No. 23-734

IN THE

Supreme Court of the United States

JODY ROSE, ADMINISTRATRIX OF THE ESTATE OF KYREE DEVON HOLMAN, DECEASED,

Petitioner,

v.

PSA AIRLINES, INC., PSA AIRLINES, INC. GROUP BENEFIT PLAN, UMR, INC., QUANTUM HEALTH, INC. *AKA* MYQHEALTH BY QUANTUM, AND MCMC, LLC,

Respondents.

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

BRIEF IN OPPOSITION TO CERTIORARI

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QUESTION PRESENTED

Petitioner seeks monetary relief under Section 502(a)(3) of the Employee Retirement Income Security Act of 1974 ("ERISA"), which allows plan beneficiaries to obtain "appropriate equitable relief" for violations of the statute. 29 U.S.C. §1132(a)(3). In the decision below, the Fourth Circuit held that petitioner could not pursue a particular "make-whole" monetary remedy—surcharge—under Section 502(a)(3) but remanded for the district court to consider in the first instance whether other forms of relief were available.

The question presented is whether a plan participant may pursue the remedy of surcharge—*i.e.*, monetary damages meant to compensate for an injury—as "appropriate equitable relief" under Section 502(a)(3) against a plan fiduciary that allegedly breaches its fiduciary duties.

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INTRODUCTION

The question in this case is whether a plaintiff may pursue make-whole monetary damages under Section 502(a)(3) of ERISA, a provision that allows plan participants and others to seek "appropriate equitable relief," 29 U.S.C. § 1132(a)(3). For decades, this Court had a simple answer to that question: No. *See, e.g.*, *Mertens v. Hewitt Associates*, 508 U.S. 248, 256 (1993); *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204 (2002). "[M]oney damages," it explained, were the "classic form of *legal* relief," not equitable relief. *Mertens*, 508 U.S. at 255. And so held every court of appeals to have considered the question. *See infra* at 7.

It was only after *CIGNA Corp v. Amara*, 563 U.S. 421 (2011)—and then only briefly—that the waters muddied. In dicta, *Amara* suggested that a beneficiary might collect money damages from a fiduciary under Section 502(a)(3) through the remedy of "surcharge." *Id.* at 441-42. That opinion set off a chain reaction among lower courts that were surprised by—but adhered to—this Court's dicta. The Fourth Circuit was the first mover, initially understanding *Amara* to be a "striking development" to which it was "bound." *McCravy v. Metro. Life Ins. Co.*, 690 F.3d 176, 180-81 & n.2 (4th Cir. 2012) (quotation omitted). Over the years, some courts of appeals followed the Fourth Circuit's lead, abandoning their own longstanding circuit precedent as "implicitly overruled" by *Amara*. *See, e.g.*, *Gearlds v. Entergy Servs., Inc.*, 709 F.3d 448, 452 (5th Cir. 2013).

This Court, however, set the record straight in *Montanile v. Board of Trustees of the National Elevator Industry Health Benefit Plan*, 577 U.S. 136 (2016). That decision made clear that the Court's "discussion of § 502(a)(3) in [*Amara*] was not essential to resolve that case,"—*i.e.*, it was dicta—and as a result, the Court's "interpretation of 'equitable relief' in *Mertens* [and] *Great-West* . . . remain[ed] unchanged." *Id.* at 148 n.3. In the decision below, the Fourth Circuit became the first court of appeals to consider the impact of *Montanile* on the question presented, and it correctly recognized that it was not bound by *Amara*'s dicta. App. 23a-26a. Just as *Montanile* instructed, the Fourth Circuit applied the rule of *Mertens* and *Great-West* precluding the theory of recovery that petitioner pressed below. App. 26a-27a.

Petitioner's basic argument for certiorari is that, like the Fourth Circuit, several other courts of appeals changed course in *Amara*'s wake and recognized a surcharge remedy under Section 502(a)(3), but unlike the Fourth Circuit, those courts have not abandoned that rule after *Montanile*. But that is because no court of appeals other than the court below has ever confronted the effect of *Montanile* on the question presented—that is, the effect of this Court's admonition that *Amara*'s discussion of Section 502(a)(3) was dicta that did not in any respect alter *Mertens* and *Great-West*.

That makes the circuit conflict alleged in the petition illusory: No other court of appeals has considered the question decided below. Nor is there any reason to believe that any other circuit would disagree with the Fourth Circuit's analysis. After all, every circuit

to have considered the question before *Amara* but after *Great-West* rejected a surcharge-like remedy under Section 502(a)(3), and *Montanile* holds in no uncertain terms that *Mertens* and *Great-West*—not *Amara*—provide the governing rule. If, in the future, other courts of appeals follow the Fourth Circuit's lead, there will be no need for this Court to intervene; if they disagree with the Fourth Circuit, this Court's attention might be required. In all events, there is no reason for the Court's involvement now.

The absence of a circuit conflict warranting this Court's attention suffices to warrant denying the petition, but it is far from the only reason to do so. Among other things, the decision below is interlocutory—the Fourth Circuit rejected petitioner's request for a surcharge remedy but remanded the case to the district court to consider in the first instance whether petitioner might still have a different viable theory for recovery under Section 502(a)(3). App. 26a. On remand, the case may go forward or may resolve amicably, and that interlocutory posture—and other defects—make this case a poor vehicle for review even were the question presented otherwise certworthy. Beyond that, the decision below correctly applied this Court's precedents.

The petition should be denied.

STATEMENT

A. Legal Background

1. ERISA is a "comprehensive and reticulated statute" that governs "employee benefit plans," including, *inter alia*, employees' health plans. *Mertens*, 508 U.S. at 251, 262 (quotation omitted). The statute defines

the scope of fiduciary duties related to the administration of those plans, *Varity Corp. v. Howe*, 516 U.S. 489, 496 (1996), and offers plan beneficiaries certain forms of relief for a breach of those fiduciary duties, *Mertens*, 508 U.S. at 252.

In particular, Section 502(a) offers "six carefully integrated civil enforcement provisions." *Mertens*, 508 U.S. at 252 (citing 29 U.S.C. § 1132(a)). Section 502(a)(1)(B) allows a plan participant or beneficiary to "recover benefits due to him under the terms of his plan." 29 U.S.C. § 1132(a)(1)(B). Section 502(a)(2) allows plan participants to bring an action to recover losses to the plan because of breaches of fiduciary duties. *Id.* § 1132(a)(2). And, as particularly relevant here, Section 502(a)(3) allows a participant, beneficiary, or fiduciary to file suit to enjoin any act that violates ERISA, or to "obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce [ERISA under] the terms of the plan." *Id.* § 1132(a)(3).

2. Petitioner alleged a breach of fiduciary duty and requested as a remedy the monetary value of benefits not received under Section 502(a)(1)(B) or, in the alternative, "make-whole" monetary damages in the same amount under Section 502(a)(3). The question is whether such a remedy counts as "appropriate equitable relief" under Section 502(a)(3).

a. This Court first confronted the question of whether monetary damages were available under Section 502(a)(3) in *Mertens*. There, the Court rejected an attempt to recover under Section 502(a)(3) "money damages"—the "classic form of *legal* relief"—

rather than a remedy traditionally viewed as "equitable." 508 U.S. at 255 (emphasis in original). The Court explained that relief under Section 502(a)(3) will not lie if what the plaintiff "in fact seek[s] is nothing other than compensatory *damages*—monetary relief for all losses . . . sustained as a result of the alleged breach of fiduciary duties." *Id.* (emphasis in original).

In so holding, the Court rejected the plaintiffs' attempts to rely on the broader remedies available to a court in equity exercising "exclusive jurisdiction" over a cause of action, including courts applying the law of trust. *Id.* at 256. "It is true," this Court held, "that, at common law, the courts of equity had exclusive jurisdiction over virtually all actions by beneficiaries for breach of trust." *Id.* "It is also true that money damages were available in those courts against the trustee . . . and against third persons who knowingly participated in the trustee's breach." *Id.* But the Court rejected extending the bounds of "equitable relief" in Section 502(a)(3) that far, recognizing that to do so would allow plaintiffs to treat nearly any form of relief as "equitable." *Id.* at 257 (quoting 29 U.S.C. § 1132(a)(3)). Instead, the Court limited the term to "those categories of relief that were *typically* available in equity," which excluded "compensatory damages." *Id.* at 256.

The Court doubled down in *Great-West*. There, too, the Court held that Section 502(a)(3) was not an avenue to force defendants "to pay money—relief that was not typically available in equity." *Great-West*, 534 U.S. at 210. Rather, the Court explained, "[a] claim for money due and owing under a contract is

quintessentially an action at law." *Id.* (quotation marks omitted). The Court therefore held that suits that seek "to compel the defendant to pay a sum of money to the plaintiff[s]" were "*[a]lmost invariably*" suits "for money damages" and therefore unavailable under Section 502(a)(3). *Id.* (quotation omitted) (emphasis added).

Once again, the Court rebuffed any attempt to recharacterize the money damages sought as "equitable" relief, even though the plaintiffs there sought "restitution," a remedy ordinarily sounding in equity. *Id.* The Court explained that a plaintiff seeking "restitution *in equity*" was limited to "money or property identified as belonging in good conscience to the plaintiff [that] could clearly be traced to particular funds or property in the defendant's possession," and it construed Section 502(a)(3) as so limited, too. *Id.* at 213. That was true notwithstanding that "the common law of trusts" would have allowed broader relief. *Id.* at 219. As the Court explained, *Mertens* had already "rejected the claim that the special equity-court powers applicable to trusts define the reach of § 502(a)(3)." *Id.* "These trust remedies," the Court made clear, "are simply inapposite." *Id.*[1]

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[1] The Court reaffirmed the dividing line between equitable restitution and money damages in *Sereboff v. Mid Atl. Med. Servs., Inc.*, 547 U.S. 356, 363 (2006) (holding that when a plaintiff seeks "recovery through a constructive trust or equitable lien on a specifically identified fund, not from the [defendants'] assets generally," the suit is one for equitable restitution and thus permissible under section 502(a)(3)(B)).

The courts of appeals got the message. Following *Great-West*, those courts—including the Fourth Circuit—uniformly rejected any attempt to collect "the sort of make-whole relief that is not typically equitable in nature and is thus beyond the scope of relief that a court may award pursuant to section 1132(a)(3)." *Kenseth v. Dean Health Plan, Inc.*, 610 F.3d 452, 483 (7th Cir. 2010); *see also, e.g.*, *Pichoff v. QHG of Springdale, Inc.*, 556 F.3d 728, 732 (8th Cir. 2009); *Todisco v. Verizon Commc'ns, Inc.*, 497 F.3d 95, 99-101 (1st Cir. 2007); *Amschwand v. Spherion Corp.*, 505 F.3d 342, 347 (5th Cir. 2007); *Larue v. Dewolff, Boberg Assocs., Inc.,* 450 F.3d 570, 576-77 (4th Cir. 2006) (collecting cases), *vacated on other grounds by* 552 U.S. 248; *Pereira v. Farace*, 413 F.3d 330, 340 (2d Cir. 2005); *Callery v. U.S. Life Ins. Co.*, 392 F.3d 401, 409 (10th Cir. 2004)*; Crosby v. Bowater Inc. Ret. Plan for Salaried Emps. Of Great N. Paper Inc.*, 382 F.3d 587, 596 (6th Cir. 2004); *see also McLeod v. Ore. Lithoprint Inc.*, 102 F.3d 376, 378 (9th Cir. 1996).

b. That consensus fractured only after this Court's decision in *Amara*. There, the Court considered the availability of relief under a separate provision of ERISA, section 502(a)(1)(B). 563 U.S. at 425-26. The Court held that the petitioners could not recover under that provision, which sufficed to resolve the issue disputed before it. *Id.* at 438. It nevertheless went on to "identify equitable principles that the [district] court might apply on remand." *Id.* at 425, 438. It suggested that a beneficiary might pursue "make-whole" monetary relief against a plan fiduciary through the remedy of "surcharge," a form of relief available against trustees under the law of trust. *Id.* at 441-42.

Justice Scalia, joined by Justice Thomas, wrote separately to make clear that the Court's "discussion of the relief available under § 502(a)(3) and *Mertens* is purely dicta, binding upon neither us nor the District Court." *Amara*, 563 U.S. at 449 (Scalia, J., concurring in the judgment). Though perplexed as to why "the Court embark[ed] on this peculiar path," Justice Scalia cautioned: "the District Court need not read any of it—and, indeed, if it takes our suggestion to heart, we may very well reverse." *Id.* at 448-49.

That warning notwithstanding, some lower courts—including, for a time, the Fourth Circuit—indeed read and felt "bound" by *Amara*'s dicta. The Fourth Circuit considered the question shortly after *Amara* issued, and it viewed the decision as a "striking development" that had "expanded the relief and remedies available to plaintiffs asserting a breach of fiduciary duty" under Section 502(a)(3). *McCravy*, 690 F.3d at 180 (quotation omitted). It assumed *arguendo* that the relevant passage was "merely dictum," but it nevertheless concluded it could not "simply override a legal pronouncement endorsed just last year by a majority of the Supreme Court," at least where that statement was "not enfeebled by later statements." *Id.* at 181 n.2. Some other courts of appeals followed the Fourth Circuit down the rabbit hole, similarly believing "*Amara* [had] changed the legal landscape" and "abrogated" their prior precedent. *See Silva v. Metro. Life Ins. Co.*, 762 F.3d 711, 722 (8th Cir. 2014); *infra* at 15-16.

c. In *Montanile*, however, this Court made clear that *Amara* effected no such change. There, as here,

the petitioner understood *Amara* "as all but overruling" *Mertens* and *Great-West*. *Montanile*, 577 U.S. at 148 n.3. But the Court rejected that understanding. Now writing for the majority, Justice Thomas reaffirmed Justice Scalia's *Amara* concurrence: *Amara*'s discussion was "not essential to resolv[e] that case"—*i.e.*, it was dicta—and the Court's interpretation of equitable relief in *Mertens*, *Great-West*, and *Sereboff* "remain[ed] unchanged." *Id.* *Montanile* thus put to rest any doubt as to whether courts of appeals should follow the *Amara* dicta—they should not. *See id.*

B. Factual Background

1. "[T]he facts of this case," all agree, are "undoubtedly tragic." App. 37a. Kyree Devon Holman was an employee of respondent PSA Airlines and a beneficiary of a health plan administered by respondent PSA Airlines.[2] App. 4a. In December 2018, Holman suffered acute heart failure and was airlifted to Duke University Hospital. App. 40a. According to the complaint, the medical team determined that Holman was an appropriate candidate for a heart transplant, but the hospital then decided to postpone the transplant until it had ascertained his insurance coverage. App. 4a. The complaint alleges that respondents unduly delayed that coverage determination, and Holman passed away before the hospital could confirm

[2] The respondents are PSA Airlines, Inc., the plan administrator; the PSA Airlines Group Benefit Plan; and UMR, Inc., Quantum Health, Inc., and MCMC, LLC, which help PSA Airlines provide administrative services for the Plan. App. 4a

with respondents that insurance was available. App. 4a-5a.

2. Petitioner Jody Rose, the administratrix for Mr. Holman's estate, filed this lawsuit against respondents on the estate's behalf. App. 5a. Petitioner sought monetary damages under Sections 502(a)(1)(B) and 502(a)(3) as well as injunctive and declaratory relief. Although petitioner described the relief that she sought in many ways, she specifically asked for "monetary damages" corresponding to the value of the heart transplant that Mr. Holman never received. *See, e.g.*, CA J.A. 40 (asking the court to "find[] that [Rose] is entitled to recover for [Holman's] healthcare benefits"); CA J.A. 41 (requesting an "[a]ward [of] monetary damages").

3. The district court granted respondents' motion to dismiss, holding that petitioner did not have a viable theory of relief under Section 502. App. 33a-34a. First, the court considered whether relief was available under Section 502(a)(1)(B), the ordinary vehicle for a beneficiary to "recover benefits"—including monetary benefits— due under "the terms of a plan." 29 U.S.C. § 1132(a)(3). Under the unusual facts of the case, however, the court held that such a remedy was unavailable because petitioner could not collect benefits for a medical procedure that was never performed. *See* App. 33a (adopting report and recommendation of magistrate judge); *see also* App. 47a-54a (report and recommendation).

More relevant here, the court also rejected petitioner's request for relief under Section 502(a)(3). The court accepted petitioner's argument that "plan par-

ticipants and beneficiaries may, in certain circumstances, be able to recover monetary relief under § 502(a)(3)," specifically by way of a "surcharge" remedy. App. 35a (quoting *Amara*, 563 U.S. at 442). But it concluded that petitioner's requested relief was "not the type of 'make whole relief' authorized under the equitable remedy of surcharge." App. 36a-37a. It understood her request as "merely [claims] for compensatory damages," which did "not constitute 'appropriate equitable relief' under § 502(a)(3)." App. 37a.

4. The Fourth Circuit vacated and remanded in relevant part. The court affirmed the district court's decision that petitioner could not pursue relief under Section 502(a)(1)(B), App. 7a-8a, a ruling that petitioner does not challenge. But it vacated the district court's decision holding that petitioner could not pursue relief under Section 502(a)(3), accepting, as petitioner urged, that—"subject to certain limits—monetary relief based on a defendant's unjust enrichment can be 'equitable.'" App. 9a.

The question, the Fourth Circuit explained, was only "*[w]hen* can plaintiffs get money as 'equitable relief' under ERISA?" App. 16a. To answer that question, the panel turned to this Court's case law, under which "[p]laintiffs can get monetary relief under § 502(a)(3) only if such relief was 'typically available in equity.'" App. 17a (quoting *Montanile*, 577 U.S. at 142). And the remedy of surcharge, it held, was not "*typically* available in equity." App. 24a-26a (quotation omitted). The Fourth Circuit explained that a remedy was not considered "typical[]" in equity simply because it could be imposed by equitable

courts exercising exclusive jurisdiction. *See id* (quotation omitted). Rather, *Mertens* and *Great-West* had rejected a reading of Section 502(a)(3) "that would allow relief"—like surcharge—that was "available only in breach-of-trust cases." App. 18a.

The panel acknowledged that *Amara* contained *dicta* to the contrary—dicta that the Fourth Circuit had followed in *McCravy*. *Amara* had suggested that a plan beneficiary might seek relief under Section 502(a)(3) in the form of "surcharge," a "remedy under the law of trusts," against a plan fiduciary. App. 22a. But the panel explained that this Court had "since rejected the turn that it contemplated in *Amara* and therefore rejected the turn that we took in *McCravy*." App. 24a. In *Montanile*, the Court not only labeled *Amara*'s reasoning "dicta," but it also expressly declared that the "interpretation of 'equitable relief' in *Mertens* [and] *Great-West* . . . remains unchanged." *Montanile*, 577 U.S. at 148 n.3. The Fourth Circuit therefore looked to those decisions' interpretation of "equitable relief" under Section 502(a)(3)—an "interpretation [that] is flatly inconsistent with *Amara*'s suggestions." App. 24a. Thus, the Fourth Circuit abrogated its precedent relying on that inapposite decision. *Id.*

At the same time, the Fourth Circuit remanded so that the district court could consider whether petitioner "plausibly alleged facts that would support relief that *was* 'typically' available in equity." App. 26a (quoting *Montanile*, 577 U.S. at 142) (emphasis added). While *Mertens* and *Great-West* had foreclosed relief available only in equitable courts exercising "exclusive jurisdiction," the Fourth Circuit held that

monetary relief might be available if such a remedy were available to equitable courts exercising "concurrent jurisdiction." App. 21a-25a (quoting *Mertens*, 508 U.S. at 256). "One such remedy," it held, "is based on the defendant's unjust enrichment." App. 26a. It instructed the district court to consider in the first instance whether petitioner had plausibly pled the right to relief under that theory. App. 26a-27a.

6. The panel rendered its decision abandoning its prior decision in *McCravy* without en banc review, because it was not "bound" to follow prior decisions that use "reasoning inconsistent with Supreme Court authority." App. 25a (quoting *United States v. Banks*, 29 F.4th 168, 178 (4th Cir. 2022)). The court of appeals then denied rehearing and rehearing en banc. App. 71a. No judge requested a vote on whether to rehear the case en banc. *Id.*

REASONS FOR DENYING THE PETITION

There is no basis for this Court's review. Petitioner primarily seeks certiorari because she claims that "the other circuits have considered the Fourth Circuit's justifications" for rejecting a surcharge remedy under Section 502(a)(3) and "rejected them." Pet. 24. That is wrong. No court of appeals has disagreed with (or even considered) the Fourth Circuit's analysis below—*i.e.*, no court of appeals has analyzed whether to follow *Amara*'s dicta in light of *Montanile*—so there is no circuit conflict warranting this Court's review. At minimum, there is no rush to consider the question presented in this interlocutory posture, before it becomes clear whether the question presented affects petitioner herself, much less other

ERISA plan participants. That leaves petitioner's request for "summary reversal." Pet. 2. But the Fourth Circuit's carefully reasoned decision is correct, and it bears no resemblance to the "inexplicable" and "unexplained" decisions that warrant such a drastic remedy, *Felkner v. Jackson*, 562 U.S. 594, 598 (2011) (per curiam).

The petition should be denied.

A. There Is No Circuit Conflict Warranting This Court's Review

1. Every court of appeals to have considered the question presented before *Amara* but after *Mertens* and *Great-West* held that "ERISA does not permit plan beneficiaries to claim money damages from plan fiduciaries," *Helfrich v. PNC Bank, Ky., Inc.*, 267 F.3d 477, 482-83 (6th Cir. 2001); *see supra* at 7. These courts recognized that "[u]nder *Mertens* and *Great-West*," a plaintiff cannot use Section 502(a)(3) to "impos[e] liability on the [defendant] in the form of compensatory monetary damages." *Todisco*, 497 F.3d at 99-101. Before *Amara*, in other words, there was no controversy at all over the question presented—it was clear that *Mertens* and *Great-West* preclude the argument petitioner presses here.

The petition contends that after *Amara*, all the courts of appeals to have considered the issue altered their view and held that a surcharge remedy is available under Section 502(a)(3). Pet. 21-24. And indeed, many courts of appeals did believe that *Amara* had effectively overruled *Mertens* and *Great-West*, and thus concluded under *Amara* (and contrary to *Mertens* and *Great-West*) that surcharge counts as

"appropriate equitable relief" under Section 502(a)(3). The problem, though, is that this Court expressly rejected that premise in *Montanile*—it held that *Amara*'s discussion of equitable relief was dicta and that *Mertens* and *Great-West* continue to control. 577 U.S. at 148 n.3. It is only in light of that holding that the Fourth Circuit reverted to its pre-*Amara* case law and concluded that surcharge is not a remedy available under Section 502(a)(3). App. 25a-26a.

2. The question is thus not whether some courts of appeals held after *Amara* that surcharge is "appropriate equitable relief" under Section 502(a)(3)—they did. The question instead is whether those courts will maintain that position even after considering the effect of *Montanile—i.e.*, this Court's express holding that *Amara's* Section 502(a)(3) analysis was dicta that did not displace *Mertens* and *Great West*—on that question.

The Fourth Circuit is the only court of appeals to have even considered that question, let alone resolved it. Like many courts of appeals, the Fourth Circuit rejected petitioner's theory of relief before *Amara*, detouring only because it believed that *Amara* "bound" it to do so. *McCravy*, 690 F.3d at 180, 181 n.2 (quotation omitted); *see supra* at 8. But once confronted with *Montanile*, the Fourth Circuit corrected course and restored its pre-*Amara* jurisprudence. *See* App 23a-26a. Because no other court has yet confronted this issue, the circuit conflict alleged in the petition is illusory.

a. Like the Fourth Circuit, four circuits—the Fifth, Seventh, Eighth, and Ninth—issued the deci-

sions on which petitioner relies after *Amara* but *before* the Court's decision in *Montanile*. *See Gearlds v. Entergy Servs., Inc.*, 709 F.3d 448, 452 (5th Cir. 2013); *Kenseth v. Dean Health Plan, Inc.*, 722 F.3d 869, 882 (7th Cir. 2013); *Silva*, 762 F.3d at 720-22; *Gabriel v. Alaska Elec. Pension Fund*, 773 F.3d 945, 957 (9th Cir. 2014).

Those decisions do not conflict with the decision below. To be sure, each court believed that *Amara* had "significantly altered the understanding of equitable relief available under section 1132(a)(3)," *Kenseth*, 722 F.3d at 876, by stating "an expansion of the kind of relief" available under that provision, *Gearlds*, 709 F.3d at 450; *see also Silva*, 762 F.3d at 722. Thus, like the Fourth Circuit, these courts of appeals jettisoned contrary circuit precedent because they believed *Amara* had "implicitly overruled" such decisions. *See Gearlds*, 709 F.3d at 452.[3] But unlike the Fourth Circuit, these courts have yet to consider *Montanile*, which made clear that *Amara* did no such thing. There is every reason to believe that, if given the opportunity, these courts would join the Fourth Circuit and return to their pre-*Amara* precedent.

At minimum, none of those courts has considered—much less disagreed with—the Fourth Circuit's analysis below, and therefore none support the petition's claim of a circuit split. In arguing otherwise, petitioner suggests that the Ninth and Eighth Circuits "adopt[ed] *Amara*'s conclusion" after *Montanile*

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[3] *See also Silva*, 762 F.3d at 720-22 (accepting plaintiff's argument that "*Amara* abrogated" circuit precedent); *Kenseth*, 722 F.3d at 874; *supra* at 7 (collecting prior precedent).

and "found *Montanile* had [no] bearing on their analysis." Pet. 24. Hardly. While those courts have occasionally cited or applied their pre-*Montanile* precedent over the years, there is no indication that they have considered *Montanile* in subsequent cases nor grappled with the question presented. *Cf. Powell v. Minn. Life Ins. Co.*, 60 F.4th 1119, 1123 (8th Cir. 2023) (considering the equitable remedy of estoppel); *Castillo v. Metro. Life Ins. Co.*, 970 F.3d 1224, 1229 (9th Cir. 2020) (considering whether collecting attorney's fees properly constituted "surcharge"). Those decisions say nothing about how the courts of appeals would rule if confronted with *Montanile*. Indeed, the Fourth Circuit had similarly applied *McCravy* in a decision post-dating *Montanile*, *see Peters v. Aetna Inc.*, 2 F.4th 199, 216 (4th Cir. 2021), but the court had no trouble casting aside that decision where there was no "indication that [it had] considered the viability of *Amara's* rule after *Montanile*." *See* App. 25a. Much like the Fourth Circuit, those courts of appeals would presumably not let such precedent "bind [them] to a path inconsistent with the Supreme Court's dictates." *See id.* at 25a-26a.[4]

b. The same is true of the Second and Eleventh Circuits. While those circuits have issued decisions affirming the availability of surcharge after *Mon-*

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[4] *See, e.g.*, *Idaho Conservation League v. Poe*, 86 F.4th 1243, 1248 (9th Cir. 2023); *Stokes v. Southwest Airlines*, 887 F.3d 199, 204 (5th Cir. 2018); *United States v. Anderson*, 771 F.3d 1064, 1066-67 (8th Cir. 2014); *Glaser v. Wound Care Consultants*, 570 F.3d 907, 915 (7th Cir. 2009).

tanile issued, neither circuit so much as cited *Montanile*, let alone considered the effect of its holding that undercut the *Amara* dicta. *Cf. Gimeno v. NCHMD, Inc.*, 38 F.4th 910, 914-15 (11th Cir. 2022); *Sullivan-Mestecky v. Verizon Commc'ns, Inc.*, 961 F.3d 91, 102-03 (2d Cir. 2020); *In re DeRogatis*, 904 F.3d 174, 199-200 (2d Cir. 2018). Indeed, in each case, no party or amicus cited *Montanile* in their briefing.[5] Thus, while the Eleventh Circuit thought that *Amara*'s discussion was "likely dicta," it also thought that it was dicta that it could not "lightly cast aside" and accepted it as "correct." *Gimeno*, 38 F.4th at 915 (quotation omitted). The Second Circuit, meanwhile, did not seem to recognize that *Amara* was dicta at all. *Cf. Sullivan-Mestecky*, 961 F.3d at 102-03; *DeRogatis*, 904 F.3d at 199-200. If those courts had considered *Montanile*—or had the benefit of the Fourth Circuit's thorough analysis below—they may well have reached a different result.

c. Finally, petitioner argues that the Third, Sixth, and Tenth Circuits "appear" to have adopted her preferred rule, "albeit in dicta or unpublished decisions." *See* Pet. 22. They did not.

The Sixth and Tenth Circuits have flatly *rejected* petitioner's rule. *Helfrich*, 267 F.3d at, 482-83 ("ERISA does not permit plan beneficiaries to claim money damages from plan fiduciaries."); *Callery*, 392

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[5] *Cf.* No. 21-11833, *Gimeno*, Dkt Nos. 14, 27, 32; No. 18-1591, *Sullivan-Mestecky*, Dkt Nos. 44, 66, 70; No. 16-977, *In re DeRogatis*, Dkt Nos. 41, 62, 66; No. 16-3549, *In re DeRogatis*, Dkt Nos. 60; 78; 89.

F.3d at 409 ("[I]n a suit by a beneficiary against a fiduciary, the beneficiary may not be awarded compensatory damages as 'appropriate equitable relief' under § 502(a)(3) of ERISA.").

None of the cases that petitioner cites is to the contrary. In *Rochow v. Life Insurance Co. of North America*, 780 F.3d 364 (6th Cir. 2015) (en banc), the Sixth Circuit considered a different question—the availability of relief under Section 502(a)(3) if a plaintiff had already recovered under Section 502(a)(1)(B). *Id.* at 370. All the Sixth Circuit said of *Amara* is that the Court had "identified a range of equitable remedies potentially available under § 502(a)(3), including surcharge," and even then, it explained—as the Fourth Circuit did below—that "[t]he statements made by the Supreme Court in *Amara*" were "merely dicta," and "the Court did not decide what remedies are available [under Section 502(a)(3)]." *Id.* at 375 n.4.[6]

The same is true of *Teets v. Great-West Life & Annuity Insurance Co.*, 921 F.3d 1200 (10th Cir. 2019), *cert. denied* 140 S. Ct. 554 (2019). The Tenth Circuit there rejected a plan participant's attempt to recover profits from a service provider through equitable disgorgement; it did not consider surcharge at all. *See id.* at 1230. And while the Tenth Circuit acknowl-

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[6] *Brown v. United of Omaha Life Insurance Co.*, 661 F. App'x 852 (6th Cir. 2016), is no more helpful to petitioner. That unpublished decision could not have abrogated controlling circuit precedent and, in any event, simply cited *Amara* for the proposition that remedies like surcharge "*might* be appropriate." *Id.* at 860 (emphasis added).

edged—as the Fourth Circuit did (App. 14a)—that relief under Section 502(a)(3) might take "the form of a money payment," *id.* at 1224 (quoting *Amara*, 563 U.S. at 441), it also recognized that "the fact that equity courts at common law could award a particular remedy does not mean the remedy is necessarily equitable for purposes of ERISA," *Teets*, 921 F.3d at 1230.

The Third Circuit is similarly unhelpful to petitioner. That court's unpublished decision in *Staropoli v. Metropolitan Life Insurance Co.*, 2023 WL 1793884 (3d Cir. Feb. 7, 2023) noted in passing (while citing *Amara*) that "surcharge is a remedy, not a cause of action" before ultimately *rejecting* the plaintiff's "claims for equitable relief." *Id.* at *4. The Third Circuit's decision in *Menkes v. Prudential Insurance Co. of America*, 762 F.3d 285 (3d Cir. 2014) is equally afield. In *Menkes*, the court suggested in a footnote that relief under Section 502(a)(3) "*may* consist of 'monetary compensation for a loss resulting from a trustee's breach of duty,'" *id.* at 296 n.11 (quoting *Amara*, 563 U.S. at 441) (emphasis added), but it did not definitively answer the question. Nor did it have the benefit of this Court's later decision in *Montanile*, which closed the door on that possibility.

3. All told, then, only one court of appeals—the Fourth Circuit—has considered the impact of this Court's decision in *Montanile* on the question presented. With the decision below as a guide, other courts of appeals are likely to reach the same result. Indeed, even petitioner recognizes that these courts may well "return to the[ir] pre-*Amara*" approach with "further percolation." Pet. 3. After all, each of the

courts that the petition cites expressly relied on the Fourth Circuit's now-overruled decision in *McCravy* to reach their current jurisprudence.[7] There is every reason to believe that these same courts will again follow the Fourth Circuit once the question of *Montanile*'s effect is put squarely before them.

It is not surprising that no other circuit has yet confronted this question. The question presented does not arise all that frequently in the courts of appeals. In the eleven years between *McCravy* and the decision below, the Fourth Circuit cited the relevant portion of *McCravy* as dispositive in just one case. *See Peters*, 2 F.4th at 216. Some circuits (like the First, Sixth, and Tenth) have not squarely confronted the question since *Amara*. *See supra* at 14, 18-19. Still others have had no occasion to review the question since *Montanile*. And for the two courts that have, the litigants before them do not appear to have argued that *Montanile* requires a reversion to pre-*Amara* precedent. *See supra* at 18. But if petitioner is right that the question presented arises with sufficient frequency to warrant this Court's review in theory, then other circuits will no doubt be confronted with the Fourth Circuit's analysis, and if any disagreement develops, this Court can then consider whether it should step in.

At this point, though, there is simply no disagreement to resolve. This Court does not ordinarily grant certiorari to address "legal issues that have not been considered by additional Courts of Appeals." *Box v.*

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[7] *See, e.g.*, *Gabriel,* 773 F.3d at 963; *Silva*, 762 F.3d at 725; *Kenseth*, 722 F.3d at 880-82; *Gearlds*, 709 F.3d at 451.

Planned Parenthood of Ind. & Ky., Inc., 139 S. Ct. 1780, 1782 (2019) (per curiam). On the contrary, this Court recognizes the value in first allowing its "thoughtful colleagues on the district and circuit benches" to consider the question and offer "insights (or reveal pitfalls)." *Maslenjak v. United States*, 582 U.S. 335, 354 (2017) (Gorsuch, J., concurring in part and concurring in the judgment); *see also Arizona v. Evans*, 514 U.S. 1, 23 n.1 (1995) (Ginsburg, J., dissenting). And while petitioner suggests that only this Court can resolve any confusion over *Amara*, Pet. 3, 30, the point is that there is no confusion over *Amara*—*Montanile* made clear that *Mertens* and *Great-West*, not *Amara*'s dicta, control the question presented, and not a single court of appeals has concluded that surcharge is "appropriate equitable relief" under Section 502(a)(3) after considering that admonition. That is reason enough to deny the petition.

B. This Case Is An Unsuitable Vehicle For Considering The Question Presented

1. Even if the question presented were otherwise certworthy, this case would be a poor vehicle through which to resolve that question in light of its interlocutory posture. Ordinarily, that "alone furnishe[s] sufficient ground for the denial" of a petition, *Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916), as this Court "generally await[s] final judgment in the lower courts before exercising [its] certiorari jurisdiction," *Va. Military Inst. v. United States*, 508 U.S. 946, 947 (1993) (mem.) (opinion of Scalia, J.); *see, e.g.*, *Abbott v. Veasey*, 580 U.S. 1104, 1105 (2017)

(opinion of Roberts, C.J.) (treating "interlocutory posture" as sufficient to deny review, even absent other "barrier[s] to review").

This case does not warrant deviating from that ordinary practice. Petitioner seeks certiorari on the mistaken premise that the Fourth Circuit held that "ERISA provides no [] recourse" for her alleged injury. Pet. 28 n.9. But the Fourth Circuit remanded so that the district court could determine in the first instance whether recourse was available under a proper understanding of Section 502(a)(3). On remand, the district court may resolve the issue in petitioner's favor, or the parties might reach a resolution that renders the need for this Court's intervention unnecessary. Indeed, while respondents have stood ready to engage in settlement discussions, petitioner has declined to do so, or even to "make a monetary . . . [or] non-monetary demand" until this Court acts upon the petition, Dist. Ct. Dkt. 99 at 2.

Of course, if the district court ultimately holds that petitioner cannot satisfy Section 502(a)(3)'s requirements—and if the Fourth Circuit affirms—petitioner will be free to reassert her current argument, along with any new arguments that arise on remand, in a new petition for review by this Court. *See Major League Baseball Players Assoc. v. Garvey*, 532 U.S. 504, 509 n.1 (2001). But unless and until that occurs, review is improper.

2. The petition is also a poor vehicle because petitioner is unlikely to benefit from a decision by this Court adopting her understanding of Section 502(a)(3).

a. The district court has already held that petitioner would not prevail even accepting that the remedy of "surcharge" is available under Section 502(a)(3). Indeed, when the district court originally dismissed the complaint, it accepted that it was bound by the Fourth Circuit's then-controlling precedent in *McCravy*, which adopts precisely the rule that petitioner seeks here. The district court nevertheless held that petitioner could not recover under Section 502(a)(3), because the compensatory damages she seeks did not qualify as "surcharge," notwithstanding her attempts to "label" it such. App. 36a-37a. Thus, even if the Court were to adopt *Amara*'s dicta and thus adopt the rule the Fourth Circuit had previously set forth in *McCravy*, that would leave petitioner only where she started—unable to proceed for the reasons explained by the district court. *See id.*

b. At minimum, petitioner's theory would not entitle her to relief against respondents UMR, Quantum, and MCMC. The petition claims that "[i]t is undisputed that Defendants breached their fiduciary duties in handling Kyree's case," Pet. 1, but that statement flatly mischaracterizes the record. Below, respondents UMR, Quantum, and MCMC vigorously disputed that they held or breached any fiduciary duties. Resps. CA Br. 20. Neither the Fourth nor the district court has addressed that question. *See* App. 27a n.18 ("Other questions may also remain. For example, if UMR, Quantum, or MCMC were somehow unjustly enriched by the refusal to pay, then the district court may need to decide whether UMR, Quantum, or MCMC were 'fiduciaries' under ERISA."). The question presented is limited to defendants who

have a "fiduciary duty," Pet. i, and even under petitioner's understanding of *Amara*—and that of the dissent below—surcharge relief is available only against fiduciaries, App. 31a (Heyten, J. dissenting). There is no reason that UMR, Quantum, and MCMC should litigate in this Court a question that will not affect them. The more prudent course is to allow remand to proceed and, if needed, pick up the question against any defendants that remain in the case.

C. The Decision Below Is Correct

None of the ordinary indicia of cert-worthiness is present here—no circuit split requiring resolution, no final judgment, no outcome-determinative question—so what petitioner really seeks is "summary reversal." Pet. 2, 21, 32-33. But the decision below was correct. Certainly, it bears no resemblance to the type of "truly extraordinary case[]" warranting summary disposition. *See Andrus v. Texas*, 142 S. Ct. 1866, 1879 (2020) (Sotomayor, J., dissenting).

1. The Fourth Circuit faithfully followed a long line of decisions from this Court, beginning with *Mertens* and *Great-West*. Those cases make clear that plaintiffs cannot use Section 502(a)(3) to collect "monetary relief for all losses . . . sustained as a result of the alleged breach of fiduciary duties." *Mertens*, 508 U.S. at 255. "Money damages," after all, are the "classic form of *legal* relief," but the Court limited the term "equitable relief" in Section 502(a)(3) to "those categories of relief that were *typically* available in equity." *Id.* at 255-56 (emphasis in original).

Below, petitioner argued that she could seek money damages through "surcharge," a remedy available to equitable courts only under the law of trusts. App. 5a-6a, 14a-15a. But *Mertens* and *Great-West* could not have been more clear: "trust remedies are simply inapposite" to the analysis of whether relief is available under Section 502(a)(3). *Great-West*, 534 U.S. at 219. Thus, as the Fourth Circuit recognized, this Court has consistently rejected any reliance on trust-specific remedies that were available only to equitable courts exercising "exclusive jurisdiction." *Mertens*, 508 U.S. at 256; *see also Great-West*, 534 U.S. at 219. Because surcharge was one such trust-specific remedy, the Fourth Circuit was right to hold it unavailable under Section 502(a)(3).

2.a. The petition's contrary argument depends entirely on *Amara*. It casts *Amara* as a "landmark decision," Pet. i, 9, that—as petitioner argued below—"significantly delineated the reach of these cases," and "greatly narrowed *Mertens*' holding," Petr. CA Br. 36.

But in *Montanile*, this Court expressly rejected that reading of *Amara*. There, the Court stated that its "discussion of § 502(a)(3) in *CIGNA* [*v. Amara*] was not essential to resolving that case," *i.e.*, it was dicta. 577 U.S. at 148 n.3. This Court, of course, does not "greatly narrow[]" (Petr. CA Br. 36) its precedential holdings through dicta. And lest there be any doubt, the Court flatly stated that its "interpretation of 'equitable relief' in *Mertens*, *Great-West*, and [*Sereboff*] remains unchanged" by *Amara*. *Montanile*, 577 U.S. at 148 n.3.

Accordingly, the Fourth Circuit did nothing to "proclaim a decision of this Court had been overruled." Pet. 33. It simply repeated what *Montanile* said—that the relevant passage of *Amara* "was not essential" to its holding. 577 U.S. at 148 n.3. And for all the petition's protestations to the contrary (Pet. 3, 22-23, 25), that is the very definition of "dictum." *See Cent. Green Co. v. United States*, 531 U.S. 425, 431 (2001) (describing its prior pronouncement as "unquestionably dictum because it was not essential to our disposition of any of the issues contested"); Black's Law Dictionary (11th ed. 2019) (defining "judicial dictum" as a question "passed on by the court, but that is not essential to the decision" and is "therefore not binding").[8] The Fourth Circuit can hardly be faulted for taking this Court at its word. Certainly, there is no reasonable reading of *Montanile* under which *Amara* can be read to have overruled or limited *Mertens* and *Great-West*—*Montanile* holds the precise opposite.

So, the petition tries another tack, asserting now that *Amara* can be squared with *Mertens* and *Great-West* after all. Pet. 25-26. Because *Amara*'s rule was

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[8] Contrary to the petition's assertion, many of the courts of appeals it cites recognized that *Amara*'s discussion was likely dicta. *See, e.g.*, *Gearlds*, 709 F.3d at 452. The problem was that many of them, like the Fourth Circuit before *Montanile*, felt that they could not "simply override" *Amara*'s dicta because it was recently issued and had not been undercut by subsequent statements. *See id.* *Montanile* was therefore important not because it "overruled" *Amara* (Pet. 26) but because it made clear that the relevant language was dicta and told lower courts that *Mertens* and *Great-West* remained in force. 577 U.S. at 148 n.3.

applicable only to plan fiduciaries, petitioner argues, it does "not conflict" with *Mertens* and *Great-West,* which involved nonfiduciaries. *See id.* Under this theory, the rule set forth in *Mertens* and *Great-West* was limited only to cases where a plaintiff seeks to recover from a non-fiduciary. *See id.*

That understanding cannot be squared with *Mertens* and *Great-West*. While *Mertens* involved a claim against a nonfiduciary, the Court *expressly declined* to rest its decision on the defendant's non-fiduciary status. 508 U.S. at 253. Indeed, it expressed skepticism as to whether relief was available against a non-fiduciary *at all* before "reserv[ing] decision of that antecedent question" and addressing exactly the question presented here—whether monetary damages were available for the "alleged breach of a fiduciary duty." *Id.* at 252-55. *Great-West*, too, looked "only [to] the nature of the claim and the relief sought—not the status of the litigants—[to] determine the scope of available § 502(a)(3) recovery." *Amschwand*, 505 F.3d at 347. The Court thus offered an "interpretation of 'equitable relief' in *Mertens* [and] *Great-West*," *Montanile*, 577 U.S. at 148 n.3, that did not depend on the fiduciary status of the defendant, but rather on the relief that was typically available in equity against that defendant, *Great-West*, 534 U.S. at 213.

That is why the courts of appeals that considered petitioner's argument after *Great-West*—but before *Amara*—consistently rejected it, treating the fact that *Great-West* did not involve a fiduciary as a "distinction without a difference" under the text of Section 502(a)(3). *See Crosby*, 382 F.3d at 596; *Callery*, 392

F.3d at 409; *Amschwand*, 505 F.3d at 347 n.5; *see also Armstrong v. Jefferson Smurfit Corp.*, 30 F.3d 11, 13 (1st Cir. 1994). Indeed, not even the dissent below, which attempted to reconcile *Amara* and *Montanile*, suggested that its line would be tenable as a matter of "first principles" or consistent with the text of Section 502(a)(3). App. 31a (Heytens, J., dissenting).[9]

b. And so petitioner turns to challenging the part of the Fourth Circuit's decision that offered her an opportunity for relief. In particular, petitioner repeatedly criticizes the Fourth Circuit for holding that she could pursue monetary relief—like unjust enrichment—that was "traditionally available in concurrent-jurisdiction cases." *See* App. 17a, 26a. Petitioner observes that this "Court did not use the term 'concurrent'" in its previous opinions, Pet. 17 (quoting App. 21a), and so presumes the Fourth Circuit must have been wrong to use it here.

That is an odd line of attack: that portion of the Fourth Circuit's decision ultimately inured to *petitioner's* benefit. After all, this Court had already rejected any argument that monetary damages are available simply because equitable courts exercising "exclusive jurisdiction" could offer that relief.

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[9] The petition repeatedly complains that the panel majority "overturned prior circuit precedent." Pet. 32. For all the reasons explained, that decision was correct in light of this Court's intervening decision in *Montanile*. *See supra* at 26-28. But even were the panel wrong that *Montanile* abrogated its prior panel decision, the Fourth Circuit's decision was correct on its own terms and its treatment of its precedent would be a matter for that court to resolve en banc. No judge so much as called for a vote on the petition for rehearing en banc. App. 71a.

Mertens, 508 U.S. at 256; *Great-West*, 534 U.S. at 219. In the decision below, the Fourth Circuit simply reasoned that even if courts of "exclusive" jurisdiction were off the table, courts could look to the equitable relief available in courts exercising "concurrent" jurisdiction, which included remedies to recover "specific funds that [were] wrongfully in the defendant's possession and rightfully belong to [the plaintiff]." App. 17a-21a. And it remanded to allow petitioner the opportunity to pursue that theory. App. 26a-27a.

The Fourth Circuit's approach faithfully hews to the line set forth in *Mertens*, *Great-West*, and *Sereboff*, which similarly made clear that equitable relief under Section 502(a)(3) was limited to "money or property identified as belonging in good conscience to the plaintiff [that] could clearly be traced to particular funds or property in the defendant's possession." *Great-West*, 534 U.S. at 213.

Moreover, the Fourth Circuit explained at length *why* this dividing line made sense, tracing it back to the original differences between courts of equity and courts of law. App. 11a-18a. Historically, a court in equity "existed only on the backdrop of the law; its role was to provide relief where the law was inadequate." App. 11a-12a. Some suits—including those sounding in the law of trusts—were brought in equity because the court of law did not recognize the cause of action at all. *Id.* at 12a. But the remedies available in these exclusive-jurisdiction cases say little about the relief "*typically* available in equity" because, as *Mertens* recognized, "*all* relief available for breach of trust could be obtained from a court of equity." 508 U.S. at 256-57 (emphases in original). Thus, "limiting

the sort of relief obtainable under § 502(a)(3) to [such remedies] would limit the relief *not at all*." *Id.* (emphasis in original). By contrast, the remedies available to a court in equity exercising concurrent jurisdiction *were* limited. In these concurrent-jurisdiction cases, parties could bring a cause of action in a court of law to obtain some remedies (like money damages) or a court of equity to obtain others (like injunctive relief). App. 12a. By looking to the different remedies available in a concurrent-jurisdiction case, the Fourth Circuit thus identified a principled basis for identifying which remedies were quintessentially equitable rather than legal, *i.e.*, which remedies were "typically available in equity." App. 17a (quoting *Mertens*, 508 U.S. at 256). The petition, meanwhile, offers no basis for attacking that reasoning other than that it is "novel[]" and "long," Pet. 17-18, 26—hardly grounds for summary reversal.

c. Finally, petitioner—like many before her—claims that the Fourth Circuit's understanding of Section 502(a)(3) is inconsistent with ERISA's "purpose." Pet. 27-29. If the Fourth Circuit's decision is allowed to stand, she says, it will leave a "gaping hole" in ERISA's scheme, leaving some plaintiffs without recourse under Section 502(a)(3). *See* Pet. 7. But as explained above, at this stage in the case, it is not clear that the Fourth Circuit's rule precludes even petitioner herself from obtaining relief. *See supra* at 23.

Moreover, even if petitioner cannot recover, the unusual and unfortunate facts of this case would not reflect any "flagrant gaps" in ERISA's remedial scheme. *Cf.* Pet. 28. While the petition suggests that

the decision below might create an incentive for fiduciaries to "improperly deny and delay the approval of life-saving care," Pet. 28 n.9, that argument misunderstands the structure of a self-funded plan, like PSA Group Benefit Plan Inc., which can adjust premiums based on experience and therefore has little to no financial incentive to deny covered medical treatments, expensive or otherwise. And UMR, Quantum, and MCMC could never be unjustly enriched—or enriched at all—from the denial of a claim because the Plan alone is responsible for funding any benefits payments.

Congress has also answered any such concern through statutes other than ERISA. As PSA explained below (see Resps. CA Br. 13 n.1), the regulations implementing the Affordable Care Act allow participants to seek immediate, expedited, and independent review of an adverse benefit determination involving a life-or-death condition, rather than exhaust internal reviews. 29 C.F.R. § 2590.715-2719(d)(3)(i)(A). Though the hospital apparently waited to invoke that provision here, this case does not involve a fact pattern likely to repeat, or one that lends itself to fashioning broadly applicable legal rules.

In all events, this Court has repeatedly rejected similar purpose-based arguments. ERISA, it has recognized, was the product of compromise—a statute that "resolved innumerable disputes between powerful competing interests—not all in favor of potential plaintiffs." *Mertens*, 508 U.S. at 262. This Court has therefore held that even assuming plaintiffs "lack[ ]

other means to obtain relief, vague notions of a statute's basic purpose [are] inadequate to overcome the words of its text regarding the specific issue under consideration." *Great-West*, 534 U.S. at 220 (cleaned up). This Court "will not attempt to adjust the 'carefully crafted and detailed enforcement scheme' embodied in the text that Congress has adopted." *Id.* (quoting *Mertens*, 508 U.S. at 254). Where, as here, a plaintiff seeks relief that is fundamentally legal in nature, recovery under Section 502(a)(3) is not available. *Id.*

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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March 8, 2024