No. 21-771

IN THE

Supreme Court of the United States

JUSTIN HERRERA,

Petitioner,

v.

TERESA CLEVELAND, SAMUEL DIAZ, AND ENRIQUE MARTINEZ,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR AMICUS CURIAE THE HOWARD UNIVERSITY SCHOOL OF LAW CIVIL RIGHTS CLINIC IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS CURIAE[1]

Howard University School of Law is the nation's first historically Black law school. For more than 150 years since its founding during Reconstruction, the law school has worked to train "social engineers" devoted to the pursuit of social and racial justice. As part of this mission, the Howard University School of Law's Civil Rights Clinic advocates on behalf of clients and communities fighting for the realization of civil rights guaranteed by the U.S. Constitution. The Clinic has a particular interest in eradicating laws, policies, and procedural rules that serve to undermine vital human and civil rights—including judicial interpretations of rules that impede legal remedies for constitutional violations.

INTRODUCTION AND SUMMARY OF ARGUMENT

On a September evening in 2006, Amanda Deanne Smith was visiting a friend's home in Virginia Beach, Virginia.[2] Just after 5 p.m., Smith answered a knock at the front door to find police officer R.R. Ray,

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[1] The parties have consented to the filing of this amicus brief. No counsel for a party authored the brief in whole or in part. No party, counsel for a party, or any person other than amicus curiae and their counsel made a monetary contribution intended to fund the preparation or submission of the brief.

The arguments presented in this brief are made on behalf of the Civil Rights Clinic—not the Howard University School of Law or Howard University.

[2] Second Am. Compl. at ¶14, *Smith v. Ray*, No. 2:08cv281 (E.D. Va. Nov. 18, 2008), ECF No. 29.

accompanied by a man looking for his teenaged runaway son.[3] Smith informed the officer that, to her knowledge, the teen was not inside the home.[4] Unsatisfied with Smith's responses to his questions, Officer Ray grabbed Smith, forced her to the ground, and knelt on her back, rendering Smith unable to breathe or speak.[5] Several additional officers then arrived on the scene.[6] One of the officers began searching Smith's person, "inappropriately fondling Smith's breasts and penetrating Smith's genitals" as Smith screamed for help.[7] No one responded to her screams.[8] After Officer Ray and his law-enforcement accomplices asphyxiated and sexually assaulted Smith, they placed her under arrest for unlawfully possessing a pocketknife, which she had admitted carrying, and obstruction of justice for trying to escape the officers' grasps as they abused her.[9]

Smith filed suit in federal court alleging assault, battery, false imprisonment, malicious prosecution, and constitutional claims under 42 U.S.C. § 1983.[10] At the time of her initial complaint, Smith was able to

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[3] *Id.* ¶¶ 14-16.

[4] *Id.* ¶¶ 18-20.

[5] *Id.* ¶¶ 23-32.

[6] *Id.* ¶¶ 45-46.

[7] *Id.* ¶ 46.

[8] *Id.* ¶ 47.

[9] *Id.* ¶¶ 57-59.

[10] *Smith v. Ray*, No. 2:08CV281, 2011 WL 13371166, at *1 (E.D. Va. June 2, 2011).

identify Officer Ray, but because she did not know the name of the officer who sexually assaulted her, the complaint named that attacker as "Unknown Officer."[11] After discovery, Smith learned that the unknown assailant was Officer Jay Keatley.[12] Smith moved to amend her complaint to substitute Officer Keatley for the "Unknown Officer," but by this time, the statute of limitations had expired. The only way for Smith to pursue *any* remedy for the violations Officer Keatley committed against her was if the amendment "related back" to the date of her original complaint. Without relation back, Smith's claim against Officer Keatley would be subject to dismissal, even if Officer Keatley knew that Smith intended to identify him as a defendant in her initial complaint but could not do so because she did not know his name.

Federal Rule of Civil Procedure 15(c)(1)(C) governs relation back in such circumstances. The Rule provides that an amendment to a pleading "relates back to the date of the original pleading when," as relevant here, "the party to be brought in by 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." Despite the Rule's express reference to what the initially unnamed *defendant* knew or should have known, a majority of circuits have held that an amendment does not relate back when the *plaintiff* did not know the identity of an alleged wrongdoer and therefore named

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[11] *Id.*

[12] *Id.*

"John Doe" defendants in a complaint. These courts, which include the Second, Fifth, Sixth, Seventh, Eighth, Tenth, and Eleventh Circuits, hold that the use of John Doe placeholders indicates plaintiffs' "lack of knowledge of the proper party" rather than a "mistake" that would allow relation back under Rule 15(c)(1)(C).[13] By contrast, the Third and Fourth Circuits hold that "lack of knowledge of a particular defendant's identity can be a mistake," and so relation back is permitted when "the to be-added defendants had timely notice of the lawsuit and knew that the lawsuit was really meant to be directed at them."[14] The division among the circuits persists despite this Court's holding in *Krupski v. Costa Crociere* that Rule 15(c)(1)(C) "asks what the prospective defendant knew or should have known . . . not what the plaintiff knew or should have known" and that a plaintiff's "inadequate knowledge" may constitute a mistake.[15]

The petition in this case correctly notes the entrenched circuit split on the interpretation of Rule

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[13] *See Worthington v. Wilson*, 8 F.3d 1253, 1256-57 (7th Cir. 1993); *see also Heglund v. Aitkin County*, 871 F.3d 572, 579-80 (8th Cir. 2017); *Garrett v. Fleming*, 362 F.3d 692, 696-97 (10th Cir. 2004); *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); *Jacobsen v. Osborne*, 133 F.3d 315, 320-22 (5th Cir. 1998); *Cox v. Treadway*, 75 F.3d 230, 240 (6th Cir. 1996); *Barrow v. Wethersfield Police Dep't*, 66 F.3d 466, 469-70 (2d Cir. 1995), *modified*, 74 F.3d 1366 (2d Cir. 1996).

[14] *Singletary v. Pa. Dep't of Corr.*, 266 F.3d 186, 190 n.5, 200-202 (3d Cir. 2001); *see also Goodman v. Praxair*, 494 F.3d 458 (4th Cir. 2007) (en banc).

[15] *Krupski v. Costa Crociere S. p. A.*, 560 U.S. 538, 548 (2010).

15(c)(1)(C) and aptly explains that the majority rule disallowing relation back in John Doe cases is wrong. Amicus writes to emphasize two points. First, the significance of the question presented is made clear by the myriad cases raising the issue throughout the country. Nearly every federal circuit, as well as district courts in nearly every state, have opined on the issue. No further percolation is warranted. Second, civil rights plaintiffs—who are precisely the sort of plaintiffs the "mistake" provision was intended to protect—are most impacted by the majority rule against John Doe amendments.

Amanda Smith was lucky to have brought her claim in the Fourth Circuit, which permits relation back for John Doe amendments.[16] This Court should grant the petition to ensure that, consistent with the text and purpose of Rule 15(c)(1)(C), plaintiffs throughout the country are afforded the same option.

ARGUMENT

I. The Question Presented Is Exceptionally Important

The significance of the question presented is demonstrated by the sheer number of cases implicating the issue. As reflected in the appendices, amicus reviewed 49 court of appeals cases[17] and 773 district court cases[18] involving relation back of John Doe

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[16] *Smith*, 2011 WL 13371166, at *4.

[17] *See* Appendix I.

[18] *See* Appendix II.

amendments under Rule 15(c)(1)(C). Federal district courts in 43 states and the District of Columbia have confronted the issue. Every federal circuit except the D.C. and First Circuits have issued opinions on John Doe amendments. And these opinions have reached very different conclusions with respect to these amendments.

The disagreement among the circuits continues in the wake of *Krupski*. Twenty-two of the court of appeals cases and 470 of the district court cases listed in the appendices were decided after *Krupski*. And the more than 800 opinions on the issue tell just part of the story: There are undoubtedly countless other cases where plaintiffs facing binding circuit precedent did not raise the issue or where district courts denied leave to amend without issuing a written opinion.

Review of the multitude of opinions on John Doe amendments reveals the depth of the circuit split—and the real-life consequences of this division. In Mississippi, the family of Nicholas Pastor sued "John Doe" jail officials who—despite being aware that Pastor was in custody for being suicidal—left him unsupervised in violation of jail policy. After Pastor killed himself in his unsupervised cell, his family could not determine the identities of the responsible jail officials prior to the expiration of the statute of limitations. And because "the Fifth Circuit has held that Rule 15(c)(1)(C) relation-back is not available to a plaintiff who sues 'John Doe' because the plaintiff does not know who the defendant is," the district court dismissed the suit against those defendants—without regard to whether they knew within the statute of limitations that they were intended defendants in the

suit.[19] By contrast, a family in materially identical circumstances in Pennsylvania was permitted to amend a John Doe complaint because the Third Circuit has held "that the plaintiff's lack of knowledge of [John Doe] defendants' identities . . . qualifies as a mistake under Rule 15(c)(1)(C)."[20]

In Texas, the family of Gabriel Winzer sued John Doe police officers who shot and killed Winzer and then tased and handcuffed his distraught father as he attempted to render aid to his dying son.[21] When the family attempted to amend their complaint to identify the responsible officers, the district court applied Fifth Circuit precedent to hold that the family's "failure to name [the actual] defendants does not constitute a 'mistake'" under Rule 15(c)(1)(C).[22] A plaintiff injured by law enforcement in West Virginia, however, was permitted to amend her complaint to name actual defendants because the Fourth Circuit construes the "mistake" requirement to encompass John Doe amendments.[23]

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[19] *Shaidnagle v. Adams Cty., Miss.*, 88 F. Supp. 3d 705, 715–16 (S.D. Miss. 2015).

[20] *Carlos v. York Cty.*, No. 1:15-CV-01994, 2016 WL 1706163, at *5 (M.D. Pa. Apr. 27, 2016).

[21] Compl. at 1-2, *Winzer v. Kaufman Cty*, No. 3:15cv1284 (N.D. Tex. Apr. 27, 2015).

[22] *Winzer v. Kaufman Cty.*, No. 3:15-CV-01284-N, 2016 WL 11664137, at *2 (N.D. Tex. Apr. 25, 2016), *aff'd*, 916 F.3d 464 (5th Cir. 2019).

[23] *Williams v. W. Virginia Div. of Corr.*, No. 2:19-CV-00496, 2020 WL 748873, at *4 (S.D.W. Va. Feb. 13, 2020).

Both the number and substance of the cases detailed in the appendices demonstrate why this Court's review is required. The treatment of John Doe amendments under Rule 15(c)(1)(C) has prompted hundreds of opinions and caused an entrenched circuit split. And the contradictory outcomes for plaintiffs in materially identical circumstances reveals a lack of uniformity on a critical issue of federal civil procedure.

II. The Majority Rule Disallowing John Doe Amendments Harms Civil Rights Plaintiffs And Thus Contravenes The Purpose Of Rule 15(c)(1)(C)

The impact of the circuit split on John Doe amendments under Rule 15(c)(1)(C) falls hardest on civil rights plaintiffs.[24] John Doe complaints are most often filed in suits brought under 42 U.S.C. § 1983 by individuals against government actors, who can be particularly difficult to identify by name. And in requiring dismissal of Section 1983 suits at the pleading or amendment stage due to plaintiffs' inability to

[24] While the issue is most common in civil rights cases, Rule 15(c)(1)(C)'s interpretation with respect to John Doe amendments has been implicated in cases involving medical malpractice, *Davies v. LeBlanc*, No. CV 17-12575, 2020 WL 3128613 (E.D. La. June 12, 2020); wrongful death under the Death on the High Seas Act, *Craig v. United States*, 284 F. Supp. 697 (1967); breach of contract, *StreamCast Networks, Inc. v. Skype Techs., S.A.*, No. CV 06-391 FMC (EX), 2006 WL 5441237 (C.D. Cal. Sept. 14, 2006); personal injury, *Scherr v. Marriott Int'l, Inc.*, No. 08C2098, 2009 WL 4015541 (N.D. Ill. Nov. 19, 2009); privacy violations, *Bass v. Anoka Cty.*, No. 13-CV-860 (DSD/LIB), 2016 WL 11701076 (D. Minn. Nov. 21, 2016); and products liability, *Turnage v. McConnell Sales & Eng'g Corp., Inc.*, No. 2:14-CV-124-KS-MTP, 2016 WL 527076 (S.D. Miss. Feb. 9, 2016).

identify government actors, the majority rule runs contrary to the intent underlying the "mistake" provision of Rule 15(c)(1)(C). The rule was intended to excuse "mistakes" specifically in "actions by private parties against officers or agencies of the United States."[25] "To deny relation back" in such cases "is to defeat unjustly the claimant's opportunity to prove his case."[26] In recognizing the injustice of an overly restrictive use of relation back, and in permitting amendment for "mistakes,"—which this Court has recognized as including "inadequate knowledge" about a defendant's identity[27]—the rule's drafters intended to account for the power imbalance and practical realities inherent in suits by individuals against government actors.

Excessive force claims against law enforcement officers exemplify these dynamics and realities and account for a significant percentage of the cases listed in the appendices.

Victims of excessive force by law enforcement face many practical barriers to obtaining the names of their attackers. The force itself is a barrier. No one could fault Amanda Smith, for instance, for failing to record the names or badge numbers of her attackers during a traumatic sexual assault. And victims who might try to do so increasingly face efforts by some officers to shield their identities. In the 10 days

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[25] Fed. R. Civ. P. 15 advisory committee's note to 1966 amendment.

[26] *Id.*

[27] *Krupski*, 560 U.S. at 548.

following release of the video of the murder of George Floyd by then-officer Derek Chauvin, for example, citizens filed 78 complaints against Chicago police officers who intentionally removed or covered their badges during protests.[28] Officers in New York and Seattle have similarly been photographed at public protests with bands or electrical tape covering their badge numbers, which "serves to prevent aggrieved individuals from being able to identify the perpetrators of police misconduct."[29] Federal officers policed the streets of Washington, D.C. with no badges, no identifying data displayed, and refused to identify themselves to citizens.[30] Officer attempts to shield their identities are bolstered by state laws that make it exceedingly difficult—if not impossible—for victims to access officer misconduct data.[31]

Victims of excessive force who are unable to identify their government attackers face a serious dilemma. They are "unable to identify the individual

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[28] Jonathan Ballew, *Chicago Police Investigating 78 Complaints of Officers Removing or Covering Badges During Protests*, Chi. Rep. (June 11, 2020), https://tinyurl.com/2p9en68z.

[29] Alex Nicoll, *Some Police Have Appeared to Cover Their Badges with Black Bands at Protests*, Insider (June 4, 2020), https://tinyurl.com/2ucsarbp.

[30] Steve Almasy, *Some Law Enforcement Officers at Protests Have No Badges and Some Have Covered Them*, CNN (June 5, 2020), https://tinyurl.com/2p8fvbbk; Rachel Brown, *Can Law Enforcement Officers Refuse to Identify Themselves*, Lawfare (June 12, 2020), https://tinyurl.com/2p99wny6.

[31] Stephanie Wykstra, *The Fight for Transparency in Police Misconduct, Explained*, Vox (June 16, 2020), https://tinyurl.com/2p8khjpb.

officers and name them as defendants without the benefit of formal discovery, but cannot get formal discovery until after [they] file[] the lawsuit."[32] Even after the lawsuit is filed, dispositive motions and other procedural processes may delay the start of formal discovery. Without relation back, if formal discovery does not reveal the defendants' real identities prior to expiration of the statute of limitations, victims are "deprived of any remedy and of any opportunity to hold state actors to answer for their constitutional misconduct."[33] Such a result defeats not only the text and purpose of Rule 15(c)(1)(C), *see* Pet. 23-30, but also "the twin substantive aims of § 1983—compensating individuals for the deprivation of their constitutional rights and deterring future unconstitutional conduct by those officers and others."[34]

CONCLUSION

For the foregoing reasons, the Court should grant the petition and reverse the decision of the Seventh Circuit Court of Appeals.

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[32] Howard M. Wasserman, *Civil Rights Plaintiffs and John Doe Defendants: A Study in Section 1983 Procedure*, 25 CARDOZO L. REV. 793, 798 (2003).

[33] *Id.*

[34] *Id.*

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