No. 25-490

In the Supreme Court of the United States

LUJAN CLAIMANTS,

Petitioners,

v.

BOY SCOUTS OF AMERICA, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITIONERS' REPLY BRIEF

DELIA LUJAN WOLFF
LUJAN & WOLFF LLP
238 Archbishop FC
Flores St., Ste. 300
Hagåtña, Guam 96910

MAHESHA P. SUBBARAMAN
Counsel of Record
SUBBARAMAN PLLC
80 S. 8th St., Ste. 900
Minneapolis, MN 55402
(612) 315-9210
mps@subblaw.com

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PETITIONERS' REPLY BRIEF

The briefs-in-opposition (BIOs) ask this Court to cast a blind eye as the decision below and courts nationwide "end run" the clear holding of *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204 (2024) that "the bankruptcy code does not permit nonconsensual third-party releases in a chapter 11 plan." Pet. App. 78a (Rendell, J., concurring). In doing so, the BIOs confirm why this case merits review—a case allowing major insurance companies and thousands of other corporate non-debtors who "have not agreed to place anything approaching their full assets on the table" to exploit the bankruptcy system at the expense of 82,000 sexual-abuse survivors, including Petitioners. *Purdue*, 603 U.S. at 221-22; *see* Pet. 11-16.

Petitioners agree with the BIOs that "[i]t is time for this chapter of horrors to end." Coalition BIO 13. But no legitimate end comes from unlawful releases that deny every abuse survivor's right to choose their day in court over a bankruptcy plan's demonstrably false promises of full payment. Joy *Amici* Br. 5-13. The way to end the horror is to hold that neither 11 U.S.C. §363(m)'s narrow protection of asset sales nor the dubious idea of equitable mootness permits abuse claims (no less than opioid claims) to be "bargained away without the consent of those affected, as if the claims were somehow [the offender's] own property." *Purdue,* 603 U.S. at 220; Scholars *Amici* Br. 13-14. The way to end the horror is to get this extraordinary case right, ensuring that no tort victim—either today or in the future—is forced to endure the "dangerous transactional precedent" set by the decision below. *See* Pet. App. 86a (Rendell, J., concurring).

A. *Purdue* lights the way, confirming both the need for and ultimate value of review.

The BIOs maintain "[t]he human toll of further delay provides the most important reason for this Court to deny review." Coalition BIO 22. The BIOs insist that "[g]ranting certiorari now and throwing the whole [p]lan into doubt … would be a devastating re-traumatization" of abuse survivors. Scouting BIO 27. The aftermath of *Purdue* proves the opposite. By granting review, the Court stands to vindicate the dignity of abuse survivors, who are no less entitled than opioid victims to decide the fate of their claims, and whose financial situation can only improve upon invalidation of the cents-on-the-dollar nonconsensual releases now shielded by the Third Circuit.

When the Court decided *Purdue* in June 2024, dire predictions abounded. "Opioid victims … will suffer greatly in the wake of today's unfortunate and destabilizing decision." *Purdue*, 603 U.S. at 277-78, (Kavanaugh, J., dissenting). In a post-*Purdue* legal universe where "nonconsensual non-debtor releases" were "categorically impermissible," any "hope for a new deal" to settle opioid claims was "pure fantasy." *Id.* "The Sacklers … [would] not return any funds to Purdue's estate" (i.e., from the billions they raided), leaving "no viable path" for opioid victims to recover "even $3,500 each." *Id.* at 224 (majority op.).

So what happened next? The parties-in-interest "went back to the drawing board" and undertook "a months' long mediation process." *See In re Purdue Pharma L.P.*, No. 19-23649, 2025 Bankr. LEXIS 3028, at *26-29 (Bankr. S.D.N.Y. Nov. 20, 2025). The result

was a new "global agreement" under which the Sacklers agreed to return over $7 billion—or $1 billion more than previously promised—in exchange for *consensual* releases. *See id.* Opioid victims who "affirmatively elect[ed]" to release their claims would be provided "additional distributions in exchange." *Id.* Otherwise, opioid victims would "not have their direct claims … released or … compromised." *Id.* In November 2025, the bankruptcy court confirmed this new *Purdue*-compliant plan. *See id.* at *89.

Against this backdrop, the BIOs' dire prediction of abuse survivors being sent "back to square one" rings hollow. Coalition BIO 18. "[I]t is unclear why pessimism should rule the day" when elimination of the nonconsensual releases in *Purdue* afforded opioid victims more compensation and dignity. *McGirt v. Oklahoma*, 591 U.S. 894, 936-37 (2020). "[That] none of the[] [dire] predictions [in *Purdue*] panned out … caution[s] against … crediting identical warnings today." *Id.* By contrast, letting the status quo prevail guarantees a "devastating setback" for survivors in their "search for justice." Coalition BIO 18.

Under the plan, "only … the Settlement Trustee … establish[es] … the aggregate amount" of abuse-survivor claims. Pet. App. 497a. In August 2025, the Settlement Trustee attested under penalty of perjury that the aggregate value of abuse claims exceeds $20 billion.[1] The Trustee has told survivors in turn that payments "almost certainly will not be 100% of the allowed amount."[2] Or as a November 2025 filing by a

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[1] ECF 13249-1 (at ¶9) in No. 20-10343 (Bankr. D. Del.).

[2] SCOUTING SETTLEMENT TRUST FAQ §16.6 (June 20, 2025), https://tinyurl.com/mu4dd7f6.

non-settling insurer notes, at best, survivors stand to receive "only 9% of their allowed claims" given the bare $2.4 billion paid by settling insurers and others for the unlawful releases they now enjoy.[3] Pet. 14-15. Yet, in defending plan confirmation below, BSA—who opposes review here—repeatedly attested that "the [p]lan provides for **payment in full**." Pet. App. 220a.[4] Indeed, this is how BSA "attract[ed] sufficient numbers of survivors to support its plan."[5]

This bait-and-switch should not be rewarded. Petitioners do not minimize the tragedy endured by many abuse survivors awaiting the end of this case. Petitioners are themselves survivors facing the same toll. But if such realities suffice to thwart Supreme Court review of "not only error, but mischief" in a case of this magnitude, then every mass tort case becomes an unreviewable *fait accompli*. Pet. App. 91a (Rendell, J., concurring). The better answer is expedited merits briefing and argument, as *Purdue* shows and Petitioners have proposed. *See* Pet. 30.

The BIOs insist "[t]his case is not like *Purdue*." Scouting BIO 29. Such assertions do not survive the Third Circuit's admission that "if proposed today, the [BSA] Plan would be unconfirmable in the wake of *Purdue*" and abuse survivors "could not have their claims released without their consent." Pet. App. 76a. The question then becomes whether either §363(m) or "equitable mootness" permits courts to disregard *Purdue*-forbidden releases (as occurred here).

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[3] ECF 13249 (at ¶76) in No. 20-10343 (Bankr. D. Del.).

[4] *Id.* ¶70 n.158 (collecting examples).

[5] D. Kuney, *The Aftermath of Purdue Pharma*, AM. BANKR. INST. J. (Aug. 2024), at 58, https://tinyurl.com/4a4mttsd.

B. 11 U.S.C. §363(m) and equitable mootness require this Court's attention.

This case squarely raises key circuit splits over the scope of §363(m)'s targeted protection of asset sales as well as core doubts about equitable mootness that have circulated for decades. Pet. i, 20-26. Judge Rendell's concurrence below corroborates this reality as does the scholarship[6] and briefing of disinterested bankruptcy experts. *See* Pet. App. 80a-91a; Scholars *Amici* Br. 23-24. The BIOs furnish no reason to doubt this consensus or the ensuing need for review.

1a. *Plan sales.* The circuits disagree on whether "sales accomplished under plans"—in this case, an insurance buyback with nonconsensual releases—"fall within §363(m)'s ambit." Pet. App. 81a (Rendell, J., concurring). The Eleventh Circuit says 'no,' while the Third Circuit below says 'yes,' as does the Sixth Circuit. Pet. 20-21. The BIOs try to close this split by diminishing the Eleventh Circuit's decision in *Miami Center L.P. v. Bank of New York*, 838 F.2d 1547, 1553 (11th Cir. 1988) in three unsuccessful ways.

First, the BIOs stress that *Miami* involved a *liquidating* plan rather than a *reorganization* plan or a "global tort resolution" (as here). Scouting BIO 15; Coalition BIO 22. This is a red herring. *Miami* holds that §363(m) "does not apply where … assets have been sold … pursuant to a plan" because §363(m) covers *no plans at all* (liquidating or reorganization)

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[6] *See* Patricia Redmond & Ashley Champion, *Two Roads to Dismissal Diverged in a Bankruptcy Appeal*, AM. BANKR. INST. J. (Dec. 2025), https://tinyurl.com/bcrpfsm3 ("[C]ourts have split over … whether §363(m) applies to plan sales.").

—§363(m) "applies only to … sale[s] … [made under] §363(b) or (c)." 838 F.3d at 1553. *Miami* elsewhere makes clear that this decision prescribes "the law of mootness" as applied to "the sale provision of [a] reorganization plan." *Id.* at 1555 n.7. The BIOs err in "confus[ing] the factual contours of [a case] for its unmistakable holding." *Thurston Motor Lines, Inc. v. Jordan K. Rand, Ltd.*, 460 U.S. 533, 535 (1983).

Second, the BIOs maintain that "the Eleventh Circuit's single-sentence statement" in *Miami* about §363(m) is "dicta." Scouting BIO 15; Insurers BIO 4. The BIOs skip past the five pages that the Eleventh Circuit spends in *Miami* deciding the applicability of equitable mootness *because* "§363(m) does not apply." 838 F.2d at 1553; *see also id.* at 1553–57 (equitable mootness analysis based on plan being "substantially consummated"). The Eleventh Circuit does not view this circumstance as creating dicta: "where a decision rest[s] as much upon the one determination as the other, the adjudication is effective for both." *Bravo v. United States*, 532 F.3d 1154, 1163 (11th Cir. 2008) (cleaned up). Nor does the Supreme Court: "just as binding as [a] holding is the reasoning underlying it." *Bucklew v. Precythe*, 587 U.S. 119, 136 (2019).

Third, the BIOs write off *Miami* as "a slightly different doctrinal path" to the same end: "appellate court[s] cannot disrupt the terms of a bargained-for sale." Insurers BIO 4-5; Scouting BIO 15-16. Such analysis presumes the validity of the different path that *Miami* took: equitable mootness, or "a judge-made atextual doctrine of pseudo-abstention" that subverts federal law. *In re Serta Simmons Bedding, LLC*, 125 F.4th 555, 588 (5th Cir. 2024). *Miami*'s

resort to this radical alternative then makes *Miami*'s rejection of §363(m) all the more definitive, affirming the existence of a circuit split meriting review. *Cf. In re Morrow Ga. Inv'rs, LLC,* No. 23-13134, 2025 U.S. App. LEXIS 20729, at *15 (11th Cir. Aug. 14, 2025) (Newsom, J., concurring-in-the-judgment) (observing equitable mootness, unlike §363(m)-based mootness, plainly "contravene[s] Congress's prescription").

1b. *Terms of sale.* The circuits disagree on how "broadly" §363(m) "sweep[s]" in shielding the validity of asset sales against judicial reversal on appeal. Pet. App. 84a-88a (Rendell, J., concurring). Five circuits (including the Third Circuit), read §363(m) to shield all terms integral to a sale, while two circuits read §363(m) to shield just the sale itself, enabling courts to address, for example, proper disposition of sale proceeds—or, as relevant here, the effectiveness of illegal nonconsensual releases. Pet. 21-23.

The BIOs argue this split is unavailing because the decision below applies §363(m) to protect a sale itself—the insurance buyback—and, alternatively, Petitioners' citations just reflect "different outcomes resulting from … different facts." Scouting BIO 16-17; Insurers BIO 6. The "glaring flaw" in this logic is the insurance buyback is no mere sale: the buyback does not simply dispose of property "substantively belong[ing]" to BSA (the debtor), but further "seeks to extinguish claims … that belong to [BSA's] victims …. without the consent of those affected, as if the claims were somehow [BSA's] own property." *Purdue*, 603 U.S. at 220. The conclusion that §363(m) protects this sale term then divides the decision below from circuits that recognize §363(m) "does not make any dispute

moot" over sale terms about which §363(m) "does not say one word." *Trinity 83 Dev., LLC v. ColFin Midwest Funding, LLC*, 917 F.3d 599, 602-03 (7th Cir. 2019). That holding covers nonconsensual releases no less than disposition of sale proceeds. *See id.*

1c. *Sale consummation.* The circuits disagree on whether §363(m) requires "not only an authorized sale, but a sale that has occurred." *See* Pet. App. 88a-90a (Rendell, J., concurring). The First and Third Circuits believe §363(m) applies to all unstayed sale authorizations, while the Fifth and Tenth Circuits recognize §363(m) does not apply to sales conditioned on judicial review. *See* Pet. 23-24. The BIOs question this split and argue that it makes no difference here because sale consummation exists. Scouting BIO 17-19; Insurers BIO 7-8. But as Judge Rendell explains, there is no getting around the fact that "some of the Settling Insurers' agreements include[] provisions that their sales will not be completed … until there is a successful [i.e., final] appeal." Pet. App. 88a.

2. *Equitable mootness.* Across four decades, all the circuits have embraced the doctrine of "equitable mootness" while ever more judges have condemned this doctrine as "bad precedent." Pet. 25-26, 33. The BIOs suggest this case permits no review of equitable mootness because "only the concurrence reached the question." Insurers BIO 23. The majority below did reach the question, however, holding that "equitable mootness remains the law"; the plan "went effective"; and the record shows "substantial consummation"—all over Petitioners' objections, including that the Third Circuit "overrule its … adopti[on] [of] equitable mootness." Pet. App. 25a, 54a & n.21, 57a.

C. No barriers exist to the Court's review of the questions presented, whose imperative national importance is undeniable.

The extraordinary stakes of this case cannot be disputed. The decision below "shields from review …. non-consensual third-party releases" that this Court "invalidated in *Purdue*"—a "dangerous transactional precedent" that compromises Article III courts and "relegates … *Purdue* to a mere plan-drafting guide." *See* Pet. App. 86a (Rendell, J., concurring). The BIOs try to downplay this reality, invoking considerations of issue forfeiture, justified reliance, and percolation. Close examination reveals no barrier to review.

Start with **issue forfeiture**. The BIOs contend Petitioners "failed to raise the [§363(m)] issue below in the bankruptcy court or on appeal to the district court." Insurers BIO 2. The Court has rejected this kind of argument time and again in case after case: "[i]t suffices for our purposes that the court below passed on the issue presented, particularly where the issue is … one of importance to the administration of federal law." *United States v. Williams*, 504 U.S. 36, 41-42 (1992) (collecting examples). The Third Circuit decided the §363(m) issue now presented for review (Pet. App. 31a-52a), and no one disputes the issue's importance to the administration of federal law.

A proper understanding of §363(m)'s operation further dispels the BIOs' issue-forfeiture argument. Section 363(m) "merely cloak[s] certain good-faith purchasers … with a targeted protection of their newly acquired property interest." *See MOAC Mall Holdings LLC v. Transform Holdco LLC*, 598 U.S.

288, 300 (2023). "[I]nvocation of §363(m)" belongs to asset purchasers—not to third-party nondebtors like Petitioners who bear no duty to anticipate or raise this issue. *Id.* at 298. And once the purchasers here did finally raise §363(m) through motions-to-dismiss before the Third Circuit,[7] Petitioners timely asserted their objections to §363(m)'s application.[8] Petitioners also timely and repeatedly moved for stays of the plan confirmation order, which if granted would have made §363(m) irrelevant. *See* Pet. App. 26a n.6.

Turning to **justified reliance**, the BIOs detail all the transactions that have occurred since 2023 in reliance on the effectiveness of the BSA plan—most notably, an initial distribution of $295.5 million to nearly 37,000 claimants. Scouting BIO 20-21. The BIOs suggest that reviewing this case threatens to "unwind those many thousands of transactions." *Id.* Not true. Presuming the Court granted review and ruled in Petitioners' favor, all that would follow is the restoration of each abuse survivor's right to choose whether to grant a release. The settlement trust's procedures, claim determinations and distributions to date, and $2.4 billion in pledged trust assets would remain available to survivors who granted releases. And by the BIOs' own reckoning, getting consensual releases should be no problem given the "[m]ore than 85% of voting survivors [who] supported the [p]lan" in the first place. Scouting BIO 10. Meanwhile, the rights of dissenting survivors like Petitioners would be honored—and, in the process, all survivors would benefit, as *Purdue* shows. *See supra* Part A.

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7 ECF 123 (Insurers' MTD) in No. 23-1664 (3d Cir.).

8 ECF 155 (Lujan MTD Resp.) in No. 23-1664 (3d Cir.).

Finally, on **percolation**, the BIOs suggest that recent *Purdue*-limiting decisions are nothing to fear because "lower courts are only beginning to grapple" with *Purdue*. Insurer BIO 16. Such reasoning favors intervention by this Court to ensure that §363(m) and equitable mootness do not "shield[] from review" *Purdue*-related matters in future cases. Pet. App. 86a (Rendell, J., dissenting). The value of clarity on this point sooner rather than later also favors certiorari. *See In re Eng'g Recruiting Experts, LLC,* 673 B.R. 32, 35-36 (Bankr. M.D. Fla. 2025) ("[B]ankruptcy courts [are] narrowly constru[ing] *Purdue*."). Just consider the U.S. Trustee, for whom safeguarding *Purdue* has become a never-ending job. *See, e.g., In re Gol Linhas Aéreas Inteligentes S.A.,* No. 25-cv-4610, 2025 LX 552984, at *11 (S.D.N.Y. Dec. 1, 2025) (UST appeal of nonconsensual releases in chapter 11 plan).

D. The Court should not hesitate to call for the Solicitor General's views.

The Court has issued a CVSG in *Highland Capital Management, L.P. v. NexPoint Advisors, L.P.*, No. 25-119, 2025 LX 432370 (U.S. Oct. 14, 2025)—a case in which the Fifth Circuit rejected a gatekeeping injunction as an improper evasion of *Purdue*. The SG's views are no less merited on the Third Circuit's self-admitted shielding of releases "unconfirmable in the wake of *Purdue*." Pet. App. 76a. The BIOs insist a CVSG would "force survivors to wait several more months." Scouting BIO 6. The BIOs disregard the Court's ability to seek the SG's views on an expedited basis. *See, e.g.*, *Cty. of Maui v. Haw. Wildlife Fund*, 586 U.S. 1033 (2018) (setting CVSG deadline of "on or before 4 p.m., Friday, January 4, 2019").

The BIOs suggest that a CVSG is unnecessary due to some tentative SG statements about the BSA bankruptcy plan made at oral argument two years ago in *Purdue*. Scouting BIO 28. The BIOs neglect an intervening change in presidential administration and the U.S. Trustee's subsequent robust defense of *Purdue* against every form of nonconsensual release in bankruptcy—even beyond chapter 11. *See, e.g., In re Com. Express, Inc.,* 670 B.R. 573, 586-88 (Bankr. M.D. Fla. 2025) (UST defense of *Purdue* in a chapter 7 case). In light of these developments, asking for the SG's current views is not too much to ask.

CONCLUSION

The Court should grant review of this case.

Respectfully submitted,

MAHESHA P. SUBBARAMAN
Counsel of Record
SUBBARAMAN PLLC
80 S. 8th St., Ste. 900
Minneapolis, MN 55402
(612) 315-9210
mps@subblaw.com

DELIA LUJAN WOLFF
LUJAN & WOLFF LLP
238 Archbishop FC
Flores St., Ste. 300
Hagåtña, Guam 96910

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