No. 26-____

In the Supreme Court of the United States

THE CAPITAL GROUP COMPANIES, INC., ET AL.,
PETITIONERS

v.

CATHY POVER

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Section 502(a)(2) of the Employee Retirement Income Security Act of 1974 (ERISA) allows a plan participant to bring an action "for appropriate relief" under ERISA § 409. 29 U.S.C. § 1132(a)(2). Section 409, in turn, provides that a plan fiduciary who breaches a duty is "liable to make good to such plan any losses" resulting from that breach. *Id.* § 1109(a).

In *Massachusetts Mutual Life Insurance Co. v. Russell*, 473 U.S. 134, 144 (1985), the Court held, in the context of defined-benefit plans (which promise fixed income), that "recovery for a violation of § 409" goes to "the plan as a whole," so § 502(a)(2) authorizes relief only "for the plan itself." In *LaRue v. DeWolff, Boberg & Associates, Inc.*, 552 U.S. 248, 256 (2008), the Court held, in the context of defined-contribution plans (which promise the value of individual accounts, which may fluctuate), that § 502(a)(2) authorizes "recovery for fiduciary breaches that impair the value of plan assets in a participant's individual account."

Since *LaRue*, the courts of appeals have split on the scope of "appropriate relief" for defined-contribution-plan-participant plaintiffs. In the Fourth Circuit, those plaintiffs can seek monetary recovery to *only* their "individual retirement account[s]." *Trauernicht v. Genworth Financial Inc.*, 169. F.4th 459, 468-69 (4th Cir. 2026) (Niemeyer, J.). But seven circuits, including the Ninth Circuit here, hold that § 502(a)(2) doesn't "limit" plaintiffs "to recovering losses suffered only by their individual accounts." App. 21a.

The question presented is whether "appropriate relief" for a defined-contribution-plan participant under ERISA § 502(a)(2) includes monetary recovery to *other* participants' individual retirement accounts.

PARTIES TO THE PROCEEDING

Petitioners are The Capital Group Companies, Inc. (Capital Group); the U.S. Retirement Benefits Committee of Capital Group and its members; the Board of Directors of Capital Group and its members; and Does 1–30 (that is, the members of Capital Group's U.S. Retirement Benefits Committee and Board of Directors). Petitioners were Defendants-Appellants below.

Respondent Cathy Pover was Plaintiff-Appellee below.

CORPORATE DISCLOSURE STATEMENT

The Capital Group Companies, Inc. (Capital Group), is a privately held company that has no parent company. There are no publicly held companies that have a 10 percent or greater ownership interest in Capital Group.

RELATED PROCEEDINGS

United States Court of Appeals (9th Cir.):

Cathy Pover v. The Capital Group Companies, Inc., et al., No. 24-5298 (9th Cir. July 30, 2026)

United States District Court (C.D. Cal.):

Cathy Pover v. The Capital Group Companies, Inc., et al., No. 2:23-cv-9657 (C.D. Cal. Aug. 9, 2024)

TABLE OF CONTENTS

TABLE OF CONTENTS
(continued)

TABLE OF CONTENTS
(continued)

TABLE OF AUTHORITIES

Page(s)

CASES

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

INTRODUCTION

Section 502(a)(2) of the Employee Retirement Income Security Act of 1974 (ERISA) permits retirement-plan participants to sue "for appropriate relief" persons who violate fiduciary duties to the plan. 29 U.S.C. § 1132(a)(2); *see id.* § 1109(a). The question here is what constitutes "appropriate relief" when a plaintiff is a participant in a defined-contribution plan—a plan where an employee and employer contribute money to an individual investment account, and the employee's payout depends on the account's investment performance. *See LaRue v. DeWolff, Boberg & Associates, Inc.*, 552 U.S. 248, 250 n.1 (2008). Here, the Ninth Circuit held that a participant in a defined-contribution plan can sue to recover losses to other participants' individual accounts—without obtaining class certification or providing any safeguards, including notice, to other participants. That decision deepens an acknowledged, now 1–7, circuit split with *Trauernicht v. Genworth Financial Inc.*, 169 F.4th 459 (4th Cir. 2026) (Niemeyer, J.), and it does so by misconstruing ERISA's text, violating bedrock principles of equitable relief and Article III standing, and trampling due-process rights. The Court should grant review and reverse.

1. This case concerns a dispute over management of retirement-plan investments. The Capital Group Companies, Inc. (Capital Group), is an asset-management organization that maintains an ERISA-governed defined-contribution plan for its employees. Cathy Pover, a former Capital Group employee, is a participant in that retirement plan. Pover alleges that Capital Group and others breached fiduciary duties to the Plan by continuing to offer five funds that Pover thinks underperformed. Invoking § 502(a), she seeks to recover the alleged losses each individual Plan participant's investment account supposedly suffered.

Capital Group moved to compel arbitration under a Plan provision requiring "arbitration on an individual basis only, and not on a class, collective or representative basis" of any plan-related claim. App. 74a-75a. But the district court refused to enforce the arbitration provision, and the Ninth Circuit affirmed. App. 37a, 23a. The court didn't dispute that the arbitration clause covered Pover's claims. But it held the clause unenforceable because, in the court's view, it waives Pover's ERISA rights by barring her from seeking monetary relief to *other Plan participants'* accounts. App. 20a-23a.

To explain: Section 502(a)(2) claims, even when brought by a participant, are brought on behalf of the plan. *See Massachusetts Mutual Life Insurance Co. v. Russell*, 473 U.S. 134, 142 n.9 (1985); *LaRue*, 552 U.S. at 253. Thus, the Ninth Circuit reasoned, any action to recover "appropriate relief" for the plan, 29 U.S.C. § 1132(a)(2), must allow the plaintiff to seek *all* losses *the plan* purportedly suffered, not just losses to the plaintiff's individual account. App. 20a-23a. Since Capital Group's arbitration provision doesn't allow Pover to seek recovery for losses to *other participants'* accounts, the court held, it unlawfully restricts Pover's remedies and is thus unenforceable. *Id.*

The upshot? Pover may now make litigation decisions affecting *other Plan participants'* individual retirement accounts without seeking class certification or providing any process—not even notice—to safeguard absent participants' rights.

2. The Ninth Circuit's decision deepens a now 1–7 circuit split over "appropriate relief" under § 502(a)(2) for defined-contribution-plan-participant plaintiffs. Acknowledging the conflict, the Fourth Circuit holds that the only "appropriate" monetary relief available to a § 502(a)(2) defined-contribution plaintiff "would be the payment" for losses "to his individual retirement account." *Trauernicht*, 169 F.4th at 468-69. That is so, Judge Niemeyer explained, because allowing one plan participant to act as an uncertified, ersatz class representative making decisions about other participants' money would violate "'our deep-rooted historic tradition that everyone should have his own day in court,' or, at the very least, the ability to opt out of pursuing what is in essence an individualized monetary claim." *Id.* at 469. Judge Menashi has adopted the same view, explaining that a "participant in a defined-contribution pension plan … may proceed under Sections 502(a)(2) and 409(a) to seek relief that benefits only his or her individual account within the plan" because she has an Article III injury only to that extent. *See Cedeno v. Sasson*, 100 F.4th 386, 410 (2d Cir. 2024) (Menashi, J., dissenting). And before this case, the Ninth Circuit, in a decision joined by Judge Ikuta, agreed, explaining that "[a]lthough § 502(a)(2) claims seek relief on behalf of a plan, the Supreme Court has recognized that such claims are inherently individualized when brought in the context of a defined contribution plan," so "a defined contribution plan participant can bring a § 502(a)(2) claim for the plan losses in her own individual account." *Dorman v. Charles Schwab Corp.*, 780 F. App'x 510, 514 (9th Cir. 2019).

By contrast, the Ninth Circuit's decision here joined decisions from the Second, Third, Fifth, Sixth, Tenth, and Eleventh Circuits holding that a single defined-contribution-plan-participant plaintiff can seek relief under § 502(a)(2) for other participants' accounts. *See Cedeno*, 100 F.4th at 390; *Henry ex rel. BSC Ventures Holdings, Inc. Employee Stock Ownership Plan v. Wilmington Trust NA*, 72 F.4th 499, 507 (3d Cir. 2023); *Parrott v. International Bancshares Corp.*, 167 F.4th 728, 739 (5th Cir. 2026); *Parker v. Tenneco, Inc.*, 114 F.4th 786, 801 (6th Cir. 2024); *Harrison v. Envision Management Holding, Inc. Board of Directors*, 59 F.4th 1090, 1107 (10th Cir. 2023); *Williams v. Shapiro*, 161 F.4th 1313, 1322 (11th Cir. 2025). Only the Second Circuit has acknowledged the oddity of allowing one participant to make financial decisions affecting other participants without satisfying Federal Rule of Civil Procedure 23's due-process safeguards, and, even then, only to brush aside the concern. *See Cedeno*, 100 F.4th at 403.

The split has significant implications. Under the Fourth Circuit's rule, Pover could pursue only supposed losses from her individual retirement account. But because the Ninth Circuit rejected that rule, Pover can now seek relief for other plan participants' accounts without pursuing class certification.

3. a. The Ninth Circuit's rule is wrong on three levels. *First*, it contradicts this Court's precedent. In *LaRue*, this Court established that, in the context of a defined-contribution plan, "appropriate relief" means "recovery for fiduciary breaches" to "a participant's individual account." 552 U.S. at 256. The Court held that a participant could seek relief under § 502(a)(2) for "impair[ment of] the value of plan assets in [his] individual account" after a fiduciary failed to follow the participant's instructions for managing his account. *Id. LaRue* thus makes clear that, in the defined-contribution context, plan injuries are redressed by monetary relief to "a participant's individual account." *Id.* And because "§ 502(a)(2) does not provide a remedy for individual injuries distinct from plan injuries," "appropriate relief" for a defined-contribution participant will necessarily be individualized, even though relief accrues to the plan. *Id.*

Second, the Ninth Circuit's rule creates serious Article III standing issues. In *Thole v. U.S. Bank N.A.*, 590 U.S. 538, 543 (2020), this Court held that a plan participant lacks standing to litigate "the interests of others" under § 502(a)(2) if she has not suffered an individualized "'injury in fact, thus giving' [her] 'a sufficiently concrete interest in the outcome'" of the lawsuit. *Id.* A participant like Pover has no concrete stake in losses to other people's retirement accounts and thus no standing to seek recovery for those losses. Allowing a participant to sue to recover others' losses transgresses the limits of the injury in fact that gave her standing. *See Cedeno*, 100 F.4th at 415 (Menashi, J., dissenting).

Third, the Ninth Circuit's rule transgresses traditional limits on the scope of equitable relief. Section 502(a)(2) allows a plan participant to seek for the plan "monetary 'compensation' for a loss resulting from a trustee's breach"—a form of equitable relief. *CIGNA Corp. v. Amara*, 563 U.S. 421, 441 (2011). As this Court recently made clear, the "maximum a court can provide" in equitable relief is "complete relief *to the plaintiffs before the court*." *Trump v. CASA, Inc.*, 606 U.S. 831, 852, 854 (2025). Allowing Pover to seek money for accounts she has no stake in would go beyond what is necessary to give her complete relief.

b. The contrary reasoning embraced by the Second, Third, Fifth, Sixth, Tenth, Eleventh, and now Ninth Circuits is unpersuasive. Those courts hold that, because a § 502(a)(2) plaintiff seeks relief for the plan, she must be able to remedy *all* injuries suffered by the plan in a single action. *See, e.g.*, App. 20a-23a. But that reasoning gives short shrift to § 502(a)(2)'s "appropriate relief" limitation; misreads this Court's guidance in *LaRue*; and whistles past the serious standing, scope-of-relief, and due-process problems created by allowing one participant to make financial decisions affecting other participants' accounts.

4. The question presented is exceptionally important. The norm in American litigation is that one person cannot litigate another's financial interests. *See, e.g.*, *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 364 (2011). While there are exceptions, such as class actions under Rule 23, those exceptions come with many constitutionally required safeguards, including notice to affected persons and the right to opt out, plus judicial scrutiny over whether the plaintiff is fit to represent others' interests, and a prohibition on settlement without judicial approval. The rule adopted by the Ninth Circuit and other courts vitiates those protections and allows a single defined-contribution-plan-participant plaintiff to make financial decisions affecting other participants' accounts without even notifying those participants or giving them a chance to opt out and pursue their own litigation.

The Court should grant cert and resolve whether ERISA really gives such breathtaking, unsupervised power to individual participants. This case is the ideal vehicle: The question was squarely litigated and decided below, and has significant implications for the relief Pover may seek going forward.

OPINIONS BELOW

The court of appeals' opinion (App. 1a-36a) is designated for publication, but had not yet been added to the *Federal Reporter* as of filing. The opinion is available at 2026 WL 2196257. The district court's opinion (App. 39a-67a) is unreported but available at 2024 WL 4116000.

JURISDICTION

1. The district court had jurisdiction under 29 U.S.C. § 1132(e) because Pover brings her claims under § 502(a)(2) (29 U.S.C. § 1132(a)(2)). That court also had jurisdiction under 28 U.S.C. § 1331 because this action arises under the laws of the United States.

2. The court of appeals had jurisdiction under 9 U.S.C. § 16(a)(1)(B) to review the district court's denial of Capital Group's motion to compel arbitration.

3. The court of appeals entered its judgment on July 30, 2026. This petition is timely filed on August 19, 2026. The Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Relevant statutory provisions, 29 U.S.C. §§ 1109 and 1132(a), are reproduced in the appendix. App. 68a-71a.

STATEMENT

A. Legal background

1. "ERISA is a comprehensive statute designed to promote the interests of employees and their beneficiaries in employee benefit plans." *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 137 (1990). ERISA sets "uniform standards, including rules concerning reporting, disclosure, and fiduciary responsibility, for both pension and welfare plans." *Id.*; *see* 29 U.S.C. §§ 1002(3), 1003(a). A "pension plan," like the one here, "provides retirement income to employees," while a "welfare plan" provides medical, disability, or other benefits. 29 U.S.C. § 1002(1), (2)(A), (2)(A)(i).

Covered pension plans come in two varieties. A "defined-benefit plan," once "the norm," *LaRue*, 552 U.S. at 255, "promises the participant a fixed level of retirement income," "typically based on the employee's years of service and compensation," *id.* at 250 n.1. A "defined-contribution plan," in contrast, "promises the participant the value of an individual account at retirement," determined based on "the amounts contributed to that account and the investment performance of those contributions." *Id.* Defined-contribution plans, like the plan here, now "dominate the retirement plan scene." *Id.* at 250, 255.

2. ERISA establishes a "carefully crafted and detailed enforcement scheme" for the rights and duties it creates. *Great-West Life & Annuity Insurance Co. v. Knudson*, 534 U.S. 204, 209 (2002). Relevant here, § 502(a)(2) provides that "[a] civil action may be brought … by the Secretary [of Labor], or by a participant, beneficiary or fiduciary for appropriate relief under" § 409. 29 U.S.C. § 1132(a)(2). Section 409, in turn, provides that a plan fiduciary "who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries" under ERISA "shall be personally liable to make good to such plan any losses to the plan resulting from each such breach." *Id.* § 1109(a). Monetary recovery under § 409 and § 502(a)(2) includes "restitution," a "remedy traditionally viewed as equitable." *Mertens v. Hewitt Associates*, 508 U.S. 248, 252, 255 (1993); *see also CIGNA*, 563 U.S. at 441. A fiduciary shall also "be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary." 29 U.S.C. § 1109(a).

Two of the Court's precedents clarify the scope of "appropriate relief" under §§ 502(a)(2) and 409 for defined-contribution-plan-participant plaintiffs. In *Russell*, which arose in the context of a defined-benefit plan, the Court held that "recovery for a violation of § 409 inures to the benefit of the plan as a whole." 473 U.S. at 140. Thus, § 502(a)(2) does not "authorize any relief" to individual participants; rather, it authorizes relief only to "the plan itself." *Id.* at 144. Over two decades later, in *LaRue*, the Court reaffirmed that "§ 502(a)(2) does not provide a remedy for individual injuries distinct from plan injuries." 552 U.S. at 256. But it clarified that, for defined-contribution-plan plaintiffs, § 502(a)(2) "does authorize recovery for fiduciary breaches that impair the value of plan assets in a participant's individual account." *Id.* For a defined-contribution plan, the Court explained, when a "fiduciary breach diminishes plan assets payable … only to persons tied to particular individual accounts, it creates the kind of harms that concerned the draftsmen of § 409." *Id.*

B. Factual and procedural background

1. Capital Group is a global asset-management organization handling about $2.2 trillion in assets. App. 41a. Capital Group sponsors a defined-contribution retirement plan with individual accounts for its employees, CA9 2-ER-135 § 2.1—the Plan—and Capital Group's U.S. Retirement Benefits Committee (Committee) administers it "in accordance with the Plan and ERISA," 2-ER-183 § 15.2(a). Accounts are funded by employees' contributions, 2-ER-124 § 1.13, 2-ER-127 § 1.21, 2-ER-132 § 1.35, 2-ER-136 § 3.2, 2-ER-143 § 4.1(a), 2-ER-145 § 5.1, and by Capital Group's voluntary contributions of 15% of each employee's compensation per year, 2-ER-143 § 4.1(b), 2-ER-145 § 5.2. For the Plan year ending in 2023, employees contributed a total of approximately $1.3 million to their accounts, and Capital Group contributed approximately $185.8 million. 2-ER-69, 2-ER-80.

Participants direct their accounts' investment by choosing to allocate their accounts into investment options available under the Plan. 2-ER-147 § 6.1. The total value of each participant's account depends on the participant's contributions, Capital Group's contributions, and the earnings from the investments she selects. App. 41a.

The Plan authorizes the Committee to make "amendments or modifications to the Plan." 2-ER-189 § 16.2. As of January 27, 2020, the Committee had amended the Plan to require "binding arbitration" of "[a]ny claim, controversy or alleged breach or violation of law that arises out of or relates in any way to the Plan." App. 74a. The Plan requires any arbitration be brought "on an individual basis only, and not on a class, collective or representative basis." *Id.* The Plan makes clear that the arbitration provision "is intended to make mandatory individual arbitration apply … to the maximum extent permissible under ERISA." App. 75a.

2. Respondent Cathy Pover is a former Capital Group employee and a Plan participant. App. 40a. Pover brought this putative class action against Capital Group and purported Plan fiduciaries under § 502(a)(2). She alleges that Defendants breached their fiduciary duties under § 409 by mismanaging or failing to remove five funds from the Plan (of which Pover invested in three). 3-ER-255-58 ¶¶ 3-10, 3-ER-329-36 ¶¶ 195-217. The complaint seeks an order declaring that Defendants breached their fiduciary duties and are personally liable; requiring Defendants to "make good to the Plan [all] losses"; removing Plan fiduciaries found to have breached their fiduciary duties under ERISA; reforming the Plan "to include only prudent investments"; and granting "such other equitable or remedial relief as the Court deems appropriate." 3-ER-336-38.

Citing the Plan's binding arbitration provision, Capital Group moved to compel arbitration under the Federal Arbitration Act. App. 40a. Pover objected, claiming that the arbitration provision was unenforceable because it restricted the remedies ERISA affords her by, among other things, restricting monetary relief to individualized recovery to her own account, not other participants' accounts. App. 48a.

The district court refused to compel arbitration, finding "that the Plan's arbitration agreement is unenforceable" because it contravenes ERISA. App. 37a, 51a. The court reasoned that Pover's putative class action is "necessarily a representative action seeking plan-wide recovery," as authorized by ERISA. App. 55a. But "in individualized arbitration," the court continued, "Pover could not bring any of her claims in a representative capacity" and "attain plan-wide relief," whether "plan-wide monetary relief," or "plan-wide equitable relief" like "removal of [Plan] fiduciaries" and "reformation of the Plan's assets." App. 55a-64a. The court acknowledged that *Dorman* held that "*LaRue* stands for the proposition that a defined contribution plan participant can bring a

§ 502(a)(2) claim for the plan losses in her own individual account," so a plan can require "arbitration on an individualized basis." *Dorman*, 780 F App'x at 514. But it found *Dorman* "not persuasive" and not "binding" and declined to follow it. App. 64a-65a.

3. A divided Ninth Circuit panel affirmed. In doing so, it "join[ed] those … sister circuits that have rejected the reading of *LaRue* that Capital Group advances," and held that defined-contribution-plan-participant plaintiffs can "recover for financial harm suffered plan-wide," including to other participants' accounts. App. 21a-22a.

a. The majority held that the Plan's arbitration provision is not enforceable because it "forbids Pover from asserting her rights under ERISA to sue as a representative of the plan for plan-wide relief." App. 5a. To reach that conclusion, the majority explained that it "must answer two questions": First, whether the arbitration provision "prevents Pover from bringing claims on behalf of the Plan" and, second, "whether ERISA limits a participant in a defined-contribution plan to seeking monetary recovery related only to her individual account." App. 18a-19a.

The majority first held that the arbitration provision impermissibly bars § 502(a)(2) actions. App. 19a-20a. It noted that "representative" can refer either "to a plaintiff's statutory authority to sue on behalf of an absent principal" or to "a plaintiff's representation of a group of potential claimants." App. 19a; *see Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639, 648 (2022). The court reiterated that § 502(a)(2) claims "are always 'representative'" in the principal-agent sense "because the participant-plaintiff 'seeks recovery only for injury done to the plan.'" App. 19a. And it recognized that "Capital Group argues that 'representative,' as used in this provision, refers only to collective actions, not to actions brought by a plan participant on behalf of the Plan." *Id.* But the majority rejected that argument, opining that the language in Capital Group's arbitration provision was similar to language in another arbitration provision that the court had held was an impermissible representative-action waiver under ERISA. App. 20a (citing *Platt v. Sodexo, S.A.*, 148 F.4th 709, 715 (9th Cir. 2025)).

The majority next addressed the scope of appropriate relief under § 502(a)(2) and § 409 and held that "*LaRue* did not … *limit* plaintiffs participating in defined-contribution plans to recovering losses suffered only by their individual accounts." App. 21a. Rather, the majority interpreted *LaRue* to allow defined-contribution-plan-participant plaintiffs to "bring a § 502(a)(2) claim to recover for financial harm suffered plan-wide *or* by individual accounts because both are plan injuries." *Id.* (emphasis added). In the majority's view, it did not make sense that § 502(a)(2) would authorize a plaintiff "to pursue only her individualized *pro rata* share of monetary recovery owed to the Plan while simultaneously obtaining equitable relief that would affect the entire Plan." *Id.* The majority believed that "ERISA does not allow" a court "to slice and dice individual plan participants' and beneficiaries' injuries" that way. *Id.* The court concluded that "Pover is entitled to bring an action on behalf of the Plan to recover any resulting losses" from the alleged fiduciary breaches—even losses that affect only other participants' accounts. App. 23a.

b. Judge VanDyke dissented. App. 24a-36a. He believed the panel "should not have even reached the issue of arbitrability" given that the parties "expressly agreed to allow an arbitrator to decide threshold" arbitrability issues. App. 24a. He also disagreed about how to interpret the Plan's arbitration provision. In his view, the ban on "'representative' suits," "[w]hen read in context," refers to "class action or collective 'representative' suits only, not principal-agent representative suits like section 502(a)(2) ERISA claims." *Id.* Thus, Judge VanDyke would have held that the arbitration provision "does not prevent Pover from bringing claims on behalf of the Plan in arbitration." *Id.* Judge VanDyke did not opine on the scope of appropriate relief under § 502(a)(2).

REASONS FOR GRANTING THE PETITION

The Ninth Circuit's decision deepens an acknowledged, now 1–7 split about the scope of relief available to defined-contribution plan participants under § 502(a)(2). The Fourth Circuit holds that such plaintiffs may seek monetary relief only for their individual retirement accounts. *Trauernicht*, 169 F.4th at 463, 468-69. By contrast, the Second, Third, Fifth, Sixth, Tenth, and Eleventh Circuits, joined here now by the Ninth, have held that a plan participant may seek recovery for losses to other participants' individual accounts. *Cedeno*, 100 F.4th at 390 (2d Cir.); *Henry*, 72 F.4th at 507 (3d Cir.); *Parrott*, 167 F.4th at 739 (5th Cir.); *Parker*, 114 F.4th at 801 (6th Cir.); *Harrison*, 59 F.4th at 1107 (10th Cir.); *Williams*, 161 F.4th at 1322 (11th Cir.); App. 20a-23a. The split is acknowledged and entrenched—indeed, the Fourth Circuit recently denied rehearing en banc in *Trauernicht*. Only this Court can resolve the disagreement.

The Ninth Circuit's rule is wrong. This Court's precedents and bedrock Article III standing and equitable-relief principles make clear that a defined-contribution-plan-participant plaintiff may seek only the relief necessary to remedy the injury to her own account. Absent resort to the class-action device, she cannot represent other plan participants, as this Court's decision in *CASA* should have made clear. 606 U.S. at 852. The Ninth Circuit's contrary rule misreads this Court's precedents interpreting § 502(a)(2) and ignores the serious due-process problems, flagged by Judge Niemeyer's *Trauernicht* opinion, created by allowing one participant to make financial decisions, without procedural safeguards, for other participants.

The question presented is important and this case is the right vehicle for resolving it. Allowing defined-contribution-plan-participant plaintiffs to seek relief for other participants' accounts without affording those absent participants notice and an opportunity to opt out, or meaningful judicial scrutiny of the representation, is contrary to fundamental due-process principles. The Court should intervene to ensure those principles aren't given short shrift in ERISA litigation. This case is an excellent vehicle to address this issue because the question presented was squarely litigated and decided below and will determine the scope of relief Pover can seek without class certification. Put simply, if the Court does not intervene and reverse, Pover, and others like her, have effectively gained class certification the moment they file a complaint.

The Court should grant review.

I. The courts of appeals have split 1–7 on the scope of "appropriate relief" for § 502(a)(2) defined-contribution-plan-participant plaintiffs.

The Ninth Circuit deepened a circuit split over the appropriate scope of relief for defined-contribution-plan participants asserting claims under §§ 502(a)(2) and 409. Only this Court can resolve the split.

A. The Fourth Circuit holds that §§ 502(a)(2) and 409 do not authorize defined-contribution-plan-participant plaintiffs to seek monetary recovery to other participants' accounts.

The Fourth Circuit holds that the only "appropriate relief" for "§ 502(a)(2) claims brought in the context of a defined contribution plan" is recovery for losses sustained by the plaintiff's "individual retirement account"—not losses to other participants' accounts. *Trauernicht*, 169 F.4th at 463, 468-69.

In *Trauernicht*, defined-contribution-plan participants brought a putative class action, alleging that various funds "in the menu of investment options" the plan offered participants were "imprudent." *Id.* at 467. The plaintiffs claimed that the plan was "entitled to recover under ERISA § 502(a)(2) monetary losses for each plan participant's account." *Id.* The district court granted the plaintiffs' motion to certify a mandatory class under Rule 23(b)(1). *Id.* at 466-67. The court thought certification was appropriate because "the lawsuit's resolution 'would, as a practical matter, be dispositive of the interests of the other participants' claims." *Id.* at 465 (citing Fed. R. Civ. P. 23(b)(1)(B)). That was because, in the district court's view, § 502(a)(2) claims do not seek "*individualized monetary damages*" but rather seek recovery "on behalf of the Plan for recovery to the Plan as a whole." *Id.* at 465-66.

The Fourth Circuit reversed. Analyzing this Court's decisions in *Russell* and *LaRue*, Judge Niemeyer's opinion first held that the only "appropriate" monetary relief available to a defined-contribution-plan-participant plaintiff under § 502(a)(2) "would be the payment" for losses "to his individual retirement account." *Id.* at 468-69. "While this claim for relief would still be an action '*on behalf of the plan* to obtain recovery for losses *sustained by the plan* because of breaches of fiduciary duties,'" the court explained, "the scope of relief would be tailored to that necessary to redress fully the injury to the plan assets *held in the plaintiff's individual account*, thereby allowing other affected participants to bring similar § 502(a)(2) claims should they choose to do so." *Id.* at 469. The court acknowledged that other courts of appeals had held "that even with respect to defined contribution plans, ERISA § 502(a)(2) 'contemplates plan-wide remedies, and only plan-wide remedies, to address certain breaches of fiduciary duties by plan fiduciaries.'" *Id.* (citing *Cedeno*, 100 F.4th at 396). But the court declined to follow those decisions. *Id.* Instead, it agreed with *Dorman* that "[a]lthough § 502(a)(2) claims seek relief on behalf of a plan, … such claims are inherently individualized when brought in the context of a defined contribution plan like that at issue." *Id.* (quoting *Dorman*, 780 F. App'x at 514).

The court next explained that its holding about the scope of relief available to § 502(a)(2) plaintiffs had two important consequences. *First*, the plaintiffs could not maintain a mandatory class action under Rule 23(b)(1) because their claims were effectively for individualized monetary relief, which cannot be the subject of a Rule 23(b)(1) class action. *Id.* at 471-72. *Second*, the plaintiffs could not maintain a class action under any of Rule 23's class-action vehicles because not every individual account in the ERISA plan lost money, meaning the putative class members didn't suffer the same injury, as necessary to satisfy Rule 23(a)(2)'s commonality requirement. *Id.* at 472-74.

Thus, in the Fourth Circuit, a defined-contribution-plan participant alleging that a plan administrator breached fiduciary duties can use § 502(a)(2) to recover only the losses to his individual retirement account. That participant cannot make himself the plan's ad hoc trustee, or pursue losses supposedly suffered by other participants' retirement accounts.

B. Seven circuits hold that § 502(a)(2) allows defined-contribution plaintiffs to seek monetary recovery to other participants' accounts.

Disagreeing with the Fourth Circuit, the Second, Third, Fifth, Sixth, Ninth, Tenth, and Eleventh Circuits have held that a defined-contribution-plan-participant plaintiff can use § 502(a)(2) to recover losses to other plan participants' accounts—not just her own.

1. Second Circuit. In *Cedeno*, a defined-contribution-plan-participant plaintiff brought suit under § 502(a)(2), alleging that the plan administrator breached its fiduciary duties by overpaying for certain share purchases to enrich third parties. 100 F.4th at 390-91. The defendants moved to compel arbitration under a clause in the ERISA plan documents that contained language prohibiting plaintiffs from recovering relief for other plan participants' accounts. *Id.* at 392. The district court denied the motion. *Id.* at 393.

The Second Circuit affirmed. Citing this Court's statement in *LaRue* that "Section 502(a)(2) provides no remedy for 'individual injuries distinct from plan injuries,'" the court first held that § 502(a)(2) "contemplates plan-wide remedies, and only plan-wide remedies," for § 409 violations. *Id.* at 396-99. The court thus reasoned that the arbitration clause was unenforceable because it prevented plan participants from recovering plan-wide remedies—the only remedies available under § 502(a)(2)—and thus effectively waived the participants' ERISA rights. *Id.* at 400.

Judge Menashi dissented. Presaging what the Fourth Circuit would eventually hold in *Trauernicht*, and relying on this Court's decision in *Thole*, Judge Menashi explained that a "participant in a defined-contribution pension plan … may proceed under Sections 502(a)(2) and 409(a) to seek relief that benefits only his or her individual account within the plan." *Id.* at 410. That is so, Judge Menashi explained, because individual plan participants have Article III standing to seek recovery only for their own injuries, and ERISA doesn't allow private plaintiffs to act as official representatives for the plan. *Id.* at 412. Judge Menashi thus concluded that requiring a plaintiff to sue only for injuries to his own retirement account wouldn't deprive the plaintiff of any "appropriate relief" guaranteed by § 502(a)(2). *Id.* at 413-16.

2. Third, Fifth, Sixth, Tenth, and Eleventh Circuits. Five other circuits have reached the same result as the Second Circuit in similar cases using similar reasoning. In each case, a defined-contribution plaintiff brought a § 502(a)(2) claim alleging that the plan administrator (and sometimes others) breached fiduciary duties owed to the plan by mismanaging the plan's assents. *See Henry*, 72 F.4th at 503; *Parrott*, 167 F.4th at 733; *Parker*, 114 F.4th at 791; *Harrison*, 59 F.4th at 1095; *Williams*, 161 F.4th at 1316. In each case, the defendant moved to compel arbitration under dispute-resolution language in the plan documents that required participants to arbitrate their claims individually, without seeking relief that would impact other participants' accounts.

In each case, the court held that the arbitration clauses were invalid because §§ 502(a)(2) and 409 allow individual defined-contribution-plan participants to seek recovery on behalf of the plan for other participants' retirement accounts, meaning that arbitration provisions limiting a § 502(a)(2) plaintiff to recovering losses attributable to his own account would impermissibly waive remedies that ERISA allows. The Third Circuit in *Henry*, for example, held that § 502(a)(2) plaintiffs must be able to recover "all plan losses," which "would necessarily result in monetary relief to non-party plan participants." 72 F.4th at 507. The Fifth Circuit in *Parrott* held that under § 502(a)(2), a defined-contribution "plan participant can seek to recover all losses and reclaim all profits that resulted from the breach of fiduciary duties"—even those unconnected to losses from the plaintiff's retirement account. 167 F.4th at 739. The Sixth Circuit in *Parker* held that "sections 409(a) and 502(a)(2) … allow participants to sue on behalf of a plan for remedies that accrue to the plan." 114 F.4th at 801. The Tenth Circuit in *Harrison* held that § 502(a)(2) allows defined-contribution plaintiffs to seek to "restore all the losses resulting from the fiduciary breaches and to disgorge all profits made through use of assets of the [plan]." 59 F.4th at 1107. And the Eleventh Circuit in *Williams* held that § 502(a)(2) guaranteed defined-contribution plaintiffs the right to seek "plan-wide relief." 161 F.4th at 1321.

3. Ninth Circuit. The Ninth Circuit below expressly joined these six circuits in holding that §§ 502(a)(2) and 409 allow individual defined-contribution plan participants to seek plan-wide relief to other participants' accounts. App. 20a-23a. Indeed, the Court cited and noted its agreement with the Second, Sixth, and Eleventh Circuits. App. 21a-22a.

That decision has enormous implications for this case and any other § 502(a)(2) case brought within the Ninth Circuit. If the Ninth Circuit had adopted the Fourth Circuit's rule from *Trauernicht*, Pover would be limited to seeking to recover only the alleged losses sustained by her individual retirement account. But because the court instead adopted the Second, Third, Fifth, Sixth, Tenth, and Eleventh Circuits' approach, she will be allowed to seek relief on behalf of other participants' individual accounts. This case thus squarely implicates the important question that has divided eight courts of appeals.

C. Only this Court can resolve the conflict.

Only this Court can resolve the circuit split and ensure that § 502(a)(2) is applied the same way nationwide. The courts of appeals won't resolve the split on their own. The Fourth Circuit denied rehearing en banc in *Trauernicht*, cementing the split. *See* Order Denying Rehearing, *Trauernicht v. Genworth Financial Inc.*, 169 F.4th 459 (4th Cir. 2026) (No. 24-1880). And Capital Group brought both *Trauernicht* and the rehearing denial to the Ninth Circuit's attention. CA9 Docs. 71, 73. No court of appeals has any incentive to depart from its precedent because those courts could not eliminate the split with the Fourth Circuit. That leaves only this Court. The Court should grant review.

II. The majority view, which the Ninth Circuit adopted here, is wrong.

The Ninth Circuit's decision is wrong. The Fourth Circuit is correct that "appropriate relief" for a defined-contribution-plan-participant plaintiff does not include monetary recovery to *other* participants' accounts. The decisions on the other side of the split misinterpret *Russell* and *LaRue*, depart from well-established equitable principles, and raise serious Article III standing and due-process concerns.

A. "Appropriate relief" for a defined-contribution-plan-participant plaintiff does not include monetary recovery to other participants' accounts.

A defined-contribution-plan participant can seek monetary recovery under §§ 502(a)(2) and 409 only to her individual account. That conclusion follows from *LaRue*'s clarifications that §§ 409 and 502(a)(2) provide for individualized relief in the defined-contribution context, even if they do not in the defined-benefit context. Indeed, a defined-contribution-plan-participant plaintiff does not have standing to seek monetary recovery to another participant's account, as this Court's reasoning in *Thole* shows. The Court's recent holding on the scope of appropriate equitable relief in *CASA* underscores that "appropriate relief" under ERISA does not include recovery to and for non-party participants' accounts.

1. *Russell*'s and *LaRue*'s discussions of the scope of "appropriate relief" under §§ 409 and 502(a)(2) show that, in the context of a defined-contribution plan, "appropriate relief" includes monetary recovery to a plaintiff-participant's individual retirement account, but not to *other* participants' accounts.

In *Russell*, the Court held that §§ 409 and 502(a)(2) do not allow a participant in a defined-benefit plan to recover consequential damages for a delay in processing her claim. 473 U.S. at 144. In a defined-benefit plan, investment decisions necessarily have ramifications across participants' accounts because alleged fiduciary breaches can affect the plan's solvency to pay out the promised defined benefits. *Id.* The Court thus reasoned that § 409 was intended to "protect the entire plan," not "the rights of an individual beneficiary." *Id.* at 142. And the damage caused by that delay would not have been relief for the "entire plan." *Id. Russell* thus holds that § 502(a)(2) does not "authorize any relief except for [relief to] the plan itself." *Id.* at 144.

LaRue reaffirmed that "appropriate relief" under § 502(a)(2) is awarded only to the plan, not a participant. 552 U.S. at 256. But it also established that, in the context of a defined-contribution plan, "appropriate relief" means "recovery for fiduciary breaches" to "a participant's individual account." *Id.* The Court held that a participant could seek relief under § 502(a)(2) for "impair[ment of] the value of plan assets in [his] individual account" after a plan fiduciary failed to follow the participant's instructions for managing his account. *Id. LaRue* thus makes clear that, in the defined-contribution context, plan injuries are redressed by monetary relief to "a participant's individual account." *Id.* And because "§ 502(a)(2) does not provide a remedy for individual injuries distinct from plan injuries," "appropriate relief" for an individual defined-contribution participant will necessarily be individualized, even though the relief accrues to the plan. *Id.*

That makes sense, given the different natures of defined-contribution plans and defined-benefit plans. As *LaRue* explained, individualized relief is not appropriate for a defined-benefit-plan-participant plaintiff under § 502(a)(2) because a fiduciary's breach "will not affect an individual's entitlement to a defined benefit unless it creates or enhances the risk of default by the entire plan." 552 U.S. at 255. Thus, in the defined-benefit context, appropriate monetary relief means recovery of *all* alleged losses to the "entire plan," because that recovery is necessary to ensure the plan's solvency so that the participant plaintiff will be paid her fixed benefit. *Russell*, 473 U.S. at 142; *see Trauernicht*, 169 F.4th at 467-68. In a defined-contribution plan, on the other hand, a participant's benefits depend solely on the value of her individual account, so an injury occurs to the plan if a breach of fiduciary duty reduces the value "tied to particular individual accounts." *LaRue*, 552 U.S. at 255-56. The amount in *other* participants' accounts (and whether the plan can pay it out) has no bearing on whether the participant-plaintiff's account reflects the correct amount (and whether the plan can pay it out).

The upshot, as the Court explained in *LaRue*, is that "references to the 'entire plan' in *Russell* … are beside the point in the defined contribution context." *Id.* "*Russell*'s emphasis on protecting the 'entire plan' from fiduciary misconduct reflects the former landscape of employee benefit plans" when defined-benefit plans predominated. *Id.* at 254. But with the predominance of defined-contribution plans, "[t]hat landscape" "changed." *Id.* The Court could not have been more clear: "the 'entire plan' language from *Russell*, which appears nowhere in § 409 or § 502(a)(2), *does not apply to defined contribution plans*." *Id.* at 256 (emphasis added).

Put simply, the "appropriate relief" that redresses an injury to a defined-contribution-plan-participant plaintiff's *individual* retirement account includes monetary relief only *to that account*.

2. Only that understanding of the scope of "appropriate relief" under §§ 502(a)(2) and 409 for a defined-contribution-plan-participant plaintiff comports with Article III standing principles and this Court's decision in *Thole*.

In *Thole*, the Court held that plan participants lack standing to litigate "the interests of others" under § 502(a)(2) if those participants have not suffered an individualized "injury in fact, thus giving them 'a sufficiently concrete interest in the outcome'" of the lawsuit. 590 U.S. at 543. The Court reasoned that the defined-benefit-plan-participant plaintiffs there had "no concrete stake" in the lawsuit, and thus suffered no injury, where the suit's outcome "would not change the plaintiffs' monthly pension benefits." *Id.* at 547.

By analogy, defined-contribution-plan-participant plaintiffs have no concrete stake in a lawsuit, and thus lack standing, to the extent the outcome wouldn't affect their individual accounts. Rather, a defined-contribution participant sues to recover to the plan "for his own injuries" based on his "right to direct the management of the assets in his individual account." *Cedeno*, 100 F.4th at 413-14 (Menashi, J., dissenting). That "individual injury is not 'distinct' from an injury to the plan," but it does not allow the participant to sue to recover for injury to *other participants'* accounts—injuries that are not the plaintiff's. *Id.* at 415 (quoting *LaRue*, 552 U.S. at 256).

Defined-contribution-plan-participant plaintiffs thus have Article III standing to seek redress only for their own injuries. Indeed, as the Court stressed in *Thole*, plan participants "possess no equitable or property interest in the plan" and "have not been legally or contractually appointed to represent the plan." 590

U.S. at 543-44. Their interest in the case thus extends only to their own injuries. And "a plaintiff's remedy must be 'limited to the inadequacy that produced [her] injury in fact.'" *Gill v. Whitford*, 585 U.S. 48, 66 (2018). So if the injury that produces a defined-contribution-plan-participant plaintiff's injury in fact is the mismanagement of assets in her individual account, the remedy must be limited to redressing inadequacies in that individual account.

In contrast, "appropriate relief" could be broader for a different plaintiff under § 502(a)(2) with a plan-wide interest in a defined-contribution plan. Take the Secretary of Labor, who is also authorized to bring an action under § 502(a)(2). *Supra* p. 8. The Secretary, as government regulator, could have Article III standing to seek recovery across participants' individual retirement accounts. Congress thus contemplated that the scope of "appropriate relief" under § 502(a)(2) would depend on the plaintiff, plan type, and specific injury that the plaintiff alleged. As the Court has explained in interpreting "appropriate relief" in the Religious Freedom Restoration Act, "'[a]ppropriate relief' is open-ended" because "the word 'appropriate' is inherently context dependent." *Sossamon v. Texas*, 563 U.S. 277, 286 (2011).

3. *CASA*'s recent discussion of courts' limited power to grant equitable relief absent clear statutory authority underscores that "appropriate relief" for a defined-contribution-plan-participant plaintiff does not include monetary recovery to or for other participants' accounts. In *CASA*, the Court made clear that the "maximum a court can provide" in equitable relief, under traditional, well-established equitable principles, is "complete relief *to the plaintiffs before the court*." 606 U.S. at 852, 854. Courts may neither "grant relief to" nor bind "nonparties." *Id.* at 844. And a court may not award relief that "would not render [*the plaintiff's*] relief any more complete." *Id.* at 853. Rule 23 is an exception to those rules, but it contains a number of "procedural protections" that litigants cannot "circumvent" by failing to comply with both Rule 23 and traditional equitable principles. *Id.* at 849-50.

ERISA incorporates those traditional equitable principles. Monetary recovery under §§ 409 and 502(a)(2) "for a loss resulting from a trustee's breach" is a form of equitable relief. *CIGNA*, 563 U.S. at 441; *see also Mertens*, 508 U.S. at 252, 255. And "[w]hen Congress empowers courts to grant equitable relief, there is a strong presumption that courts will exercise that authority in a manner consistent with traditional principles of equity." *Starbucks Corp. v. McKinney*, 602 U.S. 339, 345 (2024). Nothing in ERISA rebuts that presumption. To the contrary, § 502(a)(2)'s reference to "appropriate relief" is "a statement that traditional rules govern." *Id.* at 347.

"Appropriate relief" for a defined-contribution-plan-participant plaintiff means only what is necessary to make her whole. Although § 502(a)(2) recovery goes to the plan, "the cause of action belong[s] to the individual plaintiff." *Munro v. University of Southern California*, 896 F.3d 1088, 1093 (9th Cir. 2018). Thus, anything beyond what is necessary to redress that plaintiff's injury would violate the complete-relief principle and impermissibly bind participants not before the Court. And allowing monetary recovery to other defined-contribution-plan participants' accounts wouldn't make an individual plaintiff's recovery "any more complete," *CASA*, 606 U.S. at 853.

B. The contrary reasoning of the majority position lacks merit.

The reasoning of the Second, Third, Fifth, Sixth, Ninth, Tenth, and Eleventh Circuits lacks merit. Those courts misread *Russell* and *LaRue* and fail to grapple with the fundamental differences between defined-benefit and defined-contribution plans. They misunderstand the nature of equitable relief, as clarified in *CASA*, and how those principles and the different plans relate to Article III standing. And their decisions—which allow one individual to litigate the ERISA rights of thousands of other plan participants without any of Rule 23's protections—raise significant due-process concerns for plans and participants alike.

1. The Ninth Circuit's decision here, like decisions from other circuits on its side of the split, misunderstands *Russell* and *LaRue*. Those courts' reasoning does not make sense in light of the Court's clear explanation in *LaRue* that *Russell*'s statement, that recovery under § 502(a)(2) must be for the "entire plan," "does not apply to defined contribution plans." 552 U.S. at 255-56.

The Sixth Circuit, for example, takes *LaRue*'s holding to mean that *LaRue* "broadens, rather than limits, the relief available under § 502(a)(2)" because it shows that a "claim may be brought on behalf of a 'plan,' even if the ultimate relief may be individualized." *Parker*, 114 F.4th at 795; *see also Cedeno*, 100 F.4th at 404; App. 21a. In other words, circuits on the majority side of the split hold that a defined-contribution-plan-participant plaintiff can *either* seek to recover only to her account or to other participants' accounts depending on what injury she alleges.

That reasoning fails to grapple with the fact that the injury for a defined-contribution-plan-participant plaintiff alleging an impairment in her own account will *always* be inherently individualized. As *LaRue* explained, the alleged injury for *defined-benefit*-plan-participant plaintiffs is that a fiduciary breach "threaten[s] the solvency of the entire plan" and thus risks "reduc[ing] benefits below the amount that participants would otherwise receive." 552 U.S. at 255-56; *supra* pp. 22-25. But the injury for *defined-contribution*-plan-participant plaintiffs is always limited to "impair[ment]" of the value of the plaintiffs' "particular individual accounts," because those plaintiffs have no interest in the plan beyond their own account values. *LaRue*, 552 U.S. at 256.

The Ninth Circuit here failed to follow *LaRue* to that logical conclusion. It explained that "[t]he analytical difference between *Russell* and *LaRue* … turned on the nature of the injury suffered on account of the plan type, not on the plan type itself." App. 22a. But it failed to realize that the "nature of the injury" for a defined-contribution-plan-participant plaintiff is *always* individualized "on account of the plan type."

2. The Ninth Circuit also held that § 502(a)(2) cannot reasonably "authorize[]" Pover "to pursue only her individualized *pro rata* share of monetary recovery owed to the Plan while simultaneously obtaining equitable relief that would affect the entire Plan." App. 21a; *see Cedeno*, 100 F.4th at 405. That reasoning lacks merit. The key principle is that the "maximum a court can provide" in equitable relief is "complete relief *to the plaintiffs before the court*." *CASA*, 606 U.S. at 852, 854. An equitable remedy—like removing a plan fiduciary—may "sometimes advantage nonparties," but it does so "only incidentally"

Id. at 851. Thus, a defined-contribution-plan-participant plaintiff can receive any appropriate relief necessary to fully redress *her* injuries—but not more—no matter whether that relief affects other participants. But monetary recovery to other participants' accounts is not necessary to redress *Pover's* alleged injury.

3. Finally, the circuit majority's approach raises serious due-process concerns, as *Trauernicht* explains. 169 F.4th at 472. In the majority's view, ERISA allows a single defined-contribution-plan-participant plaintiff to litigate on behalf of *all* participants' accounts, without any of the class-action protections under Rule 23—which means participants could not opt out and might not even receive notice of the lawsuit. That violates our "our deep-rooted historic tradition that everyone should have his own day in court." *Id.* (quoting *Ortiz v. Fireboard Corp.*, 527 U.S. 815, 846 (1999)).

And the majority's interpretation of ERISA fails under basic principles of statutory construction. The Court has "observed repeatedly that ERISA is a 'comprehensive and reticulated statute, the product of a decade of congressional study.'" *Great-West*, 534 U.S. at 209. And it has thus been "especially 'reluctant to tamper with the enforcement scheme' embodied in the statute." *Id.* But in at least the Second Circuit's view, Congress's enforcement scheme in § 502(a)(2) raises such glaring due-process deficiencies that courts must impose an extratextual duty—perhaps necessitated by the Constitution's due-process guarantee, but contained nowhere in ERISA's text—"requiring a plaintiff take adequate steps" (whatever that means) "to properly act in such a representative capacity" for other participants under § 502(a)(2). *Cedeno*, 100

F.4th at 398. Congress would not have drafted a "comprehensive and reticulated" enforcement scheme, *Great-West*, 534 U.S. at 209, that allowed plan participants to "circumvent" Rule 23, *CASA*, 606 U.S. at 849-50, to act as *de facto* uncertified class representatives for others in the plan without providing for basic due-process protections. *See infra* pp. 31-34. The Fourth Circuit's holding that § 502(a)(2) doesn't allow individual participants to sue to recover money for other participants' accounts avoids that due-process problem—yet more evidence that it is correct.

III. The question presented is exceptionally important, and this case is the ideal vehicle for resolving it.

A. The question presented has critical implications for the due-process rights of ERISA plan participants.

Representative litigation is the exception, not the norm, in our legal system. As discussed above (at 30), litigation affecting absent parties' financial interests contravenes "our 'deep-rooted historical tradition that everyone should have his own day in court.'" *Martin v. Wilks*, 490 U.S. 755, 762 (1989). That expectation flows from "the due process 'principle of general application in Anglo-American jurisprudence that one is not bound by a judgment *in personam* in a litigation in which he is not designated as a party'" except "in certain limited circumstances" where "his interests" are "adequately represented by someone with the same interests who is a party." *Ortiz*, 527 U.S. at 846. Even then, due process generally requires that absent class members "with individual monetary claims" have the opportunity "to decide *for themselves*" whether to allow others to litigate their claims. *Wal-*

Mart, 564 U.S. at 364. That's why Rule 23(c)(2)(B) requires courts overseeing damages class actions to ensure that class members receive notice of their right to opt out of the class and pursue their own claims.

The Ninth Circuit's decision throws those constitutionally required protections out the window for § 502(a)(2) cases. Under the Ninth Circuit's rule, a single defined-contribution-plan participant can make litigation decisions affecting the individual retirement accounts of other participants without satisfying any of Rule 23's due-process protections. The plaintiff doesn't need to prove she "will fairly and adequately protect the interests" of other participants. *See* Fed. R. Civ. P. 23(a)(4); *Hansberry v. Lee*, 311 U.S. 32, 40 (1940) (due process requires adequacy of representation). She doesn't have to give other participants notice of the lawsuit or an opportunity to opt out. *See* Fed. R. Civ. P. 23(c)(2)(B); *Wal-Mart*, 564 U.S. at 363 (those protections required). She can settle the case in a way "that would disproportionately, or even exclusively, benefit her" at the expense of other participants without the judicial scrutiny required by Rule 23(e)(1)(A). *Coan v. Kaufman*, 457 F.3d 250, 261 (2d Cir. 2006). And if she loses—on behalf of the plan—absent plan participants will lose their own opportunity to bring § 502(a)(2) claims without ever knowing those claims were at stake. *See Richards v. Jefferson County*, 517 U.S. 793, 801-02 (1996) (issue preclusion without prior notice raises due-process concerns). As the Fourth Circuit recognized, none of that comports with bedrock due-process principles, which must inform what constitutes "appropriate relief" under § 502(a)(2). *See Trauernicht*, 169 F.4th at 468.

Most of the courts of appeals that have allowed a single ERISA plan participant to seek recovery to other participants' individual retirement accounts have failed to even acknowledge the due-process problems that rule creates. And the one exception—the Second Circuit—failed to take the issue seriously. While the Second Circuit "requires that a participant seeking relief under Section 502(a)(2)" to "take adequate steps under the circumstances properly to act in a 'representative capacity on behalf of the plan,'" and suggests that participants satisfy Rule 23 without seeking class certification, it has stopped short of requiring any of Rule 23's safeguards. *See Cedeno*, 100 F.4th at 403. As Judge Menashi has explained, the Second Circuit's approach—that is, seven circuits' approach—"authorize[s] an *ersatz* class action that lacks the 'procedural safeguards' [courts] would require if [a participant] were proceeding under Rule 23." *Id.* at 416 (Menashi, J., dissenting). Those concerns are especially significant given the "well documented … increasing risk of ERISA litigation," "with all-time highs in 2024." Department of Labor, *Fiduciary Duties in Selecting Designated Investment Alternatives*, 91 Fed. Reg. 16,088, 16,106 (Mar. 31, 2026).

Allowing one person to make decisions about other people's money without meaningful judicial oversight or due-process safeguards is anathema to our legal tradition. And the due-process concerns are especially pronounced here. Pover claims that Plan fiduciaries breached ERISA duties by including five allegedly underperforming funds in the Plan—even though Pover never even invested in two of them. *Supra* pp. 10-11. Pover thus has no personal incentive to represent individuals who did invest in those two funds. And Pover's incentives for proving whether the three funds she *did* invest in actually underperformed appropriate comparators will diverge from other participants' incentives, because other participants invested in those funds over different periods, when the funds may have performed differently. Yet the Ninth Circuit's holding purports to allow Pover to proceed without due-process protections or Rule 23 scrutiny.

The Court regularly grants review to ensure that courts and plaintiffs do not trample on the rights of absent parties. *See, e.g.*, *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204 (2024) (bankruptcy court could not release absent parties' claims against non-debtors); *United States v. Sanchez-Gomez*, 584 U.S. 381 (2018) (courts may not recognize de facto class actions outside of Rule 23's strictures); *Wal-Mart*, 564 U.S. at 364 (absent class members must have the right to opt out of damages classes). The Court should grant review here to correct the courts of appeals' egregious departure from settled due-process principles.

B. This case is an ideal vehicle for resolving the question presented.

The parties litigated below whether Pover can seek monetary relief for other plan participants' individual retirement accounts, or just her own. The Ninth Circuit squarely decided the issue. That holding not only was a basis for refusing to compel arbitration; it also has significant implications going forward for the litigation, which will now proceed on the premise that Pover can act as a *de facto*, uncertified class representative making decisions about other plan participants' money with no Rule 23 safeguards. There is no need for further percolation. Eight circuits have addressed the question presented in published opinions, and Judge Niemeyer's Fourth Circuit opinion, Judge Menashi's Second Circuit dissent, and an earlier Ninth Circuit decision have all split from the majority approach. This case thus presents an excellent opportunity to decide whether § 502(a)(2) permits plan participants to sue to recover losses to other participants' retirement accounts. Not taking this case threatens to deprive the issue of definitive resolution unless another case reaches final judgment—an impossible situation given the enormous pressure that a rule amounting to automatic class certification puts on defendants to settle. *See Laboratory Corp. of America Holdings v. Davis*, 605 U.S. 327, 333 (2025) (Kavanaugh, J., dissenting).

CONCLUSION

The Court should grant the petition.

Respectfully submitted.

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