No. _____

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

PETITION FOR A WRIT OF CERTIORARI

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October 13, 2025

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QUESTIONS PRESENTED

Harrington v. Purdue Pharma, L.P., 603 U.S. 204, 227 (2024) makes clear that: "the bankruptcy code does not authorize a release and injunction that, as part of a [chapter 11] plan … effectively seeks to discharge claims against a nondebtor without the consent of affected claimants." In this case, the Third Circuit held the opposite: the bankruptcy code does authorize nonconsensual third-party releases as part of a plan insofar as the plan makes the releases an integral part of a 11 U.S.C. §363(b)-authorized asset sale immunized by 11 U.S.C. §363(m). But §363(m) does not immunize 'terms of sale' under 'a plan'—only "a sale" in fact made "under subsection (b) or (c)" of §363. Other circuits respect these limits.

Judge Rendell condemned the Third Circuit's decision as a "dangerous transactional precedent." Judge Rendell would have resolved the case through "equitable mootness": a problematic judge-invented abdication of jurisdiction unanimously embraced by the circuits but never once reviewed by the Supreme Court despite over 40 years of percolation.

The questions presented are:

1. Whether 11 U.S.C. §363(m) applies to asset sales under reorganization plans—and if so, whether §363(m) immunizes *Purdue*-forbidden releases.

2. Whether "equitable mootness" exists—and if so, whether it shields unauthorized practices.

PARTIES TO THE PROCEEDING

PETITIONERS
(*Appellants* in the Third Circuit)

The case-captioned "Lujan Claimants" are 75 individual survivors of sexual abuse, all represented by the law firm of Lujan & Wolff LLP.

PRIMARY RESPONDENTS
(*Appellees* in the Third Circuit)

- Boy Scouts of America;
- Delaware BSA, LLC;
- Coalition of Abused Scouts for Justice;
- Future Claimants' Representative;
- Zalkin Law Firm, P.C.;
- Pfau Cochran Vertetis Amala PLLC;
- Hartford Accident and Indemnity Company;
- First State Insurance Company;
- Twin City Fire Insurance Company;
- Navigators Specialty Insurance Company;
- Century Indemnity Company (as successor to CCI Insurance Company, as successor to Insurance Company of North America and Indemnity Insurance Company of North America);
- Federal Insurance Company;
- Westchester Fire Insurance Company;
- American Zurich Insurance Company;
- American Guarantee Insurance Company;
- Steadfast Insurance Company;
- Clarendon National Insurance Company (as successor-in-interest-by-merger to Clarendon America Insurance Company);

PARTIES TO THE PROCEEDING—cont'd

PRIMARY RESPONDENTS---cont'd (*Appellees* in the Third Circuit)

- River Thames Insurance Company Limited (as successor to Unionamerica Insurance Company Limited, on its own behalf and as successor to St. Katherine Insurance Company Limited);
- Zurich American Insurance Company, (as successor to Maryland Casualty Company, Zurich Insurance Company, and Maryland General Insurance Company); and
- Ad Hoc Committee of Local Councils of the Boy Scouts of America.

SECONDARY RESPONDENTS (*Appellants* in the Third Circuit)

- Dumas & Vaughn (D&V) Claimants;
- National Union Fire Insurance Company of Pittsburgh, Pa.;
- Lexington Insurance Company;
- Landmark Insurance Company;
- Insurance Company of the State of Pennsylvania;
- Allianz Global Risks US Insurance Company;
- National Surety Corporation;
- Interstate Fire & Casualty Company;
- Arch Insurance Company;
- Argonaut Insurance Company;
- Colony Insurance Company;
- Arrowood Indemnity Company;
- Continental Insurance Company;
- Columbia Casualty Company;

PARTIES TO THE PROCEEDING—cont'd

SECONDARY RESPONDENTS—cont'd (*Appellants* in the Third Circuit)

- Gemini Insurance Company;
- General Star Indemnity Company;
- Great American Assurance Company;
- Great American E&S Insurance Company;
- Indian Harbor Insurance Company (on behalf of itself and as successor in interest to Catlin Specialty Insurance Company);
- Liberty Mutual Insurance Company;
- Ohio Casualty Insurance Company;
- Liberty Insurance Underwriters, Inc.;
- Liberty Surplus Insurance Corporation;
- Munich Reinsurance America, Inc.;
- Traders and Pacific Insurance Company;
- Endurance American Specialty Insurance Company;
- Endurance American Insurance Company;
- Old Republic Insurance Company;
- Travelers Casualty and Surety Company, Inc.;
- St. Paul Surplus Lines Insurance Company; and
- Gulf Insurance Company.

DIRECTLY RELATED PROCEEDINGS

U.S. BANKRUPTCY COURT (DISTRICT OF DELAWARE)

- *In re: Boy Scouts of Am.* (*BSA*); Bankruptcy Case No. 20-10343-LSS (Jointly Administered); Opinion on Confirmation Entered July 29, 2022 (ECF No. 10136); Order Confirming Plan Entered Sept. 8, 2022 (ECF No. 10316).

U.S. DISTRICT COURT (DISTRICT OF DELAWARE)

- *Nat'l Union Fire Ins. Co. v. Boy Scouts of Am.* ;[Lead Case, Consolidating Appeals]; Case No. 1:22-cv-1237; Opinion & Order Affirming Bankruptcy *BSA* Confirmation Order Entered Mar. 28, 2023 (ECF Nos. 150, 151).
    - LUJAN CLAIMANTS: D.C. No. 1:22-cv-1258.

U.S. COURT OF APPEALS (THIRD CIRCUIT)

- *In re: Boy Scouts of Am.*; Case Nos. 23-1664, 23-1665, 23-1666, 23-1667, 23-1668, 23-1669, 23-1670, 23-1671, 23-1672, 23-1673, 23-1674, 23-1675, 23-1676, 23-1677, 23-1678, & 23-1780; Final Opinion & Judgment Entered May 13, 2025 (ECF Nos. 269, 270); Order Denying Reh'g Entered June 13, 2025 (ECF No. 272).
    - LUJAN CLAIMANTS: 3d Cir. No. 23-1664.

SUPREME COURT OF THE UNITED STATES

- *Lujan Claimants v. Boy Scouts of Am.*; Case No. 23A741; Order Granting Admin. Stay Entered Feb. 16, 2024 (Alito, J.); Order Denying Stay Application Entered Feb. 22, 2024.

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The Lujan Claimants respectfully petition for a writ of certiorari to review the judgment of the U.S. Court of Appeals for Third Circuit in this case.

OPINIONS & ORDERS BELOW

The Third Circuit's May 13, 2025 opinion is published at 137 F.4th 126 and reprinted at 1–91a. The Third Circuit's June 13, 2025 order denying rehearing is reproduced at 782–83a.

The district court's opinion filed March 28, 2023 affirming the bankruptcy court's confirmation order is published at 650 B.R. 87 and reprinted at 94–293a. The district court's order filed the same day on the same subject is reproduced at 92–94a.

The bankruptcy court's September 8, 2022 order on confirmation is available at 2022 WL 20541782 and reprinted at 294a–368a. The bankruptcy court's July 29, 2022 opinion on confirmation is published at 642 B.R. 504 and reprinted at 404–781a.

JURISDICTION

28 U.S.C. §1254(1) affords jurisdiction based on the Third Circuit's May 13, 2025 judgment (1–91a) and the Third Circuit's June 13, 2025 order denying the Lujan Claimants' rehearing petition (782a).

Justice Alito extended the petition deadline to October 13, 2025—a federal legal holiday—making the petition due October 14, 2025. S. Ct. R. 30.1.

STATUTORY PROVISION INVOLVED

Under **11 U.S.C. §363(m)**, the bankruptcy code establishes that: "[t]he reversal or modification on appeal of an authorization under subsection (b) or (c) of this section [i.e., §363] of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal."

STATEMENT

This "extraordinary case" presents questions of grave importance about the power of federal courts and the shielding of bankruptcy code violations from appellate review. 404a. As Judge Rendell explains, the Third Circuit's decision here evades this Court's holding last year in *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204 (2024) that the bankruptcy code "does not permit non-consensual third-party releases in a chapter 11 plan." 78a. In doing so, the decision here grows 11 U.S.C. §363(m)—a targeted protection of asset sales in bankruptcy cases—beyond its limits, deepening mature circuit splits over §363(m)'s metes and bounds. The result is the wrongful termination of legal claims belonging to non-consenting sexual-abuse survivors who want nothing more than their day in court. These survivors now come to this Court in search of the unyielding promise etched atop the Court's entrance: "Equal Justice Under Law."

A. Legal Overview

1. The nation's bankruptcy code, codified under Title 11 (11 U.S.C.), enacts an orderly process that "strikes a balance between the interests of insolvent debtors and their creditors." *Bartenwerfer v. Buckley,* 598 U.S. 69, 72, 81 (2023). Federal courts, in turn, "cannot alter the balance struck by the [code]"—"not even in rare cases." *Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 471 (2017) (cleaned up). This balance is borne out by dozens of general provisions that apply to every form of bankruptcy that the code authorizes. This balance is also borne out within each of the code's individual chapters affording bankruptcy relief to particular kinds of debtors and interests.

2. Chapter 11 of the bankruptcy code governs corporate reorganizations, allowing businesses and nonprofits to continue operating while restructuring their debts under court supervision. *See id.* at 455–56. "When a debtor files for bankruptcy, it 'creates an estate' that includes virtually all the debtor's assets." *See Purdue*, 603 U.S. at 214. Under chapter 11, "the debtor can work with its creditors to develop a reorganization plan governing … distribution of the estate's assets." *Id.* Any proposed plan must then win court approval. *Id.* A court order confirming the plan "binds the debtor and its creditors going forward—even those who did not assent." *Id.* The code foresees "three possible outcomes" of this chapter 11 process. *See Czyzewski*, 580 U.S. at 456. The first is a "court-confirmed plan." *Id.* The second is "conversion of the case to a Chapter 7 proceeding for liquidation" and "distribution of [the debtor's] remaining assets." *Id.* The third is "dismissal" of the entire case. *Id.*

To approve a proposed reorganization plan, the bankruptcy court must ensure that the plan does not exceed the court's powers under the bankruptcy code. The code provides that "[t]he court shall confirm a plan" in a chapter 11 case "only if" both "the plan" and "the proponent" of the plan "compl[y] with the applicable provisions" of the code. 11 U.S.C. §1129(a). The code further provides that confirmation may not occur unless "[t]he plan has been proposed in good faith and not by any means forbidden by law." *See id.* §1129(a)(3). This statutory language "makes plain that bankruptcy courts have the authority—indeed, the obligation—to direct a debtor to conform his plan to the requirements of [the code]." *United Student Aid Funds v. Espinosa,* 559 U.S. 260, 277 (2010) (construing the same language under chapter 13). This obligation exists "whether or not an objection is presently lodged" in the case. *Id.* at 277 n.15.

Within these contours, bankruptcy courts enjoy "broad authority to modify debtor-creditor relations" through their confirmation of reorganization plans. *Purdue*, 603 U.S. at 213–14. But such authority has its limits: "[a] bankruptcy court's … powers may not be exercised in contravention of the [c]ode." *Law v. Siegel*, 571 U.S. 415, 423 (2014). This reality spurred an intractable circuit split on the question of whether "the bankruptcy code grants a bankruptcy court the 'extraordinary' power to release and enjoin claims against a third party without the consent of the affected claimants." *Purdue*, 603 U.S. at 214. In other words, may bankruptcy courts "extend to *nondebtors* the benefits of a … discharge [of liability] usually reserved for *debtors*." *Id.* at 215. (italics in original) Last year (in 2024), this Court answered 'no.'

3. The disputed validity of nonconsensual third-party releases under the bankruptcy code came to the Court in an extraordinary case: the chapter 11 bankruptcy of Purdue Pharma, L.P. Purdue invented OxyContin—a prescription pain reliever responsible for an opioid-addiction crisis that would kill "247,000 people in the United States" between 1999 and 2019 and "cost the country between $53 and $72 billion annually." *See Purdue*, 603 U.S. at 209. The Sackler family owned and ran Purdue during these years, making numerous decisions "to maximize OxyContin sales" at the expense of Purdue's victims. *Id.* at 210. Then, after these victims began to sue, the Sacklers proceeded to raid $11 billion from Purdue, "draining Purdue's total assets by 75%." *Id.* at 211.

When Purdue filed for chapter 11 bankruptcy in 2019, the Sackler family saw another opportunity to enrich themselves. *Id.* Offering to add several billion dollars to Purdue's bankruptcy estate from the funds they raided, the Sacklers sought judicial approval of a release and injunction that would "end the growing number of [opioid-victim] lawsuits against them." *Id.* The bankruptcy court agreed, confirming a chapter 11 plan that "extinguish[ed] vast numbers of existing and potential claims" against the Sacklers "without securing the consent of those affected." *Id.* at 209. The Sacklers won this bankruptcy relief despite not being debtors and "without … placing" their "total assets on the table for their creditors." *Id.*

On review by this Court, the Sacklers' gambit failed. *See Harrington v. Purdue Pharma L.P.*, 603 U.S. 204 (2024). The Court held that "a bankruptcy court's powers are not limitless and do not endow it

with the power to extinguish without their consent claims held by nondebtors (here, the opioid victims) against other nondebtors (here, the Sacklers)." *Id.* at 220–21. The Court reached this conclusion based on the bankruptcy code's plain text, which allows courts in chapter 11 cases "to adjust claims without consent only to the extent such claims concern the debtor"—**not** third-party nondebtors. *Id.* at 218–19.

The Court found "[n]othing" in the bankruptcy code allowed the bankruptcy court to release claims against the Sacklers "without the consent of those affected, as if the claims were somehow Purdue's own property." *Id.* at 219–20. The Court also noted that "in only *one* context" does the code enable courts to bar claims against third parties in a nonconsensual manner: "asbestos-related bankruptcies." *Id.* at 222. The existence of this limited exception then proved the rule: "the bankruptcy code does not authorize a release and injunction that, as part of a plan of reorganization under Chapter 11, effectively seeks to discharge claims against a nondebtor without the consent of affected claimants." *Id.* at 227.

The Court refused to "look the other way" based on "word games" and "policy argument[s]." *Id.* at 223, –25. At the same time, the Court saw fit not to reach beyond the question at hand. The Court explained its decision did not "call into question *consensual* third-party releases." *Id.* at 226 (italics in original). And because *Purdue* involved "a stayed reorganization plan," the Court left open whether "the bankruptcy code would justify unwinding [other] reorganization plans that have already become effective and been substantially consummated." *Id*. at 226.

4. After *Purdue,* courts acknowledged that the "nonconsensual third-party release is now *per se* unlawful" in chapter 11 cases. *In re Smallhold, Inc.,* 665 B.R. 704, 709 (Bankr. D. Del. 2024). But courts wavered in their willingness to honor this rule. Some courts recognized that *Purdue* forbids nonconsensual third-party releases in any guise, keeping faith with the time-honored principle that "what cannot be done directly [under the law] cannot be done indirectly." *Cummings v. Missouri*, 71 U.S. 277, 325 (1867).

For example, the Fifth Circuit rejected text in a chapter 11 plan requiring "leave of the bankruptcy court" for suits against third-party nondebtors. *In re Highland Cap. Mgmt., L.P.*, 132 F.4th 353, 356, 358–59 (5th Cir. 2025). The court noted such "gatekeeper injunction[s]" were "not in themselves releases." *Id.* at 358, 362. But the court found *Purdue* still applied because these injunctions "similarly act[ed] to shield persons and entities from liability." *Id.* at 358–59. The court thus held the text-at-issue "exceeded" the bankruptcy code by allowing the plan "to improperly protect non-debtors from liability." *Id.* at 358.

Other courts have taken the opposite approach, electing to narrow *Purdue* to the greatest extent possible. Under this approach, one bankruptcy court has deemed *Purdue* inapplicable to "temporary, non-consensual, non-debtor injunctions" necessary to the successful implementation of a confirmed plan. *In re Miracle Rest. Grp., LLC,* No. 24-11158, 2025 Bankr. LEXIS 1188, at *8–9 (Bankr. E.D. La. May 13, 2025). Courts have also declared that *Purdue* does not apply "in the context of a §363 sale." *In re Hopeman Bros., Inc.,* 667 B.R. 101, 109 (Bankr. E.D. Va. 2025).

5. A "§363 sale" concerns the bankruptcy code's governance of sales of bankruptcy estate property (asset sales). The code recognizes two different ways that asset sales may occur in chapter 11 cases. One way is through a reorganization plan: "a plan may … provide for the sale of all or substantially all of the property of the estate, and the distribution of the proceeds of such sale among holders of claims or interests." 11 U.S.C. §1123(b)(4). The other way is through a standalone sale outside plan confirmation. Section 363 of the code enables these sales.

Specifically, under subsections (b) and (c), §363 permits "the trustee" to sell "property of the estate." The trustee is a "fiduciary" who the bankruptcy code installs and charges with managing the bankruptcy estate "in the interest of the creditors." *Czyzewski*, 580 U.S. at 455; *see* 11 U.S.C. §1106, 1107(a). The trustee acts as "debtor in possession" of estate assets and may run the debtor's business. *Id.* §§1101(1), 1104, 1108. Against this backdrop, **subsection (b)** of §363 provides that: "[t]he trustee, after notice and a hearing, may … sell … property of the estate" when the sale is "other than in the ordinary course of business." *Id.* §363(b)(1). For sales "in the ordinary course of business," **subsection (c)** of §363 provides that "the trustee may enter into … the sale … without notice or a hearing." *Id.* §363(c)(1).

The remaining provisions of §363 regulate the standalone asset sales authorized by subsections (b) and (c). For example, subsection (f) enumerates the "only" circumstances when "[t]he trustee may sell property under subsection (b) or (c) … free and clear of any interest in such property of an entity other than

the estate." 11 U.S.C. §363(f). Another provision — §363(l)—addresses the relationship between asset sales and "a contract, a lease, or applicable law … conditioned on" the debtor's "insolvency or financial condition." 11 U.S.C. §363(l). This provision affirms the distinct nature of §363 sales and plan sales: "the trustee may … sell … property under subsection (b) or (c) of this section, **or** a plan under chapter 11 ,.. may provide for the … sale … of property." *Id.*

The bankruptcy code further affirms the distinct nature of §363 sales and plan sales by establishing "a targeted protection" under §363(m) of "certain good-faith purchasers." *See MOAC Mall Holdings LLC v. Transform Holdco LLC*, 598 U.S. 288, 300 (2023). Congress appreciated "innocent third parties" may rely on the finality of asset sales in making purchase "offers and bids." *Weingarten Nostat, Inc. v. Serv. Merch. Co.,* 396 F.3d 737, 741 (6th Cir. 2005). So Congress enacted a narrow protection enabling "good faith" purchasers to defend "the validity of a sale" against "reversal or modification" on appeal. *Id.* This targeted protection is known as §363(m).

6. 11 U.S.C. §363(m) provides that: "reversal or modification **on appeal** of an authorization under subsection (b) or (c) of this section [i.e., §363] of a sale or lease of property **does not affect the validity of a sale** or lease under such authorization to an entity that purchased or leased such property in good faith." This targeted protection applies "whether or not" a good-faith purchaser "knew of the pendency of the appeal." *Id.* This protection does *not* apply, however, to the extent that "such authorization and such sale or lease were stayed pending appeal." *Id.*

Because §363(m) "takes as a given the exercise of judicial power over any [sale] authorization under §363(b) or §363(c)," this Court has ruled §363(m) is *not* jurisdictional: §363(m) enacts "a mere restriction on the effects" of review "when a party successfully appeals a covered authorization." *MOAC*, 598 U.S. at 299, 303–04. This restriction—nicknamed "statutory mootness"—has inspired considerable disagreement. While §363(m) addresses only "[sale] authorization[s] under subsection (b) or (c) of [§363]," some circuits maintain that §363(m) "applies to all types of sales in bankruptcy," including plan sales. *See In re Human Hous. Henrietta Hyatt, LLC*, 666 B.R. 332, 349 (BAP 6th Cir. 2025) (detailing Sixth Circuit law). Other circuits recognize "[§]363(m) does not apply where the debtor's assets have been sold …pursuant to a plan," requiring these courts to look "to the case law" for whether mootness exists—a judge-made inquiry called "equitable mootness." *Miami Ctr. L.P. v. Bank of N.Y.,* 838 F.2d 1547, 1553 (11th Cir. 1988).

7. The "curious doctrine" of equitable mootness provides that federal courts may "refuse to entertain … bankruptcy appeals over which they indisputably possess statutory jurisdiction and in which they can plainly provide relief." *In re Cont'l Airlines*, 91 F.3d 553, 567, 570–71 (3d Cir. 1996) (en banc) (Alito, J., dissenting). This principle reduces to a bare judicial unwillingness to upset "substantially consummated" chapter 11 plans. *In re Motors Liquidation Co.*, 829 F.3d 135, 167 (2d Cir. 2016). Though unanimously adopted by the circuits, 90a, many judges have noted the doctrine "cannot survive constitutional scrutiny." *In re One2One Commc'ns, LLC*, 805 F.3d 428, 438, 440–41 (3d Cir. 2015) (Krause, J., dissenting).

B. Facts & Procedural Background

1. The sexual abuse crisis in American scouting is one of the most extensive institutional failures to protect children in this nation's history. Over the course of a century, scouting programs that were supposed to promote "the ability of boys to do things for themselves and others" and "teach … patriotism" subjected tens of thousands of youths to "horrific" sexual abuse. *See* 36 U.S.C. §30902; 421–422a.

The Boy Scouts of America stands at the center of these events. Chartered by Congress in 1916 as a non-profit (*see* Act of June 15, 1916, ch. 148, 39 Stat. 227), BSA ran programs for boys ages 8 to 20 that taught scout-craft and promised to "instill values." *Dale v. Boy Scouts of Am.*, 734 A.2d 1196, 1200–04 (N.J. 1999), *rev'd on other grounds,* 530 U.S. 640 (2000). BSA engaged in "aggressive recruitment" through "national television, radio, and magazine campaigns" and "local membership drives." *Id.* But BSA's "strongest recruiting tool" by far was its youth members: "[a] boy in a uniform." *Id.* at 1211.

While BSA sat "atop" this massive enterprise, BSA's true power rested at the local level. 18a. BSA relied on approximately 250 "Local Councils"—each a separate non-profit entity organized under state law. *See id.* The Local Councils enforced BSA policies, collected membership fees, and helped market BSA merchandise. 415a. The Local Councils owned and operated camps through which the Councils provided educational programs and leadership training. *See id.* And the Local Councils recruited both scouts and volunteer leaders into BSA's ranks. 416a.

Beyond the Local Councils, BSA granted tens of thousands of individual charters to schools, religious institutions, and civic associations, authorizing each charter recipient to use BSA's programs to serve the recipient's "own objectives." *Dale*, 734 A.2d at 1201–02. In exchange, these "Chartered Organizations" provided infrastructure for BSA events; helped select BSA troop members; and participated in BSA Local Council leadership. *See id.; see also* 418–19a.

Being a Boy Scout fast became "an American tradition." *Dale*, 734 A.2d at 1200. Over the decades, BSA would count 87 million people as members. *See id.* at 1215–16. BSA built close relationships with "state and local governments," with the military, and with "public schools and school-affiliated groups." *Id.* at 1212–13. And BSA amassed tremendous wealth—"an impressive $1.2 billion" that included "cash, stocks, bonds, real estate and an art collection."[1] One year, BSA's chief scout executive reaped $1.6 million in salary, bonus, and deferred compensation.[2]

BSA Local Councils also prospered, collectively garnering $3.3 billion in assets.[3] The Sam Houston Area Council built a "$65 million youth camp" on a 2,800-acre tract in Texas.[4] Other Local Councils held similarly impressive properties, including the Moab

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[1] Carolyn Howe, *The Hidden History of the Boy Scouts of America*, N.Y. POST, Feb. 16, 2025, https://nypost.com/2025/02/16/lifestyle/the-hidden-history-of-the-boy-scouts-of-america/.

[2] *See* Ronald D. White, *Not So Nonprofit*, L.A. TIMES, Sept. 24, 2013, https://www.latimes.com/business/la-fi-mo-non-profit-salaries-20130924-story.html.

[3] ECF 4108, PageID.264 in No. 20-10343 (Bankr. D. Del.).

[4] Mike Baker, *At Stake in Bankruptcy: $1 Billion in Assets, or Much More*, N.Y. TIMES, Feb. 19, 2020, at A11.

Base Camp in Utah; the Curtis S. Read Reservation in the Adirondacks of New York; and the Owasippe Scout Reservation in Michigan.[5] The Local Councils' executive leadership shared in this prosperity. For example, the Great Salt Lake Council would pay its full-time "Scout executive" $214,000-a-year.[6]

Behind BSA's prestige and wealth, however, hid a systematic pattern of child abuse. In 1935, the New York Times reported[7] on BSA recordkeeping since 1920 that identified nearly 900 men who "engaged in sexual misconduct with scouts." *Doe v. Boy Scouts of Am.*, 66 N.E.3d 433, 440 (Ill. App. Ct. 2016). These "perversion files" grew year after year, *id.,* reflecting BSA's nonstop awareness of horrifying crimes within BSA programs, including "grooming," "inappropriate touching," and "[sexual] penetration." 421a.

Eventually, BSA's efforts to hide this persistent and rampant misconduct collapsed. "What began as a trickle of seemingly isolated claims in the 2000s steadily increased …." 19a. In 2012, a federal court ordered the production of BSA's "perversion files." *Doe v. Corp. of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints*, No. 1:09-cv-00351, 2012 U.S. Dist. LEXIS 79535, at *7 (D. Idaho June 7, 2012). From 2017 to 2019, BSA "resolved about 250 abuse

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5 *See* Baker, *supra* note 4.

6 *See* Lee Davidson, *Scouts May Be Thrifty, But Some Leaders Are Well Paid*, DESERET NEWS (UTAH), Nov. 11, 2007, https://www.deseret.com/2007/11/11/20053210/scouts-may-be-thrifty-but-some-leaders-are-well-paid/.

7 *Boy Scouts Head Explains 'Red' List*, N.Y. TIMES, June 9, 1935, https://www.nytimes.com/1935/06/09/archives/boy-scouts-head-explains-red-list-name-applies-solely-to-color-of.html.

claims" for $150 million. 19a. But hundreds more suits against BSA—and the Local Councils and Chartered Organizations—remained. 421a.

2. In 2020, BSA filed for bankruptcy. *See* 19a. The Local Councils and Chartered Organizations were not debtors in this chapter 11 proceeding, nor did they purport to put virtually all their assets on the table for their creditors (BSA abuse survivors). The Local Councils and Chartered Organizations nevertheless saw BSA's bankruptcy as a means to rid themselves of all liability to abuse survivors. Major insurance companies (also non-debtors here) saw the same thing. For decades, BSA, the Local Councils, and the Chartered Organizations bought or enjoyed various forms of insurance coverage that extended to abuse claims. 18–19a. These insurance policies now stood to require substantial insurer payouts.

So, after BSA entered bankruptcy, several major insurers (the Settling Insurers) proposed that BSA sell its insurance policies back to the insurers for $1.67 billion to be deposited into a Settlement Trust for abuse victims. 606a. The Local Councils proposed to assign their insurance rights to the Trust and to pay $515 million of their collective assets (a mere 15%) plus $150 million from various other sources over time. 503a. As for the over 100,000 Chartered Organizations, one agreed to pay $30 million into the Trust. 474a, 603a. The rest merely signed over their insurance rights under BSA policies. 603–06a.

For this $2.4 billion—a small fraction of their collective assets—the insurers, the Local Councils, and the Chartered Organizations demanded 'global

peace': non-consensual releases of all current and future abuse claims against them. 562a. Knowing the "controversial" nature of nonconsensual releases, the preceding nondebtor entities wove the insurance buy-back into the proposed BSA plan and then "crafted" the nonconsensual releases as a sale term protected by §363(m)'s prescriptions. *See* 86a n.10.

Meanwhile, 82,209 survivors filed timely abuse claims. 443a. The bankruptcy court estimated the aggregate value of the abuse claims "for purposes of confirmation only" at between $2.4 and $3.6 billion. 487a & n.227; 498. At the same time, the court made clear that its estimate did "not establish" the "actual amount" of any individual abuse claim or the "actual aggregate amount" of all abuse claims. 309a.

BSA polled survivors on the proposed BSA plan. *See* 450–51a; 481a. In the final vote, 48,463 approved and 8,073 disapproved—a bare 59% approval rate among all 82,209 survivors (voting and non-voting). 481a. "Thirty-nine parties filed [plan] objections …." 25a. Among them were the Lujan Claimants: 75 survivors of BSA-related abuse in Guam.[8] The Lujan Claimants objected to the nonconsensual third-party releases (*see* 580a), as did the U.S. Trustee.[9] The U.S. Trustee stressed the lack of statutory authorization for the releases as well as the releases' breadth: the releases were "so broad" that it was "unknown (and probably unknowable)" all the parties guarded by the releases and all the parties whose tort claims would ultimately be extinguished by the releases.[10]

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8 ECF 66 at PageID.9 in No. 23-1664 (3d Cir.).

9 ECF 8710 at ¶45 in No. 20-10343 (Bankr. D. Del.).

10 *Id.* at ¶31.

3. The bankruptcy court rejected the objections of the Lujan Claimants and the U.S. Trustee and, after certain modifications, confirmed the BSA plan. 294a. The court "approved" the insurance buy-back "pursuant to … [§]363" and §363(m)'s "protections." 319–20a. On appeal by the Lujan Claimants (and others), the district court affirmed. 94–293a.

The Lujan Claimants (and others) appealed to the Third Circuit, which affirmed in part. 17a. The panel deemed the nonconsensual releases an integral part of a §363 sale, triggering §363(m)'s protections. 42a. Judge Rendell rejected the panel's "dangerous" view of §363(m), favoring application of "equitable mootness" instead. 86a; 77a n.1. The Third Circuit subsequently denied rehearing. *See* 782–83a.

4. During this litigation, the Lujan Claimants repeatedly moved to stay the confirmation order. 26a n.6. Courts denied these motions on the ultimately erroneous view that the bankruptcy code authorizes nonconsensual third-party releases.[11] And courts are now learning that abuse survivors face dim prospects of equitable compensation because the total value of BSA abuse claims is really "$12 billion" (and rising), with 17,000+ claims still to be reviewed.[12]

5. This certiorari petition follows.

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[11] *See, e.g., In re BSA*, No. 22-1237, 2023 U.S. Dist. LEXIS 63098, at *59 (D. Del. Apr. 11, 2023).

[12] *See* Becky Yerak, *Boy Scouts Abuse Survivors Face Increasingly Dim Prospects of Payment*, WALL ST. J., Sept. 16, 2025, https://www.wsj.com/articles/boy-scouts-abuse-survivors-face-increasingly-dim-prospects-of-payment-9bcda82c.

REASONS TO GRANT THE PETITION

I. This case echoes *Purdue*, showing why the Court should not look the other way.

"This is an extraordinary case by any measure." 404a. For this reason, the Court should refuse "to look the other way"—just as the Court refused last year in *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204, 223 (2024). *Purdue* involved a nearly $6 billion settlement payment from the Sacklers that promised "equitable compensation" of over "100,000 individual opioid victims." *See id.* at 227–28 (Kavanaugh, J., dissenting). Given these and other "extraordinary circumstances," the Court could have denied review, letting stand nonconsensual third-party releases that the lower courts deemed "essential to the success" of Purdue's chapter 11 plan. *See id.* at 253–55.

The Court instead granted review *and* reversed. *Id.* at 214, 227 (majority op.). The Court explained that "nothing in the bankruptcy code" permits courts to "extinguish without their consent claims held by nondebtors (here, the opioid victims) against other nondebtors (here, the Sacklers)." *Id.* at 220, 223. This case entails another nonconsensual extinguishment of claims held by nondebtors (BSA abuse survivors) against other nondebtors (major insurers, the Local Councils, and the Chartered Organizations). And the Third Circuit admits that "[i]f proposed today, the [BSA] Plan would be unconfirmable." 76a. The Third Circuit nevertheless denies Petitioners the benefit of *Purdue* based on the "unique" nature of this case. *Id.* The ostensible bases for this view, in turn, support a grant of certiorari, no less than in *Purdue*.

Not 'too big to fail.' The Third Circuit stresses that under its decision, abuse survivors may "pursue their claims" via the Settlement Trust and "recover for at least some fraction of [their] suffering." 76a. The unspoken message here is that this case is too big to fail. The Court heard the same line in *Purdue*: without nonconsensual releases, opioid victims had "no viable path" to compensation. 603 U.S. at 224. "[But] the magnitude of a legal wrong is no reason to perpetuate it." *McGirt v. Oklahoma*, 591 U.S. 894, 934 (2020). Just the opposite: this case is too big to allow the strategy-in-dispute to succeed (i.e., using §363 sales to launder *Purdue*-forbidden releases). The ends cannot justify the means, which is why Judge Rendell saw "not only error, but mischief" in the Third Circuit's reading of §363(m). 91a.

Not 'too small to matter.' The Third Circuit notes all the abuse survivors who voted to approve the BSA plan. 49a n.17. It then becomes easy to view Petitioners as too small to matter (75 survivors out of 82,209 claimants). Yet, in *Purdue*, the only objectors before the Court (besides the U.S. Trustee) were a "sole individual and a small group of Canadian creditors." 603 U.S. at 255 (Kavanaugh, J., dissenting). Of the opioid victims who voted, over "95[%] approved." *Id.* at 254. The Court did not skip a beat: "our only proper task is to interpret and apply the law." *Id.* at 226 (majority op.). And to do anything else here would be to enforce "the rule of the strong, not the rule of law." *McGirt*, 591 U.S. at 924.

Not 'too complex to review.' The Third Circuit catalogues this case's voluminous record, including hundreds of opinion pages "meticulously analyzing"

the BSA plan. 255a. *Purdue* featured a similarly "complex" record. 603 U.S. at 245–46 (Kavanaugh, J., dissenting). All the scrutiny that Petitioners' case has received then makes certiorari more justified—not less. This case having undergone the "crucible of adversarial testing" and benefitted from the Court's "thoughtful colleagues on the district and circuit benches," the Court may "wisely" speak "last." *Maslenjak v. United States*, 582 U.S. 335, 354 (2017) (Gorsuch & Thomas, JJ., concurring-in-part).

Not 'too late to fix.' The Third Circuit frets "disrupt[ion]" of the *Purdue*-forbidden releases here "at this late stage." 76a. This analysis implies that even if the Court were to grant review and reverse, no relief is possible—it is 'too late' to fix the releases. But this Court rejects such thinking, which confuses "mootness with the merits." *MOAC Mall Holdings LLC* v. *Transform Holdco LLC*, 598 U.S. 288, 295–96 (2023). Moreover, "[u]nlawful acts, performed long enough and with sufficient vigor, are never enough to amend the law." *McGirt*, 591 U.S. at 937–38.

Not 'too soon to care.' The Third Circuit observes Petitioners' unsuccessful effort to obtain a stay of the plan confirmation order. *See* 26a n.6. In *Purdue*, the Court reserved *Purdue's* effect on plans "that have already become effective." 603 U.S. at 226. The Court now has the chance to decide this question in a fully developed case before countless other tort victims suffer the cost of non-consensual releases in the guise of §363 sales. The alternative is a vital loss of judicial integrity, as more courts follow the Third Circuit's lead and relegate *Purdue* to "a mere plan-drafting guide." 86a (Rendell, J., concurring).

II. The circuits are deeply split on the proper operation of 11 U.S.C. §363(m).

11 U.S.C. §363(m) "cloak[s] certain good-faith purchasers" of bankruptcy estate property "with a targeted [non-jurisdictional] protection of their newly acquired property interest." *MOAC*, 598 U.S. at 300. In this regard, by its express terms, §363(m) applies to "an authorization under … [§363](b) or [§363](c) … of a sale," establishing that "the validity of a sale" is "not affect[ed]" by any "reversal or modification on appeal of … [the] authorization." The circuits are split in at least three different ways on the operative effect of these terms. The Third Circuit's decision in this case only deepens these mature circuit splits, as Judge Rendell's concurrence elaborates.

1. *Plan Sales.* Based on §363(m)'s limitation of itself to "an authorization under subsection (b) or (c) of this section," the Eleventh Circuit held 37 years ago in *Miami Center L.P. v. Bank of New York*, 838 F.2d 1547 (11th Cir. 1988) that **§363(m)** "**does not apply where the debtor's assets have been sold … pursuant to a [chapter 11] plan**." *Id.* at 1553 (bold added); *see In re T & H Diner, Inc.*, 108 B.R. 448, 451 (D.N.J. 1989) (citing *Miami Center* for this rule). Based on this holding, the Eleventh Circuit further recognized in *Miami Center* that only "case law" (equitable mootness) afforded a possible source of bankruptcy-code preclusion of a plan-sale appeal. *See* 838 F.2d at 1553. Both conclusions are binding Eleventh Circuit law. *See Bravo v. United States*, 532 F.3d 1154, 1162 (11th Cir. 2008) ("[I]n this circuit additional or alternative holdings are not dicta, but instead are as binding as solitary holdings.").

In contrast to the Eleventh Circuit's limited view of §363(m), the Sixth Circuit has long held that §363(m)'s review bar governs *all* property sales in bankruptcy—including sales under plans. *See In re Made in Detroit, Inc.*, 414 F.3d 576, 581 (6th Cir. 2005) (enforcing §363(m) in the context of "[p]roperty … sold pursuant to … [a] [p]lan"). The Sixth Circuit takes this position based on the atextual logic that "there is no principled reason to distinguish between sales made by trustees [under §363] and other sales in bankruptcy." *Id.*; *see In re Human Hous. Henrietta Hyatt, LLC*, 666 B.R. 332, 349 (BAP 6th Cir. 2025) (stressing that the Sixth Circuit "applies [§363(m)] to all types of [property] sales in bankruptcy").

In this case, the Third Circuit adopts a kind of middle ground: §363(m) immunizes sales under a plan when the plan brands the sale a §363 sale. 38a ("the Confirmation Order … authorizes '[t]he sale … pursuant to [§]363'" (cleaned up)). But this middle ground comes with major issues. As Judge Rendell explains: "[when], as here, a sufficiently important facet of the plan [e.g., *Purdue*-forbidden releases] makes up 'consideration' for a portion of the debtors' property, a §363 sale [under the plan] allows debtors to avoid complying with [c]hapter 11." 79a. Judge Rendell also explains why §363 sales and plan sales must be viewed as distinct matters: when parties insert a §363 sale into "a globally-negotiated plan," the "vetting that would normally occur" outside plan confirmation "as part of a sale bidding and approval process" under §363 "will not occur." 84a.

2. *Terms of Sale.* In protecting "the validity of a *sale*," §363(m) splits the circuits on whether §363(m)

merely precludes any "claw[ing] back [of] the sale" or whether §363(m) immunizes "*every* term … integral to th[e] transaction." *In re ICL Holding Co.*, 802 F.3d 547, 554 (3d Cir. 2015) (italics-in-original). The First, Second, Third, Fifth, and Eighth Circuits all take the latter broad view of §363(m). *See, e.g.,*, *In re Stadium Mgmt. Corp.*, 895 F.2d 845, 849–50 (1st Cir. 1990) (applying §363(m) beyond sale to assignment of valuable sublease); *In re WestPoint Stevens, Inc.*, 600 F.3d 231, 249–50 (2d Cir. 2010) (applying §363(m) beyond sale to "lien release, claim satisfaction, and distribution provisions"); *In re Trism, Inc.*, 328 F.3d 1003, 1006–08 (8th Cir. 2003) (applying §363(m) beyond sale to release from avoidance liability).

In re Sneed Shipbuilding, Inc. 916 F.3d 405 (5th Cir, 2019) exemplifies the broad terms-of-sale view of §363(m). The bankruptcy court authorized a §363 property sale that generated $12 million for the bankruptcy estate—funds the trustee used to buy certain guarantees from a probate estate. *Id.* at 407–08. An unsecured creditor appealed the order but did not seek a stay. *Id.* The Fifth Circuit dismissed the appeal, rejecting the creditor's argument that it was "not challeng[ing] the sale"—only "disbursement" of the sale proceeds to the probate estate. *Id.* at 410. Since "[p]aying off the probate estate was an essential feature of the sale," §363(m) applied. *Id.*

The Seventh Circuit disagrees: because §363(m) "does not say one word about the disposition of the proceeds of a sale," §363(m) "does not make any dispute moot … [about] what shall be done with the proceeds of a sale." *Trinity 83 Dev., LLC v. ColFin Midwest Funding, LLC*, 917 F.3d 599, 602–03 (7th

Cir. 2019). The Seventh Circuit thereby rejects the idea that §363(m) "moot[s] all disputes" integral to a sale versus "giving the purchaser … a defense to a request to upset [a] sale." *Id.* at 603. The Seventh Circuit also identifies the D.C. Circuit as supporting this view, respecting §363(m) governs "[a] sale itself," and not "judicial control over … the money generated by a sale." *Id.* at 602*; see In re Hope 7 Monroe St. L.P.*, 743 F.3d 867, 872–73 (D.C. Cir. 2014).

The Third Circuit followed the broad view here: §363(m) shielded the BSA plan's *Purdue*-forbidden releases because "without the releases, the Settling Insurers would receive less than they bargained for." 42a. Judge Rendell objected, finding §363(m) did not reach beyond the "sale of the insurance policies" to the "separate facet" of the releases. *See* 84a. Judge Rendell also warned that the panel's broad view now meant: "[s]o as long as a court authorizes an intra-plan sale under §363, the other plan provisions are shielded from review [per §363(m)], as they may have conceivably affected the purchase price." 85a.

3. *Sale Consummation.* Section 363(m) finally divides the circuits on the issue of whether §363(m)'s mandates require "not only an authorized sale, but a sale that has occurred." 89–90a. After all, §363(m) guards just "the validity of a sale"—a point that is academic if no sale exists, or if a sale by its own terms (i.e., its own validity) allows unwinding based on contingencies or future events. This issue matters here because the bankruptcy court order confirming the BSA plan incorporates sale agreements that in turn "expressly condition" the insurance sales on the favorable conclusion of all appeals. 88a.

The Fifth and Tenth Circuits recognize that §363(m) does not apply in the case of §363(b) sales that are unconsummated because the sale by its own terms is conditioned on completion of judicial review. Take *In re Paige*, 685 F.3d 1160 (10th Cir. 2012). The Tenth Circuit determined that §363(m) did not bar review of a sale order conditioned on a third-party's defenses and "a ruling" on those defenses—meaning "a final and nonappealable order." *Id.* at 1190–91*; see In re Fieldwood Energy LLC*, 93 F.4th 817, 824 (5th Cir. 2024) (observing §363(m) does not apply in those "situations in which a bankruptcy court specifically reserve[s] an issue for later determination").

By contrast, the First and Third Circuits deem §363(m) to shield all authorized sales regardless of actual consummation so long as no stay has been obtained (a *per se* rule). As the First Circuit puts it: "when an order confirming a sale … is entered and a stay … is not obtained, the sale becomes final and cannot be reversed …." *In re Stadium Mgmt. Corp.*, 895 F.2d at 847. Or as the Third Circuit puts it here: "[§363(m)] does not include an inchoate requirement that a §363(b) sale be consummated …." 38a; *but see* 89–90a (Rendell, J., concurring) ("[§]363(m) clearly contemplates … a sale that has occurred. An appeal cannot affect … a sale that has not happened.").

In sum: the circuits fundamentally disagree on the breadth of §363(m)'s operation as a matter of plan sales, terms of sale, and sale consummation. By granting review here, the Court stands to resolve these longstanding conflicts, helping to ensure that bankruptcy outcomes do not depend on geographical happenstance (as opposed to uniform law).

III. The time has come for the Court to review so-called "equitable mootness."

Equitable mootness is "a judge-made, atextual doctrine of pseudo-abstention." *In re Serta Simmons Bedding, LLC,* 125 F.4th 555, 588 (5th Cir. 2024). The doctrine is grounded on the notion that "with the passage of time" in a bankruptcy case, "effective relief on appeal becomes impractical, imprudent, and therefore inequitable." *In re United Producers, Inc.*, 526 F.3d 942, 947 (6th Cir. 2008). Over the last 40 years, each circuit has adopted this doctrine.[13] On everything else, the circuits stand divided, including nomenclature;[14] the relevant test;[15] and key limits.[16] These divisions make "equitable mootness" one of the most unpredictable areas of bankruptcy law.

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[13] *See, e.g.*, *In re López-Muñoz*, 983 F.3d 69, 72 (1st Cir. 2020); *In re Chateaugay Corp.*, 10 F.3d 944, 952 (2d Cir. 1993); *In re Cont'l Airlines*, 91 F.3d 553, 560 (3d Cir. 1996) (en banc); *Mac Panel Co. v. Va. Panel Corp.*, 283 F.3d 622, 625 (4th Cir. 2002); *In re Pac. Lumber Co.*, 584 F.3d 229, 240 (5th Cir. 2009); *In re City of Detroit, Mich.*, 838 F.3d 792, 798 (6th Cir. 2016); *In re UNR Indus., Inc.*, 20 F.3d 766, 769 (7th Cir. 1994); *In re VeroBlue Farms USA, Inc.*, 6 F.4th 880, 883 (8th Cir. 2021); *In re Roberts Farms, Inc.*, 652 F.2d 793, 798 (9th Cir. 1981); *In re Paige*, 584 F.3d 1327, 1337 (10th Cir. 2009); *In re Club Assocs.*, 956 F.2d 1065, 1069 (11th Cir. 1992); *In re AOV Indus., Inc.*, 792 F.2d 1140, 1147 (D.C. Cir. 1986). The Federal Circuit does not hear bankruptcy appeals. *See* 28 U.S.C. §1295.

[14] *See In re UNR*, 20 F.3d at 769 ("[W]e banish 'equitable mootness' from the (local) lexicon.").

[15] *See In re Cont'l Airlines*, 91 F.3d at 568–69 (Alito, J., dissenting) (Third Circuit's five-factor test "quite different" from Eleventh Circuit's "substantial consummation" test).

[16] *See In re City of Stockton, Cal.*, 909 F.3d 1256, 1269 (9th Cir. 2018) (Friedland, J., dissenting) (criticizing application of equitable mootness to bar review of a constitutional claim).

The doctrine has since drawn the ire of many federal appellate judges. While on the Third Circuit, Justice Alito—joined by five other judges—deemed adoption of the doctrine "a bad precedent." *In re Cont'l Airlines*, 91 F.3d at 567 (Alito, J., dissenting). Judge Moore agrees: the doctrine has "almost no legal basis." *See In re City of Detroit*, *Mich.,* 838 F.3d 792, 806 (6th Cir, 2016) (Moore, J., dissenting). And Judge Krause—who wrote the decision below—has rebuked the doctrine as a source of "uncertainty and delay." *In re One2One Commc'ns, LLC*, 805 F.3d 428, 446 (3d Cir. 2015) (Krause, J., dissenting).

The Third Circuit fractured here on equitable mootness. Writing the lead opinion, Judge Krause refused even to "suggest" that Petitioners' claims were "equitably moot." 63a n.24. Judge Krause noted an argument that the "escrowed funds in [this] case" may bar a finding of equitable mootness. *Id.* Judge Rendell, on the other hand, found equitable mootness a "straightforward" basis for dismissal because (in her view) "striking the [*Purdue*-forbidden] releases" would "scrambl[e]" the BSA plan. 77a n.1.

Given the extent to which analysis of §363(m) and analysis of equitable mootness go hand-in-hand, judicial economy favors taking up both issues at the same time (especially in a case of this magnitude). Petitioners raised the issue below (54a n.21), and a circuit split exists in this context that Petitioners' case is well suited to address. The Fifth Circuit holds that equitable mootness "cannot be 'a shield for … unauthorized practices.'" *In re Serta,* 125 F.4th at 588. Yet, Judge Rendell urges the doctrine shields the *Purdue*-forbidden releases here. 77a n.1.

IV. The questions presented are of exceptional national importance, as this case shows.

The Third Circuit concedes that "if proposed today, the [BSA] Plan would be unconfirmable" given this Court's categorical prohibition of nonconsensual third-party releases in *Purdue*. 76a. Yet, the Third Circuit concludes that the *Purdue*-forbidden releases in this case must stand due to their clever packaging: plan classification of the releases as §363 sale terms. Such analysis "relegates … *Purdue* to a mere plan-drafting guide," raising the questions presented here —questions of national importance considering the ubiquity of chapter 11 reorganizations. 86a.

Indeed, absent review of the questions at hand, nondebtors may "end run" *Purdue*'s holding in four easy steps. 78a. ***First***, identify a bankruptcy estate asset that can plausibly form the basis of a §363 sale. ***Second***, make *Purdue*-forbidden releases integral to the sale price. ***Third***, label the transaction "a sale under §363" in the proposed reorganization plan. ***Fourth***, invoke §363(m) to immunize the deal. The released nondebtors are then home free—especially if the bankruptcy court agrees (as some now do) that *Purdue* does not reach §363 sales and (likely on that basis) refuses to grant a stay. 83–84a n.8.

Judge Rendell thus declares that the decision below creates a "dangerous transactional precedent." 86a. The real-world mechanics of chapter 11 cases reinforce this judgment. "[Section] 363(b) asset sales … [are] common practice in large-scale corporate bankruptcies," if not "the preferred [legal] method of monetizing the assets of a debtor company." *In re*

Chrysler LLC, 576 F.3d 108, 115–16 (2d Cir. 2009). These sales became "even more useful" during the "economic crisis of 2008-09," with buyers and sellers appreciating the "speed of the process" and its ability to "cleanse[]" assets "free and clear of … liabilities." *Id.* As a result, scholars have long feared that "[t]he 'side door' of §363(b) may well 'replace the main route of Chapter 11 reorganization plans.'" *Id.*

The Third Circuit's decision only enhances this risk, validating a new route by which parties may "bypass the requirements of Chapter 11 to cash out quickly at the expense of other stakeholders." *Id.* at 116. Just consider the facts of *Purdue* by analogy. "[T]o end the growing number of lawsuits against them brought by opioid victims," the Sackler family sought incorporation of a nonconsensual third-party release into Purdue's reorganization plan. *Purdue*, 603 U.S. at 211. The Court held that "the bankruptcy code does not authorize" nonconsensual third-party releases "as part of a plan of reorganization under Chapter 11." *Purdue*, 603 U.S. at 227. The Third Circuit's decision here establishes what the Sacklers should have done to win the releases denied to them: agree to "purchase[] the [Purdue] estate's fraudulent conveyance claims" against Sackler family; make the releases a term of the sale; label the transaction "a §363 sale" in the plan; and then cite §363(m) to seal the deal. *See* 86–87a (Rendell, J., concurring).

Against this possibility, the Third Circuit posits that no cause for alarm exists because the BSA case is "unique" and §363(m) really affects only "a narrow and well-defined category of cases." 34a, 76a. Such thinking presents two problems. First, "[b]ankruptcy

law has a tendency to normalize the extraordinary": "unusual circumstances rapidly become precedents for … less compelling circumstances."[17] Nondebtor third-party releases exemplify this tendency: "relief … describe[d] as 'extraordinary'" quickly became "a routine part of nearly every chapter 11 case." *See In re Astria Health*, 623 B.R. 793, 801 n.25 (Bankr. E.D. Wash. 2021). This history is now on course to repeat itself, with attorneys recognizing "the Third Circuit may have set forth a roadmap for future debtors to implement [so as] to work around *Purdue*."[18]

The other problem with viewing the decision below as a one-off is that the bankruptcy code does not contain "a 'rare case' exception." *Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 471 (2017). This Court has reversed the Third Circuit for believing otherwise—and in the noteworthy context of another "nonconsensual" transaction, no less. *Id.* at 469, 471. So the Third Circuit's decision in this case is either: (1) a return to impermissible "rare case" reasoning; or (2) the future of bankruptcy law, which means the nonconsensual extinguishment of nondebtor claims through §363 sales in many more chapter 11 cases to come. *Id.* Either way, review is warranted. *See id.* at 470 ("[U]ncertainty will lead to similar claims being made in many, not just a few, [future] cases.").

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[17] Adam J. Levitin, Purdue's *Poison Pill: The Breakdown of Chapter 11's Checks and Balances*, 100 TEX. L. REV. 1079, 1121 (2022), *available at:* https://texaslawreview.org/purdues-poison-pill-the-breakdown-of-chapter-11s-checks-and-balances/.

[18] Shane G. Ramsey, *Did the Third Circuit Just Create a Backdoor Around Purdue?: A Closer Look at the Boy Scouts Ruling and Section 363(m)*, NELSON MULLINS, May 19, 2025, https://tinyurl.com/35s3c4hb (last visited Oct. 13, 2025).

To the extent that any doubt remains about the national importance of the questions presented (and resulting need for review), the Court should call for the views of the Solicitor General. The U.S. Trustee brought *Purdue* to this Court. 603 U.S. at 213. Since then, the U.S. Trustee has opposed a new crop of post-*Purdue* nonconsensual releases and injunctions. *See, e.g.,*, *In re Commercial Express,* 670 B.R. 573, 586–88 (Bankr. M.D. Fla. 2025) (UST objection to nonconsensual releases in the context of a chapter 7 case); *In re AIO US, Inc.*, No. 24-11836, 2025 Bankr. LEXIS 2012, at *105 (Bankr. D. Del. Aug. 21, 2025) (UST objection to "gatekeeper provision").

Speaking for the U.S. Trustee, the Solicitor General would likely be able to inform the Court about the new types of nonconsensual releases that parties have devised to avoid *Purdue*, and how the Third Circuit's decision here bolsters these efforts. The Solicitor General's views may also prove helpful given the U.S. Trustee's foundational objection to the BSA plan—an objection that underscored the lack of affirmative consent. As the U.S. Trustee explained, "those [abuse survivors] who are presumed to accept the [p]lan …will not even be able to opt out."[19]

Finally, any concerns about a grant of review and timely resolution of this case may be addressed through expedited briefing. The Court did just this in *Purdue* by setting a December 2023 argument date. *See Harrington v. Purdue Pharma, L.P.,* 144 S. Ct. 44 (2023) (order granting review). The Court should consider adopting the same approach here.

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[19] ECF 8710 at ¶75 in No. 20-10343 (Bankr. D. Del.).

V. The decision below is wrong.

The Third Circuit errs in construing §363(m) to reach asset sales (however labeled) within chapter 11 plans and to further immunize *Purdue*-forbidden releases. Judge Rendell errs in concluding equitable mootness is both a legitimate doctrine and one that (even if valid) shields unauthorized practices.

1a. Section 363(m) governs "an authorization under subsection (b) or (c) of this section of a sale." "Congress often drafts statutes with hierarchical schemes—section, subsection, paragraph, and on down the line." *NLRB v. SW Gen., Inc.*, 580 U.S. 288, 300 (2017). "Congress used that structure in the [bankruptcy code] and relied on it to make precise cross-references." *Id.* "When Congress wanted to refer only to a particular subsection or paragraph, it said so." *Id.* In §363(m), Congress referenced §363(b) and §363(c) alone. Congress did not reference plans, "chapter 11," or 11 U.S.C. §1123(b)(4), through which the bankruptcy code authorizes "a plan" to "provide for the sale of … property of the estate." *Id.*

Statutory text then draws a clear distinction: §363(m) addresses only the non-plan asset sales that §363(b) and §363(c) authorize. "[S]ales accomplished under plans do not fall within §363(m)'s ambit." 81a (Rendell, J., concurring). Surrounding text reinforces this view. Congress defined the scope of 11 U.S.C. §363(l)—right above §363(m)—to govern how "**a plan under chapter 11** ,.. may provide for the … sale … of property" ***and*** how "the trustee may … sell … property under subsection (b) or (c) of this section." Section 363(m) lacks similar dual phrasing.

Bankruptcy code provisions besides §363 affirm the distinct nature of plan sales. Under 11 U.S.C. §1145, the bankruptcy code grants certain limited exemptions from federal securities laws. The main exemption addresses "the offer or **sale under a plan** of a security," *id.* §1145(a)(1), while a later exemption addresses "the offer or **sale**, **other than under a plan**, of a security," *id.* §1145(a)(3). Such language shows Congress does not view plan sales and sales outside plans as interchangeable concepts.

The Third Circuit attempts to get around this reality by quoting the BSA plan's invocation of §363 as the authorizing basis for the plan's insurance sale. 38a. *Purdue* rejects this move: "word games cannot obscure the underlying reality." 603 U.S. at 223. And to the extent the Third Circuit intends to suggest that §363(m) applies to plan sales because §363(m) does not expressly exclude plan sales, this Court long ago rejected such reasoning as "contrary to common sense and common usage." *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 8 (2000). "Many provisions" of the bankruptcy code lacking "an express exclusion" still "cannot sensibly be read to extend to all parties." *Id.* One of these provisions is §363(m)—a targeted protection of sales under §363 (outside plan confirmation) that cannot sensibly be read to govern asset sales under plans.

1b. As Judge Rendell comprehensively details below, even if one understands §363(m) to apply to plan sales, §363(m)'s text cuts against immunization of *Purdue*-forbidden releases. *See* 84–91a. Section 363(m) immunizes "the validity of a *sale*" (transfer of title)—not 'the validity of *the terms* of a sale' or 'the

validity of a *release*,' which is not a sale. *Cf.* 11 U.S.C. §365(b)(4) ("the terms of such lease"); *In re Braniff Airways, Inc.*, 700 F.2d 935, 939–40 (5th Cir. 1983) ("[T]he PSA transaction also provided for the release of claims … [T]his requirement is not a 'use, sale or lease' and is not authorized by §363(b).").

The Third Circuit reasons that §363(m) shields the *Purdue*-forbidden releases here because of their integral role in facilitating insurance sales under §363(b). *See* 42–44a. But such reasoning defies the time-honored rule that "a party ought not be able to do indirectly what it cannot do directly." *In re PW, LLC*, 391 B.R. 25, 36–37 (BAP 9th Cir. 2008). Courts applying §363(m) have thus determined that parties "cannot mask an improper condition … by cloaking it as an essential and inseparable part of a sale." *Id.; cf. In re Braniff*, 700 F.2d at 940 ("[One] should not be able to short circuit the requirements of Chapter 11 for confirmation … by establishing … [a] plan *sub rosa* in connection with [a §363(b)] sale ….").

2. Equitable mootness is a "bad precedent," as Justice Alito and others have warned for years. *In re Cont'l Airlines*, 91 F.3d at 567 (Alito, J., dissenting). The doctrine contravenes one the oldest threads of federal jurisdiction: that courts "have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given." *Cohens v. Virginia*, 19 U.S. 264, 404 (1821). And when courts enforce this doctrine in a manner that functions to shield unauthorized practices (like *Purdue*-forbidden releases), the doctrine forfeits any home in equity, which "abhors such conduct." *In re Fuller Cleaning & Dyeing Co.*, 118 F.2d 978, 979 (6th Cir. 1941).

CONCLUSION

The Court should grant this certiorari petition.

Respectfully submitted,

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Dated: October 13, 2025