No.: 25-976

In the Supreme Court of the United States

ROBERT CARLISLE, individually and as a representative of a class of similarly situated persons, on behalf of the NEW YORK STATE TEAMSTERS CONFERENCE PENSION AND RETIREMENT FUND,

Petitioner-Appellant,

v.

THE BOARD OF TRUSTEES OF THE AMERICAN FEDERATION OF THE NEW YORK STATE TEAMSTERS CONFERENCE PENSION AND RETIREMENT FUND; JOHN BULGARO; BRIAN K. HAMMOND; PAUL A. MARKWITZ; GEORGE F. HARRIGAN; MARK D. MAY; MICHAEL S. SCALZO, SR., ROBERT SCHAEFFER; MARK GLADFELTER; SAMUEL D. PILGER' DANIEL W. SCHMIDT; TOM J. VENTURA; MEKETA INVESTMENT GROUP, INC., and HORIZON ACTUARIAL SERVICES, LLC,

Respondents-Respondents.

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

REPLY BRIEF FOR PETITIONER

STEVEN A. SCHWARTZ
CHIMICLES SCHWARTZ KRINER & DONALDSON-SMITH LLP
361 West Lancaster Avenue
Haverford, Pennsylvania 19041
(610) 642-8500
sas@chimicles.com

Counsel of Record

ROBERT J. KRINER
CHIMICLES SCHWARTZ KRINER & DONALDSON-SMITH LLP
2711 Centreville Road, Suite 201
Wilmington, Delaware 19808
(302) 656-2500
rjk@chimicles.com

Counsel for Petitioners

Dated: May 1, 2026

DICK BAILEY
EST. 1966
www.dickbailey.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases *Page*

Other Authorities

INTRODUCTION

Respondents' opposition confirms why this petition should be granted or, at minimum, held pending this Court's decision in *Anderson v. Intel*. The decisions below raise the same core pleading problem. The central question in *Anderson* is whether courts may impose categorical threshold requirements that strip well-pleaded allegations from ERISA duty-of-prudence complaints. Both the district court and the Second Circuit committed precisely that error – in terms that closely parallel the Ninth Circuit's reasoning in *Anderson* and that the *Anderson* petitioners' merits brief directly and powerfully condemns.

In both cases, participants alleged that ERISA fiduciaries adopted and maintained an extraordinary investment strategy that concentrated an excessive percentage of plan assets in risky, costly, illiquid, and opaque asset classes (private equity and hedge funds in *Anderson*; private equity, emerging market equities ("EME") and Alternatives including hedge funds here); the strategy was an outlier when compared with the fiduciaries' own chosen or relevant peer benchmarks; the fiduciaries had knowledge of but ignored contemporaneous warnings about the risks; that the strategy underperformed a wide range of relevant comparators, including the fiduciaries' chosen comparator benchmarks; and the lower courts nevertheless dismissed the complaints at the pleading stage after refusing to credit the comparative allegations as sufficient.

Respondents attempt to distinguish *Anderson* by emphasizing that the Second Circuit did not use the phrase "meaningful benchmark." But the Court imposed a *de facto* benchmark requirement by another name. It acknowledged that the complaint alleged the fiduciaries knew of the risk, volatility, and illiquidity of the challenged asset classes and that similarly-situated plans favored more traditional and less risky investments, but held that those allegations did not show that the Fund's strategy was "such an extreme outlier" from peer multiemployer plans as to plausibly allege imprudence. Pet. App. 10a. That effectively imposed a benchmark sufficiency requirement, since requiring Petitioner to show the Fund's asset allocation was an extreme outlier compared to its Taft-Hartley peers presupposes a benchmark to compare it to. The Court required Petitioner to plead enough comparative detail to show that the Fund's allocation crossed a judicially-determined threshold from permissible "tradeoffs" into actionable imprudence. *Anderson* presents the same question: whether ERISA and Rules 8 and 12 permit courts to impose such a threshold comparator requirement and disregard otherwise well-pleaded allegations instead of evaluating the complaint as a whole.

Respondents also seek to distinguish *Anderson* because it involves "specific investment funds," whereas this case involves a defined-benefit plan's overall asset allocation. But that distinction is not a reason to deny review. It is the very reason this petition matters, given the $100 billion taxpayer bailout of defined benefit plans. ERISA's duty of prudence governs fiduciaries when they invest plan assets. It does not apply one pleading rule to imprudent default funds in a defined-contribution plan and a different, more insulated pleading rule to imprudent portfolio-wide asset-allocation decisions in a defined-benefit plan.

Moreover, Respondents' attempt to limit *Anderson* to underperformance of discrete funds misreads *Anderson*. *Anderson* does not present a simple return-comparison case. *Anderson's* merits brief explains that the complaint alleged: an unprecedented allocation to hedge funds, private equity, and other nontraditional investments; contemporaneous warnings from regulators and market professionals about excessive allocations to those asset classes; and internal and external documentation of underperformance of the investment portfolio compared to various comparators benchmarks, including fiduciary-identified benchmarks (Morningstar facts sheets in *Anderson*; Meketa's custom Taft-Hartley peer index here). *See Anderson* Merits Br. at 19 (Apr. 23, 2026). That is the same structure as this case. The difference is only the investment vehicle: Intel embedded the imprudent allocation in custom default funds; the Teamsters fiduciaries embedded it in a defined-benefit plan portfolio. ERISA's prudence standard turns on context, not on labels.

Respondents' other arguments, including standing, are irrelevant and were properly rejected by both courts below.

ARGUMENT

I. THIS CASE PRESENTS THE SAME ERISA PLEADING ISSUE ACCEPTED AND ARGUED IN *ANDERSON*.

Respondents argue that the Second Circuit's decision does not raise the question presented in *Anderson* because it never used the phrase "meaningful benchmark." BIO 10-11. That argument misreads the issues raised in *Anderson*.

A. The District Court Explicitly Relied on the *Anderson* District Court's Meaningful-Benchmark Holding.

Rejecting Petitioner's comparison of the Fund's EME performance to its Taft-Hartley peers, S&P 500, the DJIA, and the Vanguard Balanced Index Fund, the district court cited approvingly the district court's holding in *Anderson* that "simply labeling funds as comparable or a peer is insufficient to establish that those funds are meaningful benchmarks" (Pet. App. 95a-96a)[1] and held a complaint requires detailed "facts regarding the Plan's Peers, such as the size or

[1] In fact, Meketa's custom Taft-Hartley peer group was the only benchmark used by the Teamsters Fiduciaries to evaluate the Fund's asset allocation and investment performance and reflected that the Fund's asset allocation was an extreme outlier compared to its Taft-Hartley peers and other comparator benchmarks, including the Wiltshire Trust Universe Comparison Service for Taft-Hartley Funds, the S&P 500, the DJIA, the Vanguard Balanced Index Fund, and other authoritative sources like Gallagher Fiduciary Advisors and SEI. Pet. 14a-16a, 18a.

financial condition of the other plans, the number of plans represented, or the risk levels of the peer plans' other investments." Pet. App. 88a.

Whatever label is attached to the analysis, the district court below applied the same categorical rule that the Ninth Circuit adopted in *Anderson*: performance and cost comparisons are disregarded unless they are supported by an excessively-detailed account of comparator similarity.

B. The Second Circuit Applied the Same Benchmark Analysis as *Anderson* in Different Words.

Respondents argue the Second Circuit did not mention "meaningful benchmark." BIO 11, 15-18. But certiorari does not turn on whether the court below used the precise phrase at issue in another case, but whether the decision implicates the same legal rule and lower-court confusion.

The Second Circuit, while not using the phrase "meaningful benchmark," applied essentially the same categorical framework. It held that Petitioner's allegations of outlier asset allocation did not "adequately allege that the Plan's investment strategy constituted such an extreme outlier from peer multiemployer plans that it was imprudent." Pet. App. 10a. That holding necessarily turned on the sufficiency of Petitioner's peer-plan benchmark allegations. That is not materially different from asking whether the complaint pleaded a "meaningful benchmark" with sufficient exactitude to support a plausible inference of imprudence.

Regarding the conflict-of-interest allegations, the Court held that Petitioner "offer[ed] no details that would show that Meketa could expect to be paid less than the flat fee it received for serving as the Plan's private markets investments manager if it did not maintain a certain allocation of private market investments." Pet. App. 11a. That holding ignored detailed allegations and reasonable inferences that Meketa's dual role not only represented a structural conflict but also that Meketa acted on that conflict.

These holdings reflect the same methodological errors that the *Anderson* petitioners identify throughout their merits brief: instead of taking all well-pleaded factual allegations as true and evaluating them holistically, the Court demanded an extreme degree of specifics before it would credit individual categories of allegations. That is a categorical rule, not a holistic application of *Twombly* and *Iqbal*.

Respondents try to make this sound like ordinary plausibility review. But the same was true in *Anderson*: the defendants there also defended the meaningful-benchmark requirement as a mere application of Rule 8 and Rule 12(b)(6). The question is whether courts may, at the pleading stage, reject otherwise factual allegations of underperformance, peer comparisons, risk, and process because the pleaded comparison does not satisfy a court-created threshold of similarity or extremity.

This case also shows why *Anderson* should not be resolved too narrowly. If a fiduciary's own benchmark is not enough, what is? Petitioner alleged that Meketa used Taft-Hartley peers to evaluate the Fund's performance and told the Trustees that the Fund's underperformance was attributable to its overweight allocations to EME and PE. Like

Petitioner here, Anderson argues that "Intel's funds underperformed the very benchmarks that the Intel fiduciaries themselves noted as comparators." *Anderson* Merits Br. 20; *accord Parker-Hannifin*, 122 F.4th at 210 (crediting allegations that the fiduciaries' chosen funds underperformed the very benchmark they were "attempting to mimic").

The same principle applies here with even greater force. A fiduciary's own chosen comparator for evaluation purposes (whether or not labeled a "benchmark") should be enough at the pleading stage to support a plausible inference, particularly when combined with allegations of known risk, conflicted advice, underperformance, and massive benefit cuts.

The Second Circuit's contrary approach creates the same practical problem *Anderson* presents. The more unusual and risky the fiduciary's strategy, the easier it becomes to dismiss the case because no perfectly matched comparator exists. *See Anderson* Merits Br. 47 (such an approach "confers almost complete immunity on fiduciaries who pursue novel or reckless investment strategies, no matter how imprudent, so long as no other fiduciary follows suit."). That turns ERISA's prudence standard upside down. It also conflicts with trust law. *Id.* at 48 (quoting Restatement (Second) of Trusts §227, cmt. f, j.). A fiduciary should not receive pleading-stage immunity because it adopted a strategy so unusual that few prudent peers did the same thing.

C. The Issues Presented in this Case are the Same as those Argued in *Anderson.*

Much of Anderson's Merits Brief has direct application to the issues raised in this Petition. For example, Anderson argues that:

- the Intel fiduciaries breached their duties by engaging in an "unprecedented investment strategy" of allocating one-third of assets in the plan's default fund to "poorly performing and costly investments…in nontraditional assets like hedge funds and private equity" making the plan an "extreme outlier." *Id*. at 1.

- "Intel's fiduciaries' investment in nontraditional assets performed worse than their investments in traditional ones…[and] underperformed funds and indices that were identified as relative comparators by experts, and as relevant benchmarks by the Intel fiduciaries themselves." *Id*. at 2, 20.

- The Ninth Circuit "did not ask whether all of the well pleaded factual allegations in the complaint, when taken together and accepted as true, give rise to a plausible inference imprudence" and ignored that "the complaint include specific and detailed factual allegations that, taken together, easily raise an inference of imprudence." *Id.* at 1, 37.

- "Federal regulators had warned against doing exactly what the fiduciaries did here – over-investing in these illiquid and costly vehicles (the SEC, for example, had a long-standing 15% limitation on illiquid investments)." *Id.* at 37 (cleaned up).

- The Ninth Circuit's benchmark approach is "unworkable, because courts will have to decide, as a matter of law, how close is close enough for meaningful benchmark – a task that is especially challenging at the pleading stage." *Id.* at 28.

All these arguments have direct application here.

Respondents insist that *Anderson* asks only whether claims "predicated on fund underperformance" require a "meaningful benchmark," while Carlisle challenges "overall asset allocation." BIO 10-11. That is a false divide. Asset allocation is not somehow outside the investment decisions governed by ERISA's duty of prudence. It is the central investment decision in a defined-benefit plan. A fiduciary who allocates half of a fund's assets to high-risk, high-cost, illiquid asset classes is "investing plan assets" no less than a fiduciary who selects a target-date fund for a 401(k) lineup. Regardless, the complaint here is also predicated on underperformance compared to the Fund's Taft-Hartley peers and other relevant benchmarks.

Respondents' position would create an arbitrary pleading distinction. If fiduciaries place participants' retirement savings into an imprudent custom target-date fund that serves as a default option (but one that individual participants can reject in favor of more traditional investments as part of their individual investments portfolios), *Anderson* governs. But if fiduciaries take the same imprudent risk directly at the plan-portfolio level (where plan participants have zero control with respect to their *vested* retirement pensions), respondents say *Anderson* has nothing to do with the case. ERISA does not draw that distinction. Section 1104(a)(1)(B) requires prudence "under the circumstances then prevailing" whenever fiduciaries discharge duties with respect to a plan. That standard applies to choosing a fund, retaining a fund, setting a glide path, constructing a default portfolio, and allocating a defined-benefit plan's assets across risky and stable classes.

Nor is *Anderson* limited to bare allegations of fund returns. Anderson alleged Intel fiduciaries allocated one-third of the default fund to hedge funds and private equity, ignored warnings that those assets were illiquid, costly, and opaque, and continued the strategy after years of underperformance. This complaint contains substantially-similar allegations. If *Anderson* is about whether courts may impose a special comparator screen before considering those types of allegations, this case belongs in the same conversation.

1. Respondents' distinctions reinforce the need to grant or hold the Petition.

Respondents' main distinctions are that *Anderson* involves a defined-contribution plan, while this case involves a defined-benefit plan, and that *Anderson* involves specific investment options, while this case involves portfolio-wide asset allocation. Those differences make this petition more important, not less.

First, unlike defined-contribution plan participants, defined-benefit plan participants do not choose among investment options and are entirely dependent on fiduciaries to prudently invest plan assets. Respondents' proposed distinction leaves defined-benefit participants with less protection even though they deserve more. This Court has not yet addressed how the pleading standards apply in the defined-benefit context and whether there is any difference compared to the defined-contribution context.

Second, portfolio-wide asset allocation is exactly the kind of fiduciary decision for which ERISA's context-specific standard matters. A plan's overall risk exposure cannot be evaluated by isolating each investment or asking whether any single asset class or investment is always imprudent. The question is whether the fiduciaries prudently allocated the portfolio as a whole under the circumstances facing the plan. That is why *California Ironworkers* matters. There, the Ninth Circuit upheld a *trial judgment* that a 30% allocation to risky investments was imprudent because it "was too much." 259 F.3d at 1045. By contrast, the Second Circuit held that a 50% allocation in the highest-risk asset classes did not clear the pleading threshold. The Second Circuit's decision is irreconcilable with *California Ironworkers*. *See Anderson* Merits Br. 35 (discussing *California Ironworkers*).

Third, Respondents' "fact-bound" label does not eliminate the legal issue and only highlights the strength of allegations here and why the Second Circuit's decision conflicts not only with *California Ironworkers*, but also *Parker-Hannifin* and *Hughes*. *Anderson* itself arises from a complaint-specific dismissal. The recurring legal issue is how courts should evaluate ERISA prudence complaints at the pleading stage when the allegations include comparative underperformance, fiduciary-identified benchmarks, outlier allocations, and process defects. The lower courts are not simply disagreeing about facts; they are disagreeing about what ERISA (as interpreted by *Hughes*) requires and how to apply Rules 8 and 12, as interpreted by *Twombly* and *Iqbal*, before participants may obtain discovery into fiduciary decision-making.

2. The Petition raises important questions regarding the standards governing prudent process allegations that *Anderson* cannot fully resolve.

The Second Circuit's holding that Carlisle's imprudent process allegations based on Meketa's conflicted dual role as the Fund's independent investment adviser and private markets manager were insufficient presents the same legal issue regarding application of Rules 8 and 12 to investment decisions at the center of *Anderson*. As argued by Anderson, "facts relating to a fiduciary's decision-making process will frequently be in the exclusive possession of the breaching fiduciary." *Anderson* Merits Br. 34. Unlike most cases, the *Carlisle* complaint alleged specific, documented facts regarding the imprudent process utilized by the Teamsters fiduciaries: Meketa's dual, conflicted role increased its compensation from $250,000 to $1.4 million annually; keeping that enhanced compensation was dependent on the Fund maintaining its outsized private markets allocation, thereby incentivizing Meketa to make such a recommendation; Meketa simultaneously removed EME from its discretionary portfolios and recommended removal of EME from the Musicians plan while keeping the Teamsters massive EME allocation; DOL sued the IAM plan trustees for hiring Meketa in the same dual role; and the Musicians plan counsel criticized Meketa's pitch to serve in the same dual, conflicted role as reflecting "bad judgment." Yet the Second Circuit deemed those detailed, factual, nonconclusory allegations insufficient because, in its view, the complaint provided "no details" making Carlisle's conflict allegations plausible. Pet. App. 11a. That analysis conflicts with governing pleading standards (all of which are in play in *Anderson*) and common sense. What the Second Circuit demanded was not the absence of conclusory allegations – it was akin to a level of evidence necessary to defeat summary judgment if not prevail at trial, in violation of Rule 8, Rule 12 and ERISA, as interpreted by *Twombly*, *Iqbal* and *Hughes*.

II. RESPONDENTS' JURISDICTIONAL ARGUMENT IS WRONG AND DOES NOT JUSTIFY DENYING THE PETITION.

Respondents' jurisdictional objections do not make this case a poor vehicle because the arguments are flawed. Both courts below held that petitioner had Article III standing and that the case was not moot, and for good reason.

In *Thole v. U.S. Bank N.A.*, this Court held that if participants in a defined benefit plan did not receive their vested pension benefits, "they would of course have Article III standing to sue and a cause of action under ERISA § 502(a)(1)(B) to recover the benefits due to them." 590 U.S. 538, 532 (2020). That is exactly what happened here.

Contrary to Respondents' argument, the taxpayer-funded ARPA bailout does not undermine or eviscerate Carlisle's standing or concrete stake in this litigation. First, the Second Circuit correctly applied the well-settled collateral source rule that a tortfeasor does not get a free pass simply because a third party provided benefits to an injured victim. Pet. App. 5a-7a. Second, Carlisle and the other participants did not receive repayment of their benefit cuts until five years after their benefits were cut. Petitioner and participants are owed over $1,200 and $74 million respectively in unpaid interest. So even if the collateral source rule does not apply, their delayed-payment damages confer standing.

CONCLUSION

The petition should be granted and considered in tandem with *Anderson* or alternatively be held pending this Court's decision in *Anderson* and then disposed of as appropriate.

Respectfully submitted,

/s/ Steven A. Schwartz
Steven A. Schwartz
Counsel of Record
Chimicles Schwartz Kriner
& Donaldson-Smith LLP
361 West Lancaster Avenue
Haverford, Pennsylvania 19041
(610) 642-8500
sas@chimicles.com

Robert J. Kriner
Chimicles Schwartz Kriner
& Donaldson-Smith LLP
2711 Centreville Road, Suite 201
Wilmington, Delaware 19808
(302) 656-2500
rjk@chimicles.com

Counsel for Petitioners

Dated: May 1, 2026