No. 25-2609

In the United States Court of Appeals for the Third Circuit

LUCIANO BARRAGAN,
individually and as a representative
of participants and beneficiaries of the Honeywell 401(k) Plan,

Plaintiff-Appellant,

v.

HONEYWELL INTERNATIONAL INC.,

Defendant-Appellee.

AMICUS CURIAE BRIEF
OF THE U.S. SECRETARY OF LABOR
IN SUPPORT OF APPELLEE AND AFFIRMANCE

On Appeal from the United States District Court
for the District of New Jersey, Case No. No. 2:24-cv-04529-
EP-JRA (Hon. Evelyn Padin)

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IDENTITY AND INTEREST OF AMICUS CURIAE[1]

As the United States officer with chief authority over Title I of the Employee Retirement Income Security Act ("ERISA"), the Secretary of Labor must endeavor to "assur[e] the . . . uniformity of enforcement of . . . the ERISA statutes." *See Sec'y of Lab. v. Fitzsimmons*, 805 F.2d 682, 693 (7th Cir. 1986) (en banc). This responsibility includes clarifying "standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans." 29 U.S.C. § 1001(b). The fiduciary-centered issue in this case—one of dozens percolating through the courts—lives in the heartland of those standards in which clarity, uniformity, and consistency must prevail. For that reason, the Secretary offers the following to aid the Court.

[1] The Secretary files this brief under Federal Rule of Appellate Procedure 29(a)(2), which provides that a United States officer "may file an amicus brief without the consent of the parties or leave of court."

INTRODUCTION & SUMMARY OF THE ARGUMENT

This case, the most recent of its ilk to reach a circuit court,[2] concerns a superficially mundane question: if a participant in an ERISA-governed retirement plan "forfeits" matching contributions from his employer (typically by separating before those contributions vest), what happens to that money? For many plans (as here), the plan documents provide the answer. And in many cases (as here), the plan administrator has options under the plan documents—for instance, allocate those funds to future *employer* contributions, or use those funds to offset the costs of administering the plan.

Allowing employers to create options like this is indispensable under ERISA. Because "Congress did not require employers to establish benefit plans in the first place," *Conkright v. Frommert*, 559 U.S. 506, 516 (2010) (citing *Lockheed Corp. v. Spink*, 517 U.S. 882, 887 (1996)), the American worker benefits the most when employers have incentive to provide for their employees' golden years. And because "ERISA represents a 'careful balancing' between ensuring fair and prompt enforcement of rights under a plan and the encouragement of the creation of such

[2] Courts have rejected at least twenty-five similar cases, though at least six similar cases have survived motions to dismiss. *See* Joseph S. Adams, Anne Becker, Susan Nash, and Katherine S. Bailey, "January 2026 Forfeiture Litigation Update," Winston & Strawn LLP (Jan. 29, 2026), available at https://www.winston.com/en/blogs-and-podcasts/benefits-blast/january-2026-forfeiture-litigation-update.

plans,'" *id.*, part of this calibration includes the right of the plan's creator to establish the alternatives for how to allocate forfeited funds. When an employer creates a plan, ERISA law is blackletter: decisions about the form, design, structure, or—particularly relevant here—funding of a plan are decisions unencumbered by fiduciary duties.

The other side of the ERISA balance is that once a plan is created, implementation must honor the fiduciary duties of loyalty and prudence. These ensure that "employees . . . receive the benefits they had earned." *Conkright*, 559 U.S. at 516. Where they apply, ERISA-imposed fiduciary duties set a shield to protect worker retirement assets earned over the course of long careers.

Unfortunately, ERISA litigants (or, more specifically, ERISA litigators) are now trying to contort well-intentioned shields into cynical swords that often hurt the American worker, not help her. Here, although Defendant Honeywell International (1) opted (in its non-fiduciary capacity) to create a retirement plan for its employees, and (2) decided (likewise) to give the flexibility to the plan administrator to defray either certain administrative fees of its participants or offset contribution costs, Plaintiff Luciano Barragan insists that ERISA's fiduciary duties *command* plan administrators to *always* exercise that discretion to defray administrative fees. All this, even though Mr. Barragan has not alleged (and cannot allege) that any choice made by Honeywell imperiled even one cent of the contributions he is entitled to.

The district court rightly rejected this crabbed application of ERISA-imposed fiduciary duties. So too have most of the other district courts that have addressed similar theories in similar cases nationwide.[3] And although this particular theory has been rejected at least twenty-five times in multiple courts, the Secretary nonetheless believes that the damage it could inflict, if further endorsed, would be extensive enough to warrant submission of her views here.

As the Court deliberates, the Secretary respectfully offers two principles.

First, ERISA's fiduciary duties require plans like Honeywell's to be *administered* prudently and loyally. In other words, provided that the exclusive benefit of the plan participants and beneficiaries is what animates a decision, the *process* is what matters; so long as the *means* Honeywell employs demonstrate that it is running its plan with the loyal care required of a fiduciary, the *ends* on which it settles matter far less. This is especially true given the Supreme Court's focus on "'the circumstances . . . prevailing' at the time a fiduciary acts" to discern any breach. *Fifth Third Bancorp v. Dudenhoeffer*, 573 U.S. 409, 425 (2014) (quoting 29 U.S.C. § 1104(a)(1)(B)).

Because every fiduciary decision is "necessarily . . . context specific," *id.*, ERISA abhors per se, results-based theories of liability. Such theories are anathema

[3] *See id.*

to the principle that ERISA is a law of process. Mr. Barragan's allegations, if allowed to proceed beyond a Rule 12(b)(6) challenge, would upset Congress's deliberate balance.

Second, Mr. Barragan's theory will accomplish little more than making employers like Honeywell think twice before giving their fiduciaries the option to use forfeited money to benefit their plan participants through fee offsets—or worse, before establishing the level of benefits that their workers will enjoy. No employer is under any obligation to create a retirement plan at all, much less any specified level of benefits. Incentivizing plan creation and protecting flexibility is in the interest of the American worker. Because it would be detrimental to an employer's flexibility in creating a plan to retroactively deprive it of the unambiguous terms crafted in its non-fiduciary capacity, Mr. Barragan's theory is counterproductive and should be disposed of expeditiously by this Court.

For these reasons and those that follow, the Secretary respectfully requests that the Court affirm the district court's dismissal of Mr. Barragan's complaint.

BACKGROUND

A. At its core, the issue is simple. Mr. Barragan (and the plaintiffs in all other cases) have asked the courts to blend two different decisions into one: (1) how to form and fund a retirement plan, and (2) how to allocate a plan's funds *after* the plan is formed and funded. Fiduciary duties govern the latter.[4] As a "settlor" decision, in contrast, fiduciary duties do not apply to the former.[5] The difference matters.

A settlor is an entity, usually an employer, that makes the initial, discretionary decision to create a retirement plan. When he does, the decisions he makes about the form, design, structure, or—particularly relevant here—funding of the plan are "settlor decisions." And as settlor decisions, they (assuming compliance with ERISA's rudiments) can be resolved any way the settlor wishes. *Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 444 (1999). This makes sense: because "[n]othing in ERISA requires employers to establish employee benefits plans," when employers do so, the greater power to create the plan implies the lesser power to bound the benefits the plan will provide. *Spink*, 517 U.S. at 887.

After plan creation, fiduciary duties extend to actions taken to administer the plan. Specifically, ERISA provides that a person who "exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets" is a

[4] *See Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 444 (1999) (fiduciary duties "consist[] of such actions as the administration of the plan's assets.").

[5] *See Coulter v. Morgan Stanley & Co. Inc.*, 753 F.3d 361, 367 (2d Cir. 2014) ("'Settlor' functions . . . include conduct such as establishing, funding, amending, or terminating a plan."); *Cottillion v. United Refining Co.*, 279 F.R.D. 290, 309 (W.D. Pa. Dec. 21, 2011) ("Courts have widely held that decisions related to funding are settlor functions which do not implicate fiduciary duties.") (internal quotations omitted).

fiduciary. 29 U.S.C. § 1002(21)(A)(i). When exercising that discretion, a fiduciary must act "with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use," 29 U.S.C. § 1104(a)(1)(B), and "solely in the interest of the participants and beneficiaries" of that plan, *id.* § 1104(a)(1). These are the fiduciary duties of prudence and loyalty.

Whether and when the defendant acts as a fiduciary is an important threshold question because an ERISA fiduciary "may wear different hats," acting as a plan fiduciary in some contexts and as the plan sponsor in others. *Pegram v. Herdrich*, 530 U.S. 211, 225 (2000). "Where, as here, a plaintiff challenges the decision of a fiduciary wearing two hats, as a threshold matter a court must determine when the fiduciary has taken off [its] 'settlor/sponsor hat' and put on [its] 'fiduciary hat'" for the conduct at issue. *Dimou v. Thermo Fisher Sci. Inc.*, No. 23-CV-1732, 2024 WL 4508450, at *7 (S.D. Cal. Sept. 19, 2024) (quoting *Acosta v. Brain*, 910 F.3d 502, 518 (9th Cir. 2018) (noting the importance of the "threshold 'two-hats' inquiry")).

Of particular relevance, the question of "whether to cover [plan] expenses is a question of plan design, not of administration." *Loomis v. Exelon Corp.*, 658 F.3d 667, 671 (7th Cir. 2011), *abrogated on other grounds by Hughes v. Nw. Univ.*, 63 F.4th 615 (7th Cir. 2023). For this reason, courts have uniformly deemed it a settlor decision. *See Hughes Aircraft Co.*, 525 U.S. at 442; *Spink*, 517 U.S. at 890. This, in turn, covers the initial question of when forfeited plan funds will be used to cover plan expenses. And for years, both Congress and the U.S. Department of the Treasury have allowed employers to use forfeited unvested contributions to defray their own future contributions.[6]

B. Mr. Barragan is a former Honeywell employee and participant in the Honeywell 401(k) Plan (the "Plan"), a defined-contribution,[7] individual-account plan created and administered by Honeywell.[8] Appx at 62–64 (Am. Compl. ¶¶ 3, 6, 9). The Plan has two funding streams: (1) money withheld from Plan participant wages, and (2) matching contributions paid by Honeywell up to a certain level. Appx at 65 (Am. Compl. ¶ 12). Both streams are deposited into the Plan's trust fund. Appx at 65 (Am. Compl. ¶ 12). Costs for administration of the Plan's trust fund are,

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[6] Use of Forfeitures in Qualified Retirement Plans, 88 Fed. Reg. 12282 (proposed Feb. 27, 2023).

[7] "In a defined-contribution plan, such as a 401(k) plan, the retirees' benefits are typically tied to the value of their accounts, and the benefits can turn on the plan fiduciaries' particular investment decisions." *Thole v. U. S. Bank N.A.*, 590 U.S. 538, 540 (2020). "In a defined-benefit plan," in contrast, "retirees receive a fixed payment each month, and the payments do not fluctuate with the value of the plan or because of the plan fiduciaries' good or bad investment decisions." *Id.*

[8] Honeywell's plan administrator is the company's "Vice President - Human Resources, Compensation and Benefits." Appx at 121 (Honeywell 401(k) Plan Art. 14.1). For ease, this brief will use "Honeywell" to refer to both the employer and the vice president acting as plan administrator.

typically, deducted from each participant's individual account.[9] Appx at 65 (Am. Compl. ¶ 14).

The money collected directly from employee wages is fully attributable (i.e., "vested") to each employee immediately; in other words, the employee has a right to it irrespective of the amount of time he has spent with the company. Appx at 65 (Am. Compl. ¶ 16). In contrast, the matching funds contributed by Honeywell do not vest until an employee reaches three years with the company. Appx at 65 (Am. Compl. ¶ 16). If an employee leaves Honeywell before she hits the three-year mark, she "forfeits" the money that Honeywell contributed. Appx at 65–66 (Am. Compl. ¶ 17).

The issue, and the gravamen of this case, is what happens to those funds once a Honeywell employee forfeits them. The Plan's documents inform the answer here (and in most other forfeiture cases). Specifically, Honeywell may choose to do one of two things with those funds when it wears its plan administrator hat:

[9] Specifically, the Plan documents provide that "[a]ll costs and expenses of administering the Plan and managing the Funds . . . shall be borne by the Participants and paid from their Accounts in the Plan." Appx at 123 (Honeywell 401(k) Plan Art. 14.5).

(1) "reduce subsequent Employer Matching Contributions," or

(2) "defray administrative expenses of the Plan."

Appx at 119 (Honeywell 401(k) Plan Art. 7.3). From 2018 through 2023, the plan administrator (Honeywell) elected to use all forfeited unvested employer contributions to reduce its future matching contributions. Appx at 68–69 (Am. Compl. ¶¶ 30–35).

C. In response, Mr. Barragan sued. Purporting to represent a class, his operative amended complaint alleges breach of loyalty, breach of prudence, and self-dealing. Appx at 70–78 (Am. Compl. ¶¶ 37–60). In his view, because Honeywell was acting as a fiduciary when it chose whether to use those funds to defray its contributions or cover the Plan's administrative costs, it was fiduciary-duty-bound to *always* opt to pay the administrative costs. Appx at 73–76 (Am. Compl. ¶¶ 42–55). Honeywell's choice to defray its contributions, according to Mr. Barragan, thus harmed him by not reducing the Plan's administrative costs. Appx at 73 (Am. Compl. ¶ 45).

The district court dismissed Mr. Barragan's amended complaint, reasoning that he had failed to state any plausible cause of action. Recognizing that the logic of Mr. Barragan's argument meant that "forfeitures must always be used to pay Plan participants' administrative expenses before they can be allocated to reducing a company's matching contributions," the district court correctly surmised that

Mr. Barragan attempted to use the fiduciary duties of loyalty and prudence "to create an additional benefit" to participants that Honeywell's Plan did not provide. *Barragan v. Honeywell Int'l Inc.*, No. 24CV4529 (EP) (JRA), 2025 WL 2383652, at *3–4 (D.N.J. Aug. 18, 2025) (first quoting *Hutchins v. HP Inc.*, 767 F. Supp. 3d 912, 927 (N.D. Cal. 2025), then quoting *id.* at 922). The district court decided that Mr. Barragan's "theory was too broad in reach," and dismissed it with prejudice.[10] *Id.* (quoting *Collins v. Pension & Ins. Comm. of So. Cal. Rock Prods. & Ready Mixed Concrete Ass'ns*, 144 F.3d 1279, 1282 (9th Cir. 1998) (per curiam)).

Mr. Barragan appealed.

ARGUMENT

I. MR. BARRAGAN'S PER SE, ENDS-OVER-MEANS THEORY OF LIABILITY CANNOT SURVIVE A RULE 12(B)(6) MOTION TO DISMISS.

Mr. Barragan's theory is meritless. Honeywell's Plan documents give it the option to, among other things, (1) use forfeited money either to offset what it owes the plan, or (2) pay administrative costs that would otherwise be spread among the plan's participants. According to Mr. Barragan, ERISA's fiduciary duties mean that Honeywell *must always* choose the latter. In other words, Mr. Barragan believes that ERISA's fiduciary duties *de facto* amend Honeywell's Plan documents in a way that creates a requirement at odds with the flexibility contemplated by the Plan

[10] The district court also dismissed Mr. Barragan's self-dealing claim, on which the Secretary takes no position.

documents and—critically for purposes of his claims—that ERISA does not require. He further believes that merely alleging that Honeywell declined to always and uniformly provide him with this extra-contractual benefit should defeat Rule 12 dismissal.

The district court was eminently correct to hold that Mr. Barragan's theory would impose liability beyond ERISA's requirements by "creat[ing] an additional benefit" not in Honeywell's Plan. *Barragan,* 2025 WL 2383652, at *3–4 (quoting *Hutchins*, 767 F. Supp. 3d at 922). This is so because "ERISA's principal function [is] to 'protect *contractually defined benefits*.'" *US Airways, Inc. v. McCutchen*, 569 U.S. 88, 100 (2013) (quoting *Massachusetts Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 148 (1985)) (emphasis added). The main contractual "benefits" that Mr. Barragan enjoys are the Honeywell-contributed matching funds accessible after three years with the company—none of which Honeywell imperiled. And per the unambiguous terms of the Plan documents, Mr. Barragan has no contractual right whatsoever to demand that Honeywell always and uniformly cover administrative expenses that the Plan is otherwise obligated to pay. Because cost coverage unmistakably is *not* a "contractually defined benefit[]," ERISA does not demand that Honeywell provide it.

Mr. Barragan's trouble is his confusion about the interplay between the settlor and fiduciary decisions that intersect here. Fiduciary duties do attach to the decision of how to allocate forfeited money, but the question of whether a fiduciary *breached* those duties always turns on "'the circumstances . . . prevailing' at the time the fiduciary acts," and the "appropriate inquiry will necessarily be context specific." *Dudenhoeffer*, 573 U.S. at 425. And the context here is that Honeywell, on its non-fiduciary, settlor authority, created a retirement plan that *did not* entitle Mr. Barragan to have his cost burden reduced any time another Honeywell employee forfeited his unvested matching contributions. Where the plan allows it and the interests of the plan are served (for example, in circumstances that might otherwise lead the settlor to reduce current or future contributions), forfeitures could very well be applied to reduce required employer contributions, and Mr. Barragan's claims, without more, cannot succeed.

To the best of the Secretary's knowledge, no court in any jurisdiction has blessed the use of fiduciary duties to create a contractual entitlement where none existed. But that is precisely Mr. Barragan's position. Indeed, before this Court, he doubles down, explaining that "[t]o the extent that [his theory] would 'never' permit forfeitures to be used to reduce employer contributions, it is only because, among the available options for how forfeitures may be used, that one is never best for participants." Barragan's Br. at 28. In his view, the "function of [the] plan's design" (which by its terms gives the plan administrator the discretion to use forfeited money for the purposes of offsetting contributions) can *never* be used by Honeywell to offset its own contributions. *Id.* at 28–29.

Wrong. Because Mr. Barragan's theory rises and falls on his argument that ERISA's fiduciary duties abrogated a Plan option both that Honeywell was well within its rights to provide itself as settlor and that the plan administrator would be within its rights to choose when it is in the interests of the Plan participants (e.g., where it might jeopardize a settlor decision to fully fund the matching contributions or amend the Plan later to offset fees), his theory without some evidence that fiduciary could have compelled the sponsor to fund additional matching contributions fails as a matter of law.

To be certain, forfeited amounts are Plan assets, and the decision how to allocate those forfeited amounts are those of a fiduciary. But the situations are legion in which it could be both loyal and prudent for a fiduciary to use forfeitures to reduce employer contributions instead of to defray administrative costs. Because, for purposes of his loyalty claim, Mr. Barragan alleges simply that Honeywell "act[ed] in its own self-interest," and, for purposes of his prudence claim, only that Honeywell failed to investigate which option was in his best interest, he has not alleged "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

Recall that the upshot of Mr. Barragan's core theory is that ERISA's fiduciary duties require it to reflexively use forfeited money to offset the administrative expenses Plan participants owe, because, in his view, doing so would *always* be in the best interest of the participants. But that isn't so.

The problem with Mr. Barragan's pleading is its wholesale failure to recognize that the plan sponsor's ability to pay its matching contributions is not the sole consideration for allocating forfeitures. Crucially, a fiduciary cannot force a sponsor to increase its contributions by making a forfeiture-allocation decision because the contribution level (i.e., plan funding) is a settlor decision. That, however, appears to be the core of Mr. Barragan's theory and what he has pled.

Consider the opposite scenario: a plan administrator resolutely uses forfeitures to pay administrative costs rather than the sponsor's outstanding matching contributions. Under those circumstances, the sponsor would be asked to provide more of *its* funds to the plan than if the plan administrator used at least some of the forfeitures to cover matching contributions. If the sponsor refused—which, because plan funding is a settlor decision, it can—the plan would have a funding shortfall, and the plan administrator would have to decide whether to take action against the sponsor to collect the shortfall.[11] That decision would require the fiduciary to

[11] *See* 29 U.S.C. § 1104(a)(1)(A)(i) (fiduciaries must "provid[e] benefits to participants and their beneficiaries . . .").

evaluate the context, risks, and benefits again. *See* Emp. Benefits Sec. Admin., U.S. Dep't of Labor, Field Assistance Bulletin 2008-1, at 3 (Feb. 1, 2008) ("In determining what collection actions to take, a fiduciary should weigh the value of the plan assets involved, the likelihood of a successful recovery, and the expenses expected to be incurred."). For instance, any ensuing legal claims the fiduciary would bring to address the shortfall would devour *more* plan assets, potentially further imperiling participants. In that scenario, using forfeitures the way Mr. Barragan demands could well be neither loyal nor prudent.

Or, given those hypothetical circumstances, a plan sponsor may choose a less litigious, but nonetheless participant-detrimental, option. If forfeitures don't offset contributions, the sponsor is within its rights to amend the plan and simply reduce the amount it will match going forward. As a settlor decision, neither the plan administrator nor the plan's participants could object. Thus, the decision to reflexively allocate forfeited money to offset the plan's administrative costs could harm the participants to a far greater extent than simply having the plan pay the costs at the outset.

These examples illustrate the fundamental, fatal flaw in Mr. Barragan's pleadings. Application of the fiduciary duties on which he relies is both more circumscribed and more nuanced than his unadorned pleadings imply. Given the settlor/fiduciary interplay, there are risks that a fiduciary must consider before blindly bestowing on plan participants a benefit, lest she violate the very fiduciary duties Mr. Barragan champions. And because protecting participants' assets (like matching contributions) could just as likely be imperiled by Mr. Barragan's proposed course of action, he must do more than simply gesture toward the decision Honeywell reached. Because he has failed to do so, he has failed to nudge his allegations from the wholly speculative to the level of plausibility required to survive a Rule 12(b)(6) motion to dismiss.

II. If allowed to catch on, Mr. Barragan's cynical theory of liability will perversely limit the flexibility of employers and disincentivize them from creating plans for their employees.

The Secretary ends this brief where she began it. "Congress enacted ERISA to ensure that employees would receive the benefits they had earned." *Conkright*, 559 U.S. at 516. Stated more succinctly, ERISA puts the American worker first. The Secretary, ERISA's chief steward, takes tremendous pride in making sure that America's workers are protected from the alpha to the omega of their time in employment.

American workers' interests reach their apex when their employers provide them with retirement plans. But "Congress did not require employers to establish benefit plans in the first place." *Id.* at 516–17 (citing *Spink*, 517 U.S. at 887). Because employers cannot be forced to offer their employees retirement plans, employees benefit the most when their employers are incentivized to do so.

Incentivization requires tradeoffs, and, accordingly, "ERISA represents a 'careful balancing' between ensuring fair and prompt enforcement of rights under a plan and the encouragement of the creation of such plans.'" *Id.* (quoting *Aetna Health Inc. v. Davila*, 542 U.S. 200, 215 (2004)). That was intentional; "Congress sought 'to create a system that is [not] so complex that administrative costs, or litigation expenses, unduly discourage employers from offering [ERISA] plans in the first place." *Id.* (quoting *Varity Corp. v. Howe*, 516 U.S. 489, 497 (1996)). And since ERISA took effect in 1974, it has served the purpose that Congress intended, all to the advantage of the American worker.

Mr. Barragan's theory, which is being tested throughout the four corners of this great nation, threatens to limit the flexibility of employers, and discourage them, in creating retirement plans for their employees. Recall Mr. Barragan's purported injury. He has not alleged a loss or even a potential loss of *any* contributions to which he is actually entitled. He instead argues that the plan administrator declined to go to the mat on a potential dispute with the plan sponsor to give him a break on the administrative costs that the plan would otherwise have to pay.

On the other side of the ledger? If his theory were to succeed, it would likely mark the last time Honeywell, or, for that matter, any other employer watching these cases proceed, would choose to include in its retirement plan an option to provide its employees with a similar benefit. Worse still, large corporations like Honeywell may eventually decide that the press of ever-increasing, cynical, lawyer-fabricated headaches like this case constitute a real impediment to the flexibility they need to provide their employees with retirement plans. Either way, the American worker loses.

CONCLUSION

This case deserves a swift end. To cultivate an ERISA landscape with the fertile soil that sustains both employer and worker, the weeds must be pulled. For all these reasons, the Secretary respectfully requests that this Court affirm the district court's dismissal.

January 30, 2026

Respectfully submitted,

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CERTIFICATES OF COMPLIANCE

1. This document complies with the type-volume and word-count limits of Federal Rule of Appellate Procedure 29(a)(5) because, excluding the parts of the document exempted by Federal Rule of Appellate Procedure 32(f), this document contains 4,273 words.

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3. This brief complies with the electronic filing requirements of L.A.R. 31.1(c) because the text of the hard copy and electronic copy of this brief are identical, and Microsoft Defender for Antivirus has been run on the file containing the electronic version of this brief and no viruses have been detected.

/s/ Edward M. Wenger
EDWARD M. WENGER

January 30, 2026

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 30th day of January, 2026, a true copy of the Amicus Curiae Brief of the U.S. Secretary of Labor in Support of the Appellant and Reversal was filed electronically with the Clerk of Court using the Court's CM/ECF system, which will send by email a notice of docketing activity to all registered Attorney Filers.

/s/ Edward M. Wenger
EDWARD M. WENGER

January 30, 2026

CERTIFICATION OF BAR MEMBERSHIP STATUS

Pursuant to L.A.R. 28.3(d), I hereby certify that I am a member of the bar of the United States Court of Appeals for the Third Circuit.

/s/ Edward M. Wenger
EDWARD M. WENGER

January 30, 2026