No. 20-1012

In the Supreme Court of the United States

CHARLES GUENTHER, PETITIONER

v.

LOCKHEED MARTIN CORPORATION, ET AL.

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

BRIEF IN OPPOSITION

KEVIN R. GINGRAS
ROBIN H. VILLANUEVA
Lockheed Martin Corporation
6801 Rockledge Drive
Bethesda, MD 20817

R. BRADFORD HUSS
CLARISSA A. KANG
DYLAN D. RUDOLPH
Trucker Huss, APC
One Embarcadero Center, 12th Floor
San Francisco, CA 94111

NICOLE A. SAHARSKY
Counsel of Record
BRIAN D. NETTER
MINH NGUYEN-DANG
Mayer Brown LLP
1999 K Street NW
Washington, DC 20006
(202) 263-3052
nsaharsky@mayerbrown.com

Counsel for Respondents

QUESTION PRESENTED

Whether ERISA's six-year limitations period for an action for a breach of fiduciary duty in a case of "fraud or concealment," 29 U.S.C. 1113, requires an act of fraud or concealment separate from the underlying fiduciary breach.

CORPORATE DISCLOSURE STATEMENT

Lockheed Martin Corporation does not have a parent corporation. State Street Corporation is the only publicly held company that owns 10% or more of Lockheed Martin Corporation's stock.

Lockheed Martin Corporation Retirement Plan for Certain Salaried Employees does not have a parent corporation, and no publicly held company owns 10% or more of its stock.

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BRIEF IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-26a) is reported at 972 F.3d 1043. The order of the district court (Pet. App. 27a-50a) is not published in the *Federal Supplement* but is available at 2017 WL 2311666.

A prior relevant order of the court of appeals (Pet. App. 51a-57a) is not published in the *Federal Reporter* but is reprinted in 646 F. Appx. 567. A prior relevant order of the district court is not published in the *Federal Supplement* but is available at 2014 WL 31497.

JURISDICTION

The judgment of the court of appeals was entered on August 25, 2020. Pet. App. 1a. The petition for a writ of certiorari was filed on January 22, 2021. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Petitioner brought this suit under the Employee Retirement Income Security Act (ERISA), 29 U.S.C. 1001 *et seq.*, claiming that respondents breached their fiduciary duties by making certain representations about his retirement plan. The district court held that his claim was time-barred, Pet. App. 46a-47a, and the court of appeals affirmed, *id.* at 23a.

A. Legal Background

1. ERISA regulates private employer retirement plans. It does not require employers to provide those plans, prescribe any particular type of plan or level of benefit, or require employers to keep providing the same benefits in the future. See *Lockheed Corp.* v. *Spink*, 517 U.S. 882, 887 (1996). Instead, ERISA imposes various obligations once an employer has decided to provide a retirement plan. It requires the plan to honor benefits that have already accrued and imposes reporting and disclosure requirements, see 29 U.S.C. 1021-1031, and fiduciary duties on plan administrators, see 29 U.S.C. 1101-1114.

This statutory scheme "represents a careful balancing" between protecting plan beneficiaries and imposing burdensome regulations that can discourage employers from offering retirement plans in the first place. *Fifth Third Bancorp* v. *Dudenhoeffer*, 573 U.S. 409, 424-425 (2014) (internal quotation marks omitted).

2. One way Congress sought to encourage employers to create retirement plans was by protecting plan administrators from stale claims. A plaintiff generally must bring an action for breach of fiduciary duty within six years of the breach. 29 U.S.C. 1113(1). But if the plaintiff has "actual knowledge of the breach,"

the plaintiff must bring the action within three years of obtaining that knowledge. 29 U.S.C. 1113(2).

There is an exception to those general rules "in a case of fraud or concealment"; then, the plaintiff may bring the action within six years of "the date of discovery" of the breach of fiduciary duty. 29 U.S.C. 1113. That exception is at issue in this case.

B. Factual Background

Petitioner has worked for respondent Lockheed Martin (and its predecessor, Lockheed Corp.) three different times – between 1983 and 1991, between 1997 and 2001, and between 2006 and 2017. Pet. App. 3a-4a. This case concerns his retirement benefits during his third period of employment.

1. During his first two periods of employment, petitioner was enrolled in a defined-benefit pension plan, respondent Lockheed Martin Corporation Retirement Plan for Certain Salaried Employees (the Salaried Plan). Pet. App. 14a. In 2005, after petitioner had left the company for the second time, Lockheed Martin froze that plan, closing the plan to new and returning employees. *Id.* at 3a-4a. Those employees instead could participate in a new, defined-contribution retirement plan. *Id.* at 4a. Lockheed Martin sent written notice of that change to all plan participants and beneficiaries. See C.A. Supp. E.R. 38-59. Petitioner claims that he did not receive that notice, C.A. E.R. 422, although he admits that around 2005 he heard a "rumor" that the company was changing the Salaried Plan, Pet. App. 4a, 29a.

2. In 2006, petitioner sought to return to Lockheed Martin. Pet. App. 4a. During his interview, petitioner asked if he would be able to "bridg[e]" his new employment with his previous employment. *Ibid.* (internal quotation marks omitted).

Bridging is the mechanism by which an employer credits former employees who rejoin the employer with seniority for their earlier employment. See, *e.g.*, C.A. E.R. 860. For example, new employees at Lockheed Martin must accrue a period of service before their benefits vest, but with bridging, returning employees can count prior periods of employment toward that vesting requirement. See *ibid.*

In response to his question about "bridging," the company gave petitioner a form to apply for bridging. The form, titled "Application for Bridging of Prior Service," stated that returning employees can count their prior service for "pension or other purposes" if consistent with applicable policies and regulations. Pet. App. 4a (quoting C.A. E.R. 427). Petitioner completed that application. *Id.* at 31a.

Petitioner now says that he understood "bridging" to mean something different. He says he thought he could rejoin the Salaried Plan (his old retirement plan), instead of participating in the new retirement plan, when he returned to Lockheed Martin. Pet. App. 32a. No one at the company ever told petitioner that he could rejoin the old plan. See *ibid.* The bridging application likewise did not say that returning employees could rejoin their previous retirement plans. *Id.* at 30a-31a (quoting C.A. E.R. 427). And petitioner did not ask about it until much later (after he had already rejoined the company). See *id.* at 6a-7a.

3. In July 2006, petitioner accepted Lockheed Martin's job offer. Pet. App. 31a. The same day, the company sent him a letter in response to his bridging application. *Id.* at 4a, 31a. The letter explained that his prior employment would count toward his vesting in his new retirement plan: "[S]ince you were vested in a pension benefit provided by the [Salaried Plan],

your prior periods of Lockheed/Lockheed Martin service will be bridged with your proposed Lockheed Martin service." *Id.* at 5a (quoting C.A. E.R. 429). Petitioner apparently believed this meant he could rejoin the old plan, as opposed to the new plan. *Id.* at 5a, 32a. That was not correct; petitioner would keep the benefits that he accrued under the old plan, and then start accruing additional benefits in the new plan when he rejoined the company. C.A. E.R. 859-860.

4. In September 2006, petitioner rejoined Lockheed Martin. Pet. App. 32a. He submitted a second bridging application (to account for his actual start date). *Ibid.* In November 2006, the company sent him a letter in response. *Id.* at 5a. That letter confirmed that his prior service would count toward vesting ("your prior periods of Lockheed/Lockheed Martin service will be bridged with your current Lockheed Martin service") and stated that, as a result of his prior service, he was immediately vested in the company's new retirement plan. *Ibid.* (quoting C.A. E.R. 432). Petitioner also received additional credit toward early retirement and additional vacation accruals. See C.A. E.R. 860.

The November 2006 letter left no question that during his third period of employment, petitioner could accrue benefits only through the new retirement plan, and not the old (defined-benefit) plan. The letter stated that, because petitioner was "not currently participating in a Lockheed Martin defined benefit pension plan," he was "not entitled to a pension benefit from Lockheed Martin for [his] current period of service." Pet. App. 6a (quoting C.A. E.R. 432). At his deposition, petitioner admitted that he understood

this language to mean that he could not accrue additional benefits in the old plan during his new period of employment. *Id.* at 19a-20a, 34a.

C. Procedural History

1. Four years later, petitioner filed this lawsuit. He brought a claim for benefits under ERISA, see 29 U.S.C. 1132(a)(1)(B), and a breach-of-contract claim under state law. Pet. App. 7a, 34a. Petitioner argued that respondents had unreasonably refused to allow him to rejoin his old retirement plan. *Id.* at 7a. Petitioner did not originally plead any claim for breach of fiduciary duty. *Id.* at 8a; see C.A. E.R. 1121-1124.

The district court dismissed the breach-of-contract claim as preempted by ERISA, and granted respondents summary judgment on the claim for benefits. *Guenther* v. *Lockheed Martin Corp.*, No. 11-cv-380, 2014 WL 31497, at *2, *7 (N.D. Cal. Jan. 3, 2014). The court concluded that the company reasonably interpreted the 2005 change to the Salaried Plan to preclude petitioner from rejoining that plan. *Id.* at *4-5. Petitioner appealed only the dismissal of the claim for benefits.

The court of appeals affirmed that dismissal. Pet. App. 52a-53a. But it remanded the case because it decided petitioner may have alleged sufficient facts to support a claim for breach of fiduciary duty, *id.* at 53a-57a, even though he had not pleaded that claim in his original or amended complaints, *id.* at 8a, 35a.

2. On remand, petitioner amended his complaint to assert a claim for breach of fiduciary duty. Pet. App. 8a; see 29 U.S.C. 1132(a)(3). He alleged that Lockheed Martin misrepresented to him that he would be able to rejoin his old retirement plan (the Salaried Plan) if he rejoined the company. Pet. App. 8a.

The district court granted summary judgment to respondents on the ground that petitioner's fiduciary-breach claim is untimely. Pet. App. 40a-50a. The court found that the latest any breach could have occurred was when the company sent petitioner the first letter about bridging in July 2006. *Id.* at 41a-43a. The court also found that petitioner had actual knowledge of the alleged breach when he received the second letter in November 2006. *Id.* at 43a-46a. Because petitioner sued more than three years after he obtained that actual knowledge, his claim is untimely. *Id.* at 46-47a, 50a; see 29 U.S.C. 1113(2).

Petitioner had argued that his claim nonetheless is timely because his case falls under the fraud or concealment exception. Pet. App. 47a. The district court rejected that argument, explaining that petitioner "ha[d] not satisfied his burden to set forth specific facts establishing that Lockheed engaged in fraudulent activity or concealment." *Id.* at 47a-48a. The court explained that "[n]othing in the record demonstrates that Lockheed took affirmative steps to conceal either its alleged breach or any relevant information about the pension plan." *Id.* at 48a.

3. The court of appeals affirmed. Pet. App. 1a-26a. As relevant here, it agreed with the district court that petitioner's claim is untimely because he had actual knowledge of the alleged breach (a misrepresentation in the first letter) by November 2006 (the date of the second letter), and he failed to bring suit within three years of that date. *Id.* at 3a, 19a-21a; see 29 U.S.C. 1113(2).

The court of appeals also agreed that the six-year limitations period for cases of fraud or concealment is inapplicable here. Pet. App. 23a-25a. The court noted that, under circuit precedent, the exception applies only when a defendant has taken affirmative steps to

commit fraud or hide its fiduciary breach, independent of the alleged breach itself. *Id.* at 23a (citing *Barker* v. *American Mobil Power Corp.*, 64 F.3d 1397, 1402 (9th Cir. 1995)).

Here, the court of appeals determined, petitioner had not presented *any* evidence of fraud or concealment, either as part of the alleged fiduciary breach or otherwise: "[Petitioner] has failed to produce any evidence that LMC made knowingly false misrepresentations with the intent to defraud [him] when it sent him the July Letter, much less evidence of affirmative acts taken by LMC to *hide* that misrepresentation." Pet. App. 24a (internal quotation marks and citation omitted). Thus, even if no separate act of fraud or concealment were required, petitioner still would lose because "his claim [of fiduciary breach] does not rise to the level of fraud or concealment." *Ibid.* (internal quotation marks omitted). The court also rejected petitioner's argument that the July 2006 letter was a "self-concealing act" sufficient to trigger the fraud-or-concealment exception by itself. *Id.* at 24a n.10.

Finally, although the court of appeals recognized that it had to view the facts in the light most favorable to petitioner, it cast doubt on petitioner's underlying fiduciary-breach claim. Pet. App. 14a-15a. Petitioner had claimed that the company misled him about whether he could rejoin his old plan in the July 2006 letter. *Id.* at 14a. The court gave several reasons why that letter was not misleading, including that it did not state that petitioner could rejoin the old plan, and that petitioner did receive credit toward vesting (and other benefits) from having his old and new employment "bridged." *Id.* at 14a n.3.

4. Petitioner filed a petition for rehearing en banc, which was denied as untimely. Pet. App. 58a.

ARGUMENT

Petitioner contends (Pet. 8) that this Court should grant review to decide whether the six-year fraud-or-concealment exception in ERISA requires an act of fraud or concealment separate from the underlying breach of fiduciary duty. Two circuits appear to have taken differing positions on that question. But this would be an exceedingly poor case in which to address any disagreement in the circuits, because resolution of the question presented would not matter to the outcome here. The district court and the court of appeals both found that there was no fraud or concealment – not in the alleged underlying fiduciary breach, and not in any separate act of fraud or concealment. And nothing else in this case warrants this Court's review.

I. RESOLVING THE QUESTION PRESENTED WOULD NOT MATTER TO THE OUTCOME OF THIS CASE

A. Petitioner filed his case four years after the alleged fiduciary breach in June 2006. He does not dispute that he had actual knowledge of the alleged breach by November 2006. So the only way his claim is timely is if he can take advantage of ERISA's exception for "fraud or concealment." 29 U.S.C. 1113.

Petitioner claims that in order to take advantage of the exception, he need only allege fraud or concealment as part of the underlying fiduciary breach, and not any separate act of fraud or concealment. And he asserts (Pet. 13) that the circuits have disagreed about whether a separate act of fraud or concealment is necessary.

Although their decisions are not entirely clear, two courts of appeals appear to have disagreed about whether a separate act of fraud or concealment is

needed for the exception in 29 U.S.C. 1113 to apply.[1] Other circuits have not yet weighed in.[2] But there is no need to grant review to resolve any disagreement in the circuits in this case, because petitioner would lose under either standard.

B. Petitioner simply has not shown fraud or concealment, either as part of a fiduciary breach or otherwise. Both the district court and court of appeals so held after reviewing the facts in this case carefully. Pet. App. 24a, 48a. The district court concluded: "Nothing in the record demonstrates that Lockheed took affirmative steps to conceal either its alleged breach or any relevant information about the pension plan." *Id.* at 48a. The court found that, even if petitioner had pleaded "a possible breach of fiduciary duty," "he has not shown anything beyond a failure to disclose." *Ibid.* According to the district court, petitioner "has not put forward evidence rising to the level of active concealment of knowingly false misrepresentations with the intent to defraud." *Ibid.* (internal quotation marks omitted).

The court of appeals reached the same conclusion. That court stated that, at most, petitioner pleaded facts to show a misrepresentation or a failure to disclose material information – but nothing that "r[o]se

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[1] Compare Pet. App. 23a-24a (stating that a separate act of fraud or concealment generally is required), with *Martin* v. *Consultants & Administrators, Inc.*, 966 F.2d 1078, 1094-1095 (7th Cir. 1992) (indicating that an underlying breach of fiduciary duty consisting of a "self-concealing" act could trigger the exception).

[2] See *In re Unisys Corp. Retiree Med. Benefit ERISA Litig.*, 242 F.3d 497, 502-503 (3d Cir.) (expressly reserving the question), cert. denied *sub nom. Tonnies* v. *Unisys Corp.*, 534 U.S. 1018 (2001); *J. Geils Band Emp. Benefit Plan* v. *Smith Barney Shearson, Inc.*, 76 F.3d 1245, 1253 n.9 (1st Cir.) (same), cert. denied, 519 U.S. 823 (1996).

to the level of fraud or concealment." Pet. App. 24a. The court explained: "[Petitioner] has failed to produce any evidence that LMC made knowingly false misrepresentations with the intent to defraud [him] when it sent him the July Letter, much less evidence of affirmative acts taken by LMC to *hide* that misrepresentation." *Ibid.* (internal quotation marks and citation omitted).

The court of appeals made clear that the claimed underlying fiduciary breach did not itself involve fraud or concealment. The court noted that a "[m]ere failure to disclose the [2005] Plan Amendment's existence does not demonstrate that LMC hid its breach from [petitioner]." Pet. App. 24a. It also observed that petitioner's assertion that he was "bounced * * * from one department to another" may show "bureaucratic inefficiency," but it "does not on its own rise to the level of affirmative concealment." *Ibid.* And the court rejected petitioner's argument that the July 2006 letter was a "self-concealing act" that alone counts as fraud or concealment. *Id.* at 24a n.10. Without "the necessary record evidence," the court of appeals concluded, petitioner's "argument for application of the fraud or concealment exception fails." *Id.* at 24a.

C. All of this means that petitioner's claim fails under any standard. It does not matter whether the fraud or concealment must be separate from the underlying fiduciary breach, or can occur as part of the underlying fiduciary breach. Here, there was no fraud or concealment anywhere – as two courts found after carefully reviewing the record. See *Exxon Co., U.S.A.* v. *Sofec, Inc.*, 517 U.S. 830, 841 (1996) (Court does not "undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional showing of error" (internal quotation marks omitted)). Petitioner does not challenge that

holding in the petition. And even if petitioner disagreed on that point, the court of appeals' fact-bound holding would not warrant this Court's review. Sup. Ct. R. 10; see, *e.g.*, *Tolan* v. *Cotton*, 572 U.S. 650, 661 (2014) (Alito, J., concurring in the judgment).

Without any fraud or concealment, all courts would agree that the exception in Section 1113 is inapplicable. After all, the plain text of that provision requires "fraud or concealment." 29 U.S.C. 1113.

II. NO OTHER FACTOR WARRANTS THIS COURT'S REVIEW

Nothing else about this case warrants this Court's review.

A. The courts below correctly found no fraud or concealment on this record. Fraud requires, at a minimum, knowledge of falsity and intent to defraud. See, *e.g.*, *Fulghum* v. *Embarq Corp.*, 785 F.3d 395, 415 (10th Cir.), cert. denied, 577 U.S. 1007 (2015); *Barker* v. *American Mobil Power Corp.*, 64 F.3d 1397, 1401 (9th Cir. 1995). Here, no evidence in the record suggests that Lockheed Martin made a misrepresentation knowingly and with the intent to defraud petitioner. Pet. App. 24a. In fact, the record indicates that if there was any misrepresentation at all, it was inadvertent, and based on different understandings of the term "bridging." See *Guenther*, 2014 WL 31497, at *6. Although petitioner continues to claim fraud (Pet. 14), he does not acknowledge (let alone cast doubt on) the court of appeals' contrary holding.

The court of appeals also correctly found no concealment. Petitioner was required to show "a course of conduct designed to conceal evidence of [the company's] wrongdoing" from the plaintiff. *Martin* v. *Consultants & Administrators, Inc.*, 966 F.2d 1078, 1093 (7th Cir. 1992) (internal quotation marks omitted);

see *Caputo* v. *Pfizer, Inc.*, 267 F.3d 181, 190 (2d Cir. 2001). As this Court has explained, "Concealment by mere silence is not enough. There must be some trick or contrivance intended to exclude suspicion and prevent inquiry." *Wood* v. *Carpenter*, 101 U.S. 135, 143 (1879).

There is nothing like that here – no evidence of any "affirmative acts taken by LMC to hide" the alleged misrepresentation. Pet. App. 24a (emphasis omitted). On the contrary, the record shows that the company affirmatively told petitioner (in the November 2006 letter) that he was not eligible to rejoin his old plan. *Id.* at 5a-6a. That is the opposite of concealment. *Id.* at 48a. Petitioner claimed that the July 2006 letter was inherently "self-concealing." See Pet'r C.A. Br. 32-33. It was not. It did not attempt to trick petitioner or deter him from inquiring further; in fact, it said nothing about whether he could rejoin his old plan. See C.A. E.R. 439. And any trouble petitioner had when attempting to obtain information about his benefits does not show fraud or concealment, either; at most, it shows "bureaucratic inefficiency." Pet. App. 24a. Petitioner does not challenge that conclusion. And there would be no reason for this Court to review those fact-bound holdings in any event.

B. The court of appeals also correctly held that ERISA's exception for fraud or concealment applies only when there has been an affirmative act of fraud or concealment, in addition to the underlying breach or violation. Pet. App. 23a-24a.

ERISA's general six-year time limit is a statute of repose, meaning it cannot be equitably tolled. *Intel Corp. Inv. Policy Comm.* v. *Sulyma*, 140 S. Ct. 768, 774 (2020). That provision demonstrates that Congress wanted to protect plan administrators from stale claims and encourage plaintiffs not to sleep on

their rights. See *CTS Corp.* v. *Waldburger*, 573 U.S. 1, 9 (2014). At the same time, Congress created the exception for fraud or concealment, so that defendants that commit fraud or affirmatively hide their misconduct could not benefit from that behavior. See *Fulghum*, 785 F.3d at 416.

It makes sense that the fraud or concealment must be separate from the underlying breach or violation. Only then would the defendant be attempting to cover up the breach or violation by tricking the plaintiff. That is what the terms "fraud" and "concealment" require. See *Wood*, 101 U.S. at 143. That understanding is consistent with the doctrine of fraudulent concealment in other areas of the law, which similarly requires affirmative acts of concealment separate from the underlying wrong. See, *e.g.*, *Pinney Dock & Transp. Co.* v. *Penn Cent. Corp.*, 838 F.2d 1445, 1469 (6th Cir.) (discussing fraudulent concealment in antitrust cases), cert. denied, 488 U.S. 880 (1988).

Further, permitting the underlying breach or violation to satisfy the requirement of fraud or concealment would upset the careful balance Congress struck. Congress required additional conduct – an affirmative act of fraud or concealment – because it wanted to limit the exception to the statute of repose to situations in which the defendant did something particularly egregious. See *California Pub. Emps.' Ret. Sys.* v. *ANZ Secs., Inc.*, 137 S. Ct. 2042, 2049 (2017) (statutes of repose "effect a legislative judgment that a defendant should be free from liability after the legislatively determined period of time" (internal quotation marks omitted)).

Under petitioner's view, the exception would swallow up the rule. Any plaintiff could claim that any breach or violation involves fraud or concealment. Pet. App. 24a & n.10. That is just what petitioner did

here, even though two courts found that the most he pleaded was a misrepresentation (and the court of appeals cast doubt on even that, *id.* at 14a n.3). Petitioner's proposed rule would encourage plaintiffs to treat every ERISA fiduciary-breach case as one involving fraud or concealment, contrary to the plain text of Section 1113, which recognizes that fraud or concealment is the exception, not the rule.[3]

C. Petitioner spends much of his petition (Pet. 9-12) discussing a different question – namely, whether the exception for fraud or concealment always requires concealment, or also applies in cases of fraud where there is no concealment. He cites disagreement in the circuits on that question. *Id.* at 9-10; see *Fulghum*, 785 F.3d at 414-416 (describing circuits' approaches).

This case does not present that question. The court of appeals did not rule on it, and this Court should not address it in the first instance. See *Duignan* v. *United States*, 274 U.S. 195, 200 (1927). Further, that question is distinct from the question presented here, which focuses on *when* the triggering act for the six-year period must occur (at the time of the breach or separately), not *what* act qualifies (fraud, concealment, or both). And the resolution of that separate question would not matter to the outcome in this case, because the court of appeals concluded that there was no fraud or concealment here, of any kind. Pet. App. 24a. So whether only some types of fraud or concealment can trigger the exception in Section 1113

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[3] Petitioner admits (Pet. 13-14) that some fiduciary-breach claims do not involve fraud or concealment. But under his view, any misrepresentation or failure to disclose a material fact would qualify as fraud or concealment. Pet. App. 48a. That would deprive the terms "fraud" and "concealment" of all meaning.

is beside the point. The Court has denied review on this separate question in many cases that actually presented it.[4] There is no reason for a different result here, where the issue was not considered by the court of appeals and is not implicated on the facts.

D. Finally, in this case, there is not even a misrepresentation, let alone fraud or concealment. Petitioner takes issue with the July 2006 letter, but as the court of appeals noted, nothing in that letter told petitioner he could rejoin his old retirement plan. Pet. App. 14a n.3. As the district court explained, petitioner appears to have simply misunderstood what the company meant by "bridging": He believed he could rejoin the old plan, whereas the company understood that his prior period of service would count toward vesting, vacation time, and early retirement. See *Guenther*, 2014 WL 31497, at *6 ("'[B]ridging' was promised, and 'bridging' was provided, but the parties differed as to their understanding of what 'bridging' actually meant. It appears more that something was lost in translation than that a misrepresentation was made.").

Petitioner has had plenty of chances to state a claim. He has no explanation for his delay in bringing his case after he actually learned that he could not rejoin the old plan in November 2006. Pet. App. 19a. This is not a case where a plaintiff had difficulty detecting the alleged breach, and thus not a case where

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[4] See, *e.g.*, *Carolinas Elec. Workers Ret. Plan* v. *Zenith Am. Sol'ns, Inc.*, 137 S. Ct. 1079 (2017) (No. 16-731); *Embarq Corp.* v. *Fulghum*, 577 U.S. 1007 (2015) (No. 15-244); *DeFazio* v. *Hollister, Inc.*, 577 U.S. 923 (2015) (No. 15-171); *Laskin* v. *Siegel*, 572 U.S. 1060 (2014) (No. 13-942).

the exception should apply. The court of appeals correctly dismissed petitioner's claim as untimely. Further review is unwarranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

KEVIN R. GINGRAS
ROBIN H. VILLANUEVA
Lockheed Martin Corporation
6801 Rockledge Drive
Bethesda, MD 20817

R. BRADFORD HUSS
CLARISSA A. KANG
DYLAN D. RUDOLPH
Trucker Huss, APC
One Embarcadero Center, 12th Floor
San Francisco, CA 94111

NICOLE A. SAHARSKY
Counsel of Record
BRIAN D. NETTER
MINH NGUYEN-DANG
Mayer Brown LLP
1999 K Street NW
Washington, DC 20006
(202) 263-3052
nsaharsky@mayerbrown.com

Counsel for Respondents

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