No. 24-974

In The

Supreme Court of United States

TECH MAHINDRA (AMERICAS) INC.,
PETITIONER,

v.

LEE WILLIAMS, INDIVIDUALLY AND IN HIS REPRESENTATIVE CAPACITY,
RESPONDENT.

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

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

Daniel Low
Kotchen & Low, LLP
1918 New Hampshire Ave. NW
Washington, DC 20009
(202) 471-1995
dlow@kotchen.com

Counsel for Respondent

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STATEMENT OF THE CASE

Respondent Plaintiff Lee Williams ("Williams," "Plaintiff," or "Respondent") alleges that Petitioner Defendant Tech Mahindra (Americas) Inc. ("TMA," "Defendant," or "Petitioner") engaged in a pattern or practice of racial discrimination in favor of South Asians and against non-South Asians in employment decisions throughout the United States, including in hiring, promotions, and terminations. App. 29a-30a. Williams, a non-South Asian, was terminated by TMA in August 2015 as part of this discriminatory scheme. App. 30a.

In August 2018, another former TMA employee, Roderick Grant, filed a class action in the District of North Dakota asserting materially identical class claims based on the same discriminatory practices. App. 30a-31a. TMA initially moved to dismiss the *Grant* action, but later withdrew that motion and instead sought to compel arbitration of Grant's individual claims. App. 31a.

In June 2019, Williams timely sought to join the *Grant* class action as a named plaintiff and to assert the same class action claims that he later asserted in this case. App. 31a. At that time, the first-filed rule required Williams to assert his materially identical claims in the existing *Grant* class action. App. 9a ("[our first-filed rule. . .prohibited [Williams] from filing a duplicative federal lawsuit in New Jersey where one already existed in North Dakota"). The motion to amend seeking leave to add Williams' claims to the case was the correct procedural vehicle to do so.

TMA opposed the motion to amend on the basis that if *Grant* was compelled to arbitrate, the District of North Dakota would no longer have personal jurisdiction if Williams were the only named plaintiff. App. 10a.

The court ultimately granted TMA's motion to compel arbitration in February 2020, and based on that ruling, denied the motion to amend to add Williams' claims based on TMA's jurisdictional argument. App. 10a.

After that ruling, Williams promptly filed this class action case in the District of New Jersey in April 2020. App. 3a. That filing was timely if equitable tolling applied to the period during which Williams was diligently attempting to assert his claims in the *Grant* class action. App. 10a.

TMA then moved to dismiss Williams' complaint as time-barred and Williams argued that equitable tolling applied. App. 3a-4a. The district court ultimately granted TMA's motion to dismiss because it erroneously found that *China Agritech v. Resh,* 138 S.Ct. 1800 (2018) foreclosed equitable tolling of Williams' class claims. App. 35a.

In *Williams v. Tech Mahindra (Williams I)*, the Third Circuit vacated the district court's first dismissal of Williams' class claims because it found that the district court had conflated *American Pipe* tolling and wrong-forum equitable tolling, and *China Agritech* did not preclude traditional equitable tolling. App. 35a. The Third Circuit remanded for the district court to consider Williams' wrong-forum tolling

argument. App. 35a. After the *Williams I* decision, TMA elected not to petition for certiorari.

On remand, TMA filed a renewed motion to dismiss, again arguing that Williams' class claims were time-barred and equitable tolling should not be applied. App. 18a-19a. The district court then dismissed Williams' claims a second time, holding that because the motion to amend in the *Grant* action had been denied, equitable tolling could not apply. App. 23a-24a. The district court denied equitable tolling entirely on this basis and expressly noted that it did not consider whether Williams had exercised reasonable diligence. App. 24a, n.8.

Williams appealed the second dismissal and prevailed yet again. In *Williams II*, the Third Circuit held that wrong-forum tolling was available to Williams and remanded for the district court to determine, based on the facts and equities, whether tolling should be applied. App. 10a-11a.

On remand, TMA has filed a second renewed motion to dismiss, again arguing that Williams' class claims are time-barred and equitable tolling should not be applied. Dkt. 56. That motion remains pending before the district court as of this filing.

TMA also filed the present petition for certiorari, which asks this Court to review both *Williams II* and *Williams I*.

ARGUMENT

I. This Court Should Not Grant Certiorari to Review *Williams II*.

There is no basis to grant certiorari to review *Williams II* because that decision held only that wrong-forum tolling could be available under the unique facts of this case and remanded for the district court to evaluate the equities in the first instance. TMA's claimed circuit split rests on a fundamental conflation of distinct legal doctrines—Rule 15 legal tolling versus equitable tolling—and none of the decisions it cites contradict *Williams II*. Courts uniformly recognize that equitable tolling turns on the specific diligence and circumstances presented by each plaintiff, and this case offers no occasion for the bright-line rule TMA seeks. Review is also unwarranted because the underlying tolling determination remains pending in the district court.

a. Supreme Court Review of *Williams II* is Not Warranted because that Decision Was Highly Fact-Specific and There Is No Circuit Split.

In *Williams II*, the Third Circuit held that wrong forum equitable tolling was "available" to Williams "under these circumstances" because "(1) Williams sought to assert his claim within the statute of limitations applicable to his claim by seeking to join as a named plaintiff an existing putative class action, (2) the first-filed rule barred him from filing a duplicative lawsuit in another forum, and (3) the court overseeing the existing putative class action

denied the motion to add Williams solely because the existing plaintiff was compelled to arbitrate his claims." App. 10a. However, recognizing that the ultimate question of whether equitable tolling supports tolling in this case is an even more fact-intensive question left to the sound discretion of the trial court, the Third Circuit remanded to the District Court to make this determination. App. 10a-11a.

TMA argues that this Court should accept review of the *Williams II* decision because of a purported circuit split about whether the "submission of an amended complaint is insufficient to justify tolling if leave is not granted." TMA's Petition for a Writ of Certiorari ("Pet.") at 11. However, none of the cases TMA cites conflict with *Williams II* or support TMA's claim that a motion to amend must be granted to serve as the predicate for wrong forum equitable tolling.

The first case TMA cites as evidence of a purported circuit split – *U.S. ex rel. Mathews v. HealthSouth Corp.* – did not even involve any equitable tolling issue. Pet. at 11-12 (citing *Mathews*, 332 F.3d 293 (5th Cir. 2003)). In *Mathews*, the plaintiff did not even *raise* any equitable tolling issue and the court did not decide any equitable tolling issue. 332 F.3d at 396-97.

Rather, *Mathews* only addressed an entirely different legal tolling issue based on Rule 15 – which was not at issue in *Williams II*. *Compare id.* (deciding Rule 15 legal tolling issue), *with* App. at 8a, n.4 (noting "Rule 15 legal tolling" is inapplicable because the issue presented is "limited to determining

whether wrong-forum tolling applied. . . .Accordingly, we need not explore all legal tolling doctrines, especially because equitable tolling is an exception to the ordinary tolling rules.").

Rule 15 legal tolling is a different doctrine and is governed by a different legal standard than equitable tolling. Under Rule 15, "the submission of a motion for leave to amend, properly accompanied by the proposed amended complaint that provides notice of the substance of those amendments, tolls the statute of limitations, even though technically the amended complaint will not be filed until the court rules on the motion." *Moore v. Indiana*, 999 F.2d 1125, 1131 (7th Cir. 1993). Rule 15 legal tolling is automatically applicable, so long as the motion to amend is granted. *See e.g., Oetting v. Heffler*, No. 11-4757, 2017 U.S. Dist. LEXIS 128089, *6 (E.D. Pa. Aug. 11, 2017). In contrast to Rule 15 legal tolling, equitable tolling "demand[s] flexibility in order to avoid the arbitrariness of rigid rules." *Island Insteel Sys. v. Waters*, 296 F.3d 200, 218 (3d Cir. 2002). It "eschews mechanical rules" like the brightline legal rule upon which Rule 15 legal tolling depends. *Id.* (quoting *Holmberg v. Ambrecht*, 327 U.S. 392, 396 (1946)). Whether equitable tolling should be applied depends on the balance of equities and interests of justice of each case where it is asserted. *Id.* The focus is on the plaintiff's diligence in pursuing the claim, the purposes served by the statute of limitations, and whether the plaintiff was frustrated from pursuing the claim based on extraordinary circumstances outside of his or her control. *See D.J.S.-W. v. United States*, 962 F.3d 745, 752 (3d Cir. 2020).

None of TMA's other cited cases (*see* Pet. at 12-14) show any circuit split with respect to the equitable tolling issue decided by *Williams II*. Instead, they only illustrate: (1) the distinction between Rule 15 legal tolling and equitable tolling and (2) that *Williams II* is not appropriate for Supreme Court review because the applicability of equitable tolling is inherently fact-specific.

In *Angles v. Dollar Tree Stores Inc.*, the plaintiffs separately argued that their claims were timely based on Rule 15 legal tolling and equitable tolling. 494 Fed. Appx. 326, 328, 332 (4th Cir. 2012). The Fourth Circuit separately reviewed the Rule 15 legal tolling issue *de novo* and the equitable tolling issue for an abuse of discretion. *Compare id.* at 328-329, *with id.* at 332.

TMA misleadingly cites the portion of *Angles* where the court denied legal tolling under Rule 15 and ignores the separate portion of *Angles* where the court affirmed the denial of equitable tolling for entirely different reasons that are not applicable here. Pet. at 12 (citing 494 Fed. Appx. at 329). Contrary to TMA's suggestion, the *Angles* court did not find that a statute of limitations can never be equitably tolled based on a plaintiff's reasonable, but unsuccessful attempt to assert a claim through a motion to amend.

Instead, the *Angles* court affirmed the district court's decision to deny equitable tolling for reasons that are wholly inapplicable to this case, and do not reflect any circuit split with *Williams II*. 494 Fed. Appx. at 332. The district court declined to apply equitable tolling because it determined that the

plaintiffs were not reasonably diligent in pursuing their claims. *Compare id.*, *with id.* at 333-36 (Davis, J. dissenting). On appeal, the panel split because the majority found that the district court did not abuse its discretion in making this finding, while the dissent believed that the majority had "ignore[d] the compelling facts of this case. . .to reach a fundamentally unfair result." *Id.* at 333.

Similarly, in *Goldblatt v. National Credit Union Administration*, the plaintiffs separately argued that their claims were timely based on (1) Rule 15 legal tolling, and (2) equitable tolling, No. 3:11CV334, 2011 U.S. Dist. LEXIS 103880, *8-9 (D. Conn. Sept. 14, 2011), but TMA only cites to the portion of the decision where that court rejected Rule 15 legal tolling, and ignores that the *Goldblatt* court rejected equitable tolling for entirely different grounds that are not applicable here. *See* Pet. at 13 (citing 2011 WL 4101470, *3); *Goldblatt*, 2011 U.S. Dist. LEXIS 103880, *9. Specifically, the *Goldblatt* court declined to apply equitable tolling because at the time those plaintiffs' motion to amend was denied, they still had time to file elsewhere, without the benefit of equitable tolling, but failed to do so. 2011 U.S. Dist. LEXIS 103880, *9; *see also Goldblatt v. NCUA,* 502 Fed. Appx. 53, 55-56 (2d Cir. 2012) (rejecting equitable tolling because "We are not persuaded that Appellants pursued their rights diligently, and they do not argue that an extraordinary circumstance prevented them from filing their complaint against the NCUA before February 11, 2011.").

Warren v. Vazquez is yet another example of a court separately addressing Rule 15 legal tolling and equitable tolling, TMA misleadingly citing only the portion of the decision denying Rule 15 legal tolling, and the court denying equitable tolling for other fact-specific reasons that are inapplicable here. *See* Pet. at 13-14 (citing *Warren*, 2023 U.S. App. LEXIS 5411, *3 (7th Cir. Mar. 7, 2023)). The Seventh Circuit's comment in *Warren* that the "tolling effect was wiped away when Judge Young denied the motion to amend" quoted in TMA's petition was in reference to Rule 15 legal tolling, not equitable rolling. 2023 U.S. App. LEXIS 5411, *3. The *Warren* court separately addressed the plaintiff's equitable tolling argument and determined that equitable tolling should not be applied for fact-specific reasons that are not applicable here: because it was "unreasonable" for the *pro se* plaintiff to try to add his claim through a motion to amend in a previous lawsuit that raised "wholly unrelated claims" against "different defendants." *Id.* at *3-4.

Hughes v. Region is in accord with *Angles, Goldblatt*, and *Warren* because the Sixth Circuit also determined whether to apply equitable tolling based on the specific facts and equities of that case. 542 F.3d 169, 187 (6th Cir. 2008). The *Hughes* court ultimately determined that equitable tolling should be applied because under the specific circumstances presented of that case, there had been no prejudice to the defendant and the plaintiff had acted diligently and reasonably in raising her claim. *Id.* at 188-89.

In *Williams II*, the Third Circuit remanded to the District Court to decide whether equitable tolling

should be applied based on the same type of fact and case specific analysis that drove the outcomes in *Angles*, *Goldblatt*, *Warren* and *Hughes*. App., 10a-11a.[1]

TMA's citations to *Angles, Goldblatt*, *Warren,* and *Hughes* demonstrate that the applicability of equitable tolling is highly case-specific and not amenable to the mechanical application of rigid rules, like the requirement for Rule 15 legal tolling.

This Court has repeatedly explained that equitable tolling must be determined on a case-by-case basis and has resisted mechanical rules that limit equitable tolling on a categorical basis. For example, in *Holland v. Florida*, this Court explained:

> [W]e have . . . made clear that often the exercise of a court's equity powers . . . must be made on a case-by-case basis. In emphasizing the need for flexibility, for avoiding mechanical rules, we have followed a tradition in which courts of equity have sought to relieve hardships which, from time to time, arise from a

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[1] Here, since the District Court confused the legal standard applicable to Rule 15 tolling and equitable tolling, it did not consider whether Williams had acted reasonably or diligently in raising his claim through a motion to amend in the existing *Grant* class action. App. 24a-25a, n.8 ("Because the Court finds that this matter was not timely filed in the *Grant* Action, Plaintiff's wrong-forum tolling argument is denied on this basis alone. The Court need not assess the remaining inquiry of whether Plaintiff 'exercised due diligence in pursuing and preserving his claim.'").

> hard and fast adherence to more absolute legal rules, which, if strictly applied, threaten the evils of archaic rigidity. The flexibility inherent in equitable procedure enables courts to meet new situations that demand equitable intervention, and to accord all the relief necessary to correct particular injustices. Taken together, these cases recognize that courts of equity . . . exercise judgment in light of prior precedent, but with awareness of the fact that specific circumstances, often hard to predict in advance, could warrant special treatment in an appropriate case.

560 U.S. 631, 649-650 (2010) (internal quotations and citation omitted) (reversing *per se* rule adopted by the Eleventh Circuit that "attorney conduct that is 'grossly negligent' can never warrant tolling absent 'bad faith, dishonesty, divided loyalty, mental impairment or so forth on the lawyer's part.'").

Since the appropriateness of equitable tolling must be determined based on the balance of the equities on a case-by-case basis, this Court should not disturb the Third Circuit's directive for the District Court to do just that in this case. *See* App. 10a-11a. Furthermore, since the equitable tolling issue is discretionary and driven by the particular facts of each case, the availability of equitable tolling based on the specific facts presented in this case is not appropriate for Supreme Court review. *See* Sup. Ct. R. 10(c) ("A petition for a writ of certiorari is rarely

granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.").

b. Supreme Court Review of *Williams II* is Unwarranted because There is No Error to Correct.

This Court should also deny TMA's petition for certiorari because the Third Circuit's decision in *Williams II* was correct and TMA's arguments otherwise have no merit.

TMA argues that *Williams II* was incorrectly decided primarily based on its same flawed claim that there is a circuit split. TMA again argues that there is a "majority rule" that recognizes "Rule 15 preclude[s] treating [] plaintiffs' unapproved proposed amendments as sufficient to toll a statute of limitations." Pet. at 18-19 (citing *Mathews* and *Angles*). Yet again, TMA is conflating the legal standard for Rule 15 legal tolling (which depends on whether a motion to amend is granted) with the standard for equitable tolling (which depends on the overall balance of equities and is not reducible to the requirement for Rule 15 legal tolling) based on a misreading of the same cases addressed in Section I(b), *supra*.

TMA also argues that the Third Circuit erred in *Williams II* "by analyzing the proposed amendment in the *Grant* action as if it were a complaint." Pet. at 17. But as the Third Circuit correctly reasoned, there is no principled basis to apply wrong-forum equitable tolling to a plaintiff who mistakenly, but reasonably,

files a complaint in a wrong forum, but not to a plaintiff who reasonably, but mistakenly, asserts his claims through a motion to amend to join an existing lawsuit. App. 5a-9a. In both instances, the plaintiff diligently and reasonably attempted to assert his claim before the filing deadline and the defendant is not prejudiced because it received notice of the plaintiff's claim within the statute of limitations period.

TMA attempts to distinguish between a complaint that is dismissed for lack of jurisdiction and a motion to amend that is denied on the basis that a motion to amend has "no legal effect" when it is denied. Pet. at 16. However, when a complaint is dismissed without prejudice due to a jurisdictional defect – the textbook application for wrong forum equitable tolling – it is also deemed to have "never existed." *See e.g., Brennan v. Kulick*, 407 F.3d 603, 606 (3d Cir. 2005); *see also e.g., Lewis v. N.J. Dep't of Child. & Fams.,* 2023 U.S. App. LEXIS 18725, *8-9 (3d Cir. Jul. 24, 2023) ("[F]or statute-of-limitations purposes, a complaint dismissed without prejudice is treated as if it never existed."); *Cardio-Medical Assocs. v. Crozer-Chester Med. Ctr.,* 721 F.2d 68, 77 (3d Cir. 1983) (A "statute of limitations is not tolled by the filing of a complaint subsequently dismissed without prejudice," as "the original complaint is treated as if it never existed.").

While legal tolling is not applicable for a defective filing, "[i]t is the precise nature of equitable tolling that provides an exception, in limited circumstances, to ordinary tolling rules." App. 7a, n.3. If a defective filing can never serve as the basis for

equitable tolling of the statute of limitations, "then wrong forum tolling would be a nullity." App. 7a, n.3.

TMA argues that since the plaintiff in *Burnett v. New York Central Railroad Co.* filed a lawsuit in state court, filing a lawsuit must be an essential ingredient for wrong forum tolling, Pet. 17-18 (citing 380 U.S. 424 (1965)), but this is the wrong takeaway from *Burnett*.

In *Burnett*, the Supreme Court found that equitable tolling should be applied where a plaintiff mistakenly filed a FELA claim in state court before the statute of limitations, that was later dismissed for improper venue after the statute of limitations had run. 380 U.S. at 436. The Court found that the interests of justice in resolving the case on the merits outweighed the policy of repose, and thus equitable tolling should be applied, because the plaintiff had "not [slept] on his rights" and the defendant "could not have relied on the policy of repose embodied in the limitation statute, for it was aware that [plaintiff] was actively pursuing his FELA remedy." *Id.* at 428-30. The court also explained that it would be unfair to deny equitable tolling based on the timely filing of a state court lawsuit because 28 U.S.C. § 1406 allows the transfer of a federal lawsuit mistakenly filed in the wrong venue. *Id.* at 430-43. Since § 1406 exists to ensure that a plaintiff "not be penalized by time consuming and justice defeating technicalities," but a state court lawsuit cannot be transferred to federal court, denying equitable tolling "would produce a substantial nonuniformity by creating a procedural anomaly." *Id.*

The reasoning of *Burnett* demonstrates that equitable tolling should not turn on a "procedural anomaly" that has no significance in the broader weighing of the equities. *Id.* at 433. While the plaintiff in *Burnett* demonstrated his diligence – and the defendant's diminished reliance on the policy of repose – based on a previous filing of a complaint in state court, the *Burnett* Court never held that the filing of an original complaint was the only way to do this.

TMA has not cited any case where a court held – contrary to *Williams II* – that a plaintiff must file an original complaint – rather than *e.g.,* a motion to amend – to benefit from wrong forum tolling. Such a rule would be contrary to this Court's guidance, which has focused on weighing the equities on a case-by-case basis, rather than adopting rigid and categorical rules for lower courts to mechanically apply. *See Holland*, 560 U.S. at 649-50.

c. This Court Should Not Review *Williams II* because that Ruling was Interlocutory and the District Court Has Yet to Determine Whether Equitable Tolling Should Be Applied.

This Court should not review *Williams II* because it was an interlocutory order that simply left the issue of equitable tolling open for the District Court to determine based on the specific facts of this case in its sound discretion. App. 10a-11a.

This type of order is not appropriate for Supreme Court review, particularly since TMA will have ample opportunity to argue its position that equitable tolling is not warranted in this case. Indeed, TMA has already filed a Second Renewed Motion to Dismiss, Dkt. 59, in which it argues that equitable tolling should not be applied due to Plaintiff's lack of diligence in pursuing his claim.

Even beyond its pending Second Renewed Motion to Dismiss, TMA will also have a further opportunity to challenge the appropriateness of equitable tolling through a motion for summary judgment. *See e.g., Sims v. Court of Common Pleas*, No. 2:10-cv-151, 2010 U.S. Dist. LEXIS 103454, *9 (W.D. Pa. Sept. 30, 2010) (denying motion to dismiss based on plaintiff's equitable tolling arguments, but noting that "Defendants will be entitled to renew these contentions, if warranted, at the summary judgment stage based upon a more fully-developed record").

Both Petitioner and Amici urge this Court to accept review of *Williams II* in order to adopt a categorical rule precluding wrong forum equitable tolling based on claims first raised through a motion to amend that is ultimately denied. Pet. at 17; Amici at 2. Both claim that this categorical rule should be adopted to prevent tolling based on "bad faith" amendments and undue prejudice to defendants. However, TMA and Amici overlook that the existing legal standard for equitable tolling – embraced by the Court in *Williams II* – allows the court to evaluate whether the amendment was sought in bad faith and whether equitable tolling would unduly prejudice the

defendant. A categorical rule is not only unnecessary, but will only serve to preclude equitable tolling in cases where it would otherwise be appropriate based on the specific facts and equities.

II. This Court Should Not Grant Certiorari to Review *Williams I*.

TMA's request for review of *Williams I* should be rejected for multiple, independent reasons. First, the petition is untimely because TMA declined to seek certiorari when *Williams I* was issued in 2021. Second, *Williams I* raises no question warranting review because there is no circuit split and the issue has not been raised in any other case. Third, contrary to TMA's claims, *Williams I* did not subvert *China Agritech* or open the door to endless class action tolling. It simply recognized that a plaintiff who timely and reasonably asserted class claims should not be barred from having his claims heard due to procedural circumstances beyond his control.

a. Petitioner Failed to Timely Petition for Review of *Williams I*.

A petition for certiorari must be filed within 90 days of the judgment or order of which the petitioner seeks review. S. Ct. R. 13. After the Third Circuit issued *Williams I* on December 14, 2021, App. 28a, TMA chose not to petition this Court for review of that decision. Instead, TMA continued to challenge equitable tolling on other grounds. App. 18a. While TMA made a different decision after *Williams II* – seeking to continue challenging equitable tolling at both the district court and Supreme Court level – this

Court should not grant certiorari to review *Williams I* over three years after TMA previously elected not to seek review of that decision.

b. Supreme Court Review of *Williams I* is Unwarranted Because There is No Circuit Split, and the Issue is Exceedingly Uncommon.

This Court should not review *Williams I* because no other court has *ever* directly addressed whether equitable tolling applies to class claims. TMA has not identified or cited any such case in its petition. Since no other court has addressed this issue, there is no conflict among the U.S. courts of appeals or any state courts of last resort. *C.f.* Sup. Ct. R. 10(a)(b). TMA does not attempt to show otherwise.

Since the equitable tolling issue addressed in *Williams I* does not appear to have been raised in any other case, the issue is not an "important question of federal law" requiring this Court's attention. *C.f.* Sup. Ct. R. 10(c).

TMA claims that *Williams I* "provides an easy roadmap for circumventing" this Court's decision *China Agritech* and suggests that the *Williams I* decision will have significant nationwide ramifications for class action litigation. Pet. at 32. Similarly, the Amicus Brief submitted by the Securities Industry and Financial Markets Association and the Chamber of Commerce warns that "the extension of wrong forum tolling to lass claims would raise the prospect of endless tolling of the statute of limitations as the same or successive

plaintiffs file and re-file complaints in different forums." Amici at 8. However, these arguments strain credulity and remain unsubstantiated, even though the *Williams I* was issued in December 2021.

While Amici claims that applying wrong forum equitable tolling to class claims would "encourage class plaintiffs to push the outer boundaries of any venue and jurisdictional provisions in hopes of finding a more favorable reception for their claims in a far-flung jurisdiction," Amici at 9-10, there is no evidence this has occurred – in even one instance – since the *Williams I* decision in 2021.

Any such strategic behavior would carry massive risk because a plaintiff must show that they made a good faith and reasonable mistake when they asserted their claims in a wrong forum. *See Island Insteel Sys.,* 296 F.3d at 217. Even then, application of equitable tolling is discretionary, not mandatory.

Permitting application of wrong forum equitable tolling to class claims does not present a risk of repeated untimely class actions being filed "again and again," because wrong forum equitable tolling is only available to plaintiffs who timely filed their claims *before* the original statute of limitations. *See e.g., Doherty v. Teamsters Pension Trust Fund*, 16 F.3d 1386, 1394 (3d Cir. 1994). In this case, only Grant and Williams timely asserted class action claims directed towards TMA's pattern-or-practice of racial discrimination against South Asians during the class period. At the time that Williams asserted his class claims, he had to assert them in the *Grant* class action due to the first-filed rule. When TMA

successfully compelled Grant to arbitrate his claims, TMA chose to object based on a lack of specific personal jurisdiction to Williams continuing to pursue the class claims in the District of North Dakota. Applying "wrong forum" equitable tolling to Williams' class action pattern-or-practice claim based on these facts would not cause an indefinite series of repeat class actions, but rather, it would allow TMA's classwide liability for systemically discriminating against non-South Asians to be adjudicated on the merits, rather than on the basis of Williams' reasonable, but mistaken, belief that the District of North Dakota was the appropriate jurisdiction for him to pursue this class action.

If this Court did reverse *Williams I*, it could have significant negative consequences even beyond the injustice in this case. First, a categorical bar to wrong forum equitable tolling of class action claims would only change the outcome of cases where courts would otherwise find that justice and fairness require equitable tolling. Second, if this Court ruled that wrong forum equitable tolling was categorically inapplicable to class claims, it would dramatically increase skirmishes over jurisdictional issues and motion practice by defendants in class action cases because an unforeseen win on jurisdictional grounds would provide a path for defendants to avoid classwide liability altogether.

c. *Williams I* Correctly Determined that *China Agritech* Did Not Preclude Wrong Forum Equitable Tolling.

In *China Agritech,* the Supreme Court addressed whether a putative class member can commence a follow-on class action based on *American Pipe* class action tolling after the certification of a previous class action was denied. 138 S.Ct. at 1802.

American Pipe class action tolling preserves the claims of all putative class members until class certification is denied, or they opt-out, without those members having to take any action. *See American Pipe v. Utah*, 414 U.S. 553, 558 (1974). The doctrine follows from Rule 23 and a judicial desire to avoid the inefficiency of flooding courts with protective individual lawsuits. *Id.* at 551-54.

In *China Agritech*, several plaintiffs had filed a third class action lawsuit one and a half years after the statute of limitations ended, and after two previous iterations of the same class claims had been denied certification. 138 S.Ct. at 1804-05. Unlike Williams, those plaintiffs had not previously attempted to assert class claims, or to represent the class, before their statute of limitations expired, and the Court expressly noted that "without *American Pipe*, [they] would have no peg to seek tolling here." *Id.* at 1805, 1810.

While the holding of *China Agritech* limited *American Pipe* class action tolling, it did not limit other equitable tolling doctrines, and the Court's dicta

demonstrates the difference – and appropriateness – of the Third Circuit's decision in *Williams I* that "wrong forum" equitable tolling can be applicable to class action claims. *See id.* at 1806-09; *see also Cal. Pub. Employees' Ret. Sys. v. ANZ Sec., Inc.,* 137 S. Ct. 2042, 2052 (2017) ("the American Pipe Court did not consider the criteria of the formal doctrine of equitable tolling in any direct manner. It did not analyze, for example, whether the plaintiffs pursued their rights with special care; whether some extraordinary circumstance prevented them from intervening earlier; or whether the defendant engaged in misconduct.").

In *China Agritech*, the Court expressed three reasons for limiting *American Pipe* class action tolling from preserving an otherwise untimely follow-on class action. 138 S.Ct. at 1806-09. First, the Court wanted to encourage would-be class representatives to come forward in the first class action, or in their own competing class action, before the statute of limitations expired. *Id.* at 1806-07. Second, the Court contrasted *American Pipe* tolling (which is based on a plaintiff simply being within the putative class) with ordinary equitable tolling (which is based on the plaintiff's diligence and preventing unfairness to the plaintiff based on exceptional circumstances), and explained that a putative plaintiff who passes up the opportunity to come forward in the first class action does not act diligently enough to preserve her "interest in representing the class as lead plaintiff." *Id.* at 1808. Finally, the Court wanted to prevent *American Pipe* tolling from being used again and again, after each denial of class certification, to spur

unending repeat class actions using a new plaintiff from the previous putative class. *Id.*

None of these rationales are implicated by the Third Circuit's finding in *Williams I* that equitable tolling could potentially apply to Williams' class claims based on his timely, but mistaken, assertion of those class claims and attempt to represent the class in a wrong forum on June 6, 2019. In fact, Williams did exactly what the *China Agritech* Court expressly sought to encourage: he came forward and sought to represent the class *before* his statute of limitations expired. 138 S. Ct. at 1806. Additionally, one of the reasons that the Court declined to limit *American Pipe* class action tolling to individual claims was that by virtue of a putative class member needing to rely on *American Pipe* tolling to file a follow-on class action, they had not previously taken steps within the limitations period to preserve their "interest in representing the class as lead plaintiff." *Id.* at 1808. Here, Williams did not rely on the mere fact of a previous class action filing, but rather on his *own* reasonable diligence in attempting to vindicate and preserve his "interest in representing the class as lead plaintiff." *Id.*

Finally, there is no risk of traditional "wrong forum" equitable tolling being used to perpetuate repeated, follow-on class actions, as feared in *China Agritech* with respect to *American Pipe* class action tolling, because for "wrong forum" tolling to apply, a plaintiff has to have affirmatively attempted to assert the claims before their statute of limitations expired, but have been frustrated in doing so. *See Doherty*, 16 F.3d at 1394; *Island Insteel Sys.*, 296 F.3d at 217. The

China Agritech holding did not limit other established bases for equitable tolling, such as "wrong forum" tolling, and extending *China Agritech* to preclude any equitable tolling of "class claims" would not only strain the Court's rationale, but would create harsh and inequitable outcomes. Traditional equitable tolling is limited to situations, such as the instant case, where it would be inequitable not to extend the statute of limitations. *See Shendock v. Dir., Office of Workers' Comp. Programs,* 893 F.2d 1458, 1462 (3d Cir. 1990). Here, TMA received timely notice of Williams' claims and did not have a reasonable expectation of repose from those claims, but due to its opposition to Grant's motion to amend, and Williams' reasonable mistake in pursuing his class claims through the existing *Grant* Class Action, TMA seeks to avoid an otherwise appropriate classwide adjudication of its pattern-or-practice of employment discrimination against non-South Asians.

CONCLUSION

This case involves a highly fact-specific and still-unresolved question of equitable tolling. TMA seeks certiorari not to resolve a circuit conflict or clarify an unsettled legal doctrine, but to short-circuit further proceedings to determine the applicability of equitable tolling based on the specific facts and equities in this case. The Third Circuit's careful, limited decisions in *Williams I* and *Williams II* do not conflict with any decision of another appellate court, were correctly decided, and do not warrant this Court's intervention. The petition should be denied.

Respectfully submitted,

s/ Daniel Low
Kotchen & Low, LLP
1918 New Hampshire Ave. NW
Washington, DC 20009
(202) 471-1995
dlow@kotchen.com

Counsel for Respondent