No. 18-921

IN THE

Supreme Court of the United States

ROMAN CATHOLIC ARCHDIOCESE OF SAN JUAN, PUERTO RICO, ET AL.,

Petitioners,

v.

YALÍ ACEVEDO FELICIANO, SONIA ARROYO VELÁZQUEZ, ELSIE ALVARADO RIVERA, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PUERTO RICO

SUPPLEMENTAL BRIEF FOR RESPONDENTS

Kelsi Brown Corkran
Thomas M. Bondy
Max Carter-Oberstone
ORRICK, HERRINGTON & SUTCLIFFE LLP
1152 15th Street NW
Washington, DC 20005

German J. Brau-Ramirez
Antonio Bauzá-Santos
BAUZÁ, BRAU, IRIZARRY, OJEDA & SILVA
PO Box 13669
San Juan, PR 00908

E. Joshua Rosenkranz
Counsel of Record
ORRICK, HERRINGTON & SUTCLIFFE LLP
51 West 52nd Street
New York, NY 10019
(212) 506-5000
jrosenkranz@orrick.com

Counsel for Respondents

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTRODUCTION

As the government recognizes, the question presented by Petitioners is inappropriate for resolution in this case. Indeed, the petition is an attack on holdings that appear nowhere in the decision below. The government nonetheless urges the Court to grant review, and in doing so, sows significant confusion of its own. Viewing the decision below through a clear lens, it is readily apparent the Puerto Rico Supreme Court held nothing warranting this Court's intervention.

The decision is a straightforward application of neutral incorporation rules under Puerto Rico law. As the Puerto Rico Supreme Court explained, the Catholic Church in Puerto Rico was initially incorporated at the island-wide level—a holding that neither Petitioners nor the government contest. And while Petitioners could easily have filed paperwork to separately incorporate individual dioceses or parishes—just as the vast majority of churches have long done throughout the United States—they never did so. Because unincorporated associations have no separate legal identity, the proper defendant in this case remains the only entity that obtained corporate status under local incorporation rules: the island-wide Church.

The petition thus rests entirely on a mistaken premise: that the Puerto Rico Supreme Court "interfere[d] with matters of internal church structure." Pet. I. It did not. The Court made clear that nothing in its opinion controls "how [the Church] may choose" to organize itself internally. App. 13. To the contrary, the Court explained, if Petitioners believe the

Church's civil corporate status no longer aligns with its internal organization, they are free—like any other business, non-profit, or religious entity—to resolve the discrepancy by "submitting to an ordinary incorporation process" under local law. App. 14.

Remarkably, the government not only agrees the case "presents no occasion for considering" the question posed by Petitioners, Br. 14, but also identifies a minefield of significant vehicle obstacles, Br. 15-19—two of which deprive this Court of jurisdiction to grant the petition.

The Court should do what it would normally do in these circumstances: deny review. In suggesting the Court instead GVR, the government does not even purport to identify any intervening legal development of the sort necessary to implicate the Court's GVR practice. Nor does the government identify any traditional cert. factors supporting its alternative recommendation of plenary review.

In fact, there are especially compelling reasons to deny review. Respondents are retired teachers who devoted their careers to educating Catholic schoolchildren. As a supplement to their modest salaries, they were contractually promised lifetime pension benefits, and they depended on those benefits in planning for retirement. The Church's decision to abruptly cancel those benefits three years ago has forced many of them into desperate straits, unable "to pay the costly deductible [for] their … medications" or "facing … foreclosure" on their homes. Stay Appendix J-8. The

Court should deny the petition so that their contractual entitlement to their sorely needed pension benefits can finally be adjudicated.

I. As The Government Agrees, This Case Does Not Implicate The Question Presented.

The government acknowledges (at 14) this case "presents no occasion for considering" the question presented: whether "the First Amendment empowers courts to override the chosen legal structure of a religious organization," Pet. I. That concession is unsurprising because the Puerto Rico Supreme Court held nothing of the sort. In concluding the island-wide Catholic Church is the proper defendant, the Court relied on the following three points:

1. Centuries ago, the Puerto Rico Catholic Church obtained corporate status at the island-wide level. The 1898 Treaty of Paris, transferring Puerto Rico to the United States, guaranteed that corporate status would continue after the transfer. App. 6.

2. While a diocese, parish, or any other unit of the Church—just like any non-Catholic church, religious institution, or nonprofit—may "submit[] to an ordinary incorporation process" to establish or alter its separate corporate status, the ones at issue here never did so. Nor did the Church ever dissolve its island-wide corporate status. App. 14.

3. The island-wide Church thus retained its corporate identity, and the Church's parishes and dioceses have "no legal personality of their own." App. 14. Because unincorporated sub-units of a corporation have no legal personality, the island-wide Church was the only proper defendant. App. 13-16.

Petitioners and the government affirmatively endorse the first point, Reply 5; Br. 10, and do not contest the second. They apparently disagree with the third point, but offer no satisfactory explanation why.

The court's analysis is fully consistent with generally applicable corporations-law principles and, accordingly, poses no First Amendment problem. Unlike "unincorporated associations," corporations can "sue and be sued." *Asoc. de Res. Est. Cidra v. Future Dev.*, 152 D.P.R. 54, 70 (2000) (quotation marks omitted) (translated); *see* 1 Fletcher Cyc. Corp. §23. Moreover, Puerto Rico's incorporation process for nonprofit entities is simple and applies neutrally to all nonprofits, including religious organizations. 14 L.P.R.A. §3501. The incorporation form is just three pages long. *See* https://tinyurl.com/sonjgau. There is no filing fee. 14 L.P.R.A. §3901(c). And after incorporation, "religious nonprofit corporations" are forever exempt from annual reporting requirements. *Id.* §3857.

Given the simplicity and legal advantages of incorporation, it is unsurprising that "87% of religious organizations in the United States use a religious nonprofit corporation legal form." 1 Religious Organi-

zations and the Law §9:2 (2019). That includes Catholic dioceses and parishes, which have widely incorporated across the country. Marie T. Reilly, *Catholic Dioceses in Bankruptcy*, 49 Seton Hall L. Rev. 871, 880-82 (2019). The relevant dioceses and parishes here, however, have not done so.

The Puerto Rico Supreme Court thus unremarkably held that, absent compliance with basic incorporation paperwork, those parishes and dioceses possess no independent legal personality. This Court, of course, has no jurisdiction to review that local-law determination. And the case presents no serious First Amendment question because, as Petitioners recognize, "neutral legal principles," such as basic incorporation requirements, may be applied to churches without violating the Constitution's Religion Clauses. Reply 3-4; *see e.g.*, *Tony & Susan Alamo Found. v. Sec'y of Labor*, 471 U.S. 290, 303-04 (1985); *Jones v. Wolf*, 443 U.S. 595, 606 (1979).

II. The Government's Recommendation To GVR Or Grant Plenary Review Of Questions Not Presented Is Extraordinary And Unpersuasive.

While agreeing the Court should not grant review of Petitioners' question presented, the government nonetheless suggests the Court GVR or grant plenary review of different questions posed for the first time by the government. Yet the government's own brief demonstrates the petition presents three serious vehicle problems, two of which deprive this Court of jurisdiction to grant the petition in any fashion. Moreover, just like the petition, the government

premises its assessment on a serious misunderstanding of the decision below. Finally, following the government's recommendation would involve an extraordinary and unwarranted departure from the Court's ordinary practices.

A. The Government Identifies Three Significant Vehicle Obstacles That Foreclose GVR Or Plenary Review.

1. The first obstacle to granting the petition is that it is void. As the government explains (at 15-16), it was filed in violation of the bankruptcy automatic stay. This is a jurisdictional obstacle to this Court's review—or at a minimum, a serious vehicle problem because the Court would have to decide whether the issue is jurisdictional, which it has not previously addressed.

In suggesting otherwise (at 16), the government relies entirely on a Seventh Circuit case, *In re Anderson*, 917 F.3d 566 (7th Cir. 2019), addressing a distinct question: whether a state court may interpret the scope of a bankruptcy court's order lifting an automatic stay. More on point are other appellate decisions treating the automatic stay as jurisdictional where a notice of appeal is filed in contravention of the automatic stay and is thus "void," meaning no valid notice of appeal was ever filed to vest the court of appeals with jurisdiction. *E.g.*, *Parker v. Bain*, 68 F.3d 1131, 1138 (9th Cir. 1995); *Constitution Bank v. Tubbs*, 68 F.3d 685, 691-94 (3d Cir. 1995). The same is true here. There is no valid petition to vest this Court with any sort of certiorari jurisdiction—whether it be to GVR or to grant plenary review.

Finally, the government's contention (at 16) that Respondents waived this issue lacks merit. Aside from the fact that threshold jurisdictional problems are not waivable, the BIO pointed to the automatic-stay provision and explained that when the "Petition for Writ of Certiorari [was filed], the Catholic Church's Bankruptcy petition was still pending." BIO 17.

2. A second jurisdictional flaw is that Petitioners seek review of a preliminary injunction. As with state-court judgments, this Court's review is limited to "[f]inal judgments" rendered by the Puerto Rico Supreme Court. 28 U.S.C. §1258.

That is not to say this Court lacks all authority over interlocutory state-court proceedings. Justices Alito and Breyer previously denied a stay in this case based on the Court's general authority to stay interlocutory state-court proceedings. *E.g.*, *CBS, Inc. v. Davis*, 510 U.S. 1315 (1994). That is all the Court did in *Nat'l Socialist Party of Am. v. Vill. of Skokie*, 432 U.S. 43 (1977), which the government cites in support of jurisdiction here. Br. 15. To read *Skokie* more broadly as authorizing merits review of state-court *preliminary* injunctions would effectively annul the statute limiting jurisdiction to "*final*" judgments.

The government also cites several cases applying *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975), which prescribes four narrow exceptions to the finality rule. The government seeks expansion of *Cox* through recognition of what would be a fifth sprawling exception: allowing review whenever a state-court ruling would "restrict[] the exercise of an important

federal right." Br. 15. This Court has repeatedly rejected such an argument, which would allow the *Cox* exceptions "to swallow the rule" of finality. *E.g.*, *Flynt v. Ohio*, 451 U.S. 619, 622 (1981); *Johnson v. California*, 541 U.S. 428, 430 (2004).

3. Finally, the government suggests (at 18-19) that, if the Court grants review, it should "direct the parties to brief" whether the Puerto Rico Supreme Court lacked jurisdiction under 28 U.S.C. §1446(d) because it issued its decision while Petitioners' removal notice remained pending in federal court. That, however, would be extraordinary and unwarranted: Absent "the most exceptional" circumstances, this Court will not "consider questions not raised in the petition." *Izumi Seimitsu Kogyo Kabushiki Kaisha v. U.S. Philips Corp.*, 510 U.S. 27, 28 (1993).

Instead, the Court should treat this as it would any other potential vehicle obstacle: a basis for denying review. This is particularly appropriate here because Petitioners have separately appealed this issue to the First Circuit. In that now-pending appeal, the First Circuit will consider whether the federal district court validly entered a nunc pro tunc judgment retroactively remanding the case, and whether Petitioners waived the argument by withdrawing their removal notice and seeking relief from the Puerto Rico trial court before the case was formally remanded. *See Acevedo-Feliciano v. Archdiocese of San Juan*, No. 18-1931 (1st Cir.).

B. The Government Is Wrong On The Merits.

The Court need go no further than the jurisdictional obstacles above to determine that it should not and cannot grant the petition in any fashion. But the government also fails to identify any good substantive reason for the Court's review.

The government asserts the Puerto Rico Supreme Court "single[d] out" Catholicism for "discriminatory treatment." Br. 8. The few things the government points to, however, come nowhere close to showing denominational discrimination, an extraordinary accusation. *See Trump v. Hawaii*, 138 S. Ct. 2392, 2417 (2018).

The government's primary contention is that the "Puerto Rico Supreme Court did not cite any neutral rule of Puerto Rico law." Br. 9. But it did. It relied on "Civil and Corporate Law of general application" to resolve a "contractual dispute regulated by local law," and applied the bedrock principle of corporations-law that unincorporated associations like the dioceses here must "independently submit[] to an ordinary incorporation process" to obtain "legal personality of their own." App. 12-14. Beyond relying on its own expertise on Puerto Rico corporations law, the court cited (App. 14-15) its own case law, multiple corporations-law treatises, and the Puerto Rico State Department's Corporations Registry, which expressly confirms the Puerto Rico Catholic Church "has its own legal personality" and "any division or dependency" of the Church "will be part of the same," not a

separate corporate entity. Stay Appendix R-1 (translated). The court also relied on the 1898 Treaty of Paris, which this Court long ago recognized as memorializing (subject to dissolution or reincorporation) the "corporate … personality" of the island-wide Catholic Church in Puerto Rico. *Ponce v. Roman Catholic Apostolic Church*, 210 U.S. 296, 319 (1908).

The government contends the court "overread[]" *Ponce* and misconstrued the treaty to create a "special presumption" for the Catholic Church. Br. 9-10. In particular, it emphasizes the "court repeatedly framed the applicable rule in terms of the Catholic Church" and read *Ponce* as excusing application of "neutral and generally applicable law" to determine whether "assets of a[] Catholic entity in Puerto Rico" are part of the island-wide entity. Br. 9-10.

These contentions are seriously flawed. As an initial matter, any mistake of treaty interpretation or corporate-law analysis would be far from tantamount to unconstitutional discrimination. And the many references to the Catholic Church are explained by two simple facts. First, plaintiffs' suit is directed at the Catholic Church. The court therefore had no reason to address the corporate status of other religious organizations who are not parties to this case. Second, as the government acknowledges (Br. 2), the only church in existence in Puerto Rico at the time of the treaty, and thus the only church whose corporate status was specially established by treaty, was the Catholic Church.

More fundamentally, all the court read *Ponce* to hold was that the Catholic Church had island-wide

corporate status as of 1898. The government acknowledges (at 10) *Ponce* recognized as much. But the government offers no clues about what the missing "neutral and generally applicable" corporate-law analysis would have looked like. It fails to explain how, where the island-wide corporate entity recognized in *Ponce* had never been dissolved or reincorporated, it was unreasonable for the court to conclude that that entity now encompasses any diocese, parish, or other sub-unit that was created from the original island-wide Church and has never incorporated separately. App. 14-15.[1]

If, for instance, a corporation like Google created new subdivisions (*e.g.*, Android or Gmail operations) without ever separately incorporating them, they would be deemed part of Google—even if, over time, they began to operate autonomously. *See* 1A Fletcher Cyc. Corp. §166. The same would be true of "two unincorporated chapters … of a secular institution" or "two unincorporated Jewish schools" (Br. 12) *if as here,* they were created from a larger incorporated institution whose incorporation was never dissolved or altered.

[1] The government disagrees (at 13) with the Court's fact-bound assessment of the corporate status of Perpetuo Socorro Academy, but the Court treated the school as unincorporated because, under local corporate law, its incorporation lapsed in 2014. App. 14-16. As would be true of any entity under those circumstances, it reverted back to its previous status: an unincorporated unit of the incorporated Church.

C. The Court Should Not Dramatically Expand Its Limited GVR Practice Or Decide Questions Unpresented By Petitioners.

Even apart from the fatal flaws in the government's merits analysis, the government identifies no valid basis for granting the petition.

The government's primary recommendation is to GVR. But with exceedingly rare exceptions irrelevant here, GVRs are limited to three circumstances, none of them applicable: "(1) where an intervening factor has arisen…, (2) where … clarification of the opinion below is needed to assure [a decision rested on federal-law grounds], and (3) where the respondent … confesses error." *Lawrence ex rel. Lawrence v. Chater*, 516 U.S. 163, 168 (1996) (quotation marks omitted); *see also Stutson v. United States*, 516 U.S. 163, 180 (1996) (Scalia, J., dissenting).

The government's merits argument relies on the long-established principle that denominational discrimination is unconstitutional. Br. 19. But this Court GVRs in light of intervening precedents, not deeply rooted legal principles. "Unless there is some new development to consider, [the Court] should vacate [a] judgment … only after affording that court the courtesy of reviewing the case on the merits and identifying a controlling legal error." *Myers v. United States*, 139 S. Ct. 1540, 1541 (2019) (Roberts, C.J., dissenting).

The only authority the government cites for its extraordinary GVR request is *Jones*, 443 U.S. 595. But

Jones was not a GVR. It remanded the case only after granting plenary review.

The government also suggests the Court could hold and GVR in light of *Espinoza v. Mont. Dep't of Revenue*, No. 18-1195. But aside from implicating the Constitution's Religion Clauses, *Espinoza* and this case share nothing in common. This Court does not GVR every petition that arises under a constitutional provision merely because that same provision is at issue in a pending merits case.

Finally, the government alternatively recommends that the Court "simply grant plenary review"—not of Petitioners' question presented, but of a substitute question concerning the government's claim of religious discrimination. Br. 21. This Court, however, does not consider questions that "fall[] outside the scope of the question presented on certiorari." *Meyer v. Holley*, 537 U.S. 280, 292 (2003).

****

The government's recommendation that the Court grant the petition is not only jurisdictionally foreclosed and substantively wrong. It is also wholly unnecessary. Neither Petitioners nor the government alleges any split. And the decision's prospective significance is extremely limited: It governs only in Puerto Rico. It is interlocutory, meaning it could be revisited at a subsequent stage of the case. And it will have little bearing on future cases if the Church's dioceses and/or parishes file the simple incorporation paperwork needed to establish separate civil-law personalities—just as numerous Catholic dioceses and

parishes have done across the country. The only significant effect of granting this petition will be further delaying pension payments to financially desperate retirees who devoted their careers to Catholic education.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

Kelsi Brown Corkran
Thomas M. Bondy
Max Carter-Oberstone
ORRICK, HERRINGTON & SUTCLIFFE LLP
1152 15th Street NW
Washington, DC 20005

German J. Brau-Ramirez
Antonio Bauzá-Santos
BAUZÁ, BRAU, IRIZARRY, OJEDA & SILVA
PO Box 13669
San Juan, PR 00908

E. Joshua Rosenkranz
Counsel of Record
ORRICK, HERRINGTON & SUTCLIFFE LLP
51 West 52nd Street
New York, NY 10019
(212) 506-5000
jrosenkranz@orrick.com

December 20, 2019