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No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

EZEQUIEL RIVERA, JR.,

Petitioner,

v.

**SEDGWICK CLAIMS MANAGEMENT SERVICES;
ACE FIRE UNDERWRITERS INSURANCE COMPANY;**

NESTLÉ USA, INC.,

Respondents.

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

for the Eighth Circuit

No. 25-2773

Originating from:

United States District Court

District of Minnesota

Case No. 0:24-cv-03247-LMP-SGE

PETITION FOR A WRIT OF CERTIORARI

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Supreme Court, U.S.
FILED

MAY 27 2026

OFFICE OF THE CLERK

QUESTIONS PRESENTED

1. Whether Rule 10(c) permits a district court to disregard or discount exhibits attached to or incorporated into a complaint when assessing plausibility, while relying on other record materials or prior proceedings to support dismissal under Rule 12.
2. Whether Rule 12(d) requires conversion when a district court's Rule 12 dismissal depends on materials outside the pleadings, including prior proceedings or defense-supplied factual characterizations, without excluding those materials or giving the nonmovant a reasonable opportunity to respond.
3. Whether a court of appeals may affirm a Rule 12 dismissal without resolving what materials constituted the pleadings under Rule 10(c) and what materials, if any, triggered Rule 12(d) conversion.

PARTIES, CORPORATE DISCLOSURE, AND RELATED PROCEEDINGS

Parties

Petitioner Ezequiel Rivera, Jr. was plaintiff in the United States District Court for the District of Minnesota and appellant in the United States Court of Appeals for the Eighth Circuit. Respondents Sedgwick Claims Management Services, ACE Fire Underwriters Insurance Company, and Nestle USA, Inc. were defendants in the district court and appellees in the court of appeals.

Corporate Disclosure Statement

Petitioner is an individual and has no parent corporation, and no publicly held corporation owns 10% or more of any stock of petitioner. The following information is taken from respondents' Rule 7.1 corporate disclosure statements filed in the lower court and is included for completeness. ACE Fire Underwriters Insurance Company disclosed that it is a wholly owned subsidiary of ACE Property and Casualty Insurance Company, which is ultimately in the Chubb ownership chain, and that Chubb Limited (NYSE: CB) is the only publicly traded company holding more than a 10% ownership interest in ACE Fire Underwriters Insurance Company. Nestlé USA, Inc. disclosed that it is a wholly owned subsidiary of Nestlé Holdings, Inc., which is ultimately a wholly owned subsidiary of Nestlé S.A., a publicly traded Swiss corporation whose shares are traded in the United States in the form of American Depositary Receipts. Nestlé USA further disclosed that no publicly held corporation owns 10% or more of the stock of Nestlé S.A. Sedgwick Claims Management Services, Inc. disclosed that Sedgwick Holdings II, L.P. is its parent corporation and that no publicly held corporation owns 10% or more of Sedgwick Claims Management Services, Inc.'s stock.

Related Proceedings

Directly related proceedings under Supreme Court Rule 14.1(b)(iii):

- United States District Court for the District of Minnesota, *Rivera v. Sedgwick Claims*

Management Services, et al., No. 0:24-cv-03247-LMP-SGE. The district court entered its dismissal order on July 7, 2025, entered judgment on July 8, 2025, and denied Rule 59(e) and recusal relief on September 19, 2025.

- United States Court of Appeals for the Eighth Circuit, *Rivera v. Sedgwick Claims*

Management Services, et al., No. 25-2773. The court of appeals entered an unpublished affirmance and judgment on April 7, 2026, and denied panel rehearing and rehearing en banc on May 6, 2026. The district court also discussed prior actions arising out of petitioner's employment injury and benefits disputes: *Rivera v. Nestle USA Inc.*, No. 23-cv-1431 (E.D. Wis.); *Rivera v. Nestle USA Inc.*, No. 1:24-cv-00691 (E.D. Wis.); and *Rivera v. ACE Fire Underwriters Ins. Co.*, No. 24-cv- 2610 (E.D. Pa.). Those matters are not directly related for Rule 14.1(b)(iii) purposes because they do not arise from the same trial-court case now under review, but they matter here because the district court relied on them in its Rule 12 dismissal analysis.

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OPINIONS BELOW

The Eighth Circuit issued an unpublished per curiam opinion affirming the district court. APP-2-APP-3. The Eighth Circuit judgment was entered the same day. APP-4. The order denying panel rehearing and rehearing en banc is reproduced at APP-5. The district court's order dismissing the case is reproduced at APP-6-APP-18, and its order denying Rule 59(e) and recusal relief is reproduced at APP-19-APP-33.

JURISDICTION

The court of appeals entered judgment on April 7, 2026. APP-4. Petitioner timely sought rehearing. The Eighth Circuit denied panel rehearing and rehearing en banc on May 6, 2026. APP-5. This Court has jurisdiction under 28 U.S.C. § 1254(1), APP-193. Under Supreme Court Rule 13.3, APP-204, the time to file a petition for certiorari runs from the denial of rehearing when rehearing was timely sought. If filed on or before August 4, 2026, this petition is timely. Supreme Court Rule 12.7, APP-203, further permits a party to cite or quote the record even before the lower-court record is transmitted to this Court.

CONSTITUTIONAL, STATUTORY, AND RULE PROVISIONS INVOLVED

This petition involves the Due Process Clause of the Fifth Amendment, APP-192; 28 U.S.C. § 455(a), APP-194; 28 U.S.C. § 1254(1), APP-193; 28 U.S.C. § 1406(a), APP-195; Title VII's venue provision, 42 U.S.C. § 2000e-5(f)(3), APP-196; the ADA's incorporation provision, 42 U.S.C. § 12117(a), APP-197; ERISA § 510, 29 U.S.C. § 1140, APP-198; Federal Rule of Civil Procedure 10(c), APP-199; Federal Rule of Civil Procedure 12(d), APP-200; Federal Rule of Civil Procedure 15(a)(2), APP-201; and Federal Rule of Civil Procedure 59(e), APP-202. Relevant provisions are reproduced in the appendix at APP-192-APP-202.

STATEMENT OF THE CASE

A. Petitioner's complaint alleged federal retaliation, discrimination, and benefit- interference theories tied to Minnesota-based claims administration.

Petitioner was a Nestlé employee who suffered a serious knee injury after a workplace incident at Nestlé's Little Chute, Wisconsin facility. He alleged that he had previously reported discrimination and harassment; that he was terminated on March 3, 2023; and that respondents later manipulated medical, wage, and benefit decisions to deny necessary medical care, prematurely end treatment, and cut or delay benefits. The complaint identified federal-question jurisdiction under Title VII, the ADA, and ERISA § 510. APP-37-APP-47. Venue was not asserted randomly. The complaint identified Sedgwick Claims Management Services at an Eden Prairie, Minnesota address and alleged that Sedgwick's Minnesota office handled petitioner's case and denied medical treatment. APP-37-APP-47. The appendix also includes communications and exhibits concerning claim handling, denial of surgery or treatment, wage reporting, and communications among Sedgwick, ACE, and Nestlé. APP-49-APP-50, APP-61-APP-64, APP-68-APP-90, APP-95-APP-96. Nestlé's answer confirmed what the complaint pleaded. It addressed allegations involving denial of medical coverage and premature end of healing; retaliatory termination; delayed benefits; biased independent medical examination; unjustified examination; premature end of healing and PPD rating; and retaliation in refusing to pay for surgery. Those denials did not become evidence on a Rule 12(c) motion; the pleaded facts and reasonable inferences still had to be viewed in petitioner's favor.

B. The district court used prior lawsuits and defense characterizations to supply factual background while refusing to engage petitioner's exhibits.

ACE and Sedgwick moved to dismiss under Rules 12(b)(3) and 12(b)(6). ACE argued that petitioner's claims were really workers' compensation disputes, that workers' compensation insurance is excluded from ERISA, that Wisconsin's workers' compensation system supplied an exclusive remedy,

and that Title VII/ADA venue belonged in Wisconsin. Sedgwick made similar arguments and asserted that it was not petitioner's employer or a covered entity for Title VII/ADA purposes. Nestlé filed an answer and then moved for judgment on the pleadings. The dismissal order accepted significant parts of respondents' framing. The court stated that although petitioner did not explain the precise relationship between Nestlé, ACE, and Sedgwick, "Ace explains" that ACE is Nestlé's workers' compensation insurer and Sedgwick manages claims for ACE on behalf of Nestlé. APP-6-APP-18. The court also drew background from prior decisions in the Eastern Districts of Wisconsin and Pennsylvania. APP-171-APP-191. At the same time, the court refused to discern petitioner's claims from what it characterized as "mountains of exhibits." APP-6-APP-18. The resulting dismissal rested on two stated grounds. First, the district court dismissed ERISA claims because petitioner had not pleaded an ERISA-governed plan. Second, it held that Title VII and ADA venue was improper in Minnesota under 42 U.S.C. § 2000e-5(f)(3), declined transfer under 28 U.S.C. § 1406(a), denied pending motions, and dismissed without prejudice. APP-6-APP-18; APP-195-APP-198.

C. The 365-page exhibit premise is internally inconsistent and not resolved by the docket record available to petitioner.

This petition does not ask the Court to grant review merely because a page number was wrong. The issue is that a disputed record premise became a reason for dismissal, a reason for refusing evidence, a reason for denying Rule 59(e), and a reason for rejecting recusal, while the court of appeals never resolved the premise. The district court's Rule 59(e)/recusal order stated that petitioner attached exhibits "consisting of 365 total pages" to the complaint. APP-19-APP-33. The dismissal order also relied on the alleged exhibit record to conclude that petitioner worked and was terminated at a Nestlé plant in Wisconsin. APP-6-APP-18. Yet the complaint included in the appendix is eleven pages. APP-37-APP-47. The appendix separately includes later-filed evidence, including a placeholder for Exhibits A-Y and video material, as well as extensive later exhibit filings. APP-97-APP-169. Thus, either the supposed 365-page exhibit record existed but was treated inconsistently, or it did not exist in a reviewable form in the record as described. If it existed, Rule 10(c) made it part of the pleading and the court should not have dismissed while refusing to sift it. APP-199. If it did not exist or was not uploaded and reviewable, it should not have been used to characterize petitioner's filings as a "mountain" or to support venue dismissal. Either way, the court of appeals could not perform meaningful de novo review without resolving what the record actually contained.

D. Petitioner preserved the issue in post-judgment motions, but the same judge denied Rule 59(e) and recusal.

Petitioner promptly moved under Rule 59(e), arguing manifest legal and factual error, improper venue dismissal, ERISA pleading error, failure to liberally construe pro se pleadings, Rule 12(d) conversion, and failure to address the record evidence. APP-98-APP-131; APP-200; APP-202. He also sought recusal under 28 U.S.C. § 455(a), arguing that the court's language, use of prior cases, refusal to consider exhibits, and procedural treatment created an appearance of partiality. APP-132-APP-169; APP-194. The district court denied both motions. It defended the "mountains" characterization, stated that it had gathered background from the complaint and other filings, rejected recusal, and stated that it had reviewed the exhibits attached to the complaint as well as hundreds of pages in other motions. APP-19-APP-33. That statement sharpened, rather than cured, the inconsistency: the dismissal order refused to sift the exhibits, while the Rule 59(e) order asserted full review of the same exhibits. APP-6-APP-18; APP-19-APP-33.

E. The Eighth Circuit affirmed without resolving the record defect.

The Eighth Circuit issued an unpublished per curiam opinion affirming the district court. APP-2-APP-3. The court of appeals entered judgment the same day. APP-4. The court did not address the 365-page exhibit issue, the conventionally filed video/media exhibit, Rule 10(c), Rule 12(d), transfer under § 1406(a), leave to amend, or the § 455(a) question. Rehearing was denied, with one

judge not participating. APP-5.

F. The appendix record shows why the Rule 12 dismissal cannot be separated from the Title VII and ADA merits allegations.

The appendix is not merely a collection of background papers. It is the record material showing why the lower courts had to apply Rule 10(c), Rule 12(d), Rule 15(a)(2), Title VII/ADA venue principles, and the pro se pleading rules before dismissing the case. APP-196-APP-201. The complaint itself named Sedgwick at an Eden Prairie, Minnesota address, identified federal- question jurisdiction under Title VII, the ADA, and ERISA § 510, and listed federal violations tied to medical coverage, termination, workers' compensation benefits, independent medical examinations, premature end of healing, PPD rating, and refusal to pay for surgery. APP-37- APP-47. The same appendix supplies the nonconclusory facts the dismissal order said were missing: Nestlé admitted petitioner reported discrimination on November 3, 2022; petitioner's November 3 email alleged discrimination, intimidation, hostile treatment, sabotage, and overtime interference; petitioner reported racial discrimination to Nestlé headquarters on February 28, 2023; Nestlé terminated him on March 3, 2023; and Nestlé acknowledged that surveillance video had been reviewed by named decisionmakers but later overwritten. APP-51-APP-54, APP-60, APP-65-APP-67. The appendix also supplies ADA and retaliation facts: emergency-room records identified the right-knee injury as work-related and for workers' compensation; claim records listed Nestlé as employer, ACE as insurer, and Sedgwick as claims administrator; medical and IME materials discussed ACL and meniscus injury, surgery, continuing pain, restrictions, end of healing, and permanent partial disability; and treating-provider materials reflected restrictions and continued treatment needs. APP-55-APP-64, APP-68-APP-90, APP-95-APP-96. The prior Wisconsin and Pennsylvania orders included in the appendix do not provide an alternative merits basis for dismissal. The Pennsylvania and later Wisconsin screening matters were dismissed without prejudice or for lack of subject-matter jurisdiction, and the Wisconsin summary-judgment decision was a different case with a different procedural posture. Yet the district court used those prior matters to frame the Rule 12 dismissal, while refusing to apply the current appendix exhibits consistently. APP-171-APP-191.

REASONS FOR GRANTING THE PETITION

I. The Decision Below Deepens a Conflict Over Rule 10(c), Rule 12(d), and Extrinsic Materials at the Pleading Stage

This case is certworthy because the decision below permits the very pleading-stage practice that the Ninth and Second Circuits have cautioned against: using extrinsic or selectively credited record materials to defeat a complaint while denying the plaintiff the protections of Rule 10(c), Rule 12(d), and ordinary Rule 12 review. The district court described petitioner's incorporated materials as a "mountain" it would not sift, later stated that the complaint had exhibits totaling 365 pages and that the court reviewed the complaint, exhibits, and other filings, and relied on prior proceedings and respondents' factual characterizations to frame the dismissal. APP-6-APP-18; APP-19-APP-33. The Eighth Circuit affirmed without deciding whether those materials were part of the pleading under Rule 10(c), excluded from consideration, or extrinsic materials requiring conversion under Rule 12(d). APP-2-APP-5.

A. The Ninth Circuit would not permit this asymmetric use of pleading-stage materials.

The Ninth Circuit has made clear that courts may not use incorporation by reference or judicial notice to resolve factual disputes or to convert Rule 12 review into a defense-driven merits proceeding. In *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988 (9th Cir. 2018), the court warned that overuse of incorporation by reference and judicial notice can improperly defeat otherwise plausible claims at the pleading stage. *Khoja* held that judicial notice may establish the existence of public records, but not disputed facts within those records, and that incorporation by reference must not be used to resolve factual disputes against the plaintiff. See also *Lee v. City of Los Angeles*, 250 F.3d 668 (9th Cir. 2001)

(a court may notice the existence of public records but may not take notice of disputed facts stated in them when deciding a Rule 12 motion). Under that approach, the decision below would not stand. The district court relied on prior cases and ACE's explanation of the relationship among Nestle, ACE, and Sedgwick, while discounting petitioner's own incorporated exhibits that showed communications among those same entities and claim-handling records identifying Nestle as employer, ACE as insurer, and Sedgwick as claims administrator. APP-6-APP-18; APP-49-APP-50; APP-61-APP-64. The Ninth Circuit's rule would require the court either to credit the incorporated exhibits as part of the pleading under Rule 10(c), limit judicial notice to the existence of prior public records, or convert the motion under Rule 12(d) before relying on disputed extrinsic facts.

B. The Second Circuit likewise requires conversion when a Rule 12 dismissal depends on outside materials not integral to the complaint.

The Second Circuit follows the same limiting principle. In *Chambers v. Time Warner, Inc.*, 282 F.3d 147 (2d Cir. 2002), the court held that materials outside the complaint may be considered on a Rule 12 motion only when they are attached to the complaint, incorporated by reference, or integral to the complaint, and it found error where the district court considered defense-submitted materials without conversion. In *Global Network Communications, Inc. v. City of New York*, 458 F.3d 150 (2d Cir. 2006), the Second Circuit vacated a dismissal because the district court considered matters outside the pleadings without converting the motion to summary judgment, emphasizing that a court cannot bypass Rule 12(d) by using extrinsic evidence to resolve the merits at the pleading stage. That rule is directly implicated here. The petition alleges that the district court used prior litigation history, respondents' descriptions, and an unresolved 365-page exhibit premise to support dismissal, while refusing to treat petitioner's referenced and attached materials consistently. APP-6-APP-18; APP-19-APP-33. Under *Chambers* and *Global Network*, the court should have identified the operative pleading record, treated incorporated written instruments consistently, excluded non-integral materials, or converted the motions and allowed petitioner a fair opportunity to respond.

C. The conflict matters because the outcome turns on the governing circuit's pleading- record rule.

This case therefore presents at least an arguable conflict warranting review or, at minimum, grant-vacate-remand. In the Ninth or Second Circuit, a Rule 12 dismissal based on disputed use of prior proceedings, defense factual characterizations, and an unresolved exhibit record would require careful limitation of judicial notice and incorporation-by-reference doctrine, or Rule 12(d) conversion. In this case, the Eighth Circuit affirmed without resolving the threshold record question at all. APP-2-APP-5. The result is a nonuniform federal rule for the same pleading-stage problem: whether a court may use materials outside or adjacent to the complaint against a plaintiff while refusing to give the plaintiff the benefit of incorporated exhibits and reasonable inferences. The Court need not decide the merits of petitioner's Title VII, ADA, or ERISA theories to resolve this conflict. The question is procedural and recurring: what record controls when a district court dismisses under Rule 12 after referring to attached exhibits, prior proceedings, other filings, and defense-supplied factual characterizations. Because the answer differs depending on whether the case is governed by the approach reflected in the Ninth and Second Circuits or the approach applied below, review is warranted. Grounds for Writ and Reversal This case presents Question 1 because the district court treated the same exhibit record inconsistently. If the exhibits were attached to or incorporated into the complaint, Rule 10(c) made them part of the pleading for all purposes. The court therefore could not use the exhibits' volume to fault petitioner, rely on adverse outside materials, and then refuse to credit the incorporated exhibits when they supplied plausibility. The Eighth Circuit's summary affirmance left unresolved what materials were part of the pleadings and whether the Rule 12 dismissal rested on a lawful record. Because Rule 10(c) made the incorporated exhibits part of the pleading, the Title VII and ADA allegations were plausible. The court therefore should not have dismissed without transfer or leave to amend. The Rule 10(c) record dispute became part of the recusal issue because the judge whose own description of the exhibit record was

challenged decided the Rule 59(e) and recusal motions herself, then repeated the same disputed premise.

II. The Lower Courts Violated Rule 10(c) by Refusing to Treat the Complaint's Incorporated Exhibits as Part of the Pleading, and That Error Requires Vacatur

Federal Rule of Civil Procedure 10(c) provides that "[a] copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes." That rule controlled the pleading-stage review here. Petitioner's complaint did not merely attach random papers. It identified federal claims and expressly relied on supporting exhibits for each violation, including retaliatory termination, denial of medical coverage, delayed benefits, biased independent medical examinations, premature end of healing, PPD rating, and refusal to pay for surgery. APP-37- APP-47. The district court was therefore required to treat the complaint and its incorporated exhibits as one pleading record when deciding Rule 12 dismissal. It did not do so.

A. Element One: The Complaint Expressly Incorporated Written Exhibits Into the Pleading.

The first Rule 10(c) requirement is satisfied because petitioner's complaint incorporated written exhibits as factual support for the claims. The complaint identified seven pleaded violations and, under each violation, listed supporting evidence. APP-40-APP-43. The complaint referenced medical records, denial correspondence, doctor evaluations, termination records, discrimination complaints, benefit-delay records, workers' compensation records, independent medical- examination reports, treating-doctor orders, and evidence of protected activity. APP-40-APP-45. This was not a situation

where a litigant filed an unintelligible pleading and expected the court to invent claims. The complaint gave the court the claims, statutes, defendants, and factual categories. It then identified exhibits supporting those claims. That is exactly the function Rule 10(c) serves: written instruments attached to or incorporated in a pleading become part of the pleading for Rule 12 review. The complaint also identified the federal statutory bases for jurisdiction and liability: Title VII, the ADA, and ERISA. APP-39. It identified Sedgwick Claims Management Services, ACE Fire Underwriters Insurance Company, and Nestlé USA, Inc. as defendants. APP-37-APP-39. It alleged that Sedgwick's Minnesota office handled the claim and denied medical treatment. APP-39. Those

B. Element Two: The Exhibits Were Central to the Claims and Supplied the Factual Content Required by Twombly and Iqbal.

The second element is that the incorporated materials were central to plausibility. They were. The exhibits supplied the factual content that the district court said was missing. For Title VII retaliation, the incorporated materials show protected activity, employer knowledge, adverse action, causation, and pretext. Nestlé admitted petitioner reported discrimination on November 3, 2022. APP-54. Petitioner's November 3 email alleged discrimination, intimidation, sabotage, overtime interference, and hostile treatment. APP-65. Petitioner also reported racial discrimination to Nestlé headquarters on February 28, 2023. APP-60. Nestlé terminated him on March 3, 2023. APP-51; APP-66-APP-67. The close timing between the February 28 racial-discrimination complaint and the March 3 termination supports causation. The disputed "fighting" reason, petitioner's statement that he was pushed and injured, and Nestlé's admission that decisionmakers reviewed surveillance video that was later overwritten support pretext. APP-51-APP-52; APP-66-APP-67. For Title VII discrimination and hostile treatment, the complaint and exhibits allege race and national-origin discrimination. The February 28 headquarters complaint states that petitioner had a racial-discrimination complaint and did not feel local HR was properly handling it. APP-60. Petitioner's November 3 email complained of discrimination, intimidation, unfair treatment, and being treated as if he did not belong. APP-65. These materials support a plausible inference of protected-class discrimination and employer knowledge. For ADA discrimination, accommodation, retaliation, and interference, the exhibits show a serious work-related knee impairment, medical treatment, restrictions, surgery, ongoing pain, IME determinations,

end-of-healing opinions, and PPD findings. Emergency-room records identified the right-knee injury as work-related and for workers' compensation. APP-55-APP-59. Workers' compensation claim records identified Nestlé as employer, ACE as insurer, and Sedgwick as claims administrator, and showed claim delay and late payment. APP-61-APP-64. IME records discussed ACL and meniscus injury, surgery, ongoing pain, restrictions, end of healing, and permanent partial disability. APP-68-APP-90. Treating-provider records and return- to-work materials showed restrictions and continuing limitations. APP-48; APP-95-APP-96. These documents are not collateral. They go directly to the elements of the pleaded federal claims. At Rule 12, petitioner did not have to prove the claims; he only had to plead facts allowing a reasonable inference of liability. The incorporated exhibits supplied that factual content.

C. Element Three: Rule 10(c) Required the District Court to Treat the Incorporated Exhibits as Part of the Pleading for All Purposes.

Rule 10(c) does not allow a court to treat exhibits as part of the pleading only when doing so hurts the plaintiff. Once the complaint incorporated the exhibits, they became part of the pleading "for all purposes." That means the court had to consider them consistently when assessing plausibility, venue, amendment, and transfer. The district court did the opposite. In the dismissal order, the court criticized petitioner's exhibits as a "mountain" and stated that a pro se litigant cannot simply dump papers on the court and expect the court to sift through them. APP-8. But in the Rule 59(e) order, the court stated that petitioner attached exhibits "consisting of 365 total pages" and that it had reviewed the complaint, exhibits, and other filings. APP-21; APP-30. That internal inconsistency is the Rule 10(c) error. If the exhibits were part of the complaint, the court was required to credit the factual content they supplied at the pleading stage. If they were not part of the complaint, the court could not use their volume or existence to fault petitioner or rely on them selectively. The court could not have it both ways.

D. Element Four: The District Court Used the Exhibit Record and Outside Materials Asymmetrically.

The fourth element is asymmetric treatment. The district court used materials outside or beyond the complaint to frame the case against petitioner while refusing to credit the incorporated exhibits that supported his claims. The dismissal order relied on prior lawsuits and defense characterizations. It stated that although petitioner did not explain the precise relationship among Nestlé, ACE, and Sedgwick, "Ace explains" that ACE was Nestlé's workers' compensation insurer and Sedgwick managed claims for ACE. APP-8. The court also relied heavily on prior Wisconsin and Pennsylvania proceedings to characterize the case as another attempt to litigate the same dispute. APP-6-APP-10. But petitioner's own incorporated exhibits showed the relationship among the defendants. Nestlé admitted communications with ACE regarding petitioner's workers' compensation claim. APP-49. Nestlé admitted communications with Sedgwick regarding petitioner's workers' compensation claim. APP-50. Workers' compensation records identified Nestlé as employer, ACE as insurer, and Sedgwick as claims administrator. APP-61-APP-64. Those materials supported petitioner's theory that the defendants' conduct was coordinated and that the claims- administration process was part of the alleged retaliation, interference, and denial of treatment. The Rule 10(c) violation is therefore not merely that the court failed to cite petitioner's exhibits. The violation is that the court used defense explanations and prior proceedings to supply adverse background facts while refusing to give petitioner the benefit of the incorporated exhibits that supplied favorable factual inferences. That is not Rule 12 review.

E. Element Five: If the District Court Considered Materials Outside the Pleadings, Rule 12(d) Required Exclusion or Conversion.

Rule 10(c) and Rule 12(d) work together. Rule 10(c) permits a court to consider written instruments attached to the complaint as part of the pleading. But when a court considers matters outside the pleadings on a Rule 12 motion, Rule 12(d) requires the motion to be converted to summary judgment and all parties must receive a reasonable opportunity to present pertinent material. Here, the district

court relied on prior litigation history, defense descriptions, and materials beyond the complaint. APP-6-APP-18. Yet the court did not convert the motions to summary judgment or provide Rule 12(d) notice. At the same time, it refused to fully credit petitioner's incorporated exhibits as part of the pleading. That created a procedural imbalance: adverse outside materials were used against petitioner, while favorable incorporated materials were discounted as a "mountain." APP-8; APP-21; APP-30. That procedure deprived petitioner of the protections required at the pleading stage. The court had two lawful options: treat the incorporated exhibits as part of the complaint under Rule 10(c), or exclude outside materials unless converting under Rule 12(d). It did neither.

F. Element Six: The Rule 10(c) Error Was Prejudicial Because the Exhibits Made the Complaint Plausible.

A Rule 10(c) error warrants vacatur when it affects the judgment. This one did. The district court dismissed the ERISA theory for failure to allege an ERISA-governed plan and dismissed the Title VII and ADA claims for improper venue. APP-11-APP-17. But the court's refusal to properly apply Rule 10(c) affected the entire pleading review. The incorporated materials showed that the complaint was not factually empty. They supported at least the following plausible claims: Title VII retaliation. The exhibits show discrimination complaints, employer knowledge, termination days later, disputed reasons for termination, and missing or overwritten video evidence. APP-51-APP-54; APP-60; APP-65-APP-67. Title VII discrimination / hostile treatment. The exhibits show complaints of racial and national-origin discrimination, hostile treatment, intimidation, sabotage, overtime interference, and failure by local HR to properly handle the complaint. APP-60; APP-65. ADA disability discrimination. The exhibits show a serious knee impairment, work-related injury, ACL/meniscus condition, surgery, pain, restrictions, and employer knowledge of the injury. APP-48; APP-55-APP-64; APP-68-APP-90; APP-95-APP-96. ADA retaliation and interference. The exhibits show medical restrictions, delayed benefit handling, claims-administration communications among Nestlé, Sedgwick, and ACE, IME/end-of-healing decisions, PPD findings, and refusal or delay in treatment. APP-49-APP-50; APP-61-APP-64; APP-68-APP-90. These facts were enough to cross the plausibility threshold. They were also enough to require, at minimum, leave to amend or transfer if venue was improper. The district court's failure to apply Rule 10(c) therefore affected dismissal, venue analysis, transfer, amendment, and appellate review.

G. Element Seven: The Error Also Affected Venue and Transfer.

The Rule 10(c) violation was not limited to the merits. It affected venue. The complaint alleged that Sedgwick Claims Management Services was located in Eden Prairie, Minnesota and that Sedgwick's Minnesota office handled the case and denied treatment. APP-38-APP-39. The incorporated exhibits showed Sedgwick's role in the claim, Nestlé's communications with Sedgwick, and ACE's role as insurer. APP-49-APP-50; APP-61-APP-64. These materials were relevant to petitioner's venue theory and to whether the interest of justice required transfer instead of dismissal. Even if the district court ultimately concluded that Title VII and ADA venue lay in Wisconsin, dismissal was not the only remedy. Under 28 U.S.C. § 1406(a), a court may transfer a case filed in the wrong venue when transfer serves the interest of justice. Once the complaint and incorporated exhibits showed plausible federal civil-rights claims, the proper course was transfer or leave to amend, not outright dismissal. The Rule 10(c) error caused the court to undervalue the federal claims and then deny transfer.

H. Element Eight: The Eighth Circuit Failed to Correct the Rule 10(c) Error.

The Eighth Circuit affirmed in a short unpublished opinion, stating only that, after careful review, dismissal was proper for the reasons stated by the district court. APP-2-APP-5. It did not resolve whether the 365 pages were part of the complaint under Rule 10(c), whether the district court considered outside materials without Rule 12(d) conversion, whether the incorporated exhibits supplied plausibility, whether transfer was required under § 1406(a), or whether leave to amend should have been granted. That summary affirmance left the Rule 10(c) error intact. Meaningful appellate review

requires an identifiable pleading record. When the district court says both that it would not sift the exhibits and that it reviewed 365 pages, the court of appeals cannot simply affirm without deciding how those materials were treated under Rule 10(c) and Rule 12(d).

I. The Rule 10(c) Error Requires Vacatur and Remand.

The remedy is vacatur and remand. Petitioner does not ask this Court to weigh evidence or decide the ultimate merits. The requested relief is procedural: the lower courts should be required to apply the correct pleading rules. The judgment should be vacated because the complaint and incorporated exhibits plausibly alleged federal claims and because the district court's inconsistent treatment of those exhibits infected the Rule 12 dismissal. On remand, the lower court should be directed to: treat the complaint and incorporated written exhibits as part of the pleading under Rule 10(c); exclude outside materials or convert under Rule 12(d); accept well-pleaded facts and reasonable inferences in petitioner's favor; liberally construe the pro se complaint; consider transfer under § 1406(a) if venue is improper; and allow amendment under Rule 15(a)(2) for any curable pleading defect.

J. Summary of Rule 10(c) Elements Proven by the Appendix.

Rule 10(c) Element Appendix Proof Legal Effect The complaint incorporated exhibits Complaint listed exhibits under each violation. APP-40-APP-43. Exhibits became part of the pleading. Exhibits were central to claims Exhibits showed discrimination complaints, termination, medical injury, claim handling, IMEs, restrictions. APP-48-APP-96. They had to be considered in plausibility review. Court treated exhibits inconsistently Court criticized "mountain" of exhibits but later said it reviewed 365 pages. APP-8; APP-21; APP-30. Asymmetric treatment violated Rule 10(c). Court used outside/adverse materials Court relied on prior cases and "Ace explains" relationship among defendants. APP-6-APP-10. Rule 12(d) required exclusion or conversion. Exhibits supported plausibility Protected activity, termination, timing, pretext, disability, restrictions, delayed benefits. APP-48- APP-96. Dismissal cannot stand under Rule 12. Error affected venue/transfer Complaint alleged Sedgwick Minnesota address and claims handling; exhibits showed Sedgwick/ACE/Nestlé communications. APP-38- APP-39; APP-49-APP-50; APP-61-APP-64. Court should have considered transfer or amendment. Appellate court failed to cure Eighth Circuit affirmed without addressing Rule 10(c), Rule 12(d), transfer, or amendment. APP-2- APP-5. Vacatur is required for meaningful review. For these reasons, the Rule 10(c) error was not harmless. It affected the pleading standard, the factual record, the venue ruling, transfer, amendment, and appellate review. This Court should grant the petition, vacate the judgment, and remand for proper Rule 12 review under Rule 10(c).

III. The Complaint Plausibly Alleged Federal Civil-Rights Claims, and the Lower Courts Committed Pleading-Stage Error by Dismissing Instead of Crediting the Complaint, Incorporated Exhibits, and Reasonable Inferences

The district court's dismissal cannot be reconciled with the Rule 12 pleading standard, the liberal construction owed to pro se pleadings, or the Fifth Amendment guarantee of meaningful access to a fair adjudication. The complaint did not merely recite labels. It identified federal statutes, named the responsible defendants, alleged protected discrimination complaints, a serious work- related knee impairment, termination within days of protected activity and injury, delayed and denied benefits, biased medical examinations, premature end-of-healing determinations, refusal to pay for surgery, and coordinated communications among Nestlé, Sedgwick, and ACE. APP-37-APP-47; APP-49-APP-50; APP-55-APP-64; APP-68-APP-90; APP-95-APP-96. Those facts were sufficient to cross the plausibility threshold under *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), especially because petitioner proceeded pro se and his pleadings had to be liberally construed under *Haines v. Kerner*, 404 U.S. 519 (1972), and *Erickson v. Pardus*, 551 U.S. 89 (2007). The district court acknowledged that petitioner alleged seven causes of action under Title VII, the ADA, and ERISA. APP-7. The complaint alleged that Nestlé refused to cover petitioner's knee surgery, prematurely ended medical treatment, terminated petitioner in retaliation for reporting

discrimination and taking medical leave, delayed workers' compensation benefits, used biased and unjustified independent medical examinations, issued a premature end-of-healing and PPD rating, and retaliated by refusing to pay for necessary surgery. APP-40-APP-43. The complaint's statement of claim further alleged discriminatory and retaliatory practices, hostile work environment, disparate treatment, wrongful termination, conspiracy among Sedgwick, ACE, and Nestlé to cut off benefits, and retaliation for protected activity. APP-44-APP-45. These are factual allegations, not empty conclusions. The pleading also identified Minnesota-based venue facts. Sedgwick was listed at an Eden Prairie, Minnesota address, and petitioner wrote that Sedgwick Claims Management's Minnesota office handled his case. APP-38-APP-39. Whether that allegation ultimately establishes venue is a legal question, but at the pleading stage the court was required to accept well-pleaded facts and draw reasonable inferences in petitioner's favor. The district court instead drew adverse inferences from prior litigation, defense explanations, and its own characterization of petitioner's exhibits. APP-6-APP-18. That was improper at Rule 12. The complaint plausibly alleged Title VII retaliation. Title VII makes it unlawful to retaliate against an employee because he opposed discrimination. 42 U.S.C. § 2000e-3(a). The appendix shows protected activity: Nestlé admitted petitioner reported discrimination on November 3, 2022, and petitioner reported racial discrimination to Nestlé headquarters on February 28, 2023. APP-54; APP-60; APP-65. The appendix shows adverse action: Nestlé terminated petitioner on March 3, 2023. APP-51; APP-66-APP-67. The close timing between the February 28 racial- discrimination complaint and the March 3 termination supports causation. The disputed "fighting" rationale, petitioner's statement that he was pushed and injured, and Nestlé's admission that surveillance video was reviewed but later overwritten support pretext. APP-51- APP-52; APP-66-APP-67. Under *Burlington Northern & Santa Fe Railway Co. v. White*, 548 U.S. 53 (2006), termination and benefit-related retaliation easily qualify as materially adverse actions because they would deter a reasonable worker from complaining of discrimination. The complaint also plausibly alleged Title VII discrimination and hostile treatment. Petitioner alleged race and national-origin discrimination, including that he was Mexican American and that technicians were against him because he is Mexican. APP-60; APP-94; APP-171-APP-172. His November 3 email described discrimination, intimidation, sabotage, unfair treatment, overtime interference, and hostile treatment. APP-65. Nestlé admitted petitioner had reported discrimination. APP-54. These allegations gave fair notice of a Title VII discrimination theory and were sufficient at the pleading stage. A plaintiff is not required to prove the prima facie case in the complaint. *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506 (2002). The complaint plausibly alleged ADA discrimination, failure to accommodate, retaliation, and interference. The appendix shows petitioner suffered a serious work-related right-knee injury; emergency-room records identified the injury as work-related; later records documented ACL and meniscus injury, surgery, pain, restrictions, IME findings, end-of-healing findings, and permanent partial disability. APP-55-APP-64; APP-68-APP-90; APP-95-APP-96. The return- to-work recommendation showed petitioner could work with restrictions, including a maximum lifting restriction. APP-48. These facts plausibly support that petitioner had an impairment, was regarded as impaired, or needed accommodation. The termination followed within days of the injury and medical treatment. APP-51; APP-55-APP-67. At minimum, the allegations supported an amendable ADA theory and required leave to amend under Rule 15(a)(2), not outright dismissal. The district court's treatment of the complaint and exhibits created a constitutional record-review problem. The court criticized petitioner for submitting a "mountain" of exhibits and refused to sift them, but later stated that it reviewed 365 pages of exhibits. APP-8; APP-21; APP-30. That inconsistency matters because Federal Rule of Civil Procedure 10(c) makes written instruments attached to a pleading part of the pleading for all purposes. If the exhibits were attached or incorporated, they had to be considered consistently. If they were outside the pleadings, Rule 12(d) required exclusion or conversion to summary judgment with notice and a fair opportunity to respond. The district court did neither. This violated basic Fifth Amendment due process principles. Due process requires a meaningful opportunity to be heard before deprivation of a claim. U.S. Const. amend. V; *Mathews v. Eldridge*, 424 U.S. 319 (1976). Meaningful review is impossible where the court uses the

record against a pro se litigant while refusing to credit the same record when it supports plausibility. The court accepted adverse framing from prior cases and defense explanations while rejecting petitioner's incorporated materials as too burdensome to review. APP-6-APP-18. The Eighth Circuit then affirmed in a short unpublished opinion without resolving the Rule 10(c), Rule 12(d), venue-transfer, amendment, or record-integrity issues. APP-2-APP-5. That left the central pleading error uncorrected. The error is especially clear because the district court did not dismiss the Title VII and ADA claims on the merits after finding them implausible. It dismissed ERISA for failure to plead an ERISA-governed plan and dismissed Title VII/ADA claims for improper venue. APP-11-APP-17. But once the complaint and appendix showed plausible civil-rights claims, the proper remedy for any venue defect was transfer in the interest of justice under 28 U.S.C. § 1406(a), not dismissal. *Goldlawr, Inc. v. Heiman*, 369 U.S. 463 (1962), holds that § 1406(a) exists to remove procedural obstacles to adjudication on the merits. Dismissing a pro se civil-rights complaint that alleged protected activity, injury, termination, disability-related restrictions, delayed benefits, and refusal to pay medical treatment-without transfer or leave to amend-was an abuse of discretion and a departure from accepted federal practice. The lower courts' error is therefore not a mere disagreement over facts. It is a pleading-stage legal error. The complaint plausibly alleged Title VII and ADA claims. The record exhibits strengthened, rather than weakened, plausibility. The district court was required to accept the factual allegations, credit reasonable inferences, construe the pro se pleading liberally, treat incorporated exhibits consistently under Rule 10(c), apply Rule 12(d) if it considered outside materials, and allow amendment or transfer where defects were curable. Because the lower courts failed to do so, certiorari should be granted, the judgment vacated, and the case remanded for proper Rule 12 review, transfer if venue is improper, and leave to amend.

IV. The Appendix Materials Establish Plausibility Under Rule 8, Rule 10(c), Title VII, and the ADA

The appendix materials are not offered to prove the ultimate merits at the pleading stage. They show that the complaint and incorporated exhibits supplied enough factual content to make the federal civil-rights claims plausible and to require ordinary Rule 12 review. The district court described the complaint as containing almost no factual allegations, but the complaint identified seven federal violations and listed the supporting exhibits for medical coverage, termination, delayed benefits, independent medical examinations, end of healing, PPD rating, and refusal to pay for surgery. APP-40-APP-43. The statement of claim then alleged discriminatory and retaliatory practices, hostile work environment, disparate treatment, wrongful termination, conspiracy among Nestle, Sedgwick, and ACE to cut off workers compensation benefits, and denial of medical care. APP-44-APP-46.

A. The appendix plausibly alleged protected activity and employer knowledge.

The appendix shows protected activity. Nestle admitted that petitioner reported alleged discrimination on November 3, 2022. APP-54. The November 3 email complained of discrimination, intimidation, hostile treatment, sabotage, overtime interference, and unfair treatment at the Little Chute facility. APP-65. Petitioner again reported racial discrimination to Nestle headquarters on February 28, 2023, stating that local HR was not properly taking action and asking for someone outside the Little Chute branch to investigate. APP-60. The investigation transcript also records petitioner reporting that he felt disrespected, was yelled at and laughed at, was called names, and viewed the conduct as racial. APP-66-APP-67. These materials plausibly satisfy protected activity and knowledge for Title VII retaliation.

B. The appendix plausibly alleged adverse action, causation, and pretext.

The appendix shows adverse action. Nestle terminated petitioner on March 3, 2023, only days after the February 28 headquarters racial-discrimination complaint. APP-51; APP-60. The close timing supports a reasonable inference of causation at the pleading stage. The appendix also supports pretext or disputed motive: petitioner stated that he did not fight and that he was the one who reported the

incident; Nestle personnel told him the investigation showed a fight occurred; and the same investigative record reflects his injury would be handled through workers compensation. APP-66. Additional appendix material shows that named Nestle decisionmakers reviewed surveillance video from the February 26, 2023 incident, but Nestle later stated the video was overwritten in the ordinary course. APP-52. Those facts do not prove retaliation, but they plausibly allege a disputed termination rationale and a causal chain sufficient to survive Rule 12 dismissal.

C. The appendix plausibly alleged discrimination and hostile treatment.

The appendix also supports Title VII discrimination and hostile-environment plausibility. Petitioner alleged that he is Mexican American and that he experienced race and national-origin discrimination. APP-44-APP-45. The February 28 headquarters complaint expressly described a racial-discrimination complaint and alleged that local HR was not properly investigating. APP-60. The November 3 email described discrimination, intimidation, sabotage, unequal overtime treatment, and being treated as if he did not belong. APP-65. At the pleading stage, these facts provided fair notice of the discrimination theory and supported a reasonable inference that the adverse employment actions were connected to protected-class discrimination or retaliation.

D. The appendix plausibly alleged ADA impairment, restrictions, and failure-to- accommodate or retaliation facts.

The appendix supplies nonconclusory ADA facts. Emergency-room records from February 26, 2023 identify the chief complaint as a knee injury and workers compensation matter, describe petitioner as reporting that a coworker pushed him at work and caused his knee to twist, and state that the encounter was identified as a work injury to be considered for workers compensation. APP-55-APP-59. Workers compensation records identify Nestle as employer, ACE as insurer, and Sedgwick as claims administrator, and describe the injury as being pushed by an employee and twisting the right knee causing ACL/meniscus injury. APP-61-APP-64. Medical and IME materials describe ACL and meniscus injury, surgery, ongoing pain, restrictions, end-of-healing opinions, and permanent partial disability issues. APP-68-APP-90. Treating-provider and return-to-work materials also show work-related restrictions and continuing limitations. APP-48; APP-95-APP-96. Those facts plausibly allege a serious physical impairment, employer and claims-administrator knowledge, and adverse treatment connected to medical restrictions, benefits, and requested treatment.

E. The appendix plausibly connected Nestle, Sedgwick, and ACE to the claim-handling conduct.

The appendix also supports the relationship among the defendants. Nestle admitted that it communicated with ACE Fire Underwriters regarding petitioner's workers compensation claim. APP-49. Nestle also admitted that it communicated with Sedgwick regarding petitioner's workers compensation claim. APP-50. The state claim documents identify Nestle as employer, ACE as insurer, and Sedgwick as the claims administrator or third-party administrator. APP-61- APP-64. These materials made plausible, at minimum, that the benefits, medical-treatment, IME, end-of-healing, and PPD decisions were not isolated background facts but part of the claim- handling conduct alleged in the complaint. They were also relevant to venue, transfer, and leave to amend.

F. The appendix required crediting reasonable inferences, not weighing evidence.

At Rule 12, petitioner was not required to prove discrimination, retaliation, disability discrimination, or interference. He was required to allege facts that allow a reasonable inference of liability. The appendix did so: discrimination reports before termination; a renewed racial-discrimination complaint days before termination; a documented work injury; medical restrictions and surgery; delayed or disputed benefits; communications among Nestle, Sedgwick, and ACE; and IME/end-of-healing/PPD decisions affecting medical treatment. APP-48-APP-90; APP-95-APP-96. If the district court considered those incorporated materials, Rule 10(c) required the court to treat them as part of the pleading for all purposes. If the court instead relied on prior cases, defense characterizations,

or other outside materials, Rule 12(d) required exclusion or conversion. Either way, the appendix materials show that dismissal for lack of plausibility, refusal to transfer, and refusal to allow amendment rested on an incomplete or inconsistent Rule 12 record.

G. The ERISA issue did not defeat plausibility of the Title VII and ADA claims.

The district court dismissed ERISA claims because it concluded petitioner did not identify an ERISA-governed plan. APP-12-APP-14. Even if that ruling were correct, it did not eliminate the plausibility of the Title VII and ADA theories supported by the same appendix. The benefit and medical-treatment exhibits showed adverse action, disability-related restrictions, claim administration, and possible retaliation or interference. APP-49-APP-50; APP-55-APP-64; APP-68-APP-90; APP-95-APP-96. At minimum, any defect in identifying an ERISA plan was curable by amendment or by proceeding on the Title VII, ADA, and other civil-rights theories that the appendix made plausible. For these reasons, the appendix demonstrates more than labels and conclusions. It provides an element-by-element factual basis for protected activity, knowledge, adverse action, causation, disability-related impairment and restrictions, claim-handling involvement, and pretext. The lower courts therefore should have credited the incorporated exhibits and reasonable inferences, converted under Rule 12(d) if relying on outside materials, transferred if venue was improper, or allowed amendment. The Rule 12 dismissal should be vacated.

V. The Lower Courts Departed From Accepted Pleading-Stage and Record-Review Principles

A. A court may not use a disputed or unverified record description as both a reason to dismiss and a reason not to review the record.

Due process requires a meaningful opportunity to be heard and a decision based on the record before the decisionmaker. Appellate review likewise depends on a record that permits the reviewing court to understand what the trial court actually considered. These principles are not limited to criminal transcripts; they reflect the basic premise that a reviewing court cannot meaningfully review a judgment when the decisive record premise is unresolved. Here, the district court used the asserted size of petitioner's exhibits to justify non-review. It characterized petitioner's exhibits as a "mountain" and stated that it would not sift them. APP-6- APP-18. Later, when petitioner challenged that approach, the court stated that it reviewed all 365 pages of exhibits. APP-19-APP-33. The appendix record does not resolve that contradiction. It shows an eleven-page complaint, APP-37-APP-47, later conventionally filed or separately docketed evidence, including a placeholder for Exhibits A-Y and video material, APP-97, and later post-judgment filings and exhibit-supported motions. APP-98-APP-169. If the 365 pages were attached to the complaint, Federal Rule of Civil Procedure 10(c) states that a written instrument attached to a pleading is part of the pleading for all purposes. APP-199. That does not require a court to invent claims. But petitioner did not ask the district court to invent claims from an undifferentiated dump. His filings identified specific categories of evidence: denial correspondence, medical records, benefit records, wage reporting, communications among respondents, treating-doctor recommendations, discrimination complaints, and Minnesota claims administration. APP-37-APP-47, APP-49-APP-50, APP-55-APP-64, APP-68-APP-90, APP-95-APP-96. A court may reject conclusory allegations, but it cannot first treat the exhibits as part of the complaint when useful against petitioner, then refuse to consider them when they supply context supporting venue, retaliation, or leave to amend. If the 365 pages were not actually uploaded, scanned, or available to the appellate court as described, the error is even more basic. A court cannot use missing materials to characterize a litigant as burying claims in a mountain of paper. Nor can an appellate court affirm without ensuring that the documents referenced by the district court were part of the record. Supreme Court Rule 12.7 recognizes that the lower-court record remains below until requested and that, when transmitted, the clerk must number and identify the documents transmitted. APP-203. That rule presupposes an identifiable record. The problem here is that the lower courts did not identify or reconcile the supposed 365 pages with the docket record petitioner could see.

B. The lower courts sanctioned an unclear Rule 12 record practice: using prior proceedings and defense explanations against a pro se plaintiff while not deciding whether incorporated exhibits were part of the pleading under Rule 10(c), excluded, or outside materials requiring Rule 12(d) conversion.

The Court's dismissal should be altered or reversed because the Court committed Rule 12(d) conversion error. Rule 12(d) provides

that when matters outside the pleadings are presented to and not excluded by the court on a Rule 12(b)(6) motion, the motion must be treated as one for summary judgment under Rule 56, and all parties must be given a reasonable opportunity to present all material pertinent to the motion. The Supreme Court has enforced this mandatory conversion requirement. *Carter v. Stanton*, 405 U.S. 669, 671 (1972). The Eighth Circuit likewise requires strict compliance where both the party and the court rely on materials outside the pleadings. *Brooks v. Midwest Heart Grp.*, 655 F.3d 796, 800 (8th Cir. 2011); *Gibb v. Scott*, 958 F.2d 814, 816 (8th Cir. 1992). Because Plaintiff was not given notice of conversion or a reasonable opportunity to present Rule 56 material, including discovery under Rule 56(d) where necessary, dismissal under Rule 12(b)(6) was procedurally improper. This error was prejudicial because the Court did not merely take judicial notice of the existence of public docket entries or prior filings. Instead, the Court relied on outside materials to resolve disputed factual issues against Plaintiff before discovery, including issues involving notice, exhaustion, preclusion, causation, retaliation, and the merits of Plaintiff's claims. That use of outside evidence triggered Rule 12(d), and the failure to convert denied Plaintiff the procedural protections of Rule 56. The court of appeals failed to provide meaningful appellate review because it affirmed without resolving whether the district court actually considered the exhibits attached to and incorporated into the complaint, or whether it improperly ignored them while applying the plausibility standard. APP-2-APP-3. The district court treated the attached exhibits as an improper burden rather than part of the pleadings under Rule 10(c). APP-6-APP-18; APP-199. If those exhibits were incorporated into the complaint, they had to be considered at the Rule 12 stage when deciding plausibility. The district court misapplied the pro se pleading standard by treating the complaint as factually empty while failing to credit specific exhibit references that were attached to and incorporated into the complaint. The appellate court relied on Rule 12 plausibility cases without explaining whether the district court accepted the pleaded and incorporated facts as true, making meaningful review impossible. APP-2-APP-3. The district court blurred the Rule 12 record by both refusing to consider petitioner's exhibits as part of the complaint and relying on other filings and prior cases to frame the allegations. APP-6-APP-18. The appellate court affirmed without clarifying the proper Rule 12 record. APP-2- APP-3. At the pleading stage, a court asks whether the complaint states a plausible claim, accepting factual allegations as true and drawing reasonable inferences for the plaintiff. Rule 12(d) governs when matters outside the pleadings are presented to and not excluded by the court. APP-200. Rule 12(d) does not authorize courts to rely on extrinsic facts against the plaintiff while refusing plaintiff's embraced exhibits. The district court stated that it gathered factual background not only from the complaint, but also from petitioner's other filings and from prior Wisconsin and Pennsylvania cases. APP-6-APP-18; APP-171-APP-191. It also adopted ACE's description of the relationship among Nestlé, ACE, and Sedgwick. APP-6-APP-18. That may be permissible in limited ways when a court takes judicial notice of the existence of public records. But it is not permissible to use prior proceedings and defense characterizations to fill factual gaps, while simultaneously refusing petitioner's incorporated and specifically cited exhibits, without converting the motions under Rule 12(d) or giving petitioner a fair opportunity to respond under summary-judgment standards. APP-200. The court's reliance on prior cases created a further problem. The district court did not apply recognized preclusion doctrine to the Minnesota complaint. Instead, it used the prior cases to frame petitioner as a repeat filer and to support dismissal and refusal to transfer. APP-6-APP-18; APP-171-APP-191. That approach is not neutral Rule 12 review of the complaint before the court.

C. The lower courts also failed to apply the ordinary remedies of leave to amend or transfer.

Even if Minnesota was an improper venue, the district court should have seriously considered transfer under 28 U.S.C. § 1406(a), especially for a pro se litigant, instead of dismissing the action

where the defects might have been cured in a proper venue. APP-195. Even if the district court believed the ERISA theory was deficient because petitioner had not identified an ERISA-governed plan, that would not justify dismissal of the entire action without a meaningful leave-to-amend analysis. Rule 15(a)(2) directs courts to freely give leave when justice so requires. APP-201. The complaint,

premature end of healing, benefit delay or reduction, and retaliation after protected complaints.

APP-37-APP-47, APP-49-APP-50, APP-55-APP-64, APP-68-APP-90, APP-95-APP-96. If ERISA was not the proper theory, petitioner could have amended to clarify Title VII/ADA retaliation or other federal theories, or dropped ERISA entirely. The same is true of venue. Title VII's special venue statute, incorporated by the ADA, is mandatory, but improper venue ordinarily calls for dismissal only when transfer would not serve the interest of justice. APP-196-APP-197. The district court declined transfer because it viewed the complaint as fatally deficient and viewed petitioner as forum shopping. APP-6-APP-18. But that conclusion depended on the same unreviewed or disputed record and prior-litigation framing. A pro se litigant's mistaken venue theory, especially where he alleged Minnesota-based claim administration by Sedgwick, should not be treated as bad faith without resolving the factual record. APP-37-APP-47, APP-49-APP-50, APP-61-APP-64. The court dismissed a pro se complaint for pleading deficiencies without granting leave to amend, even though any missing facts-such as the identity of a plan, the basis for ADA/Title VII venue, or the connection between defendants and claims-could potentially have been clarified by amendment. APP-201.

VI. The Eighth Circuit Citations Do Not Resolve the Questions Presented

The Eighth Circuit cited only three decisions in its unpublished per curiam opinion. APP-2- APP-3. Each supports, rather than defeats, the need for review or at least remand. First, the Eighth Circuit cited ordinary Rule 12(b)(6) review, under which a court accepts well-pleaded facts as true and draws reasonable inferences in favor of the nonmoving party. APP-2- APP-3. That standard was not applied to the record problem here. The Eighth Circuit did not decide whether the alleged 365-page exhibit set existed in a reviewable form, whether the district court considered it, or whether the district court used extrinsic materials against petitioner while refusing petitioner's materials. APP-2-APP-3, APP-6-APP-18, APP-19-APP-33. Second, the Eighth Circuit cited Rule 12(c) review principles. APP-2-APP-3. That principle favors petitioner. If the exhibits were attached or necessarily embraced by the pleadings, they were part of the Rule 12 record and should have been considered in petitioner's favor. APP-199. If they were not part of the record, the district court should not have cited them against him or used their alleged volume to refuse consideration. APP-6-APP-18. Third, the Eighth Circuit cited a venue case. APP-2-APP-3. But the opinion did not address Title VII's special venue provision, Minnesota-based claims administration, conventionally filed exhibits, Rule 10(c), Rule 12(d), or transfer after a pro se pleading. APP-196, APP-199-APP-200. Its de novo-review premise required the court of appeals to decide the venue question on a correct record. The district court's other authorities do not cure the error. The general proposition that courts need not mine a pile of papers to invent claims does not authorize a court to refuse specifically identified exhibits incorporated into a complaint while relying on prior lawsuits and defense characterizations. APP-6-APP-18. The ERISA authorities relied on below may explain why some workers' compensation arrangements fall outside ERISA, but they do not decide Title VII/ADA retaliation, post-termination retaliation, record integrity, transfer, or leave to amend. APP-198, APP-201. The Title VII venue authorities relied on below do not address a docket showing Minnesota claims administration and conventionally filed exhibits. APP-37-APP-47, APP-49-APP-50, APP-61-APP-64, APP-97.

VII. The Recusal and Rule 59(e) Rulings Compound the Record-Integrity Problem

Section 455(a) requires disqualification whenever a judge's "impartiality might reasonably be questioned." APP-194. Under *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1988), that standard protects not only the parties, but also the public's confidence in the integrity of the judicial process. The question is objective: whether a reasonable observer, informed of all relevant facts, would

question the appearance of impartiality. This case presents that concern because the recusal and Rule 59(e) rulings did not merely follow adverse decisions; they reaffirmed the same disputed record premise that infected the dismissal. This petition does not argue that recusal was required merely because the district court ruled against petitioner. Adverse rulings alone ordinarily do not establish disqualification. The problem is the sequence and function of the rulings here. The dismissal order characterized petitioner's incorporated and referenced materials as a "mountain" of exhibits that the court would not sift. APP-6-APP-18. When petitioner challenged that premise through Rule 59(e) and sought recusal, the same judge denied both motions while stating that the court had reviewed the complaint, exhibits, and hundreds of pages of filings, including the asserted 365-page exhibit record. APP-19-APP-33. That did not cure the record problem. It sharpened it. The appearance problem is objective and structural. The judge whose own description and treatment of the record became the central due-process issue then decided whether that same treatment created an appearance of partiality. A reasonable observer could question whether the court was neutrally correcting a manifest record error or instead defending its own disputed characterization of the pleadings and exhibits. Under *Liljeberg*, § 455(a) exists to avoid precisely that type of appearance problem: a proceeding in which public confidence is undermined because the judge's impartiality may reasonably be questioned, even without proof of actual bias. The Rule 59(e) ruling compounds the problem. Petitioner's Rule 59(e) motion identified the same issues now presented: improper venue dismissal, ERISA pleading error, failure to liberally construe a pro se complaint, failure to apply Rule 10(c), failure to convert or exclude outside materials under Rule 12(d), failure to consider the record exhibits, and failure to grant leave to amend or transfer. APP-98-APP-131; APP-199-APP-202. Rule 59(e) was the procedural mechanism through which the district court could have corrected manifest legal or factual error. Instead, the court characterized petitioner's arguments as repetition and reaffirmed the disputed premise that the court had reviewed the exhibit record. APP-19-APP-33. That matters because the record dispute was not collateral. It affected dismissal, post-judgment review, recusal, and appeal. The district court's dismissal order stated that it would not search through petitioner's exhibits, while the Rule 59(e)/recusal order stated that the court had reviewed the complaint, exhibits, and other filings. APP-6-APP-18; APP-19-APP-33. If the exhibits were part of the complaint, Rule 10(c) required them to be treated as part of the pleading for all purposes. APP-199. If the court relied on materials outside the pleadings, Rule 12(d) required exclusion or conversion. APP-200. Either way, the court could not use the exhibit record's alleged volume against petitioner while refusing to credit the incorporated materials that supported plausibility, venue, transfer, or leave to amend. The district court's reliance on prior litigation history deepened the appearance problem. The dismissal order drew factual framing from petitioner's prior Wisconsin and Pennsylvania cases and from respondents' characterizations, rather than strictly identifying the operative Rule 12 record in the Minnesota complaint. APP-6-APP-18; APP-171-APP-191. A reasonable observer could question whether the court reviewed the complaint before it on its own pleadings and incorporated exhibits, or whether the prior-case history influenced the dismissal, the refusal to transfer, the denial of Rule 59(e), and the denial of recusal. Under *Liljeberg*, the proper inquiry also considers the risk of injustice to the parties, the risk of injustice in other cases, and the risk of undermining public confidence in the judicial process. Each factor supports at least vacatur and remand for independent review. First, petitioner suffered prejudice because the disputed record premise affected whether his complaint was treated as plausible, whether his exhibits were considered under Rule 10(c), whether outside materials triggered Rule 12(d), and whether transfer or amendment was required. Second, allowing the ruling to stand creates risk in other pro se civil-rights cases by permitting courts to describe incorporated exhibits as too burdensome while later relying on the same record to deny post-judgment relief. Third, public confidence is harmed when a dismissal turns on an unclear record and the same judge resolves the challenge to that record without independent appellate clarification. The Eighth Circuit's summary affirmance did not cure the problem. It affirmed for the district court's stated reasons without resolving whether the alleged 365-page exhibit set was part of the pleading, whether the district court considered or rejected it, whether Rule 12(d) conversion

was required, whether the prior proceedings were used only for permissible judicial notice or for disputed factual inferences, or whether the § 455(a) appearance issue required independent review. APP-2-APP-5. Under *Liljeberg*, where the appearance of impartiality and the integrity of the record are intertwined, meaningful appellate review requires more than affirmance by reference to the same disputed reasoning. For these reasons, the recusal and Rule 59(e) rulings are not independent complaints about adverse decisions. They are part of the same record-integrity defect. The district court's own disputed characterization of the record became a basis for dismissal, a basis for denying Rule 59(e), and a basis for denying recusal. A reasonable observer knowing those circumstances could question the appearance of impartiality under § 455(a). At minimum, this Court should grant, vacate, and remand so that the court of appeals can conduct independent review of the Rule 10(c), Rule 12(d), Rule 59(e), and § 455(a) issues on a clarified record.

VIII. Respondents' Arguments Do Not Supply an Alternative Basis for Summary Affirmance

Nestlé's answer largely denied the allegations, put petitioner to his burden, and denied venue facts for lack of information. That is not evidence. On a Rule 12(c) motion, denials do not erase well-pleaded allegations. The court had to accept petitioner's allegations and draw reasonable inferences in his favor unless the pleadings themselves showed no claim. The appendix shows that the complaint pleaded specific categories of evidence, including medical records, denial correspondence, termination materials, discrimination complaints, benefit records, IME reports, treating-doctor recommendations, and protected activities. APP-37-APP-47, APP-51-APP-67, APP-68-APP-90, APP-95-APP-96. Respondents' exhaustion arguments likewise do not justify summary affirmance. Title VII retaliation can include post-employment conduct and actions that would dissuade a reasonable worker from protected activity. If the administrative record was insufficient, that issue required record-based analysis, not a Rule 47B affirmance that skipped the exhibit and venue dispute. APP-2-APP-3.

IX. The Case Is a Suitable Vehicle

First, the court applied plausibility review without deciding whether the attached exhibits were part of the pleading under Rule 10(c). APP-2-APP-3, APP-199. Second, the district court's orders are inconsistent: one says it would not review the "mountains of exhibits," while the later order claims it reviewed all exhibits. APP-6-APP-18, APP-19- APP-33. Third, the Eighth Circuit affirmed in an unpublished per curiam opinion without resolving that record-review problem, which undermines meaningful appellate review. APP-2-APP-3. Defendants challenged plausibility while failing to meaningfully analyze the complaint and Rule 10(c) exhibits as a whole. They selectively used exhibits and public records when helpful to them, but did not confront petitioner's exhibit-supported factual theory claim by claim. The central legal error is that the courts applied Rule 12 plausibility review without first defining the pleading record. APP-199-APP-200. The district court dismissed petitioner's pro se complaint as implausible while stating it would not discern claims from the "mountains of exhibits," even though the complaint identified supporting facts and the appendix contains claim-specific materials. APP-6-APP-18, APP-37- APP-47, APP-49-APP-67, APP-68-APP-90, APP-95-APP-96. Under Rule 10(c), attached and incorporated exhibits are part of the pleading. APP-199. The later Rule 59(e) order then asserted that the court did review the complaint, exhibits, and filings, creating an internal inconsistency. APP-19-APP-33. That contradiction is not harmless. It goes to the heart of whether petitioner received a meaningful opportunity to be heard. The Eighth Circuit affirmed without resolving whether the exhibits were part of the pleadings, whether they were considered, or whether the district court applied the proper Rule 12 standard. APP-2-APP-3. Because plausibility review depends on the facts properly before the court, affirmance without resolving that record question deprived petitioner of meaningful appellate review and due process of law. APP-192. The issues were preserved. Petitioner raised the exhibit-record problem, Rule 10(c), Rule 12(d), venue, transfer, liberal construction, leave to amend, Rule 59(e), and recusal in the district court and on appeal. APP-98-APP-169, APP-194-APP-202. The Eighth Circuit affirmed only for the district court's stated reasons and cited standard-of-review cases. APP-2-APP-3. The Court can grant, vacate, and remand for

the Eighth Circuit to resolve the record and apply de novo review, or grant plenary review to clarify that pro se exhibit records cannot be used asymmetrically at the pleading stage. The Rule 10(c) violation presents a certworthy record-integrity question because the district court treated incorporated exhibits asymmetrically: it used their volume and selected outside materials to fault petitioner, but refused to credit the same incorporated exhibits when they supplied factual plausibility. The Eighth Circuit then affirmed without determining what materials were part of the pleading record. That procedure conflicts with Rule 10(c), Rule 12(d), and the due-process requirement of meaningful appellate review. The requested relief is modest. Petitioner does not ask this Court to decide the merits of his benefit, discrimination, or retaliation claims in the first instance. He asks for a ruling that lower courts must decide Rule 12 and venue questions on an accurate, identifiable record; must treat incorporated exhibits consistently; must convert or exclude extrinsic matters under Rule 12(d); must meaningfully consider transfer or leave to amend; and must address recusal under § 455(a) when the judge's own disputed record characterization is central to the due-process claim. APP-194-APP-202.

CONCLUSION

The petition for a writ of certiorari should be granted. This is a record-integrity and meaningful-review defect that infected dismissal, Rule 59(e), recusal, and appeal. In the alternative, the Court should grant the petition, vacate the judgment, and remand for the Eighth Circuit to conduct de novo review on a clarified record, including whether the alleged 365-page exhibit set was part of the record, whether conventionally filed materials were available for appellate review, whether Rule 10(c) and Rule 12(d) were satisfied, whether transfer or leave to amend was required, and whether recusal or reassignment is necessary under 28 U.S.C. § 455(a).

Respectfully submitted,

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