No. 21-771

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

BRIEF OF CIVIL PROCEDURE SCHOLARS AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF THE AMICI CURIAE[1]

Amici curiae are leading civil procedure scholars with expertise regarding Federal Rule of Civil Procedure 15. *Amici* have a professional interest in the correct interpretation of the Rules of Civil Procedure.

The *amici* are listed in the Appendix.

[1] Pursuant to this Court's Rule 37.6, counsel for *amici curiae* certifies that this brief was not authored in whole or in part by counsel for any party and that no person or entity other than *amici curiae* or their counsel has made a monetary contribution intended to fund the preparation or submission of this brief. All parties have received timely notice of *amici*'s intent to file and have consented to the filing of this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

The court of appeals' decision misinterprets Federal Rule of Civil Procedure 15(c)(1)(C); is irreconcilable with this Court's decision in *Krupski v. Costa Crociere S. p. A.*, 560 U.S. 538 (2010); deepens an entrenched circuit split; and generates perverse incentives and arbitrary outcomes.

1. Rule 15(c)(1)(C) provides that a plaintiff's amendment of his complaint to correct the name of a defendant relates back to the date when the original complaint was filed if the newly-added party: (i) has "received such notice . . . 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."

The court below held that an amendment replacing a "John Doe" placeholder can never relate back under Rule 15(c)(1)(C) because the use of the placeholder is a "conscious choice, not an inadvertent error," Pet. App. 10a, and therefore not a "mistake concerning the proper party's identity" within the meaning of the Rule. *See id.*

a. In *Krupski*, this Court emphasized what is clear from the text of the Rule: "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." 560 U.S. at 541. The court of appeals' reasoning – focusing on the plaintiff's state of mind, not what the defendant

knew or should have known – is flatly inconsistent with that principle.

As *Krupski* explained, the phrase "mistake concerning the proper party's identity" occurs in a provision in the Rule that addresses the defendant's actual or constructive knowledge – not anything about the plaintiff's knowledge or state of mind. *See* 560 U.S. at 548-49. Under Rule 15(c)(1)(C), therefore, the question is whether the added party should have known that he or she was the intended defendant and that there was a "mistake concerning the proper party's identity" – in other words, a misidentification of the proper party.

A "John Doe" placeholder leaves a prospective defendant in no doubt that there has been a misidentification. It follows that, when the other requirements of the Rule are satisfied, a plaintiff's amendment to his complaint to correct the defendant's name from a "John Doe" placeholder, just like the correction of any other misidentification, relates back to the original complaint under Rule 15(c)(1)(C).

b. The court of appeals' decision to the contrary joined an entrenched circuit split. Several circuits have concluded, as the Seventh Circuit did here, that Rule 15(c)(1)(C) bars relation back whenever a plaintiff uses a placeholder. *See Ceara v. Deacon*, 916 F.3d 208, 212 (2d Cir. 2019); *Winzer v. Kaufman Cnty.*, 916 F.3d 464 (5th Cir. 2019), *cert. denied*, 141 S. Ct. 85 (2020); *Heglund v. Aitkin Cnty.*, 871 F.3d 572 (8th Cir. 2017). These circuits – focusing, erroneously, on the plaintiff's state of mind – reason

that "an amendment to replace a John Doe defendant is made not to correct a mistake but to correct a lack of knowledge and is therefore not a mistake under Rule 15(c)(1)(C)." *Ceara*, 916 F.3d at 213 (internal quotation marks omitted).

Other circuits, in contrast, have held that plaintiffs who amend their complaints to substitute the correct defendants for John Doe placeholders can meet the requirements of Rule 15(c)(1)(C). *See Goodman v. Praxair, Inc.*, 494 F.3d 458 (4th Cir. 2007) (en banc); *Singletary v. Pa. Dep't of Corr.*, 266 F.3d 186 (3d Cir. 2001). These circuits explain that the Rule 15(c)(1)(C) inquiry turns on whether the correct defendant had actual or constructive knowledge that it was the intended party and was misidentified in the complaint, irrespective of the plaintiff's state of mind.

c. Legal scholars overwhelmingly support the minority position and reject the approach taken by the court below. *See, e.g.*, Edward F. Sherman, *Amending Complaints to Sue Previously Misnamed or Unidentified Defendants After the Statute of Limitations Has Run*, 15 Nev. L.J. 1329, 1346–48 (2015); Brian J. Zeiger et al., *A Change to Relation Back*, 18 Tex. J. C.L. & C.R. 181, 194-96 (2013); Robert A. Lusardi, *Rule 15(c) Mistake: The Supreme Court in* Krupski *Seeks to Resolve A Judicial Thicket*, 49 U. Louisville L. Rev. 317, 337-38 (2011); 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, 1276–77 (1997); Meg Tomlinson, Note, Krupski *and Relation*

Back for Claims Against John Doe Defendants, 86 Fordham L. Rev. 2071, 2102–05 (2018).

2. A ruling that an amendment correcting a placeholder cannot relate back, under Rule 15(c)(1)(C), creates perverse incentives and will lead to arbitrary and unfair outcomes. "[P]laintiffs who, usually through no fault of their own, do not know the names of the individuals who violated their rights" would be time-barred. *Singletary*, 266 F.3d at 202 n.5. But plaintiffs who make negligent or even reckless pleading errors in naming an actual person or entity, instead of a placeholder, would not be. *See id.*

Beyond that, plaintiffs who could otherwise use a placeholder would have to protect their interests in ways that are far more costly to everyone – for example by naming a long list of possible defendants in the complaint. Potential defendants would have every incentive to conceal their identities and stonewall plaintiffs' inquiries until the statute of limitations runs. The history of Rule 15(c)(1)(C), evidenced in the Advisory Committee's notes, shows that the Rule was amended to prevent this kind of costly arbitrariness and injustice.

ARGUMENT

I. Petitioner's Amendment Correcting the "John Doe" Placeholder Related Back to the Filing Date of the Original Complaint Under Rule 15(c)(1)(C).

A. The court of appeals' decision is inconsistent with the plain language of Rule 15(c)(1)(C).

1. Under Rule 15(c)(1)(C), an amendment to a complaint relates back to the original filing date when two conditions are satisfied. The first is that "within the period provided by Rule 4(m) for serving the summons and complaint, the party to be brought in by amendment . . . received such notice of the action that it will not be prejudiced in defending on the merits." Fed. R. Civ. P. 15(c)(1)(C)(i). The second is that the party brought in by the amendment "knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity." Fed. R. Civ. P. 15(c)(1)(C)(ii).

The court below did not assert that the defendants were prejudiced by petitioner's amendment to the complaint, or that they lacked constructive knowledge that they were the proper defendants. Instead, the sole basis for the court's decision was that petitioner's use of a John Doe placeholder was not "a 'mistake' within the meaning of Rule 15(c)." Pet. App. 2a. The court's explanation was that a "plaintiff names a John Doe defendant knowing full well the factual and legal differences between the nominal defendant and the proper

defendant" and that "suing a John Doe defendant is a conscious choice, not an inadvertent error." Pet. App. 9a-10a.

This is wrong for many reasons. As the text of the Rule makes clear – and as this Court explained in its unanimous decision in *Krupski* – "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." 560 U.S. at 548. The court of appeals' emphasis on what petitioner supposedly "kn[ew] full well" and on whether petitioner acted "conscious[ly]" or "inadvertent[ly]" is irreconcilable with this Court's unequivocal statements.

Specifically, as the Rule states, and as *Krupski* emphasizes, the question whether there is a "mistake concerning the proper party's identity" does not concern the plaintiff's state of mind; it has to do with the defendant's understanding of the complaint. In the language of the Rule, the question is: "should [the added party] have known" that "but for a mistake concerning the proper party's identity," the "action would have been brought against it." Fed. R. Civ. P. 15(c)(1)(C)(ii). 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." *Krupski,* 560 U.S. at 553-54.

As long as the other conditions specified in the Rule are satisfied, the use of a "John Doe"

placeholder leaves the prospective defendant with no doubt whatsoever "about the plaintiff's intent in filing the original complaint." Indeed, the case caption itself makes clear that the plaintiff did not (and could not) identify the intended defendant by its proper name. If the other conditions in the Rule are satisfied – if there is no prejudice, and if the defendant understands that it should have been named – the use of a "John Doe" placeholder gives the defendant no ground at all for complaint – under the text of the Rule, the *Krupski* Court's explanation of the Rule, or common sense.

2. The Court described the basis of the Rule in *Krupski*:

> A prospective defendant who legitimately believed that the limitations period had passed without any attempt to sue him has a strong interest in repose. But repose would be a windfall for a prospective defendant who understood, or who should have understood, that he escaped suit during the limitations period because the plaintiff misunderstood a crucial fact about his identity.

560 U.S. at 550. The Court's point applies *a fortiori* when, as here, a defendant who constructively knows that he should have been named in the complaint nonetheless "escape[s] suit" – not even because the plaintiff was guilty of an avoidable misunderstanding, but just because he could not find out a "crucial fact about the [defendant's] identity" within the limitations period. *Id.*

For this reason, a John Doe placeholder is especially effective in making sure that the purpose

of Rule 15(c)(1)(C) is achieved: that the prospective defendant "understood . . . the plaintiff's intent in filing the original complaint," *Krupski,* 560 U.S. at 554. The placeholder flags the fact that the plaintiff has not yet identified the proper defendant. A complaint that originally and erroneously named an actual person or entity as the defendant, instead of a placeholder, is more likely to cloud the prospective defendant's understanding. In such a situation, the prospective defendant might reasonably believe that there has been no mistake at all – that the plaintiff deliberately chose to sue a different party.

If, as this Court said, the "question" under the Rule "is what the prospective defendant reasonably should have understood about the plaintiff's intent in filing the original complaint against the first defendant," *Krupski,* 560 U.S. at 553-54, a "John Doe" placeholder can answer that question as well as, and often better than, any other mistakenly specified defendant.

3. The court of appeals' error was its failure to recognize that, in the context of the Rule, the meaning of the phrase "a mistake concerning the proper party's identity" is simply that the complaint misidentifies the intended defendant. The Rule does not refer to the plaintiff's "committing" or "making" a mistake. Instead, it refers to "a mistake concerning the proper party's identity" that the defendant should reasonably recognize in the complaint. The question is whether the defendant understands that the plaintiff did not accurately state the defendant's "identity," no matter what incorrect name in the

complaint reveals that fact. If the prospective defendant knew, or reasonably should have known, that there was such a misidentification, then that portion of the Rule is satisfied.

The misidentification might be the result of the plaintiff's accidentally naming the wrong defendant. It might be the product of an excusable misunderstanding by the plaintiff. It might be caused by the plaintiff's negligent failure to identify the proper defendant, *cf*. *Krupski*, 560 U.S. at 541, 546 (describing the court of appeals' reasoning).

Or, as with the use of a placeholder, it might come about because the plaintiff, through no fault of his own, was unable to find out the defendant's name within the limitations period. The plaintiff's state of mind – which, in any event, often can be determined only by extended collateral proceedings – is immaterial under the Rule. That was precisely what *Krupski* emphasized. In fact, the distinctive feature of a placeholder, as opposed to the other forms of misidentification, is that it makes the misidentification obvious, to everyone's benefit.

As the Court noted in *Krupski*, the requirement of a "mistake" precludes relation back when there was no misidentification at all – for example, when the plaintiff strategically made "a deliberate choice to sue one party instead of another while fully understanding the factual and legal differences between the two parties." 560 U.S. at 549; *see also id*. at 551-52 (discussing *Nelson v. Adams USA, Inc.,* 529 U.S. 460 (2000)). The use of a placeholder is the opposite of that scenario. Far from being a "fully

informed decision," *Krupski*, 560 U.S. at 552, a plaintiff uses a placeholder precisely because of a lack of full factual understanding – and often because there is no identifiable party whom he can, in good faith, name. Often, if such a plaintiff wants to sue at all within the limitations period, he must use the placeholder.

4. The context of Rule 15(c)(1)(C) makes it apparent that the court of appeals erred. The court dwelt on the word "mistake" without taking into account the phrase in which it occurred and the defendant-focused function of that phrase in the Rule – the very points emphasized by this Court in *Krupski*. But even if the word "mistake" is, impermissibly, viewed in isolation, the court of appeals' restrictive reading of the word "mistake" is at odds with the common meaning of that term.

The word "mistake" can refer to "a wrong action or statement proceeding from faulty judgment, *inadequate knowledge*, or inattention." *Mistake*, Merriam-Webster.com, https://www.merriam-webster.com/dictionary/mistake (last visited Dec. 21, 2021) (emphasis added). The Court cited this definition, among others, in *Krupski*: "a wrong action or statement proceeding from faulty judgment, inadequate knowledge, or inattention" or "a state of mind not in accordance with the facts." *See* 560 U.S. at 548-49 (quoting *Webster's Third New International Dictionary* 1446 (2002)).

If the intended defendant is not actually named "John Doe," then referring to "John Doe" in the complaint is a "wrong statement." And if the

plaintiff's use of the "John Doe" name proceeded from "inadequate knowledge," then it is a mistake.

The court below tried to explain its disregard of this definition of "mistake" in various ways. It characterized the use of a placeholder as "a deliberate choice" and "a conscious choice, not an inadvertent error." Pet. App. 9a-10a. But of course mistakes can be the product of deliberate and conscious choices that are not inadvertent. A student who is fully aware of his inadequate knowledge of a subject might write an answer on a test that he knows is almost certainly wrong. The answer will reflect exactly what the student meant to say, but it will still be a mistake.

The court also asserted that "[n]aming a John Doe defendant as a nominal placeholder is not a wrong action proceeding from inadequate knowledge; it is a proper action on account of inadequate knowledge." Pet. App. 10a. This is a play on words. The use of a placeholder is "proper" in the sense that it is the right thing for a party to do when he does not know the intended defendant's identity – as opposed to, for example, simply guessing (which, as we explain below, the court of appeals' approach would, perversely, reward). But it is "wrong" – a mischaracterization of "the proper party's identity" – because, of course, the defendant's name is not "John Doe."

B. The history and purpose of Rule 15(c)(1)(C) also show that the Rule covers the relation back of amendments that correct placeholders.

The Advisory Committee's Notes to the relation back rules, now codified in Rule 15(c)(1)(C), establish that these provisions were originally enacted, and later amended, to protect plaintiffs like petitioner.[2] In particular, the Committee designed the Rules to prevent courts from denying relation back when doing so would "defeat unjustly the claimant's opportunity to prove his case." Fed. R. Civ. P. 15(c), Advisory Committee's note to 1966 amendment. The Advisory Committee identified as an "acute" example a plaintiff who seeks to sue government officers or agencies but names an incorrect defendant, such as the United States or "the 'Federal Security Administration' (a nonexistent agency)." *Id.* The Committee noted that this problem extended to other types of suits against both the government and private parties. *Id.*

Rule 15(c) was intended to be a "general solution" to these problems. *Id.* The Committee recognized that "the chief consideration of policy is that of the statute of limitations." *Id.* The Rule therefore established notice to the defendant as the central

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[2] This Court relied on the Advisory Committee's Notes to interpret Rule 15 in *Krupski*, *see* 560 U.S. at 550–51; *see also United States v. Vonn*, 535 U.S. 55, 63–64 (2002) (relying on the Advisory Committee's Notes to interpret the Rules of Criminal Procedure); *Miss. Publ'g Corp. v. Murphree*, 326 U.S. 438, 444 (1946) ("[I]n ascertaining [the] meaning [of the Federal Rules] the construction given to them by the Committee is of weight.").

criterion. So long as the defendant in a given case received actual or constructive notice within the time period established by the Rules and the relevant statute of limitations, "[t]he policy of the statute limiting the time for suit against [the defendant] would not have been offended by allowing relation back." *Id.*

In 1991, the Rule was further amended to "prevent parties against whom claims are made from taking unjust advantage of otherwise inconsequential pleading errors." Fed. R. Civ. P. 15(c), Advisory Committee's note to 1991 amendment. The Committee instructed that "[i]f the notice requirement is met . . . a complaint may be amended at any time to correct a formal defect such as *a misnomer or misidentification*." *Id.* (emphasis added).

When the allegations and details included in a complaint leave the intended defendant with actual or constructive knowledge that they are the target of the plaintiff's suit, an amendment that replaces a John Doe placeholder with the defendant's real name fits the Advisory Committee's description of an "amend[ment] … to correct a formal defect such as a misnomer or misidentification." *Id.* The defendant has notice and is not prejudiced; all that remains is to formally replace the "misnomer or misidentification" with the defendant's name. *Id.*

C. The court of appeals' approach invites arbitrary results and creates perverse incentives

A categorical refusal to permit relation back of amendments correcting placeholders leads to arbitrary and irrational outcomes. For example, under the court of appeals' approach, when all of the correct defendants are on notice of the complaint against them during the limitations period, the applicability of Rule 15(c)(1)(C) apparently would turn solely on the happenstance of whether the plaintiff assigned particular defendants incorrect names that he thought might be correct (in which case there would be relation back) or instead more cautiously described a defendant as "John Doe."

Similarly, the court of appeals would, presumably, allow relation back if petitioner in this case had named "Illinois" or "Cook County" instead of naming individual defendants – the kind of error specifically envisioned by the Advisory Committee Notes. In fact, the court of appeals apparently would permit relation back if petitioner had made his best guess at the names of the correctional officers involved in the incident. But because petitioner instead captioned his original complaint with placeholders for the defendants, his amendment, according to the court of appeals, categorically cannot relate back.

"This disparity . . . seems to have no principled basis and should not be codified in our Rules of Civil Procedure." *Singletary*, 266 F.3d at 202 n.5. It punishes a plaintiff who honestly expresses

uncertainty by using placeholders.[3] These are exactly the kind of distinctions that, as we explained, the Rules sought to eliminate by establishing relation back procedures. *See* Fed. R. Civ. P. 15(c) advisory committee's note to 1966 amendment.

The court of appeals' approach also creates perverse, and troubling, incentives. It encourages plaintiffs to guess at a defendant's name – potentially creating wasteful confusion – instead of candidly acknowledging that they need more information. Beyond that, plaintiffs who cannot rely on a John Doe allegation to toll the statute of limitations will, rationally, engage in protective tactics that impose costs on defendants and on the courts – for example, by naming all possible defendants, all of whom will be drawn into the litigation and may need to obtain counsel and respond to the complaint. *See, e.g.*, *White v. City of Chicago*, No. 14-CV-3720, 2016 WL 4270152, at *3 (N.D. Ill. Aug. 15, 2016) (describing how a plaintiff unable to identify the John Doe police officer who allegedly assaulted him "filed a second amended complaint . . . adding as defendants all of the police officers whose names appeared in [plaintiff's] police records . . . to protect against the running of the statute of limitations on the assumption that one of those officers likely was the John Doe defendant").

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[3] In fact, by requiring a plaintiff to name a real person when a plaintiff does not know (on the facts of this case, for example) the name of the prison guard who allowed him to be attacked, the lower court's approach might expose the plaintiff to a motion for sanctions under Rule 11.

Perhaps most troubling, the court of appeals' approach gives defendants an incentive to prolong the early stages of litigation and delay discovery until the plaintiff can no longer determine the proper defendant's name within the limitations period. Worse, the court of appeals' approach can cause these effects to spill over outside the litigation context. Police, prison guards, and others frequently involved in John Doe suits, for example, will have an incentive to hide their identities during the course of their duties. If a victim lacks knowledge of the offender's identity, anonymity will become immunity.

II. The Court Should Resolve the Circuit Split and Reaffirm the Correct Interpretation of Rule 15

This Court has not hesitated to intervene when lower courts misinterpret the Federal Rules of Civil Procedure – as in *Krupski* itself. *See* 560 U.S. at 546 & n.2 (describing "tension among the Circuits over the breadth of Rule 15(c)(1)(C)(ii)); *see also Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555–56 (2007) (interpreting Rule 12(b)(6)); *Nutraceutical Corp. v. Lambert*, 139 S. Ct. 710, 714–18 (2019) (interpreting Rule 23(f)); *cf. Houston v. Lack*, 487 U.S. 266, 268 (1988) (interpreting Federal Rule of Appellate Procedure 4(a)(1)). The Court should do so now to correct lower courts' misinterpretation of Rule 15(c)(1)(C) and *Krupski*. The issue in this case arises in a variety of contexts, including bankruptcy, copyright, labor and employment, privacy protection, and products liability. *See, e.g.*, *Aslanidis v. U.S. Lines, Inc.*, 7 F.3d 1067 (2d Cir. 1993) (bankruptcy);

Reiner v. Canale, 301 F. Supp. 3d 727 (E.D. Mich. 2018) (copyright); *Wiggins v. Kimberly-Clark Corp.*, 641 F. App'x 545 (6th Cir. 2016) (labor and employment); *Heglund*, 871 F.3d at 576 (privacy protection); *Locklear v. Bergman & Beving AB*, 457 F.3d 363 (4th Cir. 2006) (products liability).

Resolving the circuit split over Rule 15(c)(1)(C) is necessary to prevent further erosion of *Krupski*. As we noted, several other courts of appeals take the same approach as the court below. The result is litigation over the subjective state of mind of plaintiffs – precisely what that this Court sought to put an end to in *Krupski*. By plucking the "but for a mistake" requirement out of the context of notice to the defendant, and insisting that courts inquire into whether the plaintiff has made a "mistake," that approach requires courts to engage in "an unguided and therefore undisciplined sifting of reasons for an amendment." *Goodman*, 494 F.3d at 472-73. The pre-*Krupski* "disagreement among courts over which mistakes are forgiven under Rule 15(c) and which mistakes result in dismissal illustrates the peril of the approach." *Id.* at 473. This approach leads to arbitrary and unjust results and excess litigation unmoored from any sensible justification.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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