

No. 21A__

IN THE
Supreme Court of the United States

FAIRHOLME FUNDS INC., ET AL.,

Applicants,

v.

UNITED STATES,

Respondent.

OWL CREEK ASIA I, L.P., ET AL.,

Applicants,

v.

UNITED STATES,

Respondent.

MASON CAPITAL L.P., ET AL.,

Applicants,

v.

UNITED STATES,

Respondent.

AKANTHOS OPPORTUNITY FUND, L.P.

Applicant,

v.

UNITED STATES,

Respondent.

(caption continued on next page)

**APPLICATION FOR AN EXTENSION OF TIME TO FILE A
PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT**

(continued from front cover)

APPALOOSA INVESTMENT LIMITED PARTNERSHIP I, ET AL.,

Applicants,

v.

UNITED STATES,

Respondent.

CSS, LLC,

Applicant,

v.

UNITED STATES OF AMERICA,

Respondent.

ARROWOOD INDEMNITY COMPANY, ET AL.,

Applicants,

v.

UNITED STATES,

Respondent.

JOSEPH CACCIAPALLE,

Applicant,

v.

UNITED STATES,

Respondent.

To the Honorable John G. Roberts, Jr., Chief Justice of the Supreme Court of the United States and Circuit Justice for the Federal Circuit:

1. Under Supreme Court Rules 13.5, 22, and 30, petitioners,¹ all of the plaintiffs-appellants in *Fairholme Funds, et al. v. United States*, *Owl Creek Asia I, L.P., et al. v. United States*, *Mason Capital L.P., et al. v. United States*, *Akanthos Opportunity Fund, L.P. v. United States*, *Appaloosa Investment Limited Partnership I, et al. v. United States*, *CSS, LLC v. United States*, *Arrowood Indemnity Company, et al. v. United States*, and *Joseph Cacciapalle v. United States* (together, the “Private Shareholders”) respectfully request a sixty-day extension of time, up to and including July 22, 2022, to file one or more petitions for a writ of certiorari to the United States Court of Appeals for the Federal Circuit, to review *Fairholme Funds, Inc. v. United States*, 26 F.4th 1274 (Fed. Cir. 2022) (Nos. 20-1912, 20-1914, 20-1934, 20-1936, 20-1938, 20-1954, 20-1955, 20-2020, 20-2037). The United States Court of Appeals issued its decision on February 22, 2022. Appendix A. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254. The time to file petitions for writs of certiorari will otherwise expire on May 23, 2022. The application is timely because it has been filed more than ten days before the date on which a petition is otherwise due.

2. The decision of the Federal Circuit presents important and recurring questions concerning the availability to private shareholders of any remedy when the federal government controls a company and transfers to itself the shareholders’ rights

¹ Petitioners each state that they have no parent corporation and no publicly held company owns 10% or more of Petitioners’ stock.

in their stock. The Private Shareholders are shareholders of Fannie Mae and Freddie Mac (the “Companies”) and plaintiffs in eight separate cases, including one class action.² All eight cases assert claims against the United States based on the government’s imposition of the “net worth sweep”—an agreement between Treasury and the Federal Housing Finance Agency whereby the fixed quarterly dividend Treasury was receiving in exchange for certain financing it had provided to the Companies was replaced with a quarterly dividend equal to each Company’s entire net worth (minus a small capital reserve). This net worth sweep transferred the entire economic value of the Private Shareholders’ interests in their stock to the government shareholder of the Companies (Treasury). *See generally Collins v. Yellen*, 141 S. Ct. 1761, 1778–79 (2021). The government’s expropriation of private property rights is an extreme and unprecedented overreach.

3. Good cause exists for this requested extension. These eight cases have been procedurally coordinated throughout proceedings in the Court of Federal Claims and the Federal Circuit allowing counsel for the Private Shareholders to ensure that there is no duplicative briefing. In the Court of Federal Claims, the court held a single oral argument for all eight cases on the government’s motion to dismiss. In the Federal Circuit, the briefing was streamlined and issues relevant to all Private Shareholders were briefed jointly. Like the Court of Federal Claims, the Federal Circuit also held a single combined oral argument, and it issued one decision addressing all the cases.

² The plaintiffs in *Owl Creek*, *Mason*, *Akanthos*, *Appaloosa*, and *CSS* are all represented by the same counsel and these five cases were consolidated on appeal.

This coordination has promoted judicial efficiency and conserved both the parties' and the courts' resources. Granting the requested extension will enable the Private Shareholders to continue this coordination in seeking certiorari, streamlining the issues for this Court to consider, and avoiding duplication.

4. Furthermore, counsel for the Private Shareholders have a number of conflicts making it extremely difficult to meet the current May 23 deadline. Counsel for the Owl Creek Petitioners had depositions in April 2022 in *Lufthansa Technik v. Panasonic Avionics Corp.*, No. 2:17-cv-01453-JCC (W.D. Wash.) and has additional depositions in May and June 2022 in *Citigroup Inc., et al. v. Villar*, No. 2:19-cv-05310-GW (C.D. Cal.), must brief summary judgment in June 2022, has several upcoming filings due in May and June 2022 related to *Antero Resources Corp. v. Irby*, Nos. 21-0119, 21-1021 (W. Va.), and has had a number of hearings this month including an in-person oral argument on May 4, 2022 in *United States v. Fallin*, No. 20-7702 (4th Cir.). Counsel for the Owl Creek Petitioners also filed petitions for writ of certiorari in *Campbell-Martin, et al. v. United States*, No. 21-1344, on April 7, 2022 and in *Ojedokun v. United States*, No. 21-1380 on April 22, 2022, and was out of the office on May 5–7 attending the American Bar Association Section of Litigation Annual Conference and Spring Leadership Meeting.

5. Counsel for the Fairholme Petitioners are preparing for oral arguments on May 18 in *Norwegian Cruise Line Holdings Ltd. v. State Surgeon General*, No. 21-12729 (11th Cir.), June 9 in *Rop v. Federal Housing Finance Agency*, No. 20-2071 (6th Cir.), and June 17 in *Bhatti v. Federal Housing Finance Agency*, No. 17-2185 (D.

Minn.). In addition, counsel for the Fairholme Petitioners are preparing an opposition to a preliminary injunction motion in *Falls v. DeSantis*, No. 22-166 (N.D. Fla.), which is due on June 1.

6. Counsel for the Arrowood Petitioners have a mediation in June in *State of California et al. v. Essilor Laboratories of America, Inc., et al.*, CGC-16-551940 (Cal. Super. Ct.), upcoming deposition work in that case and other cases, and a conference in May in *United States ex rel. Mark v. Shamir USA, Inc.*, No. 2:18-cv-9426 (C.D. Cal.).

7. Counsel for the Cacciapalle Petitioners have a trial currently scheduled for July 11, 2022 in the related case of *In re Fannie Mae/Freddie Mac Senior Preferred Stock Purchase Agreement Class Action Litigations*, No. 13-1288 (RCL).

WHEREFORE, the Private Shareholders respectfully request that an order be entered extending the time for the Private Shareholders to file one or more petitions for a writ of certiorari for sixty days, up to and including July 22, 2022.

Dated: May 9, 2022

/s/ Charles J. Cooper

Charles J. Cooper
Counsel of Record
COOPER & KIRK, PLLC
1523 New Hampshire
Avenue, N.W.
Washington, D.C. 20036
(202) 220-9600
ccooper@cooperkirk.com

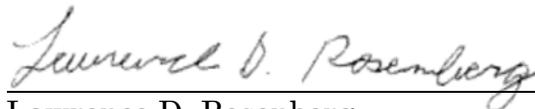
Counsel for Fairholme Petitioners

/s/ Hamish P.M. Hume

Hamish P.M. Hume
Counsel of Record
Samuel C. Kaplan
BOIES SCHILLER FLEXNER LLP
1401 New York Ave. NW
Washington, DC 20005
(202) 237-2727
hhume@bsfllp.com

Counsel for Cacciapalle Petitioners

Respectfully submitted,



Lawrence D. Rosenberg
Counsel of Record
C. Kevin Marshall
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
(202) 879-3939
ldrosenberg@jonesday.com

Counsel for the Owl Creek Petitioners

/s/ Richard M. Zuckerman

Richard M. Zuckerman
Counsel of Record
DENTONS US LLP
1221 Avenue of the Americas
New York, New York 10020
(212) 768-6700
richard.zuckerman@dentons.com

Counsel for Arrowood Petitioners