No. 25-498

In the Supreme Court of the United States

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

v.

INTEL CORPORATION INVESTMENT POLICY COMMITTEE, ET AL.
Respondents.

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

REPLY BRIEF IN SUPPORT OF CERTIORARI

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QUESTIONS PRESENTED

Under the Employee Retirement Income Security Act of 1974 (ERISA), a plan fiduciary is subject to a "[p]rudent man standard of care," which requires the fiduciary to "discharge his duties with respect to a plan" with the "care, skill, prudence, and diligence" that a prudent person "acting in a like capacity and familiar with such matters would use." 29 U.S.C. § 1104(a)(1)). As this Court has recognized, a court's inquiry into whether a plaintiff has adequately alleged that a fiduciary breached ERISA's duty of prudence "will necessarily be context specific" because the content of that duty "turns on 'the circumstances … prevailing' at the time the fiduciary acts." *Fifth Third Bancorp v. Dudenhoeffer*, 573 U.S. 409, 425 (2014) (quoting 29 U.S.C. § 1104(a)(1)(B)). As a result, "categorical" pleading rules are "inconsistent with the context-specific inquiry that ERISA requires." *Hughes v. Nw. Univ.*, 595 U.S. 170, 173 (2022).

The question presented is: Whether, for claims predicated on fund underperformance, pleading that an ERISA fiduciary failed to use the requisite "care, skill, prudence, or diligence" under the circumstances and thus breached ERISA's duty of prudence when investing plan assets requires alleging a "meaningful benchmark."

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REPLY

The Solicitor General's brief in *Parker-Hannifin* recognizes that there is a "conflict in the circuits" over the question presented that "warrants this Court's review." Brief of United States as Amicus Curiae at 18, No. 24-1030 (S. Ct. Dec. 9, 2025).[1] It also confirms that this issue—whether plaintiffs must allege a "meaningful benchmark" to state an imprudent-investment claim predicated on fund underperformance—is of "substantial importance to the millions of Americans participating in ERISA-governed plans." *Id.* at 22. And, the government agrees, the Ninth Circuit's decision below squarely implicates the dispute over the question presented. *See id.* at 19.

At a minimum, therefore, this petition should be held pending the disposition of *Parker-Hannifin*. But if the Court decides not to grant certiorari in *Parker-Hannifin*, plenary review in this case would be appropriate. As the respondents themselves acknowledge, "this case presents a more suitable vehicle to address the issue than *Parker-Hannifin*." BIO 29. That is because, unlike the Sixth Circuit's decision in *Parker-Hannifin*, the Ninth Circuit's decision (1) is final, (2) applied the "meaningful benchmark" requirement to dismiss all the claims in the case, and (3) could be reviewed by the entire Court. *See* Pet. 2–3, 19; BIO 30.

Beyond this, the respondents offer little to undermine the need for this Court's review. They try (at 22) to suggest that the Ninth Circuit's categorical "meaningful benchmark" pleading requirement is just "shorthand" for the standard pleading inquiry, and they work (at 12–20)

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[1] Unless otherwise specified, all internal quotation marks, alterations, and citations are omitted from quotations throughout.

to paper over the confusion in the lower courts. Neither attempt succeeds. The Ninth Circuit's pleading standard is not only "inconsistent with the context-specific inquiry that ERISA requires," *Hughes v. Nw. Univ.*, 595 U.S. 170, 173 (2022), but, by the panel's own admission, it is found nowhere in ERISA's text. *See* App. 12a (suggesting that the requirement is "implicit"). It also sharply conflicts with the approach taken in other circuits. *See* US Br. 18–19.

And the respondents' defense of the decision below fares no better. The nature of the claims in this case—that Intel's fiduciaries acted imprudently by adopting a radical and unparalleled asset-allocation approach—bring the problem with the meaningful-benchmark requirement into stark relief. If there is such a requirement, and if it is as stringent as the rule applied by the Ninth Circuit in the decision below, then ERISA offers no protection to plan participants where fiduciaries make outlier investment decisions. That renders ERISA's prudence requirement a dead letter in some of the most egregious cases. Nothing in ERISA justifies such a result.

1. The Solicitor General's brief confirms the certworthiness of the question presented. As the government has explained, the circuits are now split over whether, for imprudent-investment claims predicated on fund underperformance, plaintiffs must allege a "meaningful benchmark." U.S. Br. 10–11, 18–21; *see Johnson v. Parker-Hannifin Corp.*, 122 F.4th 205, 232 (6th Cir. 2024) (Murphy, J., dissenting) (noting the majority's "assert[ion] that plaintiffs do not need to plead a meaningful benchmark" and describing it as "creat[ing] a circuit split" if applied to claims that "rely[] on an investment's *relative underperformance*"); *see also* Petition for Certiorari at 11, *Parker-Hannifin Corp. v.*

Johnson, No. 24-1030 (S. Ct. Mar. 26, 2025) (explaining that the Sixth Circuit's decision "creates a circuit split on the requirements for pleading a plausible ERISA claim based on the relative underperformance of a plan investment").

And the crux of the disagreement is likewise concrete: The Sixth Circuit's decision in *Parker-Hannifin* does not "clearly require a meaningful benchmark for an imprudent-investment claim based on relative underperformance." U.S. Br. 18. Yet other circuits, like the Ninth Circuit below, "have clearly required a plaintiff to identify a comparator that exhibits the same strategies, objectives, and risks as the subject fund." *Id.*

There is also divergence over the content of any such "meaningful benchmark" requirement. In *Parker-Hannifin*, the Sixth Circuit concluded that, even assuming a meaningful benchmark was required, the plaintiffs had sufficiently alleged one. *See* 122 F.4th at 216. As the Sixth Circuit explained, an "S&P target date fund benchmark" could suffice as a comparator for the challenged fund because both were "comprised primarily of index or passive strategies." *Id.* at 216–17. The Ninth Circuit, in contrast, rejected a series of "allegedly comparable alternatives, including published indices like the S&P 500 and Morningstar categories of peer-group funds" as insufficiently similar. U.S. Br. 19 (citing *Anderson v. Intel Corp. Inv. Pol'y Comm.*, 137 F.4th 1015, 1020 (9th Cir. 2025)). As the Ninth Circuit saw it, these comparators were categorically insufficient because they had "different aims, different risks, and different potential rewards." App. 14a (quoting *Davis v. Washington Univ. in St. Louis*, 960 F.3d 478, 485 (8th Cir. 2020)).

Given this, the respondents' claim of widespread agreement rings especially hollow. BIO 12–15. They contend, for instance, that "every circuit to consider the question recognizes that dismissal is appropriate where" a claim based on underperformance is supported by an "apples to oranges" comparison. BIO 2; *see also* BIO 3, 9, 12, 24 (characterizing courts as accepting apples-to-apples comparisons while rejecting apples-to-oranges comparisons). But that just assumes the answers to the questions that form the basis of the disagreement—namely, that a comparator fund *is* strictly necessary for an underperformance claim (the existence of a benchmark requirement), and that specific comparator funds are too dissimilar to serve as a meaningful comparator (the content of any such benchmark requirement).

Ultimately, given the serious uncertainty over "an issue of substantial importance to the millions of Americans participating in ERISA-governed plans," this Court's review is warranted. U.S. Br. 22. In the circumstances of this case alone, ERISA plan participants collectively lost millions in retirement savings. Pet. 10. And the typical Intel plan participant "would have hundreds of thousands more dollars of retirement savings if Intel fiduciaries" had made prudent choices for investing "Intel employees' retirement savings." *Id.* There are similar stakes for employees with ERISA-governed plans across the United States. The Court should grant review to provide clarity to the millions of Americans who participate in ERISA-governed plans.

2. The respondents' defense of the Ninth Circuit's decision below—which applied an especially muscular

version of the meaningful-benchmark requirement—is just as weak.

Indeed, the respondents hardly defend the Ninth Circuit's adoption of a strict meaningful-benchmark requirement as a categorical pleading rule. Instead, they suggest the requirement could be understood as nothing more than "shorthand" for "the analysis inherent in … [the] Rule 8(a) and Rule 12(b)(6)" inquiry for claims of imprudence based on underperformance and high costs. BIO 22. The "comparative exercise" necessitated by the meaningful-benchmark requirement, they insist, "channels the common-sense notion" that courts may not infer imprudence based on underperformance unless the plaintiffs provide allegations demonstrating "the existence of a comparator fund and allegations establishing *why* it is an appropriate comparator." *Id.*

That's impossible to square with the actual decision below. The Ninth Circuit employed a hard-and-fast rule that, "to the extent a plaintiff asks a court to infer that a fiduciary used improper methods based on the performance of investments," the complaint "must compare that performance to funds or investments that are meaningfully similar." App. 14a–15a; *see also* App. 19a. That rule applies even if the basis of the claim is that "there are *no* meaningful comparators for the fiduciaries' decision" because the decision "was unusual if not unparalleled." App. 15a.

The upshot is that the meaningful-benchmark requirement applied by the Ninth Circuit operates to bar imprudence actions even against fiduciaries who adopt investment strategies so radically unwise that none of their peers have done the same. And, contra the respondents (at 3, 27), there is nothing "peculiar" about this case. The Intel fiduciaries' radical investment

strategy here only underscores the problem with the meaningful benchmark requirement. It guts ERISA's protection of plan participants in the circumstances where they would need it the most—where the fiduciaries invest in ways that are so far out-of-step with industry norms that no sufficiently close comparator exists.

That's not all. To support the claim that Intel's fiduciaries massively over-allocated assets to hedge funds and private-equity funds relative to fiduciaries for similarly sized defined-contribution plans and target-date and balanced funds, and that Intel's funds substantially underperformed those funds, the complaint specifically included multiple comparator funds. In fact, the alleged comparators included the very funds against which the Intel fiduciaries themselves compared the plans. *See* 3-ER-583–85, 606–07 (alleging that Intel fiduciaries expressly announced that they considered the Morningstar MSCI World Index and two Morningstar peer-group categories as benchmarks). And the complaint alleged in detail that the comparator funds shared "common goals and features" with the Intel funds, 3-ER-584, and it even provided expert opinions about the meaningfulness of some of the comparators. *See, e.g.*, 3-ER-588; 4-ER-731–33; 4-ER-717.

None of this was enough in the Ninth Circuit's view. It used the meaningful-benchmark rule to reject every comparator described in the plaintiffs' 163-page complaint. The court pointed to Intel fiduciaries' generic disclosures that the subject funds had a "risk-mitigation objective," pursuant to which they invested heavily in non-traditional asset classes. App. 13a. Then the court rejected all the comparisons alleged in the complaint for being "equity-heavy retail funds that pursued different objectives—typically revenue generation." App. 14a.

Thus, the court concluded, the plaintiffs' "putative comparators were not truly comparable because they had 'different aims, different risks, and different potential awards.'" *Id.* (quoting *Davis*, 960 F.3d at 485).[2]

Nothing in ERISA permits this type of fine-grained comparative analysis at the pleading stage. Just the opposite. This Court has repeatedly stressed that ERISA requires courts to engage in a "careful, context-sensitive scrutiny of a complaint's allegations" under normal pleading standards, which require courts to accept well-plead allegations as true. *Fifth Third Bancorp. v. Dudenhoeffer*, 573 U.S. 409, 425 (2014).; *see also Hughes*, 595 U.S. at 173, 177 (citing *Ashcroft v. Iqbal*, 566 U.S. 662 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007)). But the Ninth Circuit discarded that approach in favor of a categorical pleading rule that leaves no room for a careful, context-sensitive inquiry into the plausibility of the plaintiffs' claims—and bears no resemblance to the standard pleading inquiry required by Rule 8(a).

3. As the Solicitor General's brief recognizes, this case concerns substantially the same question as *Parker-Hannifin*. *See* U.S. Br. 19 (describing the Ninth Circuit's decision in this case as in conflict with the Sixth Circuit's decision in *Parker-Hannifin* on the question presented); U.S. Br. 21 (describing the Ninth Circuit's rejection of

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[2] In one particularly striking example, the Ninth Circuit rejected the "Morningstar peer group categories" as insufficiently similar to the subject funds to serve as a meaningful benchmark even though the complaint alleged that "Intel commissioned Morningstar to prepare fact sheets for plan participants that compared the Intel TDFs to the Morningstar peer group categories." 4-ER-717. On that view, it is not even enough that fiduciaries have considered a fund comparable enough to justify particular investment decisions to their plan participants.

plaintiffs' comparators as inconsistent with the Sixth Circuit's acceptance of the S&P benchmark in *Parker-Hannifin*). The Court should therefore either hold this case pending its decision in *Parker-Hannifin* or, if it denies certiorari there, grant plenary review here.

CONCLUSION

The petition for a writ of certiorari should be held pending this Court's disposition of *Parker-Hannifin Corp. v. Johnson*, No. 24-1030, and then disposed of accordingly.

Respectfully submitted,

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