No. _____

In the Supreme Court of the United States

In re BOY SCOUTS OF AMERICA & DELAWARE BSA LLC,

Debtors.

LUJAN CLAIMANTS,

Applicants,

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

APPLICATION FOR A 60-DAY EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

To: The Honorable Samuel A. Alito, Jr., Associate Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Third Circuit

Applicants Lujan Claimants respectfully seek a 60-day extension from September 11, 2025, to and including November 10, 2025, within which to file a certiorari petition to review the final judgment and opinion of the U.S. Court of Appeals for the Third Circuit in the above-captioned matter.

September 11, 2025 is the present deadline for the Lujan Claimants to file any certiorari petition. On May 13, 2025, the Third Circuit issued its precedential

opinion and judgment. App.1-95. Then, on June 13, 2025, the Third Circuit denied the Lujan Claimants' timely petition for rehearing. App.96. The Lujan Claimants are filing this time-extension application on August 29, 2025—more than 10 days before September 11, 2025, when the Lujan Claimants' certiorari petition is due. S. Ct. R. 13.5. This Court's jurisdiction would be invoked under 28 U.S.C. §1254(1). Copies of the Third Circuit's precedential opinion and later denial of rehearing are included with this application. *See* Appendix (cited as "App.").

The following grounds support this time-extension application:

1. This case presents an important question of statutory interpretation—with constitutional ramifications—on which the circuits are divided.

2. The Bankruptcy Code recognizes two different ways that sales or leases of bankruptcy estate property may occur. "The **trustee** [of the estate] may use, sell, or lease property **under subsection (b) or (c)** of this section"—meaning §363(b) or §363(c). 11 U.S.C. §363(l). Alternatively, "**a plan** under chapter 11, 12, or 13 [of the Code] … may provide for the use, sale, or lease of property." *Id.*

3. "Interested parties may file an objection to … a sale or lease … and may appeal if the court authorizes a sale or lease … over the[] [party's] objection." *MOAC Mall Holdings LLC v. Transform Holdco LLC*, 598 U.S. 288, 291 (2023).

4. When a party appeals a court's authorization of a sale or lease of estate property under §363(b) or §363(c), the Bankruptcy Code under 11 U.S.C. §363(m) "cloak[s] certain good-faith purchasers or lessees with a targeted protection of their newly acquired property interest." *MOAC*, 598 U.S. at 291.

5. Section 363(m) specifically provides: "[t]he reversal or modification on appeal of **an authorization under subsection (b) or (c) of this section** of a sale or lease … does not affect the validity of a sale or lease … unless such authorization and such sale or lease were stayed pending appeal." 11 U.S.C. §363(m).

6. The Eleventh Circuit holds that §363(m)'s protective cloak applies only to sales or leases authorized under §363(b) or (c)—no further. *See Miami Ctr. Ltd. P'ship v. Bank of New York*, 838 F.2d 1547, 1553 (11th Cir. 1988). As the Circuit explains: "[§363(m)] applies only to the sale of the debtor's property by the trustee pursuant to §363(b) or (c). **Section 363(m) does not apply where the debtor's assets have been sold … pursuant to a plan of liquidation**." *Id.* (bold added); *see In re T & H Diner, Inc.*, 108 B.R. 448, 451 (D.N.J. 1989) (citing *Miami Center* for the rule that §363(m) applies only to sales/leases under §363(b) or (c)).

7. The Sixth Circuit, on the other hand, expands §363(m)'s protective cloak far beyond §363(m)'s text: "[t]hough the statutory provision specifically addresses a sale by a bankruptcy trustee … **there is no principled reason to distinguish between sales made by trustees and other sales in bankruptcy**." *In re Made in Detroit, Inc.*, 414 F.3d 576, 581 (6th Cir. 2005) (internal punctuation omitted) (bold added). Thus, unlike the Eleventh Circuit, the Sixth Circuit readily applies §363(m) to "[p]roperty … sold pursuant to [a] … [Liquidating] Plan." *Id.*; *see also, e.g., In re Human Hous. Henrietta Hyatt, LLC*, 666 B.R. 332, 349 (B.A.P. 6th Cir. 2025) (discussing the Sixth Circuit's 2005 *Made in Detroit* decision) ("The mootness rule codified in §363(m) applies to all types of sales in bankruptcy.").

8. In this case, the Third Circuit sets forth another approach to §363(m): §363(m) applies to sales under a plan when any order confirming the plan generally says §363 authorizes the sale. *See* App.40 ("the Confirmation Order unambiguously authorizes '[t]he sale of the [Settling Insurers' policies] … pursuant to section[] 363'"); *In re BSA*, No. 20-10343 (LSS), 2022 Bankr. LEXIS 3730, at *33 (Bankr. D. Del. Sep. 8, 2022) (confirmation order in this case) ("The sale … is hereby approved pursuant to sections 363, 1123, and/or 1141 of the Bankruptcy Code.").

9. The Third Circuit expands §363(m)'s protective cloak beyond §363(m)'s text in two ways. First, the Third Circuit applies §363(m) to an authorization under §363 generally, while §363(m) requires "an authorization under subsection (b) or (c)." *See NLRB v. SW Gen., Inc.*, 580 U.S. 288, 300 (2017) (explaining the respect owed when statutory text "refer[s] only to a particular subsection or paragraph"). Second, the Third Circuit deems §363(m) applicable to plan-based sales in addition to sales under §363(b) and (c), which are not plan-based. *See* App.81 (Rendell, J., concurring) ("[The] fundamental flaw in the majority's resort to §363(m) … [is] that [§363(m)] does not apply to sales in reorganization plans ….").

10. The federal courts of appeals are thus split on the following question: whether 11 U.S.C. §363(m)'s protective cloak expands beyond Congress's express limitation of §363(m) to "**an authorization under subsection (b) or (c) of this section**." The Eleventh Circuit says 'no.' The Third and Sixth Circuits say 'yes.' And in *In re Texas Extrusion Corp.*, 844 F.2d 1142 (5th Cir. 1988), the Fifth Circuit admits a "definite implication" that the answer is 'no.' *Id.* at 1165.

11. This circuit split matters for three key reasons:

a. **Judicial review**—"[S]weeping and radical" impairment of judicial review follows from the expansion of §363(m)'s protective cloak beyond §363(m)'s text, as Judge Rendell explains in her insightful concurrence below. *See* App.83. Expanding §363(m) to plan sales—as occurred here—invites parties to bury sales in "a globally-negotiated plan," bypassing the judicial review "that would normally occur as part of a sale bidding and approval process and court order prior to plan confirmation." App.87. Section 363(m)'s protective cloak then "insulates the plan from appellate review." App.83. "[P]lan provisions are shielded" because "they may have conceivably affected the purchase price." App.88. Undue expansion of §363(m) thus risks "Article III courts not having the capacity to review Confirmation Orders if the parties agree to call key intra-plan transactions 'sales.'" App.90.

b. **Statutory interpretation**—"[I]nterpretation of the Bankruptcy Code … must begin … with the language of the statute …." *Ransom v. FIA Card Servs., N.A.*, 562 U.S. 61, 69 (2011). This rule collapses upon expansion of §363(m) beyond §363(m)'s text: "an authorization under subsection (b) or (c) of this section." Congress could have written §363(m) to cover "an authorization under subsection (b) or (c) of this section *or a plan under chapter 11, 12, or 13 of this title*"—language echoing §363(l). Congress instead used words that "appl[y] to §363(b) and (c) sales, not plan sales." App.83 (Rendell, J., concurring). "Atextual judicial supplementation is particularly inappropriate when, as here, Congress has shown that it knows how to adopt the omitted language …." *Rotkiske v. Klemm*, 589 U.S. 8, 14 (2019).

c. **Stare decisis**—In *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204 (2024), the Supreme Court ruled that: "the [B]ankruptcy [C]ode does not authorize a release and injunction that, as part of a [Chapter 11] plan of reorganization … seeks to discharge claims against a nondebtor without the consent of affected claimants." *Id.* at 227. Yet, the Third Circuit's expansion of §363(m)'s protective cloak provides a new way to achieve the very nonconsensual releases that *Purdue* prohibits. Here, the plan-approved sale of insurance policies tethered to impermissible releases was "almost certainly crafted in an attempt to insulate the plan and confirmation order from appellate review." App.85 (capitalization omitted). The result is a "dangerous transactional precedent" that relegates *Purdue* "to a mere plan-drafting guide"—one suggesting "the Sackler family [in *Purdue*] should have purchased the [bankruptcy] estate's fraudulent conveyance claims in addition to the nonconsensual third-party releases and called it a §363 sale." App.90 (Rendell, J., concurring).

12. Applicants Lujan Claimants are sexual-abuse survivors—victims of "the horrific history of sexual abuse in the Boy Scouts of America's ranks." App.18. The Lujan Claimants sought to preserve their tort claims in this context after the Boy Scouts (BSA) entered bankruptcy to streamline and settle BSA's tort liability through various devices, including nonconsensual releases. App.18-19; App.28 n.6. In the end, the Third Circuit dismissed the Lujan Claimants' appeals as "statutorily moot under §363(m)," expanding §363(m) to plan sales and saddling the Claimants with *Purdue*-forbidden nonconsensual releases. App.79. Judge Rendell concurred, finding equitable mootness rather than §363(m) applied. App.80-95.

13. The Third Circuit's expansive reading of §363(m) in this case—to the point of insulating *Purdue*-forbidden nonconsensual releases from appellate review—has constitutional ramifications. Effectuation of these releases denies the Lujan Claimants' constitutional right to a civil jury trial on their BSA-related tort claims. "The trial by jury is justly dear to the American people. It has always been an object of deep interest and solicitude, and every encroachment upon it has been watched with great jealousy." *Parsons v. Bedford*, 28 U.S. 433, 466 (1830).

14. Given the importance of the statutory-interpretation question presented here—and other similarly important questions that counsel may identify on closer review of the record and decisions below—the Lujan Claimants respectfully seek a 60-day extension of their current deadline to file a certiorari petition.

15. Good cause exists to grant this request.

16. Counsel-of-record, Mr. Mahesha P. Subbaraman, was only recently retained to handle the Lujan Claimants' certiorari petition. His time is subject to numerous competing obligations over the next two months:

- Preparation of an amicus brief in *Tex. Ass'n of Money Servs. Bus. v. Bondi*, No. 25-50481 (5th Cir.) (amicus brief due Sept. 5, 2025);
- Expected motion practice and/or reply-brief preparation in *In re Baum*, No. 23-cv-11140 (E.D. Mich.) (due mid-Sept. 2025);
- Preparation of an amicus brief in *Minn. Police & Peace Officers Ass'n v. Minn. Bd. of Peace Officer Standards & Training*, No. A25-1102 (Minn. App.) (amicus brief due Sept. 25, 2025);
- Preparation of an amicus brief in *Associated Press v. Budowich*, No. 25-5109 (D.C. Cir.) (amicus brief due Oct. 6, 2025);
- Presentation of oral argument in *Bermudez v. EOIR*, No. 24-30617 (5th Cir.) (oral argument set for Oct. 7, 2025);

- Expected preparation of a Brief in Opposition in *Brooks v. Allen*, No. 25A186 (U.S.) (BIO likely due around Oct. 20, 2025); and
- Preparation of district court briefing on an ad hoc basis for various Social Security appeals during September/October 2025.

17. Counsel requires time to review the voluminous record in this case, as exemplified by the Third Circuit's 90+ page opinion. *See* App.1-95; *see also* App.27 ("[T]he Bankruptcy Court held a [22]-day confirmation trial that featured fifteen days of testimony from twenty-six witnesses and over 1,000 exhibits, followed by seven days of oral argument. On July 29, 2022, th[e] [Bankruptcy] Court issued its 269-page confirmation opinion …. [It] then proceeded to hold two more hearings and, on September 8, 2022 … entered the Confirmation Order ….").

18. Based on the above, Mr. Subbaraman is unable to prepare an adequate certiorari petition in this case absent the requested extension. Mr. Subbaraman is a solo practitioner with no partners, associates, or legal support staff.

The Lujan Claimants thus respectfully seek an extension of their certiorari petition deadline to and including November 10, 2025.

Respectfully submitted,

Dated: August 29, 2025

SUBBARAMAN PLLC

By: /s/Mahesha P. Subbaraman
Mahesha P. Subbaraman

SUBBARAMAN PLLC
80 S. 8th Street, Suite 900
Minneapolis, MN 55402
(612) 315-9210
mps@subblaw.com

Counsel-of-Record for Applicants Lujan Claimants