

19-7009

No. \_\_\_\_\_

Supreme Court, U.S.  
FILED

DEC 07 2019

OFFICE OF THE CLERK

\_\_\_\_\_  
IN THE  
SUPREME COURT OF THE UNITED STATES  
\_\_\_\_\_

Daniel Rosario González — PETITIONER  
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the First Circuit  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Daniel Rosario González  
(Your Name)

Apartment 218 Building 20, Brisas de Bayamón  
(Address)

Bayamón, Puerto Rico 00961  
(City, State, Zip Code)

(939)231-0941  
(Phone Number)

**ORIGINAL**

**QUESTION(S) PRESENTED**

WHETHER A DISTRICT COURT WHICH HAD NO JURISDICTION OVER A CASE  
DISMISS IT WITH PREJUDICE AND,  
WHETHER AN APPEAL COURT AFFIRM THAT DISMISSAL WITH PREJUDICE  
WHEN IT WAS SHOWN THAT THE DISTRICT COURT LACKED JURISDICTION.

## LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

## RELATED CASES

3:09-CV-02200  
DDP2016-0566  
SJ2017CV1404  
3:16CV-02824  
3:17CV-02143

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# TABLE OF AUTHORITIES CITED

## CASES

## PAGE NUMBER

First Bank of P.R. v. Inmob, Nac., Inc., *supra* 913

Rankin v. Howard, (1980) 633 F.2d 844, cert den.

Zeller v. Rankin, 101 S.Ct. 2020, 451 U.S. 939, 68 L.Ed 2d 326

Piper v. Pearson, id., 2 Gray 120

Piper v. Pearson, 2 Gray 120, cited in

Bradley v. Fisher, 13 Wall. 335, 20 L.Ed. 646 (1872)

Freire Ayala v. Vista Rent, 169 DPR 418 (2006)

Ex Parte McCordle, 74 U.S. (7 Wall.) 506, 514 (1968)

## STATUTES AND RULES

Regla 10.8(c) de Procedimiento Civil  
32 L.P.R.A. AP. Vj

## OTHER

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

## JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was September 9, 2019.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: October 2, 2019, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

La falta de diligenciamiento del emplazamiento (personal o por edictos), priva al tribunal de jurisdicción sobre la persona e invalida cualquier sentencia en su contra. *First Bank of P.R. v. Inmob, Nac., Inc.*, supra, pág. 913.

When a judge knows that he lacks jurisdiction, or acts in the face of clearly valid statutes expressly depriving him of jurisdiction, judicial immunity is lost. *Rankin v. Howard*, (1980) 633 F.2d 844, cert den. *Zeller v. Rankin*, 101 S.Ct. 2020, 451 U.S. 939, 68 L.Ed 2d 326.

Unfortunately, judges sometimes exceed their jurisdiction in a particular case. But an act done in complete absence of all jurisdiction cannot be a judicial act. *Piper v. Pearson*, id., 2 Gray 120. It is no more than an act of a private citizen, pretending to have judicial power which does not exist at all.

When a federal court acts without jurisdiction, it does more than commit an error - it exercises authority that it does not possess.

When a federal court lacks constitutional or statutory jurisdiction, it has no power or authority to do anything.

"Where there is no jurisdiction, there can be no discretion, for discretion is incident to jurisdiction." *Piper v. Pearson*, 2 Gray 120, cited in *Bradley v. Fisher*, 13 Wall. 335, 20 L.Ed. 646 (1872).

"...una vez el tribunal determina que no tiene jurisdicción lo que procede es la desestimación del caso. Véase, Regla 10.8(c) de Procedimiento Civil, 32 L.P.R.A Ap. V; *Freire Ayala v. Vista Rent*, 169 DPR 418 (2006).

"without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." *Ex parte McCardle*, 74 U.S. (7 Wall.) 506, 514 (1968)".



### **STATEMENT OF THE CASE**

On May 17, 2018 Honorable Senior Judge Daniel R. Dominguez dismissed with prejudice under dockets 80 and 81 cases 16-2824 and 17-2143 over which he never acquired jurisdiction as the record shows that plaintiff never served process on Defendant United States.

On September 9, 2019 the Court of Appeals for the First Circuit entered JUDGMENT affirming the lower court's decision.

On October 9, 2019 the Court of Appeals for the First Circuit denied plaintiff-appellant petition for rehearing.

## **REASONS FOR GRANTING THE PETITION**

The First Circuit's affirmation of a dismissal with prejudice of a lower court that never acquired jurisdiction over a case as the defendant was never served process constitutes error of law and open violation to plaintiff-appellant constitutional right to the due process of law.

Honorable Senior Judge Daniel R. Dominguez was well aware that he was bound by statute to dismiss the cases without prejudice as defendant was never served process, hence he lacked jurisdiction.

The Court of Appeals for the First Circuit was well aware that defendant was never served process which in turn means that the lower court never acquired jurisdiction to dismiss with prejudice the cases hence, the First Circuit's decision had to be to order the lower court to dismiss without prejudice, not to affirm.

Should the United States Supreme Court Justices fail to intervene in this matter would allow Honorable Senior Judge Daniel R. Dominguez and the United States Court of Appeals for the First Circuit to circumvent plaintiff-appellant constitutional right to the due process of law and give way to further constitutional violations on other United States citizens in similar situations.

This matter is of utmost national importance because it shows the deliberate abuse of discretion and error of law of Honorable Senior Judge Daniel R. Dominguez and the United States Court of Appeals for the First Circuit.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A large, stylized handwritten signature in black ink, consisting of a large loop and a long horizontal stroke, is written over the signature line and extends upwards into the text area.

Date: December 4, 2019