No. _____

In the
Supreme Court of the United States

WILLIAM BOATENG,
Petitioner,
v.

BP, P.L.C.; BP EXPLORATION & PRODUCTION, INCORPORATED; BP AMERICA, INCORPORATED; BP PRODUCTS NORTH AMERICA, INCORPORATED; BP INTERNATIONAL LIMITED,
Respondents.

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

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PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Federal Rule of Civil Procedure 12(d) provides, "If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion."

1. Can a *Court of Appeals* treat a Rule 12(b)(6) motion to dismiss as a converted motion for summary judgment under Rule 12(d) when the district court itself decided the motion as one to dismiss under Rule 12(b)(6) and did not treat the motion as one converted to summary judgment pursuant to Rule 12(d)?

2. Does the non-movant's presentation to the district court of materials beyond the complaint alone satisfy the "reasonable opportunity" of Rule 12(d), or is something more required?

PARTIES TO THE PROCEEDINGS

Petitioner William Boateng was the plaintiff in the United States District Court and the appellant in the United States Court of Appeals. Respondents (the BP entities) were the defendants in the District Court and the appellees in the Court of Appeals.

STATEMENT OF RELATED PROCEEDINGS

- *Boateng v. BP, P.L.C., et al.*, No. 18-31032 (5th Cir.) (Opinion issued July 3, 2019; Petition for Rehearing denied August 2, 2019)
- *Boateng v. BP, P.L.C., et al.*, No. 11-1383 (E.D. La.) (Judgment issued August 29, 2019; Opinion issued August 15, 2018)

There are no additional proceedings in any court that are directly related to this case.

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PETITION FOR A WRIT OF CERTIORARI

William Boateng petitions this Court for a writ of certiorari to review the Orders and Decisions of the Court of Appeals and District Court below.

OPINIONS BELOW

The July 3, 2019 Opinion of the United States Court of Appeals for the Fifth Circuit is unpublished and appears at Appendix 1. The August 29, 2018 Order & Reasons of the United States District Court for the Eastern District of Louisiana is unpublished and appears at Appendix 11.

JURISDICTION

The Opinion of the United States Court of Appeals was entered on July 3, 2019. App. 1. A timely petition for rehearing was filed and was denied by the Court of Appeals on August 2, 2019. App. 20. This Court's jurisdiction is invoked under 28 U.S.C. § 1254.

RULE PROVISIONS INVOLVED

Federal Rule of Civil Procedure 12(b): "How to Present Defenses. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion: … (6) failure to state a claim upon which relief can be granted…"

Federal Rule of Civil Procedure 12(d): "Result of Presenting Matters Outside the Pleadings. If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary

judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion."

STATEMENT OF THE CASE

In April 2010, defendant BP suffered a catastrophic oil spill in the Gulf of Mexico at the Macondo Well after the oil rig Deepwater Horizon sunk from an explosion and fire. The leak spilled at least 5,000 barrels of petroleum into the Gulf of Mexico daily, endangering the coasts of several Gulf states and threatening generations of marine and ocean life.

Stopping the spill proved problematic. BP failed at several attempts to stop it and, in desperation, reached out to the public for ideas.

As Plaintiff detailed in his Complaint filed in the District Court, Plaintiff responded to BP's request by presenting to BP's engineers a three-page PowerPoint presentation, detailing a six-step procedure illustrating that removing the bolts on the upper flange of the blowout preventor (BOP) that connected to the cut pipe, and placing a new valve with sealing capability on the BOP, would seal the leak and prevent future leaks, which was unlike BP's previously-attempted solutions (such as the LMRP cap) that caused half of the oil to continue leaking into the sea.

Plaintiff sent his proposal illustrating his "flange on flange" method to BP on June 10, 11, and 25, 2010.

BP acknowledged receiving Plaintiff's proposal in June 12 and July 2, 2010 email replies, and in a September 2, 2010 reply letter to plaintiff. But BP

refused to compensate plaintiff for the detailed proposal he provided. So plaintiff sued BP in the district court, asserting breach of contract and "misappropriation" of his proposal to stop the problematic leak, and alleging that his proposal, which was novel to BP, led to BP's use of its "capping stack and transitional spool" on July 10, 2010 that finally succeeded in stopping the catastrophic spill.

The Rulings Below

BP did not file an answer to plaintiff's Complaint, nor was any discovery conducted. Instead, BP filed a Motion to Dismiss for Failure to State a Claim under Fed. R. Civ. P. 12(b)(6). The district court granted the motion without oral argument, ruling that plaintiff's Complaint could not make out any plausible claim. App. 12. With regard to breach of contract, the court said that "the complaint fails to plausibly allege any facts from which it can be reasonably inferred that BP agreed it would pay Boateng for such use." App. 14. With regard to plaintiff's "misappropriation" claim, the court agreed with BP that the legal theory failed to state a claim under Louisiana state law. App. 15. The court rejected any claim for unjust enrichment as well:

> Boateng's complaint provides only vague descriptions of what he submitted to BP. In his opposition brief, however, Boateng states that his plan "called for the removal of the bolts so the cap-head could be removed and replaced with a valve. That valve then could be either shut off to stop the leak or connected to a new pipe to pump the oil to the surface." (Opp'n at 5, Rec. Doc. 18). Attached to Boateng's opposition

> are images depicting the proposal he allegedly submitted to BP, as well as images of the capping stack actually used by BP to stop the discharge. (Rec. Docs. 18-2, 18-4). Since this additional material is presented by Boateng, the Court will treat it as if it was included in the complaint for purposes of the instant motion.
>
> The Court finds that Boateng's complaint, including the additional descriptions and images included in his opposition, fails to establish that he conferred an actual benefit upon BP. Boateng's proposal was to unscrew the bolts of a flange and place a valve on top of the blowout preventer. The capping stack and transition spool actually used by BP were far more complex. Boateng's own exhibit depicting images of BP's device next to Boateng's proposed valve reveal that Boateng's proposal was a far cry from what was actually used. [App. 16-17]

The Court of Appeals affirmed the dismissal of plaintiff's lawsuit but not based on the motion to dismiss analysis the district court conducted. Rather, the Court of Appeals said that summary judgment was proper. "Although the district court seemed to dismiss Boateng's claims under Rule 12(b)(6), the district court implicitly granted a summary judgment motion by considering matters beyond the pleadings," the Court of Appeals said, stating that plaintiff opposed BP's motion to dismiss in the district court not only by citing allegations of his Complaint but by submitting to the district court evidence beyond his pleading (the "images depicting the proposal he allegedly submitted to BP, as

well as images of the capping stack actually used by BP to stop the discharge" about which the District Court said, "Since this additional material is presented by Boateng, the Court will treat it as if it was included in the complaint for purposes of the instant motion"). App. 2-4. The Court of Appeals then proceeded to apply a summary judgment standard to assess the evidentiary sufficiency of plaintiff's claims:

> Boateng's critical evidence cannot reasonably support an unjust enrichment claim because the evidence fails to support a finding that BP was enriched. Boateng's critical evidence is a three-page PowerPoint that he sent to BP. It contains crudely annotated Clipart-esque pictures and extremely brief descriptions of his plan to cap the oil spill. His plan for stopping the leak "called for the removal of the bolts so the cap-head could be removed and replaced with a valve. That valve then could be either shut off to stop the leak or connected to a new pipe to pump the oil to the surface." *Boateng v. BPI, No. 11-1383, slip op. at *3 (E.D. La. Aug. 15, 2018).* Yet, Boateng also submitted BP's technical briefing discussing the actual capping process. The process described by BP is far more complex, nuanced, and specific, and only has—at most—surface-level similarities to Boateng's plan. It would be unreasonable for a juror to believe that Boateng's superficial input conferred any benefit to BP, whose highly-skilled engineers were struggling to cap a complex oil spill thousands of feet underwater. We conclude that Boateng's critical evidence in this case

> cannot support an unjust enrichment claim and summary judgment in favor of BP is appropriate. [App. 7]

The Court of Appeals concluded, "[a]lthough BP initially moved for dismissal under 12(b)(6), the district court implicitly converted BP's dismissal motion into one seeking summary judgment by granting Boateng's request to consider matters outside the pleadings. Summary judgment in favor of BP is appropriate here because Boateng's evidence cannot support his claim that he conferred a benefit upon BP. Additionally, because Boateng's claim is meritless, any error in denying him leave to amend was harmless. Accordingly, we AFFIRM the district court's grant of summary judgment and DENY Boateng's motion for leave to amend." App. 8.

REASONS FOR GRANTING THE PETITION

I. Can a *Court of Appeals* treat a Rule 12(b)(6) motion to dismiss as a converted motion for summary judgment under Rule 12(d) when the district court itself decided the motion as one to dismiss under Rule 12(b)(6) and did not treat the motion as one converted to summary judgment pursuant to Rule 12(d)?

The BP defendants filed a motion to dismiss under Rule 12(b)(6). The district court treated BP's motion as one to dismiss, ruling that plaintiff's Complaint failed the "facial plausibility" standard of Ashcroft v. Iqbal, 556 U.S. 662, 678–79, 129 S. Ct. 1937, 1949–50, 173 L. Ed. 2d 868 (2009) and Bell Atl. Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007).

The district court did not mention anything about assessing the sufficiency of plaintiff's *evidence* per a Rule 12(d) conversion/Rule 56 summary judgment procedure. The district court assessed only the sufficiency of the pleading. Yet on appeal, the Court of Appeals said that the district court "implicitly granted a summary judgment motion by considering matters beyond the pleadings," then ruled – on appeal, "Summary judgment in favor of BP is appropriate here because Boateng's evidence cannot support his claim that he conferred a benefit upon BP." App. 7.

The Court should grant this Petition to clarify that this was improper under the Federal Rules of Civil Procedure and the core notice requirement of the underlying Due Process Clause. Rule 12(d) provides that if "matters outside the pleadings are presented to and not excluded by the court" then the motion to dismiss should be treated as one for summary judgment. The "court" to which the Rule refers is the district court, not a court of appeals.

When the district court did not consider the motion to dismiss as one converted to summary judgment, the parties cannot be considered to have received the "reasonable opportunity to present all the material that is pertinent to the motion" that Rule 12(d) mandates. This notice is critical. See, e.g., Castle v. Cohen, 840 F.2d 173, 179–80 (3d Cir. 1988) (vacating summary judgment when the district court converted a Rule 12(b)(6) motion without notice to the parties).

The Court should clarify Rule 12(d)'s operation for lower courts.

In addition to the Fifth Circuit in this case, two other circuit courts have followed similar improper procedures. In Hirrill v. Merriweather, 629 F.2d 490, 495 (8th Cir. 1980), the district court considered and granted a motion to dismiss. The Eight Circuit Court of Appeals found one claim sufficient to survive the Rule 12(b)(6) analysis but ruled the claim would be dismissed on summary judgment for failure of evidence: "we would ordinarily remand the case for further consideration as to Count II … From our consideration of the record as a whole, however, we are satisfied that the pension claim set out in Count II is wholly without merit, and that further proceedings in the district court would be a waste of time and effort. For the sake of clarity, we will say that we treat the case as to Count II as though the defendants had filed a motion for summary judgment under Fed. R. Civ. P. 56(b)3 and we will apply Rule 56 standards." Like the Court of Appeals' ruling in Mr. Boateng's case, the Court of Appeals' application of Rule 12(d) to effectively convert a motion to dismiss into one for summary judgment in the appeals court misapplies Rule 12(d) and violates the core notice requirements of the Rule and the Due Process Clause.

The Tenth Circuit also followed this improper procedure in Alexander v. Oklahoma, 382 F.3d 1206, 1213–15 (10th Cir. 2004). Again, the district court assessed the plaintiffs' claims under Rule 12(b)(6). But the Court of Appeals said that "because the court considered materials outside the complaint in making its rulings, we must apply a summary judgment standard of review[.]" The Court of Appeals said that a "*de facto* conversion occurred because (1) both parties

presented material to the court which went beyond the four corners of the complaint and (2) the court referenced at least some of those materials in its order." The Court of Appeals rejected the plaintiffs' contention "that although the parties provided additional materials, the court did not rely on them. They maintain that this lack of judicial reliance, and the fact that the parties mentioned outside materials only in passing, prevents us from altering the court's analysis under Rule 12(b)(6)." The Court of Appeals said that it was sufficient – notice-wise – that the district court "relied on" material beyond the pleadings "in rendering its decision." "While '[t]he court cannot convert a motion to dismiss to a motion for summary judgment without notice, unless the opposing party has responded ... by filing his own affidavits[,]' … we find such a conversion permissible here because Plaintiffs were both on notice of the possibility of conversion and provided their own affidavit to the District Court…" (*citing* Arnold v. Air Midwest, Inc., 100 F.3d 857, 859 n.2 (10th Cir. 1996) ("Because [the non-movant] submitted material beyond the pleadings in opposition to defendants' motion, he is scarcely in a position to claim unfair surprise or inequity")).

We submit that such a procedure by a court of appeals contravenes the notice required by Rule 12(d) and by Rule 56 (which Rule 12(d) says governs upon conversion), and violates the core notice principles of the Due Process Clause. Beckles v. United States, 137 S. Ct. 886, 898, 197 L. Ed. 2d 145 (2017). Even Mr. Boateng's appellate counsel did not address whether conversion was proper because the district court did not state that such a conversion had occurred. The

Court of Appeals simply treated the case as one converted to summary judgment when it rendered its appeal decision. App. 3-7. This Court should grant this Petition to clarify that Rule 12(d) does not permit a court of appeals to consider a case as having been converted from a motion to dismiss to a motion for summary judgment where the district court did not consider such a conversion to have occurred and where the district court assessed the defendant's motion only as a motion to dismiss under the Rule 12(b)(6) standard.

II. Does the non-movant's presentation to the district court of materials beyond the complaint alone satisfy the "reasonable opportunity" of Rule 12(d), or is something more required?

The Court of Appeals said that because plaintiff opposed defendant's motion to dismiss in the district court not only by citing the allegations of his Complaint but by submitting evidence beyond the pleading, this constituted an "implicit" Rule 12(d) "conversion" to summary judgment. But as stressed above, the district court itself did not treat defendants' motion as one for summary judgment, let alone provide notice to either party that plaintiff's Complaint was being assessed not just for the viability of the pleading but for the sufficiency of the evidence supporting it. There was no notice to plaintiff that he was required to come forth with such sufficient evidence showing that a reasonable jury could find in his favor at a trial. The district court did not even hold oral argument on the motion to dismiss.

The Court should clarify the "reasonable opportunity" that Rule 12(d) mandates. Is notice from the district court to the parties that the motion to dismiss will be converted to one for summary judgment required? Does something less suffice? We submit that Rule 12(d)'s "reasonable opportunity" at least requires more than the non-movant's mere presentation of evidence beyond the pleadings – something in the record confirming that the non-movant (in particular) was aware that the district court was assessing not just the sufficiency of the pleading but the sufficiency of the evidence supporting the claims, *and* that this was the non-movant's burden to show in order to avoid dismissal of his case. None of this occurred in Mr. Boateng's case below.

Clarification is needed because circuit courts are split on the issue of what satisfies Rule 12(d), with several decisions causing inconsistent results. As the First Circuit has recognized, "some circuits require that the parties be expressly notified of the district court's intention to convert a Rule 12(b)(6) motion into a motion for summary judgment and strictly enforce this notice requirement" (citing Moody v. Town of Weymouth, 805 F.2d 30, 31 (1st Cir. 1986)).

The Eleventh Circuit has noted that "although not expressly required by Rule 12, in total fairness to the parties, the better practice is for the trial judge to notify the parties that a Rule 12(b)(6) ... motion is to be treated as a motion for summary judgment whenever the trial judge considers matters outside the pleadings." Griffith v. Wainwright, 772 F.2d 822, 825 (11th Cir. 1985) (*citing* 6 Moore's Federal Practice

¶ 56.14 [1], pp. 56–353 to 56–354 n. 14). Older cases within the circuit have noted the prior ten day notice requirement and enforced such notice for converted motions: "It is clearly the law in this circuit that whenever a district judge converts a 12(b)(6) motion to dismiss into one for summary judgment by considering matters outside the pleadings the judge must give all parties ten-days notice that he is so converting the motion." Donaldson v. Clark, 819 F.2d 1551, 1555 (11th Cir. 1987).

The Third Circuit has reasoned similarly: "We have previously held that when no hearing is conducted, the court's order converting Rule 12(b)(6) and Rule 12(c) motions into summary judgment motions must be unambiguous." Rose v. Bartle, 871 F.2d 331, 341 (3d Cir. 1989). The Third Circuit stressed that "it would be desirable in the interest of clarity for an order to notify expressly the parties that the court was converting a motion to dismiss into one of 'summary judgment' or that the ruling would be pursuant to 'Rule 56…'" Rose, 871 F.2d at 342.

As noted above, the Tenth Circuit Court of Appeals followed the improper conversion procedure in Alexander v. Oklahoma, 382 F.3d 1206, 1213–15 (10th Cir. 2004), yet other Tenth Circuit cases have stressed, "[a] motion to dismiss pursuant to Rule 12(b)(6) is treated as a motion for summary judgment when premised on materials outside the pleadings, and the opposing party is afforded the same notice and opportunity to respond as provided in Rule 56." Hall v. Bellmon, 935 F.2d 1106, 1110–11 (10th Cir. 1991). "The provisions of Rule 56(c) for notice to the opposing

party and an opportunity for him to serve opposing affidavits are mandatory. Noncompliance therewith deprives the court of authority to grant summary judgment" (citing Torres v. First State Bank of Sierra Cty., 550 F.2d 1255, 1257 (10th Cir. 1977)); but see Alexander, 382 F.3d 1206 (district court, in dismissing civil rights action for failure to state a claim, relied substantially on materials outside the complaint, and therefore plaintiffs' accrual claim would be reviewed on appeal under a summary judgment standard; plaintiffs were on notice of the possibility of conversion of the motion to dismiss to a motion for summary judgment, inasmuch as city filed its motion to dismiss in the alternative as one for summary judgment, and plaintiffs provided their own affidavit to the court, in which they addressed the summary judgment standard).

Other circuits do not require notice or even confirmation in the record that the non-movant was aware that summary judgment was occurring, taking a "more pragmatic," "less formalistic" approach and treating any error in failing to give notice as harmless. Despite what the First Circuit has recognized in other cases, the First Circuit has said, "[i]n some circumstances we have … 'treat[ed] any error in failing to give express notice as harmless when the opponent has received the affidavit and materials, has had an opportunity to respond to them, and has not controverted their accuracy.'" See Bos. Celtics Ltd. P'ship v. Shaw, 908 F.2d 1041, 1050 (1st Cir. 1990) (noting where no potential disputed material issue of fact exists, summary judgment will not be disturbed

"even though the district court disregarded the procedure which should have been followed"').

The Eighth Circuit appears to follow this approach, see, e.g., Kaestel v. Lockhart, 746 F.2d 1323 (8th Cir. 1984), Hirrill, 629 F.2d 490 (where it appeared from consideration of record as a whole that plaintiff's case lacked merit, court of appeals would treat case as though defendants, who had moved for dismissal for failure to state claim upon which relief could be granted, had filed motion for summary judgment, and standards of rule 56 of these rules would be applied).

The Seventh Circuit follows a similar approach. See, e.g., Lazzara v. Howard A. Esser, Inc., 802 F.2d 260, 272 (7th Cir. 1986) ("Although Esser may not have received proper notice that the district court was treating the motion to dismiss as a motion for summary judgment, any error was harmless on the facts of this case"); Milwaukee Typographical Union No. 23 v. Newspapers, Inc., 639 F.2d 386, 391 (7th Cir.), cert. denied, 454 U.S. 838, 102 S. Ct. 144, 70 L.Ed.2d 119 (1981).

The Fourth Circuit has followed this approach, too, see, e.g., Johnson v. Pennsylvania Wire & Rope Co., 867 F.2d 608 (4th Cir. 1989) ("We acknowledge that Fed. R. Civ. P. 56 requires a motion by one, or both, of the parties, prior notice of the motion hearing, and the hearing, itself. However, this Court has approved sua sponte orders of summary judgment where the purposes of Rule 56—notice and an opportunity to be heard—are achieved"). The Fourth Circuit has recognized, however, "that some of the circuits take a different view" (citing Clark v. Tarrant Cty., Texas, 798

F.2d 736 (5th Cir. 1986); Griffith, 772 F.2d 822; Brobst v. Columbus Servs. Int'l, 761 F.2d 148 (3d Cir. 1985)), "but we think a better view is that a district court can, in rare cases, act on its motion in this regard."

The Sixth Circuit follows this same rationale. Hoopes v. Equifax, Inc., 611 F.2d 134, 136 (6th Cir. 1979).

The Second Circuit's more recent decision in Sahu v. Union Carbide Corp., 548 F.3d 59, 67-70 (2d Cir. 2008), illustrates the clarity needed about Rule 12(d)'s notice requirement. In Sahu, the district court did not notify the parties before converting the Rule 12(b)(6) motion into a motion for summary judgment, reasoning as several of the circuits have that the plaintiffs were "on notice of a possible conversion" because the parties "submitted matters outside the pleadings" and the plaintiffs entitled their opposition to the defendants' motion to dismiss "Memorandum of Law in Opposition to Motion to Dismiss and/or for Summary Judgment...." Sahu v. Union Carbide Corp., 418 F. Supp. 2d 407, 411 (S.D.N.Y. 2005). The Court of Appeals "disagree[d] with the district court's conclusion that the plaintiffs received sufficient notice" under Rule 12(d) but only after a difficult analysis trying to distinguish between when a motion to dismiss has been properly converted to a motion for summary judgment, and when it has not, concluding that the plaintiff's "extrinsic evidence" submitted to the district court was "not meant to counter a possible future motion for summary judgment brought by the defendants under Rule 56:"

> While the defendants' submissions—including the defendants' memorandum of law in support

of their motion to dismiss, which discussed much of this evidence at length—gave the plaintiffs notice that the defendants wanted the motion changed to one for summary judgment, and gave the district court the opportunity to consider the extrinsic evidence they submitted before ruling, the plaintiffs could not have known whether the court would in fact consider them, or would convert the motion into one for summary judgment in order to do so….

We think that the title of the defendants' memorandum in support of its motion as a motion to dismiss or for summary judgment similarly failed to provide the plaintiffs with adequate notice. A motion called a motion for summary judgment, whether or not stated as alternatively for dismissal, ordinarily will place a plaintiff on notice that the district court is being asked to look beyond the pleadings to the evidence in order to decide the motion. In this case, however, where the plaintiffs had filed a multi-count complaint and the supporting memoranda and evidence can fairly be read to seek only dismissal under Rule 12(b)(6) on some counts and summary judgment on others, the motion papers provided insufficient notice. The plaintiffs should have been made aware that all counts could or would be decided under the summary judgment standard in order to give them the opportunity to oppose the motion with evidence and a focused argument.

The Second Circuit's decision in Sahu shows that the analyses conducted in the lower courts produces inconsistent applications of Rule 12(d)'s fundamental notice requirement. As the Second Circuit has stressed, "care should, of course, be taken by the district court to determine that the party against whom summary judgment is rendered has had a full and fair opportunity to meet the proposition that there is no genuine issue of material fact to be tried, and that the party for whom summary judgment is rendered is entitled thereto as a matter of law." First Fin. Ins. Co. v. Allstate Interior Demolition Corp., 193 F.3d 109, 115 (2d Cir. 1999). The plaintiff must be "aware that they were in danger of an adverse grant of summary judgment based on the submissions prior to the district court's order converting the motion and then deciding it." This lack of notice harmed Mr. Boateng's case– where no discovery was conducted regarding the link between plaintiff's proposal and the solution that BP employed to stop the oil leak – yet his lawsuit was dismissed for failure of evidence. See, e.g., Klocke v. Watson, 936 F.3d 240, 246 (5th Cir. 2019), as revised (Aug. 29, 2019) ("Summary judgment motions are normally resolved after the discovery process has concluded or sufficiently progressed"). The Court should grant this Petition to reconcile the inconsistent applications of Rule 12(d)'s "reasonable opportunity" requirements in the lower courts. The Court should clarify that a district court must provide notice to the parties that it is considering a Rule 12(b)(6) motion to have been converted to a summary judgment motion. The record must confirm that the non-movant, in particular, was aware that the district court was assessing not just the sufficiency of his pleading but

the sufficiency of the evidence supporting his claims, and that this was the non-movant's burden to demonstrate in order to avoid dismissal of his lawsuit.

CONCLUSION

The Court should grant this Petition for a Writ of Certiorari and, we respectfully submit, reverse and remand back to the district court for reinstatement of plaintiff's Complaint and discovery on his claims.

Respectfully submitted,

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