

No. _____

**In the
Supreme Court of the United States**

GORDON BALL, ET AL.,

Petitioners,

v.

PATRICK W. PENDLEY, ET AL.,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This case presents a recurring and important question concerning the limits of incorporation-by-reference doctrine at the Rule 12(b)(6) pleading stage. Federal courts increasingly consider contracts, recordings, reports, videos, and other materials outside the complaint without converting motions to dismiss into summary-judgment proceedings under Rule 56. The courts of appeals, however, apply different approaches regarding the extent to which incorporated materials may be used to override well-pleaded allegations and competing inferences arising from exhibits attached to the complaint under Rule 10(c). Petitioners contend the decision below improperly resolved disputed contractual meaning and competing factual inferences against them before discovery.

Federal courts nevertheless increasingly invoke incorporation-by-reference doctrine to consider documents outside the complaint without converting motions to dismiss into summary judgment proceedings under Rule 56. The courts of appeals are divided regarding whether incorporated documents may be treated as substantively true and used to override contrary factual allegations and plaintiff-attached Rule 10(c) exhibits, which adversely affects plaintiffs and results in persistent doctrinal inconsistency and confusion.

The questions presented are:

1. Whether, on a Rule 12(b)(6) motion, a court may treat documents incorporated by reference as controlling over contrary factual allegations and exhibits attached to the complaint under Rule 10(c).

2. Whether a court may resolve disputed contractual meaning and competing factual inferences against a plaintiff at the pleading stage without converting the motion into one for summary judgment under Rule 56.

PARTIES TO THE PROCEEDINGS

Petitioners, and plaintiffs-appellants below are Gordon Ball, individually and on behalf of Gordon Ball LLC.

Respondents, and defendants-appellees below are Patrick W. Pendley, and Pendley, Baudin & Coffin, LLC.

CORPORATE DISCLOSURE STATEMENT

Petitioner Gordon Ball LLC has no parent company and no public company owns 10% or more of its stock or membership interest.

RELATED PROCEEDINGS

United States District Court (NDAL):

*Gordon Ball, individually and on behalf of
Gordan Ball, PLLC, Gordan Ball LLC v.
Patrick W. Pendley, Pendley, Baudin &
Coffin, LLC, No. 2:25-cv-00014-RDP
(May 1, 2025) (dismissal)*

United States Court of Appeals (CA11):

*Gordon Ball, individually and on behalf of
Gordan Ball, PLLC, Gordan Ball LLC v.
Patrick W. Pendley, Pendley, Baudin &
Coffin, LLC, No. 25-11598 (Mar. 3, 2026)
(district court affirmed)*

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The Eleventh Circuit’s opinion is reproduced in the Appendix at App. 1–8. The Northern District of Alabama’s memorandum opinion is reproduced in the Appendix App. 9–34.

JURISDICTION

The Eleventh Circuit’s decision was entered on March 3, 2026. This Court has jurisdiction under 28 U. S. C. § 1254(1).

STATEMENT OF THE CASE

This case presents an important and recurring question concerning the permissible scope of incorporation-by-reference doctrine at the pleading stage and whether Rule 12(b)(6) permits courts to use incorporated documents as true, and to override plaintiff allegations and plaintiff-attached exhibits before discovery.

In the instant case, the below court dismissed with prejudice on a Rule 12(b)(6) motion by treating the 2016 memorialization letter (Letter) as a separate contract while ignoring evidence attached to the complaint confirming that the parties treated the same Letter as a memorialization of the parties’ prior oral agreements and the parties’ intent.

Petitioners filed suit in the Northern District of Alabama arising from a longstanding fee-sharing relationship and related business dealings with Respondents. Petitioners alleged that the parties entered into an oral agreement concerning fee allocations arising from Blue Cross and Blue Shield antitrust litigation

and that a November 2016 signed letter memorialized or confirmed that agreement.

The complaint expressly alleged that a separate 2013 Joint Venture Agreement (JVA) did not govern the dispute presented. Petitioners further alleged that the 2016 Letter was written approximately three years after the October 2013 JVA was executed, and was written to memorialize the parties' oral agreement of 2012 and early 2013.

The complaint attached numerous exhibits pursuant to Rule 10(c), including Respondent's sworn discovery deposition and the Letter confirming the existence of the parties' fee-sharing arrangement and supporting Petitioners' interpretation of the Letter as alleged in the complaint.

Respondents moved to dismiss under Fed. R. Civ. P. 12(b)(6). Although Petitioners expressly alleged that the JVA was unrelated to the claims asserted, the district court incorporated the JVA by reference into the pleadings and treated it as dispositive relying on *Johnson v. City of Atlanta*, 107 F. 4th 1292, (CA11 2024).

The district court then relied upon the JVA and Respondents' interpretation of the phrase "state cases" in the Letter to dismiss the complaint with prejudice. In doing so, the court rejected Petitioners' competing allegations, disregarded plaintiff-attached Rule 10(c) exhibits, resolved disputed contractual meaning against Petitioners, and concluded that the 2016 Letter agreement unambiguously excluded fees from the parties' multi-district litigation (MDL) case.

The Eleventh Circuit affirmed. The Eleventh Circuit held that the "plain language" of the Letter excluded the fees at issue because the underlying MDL

proceeded in federal court. The court further concluded that the 2013 JVA extinguished prior agreements and that any ambiguity would be construed against Petitioners as alleged drafters.

Neither courts below meaningfully addressed whether the 2016 Letter — executed years *after* the 2013 JVA — memorialized, modified, supplemented, or superseded the earlier arrangement. The courts simply held that the 2016 Letter was an entirely separate contract from any oral agreement, did not meaningfully analyze the Rule 10(c) exhibits attached to the complaint, and expanded the limits of incorporation-by-reference doctrine under Rule 12(b)(6).

The result was a fact-based merits adjudication at the pleading stage based upon defendant-favorable interpretations of incorporated documents before discovery occurred, and the court's conversion of a Rule 12(b)(6) motion to a Rule 56 motion without providing parties an opportunity to obtain discovery or respond to a Rule 56 motion. The court substituted its own interpretation of the Letter for the parties' understanding confirmed in evidence attached to the complaint.

The court made a fact-based decision that the Letter was a separate contract and then interpreted the Letter (contract) as only applying to the parties' state-based cases, thereby excluding any MDL fee agreed to years earlier and dismissed plaintiffs' complaint with prejudice. This is inconsistent with ordinary Rule 12(b)(6) standards because at the Rule 12(b)(6) stage of litigation, courts are required to accept the facts set forth in the complaint as true without evidentiary support. The courts below denied plaintiffs opportunity to have their facts as plead in the complaint

accepted as true, and denied the parties opportunities to conduct discovery.

REASONS FOR GRANTING THE PETITION

I. The Courts of Appeals Apply Materially Different Approaches Regarding the Use of Incorporated Documents at the Rule 12(b)(6) Stage

All federal circuits recognize some form of the incorporation-by-reference doctrine to permit courts to consider certain documents referenced in complaints without converting Rule 12(b)(6) motions into summary judgment proceedings. But the circuits are divided regarding whether incorporated documents may be treated as substantively true and used to override contrary allegations and Rule 10(c) exhibits.

Incorporation-by-reference doctrine is distinct from judicial notice. Petitioners do not challenge the limited ability of courts to recognize the existence or authenticity of documents referenced in pleadings. Rather, Petitioners challenge the use of incorporated materials to resolve disputed factual inferences and contractual meaning against plaintiffs before discovery.

The Eleventh Circuit has increasingly adopted an expansive approach permitting incorporated materials to displace plaintiff allegations whenever the court concludes the materials “contradict” the complaint. See *Johnson v. City of Atlanta*, 107 F. 4th 1292 (CA11 2024). *Johnson* dealt with objective video evidence allegedly contradicting allegations. The below court in the instant case dealt with documents which are subject to competing interpretations for a jury, intent or state of mind was disputed concerning the Letter, and the incorporated material created factual disputes

between plaintiffs' claims, evidence made through documents attached to the complaint, and the court decided that the incorporated-by-reference documents controlled without addressing the complaint and attached exhibits. Once the court chose among competing interpretations over plaintiffs' allegations and exhibits, the courts exceeded authority under Rule 12(b)(6) and effectively conducted a premature summary judgment with prejudice.

Petitioners do not dispute that courts may consider incorporated materials or exhibits attached to complaints in appropriate circumstances. Nor do Petitioners dispute that exhibits may control over conclusory allegations when the contradiction is direct and unambiguous. See, e.g., *Sprewell v. Golden State Warriors*, 266 F. 3d 979, 988 (CA9 2001); *Griffin Indus., Inc. v. Irvin*, 496 F. 3d 1189, 1205–06 (CA11 2007). The question presented here is narrower: whether courts may resolve competing reasonable interpretations and disputed factual inferences against plaintiffs at the pleading stage by treating incorporated documents as substantively true before discovery.

The decisions of the courts below exemplify this expansive approach. The below courts treated incorporated documents as dispositive, relied upon defendant-favorable interpretations of those documents, disregarded Rule 10(c) exhibits attached to the complaint, resolved disputed contractual meaning against Petitioners, and effectively treated incorporated documents as true.

Other courts of appeals have adopted materially different approaches.

The Ninth Circuit has expressly warned that incorporation-by-reference doctrine cannot become “a tool

for defendants to short-circuit the resolution of a well-pleaded claim.” *Khoja v. Orexigen Therapeutics, Inc.*, 899 F. 3d 988, 998 (CA9 2018). *Khoja* cautioned against the “unscrupulous use of extrinsic documents to resolve competing theories against the complaint” and emphasized that courts may not assume the truth of disputed matters contained within incorporated materials.

The Fourth Circuit likewise has rejected the proposition that incorporated-by-reference documents automatically override complaint allegations. In *Goines v. Valley Community Services Board*, 822 F. 3d 159 (CA4 2016), the court explained that plaintiffs attach documents for many reasons and plaintiffs do not thereby adopt every statement within those documents as true. The court specifically warned that defendants may not use attached documents to defeat otherwise plausible allegations.

The Second Circuit recently reaffirmed those limitations in *Pearson v. Gesner*, No. 22-1227 (CA2 Jan. 13, 2025), emphasizing that courts must consider the purpose for which documents are attached and may not simply assume incorporated-by-reference materials conclusively establish defendants’ version of disputed facts.

The D.C. Circuit similarly has emphasized that Rule 12(b)(6) plausibility review does not permit courts to choose among competing factual narratives. *Banneker Ventures, LLC v. Graham*, 798 F. 3d 1119 (CA DC 2015).

These divergent approaches have produced substantial uncertainty concerning one of the most frequently litigated procedural doctrines in modern federal practice: whether incorporated documents may

merely be considered for their existence and contents or instead treated as substantively true to override otherwise plausible allegations and attached exhibits and defeat plaintiff's claims evidenced by attached exhibits.

The question presented recurs frequently in modern federal litigation. Defendants increasingly invoke incorporation-by-reference doctrine at the pleading stage to seek dismissal based upon contracts, recordings, reports, and other materials outside the complaint. District courts have struggled to distinguish between permissible consideration of incorporated materials and impermissible resolution of factual disputes or competing inferences before discovery. The resulting uncertainty affects contract, securities, employment, constitutional, and commercial litigation nationwide.

II. The Decision Below Conflicts with Rule 10(c) and this Court's Pleading-Stage Precedents

Fed. R. Civ. P. 10(c) provides that exhibits attached to a complaint are part of the pleading "for all purposes." This Court has repeatedly held that Rule 12(b)(6) requires courts to accept well-pleaded allegations as true and draw reasonable inferences in plaintiffs' favor. *Bell Atl. Corp. v. Twombly*, 550 U. S. 544 (2007); *Ashcroft v. Iqbal*, 556 U. S. 662 (2009); *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U. S. 308 (2007).

Tellabs held that a complaint with its exhibits must be considered in its entirety. The below court in the instant case did not follow *Tellabs*, rather, expanded

Johnson. The decision below cannot be reconciled with those principles.

Petitioners attached Rule 10(c) exhibits allegedly demonstrating that the 2016 Letter memorialized or confirmed an existing fee-sharing arrangement. Petitioners further alleged that the 2013 JVA did not govern the dispute, and that the later 2016 Letter memorialized any prior agreement. Rather than crediting those allegations and attached exhibits as true, the lower courts elevated the incorporated JVA above the complaint itself. The courts below held that the Letter was a separate contract from the oral agreements, rejected competing inferences from the alleged separate contract, declared the Letter contract unambiguous, applied *contra proferentem* against Petitioners, and used incorporated materials to extinguish the claims with prejudice before discovery.

Rule 10(c) does not prohibit courts from considering exhibits attached to complaints or documents properly incorporated by reference. But Rule 10(c), together with Rule 12(b)(6), does prohibit courts from resolving competing reasonable inferences against plaintiffs at the pleading stage. Petitioners attached exhibits allegedly corroborating their interpretation of the parties' course of dealing and the 2016 Letter. The lower courts nevertheless treated incorporated materials as dispositive and resolved disputed contractual meaning against Petitioners before discovery or evidentiary development.

The decision concerning the Letter below also conflicts with *Tellabs*, which requires courts to consider allegations holistically and evaluate competing inferences collectively rather than selectively isolating particular words or phrases. Here, the lower courts

focused narrowly upon the phrase “state cases” while disregarding the broader course-of-dealing allegations, the parties’ subsequent conduct, and the attached exhibits supporting Petitioners’ interpretation.

Most fundamentally, the decision below collapses the distinction between Rule 12(b)(6) and Rule 56. The below courts effectively conducted summary-judgment-type factual adjudication without discovery, evidentiary development, or the procedural safeguards ordinarily required before resolving disputed contractual meaning and competing factual narratives.

III. This Case is an Ideal Vehicle for Resolving the Questions Presented

This case presents the issue in a clean procedural posture. The complaint was dismissed under Rule 12(b)(6) before discovery. The lower courts expressly relied upon incorporated materials to reject Petitioners’ interpretation of the parties’ agreements. No jurisdictional obstacles or unresolved procedural issues prevent review, and the decision below expressly turned upon the treatment of incorporated documents and attached exhibits at the pleading stage.

The case arises from a straightforward Rule 12(b)(6) dismissal affirmed on appeal. There are no jurisdictional complications, no unresolved factual disputes concerning the procedural posture, and no alternative grounds that obscure the question presented.

The lower courts expressly relied upon incorporated documents to reject Petitioners’ allegations and attached Rule 10(c) exhibits. The Eleventh Circuit expressly held that the incorporated documents

controlled because the below court concluded they contradicted Petitioners' interpretation.

The question presented recurs constantly in federal litigation. Increasingly, defendants invoke incorporation-by-reference doctrine to seek dismissal before discovery by introducing contracts, reports, recordings, videos, and other materials outside the complaint. Courts increasingly divide over whether those materials may simply be considered or instead treated as substantively true to override plaintiff allegations.

Without guidance from this Court, Rule 12(b)(6) risks becoming a mechanism for premature merits adjudication rather than a procedural device testing pleading sufficiency.

Standard of Review

Dismissal under Fed. R. Civ. P. 12(b)(6) is reviewed de novo. *Bell Atl. Corp. v. Twombly*, 550 U. S. 544 (2007). At the pleading stage, courts must accept well-pleaded factual allegations as true and draw reasonable inferences in the plaintiff's favor. *Ashcroft v. Iqbal*, 556 U. S. 662 (2009); *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U. S. 308 (2007).

Questions concerning incorporation-by-reference doctrine likewise present legal questions reviewed de novo, including whether incorporated documents may properly be considered on a motion to dismiss and the extent to which such documents may be used to resolve competing factual inferences against plaintiffs before discovery.

This petition presents a pure question of federal procedural law concerning the interaction between Rule 12(b)(6), Rule 10(c), and incorporation-by-reference doctrine. The question presented arises in a

clean procedural posture following dismissal at the pleading stage without discovery or factual development.

CONCLUSION

This petition presents an important and recurring procedural question concerning the proper limits of incorporation-by-reference doctrine under Rules 10(c), 12(b)(6), and 56. Although all federal courts recognize some form of incorporation-by-reference doctrine, the courts of appeals apply materially different approaches regarding whether incorporated materials may override well-pleaded allegations and competing inferences arising from attached exhibits before discovery. The resulting uncertainty increasingly affects modern federal litigation nationwide.

The decisions below squarely presents that conflict. The lower courts relied upon incorporated documents to reject Petitioners' allegations, disregarded plaintiff-attached Rule 10(c) exhibits, resolved disputed contractual meaning, applied merits-based interpretive doctrines against Petitioners, and adjudicated competing factual inferences at the pleading stage without discovery or Rule 56 safeguards.

Absent this Court's intervention, Rule 12(b)(6) risks becoming a mechanism for premature merits adjudication rather than a procedural device testing the sufficiency of pleadings. The growing divergence among the federal courts of appeals concerning incorporation-by-reference doctrine, Rule 10(c), and the continued force of *Twombly*, *Iqbal*, and *Tellabs* warrants this Court's review.

The petition for writ of certiorari should be granted, the judgment below should be vacated, and the case

should be remanded for further proceedings consistent with this Court's clarification of the proper limits of incorporation-by-reference doctrine at the Rule 12(b)(6) pleading stage.

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