

No. A-_____

IN THE
SUPREME COURT OF THE UNITED STATES

PUERTO RICO FISCAL AGENCY
AND FINANCIAL ADVISORY AUTHORITY,
APPLICANT,

v.

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, ET AL.,
RESPONDENTS.

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

**APPLICATION FOR EXTENSION OF TIME TO FILE
A PETITION FOR A WRIT OF CERTIORARI**

Peter Friedman
(Counsel of Record)
O'MELVENY & MYERS LLP
1625 Eye Street, N.W.
Washington, D.C. 20006-4001
(202) 383-5300

TO: Justice Ketanji Brown Jackson, Circuit Justice for the United States Court of Appeals for the First Circuit:

Pursuant to Supreme Court Rules 13.5 and 22 and 28 U.S.C. § 2101(c), Applicant Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF”) hereby respectfully requests an extension of 60 days in which to file a petition for writ of certiorari.¹

The First Circuit filed an initial opinion on June 12, 2024, attached hereto as Appendix A. A timely petition for panel rehearing was granted in part on November 13, 2024. The order of the First Circuit filed on November 13, 2024, attached hereto as Appendix B, withdrew the June 12, 2024 opinion and replaced it with an amended opinion. The First Circuit’s amended opinion in this case, filed on November 13, 2024, is attached hereto as Appendix C. A timely petition for panel rehearing of the amended opinion was denied on December 31, 2024, in orders attached hereto as Appendices D-1 and D-2. This Court has jurisdiction to review the judgment pursuant to 28 U.S.C. § 1254. A petition for a writ of certiorari is currently due by March 31, 2025. This application is filed ten days before that date. *See* Supreme Court Rule 13.5. The requested extension would change that date to May 30, 2025. As grounds for this request, Applicant states as follows.

1. Crippled by debt and saddled with crumbling infrastructure, Puerto Rico’s

¹ Counsel for AAFAF contacted counsel for the Creditor Parties (defined below) on March 21, 2025 regarding their position on the instant extension request. As of filing, the Creditor Parties have not stated their position, and may wish to be heard regarding the request.

electric utility, the Puerto Rico Electric Power Authority (“PREPA”), filed a proceeding (“Title III Proceeding”) to adjust its debts in 2017 under the special scheme created by Congress in Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”), 48 U.S.C. § 2101, et seq. Since filing the proceeding, Puerto Rico has endured hurricanes that devastated PREPA’s electric system even further, leading to months of darkness. Even today—nearly eight years after the hurricanes—while PREPA searches for a path out of its debt adjustment proceeding, Puerto Rico still lives with an electric utility that has blackouts and outages far above the national average and charges high rates for service that is well below industry standards.

The Trustee of the PREPA bonds, filed a proof of claim on behalf of itself along with the purchasers and holders of bonds (collectively, the “Creditor Parties”) asserting an approximately \$8.5 billion claim secured by a lien on PREPA’s current and future stream of gross revenues pursuant to the Trust Agreement that governs PREPA’s bonds. The Financial Oversight and Management Board for Puerto Rico (“FOMB”), an entity created by Congress and tasked as PREPA’s representative as debtor in the Title III Proceeding among its other responsibilities, *Fin. Oversight & Mgmt. Bd. for P.R. v. Aurelius Inv., LLC*, 590 U.S. 448, 453 (2020); PROMESA §§ 101(b), (e), commenced an adversary proceeding challenging the Creditor Parties’ proof of claim and AAFAF intervened as plaintiff. Under Puerto Rico law, AAFAF is the “fiscal agent, financial advisor, and reporting agent of all entities of the Government of Puerto Rico,” and has particular responsibilities with respect to the

elected government's role in Title III proceedings. Puerto Rico Act No. 2 of Jan. 18, 2017. The statutory committee of unsecured creditors in the PREPA Title III Proceeding also intervened as a plaintiff in the adversary proceeding (the committee, together with AAFAF and the FOMB, are the "PREPA Parties").

The district court overseeing the Title III Proceeding issued an order on March 22, 2023, attached hereto as Appendix E, holding that the Creditor Parties' claim and alleged security interest were inconsistent with the language of the Trust Agreement governing PREPA's bonds. That language, the district court recognized, created a security interest in PREPA's net revenues ("Net Revenues"), but only once those revenues are deposited by PREPA in designated funds, which PREPA was not compelled to do after the Title III Proceeding commenced. Appx. E 36. That left the Creditor Parties with a secured claim of approximately \$17 million, which was the amount of their collateral in the designated funds. The PREPA Parties argued that because the Creditor Parties had contractually agreed to be non-recourse creditors (that is, their only contractual right of recovery was from their collateral), the Creditor Parties had no other claim than their secured claim. The district court disagreed and, after an evidentiary hearing, issued an order on June 26, 2023, attached hereto as Appendix F, concluding that the Creditor Parties had an unsecured claim of nearly \$2.4 billion, valued in 2017 dollars (the year in which PREPA commenced the Title III Proceeding) in addition to their secured claim. Appx. F 47.

All parties appealed the district court's decision. The United States Court of

Appeals for the First Circuit agreed that the Creditor Parties had recourse only to their collateral, but held that Creditor Parties had security interests in PREPA's Net Revenues (to the extent such Net Revenues exist) even if such Net Revenues were not deposited in designated funds. The First Circuit also held that the district court erred in estimating the amount of the Creditor Parties' claim based on their "right to payment" under section 502(c) of the Bankruptcy Code, and that the Creditor Parties could assert claims as set forth in their contractual agreements with PREPA. Appx. C 54–55. After considering the PREPA Parties' petitions for rehearing by the panel and the en banc court (the FOMB did not join the request for en banc review), the First Circuit panel issued a revised opinion that came to the same conclusion but introduced a substantially revised rationale for key portions of its holding. The PREPA Parties each filed subsequent petitions for panel rehearing, which were denied.

In the end, the First Circuit's decision may have a substantial impact on resolution of PREPA's Title III case. This will have an enormous effect on over three million American citizens who reside in Puerto Rico. The people of Puerto Rico rely on PREPA to deliver one of the island's most vital and essential public services, and it is imperative that it is able to successfully restructure.

2. There is good cause for the requested 60-day extension of time for the filing of any petition. On January 2, 2025, Governor Jenniffer González-Colón was inaugurated as the new governor of Puerto Rico. PREPA's Title III Proceeding has been ongoing for eight years, while Governor González-Colón has been in office for

fewer than eighty days. The González-Colón Administration is actively evaluating the extensive record in the PREPA Title III proceeding and assessing whether it is in the best interests of the people of Puerto Rico to instruct AAFAF to pursue a petition for a writ of certiorari in this case. Urgently addressing Puerto Rico's energy crisis is among the González-Colón Administration's highest priorities. PREPA's Title III Proceeding is a matter of paramount importance to the three million American citizens living in Puerto Rico and the nature of the Creditor Parties' claims is central to the ultimate resolution of PREPA's Title III Proceeding and its ability to adjust its debts. The requested 60-day extension of time will allow the González-Colón Administration, through AAFAF, to make an informed determination about the propriety of pursuing a petition for a writ of certiorari.

For the foregoing reasons, the application should be granted.

Respectfully submitted,

/s/ Peter Friedman

Peter Friedman
(Counsel of Record)
O'MELVENY & MYERS LLP
1625 Eye Street, N.W.
Washington, D.C. 20006-4001
(202) 383-5300

Dated: March 21, 2025