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 Writ of Certiorari to the Supreme Court of Puerto Rico

SUPPLEMENTAL BRIEF FOR PETITIONERS

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SUPPLEMENTAL BRIEF

Petitioners wholeheartedly agree with the United States that the decision below cannot stand. It is riddled with First Amendment violations that stem "from an overreading of this Court's opinion in *Ponce v. Roman Catholic Apostolic Church in Porto Rico*, 210 U.S. 296 (1908)." U.S.Br.10. Since these serious constitutional errors flow from a misreading of *Ponce*, only a decision from this Court can eliminate the unconstitutional state of affairs the decision below has created. And the last thing anyone needs is for this unconstitutional dynamic to be prolonged by a GVR or further procedural maneuverings. The ongoing deprivation of religious liberty is not an abstraction. The decision below is hamstringing every Catholic entity (and only Catholic entities) on the island on a daily basis. The Court should grant certiorari now to remedy this ongoing constitutional violation and to provide meaningful and much-needed relief to the numerous Catholic entities in Puerto Rico that have been suffering under the decision for more than a year and half.

I. The Decision Below Violates Fundamental First Amendment Principles.

1. The United States correctly recognizes that the decision below raises grave First Amendment concerns. *See, e.g.*, U.S.Br.19-20. As petitioners have explained, it is elementary that, under the First Amendment, "one religious denomination cannot be officially preferred over another." *Larson v. Valente*, 456 U.S. 228, 244 (1982); Pet.33; Reply.5, 11. And as the United States ably explains, the decision below runs afoul of that "fundamental nonpersecution

principle." U.S.Br.19 (quoting *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 523 (1993)).

The Puerto Rico Supreme Court violated that precept by lumping into one overarching, monolithic legal entity dubbed the "Roman Catholic and Apostolic Church in Puerto Rico" all the myriad Catholic entities on the island—even though they are separate legal entities under Catholic canon law. *See* 1983 Code of Canon Law, Book II, Part II, The Hierarchical Constitution of the Church. Under the decision below, "all Catholic entities in Puerto Rico, no matter how separate and how autonomous in practice, presumptively qualify as components of a single legal person, and … are thereby responsible for each other's liabilities." U.S.Br.7. No other denomination labors under that disability. The ruling thus not only contradicts Catholic doctrine, which unambiguously provides that each juridic person has distinct "obligations and rights," 1983 Code c.113, §2, *see also* USCCB Br.9-11, but applies a "special legal presumption applicable to the Catholic Church" alone, U.S.Br.7.

As the United States notes, the decision identified no "neutral rule of Puerto Rico law governing corporations, incorporated or unincorporated associations, veil-piercing, joint-and-several liability, or vicarious liability that required that result." U.S.Br.9. And nothing suggests that the assets of any two Protestant or Jewish entities—whether incorporated or not—would be deemed legally commingled, or any basis on which a newly created Protestant or Jewish entity would be deemed a legal

"outgrowth" of some other incorporated religious entity unless and until it separately incorporates. But under the decision below, all entities affiliated with Catholicism are deemed "mere indivisible fragmentations" of one overarching Catholic Church of Puerto Rico—regardless of neutral principles of organizational law, Catholic doctrine, or efforts to establish separate legal personhood. Pet.App.14.

As a case in point, the Puerto Rico Supreme Court *rejected* the distinct corporate status of the Academia del Perpetuo Socorro, even though it is a duly incorporated entity under Puerto Rico law. Pet.App.4-5, 14; U.S.Br.13; Academies' Resp.ii, 1, 4, 7, 18-19.[1] Thus, far from treating the Catholic faith neutrally, the Puerto Rico Supreme Court applied a Catholic-only exception to general corporate-law principles, whereby Catholic entities are incapable of possessing distinct legal personhood.

As the United States underscores, there are "no indications" that "the Puerto Rico Supreme Court would apply the same presumption to any other entity under the civil law," U.S.Br.7, or to two entities—

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[1] The decision below suggested that it could ignore the school's distinct corporate status because its corporate certificate "had been revoked on May 4, 2014." Pet.App.3. But that certificate was restored in 2017, Academies' Resp.18-19; Pet.App.52-53 & n.10, and there is no "neutral" principle that temporary revocation of an otherwise-valid corporate certificate means that the entity somehow "reverts" to something it never was. Quite the opposite: Under Puerto Rico law, a temporarily dissolved corporation "shall continue for a three (3)-year term" and, upon restoration, is treated "as if the certificate of incorporation had at all times remained in full force and effect." P.R. Laws Ann. tit. 14 §§3708, 3762(d).

incorporated or not—affiliated with any other religion. To the contrary, the decision below expressly states that the Catholic Church must be treated as a singular entity because it is "*sui generis*" and "different from other religious institutions." Pet.App.5, 14. That Catholic-only rule plainly violates the core First Amendment "obligation of religious neutrality." *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n*, 138 S. Ct. 1719, 1723 (2018).

Making matters worse, the Puerto Rico Supreme Court's conclusion that the Catholic Church demands "*sui generis*" treatment stems from its mistaken view that this Court's decision in *Ponce* somehow compels that unconstitutional result. *See* Pet.App.5-8 (quoting at length from *Ponce* and detailing court's understanding of what *Ponce* and the Treaty of Paris command). But this Court plainly did not mandate rampant violations of the Religion Clauses when it held that the "Roman Catholic Church in Porto Rico" was a juridical entity with capacity to sue. U.S.Br.10 (citing *Ponce*, 210 U.S. at 308-24). Nor did it freeze in time the corporate structure of the Catholic Church as it existed in Puerto Rico in 1908, when there was only one diocese on the island. U.S.Br.10; Pet.App.144-45. To the contrary, this Court advanced religious liberty and neutrality principles by recognizing that Catholic entities, like any other religious entities, can and do have separate legal personhood. Reply.4-6. By converting *Ponce* into a license to commit Religion Clause violations as to the Catholic faith alone, the decision below gravely misconstrues this Court's precedent in ways only this Court can correct. U.S.Br.10.

2. The decision below not only violates *Larson*'s non-discrimination principle, but also violates a long line of this Court's precedents acknowledging the need for civil authorities to respect a religion's own vision of its governance and structure. It is not for courts to determine that two religious entities are one and the same when they deem themselves separate and distinct. To the contrary, for more than 150 years, church organization has been a matter for churches. As this Court has explained, the First Amendment grants to "religious organizations, an independence from secular control or manipulation, in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952).

Applying these principles, the Court has repeatedly and consistently rebuffed governmental interference with church governance as a matter of religious autonomy. Pet.19-27. Indeed, this Court has intervened to protect religious autonomy even when the impermissible interference with that autonomy results from application of neutral laws. *E.g.*, *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 441 (1969); *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 179-80 (2012).

But, as already noted, Puerto Rico has no neutral law that petitioners failed to follow. Instead, the Puerto Rico Supreme Court just effectively "reconfigur[ed] the internal and hierarchical ecclesiastical organization" of the Catholic faith.

Pet.App.22 (Rodríguez, J., dissenting). It is hard to conceive that the courts below would make the same mistake with respect to two entities of a religion they deemed less hierarchical. But perceived familiarity cannot be allowed to breed disregard for first principles, and the Puerto Rico Supreme Court did just that in imposing a particular structure on petitioners based on the misguided notion that it understands the Catholic faith better than petitioners or the U.S. Catholic Conference of Bishops. USCCB Br.9-11. The Puerto Rico Supreme Court's arrogation to itself of the power to decide how the Catholic Church should and must be structured violates both non-discrimination and religious autonomy principles.

While the government suggests that this Court need not address the latter issue, U.S.Br.13, addressing both issues would best ensure complete relief and avoid continuing chaos on remand. Because the religious autonomy doctrine shields against even ostensibly neutral judicial interference with religious governance, *see, e.g.*, *Serbian E. Orthodox Diocese for U.S. of Am. & Can. v. Milivojevich*, 426 U.S. 696, 721 (1976), addressing both issues will ensure that the courts below do not just reach the same mistaken result for marginally different reasons on remand.[2]

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[2] Both issues are fairly included in question presented in the petition, which asks whether the First Amendment (which both guarantees religious autonomy and prohibits religious discrimination) permits the disregard of "the chosen legal structure of a religious organization." Pet.i. As petitioners have explained, doing so under any circumstances violates religious autonomy principles, and doing so in a discriminatory manner violates *Larson* and its progeny as well. Pet.19, 32-33; Reply.5, 11.

II. There Is No Obstacle To This Court's Review.

The United States correctly concludes that none of the alleged "procedural issues" in this case "precludes this Court from reviewing the decision below." U.S.Br.7; *see also* U.S.Br.15-19. First, as the United States recognizes, the decision below is a final judgment for purposes of 28 U.S.C. §1258 and *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975). U.S.Br.15; Pet.3-4, 30 n.6; Reply.7-8. Indeed, every court on the island, federal or commonwealth, has treated it as a final decision on the incorporation issue entitled to preclusive effect—typically at respondents' insistence. *See, e.g.*, *Acevedo Feliciano v. Diócesis De Arecibo, Inc.*, 2019 WL 2634002, at *1 (P.R. App. Ct. May 31, 2019); *infra* pp.10-11.

Second, while the United States notes a potential argument that the petition was filed in violation of the Bankruptcy Code's automatic stay, respondents made no such argument before the bankruptcy court or in their brief in opposition, and the United States correctly notes that the automatic-stay statute is nonjurisdictional, so any argument on that score is forfeited. U.S.Br.16-17; *see also, e.g.*, *Easley v. Pettibone Mich. Corp.*, 990 F.2d 905, 910-12 (6th Cir. 1993); *Sikes v. Global Marine, Inc.*, 881 F.2d 176, 178-79 (5th Cir. 1989).[3] Regardless, the automatic stay

[3] While respondents did note the chronology of filings in the recitation of the facts relating to the bankruptcy proceedings in their brief in opposition—*i.e.*, that the petition for certiorari was filed before respondents succeeded in getting the bankruptcy petition dismissed but while a motion to dismiss was pending—they never argued that the petition therefore violated the

expired when the bankruptcy court dismissed the bankruptcy petition, and it would not have attached to all petitioners anyway. *Cf. Ritchie Capital Mgmt., L.L.C. v. Jeffries*, 653 F.3d 755, 762 (8th Cir. 2011) ("Unless a case involves unusual circumstances, … the bankruptcy court cannot halt litigation by non-debtors."). Only the Archdiocese of San Juan filed for bankruptcy—the Dioceses of Caguas and Fajardo–Humacao cooperated with, but were not party to, the bankruptcy proceedings; and the Dioceses of Arecibo, Mayagüez, and Ponce declined "to participate in th[e] bankruptcy case," as the bankruptcy court emphasized in dismissing the Archdiocese's petition. *In re Arquidiocesis De San Juan De Puerto Rico*, No. 18-04911, 2019 WL 1282796, at *5, *9-10 (Bankr. D.P.R. Mar. 18, 2019).

Finally, the United States notes the possibility that the court of first instance lacked jurisdiction to issue its injunction. U.S.Br.17-19. As the United States explains, however, "[t]he apparent defect in the jurisdiction of the Puerto Rico Court of First Instance … does not deprive this Court of certiorari jurisdiction under 28 U.S.C. [§]1258." U.S.Br.19. Indeed, that the court issued (and the supreme court approved) its remarkable "open[] doors, break[] locks, or forc[e] entry … night or day" order, Pet.App.223-24, despite questions about its power to do so, only underscores the need for this Court's review. That issue has nothing to do with the Puerto Rico Supreme Court's Catholic-only rule for commingling separate organizations and their funds, and only confirms that

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automatic stay or created any obstacle to this Court's review. BIO.17.

neutral principles are not being honored in this dispute. While the United States suggests that the Court may wish to direct the parties to brief this question, U.S.Br.19-20, this question is not independently cert-worthy, and there is no indication whatsoever that a ruling on that question alone would prompt anything but a reentry of the exact same injunction.

III. Immediate Review And Relief Are Imperative.

At bottom, the United States, respondents Academia del Perpetuo Socorro and Academia San José, respondent Catholic Employees Pension Trust, and numerous *amici* (including the United States Conference of Catholic Bishops) all agree that the Court should grant certiorari and correct the Puerto Rico Supreme Court's grave misapplication of the First Amendment. While the United States suggests multiple avenues through which the Court could eventually provide such relief, petitioners respectfully submit that the best and most straightforward course is to grant plenary review and reverse now. There is nothing abstract about this dispute about religious liberty. To the contrary, "this wolf comes as a wolf." *Morrison v. Olson*, 487 U.S. 654, 699 (1988) (Scalia, J., dissenting). The injunction approved below quite literally authorizes the breaking down of church doors and the seizure of any and all church assets, up to and including sacred art, to satisfy the debts of separate parties. Moreover, respondents have taken extraordinary steps to prevent any effort to ameliorate the effects of the decision below. The time for

intervention is now, and only this Court can provide meaningful relief.

This case has already had a profound and immediate impact across the island, and Puerto Rico's Catholic churches, dioceses, and people continue to suffer. To provide just a few illustrations, pursuant to the attachment order issued by the court of first instance, the court marshal has seized $600,000 from the Archdiocese of San Juan. The seized accounts include Parish and Archdiocesan operation funds and have restricted funds for insurance-claim monies for ongoing Hurricane Maria recovery and designated collections from donors for a variety of Catholic purposes, including Holy Land, Seminarian formation, catechesis for children and youth, and youth ministry.

The decision below also forced the Archdiocese of San Juan into bankruptcy, then led the bankruptcy court to conclude—at respondents' behest—that the Archdiocese could not seek relief under the Bankruptcy Code because not all of the Catholic dioceses that had been declared one and the same were participating in the bankruptcy proceedings. *In re Arquidiocesis*, 2019 WL 1282796, at *10. To repeat, lest the absurdity be lost in legalese: After being declared a single Catholic monolith despite church doctrine and secular reality to the contrary, the Archdiocese was denied bankruptcy protection because—as a consequence of both church doctrine and secular reality—it had no legal or practical ability to order the other dioceses to join the bankruptcy petition. That state of affairs is both constitutionally

and practically untenable, and it demands immediate intervention.

The absurdities do not end there. When, in the wake of the decision below, the Diocese of Arecibo sought to incorporate, that effort was promptly challenged—again, by respondents—and was rejected by the Puerto Rico courts, which embraced respondents' argument that the decision below precluded the Diocese from attempting to incorporate. *See Acevedo Feliciano*, 2019 WL 2634002, at *1-2. And although the decision of the court of first instance on that issue was recently reversed, it was reversed not because the Diocese obviously has a right to invoke the same incorporation provisions as any other entity, but on the theory that the single-and-unified (but, in both church doctrine and secular reality, nonexistent) Catholic Church entity manufactured by the decision below was a necessary party whose presence was indispensable. *See Acevedo Feliciano v. Diócesis De Arecibo, Inc.*, 2019 WL 6134897, at *1 (P.R. App. Ct. Oct. 11, 2019). When any form of relief is precluded by the indispensability of a party that does not exist in reality, but rather exists only in the decision below based on a profound misreading of this Court's decision in *Ponce*, the need for immediate review is plain.

As all this vividly illustrates, respondents will stop at nothing to frustrate every avenue through which petitioners might obtain even the slightest measure of relief. Indeed, respondents insisted on pursuing their appeal to the Puerto Rico Supreme Court even though the appellate court had issued an order that would have kept pension payments flowing

to respondents without ignoring the Church's structure, and the Archdiocese of San Juan (an actual defendant) had informed the court that it was willing to ensure compliance with that order. Pet.App.166-67. But respondents forged ahead nonetheless, because they are thoroughly convinced that petitioners and the respondents in support of certiorari not only are not, but cannot be, separate legal entities, and have made it their mission to ensure that every court in Puerto Rico—be it a commonwealth court, a bankruptcy court, or a federal district court—embraces that view. The only thing that will put an end to the havoc that the decision below has wrought is a definitive decision from this Court.

Under these circumstances, the need for immediate relief is self-evident. There is certainly no reason to hold this case pending the Court's resolution of *Espinoza v. Montana Department of Revenue*, No. 18-1195 (oral argument scheduled for Jan. 22, 2020). That case is fully briefed and no party, nor even the 45 amici, had occasion to so much as include *Ponce* in a string cite. Given that an "overreading" of *Ponce* is at the heart of the decision below, U.S.Br.10, and the decision imposes immediate and untenable harms on every Catholic entity on the island, waiting on *Espinoza* is a *non sequitur*. If the Court prefers a summary disposition to plenary review, the proper course is not a hold or GVR but summary reversal.

CONCLUSION

The Court should grant the petition.

Respectfully submitted,

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