

No. 17-1007

**IN THE
SUPREME COURT OF THE UNITED STATES**

GREGORIO IGARTUA, *et. al.*,
Petitioners

V.

UNITED STATES, *et. al.*,
Respondents

On Petition for a Writ of Certiorari to the
U.S. Court of Appeals “en banc”
For The First Circuit

PETITIONERS’ REPLY BRIEF

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QUESTION

THE COURT SHOULD GRANT THE PETITION TO RESOLVE THE QUESTION OF WHETHER THIS CASE SHOULD BE JUDICIALLY DISPOSED OF BY CONVENING A SPECIAL THREE JUDGE COURT

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OF BY CONVENING A SPECIAL THREE JUDGE
COURT.**

ARGUMENTS

Respondents’ Brief In Opposition is based on arguments related to the merits of the case and not to the jurisdictional issue of 28 USCA 2284, as exposed in the Petitioners’ Brief.

It is pertinent to clarify and emphasize that the only issue involved in the Petition before this Court is the request that the complaint should be judicially disposed of as the law provides, by a Three Judge Court. It is pertinent to clarify that Petitioners are not litigating the merits of the case, as Respondents pretend with their argument in their Brief in Opposition. Rather, these are requesting that under their equal protection of the law and their due process rights their case be judicially disposed of by a Three Judge Court, as Congress has provided for cases of apportionment (28 USCA 2284), the jurisdictional rule for how these cases of apportionment must be judicially dispose. This legislation deserves the utmost deference from the Federal Courts.

Respondents argued about the non-applicability of the ICCPR (Article 25) Treaty quoted by the Petitioners in their complaint. Although the articulation of human rights norms at the international level is part of the arguments of the complaint, this is not the principal issue before this Honorable Court in the Petition, nor are other arguments of the well supported merits of the case. Rather, the principal and only issue pending before this Honorable Court is the question of whether the case should be remanded, as the law provides (28 USCA 2284), for judicial disposition to a thee judge court in the Federal District Court of Puerto Rico.

As American citizens for more than 100 years (since 1917), Petitioners demand government by consent of the governed, the right to vote for five Representatives to the U.S. House of The People.

(Puerto Rico is being denied the right to vote for five representatives under the population requirement, as determined by the U.S. Census).

Considering Petitioners' constitutional equal and due process rights, this Petition for Certiorari should be granted so that the 3.4 million American citizens of Puerto Rico have the opportunity to have their complaint be heard by a three judge court.

When Petitioners-Plaintiffs filed this complaint they requested the District Court for Puerto Rico to name a Special Three Judge Court, as required by law for cases as this one involving apportionment of Representatives. (28 USCA 2284). Respondents-Defendants opposed. The District Court denied Petitioners' request on the ground that it felt bound by a former "en banc" opinion in a previous case by Plaintiffs'. (See footnote in *Igartua IV 626 F3d at 598 n.6*). (Pet. Annex Brief 11-12). (See also, Annex C). (The District Judge dismissed the complaint without Petitioners-Plaintiffs having the opportunity of an Answer to the Complaint). In doing so, the Court avoided addressing the legal basis for the denial of such special procedures dictated by Congress, and omitted what legal basis requires affording Petitioners treatment that differs from that given to the residents of the Territory of D.C. (See, *Adams v. Clinton*, 26 F. Supp. 2nd 156 DCDC. 1998, 53, U.S. 941).

Moreover, the Plaintiffs appealed to the First Circuit and the three Federal Judges members of the Panel were in agreement that this case should be judicially disposed by a Three Judge District Court, supporting Petitioners request, (Pet. Brief Annex B).

The case was then referred to the “en banc” Court for judicial disposition. The “en banc” Court denied remanding the case to a Three Judge Court on a 4-3 opinion. (Pet. Brief Annex A).

Contrary to Respondents arguments, Petitioners Claim to have their complaint be heard by a three judge court is not pretentious, nor unprecedented. It is solidly supported by:

- a) Congressional legislation that provides for cases as this one of apportionment of representatives. (28 USCA 2884).
- b) Three dissident opinions of federal judges of the Court “en banc” in the First Circuit (Pet. Brief - Annex A; 4-3 opinion). It is pertinent to consider that one of the four judges of the “en banc” opinion, Judge Howard, made a contradictory reversal in the “en banc” opinion of his previous stance (*Igartua v U.S.* 417 F 3d 145, 1st Cir. 2005) on the applicability of ICCPR to the voting rights requests. (Pet. Brief pg. 7).
- c) Three opinions of the three federal judges of the Panel of the First Circuit. (Pet. Brief Annex B).
- d) Concluding remarks of Judge Gregory Garcia in his opinion at the District Court in contradiction to his dismissal opinion of the complaint, and in support of the Plaintiffs’ voting rights request. (Pet. Brief Annex C pages 62-73).
- e) Judicial Precedent – *Adams v. Clinton*, 26 F. Supp. 2d 156 (531 US 941) (Pet. Brief pg.10). In *Adams v. Clinton*, 26 F. Supp. 2d 156 (D.C.D.C. 1998), the District Court granted

the citizens of the Territory of the District of Columbia, the right to have their complaint (similar to this one) heard by a Three Judge Court and it was affirmed by this Honorable Court.

Thus, doors to the 28 USCA 2884 judicial process remedy should not be close to Petitioners as Respondents pretends and argues in its opposition Brief. These were not closed to Plaintiffs, American Citizens residents of the Territory of DC in that similar case. (*Id. Adams*).

With their Brief in Opposition Respondents pretend to separate the apportionment process from any constitutional provision for which the process was implemented, particularly U.S. Constitutional due process and equal protection of the law rights. (See also, other constitutional provisions in support of Petitioners arguments (Pet. Brief pg. iv). Consider ironic that Respondents has forced the Government of Puerto Rico to spend \$10 million annually to the Police Department in how to ensure that the U.S. constitutional provisions of due process and equal protection of the law are applied to its American Citizens residents of Puerto Rico while in service (*U.S. v. P.R. Police Dept.*, 922 F. Supp. 2nd. 185, (2013)).

Within this context, this Honorable Court should consider that Respondents have not advanced any argument in favor of the notion that the appointment of the three-judge court will affect the procedures, or will cause any harm to any of the parties to the Complaint. Denial of Petitioners' rights to have this case be judicially disposed by a

three judge court lacerates their due process and equal rights, and evidence that Respondents adopt and further the practice of affording the least amount of rights possible to the American citizens of Puerto Rico, a lowest common denominator approach to human and fundamental rights. Respondent's argument against a three judge court, as requested by Petitioners' are mere jurisdictional pretexts. (Pet. Brief- App. A pg.10).

By denying Petitioners' judicial disposition of this case by a Three Judge Court, as requested by Respondents, the Petitioners will be left without due process and equal protection of the laws as provided by the U.S. Constitution. Petitioners have been confined to a state of servitude by disenfranchisement with respect to elections of five U.S. Representatives, and in a way inconsistent and contrary to interpretations of the federal Courts for 118 years. The denial of the right to vote in such elections is a condition of servitude upon all the American citizens of Puerto Rico (Servants), because all are compelled to accept the applicability of government without their consent from the House of Representatives (Master). (Compare to the Slaughter House Cases – 83 US 36.)

As in the Police Department case, Respondents litigate in some cases for the applicability to Puerto Rico of U.S. Constitutional provisions and discriminatorily not for others. Moreover, in this case they oppose that it be judicially dispose of as Congress has provided. This contradictory practice is not tolerated anymore by some federal judges. As recently as this month the Hon. Federal Judge

Gustavo Gelpí, in the District Court of Puerto Rico held:

"... Hence, the Court agrees with Vaello-Madero that the United States' voluntary dismissal "raises the prospect that the United States might be trying to abandon its chosen forum in response to what it might perceive as a serious setback." (Hon. Judge G. Gelpi and Docket No. 25 at 12 May 2018, D.C. P.R.). The Court will not allow the United States to avoid judicial review of an unsympathetic topic using jurisdictional pretexts.

Therefore, the United States' motion for voluntary dismissal at Docket No. 23 is DENIED..." (See also, Consejo de Salud Playa de Ponce v Rullan 586 FS 2d 22 2008; U.S. v Laboy 553 F 3d 715).

It is pertinent to consider that Judge Torruella dissented from the denial of rehearing "en banc", arguing that petitioners' "en banc" request "raises a question of exceptional importance." (Pet. App. B) and that Judges Lipez and Thompson also separately dissented arguing that plenary review of Petitioners' claims was appropriate.

This case is suitable for judicial relief. It is related to what Petitioners are, American citizens by birth, as are the other 3.4 million members of this class action, not on what these may be (Since 1917). Petitioners present a justifiable "case and

controversy “which a three judge court can and should decide.

Respondents’ Opposition Brief arguing contrary to what the law provides for Petitioners for cases of apportionment is discriminatory. These are requesting this Court that it denies the right to what the law provides for cases of apportionment, the applicability of (28 USCA 2884). Moreover, Respondents pretend this Court to also discriminate against Petitioners by requesting that it denies also to them what such law provides. Under what legal and/or rational basis can Respondents (or this Honorable Court) justify the unequal treatment or denial of due process to the American Citizens residents of Puerto Rico on this jurisdictional issue?

CONCLUSION

For the reasons stated in this Reply Brief, and for those set forth in the Petition, this Court should grant the Petition for Writ of Certiorari and remand this case to be judicially disposed of by a Three Judge Court in the Federal District Court of Puerto Rico as Congress provided for this cases. (28 USCA 2884).

RESPECTFULLY SUBMITTED,
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