No. 25-590

In the Supreme Court of the United States

JERRY ALDRIDGE, ET AL.,
PETITIONERS

v.

REGIONS BANK,
RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITIONERS' SUPPLEMENTAL BRIEF

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INTRODUCTION

The government agrees that the Sixth Circuit "erred in concluding that the term 'equitable relief' in ERISA Section 502(a)(3), 29 U.S.C. 1132(a), categorically excludes monetary surcharge remedies." U.S. Br. at 8. It acknowledges, too, that "Petitioners have correctly identified a circuit conflict." *Id.* at 16. And it refutes Respondent's claim that *Montanile v. Board of Trustees*, 577 U.S. 136 (2016), "squarely resolved" this conflict by clarifying that the surcharge discussion in *CIGNA Corp. v. Amara*, 563 U.S. 421 (2011), was "dicta." BIO at 1. That, the government explains, is "an overreading of *Montanile*," which neither involved a surcharge claim nor identified "any substantive flaws" with *Amara*'s reasoning. U.S. Br. at 12–14. And in any event, *Montanile* did not "resolve" anything: Circuit decisions on both sides of the split "postdate *Montanile*." *Id.* at 17.

The Solicitor General also does not dispute that the issue presented is an important one warranting review. As it notes, in *LaRue v. DeWolff, Boberg & Associates, Inc.*, 552 U.S. 248 (2008), this Court "granted certiorari" on whether § 1132(a)(3) authorizes surcharge, but "did not ultimately decide the question." U.S. Br. at 9. The Court subsequently analyzed surcharge in *Amara*—and while several circuits have "found that analysis 'persuasive,'" others (like the Sixth Circuit) have incorrectly treated *Montanile* as a "license to disregard" it. *Id.* at 13, 17. "Given that conflict," the government notes, "the Court may want to revisit the availability of surcharge against ERISA fiduciaries in a future case." *Id.* at 17.

The government's brief, in short, makes a powerful case for review. It recommends denying this petition only because it "is not a suitable vehicle." *Id.* at 2. "'[T]op-hat plans' like the one involved in this case are not subject to ERISA's fiduciary-duty rules, and the parties dispute whether respondent qualifies as a fiduciary." *Id.* (cleaned up). Consequently, the government claims, "[t]he Court would need to resolve" Respondent's fiduciary status "before it [can] address the surcharge question," and examining surcharge "in the idiosyncratic context of a top-hat plan might provide" "limited guidance in more typical cases going forward." *Id.*

That contention is misguided. To begin, the Sixth Circuit neither limited its ruling to top-hat plans nor tied it to fiduciary status. It held, "as a categorical matter, that surcharge too closely resembles money damages to qualify as 'equitable relief.'" *Id.* (citing App. 33a). Stated otherwise, "surcharge 'is unavailable under § 502(a)(3)' regardless of a defendant's fiduciary status." *Id.* at 17.

Nor does the government identify a case presenting a more "typical factual context" or offer assurance that one is coming. *Id.* at 18. To the contrary, recent decisions underscore why the Court should not wait. The Fourth, Fifth, and Sixth Circuits are the last three circuits to examine the surcharge question. Although these cases came out on opposite sides of the split, *none* resolved questions of fiduciary status. *Compare Rose v. PSA Airlines, Inc.*, 80 F.4th 488, 505 & n.18 (4th Cir. 2023) (rejecting surcharge while noting that, on remand, "the district court may need to decide whether [the defendants] were 'fiduciaries' under ERISA"), *with Aramark Servs., Inc. Grp. Health Plan v. Aetna Life Ins.*

Co., 162 F.4th 532, 541 & n.42 (5th Cir. 2025) (recognizing surcharge while "declin[ing] to address" "fiduciary status" at "this early stage").[1] This Court denied review in *Rose*. 144 S. Ct. 1346 (2024). Were it to deny this petition, it would supply future courts with a roadmap: resolve a disputed remedies question, leave other questions open, and then invoke those unanswered questions as a reason for the Court to stay its hand.

That cannot be right. And it was not in fact the path taken in *Harris Trust and Savings Bank v. Salomon Smith Barney Inc.*, 530 U.S. 238, 242 n.1 (2000), or *Mertens v. Hewitt Associates*, 508 U.S. 248, 254–55 (1993), when this Court granted review to address the remedial reach of § 1132(a)(3) without deciding status or liability. It should do the same here. Respondent's fiduciary status can be addressed on remand, and Petitioners have substantial grounds for establishing it.

I. THE DECISION BELOW REACHES ALL ERISA PLANS.

1. The Sixth Circuit did not tie or limit its holding to top-hat plans. Instead, as the government acknowledges, "it viewed surcharge as categorically unavailable under Section 502(a)(3)." U.S. Br. at 16. Consistent with that understanding, courts in the Sixth Circuit have since applied the panel's ruling to bar surcharge claims brought against health insurance plans, *Trout v. Meijer, Inc.*, 2026

[1] The Fifth Circuit has granted rehearing en banc in *Aramark*. Neither party has asked the en banc court to examine or resolve fiduciary status.

WL 1098213, at *15 (W.D. Mich. Apr. 23, 2026), and 401(k) retirement plans, *All. Coal, LLC v. Smith*, 2026 WL 353029, at *8 (E.D. Ky. Feb. 9, 2026). Courts elsewhere have declined to follow the Sixth Circuit, and instead "adhered" to *Amara* and prior circuit precedent recognizing "claims of surcharge." *Aetna Life Ins. Co. v. Bd. of Trs. of AGMA Health Fund*, 2025 WL 2611947, at *5 (D. Conn. Sept. 10, 2025).

In other words, no one is thinking of the decision below in the way the Solicitor General seeks to limit it. The Sixth Circuit itself did not confine its rule to top-hat plans and, unsurprisingly, courts applying and rejecting the Sixth Circuit's rule have treated the panel's decision as extending beyond the top-hat context.

2. For similar reasons, the government is incorrect to suggest that "[t]he specific question" here is limited to "whether surcharge is an available remedy in a suit against a rabbi-trust administrator." U.S. Br. at 18. The question presented does not mention rabbi trusts or top-hat plans. It asks "[w]hether, when proceeding under § 1132(a)(3), a beneficiary may seek surcharge."[2] Pet. at i.

It does so because Petitioners seek review of the question the Sixth Circuit answered when it "held that the 'equitable relief' authorized by Section 502(a)(3) can never

[2] The government's contention that surcharge runs "against ERISA fiduciaries" does not bear on the question presented. U.S. Br. at 17. The question presented asks whether beneficiaries may seek surcharge at all. Whether they may seek surcharge only against parties "whom ERISA typically treats as a trustee," *Amara*, 563 U.S. at 439, is plainly a "subsidiary question fairly included" within that question, S. Ct. R. 14.1(a); *see Richlin Sec. Serv. Co. v. Chertoff*, 553 U.S. 571, 579 n.4 (2008).

include monetary surcharge," U.S. Br. at 13—a "holding," it explained, that "foreclose[d] the Participants' request[ed]" relief, App. 37a–38a. In other words, Petitioners ask this Court to answer the same, case-dispositive question that the court below decided. No more, no less.

II. THIS COURT ROUTINELY DECIDES WHAT REMEDIES ARE AVAILABLE WHILE LEAVING LIABILITY FOR REMAND.

The government asserts that this Court "would need to grapple with" Respondent's "fiduciary status" before it can "apply *CIGNA*'s analysis to petitioners' claims." U.S. Br. at 16. Not so.

1. In *Harris Trust and Savings Bank v. Salomon Smith Barney Inc.*, 530 U.S. 238 (2000), another § 1132(a)(3) case, petitioners asked this Court to examine whether equitable relief could be sought "against a nonfiduciary 'party in interest'" for participating in "a transaction barred by § 406(a)." *Id.* at 241, 243. Under the Solicitor General's rubric, the Court should not have granted review in *Harris Trust*, because respondent there maintained that it was not a "party in interest," an issue the court of appeals did not resolve. *Id.* at 242 n.1. But this Court instead took up the question the court of appeals *did* resolve, reversed that ruling, and left for remand respondent's arguments as to its party-in-interest status. *Id.*

Mertens v. Hewitt Associates, 508 U.S. 248 (1993), is similarly instructive; indeed, the decision below relied on *Mertens* and saw it as arising in a substantially similar posture, App. 32a. There, as here, the plaintiffs asked the Court to examine the availability of monetary remedies under § 1132(a)(3). The defendant in *Mertens* was not a fiduciary, and this Court observed that the parties had not identified an ERISA provision that the defendant, as a nonfiduciary, had violated. 508 U.S. at 253–54. It was therefore "unclear" whether a "remediable wrong" had occurred. *Id.* at 254. That circumstance, however, did not preclude review: This Court "reserve[d] decision of that antecedent question," *id.* at 255, and proceeded to resolve the remedies question on which the decision below rested.

If anything, this case presents a more straightforward situation than *Mertens*. Though no party in *Mertens* identified a plan term or ERISA provision the defendant had violated, Petitioners have noted that their Plan terms require lump-sum distributions upon termination, which went unenforced under Respondent's watch. Pet. at 26; App. 10a. Neither the Solicitor General nor Respondent disputes that this term was violated.

2. Furthermore, as to surcharge specifically, courts on both sides of the split have done just what the Sixth Circuit did here: "jump[] past any liability issues" to address "the remedies question" first. App. 32a.

Post-*Amara*, the Fifth Circuit recognized "surcharge as a potential remedy under § 502(a)(3)" and overruled its prior decisions holding otherwise. *Gearlds v. Entergy Servs., Inc.*, 709 F.3d 448, 452 (5th Cir. 2013). It reached that conclusion without resolving the defendant's argument that it was not a fiduciary. *Id.* at 452 n.1. "The district court did not address this issue," *Gearlds* explained, "because it determined that the remedy [the plaintiff] sought was not available." *Id.* The Fifth Circuit reversed on remedy and left fiduciary status for the district court on remand. *Id.* Likewise, in *McCravy v. Metropolitan Life Insurance Co.*, 690 F.3d 176, 181–82 (4th Cir. 2012), the Fourth Circuit held that a plaintiff may seek surcharge under § 1132(a)(3). And like *Gearlds*, it left breach and liability for remand. *Id.*

To be sure, the landscape in both the Fifth and Fourth Circuits has shifted, following the decisions in *Aramark* and *Rose*. But those recent rulings only confirm the broader point, because fiduciary status remained unresolved in *Aramark* and *Rose* as well. *See Aramark*, 162 F.4th at 541 n.42; *Rose*, 80 F.4th at 505 n.18. Taken together, these cases underscore why the Court should not wait for "a case that presents" surcharge in a more "typical factual context." U.S. Br. at 18. The posture here is commonplace, as typical as any other surcharge decision.

There is, moreover, good reason why courts have not decided fiduciary status when addressing surcharge. As this Court has explained, whether an entity is acting as a fiduciary is a fact-intensive question, turning on "*functional* terms of control and authority." *Mertens*, 508 U.S. at 262. The same entity can be a fiduciary when performing some responsibilities, but not others. *Lockheed Corp. v. Spink*, 517 U.S. 882, 891 (1996). "Proof of fiduciary status may come from [a] plan document, but can also come from the factual circumstances surrounding the administration of the plan, even if these factual circumstances contradict the designation in the plan document." *Gimeno v. NCHMD, Inc.*, 38 F.4th 910, 915 (11th Cir. 2022) (cleaned up).

Against this backdrop, the choice comes into focus: wade into a disputed factual question or resolve a purely legal one. Courts choosing the latter path have done no more than follow the familiar principle that "if it is not necessary to decide more, it is necessary not to decide more." *PDK Labs. Inc. v. U.S. D.E.A.*, 362 F.3d 786, 799 (D.C. Cir. 2004) (Roberts, J., concurring in part and concurring in the judgment). The government's recommendation would turn that sensible exercise of restraint into an unnecessary barrier to review.

III. PETITIONERS HAVE SUBSTANTIAL GROUNDS FOR RELIEF ON REMAND.

If the Court looks beyond the question decided and to Petitioners' prospects on remand, Respondent's unresolved fiduciary status provides no basis for denying review. Petitioners have substantial grounds for treating Respondent as an ERISA fiduciary, based on the statutory text, the duties Respondent undertook as Trustee, and the analysis set forth in *Amara*.

1. Under 29 U.S.C. § 1002(21)(A), "a person is a fiduciary" if he or she "has any discretionary authority or discretionary responsibility in the administration of such plan" or "exercises any authority or control respecting management or disposition of its assets." There is no carve-out to that definition for top-hat plans.

And here, as the Solicitor General recognizes, Respondent was tasked with "day-to-day administration of the [p]lans." U.S. Br. at 5. The governing documents specify that Respondent was empowered to "invest the principal and income of the Fund . . . in its sole discretion," was "authorized" to "dispose of any securities or property," and could "do all acts . . . as in the judgment of the Trustee may be necessary." D. Ct. Dkt. 19-3 at 2, 5–6. These actions must be taken "with the objective of serving the best interests of participants and their beneficiaries"—a classic reflection of fiduciary responsibility. *Id.* at 3.

2. Respondent's fiduciary status is reinforced by *Amara*. That decision recognized that "[e]quity courts" could award "monetary 'compensation' for a loss resulting from a trustee's breach of duty." 563 U.S. at 441–42. As the government notes, *Amara* then analogized a common-law trustee to an ERISA "plan fiduciary," which "ERISA typically treats as a trustee." U.S. Br. at 15 (quoting 563 U.S. at 439). But here, all agree Respondent is the Trustee of the trust that Petitioners' employer established to hold assets to satisfy its obligations under the Plans. D. Ct. Dkt. 19-3 at 1. There is thus no need to extend *Amara*'s analogy—of likening an ERISA fiduciary to a trustee—because Respondent *is* a trustee.

The Solicitor General recognizes this point. U.S. Br. at 16. It does not substantively refute it, saying only that "[t]he court of appeals did not address th[e] argument" because it deemed surcharge "categorically unavailable." *Id.* It then points to three unpublished district court cases and a Third Circuit decision that, it says, have held that top-hat plan defendants are not ERISA fiduciaries. *Id.* at 18. But unlike Respondent, in *none* of these cases was the defendant a trustee. *See, e.g.*, *Goldstein v. Johnson & Johnson*, 251 F.3d 433, 443 (3d Cir. 2001); *Berland v. X Corp.*, 2025 WL 1223547, at *6 (N.D. Cal. Apr. 28, 2025). The district court decisions, furthermore, bind no one.

And *Goldstein* had nothing to do with the issues presented—it did not involve a § 1132(a)(3) claim—and the Third Circuit is among the circuits that have not weighed in on the surcharge conflict. U.S. Br. at 17.

3. Like Respondent, the Solicitor General places great weight on 29 U.S.C. § 1101(a)(1), which exempts top-hat plans from ERISA Title I, Part 4, *see* §§ 1101–14, a Part that includes ERISA's statutory fiduciary-duty provisions, *see* § 1104. U.S. Br. at 4. The government notes that top-hat plans are also exempted from ERISA's vesting and funding requirements, set forth in Parts 2 and 3. *Id.* (citing 29 U.S.C. §§ 1051(2) (Part 2) & 1081(a)(3) (Part 3)).

But Petitioners have not brought a § 1104 claim or a claim under Parts 2, 3, or 4. They have sued under § 1132(a)(3), which falls under Part 5. No one suggests that any top-hat exemptions extend to Part 5 or § 1132(a)(3). To the contrary, "liability under [§ 1132(a)(3)] does not depend on whether ERISA's substantive provisions" in its other Parts "impose a specific duty on the party being sued." *Harris Tr.*, 530 U.S. at 245. Instead, plaintiffs may seek § 1132(a)(3) relief so long as they identify a violation of "the terms of the plan"—and Petitioners have done that by pointing to the Plans' lump-sum distribution requirement. U.S. Br. at 6.

More broadly, the Solicitor General and Respondent overstate the exemptions' breadth. ERISA is "an enormously complex and detailed statute," with a "carefully crafted and detailed enforcement scheme." *Mertens*, 508 U.S. at 254, 262. Had Congress wanted to exempt top-hat plans from § 1132(a)(3), it could have easily done so, as it did for Parts 2, 3, and 4. Had it wanted to exclude top-hat plan trustees from fiduciary status altogether, it could have done that too, by amending § 1002(21)(A). It did neither.

Instead, the structure Congress embraced follows "principles of trust law." *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 111 (1989). Under the law of trusts, the settlor of a trust may "relieve[]" the trustee "of liability for breach of trust," including for breaches of the duties of care and loyalty. Restatement (Second) of Trusts § 222(1). That is what § 1101(a)(1) does. But such exculpatory "provisions are strictly construed, and the trustee is relieved of liability only to the extent to which it is clearly provided." *Id.* cmt. a. In short, although § 1101(a)(1) relieves Respondent of liability under §§ 1101 to 1114, it does only that. It does not and cannot sweep more broadly than what the text provides.[3]

* * *

The government characterizes this case as "unusual." U.S. Br. at 2. It is not. Petitioners ask this Court to

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[3] The government recommends denying review of the second question, on preemption, because the Sixth Circuit's holding "does not conflict with any decision of another court of appeals." U.S. Br. at 2. Petitioners have not argued that it does. Instead, as Professor Bray explains, the Court should grant the second question because "[a] rejection of surcharge under ERISA *and* the preemption of state-law contract claims might well lead to a position that is inconceivable under trust law, ERISA, and principles of equity." Bray Br. at 9 (internal quotation marks omitted). That position, indeed, would leave Petitioners worse off than if ERISA had not been enacted.

resolve an acknowledged and important conflict on a purely legal question. If this Court agrees and rejects the Sixth Circuit's categorical rule, it can reverse and remand. Petitioners would then have to establish their ultimate right to relief before the lower courts, which—far from unusual—is an ordinary consequence of many successful appeals.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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