

No. 24-

IN THE
Supreme Court of the United States

PEDRO ORTIZ ROMERO,

Petitioner,

v.

GOVERNMENTAL DEVELOPMENT BANK FOR
PUERTO RICO (GDB); ITS PRESIDENT; CHRISTIAN
SOBRINO VEGA; ITS CHIEF OPERATIONS OFFICER,
GUILLERMO CAMBA-CASAS,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

PEDRO ORTIZ ROMERO
Pro se
P.O. Box 190987
San Juan, PR 00919-0987
(787) 439-3156

120511



COUNSEL PRESS

(800) 274-3321 • (800) 359-6859

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QUESTIONS PRESENTED

The questions presented are—

1. Whether a complaint in an employment discrimination lawsuit must contain specific facts that establish a *prima facie* case of discrimination?
2. Whether comparator evidence can support an inference of discrimination if the plaintiff and comparators do not share the same position, duties, and supervisor.
3. Whether a jury's disbelief of an employer's proffered reason for an adverse employment action can sustain an inference of discrimination or retaliation.
4. Whether, this Supreme Court of the United States reverses the decision of the District Court of Puerto Rico and the First Circuit, regarding the filing of a motion to dismiss by the defendants (pursuant to Rule 12(b)(6) of the F.R.Civ.P.), and if the Court denies the motion to dismiss, the defendants must respond to the amended complaint of this plaintiff with clear, legal and constitutional arguments;

PARTIES TO PROCEEDING

Petitioner is Pedro Ortiz Romero and the Plaintiff in the United States District Court for the District of Puerto Rico and Appellant in the United States Court of Appeals for the First Circuit;

Respondents are the Governmental Development Bank for Puerto Rico, ("GDB"), Christian Sobrino Vega it was President of the GDB and Chairman of FAFAA to June 30, 2018. And then President of the FAFAA and Guillermo Camba Casas ("Camba"), is an ex Director de Recursos Humanos y Relaciones Laborales to October 15, 2012. It was GDB's Chief Operations Officer to March 23, 2018 and the defendants in the United States District Court for the District of Puerto Rico and Appellees in the United States Court of Appeals for the First Circuit;

CORPORATE DISCLOSURE STATEMENTS

Pursuant to Supreme Court Rule 29.6 petitioner, Pedro Ortiz Romero, has no parent corporations and no publicly held company that owns 10% or more of any entity.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Pedro Ortiz Romero respectfully petitions for a writ of certiorari to review the Puerto Rico District Court's memorandum opinion and order (Doc.22 and 23) and the affirmation of the United States Court of Appeals for the First Circuit pursuant to F.R.Civ.P. Rule 12(b)(6).

On December 23, 2024 I submitted an Application for an Extension of Time Within Which to File a Petition for a Writ of Certiorari. On December 27, 2024 the Clerk's Office of the United States Supreme Court returned them to me with a letter dated December 27, 2024 and received on December 30, 2024 to correct them. I contacted Emily and she contacted me through someone else and I mentioned that I would send them to her corrected today (December 30, 2024). I sent them via Priority Mail. (See Exhibit D).

OPINIONS BELOW

The judgment for which review is sought is Pedro Ortiz v. GDB and Other, No. 19-2084 (October 4, 2024). On October 4, 2024, the United States Court of Appeals for the First Circuit affirmed. Without signing manually. Received on October 18, 2024. (Attached as Exhibit A).

On October 28, 2024, the United States Court of Appeals for the First Circuit entered a Mandate received on November 18, 2024. Petitioner was not sent a certified, manually signed copy of the judgment, nor was a copy of the court's manually signed opinion, if any, sent to me (attached as Exhibit B).

JURISDICTION

The federal question is timely and properly raised in the court of first instance and the appellant court that he issued a written judgment October 04, 2024. (Exhibit. -A), and the Court's jurisdiction is invoked to review the District Court order (Doc. 22-23) on a timely Writ of Certiorari pursuant to 28 U.S.C. § 1254(1) providing Petitioner with the equal protection rights and due process of law guaranteed Petitioner pursuant the 5th and 14th amendments of the U. S. Const., as adequate relief cannot be obtained in any other form or court.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The case before the Court involves F.R.Civ.P. Rule 12(b)(6), constitutional provisions pursuant the Fifth and Fourteenth Amendments of the United States Constitution, Federal case laws, statutes, and the Federal Rules of Civil Procedure which are set forth in the reasons for granting the Writ;

29 U.S.C. § 623 provides:

(a) Employer practices

It shall be unlawful for an employer—

(1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age; [or]

(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age.

...

(d) It shall be unlawful for an employer to discriminate against any of his employees or applicants for employment . . . because such individual, . . . has opposed any practice made unlawful by this section, or because such individual, member or applicant for membership has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or litigation under this chapter.

INTRODUCTION AND STATEMENT OF THE CASE

The record unequivocally shows that this plaintiff presented documentary evidence, in addition to direct evidence, relating to discrimination under the ADEA. And why Rule 12(b)(6) of the F.R.Civ.P. is not applicable to this case. Defendants moved to dismiss my case under Rule 12(b)(6) of the F.R.Civ.P. A motion to dismiss is not an answer to petitioner's amended complaint pursuant to the Federal Rules of Civil Procedure, a fatal, final and fundamental error, and the defendants must respond to the amended complaint of this plaintiff with clear, legal and constitutional arguments. Otherwise I would have to send the cases to this Honorable Court, limiting my Constitutional rights included in the Fifth (5th) and

Fourteenth (14th) Amendment of the United States Constitution.

The case before the Court raises substantial and important issues involving Rule 12(b)(6) of the F.R.Civ.P., constitutional provisions pursuant to the Fifth and Fourteenth Amendments to the United States Constitution, federal case law, statutes, and the Federal Rules of Civil Procedure and previous appeal court and other Circuit Courts of appeal which are set forth in the reasons for granting the Writ. The circuit courts are in disagreement. Three circuit courts mentions that A motion to dismiss is not a responsive pleading for purposes of F.R.Civ.P. Rule 15(a). Furthermore, a Rule 12(b)(6) motion is not a responsive pleading under the 9th Circuit Court's opinion in *St. Michael's Convalescent Hosp. v. State of Cal.* (9th Cir. 1981).

The District Court entered final judgment on Plaintiff's discrimination claims pursuant to F.R.C.P. 12(b)(6). The District Court erred by expressly summarily finding, among other things, that this plaintiff failed to comply with Federal Rules of Civil Procedure (F.R.C.P.) 12(b)(6) and by absorbing the defendants without permitting this Plaintiff to take his depositions. In addition, this plaintiff requested, pursuant to his constitutional's rights, a jury trial, and the District Court summarily ruled.

Morcover, by not being permitted to initiate discovery and depositions pursuant to Rule 26(f), without the critical evidence that this Plaintiff-Appellant was able to obtain during discovery and depositions, this Appellant was deprived of his ability to prove discrimination and retaliation in court before a jury.

The First Circuit endorsement of these errors through its summary affirmance warrants review, as will be further set forth in Applicant's petition.

The First Circuit affirmed the sentence without even ordering an oral hearing to allow for arguments and, if necessary, the presentation of argumentative and/or direct evidence.

The case concerns the Federal Rules of Civil Procedure Rule 12(b)(6) and previous appeal court opinions both in the First Circuit and other Circuit Courts of appeal which are set forth in the reasons for granting the Writ;

The First Circuit affirmed the case based on Rule 12(b)(6). With this, the First Circuit's decision conflicts with the decisions of other courts of appeals on the standard for determining whether comparator evidence can support an inference of intentional discrimination.

The First Circuit's decision also conflicts with the decisions of other courts of appeals regarding the proper application of *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133 (2000). In *Reeves*, this Court held that a jury's disbelief of the employer's proffered nondiscriminatory reason for an adverse employment action can sustain an inference of discrimination.

Over time, however, the courts of appeals have adopted inconsistent approaches to applying *Reeves*. And in the First Circuit, "*Reeves* is at risk of suffering death by a thousand cuts." *Henderson v. Mass. Bay. Transp. Auth.*, 977 F.3d 20, 54 (1st Cir. 2020) (Barron, J., dissenting). This Court's review is thus needed to clarify the proper application of *Reeves*.

The Court should grant certiorari to resolve the circuit split and clarify the standard for determining whether comparator evidence supports an inference of intentional discrimination, in the age discrimination and retaliation claims under the Age Discrimination in Employment Act (ADEA).

REASONS FOR GRANTING THE WRIT

The case presents a compelling rationale and an ideal vehicle for resolving the fundamental and recurring conflict created by the decisions of the other courts—a clear and direct division between the district and circuit courts with respect to motions to dismiss pursuant to Rule 12(b)(6) of the F.R.Civ.P.

The F.R.Civ.P. Rule: 7 states “there shall be a complaint and answer no other pleading shall be allowed;”.

The record shows respondents’ motion (Doc. 38) to dismiss is not an answer, or a responsive pleading to the amended complaint (Doc. 27), see *Centifanti v. Nix*, (3d Cir. 1989) citing *Reuber v. United States*, 750 F.2d 1039, 1061 n. 35 (D.C. Cir. 1984); *Domino Sugar Corp. v. Sugar Workers Local 392*, 10 F.3d 1064, 1068 n.1 (4th Cir. 1993) citing *United States v. Newbury Mfg. Co.*, 123 F.2d 453 (1st Cir. 1941).

A motion to dismiss is not a responsive pleading for purposes of F.R.Civ.P. Rule 15(a), see *McDonald v. Hall*, 579 F.2d 120, 121 (1st Cir. 1979; *McLellan v. Mississippi Power & Light Co.*, 526 F.2d 870, 872n.2 (5th Cir. 1976); *St. Michael’s Convalescent Hosp. v. State of Cal.*, 643 F.2d 1369, 1374 (9th Cir. 1981).

A responsive pleading is a pleading which joins issues and replies to a prior pleading of an opponent in contrast to a dilatory plea or motion which seeks to dismiss on some ground other than the merits of the action, though general denials are not commonly accepted today, an answer in which specific denials are set forth and an answer by way of confession and avoidance are examples of responsive pleading, as defined in Blacks Law Dictionary.

CONCLUSION

For the foregoing reasons, Petitioner, who is not represented by counsel in this case, respectfully prays requests that this Court grant Petitioner's petition for a Writ of Certiorari.

I would appreciate it if you could send me everything related to this case by mail, since the mail is one of the few government agencies explicitly authorized by the United States Constitution.

Respectfully submitted,

PEDRO ORTIZ ROMERO

Pro se

P.O. Box 190987

San Juan, PR 00919-0987

(787) 439-3156

This case was originally submitted on January 2, 2025, via priority mail and received at the postal facility of the Supreme Court of the United States on January 8, 2025.

It was sent for the second time on February 19, 2025, by priority mail and received at the postal facility of the Supreme Court of the United States on February 24, 2025.

Subsequently, on February 25, 2025, he was received at the Office of the Clerk of the Supreme Court of the United States.

Re-filed: July 2, 2025