No. ________

IN THE

Supreme Court of the United States

In Re: Bernard L. Madoff Investment Securities, LLC,

Debtor,

****

Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC,

Plaintiff-Appellee,

v.

Malcolm H. Sage, in his Capacity as Partner or Joint Venturer of Sage Associates and Sage Realty, Individually as Beneficiary of Sage Associates and Sage Realty, and as the Personal Representative of The Estate of Lillian M. Sage,

Defendant-Appellant,

Lynne Florio,

Non-Party-Appellant,

Sage Associates, et al.,

Defendants,

SIPC,

Intervenor.

APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT (Second Circuit Case No. 25-3036)

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SUPREME COURT, U.S.

Pursuant to Rules 13.5 and 22 of the Rules of this Court, applicants Lynne Florio and Malcolm Sage, proceeding pro se, respectfully request a 60-day extension of time, to and including November 28, 2026, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in In re Bernard L. Madoff Investment Securities, LLC (Picard v. Sage), No. 25-3036. In support of this application, applicants state as follows:

1. The Judgment Sought To Be Reviewed and the Jurisdiction of This Court.

The judgment sought to be reviewed is the order of the United States Court of Appeals for the Second Circuit entered May 21, 2026, granting respondent's motion for summary affirmance of two rulings of the United States District Court for the Southern District of New York (Cote, J.): an Opinion and Order of October 16, 2025 denying applicants' motion under Federal Rule of Civil Procedure 60(d)(3) to set aside a judgment for fraud on the court, and an Order of November 4, 2025 denying Reconsideration. *In re Bernard L. Madoff Investment Securities, LLC,* No. 25-3036, 2026 WL 1552417 (2d Cir. May 21, 2026). Applicants' timely petition for panel rehearing and rehearing en banc was denied on July 1, 2026. Copies of the May 21, 2026 order, the July 1, 2026 orders denying rehearing, the October 16, 2025 Opinion and Order, and the November 4, 2025 Order denying

Reconsideration are attached as Appendices A through D, and applicants' opposition to respondent's motion for summary affirmance, filed February 6, 2026 (Dkt. Entry 30.1), is attached as Appendix E. This Court would have jurisdiction over the judgment under 28 U.S.C. § 1254(1).

Unless extended, the time within which to file a petition for a writ of certiorari will expire on September 29, 2026, ninety days after the denial of rehearing. This application is filed more than ten days before that date. See Sup. Ct. R. 13.5. This is applicants' first request for an extension of time.

2. Background.

Respondent is the trustee appointed under the Securities Investor Protection Act, 15 U.S.C. § 78eee(b)(3), for the liquidation of Bernard L. Madoff Investment Securities LLC; his counsel serves by the same judicial appointment. In 2022, following a bench trial, the District Court entered judgments of $16,880,000 against applicant Malcolm Sage and his siblings, jointly and severally, as alleged general partners of two family brokerage accounts. The Court of Appeals affirmed those judgments by summary order in 2023, and this Court denied a petition for a writ of certiorari presenting questions concerning the calculation of net equity under SIPA. *Sage v. Picard,* No. 23-1175 (June 3, 2024). The Circuit Justice granted an extension of time for the filing of that petition. No. 23A765 (Feb. 21, 2024).

The rulings now sought to be reviewed arise from a later, distinct proceeding, and the petition will present a question not previously before this Court. On July 1, 2025, applicants moved under Rule 60(d)(3) to set aside the judgments as procured by fraud on the court, on grounds documented with record citations. The District Court denied the motion, holding that *"even if [applicants'] accusations against the trustee's counsel were proven, including their accusations of perjury, that still would not rise to the extreme level of fraud on the court,"* and denied Reconsideration. On respondent's motion, the Court of Appeals stayed merits briefing and summarily affirmed in an order holding that the appeal *"lacks an arguable basis in either law or in fact"*; no opening brief was filed.

3. The Question Presented Is Substantial.

The petition will present, in substance, the question whether perjury and fabrication by officers of the court — here, a court-appointed fiduciary and his court-appointed counsel — may be held categorically insufficient, even if proven, to establish fraud on the court under Federal Rule of Civil Procedure 60(d)(3). The petition will also present, in substance, the question whether extinguishing such a claim without an evidentiary hearing in the District Court or merits briefing on appeal comports with due process and with the appeal of right Congress provided under 28 U.S.C. §§ 158(d) and 1291. The conditional is the District Court's own: its opinion assumed the accusations true and held them insufficient as a matter of law, without an evidentiary hearing. Neither of its rulings cites *Hazel-Atlas Glass Co. v. Hartford-Empire Co.,* 322 U.S. 238 (1944), and neither addresses the respondent's court-appointed, fiduciary character — although this Court and the courts of appeals have long defined fraud on the court by reference to fraud *"perpetrated by officers of the court."* The Court of Appeals then disposed of the appeal in a single sentence, before briefing, under authorities developed for screening in forma pauperis complaints. The question was designated in applicants' statement of issues on appeal, was presented again in their petition for rehearing, and has never received merits briefing in any court. Respondent's own filings preview his response: his opposition below described the Trustee as *"an adverse party in an adversarial system"* (*Picard v. Sage Associates,* No. 20-cv-10057 (DLC) (S.D.N.Y. Aug. 8, 2025), ECF No. 136 at 19) — a court-appointed fiduciary disclaiming the very status on which the doctrine turns.

Nor is the question likely to receive further consideration elsewhere. Liquidations under SIPA are concentrated in the Second Circuit by the location of the securities industry, so the rule applied below will govern virtually every fraud-on-the-court motion brought against a SIPA trustee, without occasion for consideration by other circuits.

4. Reasons Justifying an Extension of Time.

First, applicants are a married couple in their seventies who are proceeding pro se. Throughout the ninety-day period they have been, and remain, engaged in active litigation in other forums, including contested matters in the United States Bankruptcy Court for the Southern District of New York and fully briefed motions pending in the Supreme Court of the State of New York. Their obligations in the coming weeks alone include a notice of appeal and motion for leave to appeal, due September 14, 2026, from a Bankruptcy Court order entered August 31, 2026; reply papers due October 13, 2026 on a pending motion in the Bankruptcy Court; and oral argument in that court on October 22, 2026. Both applicants also manage health conditions that intermittently limit their capacity for sustained work — a circumstance the Bankruptcy Court has recognized by standing order of April 30, 2026, granting them a reasonable accommodation under the Americans with Disabilities Act that permits the extension of deadlines upon written notice of documented medical incapacity. Adv. Pro. No. 23-01099, ECF No. 168 (Bankr. S.D.N.Y.). The demands of those concurrent proceedings have substantially limited, and will continue to limit, the time available to prepare a petition for this Court.

Second, the record is unusually extensive. The underlying litigation spans more than fifteen years and includes a five-day bench trial at which more than 2,000 exhibits were admitted, two prior appeals to the Court of Appeals, and related proceedings in the Bankruptcy Court and the state court. Presenting the question with the concision this Court's Rules require, from a record of that size, warrants additional time.

Third, applicants are seeking to retain counsel experienced in practice before this Court for the preparation of the petition. The requested extension will permit prospective counsel to evaluate the case and, if retained, to participate meaningfully in the petition's preparation.

Finally, the extension will not prejudice respondent. Applicants seek no stay; the judgments below are unaffected by this application.

5. Conclusion.

For the foregoing reasons, applicants respectfully request that the time within which to file a petition for a writ of certiorari be extended by sixty days, to and including November 28, 2026. Because that date falls on a Saturday, the time would run to Monday, November 30, 2026. See Sup. Ct. R. 30.1.

Dated: September 6, 2026
New York, New York

Respectfully submitted,

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LIST OF APPENDICES

Appendix A — Order of the United States Court of Appeals for the Second Circuit granting summary affirmance, entered May 21, 2026.

Appendix B — Orders of the United States Court of Appeals for the Second Circuit denying panel rehearing and rehearing en banc, entered July 1, 2026.

Appendix C — Opinion and Order of the United States District Court for the Southern District of New York (Cote, J.) denying applicants' motion under Federal Rule of Civil Procedure 60(d)(3), entered October 16, 2025.

Appendix D — Order of the United States District Court for the Southern District of New York (Cote, J.) denying Reconsideration, entered November 4, 2025.

Appendix E — Applicants' Opposition to Respondent's Motion for Summary Affirmance, filed February 6, 2026 (Dkt. Entry 30.1).

CERTIFICATE OF SERVICE

I certify that on September 6, 2026, I served one copy of the foregoing Application for an Extension of Time Within Which to File a Petition for a Writ of Certiorari, with appendices, upon counsel of record for respondent by first-class United States mail, postage prepaid, addressed as follows: Seanna R. Brown, Esq., David J. Sheehan, Esq., James H. Rollinson, Esq., Nicholas J. Cremona, Esq., and Lan Hoang, Esq., Baker & Hostetler LLP, 45 Rockefeller Plaza, New York, New York 10111 and 127 Public Square, Cleveland, Ohio 44114, and upon the Securities Investor Protection Corporation, c/o Michael L. Post, Chief Executive Officer and General Counsel, 1667 K St. N.W., Suite 1000, Washington, D.C. 20006.

Lynne Florio