No. 17-

IN THE
Supreme Court of the United States

SUN LIFE ASSURANCE COMPANY OF CANADA,
Petitioner,
v.

RICHARD E. JACKSON AND SIERRA N. JACKSON, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF BRUCE D. JACKSON,
Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1001 *et seq.*, generally requires administrators of employee benefit plans to make payments to the "beneficiary who is designated by a participant, or by the terms of [the] plan." *Egelhoff* v. *Egelhoff ex rel. Breiner*, 532 U.S. 141, 147 (2001) (internal quotation marks and citations omitted).

In 1985, Congress carved out a narrow exception to this rule for court orders that create or assign rights to benefits under a State's domestic relations laws. *See* 29 U.S.C. § 1056(d)(3)(B)(ii). An order qualifies for the exception "only if [it] clearly specifies" certain information, including the identity of the "alternate payee" and the benefits to which they are entitled. *Id.* § 1056(d)(3)(C). If the order fails in any one of those particulars, the plan documents control.

In this case, the Sixth Circuit held that an order "clearly specifies" the required information when that information can be inferred from the documents as a whole. That splits sharply with decisions of the Second and Tenth Circuits, which hold that an order must strictly comply on its face with the statute's requirements. And it is inconsistent with the approach adopted by the Seventh Circuit and two state high courts, which hold that the statute is satisfied so long as the plan administrator has reason to know the required information, even if it appears nowhere in the order.

The question presented is:

What is required for a domestic relations order to "clearly specif[y]" the information required by 29 U.S.C. § 1056(d)(3)(C)?

PARTIES TO THE PROCEEDING

Petitioner Sun Life Assurance Company of Canada was the plaintiff-appellant below.

Respondents Richard E. Jackson and Sierra N. Jackson, individually and as the personal representative of the estate of Bruce D. Jackson, were defendants-appellees below.

RULE 29.6 DISCLOSURE STATEMENT

Sun Life Assurance Company of Canada is a wholly owned subsidiary of Sun Life Financial, Inc., which is publicly traded. No other publicly traded corporation owns 10% or more of Sun Life Financial, Inc.

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Petitioner Sun Life Assurance Company of Canada respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The Sixth Circuit's opinion is reported at 877 F.3d 698. Pet. App. 1-16. The district court's order granting summary judgment against Sun Life is unreported. *Id.* at 25-60.

JURISDICTION

The Sixth Circuit entered judgment on December 13, 2017. Pet. App. 17-18. It denied Sun Life's

timely petition for rehearing on January 18, 2018. *Id.* at 61-62. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The pertinent provisions of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.*, are reproduced in the appendix to this petition. Pet. App. 63-64.

INTRODUCTION

This case presents a recurring question that has split the federal courts of appeals and state high courts: How far must an ERISA plan administrator go to discern whether a state-law domestic relations order that purports to assign benefits to someone else ousts the beneficiary identified on the face of the plan's documents and records?

That question is particularly important because "ERISA's statutory scheme 'is built around reliance on the face of written plan documents.'" *Kennedy* v. *Plan Adm'r for DuPont Sav. & Inv. Plan*, 555 U.S. 285, 300-301 (2009) (quoting *Curtiss-Wright Corp.* v. *Schoonejongen*, 514 U.S. 73, 83 (1995)). A principal aim of the statute is to let employers "establish a uniform administrative scheme, with a set of standard procedures to guide processing of claims and disbursement of benefits" so "that beneficiaries get what's coming quickly, without the folderol essential under less-certain rules." *Id.* (internal quotation marks and brackets omitted).

Congress did not abandon that objective when it crafted the narrow exception for qualified domestic relations orders. It set out "specific and objective criteria" amounting "to a statutory checklist working to spare an administrator from litigation-fomenting

ambiguities." *Id.* at 301-302 (internal quotation marks omitted).

The rule adopted by the Sixth Circuit in this case frustrates the statute's design. By holding that a state-law order can satisfy the statutory checklist by "implication[s] or inference[s]" pieced together from the various documents it incorporates, Pet. App. 7-8, the decision below undermines "a plan administrator's ability to look at the plan documents and records conforming to them to get clear distribution instructions, without going into court." *Kennedy*, 555 U.S. at 301.

This Court has intervened repeatedly to the "hold[] the line" in cases that threaten to "blur the bright-line requirement to follow plan documents in distributing benefits." *Id.* at 302; *see, e.g.*, *Egelhoff* v. *Egelhoff ex rel. Breiner*, 532 U.S. 141 (2001); *Boggs* v. *Boggs*, 520 U.S. 833 (1997). By injecting needless risk and uncertainty into the determination of plan beneficiaries, the decision below is no less offensive to ERISA's policy of maintaining bright-line rules than these prior cases. This Court should grant review and hold that a domestic relations order fails to "clearly specify" the enumerated information unless that information is expressly stated on the order's face.

STATEMENT

A. Statutory Background

ERISA mandates that "[e]very employee benefit plan shall be established and maintained pursuant to a written instrument." 29 U.S.C. § 1102(a)(1). That instrument must "specify," among other things, "the basis on which payments are made to and from the plan." *Id.* § 1102(b)(4). And it must include a

spendthrift clause "provid[ing] that benefits * * * under the plan may not be assigned or alienated." *Id.* § 1056(d)(1). Any contrary state law is expressly preempted. *See id.* § 1144(a); *Egelhoff*, 532 U.S. at 146-148.

Following ERISA's enactment, courts were split on whether the statute preempted state domestic relations laws allowing the attachment of vested retirement benefits. *See* S. Rep. 98-575, at 18-19 (1984). In response to this and other concerns, Congress passed a package of amendments to ERISA called the Retirement Equity Act of 1984 (REA), Pub. L. 98-397, 98 Stat. 1426. The REA carved out an exception to the anti-alienation rule and the general preemption provision for certain "qualified" state-law orders "relat[ing] to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant." 29 U.S.C. § 1056(d)(3)(B)(ii).

To fit within the REA's narrow exception and count as a "qualified domestic relations order"—or "QDRO"—an order must create or recognize an "alternate payee's" right to receive benefits under a participant's ERISA plan, *id.* § 1056(d)(3)(B)(i), and must satisfy a straightforward statutory checklist. The order must "clearly specif[y]" (1) the name and mailing address of both the plan participant and the "alternate payee"; (2) the "amount or percentage" of benefits to be paid; (3) the "number of payments or period to which" the order applies; and (4) each of the plans to which it applies. *Id.* § 1056(d)(3)(C).[1]

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[1] The order cannot expand the benefits otherwise available under the plan and cannot conflict with an order "previously

A qualified domestic relations order trumps plan procedures. *Id.* § 1056(d)(3)(J). But if a domestic relations order fails to satisfy the statutory particulars in any respect, "the plan administrator shall pay the" benefits "to the person or persons who would have been entitled to such amounts if there had been no order," plus any interest that accrued over the time spent determining whether the order qualifies. *Id.* §§1056(d)(3)(H)(i), (iii)(II).

B. Factual Background

Sun Life is the insurer and claim fiduciary of life insurance benefits that were provided to the late Bruce Jackson under an employee-benefit plan sponsored by his employer. Pet. App. 3. When Bruce signed up for life insurance in 2003, he named his brother, respondent Richard Jackson, as his sole beneficiary. *Id.* at 2.

Richard was still listed as the plan's sole beneficiary when Bruce died in 2013. *Id.* at 3-4. Under the terms of the plan, that meant Richard was entitled to 100% of the insurance proceeds, a total of $239,000. *Id.* at 35. But Richard soon found himself competing for that money with Bruce's only child, respondent Sierra Jackson.

Sierra made her own claim for Bruce's benefits based on a provision in her parents' separation agreement, which was incorporated into a court order when they divorced in 2006. *Id.* at 3. That provision stated:

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determined to be a qualified domestic relations order." 29 U.S.C. § 1056(d)(3)(D).

> **Article IX: Life Insurance**
>
> In order to secure the obligation of the parties to support their child during her minority, Father and Mother shall maintain, unencumbered, all employer-provided life insurance, now in existence at a reasonable cost, or later acquired at a reasonable cost, naming their minor child as primary beneficiary during her minority; and the obligation to do so shall continue until she * * * reach(es) the age of eighteen (18) or graduates from high school, whichever occurs last.

Id. at 3-4.

Sierra argued that the divorce decree was a qualified domestic relations order that made her an "alternate payee" of Bruce's life insurance policies under ERISA. Sun Life disagreed. It concluded that the divorce decree did not meet the statutory requirements for a qualified domestic relations order and paid the benefits to Richard as the named beneficiary. *Id.* at 4.

C. Proceedings Below

1. Sun Life filed suit against Sierra and Richard in the United States District Court of the Southern District of Ohio, seeking a declaration that it had properly paid the proceeds of Bruce's policies to Richard. Pet. App. 4. Sierra counterclaimed for a declaration that she was the rightful beneficiary. *Id.*

The district court granted Sierra's motion for summary judgment on her counterclaim. The court assumed that the divorce decree "mandate[d] that Bruce designate Sierra as the beneficiary" of his life insurance plan and thus made her an alternate payee. *Id.* at 35. The court proceeded to consider

whether the decree was a qualified domestic relations order "exempt from ERISA's broad preemption provision." *Id.* at 41.

Sun Life argued that the decree failed three of the four requirements set forth in 29 U.S.C. § 1056(d)(3)(C): (1) it did not identify Sierra or include her mailing address; (2) it did not specify "the amount or percentage of" Bruce's benefits that were supposed to be paid to Sierra; and (3) it did not identify "each plan" to which it applied. *Id.*; *see* Pet. App. 37. The district court acknowledged that the decree did not "literal[ly]" comply with each of those prerequisites. Pet. App. 39. But it held that "the Decree need only *substantially* comply with" the statute and concluded that the decree met that standard. *Id.* (emphasis added); *see id.* at 41.

2. The Sixth Circuit affirmed. The court of appeals began by addressing the proper standard for evaluating the decree's compliance with the statute. It recognized that the district court had got it wrong. Although prior circuit precedent endorsed a "substantial compliance" test for domestic relations orders entered *before* the 1985 amendments to ERISA, *id.* at 6, the court of appeals held that such a test "neglects a congressional directive" that the requirements of a qualified domestic relations order must be "*clearly specified*." *Id.* at 7 (emphasis added). Accordingly, the court rejected Sierra's argument—echoed in an *amicus* brief filed by the Department of Labor—that a looser standard was appropriate. *Id.* at 8-11.

But the Sixth Circuit immediately began to qualify the ostensibly rigorous standard it had just endorsed. It held that clear specification did not require "any 'strict' *method* of compliance" with the

statutory requirements. *Id.* at 8 (emphasis in original). Information, the court explained, could be "clearly specified" through "implication or inference so long as the meaning is definite." *Id.* at 7. And ERISA plan administrators had a duty to draw these inferences and implications from "the entirety of the decree documents being interpreted." *Id.* at 8. Applying that standard, the court of appeals retraced the district court's reasoning to conclude that the divorce decree was a qualified domestic relations order. *Compare id.* at 11-14 *with id.* at 37-41.

3. The Sixth Circuit denied Sun Life's timely petition for rehearing en banc, Pet. App. 61-62, and its motion to stay the mandate pending the filing of a petition for a writ of certiorari.

This petition followed.

REASONS FOR GRANTING THE PETITION

I. THERE IS AN ACKNOWLEDGED SPLIT ON THE QUESTION PRESENTED

1. A state-law domestic relations order counts as a qualified domestic relations order under ERISA only if it "clearly specifies" the information listed in the statute. 29 U.S.C. § 1056(d)(3)(C). The courts of appeals and state high courts, however, have differed on just what is required to "clearly specif[y]" the statute's enumerated information.

The purpose-driven approach. At one end of the spectrum, the Seventh Circuit has held that a domestic relations order is sufficient so long as it is "specific enough to serve ERISA's purposes." *Metropolitan Life Ins. Co.* v. *Wheaton*, 42 F.3d 1080, 1085

(7th Cir. 1994).[2] The Seventh Circuit believed that requiring "more specificity would defeat the purpose of" Section 1056(d) and result in "a purely theoretical gain in certainty." *Id.* As the Seventh Circuit saw it, "[i]t is asking too much of domestic relations lawyers and judges to expect them to dot every *i* and cross every *t* in formulating divorce decrees that have ERISA implications." *Id.* The Seventh Circuit thought strict compliance with the statute was "humanly impossible"—something that the court did "not think Congress meant to ask." *Id.*

The North Dakota Supreme Court has gone even further. It has held—relying solely on Section 1056(d)'s legislative history—that a domestic relations order can satisfy the requirements of a qualified domestic relations order without any address for an alternate payee so long as "the plan administrator has knowledge of the identity of the alternate payee and an address to contact her." *Tolstad* v. *Tolstad*, 527 N.W.2d 668, 673 (N.D. 1995). And the Pennsylvania Supreme Court has gone further still. It held that a domestic relations order can be a qualified domestic relations order without the address of a payee so long as the address can be determined from the plan administrator's records, public records, or the plan participant. *Stinner* v. *Stinner*, 554 A.2d 45, 49 (Pa. 1989). For these more-lenient courts, "the rights of the alternate payee should not be lost" for "the lack of one easily-ascertainable address" or other information. *Id.*

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[2] This approach is sometimes called "substantial compliance." *See* Pet. App. 10. But, as the court of appeals observed, the cases do not consistently use that term. *Id.*

The strict-compliance approach. At the other end of the spectrum, the Tenth and Second Circuits have held that a domestic relations order must strictly comply with Section 1056(d)(3)(C) to qualify. A plan administrator's subjective knowledge or public records cannot make up for a domestic-relations order that is insufficient on its face.

The Tenth Circuit explicitly rejected the Seventh Circuit's purpose-driven approach, stating that it did "not agree that the QDRO specificity requirements should be construed this liberally." *Hawkins* v. *C.I.R.*, 86 F.3d 982, 992 (10th Cir. 1996). The court explained that "relaxing the [QDRO] requirements * * * does violence to the plain meaning of the statute" and "contravene[s] the Supreme Court's frequent admonition that courts must not read language out of a statute." *Id.*

In addition, "relaxing the specificity requirements, * * * would involve the courts in precisely the sort of subjective inquiry the statute was designed to avoid." *Id.* "[I]f the specificity requirements are to be evaluated only in light of a plan administrator's subjective knowledge, even the most facially inadequate order could theoretically qualify as a QDRO, so long as the plan administrator was aware of the parties' 'true' intentions." *Id.* (citation omitted). The Tenth Circuit did "not believe that Congress intended * * * this type of *ad hoc* subjective inquiry." *Id.* Instead, the statute "should be accorded its plain meaning, and not interpreted so as to allow the parties to omit the requested information whenever it is convenient or even perhaps logical to do so." *Id.* at 993.

The Second Circuit concurred. *Yale-New Haven Hosp.* v. *Nicholls*, 788 F.3d 79, 85 (2d Cir. 2015). It adopted the Tenth Circuit's decision in *Hawkins* and

"follow[ed] the clear intent of Congress in holding that the substantial compliance rule * * * does not apply." *Id.* And as a consequence, a domestic-relations order "which fail[s] to fully comply with all of the statutory requirements is not a QDRO." *Id.*[3]

The "clearly specifies" approach adopted below. In this case, the Sixth Circuit purported to reject both the purpose-driven and strict-compliance approaches. *See* Pet. App. 7. According to the court of appeals, the correct "clearly specifies" standard "demands more than a 'substantially complies' standard" but "does not * * * require[] Simon Says rigidity or demand[] magic words." *Id.* A domestic-relations order can "'clearly specify' something by implication or inference so long as the meaning is definite." *Id.*

2. This three-way split is not just a matter of semantics. Take this case. The Second Circuit has held that a domestic-relations order that encompassed the participant's "PENSION and RETIREMENT accounts which were accumulated during the marriage" did not clearly specify "the plans to which it applies." *Yale-New Haven Hosp.*, 788 F.3d at 83-84. But the Sixth Circuit would hold this identification sufficient because it is just like the "all employer-provided life insurance" identified by the Jackson divorce decree. *See* Pet. App. 13. The pension and retirement accounts which were accu-

[3] The Ninth Circuit's rule is less clear. Although that court has suggested that it requires only "substantial compliance" with the statute, it has held that an order must "clearly contain" the required information and rejected orders that were arguably more specific than the one at issue here. *Hamilton* v. *Wa. State Plumbing & Pipefitting Indus. Pension Plan*, 433 F.3d 1091, 1097 (9th Cir. 2006); *see infra* p. 16.

mulated during the marriage in *Yale New-Haven Hospital* could have been identified by context. *See* Pet. App. 7. The outcome-determinative difference between the two cases is the Second Circuit's strict-compliance standard versus the Sixth Circuit's broad, contextual approach. *See also Wheaton*, 42 F.3d at 1083-84 (similarly concluding, under its purpose-driven approach, that "'the life insurance which is presently carried through his/her employer' * * * permits the identification of the plans to which the decree applies without significant ambiguity").

The same is true of the Sixth Circuit's holding below that the Jackson divorce decree "clearly specified" Sierra's address by listing her parents' address and stating that her parents would share residential custody. Pet. App. 12. The court of appeals' holding is in line with the Seventh Circuit and Pennsylvania and North Dakota Supreme Courts, which do not view the lack of a payee's address fatal so long as it can be obtained from other sources. *See Wheaton*, 42 F.3d at 1085; *Tolstad*, 527 N.W.2d at 673; *Stinner*, 554 A.2d at 49. But it is contrary to the Tenth and Second Circuits, which require a payee's address to be stated in the domestic-relations order. *See Hawkins*, 86 F.3d at 992; *Yale-New Haven Hosp.*, 788 F.3d at 85.[4]

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[4] *Hawkins* ultimately excused the lack of the payee's address because the appellant conceded in the trial court that the plan administrator had the address available to it and did not argue that it had to be stated in the domestic-relations order. 86 F.3d at 993. But the opinion makes plain that—absent the appellant's concession—it would have deemed the requirement not satisfied. *Id.* at 991-992.

Further percolation is unnecessary. The Seventh Circuit explained why it believed its purpose-driven approach is superior, the Tenth Circuit has explained why its strict-compliance approach is more faithful to the statutory text, and the Second Circuit has explicitly agreed with the Tenth Circuit. *Compare Wheaton*, 42 F.3d at 1085, *with Hawkins*, 86 F.3d at 992, *and Yale-New Haven Hosp.*, 788 F.3d at 85. The Sixth Circuit, meanwhile, explained below why it disagreed with both the purpose-driven and strict-compliance approaches. Pet. App. 8-11. The courts' positions are clearly staked out and do not require further development.

In short, there is a real, mature, and outcome-determinative split as to the proper standard for when a state domestic relations order "clearly specifies" Section 1056(d)(3)(C)'s required information. This Court's review is essential to give guidance to the courts, plan administrators, and domestic relations lawyers.

II. THIS CASE IS THE IDEAL VEHICLE TO ADDRESS AN IMPORTANT AND RECURRING QUESTION

This case is an optimal vehicle to resolve the question presented. First, as noted, the split is outcome determinative. If Sierra and Richard lived in New York instead of Ohio, this case would have come out the other way. Sun Life would have filed its action in a federal district court in New York and, under *Yale-New Haven Hospital*, that court would have been constrained to hold that the divorce decree is *not* a qualified domestic relations order. *See supra* pp. 11-12. As a result, *Richard* would have been entitled to the proceeds and Sun Life would have been liable under ERISA's private right of action if it

paid Sierra instead. *See* 29 U.S.C. § 1132(a)(1)(B) (authorizing claims by a participant or beneficiary "to enforce his rights under the terms of the plan").

Second, the issue is cleanly presented. The parties do not dispute that the divorce decree otherwise meets the requirements of § 1056(d)(3)—the only question is whether the decree "clearly specifies" the information required under § 1056(d)(3)(C). The parties do not dispute that Richard is the sole beneficiary under the terms of the plan. Nor is the issue obscured by any question of state law. The parties' rights turn exclusively on the proper interpretation of ERISA's provisions.

The question is also exceedingly important. The standard for determining whether a domestic-relations order "clearly specifies" the required information has significant implications for plan participants, beneficiaries, and administrators across the country. A rule that ousts the participant's beneficiary designation through a patchwork of inferences gleaned from various documents defeats the purpose of "giving a plan participant a clear set of instructions for making his own instructions clear." *Kennedy*, 555 U.S. at 301. It undercuts the aim of "protect[ing] plan participants and beneficiaries." *Boggs*, 520 U.S. at 845. And it imposes unacceptable costs on plan administrators, who must take on the risk that a court will draw inferences and implications they may have missed after the fact.[5]

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[5] Moreover, because the Tax Code contains a substantially identical definition of qualified domestic relations orders, the standard impacts the tax consequences of employee benefits, as well. *See* 26 U.S.C. § 414(p); *Hawkins*, 86 F.3d at 988.

This Court has long recognized "the centrality of pension and welfare plans in the national economy, and their importance to the financial security of the Nation's work force." *Boggs*, 520 U.S. at 839. And it has stressed "the virtues of adhering to an uncomplicated rule" for discerning who is entitled to plan benefits: "simple administration, avoiding double liability, and ensuring that beneficiaries get what's coming quickly." *Kennedy*, 555 U.S. at 301 (internal quotation marks and brackets omitted). "[T]he cost of less certain rules," this Court has explained, "would be too plain"—uncertainty, delay, and heightened litigation risk. *Id.* That is why this Court has not hesitated to grant review in cases that threaten the uniform administration of benefits. *See, e.g.*, *Kennedy*, 555 U.S. 285; *Egelhoff*, 532 U.S. 141; *Boggs*, 520 U.S. 833. It should do so again here.

III. THE DECISION BELOW WAS WRONG

In crafting a narrow exception to ERISA's overriding focus on plan documents, Congress was careful not to add needless complexity to the process of identifying beneficiaries. That is why it directed plan administrators and courts to disregard state-law domestic relations orders that did not "clearly specify" certain basic information. The Sixth Circuit acknowledged that the plain meaning of those words demands that the information be conveyed "definitely," "explicitly," or "particularly." *See* Oxford English Dictionary (2d ed. 1989); Pet. App. 7. But its analysis of the divorce decree at issue here cannot be reconciled with Congress's command.

Start with the decree's failure to identify an alternate payee. Article IX of the separation agreement, the operative language here, provides only that Bruce Jackson and his ex-wife "shall maintain,

unencumbered" certain insurance "naming their minor child as a beneficiary." *Id.* at 3. The Sixth Circuit found this language sufficient because the decree elsewhere states that "the parties have one (1) child . . . namely: Sierra N. Jackson." *Id.* at 12. But even if that were enough to clearly specify the "minor child" referred to in Article IX it does not so much as suggest that she is an alternate payee. In *Hamilton*, the Ninth Circuit found that a dissolution order directing the husband to "name the children of the marriage, David and Sarah as the beneficiaries" of his pension "require[d] the husband to designate the Children as beneficiaries but d[id] not require any action by [his ERISA] Plans," and "d[id] not assign death benefits." 433 F.3d at 1097-98. The order thus failed to "qualify as a QDRO." *Id.* at 1098. So too here, the directive to Sierra's *parents* to "maintain, unencumbered" any plans naming her failed to clearly specify that she was an alternate payee.

The decree also failed to clearly specify Sierra's address. The Sixth Circuit was satisfied that a "shared parenting plan" attached to the decree identified Sierra's parents as her shared "residential parents and legal custodians." Pet. App. 12. *Their* addresses were in the separation agreement. *Id.* The Sixth Circuit apparently believed that Sun Life should have looked to the separation agreement to find Sierra's birth date, ascertained that she was a minor, consulted the shared parenting plan, and concluded that Sierra could be reached at her mother's address. That strays far beyond the "discrete" inquiry Congress intended. *Kennedy*, 555 U.S. at 301.

Finally, the decree did not explicitly or definitely identify the life insurance plan at issue here. The

Sixth Circuit thought Article IX's reference to "all employer-provided life insurance" was "unambiguous[]." Pet. App. 13. But a general reference to a category of things does not "clearly specify" any one of them. *See Yale-New Haven Hosp.*, 788 F.3d at 83. Congress could have chosen a more forgiving standard; it did not. The Sixth Circuit's error offers yet another reason for this Court's review.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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