

# United States Court of Appeals

**For the Seventh Circuit  
Chicago, Illinois 60604**

Decided August 4, 2022

**Before**

JOEL M. FLAUM, *Circuit Judge*

ILANA DIAMOND ROVNER, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

No. 19-2725

KEITH SMITH,  
*Plaintiff-Appellant,*

*v.*

CITY OF CHICAGO, et al.,  
*Defendants-Appellees.*

Appeal from the United States District  
Court for the Northern District of  
Illinois, Eastern Division.

No. 18-cv-4918

Virginia M. Kendall, *Judge.*

**ORDER on  
Petition for Panel Rehearing**

On consideration of the petition for panel rehearing filed by the Defendants-Appellees on July 28, 2022, all members of the panel have voted to deny the petition for panel rehearing and to amend the court's July 14, 2022 Order as follows: The last paragraph on page 2 of that Order is deleted and is replaced with the following:

The district court never addressed the merits of the claim as framed by the City now, and we decline the City's invitation to enter summary judgment in its favor in the first instance instead of remanding. Although federal courts of appeals have the authority under 28 U.S.C.

§ 2106 to provide that relief when so doing would be just under the circumstances, in most instances, “such a decision is best made by the district court; we would rarely find it appropriate to direct the entry of summary judgment.” *Turner v. J.V.D.B. Assocs., Inc.*, 330 F.3d 991, 998 (7th Cir.2003). See also *International Fin. Servs. Corp. v. Chromas Techs. Canada, Inc.*, 356 F.3d 731, 739-40 (7th Cir. 2004). This case is no exception to the rule and we remand so that the district court may consider the City’s argument in the first instance.

Accordingly, the petition for panel rehearing is hereby DENIED.