
In the Supreme Court of the United States

WINSTON R. ANDERSON, CHRISTOPHER M. SULYMA,
on behalf of all those similarly situated
Applicants,

v.

INTEL CORPORATION INVESTMENT POLICY COMMITTEE, INTEL RETIREMENT PLANS
ADMINISTRATIVE COMMITTEE, FINANCE COMMITTEE OF THE INTEL CORPORATION
BOARD OF DIRECTORS, CHRISTOPHER C. GECZY, RAVI JACOBS, DAVID S. POTTRUCK,
ARVIND SODHANI, RICHARD TAYLOR, TERRA CASTALDI, RONALD D. DICKEL, TIFFANY
DOON SILVA, TAMI GRAHAM, CARY KLAFTER, STUARD ODELL, CHARLENE BARSHEFSKY,
SUSAN L. DECKER, JOHN J. DONAHUE, REED E. HUNDT, JAMES D. PLUMMER, FRANK D.
YEARY, STACY SMITH, ROBERT H. SWAN, TODD UNDERWOOD, AND GEORGE S. DAVIS,
Respondents.

**APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE
A PETITION FOR A WRIT OF CERTIORARI**

To the Honorable Elena Kagan, Associate Justice of the Supreme Court of the
United States and Circuit Justice for the United States Court of Appeals for the Ninth
Circuit:

Applicants Winston R. Anderson and Christopher M. Sulyma, individually and on
behalf of all similarly situated plan participants, respectfully seek a 60-day extension of time
within which to file a petition for a writ of certiorari to review the Ninth Circuit's judgment
in this case, to and including October 19, 2025. Absent an extension, the deadline for filing
this petition will be August 20, 2025. This application is being filed on August 1, 2025—more
than 10 days before the petition is due. See S. Ct. R. 13.5.

In support of this request, the applicants state as follows:

1. On May 22, 2025, the Ninth Circuit entered judgment and issued its opinion, a copy of which is attached. *See* App. at 1. This Court has jurisdiction under 28 U.S.C. § 1254(1).

2. This case involves a significant question that has divided the circuits: What is required to plead an imprudent-investment claim under the Employee Retirement Income Security Act, 29 U.S.C. § 1104(a)(1)(B)? The federal courts of appeals have reached differing views on this question. *See, e.g., Meiners v. Wells Fargo & Co.*, 898 F.3d 820 (8th Cir. 2018); *Matousek v. MidAmerican Energy Co.*, 51 F.4th 274 (8th Cir. 2022); *Albert v. Oshkosh Corp.*, 47 F.4th 570 (7th Cir. 2022); *Smith v. CommonSpirit Health*, 37 F.4th 1160 (6th Cir. 2022); *Forman v. TriHealth, Inc.*, 40 F.4th 443 (6th Cir. 2022); *Matney v. Barrick Gold of N. Am.*, 80 F.4th 1136 (10th Cir. 2023); *Johnson v. Parker-Hannifin Corp.*, 122 F.4th 205 (6th Cir. 2024). This disagreement prompted a petition for certiorari in *Johnson v. Parker-Hannifin Corp.*, No. 24-3014, and this Court recently called for the views of the Solicitor General in that case. *See* CVSG Order, *Parker-Hannifin Corp. v. Johnson*, --- S. Ct. ---, No. 24-1030 (June 30, 2025), 2025 WL 1787707, at *1.

3. This case was originally brought by Mr. Anderson, a former Intel employee who worked at the company for fifteen years and is a fully vested participant in both Intel's 401(k) savings plan and its retirement plan. Mr. Anderson filed this case in 2019 challenging the Intel fiduciaries' mismanagement of their plans and their breaches of ERISA's fiduciary duties. Soon after filing, his case was stayed pending this Court's decision in a related lawsuit raising similar allegations, *Sulyma v. Intel Corp.*, which the Court resolved in Mr. Sulyma's favor. *See Intel Corp. Inv. Pol'y Comm. v. Sulyma*, 589 U.S. 178 (2020)

(concerning the “actual knowledge” requirement in ERISA’s statute of limitations). After remand, Mr. Sulyma’s case was consolidated with Mr. Anderson’s. App. at 7.

4. The Intel fiduciaries filed a motion to dismiss the consolidated complaint, which the district court granted. *Id.* The district court agreed with the plaintiffs that “plausible allegations of self-dealing or conflicts of interest, combined with plausible allegations of higher-than-average fees and poor performance suffered by investments, are sufficient to state a claim for breach of the duty of prudence under ERISA.” *Anderson v. Intel Corp.*, 2021 WL 229235, at *11 (N.D. Cal. 2021). But, as relevant here, it found that the allegations of poor performance and excessive fees were not plausible because they failed to allege “adequate benchmarks against which to compare the Intel Funds.” *Id.* at *8; *see also id.* at *9 (noting that the plaintiffs “failed to adequately plead factual allegations to support their claim that [they] have provided a meaningful benchmark against which to compare the fees incurred by the Intel Funds”). The court also found that the plaintiffs failed to plausibly allege that fiduciaries in 2011 would be aware of the risks of hedge-fund and private-equity investments. *Id.* at *11. And it determined that the plaintiffs’ allegations about Intel’s conflicted interests were “conclusory.” *Id.* at *11–12. The court therefore dismissed the plaintiffs’ claims. *Id.* at *14–15.

5. The Ninth Circuit affirmed. Adopting the district court’s view of the required pleading standards, the Ninth Circuit held that, to state imprudent-investment claims like those here, a plaintiff *must* include in the complaint a “meaningful benchmark”—which the court described as a “relevant comparator [fund] with similar objectives.” App. at 12. And, the court went on, this “meaningful benchmark” pleading requirement applies equally to

underperformance-based prudence claims as well to claims regarding the incursion of higher fees. App. at 12–14. As the Ninth Circuit saw it, “to the extent a plaintiff asks a court to infer that a fiduciary used improper methods based on the performance of the investments,” the plaintiff “must compare th[e funds’] performance to funds or investments that are meaningfully similar.” App. at 14; *see also id.* (applying this same rule to a claim that “investors ... incurred higher fees”). And this was true, according to the Ninth Circuit, even if the plaintiff alleges that “there are *no* meaningful comparators for the fiduciaries’ decision” because the fiduciaries’ investment decision “was unusual, if not unparalleled.” App. at 14–15. Absent pleading a “meaningful benchmark,” the Ninth Circuit held, claims that a fiduciary imprudently invested plan participants retirement savings will fail.

6. In reaching this conclusion, the Ninth Circuit addressed the same pleading-standard issue that has already prompted a petition for certiorari and a call, from this Court, for the views of the Solicitor General. *See* CVSG Order, *Parker-Hannifin Corp.*, *supra*. The Ninth Circuit explicitly relied on decisions from the Seventh, Eighth, and Tenth Circuits to support its adoption of a “meaningful benchmark” pleading requirement. *See* App. at 11–12 (citing *Meiners*, 898 F.3d at 822; *Matousek*, 51 F.4th at 278; *Albert*, 47 F.4th at 581–82; *Matney*, 80 F.4th at 1149); *but see Johnson*, 122 F.4th at 216 (noting that a “meaningful benchmark” is “not required”).

7. The applicants respectfully request a 60-day extension of time to file a petition for a writ of certiorari seeking review of the Ninth Circuit’s ruling and submit that there is good cause for granting the request. Applicants’ counsel and his colleagues are, and will continue to be, heavily engaged with other matters, including: an opposition to a motion

to dismiss due in the Northern District of California in *Chen v. Bank of America*, No. 4:25-cv-03790-DMR, on August 22, 2025; an opposition to a motion to dismiss due in the Southern District of New York in *Chang v. Shen Yun*, No. 24-8980, on August 28, 2025; a reply brief due in the Ninth Circuit in *Blankinship v. Union Pacific Railroad Co.*, No. 25-432, on September 5, 2025; a reply brief due in the Ninth Circuit in *People of the State of California; et al., and State of North Dakota, and State of Georgia v. Meta Platforms, Inc.; et al, and consolidated cases*, No. 24-7032, on September 12, 2025; a respondent's brief due in this Court in *Geo Group v. Menocal*, No. 24-758, on September 15, 2025; and a reply brief due in the Second Circuit in *Lowell v. Lyft, Inc.*, No. 24-2948, on September 22, 2025. The applicants' counsel also has pre-planned personal travel over the coming summer month. Extending the deadline to file the petition in this case to October 19, 2025, will allow the applicants' counsel to carefully research and prepare the petition in this case.

CONCLUSION

For the foregoing reasons, the applicants respectfully request that the Court extend the time within which to file a petition for a writ of certiorari in this matter to and including October 19, 2025.

Dated: August 1, 2025

Respectfully submitted,

/s/ Matthew W.H. Wessler

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