Nos. 18-1334, -1496, -1514, -1521, -1475

In the Supreme Court of the United States

FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,

Petitioner,

v.

AURELIUS INVESTMENT, LLC, ET AL.,

Respondents.

On Writs Of Certiorari To The United States Court Of Appeals For The First Circuit

BRIEF OF FORMER FEDERAL AND LOCAL JUDGES AS *AMICI CURIAE* SUPPORTING THE FIRST CIRCUIT'S RULING ON THE APPOINTMENTS CLAUSE

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August 29, 2019

Additional Captions Listed on Inside Cover

OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF ALL TITLE III DEBTORS OTHER THAN COFINA,
Petitioner,

v.

AURELIUS INVESTMENT, LLC, ET AL.,
Respondents.

UNITED STATES,
Petitioner,

v.

AURELIUS INVESTMENT, LLC, ET AL.,
Respondents.

AURELIUS INVESTMENT, LLC, ET AL.,
Petitioners,

v.

COMMONWEALTH OF PUERTO RICO, ET AL.,
Respondents.

UNION DE TRABAJADORES DE LA INDUSTRIA ELECTRICA Y RIEGO, INC.,
Petitioner,

v.

FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,
Respondent.

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INTEREST OF *AMICI CURIAE*

Amici are former federal and local judges who served in the U.S. territories.[1]

Retired Justice B.J. Cruz is the Public Auditor of Guam. He was appointed to the Superior Court of Guam in 1984 and to the Supreme Court of Guam as an Associate Justice in 1997. From 1999 until 2001, he served as Chief Justice of the Supreme Court of Guam.

Retired Judge José Fusté served on the United States District Court for the District of Puerto Rico from 1985 until he retired in 2016. He served as the Chief Judge of that court from 2004 to 2011.

Retired Judge Henry Feuerzeig served on the United States Virgin Islands Superior Court from 1976 until he retired in 1987.

Former Judge Soraya Diase Coffelt served on the United States Virgin Islands Superior Court from 1994 until 2000 and intermittently on the Appellate Division of the District Court of the United States Virgin Islands during that time.

While serving on the bench, *amici* were required to apply the controversial "territorial incorporation" doctrine set forth in the Insular Cases. In *amici*'s experience, the Insular framework is unworkable in application and rooted in offensive racial stereotypes. *Amici* respectfully submit that the time has come for this Court to overrule the Insular Cases, to ensure that they cannot be used to selectively apply the Constitution in the territories, and to ensure that no judge

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[1] All parties have filed blanket consents to the filing of *amicus* briefs. No counsel for a party authored this brief in whole or in part, and no person other than *amici*'s counsel made a monetary contribution to fund the preparation or submission of this brief.

serving in the territories will ever again be forced to apply a precedent that assumes that he or she belongs to a sub-class deserving of fewer constitutional protections.

SUMMARY OF THE ARGUMENT

In this case, at least one party contends that the Appointments Clause cannot apply to the members of the Financial Oversight and Management Board for Puerto Rico, an entity created by Congress in 2016 to manage Puerto Rico's debt crisis, because the Appointments Clause is a "structural provision[]" and not a "fundamental personal right." Br. for Pet. Official Committee of Unsecured Creditors of all Title III Debtors (other than COFINA) ("Unsecured Creditors Br.") at 21.

This argument implicates the principles set forth in the Insular Cases, a doctrine that Justices of this Court have called "very dangerous," *Reid* v. *Covert*, 354 U.S. 1, 14 (1957) (plurality op. of Black, J.), from a line of authority that is "without parallel in our judicial history," *King* v. *Morton*, 520 F.2d 1140, 1153 (D.C. Cir. 1975) (Tamm, J., dissenting). The Insular Cases, as they have recently been applied by some lower courts, suggest that only unspecified "fundamental" personal rights in the Constitution that are "universally . . . integral to free and fair society" necessarily apply to unincorporated American territories such as Puerto Rico. *Tuaua* v. *United States*, 788 F.3d 300, 308 (D.C. Cir. 2015).

Amici take no position as to whether the Board members are "Officers of the United States" under the Appointments Clause. They respectfully submit, however, that if the Court determines the Board members are Officers of the United States, the Insular Cases

should not preclude the Appointment Clause's application.

The Insular Cases rest on the untenable principle that—in the unincorporated territories alone—the Constitution is a menu, such that Congress may pick and choose certain provisions limiting its powers while declining others. This doctrine jeopardizes the rights of the inhabitants of the territories and disregards the constitutional text. Moreover, the Insular framework requires judges to undertake the flawed exercise of sifting out "fundamental personal rights" applicable to all free societies from the "artificial, procedural, or remedial" constitutional provisions that are "idiosyncra[sies]" of "the American social compact." *Tuaua*, 788 F.3d at 308. This dichotomy, besides being unworkable, disregards that the structural provisions generally, and the Appointments Clause specifically, protect individual liberty.

Worse yet, the Insular doctrine is rooted in the discredited assumption that the different races occupying the territories are not capable of properly applying the Anglo-American legal tradition. This assumption is impossible to separate from any application of the Insular Cases.

This Court should decline the invitation to breathe new life into the discredited Insular Cases. This Court may reject the Insular Cases' application to these facts. *Reid*, 354 U.S. at 14 ("neither the [Insular] cases nor their reasoning should be given any further expansion"). No Insular Case addressed the applicability of the Appointments Clause to an unincorporated territory. No practical consideration specific to Puerto Rico justifies a carve-out for the Appointments Clause. The First Circuit correctly recognized, therefore, that the Insular Cases "do not impede the

application of the Appointments Clause in an unincorporated territory." *Aurelius Investment, LLC* v. *Puerto Rico*, 915 F.3d 838, 855-56 (1st Cir. 2019).

But *amici* respectfully urge the Court to consider another course. The time has come to overrule these cases. Lower courts continue to expand the Insular framework, resulting in a judge-made regime of second-class rights in the territories. All the while, the Insular Cases have lost any relevance, and were never workable in the first place. The enforcement of constitutional rights is too important to be left to the vicissitudes of an arcane and outdated doctrine.

ARGUMENT

I. The Court Should Refuse To Expand The Insular Cases Beyond Their Precise Facts.

A. The Insular Cases Did Not Create A Blanket, *Per Se* Distinction Between "Universally Fundamental" Personal Rights And All Other Constitutional Provisions.

No Insular Case[2] addressed whether the Appointments Clause applies in Puerto Rico or any other unincorporated territory. Moreover, over 50 years ago, a plurality of this Court admonished that "neither the [Insular] cases nor their reasoning should be given any further expansion" because, "if allowed to flourish," they "would destroy the benefit of a written Constitution and undermine the basis of our government." *Reid*, 354 U.S. at 14.

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[2] *De Lima* v. *Bidwell,* 182 U.S. 1 (1901); *Dooley* v. *United States,* 182 U.S. 222 (1901); *Armstrong* v. *United States,* 182 U.S. 243 (1901); *Downes* v. *Bidwell,* 182 U.S. 244 (1901); *Hawaii* v. *Mankichi,* 190 U.S. 197 (1903); *Dorr* v. *United States,* 195 U.S. 138 (1904).

Nonetheless, at least one party here takes the position that, under the Insular framework, the Appointments Clause does not apply to Puerto Rico because the clause is a "structural provision[] of the Constitution," and only the Constitution's "fundamental personal rights" apply to an unincorporated territory. *See, e.g.,* Unsecured Creditors Br. at 21 ("only" "fundamental personal rights" "limit Congress when it exercises its Article IV powers") (a "separate line of authority confirms that the structural provisions of the Constitution do not apply here"); *see also* Br. of the Official Committee of Retired Employees of the Commonwealth of Puerto Rico at 3-4 & n.1 (the Insular Cases "taken at face value" are "consistent" with the principle that "inter-branch structural separation-of-powers constraints do not apply in the territories").[3]

These arguments draw on decisions that have interpreted the Insular Cases to support a blanket distinction between "fundamental personal rights," which apply in all territories, and other constitutional provisions, which do not necessarily. For example, in *Tuaua* v. *United States*, purporting to apply the "Insular framework," the D.C. Circuit determined that the Citizenship Clause does not apply in American Samoa. 788 F.3d at 308. The court held that "the Insular Cases distinguish as universally fundamental those rights so basic as to be integral to free and fair society," while "non-fundamental" provisions are "artificial, procedural, or remedial rights" that are "idiosyncratic to the American social compact or to the Anglo-American tradition of jurisprudence." *Id.*

But this blanket distinction finds no purchase in the Insular Cases. The distinction rests, at best, on

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[3] The United States asserts that "the Insular Cases are not relevant here." Br. of the United States at 25.

scattered statements from the Court's jumbled, incoherent Insular jurisprudence. *See, e.g.*, *Downes*, 182 U.S. at 282 (noting "there may be a distinction between certain natural rights . . . and what may be termed artificial or remedial rights which are peculiar to our own system of jurisprudence"); *Dorr*, 195 U.S. at 148 (suggesting that the right to trial by jury is not "a fundamental right which goes wherever the jurisdiction of the United States extends"). Viewed as a whole, however, "[t]he Insular cases, in the manner in which the results were reached, the incongruity of the results, and the variety of inconsistent views expressed by the different members of the court are . . . without parallel in our judicial history." *King*, 520 F.2d at 1153 (Tamm, J., dissenting).

The Insular Cases establish, at most, that certain constitutional provisions are inapplicable in certain unincorporated territories by virtue of those territories' purported "wholly dissimilar traditions and institutions." *Reid*, 354 U.S. at 14. Their holdings "hardly amount to withholding all but the 'fundamental' provisions of the Constitution from those territories." Christina Duffy Burnett, *Untied States: American Expansion and Territorial Deannexation*, 72 U. Chi. L. Rev. 797, 835-36 (2005).[4] Such a garbled line of precedent is far too thin a reed to support a doctrine that

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[4] This Court's decision in *Boumediene* v. *Bush* does not say otherwise. There, in reciting the history of the Insular Cases, this Court noted in passing that "even in unincorporated Territories the Government of the United States was bound to provide to noncitizen inhabitants 'guaranties of certain fundamental personal rights declared in the Constitution.'" 553 U.S. 723, 758 (2008) (citing *Balzac* v. *Porto Rico*, 258 U.S. 298, 312 (1922)). But *Boumediene* also recognized that the territorial powers assigned to the political branches do not include "the power to decide when and where [the Constitution's] terms apply." *Id.* at 765.

denies much of the Constitution to the unincorporated territories.

B. A Blanket Distinction Between "Universally Fundamental" Personal Rights And Other Constitutional Provisions Is Unworkable.

Even taking as a given the Insular framework as articulated by *Tuaua* and other courts, the notion that it is possible to identify and distinguish the Constitution's "fundamental personal rights" (which apply *per se* in the unincorporated territories) from its other provisions (which do not) is fatally flawed and utterly unworkable in practice.

Take the cases' description of "fundamental personal rights," which a party here adopts. *See* Unsecured Creditors Br. at 21. As explained, in *Tuaua*, the D.C. Circuit characterized fundamental personal rights as "rights so basic as to be integral to free and fair society." 788 F.3d at 308; *see Downes*, 182 U.S. at 291 ("principles which are the basis of all free government which cannot be with impunity transcended"). *Tuaua* distinguished those rights from "artificial, procedural, or remedial rights" that are "idiosyncratic to the American social compact or to the Anglo-American tradition of jurisprudence," which do not necessarily apply to the territories. 788 F.3d at 308.

These sweeping categories—described at an eagle's-eye level of generality—are light years from constituting the "objective factors and practical concerns" that this Court emphasized should guide the Constitution's application outside the continental mainland. *Boumediene*, 553 U.S. at 764. It is not obvious that a "procedural" right can be meaningfully decoupled from the substantive right it protects, or that a judge can objectively separate the universal notions of "free

and fair society" (whatever those are) embedded in the Constitution from the "idiosyncra[sies]" of "Anglo-American tradition." In any event, as the world draws on the U.S. experience, it is an increasingly futile task. *See, e.g.*, *United States* v. *Then*, 56 F.3d 464, 469 (2d Cir. 1995) (Calabresi, J., concurring) (describing the global impact "[s]ince World War II" of "American constitutional theory and practice"). And yet this is the task that at least one party would foist upon the federal judiciary: to determine whether a particular constitutional provision extends to the territories by "imagin[ing] free governments that are structured in ways that are at odds with the structure selected by the Framers." Unsecured Creditors Br. at 24.

As is clear, this framework is an invitation to a judicial morass.[5] It is based on airy and unworkable distinctions, rather than constitutional text or structure.

C. The Insular Framework Disregards That The Structural Provisions Generally, And The Appointments Clause Specifically, Protect Individual Liberty.

Here, a party urges the Court to enter the morass of the Insular framework by deciding this case by reference to "whether the Appointments Clause creates some 'personal right' that is 'so basic as to be integral

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[5] To be clear, the Insular framework is easily distinguished from the analysis this Court applies in determining whether a provision of the Bill of Rights applies to the States via the Due Process Clause of the Fourteenth Amendment. The latter analyzes which "safeguard[s]" are "fundamental to *our* scheme of ordered liberty," a far more judicially manageable task than deciding which American notions of freedom are "idiosyncratic" and which are truly integral to any and all free societies across the globe. *Timbs* v. *Indiana*, 139 S. Ct. 682, 686-87 (2019) (emphasis added).

to free and fair society' that it forms 'the basis of all free government.'" Unsecured Creditors Br. at 22.

That is simply the wrong question in determining whether to apply the Constitution to the territories. And the answer offered to that question—that the Appointments Clause is not a fundamental personal right because it is "not essential to liberty," Unsecured Creditors Br. at 12—is contradicted by this Court's precedents, which make clear that both rights possessed by individuals *and* structural safeguards against the abuse of power are designed to protect individual liberty.

The Constitution's full protections for individual liberty necessarily include the so-called structural provisions—such as the Appointments Clause—because "structure in general" is "*designed* to protect individual liberty." *Bond* v. *United States*, 572 U.S. 844, 880 (2014) (Scalia, J., concurring) (emphasis in original). For this reason, there can be no principled "distinction between provisions protecting individual liberty, on the one hand, and 'structural' provisions, on the other." *Id.*

This is particularly true of the provisions that separate and cabin the powers of the federal government, which "serve to safeguard individual liberty." *NLRB* v. *Noel Canning*, 573 U.S. 513, 525 (2014); *see Free Enterprise Fund* v. *Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 497-98, 501 (2010) (explaining that "[t]he people do not vote for the 'Officers of the United States'" and that "[t]he Framers recognized that, in the long term, structural protections against abuse of power were critical to preserving liberty") (quoting U.S. Const. Art. II, § 2, cl. 2; *Bowsher* v. *Synar*, 478 U.S. 714, 730 (1986)).

The Appointments Clause specifically is a "major building block fitted into the constitutional structure designed to avoid the accumulation or exercise of arbitrary power." *Buckley* v. *Valeo*, 424 U.S. 1, 271 (1976) (White, J., concurring in part). It "prevents congressional encroachment upon the Executive and Judicial Branches" and "assure[s] a higher quality of appointments." *Edmond* v. *United States*, 520 U.S. 651, 659 (1997). As is obvious, there is no warrant to deem this "significant structural safeguard[]," *id.*, a mere "idiosyncra[sy]" of the "Anglo-American tradition." *Tuaua*, 788 F.3d at 308.

II. In The Alternative, The Insular Cases Should Be Overruled.

The Insular Cases have long been obsolete and unworkable. They defy objective and consistent application. The result is that the millions who inhabit the territories live in doubt as to which constitutional rights they actually possess. This state of limbo is legally and morally untenable.

The Insular doctrine is supported by two assumptions, neither of which hold currency any longer: (1) the races who inhabit the unincorporated territories are so different from mainland Americans that a lesser regime of constitutional guarantees should apply; and (2) the practical conditions in the unincorporated territories are so different from the mainland that a lesser regime of constitutional guarantees should apply. The first assumption was never valid. The second assumption—to the extent it was valid in 1901 when the Insular Cases were decided—is no longer valid today. "Subsequent developments" have thus "eroded" the "underpinnings" of the Insular Cases, providing the "special justification" needed to

overrule them. *Janus* v. *Am. Federation of State, Cnty. & Municipal Employees*, 138 S.Ct. 2448, 2486 (2018).

All the standard *stare decisis* factors militate in favor of discarding this line of authority: the "quality of [the case's] reasoning"; the "workability of the rule it established"; "its consistency with other related decisions"; "developments since the decision was handed down"; and "reliance on the decision." *Id.* at 2478-79. The foundation of the Insular Cases' reasoning—the supposed racial unsuitability of those living in the territories to Anglo-American legal norms—was always wrong. Nor, as of 2019, are there any cultural or practical concerns justifying the selective application of constitutional rights in the territories. The sifting out of "fundamental personal rights" from the Constitution's other provisions is both unworkable and inconsistent with this Court's jurisprudence. *See supra* I(B), (C). And there are no valid concerns that parties will have detrimentally relied on the Insular Cases. There is thus no reason to give any further precedential weight to the Insular Cases.

A. The Insular Cases Are Based On Discredited Assumptions About The People Living In U.S. Territories.

While it is possible to cast the Insular framework in purportedly race-neutral terms—*i.e.*, by focusing on whether territories have "wholly dissimilar traditions and institutions," *Reid*, 354 U.S. at 14—the reality is that the Insular Cases are rooted in the assumption that the different races in the territories are not capable of implementing Anglo-American legal institutions. *See, e.g.*, *Downes*, 182 U.S. at 287 (Brown, J.) ("If those possessions are inhabited by alien races, differing from us in religion, customs, laws, methods of taxation, and modes of thought, the administration of

government and justice, according to Anglo-Saxon principles, may for a time be impossible . . . ."); 302 (White, J.) (arguing that different rules are necessary to govern with a "tighter rein, so as to curb their impetuosity," when Americans "conquer[]" lands that are home to a "fierce, savage, and restless people"); *Dorr*, 195 U.S. at 145, 148 (holding that "the uncivilized parts of the archipelago [of the Philippines] were wholly unfitted to exercise the right of trial by jury").

The Insular Cases are thus "rooted in dangerous stereotypes" about "a particular group's supposed inability to assimilate." *Trump* v. *Hawaii*, 138 S.Ct. 2392, 2447 (2018) (Sotomayor, J., dissenting) (characterizing the government order at issue in *Korematsu* v. *United States*, 323 U.S. 214 (1944)). Thus, in approving the denial of constitutional rights "solely and explicitly on the basis of race," the Insular Cases are "gravely wrong." *Id.* at 2423 (Roberts, C.J.).

But while these cases remain binding precedents of this Court, lower courts must apply them. And every time they do so, the courts implicitly endorse the unacceptable racial assumptions that gave rise to the doctrine. *See, e.g., United States* v. *Pollard*, 209 F. Supp. 2d 525, 546 (D.V.I. 2002) ("Rail as I may against the *Insular Cases* and their progeny, however, this federal trial court is bound by the view of the Supreme Court and United States Court of Appeals for the Third Circuit that disparate treatment based on a territory's unincorporated status need only have a basis in reason."), *rev'd on other grounds*, 326 F.3d 397 (3d Cir. 2003). To no group is this fact more painfully obvious than to *amici* here—former judges who served in the U.S. territories—who were bound to apply precedents premised on the notion that they are entitled to some lesser balance of constitutional protection.

B. Any Previously Valid Practical Considerations Supporting The Insular Doctrine No Longer Apply.

To the extent there were once "practical" or "functional" justifications rooted in history or culture for the selective application of the Constitution to the unincorporated territories, those justifications no longer hold today. *See Balzac*, 258 U.S. at 312-13 ("[T]he real issue in the *Insular Cases* was not whether the Constitution extended to the Philippines or Porto Rico when we went there, but which of its provisions were applicable" in "dealing with *new conditions and requirements*.") (emphasis added). For example, in *Dorr*, the jury-trial right was held inapplicable to the Philippines because the Court deemed it unsuited to the civil law regime then in place. 195 U.S. at 145. This was the precise example discussed by this Court in *Boumediene* when it described the Insular Cases as adopting a "functional approach" to "questions of extraterritoriality." 553 U.S. at 757, 764; *see Reid*, 354 U.S. at 50, 51 (Frankfurter, J., concurring in the judgment).[6]

But there are no "conditions or requirements" in Puerto Rico today, if there ever were, that justify a carve-out for the Appointments Clause specifically, let alone the Constitution's structural provisions *en masse*. Times have changed. The Insular Cases' assumptions that the territories have "wholly dissimilar

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[6] The only guidance courts have as to constitutionally relevant differences between the territories and the States from the Insular Cases is much too outdated and incoherent to have any import today. *See, e.g.*, *Downes*, 182 U.S. at 282 (referring to "differences of race, habits, laws, and customs of the people" and "differences of soil, climate, and production"). The Insular Cases' outdated reasoning and unworkable doctrine provide yet another reason to overrule them. *Janus*, 138 S.Ct. at 2478-79.

traditions and institutions" (*Reid*, 354 U.S. at 14) "are not valid today where all the territories have television, direct communications with the States, automobiles, jet airplane transportation, and when many of the inhabitants have high school and college education and where virtually all speak and understand English." James A. Branch, Jr., *The Constitution of the Northern Mariana Islands: Does a Different Cultural Setting Justify Different Constitutional Standards?*, 9 Denv. J. Int'l L. & Pol'y 35, 66 (1980). That is particularly true of Puerto Rico. *See, e.g.*, *Torres* v. *Puerto Rico*, 442 U.S. 465, 475-76 (1979); *Califano* v. *Gautier Torres*, 435 U.S. 1, 3 n.4 (1978) ("Puerto Rico has a relationship to the United States that has no parallel in our history.") (quotation marks omitted).

Indeed, most of the unincorporated territories have been part of our country for over 100 years. Even assuming *arguendo* that conditions in 1904 justified this Court's stay of the imposition of the right to trial by jury in a territory that had thus far known only the civil law inquisitorial system, *see Dorr*, 195 U.S. at 145, no such justification exists in 2019 for a carve-out for the Appointments Clause in Puerto Rico. The same goes for any other constitutional protection.

A decade ago, this Court already doubted that the Insular Cases' reasoning could stand the test of time. *Boumediene* noted that "over time the ties between the United States and any of its unincorporated Territories [may] strengthen in ways that are of constitutional significance." 553 U.S. at 758. The Court thus recognized that the Insular Cases' purported justification for the unequal application of constitutional rights—the "wholly dissimilar traditions and institutions" of the unincorporated territories (*Reid*, 354 U.S. at 14)—might fade with time with respect to some or

all the unincorporated territories. That time has come.

C. The Insular Cases Are At Odds With The Constitutional Text.

By declining to enforce the Constitution's express terms, the Insular Cases are plainly at odds with the notion, firmly embedded in the Supremacy Clause, that "the written document is supreme law." Akhil Reed Amar, *The Document and the Doctrine*, 114 Harv. L. Rev. 26, 32 (2000). The Constitution, both in the territories and in the mainland, is not a menu. Indeed, a half-century after the Insular Cases were decided, a plurality in *Reid* rejected the "suggest[ion] that only those constitutional rights which are 'fundamental' protect Americans abroad" on the basis that there is "no warrant, in logic or otherwise, for picking and choosing among the remarkable collection of 'Thou shalt nots'" in the Constitution. 354 U.S. at 8-9. But it is precisely this flawed "picking and choosing" that underlies the distinction between "fundamental personal rights" and other provisions that parties here urge the Court to apply, and that decisions like *Tuaua* embrace.

To the extent that the Insular doctrine endorses this approach, it undermines the nature of our Constitution as an imperative instrument. "The constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and like other acts, is alterable when the legislature shall please to alter it," and "there is no middle ground." *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137, 177 (1803). When four Justices of this Court in *Reid* inveighed against the expansion of the Insular Cases or their reasoning, it was because "[t]he concept that the Bill of Rights and other constitutional

protections against arbitrary government are inoperative when they become inconvenient or when expediency dictates otherwise is a very dangerous doctrine and if allowed to flourish would destroy the benefit of a written Constitution and undermine the basis of our government." *Reid*, 354 U.S. at 14 (plurality of Black, J.). The *Reid* plurality explained that the only route to avoid applying the Constitution's express terms in the territories should be through the formal amendment process, as the Justices understood that they had "no authority, or inclination, to read exceptions into it which are not there." *Id.* This Court should close this constitutional loophole in the territories by overruling the Insular Cases.

CONCLUSION

The Court should affirm the judgment of the Court of Appeals to the extent it holds that the Insular Cases do not impede the application of the Appointments Clause to unincorporated territories.

Respectfully submitted,

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August 29, 2019

APPENDIX

Amici consist of the following former judges:

1. Benjamin J.F. Cruz
2. José A. Fusté
3. Henry Feuerzeig
4. Soraya Diase Coffelt