ORIGINAL

No. 18-7136

IN THE

SUPREME COURT OF THE UNITED STATES

MARK HANNA, PETITIONER,

VERSUS

JAMES LEBLANC, ETAL, RESPONDENTS.

ON PETITION FOR WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Mark Hanna

Mark Hanna 132872
WCC, H1A
670 Bell Hill Rd.
Homer, LA 71040

Questions Presented For Review

I.

Whether La. RS32:863 of the Louisiana Motor Vehicle Safety Responsibility Law is unconstitutional for due process of law in terms of Mullane v Central Hanover Bank & Trust Co.,339 U.S. 306, 318 (1950); and Mathews v Eldridge, 424 U.S. 319, 335 (1976), where it requires incarcerated persons to maintain automotive insurance coverage from behind bars or to surrender vehicle plates at OMV locations from behind bars to avoid sanctions under the statute?

II.

In stating a valid Section 1983 retaliation claim against supervisory officials sufficient at-least to an extent which would raise a reasonable expectation that discovery will reveal evidence of it, Bell Atlantic v Twombly, 550 U.S. 544,556 (2007); Ashcroft v Iqbal, 556 U.S. 662, 678-79 (2009), whether it is sufficient if the factual content allows a court to draw a reasonable inference that the identified defendant can be located in a group of similarly-situated unidentified individuals?

III.

Whether an amended complaint giving placeholder "Doe" names for defendants can relate back to the original complaint under the "mistake" provision of Rule 15 (c)(1)(C), Fed.R.Civ.P.?

Parties

The Petitioner is Mark Hanna, a state prisoner in the Wade Correctional Center in Homer, Louisiana. The Respondents, not all named on the cover page, are James LeBlanc, SEcretary, Louisiana

Dept. of Public Safety and Corrections; Louisiana Dept. of Public Safety and Corrections; Louisiana Office of Motor Vehicles.

Table Of Contents

Table Of Authoriries

Statutes, Rules Of Procedure

Index To Appendices

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a petition for writ of certiorari issue to review the judgment below.

Judgment Below

The judgment of the United States Court of Appeals for the Fifth Circuit and the decision on rehearing are unpubished. The judgment of the United States District Court for the Western District of Louisiana, MOnroe Division, is published at U.S. Dist. LEXIS 76299 Civil Action No. 15-2851 May 15, 2017, Decided, May 18, 2017, Filed. The Magistrate Judge's Report and Recommendation and the Order denying the motion to amend for joining the Doe-named defendants are unpublished. Copies of the decisions are attached as Appendices A, B, C, D, E and F, respectively.

Jurisdiction

The judgment of the United States Court of Appeals for the Fifth Circuit and the decision on rehearing (timely-filed) were entered December 12, 2017, and February 2, 2018. A sixty-days time-extension for filing the petition for writ of certiorari in the Supreme Court of the United States was entered SEptember 4, 2018, and again on November 9, 2018. Jurisdiction in the Supreme Court is established in Title 28 USC, Section 1254 (1).

Constitutional And Statutory Provisions

This case involves Louisiana Revised Satutes, La. RS32:861, 863, 865 and8; La. RS14:18(5); Rules 12(b)(6) and 15(c(1)(C), Fed.R. Civ.P.; the Access To Courts Clause of the First Amendment, and the Substantive and Procedural Elements of the Due Process Clause of the Fourteenth Amendment, to the United States Constitution; Title 42 USC, SEction 1983. Copies of these are attached as Appendices G, H, I, J, K, L, M, N, O and P, respectively.

Statement Of The Case

After my arrests on January 14, 2015, and January 25, 2016, I incurred sanctions ($975.00 in reinstatement fees) under RS32:863 for lapses in my automotive insurance coverage (coverage). I was an insured motorist both times when I got incarcerated, but I was unable to continue maintaining coverage or surrender my vehicle plates at OMV (Office of MOtor Vehicles) locations from behind bars. My letters to DOC asking for a hearing on the issue of sanctions were deemed untimely -filed--disregarded. After I filed a petition for judicial review of the sanctions in a Louisiana district court, during visits to OMVs on December 4 and 7, 2015, OMV officers told me in a printed OMV report, "Our records indicate there is a petition file against the department on your behalf. You may need to contact your attorney prior to reinstatement", as the reason why my license would not be reinstated and my $975.00 cash in-hand payment would be declined. The 1983 suit was filed December 18, 2015, for declaratory judgments and damages on retaliation and breach of due process of law claims. The motion to amend for joining the Doe-named defendants, filed November 4 and 7, 2016, was denied on futility of amendment, giving repose in a statute of limitations to the Doe-mamed defendants under Rule 15 (c)(1)(C), Fed.R.Civ.P. The retaliation and breach of due process of law claims asserted against James Le-

Blanc, Secretary of the DOC, were dismissed under Rule 12(b)(6), Fed.R.Civ.P., in a finding that he was not involved in anything. Doc.s (trial court documents) 1,6,33,44,45,93 and 116. ROA (appeal court record) 16-19, 100-05, 312-22, 396-98, 399-400, 714-37, and 893-94. Affirmed on appeal. Footnote One

Federal Court Jurisdiction

The retaliation and breach of due process of law claims raise questions under the Access To Courts Clause of the First Amendment, and the Substantive and Procedural Elements of the Due Process Clause of the Fourteenth Amendment, to the United States Constitution. Subject matter jurisdiction is established in Title 28 USC, Section 1331.

I. Question Presented

Whether La. RS 32:863 of the Louisiana Motor Vehicle Safety Responsibility Law is unconstitutional for due process of law in terms of Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 318 (1950); and Mathews v. Eldridge, 424 U.S. 319, 335 (1976), where it requires incarcerated persons to maintain automotive insurance coverage or to surrended vehicle plates at OMV locations from behind bars to avoid sanctions under the statute?

Reasons For Deciding The Question

As related in the discussion, infra, the constitutional infirmity detected in RS 32:863 not only exposes thousands of incarcerated persons to unavoidable sanctions accomplished without due process of law, but it also exposes all at-large insured motorists on the highways of our state to an otherwise-avoidable latent public safety hazard in the risk of inadvertent or delinquent operation of the uninsured license-plated vehicles owned by those incarcerated persons. That constitutional infirmity also facilitates attainments of private property (seizures, sales and garnishments) accomplished without due process of law in its subsidiary statute, RS32:8, annexed to RS32:863 A(3)(a).

Argument

JUdicial notice may establish, for purposes of the discussion, that it is usually impossible, without assistance from at-large persons, for incarcerated persons to maintain coverage or surrender vehicle plates at OMV locations from behind bars. In the present case I was assessed fines and fees and reinstatement of my license was blocked in sanctions under the statute in response to my failure to do those things. I was an insured motorist when I got incarcerated. Averments 1 through 12 Doc 6, pp1-4,ROA 100-03; Averments 21,22,23 and 29 Doc 45, pp2-5, 7-8, ROA 400-03, 405-06. I owed no fines or fees to the courts of jurisdiction for citations or failures to appear when I appeared at OMV locations on DEcember 4 and 7, 2015. Doc 102, p1,ROA 819; Doc 102-1, pp1-2, ROA 820-21; Doc 102-3,pp 1-3, ROA 823-25.

Many years ago the Louisiana Legislature, in the interest of public safety and on behalf of insured motorists, enacted laws to impliment compelled coverage. The panoply of laws enacted to enforce that coverage which are relevant to the present case are codified in La. RS32:861-865 (861-865) of the Louisiana Motor Vehicle SAfety Responsibility Law. 863 A(3)(a) provides for administrative reinstatement fees of $100.00-$500.00 per incident, and for interference with the licenses owned by persons who fail to continuously maintain coverage on their registered vehicles. 863 does not pertain to actual moving violations of operating motor vehicles without coverage. Those are handled in 865. The Louisiana Supreme Court has held that uninsured vehicles pose a threat to public safety on the highways of our state. Marcus v Hanover Ins.Co.,Inc., 740 So2d 603,605, 98-2040,pp 4-5(La 6/4/99) THe requirements codified in 863A(1) and 865B(2) indicate that the Louisiana Legislature percieves that uninsured license-plated vehicles pose a threat to public safety due to the risk of inadvertent or delinquent operation. In response to that percieved risk 863 A(1) authorizes the the SEcretary to revoke the registration , impound the vehicle and cancel the license plates of uninsured vehicles and 865 B(2) provides for a $10,000.00 fine to be levied against the owners of uninsured vehicles involved in accidents where significant damage or injury occurs. Coextensively, 863 A(3)(a) and 861 A(3) provides for relief from sanctions if the plates of such vehicles are surrendered at OMV locations within ten days after a lapse in coverage occurs. 863 D(1)and (2) provide for administrative hearings and notice served by first-class mail at the last address furnished to the Department, which is usually the address fixed on the driver's licenses. 863 D(4) provides for judicial review of sanctions in the Louisiana district courts. 863 A(3)(a) also provides for "delinquent dept" collection of unpaid fees (seizure and sales of private propery, garnishments of wages and tax returns, etc.). RS32:8,Final Delinquent Dept Law,annexed to RS32:863A(3)(a), final sentence text. Administrative review must be applied for and pursued within ten days after initial notice of sanctions looming. 863D(1),(2) and (4).Unpaid fees become documented predicates for delinquent debt collection if not paid within sixty days after adverse conclusion of administrative-judicial review (or default waiver after notice as provided for in 863D. Section 8). Failure on the part of incarcerated persons to answer notice mailed to the last address fixed on the driver's licenses form default waiver of administrative-judicial review as lapses in coverage loom to become documented predicates for sanctions and final delinquent debt. Section 8. Exhibit A-11, Doc 1-1, p 11. ROA 30; Averments 21-22, Doc 45, pp 2-4, ROA 400-02; Doc 56-2, pp 1-3, ROA 461-62; Doc 116, p 1, ROA 893-94; Appellant's Brief on Appeal, Part III(B), p 21; Doc 32, pp25-29, 32-34, ROA 296-300, 303-05; Doc 89, pp 6-9, ROA 685-87; Doc 101, pp 38-42, ROA 796-800.

The United States Supreme Court has held that "...driver's licenses are not to be taken away without that procedural due process required in the Fourteenth Amendment." Bell v. Burson, 402 U.S. 535, 539 (1971). In response to the State of Georgia's perceived need "... to obtain security from which to pay any judgments resulting from (an) accident", 402 U.S., at 540, the state must first make a "... determination of the question of whether there is a reasonable possibility of a judgment being rendered against him as a result of an accident", 402 U.S., at 542, before licenses can be suspended for failure to provide such security. The test to be applied in given cases for discerning what is required in the Fifth and Fourteenth Amendments in this context was succinctly stated in

Mathews v Eldridge, 424 U.S. 319 (1976). Mathew's analysis involves "...consideration of three distinct factors: first, the private interest that will be effected by official action; second, the risk of erroneous deprivation of such interest through the procedure used, and the probable value, if any, of additional or substitute procedural safeguards; and finally the government's interest, including the function involved and the fiscal and administrative burdens that additional or substitute procedural requirements would entail." 424 U.S, at 335. "Far more substantial than the admnistrative burden, however, is the public interest in safety on the roads and highways, and in the prompt removal of a safety hazard." Dixon v Love, 431 U.S. 105, 114 (1977). Emphasis added.

Mathew's test was applied in Dixon v Love to assess the procedure there and term it an "illustration ot the fact that procedural due process in the administrative setting does not always require application of the judicial model." 431 U.S, at 115. The system of procedures assessed in Dixon only provided an administrative determination of previously documented traffic citation convictions as substantive predicates "...to make discretionary decisions..." for administrative suspensions or revocations of driver's licenses. Ibid. "Administrative efficiency would be be impeded by the availibility of a pretermination hearing in every case."431 U.S.,at 114. The decisions indicate that prediprivation hearings are not always required pror to interference with state-issued driver's licenses. In Dixon, all the predeprivation hearings due had already been provided for in the district courts where the convictions were obtained. 431 U.S., at113. THose convictions formed the documented predicates for summary dispositions of administrative suspensions and revocations, with post-deprivation hearings provided after notice. 431 U.S, at 118.

THe Mathew's analysis requires careful attention to discerning precisely when uncostitutional incursions are likely to occur. Zinermon v Burch, 494 U.S. 113, 139 (1990). Zinermon teaches that an otherwise constitutionally-adequate system of due process may fail due process analysis at some critical moment if no one is designated under state law to maintain a continuously linking sequence in its procedure. 494 U.S.,at 135. There the state failed to "direct any member of the (hospital) facility staff to determine whether a person is competent to give consent (or) to initiate the involuntary placement procedure for every incompetent person."Ibid. For purposes of due process, there is no "categorical distinction between a deprivation of liberty and one of property." 494 U.S.,at 132. Thus, regarding a protected property interest, a system that fails in the manner desc-ribed in Zinermon would be charactorized as "one that destroys a property interest by operation of law." Logan v Zimmerman Brush Co., 455 U.S, 422, 436 (1982). Logan involved an administrative fair housing complaint system that provided no manner of catching up after one of its own state agents designated under state law to maintain a continuous link in its procedure (an evidentiary hearing) fell behind schedule, leaving claimants with procedurally defaulted claims. Ibid. A state's procedural system may fail in a similar manner if at some critical moment it fails to provide adequate notice of looming adverse governmental incursion. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 318 (1950). Mullane involved the State of New York's judicial proceeding designed to settle common trust fund accounts which only provided notice of the proceeding to the benificiaries by publication in local news papers, even though the trustees of the accounts had on its books the addresses of the benificiaries. Ibid. Mullane stands for the general proposition that "in any proceeding which is to be accorded finality..., notice reasonably calculated, under all the circumstances (is required) to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." 339 U.S., at 314. A system that leaves the prospect of actual notice to "chance alone" fails due process analysis under Mullane. 339 U.S., at 315.

In Jones v Flowers, 547 U.S, 220 (2006), the Supreme Court revisited the prospect of actual notice, this time in the context of property tax sales in the State of Arkansas where the government became aware that at some critical moment its effort to provide notice by cerified mail had failed. 547 U.S., at 227. DRawing on Mullane, and rejecting strong opposition premised on Dusenberry v United States, 534 U.S 161 (2002), the Court concluded that in failing to take "additional reasonable steps to notify...", the government in Jones had failed to provide adequate notice. 547 U.S., at 234. The plaintiff in Dusenberry had made a mistake in taking the wide open position that "...

notice was insufficiant because due process generally requires 'actual notice'". 534 U.S.,at 169. Emphasis added. Although a state "must attempt to provided actual notice", 534 U.S., at 170, "none of our cases...has required actual notice". Id, at 171. For purposes of our discussion, I would caution to ackowlege that none of the Supreme Court's prior cases prohibit the possibility that it might eventually encounter a class a cases where actual notice is required. It will be shown that the present case is one that represents such a class of cases.

In the present case it can be shown that 863 reliably fails to provide any notice of sanctions looming at a critical moment that a need for such notice is actuated; i.e., when insured motorists are arrested and the soon-to-be-uninsured license-plated vehicles remain at large and hence a threat to public safety. That eventuality sets in motion a sequence of events hundreds maybe thousands of times annually, with potentially catastrophic, otherwise-avoidable loss of life or property with no one to be held adequately accountable; where the state has chosen to dispense with due process and with securing a measure of safety in exchange for annual revenues generated to show for it. As related in the complaint, Averments 21, 22, 23, 29, of Doc 45, pp 2-5, 7-8, ROA 400-03, thousands of incarcerated persons in Louisiana have incurred sanctions accomplished without opportunity for due process (hearings) under 863. No inmate in the history of compelled coverage in Louisiana has ever attended a hearing on sanctions looming or imposed under 863. Doc 32 ,p 26, ROA 279; Doc 89, p 7, ROA 686, DOc 101, p39, ROA 797.

During the forty-plus year history of compelled coverage in Louisiana under 863, the state has failed to provide any notice of sanctions looming, and hence any opportunity for due process [hearings] to incarcerated persons before [or even after] sanctions became finalin every case. In every case notice of sanctions looming were mailed to the address fixed on the driver's licenses [home addresses] of incarcerated persons. Each one of those failures secured to the state an erroneous incursion of a substantial propery interest [sanctions] and in many of those cases an erroneous attainment of private property [seizures, sales and garnishments, Section 8], as each failure required those persons to either maintain coverage from behind bars [when it is not needed or wanted], or to surrender vehicle plates at OMV locations from behind bars [which is usually impossile to accomplish from behind bars], and at a time when those requirements advance no legitiment governmental objective because such persons pose a threat to no one on the highways of our state from behind bars. Removing the plates from the soon-to-be uninsured vehicles owned by those incarcerated persons is the only legitimate governmental objective that remains in these developments because incarcerated persons are unable to prevent inadvertent or delinquent operation of those vehicles from behind bars [without assistance from at-large persons who are now in a position to take delinquent operation of those vehicles themselves].

During the hearings that the state fails to provide opportunity for, the state could have gathered information to locate those vehicles to remove the plates from them in the interest of public safety and private property. Or the hearings could have been waived by the arrested owners of those vehicles within a reasonable time after arrest in written applications of it, the owner providing the location of the vehicle at that time to law enforcements so they can remove the plates from them to deter delinquent operation in exchange for relief from sanctions under the statute. Recall that the Louisiana Legislature is willing to assess a $10,000.00 fine to deter delinquent operation of uninsured vehicles. 865 B(2). Hence, we may assume there is at least a significant if not substantial or pervasive risk of it occuring. But that hefty fine, and hence any deterrence purpose it might serve depends on whether "the owner thereof knows or has been notified by the department of the absense of the required security." Ibid. A hearing or the option of a written waiver of it made within a reasonable time after arrest would serve to actuate this part of the statute. And hence this part of the statute has never been made reliably effective regarding incarcerated persons.

The Supreme Court in Dusenberry determined it should "turn to (Mullane) when confronted with questions regarding the adequacy of the method used to give notice", 534 U.S., at 168, rejecting "the approach articulated in Mathews v. Eldridge...", in the notice context. Id, at 167. Dusenberry did not, however, nor did the cases cited in it, 534 U.S., at 168, involve the interest in public safety on the highways of our state, as it is an issue involved in the present case. Nor was it contemplated in Dusenbe-rry or on its cases that the method of notice would almost never succeed in its purpose, as it is contemplated in the present ca-se. And it was not suggested in Dusenberry or in its cases that some additional, alternative or substitute procedural mechanisms apart from notice might be required, as it is suggested in the present case. In the present matter 863 provides hearings on the issue of lapsed coverage in the general case. But in the cases of incarcerated persons[who were insured motorists when they got incarcerated], the usual verdict would turn in favor of the li-censee because it is usually impossible [without assistance from at-large persons] for those incarcerated to continue maintaining coverage or to surrender vehicle plates at OMV locations. Impos-sibility is an affirmative defense under Louisiana law. La. RS 14:18 (5); Exhibit A - 26, 40, Doc. 1-1, p 26, 40, ROA 45, 59. If 863 D (2) were to exclude such a defense, it would fail ana-lysis under Bell v. Burson. "... [A] hearing which excludes con-sideration of an element essential to the decision whether licen-ses shall be suspended does not [provide] 'meaningful' [due pro-cess] "appropriate to the nature of the case'..." 402 U.S., at 541-542, quoting Armstrong v. Manzo 380 U.S. 545, 552 (1965); Mullane, 339 U.S., at 313. The question whether such pro forma foregone-conclusioned hearings are required presents itself aga-inst the alternative of a continuous due process holiday in fav-or of the state.The paradox is one not seen in the Supreme Court 's prior cases. Notice by mail in this context is not reliably possible and hearings would conclude in favor of the licensee in every case anyway. Because of that very reason sanctions would manifest an erroneous incursion in every case. Hence, the question transcends notice. It reaches to what process is due. A composite form of analysis taken under Mullane and Mathews, therefore, might be appropriate to a case where, as here, additional, alternative or substitute procedural mechanisms apart from notice, together with notice, form the inquiry.

As related previously, an otherwise-constitutional system of due process may fail at a criticle moment if no one is designated under state law to maintain a continuous link in its procedure, Zinermon, 494 U.S., at 135, 139; Logan, 455 U.S., at 436, or if at some criticle moment it fails to provide adequate notice of adverse government incursion looming. Mullane, 339 U.S., 314, 318. Where 863 fails to designate law enforcement officers to provide written waivers of hearings within a reasonable time after arrest, securing the location of the soon-to-be uninsured vehicles at that time to remove the plates from them in exchange for relief from sanctions under the statute , it at once fails both elements of the dual Mathews-Mullane analysis we formed to observe its defects. That method of notice/ procedural mechanism would at once serve to provide a continuous link in procedure with adequate [actual] failsafe notice of looming adverse government incursion in every case.

Where the Supreme Court has "not attempted to redraft a state's notice statute," Jones , 547 U.S., at 238, or "prescribe the form of notice that the [government] should adopt...', id, (citation ommitted), the Supreme Court has traditionally undertaken the project of discerning what procedural mechanisms are due in given cases. The Louisiana Legislature may choose to dispense with every modicum of due process [hearings or waiver of hearings, etc., on the issue of sanctions] to its incarcerated, but to survive due process analysis it must also choose to dispense with sanctions imposed on those incarcerated for lapses in their coverage.

A corollary of recognizing that it is usually impossible, without assistance from at-large persons, for incarcerated persons to continue maintaining coverage or surrender vehicle plates at OMV locations from behind bars, is the reality that only those incarcerated persons fortunate enough to have access to such persons from behind bars can avoid sanctions under 863. As I attempted to relate in the trial court and on appeal, "Section 863 is not made constitutional in the possibility that some persons might be able to avoid its sanctions through personal fortune on a random basis." Doc 89, p 42, ROA 800. "A system or procedure that deprives persons of their [property interest] in a random manner ... necessarily presents an unjustifiable high risk [of failure]." Logan, 455 U.S., at 434-35. See also, Mullane, 339 U.S., at 315. The combined precepts of Mullane, 339 U.S. at 314, 315, 318; Mathews, 424 U.S., at 335; Logan, 455 U.S., at 434, 435-36; and Zinermon 494 U.S., at 135, 139, indicate that I was deprived of a protected property interest in a random manner; i.e., without due process of law, and by operation of law;

i.e., indicating that 863 is unconstitutional.

As related previously, administrative burdens do not prevail over public safety or over the removal of a public safety hazard, such as the one encountered in the present case with uninsured license-plated vehicles remaining at large and mobile after the insured motorist arrested owners are removed from their ability to prevent delinquent operation of them. In failing to provide for hearings [or waiver of hearings], the state also fails its own public safety agenda. In the aftermath of these developments, some insured motorists/accused law breakers may go to jail [and loose their licenses, their reinstatement fee dollars, or all their private property through seizure, sales and garnishment accomplished without due process of law], while some unaware at-large insured motorists may go to hospitals and cemeteries and the state reposes in its treasury. The alternative processes proposed in the present case might involve expenditure of state funds to provide waiver applications and to dispatch local law enforcements to remove the plates from the soon-to-be uninsured vehicles. But those costs would be offset in the numbers of cases where that option is declined, where an exceptional number of persons can make other arrangements. Actual hearings can be linearized into brief interviews.

Under present law, 863, the status quo authorises sanctions, seizures and sales of private propery and garnishment of wages of persons who have been removed from their ability to circumvent those processes by the very same state officials authorized to actuate them. Recall that those persons were insured motorists when they got incarcerated.

A finding that 863 is unconstitutional in the present case would obligate the Defendant, Secretary James LeBlanc, to rescind the reinstatement fee currently imposed in the OMV/DOC in lieu of my Louisiana driver's license.

II. Question Presented

In stating a valid Section 1983 retaliation claim against supervisory officials sufficient at-least to an extent which would raise a reasonable expectation that discovery will reveal evidence of it, Bell Atlantic Corp. v Twombly, 550 U.S. 544, 556 (2007); Ashcroft v Iqbal, 556 U.S. 662, 678-79 (2009), whether it is sufficient if the factual content allows a reasonable inference that the identified defendant can be located in a group of similarly-situated unidentified individuals?

Reasons For Deciding The Question

A literal interpretation of what is written in the Twombly-Iqbal decisions allows error dismissal, where the circle of plausible involvement of supervisory officials is rarely fine enough to pinpoint some individual, pleadings that affirmatively locate a group of similarly-situated inividuals of which an identified individual is a member must be sufficient to sustain the controversy [at-least for discovery] if the rules of pleading, the rules of evidence and the rules of judicial review are to harmonize in an effective project of discerning the truth of such cases.

Argument

"Our records indicate there is a petition filed against the department on your behalf. You may need to contact your attorney prior to reinstatement." Exhibit C-1, C-2, OMV Report, Doc 1-1, pp 61-62, ROA 81-82; Averments 1-7, 9-12, Doc 6, pp 1-4, ROA 100-03; Averment 20, Doc 45, p 2, ROA 400; Exhibits attached to the Petition For REhearing On Appeal, No. 17-30457. The quoted statement was alleged represented as the reason why my driver's licanse was not reinstated in the OMV/DOC on DEcember 4 and 7, 2015. Named in Averment 2, Doc 6, pp 1-2, ROA 100-01, is James LeBlanc, SEcretary of the OMV/DOC in Baton Rouge, Louisiana. See, e.g., Doc 18, ROA 164, summons served to Dẽfendant, James LeBlanc in his office at 504 Mayflower Street, Baton Rouge, etc.. The defendants relied on Exhibit C-1 OMV Report in advancing their own adverse alternative rational basis for the decision to not reinstate my driver's license. Doc 32, p 1, ROA 819; Doc 102-1, pp1-2, ROS 820-21; Doc 102-3, pp 1-3, ROA 823-25. THat adverse factual proposition spawned a sequence of skirmishes in the trial court. Doc 32, pp 14-22, ROA 285-93; Doc 43, p 11, ROA 384; Doc 85, pp11, 12-13, ROA 653; 654-55; Doc 85, pp 19-20, 21, ROA 661-62, 663; Doc 90, pp3-7, ROA 691-95; Doc 90, pp11-13, ROA 699-701; Doc 101, pp8-26, ROA 766-84.

As I attempted to relate in the trial court and on appeal, local OMV officers had no way of even knowing about a petition filed against the Department on my behalf, unless that information had been transmitted to them through persons in the

OMV/DOC, Defendant, James LeBlanc, a plausibly-involved/liable person among them, as idicated in the text phrase, "our records indicate...". OMV Report,supra,Doc 101, p 20, ROA 778. Augmenting that hypothesis, I was given that same reason for declining to reinstate my license at plural OMVs on December4 and 7, 2015, indicating that the dicision was common to the several OMVs and hence it was not made locally and must , therefore, have had its genesis in the OMV/DOC Headquarters in Baton Rouge where James LeBlanc is the Secretary. Averments 5 and 20, Doc.s 6 and 45,pp 2-3 and 2, ROA 101-02 and 400; Doc 32, pp21-22, ROA 292-93; Doc 43, pp5-6, ROA 378-79; Doc 101, pp18-21, ROA 776-79.

THe claim is asserted for the proposition that Defendant LeBlanc declined to reinstate my license in retaliation to the petition filed against the Department on my behalf. As I also attempted to relate in the trial court and on appeal, the Defendant LeBanc is sued on a theory of supervisory liability through a collection of facts avered in support of an inference that he '"... directed subordinates to act unlawfully or knew that subordinates would act unlawfully and failed to stop them from doing so: Valdez v Crosby, 450 F.3d 1231, 1237 (7th Cir 2006), cert dismissed, 459 U.S. 1249 (2007)." Doc 101, p 20, ROA 778. See, also, Averment 26, Doc 33, ROA 317; Part II B, Appellant's Brief On Appeal; and p 7, REply Brief On Appeal. The question presented is formed around this group of complaint fact allegations, documents and objections. The appeal court concluded that "...nothing in Hanna's amended comlaint or alleged documents indicate that LeBlanc participated in or was involved in the decision..."

to not reinstate my driver's license on December 4 and 7, 2015. Appeal Decision, Per Curiam No. 17-30457. In adopting the Magistrate Judge's Doc 93 Report and Recommendation the trial court reached that same conclusion. Doc 116, ROA 893. "A claim has factual plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 556 U.S., at 678. "Asking for plausible grounds...simply calls for enough facts to raise a reasonably expectation that discovery will reveal evidence of the claim." Twombly, 550 U.S., at 556. As the trial and appeal courts correctly concluded in the present case, the complaint allegations, supporting documents and objection arguments do not precisely implicate, numero uno, the defendant LeBlanc, in the decision to not reinstate my driver's license on DEcember 4 and 7, 2015. The materials do, however, affirmatively implicate a group of supervisors and nonsupervisors in the Depatment of whom he is a member. Averments 1-12, 26-27 and 28, Doc.s 6, 33 and 45, pp 1-3, 6-7 and 7, ROA 100-04, 317-18 and 405, respectively. In the aftermath of the Supreme Court's decision given in Iqbal, supra, there has been much concern over what remains of what many litigants and litigators have come to rely on as a theory of "supervisory liablity". "In a 1983 suit or Bivens action- where masters do not answer for the torts of their servants- the term 'supervisory liability' is a misnomer." Iqbal, 556 U.S. at 677. The Iqbal decision precipitated promulgation of a Notice Pleading Restoration Act of 2009, Senate Bill 1504, 111 Congress (2009). Numerous jurists, litigators and commentators

TOP

remain "...unsure what the general test for supervisory liablity should be." Justice Souter, writing for the minority in Iqbal, 556 U.S. at 684.

In the present case, the Court is confronted with a context where "master" and "servant", together are included in a group of similarly-situated, plausibly-involved individuals with a common group identity, but where only the master has been identified among the numerous unidentified servants. At this point the question turns to asking: (1) Should the tools of discovery be made availible to the plaintiff encountering such a group of master/servant, plausibly-involved/liable individuals?; and/or (2) Does supervisory liability under 1983 remain a viable theory where, during the pleadings affirmative knowlege of a lone supervisor's involvement cannot be determined among numerous other supervisors and nonsupervisors who form an identifiable group?; and/or (3) Is there such a test, or can one be formulated which would serve to guide jurists in the project of discerning a 1983 "supervisory liability " claim? I percieve that if such a test can be formulated, it would involve a combination-analysis of the rules of evidence and the rules of judicial review applied to 1983 and Bivens claims. I percieve that the trial and appeal courts in the present case erred regarding what would satisfy some pleading standard that should have been applied. If the correct standard calls for drawing all reasonable inferences in a light most favorable to the plaintiff, I percieve that the lower courts failed to observe it in the prospect of sifting the OMV/DOC employee population in discovery, which may or may not have succeeded in refining the circle of implication I have drawn about the defendant, James LeBLanc that was roughly sketched in the pleadings and documents I submitted to the trial court. James LeBlanc, Secretary, was not randomly selected for liability or chosen as preferred over other plausibly-involved/liable individuals. Doc. 32, pp. 29-31, ROA 300-02; Doc. 43, pp. 13-14, ROA 386-87. "When the secretary seeks to impose the sanctions required in this section ..." 863D(1). James LeBlanc as Secretary is the person designated in Louisiana law to impose sanctions under 863. As related in the complaint [Docs. 6 and 45], the decision to not reinstate my driver's license was formed in the context of declining to receive my $975.00 cash in-hand payment to be applied under 863. Hence, although the de facto revocation of my license was not provided for in Louisiana law, Averments 28, Doc. 45 Pg. 7, ROA 405, nevertheless, Louisiana law in 863 formed a cloak of law in consummation of it, tracable to the group of OMV/DOC supervisors /subordinates of whom James LeBlanc, Secretary, is a member and chief decisionmaker "...[S]tate law delineates the contours of federal liability by locating the person who can be held responsible under Section 1983 for causing constitutional injury." Doe v. Raines County, 66 F.3d 1402, 1407 (5th Cir. 1995). As I attempted to relate in the trial court and on appeal, I am not empty-handed in making my claims against the Defendant James Le-LeBlanc. But, how fine of a circle, Doe v. Rains; Valdez v. Crosby, must be drawn about an individual among a group of individuals, sufficient under Twombly-Igbal for invoking discovery?

Where Iqbal instructs "...the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. ..", 556 US, at 687 [emphasis added], it does not instruct the courts to draw reasonable inferences that the defendant is merely a member of some group of unidentified individuals. If the tools of discovery are not to be made available to plaintiffs upon such a showing, there is very little chance that supervisory officials will reliably be held accountable for their misconduct. I perceive that the trial and appeal court's position taken in the present case in relation to the rough circle of involvement I have drawn about the defendant LeBlanc in the decision to not reinstate my driver's license on December 4 and 7, 2015, it is an application of the language used in Iqbal, supra, taken to its literal extreme, though it raises the pleading standard to be applied in supervisory liability claims to an unachievable level for plaintiffs proceeding on the most cogent of theories, like the one described in Valdez v. Crosby, supra. A conclusion that some OMV/DOC supervisor germinated the OMV Report reference to my state court litigation activities is all but inescapable.Without changing a word [or its meaning] of the Supreme Court's most relevant decision to the present case, Iqbal, supra, the trial and appeal courts have confounded it in a decision with potential for wide-ranging erroneous literal application.

III. Question Presented

Whether an amended complaint giving placeholder "Doe" names for defendants can relate back to the original complaint under the "mistake" provision of Rule 15(c), Fed. R. Civ. R.?

Reasons For DEciding The Question

(A) The question represents a longstanding division in the federal circuits. A printed copy of Rule 15(c), as amended on December 1, 2009, is attached as Appendix M. Subpart (C)(i) and (ii) are revisions for subparts (3)(A) and (B) of the former edition. The part of Rule 15(c) at issue in the present case is part (C)(ii), formally part (3)(B), which includes that term, "mistake". The First, Second, Fifth, Sixth, Seventh and Eleventh Circuit Courts of Appeals have excluded "... lack of information or knowledge" from the definition of that term, "mistake", regarding a plaintiff's inability to correctly name a defendant initially or in an amendment inside the limitations. See, e.g., Wilson v. U.S., 23 F.3d 559, 563 (1st Cir. 1994); Barrow v. Wethersfield, 66 F.3d 466, 470 (2d Cir. 1995); Jacobson v. Osborne, 133 F.3d 315, 321 (5th Cir. 1998); Cox v. Treadway, 75 F.3d 230, 240 (6th Cir. 1996); Worthington v. Wilson, 8 F.3d 1253, 1257 (7th Cir. 1993); Wayne V. Jarvis 197 F.3d 1098, 1103--04 (11th Cir. 1999). There is a partial revision in the First Circuit, Leonard v. Parry, 219 F.3d 25, 29 (1st Cir. 2000) ("... 15(c) does not distinguish between the types of mistakes." But the First Circuit maintains to prohibit Doe relation back. The Fourth Circuit in Goodman v. Praxair, 494 F.3d 458, 470-71 (4th Cir. 2007), fully revised its position on the question, Locklear v. Bergman & Beving Co., Inc. 457 F.3d 363, 366 (4th Cir. 2006), from prohibiting to permitting Doe relation back. The Third Circuit has determined to include "lack of knowledge" in its definition of the term to permit Doe relation back. Singletary v Pennsylvania Department of Corrections, 266 F.3d 186, 201 and n.5 (3d Cir. 2001). In the Ninth Circuit the relation back provisions of state law, rather than federal law, govern Doe relation back in civil rights actions brought under 1983. Rodgers v Horsely, 123 Fed Appx 281 (9th Cir2005); Merrit v County of Los Angeles, 875 F.2d 765, 768 (9th Cir 1988). Rule 15(c)(1)(A) provides for relation back under the law of the forum state providing the statute of limitations, but not when there is no difference between the state relation back law and Rule 15(c), Fed.R. Civ.P.. Hanna v Plumer, 380 U.S. 460 (1965); Walter v Armco Steel Corp., 446 U.S. 740 (1980). The Tenth Circuit permits Doe relation back under Rule 15(c). Watson v Unipress, Inc., 733 F. 2d 1368 (10th Cir 1984). In the Eighth Circuit it is permitted. Munz v Parr, 758 F.2d 1254, 1257 (8th Cir 1985).

(B) One position taken on the question, opposing Doe-relation back, does not comport with the Supreme Court's historical liberal construction of the rules in general, or with its liberal construction of Rules 15(a) and (c). See, e.g., New York Central & Hudson River R.R, v Kinney,260 U.S. 340 (1920):

> Of course an argument can be made for the other side, but when a defendant has had notice from the beginning that the plaintiff sets up and is trying to enforce a claim against it because of specific conduct, the reasons for the statute of limitations do not exist and we are of the opinion that a liberal rule should be applied.

260 U.S., at 346. See also, e.g., Torres v Oakland Scavenger Co., 487 U.S. 312 (1988):

> [T]he requirements of the rules of procedure should be

> liberally constued and "mere technicalities" should not stand in the way of consideration of a case on the merits.

487 U.S., at 316, quoting Foman v Davis, 371 U.S. 178, 181 (1962).

(C) THere is an inadequate quantum of Supreme Court guidance on Rule 15(c) for the circuits to train their decisions on. Where the Supreme Court's decision given in Krupski v Costa Crociere S.p.A, 177 L.Ed2d 48,53 (2010), would arguably support Doe relation back, the circuits remain divided on it. A few Supreme Court decisions given in recent times may suggest that a more conservative approach to pleading in general may overshadow some of the older decisions. See, e.g., Bell Atlantic v Twombly, 550 U.S. 555-57, 562-63, 570(2007); AShcroft v Iqbal, 556 U.S., at 678-79.

(D) Where the question is answered in those circuits who oppose Doe relation back, the results are unfair to plaintiffs facing adverse dilatory offsettings and neutral operation of the rule is attenuated. The hazards of indefinately looming liability are sufficiently fused through issue/claim preclusion application and through laches. Equitable tolling does not reliably intercept adverse dilatory ofsettings. The majority-circuit interpretation also does not conform to a logical calculus of the rule in operation.

Argument

Some of the circuits who prohibit Doe relation back rely on a linguistic basis which in substance involves an exercise in semantics and does not actually coincide with any standard definition of "mistake". See,e.g., Arthur v Maersk, 434 F.3d 196, 208 (3d Cir 2006); Leonard v Parry, 219 F.3d 25, 28 (1st Cir 2000). The majority-circuit interpretation of the term also leads to a pragmatic conclusion (hypothesis) that Parts (C)(i) and (ii) of the rule are irrelivant to the question in given cases where lack of information regarding a defendant's correct name/is the reason why the plaintiff did not accomplish correctly naming a defendant initially or within an amendment inside a limitation. That hypothesis, however, may be the product of a chosen interpretation of the term. See, e.g., Worthington v Wilson, 8 F.3d 1253 (7th Cir 1993):

> Rule 15 (c) permits an amendment to relate back only where there has been an error concerning the identity of the proper party and where that party is charged with knowlege of the mistake, but it does not permit relation back where, as here, there is a lack of knowlege of the proper party...Thus, in the absense of a mistake in the identification of the proper party, it is irrelivant for purposes of Rule 15 (c) whether or not the purported substitute party knew or should have known that the action would have been brought against him.

8 F.3d 1257 (citing Wood v Woracheck, 618 F.2d 1225, 1229-30 (7th Cir 1980). That interpretation allows a would-be defendant to view a complaint describing himself as placeholder John Doe defendant many days inside the limitations (affirming that he is that would-be defendant), and one day after a lapse in prescription occurs, take repose in that knowlege with no recourse or remedy availible at law to the plaintiff.

That interpretation also does not readily lend itself to a logical calculus of the rule in operation. Both lack of knowlege of identity and mistaken identity create the same result--failure to name the correct party initially or inside the limitation. Between the two reasons for that failure, either category of reason exerts no more influence than the other regarding whether the newly-joined party knew or should have known [whithin the time limit] that but for either reason, he would have been named initially or inside the limitations.

The Third Circuit flushed out this defect common to the majority-circuit interpretation of the rule. See, e.g., Authur v. Maersk, 434 F.3d, at 208-209. It is ultimately notice to the new-ly joined party, as opposed to either of these reasons for the failure to name, that forms the framework of a correctly-structured analysis of the rule in given cases. Review of the decisions given in all the circuits who prohibit Doe relation back discloses a process where the circuits proceed with citing each other without ever attempting to discern this logic. I perceive that the "but for a mistake" language relied on in the rule primarily serves to eliminate "choice" as the reason for a plaintiff failing to correctly identify a would-be defendant initially or through an amendment inside the limitations. I also perceive that "lack of knowledge" does not equate "choice" as a reason in this context. And eliminating choice, therefore, does not eliminate lack of knowledge from the ambit of the rule. Any correct given meaning we might assign to that term, "mistake", as used in the rule must conform to these observations. See, e.g., Luudy v. Adamar of New Jersey, 34 F.3d 1173, 1183 n .3 (3d Cir. 1994).

Some of the circuits who prohibit Doe relation back have determined to accommodate pro se plaintiffs naming a state, political subdivision or institution, permitting relation back if the substance of the complaint would support naming one or more individual agents of those government entities on the assume premise that the "mistake" involved suing the government entity to encompass suing its agents who were involved in causing the injury. See, e.g., Donald v. Cook County Sheriff's Dep't., 95 F.3d 548, 560-61 (7th Cir. 1996), citing Woods v. Indiana University-Purdue University, 996 F.2d 880, 884-87 (7th Cir. 1993). A similar form of the premise is supported in the Advisory Committee Notes of the 1966 amendments to Rule 15(c). Donald, 95 F.3d, at 560-61; Singletary, 226 F.3d, at 201 n.5. But the Donald court and others among the majority of circuits attempt to contrast such a "mistake" with not knowing the names of any potentially-liable individual tortfeasors. By the simple expedient of naming a state, political subdivision or institution, such litigants in the circuits who prohibit Doe relation back invoke a wherewithal to discovery and joinder of otherwise-unidentified individuals long after the limitations have expired, while those giving Doe namings who honestly represent not knowing the names of the would-be defendants, are prohibited. Hence, pro se plaintiffs naming the state, etc., in this manner accomplish the same purpose of a Doe-naming in those circuits where the practice is prohibited. The Third Circuit in Singletary readily discerned the incongruity, citing a group of commentary for the proposition that Rule 15(c)(3)(B) [currently (c)(1)(C)(ii)] should be amended to include the phrase, "or lack of information regarding the proper party", before "but for a mistake" in the text. 226 F.3d, 201n.5. The

Seventh Circuit district courts accommodating pro se plaintiffs in this manner accomplish it through close management of discovery directed to the heads of the agencies where the would-be defendants were employed when the plaintiffs' claims accrued. 95 F.3d, at 556, 561. Footnote Two.

The question presented for invoking the Court's jurisdiction in the present case tends to provoke another question: Whether "... Rule 15(c) on its face applies to the changing of a party, not just to correcting a misnomer." Lundy, 34 F.3d, at 1192-93 and n. 27. The Lundy court determined the rule to permit relation back for the "addition" of defendants. Ibid. See, also, Goodman v Praxair, 494 F.3d, at 468-69 (same). THe Second Circuit in Barrow v Wethersfield, supra, determined to apply relation back "...only if the change is the result of an error, such as a misnomer or misidentification." Id, at 469. THe notion is taken from language used in the Advisory Committee Notes of the 1991 amendments to Rule 15 (c). Between the two operations, adding or relpacing a party, either one exerts no more influence than the other regarding whether a newly-joined party knew or should have known that but-for either reason, he would have been named initially or inside the limitations. Lundy, 34 F.3d, at 1192-93. Nor does the difference between adding and replacing determine whether a choice was or was not made initially to sue the newly-joined party. The rule clearly relates where "...the amendment changes the party", "or the naming of the party", two distinct, yet occasionally one in the same, occurrances. A plaitiff may amend to change the party and the name of the newly-joined party.

See, e.g., Leonard v Parry, 219 D.3d, at 27, 29. Or a plaintiff may amend to correct merely the misnaming of a proper party. Barrow, supra.

Adding defendants after a lapse in limitations is logically contemplated in identity of interest doctrine application. Identity of interest would not be necessary if the party sought to be joined were merely a misnamed party. "Timely filing of a complaint, and notice within the limitations period to the party named in the complaint, permit imputation of notice to the subsequently named and sufficiently related party. Shiavone v Fortune, 477 U.S. 21, 29 (1986). The Supreme Court's approval of the identity of interest doctrine encompasses approval of adding parties after a lapse in limitations.

The Fifth Circuit determines to permit relation back for mispleading a sheriff's office to encompass pleading against its individual deputies. Kirk v Cronvich, 629 F.2d 404, 408 n.3 (5th Cir 1980); Campbell v Bergeron, 486 F. Supp 1246,1251 (M.D. La. 1980). As related previously, however, that manner of amendment is equal in substance to a Doe-naming. "'John Doe',(the functional equivilant of 'unknown person'." Singletary, 226 F.3d, at 190. In the present case, however, although I had mispleaded against the OMV/DOC in the original Doc 1 complaint, because prior to service I had amended to join Defendant James LeBlanc, Doc 6, I did not qualify for the exception.

The defendant, LeBlanc, Secretary, was named on a theory of liability like the one described in Valdezv Crosby, supra. Doc 101, p. 20. ROA 778; proposed Averment 26, Doc 33, ROA 317, Part II(B)

, Appellant's Brief on Appeal, No.17-30457. I sought to include the Doe defendants thirty days inside limitations on that theory. The present case history is much like the history seen in Donald v Cook County Sheriff's Dept., supra. The plaintiff in Donald had incurred prejudice in the defendant's "sua sponte"-actuated delay of the defendant's response to the summonses served. 95 F.3d, at 555-56, 578. Donald's motion to amend came in response to the defendant's motion to dismiss asserting Eleventh Amendment immunity. Id, at 557-58. But Donald filed suit two weeks inside the limitations in his case, Id, at 551, whereas in the present case I filed suit two weeks after my claims accrued. Doc 1, ROA 16. All of Donald's motions to amend came long after the limitations had expired in his case, id, at 552-53, whereas in the present case I sought to amend thirty days inside the limitations. Donald's case was remanded on appeal to engage discovery and exploration of notice under Rule 15(c)(3) or for equitable tolling. 95 F.3d, at 562.

The statute of limitations to be applied on my retaliation claim is codified in Louisiana law giving personal injury claims one year after they accrue. La. Civil Code, Article 3492. Federal courts look to the forum state for personal injury limitations. Wilson v Garcia, 471 U.S. 261, 267 (1985). THrough a sequence of delays in the U.S. Marshal's Office with service of process and what appears to be a clerk's error in the district court [giving the defendants sixty (thirty-nine additional) days for responding to the sommonses they were served with giving only twenty-one days for it(as in Donald, supra)], the date of filing my motion for joining the Doe-named defendants [OMV officers and supervisors],was offset from sixty-nine days inside the limitations to thirty days inside the limitations. Doc 1, ROA 16; Doc 6, ROA 100; Doc 11, ROA 129; Doc 13,ROA 145, Doc 15, ROA 147; Doc 17, ROA 161; Doc 18, ROA 164. THere have been no "USA Defendants". Doc 18, ROA 164; Doc 78, ROA 615 [docket sheet]; Doc 92, ROA 707 [docket sheet]; Doc 45,pp 13-20, 20-21, ROA 386-93,393-94. The defendant's response to the summonses came in the form of motions to dismiss asserting Eleventh Amendment and qualified immunity, the latter serving to suspend or forestall discovery. Doc.s 20 and 24, ROA 184 and 205; Doc 93, p 20, ROA 733. My claims asserted against the Doe-named defendants accrued on December 4 and 7, 2015, and the motion for joining them came on NOvember 4 and 7, 2016, in response to the defendant's motion to dismiss. The date given in Averment 2, Doc 6, is a typographic error for December 4, 2015. See Averment 2, Doc 1, ROA 16. My arguments and pleas for equitable tolling premised on those delays in the U.S. Marshal's Office and in the District Court Clerk's error produced no relief in the trial and appeal courts. All my objections on the issue were disregarded and a pall of silence has fallen over them in those courts. Doc.s 63 and 64, ROA 519, Electronic Order for Recusal. Petition For Rehearing On Appeal. <u>Footnote Three.</u>

I got reincarcerated only a few weeks after I filed suit on December 18, 2015. Averment 22, Doc 45, p 4, ROA 402. On March 18, 2016, I served the Defendant LeBlanc with the Notice and Waiver of Service In A Civil Action. Doc 78, ROA 615; Doc 79, ROA 621;

Doc 56-2, ROA 461-63 [Inmate Mail Signiture Sheet, etc.]. My motion to join the Doe-named defendants came thirty days inside the limitations, and in response to the defendant's motions to dismiss, it would have come sixty-nine days inside the limitations had the defendants not consumed those additional thirty-nine days they were not entitled to in response to the summonses , knowing they are not "USA Defendants".Doc.s 18, 78 and 80, ROA 164, 615 and 629, respectively. Nevertheless, but-for application of of the Fifith Circuit's interpretation of Rule 15(c)(1)(C)(ii), defining that term, "mistake", to exclude "lack of knowlege", my motion to join the Doe-named defendants would not have been denied. Although the trial court could have applied equitable tolling[and declined it over my objections], the trial and appeal courts have remained **silent on** that option, leaving only the trial court's references to futility of amendment premised on the mistake provision of Rule 15(c) to explain its decision. Doc.s 44 and 116, pp 2-3 and 1-2, ROA 397-98 and 893-94. Equitable tolling is applied sparingly and fails to relibly intercept dilatory offsettings in the circuits where Doe-relation-back is prohibited.

The present case is a model for appropriate application of equitable tolling. See, e.g., Owens-El v U.S. Attorney General, 759 F.3d 349-50 (4th Cir 1995) (clerk's error created delay); Donald v Cook County Sheriff's Dept., 95 Fed 3d, at 554-55, 578 ("sua sponte"-actuated delay with defendant's response to summonses served). But the discretion involved in its application is not readily prone to equity when that discretion has no specified substantive predicates to channel it. THe contours of its operative parameters are not amenable to the rules in the way that pleading can be handled in the rules of procedure.

Wisenbaker v Farwell, 341 F.Supp.2d 1160,1165 (D.Nev.2004 (citing Supermail Cargo v U.S., 68 F.3d 1204, 1206 (9th Cir 1995)(regarding Rule(12)(b)(6)). For these reasons it is less likely to intercept adverse dilatory offsettings. But issue/claim preclusion application are also creatures of discretion. Under the status quo, however, would-be defendants enjoy the protections of issue/claim preclusion application and laches, combined with the notice/mistake [choice] provisions of Rule 15(c) to enforce the statutes of limitations, whereas plaintiffs have only the loose and often illusory protections of discretionary tolling.

REgarding prejudice [Rule 15 (C)(1)(C)(i)], lack of knowlege of identity does not indicate a decision [choice] to not hold any would-be defendant liable in given cases. To the contrary, Doe-naming indicates a plaintiff's intention to join that defendant for liability, Hence, prohibiting Doe relation back is prone to to facilitate disoperation of the rule in cases where a failure initially or within the time-limit for it to name a defendant, or use a placeholder Doe-naming, could be misinterpreted as a decision [choice] to not sue that would-be defendant. Neverthe-less, moreover, would-be defdendants have issue/claim preclusion and laches where they may be applied. Doe relation back, in and of itself therefore, does not work prejudice to would-be defend-ants.

Regarding notice [Rule 15(c)(1)(C)(ii)], a well-pleaded complaint Doe-naming, compared to one which merely includes a list of Doe names in the caption, is more likely to succeed in giving notice to would-be defendants that they are in the process of being de-tected in personam, based on what a person of ordinary intellig-ence would infer. See, e.g., concurrent opinion of SEnior Judge Wiiliam M. Hoeveler, Wayne v Jarvis, 197 F.3d 1098, 1107-08(11th Cir 1999). It is largely a technicality-proof process of subst-ance and it coincides with what the Supreme Court laid before us in Torres, Foman and New York Central, supra. Conforming the fact allegations in a complaint to what is meant in these obser-vations would improve a complainant's prospect regarding compli-ance with the rules of pleading in general , as they are expl-ained in the Supreme Court's most recent decision given in Twom-bly and Iqbal, supra, on the subject. Vague and conclusory alle-gations would fail to apprise would-be defendants of looming li-ability for preserving repose. Hence, Doe relation back in no way discounts the requirements of proper notice when the rules for pleading elsewhere are moderately observed in assessment of asserted claims.

As related previously, the Defendant LeBlanc was served with the Notice of Waiver of Service in a Civil Action on March 18, 2016, sufficient to apprise him and his subordinate officers in the OMV /DOC[field officers and supervisors] of in personam detection and joinder through identity of interest and eventual discovery and amendment.

Recall that the OMV/DOC field officers first became aware of my state court litigation activities through their own electronic data banks that are linked with the OMV/DOC Headquarters in Baton Rouge. Exhibit C-1 and C-2 OMV REport, Doc 1-1, ROA 81-82. Averments 5 and 20, Doc.s 6 and 45, ROA 101 and 400, respectively. That development indicates interoffice transmission of such information between OMV field officers and Baton Rouge supervisors, Defendant LeBlanc a plausibly-involved implicated individual among them. See, e.g., Part II, infra. In proximity with that acknowleged data link in relation to DOC Headquarters, it is not implausible to impute notice of my federal court litigation activities to the Doe-named OMV field officers involved.

There are widely diverse and counterintuitive interpretations of how to apply Rule 15(c) relation back among the federal circuits with no indication of it resolving itself. Finding that Doe-namings can relate back, at-least for government agent individuals, would effect reversing the trial court's rejection of my Doc 33/35 Averment 23-27 amendments, giving thirty days for discovery, identification and joinder of the Doe-named defendants. Recall that I filed the motion to amend thirty days inside the limitations.

A review of the entire record indicates that the peculiar relationship that existed between myself and the defendants, between a government agency [agents] and its prisoner, facilitated the defendants' ability to effect dilatory offsettings sufficient for its purpose and there was nothing I could do about it. In the federal circuits where Doe relation back is prohibited, where the controversy is between government agents and nongovernment idividuals, where the identities of the government agents involved is often knowlege peculiar to government agencies , there is often strong incentive, ample opportunity and adequate talent within those agencies to orchestrate termination of controversies on technicality grounds through dilatory offsettings. Permitting,but also limiting, Doe relation back to cases where the complaint gives enough information to impute knowlege to would-be defendants of the claim would provide a needed measure of equilibrium to controversies where the need to preserve repose from indefinately-looming liability in this context competes with the need to bring legitimate claims to closure on the merits. Limiting the holding to claims against government agents coincides with the Notes of the Advisory Committee in the Amendments to Rule 15(c), and limiting the incidence of imputed knowlege to complaints giving sufficient detail for it coincides with the precepts of Twombly-Iqbal,supra . Leaving the remaining categories of relation back to, e.g., private sector liability, etc., to application of Rule 15(c)(1)(C) of the rule would harmonize with these options.

Conclusion

The petition for writ of certiorari should be granted.

Footnotes

Footnote One: In the related claim asserting that La. RS32:863 is unconstitutional for due process of law the trial court concluded that 863 is not unconstitutional because a $500.00 fee is "minor" and notice served at a "last known address is almost always constitutionally sufficient." Doc 93, p 17, ROA 730, Doc 116, ROA 893-94.

Footnote Two: The theory of liability that the 1966 Advisory Committee commented on and the one mispleaded in Donald, supra, are not precisely the same. The 1966 Advisory Committee referenced mispleading against the UNited States government to encompass pleading against the head of its government agencies; whereas the theory of liability relied on in Donald entailed mispleading against the state to encompass pleading against the head of that agency or one or more of its agents. The former involved judicial review of administrative actions controlled by federal statutes that require pleading against the heads of various federal agencies; whereas the latter involves suing a state or its agencies who in pursuance of their state soverienty in the Eleventh Amendment are immune to suit in the federal courts. Donald, 95 F.3d, at 561. THe principle is extended to mispleading against municipalities to encompass pleading against its officers and/or mayors, where municipalities are not vicariously liable and supervisors are not liable through respondeat superior under 1983. See, e.g., Soto v Brooklyn Corr'l, 80 F.3d 34, 35

-36 (2d Cir 1996). The principle is extended to the private sector for mispleading against corporations to encompass pleading against its employees. Goodman v Praxair, 494 F.3d, at 474.

Footnote Three: The trial court misapprended qualified immunity. It cannot be applied for any reason that forms a Rule 12(b)(6) dismissal. Goodman v Harris County, 571 F.3d 388, 396 (5th Cir 2009). If a claim fails under Rule 12(b)(6) it is dismissed and nothing remains for a court to grant immunity from. Failure to adequately plead involvement is a Rule 12(b)(6) dismissal issue.

Respectfully,

Mark Hanna, # 132872
WCC, H1A
670 Bell Hill Rd.
Homer, LA 71040