No. 21-771

IN THE

Supreme Court of the United States

JUSTIN HERRERA,

Petitioners,

v.

THERESA CLEVELAND, ET AL.,

Respondents.

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Under Federal Rule of Civil Procedure 15(c)(1)(C), an amendment that "changes the party or the naming of the party against whom a claim is asserted" relates back to the date of the original pleading only if the party being brought in by that 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." A "mistake" for purposes of this rule is "an error, misconception, or misunderstanding; an erroneous belief." *Krupski v. Costa Crociere S. p. A.*, 560 U.S. 538, 548 (2010) (cleaned up). As a result, "making a deliberate choice to sue one party instead of another while fully understanding the factual and legal differences between the two parties is the antithesis of making a mistake concerning the proper party's identity." *Id.* at 549.

The question presented is: does an amendment relate back under Rule 15(c)(1)(C) when the plaintiff made no mistake in his original complaint, but instead deliberately named three fictitious John Doe defendants?

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BRIEF IN OPPOSITION

STATEMENT

On September 19, 2018, Herrera, acting pro se, filed his complaint in the district court, alleging violations of his constitutional rights under 42 U.S.C. § 1983. R. 1.[1] In that complaint, Herrera claimed that, on October 26, 2016, he had been assaulted by other inmates while at the Cook County Jail, and that the correctional officers on duty failed to protect him from that assault. R. 9 at 4-5. Herrera did not name any of

[1] We cite the district court record as "R. ___," the Seventh Circuit record as "7th Cir. R. ___," and the audio recording of the oral argument in the Seventh Circuit as "7th Cir. Arg. ___."

these correctional officers, or provide their identifying information (*e.g.*, appearance, gender, build, race), but instead listed each defendant as a "John Doe." *Id.* at 2. Herrera also did not identify the inmate whom he claimed had initiated the assault.

Over a year later, on October 3, 2019, Herrera – now acting through counsel – filed an amended complaint identifying the inmate who had assaulted him as Fernando Little and identifying two of the Doe defendants as Teresa Cleveland and Samuel Diaz. R. 34. The third defendant was still designated "John Doe," a "correctional officer" with the Cook County Jail. *Id.* ¶ 10. Herrera later filed a second amended complaint identifying that third Doe defendant as Enrique Martinez. R. 42.

The defendants moved to dismiss Herrera's complaint. R. 47. As defendants explained, his claim was governed by Illinois' two-year statute of limitations, and that limitations period had expired shortly after Herrera filed his initial complaint, on October 26, 2018. *Id.* at 3-4.

In his response, R. 49, Herrera made two arguments against dismissal. First, Herrera argued that his amendments related back to his original complaint under Fed. R. Civ. P. 15(c)(1)(C) because "inadequate knowledge [is] a type of mistake." *Id.* at 5 (quotation marks omitted). As a result, he said, the only question was whether the defendants had

received adequate notice of the suit, which Herrera claimed was provided when notice was served on the Cook County Sheriff. *Id.* at 6-7. Second, he argued, the limitations period was equitably tolled during the administrative grievance process, while the district court conducted a preliminary evaluation of his complaint, and while he awaited appointment of counsel. *Id.* at 7-9.

The district court denied the motion to dismiss. Pet. App. 13a-19a. Although the court acknowledged that the Seventh Circuit "has held that Rule 15's 'mistake' requirement is not satisfied if the plaintiff simply lacks knowledge concerning, or is ignorant of, the identity of the prospective defendant," it concluded that *Krupski v. Costa Crociere S.p.A.*, 560 U.S. 538 (2010), overruled that precedent. Pet. App. 17a. Under *Krupski*, the court concluded, relation back under Rule 15(c)(1)(C) depended on what the newly added defendants knew about the plaintiffs' suit before they were added. *Id.* at 18a. Because information regarding such knowledge will rarely be before the district court on a motion to dismiss, the court explained, "dismissal on that basis is rare." *Ibid.* Accordingly, the district court denied the motion to dismiss for lack of any information in the pleadings regarding the defendants' knowledge, explaining that the denial of the motion to dismiss on that ground made it unnecessary to address equitable tolling. *Id.* at 18a-19a & n.1.

The district court certified its ruling for interlocutory appeal pursuant to 28 U.S.C. § 1292(b), Pet. App. 22a, and the Seventh Circuit accepted the appeal for consideration, *id.* at 21a. On appeal, an amicus for Herrera argued that his complaint would have related back even absent a "mistake" for purposes of Rule 15(c)(1)(C). 7th Cir. R. 14-2 at 22-23. According to that amicus, Rule 15(c)(1)(A) allows relation back whenever allowed under the state law providing the applicable limitations period, and the Illinois law providing that limitations period allows relation back when a plaintiff is unable to identify a defendant due to a lack of knowledge. *Id.* at 23-26. But at oral argument, defendants explained that this argument was waived because Herrera had never raised it in the district court or in his response brief on appeal. 7th Cir. Arg. 20:21-20:36.

The court of appeals reversed. Pet. App. 1a-12a. As the court of appeals explained, *Krupski* defined a "mistake" for purposes of Rule 15(c)(1)(C) "as an error, misconception, or misunderstanding; an erroneous belief," or "a misunderstanding of the meaning or implication of something; a wrong action or statement proceeding from faulty judgment, inadequate knowledge, or inattention; an erroneous belief; or a state of mind not in accordance with the facts." Pet. App. 8a (cleaned up). As a result, under *Krupski*, a deliberate but mistaken choice to sue a particular defendant does not entirely foreclose an amendment from relating back under Rule 15(c)(1)(C), because the

plaintiff might misunderstand that defendant's status or role. *Ibid*. But *Krupski* "made clear that a plaintiff's deliberate choice to sue one party over another while 'fully understanding factual and legal differences' between them is 'the antithesis of making a mistake concerning the proper party's identity.'" *Ibid*. (quoting 560 U.S. at 549).

As a result, "naming a John Doe defendant does not constitute a 'mistake'" under *Krupski*, for three reasons. Pet. App. 9a. First, "naming a defendant as John Doe in the complaint is not based on an error, misconception, misunderstanding, or erroneous belief." *Ibid.* "Rather, it is a deliberate choice," because "the plaintiff names a John Doe defendant 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." *Ibid.*

Second, "a John Doe case and *Krupski* are different in kind." Pet. App. 9a. "While the plaintiff in *Krupski* had no idea she lacked knowledge of the proper defendant's identity, Herrera sued John Doe defendants fully aware that he lacked adequate information to ascertain the correctional officers' identities." *Ibid.* "Put differently, the plaintiff in *Krupski* did not know what she did not know; Herrera did know what he did not know." *Ibid.*

Third, while *Krupski* defined a "mistake" to

include "a wrong action or statement" resulting from "inadequate knowledge," that does not mean that "inadequate knowledge" and a "mistake" are the same thing. Pet. App. 10a. Rather, "it is the 'wrong action' *stemming* from 'inadequate knowledge' that amounts to a mistake." *Ibid.* (emphasis added). Using a Doe designation "is not a wrong action proceeding from inadequate knowledge; it is a proper action on account of inadequate knowledge." *Ibid.*

"In sum," the Seventh Circuit concluded, "suing a John Doe defendant is a conscious choice, not an inadvertent error." Pet. App. 10a. And because Herrera's amended complaints did not relate back under Rule 15(c)(1)(C), they were untimely. *Id.* at 11a. But, the court cautioned, "Herrera's case does not necessarily end here. As he argued in the district court and does so again on appeal, the doctrine of equitable tolling may apply." *Ibid.* And while "equitable tolling is rare," the court concluded, "it remains available here. Whether Herrera satisfies this test is a factual inquiry beyond the scope of this interlocutory appeal, so we leave this issue for the district court to consider on remand." *Ibid.*

REASONS FOR DENYING THE PETITION

The petition for certiorari should be denied. This case reached the Seventh Circuit not on appeal from a final judgment, but on appeal of an interlocutory ruling denying a motion to dismiss. And as the

Seventh Circuit recognized when remanding this matter to the district court for further proceedings, Herrera's complaint might still proceed even though it does not relate back under Rule 15(c)(1)(C). In addition, the issue presented is of only marginal importance – under Rule 15(c)(1)(A), the state law providing the applicable limitations period provides the default rule for relation back in civil rights cases, and several states allow relation back of Doe designations. Illinois is one of those states, but Herrera waived any argument for relation back under Rule 15(c)(1)(A) by failing to raise that issue in the proceedings below. Furthermore, the split of authority Herrera relies upon is not sufficiently developed to warrant this Court's review – indeed, the only post-*Krupski* decision Herrera can identify on his preferred side of that split is an unpublished decision that does not bind even the court in which it was issued. Finally, the court of appeals correctly recognized that using a Doe designation is not a mistake allowing relation back under Rule 15(c)(1)(C).

I. This Case Is A Poor Vehicle For The Question Presented.

This case is a poor vehicle for the question presented because it involves the review of an interlocutory order denying a motion to dismiss. Generally, this Court will not grant certiorari to review an issue when "it is not clear that [its] resolution of [that issue] will make any difference" to

the petitioner. *Ticor Title Ins. Co. v. Brown*, 511 U.S. 117, 122 (1994) (per curiam). As a result, because "many orders made in the progress of a suit become quite unimportant by reason of the final result, or of intervening matters," certiorari review of an interlocutory order is inappropriate "unless it is necessary to prevent extraordinary inconvenience and embarrassment in the conduct of the cause." *Am. Constr. Co. v. Jacksonville, T. & K. W. R. Co.*, 148 U.S. 372, 384 (1893); accord*, e.g., Hamilton-Brown Shoe Co. v. Wolf Bros.*, 240 U.S. 251, 258 (1916) ("except in extraordinary cases, the writ is not issued until final decree").

This case directly implicates the concerns underlying that longstanding rule. As the court of appeals explained below, even though Herrera's complaint did not relate back, his "case does not necessarily end here" because "equitable tolling may apply." Pet. App. 11a. But because the applicability of equitable tolling "is a factual inquiry beyond the scope of this interlocutory appeal," the court "le[ft] this issue for the district court to consider on remand." *Ibid*. As a result, there is still a chance that Herrera's suit may be allowed to proceed, even if it does not relate back under Rule 15(c)(1)(C). Indeed, Herrera argued precisely that before the Seventh Circuit. See 7th Cir. R. 12 at 4 n.1 ("even if this Court were to reverse and remand, the motion to dismiss could still be denied on [equitable tolling] grounds").

Herrera does not come to grips with the interlocutory nature of the ruling he seeks to challenge, so he does not claim that this case involves any extraordinary circumstance justifying this Court's immediate intervention. Nor could he. Nothing about equitable tolling – involving only questions of whether it is fair and equitable to hold Herrera to the normal limitations period – is even conceivably a matter of great embarrassment. Nor does merely being asked to present argument and evidence in the district court on the issue of equitable tolling entail any extraordinary inconvenience. Much to the contrary, if the district court resolves that issue in Herrera's favor, it would actually *spare* Herrera a great deal of inconvenience unnecessarily litigating the question presented to this Court.

This case involving no extraordinary circumstances warranting this Court's immediate review of an interlocutory issue, the best course is to allow the district court to address in the first instance whether equitable tolling would allow Herrera's suit to proceed. If that issue is not resolved in Herrera's favor, he can seek this Court's review again, this time with a final judgment in hand that will ensure that this Court's review of the question he presents is not for naught. See *Va. Military Inst. v. United States*, 113 S. Ct. 2431, 2432 (1993) (Scalia, J., concurring in denial of certiorari). And if that issue is resolved in Herrera's favor, then there is no need for this Court's review of the question presented.

II. The Supposed Conflict Is Not Sufficiently Developed To Warrant Review.

This Court should deny certiorari for the additional reason that the conflict of authority identified in the petition is not yet sufficiently developed to warrant this Court's review.

According to Herrera, the courts of appeals have been divided "for nearly three decades" over the proper interpretation of Rule 15(c)(1)(C), Pet. 11, but any conflict between the circuits that predates this Court's decision in *Krupski* cannot warrant certiorari review, see Stephen M. Shapiro, et al., SUPREME COURT PRACTICE 248 (10th ed. 2013) ("A conflict with a decision that has been discredited or that has lost all weight as authority by reason of intervening decisions of the Supreme Court . . . will not be an adequate basis for granting certiorari.").

As a result, the appropriate question here is whether the supposed conflict among the circuits persists in *Krupski*'s wake, after the courts of appeals have had adequate opportunity to examine its effect on their prior decisions. On this subject, Herrera declares it "readily apparent" that *Krupski* "will not align" the courts of appeals. Pet. App. 23. But this is a drastic overstatement – in the decade-plus since this Court decided *Krupski*, only five courts of appeals have addressed its effect on relation back following a Doe designation. Pet. App. 1a-12a; *Ceara v. Deacon*,

916 F.3d 208 (2d Cir. 2019); *Heglund v. City of Grand Rapids*, 871 F.3d 572 (8th Cir. 2017); *Smith v. City of Akron*, 476 Fed. Appx. 67 (6th Cir. 2012); *Everett v. Prison Health Servs.*, 412 Fed. Appx. 604 (4th Cir. 2011). Of those, the only one to allow relation back under Rule 15(c)(1)(C) of an amendment following a Doe designation was an unpublished opinion of the Fourth Circuit that discusses *Krupski* only in a footnote. *Everett*, 412 Fed. Appx. at 606 n.3.

Far from indicating an entrenched circuit split, that lone post-*Krupski* decision indicates that the Fourth Circuit has not yet foreclosed reconsidering its pre-*Krupski* interpretation of Rule 15(c)(1)(C). To the contrary, the discussion of *Krupski* in an unpublished opinion is strong indication that the Fourth Circuit intended to "preserve[ ] its ability to change course in the future," *Plumley v. Austin*, 135 S. Ct. 828, 831 (2015) (Thomas, J., dissenting from denial of certiorari), by including that discussion in an unpublished opinion that is "not binding" on future Fourth Circuit panels, *Minor v. Bostwick Labs., Inc.*, 669 F.3d 428, 433 n.6 (4th Cir. 2012). It is readily apparent why the Fourth Circuit hoped to keep that option open – *Krupski* was brought to the *Everett* court's attention in a "letter" submitted "[a]fter all briefs were filed," 412 Fed. Appx. at 606 n.3, and, by rule, such letters may be no more than 350 words long, Fed. R. App. P. 28(j).

Perhaps recognizing that the unpublished

decision in *Everett* offers no real support for his claim of an "entrenched" split of authority post-*Krupski*, Herrera attempts to reinforce that claim with the Third Circuit's unpublished decision in *Wadis v. Norristown State Hosp.*, 617 Fed. Appx. 133 (3d Cir. 2015). Pet. 20. But *Wadis* says absolutely nothing about how the Third Circuit reads *Krupski* – indeed, it does not even mention *Krupski*, let alone discuss *Krupski*'s effect on relation back after a Doe designation. Nor was there reason for the Third Circuit to discuss that issue, since the plaintiff in *Wadis* "did not seek to substitute a named defendant for a John Doe defendant." 617 Fed. Appx. at 136. As a result, the Third Circuit's *entire* discussion of relation back after a Doe designation is confined to a single, fleeting sentence of dicta. *Id.*

Herrera also notes that the Fifth Circuit has "continued to follow its precedent barring relation back for Doe substitutions, without any discussion of *Krupski*," Pet. 23 (citing *Winzer v. Kaufman County*, 916 F.3d 464 (5th Cir. 2019); *Balle v. Cnty. of Nueces*, 952 F.3d 552 (5th Cir. 2017)), but those decisions offer no support for his claim of an entrenched split, either. Because neither *Winzer* nor *Balle* discuss *Krupski*, they cannot be read to stake a position regarding *Krupski*'s effect on relation back following a Doe designation. Indeed, a review of the briefs in those cases reveals that it was never argued to the Fifth Circuit that *Krupski* required it to take a different position – the briefs in *Winzer* never even mentioned

Krupski, and the appellant's opening brief in *Balle* made only a passing reference to *Krupski*, for an unrelated point.

Unable to identify any appellate authority evincing an entrenched split post-*Krupski*, Herrera falls back on the "dozens of decisions from district courts" he claims agree with his position. Pet. 18. But the existence of those decisions – many of which have since been overruled – offers no support for certiorari here. Under this Court's rules, only splits of binding appellate authority will support a grant of certiorari. Sup. Ct. R. 10(a) & (b). It is thus simply irrelevant for present purposes whether the district courts disagree (or agree, for that matter) with the courts of appeals regarding the proper interpretation of *Krupski*.

In sum, there is no evidence of an "entrenched" split of authority regarding whether a Doe designation is a "mistake" under *Krupski*. To the contrary, all indications are that the majority of the courts of appeals have not yet had sufficient opportunity to conclusively address that issue. As a result, this Court's review would be premature, and certiorari should be denied for that reason alone.

III. The Question Presented Is Not Sufficiently Important To Warrant Review.

Herrera claims that the question whether Rule 15(c)(1)(C) allows relation back after a Doe designation "is exceptionally important" in civil rights suits such as his, Pet. 34 – a claim echoed by his amici, see Howard Amici 8; Jailhouse Lawyer Amici 5 – but this fundamentally misunderstands Rule 15(c)(1)(C), which is designed to play only a limited role in civil rights cases, as well as any other cases that derive their limitations periods from state law. Indeed, Rule 15(c)(1)(C) might not have been of any importance to Herrera *himself* but for his counsel's decision to rely solely on that rule in the proceedings below.

To understand why this is so, it must be remembered that Rule 15(c)(1)(C) is but one of three alternative, sufficient grounds for allowing the relation back of an amendment. An amendment also relates back when either (1) "the law that provides the applicable statute of limitations allows relation back," Fed. R. Civ. P. 15(c)(1)(A); or (2) "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," Fed. R. Civ. P. 15(c)(1)(B). As a result, a court need address relation back under Rule 15(c)(1)(C) only if neither of the two other grounds for relation back are available.

Of particular significance for present purposes is Rule 15(c)(1)(A). As the Rules' drafters explained when adding that provision in 1991, their intent was "to make it clear that the rule does not apply to preclude any relation back that may be permitted under the applicable limitations law." Fed. R. Civ. P. 15, Notes of Advisory Committee on 1991 amendments. "Generally, the applicable limitations law will be state law," even in cases where "federal jurisdiction is based on a federal question." *Ibid.* "Whatever may be the controlling body of limitations law, if that law affords a more forgiving principle of relation back than the one provided in this rule, it should be available to save the claim." *Ibid.*

Recognizing the rules' drafters' clear intent to allow relation back to the full extent permitted by the state law that provides the controlling limitation period, the courts of appeals agree that an amendment in a section 1983 case relates back so long as the state law providing the limitations period would allow that amendment to relate back. *E.g.*, *Riveros-Sanchez v. City of Easton*, 861 Fed. Appx. 819, 823 (3d Cir. 2021): *Balle*, 952 F.3d at 557; *Hogan v. Fischer*, 738 F.3d 509, 518 (2d Cir. 2013); *Presnell v. Cnty. of Paulding*, 454 Fed. Appx. 763, 767 (11th Cir. 2011). These rulings are clearly correct – in the comments to the 1991 amendments that added Rule 15(c)(1)(A), the rules' drafters' chosen example of a federal-question case in which relation back would be governed by state limitations law *was a civil rights*

case arising under section 1983. Fed. R. Civ. P. 15, Notes of Advisory Committee on 1991 amendments (citing *Bd. of Regents v. Tomanio*, 446 U.S. 478 (1980) (explaining that the statute of limitations for claims under section 1983 is derived from state law)).

As a result, if the state law providing the limitations period for a plaintiff's section 1983 claim would allow relation back of an amendment after a Doe designation, that amendment relates back under Rule 15(c)(1)(A) as well, making it irrelevant whether that amendment would also relate back under Rule 15(c)(1)(C). In *Hogan*, for example, because the New York law that provided the statute of limitations for the plaintiff's section 1983 claim "permit[s] John Doe substitutions nunc pro tunc," the plaintiff's amendment of a Doe designation related back to his original complaint under Rule 15(c)(1)(A), 738 F.3d at 518-20, regardless of its failure to relate back under Rule 15(c)(1)(C), *id.* at 518.

Properly understood, then, whether Rule 15(c)(1)(C) allows relation back after a Doe designation is an issue of only limited, secondary importance in federal civil rights litigation. For civil rights plaintiffs in a number of states, that issue is of no consequence because those states' limitations laws expressly allow relation back. *E.g.*, Ala. R. Civ. P. 9(h) & 15(c)(4); Ark. Code § 16-56-125; Cal. Code Civ. P. § 474; N.Y. Civ. P. Law § 1024; Ohio Civ. R. 3(A) & 15(D). And that issue *could* have been of no

consequence to even Herrera himself – under Illinois law, "a plaintiff's lack of knowledge regarding a party's identity" may constitute a mistake allowing relation back, *Zlatev v. Millette*, 2015 IL App (1st) 143173, ¶ 4, but Herrera eschewed reliance on Rule 15(c)(1)(A) below, choosing instead to argue only that his amendment related back under the narrower language of Rule 15(c)(1)(C).

Because the question whether a Doe designation relates back under Rule 15(c)(1)(C) is an issue of no consequence to civil rights litigants in the states that allow relation back after a Doe designation, and might have been of no consequence to Herrera himself had he not waived any reliance on the more favorable language of Rule 15(c)(1)(A), this Court's review of that issue is not warranted.

IV. The Judgment Below Is Correct.

This Court's review is also unnecessary because the court of appeals correctly recognized that a Doe designation is not a "mistake" allowing relation back under Rule 15(c)(1)(C).

The inquiry into the meaning of Rule 15(c)(1)(C) begins, and ends, with its plain language. The Federal Rules of Civil Procedure must be given their plain meaning, so the primary question when analyzing a given rule is whether its language is unambiguous; if so, the judicial inquiry is over, and the rule must be

applied as written. *Bus. Guides, Inc. v. Chromatic Communs. Enters.*, 498 U.S. 533, 541 (1991). Here, the language of Rule 15(c)(1)(C) could not be more unambiguous – under that rule, an amendment relates back only if the defendant "knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity."

This Court interpreted that language in *Krupski*, explaining that a "mistake" is commonly understood as "an error, misconception, or misunderstanding; an erroneous belief" or "a misunderstanding of the meaning or implication of something, a wrong action or statement proceeding from faulty judgment, inadequate knowledge, or inattention; an erroneous belief; or a state of mind not in accordance with the facts." 560 U.S. at 548-549 (cleaned up). Thus, this Court explained, the only question under Rule 15(c)(1)(C) is "whether [the defendant] knew or should have known that it would have been named as a defendant but for *an error*." *Id.* at 548 (emphasis added).

This analysis from *Krupski* forecloses any argument that Herrera's complaint relates back under Rule 15(c)(1)(C). Herrera does not claim that he used a Doe designation in his initial complaint as the result of a factual error regarding the proper defendants' identity – he does not claim, for example, that he believed the defendants were all actually

named "John Doe" – but admits that he did so deliberately, "[b]ecause he did not know the officers' names." Pet. 8. Nor does Herrera claim that he misunderstood the legal effect of his use of a Doe designation; rather, he admits that such a designation "plainly signals" that he "lack[ed] the necessary knowledge" to name an actual person. *Id.* at 25. As this Court explained in *Krupski*, such a deliberate choice "is the antithesis of making a mistake concerning the proper party's identity." 560 U.S. at 549. Absent such a mistake, it was impossible for the defendants to actually or constructively know that they would have been originally named in Herrera's complaint but for a mistake. As a result, Herrera's amendment does not relate back under Rule 15(c)(1)(C).

Herrera's arguments to the contrary are wholly misplaced. Herrera repeatedly insists that it should be irrelevant that his actions were deliberate because "Rule 15(c)(1)(C) focuses on the defendant's knowledge, not the plaintiff's state of mind," Pet. 26; accord *id.* at 24-25, but *Krupski* flatly rejected that notion, explaining that "[i]nformation in the plaintiff's possession is relevant" so long as "it bears on the defendant's understanding of whether the plaintiff made a mistake regarding the proper party's identity." 540 U.S. at 548. As a result, it is perfectly appropriate to ask whether the plaintiff "ma[de] a deliberate choice to sue one party instead of another while fully understanding the factual and legal

differences between the two parties," since such a deliberate choice conclusively shows that the plaintiff made no "mistake concerning the proper party's identity." *Id.* at 549. Tellingly, Herrera does not even acknowledge these statements from *Krupski*, let alone explain how they can be reconciled with his understanding of Rule 15(c)(1)(C).

Herrera also claims that the proper inquiry under Rule 15(c)(1)(C) is simply whether the defendant "underst[ood] that he was the proper party to the claims." Pet. 24; *accord id.* at 26. But had the Rule's drafters intended for that to be the entirety of the relevant inquiry, they would have simply said so. Instead, they specified that an amendment relates back under Rule 15(c)(1)(C) only if the defendant actually or constructively knew he would have been named "but for a mistake." That choice of the drafters must be respected, by applying the Rule as it actually reads, not as Herrera wishes it would read. See *Bus. Guides*, 498 U.S. at 541.

Trying to get around this problem, Herrera claims that the use of a Doe designation is a "mistake" under Rule 15(c)(1)(C) because a plaintiff who uses such a designation "name[s] the wrong defendant due to inadequate knowledge." Pet. 25; see *id.* at 27 (claiming that "listing 'John Doe' as the defendant when that is not the defendant's name is just as wrong as any other misidentification"). This is nonsense – a Doe designation does not *name* or *identify* a defendant at

all, it merely uses a fictitious name to indicate that the defendant's name is unknown. *E.g.*, Carol M. Rice, *Meet John Doe*, 57 U. PITT. L. REV. 883, 885 n.4 (1996) (explaining that "John Doe" is "a name used in law courts, legal papers, etc. to refer to any person whose name is unknown") (cleaned up); accord Pet. 27 ("'John Doe' is a convention that helpfully signals the plaintiff's inadequate knowledge to the court"). Thus, a plaintiff's use of a Doe designation to indicate that he does not know the identity of the proper defendant is no more "wrong" or "mistaken" than it would be to use "Unknown Defendant" or "Unidentified Defendant." Unless Herrera means to take the strange position that Rule 15(c)(1)(C) treats a plaintiff's use of "John Doe" more favorably than the use of "Unknown Defendant," despite both meaning the exact same thing, the mere fact that one is technically a "name," and the other is not, is a distinction without a difference.

Herrera's remaining arguments are easily set aside. Herrera accuses the court of appeals of mischaracterizing the facts in *Krupski*, Pet. 26-27, but that would be irrelevant for present purposes even were it true, since this Court reviews judgments, not statements in opinions, *California v. Rooney*, 483 U.S. 307, 311 (1987) (per curiam). Herrera also insists that it would be "nonsensical" if a complaint *cannot* relate back after a Doe designation but *can* relate back if the plaintiff simply "misidentif[ies] the defendant so that relation back remains an option." Pet. 28. This

argument rests on a faulty premise – intentionally misidentifying a defendant merely to leave the door open to relation back is just as much of a deliberate choice as using a Doe designation, and therefore does not constitute a "mistake" for purposes of Rule 15(c)(1)(C).

Finally, Herrera offers a lengthy discussion of how he thinks the Rule's "purposes" and "administrability" might be better served, and more sensical "incentives" provided to litigants. Pet. 28-32. But because the text of Rule 15(c)(1)(C) is plain on its face, these are, at most, arguments for its amendment, and this Court has been clear that "[c]ourts are not free to amend a rule outside the process Congress ordered." *Amchem Prods. v. Windsor*, 521 U.S. 591, 620 (1997). This is true even if the amendments would, as Herrera believes, better serve the rule's purposes, because a court's "task is to apply the text, not to improve upon it." *Pavelic & LeFlore v. Marvel Entertainment Group*, 493 U.S. 120, 126 (1989).

CONCLUSION

The petition for a writ of certiorari should be denied.

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