

20-5061

No.-----

ORIGINAL

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**IN THE**  
**Supreme Court of the United States**

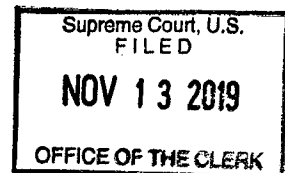
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**PHILIP EMIABATA**

**Petitioner,**

**v.**

**BB & T (BRANCH BANKING AND TRUST CO.,) JACQUE DOLOTINA,**  
**Asst. Manager at BB&T Co.**

**Respondents.**



.....  
**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES**  
**COURT OF APPEALS FOR THE FOURTH CIRCUIT**

-----  
***PETITION FOR A WRIT OF CERTIORARI***

-----  
**PHILIP EMIABAT:**

**Pro se Petitioner of Record.**

**508 Evening Grosbeak Dr.**

**Pflugerville TX 78660.**

**512-791-2395. Email Address: philipemiabata@yahoo.com.**

## **QUESTION PRESENTED**

- 1. Whether the district court is required under Rule 12(d) of the Federal Rule of Civil Procedure to either exclude matters outside the pleadings or to give notice that the motion would be converted to a motion for summary judgment under Rule 56; whether the failure to give notice violated Emiabata,s due process rights. The Four Circuit in here Decision Conflicts with this Court's Precedents.**
- 2. Whether denying a pro se litigant leave to ament the complaint is a violation of Rule 12(d)/Rule 56(d), and whether when denying a pro se litigant leave to amend the complaint as in here, a district court must provide a reason for that denial (as held by the Third, Seventh, Ninth, Eleventh, and D.C. Circuits),or whether a district court need not provide a justifying reason when denying a pro se litigant leave to amend the complaint if that reason is apparent from an analysis of the record(as held by the First, Fourth, Fifth, and Tenth Circuits). The question presented is:**

**May a federal court ever grant a motion for relief from judgment under Federal Rule of Civil Procedure in violation of Rule 12(d) or Rule 56(d) in a case involving legal error?**

## TABLE OF CONTENTS

QUESTION PRESENTED.....	i
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES.....	ii-iv
TABLE OF CASES.....	ii-iii

STATUTES, RULE AND CONSTITUTIONAL PROVISION.....	iv
--	----

PETITION FOR A WRIT OF CERTIORARI.....	1
--	---

PARTIES AND RULE 29.6 STATEMENT.....	2
--------------------------------------	---

OPINIONS AND ORDER BELOW.....	2-3
-------------------------------	-----

JURISDICTION.....	3
-------------------	---

STATEMENT OF THE CASE.....	3
----------------------------	---

REASONS FOR GRANTING THE WRIT.....	7
------------------------------------	---

1. This court should grant the writ and clarify that Rule 12(b)(6) does not permit dismissal of claim by considering matters outside the pleading to resolve disputed issues of material facts and failure to comply with Rule 12(d) violates a plaintiff's rights to procedure due process.....	8
--	---

11. The FOUR CIRCUIT Decision Conflicts with this Court's Precedents Appendix...	3
--	---

CONCLUSION.....	19
-----------------	----

### APPENDIX

A. Fourth Circuit Affirmed.....	1
---------------------------------	---

B. District Court Decision.....	2
---------------------------------	---

C. District Court Memorandum Opinion.....	3.
---	----

II

TABLE OF AUTHORITIES

Cite	TABLE OF CASES	Page
Bell Atl. Corp. v. Twombly .		
550 U. S. 544, 570 (2007).....		7
Ashcroft v. Iqbal.		
556 U.S. 662, 129 S. Ct. 1937 (2009).....		8
Conley v. Gibson,		
355 U.S. 41, 78 S. Ct. 99 (1957).....		8
Property Management & Investments, Inc. v. Lewis,		
752 F. 2d 599, 604 (11 th Cir. 1985).....		9
Carter v. Stanton,		
405 U. S. 669, 671, 92 S. Ct. 1232 (1972).....		9
Samkowski v. Carter,		
416 U. S. 918, 94 S. Ct. 191 (1987).....		9
Celotex Corp. v. Catrett,		
477 U.S. 317, 326; 106 S. Ct. 2548 (1986).....		10
Finn v. Gunter,		
722 F. 2d 711(11 th Cir. (1984).....		10
Nelson v. Adams USA, Inc.,		
529 U. S. 460, 465; 120 S. Ct. 1579 (2000).....		11
Lomax v. Armontrout,		

### III

923 F. 2d 574, 575 (8 th Cir.).....	13
Burrell v. Newsome,	
883 F. 2d 416, 417 (5 th Cir.).....	14
Lopez v. General Motors Corp	
697 F. 2d 1328, 1332 (9 th Cir, 1983).....	14

**TABLE OF AUTHORITIES CONT**  
**STATUTES, RULES AND CONSTITUTIONAL PROVISIONS**

Cite

Page

Constitution of the United States

Amendment XIV, Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Federal Rules of Civil Procedure

Rule 12(b)(6).....3,7,8...

(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:

- (1) lack of subject-matter jurisdiction; (2) lack of personal jurisdiction;  
 (3) improper venue; (4) insufficient process; (5) insufficient service of pro  
 (6) failure to state a claim upon which relief can be granted; (9) failure  
 to join a party under Rule 19.

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or

objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

iiv.

## TABLE OF AUTHORITIES CONT

### STATUTES, RULES AND CONSTITUTIONAL

Cite

page

Federal Rules of Civil Procedure

Rule

12(d).....7,8,9,10,11;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.

Federal Rules of Civil Procedure

Rule

15 (a)(2) In all other case, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so require .

## **PROTECTION OF THE LAW:**

28 U.S.C. Section 1331 and Petitioner filed this Appeal Pursuant to Federal Rule of Appellant Procedure Rule 26 computing of time. As Appellant or Petitioner is a paper filer.

## **QUESTION PRESENTED**

1. Whether the district court was required under Rule 12(d) of the Federal Rule of Civil Procedure to either exclude matters outside the pleadings or to give notice that the motion would be converted to a motion for summary judgment under Rule 56; whether the failure to give notice violated Emiabata's due process rights.
2. Whether denying a pro se litigant leave to ament the complaint is a violation of Rule 12(d)/Rule 56(d), and Whether when denying a pro se litigant leave to amend the complaint, a district court must provide a reason for that denial (as held by the Third, Seventh, Ninth, Eleventh, and D.C. Circuits), or whether a district court need not provide a justifying reason when denying a pro se litigant leave to amend the complaint if that reason is apparent from an analysis of the record(as held by the First, Fourth, Fifth, and Tenth Circuits).



3. Whether a district court need not provide or applied Houston/ Extending Houston to out of States pro se litigant Complaints pursuant to Statute of limitations within the state one-year statute of limitation (in Statute of limitations)[Mailbox Rule] and whether the method pro se litigant used in filing is Complaint (Overnight mail) was Discriminated against , in here whether the District/Appellate Court has so far departed from the accepted and usual course of judicial proceedings

### **PARTIES AND RULE 29.6 STATEMENT**

The caption of this case contains the names of the parties who participated in the proceedings below and no corporate disclosure statement is necessary on Emiabata's behalf.

### **OPINIONS AND ORDERS BELOW**

The district court issued Memorandum Opinion and Order on December 13, 2018 dismissing Emiabata's complaint for failure to state a claim under Fed. R. Civ .P. 12(b)(6) in dismissing plaintiff's complaint, the district court concluded that Emiabata had failed to sufficiently plead or otherwise prove that he conferred a substantial benefit upon respondents also further held that complaint is facially time-barred.,[notwithstanding that Emiabata's, Mail its Complaint via Overnight mail on June 6, 2017 Evidence had it so.] (Document 63). (App...) The Fourth Circuit Court of Appeal

agreed with the district court(App..). The Court of Appeal concluded there was no plausible factual basis for Emiabata's assertion that he conferred an actual benefit on respondents.(App...) The Court of Appeals also held that Emiabata's Complaint was time-barred.,(Notwithstanding with Evidence that Petitioner Mailed its Complaint via Overnight Mail on June 6, 2017.). The Court of Appeals also in here held that Emiabata's ideas were not developed enough to be ready for immediate use.(App...). The Court of Appeals further concluded that there were defects in Emiabata's complaint that could not be cured by amendment.(App...)The Fourth Court of appeals issued its unpublished opinion on August 15, 2019.

The district court issued judgment on December 13, 2018 (Document 64)

### **JURISDICTION**

This Court has jurisdiction under 28 U. S. C. Section 1254(1) to review the Circuit Court's decision on Writ of Certiorari.

### **STATEMENT OF THE CASE**

This case arose from an account opened with BB&T bank branch in Round Rock, Texas, by Plaintiff's, the facts as see in alleged in the complaint, and as laid out in the district court's order (Doc. 43 at 2-3), on June 6, 2016, Dolotina a bank employee precluded Emiabata's wife, Sylvia, from withdrawing

funds from Plaintiff's and is wife joint account because it had been flagged for fraud. (Doc. 2 at 7-8) in here Sylvia called Plaintiff Mr. Emiabata to explain the situation. (id.) When the phone was on loudspeaker, Plaintiff told Dolotina he "might have a legal action and that[he] might sue the bank for damages" (id. At 8.)[see plaintiff's complaint in-corporate with reference] Dolotina called the police, Claiming that she heard Plaintiff's say he would "come to the bank to shoot the bank." (id. At 7.) As a result, BB&T WROTE plaintiff a letter that banned plaintiff for life., at the time of this Petition, Petitioner is still Banned., and Plaintiff's was subjected to a criminal investigation. (id. At 7-8.) in here if not due to the good work of the said Police., Plaintiff's Africa-American here in South, would have been in prison through or by the lawful action of these respondents.

**On June 6, 2017, Plaintiff's Emiabata Filed a complaint against BB&T and Dolotina via Overnight Mail, see plaintiff exhibit of mailing receipt file with District Court also in with Appeals Court. Showing that plaintiff mailed its complaint via overnight mail on June 6, 2017 supra.**

The Court Clerk only docketed Plaintiff Complaint on June 9, 2017, in here Plaintiff's filed complaint against BB&T and Dolotina alleging false light, libel, and slander. (id.) Plaintiff Pro se Original Complaint. The court subsequently only allowed pro se Plaintiff to amend the complaint to properly allege subject-matter jurisdiction, regards Dolotina .( Docs. 19, 20 et

al.) July 31, 2018, the court granted Dolotina' motion to dismiss for insufficient service and lack of personal jurisdiction [in here notwithstanding that Dolotina was acting on behalf of BB&T as asst. manager] in here BB&T Service Was Sufficient. Here again the district court granted BB&T's motion to dismiss all claims except slander for failure to state upon which relief can be granted. (Doc. 43.)

In here pro se Plaintiff's filed it first motion for leave to file amended complaint in the remained SLANDER for failure to state upon which relief can be granted. (Doc. 43.) This motion for leave to Amended was denied for been Time- Barred.

The amended complaint that was denied included numerous Exhibits. Leave to amend the complaint was denied and respondents answered the amend complaint as time-barred and renewing the motion to dismiss for failure to state a claim. Both the plaintiff's original complaint and Amended complaints were filed in pro se. The district court then granted BB&T motion's to dismissed without the district court issuing a Rule 12(d) in here no order giving notice to pro se Plaintiff's that the motion to dismiss would be considered under Rule 56. The pro se plaintiff amended complaint that was filed, and Plaintiff also filed an affidavit and numerous exhibits. Which showed several striking , (1) Defamation per se ; (2) Slander per se; (3) Life Banned; (4) Breach of Contract; (5) Bad-Faith Dealing; (6) Invasion of Privacy; (7) Deliberate Infliction of Emotion Distress;(8) Tortuous Interference with a Contract in both

Individual Defendants personal and professional capacities' . These and numerous other documents raised disputed issues of fact with regard to the genesis of issues.

The trial court did not issue Rule 12(d) notice and although the district court considered documents and evidence outside the four corners of the complaint, in here the District court dismissed the complaint under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief could be granted. (App...).

Plaintiff's Emiabata's timely appealed the dismissal with prejudice cause plaintiff's complaint was time barred to the Court of Appeals for the Fourth Circuit. (App...) Plaintiff's Emiabata's argued, in part, that the district court erred in dismissing the complaint under 12(b)(6) because it considered evidence outside the margins of the complaint and, in doing so, resolved disputed issues of fact., and Pro se Plaintiff's argued, in part, that the district court erred in dismissing the complaint for time-barred as plaintiff's mailed its complaint via overnight mail on June 6, 2017 because the district court failed to extend the Houston, mailbox Rule to plaintiff's Complaint. The Court of Appeals failed to consider that argument and without oral argument, affirmed the dismissal under 12(b)(6). (App...) and Plaintiff's complaint to be time-barred. The Court of Appeals held that the de novo standard of review would apply because it was reviewing grant of a 12(b)(6) motion.

The court went to conclude that Plaintiff's 8 counts claims were insufficiently pleaded and there was no plausible factual

basis for his allegation that he conferred an actual benefit on BB&T/Dolotina. The court further held that Plaintiff's Emiabata's ideas were not sufficiently developed or concrete to be ready for immediate use and respondents extensively modified or completely changed any ideas Mr. Emiabata may have provided., Plaintiff's complaint was time-barred. Finally, the court held that the district court did not abuse its discretion by concluding that there were defects in Emiabata's complaint that could not be cured by amendment. In spite of a clear record and argument that the district court considered reams of evidence outside the pleadings and resolved disputed issues of fact, the Court of Appeals summarily affirmed the district court's errors. (App...)

### **REASONS FOR GRANTING THE WRIT**

1. This Court should grant the writ and clarify that Rule 12(b)(6) does not permit dismissal of a claim by considering matters outside the pleadings to resolve disputed issues of material facts and failure to comply with Rule 12(d) violates a plaintiff's rights to procedural due process.

In May 2007, the Court altered the way federal courts approach motions to dismiss under Federal Rule of Civil Procedure 12(b)(6) with its decision in **Bell Atlantic Cop. V. Twombly**. The court considered in detail what a complaint must contain to survive a motion to dismiss for failure to state a claim pursuant to **Fed. R. Civ. P. 12(b)(6)**. in the process, Twombly construed the standard set more than 50 years earlier

in **Conley v. Gibson** that, “a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. **Twombly** adopted a more movant-friendly standard, requiring a complaint to allege facts that, if proven, would support the relief requested and to show that the alleged facts were “enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true.

Though **Twombly** marked a clear departure from prior liberal federal pleading standards, conflict remained as to the legal standard governing **Rule 12 (b)(6)**. It was uncertain whether the **Twombly** standard only applied to antitrust cases or to all motion to dismiss for failure to state a claim and whether **Twombly** set forth a new pleading standard. That uncertainty created by **Twombly** was put to rest by the May 2009 decision in **Ashcroft v. Iqbal**. This decision provides a great deal of guidance in resolving these issues raised by **Twombly**. **Iqbal** held that **Twombly** was not limited to antitrust disputes. Such a narrow reading, the Court reasoned, would go against the Federal Rules of Civil Procedure. **Iqbal** made plain that the **Twombly** analysis applies “in all civil actions and proceedings in the United States district courts. In doing so, **Iqbal** makes it clear that **Twombly** applies to all cases governed by the Federal Rules of Civil Procedure. Under **Twombly** and **Iqbal**, a claim as in here is plausible on its face if the complaint

contains sufficient facts for a court to draw an inference that the defendant is liable for the alleged misconduct.

Although **Twombly and Iqbal** modified the standard to be applied in determining whether a complaint is sufficient to overcome a motion to dismiss under **Rule 12(b)(6)**, as in here, **Rule 12(d)** was not modified and remains in effect. In here too, **Under Rule 12(d)**, “If, on motion under **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 motion.” In this case, there was a clear and classic procedural failure to adhere to the dictates of **Rule 12(d)**.

The district court clearly had discretion to consider matters outside Emiabata’s complaint.[1] However, there are limitations on the exercise of that discretion. If the court exercises that discretion and in fact considers outside matters i.e., if the judge does not exclude them as in here, Rule 12(d) requires the judge to comply with the requirements of Rule 56[2].

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[1] *Property Management & investments, Inc. v. Lewis*, 752 F.2d 599, 604 (11 th Cir. 1985)

[2]. *Carter v. Stanton*, 405 U.S. 669, 671, 92 S. Ct. 1232 (1972), vacated on other grounds, sub nom. *Samkowski v. Cater*, 416 U.S.918, 94 S. Ct. 191 (1974)



Rule 12(d) required that Emiabata's be given a reasonable opportunity to present material that is relevant to a converted motion to dismiss. Moreover, because Rule 12(d) triggers the procedural opportunities under Rule 56, the required notice would have given Emiabata the right to file a Rule 56(f) motion for additional time to pursue limited discovery[3]

In this case, the district court, as noted above, considered an excessive amount of material outside the pleadings and failed to comply with Rule 12(d) after the complaint was amended and a new motion to dismiss was filed. The district court was required, as a matter of procedure, to either give notice that it was excluding all of that material or that it was converting the Rule 12 (b)(6) motion to one for summary judgment. Also Rule 56 (d) required the district court gives Emiabata's a reasonable opportunity to present material that is relevant ...e.g. amend his complaint, pursue limited discovery. It failed to do so, and the Court of Appeals for the Fourth Circuit continued with that failure when it entered the cursory opinion affirming the district court's dismissal under Rule 12(b)(6). Notice to the parties that the motion to dismiss was being converted into a summary judgment motion never happened.[ notwithstanding that Emiabata's asked the district court to do so]. As the court in *Finn v. Gunter*, [4],

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[3]. *Celotex Corp. v. Catrett*, 477 U.S. 317, 326; 106 S. Ct. 2548 (1986); *Id.*, 477 U.S. 326 fn.6

[4] *Finn v. Gunter*, 722 F.2d 711 (11 th Cir. 1984)

Opinion: "What is important is that [the non-moving party] be given an opportunity to present every factual and legal argument available. Proper procedures must be followed. We will not speculate on what action the parties will take..."[5] It is effectively hornbook law at all levels of courts, that the Rule 12(b)(6) motion in this case should have been converted to a Rule 56 motion and Emiabata's was entitled to notice of the conversion. Emiabata's need not belabor the point except to note that this Court should not speculate on what action Emiabata's may have taken had the district court complied with Rule 12(d). The fact remains that the district court did not comply and therefore misapplied the law. The Federal Rules of Civil Procedure are designed to further the due process of law that the Constitution guarantees.[6] The district court's failure to follow the mandates of Rule 12(d) violated Emiabata's rights to procedural due process.

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[5] *Id.*, at 713.

[6]. *Nelson v. Adams USA, Inc.*, 529 U.S. 460, 465; 120 S. Ct. 1579 (2000)

### **RELEVANT FEDERAL RULES OF CIVIL PROCEDURE**

This case concerns the explanation and amendment, a district court must followed/given, when denying pro se litigants leave to amend their complaint. Federal Rule of Civil Procedure

15(a)(2) addresses amendments not made as a matter of course, and provides that:

In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so require as in here.

Fed. R. Civ. P. 15(a)(2). The facts remain that the district court did not comply and therefore misapplied the law.

**THE FOURTH CIRCUIT AFFIRMS THE DISTRICT COURT'S DENIAL OF PETITIONER'S COMPLAINT FOR TIME BARRED.**

Petitioner's timely appealed the district court order, dismissal of Petitioner's complaint for time-barred., in here Petitioner's arguing primarily that the district court's failure to provide or extended Houston, Mailbox Rule to Emiabata's Complaint In here the district court therefore misapplied the law., And Facts Remains that District Court Discriminate against the methods pro se litigant, Emiabata use in filing is complaint. Overnight mail (Federal Express with it mail receipt number **EL 537042237 US**) see Appellant Attached APPX001, Is the Federal Express mail Receipt used by Plaintiff-Petitioner's in mailing is complaint, hereby in-corporate with reference. As seen in this Federal Express Receipt, which is some of the Gravamen of this case, was filed in both Courts , in here this FEDERAL EXPRESS RECEIPT SHOWED AS FOLLOWING:

- (A). Sender Philip Emiabata, 508 Evening Grosbeak Dr.  
Pflugerville TX 78660.
- (B). Article Addressed to the clerk of court U. S. District Court  
42 W. Market street Greensboro, NC. 27401-2544.
- (C). Date Accepted 06/06/17
- (D). Time 4:21 pm
- (E). Postage \$23.75.

In here the district court and the Fourth Circuit erred in their decisions that Emiabata's Complaint was time-barred and when the district court refused to grant Plaintiff-Petitioner's motion for leave to amend on the grounds that Plaintiff-Petitioner's Complaint would be futile as time-barred. See district court Memorandum Opinion and Order Document 63 Filed 12/13/18 at page(14) first para. "As a result, Emiabata's slander claim is facially time-barred".

For the above foregoing plaintiff-petitioner's complaint was not facially time-barred if the district court apply the mailbox Rule [Houston] to pro se litigant pursuant to Statute of limitations within the state one-year statute of limitation. Here the district court abuse of discretion. See **Lomax v. Armontrout, 923 F.2d 574, 575 (8 th Cir.)**(Using the Houston rationale, the certificate of service on a pro se habeas petitioner's [as in here pro se out of state litigant]notice of appeal was used as the filing date to make the notice timely,

**Burrell v. Newsome, 883 F. 2d 416, 417 (5 th Cir.)**(Using the Houston rationale, was used as the filing date.

Finding amendment less than six weeks after complaint to be timely on like in here Petitioner's complaint which the clerk of the district court docket just about 3 days. [JUNE 9 , 2017]

When determining whether to allow amendment to add a nondiverse party, courts consider whether the amendment was attempted in a timely fashion,. See, e.g., **Lopez v. General Motors Corp., 697 F. 2d 1328, 1332 (9 th Cir. 1983)**. In this Plaintiff-Petitioner's present case, Emiabata filed is complaint via Over-night mail on June 6, 2017 which the district court clerk filed on June 9, 2017 [3 days]. This is not an unreasonable amount of time. In support Plaintiff-Petitioner's argument that is Complaint is not time-barred, see Appellant-Petitioner's Reply Brief at page (10 to 13) at page 10 "The Court dismiss with prejudice appellant complaint which is a harsh, for the court and the defendants counsel to claim that Appellant Complaint is time-barred here the Court erred without Apply Texas Rules of Civil Procedure., Rule 5; Rule 21; Mailbox law and due to the Harshness of judgment., In re Elmore, 227 F. 3d at 1011,..." page 11 "Here equitable tolling is applicable in this case. The doctrine applies here".

"situations in which, without fault by the Plaintiff, plaintiff was able to sue within the statutory Period (June 6, 2017) Plaintiff mail is complaint by the fastest mines, that is over-night mail".

Secondly if the district court apply Houston or the Equitable tolling to Plaintiff-Petitioner's Complaint, Plaintiff-Petitioner's Complaint will not be time-barred or futile. Separately, this case also is an excellent vehicle for the question presented because Petitioner's proposed amendment in the Second Amended Complaint that was denied by district court was not futile. Thus, application of the Fourth Circuit's rule to Petitioner's case should have resulted in reversal of the district court's decision because the record did not support a finding that the second amended complaint that was denied was futile.

### **THE QUESTION PRESENTED IS RECURRING AND IMPORTANT.**

#### **Whether a District Court Must Provide a Pro Se Litigant Sufficient Notice of Pleading Deficiencies Is an Important National Question.**

The question presented implicates fundamental principles of due process worthy of this Court's attention. The majority of pro se plaintiff in here including plaintiff's bring claims seeking protection of basic rights, including constitutional and civil rights claims. Bloom & Hershkoff, *supra*, at 479-81; David Rauma & Charles P. Sutelan, Analysis of Pro Se Case Filings in Ten U.S. District Courts Yields New Information, 9 FJC Directions 5, 5 (1996). The pool of pro se litigants disproportionately comprises women, minorities, in here which plaintiff is, and poor-groups [also in here is plaintiff's] historically subject to unfavorable treatment and to whom the courts have provided

legal protections and avenues of redress. See Doyle et al., supra, at 297-98. Nearly one-third of all complaints filed in federal court are filed by pro se litigants. See, e.g., U.S. Courts, U.S District Courts- Civil Pro Se and Non-Pro Se Filings by District, During the 12 Month Period Ending September 30, 2017, at 1[5]

The predominant reason these litigants proceed pro se is their inability to afford counsel. See, e.g., Hon. Jed S. Rakoff, Learned Hand Medal Speech (May 2 , 2018)

The increasing cost of counsel is problematic because as the federal judiciary knows firsthand, successfully proving a case in federal court without representation is extraordinarily difficult. See id. (noting most working-class Americans would not qualify as indigent, but cannot afford lawyers); see also Hon. Patricia M. Wald, Becoming A Player: A Credo for young Lawyers in the 1990s, 51 Md L Rev. 422, 428 (1992) (“ In a recent ABA study, forty percent of low-income households surveyed had civil legal problems in the last twelve months but could not obtain counsel.”). Moreover, for many of these litigants which Petitioner’s here falls , the potential monetary damages are too uncertain or small for attorneys to take their cases on a contingency basis. See Doyle et al., supra, at 300.

As district court judges themselves have recognized, “federal programs to provide civil counsel are under-funded and severely restricted,” resulting in “a crisis in unmet legal needs which disproportionately harms racial minorities, in here which

Petitioner's falls, women, and those living in poverty". Colum. L. SCH. Hum. Rts. Clinic, Access to Justice: Ensuring Meaningful Access to Counsel in Civil Cases-Response to the Fourth Periodic Report of the United States to the United Nations Human Rights Committee 301 (Aug. 2013). Pro se litigants face steep obstacles and unique challenges when pleading their cases in federal court. In here the true classic example is see here in Pro se Petitioner's complaint, out of State pro se Petitioner's mail is complaint with the fastest means over-night mail, the day the state statute of limitation [ June 6, 2017] the district court claims it was time-barred and Fourth Circuit Affirm it.

These convergent factors create a situation where many individuals from protected classes and vulnerable population are forced to seek civil rights protection from the courts for serious legal injuries, without attorney assistance. They are left to interpret the law and write their pleading documents –[as in here]and in some circuits, left to decipher why their pleadings fall short, all without counsel. The question presented invokes these very concerns of due process and access to justice because the rule adopted by the majority of the circuits provides significant assistance to pro se litigants, with minimal additional effort by the courts,

Requiring a district court to provide the justifying reason for denying a pro se plaintiff leave to amend would ensure that the pro se plaintiff can understand the basis of that denial and offer further amendments if the claims are, in fact, meritorious. As in

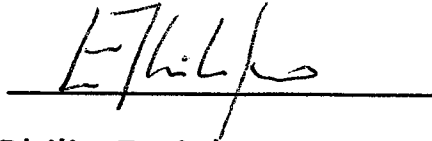


here with pro se Petitioner. Without notice of the pleading deficiencies, however, vulnerable individuals with meritorious claims may be blocked from accessing the courts because they are unable to comply with the technical requirements of the Federal Rules of Civil Procedure., as in here. Especially because the majority of pro se litigants bring claims sounding in constitutional and civil rights injuries as in here, seeking basic protections from the federal court system, in here pro se litigant which is life banned by Defendants, which is still ongoing but the district court and the Fourth Circuit have closed or blocked Petitioner's here, accessing the courts with is meritorious claims based on technical requirements , refuse amendment to Petitioner's Complaint, No Evidence granting Dismissal; and No discovery et al., the question presented is an important one that this Court should decide.

### **CONCLUSION**

The question presented in this case is whether recent decisions from this Court have an effect on the requirement that the district court must follow Rule 12(d) when considering a motion for failure to state a claim under Rule 12(b)(6). Intertwined within that question is the question whether the failure to follow Rule 12(d) violates a plaintiff procedural due process rights. Consideration of these important questions warrants grant of this petition and consideration of Emiabata's claims on their merits.

Dated : November 11, 2019.

A handwritten signature in black ink, appearing to read 'Philip', is written over a horizontal line.

Philip Emiabata, In pro se

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Ph: (512) 791-2395,

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