

24-6397  
No. \_\_\_\_\_

In the Supreme Court of the  
United States

MAHFOOZ AHMAD.

*Petitioner,*

v.

COLIN DAY, et al.,

*Respondents.*

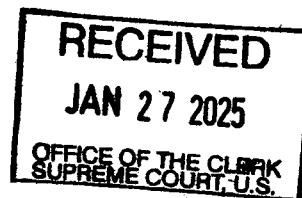
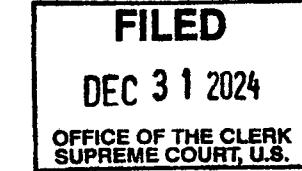
On Petition for Writ of Certiorari to the United  
States Court of Appeals for the Second Circuit

**PETITION FOR WRIT OF CERTIORARI**

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## QUESTION PRESENTED

The standard for dismissing claims under Rule 12 (b) 6 of the Federal Rules of Civil Procedure is variable across the circuit courts. It is as variable as the preferences for ice cream flavors. In some jurisdictions, a high bar for dismissal ensures that plaintiffs get their day in court. In others, claims are quickly 'scooped away' before they reach discovery. But unlike ice cream, the 'scooping away' of claims here risks consequential outcomes: an individual's life, livelihood, freedom, and property. Such disparity warrants review by the United States Supreme Court intervention to clarify a standard that should apply equally across all the jurisdictions. The Supreme Court's guidance is essential for a consistent Rule 12 (b) 6 application, as circuit courts remain divided on key criteria for this rule which is pretty much applied in every single case across our nation. For example, while the Ninth and Second Circuits allow dismissals based on documents incorporated by reference, the Seventh Circuit grants plaintiffs a limited right to amend, often denying dismissals outright except in clear cases of futility. Conversely, the Fifth Circuit emphasizes substantial factual allegations in contract cases and denies amendments if claims are critically flawed. This unresolved inconsistency in applying Rule 12(b) 6 leaves our courts facing unpredictable dismissal standards, undermining procedural fairness. The question presented is:

Does the Federal Rule of Civil Procedure 12 (b) 6 require a consistent standard across circuits, or may courts apply varying criteria leading to unpredictable dismissal outcomes?

## **PARTIES TO THE PROCEEDING**

Petitioner, Plaintiff-Appellant is Mahfooz Ahmad.

Respondents, Defendants-Appellees are Colin Day, Courtney Dutter, iCIMS Inc, Navi Health Inc, Beacon Hill Staffing Group, Vista Equity Partners.

Because no petitioner is a corporation, a corporate disclosure statement is not required under Supreme Court Rule 29.6

**STATEMENT OF PROCEEDINGS**

*Ahmad v. Day et al*, No. 24-856 (2nd Cir.) (opinion issued on Aug. 05, 2024, “the appeal is dismissed because it “lacks an arguable basis either in law or in fact.””).

*Ahmad v. Day et al*, No. 23-920 (2nd Cir.) (opinion issued on Nov. 07, 2023, “lacks arguable basis”); (motion for reconsideration on medical grounds, denied on Dec. 07, 2023); (motion to reconsider, due to procedural errors denied as moot on Dec. 08, 2023).

*Ahmad v. Day et al.*, 1:20-cv-04507 (S.D.N.Y) (opinion issued on Dec. 28, 2022, leave to amend granted in part and denied in part); (memorandum and order granting remaining defendants’ motion to dismiss and denying plaintiff’s motion for a preliminary injunction as moot issued on June. 06, 2023); (petition for reconsideration denied the next day).

*Ahmad v. Day et al*, No. 23-6337 (U.S. Supreme Court) (Petition Denied Feb 20, 2024) (Petition for Rehearing Denied March 25, 2024)

There are no additional proceedings in any court that are directly related to this case within the meaning of this Court’s Rule 14(b)(iii).

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**PETITION FOR A WRIT OF CERTIORARI**

Petitioner Mahfooz Ahmad respectfully asks this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.

The Second Circuit allows dismissals based on documents incorporated by reference into the complaint. However, in this case, both the Second Circuit and the Southern District of New York ignored the document incorporated by reference, effectively applying a different Rule 12 (b) 6 standard.

**OPINIONS BELOW**

The Second Circuit's opinion is reproduced at App.112a. The district court's final opinion is reproduced at App.6a.

**JURISDICTION**

The Second Circuit issued its decision on August 05, 2024, App.112a. On October 24, 2024, Justice Sotomayor extended the time to file a petition for a writ of certiorari through January 2, 2025, by granting the application number 24A380. This Court has jurisdiction under 28 U.S.C. § 1254(1).

**CONSTITUTIONAL AND STATUTORY  
PROVISIONS**

Federal Rule of Civil Procedure Rule 12 (b) 6  
28 U.S.C. § 2284

## STATEMENT OF THE CASE

This case raises critical federal questions about a litigant's rights in facing employment discrimination and intellectual property theft. From February 2016 to June 2018, petitioner was employed by iCIMS Inc., where the petitioner endured racial, religious, and national origin discrimination, wage theft, and later unauthorized use of the intellectual property by the Defendants. Despite presenting detailed allegations, the district court dismissed the proposed second amended complaint (PSAC) under Rule 12 (b) 6.

The fee-paid civil appeal, Case 24-856, was improperly dismissed by the Second Circuit without the opportunity for argument or substantive review. The court treated the appeal as if it had been filed in forma pauperis (IFP), despite the filing fee being paid.

Petitioner seeks Supreme Court review of the Second Circuit's refusal to address the discrimination and intellectual property claims, given the detailed, unexamined factual and legal issues.

## BACKGROUND

In June 2020, petitioner filed a civil rights and wrongful termination suit in the Southern District of New York, citing federal question jurisdiction. The claims involved Title VII of the Civil Rights Act, 42 U.S.C. § 1981, and state and city human rights laws for employment discrimination. The district court only partially granted the request for employment records discovery. The metadata of a purported “agreement” containing an arbitration clause, noting that questions about its authenticity should go to trial.

Petitioner has denied signing the alleged agreement, alleging that the signature was unlawfully copied. Initially, the court denied the Defendants' motions to dismiss or to compel arbitration, acknowledging that the validity of the “agreement” was a key issue, one deserving of scrutiny rather than dismissal, like choosing to savor the flavor of a case before deciding it.

However, after the petitioner filed the Proposed Second Amended Complaint, and a motion for default against the main three Defendants Colin Day, Courtney Dutter and iCIMS Inc. The district court dismissed the case by permitting five motions to dismiss against a single pleading.

The Proposed Second Amended Complaint also includes a constitutional challenge to the Federal Arbitration Act, such a claim mandates that the case be reviewed by a panel of three judges not just one, the district court dismissed the case under Rule 12(b)(6). 28 U.S.C. § 2284 should have been applied in by granting the review of the Proposed Second Amended Complaint to a panel of three judge court.

## REASONS FOR GRANTING THE PETITION

The question in *Ahmad v. Day et al.*, is simple but critical: should a plaintiff's claim be dismissed under Rule 12(b)(6) based on one circuit's stringent standard, while another circuit would allow that same claim to proceed?

Much like the ingredients in a classic ice cream recipe, the Rule 12(b)(6) standard should be consistent and straightforward. Yet, the circuits have 'stirred' up varying interpretations, resulting in an uneven legal landscape. This Court's review is essential to clarify the standard and bring uniformity to Rule 12(b)(6) dismissals. There are varying standards for Federal Rule 12(b)(6) across the circuits as seen below:

- 1. First Circuit:** A complaint can be dismissed if the plaintiff fails to argue against dismissal in response, even if it states a valid claim, and such dismissals are not appealable.
- 2. Second Circuit:** The Second Circuit permits dismissal under Rule 12(b)(6) based on documents incorporated by reference, ensuring that only well-pleaded claims proceed.
- 3. Third Circuit:** The Third Circuit emphasizes that a complaint must contain sufficient factual matter to raise a reasonable expectation that discovery will reveal evidence of the necessary elements.
- 4. Fourth Circuit:** The Fourth Circuit requires a plaintiff to allege enough facts to support a plausible claim, focusing on the need for reasonable detail.
- 5. Fifth Circuit:** The Fifth Circuit centers on substantial factual allegations in contract cases and often denies amendments when claims are

fundamentally flawed, requiring specific harm connections.

**6. Sixth Circuit:** The Sixth Circuit has held that a plaintiff cannot evade dismissal under Rule 12(b)(6) by merely seeking to amend a complaint that is already invalid.

**7. Seventh Circuit:** The Seventh Circuit rules that courts cannot grant a 12(b)(6) motion to dismiss solely because it is unopposed and typically grants at least one chance to amend unless futility is clear.

**8. Eighth Circuit:** The Eighth Circuit adopts a liberal standard, allowing dismissal only when the plaintiff cannot prove any set of facts in support of their claim.

**9. Ninth Circuit:** The Ninth Circuit allows dismissal if complaints fail to provide sufficient factual matter to state a plausible claim, stressing the need for specific context and details.

**10. Tenth Circuit:** The Tenth Circuit requires a clear showing that a plaintiff's claims are not plausible before granting a motion to dismiss under Rule 12(b)(6).

**11. Eleventh Circuit:** The Eleventh Circuit mandates that dismissal is appropriate only when the plaintiff cannot prove any facts that would support the claim, setting a higher threshold for dismissals.

## ARGUMENT

This petition serves up a three-point argument for certiorari, akin to a classic banana split with its three essential flavors, chocolate, strawberry, and vanilla.

Each legal point here represents a key reason why Supreme Court guidance is essential to establish a uniform standard for Rule 12(b)(6) dismissals across all circuits.

### **Lack of Uniformity Across Circuits in 12(b)(6) Standards**

Like varying ice cream flavors, the standards for Rule 12(b)(6) dismissals differ across circuits, creating inconsistency. For instance, while the Ninth and Second Circuits allow for dismissals based on documents incorporated by reference, the Seventh Circuit typically gives plaintiffs an opportunity to amend unless the claim is clearly futile. This split means the same case could be dismissed in one circuit but proceed in another, which disrupts the uniform application of federal procedural rules.

### **Inconsistent Access to Justice**

Just as flavors blend differently in each bite, different circuits apply the Rule 12(b)(6) standard with varying degrees of strictness, affecting access to justice. The Fifth Circuit's high bar for factual pleading in contract cases, for example, contrasts with other circuits where the threshold is lower, limiting some plaintiffs from fully presenting their cases. In cases like mine, these heightened standards lead to early dismissals, effectively denying litigants the chance to prove legitimate claims of discrimination and intellectual property theft.

### **Impact on Federal Rights**

This final flavor in the split highlights how strict dismissal standards can curtail essential federal rights. Premature dismissals under rigid 12(b)(6) interpretations, as happened in my case, prevent courts from properly considering significant federal claims, such as civil rights and intellectual property protections. A unified approach from the Supreme Court would ensure Rule 12(b) 6 is applied fairly, honoring both plaintiffs' rights to a day in court and defendants' rights to early dismissal of groundless claims.

The *Twombly* and *Iqbal* standards have led to an increasing divergence among circuits, creating a pressing need for immediate intervention to stabilize the evolving standards governing federal litigation. Much like a favorite ice cream shop that needs a consistent recipe to ensure each scoop delights its customers, the case of *Ahmad v. Day et al.* advocates for the adoption of a “Day pleading” standard. This standard would ensure consistency and fairness in the litigation process across federal courts.

By providing a solid foundation for uniformity in procedural requirements, the proposed standard promotes equitable access to justice for all litigants. Just as a well-crafted sundae layer ingredients to create a satisfying treat, this approach not only addresses current disparities but also establishes a lasting framework for proper litigation practices in the federal court system.

## CONCLUSION

The petitioner respectfully urges the Supreme Court Justices to review the Proposed Second Amended Complaint (PSAC) and the decision of the United States Court of Appeals for the Second Circuit to ensure that federal laws are applied consistently and justly across all the circuits and that our circuit courts apply a uniform Rule 12 (b) 6 standard.

Thank you!

Dated: December 30th, 2024

Respectfully submitted,  
*/s/ Mahfooz Ahmad*

MAHFOOZ AHMAD