

No. 20-1722

Supreme Court, U.S.  
FILED

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IN THE  
SUPREME COURT OF THE UNITED STATES

Damian Cruz – PETITIONER,

vs.

Glenda I. Lebron Vazquez – RESPONDENT.

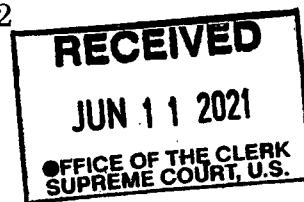
ON PETITION FOR A WRIT OF CERTIORARI TO  
Puerto Rico Court of Appeal

PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

The following questions are presented:

1. Whether the Puerto Rico Court of Appeal departed so far from the due process in direct conflict with the Fourteenth Amendment of the Constitution of the United States; and erred when affirmed refers to the administrative agency Puerto Rico Child Support Administration a pure federal law question about *in personam*, subject matter and interstate territorial jurisdiction that arose from the divorce default judgment in direct conflict with what this Court has held in *Kulko v. Superior Court of Cal., City and County of San Francisco*, 436 U.S. 84 (1978) bounded by the Puerto Rico Supreme Court in *Shuler v. Shuler*, 157 P.R. Dec. 707 (2002).
2. Whether the Puerto Rico Court of Appeal erred, abused its discretion and departed so far from the judicial proceedings when affirmed refers to the administrative agency Puerto Rico Child Support Administration a pure trial court judicial issue about errors found in a default judgment entered for the divorce lawsuit in direct conflict with the Puerto Rico Rules of Civil Procedures, Rule 43.6 which state that a judgment by default shall not be different in kind of the original demand; and Rule 49.1 which state that only a trial court can correct errors found in its own judgments and after an appeal can be corrected only by the Puerto Rico Court of Appeal.

## LIST OF PARTIES

All parties appears in the caption of the case on the cover page.

## LIST OF PROCEEDINGS

In compliance with Rule 14.1(b)(iii) of the Supreme Court of the United States, below is a list of all proceedings in other courts that are directly related to the case in this Court.

- *Glenda I. Lebrón Vázquez vs. Damian Cruz*, No. E DI2008-0710, Puerto Rico Trial Court. Default Judgment entered October 17<sup>th</sup>, 2008; Order entered July 9<sup>th</sup>, 2020; and Order entered August 28<sup>th</sup>, 2020.
- *Glenda I. Lebrón Vázquez vs. Damian Cruz*, No. KLAN202000838, Puerto Rico Court of Appeal. Order entered October 29<sup>th</sup>, 2020; and Final Judgment entered February 22<sup>nd</sup>, 2021.
- *Glenda I. Lebrón Vázquez vs. Damian Cruz*, No. AC-2021-0050, Puerto Rico Supreme Court. Order entered March 25<sup>th</sup>, 2021; and Mandate entered April 13<sup>th</sup>, 2021.

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

I Damian Cruz, the petitioner (hereinafter Mr. Cruz), respectfully prays that this Court issue a writ of certiorari to review the judgment below.

**OPINIONS BELOW**

The opinion of the highest Puerto Rico's court who reviewed the merits of this case with verbatim English translation appears at Appendix A [Pet.App. 1a-16a] to the petition and is unpublished/unreported.

The order of the Puerto Rico Trial Court with verbatim English translation appears at Appendix B [Pet.App. 17a-19a] to the petition and is unpublished/unreported.

**JURISDICTION**

The date on which the highest Puerto Rico's court decided this case was February 22<sup>nd</sup> of 2021. A copy of that decision with verbatim English translation appears at Appendix A [Pet.App. 1a-16a] to the petition. A timely petition for discretionary review was denied by the Puerto Rico Supreme Court on March 25<sup>th</sup> of 2021. A copy of the Puerto Rico Supreme Court' order denying a discretionary review with verbatim English translation appears at Appendix C [Pet.App. 20a-22a] to the petition.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a) and 28 U.S.C. § 1258.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- U.S. Const. amend. XIV, § 1 “All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of laws.”
- Uniform Interstate Family Support Act (UIFSA) § 205(c) “ If a tribunal of another state has issued a child-support order pursuant to UIFSA or a law substantially similar to that Act which modifies a child-support order of a tribunal of Puerto Rico, tribunals of Puerto Rico shall recognize the continuing, exclusive jurisdiction of the tribunal of the other state.”
- *Kulko v. Superior Court of Cal., City and County of San Francisco*, 436 U.S. 84 (1978) “A defendant to be bound by a judgment against him must have certain minimum contacts with the forum State such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.”
- *Shuler v. Shuler*, 157 P.R. Dec. 707 (2002) “It is known that the clause of due process of law of the United States Constitution limits the States court’s authority and the power, among these Puerto Rico, to assume jurisdiction and issue orders against natural and legal persons that do not reside within its territory...Is a norm well known that the courts should be jealous guardians of the exercise of its jurisdiction and, above all, for be able to adequately and validly exercise such judicial authority, shall have jurisdiction over the subject matter and over the

person of the litigants...We have been faithful to the norm established since more than a century by the United States Supreme Court that with respect to a court's jurisdiction over a person, each State has jurisdiction and sovereign over the defendants as long they are within its territorial limits...Is general rules of law that a State court only can exercise jurisdiction over the persons who reside within the State territory. The judicial function of the courts as part of the exercise of the sovereign power of a State generally it is circumscribed to persons who are present or goods located within the territorial limits of the State...In such way the so-called principle of territoriality is configured...The doctrine of the minimum contacts was adopted by this Court...the case *Kulko v. California Superior Court* had the effect to limit the possibilities to obtain jurisdiction over the no residents in the cases of custody, child support or division of community property. In other words, the minimum contacts doctrine applies in actions that affect the patrimonial right of a defendant absent who cannot be deprived from its property without the due process of law."

- N.Y. Family Court Law § 511 "Except as otherwise provided, the family court has exclusive original jurisdiction in proceedings to establish paternity and, in any such proceedings in which it makes a finding of paternity, to order support and to make orders of custody or of visitation, as set forth in this article. On its own motion, the court may at any time in the proceedings also direct the filing of a neglect petition in accord with the provision of article ten of this act. In accordance with the provisions of section one hundred eleven-b of the domestic relations law, the

surrogate's court has original jurisdiction concurrent with the family court to determine the issues relating to the establishment of paternity."

- Puerto Rico Rules of Civil Procedures, Rule 43.6.-Granting of relief "Every judgment shall grant the relief to which the party in whose favor it is rendered is entitle, even if the party has not demanded such relief in his pleading; however, a judgment by default shall not be different in kind nor exceed the amount prayed for in the demand for judgment."
- Puerto Rico Rules of Civil Procedures, Rule 49.1.-Errors of form "Errors of form in proceedings, orders or other parts of the record, and those appearing therein because of oversight or omission, may be corrected by the court at any time, on its own initiative, or upon the motion of a party, upon prior notice, should it be ordered. Said errors can be corrected during the handling of an appeal or a writ of certiorari, before the appeal is docketed to the court of appeal, and subsequently, they shall only be corrected by permission of the court of appeal."

#### **STATEMENT OF THE CASE**

1. In 1999 were married in New York the respondent Glenda I. Lebrón Vázquez (hereinafter Ms. Lebrón) and Mr. Cruz who is a natural born citizen of New York, both then New York domiciliaries. After the parties consumed their marriage, had a daughter born in New York which is the State who determined Mr. Cruz's paternal filiation and where the family resided together until Ms. Lebrón voluntarily moved to Puerto Rico taking the child without Mr. Cruz's consent.
2. In 2006 after Mr. Cruz was determined total disable as a result of an accident, a family court of New York exercised its exclusive subject matter jurisdiction for the

child support case no. BQ16329N1 issuing a final judgment ordering that Mr. Cruz does not have the obligation to pay child support due to his Supplemental Security Income (SSI) disability status [Pet.App. 38a] and the Social Security Administration acted in accord of such final order [Pet.App. 39a].

3. In 2008 Ms. Lebrón sent the child to spent summer vacations with Mr. Cruz in New York while at the same time, without told nothing to Mr. Cruz, in June 12<sup>th</sup> of 2008 filed in Puerto Rico a lawsuit for divorce due to separation case no. EDI-2008-0710 in which falsely alleged that she did not know where Mr. Cruz lived neither has contact with him. For the divorce lawsuit, a Puerto Rico Trial Court obtained jurisdiction via service of process made by publication after noted a default. In October 17<sup>th</sup> of 2008 the Puerto Rico Trial Court entered for the divorce case a default judgment [Pet.App. 26a-30a] in which ended the marriage but also awarded in favor of Ms. Lebrón an alleged child support debt in the amount of \$1,204.66 and ordered a monthly child support payment of \$260.00 recommended by the Child Support Examiner that since then accumulate balance. Two month later in December 2008, the Puerto Rico's Child Support Administration opened the child support case no. 0434570; and thereafter reported a child support debt to the correspondent federal and state programs for denial of passport, credit report agencies, etc.
4. Public records shows that since 2012 it has been reported on Ms. Lebrón's name different domiciliary addresses and since 2018 the child is domiciliary of Florida State. The child support debt resulted from the divorce default judgment has

accumulated balance during the years that Ms. Lebrón and the child has not been domiciliaries of Puerto Rico.

5. After denied a passport due to the Puerto Rico's Child Support Administration child support debt reported on Mr. Cruz's name, Mr. Cruz learned about the divorce default judgment. Consequently Mr. Cruz without submitted to the jurisdiction of Puerto Rico for any matter other than the divorce case, filed a motion through special appearance [Pet.App. 31a-47a] arguing that the divorce default judgment contain prejudicial errors of form because:
  - a) The award against Ms. Cruz of child support payment is in direct conflict to what the United States Supreme Court has held in *Pennoyer v. Neff*, 95 U.S. 714 (1877) and *Kulko v. Superior Court of Cal., City and County of San Francisco*, 436 U.S. 84 (1978) bounded by the Puerto Rico Supreme Court in *Pequero v. Hernández Pelot*, 139 D.P.R. 487 (1995) and *Ind. Siderúrgica v. Thyssen*, 114 D.P.R. 548 (1983);
  - b) Puerto Rico has lack of *in personam* and subject matter jurisdiction for a child support case because do not exist any minimum contact or any other legal requirements and the jurisdiction correspond original continue exclusively to New York for been the State who determined Mr. Cruz's paternal filiation pursuant N.Y. Family Court Law § 511 which stated that New York have exclusive jurisdiction to order child support when has determined the paternal filiation;
  - c) Pursuant the Federal Act of Congress Uniform Interstate Family Support Act, Puerto Rico has to recognize the original continue exclusive jurisdiction of the family court of New York which obtained and exercise its jurisdiction since 2006;

- d) Puerto Rico has lack of continue *in personam* jurisdiction over Ms. Lebrón and the child while each of them has not been domiciliaries of Puerto Rico;
- e) Pursuant the Puerto Rico Rules of Civil Procedures the default judgment cannot award child support payments because a child support is a different cause than the one invoked in the lawsuit for divorce due to separation.

The Trial Court acknowledged and attended Mr. Cruz's motion. Without Ms. Lebrón file a response or opposition to Mr. Cruz's motion, the Trial Court on its own decided that Mr. Cruz shall refer his claim to the Puerto Rico's Child Support Administration and based its decision in the Trial Court's lack of jurisdiction because Mr. Cruz did not recognize the jurisdiction of the Trial Court [Pet.App. 17a-19a]. Mr. Cruz timely filed a motion for reconsideration [Pet.App. 48a-60a] in which reasserted all arguments previously made and objected the Trial Court's decision for been erroneous without merit in law because:

- a) The Trial Court already obtained jurisdiction for the divorce case through service of process via publication after noted a default;
- b) The Puerto Rico's Child Support Administration does not have the legal authority to correct errors made by the Puerto Rico Trail Court in the divorce case;
- c) Puerto Rico has lack of *in personam* and subject matter jurisdiction to award against Mr. Cruz a child support payment.

Ms. Lebrón neither filed a response or opposition for Mr. Cruz's motion for reconsideration. The Trial Court denied Mr. Cruz's motion for reconsideration.

6. Timely Mr. Cruz without submitted to the jurisdiction of Puerto Rico for any matter other than the divorce case, filed an appeal [Pet.App. 61a-82a] case no.

KLAN202000838 in which reasserted all arguments presented at the Trial Court. The Puerto Rico Court of Appeal acknowledged Mr. Cruz's appeal and ordered a deadline for Ms. Lebrón file a response [Pet.App. 23a-25a] but Ms. Lebrón did not file a response or opposition to the appeal reason why Mr. Cruz timely filed a motion requesting the Court of Appeal enter a summary judgment. The Puerto Rico Court of Appeal opined that has lack of jurisdiction because Mr. Cruz did not submitted to the jurisdiction of Puerto Rico, affirmed the Trial Court's decision and ordered that Mr. Cruz shall refer his claim to the Puerto Rico's Child Support Administration [Pet.App. 1a-16a].

7. Timely Mr. Cruz without submitted to the jurisdiction of Puerto Rico for any matter other than the divorce case, filed with the Puerto Rico Supreme Court a petition for review case no. AC-2021-50 in which reassert all the arguments presented below and argued that the decision of the Puerto Rico Court of Appeal is erroneous without merit in law because:
  - a) Under the Constitution of Puerto Rico all the courts in Puerto Rico work as a single judicial organization and the Court of Appeal have the same jurisdiction obtained by the Trial Court in the divorce case;
  - b) The decision is in direct conflict with what the Puerto Rico Supreme Court and this Court has held;
  - c) Mr. Cruz's allegations on appeal should be deemed as admitted by Ms. Lebrón after a timely request for a summary judgment due to Ms. Lebrón's failure to response.

The Puerto Rico Supreme Court denied a discretionary review [Pet.App. 20a-22a].

## REASONS FOR GRANTING THE WRIT

The issue subject to this case is not the support of children since from 2006 that jurisdiction belongs exclusively to the State of New York who already decided the merits of the case. Neither the issue is the end of the marriage contract since Mr. Cruz agrees with it. Among the issues subject to this case, are that the civil action was filed only under the cause of divorce not child support; that a default judgment cannot be about a different cause other than the one invoked in the lawsuit; that Puerto Rico have lack of *in personam* and subject matter jurisdiction for a child support case because do not exist any minimum contact or any other legal requirements and because that jurisdiction belong original continue and exclusively to the State of New York; that the Puerto Rico's Child Support Administration is not a venue vested with power to correct errors made by the Puerto Rico Trial Court's in the divorce case.

**I. The Puerto Rico Court of Appeal has decided an important question of federal law about jurisdiction in a way that conflicts with what the Puerto Rico Supreme Court and this Court has held**

The “effects” rule that the Puerto Rico Courts applied not only is intended to reach wrongful activity outside New York which by law is the legal forum with jurisdiction for the child support case, but also intended Mr. Cruz engage in minimum contact if he make an appearance before the Child Support Administration who not only has no legal authority to correct the Trial Court's errors made in the divorce case but also have lack of subject matter jurisdiction. That is to say, if Mr. Cruz present his claim about prejudicial errors contained in the divorce default judgment, he would make a minimum contact granting jurisdiction over his person causing serious adverse harm and prejudice to his

child support case in New York. Both the Puerto Rico Court of Appeal and Trial Court are required to follow the mandatory authorities of the Puerto Rico Supreme Court issued in accordance with the controlling authorities of this Court. In accordance with this Court decision made in *Kulko v. Superior Court of Cal., City and County of San Francisco*, 436 U.S. 84 (1978), the Puerto Rico Supreme Court in *Shuler v. Shuler*, 157 P.R. Dec. 707 (2002) established that to obtain *in personam* jurisdiction for a child support case the authority of the States, including Puerto Rico, are limited and a court cannot enter a judgment against persons who are not within their territorial limits unless the existence of minimum contacts and/or other applicable legal requirements and/or exemptions. The appellate court erred when affirmed the trial court's decision to refer an issue about prejudicial errors of form made by the Trial Court in the divorce case contrary to the traditional notion of the fairness of due process of law in direct conflict with the decisions of the Puerto Rico's highest court and this Court.

**II. The Puerto Rico Court of Appeal has departure so far from the due process of law that call for the exercise of this Court supervisory power**

The Puerto Rico Supreme Court denial of discretionary review do not conclude there is not errors in the lower courts' decisions nor serve as an adjudication on the merits of the case, rather is the exercise of their discretion for do not intervene in the controversy in accordance with the Puerto Rico Supreme Court opinion made in *Sociedad Legal de Gananciales v. Pauneto Rivera*, 130 D.P.R. 749 (1992) (citation omitted). The Puerto Rico Supreme Court denial of discretionary review calls for the exercise of this Court's supervisory power to assure the Puerto Rico lower courts' decisions be made in accordance with the decisions of the Puerto Rico Supreme Court and this Court about the Due Process

Clause of the Fourteen Amendment of the United States Constitution. The absence of the Puerto Rico Supreme Court supervisory power resulted in the need of this Court intervention after the Puerto Rico lower courts' decisions departed so far from the due process of law against the judicial proceedings and contrary to the Puerto Rico Rules of Civil Procedures Rule 43.6 which requires that a judgment entered in default shall not be different in kind of the nature of the cause invoked in the original lawsuit; and Rule 49.1 which state that only the Trial Court is vested with legal authority to correct errors found in its own judgments and if an appeal is filed such authority correspond solely to the Court of Appeal. This Court's is the only forum with power to protect the interest of the United States Constitution from the possible Puerto Rico lower court's Home-State-Bias and abuse of discretion after made a decision in direct conflict with a the Federal Act of Congress Uniform Interstate Family Support Act (UIFSA) § 205(c) which state that Puerto Rico shall recognize the continuing, exclusive jurisdiction of the New York over the child support case granted by its State law under the N.Y. Family Court Law § 511 which state that in proceedings in which New York makes a finding of paternity New York family court has exclusive original jurisdiction to enter an order for child support.

The Puerto Rico Court of Appeal decision denied equal protection of laws and constitute a abuse of discretion because applied a double standard when the same reporting judge who affirmed the Trial Court's decision in other case opined that a party who has been sue in default will not waive any defense about lack of jurisdiction, do not admitted incorrect factual assertions and legal conclusions, has the right to object the amount of any alleged debt and object the default judgment, that an amount of debt should be sustained by evidence. See *Condado 3 v. Miguel Angel Pereira Suarez*, Case No.

KLAN201800156 (2018) (citation omitted). The legal interpretation of the Puerto Rico Court of Appeal about lack of jurisdiction for the issues presented on appeal is erroneous without merit in law because the Court of Appeal has the same jurisdiction that the Trial Court exercised when divorced the parties.

In this case the due process of law is vitally important because without a judicial proceeding specific for a child support case, will be impossible for a forum to review the merits and Mr. Cruz would be deprived from a discovery process to: find if during the past 10 years Ms. Lebrón has gave permission to a non-parent to claim a federal child tax credit for the child which in that instant Ms. Lebrón has not right to receive past-due child support payments directly; review Ms. Lebrón's income taxes records for the past 10 years either filed alone or join with a domestic partner/husband; find if during the past 10 years Ms. Lebrón received a federal child tax credit for the child; find if during the past 10 years Ms. Lebrón or other non-parent person has received simultaneous public benefits from different States on behalf the child; review all the applications Ms. Lebrón filed after the divorce with the Social Security Administration requesting auxiliary benefits on her behalf as Mr. Cruz's wife and on behalf of the child; find if Ms. Lebrón has requested or received any support payment from the child's paternal grandmother as provide the Puerto Rico Child Support Administration. All these, are some of the main factors that sustain why the due process of law is so vital in this case and how a child support case far reach high public interest such federal tax laws, public benefits managed with federal and states funds and subsidiary child support responsibility over grandparents. This way has been showed the abuse of discretion of the Puerto Rico lower courts and the adverse implications of their erroneous decisions.

**III. The Puerto Rico Court of Appeal decision caused serious harm to Mr. Cruz and poses a far reaching prejudice against the public interest that need this Court decide the issues presented**

The Puerto Rico Supreme Court has firmly established in *Peña v. Warren*, 162 D.P.R. 764, 773 (2004) (citation omitted) that child support is a matter of high public interest. In *Kulko v. Superior Court of Cal., City and County of San Francisco*, 436 U.S. 84 (1978) this Court already has demonstrated how similar issues about the due process of law granted by the Fourteen Amendment of the United State Constitution make this case eligible for this Court supervisory power intervention. For more than 75 years the effect rule of the *Kulko* case serve as a controlling authority after established that in order to enter a judgment against a defendant “must have certain minimum contacts with the forum State such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.” In *Shuler v. Shuler*, 157 P.R. Dec. 707 (2002) the Puerto Rico Supreme Court reaffirm that a jurisdiction issue between citizen of different territories within the States is an issue involving the United States Constitution and explain how this Court’s controlling authorities has been applied among Puerto Rico’s judicial system. Other significant issue about federal law with high public interest is the jeopardy of the Act of Congress Uniform Interstate Family Support Act not being uniform applied through our country. Those issues call for the intervention of this Court to protect the integrity of the power of our national judiciary system. The Puerto Rico lower courts’ decisions pose a far reaching prejudice not only against Mr. Cruz’s rights under the United States Constitution but also against Mr. Cruz’s rights under federal and N.Y. State laws causing serious prejudice to the public interest because of the so many other cases that has been

decided in accordance with this Court controlling authorities. Also poses the danger to set a precedent that would result in miscarried of justice to any other person similar situated who may suffer the same harm and injustice; and a precedent that would confer for the States to made similar decisions contrary to the decisions of this Court. For this last argument we consider that the territorial status of Puerto Rico is below than the status of a State, meaning that if a territory is allowed to act not in accord with our national judiciary system would have the effects rule for a State may act the same way.

Travel is part of the liberty of which a United States citizen cannot be deprive without due process of law in accordance with what this Court has held in *Kent v. Dulles*, 357 U.S. 116 (1958) (citation omitted). Mr. Cruz has suffered serious harm and adverse consequences when was deprived from his liberty after been denied a passport as a result of the illegal child support debt reported by the Puerto Rico Child Support Administration to the correspondent federal and state programs for denial a passport. Puerto Rico lower courts' decisions not only violated Mr. Cruz's right to get a passport but also put in danger his freedom with a threat of jail because of the illegal child support debt accumulated for more than a decade with an outstanding balance until this date. Also threat his property because a lien is enforceable to satisfy the illegal child support debt. Other Mr. Cruz's suffered damages resulted after the Puerto Rico Child Support Administration reported the illegal child support debt to the consumer credit reporting agencies negatively affecting his personal credit score resulting in high interest rate, limited housing opportunities, etc. But above all is the harm caused to Mr. Cruz's New York child support case with exclusive jurisdiction exercised years before to the divorce lawsuit and over which already has entered a final order on the merits in favor of Mr. Cruz. Puerto Rico

Trial Court's order entered in default establishing a child support payment not only is against the basic principle of substantial justice and fairness of the proceedings but resulted in a second ruling over the same matter which applied the same principle involved in the Double Jeopardy Clause of the Fifth Amendment of the United States Constitution which state that no person shall be subject for the same offense to be twice put in jeopardy of life or limb.

**IV. This case provide the opportunity for this Court clarify mandatory versus persuasive authority applicable as long-arm jurisdiction of the minimum contacts doctrine abide by the Puerto Rico Supreme Court**

The doctrine of minimum contacts were established by this Court in *International Shoe v. State of Washington*, 326 U.S. 310 (1945) (citation omitted) and reaffirmed for child support cases in *Kulko v. Superior Court of Cal., City and County of San Francisco*, 436 U.S. 84 (1978). This case may serve as a vehicle to clarify how the minimum contact doctrine established by this Court is applicable as a long-arm jurisdiction to the territory of Puerto Rico. Also this case provide the opportunity for this Court reaffirm the Puerto Rico Supreme Court's decisions that are bound to the controlling authorities of this Court which are mandatory not persuasive authorities for the Puerto Rico lower courts.

#### **CONCLUSION**

For all the above, in the furtherance of justice this petition for a writ of certiorari should be granted.

Respectfully submitted on this date of June 11<sup>th</sup> of 2021 by Damian Cruz, the petitioner as pro se.

Signature:



Damian Cruz, Petitioner as pro se