

IN THE SUPREME COURT OF THE UNITED STATES

ANDREW KUSTAS,

Applicant,

v.

ANTHONY MAFFEO,

Respondent.

**EMERGENCY APPLICATION TO STAY THE MANDATE OF THE UNITED STATES
COURT OF APPEALS FOR THE FIRST CIRCUIT PENDING THE FILING AND
DISPOSITION OF A PETITION FOR A WRIT OF CERTIORARI**

First Circuit Nos. 25-1057 and 25-1077

To the Honorable Ketanji Brown Jackson, Associate Justice of the Supreme Court of the United States and Circuit Justice for the First Circuit:

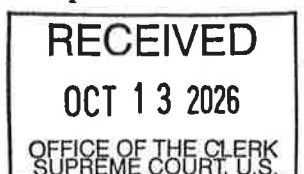
Applicant Andrew Kustas, proceeding pro se, respectfully applies pursuant to 28 U.S.C. § 2101(f) and Rules 22 and 23 of this Court for an order staying the mandate of the United States Court of Appeals for the First Circuit pending Applicant's timely filing and this Court's disposition of a petition for a writ of certiorari.

The First Circuit entered judgment on July 16, 2026, affirming a judgment requiring Applicant to pay Respondent \$29,701.89, plus postjudgment interest. Applicant timely filed a petition for panel rehearing and rehearing en banc on July 27, 2026. On September 28, 2026, the panel denied rehearing, and a majority of the non-recused active judges did not vote to rehear the case en banc.

Applicant then asked the First Circuit to stay issuance of its mandate while he sought Supreme Court review. On October 7, 2026, the First Circuit denied that request under Federal Rule of Appellate Procedure 41(d) and First Circuit Local Rule 41.0.

This application seeks temporary preservation of the status quo while Applicant timely seeks review by this Court.

The circumstances are unusual. In affirming the damages judgment, the First Circuit expressly stated that it had "**substantial doubts about the method used by the district court to calculate the award of damages**" and explained that the method did not "**reflect or capture the comparison**



between actual and expected performance" that ordinarily defines a damages inquiry premised on lost profits or opportunity cost.

That actual-versus-expected comparison was not absent from Applicant's appeal. Applicant's opening brief expressly argued that damages should be determined by comparing expected performance with delivered performance during the same relevant period. Applicant's rehearing petition then specifically argued that the panel had misunderstood the nature of that challenge and identified the portions of the opening brief in which the methodology and starting-value issues had been raised.

Applicant respectfully requests a limited stay so that this Court may have a meaningful opportunity to consider his forthcoming petition for writ of certiorari before enforcement proceeds on a judgment whose damages methodology the Court of Appeals itself seriously questioned.

OPINIONS AND ORDERS BELOW

The judgment of the United States Court of Appeals for the First Circuit was entered July 16, 2026.

Applicant filed a timely petition for panel rehearing and rehearing en banc on July 27, 2026. On September 28, 2026, the panel denied rehearing, and the petition for rehearing en banc was denied after a majority of the non-recused active judges did not vote to rehear the case.

On October 7, 2026, the First Circuit denied Applicant's pro se motion to stay issuance of the mandate, citing Federal Rule of Appellate Procedure 41(d) and First Circuit Local Rule 41.0.

JURISDICTION

This Court has jurisdiction to review the judgment of the First Circuit under 28 U.S.C. § 1254(1). This Court has authority under 28 U.S.C. § 2101(f) and Supreme Court Rule 23 to stay enforcement of a judgment sought to be reviewed by this Court.

Applicant timely sought rehearing, which was denied September 28, 2026. Applicant intends to file a timely petition for writ of certiorari.

STATEMENT OF THE CASE

Respondent brought an action against Applicant in the United States District Court for the District of Massachusetts concerning investments managed by Applicant. Following a civil bench trial, the district court found Applicant liable for breach of contract and ultimately awarded Respondent \$29,701.89 plus postjudgment interest.

Applicant did not challenge the finding of liability in his appeal. He challenged the calculation of damages.

Applicant's opening brief framed the first issue as whether the district court improperly calculated the damages award. It specifically argued that damages should equal the difference between the performance expected and the performance actually delivered during the relevant contract period.

Applicant explained:

"Damages arising from breach of contract in this case are properly awarded to the Plaintiff in the amount of performance expected minus performance delivered during the contract period for which there is evidence of."

Applicant further argued that actual and expected performance should be measured using corresponding starting and ending dates, and challenged the district court's use of a later 2017 cost-basis figure as the starting point for damages incurred during the earlier contract period.

The First Circuit independently identified a closely related methodological problem. It stated:

"On review of the record, we note that we have substantial doubts about the method used by the district court to calculate the award of damages, which does not reflect or capture the comparison between actual and expected performance that typically would define a damages inquiry premised on lost profits or opportunity cost."

The Court of Appeals further stated that Respondent's expert's estimate perhaps could serve as a starting point for calculating expected performance, but that the estimate could not, in the court's view, provide a reliable estimate of actual performance during the relevant damages interval.

The Court of Appeals nevertheless affirmed. It concluded, among other things, that some of Applicant's challenges were unpreserved, that his appellate presentation lacked record citations and legal authority, and that his specific arguments were inadequately developed. It further stated that Applicant had focused on matters that did not directly concern the calculation materially driving the damages award.

The panel concluded that it could not identify a developed, compelling challenge corresponding to what it described as the likely primary ground for an availing challenge, and it declined to fashion such a challenge *sua sponte*.

Applicant's rehearing petition directly addressed that reasoning. It argued that the panel had mischaracterized the central damages challenge and pointed to the opening brief's express challenge to the 2017 cost-basis starting figure. The rehearing petition explained that the January 2012 statement was offered as the only verified portfolio value during the damages period, rather than

merely as an isolated evidentiary objection.

The rehearing petition also argued that the district court's calculation accounted for expected return without giving corresponding effect to delivered return, and that this methodology issue had been preserved in the opening brief.

The petition concluded that the panel had acknowledged substantial concerns with the damages methodology while misunderstanding the challenge Applicant had actually presented. Panel rehearing and rehearing en banc were denied on September 28, 2026.

REASONS FOR GRANTING A STAY

I. THERE IS A REASONABLE PROBABILITY THAT THE PETITION FOR CERTIORARI WILL PRESENT A QUESTION WARRANTING THIS COURT'S REVIEW.

Applicant recognizes that certiorari is extraordinary and discretionary and that this Court does not ordinarily grant review merely to correct an asserted error in a particular case.

This case, however, presents an unusual interaction between appellate waiver principles and an appellate court's own identification of a serious defect in the methodology supporting a monetary judgment.

The First Circuit did not simply reject Applicant's view of the damages calculation. It independently expressed "substantial doubts" about the method used and stated that the method failed to capture the actual-versus-expected-performance comparison ordinarily required for the type of damages at issue.

At the same time, Applicant's opening brief expressly articulated that same basic comparison. It argued that damages were the difference between expected performance and delivered performance during the relevant contract period and challenged the starting figure used to perform that calculation.

After the panel characterized Applicant's arguments as insufficiently developed or directed to the wrong aspects of the calculation, Applicant's rehearing petition specifically identified where those issues had been raised and argued that the panel had misunderstood his challenge.

The forthcoming petition for certiorari will therefore not rest merely on disagreement with the amount of damages. It will ask whether appellate waiver principles may sustain a monetary judgment under these unusual circumstances, where the appellate court itself identifies a serious methodological defect and the pro se appellant's briefs had in fact raised the core actual-versus-expected-performance issue.

II. THERE IS A FAIR PROSPECT OF RELIEF ON THE MERITS IF REVIEW IS GRANTED.

The First Circuit's own reasoning supplies substantial grounds for questioning the damages award. The court expressly concluded that the district court's methodology did not properly capture the comparison between actual and expected performance and questioned whether the figure relied upon could reliably estimate actual performance during the relevant interval.

That concern corresponds to the core methodology stated in Applicant's opening brief. Applicant did not merely assert that the ultimate number was too high. He argued that the calculation must compare expected performance with delivered performance over the same period and challenged the starting value used in that calculation.

Applicant's rehearing petition made the preservation issue even more explicit. It identified the opening brief's challenge to the 2017 cost-basis starting figure and argued that the January 2012 statement was evidence of the only verified portfolio value during the relevant damages period.

Applicant therefore respectfully submits that the issue the Court of Appeals considered potentially availing was not wholly absent from his appellate presentation and that there is a substantial basis for further review.

III. APPLICANT FACES SERIOUS HARM ABSENT A STAY.

The judgment against Applicant is \$29,701.89 plus accumulating postjudgment interest.

Applicant does not possess approximately \$29,701.89 in available funds and does not possess assets sufficient to satisfy a judgment of that amount.

If the mandate issues and enforcement proceeds while Supreme Court review remains available, Applicant may face collection and enforcement proceedings concerning a judgment he cannot presently satisfy. Those proceedings may impose significant practical and financial burdens before this Court has had an opportunity to determine whether review is warranted.

Applicant recognizes that the existence of a monetary judgment does not by itself establish irreparable harm. The requested stay is instead a limited request to preserve the status quo in light of Applicant's inability to satisfy the judgment and the unusual merits circumstances identified by the Court of Appeals itself.

Applicant does not seek indefinite delay or relief from the judgment without review. He seeks only sufficient time to file his petition for writ of certiorari and permit this Court to determine whether the judgment should be reviewed.

IV. THE BALANCE OF EQUITIES FAVORS A LIMITED STAY.

The prejudice to Respondent from a limited stay is comparatively modest. Postjudgment interest continues to accrue, while Applicant seeks only the time necessary for orderly Supreme Court review.

By contrast, absent a stay, Applicant may be exposed to enforcement proceedings that he lacks the funds or assets to satisfy before this Court can determine whether to review a damages methodology that the First Circuit itself stated was subject to substantial doubts.

The balance therefore favors maintaining the status quo for the limited period necessary for Applicant to pursue timely Supreme Court review.

V. APPLICANT FIRST SOUGHT THE REQUESTED RELIEF IN THE COURT BELOW.

Supreme Court Rule 23.3 ordinarily requires an applicant to seek the requested relief in the appropriate court below before applying to this Court.

Applicant has done so. Following the September 28 denial of rehearing, Applicant moved the First Circuit to stay issuance of its mandate while he sought Supreme Court review.

On October 7, 2026, the First Circuit denied that motion. The order cited Federal Rule of Appellate Procedure 41(d) and First Circuit Local Rule 41.0, including the local rule's statement concerning cases in which the court believes that the only effect of a petition for certiorari would be pointless delay.

Accordingly, the requested relief is no longer available from the Court of Appeals.

CONCLUSION

For the foregoing reasons, Applicant respectfully requests that the Circuit Justice stay issuance and enforcement of the mandate of the United States Court of Appeals for the First Circuit pending Applicant's timely filing of a petition for writ of certiorari and this Court's disposition of that petition.

If the mandate has issued before this application is acted upon, Applicant respectfully requests such relief as is necessary and within this Court's authority to preserve the status quo pending disposition of the petition for writ of certiorari.

Respectfully submitted,

A handwritten signature in black ink, consisting of a stylized, cursive 'B' followed by a long horizontal stroke extending to the right.

ANDREW KUSTAS

Applicant, Pro Se

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Wolfeboro, NH 03894

603-986-0249

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October 7, 2026

APPENDIX

Appendix A - Judgment of the United States Court of Appeals for the First Circuit entered July 16, 2026

Appendix B - Order denying panel rehearing and rehearing en banc entered September 28, 2026

Appendix C - Order denying motion to stay issuance of mandate entered October 7, 2026

Appendix A is reproduced from the court-issued judgment. Appendices B and C reproduce the docket-entry text supplied by Applicant.

Plaintiff - Appellee/Cross - Appellant, v. ANDREW KUSTAS, Defendant - Appellant/Cross - Appellee, WHITE PINES INVESTMENTS, Defendant. _____ Before Rikelman, Kayatta, and Aframe, Circuit Judges. _____ JUDGMENT Entered: July 16, 2026

These are cross-appeals from a final judgment entered after a civil bench trial in the District Court for the District of Massachusetts. We refer to the parties as "Plaintiff" and "Defendant" for simplicity and we assume their familiarity with the facts and proceedings. After Plaintiff's claims went to a bench trial, the district court (a magistrate judge, serving by consent, 28 U.S.C. § 636(c)), issued a series of three orders relating to liability, damages, and other matters, including amendment of the pleadings. The final judgment, in relevant part, found Defendant liable for breaches of contract, and awarded Plaintiff damages of \$29,701.89, plus postjudgment interest under 28 U.S.C. § 1961(a). On appeal, Plaintiff and Defendant do not challenge any conclusion relating to liability (the focus of the first order). Plaintiff brings three challenges, relating to the district court limiting the interval for damages recovery, denying a motion under Federal Rule of Civil Procedure 59(e) for an award of pre-judgment interest, and denying a motion under Federal Rule of Civil Procedure Case: 25-1057 Document: 00118477243 Page: 1 Date Filed: 07/16/2026 Entry ID: 6826549 15(b) to amend the pleadings to include an additional party. Defendant brings a suite of challenges relating to the calculation of the damages award. These challenges by Plaintiff and Defendant mostly implicate review of the second and third orders. We review these challenges under the appropriate standards of review, all of which involve deference to the district court. See *Rojas-Buscaglia v. Taburno-Vasarhelyi*, 897 F.3d 15, 24 (1st Cir. 2018) ("The applicable standard of review for an award of damages [. . .] is for an abuse of discretion. Under this framework, an appellant must convince this Court that the district court 'committed a meaningful error in judgment.'" (citations omitted) (quoting *Lussier v. Runyon*, 50 F.3d 1103, 1111 (1st Cir. 1995)); *ACA Fin. Guar. Corp. v. Advest, Inc.*, 512 F.3d 46, 55 (1st Cir. 2008) ("Review of the denial of the Rule 59(e) motion is for 'manifest abuse of discretion.'" (quoting *Council of Ins. Agents & Brokers v. Juarbe-Jiménez*, 443 F.3d 103, 111 (1st Cir. 2006)); *United States v. Santana*, 342 F.3d 60, 68 (1st Cir. 2003) (reviewing a decision "allowing certain expert testimony" for abuse of discretion and adding that "[t]he hallmark of abuse of discretion review is deference"); *Kenda Corp. v. Pot O'Gold Money Leagues, Inc.*, 329 F.3d 216, 232 (1st Cir. 2003) ("We review denials of leave to amend under Rule 15 for abuse of discretion, deferring to the district court for any adequate reason apparent from the record.") (quoting *Resolution Tr. Corp. v. Gold*, 30 F.3d 251, 253 (1st Cir. 1994)). Beginning with Plaintiff's challenges, we can discern no developed, compelling challenge to the relevant conclusions of the district court. Plaintiff's challenges, in the main, lack adequate development in reference to the express reasoning of the district court. See *Sparkle Hill, Inc. v. Interstate Mat Corp.*, 788 F.3d 25, 30 (1st Cir. 2015) (rejecting a challenge where "the opening brief present[ed] no argument at all

challenging [the] express grounds upon which the district court prominently relied in entering judgment"). To take just one example, Plaintiff does not address the district court's conclusion that amendment of the pleadings to add a party would not have led to any supportable award of damages in favor of that party, and so does not show that any error under Rule 15(b) was not harmless. Plaintiff also does not establish that the district court erred in the assessment of the available record that led to the limited interval for recovery of damages, or that he was entitled to pre-judgment interest as a matter of law, especially given the context of the timing of his suit on these claims. Turning to Defendant's challenges, we highlight that we read his arguments liberally because he is pro se. See *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam). On review of the record, we note that we have substantial doubts about the method used by the district court to calculate the award of damages, which does not reflect or capture the comparison between actual and expected performance that typically would define a damages inquiry premised on lost profits or opportunity cost. Compare *Evans v. Akers*, 534 F.3d 65, 74 (1st Cir. 2008) (in the context of a conceptually similar federal claim, stating that "[l]osses to a [retirement] plan from breaches of the duty of prudence may be ascertained, with the help of expert analysis, by comparing the performance of the imprudent investments with the performance of a prudently invested portfolio") (emphasis added). Plaintiff's expert's seeming reliance on a rough proxy of an estimate for the starting value of the portfolio during the relevant damages interval perhaps may have been supportable as a starting point for calculating expected performance of a prudent portfolio; but that estimate cannot, that we can see, offer any reliable estimate of actual performance over the relevant damages interval. Nonetheless, Defendant's specific contentions on appeal are unconvincing, Case: 25-1057 Document: 00118477243 Page: 2 Date Filed: 07/16/2026 Entry ID: 6826549 including because (1) some challenges are unpreserved, (2) he does not include any record citation for his arguments (let alone legal authority), (3) the concession of liability for breach of contract may undermine challenges premised on there being no damages, and (4) his specific arguments lack adequate development. Further, and perhaps most importantly, Defendant primarily focuses on aspects of the record and reasoning that had nothing directly to do with the calculation employed by the district court that materially drove the damages award (for instance, focusing on the treatment of a January 2012 account statement that had no direct role in the district court's calculation of damages). Last, we note that the district court expressly acknowledged the legitimate doubts about the figure for a starting value that was used to calculate expected performance and then subtracted from that expected performance calculation to generate the damages award, but correctly noted both that Defendant had waived his specific challenge to that figure and that the error was materially harmless relative to the use of another proposed figure. D.Ct.Dkt. No. 138 at 18 n.22. We therefore cannot, even reading liberally, identify any

developed, compelling challenge drawn to what would be the likely primary ground for any availing challenge. We decline to fashion such a challenge for Defendant sua sponte. See *United States v. Nishnianidze*, 342 F.3d 6, 18 (1st Cir. 2003) (pro se appellants may waive challenges through a failure to develop them on appeal). Accordingly, the judgment of the district court is AFFIRMED. See Local Rule 27.0(c). By the Court: Anastasia Dubrovsky,
Clerk cc: Michael B. Cosentino Michael S. Rabieh Andrew Kusta

United States Court of Appeals For the First Circuit

Nos. 25-1057
25-1077

ANTHONY MAFFEO, individually, and as Trustee of the Integrated Benefits Group 401(k),

Plaintiff - Appellee/Cross - Appellant,

v.

ANDREW KUSTAS,

Defendant - Appellant/Cross - Appellee,

WHITE PINES INVESTMENTS,

Defendant.

Before

Rikelman, Kayatta, and Aframe,
Circuit Judges.

JUDGMENT

Entered: July 16, 2026

These are cross-appeals from a final judgment entered after a civil bench trial in the District Court for the District of Massachusetts. We refer to the parties as "Plaintiff" and "Defendant" for simplicity and we assume their familiarity with the facts and proceedings.

After Plaintiff's claims went to a bench trial, the district court (a magistrate judge, serving by consent, 28 U.S.C. § 636(c)), issued a series of three orders relating to liability, damages, and other matters, including amendment of the pleadings. The final judgment, in relevant part, found Defendant liable for breaches of contract, and awarded Plaintiff damages of \$29,701.89, plus post-judgment interest under 28 U.S.C. § 1961(a).

On appeal, Plaintiff and Defendant do not challenge any conclusion relating to liability (the focus of the first order). Plaintiff brings three challenges, relating to the district court limiting the interval for damages recovery, denying a motion under Federal Rule of Civil Procedure 59(e) for an award of pre-judgment interest, and denying a motion under Federal Rule of Civil Procedure

15(b) to amend the pleadings to include an additional party. Defendant brings a suite of challenges relating to the calculation of the damages award. These challenges by Plaintiff and Defendant mostly implicate review of the second and third orders.

We review these challenges under the appropriate standards of review, all of which involve deference to the district court. See Rojas-Buscaglia v. Taburno-Vasarhelyi, 897 F.3d 15, 24 (1st Cir. 2018) ("The applicable standard of review for an award of damages [. . .] is for an abuse of discretion. Under this framework, an appellant must convince this Court that the district court 'committed a meaningful error in judgment.'" (citations omitted) (quoting Lussier v. Runyon, 50 F.3d 1103, 1111 (1st Cir. 1995)); ACA Fin. Guar. Corp. v. Advest, Inc., 512 F.3d 46, 55 (1st Cir. 2008) ("Review of the denial of the Rule 59(e) motion is for 'manifest abuse of discretion.'" (quoting Council of Ins. Agents & Brokers v. Juarbe-Jiménez, 443 F.3d 103, 111 (1st Cir. 2006)); United States v. Santana, 342 F.3d 60, 68 (1st Cir. 2003) (reviewing a decision "allowing certain expert testimony" for abuse of discretion and adding that "[t]he hallmark of abuse of discretion review is deference"); Kenda Corp. v. Pot O'Gold Money Leagues, Inc., 329 F.3d 216, 232 (1st Cir. 2003) ("We review denials of leave to amend under Rule 15 for abuse of discretion, deferring to the district court for any adequate reason apparent from the record.") (quoting Resolution Tr. Corp. v. Gold, 30 F.3d 251, 253 (1st Cir. 1994)).

Beginning with Plaintiff's challenges, we can discern no developed, compelling challenge to the relevant conclusions of the district court. Plaintiff's challenges, in the main, lack adequate development in reference to the express reasoning of the district court. See Sparkle Hill, Inc. v. Interstate Mat Corp., 788 F.3d 25, 30 (1st Cir. 2015) (rejecting a challenge where "the opening brief present[ed] no argument at all challenging [the] express grounds upon which the district court prominently relied in entering judgment"). To take just one example, Plaintiff does not address the district court's conclusion that amendment of the pleadings to add a party would not have led to any supportable award of damages in favor of that party, and so does not show that any error under Rule 15(b) was not harmless. Plaintiff also does not establish that the district court erred in the assessment of the available record that led to the limited interval for recovery of damages, or that he was entitled to pre-judgment interest as a matter of law, especially given the context of the timing of his suit on these claims.

Turning to Defendant's challenges, we highlight that we read his arguments liberally because he is pro se. See Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam). On review of the record, we note that we have substantial doubts about the method used by the district court to calculate the award of damages, which does not reflect or capture the comparison between actual and expected performance that typically would define a damages inquiry premised on lost profits or opportunity cost. Compare Evans v. Akers, 534 F.3d 65, 74 (1st Cir. 2008) (in the context of a conceptually similar federal claim, stating that "[l]osses to a [retirement] plan from breaches of the duty of prudence may be ascertained, with the help of expert analysis, by comparing the **performance** of the imprudent investments with the **performance** of a prudently invested portfolio") (emphasis added). Plaintiff's expert's seeming reliance on a rough proxy of an estimate for the starting value of the portfolio during the relevant damages interval perhaps may have been supportable as a starting point for calculating expected performance of a prudent portfolio; but that estimate cannot, that we can see, offer any reliable estimate of actual performance over the relevant damages interval. Nonetheless, Defendant's specific contentions on appeal are unconvincing,

including because (1) some challenges are unpreserved, (2) he does not include any record citation for his arguments (let alone legal authority), (3) the concession of liability for breach of contract may undermine challenges premised on there being no damages, and (4) his specific arguments lack adequate development. Further, and perhaps most importantly, Defendant primarily focuses on aspects of the record and reasoning that had nothing directly to do with the calculation employed by the district court that materially drove the damages award (for instance, focusing on the treatment of a January 2012 account statement that had no direct role in the district court's calculation of damages). Last, we note that the district court expressly acknowledged the legitimate doubts about the figure for a starting value that was used to calculate expected performance and then subtracted from that expected performance calculation to generate the damages award, but correctly noted both that Defendant had waived his specific challenge to that figure and that the error was materially harmless relative to the use of another proposed figure. D.Ct.Dkt. No. 138 at 18 n.22. We therefore cannot, even reading liberally, identify any developed, compelling challenge drawn to what would be the likely primary ground for any availing challenge. We decline to fashion such a challenge for Defendant sua sponte. See United States v. Nishnianidze, 342 F.3d 6, 18 (1st Cir. 2003) (pro se appellants may waive challenges through a failure to develop them on appeal).

Accordingly, the judgment of the district court is **AFFIRMED**. See Local Rule 27.0(c).

By the Court:

Anastasia Dubrovsky, Clerk

cc:

Michael B. Cosentino

Michael S. Rabieh

Andrew Kustas

APPENDIX B

ORDER DENYING PANEL REHEARING AND REHEARING EN BANC

Entered September 28, 2026 at 11:48 AM

ORDER entered by David J. Barron, Chief Appellate Judge; William J. Kayatta, Jr., Appellate Judge; Gustavo A. Gelpí, Jr., Appellate Judge; Lara E. Montecalvo, Appellate Judge; Julie Rikelman, Appellate Judge; Seth Robert Aframe, Appellate Judge; and Joshua D. Dunlap, Appellate Judge: The petition for rehearing having been denied by the panel of judges who decided the case, and the petition for rehearing en banc having been submitted to the non-recused active judges of this court and a majority of the non-recused judges not having voted that the case be heard en banc, it is ordered that the petition for rehearing and petition for rehearing en banc be denied. Any other requests for relief also are denied. [25-1057, 25-1077] (ATC) [Entered: 09/28/2026 11:48 AM]

United States Court of Appeals For the First Circuit

No. 25-1057

ANTHONY MAFFEO, individually, and as Trustee of the Integrated Benefits Group 401(k),

Plaintiff - Appellee/Cross - Appellant,

v.

ANDREW KUSTAS,

Defendant - Appellant/Cross - Appellee,

WHITE PINES INVESTMENTS,

Defendant.

No. 25-1077

ANTHONY MAFFEO, individually, and as Trustee of the Integrated Benefits Group 401(k),

Plaintiff - Appellee/Cross - Appellant,

v.

ANDREW KUSTAS,

Defendant - Appellant/Cross - Appellee,

WHITE PINES INVESTMENTS,

Defendant.

Before

Barron, Chief Judge,
Kayatta, Gelpí, Montecalvo, Rikelman,
Aframe, and Dunlap, Circuit Judges.

ORDER OF COURT

Entered: September 28, 2026

The petition for rehearing having been denied by the panel of judges who decided the case, and the petition for rehearing en banc having been submitted to the non-recused active judges of this court and a majority of the non-recused judges not having voted that the case be heard en banc, it is ordered that the petition for rehearing and petition for rehearing en banc be denied. Any other requests for relief also are denied.

By the Court:

Anastasia Dubrovsky, Clerk

cc:

Michael B. Cosentino

Michael S. Rabieh

Andrew Kustas

APPENDIX C

ORDER DENYING MOTION TO STAY ISSUANCE OF MANDATE

Entered October 7, 2026 at 10:13 AM

ORDER entered by Julie Rikelman, Appellate Judge; William J. Kayatta, Jr., Appellate Judge and Seth Robert Aframe, Appellate Judge. Andrew Kustas' pro se motion to stay issuance of the mandate is DENIED. See Fed. R. App. P. 41(d) (standard); Local Rule 41.0 (this court will deny requests to stay entry of mandate "in [] cases where the court believes that the only effect of a petition for certiorari would be pointless delay"). Kustas' attention is directed to Supreme Court Rule 13(3). [25-1057, 25-1077] (GB) [Entered: 10/07/2026 10:13 AM]

United States Court of Appeals For the First Circuit

Nos. 25-1057
25-1077

ANTHONY MAFFEO, individually, and as Trustee of the Integrated Benefits Group 401(k),

Plaintiff - Appellee/Cross - Appellant,

v.

ANDREW KUSTAS,

Defendant - Appellant/Cross - Appellee,

WHITE PINES INVESTMENTS,

Defendant.

Before

Rikelman, Kayatta, and Aframe,
Circuit Judges.

ORDER OF COURT

Entered: October 7, 2026

Andrew Kustas' pro se motion to stay issuance of the mandate is **DENIED**. See Fed. R. App. P. 41(d) (standard); Local Rule 41.0 (this court will deny requests to stay entry of mandate "in [] cases where the court believes that the only effect of a petition for certiorari would be pointless delay"). Kustas' attention is directed to Supreme Court Rule 13(3).

By the Court:

Anastasia Dubrovsky, Clerk

cc:

Michael B. Cosentino, Michael S. Rabieh, Andrew Kustas

United States Court of Appeals For the First Circuit

Nos. 25-1057
25-1077

ANTHONY MAFFEO, individually, and as Trustee of the Integrated Benefits Group 401(k),

Plaintiff - Appellee/Cross - Appellant,

v.

ANDREW KUSTAS,

Defendant - Appellant/Cross - Appellee,

WHITE PINES INVESTMENTS,

Defendant.

MANDATE

Entered: October 15, 2026

In accordance with the judgment of July 16, 2026, and pursuant to Federal Rule of Appellate Procedure 41(a), this constitutes the formal mandate of this Court.

By the Court:

Anastasia Dubrovsky, Clerk

cc:

Michael B. Cosentino

Andrew Kustas

Michael S. Rabieh