No. 20-28

IN THE

Supreme Court of the United States

PRICEWATERHOUSECOOPERS LLP,
THE RETIREMENT BENEFIT ACCUMULATION PLAN
FOR EMPLOYEES OF PRICEWATERHOUSECOOPERS LLP,
AND THE ADMINISTRATIVE COMMITTEE TO THE
RETIREMENT BENEFIT ACCUMULATION PLAN FOR
EMPLOYEES OF PRICEWATERHOUSECOOPERS LLP,

Petitioners,

v.

TIMOTHY D. LAURENT AND SMEETA SHARON,
ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY
SITUATED,

Respondents.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Second Circuit

REPLY BRIEF FOR PETITIONERS

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RULE 29.6 STATEMENT

The corporate disclosure statement included in the petition for a writ of certiorari remains accurate.

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REPLY BRIEF FOR PETITIONERS

The purported "retirees" in the respondent class, BIO 1, are former PwC personnel whose Plan benefits vested after five years of service and who took lump-sum distributions when they left PwC, as the Plan's terms allowed, in the amounts PwC promised. Their entire claim—and class definition—hinges on the fact that they are *not* "retirees" who had reached "normal retirement age." Pet. 9-10. Now they seek additional, hypothetical interest on those distributions by "equitably reforming" PwC's former Plan and "enforcing" it as rewritten, to the Plan's detriment.

Nothing in the Plan's terms required such inequitable windfalls, and Congress long ago eliminated any requirement to pay such future interest. And nothing in ERISA's remedial provision, § 502, authorizes such retrospective damages. Until the Second Circuit's decision, no court had permitted participants to recover contractual money damages under § 502(a)(1)(B) after reforming a plan under § 502(a)(3) where such relief was unavailable under either subsection independently—and this Court's *Amara* decision foreclosed that bootstrapping approach. Respondents' contrary arguments show why this Court's review is needed.

I. RESPONDENTS HAVE NO AUTHORITY FOR COMBINING PLAN REFORMATION WITH CONTRACT DAMAGES.

Respondents do not dispute that their requested relief is unavailable under § 502(a)(1)(B) alone. Nor could they. This Court stated in *CIGNA Corp.* v. *Amara* that § 502(a)(1)(B)'s office is "the simple enforcement of a contract as written," and on that basis held that "§ 502(a)(1)(B) d[id] not authorize

entry of the relief" plaintiffs sought—enforcement of the plan *as reformed*. 563 U.S. 421, 436, 438 (2011). A straightforward application of *Amara* would have doomed Respondents' claim.

Respondents do not contest that the Third, Fourth, and Eighth Circuits have held that § 502(a)(1)(B) permits courts to do no "more than simply enforce a contract as written." *Pender* v. *Bank of America Corp.*, 788 F.3d 354, 362 (4th Cir. 2015). Instead, Respondents assert that none of those conflicting decisions involved equitable reformation followed by enforcement of the plan as reformed. BIO 26. But the reasoning in those decisions forecloses that remedy even where plaintiffs specifically request equitable reformation of plan terms as a preparatory step to recalculating benefits under § 502(a)(1)(B). *See Soehnlen* v. *Fleet Owners Ins. Fund*, 844 F.3d 576, 583 n.2 (6th Cir. 2016) (agreeing with *Pender* that "an action attempting to re-write the terms of a plan is unavailable under § [502](a)(1)(B)").

Respondents cannot square the Second Circuit's workaround of combining aspects of § 502(a)(1)(B) and § 502(a)(3) into a single reform-and-enforce remedy with the holdings of other circuits, or with *Amara*.

A. The First, Third, and Ninth Circuits have rejected a mix-and-match approach to § 502(a) remedies. Pet. 19-21. Respondents acknowledge that the First Circuit in *Todisco* v. *Verizon Communications, Inc.* rejected combining equitable relief under § 502(a)(3) with enforcement of the "reformulated plan" under § 502(a)(1)(B). 497 F.3d 95, 98, 101 (1st Cir. 2007); *see* BIO 26-27. Respondents quibble that the First Circuit treated plaintiff's request for "'reformation'" as an "estoppel claim." BIO 27. But they never explain why that

distinction matters, much less grapple with the central point that the First Circuit rejected the hybrid approach the Second Circuit adopted.

Similarly, Respondents cannot dispute that the Third Circuit in *Eichorn* v. *AT&T Corp.* rejected plaintiffs' "bootstrap approach" of combining an injunction under § 502(a)(3) to alter plan documents governing benefit entitlements with an order under § 502(a)(1)(B) to pay benefits owed as a result of that injunction. 484 F.3d 644, 653-55 (3d Cir. 2007). The Second Circuit here did not distinguish *Eichorn* because the § 502(a)(3) relief requested there was reformation of "pension *records*" as opposed to "the terms of the *plan contract*." BIO 25. Rather, it declined to follow *Eichorn*'s rejection of "two-step remed[ies]" as "contradict[ing]" the Second Circuit's "own precedent." Pet. App. 18a-19a.

Respondents ignore the Ninth Circuit's decision rejecting a two-step remedy in *Goeres* v. *Charles Schwab & Co.*, 220 F. App'x 663 (9th Cir. 2007). *See* Pet. 21. Instead, they invoke *Moyle* v. *Liberty Mutual Retirement Benefit Plan*, which read *Amara* to hold that "once [a] plan [is] reformed under § [502](a)(3)," it can "be enforced under § [502](a)(1)(B)." 823 F.3d 948, 960 (9th Cir. 2016); *see* BIO 27. *Moyle*'s reading of *Amara* was incorrect, and also immaterial to the outcome, since the question there was whether plaintiffs could "seek relief under § [502](a)(3) despite their *alternative* claim under § [502](a)(1)(B)." 823 F.3d at 959-60 (emphasis added). Moreover, the court permitted the plaintiffs to proceed under § 502(a)(3) because they alleged fraud, *id.* at 959, unlike the plaintiffs here. Even if the Ninth Circuit had permitted a combined remedy under § 502(a)(1)(B)

and § 502(a)(3), that would simply make the circuit split 2–2, instead of 3–1.[1]

B. *Amara* foreclosed the possibility that the lower courts on remand could "both reform the plan under § 502(a)(3) and enforce the plan-as-reformed under § 502(a)(1)(B)." BIO 20; *see also id.* at 12-13. The Court *noted* in dicta that "[o]ne can fairly describe step 2" of the remedy in that case—enforcement of the reformed plan—"as consistent with § 502(a)(1)(B)," 563 U.S. at 435, but it *held* that § 502(a)(1)(B) "does not authorize" "entry of the relief the District Court provided," *id.* at 425. The Court turned to "a different equity-related ERISA provision"—§ 502(a)(3)—to determine whether any equitable theory could authorize monetary relief. *Id.* Nothing in *Amara* suggests that the lower court could reform the plan under § 502(a)(3) and then award contract damages under § 502(a)(1)(B).

Nor has this Court endorsed combining two separate provisions of § 502(a) to award a hybrid remedy on a single claim. BIO 18-19. In *Massachusetts Mutual Life Insurance Co.* v. *Russell*, this Court explained the different remedies a "hypothetical" ERISA plaintiff could pursue, without suggesting that courts could combine parts of each remedy into new remedies unavailable under any subsection alone. 473 U.S. 134, 146-47 (1985). In *Firestone Tire & Rubber Co.* v. *Bruch*, the Court merely recited the separate counts of plaintiffs' complaint. 489 U.S. 101, 106 (1989). That a plaintiff

[1] Respondents mischaracterize *Ross* v. *Rail Car American Group Disability Income Plan* by combining snippets from two sentences, neither of which says anything about reformation and enforcement. 285 F.3d 735, 741 & n.7 (8th Cir. 2002).

may alternatively plead independent claims under two distinct subsections of § 502(a) provides no support for the Second Circuit's novel creation of a hybrid remedy that is not authorized by either subsection standing alone.

C. Respondents engage in semantics by arguing that PwC inconsistently reads the Second Circuit's decision as having either authorized "two distinct forms of relief" for "two separate claims," or "combined the two discrete remedies of reformation and enforcement into a single 'hybrid.'" BIO 4; *see also id.* at 12-14. The Second Circuit's error is not in ordering two-step relief, but, rather, in authorizing a two-*subsection* remedy for a *single liability claim*—a misconstruction of ERISA warranting review regardless of whether it is termed "hybrid" relief or "two forms" of relief. *See* Dist. Ct. Dkt. 261, at 9. That decision conflicts with other circuits and with "controlling cases" from this Court. Pet. App. 9a, 18a-19a. The notion that, by utilizing § 502(a)(1)(B) and § 502(a)(3) "simultaneously," Respondents can evade the limitations that apply to each subsection "independently," warrants review regardless of whether Respondents are viewed as seeking one or two forms of relief for their claim.

Similarly, the Secretary of Labor's *amicus* brief below did *not* endorse fusing aspects of § 502(a)(1)(B) and § 502(a)(3) into one remedy, as Respondents misleadingly suggest. BIO 9. The Secretary argued only for applying § 502(a)(1)(B) *or* § 502(a)(3) in the *alternative*. But if there is any doubt on this score, this Court should call for the Solicitor General's views.

II. RESPONDENTS CANNOT AVOID THE CIRCUIT SPLIT ON THE TRADITIONAL CONDITIONS FOR EQUITABLE REFORMATION UNDER § 502(a)(3).

A. Respondents' Attempts To Avoid *Great-West* Are Futile.

Section 502(a)(3) does not permit suits seeking "to impose personal liability … for a contractual obligation to pay money." *Great-West Life & Annuity Ins. Co.* v. *Knudson*, 534 U.S. 204, 210 (2002). Yet the Second Circuit held that § 502(a)(3) authorizes plan reformation merely as a "preparatory step" for a simultaneous award of money damages due under revised contract terms. Pet. App. 18a. Respondents' efforts to paint that holding as consistent with the holdings of this Court and numerous other circuits fail. Pet. 23-29.

This Court did not hold in *Amara* that § 502(a)(3) permits courts to reform a contract and enforce that contract as reformed "to recover money owed under the contract's corrected terms." BIO 15. As PwC previously noted, "*Amara*'s only discussion of monetary relief under § 502(a)(3) concerned remedies that were *equitable* in nature through and through, specifically unjust enrichment, equitable estoppel, and surcharge," Pet. 25—remedies for which Respondents indisputably do not qualify. If *Amara* had stated that equitable "reformation could set up an award of *contractual* money damages," it would have "conflicted with *Great-West*." *Id.*; *see also Montanile* v. *Bd. of Trs. of Nat'l Elevator Indus. Health Benefit Plan*, 136 S. Ct. 651, 660 n.3 (2016) (*Great-West*, not *Amara*'s dicta, governs § 502(a)(3)'s interpretation). Respondents offer no response to these points.

The cases Respondents cite do not show that premerger equity courts would typically have

permitted reformation solely as a springboard to contractual damages. BIO 15-16 & n.2. In *Northern Assurance Co.* v. *Grand View Building Ass'n*, this Court addressed only whether the relief awarded in equity by the state court was barred by the Court's prior holding that no relief was available at law; it expressly did not consider "[w]hether sufficient grounds were shown for th[at] relief." 203 U.S. 106, 107 (1906). And the plaintiffs in *Dameron* v. *Jamison* sought reformation of "a deed" and "partition of the land," not money damages. 4 Mo. App. 299, 301 (1877).

But even if Respondents' scattered cases showed that a handful of equity courts permitted reformation merely as an avenue for awarding contract damages, that would not establish that such relief was "*typically* available in equity." *Great-West*, 534 U.S. at 210 (citation omitted). This Court has "rejected" the view that § 502(a)(3) permits courts to award "whatever relief a court of equity is empowered to provide in the particular case at issue." *Id.*

Respondents' argument that they do not seek money damages is also meritless. BIO 17. They assuredly hope the district court will "compel [PwC] to pay a sum of money to" them, which makes this a "suit[ ] for 'money damages.'" *Great-West*, 534 U.S. at 210. The Seventh Circuit's opinion in *Johnson* v. *Meriter Health Services Employee Retirement Plan* is hardly an "analogous case" (BIO 17), as the court there addressed only whether class certification was appropriate and did not cite § 502(a)(3) or *Great-West*. 702 F.3d 364 (7th Cir. 2012). If Judge Posner thought that the retrospective benefits plaintiffs sought were not "damages," he provided no citation supporting that view. *Id.* at 369.

Finally, Respondents' only rejoinder to the holdings of other circuits refusing to award equitable relief in actions seeking money damages for alleged ERISA violations is that none "involved a claim for equitable reformation." BIO 27. But, again, they do not explain why that distinction matters.

B. Respondents Cannot Deny The Circuit Split On Whether Equitable Reformation Requires Fraud Or Mistake Not Alleged Here.

Respondents do not even attempt to defend the Second Circuit's erroneous holding that equitable reformation is "categorically available" whenever plan terms violate ERISA, regardless of "the specific circumstances under which those remedies were typically available in equity courts." Pet. App. 15a-16a. That holding conflicts with this Court's instruction in *Great-West* that equitable remedies under § 502(a)(3) must satisfy "the conditions that equity attached to [their] provision." 534 U.S. at 216.

Typically, premerger equity courts reformed written contracts only to correct a fraud or mistake. Pet. 28-29. Respondents cannot shoehorn this case into those circumstances, because they have "not allege[d] mistake, fraud, or inequitable conduct here." Pet. App. 39a. Their belated attempt to style an alleged violation of ERISA as a species of "constructive fraud," BIO 29-30, is unavailing. Not only does it contradict Respondents' pleadings and arguments over fourteen years of litigation, *see* Pet. 31-32, but the Second Circuit expressly declined to reach the issue, Pet. App. 16a n.4. None of Respondents' authorities suggests that equity courts would typically reform a contract to avoid an allegedly illegal contract term. Rather, "reformation to meet a

legal standard" was a "form[ ] of *nontraditional* reformation [that] generated controversy." 2 Dan Dobbs, *Law of Remedies* § 4.3(7), at 619-20 (2d ed. 1993) (emphasis added).[2]

Respondents cannot dispute that other circuits have held that "[t]he power to reform contracts" under § 502(a)(3) "is available *only* in the event of mistake or fraud." *Gabriel* v. *Alaska Elec. Pension Fund*, 773 F.3d 945, 955 (9th Cir. 2014) (emphasis added); *see also* Pet. 29-31 (collecting cases). Respondents argue that those cases did not "involve[ ] plan terms that violated ERISA," BIO 31, but they point to no language in any of the opinions hinting that this distinction would have made a difference. *Contra Pearce* v. *Chrysler Grp. LLC Pension Plan*, 893 F.3d 339, 348 (6th Cir. 2018) (requiring fraud or inequitable conduct even where defendant "breached" its "legal duty under ERISA"); Pet. 29-30. And Respondents' cases—a 1992 D.C. Circuit case, a Seventh Circuit case that does not mention § 502(a)(3) or cite *Amara*, and a district court case—do not remotely suggest "uniform[ ] agree[ment]" that equitable reformation is available absent fraud or mistake. BIO 31-32.

As a last-ditch effort, Respondents assert that the Second Circuit's § 502(a)(3) holding is "not

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[2] PwC nowhere conceded below that "§ 502(a)(3) authorizes a court to reform a plan's terms based solely on a violation of ERISA." BIO 30. Although PwC noted the uncontroversial proposition that § 502(a)(3)(B) permits suits by *current* plan participants for injunctive relief to "'enforce' the provisions of ERISA," PwC CA2 Br. 26, PwC devoted an entire section of its brief to arguing that § 502(a)(3) does not permit *former* plan participants to enforce ERISA, and that they can obtain reformation only for fraud or mistake, *id.* at 42-47.

encompassed by the Question Presented." BIO 28. But if reformation is unavailable under § 502(a)(3), then the Second Circuit obviously "improperly combined" that remedial provision with § 502(a)(1)(B) to award relief here, and just as obviously erred in "interpreting § 502(a)(3) to permit reformation" of the Plan. Pet. i. In any event, the question whether § 502(a)(3) is available under these circumstances is "fairly comprised" within the Question Presented as a "predicate to an intelligent resolution of the" question. *Vance* v. *Terrazas*, 444 U.S. 252, 258-59 n.5 (1980).

III. THE PURPORTED VEHICLE PROBLEMS ARE ILLUSORY.

Respondents do not dispute that "the broad ERISA remedial issues identified in the Petition" are important. BIO 32. The Second Circuit's novel, mix-and-match remedy undermines national uniformity, creates significant uncertainty about the litigation risks employers face, and invites forum shopping. *See* Pet. 32-34; Br. *Amici Curiae* 8-11, 21-23. And Respondents' supposed vehicle concerns lack merit.

There is no reason to await "final judgment" to grant certiorari, because the panel resolved a pure legal question that does not require further factual development. BIO 33; *see* Stephen M. Shapiro et al., *Supreme Court Practice* § 4.18, at 4-57 (11th ed. 2019) ("[T]he interlocutory status of the case may be no impediment to certiorari where the opinion of the court below has decided an important issue, otherwise worthy of review, and Supreme Court intervention may serve to hasten or finally resolve the litigation."). Here, the presence of ongoing litigation weighs in *favor* of certiorari because the courts and parties may needlessly expend resources on a legally deficient claim.

Furthermore, as Respondents' acknowledge, the Second Circuit did not reach their alternative arguments, so those are no obstacle to this Court's review. BIO 33. Those arguments are meritless in any event. *Amara* forecloses Respondents' contention below that both steps of its reformation-and-enforcement remedy "are authorized by § 502(a)(1)(B) of ERISA." Pet. App. 10a; *see Amara*, 563 U.S. at 436. Respondents have never "allege[d] mistake, fraud, or inequitable conduct" in connection with the amount of lump-sum benefits paid under the Plan. Pet. App. 39a; *see also id.* at 16a n.4. And Respondents' assertion that PwC was barred by the "mandate waiver rule" from filing a Rule 12(c) motion based on an argument that was not presented by or addressed in PwC's interlocutory appeal of the denial of its Rule 12(b)(6) motion, *see* BIO 33, is baseless. *See* Fed. R. Civ. P. 12(h) ("Failure to state a claim upon which relief can be granted … may be raised … by a motion under Rule 12(c)" regardless of whether it was raised by another "motion under this rule.").

Finally, the equities militate in favor of review. When Respondents left PwC, they received exactly what was written in the Plan and what they were told they would receive—the full amount of their notional account balances. They could have remained in the Plan and continued to receive investment experience, but chose to withdraw their account balances instead. Granting them an additional "remedy" that could exceed $2 billion based on hypothetical (but guaranteed positive) returns would be a pure windfall relative to participants who remained in the Plan and obtained actual (positive or negative) investment experience. It also would necessitate "reforming" a pre-2008 version of the Plan to comply with an ERISA interpretation that Congress abrogated in 2006.

Congress thus *agreed* with PwC that the perverse effects of the IRS's (and Second Circuit's) whipsaw calculations should be "foiled." BIO App. 16a. PwC, current Plan participants, and those who elected to remain in the Plan should not be punished because PwC gave Respondents what PwC and the Plan consistently promised—especially in light of the IRS's acknowledgment that PwC relied in good faith on the IRS's prior approvals of the Plan. *See* Pet. 8-9.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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