

IN THE

Supreme Court of the United States

CITY OF MARATHON,

Applicant,

v.

RODNEY SHANDS, ET AL.,

Respondents.

**Application for Extension of Time Within
Which to File a Petition for a Writ of Certiorari to
the Florida Third District Court of Appeal**

**APPLICATION TO THE HONORABLE JUSTICE
CLARENCE THOMAS, AS CIRCUIT JUSTICE**

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APPLICATION FOR EXTENSION OF TIME

Pursuant to this Court's Rule 13.5, Applicant City of Marathon respectfully requests a 60-day extension of time within which to file a petition for a writ of certiorari, to and including May 4, 2026.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The judgment for which review is sought is *Shands v. City of Marathon*, 411 So.3d 452 (Fla. 3d Dist. Ct. App. 2025) (see Attachment 1).

JURISDICTION

This Court will have jurisdiction over any timely petition under 28 U.S.C. § 1257. The Supreme Court of Florida issued its order denying review on December 5, 2025 (see Attachment 2). In accordance with Rule 13.5, this application is being filed more than 10 days before the current due date of March 5, 2026.

REASONS JUSTIFYING AN EXTENSION OF TIME

1. This case presents an important constitutional question that has split the lower courts: Whether a taking has occurred under the categorical rule announced in *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992), even though the regulated property retains significant market value for both its transferred development rights ("TDRs") and recreational uses.

Below, the Third District Court of Appeal, sitting *en banc*, held that a categorical taking under *Lucas* occurred when a regulation denied all economically beneficial uses of the property, irrespective of whether the property had been rendered valueless (as Lucas's property had been). Attachment 1 at 14–16; *Lucas*, 505 U.S. at

1007. By narrowing the inquiry to the set of activities the court of appeals considered valid economic uses, the court excluded consideration of the market value of the property for both its TDRs and recreational uses. Attachment 1 at 20–25. As a result, the court of appeals held that Applicant City of Marathon had taken the respondents’ property, despite the trial court finding that the regulated property had a fair market value of six times its purchase price. Attachment 1 at 53.

Judge Logue dissented, arguing that the majority had reinterpreted both *Lucas* and this Court’s opinion in *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978), to avoid proper consideration of the value of the property as a whole. Attachment 1 at 45–47. Judge Logue also explained that the majority’s approach will “ultimately prove unworkable.” Attachment 1 at 74.

Whether *Lucas* is primarily concerned with economic use or market value has generated a sizeable split in the lower courts. On one side, the Fifth Circuit, Federal Circuit, and the Supreme Court of Hawaii have held that denial of all economic use is the primary consideration under *Lucas*. The Ninth Circuit at first agreed with them, but more recently flipped to join the Eighth Circuit, D.C. Circuit, and Supreme Court of Michigan in holding that *Lucas* is primarily about the elimination of value. No surprise then that the majority in *Shands* found that the “significance of TDRs in the regulatory takings matrix has been sharply debated” and the “Supreme Court has yet to clarify this conundrum.” Attachment 1 at 16–18.

2. An extension is warranted to allow counsel time to coordinate and prepare a petition that will aid this Court's review of the important issue presented by the decision below. Applicant City of Marathon retained counsel 31 days into the 90 day deadline for filing a petition under this Court's Rule 13.1. Counsel, meanwhile, was subject to multiple competing deadlines, including oral arguments on January 29, 2026 in *Banco San Juan Internacional, Inc., v. The Federal Reserve Bank of New York*, No. 25-1144 (2nd Cir.) and February 24, 2026 in *Lang v. Sig Sauer, Inc.*, No. 25-10810 (11th Cir.). Counsel additionally filed a reply brief on February 6, 2026 in *Glasscock v. Sig Sauer, Inc.*, No. 25-2707 (8th Cir.). Finally, counsel's son was injured in a serious car accident that will require at least three surgeries. It will be necessary to spend a substantial amount of time with him during the period when the petition will be prepared. Accordingly, 60 days is required to ensure that counsel has sufficient time to craft a petition and have it filed.

CONCLUSION

For these reasons, Applicant respectfully requests a 60-day extension of time within which to file a petition for a writ of certiorari, to and including May 4, 2026.

Respectfully submitted,

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