No. 21-718

IN THE

# Supreme Court of the United States

HERMANDAD DE EMPLEADOS DEL FONDO DEL SEGURO DEL ESTADO, *et al.*,

*Petitioners,*

*v.*

UNITED STATES, *et al.*,

*Respondents.*

**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT**

## BRIEF IN OPPOSITION


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## QUESTION PRESENTED

To invoke the jurisdiction of a federal court, a plaintiff must establish the "irreducible constitutional minimum" of Article III standing: an injury-in-fact fairly traceable to the conduct of the defendant and likely to be redressed by a favorable judicial decision. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). Applying those well-established principles, the court of appeals concluded Petitioners lacked standing to challenge the Puerto Rico Oversight, Management, and Economic Stability Act ("PROMESA") in two different ways. Petitioners' claim that PROMESA diminished the independence of the Puerto Rico government was a "generalized grievance" that caused Petitioners no particularized injury. Their alternative theory that economic harm allegedly caused by four Commonwealth statutes supplied standing was wrong because none of the requested federal relief would invalidate those statutes and redress the alleged injury.

The sole Question Presented is:

Did the court of appeals correctly conclude Petitioners lacked Article III standing?

## RULE 29.6 STATEMENT

Respondent the Financial Oversight and Management Board for Puerto Rico, in its own capacity and as representative of the Commonwealth of Puerto Rico, is not a nongovernmental corporation and is therefore not required to submit a statement under Supreme Court Rule 29.6.

# TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Page(s)**

**CASES**

**Statutes and Other Authorities**

## BRIEF IN OPPOSITION

Respondents respectfully submit that the petition for a writ of certiorari should be denied.

## STATEMENT OF THE CASE

The Petition mischaracterizes the issue decided below and incorrectly claims its resolution requires overruling the *Insular Cases* and settling the question of Puerto Rico's political status. Petitioners sought to strike down the Puerto Rico Oversight, Management, and Economic Stability Act ("PROMESA") as unconstitutional and to invalidate the actions of the Financial Oversight and Management Board for Puerto Rico (the "Board"). Petitioners were unable to show they had suffered any particularized, redressable injury, however, and therefore their action was dismissed for lack of Article III standing. The only question presented now is whether that ruling was correct. Neither the *Insular Cases* nor Puerto Rico's political status bear on Petitioners' failure to establish Article III standing.

Certiorari should be denied because the Article III standing question does not satisfy any of the traditional criteria warranting this Court's review. Petitioners do not argue the decision below creates or widens a circuit split. They claim a conflict with this Court's precedents, but they misunderstand what that means. The Petition argues the court below *misapplied* this Court's Article III jurisprudence and calls that a "conflict." Pet. 17–26. A misapplication of a rule of law does not create a conflict, however, nor is it a basis for granting certiorari. *See* Sup. Ct. R. 10.

Petitioners offered two theories of "injury" to satisfy Article III. First, they argued PROMESA and the Board took power away from the Commonwealth's elected government, violating their rights. Petitioners essentially complain that, because PROMESA transferred certain powers to the Board which were formerly exercised by elected officials, Petitioners' votes no longer control who exercises those powers. The court below correctly held that was a "generalized grievance" about the structure of government that could be asserted by every resident of Puerto Rico and thus could not supply standing to these Petitioners. Second, Petitioners argued four statutes enacted by the Commonwealth and incorporated into the fiscal plans certified by the Board impaired rights guaranteed by their collective-bargaining agreements. The court correctly held that injury was not redressable in this lawsuit. Petitioners had asked the Title III court to invalidate PROMESA, enjoin the Board from acting, overrule the *Insular Cases*, and "decolonize" Puerto Rico. None of that relief would eliminate the Commonwealth statutes or redress harms allegedly emanating from them.

Petitioners do not argue either of those decisions applied a different rule of law or reached a different outcome from any holding of this Court involving materially similar claims. In truth, both decisions were run-of-the-mill applications of well-settled doctrine. And both were plainly correct. Accordingly, there is no persuasive ground for granting certiorari, and the Petition should be denied.

1. Puerto Rico is in the midst of what Congress determined to be a "fiscal emergency" that has left the

Commonwealth government unable to provide its citizens with basic essential services. 48 U.S.C. § 2194(m)(1), (2). In 2016, Congress enacted PROMESA to address that fiscal emergency. *Id.* §§ 2101–2241.

PROMESA established the Board as an entity within the Puerto Rico government. *Id.* § 2121(c)(1). The Board's mission is to help the Commonwealth "achieve fiscal responsibility and access to the capital markets." *Id.* § 2121(a). To that end, PROMESA grants the Board extensive authority over long-term fiscal plans and budgets in Puerto Rico, *id.* §§ 2141–2142, and authorizes the Board to commence debt-restructuring cases under Title III of the statute on behalf of the Commonwealth and its covered instrumentalities, *id.* § 2164(a). The Board commenced a Title III debt-restructuring case for the Commonwealth in May 2017.

Congress enacted PROMESA pursuant to its Article IV power to make all needful rules and regulations for the territories. *Id.* § 2121(b)(2); *Fin. Oversight & Mgmt. Bd. for P.R. v. Aurelius Inv., LLC*, 140 S. Ct. 1649, 1656 (2020); *see also* U.S. Const. art. IV, § 3, cl. 2. When legislating under Article IV, Congress has "broad latitude to develop innovative approaches to territorial governance," *Puerto Rico v. Sánchez Valle*, 579 U.S. 59, 77 (2016), and it can enact laws "that would exceed its powers, or at least would be very unusual" in other contexts, *Aurelius*, 140 S. Ct. at 1658 (quoting *Palmore v. United States*, 411 U.S. 389, 398 (1973)).

2. Petitioners are two labor unions representing employees of Puerto Rico's State Insurance Fund Corporation ("CFSE") and a member of one of the unions.[1] The unions are parties to collective-bargaining agreements with CFSE.

In May 2018, Petitioners brought an adversary proceeding within the Commonwealth's Title III case against the Board, the United States, the Commonwealth, and its governor seeking to strike down PROMESA and have Puerto Rico "decolonized." *See* C.A. Joint App'x ("JA") 20–100.[2] In their operative complaint, Petitioners alleged that, since acquiring Puerto Rico in the Spanish-American War, the United States imposed colonial rule and deprived the Commonwealth of its right to self-determination. JA43–53. They further alleged PROMESA infringed their right to vote by establishing a Board with the power to overrule decisions by the Commonwealth's elected government. JA25–26, JA42–43, JA64–66. They also claimed certain unspecified rights and benefits guaranteed by their collective-bargaining agreements with CFSE had been impaired by four Puerto Rico statutes and that those four statutes were "incorporated" into the Commonwealth's fiscal plan certified by the Board. *See* JA36, JA40–41.[3]

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[1] Other union members were plaintiffs below but have since either withdrawn from the case or passed away.

[2] Because Petitioners failed to include their adversary complaint in the appendix to the Petition, this brief references the joint appendix at the court of appeals.

[3] The same two unions brought a separate adversary proceeding in 2018 challenging the four Commonwealth statutes under the

Petitioners' complaint asserted ten causes of action. JA93–97. Count One requested a declaration that the "Universal Freedoms of the right to vote and to have full political participation . . . warrant[] the remedies sought in this adversary proceeding." JA93. Counts Two through Eight sought to strike down PROMESA and nullify and enjoin all actions taken by the Board as violating the First, Fifth, Thirteenth, Fourteenth, and Fifteenth Amendments to the United States Constitution. JA94–96. Count Nine requested an order overruling the *Insular Cases*, which held Puerto Rico is an "unincorporated" territory not subject to the Constitution's full protections. JA96–97. And Count Ten asked the court to "declare the existence of an illegal colonial regime that is subject to the procedures enacted by international law to decolonized Puerto Rico, under the Declaration on the Granting of Independence to Colonial Countries and Peoples, adopted by General Assembly resolution 1514 (XV) of December 14, 1960." JA97.

3. Defendants moved to dismiss the complaint for lack of subject-matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1) and for failure to state a claim under Rule 12(b)(6). The Title III court granted the motions without reaching the merits because Petitioners lacked Article III standing. Pet. App. 29–40.

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Contract Clause. The Title III court dismissed that case for failure to state a claim, and the First Circuit affirmed. *Hermandad de Empleados del Fondo del Seguro del Estado, Inc. v. Fin. Oversight & Mgmt. Bd. for P.R. (In re Fin. Oversight & Mgmt. Bd. for P.R.)*, 979 F.3d 10 (1st Cir. 2020). This Court denied the unions' petition for certiorari. *See Hermandad de Empleados del Fondo del Seguro del Estado, Inc. v. Puerto Rico*, 142 S. Ct. 76 (2021).

The Title III court began its standing analysis by examining Petitioners' alleged political injuries—*i.e.*, their complaints about Puerto Rico's territorial status and the establishment of the Board with the power to overrule certain decisions by the elected Commonwealth government. Pet. App. 34–36. The court held those injuries were not particularized to Petitioners but instead were generalized grievances about the Puerto Rico government shared by all residents of Puerto Rico. *Id.* As the court observed, Petitioners failed to "explain how the rulings sought in any of their prayers for relief would directly and tangibly benefit [them] more than the Puerto Rican public at large," and therefore their political claims did not satisfy Article III. Pet. App. 35.

The Title III court further held standing was not created by Petitioners' allegation that certain rights under their collective-bargaining agreements had been impaired by four statutes enacted by the Commonwealth government and incorporated into the fiscal plan certified by the Board. Pet. App. 36–40. Assuming those alleged harms constitute injuries-in-fact, the court nevertheless found them not redressable in this case. Pet. App. 37–39. As the court observed, those four statutes would remain on the books even if the court granted Petitioners all their requested relief. *Id.* The requested relief was thus not "tailored" to the alleged injury. Pet. App. 39. In the court's words, Petitioners "do not assert that the relief sought would itself result in the repeal of the Challenged Legislation," which "was enacted by the elected Commonwealth Legislature." *Id.*

Since neither type of "injury" alleged in Petitioners' complaint satisfied the requirements for Article III standing, the Title III court dismissed the complaint in its entirety. Pet. App. 40.

4. A unanimous panel of the court of appeals affirmed. Pet. App. 3–9. The panel began by observing that Article III limits a federal court's jurisdiction to resolving cases and controversies, which exist only if "the plaintiff has demonstrated 'such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends.'" Pet. App. 5–6 (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)).

The panel agreed with the Title III court that Petitioners' complaints about the four Commonwealth statutes allegedly impairing their collective-bargaining rights were not redressable by Petitioners' lawsuit. Pet. App. 6–7. "The problem with the plaintiffs' contention," the panel explained, "is that none of the relief that they seek would prevent any of the laws that they contend caused them pecuniary harm from continuing to have full force and effect." Pet. App. 7. Accordingly, even if Petitioners were to prevail, they would continue to suffer "the pecuniary harm they trace back to those laws." *Id.*

The panel also agreed that Petitioners' complaint about diluted voting power was a generalized grievance insufficient to support standing. Pet. App. 7–8. It found Petitioners' alleged harm was not concrete or particularized to Petitioners because it "results from the fact that PROMESA and the [Board's] actions are preemptive of local law." Pet. App. 8 (citing *Gill v.*

*Whitford*, 138 S. Ct. 1916, 1923 (2018)). That Petitioners are aggrieved because federal law preempts territory law is the opposite of a particularized injury required for Article III standing.

The panel recognized that Petitioners' claims seeking to strike down PROMESA were "weighty ones" but stressed that, "to be fit for adjudication in federal court, they must be raised in a suit that satisfies the requirements of Article III." Pet. App. 9. Having found that Petitioners lacked standing under Article III, the panel affirmed the Title III court's order of dismissal. *Id.*

5. Petitioners sought panel rehearing and rehearing en banc. Both requests were denied without dissent. Pet. App. 43–46.

The petition for certiorari followed.

## REASONS FOR DENYING THE PETITION

### I. There Is No Conflict With Any Decision From This Court.

Petitioners do not contend the court of appeals applied an incorrect rule of law. Nor could they. The court of appeals correctly held Article III requires a plaintiff to establish an injury-in-fact, causation, and redressability. Pet. App. 6 (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992)). And it correctly held injury-in-fact, in turn, requires a "'personal stake in the outcome,' distinct from a 'generally available grievance about government.'" Pet. App. 8 (quoting *Gill*, 138 S. Ct. at 1923). Instead, Petitioners

merely take issue with the application of those general rules to their particular set of facts. That is not a basis for granting certiorari. *See* Sup. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of . . . the misapplication of a properly stated rule of law.").[4]

Petitioners make only a glancing effort to claim a conflict with a handful of decisions from this Court. None of those precedents are on point because they involved materially different facts. Petitioners are really asking this Court to remedy perceived errors in the application of its Article III standing jurisprudence under the guise of reviewing a "conflict." This Court is not in the business of "[e]rror correction," *Cavazos v. Smith*, 565 U.S. 1, 9 (2011) (Ginsburg, J., dissenting), however, and there was no error here in any event.

### A. Generalized Grievance

Petitioners try to compare this case to *Baker v. Carr*, where voters in overpopulated districts claimed a Tennessee statute apportioning state representation "impair[ed]" the effectiveness of their votes vis-à-vis voters in less-populated districts. 369 U.S. 186, 208 (1962) (cited in Pet. 20). In *Baker*, this Court held the voters had asserted a sufficiently individualized injury to support Article III standing based on allegations that their voting districts were granted disproportionately fewer state representatives than other districts having fewer voters. *Id.* at 206; *see also Gill*,

[4] Petitioners do not argue that the decision below implicates a circuit split.

138 S. Ct. at 1930 (emphasizing *Baker* was "expressly premised" on a showing of "disadvantage to [voters] as individuals"). Here, by contrast, Petitioners did not allege any impairment to their voting power for territorial representatives vis-à-vis other Puerto Rico residents, much less the type of "population inequality among districts" at issue in *Baker*. *See Rucho v. Common Cause*, 139 S. Ct. 2484, 2496 (2019). Indeed, Petitioners did not allege an injury to their voting rights at all, but rather claimed that PROMESA diminished the power of the *territorial government* by empowering the Board to overrule its decisions. JA25–26. That is an abstract complaint about the manner in which Congress structured the Puerto Rico Government under PROMESA (which preempts Puerto Rico law pursuant to the Supremacy Clause), which is nothing like the disproportionate representation injury particularized to the voters in *Baker*.

Petitioners contend their grievance is not "generalized" because it is limited to citizens of Puerto Rico and not shared by residents of the fifty states, who are not subject to PROMESA or the Board. Pet. 14–15. But they misunderstand the meaning of a generalized grievance. The question is not *how many people* would share the same claim; it goes to the *nature of the claim*, whether it is based on a concrete and specific injury (caused by defendants and redressable by the relief requested) or one that is merely abstract and diffuse. *See Carney v. Adams*, 141 S. Ct. 493, 499 (2020) (complaint about a state's process for selecting judges is a generalized grievance absent showing the process causes the plaintiff a "personal and individual" injury). For example, a suit asserting the state did not redistrict in accordance with state law failed

to articulate the litigants' stake in the litigation because the claim was a generalized complaint about the conduct of government. *Lance v. Coffman*, 549 U.S. 437, 442 (2007). Similarly, proponents of California's Proposition 8 lacked standing to appeal a decision striking down the initiative because they had "no 'personal stake' in defending its enforcement that is distinguishable from the general interest of every citizen of California." *Hollingsworth v. Perry*, 570 U.S. 693, 707 (2013); *see also Doremus v. Bd. of Educ.*, 342 U.S. 429, 433 (1952) (dismissing as generalized grievance a challenge to a New Jersey statute). As in *Lance* and *Perry*, Petitioners did not allege they had been injured in any particularized way by PROMESA, and they therefore lack standing to challenge the statute.[5]

Petitioners also half-heartedly claim a conflict with *FEC v. Akins*, 524 U.S. 11 (1998). *See* Pet. 17–18. In *Akins*, the plaintiffs had standing because they suffered a "concrete and particular" harm from being denied access to statutorily required information that would have helped them evaluate candidates for office. 524 U.S. at 21. No such deprivation of information or similar concrete injury was alleged here. *See TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2214 (2021) (distinguishing *Akins* where there was no alleged deprivation of "required information"). Nor did Petitioners otherwise allege any concrete harm particularized to themselves, but rather alleged abstract grievances about the structure of the Puerto Rico government. *See Massachusetts v. EPA*, 549 U.S.

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[5] Petitioners' reliance on 11 U.S.C. § 1109(b) (*see* Pet. 15) is unavailing because a statute cannot confer standing on parties who do not satisfy Article III. *See Spokeo*, 578 U.S. at 339.

497, 522 (2007) (noting that "widely shared" injuries must be "concrete" under *Akins*). That Article III standing was established in *Akins* based on materially different allegations of injury does not create a conflict with the decision below.[6]

### B. Redressability

Petitioners' other theory of injury was that they allegedly suffered harm to their "collective bargaining agreements and/or labor rights" as a result of four statutes enacted by the Commonwealth government. JA33, JA40–41. As the court of appeals concluded, that alleged harm would not be redressed by the relief sought in the complaint, because even if the court enjoined the Board, overruled the *Insular Cases*, and awarded everything else Petitioners requested, the Commonwealth statutes would remain on the books. And any speculation that the Puerto Rico government might reverse course and repeal those statutes if PROMESA were struck down is pure conjecture. *See Lujan*, 504 U.S. at 561 (to establish standing, "it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision" (quotation marks omitted)).

Petitioners do not even try to identify a decision from this Court or another court of appeals conflicting

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[6] Even further afield are *Stern v. Marshall*, 564 U.S. 462 (2011), and *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982) (plurality opinion). Pet. 15–16. Neither case addressed standing but instead considered Article III challenges to non-Article III bankruptcy judges' power to determine disputes that would have gone to the law courts in England in 1789.

with that holding. That is not surprising because the holding below was an entirely routine application of the concept of redressability. The court of appeals did not need to go out on a limb to conclude there is no case or controversy if the lawsuit does not address the complained-of injury.

Petitioners' allegation that the fiscal plan certified by the Board in 2018 "incorporated" the four Commonwealth statutes allegedly causing Petitioners' "collective bargaining" injury does not change the analysis. JA40. The mere fact that the fiscal plan endorsed existing Commonwealth statutes and made fiscal projections on the assumption that those statutes would remain in force does not mean that the Board caused Petitioners any injury. To the extent Petitioners have suffered an injury, the statutes themselves—enacted by the Commonwealth government *before* the Board certified the fiscal plan—caused that injury. Moreover, striking down PROMESA or overturning the *Insular Cases* would not provide Petitioners any redress because even if the fiscal plan certified under PROMESA no longer existed, the four Commonwealth statutes allegedly causing Petitioners' injury would remain in force.[7]

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[7] For the first time, Petitioners introduce the claim that they have been harmed by unspecified "austerity measures" imposed by the Board that supposedly affected their unidentified "property and vested rights." Pet. 9. Those allegations were not asserted in the complaint, however, and such vague allegations are insufficient to establish Article III standing in any event. Petitioners also fail to acknowledge Congress enacted PROMESA to address a fiscal emergency in Puerto Rico, 48 U.S.C.

## II. This Case Does Not Present An Opportunity To Overturn The *Insular Cases*.

Petitioners misrepresent the issues at stake when they argue this is the "perfect case" to overrule the *Insular Cases* and to determine "the lawfulness of Puerto Rico's status" as a territory. Pet. 26–38.[8] This case was resolved on the narrow ground that Petitioners lacked Article III standing to pursue their claims. *See* Pet. App. 12–13. Accordingly, should the Court grant certiorari, the sole question presented would be whether Petitioners established injury-in-fact, causation, and redressability. Broader questions concerning Puerto Rico's legal status or the viability of the *Insular Cases* are simply not presented.

To be sure, the complaint below criticized the *Insular Cases* and alleged Puerto Rico's status as a territory of the United States amounts to illegal colonialism. *See, e.g.*, JA43–53. The courts below properly did not reach those allegations because Petitioners lacked Article III standing. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998) (explaining that courts cannot resolve a case's merits unless jurisdiction is established). Neither court even mentioned the *Insular Cases*. As a result, this Court would likewise have no occasion to address them. *See Ret. Plans*

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§ 2194(m)(1), which means that austerity measures were already necessary before the Board was created.

[8] In the *Insular Cases*, this Court created the doctrine of incorporated and unincorporated Territories, the latter of which are guaranteed only "fundamental" constitutional rights. *See, e.g.*, *Dorr v. United States*, 195 U.S. 138 (1904); *Downes v. Bidwell*, 182 U.S. 244 (1901).

*Comm. of IBM v. Jander*, 140 S. Ct. 592, 595 (2020) ("The [court of appeals] did not address these arguments, and, for that reason, neither shall we." (cleaned up)). After all, this is "a court of review, not of first view." *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005).

Moreover, even if this case had been resolved on the merits rather than on Article III standing grounds, it *still* would not present an opportunity to revisit the *Insular Cases* because those cases have no bearing here. As the Petition correctly explains, the *Insular Cases* established a distinction between (a) "incorporated" territories, where the Constitution applies in full, and (b) "unincorporated" territories, where some constitutional provisions might not apply. Pet. 26–27. None of Petitioners' claims turns on that distinction, however.

In Counts Two through Eight, Petitioners sought declarations that PROMESA and actions taken by the Board pursuant to PROMESA violate the First, Fifth, Thirteenth, Fourteenth, and Fifteenth Amendments to the United States Constitution. *See* JA94–96. Each of those amendments applies in Puerto Rico notwithstanding its unincorporated status. *See, e.g.*, *Posadas de P.R. Assocs. v. Tourism Co. of P.R.*, 478 U.S. 328, 331 n.1 (1986) ("We have held that Puerto Rico is subject to the First Amendment Speech Clause, the Due Process Clause of either the Fifth or the Fourteenth Amendment, and the equal protection guarantee of ei-

ther the Fifth or the Fourteenth Amendment." (citations omitted)).[9] Accordingly, the *Insular Cases* have no bearing on the merits of those claims. Likewise, Counts One and Ten, which sought relief under international law and the "Universal Freedoms of the right to vote and to have full political participation," do not implicate the *Insular Cases*. JA93, JA97.

In Count Nine, Petitioners requested a declaration overruling the *Insular Cases*. JA96–97. That does not work as a freestanding claim. Precedent may be overruled only if it would otherwise control the outcome of a case but was wrongly decided, and here, for the reasons explained above, the *Insular Cases* have no substantive impact on the outcome of any of Petitioners' claims. Thus, there is no opportunity for the Court to overrule the *Insular Cases* in this litigation, notwithstanding Petitioners' request.

In an effort to make the *Insular Cases* appear relevant to this case, Petitioners contend PROMESA could not have been enacted but for the *Insular Cases*. Pet. 26 (arguing that PROMESA was enacted "pursuant to the Territories Clause of the U.S. Constitution *as interpreted in the Insular Cases*" (emphasis added)). That is not correct. Congress enacted PROMESA using its plenary powers under Article IV of the Constitution to make all needful rules and regulations for the territories. 48 U.S.C. § 2121(b)(2);

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[9] Although this Court has not had the opportunity to address the question, the Thirteenth and Fifteenth Amendments plainly apply in Puerto Rico. Indeed, the Thirteenth Amendment by its terms applies anywhere subject to the jurisdiction of the United States. *See* U.S. Const. amend XIII.

*Aurelius*, 140 S. Ct. at 1658. Congress would have had the power to enact PROMESA under Article IV regardless of whether the *Insular Cases* had ever been decided. Indeed, even before the *Insular Cases*, this Court recognized Article IV grants Congress "full and complete legislative authority over the people of the Territories and all the departments of the territorial governments." *Nat'l Bank v. Cnty. of Yankton*, 101 U.S. 129, 133 (1879); *see also Aurelius*, 140 S. Ct. at 1659 (citing examples of Congress exercising its Article IV powers to enact laws concerning the governance of the territories prior to the *Insular Cases*).

Petitioners' contentions that the *Insular Cases* are "morally repugnant," "anti-democratic," and wrongly decided may be true, but that is beside the point. Pet. 28, 30–31. The sole question presented in the Petition is whether Petitioners have Article III standing, and the *Insular Cases* are not relevant to that question. *Cf. Aurelius*, 140 S. Ct. at 1665 (declining to address an argument that the *Insular Cases* should be overruled because the *Insular Cases* had no bearing on the outcome of the case).[10]

For the same reasons, the Petition misses the mark when it contends this case presents the "novel issue" of "the lawfulness of Puerto Rico's status as a colony of the U.S." Pet. 32. By "colony," Petitioners are referring to Puerto Rico's status as an unincorporated territory pursuant to the *Insular Cases*. *See id.* at 32–38. For the reasons stated, the issue of Puerto

[10] The Petition's lengthy discussion of *stare decisis* is likewise of no moment because this case does not present an opportunity to overrule the *Insular Cases*. Pet. 28–30.

Rico's unincorporated status under the *Insular Cases* is not presented here.

## III. This Case Is A Poor Vehicle Because The Complaint Is Meritless.

Even if the Court were interested in the question of whether allegations like those in the complaint satisfy the elements of Article III standing, this case is a poor vehicle for taking up that question because the complaint is meritless on its face. Petitioners are exceedingly unlikely to prevail even if the Court were to grant certiorari and reverse on the Article III standing question. The Court should conserve its resources and await a case presenting a similar question where its decision could affect the ultimate outcome.

The gravamen of Petitioners' complaint is that the Constitution precludes Congress from establishing a Board with the power to overrule the Commonwealth's elected government on fiscal and budgetary matters. *See, e.g.*, JA64 ("Given the constitutional rights residents of Puerto Rico have, in particular the right to vote, Congress cannot create a government structure like the FOMB with powers over the elected Government of Puerto Rico."). That position runs contrary to centuries of precedent recognizing Congress's plenary authority under Article IV both to make local law for the territories and to "create[] structures of local government" that make and enforce local law. *Aurelius*, 140 S. Ct. at 1658–59 (citing examples). When Congress establishes a local government in the territories, "the form of government it shall establish is not prescribed." *Binns v. United States*, 194 U.S. 486, 491 (1904); *see also Yankton*, 101 U.S. at 133 (Congress

"has full and complete legislative authority over . . . all the departments of the territorial governments"). Indeed, even if Congress permits a territory to elect its own government, it maintains ultimate veto power over that government. *Examining Bd. of Eng'rs, Architects & Surveyors v. Flores de Otero*, 426 U.S. 572, 596 & n.28 (1976); *see also Boyd v. Nebraska*, 143 U.S. 135, 169 (1892) ("It is too late at this day to question the plenary power of congress over the territories."). Accordingly, there is nothing unconstitutional about Congress choosing to structure the Puerto Rico government with a Board that oversees budgetary and fiscal matters. To the contrary, that is precisely what Article IV contemplates.

## CONCLUSION

The petition for a writ of certiorari should be denied.

January 18, 2022

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