

In the
Supreme Court of the United States

LUIS A. RAMOS GONZÁLEZ, ET. AL.,

Petitioners,

v.

SCOTIABANK DE PUERTO RICO, ET. AL.,

Respondents.

On Petition for a Writ of Certiorari to the
Supreme Court of Puerto Rico

PETITION FOR A WRIT OF CERTIORARI

GRACE MONGE LA FOSSE

COUNSEL OF RECORD FOR PETITIONERS

ATTORNEYS AND COUNSELLORS AT LAW, LLC

P.O. Box 192053

SAN JUAN, PR 00919-2053

TEL. (787) 765-9090

CEL. (787) 413-1135

MONGELAFOSSELAW@GMAIL.COM

NOVEMBER 7, 2019



QUESTIONS PRESENTED

1. If an “Unacceptable Site”, pursuant Federal Regulations, can be granted Mortgage Financing, such as a Home Mortgage Loan, which is insured by Federal Government and sold to Secondary Market (Federally related Mortgage Loan)?

2. If a Home Mortgage Loan Agreement—granted over an “Unacceptable Site” that poses ominous threats to Homeowners who live among human feces because the Site lacks a legal and adequate wastewater disposal system—is null and void because it was granted against the Law (Federal Regulations)?

3. If a Home Mortgage Loan Agreement granted over an “Unacceptable Site” shall be sanctioned by Courts when Federal Regulations prevent banking institutions from granting mortgage financing on a property that is considered an “Unacceptable Site”?

PARTIES TO THE PROCEEDING BELOW

Petitioners, Luis A. Ramos González and another 76 people (*See* List of Petitioners below), who live in the Housing Development known as “Hacienda Jimenez Mansions”, were the petitioners in the Supreme Court of the Commonwealth of Puerto Rico; the appellants in the Court of Appeals of Puerto Rico; and plaintiffs in the Court of First Instance of San Juan, Puerto Rico.

Respondents, Scotiabank de Puerto Rico, First Bank de Puerto Rico, Banco Popular de Puerto Rico, Banco Santander de Puerto Rico, Oriental Bank, DLJ Mortgage Capital Inc., PRIH LLC, Rushmore Loan Management Services LLC, Operating Partners, Co. LLC, TRM LLC, were defendants in the Court of First Instance of San Juan, Puerto Rico; appellee in the Court of Appeals of Puerto Rico; and respondents in the Supreme Court of the Commonwealth of Puerto Rico.

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LIST OF PETITIONERS

- Luis A. Ramos González
- Ada Ramírez Torres & Conjugal P’ship.
- Adaline Mercado Rodríguez
- Aileen R. Ramírez Toledo
- Alice Braña Torres & Conjugal P’ship.
- Amarilis Fontánez Roberto
- Ana Celia Toledo Febres & Conjugal P’ship.
- Ana N. Berlanga Rosado
- Andrés Maldonado Robledo
- Ángel Daniel Reillo Cotto & Conjugal P’ship.

- Ángel Luis Ramírez De Jesús & Conjugal P'ship.
- Antonia Pabón Santiago
- Antonio Vázquez Díaz & Conjugal P'ship.
- Arlene J. Gómez Burgos & Conjugal P'ship.
- Aurelia Molina Bermúdez,
Legal Guardian Ricardo Girona Molina
- Carlos J. Encarnación Matos & Conjugal P'ship.
- Carmen Julia López Santos
- Carmen R. Viera Rivera
- Clara Luz Vázquez Torres & Conjugal P'ship.
- Conchita Verdejo Osorio & Conjugal P'ship.
- Deborah Morales Pagán & Conjugal P'ship.
- Edgardo G. López Torres & Conjugal P'ship.
- Edgardo Martínez Luna & Conjugal P'ship.
- Eliseo Morales Nieves
- Enid Báez Rivera & Conjugal P'ship.
- Evelyn Vega López & Conjugal P'ship.
- Francisco J. Benítez Cotto
- Gil Freddy Mojica García & Conjugal P'ship.
- Gricel Maldonado Viana
- Héctor L. Núñez Cruz & Conjugal P'ship.
- Heidy Ayala Figueroa & Conjugal P'ship.
- Henzy Graciani Sanjurjo & Conjugal P'ship.
- Iraida M. Colón Félix
- Isabel K. Hernández Pérez
- Ivelisse Tirado Medina
- Javier Álamo Rodríguez
- Jessica A. Camacho Báez & Conjugal P'ship.
- Joel Ortiz Rivera
- Jorge I. Santos Bonilla & Conjugal P'ship.

- José A. Betancourt Delgado
- José A. Giménez Núñez & Conjugal P'ship.
- José A. Graciani Peña
- José A. Rodríguez Sánchez
- José E. González Albertorio & Conjugal P'ship.
- José Ponce De León González
- Juan A. Álamo Rodríguez & Conjugal P'ship.
- Karen M. Cabrera Aponte & Conjugal P'ship.
- Lino J. Andrades Roche
- Luciano Carrasquillo Mercado & Conjugal P'ship.
- Lucy D. Padilla Flores
- Luis García Vega & Conjugal P'ship.
- Luis Guevara Luiggi
- Luz A. Rodríguez Santiago
- Lynda N. Vázquez Cuebas
- Mario A. Castillo Camacho
- Mary Zayas Melero & Conjugal P'ship.
- Mayra Vilella Pérez
- Michael A. García De Jesús
- Minerva Burgos Allende
- Mónica I. Torres Rivera & Conjugal P'ship.
- Nereida Valera Pérez
- Noemí Núñez Esquilín
- Norma Angle Valera
- Olga E. Díaz Díaz
- Pedro Páez Rodríguez
- Rolando Franquiz Acevedo
- Shane W. Cleveland Landry
- Sheida M. Camacho García & Conjugal P'ship.
- Solyary Pizarro García & Conjugal P'ship.

- Sonia Cuebas Rivera & Conjugal P'ship.
- Sucn. Alejandro Girona Rodríguez
Composed by: Alejandro Girona Molina; Diana María Girona Molina; Jorge Girona Molina; Raúl Girona Molina; Guillermo Girona Molina; Ricardo Girona Molina; Margarita Girona Molina; and María del Carmen Girona Molina, represented by Ricardo Girona Molina
- Sucn. De Juan Rivera Fuentes
Composed by: Cristal Aimeé Rivera Burgos, Joniel Eduardo Rivera Burgos, both represented by Minerva Burgos Allende
- Sucn. Luis A. Figueroa Santiago
Composed by: Luis Alfredo Figueroa Rodríguez, Yaritza Mary Figueroa Rodríguez, Nicole Marie Figueroa Rodríguez, represented by Luz Aura Rodríguez Santiago
- Víctor M. Acevedo Roldán & Conjugal P'ship.
- Víctor M. Figueroa Rexach & Conjugal P'ship.
- Víctor M. Figueroa Rexach & Conjugal P'ship.
- Virginia Arias Figueroa & Conjugal P'ship.
- Yadira M. Rivera Martínez

STATEMENT UNDER RULE 14.1(b)(iii)

The proceedings before the Courts of the Commonwealth of Puerto Rico identified below are directly related to the above-captioned case before this Court.

Court in question: Supreme Court of the Commonwealth of Puerto Rico. *Case:* *Luis Ramos, et. al. v. Scotiabank, et. al.*, Case No. CC-19-0378. *Entry of Judgment:* October 23, 2019—Final Judgment/ Order Denying Discretionary Review of the Supreme Court of the Commonwealth of Puerto Rico (App.1a—Resolution Denying Writ of Certiorari).

Court in question: Puerto Rico Court of Appeals. *Case:* *Luis Ramos, et. al. v. Scotiabank, et. al.*, Case KLAN-2018-01350. *Entry of Judgment:* March 27, 2019—Final Judgment of the Puerto Rico Court of Appeals (App.12a—Judgment Denying Appeal).

Court in question: Puerto Rico Court of First Instance of San Juan. *Case:* *Luis Ramos, et. al. v. Scotiabank, et. al.*, Case No. SJ-2017-CV-01870. *Entry of Judgment:* September 20, 2018—Final Judgment of the Puerto Rico Court of First Instance of San Juan (App.30a—Judgment Dismissing Complaint).

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PETITION FOR A WRIT OF CERTIORARI

Petitioners, Luis A. Ramos González and another 76 people (*See* List of Petitioners, p. ii-v), who all live in the private Housing Development known as “Hacienda Jimenez Mansions”, respectfully petition for a writ of certiorari to the Supreme Court of the Commonwealth of Puerto Rico.



OPINIONS AND ORDERS

The Final Judgment of the Supreme Court of Puerto Rico—Entry: October 23, 2019—was not reported, and a certified translation is set forth in the Appendix at App.1a (denying Writ of Certiorari—*Luis A. Ramos González, et. al. v. Scotiabank, et. al.*, Case No. CC-19-0378).

The Final Judgment of the Puerto Rico Court of Appeals—Entry: March 27, 2019—is reported at 2019 PR App. LEXIS 752, and a certified translation is set forth in the Appendix at App.12a (denying Appeal—*Luis A. Ramos González, et. al. v. Scotiabank, et. al.*, Case No. KLAN-2018-01350). *See also* Order of the Puerto Rico Court of Appeals—Entry: April 22, 2019—was not reported, and a certified translation is set forth in the Appendix at App.6a (denying Petition for Rehearing). The Final Judgment of the Puerto Rico Court of First Instance of San Juan—Entry: September 20, 2018—is unreported, and a certified translation is set forth in the Appendix at App.30a (dismissing

Complaint—*Luis A. Ramos González, et. al. v. Scotiabank, et. al.*, Case No. SJ-2017-CV-01870).



JURISDICTION

Pursuant Tittle 28 U.S.C. § 1258, final judgments or decrees rendered by the Supreme Court of the Commonwealth of Puerto Rico may be reviewed by the Supreme Court of the United States by writ of certiorari:

- [i] where the validity of a treaty or statute of the United States is drawn in question; or
- [ii] where the validity of a statute of the Commonwealth of Puerto Rico is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States; or
- [iii] where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

This Court has jurisdiction pursuant to 28 U.S.C. § 1258 because the final judgment of the Supreme Court of the Commonwealth of Puerto Rico is contrary to Federal Laws and Regulations, is repugnant to the Constitution and is contrary to the rights claimed by petitioners under the Constitution of the United States.

The Final Judgment of the Puerto Rico Court of First Instance of San Juan, entry: September 20, 2018,

dismissed complaint (App.30a). The Final Judgment of the Puerto Rico Court of Appeals, entry March 27, 2019, denied Appeal (App.12a). The Order of the Puerto Rico Court of Appeals, entry April 22, 2019, denied Petition for Rehearing (App.6a). The Final Judgment of the Supreme Court of the Commonwealth of Puerto Rico, entry: October 23, 2019, denied Writ of Certiorari (App.1a).



CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS

The following relevant constitutional and statutory provisions are reproduced in the appendix.

Constitutional Provision

U.S. Const. amend. XIV, § 1 (App.46a).

Statutory Provisions

Article 4, P.R. Civil Code, 31 L.P.R.A. § 4. Acts contrary to law; renunciation of legal right (App.46a).

38 U.S.C.S. § 3702 (d).
Basic Entitlement (App.46a).

38 USCS § 3704. Restrictions on loans (App.47a).

42 U.S.C.S. § 1441. Congressional declaration of national housing policy (App.51a).

Regulatory Provisions

7 C.F.R. § 3555.1. Applicability (App.53a).

7 C.F.R. § 3555.5. Environmental requirements (App.53).

7 C.F.R. § 3555.201. Site requirements (App.56a).

7 C.F.R. § 3555.202(b)(4). Dwelling requirements (App.58a).

24 C.F.R. § 5.703(a). Physical condition standards for HUD housing that is decent, safe, sanitary and in good repair (DSS/GR) (App.60a).

24 C.F.R. § 200.926d(3)(i) (App.61a).

24 C.F.R. § 200.926d(f)(1) (App.61a).

38 C.F.R. § 36.4347(c).

Lender appraisal processing program (App.62a).

**INTRODUCTION**

This case presents important national policy questions on the matter of Mortgage Financing on real estate that are considered “Unacceptable Sites” in accordance with Federal Regulations—Mortgage loans which are insured by the Federal Government and sold to the Secondary Market (Federally Related Mortgage Loan).

Everyday, Mortgage Financing is granted through the Banks that operate in the United States and its territories. Mortgage financing generates diverse and

critical reactions in the different markets of our Capitalist System and in the Government System, among others. As an example, a simple mortgage financing adds value to the Real Estate Market, adds value to the Secondary Mortgage Market, adds value to the Money Market; it generates income taxes payments, property taxes payments; it increases the capital gains of business owners & homeowners; and it provides other intangible goods such as happiness, security and sense of belonging.

Because that Mortgage Financing can cause effects in the Economy, its high regulation is justified and permanently rooted in public policy. It is worth noting that Mortgage Financing can generate the positive effects that we have detailed in the previous paragraph. However, Mortgage Financing against Federal Regulations can cause negative effects for the economy of the country. It can even cause exponential decay.

As is known, Federal Regulations prevent banking institutions from granting mortgage financing on a property that is considered an “Unacceptable Site” because it can put at risk the safety, life, and health of its inhabitants (*e.g.* homeowners); it can put at risk the businesses and economic wealth produced by mortgage financing in the Economy of the Nation (*i.e.* added value to the Real Estate Market, the Secondary Mortgage Market, and the Money Market); it can put at risk the interest of the Security Holders; and can destabilize the Secondary Market and the confidence of its investors. In this regard, it is important to mention that near the beginning of the 21st Century, the Mortgage Market of Puerto Rico hovered in an annual volume of \$15 Billion Dollars.

It is worth contrasting this figure with the figure of \$53 Billion Dollars that the NY Fed spent to rescue the overnight lending Market last month (September 2019).

The case of Luis A. Ramos González and his 76 neighbors (collectively called “the Petitioners”), who live in the private Housing Development known as “Hacienda Jimenez Mansions”, is an exemplary case to demonstrate the negative side of mortgage financing granted against Federal Regulations since the housing units of Hacienda Jiménez Mansions constitute an “Unacceptable Site” in accordance with the Federal Regulations, *infra*. According to Federal Agencies data, there are currently 5 other private urban developments in Puerto Rico with the same problems that affects the Hacienda Jiménez Mansions community.

The native banks of Puerto Rico (respondents) did not fulfill their responsibility and granted Mortgage Financing against Federal Regulations. All the mortgages granted related to the housing units of Hacienda Jiménez Mansions were insured by the Federal Government and sold in the Secondary Mortgage Market even though those housing units are “Unacceptable Site” and functional ruins.

In this case, the judicial system of Puerto Rico has failed to correct such bad practice in mortgage financing and stop its downward spiral. The judicial system of Puerto Rico has not given Due Process of Law and has refused to apply Federal and Local Law and Regulations. This translates into a 30-year sentence (mortgage life) and the confinement of 77 people and their families in a place that daily affects their lives, safety and health. This inaction of the judicial system

of Puerto Rico is allowing 5 other communities in Puerto Rico to suffer the same effects.

Sustaining this pattern is extremely dangerous and harmful to constituents and to the economy. Your meritorious decision in this case will banish, *ipso facto*, bad practice in mortgage financing and will have right resonance in the construction industry across the United States and its territories (“NO GOOD CONSTRUCTION: NO MORTGAGE FINANCING”). This policy will create unprecedented wealth for the Nation in the short and long term.



STATEMENT OF THE CASE

In this case, the native banks of Puerto Rico granted mortgage financing against Federal Regulations given that the housing units of Hacienda Jiménez Mansions constitute an “Unacceptable Site” for mortgage financing. In this urban development, the requirements of the Puerto Rico Planning Board were not met.

Specifically, the construction of a Communal Septic System, for the disposal of all wastewater, was not built as per Planning Board requirements. Instead, 57 illegal septic tanks were built, one in each housing unit of Hacienda Jiménez Mansions. The original proposal of the 57 individual septic tanks was rejected by the Planning Board itself due to the type of soil where the housing units would be built (non-permeable).

After the development and construction of Hacienda Jiménez Mansiones with 57 individual and illegal

septic tanks, each one built under the driveway of the garage of each home and without observing the minimum distances required by federal and state regulations, the native banks of Puerto Rico granted their mortgage financing for Hacienda Jiménez Mansions against Federal Regulations. Curiously, the native banks failed to obtain the 57 certifications of the Department of Health of Puerto Rico (FHA Form 2573) for the 57 individual septic tanks—illegally built in Hacienda Jiménez Mansiones.

<p>COMMONWEALTH OF [Logo] PUERTO RICO Department of Health</p> <p>ENVIRONMENTAL HEALTH PROGRAM FAJARDO REGION</p> <p>May 10, 2016</p> <p>To: Luis A. Ramos González <u>[Signature]</u></p> <p>From: Orlando Llanos Bonilla Environmental Health Official Fajardo Region</p> <p>I hereby inform you that after an inspection of the septic tank of your residence at <u>Urb. Manciones</u> [sic] de Hacienda Jimenez, Calle Maga # 3, Río Grande, Puerto Rico, it was found that it does not meet the location requirements since it is less than 10 feet from the structure.</p>

See App.84a.

It was not long after petitioners settled into their new homes that their American Dream turned into a

nightmare because said individual septic tanks were not functional—almost always filled and overflowed if emptying is not practiced constantly.

When it rains, the septic tanks must be emptied almost daily. Even so, these overflows, the rot of human excrement and putrid water accumulated in the ground, leaks through cracks of the concrete in the area of the entrance of the garage and in the entrance of the balcony of the homes of Hacienda Jiménez Mansions.

Also, the putrid waters and fecal matter, coming from the septic tanks and trenches of each home, produce gases and foul, fetid and noxious odors that are unbearable and dangerous for the health of the petitioners and their families. The courtyards of the homes are considered breeding grounds for bacteria and lethal microbes. These bacteria, microbes and feces access the sidewalks, streets, garages, and balconies of the homes making it easy to become infected.

On any given raining day, petitioners on awaking to go to work, find themselves stepping into dirty waters that overflowed during the night from the toilets, reaching every corner of their homes. Constantly, with or without rainy days, their bathtubs are found filled with human excrement.

Multiple hospitalizations of children and adult residents of the Hacienda Jiménez Mansions have been reported as a result of contact with these pathogens. One of those children seriously approached the point of death. The land where Hacienda Jiménez Mansions is located is considered a valley of methane and other pollutants.

On September 1, 2017, petitioners filed complaint against respondents before the Puerto Rico Court of First Instance of San Juan (No. SJ2017cv01870), to claim the nullity *ab initio* of the mortgage loan agreement so that the petitioners can be released to acquire suitable homes where they can rebuild their lives and restore their health. The respondents filed motion to dismiss. The Court of First Instance of San Juan dismissed petitioners' complaint.¹ Entry of judgment: September 20, 2018. (App.30a).

On December 10, 2018, petitioners filed an appeal before the Puerto Rico Court of Appeals. The Court of Appeals of Puerto Rico confirmed the judgment of the Court of First Instance. Entry of judgment: March 27, 2019. (App.12a). With regards to the federal questions presented, the Court of Appeals of Puerto Rico just stated: “[i]n synthesis, they [petitioners] propose

¹ At some point, the Court considered that the complaint was barred by *res judicata* as per the decision in *Gil Freddy Mojica, et. al. v. Braulio Agosto Vega, et. al.*, N3CI-2006-00751, where the complaint was dismissed against the banks because the complaint failed to state a claim upon which relief could be granted. In Gil's case the complaint was dismissed against the Banks due to the fact that they were not considered developers-constructors. Gil case is a Construction Law case. Even though it is established law that, “[t]he Court hold that a dismissal pursuant to rule 12(b)(6) merely goes to the form of the pleadings and the adequacy and sufficiency of the complaint, and it stops there. The prior suit does not act as a bar to the instant case as it was neither an adjudication on the merits nor a determination of any legal issue. Rather, as the Court have said, the prior claim was dismissed for insufficiency in the pleadings which would render the doctrine of *res judicata* and collateral inapplicable.” *First Sa. & Loan Asso. v. First Federal Sav. & Loan Asso.*, 547 F. Supp. 988 (1982).

that the Court should have applied certain federal regulations that prevented the summary disposition of their claims. They are not right.”

On May 22, 2019, petitioners filed a petition for writ of certiorari before the Supreme Court of the Commonwealth of Puerto Rico, where they claimed their constitutional right to Due Process of Law, the application of the Federal and State Law and Regulations, and their rights of property and liberty. (App. 63a). The Supreme Court of the Commonwealth of Puerto Rico denied the writ of certiorari filed by petitioners. Entry of judgment: October 23, 2019. (App.1a).



REASONS FOR GRANTING THE PETITION

- I. **IMPORTANT FEDERAL QUESTIONS HAVE NOT BEEN BUT SHOULD BE SETTLED BY THIS COURT ON THE MATTER OF MORTGAGE FINANCING ON REAL ESTATE THAT ARE CONSIDERED “UNACCEPTABLE SITES” IN ACCORDANCE WITH FEDERAL REGULATIONS—MORTGAGE LOANS WHICH ARE INSURED BY THE FEDERAL GOVERNMENT AND SOLD TO THE SECONDARY MARKET (FEDERALLY RELATED MORTGAGE LOAN).**

The real estate of a country defines its wealth. Therefore, the quality of the real estate is essential. Every country that seeks wealth must ensure that what is built on its land is of the highest quality and durability as technology allows, since, after all, it is the real estate that is able to subsist for centuries to add wealth.

In symbiosis with the real estate construction industry is the banking industry to finance it. It is worthy analogy to think of the banking industry as the mitochondria of the construction industry. Hence, the strict regulations of the banking industry to finance the construction industry are justified. Without financing, the construction industry would not subsist. Thus, it is the banking industry that has the power to control the output of the final product from the hands of the builder to the hands of its users.

This power of the banking industry over real estate that is built in the Nation must be safeguarded from bad practices in Mortgage Financing and kept close to what is right for the social welfare and wealth of the Nation. To achieve these measures, the active hand of our Justice System is needed. There is no other power within the republican system of government that can effectively achieve it. The call falls on the Judicial Branch and, when the lower courts fail to fulfill their course, it is up to this Supreme Court of the United States to achieve the task.

At a macro level, this Petition of Writ of Certiorari calls for the power of this Court to restore the power of the banking industry affected by some native banks of Puerto Rico, who granted mortgage financing on real estate that is considered an “Unacceptable Site” in accordance with the Federal Regulations for Mortgage Financing. Due to the failures of the lower courts, these Mortgage Financing bad practices occurred in Puerto Rico, and are going in a downward spiral that need to be stopped. At the micro-level,

there is a community of 77 people and their families that need to be rescued at once.²

In the hands of this Court lies the permanent solution to these problems at the macro-micro level with positive repercussions for future generations and economy: A judgment of nullity of a mortgage loan agreement granted over an Unacceptable Site pursuant Federal Regulations.

A judgment of nullity will eject and deter bad practice in Mortgage Financing. Even more, a judgment of nullity of a mortgage loan agreement—granted over an Unacceptable Site pursuant Federal Regulations—will have the right resonance to penetrate the DNA of our construction industry to fix its alignment with the inbuilt program born of Federal Regulations: “NO GOOD CONSTRUCTION: NO MORTGAGE FINANCING”. A judgment of nullity now will create unprecedented wealth for the Nation in the short and long term.

In its Judgment, this Court can settle the following questions on the matter of Mortgage Financing on real estate that are considered “Unacceptable Sites” in accordance with Federal Regulations—Mortgage Loans which are insured by the Federal Government and sold to Secondary Market (Federally Related Mortgage Loan). Your decision here will increase the true

² In *Pennsylvania v. Lynn*, 501 F.2d 848, 854-855 (1974) the Court stated that: “[t]he most basic statement of congressional housing policy derives from the Housing Act of 1949, which dedicates the nation to “the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family.” Section 2, *as amended*, 42 U.S.C. § 1441.” (Emphasis added.)

value of the real estate market of the United States and its territories. The questions are:

1. If an “Unacceptable Site”, pursuant Federal Regulations, can be granted Mortgage Financing, such as a Home Mortgage Loan, which is insured by Federal Government and sold to Secondary Market (Federally related Mortgage Loan)?
2. If a Home Mortgage Loan Agreement—granted over an “Unacceptable Site” that poses ominous threats to Homeowners who live among human feces because the Site lacks a legal and adequate wastewater disposal system—is null and void because it was granted against the Law (Federal Regulations)?
3. If a Home Mortgage Loan Agreement granted over an “Unacceptable Site” shall be sanctioned by Courts when Federal Regulations prevent banking institutions from granting mortgage financing on a property that is considered an “Unacceptable Site”?

It is our claims that: (i) Mortgage Financing cannot be granted over an Unacceptable Site pursuant Federal Regulations; (ii) a Mortgage Loan Agreement is null and void when it is granted against Federal Regulations; and (iii) no Courts can sanction a Mortgage Loan Agreement granted over an “Unacceptable Site” when Federal Regulations prevent banking institutions from granting mortgage financing on a property that is considered an “Unacceptable Site”.

See below a sample of the aforementioned Federal Regulations. In its relevant parts:

7 C.F.R. § 3555.5(d)(1):

Lenders must use due diligence in regard to potential environmental hazards to ensure the property is decent, safe and sanitary and of sufficient value to adequately secure the loan. The level of due diligence review to determine potential environmental hazards must be equivalent to the standards established by Fannie Mae, Freddie Mac, FHA, or the VA. (App.53a).

7 C.F.R. § 3555.201(b)(4) Site requirements

The site must be supported by adequate utilities and water and wastewater disposal systems. Certain water and wastewater systems that are privately owned may be acceptable if the lender determines that the systems are adequate, safe, compliant with applicable codes and requirements, and the cost or feasibility to connect to a public or community system is not reasonable. Certain community-owned water and wastewater systems may be acceptable if the lender determines that the systems are adequate, safe, and compliance with applicable codes and requirements. The Agency may require inspections on individual, central, or privately-owned and operated water or waste systems. (App.56a).

7 C.F.R. § 3555.202(b)(4); (c)(6) Dwelling requirements

(b) . . .

(4) Have adequate and safe electrical, heating, plumbing, water, and wastewater disposal systems.

(c) . . .

(6) The lender remains responsible to ensure a final inspection is performed and required repairs are completed. (App.58a).

24 C.F.R. § 200.926d(3)(i).**Construction requirements**

(3) Site conditions.

(i) The property shall be free of those foreseeable hazards and adverse conditions which may affect the health and safety of occupants or the structural soundness of the improvements, or which may impair the customary use and enjoyment of the property. The hazards include toxic chemicals, radioactive materials, other pollution, hazardous activities, potential damage from soil or other differential ground movements, ground water, inadequate surface drainage, flood, erosion, or other hazards located on or off site. The site must meet the standards set forth in 24 CFR part 51, and HUD Handbook 4910.1, section 606 for termite and decay protection. (App.61a).

38 C.F.R. § 36.4347(c).**Lender appraisal processing program**

VA minimum property requirements. Lenders are responsible for determining that the property meets VA minimum property requirements. The separate instructions issued by the Secretary will set forth the lender's ability to adjust, remove, or alter the fee appraiser's or fee compliance inspector's recommendations concerning VA minimum property requirements. Condominiums, planned-unit developments and leasehold estates must have been determined acceptable by VA. A condominium or planned-unit development which is acceptable to the Department of Housing and Urban Development or the Department of Agriculture may also be acceptable to VA. (App.62a).

HUD Handbook 4150.2, Chapter 3, Property Analysis, General Acceptability Criteria 3-6 A.3, 4, 5; Water Supply and Sewage Disposal Systems 3-9a; Unacceptable Conditions 3-10b. In relevant part:

The lender will contact the local health authority or a professional to determine the viability of the system. (App.108a).

[. . .]

A domestic well must be a minimum of 50 feet from a septic tank, 100 feet from the septic tank's drain field and a minimum of 10 feet from any property line. (App.111a).

[. . .]

The lender, who is ultimately responsible for rejecting the site, relies on the appraiser's site analysis to make this resolution. Guidelines for determining site acceptability follow. The appraiser is required to note only those readily observable conditions. (App.118a).

A. Unacceptable Sites

FHA guidelines require that a site be rejected if the property being appraised is subject to hazards, environmental contaminants, noxious odors, offensive sights or excessive noises to the point of endangering the physical improvements or affecting the livability of the property, its marketability or the health and safety of its occupants.

Rejection may also be appropriate if the future economic life of the property is shortened by obvious and compelling pressure to a higher use, making a long-term mortgage impractical.

These considerations for rejection apply on a case-by-case basis, taking into account the needs and desires of the purchaser. For example, a site should not be considered unacceptable simply because it abuts a commercial use; some commercial uses may not appeal to a specific market segment while other commercial uses may.

If the condition is clearly a health and safety violation, reject the appraisal and return it to the lender. If there is any doubt as to the severity, report the condition and submit the completed report. The lender must clear the condition and may require an inspection or reject the property. For those conditions that cannot be repaired, such

as site factors, the appraised value is based upon the existing conditions. (App.78a).

HUD Handbook 4150.2, Chapter 3, Property Analysis, General Acceptability Criteria 3-6 A.3, 4, 5; Water Supply and Sewage Disposal Systems 3-9a; Unacceptable Conditions 3-10b

A. General Acceptability Criteria

2. Hazards. The property must be free of all known hazards and adverse conditions that: “may affect the health and safety of the occupants” may affect the structural soundness of the improvements “ may impair the customary use and enjoyment of the property These hazards include toxic chemicals, radioactive materials, other pollution, hazardous activities, potential damage from soil or other differential ground movements, ground water, inadequate surface drainage, flood, erosion, excessive noise and other hazards on or off site. (App.106a-107a).

3. Soil Contamination

a. Septic and Sewage If a septic system is part of the subject property, the appraiser must determine whether the area is free of conditions that adversely affect the operation of the system. Consider the following: “the type of system” topography “depth to ground water soil permeability” the type of soil to a depth several feet below the surface If in doubt about the operation of sewage disposal systems in the neighborhood, mark “YES” in VC-2, condition the appraisal on further inspection and prepare the appraisal “as-

repaired” subject to satisfaction of the condition. The lender will contact the local health authority or a professional to determine the viability of the system. (App.108a).

- b. Other Soil Contaminants The following conditions may indicate unacceptable levels of soil contamination: pools of liquid, pits, ponds, lagoons, stressed vegetation, stained soils or pavement, drums or odors. If there is evidence of hazardous substances in the soil, require further inspection. Mark “YES” in VC-2, condition the appraisal on further inspection and prepare the appraisal “as-repaired” subject to the satisfaction of condition. (App.108a-109a).

5. Water Supply and Sewage Systems Each living unit must contain the following: “domestic hot water” a continuing and sufficient supply of potable water under adequate pressure and of appropriate quality for all household uses “sanitary facilities and a safe method of sewage disposal.” (App.110a).

- a. Individual Water Supply and Sewage Disposal Systems If water and sewer systems are not connected to public systems, the water well and/or septic system must meet the requirements of the local health authority with jurisdiction. If the local authority does not have specific requirements, the maximum contaminant levels established by the Environmental Protection Agency (EPA) will apply. If the authority is unable to perform the water quality analysis in a timely manner, a private commercial testing laboratory

or a licensed sanitary engineer acceptable to the authority may take and test water samples. "Each living unit must be provided with a sewage disposal system that is adequate to dispose of all domestic wastes and does not create a nuisance or in any way endanger the public health." Individual pit privies are permitted where such facilities are customary and are the only feasible means of waste disposal and, if they are installed in accordance with the recommendations of the local Department of Health. (App.110a-111a).

If there is a well or septic system on the property, mark "YES" in VC4, condition the appraisal on further inspection by the lender and prepare the appraisal "as repaired" subject to satisfaction of the condition. A domestic well must be a minimum of 50 feet from a septic tank, 100 feet from the septic tank's drain field and a minimum of 10 feet from any property line. Clearly show the location of private wells and septic systems on the site sketch and note the distance between the two. (App.110a-111a).

HUD Handbook 4155.2, Chapter 4.1.d Verification of Compliance with Property Requirements (P. 4-3), provides:

As the on-site representative for the lender, the appraiser provides preliminary verification that a property meets the General Acceptability Standards, which include the Minimum Property Requirements (MPR) or Minimum Property Standards (MPS). (App.116a).

HUD Handbook 4155.2, Chapter 4.1.e

Lender Responsibility for Resolution of Property Eligibility and Accuracy of Appraised Value (P. 4-3), establishes that: “Lenders are responsible for properly reviewing appraisals . . .” (App.115a).

HUD Handbook 4000.1, Chapter II.D.3.q Onsite Sewage Disposal Systems (P. 505), provides:**i. Definition**

An Onsite Sewage Disposal System refers to wastewater systems designed to treat and dispose of effluent on the same Property that produces the wastewater.

ii. Required Analysis and Reporting

The Appraiser must note the deficiency of MPR or MPS and notify the Mortgagee if the Property is not served by an off-site sewer system and any living unit is not provided with an Onsite Sewage Disposal System adequate to dispose of all domestic wastes in a manner that will not create a nuisance, or in any way endanger the public health.

The Appraiser must visually inspect the Onsite Sewage Disposal System and its surrounding area. The Appraiser must require an inspection to ensure that the system is in proper working order if there are readily observable signs of system failure. The Appraiser must report on the availability of public sewer to the site.

The Appraiser must note the deficiency of MPR or MPS and notify the Mortgagee if the Appraiser has evidence that the Onsite Sewage Disposal System is not sufficient.” (App.117a-118a).

**HUD Handbook 4000.1, Chapter 3-6.A.3
Soil Contamination (P. 3-9), provides:**

A. General Acceptability Criteria

3. Soil Contamination

“a. Septic and Sewage

If a septic system is part of the subject property, the appraiser must determine whether the area is free of conditions that adversely affect the operation of the system. Consider the following:

- the type of system
- topography
- depth to ground water
- soil permeability
- the type of soil to a depth several feet below the surface

If in doubt about the operation of sewage disposal systems in the neighborhood, mark “YES” in VC-2, condition the appraisal on further inspection and prepare the appraisal “as-repaired” subject to satisfaction of the condition.

The lender will contact the local health authority or a professional to determine the viability of the system.” (App.108a).

**HUD Handbook 4000.1, Chapter 3-6.A.4.a
Drainage-Individual Water Supply and Sewage
Disposal Systems (P. 3-10, 3-11), provides, in
relevant part:**

“If water and sewer systems are not connected to public systems, the water well and/or septic system

must meet the requirements of the local health authority with jurisdiction. If the local authority does not have specific requirements, the maximum contaminant levels established by the Environmental Protection Agency (EPA) will apply. If the authority is unable to perform the water quality analysis in a timely manner, a private commercial testing laboratory or a licensed sanitary engineer acceptable to the authority may take and test water samples.

Each living unit must be provided with a sewage disposal system that is adequate to dispose of all domestic wastes and does not create a nuisance or in any way endanger the public health.” (App. 115a-116a).

HUD Handbook 4940.3, Rev. 1, Minimum Design Standards for Community Sewerage Systems, Chapter CS1302 ff., provides”:

CS1302 SEPTIC TANKS

CS1302-1 Septic tanks shall be buried and watertight. All septic tank systems shall be located and installed in accordance with local health and environmental regulations. *See* App.102.

HUD Handbook 4155.2, Chapter 4.4g provides: . . .

“The submitting lender has the duty to ensure all documentation is appropriate and conforms to the requirements of his handbook. The lender must assemble the processing and closing documents and place them in the case binder in the order depicted in Table 1.1, Binder Assembly.” [*See* App.104.] In relevant part:

Left Side of Binder
Mortgage Assurance of Completion,* Form HUD-92300.
Compliance Inspection Report, form HUD-92051 or other applicable documentation AND evidence of satisfaction of valuation conditions (as applicable).
Wood Destroying Insect Infestation Report, Form NPCA-1 or State mandated infestation report (as applicable).
<u>Local Health Authority's Approval* for individual water and sewer system</u>
<p>New Construction Exhibits:</p> <ul style="list-style-type: none"> • Builder's Certification, Form HUD-92541 • Builder's Warranty of Completion Form HUD-92544 • Evidence of 10-Year Warranty Plan Coverage* • Inspection Report(s)-HUD-92051, VA-26-1839 for the Department of Veteran Affairs (VA), Certificate of Reasonable Value (CRV), and Master Certificate of Reasonable Value (MCRV), or HUD approved local building authority inspections* • Subterranean Termite Treatment Report-NPCA-99a and NPCA-99b*

See complete chart at App.119a-120a.

According to these Federal Regulations Mortgage Financing cannot be granted over an Unacceptable Site.

Therefore, a Mortgage Loan Agreement is null and void when is granted against Federal Regulations.

II. THE COURT BELOW COMMITTED AN ERROR SO IMPORTANT THAT IT MUST BE CORRECTED IMMEDIATELY. ITS DECISION: (1) HAS DIRECTLY AFFECTED THE LIVES, LIBERTIES, AND PROPERTIES OF THE 77 PETITIONERS WITHOUT DUE PROCESS OF LAW; (2) HAS DIRECTLY AFFECTED THE REAL ESTATE MARKET OF THE MUNICIPALITY OF RÍO GRANDE, PR (OVER \$25 MILLION DOLLARS IN LOSS); AND (3) HAS DIRECTLY AFFECTED THE INTEREST OF HUNDREDS OF SECURITY HOLDERS WHOSE CERTIFICATES ARE SUBJECT TO FEDERALLY RELATED MORTGAGE LOANS OF HACIENDA JIMÉNEZ MANSIONS.

In this case, the native banks of Puerto Rico granted mortgage financing against Federal Regulations given that the housing units of Hacienda Jiménez Mansions constitute an “Unacceptable Site” for Mortgage Financing. The Court below has sanctioned Mortgage Loan Agreements granted over an “Unacceptable Site” when Federal Regulations prevent banking institutions from granting mortgage financing on a property that is considered an “Unacceptable Site”. Thus, the Court below has endorsed bad practices in Mortgage Financing. Such error must be corrected.

Furthermore, petitioners claim that the judgment of the Court below denying the application of federal laws and regulations, the answers of the federal questions presented, and their rights constitute a deprivation of Liberty and Property without the Due Process of Law. U.S. Const. Amend. XIV. (App.46a).

Also, the judgment of the Court below has directly affected the real estate market of the Municipality of Río Grande, PR in over \$25 million dollars; and has directly affected the interest of hundreds of security holders whose certificates are subject to Federally related mortgage loan of Hacienda Jiménez Mansions. For the people of Hacienda Jiménez Mansions, the judgment of the Court below represents the loss of their American Dream, the loss of their freedom, the loss of their property rights and their confinement in a place that daily affects their lives, safety and health.

This Court has stated “[t]hat the action of state courts and of judicial officers in their official capacities is to be regarded as action of the State within the meaning of the Fourteenth Amendment, is a proposition which has long been established by decisions of this court.” *Shelley v. Kramer*, 334 U.S. 1, 14 (1948). Similarly, in *Ex Parte Virginia*, 100 U.S. 339, 346 (1879) this Court stated that the prohibitions of the 14th Amendment are directed and a restriction of state power. (“It is there which Congress is empowered to enforce, and to enforce against State action, however put forth, whether that action be executive, legislative or judicial”).

In *Poe v. Ullman*, 367 U.S. 497 (1961) (Harlan, J., dissenting) this Court stated: “[t]he full scope of the liberty guaranteed by the Due Process Clause cannot be found in or limited by the precise terms of the specific guarantees elsewhere provided in the Constitution. This ‘liberty’ is not a series of isolated points pricked out in terms of the taking of property; the freedom of speech, press, and religion; the right to keep and bear arms; the freedom from unreasonable

searches and seizures; and so on. It is a rational continuum which, broadly speaking, includes a freedom from all substantial arbitrary impositions and purposeless restraints, . . . and which also recognizes what a reasonable and sensitive judgment must, that certain interests require particularly careful scrutiny of the state needs asserted to justify their abridgment.”

Consequently, this Court has stated that the limits come from “respect for the teachings of history [and] solid recognition of the basic values that underlie our society.” *Moore v. City of East Cleveland*, 431 U.S. 494, 503 (1977); *See also: Griswold v. Connecticut*, 381 U.S. 479, 501 (1965) (Harlan, J., concurring). (“ . . . only by continual insistence upon respect for the teachings of history, solid recognition of the basic values that underlie our society, and wise appreciation of the great roles that the doctrines of federalism and separation of powers have played in establishing and preserving American freedoms.”) Thus, the decisions of this Court have protected the sanctity of the family due to the history and tradition of the institution in American society. *Moore v. City of East Cleveland*, *supra* on pp. 503-504.

Since 1923 this Court has stated that it has not attempted to define with exactness the liberty guaranteed by the 14th amendment. *See: Meyers v. Nebraska*, 262 U.S. 390 (1923). The Court also stated, with regards to the 14th amendment, U.S. Const. amend. XIV, in *Meyers, id.* on p. 399: [w]ithout doubt, it denotes not merely freedom from bodily restraint, but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up

children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men. (Emphasis added).

In this case, the native banks of Puerto Rico (respondents) engaged in bad practices in Mortgage Financing. Their actions caused serious repercussions on multiple levels since all the mortgages granted related to the housing units of Hacienda Jiménez Mansions were insured by the Federal Government and sold in the Secondary Mortgage Market, even though those housing units are an “Unacceptable Site” and functional ruins. These actions cannot be repeated.

In this case, the judicial system of Puerto Rico has failed to correct such bad practices in mortgage financing and stop its downward spiral. The judicial system of Puerto Rico has not given Due Process of Law and has refused to apply Federal and Local Law and Regulations. This inaction of the judicial system of Puerto Rico is allowing 5 other communities in Puerto Rico to suffer the same effects. The error of the Court below must be corrected with your pronouncements: (i) Mortgage Financing cannot be granted against Federal Regulation on a property that is considered an “Unacceptable Site”; and (ii) a Mortgage Loan Agreement is null and void when is granted against Federal Regulations on a property that is considered an “Unacceptable Site”.



CONCLUSION

It will always be the necessity of the people that drives the government to respond to changing times. At this moment, it becomes even more so imperative that Federal Regulations which stipulate “Unacceptable Site” for Mortgage Financing be given the necessary jurisprudence upon which to enforce the law and to ensure the rights of Homeowners and the Security Holders who sustain the Secondary Mortgage Market.

This Court’s decision will return the American Dream to the people of Hacienda Jiménez Mansions³ and will also be contributing to future generations which have yet to fulfill their dream. The petitioners have no other opportunity for remedy except for the remedy granted by this Court.

The petitioners respectfully request that this Petition for a Writ of Certiorari be granted.

Respectfully submitted,

/S/ GRACE MONGE LA FOSSE

COUNSEL OF RECORD FOR PETITIONERS

ATTORNEYS AND COUNSELLORS AT LAW, LLC

P.O. BOX 192053

SAN JUAN, PR 00919-2053

TEL. (787) 765-9090

CEL. (787) 413-1135

MONGELAFOSSELAW@GMAIL.COM

NOVEMBER 7, 2019

³ Among them are War Veterans who defended the Nation, disabled people, sick people, elderly, retired people, women, children, working men, public employees and federal employees.

ADDITIONAL PRO SE PETITIONERS	
GIL FREDDY MOJICA GARCÍA & CONJUGAL PARTNERSHIP HC-04 BOX 11719 RÍO GRANDE, PR 00745 (787) 248-3021	SOLYARY PIZARRO GARCÍA & CONJUGAL PARTNERSHIP HC-04 BOX 11752 RÍO GRANDE, PR 00745 (787) 473-6364
SHEIDA M. CAMACHO GARCÍA & CONJUGAL PARTNERSHIP HC-04 BOX 11719 RÍO GRANDE, PR 00745 (787) 370-9652	JOEL ORTIZ RIVERA P.O. Box 126, RÍO GRANDE, PR 00745 (787) 515-4615
CARLOS J. ENCARNACIÓN MATOS & CONJUGAL PARTNERSHIP 15255 TRIESTE ST. ORLANDO, FL. 32828 (407) 690-2441	NOEMÍ NÚÑEZ ESQUILÍN P.O. Box 1915 RÍO GRANDE, PR 00745 (787) 206-0283
SUCN. ALEJANDRO GIRONA RODRÍGUEZ REPRESENTED BY RICARDO GIRONA MOLINA HC-02 BOX 15841 CAROLINA, PR 00987-9700 (787) 564-8449	EVELYN VEGA LÓPEZ & CONJUGAL PARTNERSHIP 15255 TRIESTE ST. ORLANDO, FL. 3282 (407) 690-9414
NEREIDA VALERA PÉREZ HC-04 BOX 11733 RÍO GRANDE, PR 0074 (939) 268-4099	AURELIA MOLINA BERMÚDEZ LEGAL GUARDIAN RICARDO GIRONA MOLINA HC-02 BOX 15841 CAROLINA, PR 00987-9700 (787) 564-8449

ADDITIONAL PRO SE PETITIONERS	
HENZY GRACIANI SANJURJO & CONJUGAL PARTNERSHIP 4640 VILLAS SANTORINI DR. LAKE WORTH, FL 33461 (561) 319-0491	NORMA ANGLE VALERA HC-04 BOX 11733 RÍO GRANDE, PR 0074 (939) 268-4099
VÍCTOR M. FIGUEROA REXACH & CONJUGAL PARTNERSHIP HC-04 BOX 11735 RÍO GRANDE, PR 00745 (939) 891-0933	HEIDY AYALA FIGUEROA & CONJUGAL PARTNERSHIP 4640 VILLAS SANTORINI DR. LAKE WORTH, FL 33461 (561) 319-0491
VÍCTOR M. FIGUEROA REXACH & CONJUGAL PARTNERSHIP HC-04 BOX 11735 RÍO GRANDE, PR 00745 (939) 891-0933	ENID BÁEZ RIVERA & CONJUGAL PARTNERSHIP HC-04 BOX 11735 RÍO GRANDE, PR 00745 (787) 598-7076
LUCIANO CARRASQUILLO MERCADO & CONJUGAL PARTNERSHIP HC-04 BOX 11731 RÍO GRANDE, PR 00745-9689 (787) 617-9155	CLARA LUZ VÁZQUEZ TORRES & CONJUGAL PARTNERSHIP HC-04 BOX 11731 RÍO GRANDE, PR 00745-9689 (787) 617-9155
EDGARDO MARTÍNEZ LUNA & CONJUGAL PARTNERSHIP HC-04 BOX 11751 RÍO GRANDE, PR 00745 (787) 453-9826	CONCHITA VERDEJO OSORIO & CONJUGAL PARTNERSHIP HC-04 BOX 11751 RÍO GRANDE, PR 00745 (787) 214-2100
PEDRO PÁEZ RODRÍGUEZ CALLE 4, 2 E 18 VISTA DEL CONVENTO FAJARDO, PR 00738 (787) 657-2873	MAYRA VILELLA PÉREZ HC-04 BOX 11765 RÍO GRANDE, PR 00745 (939) 246-5122

ADDITIONAL PRO SE PETITIONERS	
ANA N. BERLANGA ROSADO C/501, BLQ. 216, #29 VILLA CAROLINA CAROLINA, PR 00985 (787) 690-2908	JESSICA A. CAMACHO BÁEZ & CONJUGAL PARTNERSHIP URB. COUNTRY CLUB CALLE HALCÓN #894 SAN JUAN, PR 00924 (787) 531-5157
JOSÉ E. GONZÁLEZ ALBERTORIO & CONJUGAL PARTNERSHIP URB. COUNTRY CLUB CALLE HALCÓN #894 SAN JUAN, PR 00924 (787) 531-5157	ADA RAMÍREZ TORRES & CONJUGAL PARTNERSHIP HC-04 BOX 11736 RÍO GRANDE, PR 00745 (787) 633-3235
JOSÉ A. GIMÉNEZ NÚÑEZ & CONJUGAL PARTNERSHIP HC-04 BOX 11736 RÍO GRANDE, PR 00745 (787) 633-3235	ALICE BRAÑA TORRES & CONJUGAL PARTNERSHIP 72 EARLE ST. 1 NEW BEDFORD M.A. 02746 (774) 400-3803
ROLANDO FRANQUIZ ACEVEDO URB. EL PLANTÍO, F-26 CALLE TULIPÁN TOA BAJA, PR 00949-4443 (787) 444-9944	DEBORAH MORALES PAGÁN & CONJUGAL PARTNERSHIP VILLAS DE LOÍZA CALLE 7, K-10 CANÓVANAS, PR 00729 (787) 209-9487
LINO J. ANDRADES ROCHE URB. ALTURAS DE RÍO GRANDE CALLE 16, BLQ. Q-868 RÍO GRANDE, PR 00745 (787) 237-1902	LUZ A. RODRÍGUEZ SANTIAGO HC-04 P.O. BOX 11750 RÍO GRANDE, PR 00745 (787) 697-4633

ADDITIONAL PRO SE PETITIONERS	
MARIO A. CASTILLO CAMACHO HC-04 BOX 11730 RÍO GRANDE, PR 00745 (787) 633-2869	VIRGINIA ARIAS FIGUEROA & CONJUGAL PARTNERSHIP HC-04 BOX 11749 RÍO GRANDE, PR 00745 (787) 220-1349
HÉCTOR L. NÚÑEZ CRUZ & CONJUGAL PARTNERSHIP CALLE CÁNCER, NÚM. 10 LA MARINA CAROLINA, PR 00979 (787) 430-3717	MÓNICA I. TORRES RIVERA & CONJUGAL PARTNERSHIP CALLE NÍSPERO, AG-13 VALLE ARRIBA HEIGHTS CAROLINA, PR 00983 (787) 550-2771
OLGA E. DÍAZ DÍAZ HC-04 BOX 11761 RÍO GRANDE, PR 00745 (787) 556-4980	ANA CELIA TOLEDO FEBRES & CONJUGAL PARTNERSHIP P.O. BOX 1011 CAROLINA, PR 00986 (939) 418-1082
MICHAEL A. GARCÍA DE JESÚS 14801 SW 170 TERRACE MIAMI, FLORIDA 33187 (786) 203-1738	SONIA CUEBAS RIVERA & CONJUGAL PARTNERSHIP HC-04 BOX 11757 RÍO GRANDE, PR 00745 (787) 607-2383
FRANCISCO J. BENÍTEZ COTTO RR-10, BOX 5261 SAN JUAN, PR 00926 (787) 909-8322	CARMEN JULIA LÓPEZ SANTOS GONZALO ALEJANDRO # 23 RÍO GRANDE, PR 00745 (787) 649-7935

ADDITIONAL PRO SE PETITIONERS	
VÍCTOR M. ACEVEDO ROLDÁN & CONJUGAL PARTNERSHIP VILLAS DE LOÍZA CALLE 7, K-10 CANÓVANAS, PR 00729 (787) 209-9487	AMARILIS FONTÁNEZ ROBERTO P.O. BOX 29001 SAN JUAN, PR 00929 (787) 685-1568
SUCN. LUIS A. FIGUEROA SANTIAGO REPRESENTED BY LUZ A. RODRÍGUEZ SANTIAGO HC-04 P.O. BOX 11750 RÍO GRANDE, PR 00745 (787) 697-4633	JOSÉ PONCE DE LEÓN GONZÁLEZ HC-04 APARTADO 11758 RÍO GRANDE, PR 00745-9689 (787) 718-9101
ANTONIA PABÓN SANTIAGO HC-04 BOX 11748 RÍO GRANDE, PR 0074 (787) 942-4592	SHANE W. CLEVELAND LANDRY C6 CALLE LIRIO DEL MAR DORADO DEL MAR DORADO, PR 00646 (787) 922-1616
LUIS GARCÍA VEGA & CONJUGAL PARTNERSHIP HC-04 BOX 11749 RÍO GRANDE, PR 00745 (787) 216-4685	KAREN M. CABRERA APONTE & CONJUGAL PARTNERSHIP P.O. BOX 372253 CAYEY, PR 00737 (787) 344-0221
JORGE I. SANTOS BONILLA & CONJUGAL PARTNERSHIP CALLE NÍSPERO, AG-13 VALLE ARRIBA HEIGHTS CAROLINA, PR 00983 (787) 550-2771	SUCN. DE JUAN RIVERA FUENTES REPRESENTED BY MINERVA BURGOS ALLENDE HC-01 BOX 13905 RÍO GRANDE, PR 00745 (787) 414-3774

ADDITIONAL PRO SE PETITIONERS	
ADALINE MERCADO RODRÍGUEZ P.O. BOX 475 PALMER RÍO GRANDE, PR 00721 (939) 216-4858	ARLENE J. GÓMEZ BURGOS & CONJUGAL PARTNERSHIP URB. VILLA COOPERATIVA CALLE 4, BLOQUE E-17 CAROLINA, PR 00985 (787) 403-5470
IVELISSE TIRADO MEDINA HC-04 BOX 11746 RÍO GRANDE, PR 00745 (787) 318-5522	MARY ZAYAS MELERO & CONJUGAL PARTNERSHIP P.O. BOX 366375 SAN JUAN, PR 00936 (787) 674-5129
AILEEN R. RAMÍREZ TOLEDO P.O. BOX 1011 CAROLINA, PR 00986 (939) 418-1082	LUCY PADILLA FLORES VILLA COOPERATIVA CALLE 4, BLOQUE E-17 CAROLINA, PR 00985 (787) 348-1315
ÁNGEL LUIS RAMÍREZ DE JESÚS & CONJUGAL PARTNERSHIP P.O. BOX 1011 CAROLINA, PR 00986 (939) 418-1082	LYNDA N. VÁZQUEZ CUEBAS 332 CALLE CAOBA URB. VISTAS DE RÍO GRANDE RÍO GRANDE, PR 00745 (787) 412-6688
ANTONIO VÁZQUEZ DÍAZ & CONJUGAL PARTNERSHIP HC-04 BOX 11757 RÍO GRANDE, PR 00745 (787) 607-2383	ANDRÉS MALDONADO ROBLEDO GONZALO ALEJANDRO # 23 RÍO GRANDE, PR 00745 (787) 649-7935

ADDITIONAL PRO SE PETITIONERS	
JOSÉ A. RODRÍGUEZ SÁNCHEZ P.O. BOX 29001 SAN JUAN, PR 00929 (787) 960-2436	YADIRA M. RIVERA MARTÍNEZ HC 01 BOX 8534 LUQUILLO, PR 00773-95035 (787) 233-5993
ISABEL K. HERNÁNDEZ PÉREZ P.O. BOX 341 PALMER, PR 00721 (787) 593-7120	ELISEO MORALES NIEVES HC-04 BOX 11776 RÍO GRANDE, PR 00745 (787) 909-2090
JOSÉ A. BETANCOURT DELGADO CALL BOX 43002, SUITE 521 RÍO GRANDE, PR 00745 (787) 367-2437	EDGARDO G. LÓPEZ TORRES & CONJUGAL PARTNERSHIP P.O. BOX 372253 CAYEY, PR 00737 (787) 220-1748
MINERVA BURGOS ALLENDE HC-01 BOX 13905 RÍO GRANDE, PR 00745 (787) 414-3774	JUAN A. ÁLAMO RODRÍGUEZ & CONJUGAL PARTNERSHIP URB. VILLA COOPERATIVA CALLE 4, BLOQUE E-17 CAROLINA, PR 00985 (787) 403-5470
ÁNGEL DANIEL REILLO COTTO & CONJUGAL PARTNERSHIP P.O. BOX 366375 SAN JUAN, PR 00936 (787) 674-5129	JAVIER ÁLAMO RODRÍGUEZ VILLA COOPERATIVA CALLE 4, BLOQUE E-17 CAROLINA, PR 00985 (787) 564-2694
LUIS GUEVARA LUIGGI URB. VENUS GARDENS CALLE ANGUEISES, #1748 SAN JUAN, PR 00926 (787) 308-9518	CARMEN R. VIERA RIVERA P.O. BOX 367509 SAN JUAN, PR 00936-7509 (787) 319-4038

ADDITIONAL PRO SE PETITIONERS	
GRICEL MALDONADO VIANA HC-04 BOX 11753 RÍO GRANDE, PR 00745 (787) 316-0296	IRAIDA M. COLÓN FÉLIX HC-04 BOX 11775 RÍO GRANDE, PR 00745 (787) 568-8716
JOSÉ A. GRACIANI PEÑA HC-04 BOX 11734 LAS TRES-T RÍO GRANDE, PR 00745 (787) 909-4650	LUIS A. RAMOS GONZÁLEZ HC-04 BOX 11752 RÍO GRANDE, PR 00745 (787) 473-6365