No. 20-1400

IN THE

Supreme Court of the United States

MARK ELLIOTT, *et al.*,

Petitioners,

v.

FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, *et al.*,

Respondents.

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

The equitable-mootness doctrine has been applied to diverse bankruptcy scenarios where the reversal of an order confirming a reorganization plan is largely ineffectual because the return of all parties to their pre-confirmation positions is not feasible, and incomplete restoration of original positions harms innocent persons who transacted in reliance on the confirmation order. All twelve Circuits that hear bankruptcy appeals have applied the doctrine in different situations where overturning the plan is largely, if not completely, impracticable because the egg cannot be unscrambled and would harm innocent persons. The appellant's failure to request a stay pending appeal and an expedited appeal is often considered a relevant factor, but only when impracticability and inequity of reversing the confirmation order is established. *See generally* 7 Collier on Bankruptcy ¶ 1129.09(1) (16th ed. 2010).

In this action under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act, the district court confirmed a plan of adjustment for one of Puerto Rico's largest instrumentalities. Petitioners, a group of creditors, appealed. The First Circuit dismissed the appeal as equitably moot.

The Question Presented is: Because vacating the confirmation order does not undo (*i*) tens of thousands of security transactions by innocent strangers, (*ii*) releases of billions of dollars of litigation, and (*iii*) transfers of a billion dollars of revenues whose ownership

was resolved by the plan, did the court of appeals appropriately dismiss the appeal, especially given Petitioners' failure to seek to stay implementation of the plan for 1.5 years and the court's finding it would be "neither equitable nor practical" to unwind the plan on appeal? Pet. App. 30a.

RULE 29.6 STATEMENT

Each of Respondents is not a nongovernmental corporation and is therefore not required to submit a statement under Supreme Court Rule 29.6.

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BRIEF IN OPPOSITION

Respondents respectfully submit that the petition for a writ of certiorari should be denied.

STATEMENT OF THE CASE

Petitioners ask the Court to grant certiorari to abolish in all circumstances an appellate court's power to invoke the equitable-mootness doctrine to dismiss appeals of confirmation orders. Alternatively, Petitioners ask for an appellate ruling directing the Commonwealth to pay them and certain others an extra $316 million beyond the consideration they received under a confirmed plan of adjustment overwhelmingly accepted by similarly situated creditors. Petitioners' first request as applied to the facts here fails because vacating the confirmation order is neither "practical [n]or equitable" as the court of appeals held: it does not unscramble the egg and causes huge harm to innocent persons. Petitioners' second request is premised on the appellate court's power to rewrite the debtor's and another party's settlement dividing up certain revenues used to fund recoveries under the plan, which power the appellate court does not have and ruled it does not have.

Pursuant to equitable mootness, a form of laches that all twelve Circuits with jurisdiction over bankruptcy appeals have adopted in different circumstances, an appeal can be dismissed when appellate relief is impractical and inequitable and when the appellant took insufficient steps to prevent the inequi-

ties. Over the past several decades, this Court has denied more than two dozen petitions seeking to abolish the doctrine or challenge its application to particular facts. It should do the same here, where the facts show it would be impractical to restore the pre-confirmation status quo and where granting appellate relief would harm thousands of innocent strangers. Petitioners' request for a ruling abolishing equitable mootness on any set of facts is certainly inappropriate.

The Petition arises out of Puerto Rico's fiscal crisis. Below, Petitioners asked the court of appeals to overturn an order confirming a plan of adjustment for the Puerto Rico Sales Tax Financing Corporation ("COFINA"). The plan embodied a settlement of COFINA's and the Commonwealth of Puerto Rico's claims to ownership of certain tax revenues and restructured more than $18 billion of COFINA's debt (or more than a quarter of the total funded public debt in Puerto Rico). Petitioners failed to object to a plan provision waiving the automatic stay of the confirmation order pursuant to Bankruptcy Rule 3020(e) and failed to ask the district court or the court of appeals to stay implementation of COFINA's plan pending appeal. They also did not request an expedited appeal and to enforce the requirement in § 106(d) of the Puerto Rico Oversight, Management, and Economic Stability Act ("PROMESA") for the appellate court to expedite disposition of their appeal. To the contrary, they moved for several extensions of their filing deadlines. As a result, by the time their appeal was argued, COFINA's plan of adjustment had been implemented for more than eighteen months.

Under the plan, the dispute between COFINA and the Commonwealth as to which entity owned the only

tax revenues COFINA could use to pay interest and principal on its bonds was settled, all COFINA's old bonds were cancelled, and more than $12 billion in new securities were issued. Pursuant to the settlement, over $1 billion of the tax revenues were allocated to COFINA and the Commonwealth and spent. Related litigation was dismissed with prejudice. The new securities have been traded on the public market tens of thousands of times. Given those uncontested facts, the court of appeals reasoned it would be "neither equitable nor practical" (Pet. App. 30a) to grant Petitioners their requested relief, which would require unwinding the plan and the tens of thousands of transactions conducted in reliance on the plan. Indeed, holders of $12 billion of new bonds would find themselves holding nothing, and the holders of $18 billion of old bonds at the time of confirmation would suddenly have them again. As the court of appeals observed, countless innocent third parties who relied on the plan would be harmed if their transactions were nullified, and overturning the plan at this late date could be fatal to the Commonwealth's fiscal recovery. Moreover, the reason relief became impractical and inequitable is that Petitioners failed to exercise any degree of diligence to prevent third parties from relying on the plan while Petitioners pursued their appeal.

This is the paradigmatic case where equity demands a denial of largely ineffectual and injurious relief. In endorsing the defense of laches, this Court has recognized that changed circumstances due to the passage of time resulting from a party's lack of diligence can render judicial relief inequitable. That is precisely the case here: Petitioners' lack of diligence led

to billions of dollars in transactions that cannot practically be undone on appeal.

The Petition fails to meet any of the criteria for certiorari. For one thing, the decision below does not conflict with any decision of this Court, which has never questioned the viability of the equitable-mootness doctrine and which has endorsed analogous equitable doctrines. The sole case cited by Petitioners in support of their "conflict" argument—*Mission Product Holdings, Inc. v. Tempnology, LLC*, 139 S. Ct. 1652, 1660 (2019)—considered only Article III mootness due to lack of a case-or-controversy, not equitable mootness. There is also no Circuit split. To the contrary, each regional Circuit applies the equitable-mootness doctrine in essentially the same manner. This case is also a poor vehicle because the Court cannot deal with the outer bounds of the equitable-mootness doctrine, which are not presented here. This case would be equitably moot under any understanding of the doctrine. The Petition should be denied.

1. Puerto Rico is in the midst of what Congress has found to be a "fiscal emergency." 48 U.S.C. § 2194(m)(1). In June 2016, Congress enacted PROMESA to address that emergency. *Id.* §§ 2101–2241. Among other things, PROMESA established the Financial Oversight and Management Board for Puerto Rico (the "Board") and granted it extensive authority over long-term fiscal plans and budgets in the Commonwealth. *Id.* §§ 2161–2162.

When the Board was established in 2016, Puerto Rico had $74 billion of debt, $49 billion of pension liabilities, and insufficient resources to satisfy those obligations. Hurricanes Maria and Irma in the fall of

2017, a series of earthquakes in early 2020, and the ongoing pandemic exacerbated the crisis by devastating the Commonwealth's infrastructure and further decimating its economy.

Unlike municipalities on the mainland, the Commonwealth's instrumentalities cannot file for bankruptcy under Chapter 9 of the Bankruptcy Code. *See Puerto Rico v. Franklin Cal. Tax-Free Tr.*, 136 S. Ct. 1938, 1942 (2016). Title III of PROMESA thus establishes a procedure for the Commonwealth and its instrumentalities to restructure their debts. 48 U.S.C. §§ 2161–2177. The Board is authorized to commence a Title III case on behalf of the Commonwealth or any of its eligible instrumentalities, and the Board serves as the sole representative of the debtor in a Title III case. *Id.* §§ 2164(a), 2175(b). To date, the Board has filed six Title III cases on behalf of the Commonwealth and its instrumentalities, including COFINA.

Respondent the Puerto Rico Fiscal Agency and Financial Advisory Authority ("AAFAF") is the entity responsible under Puerto Rico law for coordinating with the Board with respect to Title III cases and other matters arising under PROMESA. AAFAF has appeared as a party in interest in each of those cases and supported the plan of adjustment for COFINA.

2. COFINA was created to raise money to pay certain debt obligations of the Government Development Bank for Puerto Rico and the Puerto Rico Public Finance Corporation. P.R. Laws Ann. tit. 13, §§ 11a–16. By statute, a percentage of sales and use taxes collected by the Commonwealth ("SUT Revenues") were transferred to COFINA to fund its operations by,

among other things, paying debt service on the money it borrowed. *Id.* § 12.

From 2007 to 2011, COFINA issued bonds secured by the SUT Revenues it received from the Commonwealth. When the Board filed a Title III petition on behalf of COFINA in May 2017, the aggregate principal and unpaid interest on the COFINA bonds totaled $17.64 billion. Pet. App. 79a.

3. PROMESA grants the Board the exclusive right to propose a plan of adjustment in a Title III case. 48 U.S.C. §§ 2172, 2175. Before the Board could propose a confirmable plan of adjustment for COFINA, however, a dispute over the ownership of the SUT Revenues had to be resolved.

Holders of general obligation bonds issued by the Commonwealth (the "GO Bonds") claimed that Article VI, § 8 of Puerto Rico's Constitution required the Commonwealth to use the SUT Revenues to pay debt service on the GO Bonds before transferring any of the revenues to COFINA. Pet. App. 54a–55a. The COFINA bondholders disagreed, arguing that the SUT Revenues belonged to COFINA. Pet. App. 55a–56a. To facilitate a resolution of this dispute, the Board appointed two agents—one to advocate for COFINA's ownership of the SUT Revenues and the other to advocate for the Commonwealth's ownership. The agents squared off in an adversary proceeding to determine whether COFINA or the Commonwealth owned the SUT Revenues. *See Off. Comm. of Unsecured Creditors v. Whyte*, No. 17-ap-257 (D.P.R.). That adversary proceeding, if litigated to final judgment, presented an all-or-nothing proposition for both sides: About $1 billion in already collected disputed

SUT Revenues would go either to the Commonwealth (and its bondholders) or to COFINA (and its bondholders). *See* Pet. App. 111a. And resolution of the dispute would also govern billions of dollars in future SUT Revenues.

To mitigate the risk on both sides, the representatives of the Commonwealth and COFINA each consulted their stakeholders and engaged in extensive mediation conducted by a panel of federal judges in an attempt to settle the dispute over the SUT Revenues. *See* Pet. App. 11a.[1] The parties ultimately agreed that 53.65% of the disputed SUT Revenues would be allocated to COFINA and 46.35% would be allocated to the Commonwealth (the "Settlement"), and that this allocation would continue into the future to pay newly issued bonds by COFINA. Pet. App. 11a–12a; 63a–64a. The Title III court approved the Settlement following extensive briefing and a hearing. The court noted that, without a consensual resolution, "[c]ontinued litigation of the Commonwealth-COFINA Dispute will invite additional delay for both the Commonwealth and COFINA in progressing towards fiscal responsibility and access to the capital markets, significant expense, and further delay and inconvenience to the Commonwealth's and COFINA's stakeholders and ability of their creditors to receive any distribution on their claims." Dkt. No. 5045 at 18.

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[1] Contrary to Petitioners' suggestion, "[n]o entity or constituency was denied access to the mediated settlement negotiation process." Pet. App. 93a.

4. The Settlement was incorporated into COFINA's plan of adjustment (the "Plan"), a comprehensive, 76-page document providing for a complete restructuring of COFINA's $18 billion debt. Under the Plan, COFINA's bonds would be cancelled and holders of those bonds would receive cash distributions and new securities issued by COFINA. Pet. App. 25a–26a. The Plan also provided for payment of $332 million to creditors who agreed to support the Settlement and who helped negotiate the Plan. Pet. App. 78a–79a. The Plan further provided for various releases, injunctions, and exculpations, including the discharge of all claims against COFINA, and it called for the dismissal with prejudice of all litigation arising from the COFINA restructuring—including the litigation over the SUT Revenues' ownership. Pet. App. 26a.

To establish the legal framework for cancelling the COFINA bonds and issuing new bonds, the Puerto Rico legislature enacted Act 241-2018. Pet. App. 68a; 99a–103a. Among other things, Act 241 amended aspects of COFINA's structure and authorized COFINA to issue new bonds secured by a statutory lien. Pet. App. 99a–103a.

5. The Plan received overwhelming support from every class of creditor—including class 5, to which Petitioners and other junior COFINA bondholders belonged. Pet. App. 97a–98a. Petitioners were among the few parties who objected to the Plan. Pet. App. 13a. Their objection centered on the Settlement. According to Petitioners, the dispute over the SUT Revenues should not have been settled but instead all the SUT Revenues should have been awarded to COFINA in litigation. Pet. App. 13a–14a. In other words, Pe-

titioners insisted that COFINA roll the dice in a winner-take-all outcome. Petitioners raised a hodgepodge of theories why the Plan should not be confirmed, arguing the Plan, the incorporated Settlement, and Act 241 violated nine provisions of the United States Constitution—including the Ex Post Facto, Takings, Contracts, and dormant Commerce Clauses—and at least eight statutory requirements. *See* Pet. App. 14a.

6. On February 4, 2019, following a two-day hearing, the Title III court confirmed the Plan in a 42-page order accompanied by an 88-page opinion replete with factual findings. Pet. App. 35a–153a; *see also* Dkt. No. 5055. Among other things, the Title III court found the Plan to be fair and in the best interest of COFINA's creditors and concluded the Plan "is a necessary and legally compliant component of Puerto Rico's recovery efforts and is essential to ensure that Puerto Rico is on a path that will restore its access to financial markets as it builds a stronger economy." Pet. App. 45a, 112a.

In confirming the Plan, the Title III court overruled the objections raised by Petitioners. Pet. App. 15a, 103a–108a. Among other things, the court found no taking had occurred and the Plan provided Petitioners with just compensation in any event because the significant distributions they received were potentially more than what they would have received absent the Settlement and Plan. Pet. App. 15a, 106a–108a. The Title III court further found that the Plan and Act 241 passed muster under the Contracts Clause because they were reasonable and necessary responses to the Commonwealth's "unprecedented fiscal and economic crisis and the need to resolve litigation concerning" the SUT Revenues. Pet. App. 105a.

The Title III court found Petitioners' other theories lacking as well. Pet. App. 9a, 43a.

7. The Plan was designed to be consummated quickly. To that end, the Plan expressly waived the 14-day automatic stay provided in Bankruptcy Rule 3020(e) and called for the immediate implementation of the Plan's core provisions, including the prompt cancellation of COFINA's obligations under the existing bonds and the issuance of new securities. Pet. App. 22a. Petitioners did not object to the waiver of the 14-day stay, and they did not seek to stay the Plan's implementation pending an appeal. *Id.*

On February 12, 2019, the Board filed a notice informing the Title III court that the Plan's effective date[2] had occurred and the Plan had been consummated. Pet. App. 15a. On that date, COFINA's obligations under the original bonds were cancelled, and COFINA issued new securities worth about $12 billion. Pet. App. 25a–26a. Those new securities have since been traded on the open market tens of thousands of times. *Id.* Also on the effective date, hundreds of millions of dollars were distributed under the Plan; more than $1 billion in disputed SUT Revenues were distributed to the Commonwealth and COFINA pursuant to the terms of the Settlement; insurers of COFINA's original bonds made payments to the holders of those bonds; and all claims against COFINA were discharged. Pet. App. 26a, 66a.

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[2] The "effective date" is the first business day on which the conditions precedent to confirmation and effectiveness specified in the Plan are either satisfied or waived.

8. A week after the Plan had already been fully implemented, Petitioners filed a notice of appeal challenging the Title III court's order confirming the Plan. Petitioners never moved to stay the Plan's implementation in connection with their appeal, and they did not seek to expedite the appeal as permitted by PROMESA. *See* 48 U.S.C. § 2126(d). Instead, the court of appeals issued a schedule for briefing and argument in the normal course, and Petitioners moved for several extensions of their deadlines. *See* Pet. App. 27a. The appeal was argued in July 2020—more than a year and a half after the Plan had been fully consummated.

The court of appeals dismissed the appeal under the equitable-mootness doctrine. Pet. App. 1a–34a. The court found that Petitioners had failed to take any steps to prevent the Plan from being consummated pending their appeal and thus did "anything but diligently seek to prevent third parties from building reliance interests in the confirmation of the Plan." Pet. App. 23a, 27a. The court further found that the relief sought by Petitioners would require unwinding the Plan and annulling all the transactions taken in reliance on the Plan. Pet. App. 29a–30a. In the court's view, such relief was "neither equitable nor practical" (Pet. App. 30a) given how many transactions had been conducted in reliance on the Plan. As the court explained:

> COFINA bonds worth over $17 billion were exchanged for reorganized COFINA bonds worth over $12 billion. Those new COFINA bonds have since changed hands tens of thousands of times on the open market for over a year,

> with many now held by strangers to these proceedings. In addition, COFINA distributed about $322 million to creditors, Bank of New York Mellon (BNYM), as trustee, transferred more than $1 billion in disputed SUT revenues to the Commonwealth and COFINA, and insurers of the old bonds have paid holders of old bonds under the Plan. Complicating matters further, claims have been released and all litigation arising from the restructuring has been dismissed with prejudice.

Pet. App. 26a. The court found there is "no practical way to undo all of this and return to the pre-confirmation status quo." *Id.* The court further found that unwinding the Plan would be inequitable to the tens of thousands of innocent third parties who had transacted business in reliance on the Plan as a result of Petitioners' lack of diligence, and to the people of Puerto Rico given the importance of the Plan to the Commonwealth's economic recovery. Pet. App. 26a–27a.

The court of appeals rejected Petitioners' contention that it could award relief without unwinding the Plan. Pet. App. 29a–30a. As the court explained, Petitioners requested that $316 million of the SUT Revenues paid to the Commonwealth under the Settlement be paid to Petitioners instead. Pet. App. 29a. The court observed that the Settlement was the linchpin of the Plan, and it had no authority to "tweak" the Settlement to give the Commonwealth less than what it bargained for while keeping the rest of the Plan in place. *Id.* "In short, we face an up-or-down decision—

affirm or vacate Plan approval. And because no one sought a stay of the plan approval, vacating approval is precisely what would trigger a hopeless effort to unscramble the eggs." *Id.* The court of appeals thus dismissed the appeal because appellate relief was "neither equitable nor practical." Pet. App. 30a.

Petitioners did not seek rehearing. This petition followed.

REASONS FOR DENYING THE PETITION

I. THE DECISION BELOW DOES NOT CONFLICT WITH THIS COURT'S PRECEDENT.

Contrary to Petitioners' assertion, this Court has never considered or questioned the viability of the equitable-mootness doctrine in the more than four decades since it was first recognized. In fact, on more than two dozen occasions, the Court has denied petitions like this one seeking to abolish the doctrine.[3] The Court's unwillingness to overturn the equitable-mootness doctrine is unsurprising: As the court below recognized, equitable mootness is simply a form of laches, "the notion that the passage of time and inaction by a party can render relief inequitable." Pet.

[3] *See, e.g.*, *ISL Loan Tr. v. Millennium Lab Holdings II, LLC*, 140 S. Ct. 2805 (2020); *Bennett v. Jefferson Cnty.*, 139 S. Ct. 1305 (2019); *Tuttle v. Allied Nev. Gold Corp.*, 139 S. Ct. 481 (2018); *Quinn v. City of Detroit*, 137 S. Ct. 2270 (2017); *Ochadleus v. City of Detroit*, 134 S. Ct. 1584 (2017); *Aurelius Cap. Mgmt., L.P. v. Tribune Media Co.*, 136 S. Ct. 1459 (2016); *Beeman v. BGI Creditor's Liquidating Tr.*, 136 S. Ct. 155 (2015); *Mitrano v. Tyler*, 134 S. Ct. 2679 (2014); *Law Debenture Tr. Co. of N.Y. v. Charter Commc'ns, Inc.*, 569 U.S. 968 (2013); *Mitrano v. JPMorgan Chase Bank, N.A.*, 571 U.S. 983 (2013).

App. 18a. This Court has consistently endorsed laches and other similar equitable doctrines that can deny a party relief where the equities of the case counsel strongly against it. *See* Point I.B, *infra*.

Petitioners fail to cite a single decision from this Court calling the equitable-mootness doctrine into question. The sole case cited in support of their "conflict" argument does not even mention equitable mootness. Pet. 16–20 (citing *Mission Prod. Holdings, Inc. v. Tempnology, LLC*, 139 S. Ct. 1652 (2019)).

A. There Is No Conflict with *Mission Product*.

Petitioners' contention that the decision below conflicts with this Court's decision in *Mission Product* makes little sense. *Mission Product* was not an equitable-mootness case. The issue there was Article III mootness, not equitable mootness—that is, whether effectual relief could be granted or whether there was no case or controversy for Article III purposes between a debtor and a party whose contract had been rejected by the debtor under 11 U.S.C. § 365. *Mission Prod.*, 139 S. Ct. at 1660–61. The lower court had held that a debtor-licensor's rejection of an intellectual-property license precluded the licensee's continued use of the intellectual property. *Id.* Had this Court reversed the lower court, the licensee could have pursued a claim for lost profits from the wrongfully prohibited use of the intellectual property, which was sufficient to support a case or controversy. *Id.* ("For better or worse, nothing so shows a continuing stake in a dispute's outcome as a demand for dollars and cents."). There, it was not a certainty that a money judgment would not

be satisfied, whereas here the court of appeals found that ordering the Commonwealth to pay any money to Petitioners would require rewriting the settlement between COFINA and the Commonwealth which the court could not do. Pet. App. 29a–30a.

Like the Court in *Mission Product*, the court below held there was a live case or controversy between the parties. Pet. App. 18a ("We have a live controversy: Appellants want the Plan confirmation undone, and appellees do not."). Here, however, there was no practical and equitable way to restore the parties to their pre-confirmation positions and to avoid harm to innocent strangers who traded new securities in reliance on confirmation. There is thus no conflict between the decision below and *Mission Product*: Both decisions reached the same conclusion that Article III's case or controversy requirement was satisfied.

The court below went on to analyze an issue not raised in *Mission Product*—namely, equitable mootness. Pet. App. 22a–30a. Despite its name, equitable mootness does not implicate a court's Article III jurisdiction. *See, e.g.*, *Bank of N.Y. Tr. Co., NA v. Off. Unsecured Creditors' Comm. (In re Pac. Lumber Co.)*, 584 F.3d 229, 240 (5th Cir. 2020) (distinguishing between equitable mootness and Article III mootness); *see also* Pet. App. 18a (calling equitable mootness a "misnomer" because it bears no relation to Article III mootness). Unlike the Article III mootness inquiry in *Mission Product*, which concerns whether a court *can* provide relief, equitable mootness asks whether a court "*should* provide such relief in light of fairness concerns." *In re Metromedia Fiber Network, Inc.*, 416 F.3d 136, 144–45 (2d Cir. 2005). Because *Mission*

Product did not address equitable mootness, it cannot conflict with the equitable-mootness holding below.

Petitioners argue that because *Mission Product* did not discuss equitable mootness, it *sub silentio* disapproved the doctrine. Pet. 18–19. That is a baseless inference. This Court addresses only arguments raised by the parties. *See FTC v. Phoebe Putney Health Sys., Inc.*, 568 U.S. 216, 226 n.4 (2013). Neither party in *Mission Product* raised equitable mootness in its merits briefs nor argued that the parties could not be restored to their pre-confirmation positions.

Petitioners further argue *Mission Product* disavowed equitable mootness by rejecting an argument that the case was moot because the bankruptcy estate had already distributed its assets, meaning that the licensee could not collect its claim for lost profits. Pet. 18. Again, however, the Court was addressing the question of Article III mootness. 139 S. Ct. at 1661. As the Court explained, there was at least a theoretical possibility that it could grant effectual relief by unwinding distributions already made under the bankruptcy plan, which was sufficient to support an Article III case or controversy. *Id.* The Court never addressed the separate question of whether unwinding the prior distributions would be practical or equitable, which is the relevant inquiry for equitable mootness.[4]

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[4] In passing, Petitioners mention *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976), but that case likewise did not address equitable mootness; it concerned a court's discretion to abstain from hearing certain cases.

B. Equitable Mootness Is Similar to Other Equitable Defenses Endorsed by the Court.

At its core, equitable mootness is no different from other equitable doctrines endorsed by this Court—including laches, equitable estoppel, and unclean hands—that can bar relief as a threshold matter without regard to the merits of the underlying claim when the equities of the case demand it. *See In re AOV Indus., Inc.*, 792 F.2d 1140, 1147–48 (D.C. Cir. 1986) (describing equitable mootness as one of "a mélange of doctrines relating to the court's discretion in matters of remedy and judicial administration").

The court below observed that equitable mootness is "akin to equitable laches" (Pet. App. 18a)—a doctrine this Court has long recognized. Like equitable mootness, laches is a judge-made doctrine that bars a claim regardless of its merit when, as a result of a claimant's lack of diligence, "changed circumstances inequitably work to the disadvantage or prejudice of another if the claim is now to be enforced." 11A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2946 (3d ed. 2020) ("Federal Practice and Procedure"). This Court has repeatedly endorsed laches as a viable defense in a variety of contexts. *See, e.g.*, *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 121 (2002) (laches defense available under Title VII); *Bay Area Laundry & Dry Cleaning Pension Tr. Fund v. Ferbar Corp.*, 522 U.S. 192, 205 (1997) (laches defense available under Multiemployer Pension Plan Amendments Act); *California v. Am. Stores Co.,* 495 U.S. 271, 296 (1990) (laches defense

available under Clayton Act); *Abbott Lab'ys v. Gardner*, 387 U.S. 136, 155 (1967) (laches defense available under Administrative Procedure Act), *abrogated on other grounds by Califano v. Sanders*, 430 U.S. 99 (1977); *Patterson v. Hewitt*, 195 U.S. 309, 319–20 (1904) (laches defense available in state-law property action); *see also Alsop v. Riker*, 155 U.S. 448, 460–61 (1894) (applying laches doctrine to dismiss contract claim). There is no good reason for recognizing laches as a viable judge-made doctrine while rejecting equitable mootness. The only difference between the two is that laches applies when a litigant is dilatory at the trial-court level while equitable mootness applies at the appellate level when restoring all parties to their pre-confirmation positions is impractical, innocent persons will be harmed in any incomplete restoration, and the appellant does not take all possible steps to prevent a bankruptcy plan from being consummated.

In addition to laches, several other judge-made equitable doctrines can cause a court to decline to consider the merits of a claim when the equities so require. For instance, this Court has "long recognized" the doctrine of equitable estoppel, *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 572 U.S. 663, 684 (2014), which prevents a party from changing its litigation position in certain circumstances, Federal Practice and Procedure § 4477.1. Like equitable mootness, equitable estoppel can result in a court rejecting a claim without considering its merits. *See Petrella*, 572 U.S. at 684 (equitable estoppel "may bar . . . claims completely, eliminating all potential remedies"); *Henshaw v. Bissell*, 85 U.S. 255, 258 (1873) (equitable estoppel may "prevent a party from asserting his legal rights to property"). And, like equitable mootness, equitable

estoppel is a judge-made doctrine. *See Kirk v. Hamilton*, 102 U.S. 68, 78 (1880) (explaining that equitable estoppel is "chiefly, if not wholly, derived from courts of equity").

Unclean hands is another judge-made equitable defense that can cause the dismissal of a potentially meritorious claim when the equities require. Federal Practice and Procedure § 2946. This Court has recognized unclean hands as a viable defense. *See Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 239 (1944), *overruled on other grounds by Standard Oil Co. v. United States*, 429 U.S. 17, 18 n.2 (1976); *Int'l News Serv. v. Associated Press*, 248 U.S. 215, 242 (1918). The Court has likewise recognized that the equitable doctrine of *in pari delicto*—which is "closely related to, and . . . a corollary of, the clean-hands maxim," 27A Am. Jur. 2d Equity § 24—may bar a claim for damages. *See Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 306–07, 310–11 (1985).

Each of these equitable doctrines endorsed by the Court puts the lie to Petitioners' contention that equitable mootness is invalid because it is a "judge-made" doctrine of equity. *E.g.*, Pet. 2, 16. Equitable defenses are particularly appropriate in bankruptcy cases because bankruptcy is an equitable proceeding. *See Young v. United States*, 535 U.S. 43, 50 (2002) (explaining that "bankruptcy courts . . . are courts of equity and apply the principles and rules of equity jurisprudence"); *see also Bank of Marin v. England*, 385 U.S. 99, 103 (1966) ("There is an overriding consideration that equitable principles govern the exercise of bankruptcy jurisdiction."); *Katchen v. Landy*, 382 U.S.

323, 327 (1966); *Pepper v. Litton*, 308 U.S. 295, 304 (1939). This Court has long recognized that courts sitting in equity may deny relief regardless of the merits of the underlying claim when the equities of the case so demand. *See, e.g.*, *Am. Stores,* 495 U.S. at 296 ("[E]quitable defenses such as laches, or perhaps 'unclean hands,' may protect consummated transactions from belated attacks by private parties."); *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 730 (1996) (noting the "discretion federal courts have traditionally exercised in deciding whether to provide equitable or discretionary relief"). That is all that occurred below.[5]

C. The Decision Below Did Not Eliminate Petitioners' Right to Appeal.

Petitioners further miss the mark when they contend that application of the equitable-mootness doctrine violated their statutory right to appeal from the Title III court's confirmation order. Pet. 17–18 (citing 48 U.S.C. § 2166(e)(2); *Hall v. Hall*, 138 S. Ct. 1118 (2018)). The statute does not grant Petitioners rights. It grants the court of appeals jurisdiction to review the Title III court's final orders. 48 U.S.C. § 2166(e)(2). The court of appeals exercised that jurisdiction by "dismiss[ing] [Petitioners'] challenges to the Title III court's confirmation of the Plan" due to Petitioners' dilatory behavior, including their decision not to seek a stay, which made it impractical and inequitable to

[5] Petitioners' assertion that they "were not the ones seeking equitable relief in bankruptcy" is simply inaccurate. Pet. 19. Petitioners requested relief from the bankruptcy plan at the court of appeals.

fashion appellate relief. Pet. App. 27a, 33a; *see also In re Envirodyne Indus., Inc.*, 29 F.3d 301, 304 (7th Cir. 1994) (Posner, J.) (describing equitable mootness "as merely an application of the age-old principle that in formulating equitable relief a court must consider the effects of the relief on innocent third parties"). The application of the equitable-mootness doctrine did not detract from the court's jurisdiction. Pet. App. 18a ("Equitable mootness bears on how we decide [a] controversy, not whether we have jurisdiction to decide it.").

The mandatory language of 48 U.S.C § 2166(e)(2) does nothing more than grant appellate jurisdiction. *See* Pet. 17–18. The United States Code contains several provisions with similar mandatory language granting district courts jurisdiction over certain claims, but that language does not preclude application of equitable defenses. For instance, 28 U.S.C. § 1331 provides that district courts "shall have original jurisdiction" over federal questions. Yet claims brought under § 1331 can be dismissed by a district court on equitable grounds without running afoul of that mandatory language. *See, e.g.*, *Nat'l R.R. Passenger Corp.*, 536 U.S. at 121. For the same reason, an order dismissing an appeal on equitable grounds carries out the jurisdictional grant in 48 U.S.C. § 2166(e)(2).

II. THERE IS NO CIRCUIT SPLIT.

Every one of the twelve regional Circuits recognizes the equitable-mootness doctrine in appeals from bankruptcy confirmation orders. *See In re Paige*, 584 F.3d 1327, 1337–38 (10th Cir. 2009) (noting universal

agreement among the Circuits).[6] What's more, each Circuit considers the same factors when determining whether an appeal is equitably moot—including the appellant's diligence in seeking to stay implementation of the bankruptcy plan pending appeal; whether the plan has been consummated to the point where appellate relief would be impractical; and whether the requested relief would harm innocent third parties. *See* 7 Collier on Bankruptcy ¶ 1129.09(1) (16th ed. 2010) ("Collier") (noting that "the general contours of the doctrine are accepted" across the Circuits); *see also* David S. Kupetz, *Equitable Mootness: Prudential Forbearance from Upsetting Successful Reorganizations or Highly Problematic Judge-Made Abstention Doctrine?*, 25 Norton J. Bankr. L. & Prac. 245, 247 (2016) (the Circuits' tests for equitable mootness "tend to be variations on the same theme . . . [and] consider factors [that] are interconnected and overlapping"). Accordingly, this Court's review is not required to ensure uniformity. Equitable mootness is already applied consistently across the nation.

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[6] *See, e.g.*, *PPUC Pa. Pub. Util. Comm'n v. Gangi*, 874 F.3d 33, 37 (1st Cir. 2017); *In re Burger Boys, Inc.*, 94 F.3d 755, 759–60 (2d Cir. 1996); *In re Tribune Media Co.*, 799 F.3d 272, 278 (3d Cir. 2015); *Behrmann v. Nat'l Heritage Found.*, 663 F.3d 704, 713–14 (4th Cir. 2011); *In re Scopac*, 624 F.3d 274, 281–82 (5th Cir. 2010); *In re City of Detroit*, 838 F.3d 792, 799 (6th Cir. 2016); *In re UNR Indus., Inc.*, 20 F.3d 766, 769 (7th Cir. 1994); *In re President Casinos, Inc.*, 409 F. App'x 31, 31–32 (8th Cir. 2010) (per curiam); *Cobb v. City of Stockton (In re City of Stockton)*, 909 F.3d 1256, 1264–66 (9th Cir. 2018); *In re Paige*, 584 F.3d 1327, 1337–38 (10th Cir. 2009); *Bennett v. Jefferson Cnty.*, 899 F.3d 1240, 1247–53 (11th Cir. 2018); *In re AOV Indus., Inc.*, 792 F.2d 1140, 1147–48 (D.C. Cir. 1986).

Petitioners attempt to manufacture a Circuit split by contending that the equitable-mootness analysis below differed from the analysis performed in other Circuits in three ways. Pet. 29–37. In each instance, Petitioners mischaracterize the decision below.

First, Petitioners contend that the court below treated the Commonwealth as an "innocent third party" in its equitable-mootness analysis, which other Circuits supposedly would not do. Pet. 31. That is simply false. When the court below analyzed the effect that unwinding the Plan would have on innocent third parties, it did not treat the Commonwealth as a third party. Instead, it considered (1) the tens of thousands of investors who have traded the new COFINA securities on the open market and "extended credit, settled claims, relinquished collateral and transferred or acquired property in legitimate reliance on the unstayed order of confirmation"; and (2) the citizens of Puerto Rico. Pet. App. 26a–27a. Tellingly, Petitioners cite to no portion of the decision below where the court of appeals treated the Commonwealth as an "innocent third party" for purposes of equitable mootness.[7]

Second, Petitioners contend that other Circuits do not apply equitable mootness to appeals brought by secured creditors, while the First Circuit does. Pet. 32. Again, however, Petitioners' contention lacks

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[7] The Petition cites only Pet. App. 11a–14a, which contains background concerning the development of the Plan but no analysis of how appellate reversal would affect innocent third parties. Pet. 31. The other citation to Pet. App. 62a–68a is to the Title III court's confirmation order, which did not concern equitable mootness.

any support. The cases from other Circuits cited in the Petition turn on their facts and do not bar equitable mootness in appeals brought by secured creditors. *See, e.g.*, *In re Semcrude, L.P.*, 728 F.3d 314, 323 (3d Cir. 2013) ("[N]o matter how we would resolve the issue, equitable mootness was not a proper shield here."); *In re Tex. Grand Prairie Hotel Realty, L.L.C.*, 710 F.3d 324, 328 (5th Cir. 2013) (denying equitable mootness because "fractional relief" was possible that would not "require unwinding any of the transactions undertaken pursuant to the reorganization plan"). In fact, the Circuits apply equitable mootness to all manner of claims, including constitutional claims. *See, e.g.*, *Cobb v. City of Stockton (In re City of Stockton)*, 909 F.3d 1256, 1265–68 (9th Cir. 2018); *Bennett v. Jefferson Cnty.*, 899 F.3d 1240, 1250–54 (11th Cir. 2018). Furthermore, Petitioners' reference to themselves as secured creditors is their wish, not the fact. COFINA secured its obligations to Petitioners with SUT Revenues COFINA claimed to own. The Commonwealth claimed COFINA did not own them, and therefore could not pledge them to secured Petitioners' bonds. That is the issue that was settled. Petitioners simply assume there was no dispute and their status as secured claimholders was a fact, when it was actually the issue.

Third, Petitioners are wrong that the First Circuit split from its sister Circuits by considering Petitioners' failure to seek a stay as part of its equitable-mootness analysis. Pet. 33–37. Contrary to Petitioners' contention, the Third, Fifth, and Sixth Circuits (like the First Circuit below) all consider "whether a stay has been obtained" as a factor in the equitable-mootness analysis. *See In re One2One Commc'ns*, 805 F.3d

428, 434 (3d Cir. 2015); *In re Blast Energy Servs., Inc.*, 593 F.3d 418, 424 (5th Cir. 2010); *In re Schwartz*, 636 F. App'x 673, 675 (6th Cir. 2016). To the extent Petitioners suggest that the decision below turned *solely* on their failure to seek a stay, they simply mischaracterize the decision. *See* Pet. App. 22a–30a (considering various factors in addition to Petitioners' failure to seek a stay in determining that the relief requested was "neither practical nor equitable"). Indeed, Petitioners admit there is no *per se* rule in the First Circuit that a failure to seek a stay always triggers equitable mootness. Pet. 34–35 & n.68.

The bottom line is that every one of the twelve regional Circuits recognizes the equitable-mootness doctrine and considers the same factors in its equitable-mootness analysis. The cases cited by Petitioners are not inconsistent with the decision below because they turned on different fact patterns.

Bereft of any support for their Circuit split argument, Petitioners resort to citing dissents and concurrences purportedly "criticizing" the equitable-mootness doctrine. Pet. 20–23. Petitioners ignore that each application of equitable mootness has turned on different facts. That Petitioners can identify only a handful of federal judges who have purportedly "criticized" equitable mootness only underscores the broad consensus favoring the doctrine among the lower courts and highlights that its application is always to a unique set of facts. Moreover, much of the purported "criticism" touted by the Petition is not criticism at all. *See, e.g.*, *In re Pac. Lumber*, 584 F.3d at 240 (noting that equitable mootness is "firmly rooted in Fifth Circuit jurisprudence"); *City of Stockton*, 909 F.3d at

1270 (Friedland, J., dissenting) (not questioning the existence of the doctrine but holding that it did not apply to the facts of the case).

Even the judges who have questioned the underpinnings of the doctrine acknowledge that there may be appeals where unwinding a consummated plan is simply not practical. *See In re One2One Commc'ns*, 805 F.3d at 449–51 (Krause, J., concurring) (recognizing that laches and discretionary dismissal may be appropriate substitutes for equitable mootness in certain cases); *In re Cont'l Airlines*, 91 F.3d 553, 567 (3d Cir. 1996) (Alito, J., dissenting) (criticizing courts that rely on equitable mootness in appeals "in which they can plainly provide relief"). This is one of those cases where the court of appeals cannot provide relief as a practical or equitable matter because any relief would require unwinding an unusually complex Plan that has been relied on by tens of thousands of innocent investors for more than two years since its implementation.[8] Thus, Petitioners want the Court to issue a global ruling abolishing equitable mootness applicable to situations not before the Court, while even the few judges who have questioned the doctrine have generally questioned only its application to specific cases.

[8] The Petition's reliance on a law review article from 2019 purportedly criticizing the equitable-mootness doctrine is likewise not a basis for certiorari. Pet. 23–24.

III. THE COURT BELOW CORRECTLY APPLIED THE EQUITABLE-MOOTNESS DOCTRINE.

This Court typically does not grant certiorari for the purpose of error correction. *See* Sup. Ct. R. 10. Petitioners nevertheless devote much of their Petition to complaining that the court of appeals erred in its application of the equitable-mootness doctrine. *E.g.*, Pet. 24–29, 35–37. Their primary complaint concerns the finding by the court of appeals that the relief Petitioners sought would require unwinding the Plan and the tens of thousands of transactions conducted by third parties in reliance on the Plan. *See* Pet. App. 29a–30a. According to Petitioners, that finding was erroneous because the court supposedly could have granted relief without unwinding the Plan, thereby avoiding any equitable-mootness problem. Pet. 24–26.

Suffice to say, even if the court of appeals misapplied the equitable-mootness standard to the facts of this case, that is not a basis for this Court's review. *See, e.g.*, *Taylor v. Riojas*, 141 S. Ct. 52, 55 (2020) (Alito, J., concurring). In all events, the court of appeals applied the doctrine correctly.

On appeal, Petitioners requested that the court of appeals reallocate to them $316 million of the amount paid to the Commonwealth under the Settlement of the dispute over the SUT Revenues. Pet. App. 29a. However, as the court of appeals observed, it has no authority to amend the terms of a Settlement and impose on the Commonwealth terms it did not bargain for. *Id.* At most, the court of appeals could *invalidate* the Settlement. The Settlement was the linchpin of

the Plan, though. Without it, there could be no Plan, as the courts below noted. *See, e.g.*, *id.* ("[T]he Plan rested at base on the court's approval of [the] [S]ettlement."); Pet. App. 87a ("The Plan is premised on the Settlement, which is integral to the Plan."); Pet. App. 136a ("The Settlement and the allocation of the [SUT Revenues] are necessary for the implementation of the Plan.").

Accordingly, the court of appeals faced an "up-or-down decision." Pet. App. 29a. It could either invalidate the Settlement, which would require unwinding the Plan and all transactions conducted in reliance on the Plan, or it could uphold the Settlement, leaving no money available to satisfy Petitioners' demand for $316 million. *Id.* There were no other options.

Under those circumstances, the court reasonably found that it would be "neither equitable nor practical" to unwind the Plan to grant Petitioners relief. Pet. App. 30a. As the court observed, Petitioners failed even to attempt to prevent the Plan from being implemented before the appeal was resolved. Pet. App. 22a–23a, 27a. Now that the Plan has been implemented, it is impractical to "unscramble the eggs" for several reasons, including that new securities have been issued under the Plan and have been traded in large volumes. Pet. App. 25a–27a, 29a–30a. If ever there were a case where appellate reversal of a confirmation order would be impractical and inequitable, this is the case. *See also* Point IV.A, *infra*. Petitioners' contention that the court of appeals misapplied the equitable-mootness doctrine ignores the complexity of the Plan and its dependence on the Settlement.

IV. THIS CASE IS A POOR VEHICLE.

In addition to failing to satisfy any of the Court's criteria for certiorari, this case is a poor vehicle for addressing the equitable-mootness doctrine for at least two reasons. *First*, this appeal would be equitably moot under any understanding of the doctrine, and it is not a close call. Accordingly, to the extent the Court is interested in clarifying the outer bounds of the equitable-mootness doctrine, this case does not allow for it. *Second*, Petitioners' appeal—which relies on far-flung theories like the Ex Post Facto and dormant Commerce Clauses—lacks any merit. Consequently, even if the Court were to grant certiorari and reverse on equitable mootness, it would make no practical difference to the outcome of the appeal because Petitioners would lose anyway.

A. This Case Is Equitably Moot Under Any Understanding of the Doctrine.

The relief requested by Petitioners would be so overwhelmingly unfair and impractical that even skeptics of the doctrine would agree the appeal below was equitably moot. Petitioners sat on their rights and thus allowed countless innocent third parties to conduct transactions in reliance on the Plan. For instance, Petitioners made no effort to stay implementation of the Plan while they pursued their appeal. Pet. App. 22a–23a, 27a. In fact, they did not even file their notice of appeal until after the Plan's effective date had already arrived. Once their appeal was docketed, Petitioners chose not to request expedited disposition as expressly authorized by 48 U.S.C. § 2126(d). Instead, a briefing schedule issued in the ordinary

course, and Petitioners requested several extensions of their filing deadlines while also consenting to extension requests by the Board. This is thus not a marginal case where third-party reliance interests arose through no fault of the appellants. Here, Petitioners' lack of diligence is the primary reason why unwinding the Plan would be inequitable.[9]

As a direct result of Petitioners' lack of diligence, the Plan had been fully implemented for more than a year and a half by the time the appeal was argued. To be clear, this is not a plan that merely provides for the distribution of the debtor's assets. Under this Plan, COFINA's bonds were cancelled, and new securities worth over $12 billion were issued in their place. Pet. App. 25a–26a. The record shows that those new bonds have been traded tens of thousands of times. *Id.* It would plainly be impractical to unwind this Plan and restore the pre-Plan *status quo* because that would require cancelling the new securities (and disgorging all

[9] Petitioners' contention that it would have been futile to seek a stay is pure conjecture. If Petitioners had legitimate arguments for overturning the order confirming the Plan, the Title III court or the First Circuit could have granted a stay pending appeal. At the very least, equity requires a party seeking to overturn a complex plan of adjustment to request a stay. Contrary to Petitioners' contention (Pet. 37), the Board did not make it "impractical" for Petitioners to seek a stay; Petitioners merely had to file a motion. Petitioners' speculation that they might have been ordered to post a bond is an admission of the inequities their appeal could create and is no excuse for failing to request a stay. Petitioners also complain about the Plan provision waiving the 14-day stay provided in Bankruptcy Rule 3020(e), but such provisions are common because "the success of plans of reorganization often requires prompt implementation." Collier ¶ 1129.09(1).

interest paid on them), rescinding all trades, and reissuing the old bonds. Petitioners volunteer no means to accomplish the unwinding.

What's more, the Title III court found the Plan is a critical step in the Commonwealth's economic recovery. Pet. App. 45a. As the court of appeals explained, if the Plan were to be unwound years after its consummation, it would undermine confidence in the restructuring and jeopardize the Commonwealth's ability to return to fiscal solvency. Pet. App. 26a–27a. For all of these reasons, the court of appeals reasonably found that unwinding the Plan would be "neither equitable nor practical." Pet. App. 30a.

Accordingly, even if the Court were interested in defining or narrowing the equitable-mootness doctrine, this case does not allow for it. The unique facts presented here eliminate any doubt that appellate relief would have been impractical and inequitable. If the Court is interested in clarifying the boundaries of the equitable-mootness doctrine, it should await a case on the boundaries.

B. Petitioners' Substantive Challenge to the Plan Is Meritless.

This case is a poor vehicle for the additional reason that Petitioners' substantive challenge to the Plan is meritless. Therefore, even if the Court were to reverse the court of appeals on the equitable-mootness question, it would have no effect on the ultimate outcome of the case. Significantly, while Petitioners ask for their appeal to be heard, it was heard. This is not a case where the appeals court dismissed the appeal

for equitable mootness without hearing the appeal. Rather, the court required briefing of the merits and heard argument on the merits before it dismissed the appeal on equitable mootness grounds.

At the court of appeals, Petitioners employed a "kitchen sink" strategy, arguing that the Plan violated eight different statutory criteria and nine provisions of the United States Constitution. Among other things, Petitioners argued that the Plan and PROMESA violated the Ex Post Facto Clause even though that Clause applies only to criminal statutes. *See E. Enters. v. Apfel*, 524 U.S. 498, 538–39 (1998) (Thomas, J., concurring). They also argued that PROMESA violates the Appointments Clause, a position this Court has rejected. *See Fin. Oversight & Mgmt. Bd. for P.R. v. Aurelius Inv., LLC*, 140 S. Ct. 1649, 1665 (2020). Petitioners even argued there somehow was a violation of the dormant Commerce Clause. As is typically the case, the volume of arguments made by Petitioners below is inversely proportional to their merit.

Several of Petitioners' appellate arguments challenged factual findings made by the Title III court and therefore would have to overcome the deferential clear-error standard of review. The Title III court confirmed the Plan following a two-day confirmation hearing in which the court received evidence and heard testimony from numerous witnesses. *See* Pet. App. 43a. In connection with its confirmation order, the Title III court found facts that Petitioners disputed on appeal. For example, after holding that Petitioners had not suffered a taking, the Title III court found that the amounts paid to Petitioners under the

Plan (55 cents on the dollar) constituted just compensation in any event. Pet. App. 106a–108a. A finding that a party received just compensation under the Takings Clause is reviewed for clear error. *See, e.g.*, *United States v. 269 Acres*, 995 F.3d 152, 164 (4th Cir. 2021); *Portland Nat. Gas Transmission Sys. v. 19.2 Acres of Land*, 318 F.3d 279, 281 (1st Cir. 2003). Accordingly, to prevail on their takings claim on appeal, Petitioners would need to show not only that the Title III court erred in holding that no taking occurred, but also that it committed clear error in finding that Petitioners received just compensation for their claims. Petitioners are highly unlikely to make such a showing.

Petitioners' Contracts Clause claim is similarly weak. It is well settled that the Contracts Clause does not bar state laws that are reasonable and necessary under the circumstances. *See Energy Reserves Grp., Inc. v. Kan. Power & Light Co.*, 459 U.S. 400, 410 (1983). The Title III court found that Act 241—the legislation authorizing the issuance of new securities under the Plan—was reasonable and necessary for purposes of the Contracts Clause. Pet. App. 103a–106a ("The Legislature's decision is a reasonable one under the surrounding circumstances. It is also necessary in light of the ongoing fiscal emergency in Puerto Rico."). For Petitioners to prevail on their Contracts Clause claim, they would need to convince the court of appeals that the Title III court—which is intimately familiar with the circumstances on the ground in Puerto Rico after presiding over the Title III cases for the past four years—was wrong when it found that the legislation authorizing COFINA to issue new securities was reasonable and necessary. Given the severity of the Commonwealth's

fiscal crisis, Petitioners would not be able to satisfy that burden.

In addition to the fact that Petitioners' challenges to the Plan lack any merit, the relief sought by Petitioners on appeal is barred by *Young v. Higbee Co.*, 324 U.S. 204, 213–14 (1945). The holding of that case prohibits special payments to only a subset of a class of creditors, which is what Petitioners sought below. *Id.* Thus, even if the appeals court wanted to rewrite the Settlement to provide more SUT Revenues for Petitioners, it is barred from doing so because Petitioners cannot take the fruits of their appeal for themselves.

This case is therefore not a good vehicle because Petitioners are unlikely to succeed on their appeal regardless of any decision on equitable mootness.

CONCLUSION

The petition for a writ of certiorari should be denied.

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Respectfully submitted,

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