No. 07-

IN THE

Supreme Court of the United States

CSX TRANSPORTATION, INC.
Petitioner,

v.

UNITED TRANSPORTATION UNION ET AL.,
Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Has the Eleventh Circuit erred in its repeated holding – in square conflict with other circuits – that a plaintiff is forbidden from naming as a "John Doe" defendant a party whose identity is reasonably not known at the time the complaint is filed?

RULE 29.6 STATEMENT

CSX Corporation is the only publicly traded entity that owns 10% or more of petitioner's stock.

PARTIES TO THE PROCEEDINGS BELOW

In addition to the parties identified in the caption, Rufus McIntyre and unidentified members of the United Transportation Union are respondents here and were appellees below.

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STATEMENT OF THE CASE

Petitioner CSX Transportation, Inc. (CSXT) filed this lawsuit seeking declaratory and injunctive relief against an illegal work stoppage. Respondents are the defendants: a union, one if its general chairmen, and unnamed individual union members. CSXT did not identify the individual union members by name because it could not know at the time it filed the complaint which union members were participating in the unlawful work stoppage and which were instead absent from work for legitimate reasons. The court of appeals nonetheless held that the individual union members must be dismissed from the case under its rule – which other circuits squarely reject – that a complaint may not include unnamed defendants.

1. Congress enacted the Railway Labor Act (RLA) (45 U.S.C. § 151a, First) to prevent "wasteful strikes and interruptions" that would interfere with the operations of the nation's vital railroads and airlines and thereby disrupt commerce. *Detroit & Toledo Shore Line R.R. Co. v. United Transp. Union*, 396 U.S. 142, 148 (1969) (hereinafter "*Shore Line*"). *See also, e.g., Int'l Ass'n of Machinists v. Central Airlines, Inc.*, 372 U.S. 682, 689-90 (1963); *Texas & New Orleans R. Co. v. Ry. & Steamship Clerks*, 281 U.S. 548, 565 (1930). The RLA effectuates that purpose by severely restricting work stoppages and slowdowns in both industries.

The parties to a collective bargaining agreement covered by the RLA must maintain the status quo while they negotiate disagreements over the terms of the agreement – so-called "major disputes." During

this period, strikes and other work stoppages are unlawful. *See, e.g., Shore Line*, 396 U.S. at 149-53. Strikes are also prohibited outright over "minor disputes" – *i.e.*, those over the interpretation of existing collective bargaining agreements – which must be arbitrated. *Consolidated Rail Corp. v. Ry. Labor Executives Ass'n*, 491 U.S. 299, 302 (1989).

Carriers may bring a private suit – seeking, *inter alia*, injunctive relief – to enforce the RLA's prohibition on strikes. *Bhd. of R.R. Trainmen v. Chicago River & Ind. R.R.*, 353 U.S. 30 (1957); *see also Chicago & North Western Ry. Co. v. United Transp. Union*, 402 U.S. 570 (1971). Importantly, the RLA applies equally to all forbidden strikes, whether or not organized by the union's leadership: "wildcat strikes" undertaken directly by employees are equally prohibited. *See, e.g., Louisville & Nashville R.R. Co. v. Brown,* 252 F.2d 149 (5th Cir. 1958).

2. Petitioner CSXT is one of the nation's largest railroads. Petitioner and respondent United Transportation (UTU) have entered into collective bargaining agreements governing CSXT's relationship with its trainmen.

At certain intervals, petitioner must perform regular maintenance on its tracks, which requires petitioner to limit the use of affected track segments. During these track "curfews," petitioner does not call ordinary train crews – engineers and trainmen – to work. For particular curfews in the past, CSXT and the UTU reached agreements for CSXT to pay trainmen for time they did not work.

This case arises from a July 2005 curfew affecting track that runs through Erwin, Tennessee. This is a

vital rail line because it carries roughly fifty percent of all the coal that CSXT delivers to utilities in the Southeast. Declaration of Michael Sullivan ¶ 2 [Dkt. 19].[1]

Petitioner and the UTU did not reach an agreement to pay trainmen for the July 2005 curfew. The day after the conclusion of the curfew, many of UTU's trainmen failed to return to work. As a consequence, CSXT was able to operate only seventeen of thirty-six scheduled trains.

The extraordinary absence of the trainmen in the immediate wake of an unpaid period of time led CSXT to the obvious conclusion that it was the subject of a prohibited work stoppage. CSXT believed that the UTU's members were seeking to pressure it to agree to amend the parties' collective agreement to guarantee that it would pay trainmen during curfews. Such a work stoppage – whether or not authorized by the union's leadership – would violate the RLA's status quo requirement, entitling petitioner to an injunction against the participants. *See, e.g.*, *United Air Lines, Inc. v. Int'l Ass'n of Machinist & Aerospace Workers,* 243 F.3d 349, 362 (7th Cir. 2001); *Delta Airlines, Inc. v. Air Line Pilots Ass'n*, 238 F.3d 1300, 1309-10 (11th Cir. 2001).

CSXT immediately filed this lawsuit, seeking injunctive and declaratory relief against both the current work stoppage and other such conduct in the future. CSXT named as defendants the UTU and one of its local officials called a General Chairman. CSXT

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[1] Record citations are as they appear in the appellate briefing.

also separately included as defendants "UTU-represented CSXT employees Nos. 1 through 100 * * * who are engaging in a work stoppage against CSXT arising from the disputes addressed herein." Complaint ¶ 7 [RE 1]. CSXT further alleged that "trainmen based out of Erwin are taking much longer than usual to exercise seniority to bid back into the positions that CSXT re-established in the Erwin conductor pools." *Id.* ¶ 23.

CSXT designated the employees in this fashion, rather than naming them individually, because it could not know whether particular union members were absent from work because of the illegal stoppage. Certain trainmen could be absent, for example, because they were victims of union intimidation or pressure to participate in the work stoppage.

The district court initially granted petitioner a restraining order but subsequently denied a preliminary injunction. Pet. App. B at 6a. Petitioner continued to litigate the case because of the potential for the repetition of illegal work stoppages after future curfews.[2] CSXT submitted evidence that the failure

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[2] Although the particular work stoppage has since concluded, the case is not moot. Petitioner's complaint seeks an declaratory and injunctive relief against later unlawful activity, which is a realistic possibility given that CSXT has a track curfew that affects Erwin-based trainmen most years. Decl. of Don Noell [Dkt. 61-2]. Moreover, such an unlawful, short-term work stoppage is the prototypical "illustration of the private disputes that are preserved from mootness by the prospect of future repetition." 13A CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 3533.3 (1984). *See, e.g., Super Tire Eng'g Co. v. McCorkle*, 416 U.S. 115, 126-27 (1974) ("[T]he great majority of economic strikes do not last long enough for complete judicial review of the controversies they engender. . . . The judiciary

of such an extraordinary number of trainmen to report for work after the curfew could not be explained as anything other than a work stoppage prohibited by the RLA, particularly given that the engineers did show up for work without incident.[3] Petitioner also sought discovery regarding, *inter alia*, which trainmen had engaged in the work stoppage. CSXT filed a motion to compel respondents to produce certain telephone records and noticed local union officials and eleven individual UTU members who worked out of Erwin that their depositions would be taken. CSXT was prevented from taking this discovery, because respondents refused to provide phone records and filed a motion for a protective order blocking the taking of any depositions. *See* Dkt. 63-1 and Dkt. 71.

Without ruling on CSXT's effort to secure discovery, the district court granted respondents summary judgment and dismissed the case. The court found that CSXT failed to prove that the UTU and its general chairman were involved in any event. The court also found that CSXT failed to show that a work stoppage had occurred, suggesting that the absence of so many trainmen could also be explained by a hypo-

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must not close the door to the resolution of the important questions these concrete disputes present.").

[3] Between 115 and 131 trainmen normally work out of Erwin on a daily basis. Immediately after the curfew ended, more than half (66) failed to report for work. Only between five and nine trainmen per day are usually absent. *See* Complaint ¶ 22 & Exs. 4-6 [RE 1] and Decl. of Steven R. Friedman ¶ 11 [Dkt. 16-2]. In contrast, locomotive engineers returned to work in a normal manner, and CSXT did not fail to operate any trains because of a lack of engineers. Decl. of Gregory J. Allard ¶ 11 [Dkt. 42-2].

thetical "severe flu outbreak." Pet. App. B at 12a and n.5.

3. CSXT appealed. The Eleventh Circuit affirmed the district court's conclusion that the UTU and its officers were entitled to summary judgment because CSXT had failed to submit sufficient evidence to create a triable issue on the question whether those particular defendants participated in any work stoppage. Pet. App. A at 2a But the court of appeals did not accept the district court's broader conclusion that *all* the defendants were entitled to summary judgment on the ground that no work stoppage occurred. Rather, the Eleventh Circuit deemed that "a close question" (*id.*), which would of course preclude summary judgment (*see, e.g.*, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250-51 (1986) ("If reasonable minds could differ as to the import of the evidence, however, a verdict should not be directed.")).

If the Eleventh Circuit had stopped there, the case would have been remanded. CSXT would have proceeded with its RLA suit against the unnamed individual union members on the theory that they had engaged in a forbidden wildcat strike. Specifically, petitioner would have pursued its claim that there had been a work stoppage and its request for discovery regarding which union members had participated. Given the extraordinary number of trainmen who had failed to report for work at the conclusion of the curfew (*see supra* at 5 n.3), CSXT would have had a substantial prospect of prevailing.

The Eleventh Circuit held, however, that the case must be dismissed against even the unnamed individual defendants. Pet. App. A at 3a n.1. On that al-

ternative basis, it affirmed the judgment of dismissal. The court of appeals relied on that court's prior precedent holding that dismissal of claims against John and Jane Doe defendants is required because "the Federal Rules do not authorize suit against fictitious parties." *Id.* (citing *New v. Sports & Recreation, Inc.,* 114 F.3d 1092, 1094 n.1 (11th Cir. 1997); *Wiggins v. Risk Enter. Mgmt. Ltd.,* 14 F. Supp. 2d 1279, 1279 n.1 (M.D. Ala. 1998)).

The Eleventh Circuit subsequently denied CSXT's petition for rehearing or rehearing en banc (Pet. App. C), which explained that the court's ruling conflicts with an uninterrupted wall of appellate authority holding that a complaint may be filed against unnamed defendants whose identities were reasonably not known at the time it was filed.

REASONS FOR GRANTING THE WRIT

Certiorari is warranted because the Eleventh Circuit's prohibition on the use of unnamed defendants conflicts with a uniform line of authority from other circuits. The decision below moreover significantly interferes with the proper functioning of the Railway Labor Act – particularly with respect to the operations of railroads and airlines in the southeastern United States – because it eliminates a vital tool for halting the unlawful work stoppages that Congress recognized present a direct threat to the nation's economy.

1. It is well settled in virtually every federal court outside the Eleventh Circuit that "[a] complaint * * * may name an unknown defendant by using a 'John Doe' appellation or other description if the plaintiff has been unable to ascertain the real identity of the

defendant." MOORE'S FEDERAL PRACTICE – CIVIL § 10.02 (3d ed. 2007) . "When a plaintiff is ignorant as to the true identity of a defendant at the time of filing the complaint, most federal courts typically will allow the use of a fictitious name in the caption so long as it appears that the plaintiff will be able to obtain that information through the discovery process; should that not prove to be true, the action will be dismissed." 5A CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 1321.

Although this Court has not squarely addressed this practice, the lower federal courts cite *Bivens v. Six Unknown Named Agents*, 403 U.S. 388, 390 n.2 (1971), as the classic example implicitly approving it. In *Bivens*, this Court permitted a suit to go forward with fictitiously named defendants until the plaintiff could properly identify and serve the proper individual defendants.

Federal appellate authority endorsing the practice has long been – with the conspicuous exception of the Eleventh Circuit – essentially uniform. *E.g.*, *Roper v. Grayson*, 81 F.3d 124, 126 (10th Cir. 1996) ("Courts have generally recognized the ability of a plaintiff to use unnamed defendants so long as the plaintiff provides an adequate description of some kind which is sufficient to identify the person involved so process can eventually be served."); *Schiff v. Kennedy*, 691 F.2d 196, 198 (4th Cir. 1982) ("we recognize the necessity for allowing John Doe suits in the federal courts"); *Duncan v. Duckworth*, 644 F.2d 653, 656 (7th Cir. 1981) ("In such cases the court has held that, instead of dismissing a complaint because it fails to identify certain unnamed defendants, the dis-

trict court should order their disclosure or permit the plaintiff to obtain their identity through discovery."); *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980) ("where the identity of alleged defendants will not be known prior to the filing of a complaint," "the plaintiff should be given an opportunity through discovery to identify the unknown defendants").

As this case illustrates, the Eleventh Circuit, by contrast, deems the use of unnamed defendants to amount to the prohibited use of "fictitious parties." *See New v. Sports & Recreation, Inc.*, 114 F.3d 1092, 1094 n.1 (11th Cir. 1997) (approving dismissal of Doe defendants on ground that "fictitious party practice is not permitted in federal court"), *cited at* Pet. App. A at 3a n.1. The en banc court of appeals was given the opportunity to revisit or disavow that rule in this case, but declined.

Applying the Eleventh Circuit's rule, district courts in that circuit constantly dismiss claims against unnamed defendants. For more than twenty-five examples within the last year alone, see, *e.g.*, *Holbert v. Ga. Dep't of Human Res.*, No. 4:07-CV-071-RLV, 2007 U.S. Dist. LEXIS 89415, at *3 (N.D. Ga. Dec. 4, 2007); *Williams v. Martin*, No. 1:06-cv-2161-WSD, 2007 U.S. Dist. LEXIS 80248, at *16 n.2 (N.D. Ga. Oct. 29, 2007); *Portis v. Wal-Mart Stores, Inc.*, No. 07-0557-WS-C, 2007 U.S. Dist. LEXIS 77939, at *4 n.1 (S.D. Ala. Oct. 19, 2007); *Scurtu v. Int'l Student Exch.*, No. 07-0410-WS-B, 2007 U.S. Dist. LEXIS 78999, at *2 n.1 (S.D. Ala. Oct. 19, 2007); *Jordan v. City of Montgomery*, No. 2:06-cv-534-MEF-CSC, 2007 U.S. Dist. LEXIS 74072, at *2 n.1 (M.D. Ala. Oct. 3, 2007); *Siebert v. Allen*, No. 2:07-cv-295-MEF-WC, 2007 U.S. Dist. LEXIS 74074, at *7 n.7 (M.D.

Ala. Oct. 3, 2007); *Perry v. Fleetwood Enters.*, No. 2:06-cv-502-MEF, 2007 U.S. Dist. LEXIS 73355, at *2 n.1 (M.D. Ala. Sept. 28, 2007); *Rudd v. Geneva County Comm'n*, No. 1:06-cv-00233-WKW, 2007 U.S. Dist. LEXIS 66891, at *4 (M.D. Ala. Sept. 10, 2007); *Gallagher v. Geneva County Comm'n*, No. 1:07cv660-WHA, 2007 U.S. Dist. LEXIS 63925, at *6 (M.D. Ala. Aug. 29, 2007); *Clemons v. Wal-Mart Stores, Inc.*, No. 06-0755-WS-B, Inc., 2007 U.S. Dist. LEXIS 61860, at *4 n.3 (S.D. Ala. Aug. 20, 2007); *Fuller v. Home Depot Servs., LLC*, No. 1:07-CV-1268-RLV, 2007 U.S. Dist. LEXIS 59770, at *2 n.1 (N.D. Ga. Aug. 14, 2007); *Williams v. Allen*, No. 2:07-cv-307-MEF-SRW, 2007 U.S. Dist. LEXIS 55594, at *9-10 n.7 (M.D. Ala. July 30, 2007); *Susan J. v. Riley*, No. 2:00-cv-918-MEF, 2007 U.S. Dist. LEXIS 51232, at *5 (M.D. Ala. July 13, 2007); *Johnson v. Mobile County Sheriff Dep't*, No. 06-0821-WS-B, 2007 U.S. Dist. LEXIS 50034, at *19 (S.D. Ala. July 9, 2007); *Owaki v. City of Miami*, 491 F. Supp. 2d 1140, 1156 (S.D. Fla. 2007); *Mahmud v. Oberman*, 508 F. Supp. 2d 1294, 1297 n.1 (N.D. Ga. 2007); *Pickard v. Moore*, No. 3:07-CV-270-MHT, 2007 U.S. Dist. LEXIS 41872, at *1 (M.D. Ala. June 8, 2007); *Butts v. Tyco Healthcare Group LP*, No. 1:06-CV-1377-RLV, 2007 U.S. Dist. LEXIS 37847, at *9-*10 (N.D. Ga. May 24, 2007); *Wessinger v. Bd. of Regents*, 1:06-cv-2626-WSD, 2007 U.S. Dist. LEXIS 34936, at *3-*4 (N.D. Ga. May 14, 2007); *Billingsley v. McWhorter Farms*, LLC, 3:06-cv-795-WKW, 2007 U.S. Dist. LEXIS 30695 (M.D. Ala. Apr. 25, 2007); *Bryant v. Wausau Underwriters Ins. Co.*, No. 2:06-cv-1002-MEF, 2007 U.S. Dist. LEXIS 29005, at *2 n.1 (M.D. Ala. Apr. 18, 2007); *Hall v. Infirmary Health Sys.*, No. 06-0791-WS-B, 2007 U.S. Dist. LEXIS 18104, at *2 n.1 (S.D. Ala. Mar. 8, 2007); *Pierce v.*

Odyssey Healthcare, Inc., No. 06-0561-WS-B, 2007 U.S. Dist. LEXIS 15107, at *2 n.1 (S.D. Ala. Mar. 1, 2007); *Gillilan v. Walton*, No. 1:07-CV-27, 2007 U.S. Dist. LEXIS 8820, at *3 n.1 (M.D. Ga. Feb. 7, 2007); *Rolle v. Brevard County*, 6:06-cv-714-ORL-19JGG, 2007 U.S. Dist. LEXIS 6920, at *47-*48 (M.D. Fla. Jan. 31, 2007); *Samuels v. Joyner*, No. 06-0564-WS-M, 2007 U.S. Dist. LEXIS 3487, at *13 n.4 (S.D. Ala. Jan. 12, 2007).[4]

2. Certiorari is furthermore warranted because the Eleventh Circuit's refusal to permit the use of unnamed defendants is erroneous. Federal Rule of Civil Procedure 10(a), which governs the form of pleadings in federal district courts, simply requires that the parties be specified and nowhere precludes plaintiffs from naming Doe defendants. *See* Fed. R. Civ. P. 10(a). In applying Rule 10(a), federal courts have appropriately sought guidance from similar state court pleading rules, which permit unnamed parties. *E.g.*, *Maclin v. Paulson*, 627 F.2d 83, 87 n.4 (7th Cir. 1980) (citing *Keno v. Doe*, 74 F.R.D. 587, 588-89 n.2 (D.N.J. 1977), *aff'd*, 578 F.2d 1374 (3d Cir. 1978)). For its part, Congress implicitly approved the use of fictitious names by preventing the citizenship of a John Doe defendant in a state suit from interfer-

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[4] The Eleventh Circuit only permits plaintiffs to include unnamed defendants in two limited contexts, both distinct. First, a *pro se* plaintiff may do so, if the defendant is identified with particularity. *See Dean v. Barber*, 951 F.2d 1210, 1215-16 (11th Cir. 1992) (permitting use of fictitious name because "pleadings of *pro se* complainants are treated with special care" and defendant in that case was identified as "Chief Deputy of the Jefferson County Jail"). Second, pursuant to FRCP 15(c)(1), the plaintiff in a diversity action may do so if permitted by the applicable state court rules. *Saxon v. ACF Indus.*, 254 F.3d 959 (11th Cir. 2001) (en banc).

ing with the suit's removal to federal court. *See* 28 U.S.C. § 1441(a) ("For purposes of removal under this chapter, the citizenship of defendants sued under fictitious names shall be disregarded.").

The framers of the Rules of Civil Procedure moreover could not have imagined that the practice would be forbidden. The naming of Doe defendants is frequently essential to ensuring that a plaintiff can obtain relief, particularly when (as in this case) the plaintiff is injured by a collective body of individuals, some of whom are reasonably not known prior to discovery. *E.g.*, *Gillespie v. Civiletti*, 629 F.2d 637, 643 (9th Cir. 1980) (lower court abused discretion by failing to permit suit to proceed when unnamed defendants allegedly violated 42 U.S.C. §§ 1983, 1985). Without the use of fictitious defendants in such instances, "it may be impossible as a practical matter to obtain complete relief." *Palmer v. Bd. of Educ.*, 46 F.3d 682, 688 (7th Cir. 1995). The naming of John Doe defendants also affords a plaintiff who reasonably does not know the particular identity of a defendant prior to the running of a statute of limitations the opportunity to seek legal relief. *See* 5A CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 3642.

Indeed, this is a prototypical scenario in which the use of fictitious names is appropriate. As Judge Posner has explained, John and Jane Doe designations are proper in "any case in which, usually because the plaintiff has been injured as the consequence of the actions of an unknown member of a collective body, identification of the responsible party may be impossible without pretrial discovery." *Billman v. Ind. Dep't of Corrs.*, 56 F.3d 785, 789 (7th Cir. 1995). The plaintiff's "inability to identify his injurers is not by

itself a proper ground for the dismissal of his suit. Dismissal would gratuitously prevent him from using the tools of pretrial discovery to discover the defendants' identity." *Id.*

3. The Eleventh Circuit's application of its prohibition on Doe defendants in this case is particularly troubling because it threatens to substantially disrupt the proper functioning of the Railway Labor Act in the southeastern United States. The court's ruling seriously impedes the ability of railroads and airlines to secure effective relief to enforce the RLA's terms and to protect the public interest in avoiding interruptions to carrier operations from labor disputes.

Railroads and airlines regularly face work stoppages without notice. In such cases, they must act immediately – generally within hours – to seek emergency injunctive relief in order to permit their operations to continue. If the strike is not prevented or enjoined in its early moments, carrier operations will be seriously interrupted.

It is not enough that an injunction run against a union and its leaders. Union officials often attempt to disclaim responsibility for a slowdown. *See, e.g., Delta Airlines, Inc. v. Air Line Pilots Ass'n*, 238 F.3d 1300 (11th Cir. 2001); *Am. Airlines v. Allied Pilots*, 228 F.3d 574, 577 (5th Cir. 2000), *cert. denied*, 531 U.S. 1191 (2001). In other cases, the stoppage will be the result of a genuine wildcat strike directly by the employees. Whether or not authorized by their union, concerted action by employees in disregard of the RLA's mandatory dispute resolution procedures is illegal and must be enjoined. *See, e.g., Empresa Ecuatoriana de Aviacion, S.A. v. District Lodge No. 100,*

690 F.2d 838, 841 (11th Cir. 1982) (sick-out initiated by employees); *Ry. Express Agency, Inc. v. Bhd. of Ry. Clerks*, 437 F.2d 388, 391 (5th Cir. 1971) (union lost control of local union members), *cert. denied*, 403 U.S. 919 (1971); *Louisville & Nashville R.R. Co. v. Bass*, 328 F. Supp. 732 (W.D. Ky. 1971) (wildcat strike over major dispute). More broadly, it can also take some time to restore normal operations even after union members have been ordered back to work. If the carrier cannot obtain prompt emergency injunctive relief directly against employees, the RLA's primary purpose is frustrated.

Railroads and airlines, however, often have no way of knowing in the early hours after a work stoppage begins which individual employees should be enjoined, especially if the union is denying involvement in the stoppage. A carrier often does not have time to first determine which particular union members are participating in a work stoppage, rather than absent for permissible reasons. Not surprisingly, in such cases, it is commonplace for plaintiffs (including the United States) to seek emergency injunctive relief against not only the union but also unidentified individual union members who are named as John and Jane Doe defendants. As in this case, the employer promptly seeks discovery to identify the individual participants in the work stoppage.[5]

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[5] *See, e.g., John Morrell & Co. v. Local Union 304A of the United Food & Commercial Workers*, 913 F.2d 544 (8th Cir. 1990); *Ass'n of Contracting Plumbers v. Local Union No. 2 United Ass'n. of Journeymen*, 841 F.2d 461 (2d Cir. 1988); *Elsinore Shores Assoc. v. Local 54, Hotel Employees and Res. Employees Int'l Union*, 820 F.2d 62 (3d Cir. 1987); *U.S. v. Prof'l Air Traffic*

Given the Eleventh Circuit's general rule against naming Doe defendants and its application of that rule in this case, in cases arising in the southeastern United States, unions can be counted on to move to dismiss requests for injunctive relief against union members who are included as unnamed defendants. In light of the circumstances in which such cases arise – with employers seeking injunctive relief to maintain their operations before they have the opportunity to identify individual participants in the strike – the rule applied by the Eleventh Circuit may prevent railroads and airlines from effectively seeking relief against union members that is essential to effectuate the RLA. This Court's intervention is accordingly warranted.

Controllers Org., 653 F.2d 1134 (7th Cir. 1981); *Joseph Schlitz Brewing Co. Container Div. v. Gen. Drivers, Warehousemen & Helpers Local Union 745*, 486 F. Supp. 320 (E.D. Tex. 1979).

CONCLUSION

For the foregoing reasons, the petition for certiorari should be granted.

Respectfully submitted,

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