 1388 (10th Cir. 1984).

[22] *See, e.g.*, *Powers v. Graff*, 148 F.3d 1223, 1225 (11th Cir. 1998).

authority and ensure that the lower courts are applying Rule 15(c)(1)(C) in accord with its text and purpose.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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