No. 20-28

In the Supreme Court of the United States

PRICEWATERHOUSECOOPERS LLP, ET AL.,
PETITIONERS

v.

TIMOTHY D. LAURENT, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

Whether the court of appeals properly permitted respondents in this action under the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001 *et seq.*, to simultaneously seek equitable reformation of an ERISA plan under Section 502(a)(3), 29 U.S.C. 1132(a)(3), and a claim for benefits pursuant to the terms of the plan as reformed under Section 502(a)(1)(B), 29 U.S.C. 1132(a)(1)(B).

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INTEREST OF THE UNITED STATES

This brief is submitted in response to the Court's order inviting the Acting Solicitor General to express the views of the United States. In the view of the United States, the petition for a writ of certiorari should be denied.

STATEMENT

1. a. The Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001 *et seq.*, protects "the interests of participants in employee benefit plans and their beneficiaries" by "establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans, and by providing for appropriate remedies, sanctions, and ready access to the Federal courts." 29 U.S.C. 1001(b). Among those protections afforded participants in ERISA-governed pension

plans, Sections 203 and 204 of ERISA provide certain minimum vesting and accrual standards, which must be reflected in the terms of each plan. 29 U.S.C. 1053-1054; see 29 C.F.R. 2530.200a-1 (describing ERISA's requirements as a "minimum" standard for plan terms).

To vindicate the rights guaranteed under ERISA, Section 502(a) of ERISA contains a set of "carefully integrated civil enforcement provisions." *Massachusetts Mut. Life Ins. Co.* v. *Russell*, 473 U.S. 134, 146 (1985); see 29 U.S.C. 1132(a). As relevant here, Section 502(a)(1)(B) authorizes a participant or beneficiary to bring a civil action "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." 29 U.S.C. 1132(a)(1)(B). And Section 502(a)(3) authorizes a participant, beneficiary, or fiduciary to bring an action "(A) to enjoin any act or practice which violates any provision of [Title I of ERISA] or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of [Title I] or the terms of the plan." 29 U.S.C. 1132(a)(3).[1]

b. This case concerns a type of ERISA-governed pension plan known as a defined-benefit plan, specifically a cash balance defined-benefit plan. A defined-benefit plan holds a general pool of assets in a trust from which each participant is paid a guaranteed, defined level of accrued benefits, usually based on a formula that considers the employee's years of service and compensation level when the employee reaches "normal retirement age." 29 U.S.C. 1002(24); see 29 U.S.C. 1002(23)(A) and (35). A cash balance defined-benefit plan defines the

[1] With exceptions not relevant here, Section 502(a)(5) grants the Secretary of Labor identical authority. See 29 U.S.C. 1132(a)(5).

participant's accrued benefit in terms of a hypothetical account balance. See 794 F.3d 272, 274-275. Neither employers nor participants actually contribute to these hypothetical accounts. Instead, each participant's account balance reflects: (1) hypothetical employer contributions, typically a percentage of the employee's salary, and (2) hypothetical investment returns on the money in the account (referred to as interest credits). See *id.* at 275.

All defined-benefit plans are required to offer payment of an employee's accrued benefit in the form of an annuity—*i.e.*, a series of lifetime payments. 29 U.S.C. 1002(23)(A); see 794 F.3d at 274. Participants in cash balance plans often may elect to receive their benefits either as an annuity commencing at normal retirement age or as an immediate lump-sum payment upon termination of employment. See *id.* at 275. During the relevant period here, ERISA required that any lump-sum payment be "actuarial[ly] equivalent" to the annuity—*i.e.*, worth at least as much as the present value of the stream of income from the annuity commencing at normal retirement age. 29 U.S.C. 1054(c)(3).[2]

To calculate an actuarially equivalent lump-sum payment, the hypothetical account balance is projected to normal retirement age using a hypothetical interest rate, then discounted back to present value at a set rate, typically the interest rate on 30-year Treasury securities.

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[2] In 2006, Congress passed the Pension Protection Act of 2006 (PPA), "which provided that plans did not fail to satisfy ERISA solely because they did not provide actuarial equivalence for participants who terminated employment before normal retirement age and took a lump-sum payment." 794 F.3d at 276 (citing 29 U.S.C. 1053(f)(1)(B)). Respondents filed this suit in 2006, and the parties agree that the PPA does not apply to the distributions at issue.

See 794 F.3d at 275; Pet. App. 5a. This calculation—projecting ahead, and then discounting back to present value—is referred to as a "whipsaw" calculation, and generally results in additional "whipsaw" benefits for lump-sum recipients over and above the amount stated in their account balances. *Ibid.*

2. a. Respondents are former employees of PricewaterhouseCoopers LLP (PwC) and participants in the Retirement Benefit Accumulation Plan for Employees of Pricewaterhouse (Plan), a cash balance pension plan. Pet. App. 3a, 60a-61a. As an alternative to a lifetime annuity, the Plan provided a lump-sum distribution option for departing employees. *Id.* at 96a-97a. Consistent with ERISA's dictates, the Plan provided that any lump-sum distribution "shall not be less than the actuarial equivalent of the participant's normal retirement benefit." *Id.* at 97a (capitalization omitted).

For projecting a departing employee's account balance forward to normal retirement age, the Plan identified the 30-year Treasury rate as the "deemed plan interest rate." Pet. App. 89a (capitalization omitted); see *id.* at 22a. In practice, however, the Plan did not need to project any account balances to normal retirement age, because the Plan defined "normal retirement age" as "the *earlier* of the date a participant attains age 65 *or* completes 5 years of service," and the Plan's benefits did not vest until a participant completed five years of service. *Id.* at 6a (brackets, capitalization, and citation omitted; emphasis altered); see 794 F.3d at 276-277. As a result, all benefit-eligible employees had already reached "normal retirement age," as the Plan defined it, by the time they elected a benefit.

b. In 2006, respondents sued petitioners PwC, the Plan, and the Plan's Administrative Committee, on behalf of former PwC employees who terminated their employment after completing five years of service, alleging that the Plan did not comply with ERISA's benefit vesting and accrual requirements and deprived participants of ERISA-mandated whipsaw benefits. See Pet. App. 60a-75a. Respondents argue that the Plan's definition of "normal retirement age" is inconsistent with ERISA's definition of the term in Section 3(24), 29 U.S.C. 1002(24), and that the Plan's use of the 30-year Treasury rate to project account balances forward to a normal retirement age would, in any event, understate future interest credits. Pet. App. 6a; see *id.* at 23a-24a.

Petitioners moved to dismiss respondents' suit, contending that the complaint failed to state a violation of ERISA. In 2013, the district court denied petitioners' motion to dismiss, determining that the Plan's definition of "normal retirement age" violates ERISA because it does not bear a reasonable relationship to an age at which participants would normally retire. 963 F. Supp. 2d 310. The court of appeals affirmed. 794 F.3d 272. This Court denied a petition for a writ of certiorari. 577 U.S. 1119.

c. On remand, petitioners moved for judgment on the pleadings, arguing for the first time that, even if the Plan's "normal retirement age" and "deemed plan interest rate" violated ERISA, the district court lacked authority to grant the relief that respondents seek—namely, to reform the Plan to conform with ERISA and to order recalculation of the class members' benefits under the reformed Plan. Pet. App. 22a-24a (capitalization omitted). The district court granted the motion. *Id.* at 20a-42a.

The district court reasoned that respondents' request for relief is not cognizable under either Section 502(a)(1)(B) or 502(a)(3). The court explained that Section 502(a)(1)(B) permits courts "only to enforce the terms of the Plan, 'as written,'" not to alter them. Pet. App. 28a (quoting *CIGNA Corp.* v. *Amara*, 563 U.S. 421, 436 (2011)). And, the court stated, while Section 502(a)(3) does permit courts to grant the equitable remedy of reformation, that relief is only available "in cases of fraud and mutual mistake—neither of which [it found to be] at issue here." *Id.* at 37a.

3. The court of appeals reversed, holding that, whether or not Section 502(a)(1)(B) or 502(a)(3) independently authorizes the requested relief, respondents can invoke both provisions in service of "a two-step reformation and enforcement remedy." Pet. App. 14a; *Id.* at 1a-19a.

The court of appeals determined that the first step of the remedy—reformation—is authorized by Section 502(a)(3). Reformation, the court explained, "is indisputably a typical and traditional form of equitable relief" that is available to courts under Section 502(a)(3). Pet. App. 16a. It observed that "when construing a remedy in equity under [Section] 502(a)(3), courts are to be guided by 'equitable principles, as modified by the obligations and injuries identified by ERISA itself.'" *Ibid.* (quoting *Amara*, 563 U.S. at 445). And it concluded that a district court could exercise its equitable discretion under Section 502(a)(3) to reform an ERISA plan "to remedy violations of [Title I] of ERISA, even in the absence of mistake, fraud, or other conduct traditionally considered to be inequitable." *Id.* at 17a.

The court of appeals determined that the second step —enforcement—was authorized by Section 502(a)(1)(B).

The court observed that "'equity often considered reformation a "preparatory step" that "establishes the real contract."'" Pet. App. 18a (quoting *Amara*, 563 U.S. at 441). And it had "little trouble" holding that, if the district court granted such reformation, Section 502(a)(1)(B) would authorize the court to then grant enforcement of that reformed Plan. *Id.* at 18a. Although petitioners asserted that the Third Circuit had rejected that approach in *Eichorn* v. *AT&T Corp.*, 484 F.3d 644, cert. denied, 552 U.S. 1071 (2007), the court of appeals observed that, "[t]o the extent that is so," that decision "pre-date[d] *Amara*." Pet. App. 18a.

The court of appeals declined to address "the nature of any reformation and consequent relief to which [respondents] may be entitled, * * * leaving those questions to be resolved by the district court in the first instance." Pet. App. 19a. And in light of its holding on the question presented, the court declined to address any alternative arguments for relief, including the Secretary of Labor's suggestion, as an amicus, that the district court could grant the requested relief under Section 502(a)(1)(B) or based on other equitable theories under Section 502(a)(3). *Id.* at 10a, 19a.

DISCUSSION

Petitioners primarily contend (Pet. 13-26) that the court of appeals erred in permitting respondents to simultaneously seek equitable reformation of the Plan under Section 502(a)(3) and pursue a claim for benefits pursuant to the Plan as reformed under Section 502(a)(1)(B). The court of appeals' holding on that question, however, reflects an ordinary application of the Federal Rules of Civil Procedure, which permit parties to jointly pursue such contingent claims. And the court's decision does not conflict with any decision of

this Court or of another court of appeals. Further review of the question presented is unwarranted.

Petitioners also contend (Pet. 27-31) that the court of appeals independently erred in determining that equitable reformation is available in the circumstances presented here. Whether or not that question is fairly included within the question presented in the petition, Sup. Ct. R. 14.1(a), it does not independently warrant review. The court of appeals correctly reversed the district court's grant of judgment on the pleadings, allowing respondents to seek reformation, and petitioners fail to identify any circuit that would have reached a different result in the circumstances of this case. Particularly given the interlocutory posture, this Court's intervention would be premature.

A. The Court Of Appeals Correctly Allowed Respondents To Seek Relief Under ERISA Section 502(a)(3) And Section 502(a)(1)(B)

1. The court of appeals correctly permitted respondents to simultaneously seek reformation of the Plan and pursue a contingent claim for benefits pursuant to the terms of the Plan as reformed. Federal Rule of Civil Procedure 18(b) provides that, in a federal action, a "party may join two claims even though one of them is contingent on the disposition of the other." Fed. R. Civ. P. 18(b). That Rule provides ample authority for an ERISA plaintiff to pair a claim for reformation of an ERISA plan under Section 502(a)(3) with a contingent claim for benefits pursuant to the reformed Plan under Section 502(a)(1)(B). Nothing in ERISA or this Court's precedents suggests that an ERISA plaintiff should be precluded from doing so.

By its nature, reformation lends itself to such joinder. "Reformation is almost always sought so that some

other remedy may then be pursued." 1 Dan B. Dobbs, *Law of Remedies* § 4.3(7), at 618 (2d ed. 1993) (Dobbs). Indeed, the whole purpose of the remedy of reformation is to "establish[] the real contract" between the parties, permitting one party to "recover the amount actually due according to the terms of that contract." 4 John Norton Pomeroy, *A Treatise on Equity Jurisprudence* § 1375, at 999 (Spencer W. Symons ed., 5th ed. 1941) (Pomeroy). Accordingly, where reformation is appropriate, it has long been "well settled that equity would reform the contract, and enforce it, as reformed." *Balzter* v. *Raleigh & Augusta R.R.*, 115 U.S. 634, 645 (1885).

This Court effectively endorsed a two-step reform-and-enforce approach under ERISA in *CIGNA Corp.* v. *Amara*, 563 U.S. 421 (2011). In that case, the district court had found that a pension plan violated ERISA by providing participants incomplete and misleading descriptions of certain changes in the plan's benefits. *Id.* at 425, 431-432. To remedy the violation, the court had first "ordered the terms of the plan reformed" to account for the misleading descriptions and then "ordered the plan administrator * * * to enforce the plan as reformed." *Id.* at 435. The court found authority for both steps solely under Section 502(a)(1)(B). *Id.* at 435.

This Court reversed, holding that Section 502(a)(1)(B) alone could not support the district court's remedy. Importantly, however, the Court did not question the lower court's general two-step approach, and the Court's analysis strongly supports the decision below in two respects. See *Amara*, 563 U.S. at 435-438. First, the Court reasoned that the second step of the district court's two-step approach was "fairly describe[d] * * * as consistent with [Section] 502(a)(1)(B)." *Id.* at 435. Section

502(a)(1)(B) authorizes a participant to "'recover benefits due . . . under the terms of his plan'" and, at the second step, the district court had "order[ed] recovery of the benefits provided by the 'terms of [the] plan,' *as reformed*." *Ibid.* (citation omitted; second set of brackets in original).

Second, although this Court determined that Section 502(a)(1)(B) itself did not permit a court to alter the terms of a plan before ordering enforcement, *Amara*, 563 U.S. at 436; cf. Pet. 15-17, the Court made clear that Section 502(a)(3) did authorize reformation. *Amara*, 563 U.S. at 440. "The power to reform contracts," the Court observed, "is a traditional power of an equity court." *Ibid.* And it noted that equity courts "often considered reformation a 'preparatory step' that 'establishes the real contract'" before enforcing the contract as reformed. *Id.* at 441 (quoting 4 Pomeroy § 1375, at 999). The *Amara* Court remanded the case to permit the district court to determine under Section 502(a)(3) whether such relief was "appropriate on the facts of th[at] case." *Id.* at 442. The court of appeals took the same approach here.

2. Petitioners contend (Pet. 22) that, if joinder of claims under Section 502(a)(3) and 502(a)(1)(B) were available, the Court in *Amara* would not have "remanded for consideration of whether [Section] 502(a)(3) alone could provide equitable relief," and the Court's "discussion of traditional equitable doctrines for awarding monetary relief would have been superfluous." But the Court in *Amara* held only that the district court was precluded from relying on Section 502(a)(1)(B) alone, not that it could not rely on it in combination with Section 502(a)(3). See 563 U.S. at 435. And the fact that some traditional equitable remedies available under

Section 502(a)(3), including reformation itself, may provide authority to award monetary relief without any need to invoke Section 502(a)(1)(B) provides no basis for precluding ERISA plaintiffs from relying on the ordinary rules of civil procedure to bring the two together. See 29 U.S.C. 1144(d) ("Nothing in this subchapter shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States * * * or any rule or regulation issued under any such law.").

Petitioners read too much (Pet. 22) into the fact that the remedies in Section 502(a) "are separated by 'or,' not 'and.'" Congress's use of the word "or" must be understood in context. See *Encino Motorcars, LLC* v. *Navarro*, 138 S. Ct. 1134, 1141 (2018). "If you are offered coffee or tea, you may pick either * * * or you may for whatever reason order both." Bryan A. Garner, *Garner's Modern American Usage* 45 (3d ed. 2009). That is the "ordinary sense" of such a disjunctive phrase, "understood by everyone and universally accommodated" by the word "or." *Ibid.*; see Antonin Scalia & Bryan A. Garner, *Reading Law* 125 n.20 (2012) ("If *or* is used, no one would seriously urge that if one enumerated duty or power is performed or exercised, the remainder vanish.") (citation omitted).

Petitioners further err in contending (Pet. 23-25) that the court of appeals' approach conflicts with this Court's decision in *Great-West Life & Annuity Ins. Co.* v. *Knudson*, 534 U.S. 204 (2002). In *Great-West*, this Court held that Section 502(a)(3) did not permit an ERISA plan's assignee (Great-West) to sue a plan beneficiary under a reimbursement provision in the plan to recover compensation the beneficiary had received from a third party. *Id.* at 207-209, 221. The Court ex-

plained that Section 502(a)(3) authorizes plan fiduciaries (and their assignees) only to seek "those categories of relief that were typically available in equity." *Id.* at 210 (quoting *Mertens* v. *Hewitt Assocs.*, 508 U.S. 248, 256 (1993)) (emphasis omitted). And although Great-West "struggle[d] to characterize the relief sought as 'equitable' under [that] standard," the Court explained that Great-West's "'claim for money due and owing under a contract [wa]s quintessentially an action at law.'" *Ibid.* (citation omitted).

Unlike in *Great-West*, however, respondents are not seeking contract damages under Section 502(a)(3). The Section 502(a)(3) claim that the court of appeals allowed to proceed seeks only reformation of the Plan—"a traditional power of an equity court, not a court of law." *Amara*, 563 U.S. at 440. Respondents' contingent claim for past-due benefits under the Plan as reformed would proceed under Section 502(a)(1)(B), which permits ERISA participants and beneficiaries to pursue such claims "without reference to whether the relief sought is legal or equitable." *Great-West*, 534 U.S. at 221.

Petitioners' concern (Pet. 23) that permitting such a suit would render the limitations on Section 502(a)(3) "meaningless" is misplaced. Section 502(a)(1)(B) claims are available only to "participant[s] or beneficiar[ies]," not anyone who may seek relief under Section 502(a)(3). 29 U.S.C. 1132(a)(1). Moreover, not every Section 502(a)(3) claim can plausibly be characterized as seeking equitable reformation of a plan. The claim in *Great-West*, for example, sought to enforce an existing provision in an ERISA plan, not to reform it. 534 U.S. at 210-218. And *Mertens* involved the knowing participation in a violation of a fiduciary duty, not the breach of a plan term. 508 U.S. at 250.

B. No Circuit Conflict Exists On The Question Presented

Petitioners contend (Pet. 17-19, 19-21, 25-26) that the court of appeals' decision creates three different circuit conflicts on the question presented. But as that scattershot argument suggests, petitioners fail to identify any court of appeals decision that squarely conflicts with the decision below.

1. Petitioners principally rely (Pet. 17-18, 19-20, 25-26) on the Third Circuit's decision in *Eichorn* v. *AT&T Corp.*, 484 F.3d 644, cert. denied, 552 U.S. 1071 (2007). The plaintiffs in that case alleged that their employer had interfered with their ability to acquire certain pension benefits, in violation of Section 510 of ERISA, 29 U.S.C. 1140, by refusing to rehire them after selling off a portion of the company. 484 F.3d at 646-647. To remedy the violation, they asked the court to order their employer to adjust its records as if the plaintiffs had accrued the pension benefits and then to pay the plaintiffs the "money that was rendered 'past due' by operation of the court's decree." *Id.* at 653. The court of appeals held that no such relief was available. *Id.* at 646.

Petitioners emphasize (Pet. 19) the Third Circuit's statement that the plaintiffs failed to identify any support for their "bootstrap approach." *Eichorn*, 484 F.3d at 653. But that statement was made in the course of rejecting the plaintiffs' attempt to proceed exclusively under Section 502(a)(1)(B), not in combination with a claim under Section 502(a)(3). The problem for the *Eichorn* plaintiffs was not that they pursued two claims together, but that each claim failed. Relief was unavailable under Section 502(a)(1)(B) because the plaintiffs "alleged that the defendants interfered with their ability to become eligible for further benefits, not that the defendants ha[d] breached the terms of the plan itself."

Id. at 653; see *id.* at 651-654. And relief was unavailable under Section 502(a)(3) because the plaintiffs' request to alter the company's "pension records retroactively to create an obligation to pay the[m] more money" did not meet the equitable requirements for injunctive relief. *Id.* at 655; see *id.* at 654-657 & n.6.

Nothing in the Third Circuit's pre-*Amara* rejection of those claims suggests that the court would also reject a claim for the equitable remedy of reformation, where the necessary prerequisites are met, merely because it would serve as a preparatory step to a claim for benefits. Cf. *Eichorn*, 484 F.3d at 655 n.6 ("This is not to say that an ERISA plaintiff's demand for money necessarily requires the conclusion that the relief sought is not 'equitable' within the meaning of the statute."). Nor is there any basis to conclude that the Third Circuit would reject a contingent claim for benefits under Section 502(a)(1)(B) according to properly reformed plan "terms." *Id.* at 653. There is accordingly no conflict between the Third Circuit and the decision below.

2. Petitioners likewise fail to establish any conflict between the decision below and any decision of the First, Fourth, Sixth, Eighth, or Ninth Circuit. In fact, several of those circuits have affirmatively endorsed the approach followed by the Second Circuit here.

In *Pender* v. *Bank of America Corp.*, 788 F.3d 354 (4th Cir. 2015), and *Ross* v. *Rail Car America Group Disability Income Plan*, 285 F.3d 735 (8th Cir.), cert. denied, 537 U.S. 885 (2002), the Fourth and Eighth Circuits both held, consistent with this Court's decision in *Amara*, that ERISA plaintiffs could not seek relief exclusively under Section 502(a)(1)(B) in circumstances where their claims did not seek to enforce the plans as written. See *Pender*, 788 F.3d at 361-362; *Ross*, 285

F.3d at 739-740. Neither decision, however, rejected an ERISA plaintiff's attempt to proceed in two steps under Section 502(a)(3) and Section 502(a)(1)(B). In *Pender*, the Fourth Circuit had no need to consider a two-step approach, because it held that the plaintiffs could pursue their claims in one step under Section 502(a)(3). 788 F.3d at 364-365. And in *Ross*, although the court rejected the claims on the merits, it observed that "a successful plaintiff may need to assert claims" under *both* Section 502(a)(1)(B) *and* 502(a)(3) "to obtain complete relief." 285 F.3d at 741 n.7.

Petitioners do cite decisions of the First and Ninth Circuits that declined to authorize two-step relief in ERISA cases. See Pet. 20-21 (citing, *e.g.*, *Todisco* v. *Verizon Communications, Inc.*, 497 F.3d 95 (1st Cir. 2007), and *Watkins* v. *Westinghouse Hanford Co.*, 12 F.3d 1517 (9th Cir. 1993)). But none of those decisions involved a claim for reformation. And none rejected the plaintiffs' claims *because* they would have proceeded in two steps—but rather because either one or both of the individual steps failed. In *Todisco* and *Watkins*, in particular, the First and Ninth Circuits rejected the plaintiffs' attempt to rely on equitable estoppel on the ground that it was unavailable where the terms of the ERISA plan were unambiguous. See *Watkins*, 12 F.3d at 1528 (rejecting an equitable estoppel claim because the relevant plan terms were "unambiguous"); *Todisco*, 497 F.3d at 101 (citing *Watkins* and explaining that "the plan unambiguously" foreclosed the plaintiff's claim). Those decisions say nothing about whether those courts would permit respondents' claims to proceed. Indeed, as respondents note (Br. in Opp. 27), the Ninth Circuit has since expressly endorsed the reform-and-enforce

approach adopted here. See *Moyle* v. *Liberty Mut. Retirement Benefit Plan*, 823 F.3d 948, 960 (2016) ("[O]nce the plan [i]s reformed under [Section 502](a)(3) * * * , it c[an] be enforced under [Section 502](a)(1)(B).").

Finally, the decisions petitioners cite (Pet. 25-26) from the Sixth and Tenth Circuits are even further afield. While petitioners describe (Pet. 25) those decisions as holding that an alleged ERISA violation "will not support equitable reformation of a plan for the purpose of awarding money damages," neither concerned—or even mentioned—equitable reformation. In *Crosby* v. *Bowater Inc. Retirement Plan for Salaried Employees of Great Northern Paper, Inc.*, 382 F.3d 587 (2004), cert. denied, 544 U.S. 976 (2005), the Sixth Circuit held that the plaintiff could not recover benefits that had been allegedly forfeited in violation of ERISA Section 203(a) because the plaintiff did not meet the equitable prerequisites for seeking a constructive trust or disgorgement. *Id.* at 594-596. And in *Millsap* v. *McDonnell Douglas Corp.*, 368 F.3d 1246 (2004), the Tenth Circuit held only that backpay was unavailable under Section 502(a)(3) because it was not a remedy "typically available in equity," *id.* at 1252 (citation omitted), and was not, in the circumstances of that case, "incidental to or intertwined with" any such equitable remedy, *id.* at 1255; see *id.* at 1252-1253, 1255-1256.

Moreover, since the petition for a writ of certiorari was filed, the Sixth Circuit has expressly agreed with the decision below. In *DaVita, Inc.* v. *Marietta Memorial Hospital Employee Health Benefit Plan*, 978 F.3d 326 (2020), the Sixth Circuit explained that, while Section 502(a)(1)(B) authorizes a district court only to "'enforc[e]'" the terms of an ERISA plan, not to "'chang[e] them,'" a district court may, where appropriate, "*first*

reform a plan's terms per [Section 502](a)(3) before *proceeding to enforce* the reformed plan per [Section 502(a)](1)(B)." *Id.* at 343 n.12 (quoting *Amara*, 563 U.S. at 436). The two remedial provisions, the court explained, "are not oil and water." *Ibid.* ERISA plaintiffs are free to seek relief through such a "two-step process," even when both claims are combined into a single count in the complaint. *Ibid.*

C. Whether Reformation Is Available In The Circumstances Of This Case Does Not Warrant Review At This Time

Petitioners separately contend (Pet. 27) that the court of appeals "independently erred" by holding that equitable reformation is available in the circumstances of this case. But the court correctly held that petitioners were not entitled to judgment on the pleadings on that ground.

1. Section 502(a)(3) authorizes a civil action by a participant, beneficiary, or fiduciary to "enjoin any act or practice which violates any provision of [Title I of ERISA]," or "to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any [such] provisions." 29 U.S.C. 1132(a)(3). This Court has held that the phrase "appropriate equitable relief" refers to "those categories of relief that, traditionally speaking (*i.e.*, prior to the merger of law and equity), were *typically* available in equity." *Amara*, 563 U.S. at 439 (citations and internal quotation marks omitted). To determine whether an ERISA action seeks such relief, the Court has generally "turn[ed] to standard treatises on equity, which establish the 'basic contours' of what equitable relief was typically available in pre-merger equity courts." *Montanile* v. *Board of Trs. of Nat'l Elevator Indus. Health Benefit Plan*, 136 S. Ct. 651, 657 (2016) (citation omitted). And the Court has held

that the requirements for obtaining an equitable remedy under Section 502(a)(3) "must be borrowed from equitable principles, as modified by the obligations and injuries identified by ERISA itself." *Amara*, 563 U.S. at 445; see *Varity Corp.* v. *Howe*, 516 U.S. 489, 515 (1996).

This Court recognized in *Amara* that reformation falls squarely within the "categories of relief" that "were *typically* available in equity." 563 U.S. at 439 (citation omitted); see *id.* at 440-441. The Court explained that reformation of a contract was "chiefly occasioned by fraud or mistake." *Id.* at 441 (quoting 4 Pomeroy § 1375, at 1000). More specifically, courts of equity traditionally permitted reformation "where there [wa]s a mutual mistake, or mistake on one side and fraud or inequitable conduct on the other." *Simmons Creek Coal Co.* v. *Doran*, 142 U.S. 417, 435 (1892); see 3 Pomeroy § 870, at 384-385; 1 Dobbs § 4.3(7), at 617; James W. Eaton, *Handbook of Equity Jurisprudence* § 307, 619-620 (1901). Respondents have adequately pleaded that those requirements are satisfied here.

As for mistake, respondents allege that they "unwittingly" forfeited their pension benefits on the basis of the alleged ERISA violations. Compl. ¶ 83. Congress imposed an obligation on all plan sponsors, on behalf of participants and beneficiaries, to include certain minimum plan terms that sponsors must undertake to honor. See 29 U.S.C. 1053-1054; see also *Conkright* v. *Frommert*, 559 U.S. 506, 516 (2010). And respondents had every reason to believe that the Plan would comply with ERISA's vesting and accrual requirements. See C.A. App. A-1115 (Plan § 16.6(b)) ("It is intended that the Plan meet the requirements of ERISA.").

Petitioners' alleged conduct, moreover, appears to meet the definition of fraud as that term was broadly

understood in equity. "Fraud in equity includes all willful or intentional acts, omissions, and concealments which involve a breach of either legal or equitable duty, trust, or confidence, and are injurious to another, or by which an undue or unconscientious advantage over another is obtained." 3 Pomeroy § 873, at 422; see *SEC* v. *Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 193-194 (1963). Courts of equity would not "hesitate[]" to reform contracts "where a fraudulent suppression, omission, or insertion of a material stipulation exists." 1 Joseph Story, *Commentaries on Equity Jurisprudence* § 154, at 149 (12th ed. 1877); see *Amara*, 563 U.S. at 443. Here, respondents allege that petitioners inserted into the Plan an impermissible "normal retirement age" and "deemed plan interest rate" in order to "circumvent" ERISA's vesting and accrual requirements to respondents' detriment. Compl. 16 (capitalization omitted); see *id.* ¶¶ 54-75.

The court of appeals thus properly held that petitioners are not entitled to judgment on the pleadings. To be sure, the court's decision contains language that could extend beyond the circumstances of this case. Cf. Pet. 27-29; see Pet. App. 15a (faulting the district court for limiting equitable remedies under Section 502(a)(3) "to the specific circumstances under which those remedies were typically available in equity"); see also *id.* at 17a. "This Court, however, reviews judgments, not statements in opinions." *Black* v. *Cutter Labs.*, 351 U.S. 292, 297. The decision below must be understood in the particular context of this case and against the backdrop of this Court's instruction that the requirements for remedies under Section 502(a)(3) "must be borrowed from equitable principles, as modified by the obligations and injuries identified by ERISA itself." *Amara*, 563 U.S.

at 445. Particularly at this interlocutory stage, the court of appeals' broader statements do not warrant this Court's intervention.

2. The absence of any need for immediate review is confirmed by petitioners' failure to identify any court of appeals decision that suggests this case would have been resolved differently in another circuit. See Pet. 29-31. While other circuits have addressed the requirements for reformation in the context of Section 502(a)(3) as a general matter, none has held that equitable reformation is unavailable to correct plan terms that violate ERISA—much less in circumstances analogous to those presented here.

In *Pearce* v. *Chrysler Group LLC Pension Plan*, 89 F.3d 339 (2018), the Sixth Circuit considered whether an ERISA plaintiff could seek reformation of an ERISA plan to conform its terms to allegedly misleading statements in the summary plan document. *Id.* at 343. The court observed that, at equity, a contract could be reformed: "(1) where there is a 'mutual mistake of both parties'; or (2) 'where one party is mistaken and the other commits fraud or engages in inequitable conduct.'" *Id.* at 347 (citation omitted). The court clarified, however, that "'[f]raud has a broader meaning in equity [than at law]'"; that the "'intention to defraud'" is not a necessary element; and that whether one party breached a legal duty, *e.g.*, an ERISA requirement, is "an important factor" in determining whether reformation should be awarded. *Id.* at 348 (citation omitted; brackets in original). Having articulated these "guideposts," the court remanded to the district court to consider whether reformation was appropriate there. *Id.* at 349.

In *Silva* v. *Metropolitan Life Insurance Co.*, 762 F.3d 711 (8th Cir. 2014), and *Gabriel* v. *Alaska Electrical Pension Fund*, 773 F.3d 945 (9th Cir. 2014), the Eighth and Ninth Circuits similarly recognized that Section 502(a)(3) permits a court to reform an ERISA plan based on mutual mistake or fraud. See *Silva*, 762 F.3d at 723; *Gabriel*, 773 F.3d at 955. But neither case addressed whether or when an employer's inclusion of plan terms violative of ERISA could satisfy those requirements. See *Silva*, 762 F.3d at 722 (remanding to permit an ERISA plaintiff to seek reformation of a life insurance policy based on the insurer's "arguably fraudulent" collection of premiums from an employee who the insurer argued never had an approved policy); *Gabriel*, 773 F.3d at 961-962 (declining to permit an ERISA plaintiff to seek "reformation" of a plan's benefits records based on misinformation provided by the plan representative because "the [p]lan itself d[id] not contain an error").

3. Finally, even if the requirements for seeking equitable reformation of an ERISA plan warranted this Court's consideration, this case would present an unsuitable vehicle for addressing that issue.

First, the case's interlocutory posture "alone furnishe[s] sufficient ground" to deny review. *Hamilton-Brown Shoe Co.* v. *Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916); see *Brotherhood of Locomotive Firemen & Enginemen* v. *Bangor & Aroostook R.R.*, 389 U.S. 327, 328 (1967) (per curiam); *Virginia Military Inst.* v. *United States*, 508 U.S. 946, 946 (1993) (Scalia, J., respecting the denial of the petition for writ of certiorari). No remedy has yet been—and may never be—awarded in this case. The court of appeals expressly left it to the district court on remand to "address the nature of any

reformation and consequent relief to which Plaintiffs may be entitled." Pet. App. 19a. And petitioners themselves have argued to the district court that numerous "undecided issues of fact" remain for the trial court's resolution. D. Ct. Doc. 259, at 1 (Mar. 2, 2020). Those unresolved legal and factual issues make this case a particularly poor vehicle for reviewing the remedial question.

Second, the Court's review would be unlikely to "hasten or finally resolve the litigation." Pet. Reply Br. 10 (citation omitted). Petitioners focus (Pet. 27) on the court of appeals' statements suggesting that equitable relief under Section 502(a)(3) may be available even where the traditional equitable requirements are not met. But even if the Court were to vacate the decision based on those statements, respondents could still seek to show that those equitable requirements, "as modified by the obligations and injuries identified by ERISA," *Amara*, 563 U.S. at 445, are satisfied. And even if reformation were unavailable in these circumstances, the court of appeals did not resolve several other grounds for permitting this case to proceed, including the other remedial theories offered in the Secretary of Labor's amicus brief in the court of appeals. See Gov't C.A. Amicus Br. 7-26 (arguing, *inter alia*, that injunctive or surcharge relief may be available). Those other theories would present alternative grounds for affirmance. See *Union Pac. R.R.* v. *Brotherhood of Locomotive Eng'rs & Trainmen Gen. Comm. of Adjustment*, 558 U.S. 67, 80 (2009). At a minimum, these considerations counsel against further review at this interlocutory stage.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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