

No. _____

In the
Supreme Court of the United States

ROMAN CATHOLIC ARCHDIOCESE OF SAN JUAN,
PUERTO RICO, et al.,

Petitioners,

v.

YALÍ ACEVEDO FELICIANO, SONIA ARROYO
VELÁZQUEZ, ELSIE ALVARADO RIVERA, et al.,

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

PEDRO A. BUSÓ-GARCÍA
SCHUSTER & AGUILÓ
LLC-LITTLER
P.O. Box 363128
San Juan, PR 00936

GARY E. RAMIREZ
RAMIREZ LAW
OFFICES, PC
555 N. Carancahua,
Suite 880
Corpus Christi, TX 78401

PAUL D. CLEMENT
Counsel of Record
ERIN E. MURPHY
LAUREN N. BEEBE
MICHAEL FRANCUS
KIRKLAND & ELLIS LLP
655 Fifteenth Street, NW
Washington, DC 20005
(202) 879-5000
paul.clement@kirkland.com

Counsel for Petitioners

*Counsel for the
Archdiocese of San Juan*

Additional Counsel Listed on Inside Cover

January 14, 2019

FÉLIX J. MONTAÑEZ-
MIRANDA
P.O. Box 364131
San Juan, PR 00936

*Counsel for the Dioceses of
Caguas and Fajardo-
Humacao*

FERNANDO E.
AGRAIT-BETANCOURT
Centro de Seguros Bldg.,
Suite 414

701 Ponce de León Ave.
San Juan, PR 00907

*Counsel for the Dioceses of
Mayagüez and Ponce*

QUESTION PRESENTED

As this Court explained more than 150 years ago, “civil courts exercise no jurisdiction” over matters of “ecclesiastical government.” *Watson v. Jones*, 80 U.S. 679, 733-34 (1871). Since then, the Court has repeatedly reaffirmed that, “as a part of the free exercise of religion against state interference,” civil courts cannot interfere with matters of internal church structure. *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952). Despite an unbroken wall of precedent confirming that a “Church’s choice of its hierarchy” is “an ecclesiastical right” protected by the First Amendment and immune from second-guessing by civil courts, *id.* at 119, the Puerto Rico Supreme Court ignored well-established separations and distinctions between Catholic entities in Puerto Rico and collapsed the Archdiocese, five separate dioceses, and 338 distinct parishes into a single nonexistent entity, and then used that disregard of Church hierarchy to order the taking of assets from entities that are strangers to these proceedings. Incredibly, the Puerto Rico Supreme Court not only failed to defer to the Church’s understanding of its own hierarchy and doctrine, but held that doing so would violate the Establishment Clause.

The question presented is:

Whether the First Amendment empowers courts to override the chosen legal structure of a religious organization and declare all of its constituent parts a single legal entity subject to joint and several liability.

PARTIES TO THE PROCEEDING

The Roman Catholic Archdiocese of San Juan, Puerto Rico and the Roman Catholic Dioceses of Caguas, Fajardo–Humacao, Mayagüez, and Ponce, Puerto Rico are petitioners here. The Archdiocese was a defendant-appellant in the Puerto Rico Circuit Court of Appeals and a respondent in the Supreme Court of Puerto Rico. The other four dioceses attempted (but were not permitted) to join the proceedings before the court of appeals and the Puerto Rico Supreme Court.

The Catholic Schools Education Pension Trust and three Catholic schools—Perpetuo Socorro Academy, San Ignacio de Loyola Academy, and San José Academy—were also defendants-appellants and respondents below, and are respondents here.

A complete list of plaintiff respondents is reproduced at App.242-50.

CORPORATE DISCLOSURE STATEMENT

The Roman Catholic Archdiocese of San Juan, Puerto Rico and the Roman Catholic Dioceses of Caguas, Fajardo–Humacao, Mayagüez, and Ponce, Puerto Rico were created by the Holy See (the governing body of the worldwide Roman Catholic Church, headquartered at the Vatican), and are separate but distinct parts of the hierarchical Catholic Church formed and organized pursuant to Catholic canon law.

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PETITION FOR WRIT OF CERTIORARI

The decision below works an unprecedented intrusion on the First Amendment rights of religious organizations. It has been settled law for 150 years that civil courts lack the power to intrude on matters of church structure and governance, as to do anything but defer to a church's own views on such matters would raise grave concerns under both the Free Exercise Clause and the Establishment Clause. The Puerto Rico Supreme Court not only ignored those principles, but got them exactly backwards, viewing itself as not just empowered, but obligated, to ignore the Catholic Church's own canon law establishing the many constituent parts of the Church as distinct legal entities. In the court's view, deferring to the Church's own views on how the Church is structured would amount to the establishment of religion.

Armed with this radically mistaken conception of the First Amendment, the Puerto Rico Supreme Court proceeded to declare every single Catholic entity in Puerto Rico—including the Roman Catholic Archdiocese of San Juan, five separate Roman Catholic dioceses, all 338 parishes, and all other Catholic entities on the island—part of one monolithic (and, in both Church doctrine and secular reality, nonexistent) entity dubbed the “Roman Catholic and Apostolic Church in Puerto Rico.” There is and was no excuse for this profoundly troubling decision. This Court's case law demanding deference to protect free exercise values and avoid establishment is long-established and pellucidly clear. And there is no doubt that the Roman Catholic Church views all these entities as legally separate and distinct juridical

entities. Indeed, the Puerto Rico Court of Appeals applied this Court's precedents to a tee and recognized the vital importance of treating separate religious entities as just that. In reversing that decision, the Puerto Rico Supreme Court simply erred as a matter of law in a clear and egregious manner.

Some decisions failing to defer to the doctrinal or organizational views of a church involve threats to religious liberty that are "not immediately evident, and must be discerned by a careful and perceptive analysis. But this wolf comes as a wolf." *Morrison v. Olson*, 487 U.S. 654, 699 (1988) (Scalia, J., dissenting). Based on a refusal to defer to the separate nature of the various Catholic entities on the island, the courts below ordered a sheriff to "open[] doors, break[] locks, or forc[e] entry ... night or day" into Catholic churches throughout Puerto Rico and seize and sell off artwork, furniture, and anything else of value unless and until the nonexistent "Roman Catholic and Apostolic Church in Puerto Rico" supplied \$4.7 million to fund the pension obligations of three Catholic schools whose pension plan has run out of money. App.223-24. The resulting seizure of critical assets of churches and other Catholic entities throughout the island has forced the Archdiocese into bankruptcy and dramatically interfered with the ability of Catholic entities to minister to the faithful, provide for their employees, and provide social services desperately needed by the people of Puerto Rico.

The decision below is a direct affront not only to the Catholic Church, but to this Court, which has made clear time and again that "civil courts exercise no jurisdiction" over matters of "ecclesiastical

government.” *Watson v. Jones*, 80 U.S. 679, 733-34 (1871); *see also, e.g., Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 119 (1952); *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem’l Presbyterian Church*, 393 U.S. 440, 449 (1969); *Serbian E. Orthodox Diocese for U.S. of Am. & Can. v. Milivojevich*, 426 U.S. 696, 717 (1976). This Court should grant certiorari, restore to religious organizations in Puerto Rico the constitutional rights to which they are entitled, and put an end to the havoc that the decision below continues to wreak.

OPINIONS BELOW

The opinion of the Puerto Rico Supreme Court is reported at 2018 PRSC 106, available at 2018 PR Sup. LEXIS 99, and a certified translation of that opinion is reproduced at App.1-94. The opinion of the Puerto Rico Circuit Court of Appeals is unreported but available at 2018 PR App. LEXIS 1281, and a certified translation of that opinion is reproduced at App.97-220. The relevant orders of the Puerto Rico Court of First Instance are unreported, and certified translations of those three sequential orders are reproduced at App.221-41.

JURISDICTION

The Supreme Court of Puerto Rico issued its opinion on June 11, 2018, and denied a timely petition for rehearing on August 17, 2018. On November 6, 2018, Justice Breyer extended the time for filing a petition for certiorari to and including December 15, 2018 and, on December 7, 2018, further extended that time to and including January 14, 2019. This Court has jurisdiction under 28 U.S.C. §1258. *See Mohawk*

Indus., Inc. v. Carpenter, 558 U.S. 100, 106 (2009); *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 480-85 (1975).

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment provides, in relevant part: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” U.S. Const. amend. I.

STATEMENT OF THE CASE

A. The Catholic Church in Puerto Rico

The Roman Catholic Church has a unique hierarchical structure established by Catholic canon law. *See* 1983 Code of Canon Law, Book II, Part II, The Hierarchical Constitution of the Church. As with many faiths, this structure is not an end unto itself, but is a core component of how the Church furthers its religious mission. As canon law explains, the Church is “ordered for a purpose which is in keeping with the mission of the Church and which transcends the purpose of the individuals” who comprise it. 1983 Code c.114, §1; *see also, e.g.*, App.115-16 (“the immediate purpose of canonical law is to establish and guarantee the just social order within the Church, ordering and leading its subjects, through said order, to the achievement of the common good”) (citing A. Bernáñez Cantón *et al.*, *Canon Law* 75-79 (2d ed. Pamplona 1975)).

As a core part of canon law, the Catholic Church is not one monolithic entity, but rather is composed of various “juridic persons, that is, subjects in canon law of obligations and rights which correspond to their nature.” 1983 Code c.113, §2. “Juridic persons are constituted either by the prescript of law or by special

grant of competent authority given through a decree.” 1983 Code c.114, §1. Their constitution is itself a matter of faith and doctrine: “They are aggregates of persons (*universitates personarum*) or of things (*universitates rerum*) ordered for a purpose which is in keeping with the mission of the Church and which transcends the purpose of the individuals.” 1983 Code c.114, §1. Indeed, “[t]he competent authority of the Church is not to confer juridic personality except on those aggregates of persons (*universitates personarum*) or things (*universitates rerum*) which pursue a truly useful purpose and, all things considered, possess the means which are foreseen to be efficient to achieve their designated purpose.” 1983 Code c.114, §3.

While the Holy See has overarching authority over the Catholic Church, the Church is composed of distinct dioceses and parishes that “possess juridic personality by the law itself.” 1983 Code c.373. “A diocese is a portion of the people of God which is entrusted to a bishop for him to shepherd with the cooperation of the presbyterium, so that, adhering to its pastor and gathered by him in the Holy Spirit through the gospel and the Eucharist, it constitutes a particular church in which the one, holy, catholic, and apostolic Church of Christ is truly present and operative.” 1983 Code c.369. Each diocese “is limited to a definite territory,” 1983 Code c.372, §1, and “[e]very diocese or other particular church is to be divided into distinct parts or parishes,” 1983 Code c.374, §1. This separate-but-cohesive structure is designed “[t]o promote the common pastoral action of different neighboring dioceses according to the circumstances of persons and places and to foster more

suitably the relations of the diocesan bishops among themselves, neighboring particular churches are to be brought together into ecclesiastical provinces limited to a certain territory.” 1983 Code c.431, §1.

Again, each of these distinct entities that comprises the Catholic Church “can be erected as a juridic person” under canon law, 1983 Code c.433, §2, with distinct “obligations and rights,” 1983 Code c.113, §2. As a matter of canon law, then, “the Dioceses, the Ecclesiastic Province, the Apostolic See, the Parishes, the Seminars, among others,” are not one monolithic entity, but rather “have public legal personhood.” App.117.

As for the countless schools and other Catholic-affiliated entities that provide social services to Catholic and non-Catholic communities alike, many of those are established as part of a parish or order with a distinct legal capacity and status. *See, e.g.*, 1983 Code c.803 §1 (“A Catholic school is understood as one which a competent ecclesiastical authority or a public ecclesiastical juridic person directs or which ecclesiastical authority recognizes as such through a written document.”). For example, each of the three Catholic schools out of which this litigation arises was established by and is part of a parish that is a distinct juridic person. *See* App.149-51. And there are many other Catholic social service entities that are distinct legal entities that do not operate as part of a particular parish or order.

Over time, and consistent with canon law, the Holy See has established six dioceses in the Commonwealth of Puerto Rico. The first, the Diocese of San Juan, has operated on the island since 1511 and

became an Archdiocese in 1960. While that diocese originally covered the entire island, over the ensuing years, five additional dioceses were formed—Ponce in 1924, Arecibo in 1960, Caguas in 1964, Mayagüez in 1976, and Fajardo–Humacao in 2008. Together, these six legally and geographically distinct dioceses serve and oversee 338 parishes.

As a matter of canon law, there is no entity in Puerto Rico that has jurisdiction over the six dioceses in Puerto Rico. While at one time there was an entity known as the Diocese of San Juan that oversaw parishes on the whole island, that entity no longer exists. *See* App.78-80 (Colón-Pérez, J., dissenting). Instead, each of the six dioceses (including the Archdiocese of San Juan) now “enjoys the same legal status as the original Diocese of Puerto Rico,” operating under the direction of its local bishop. Bishop Fremiot Torres Oliver, *Comment: Juridical personality of the Roman Catholic Churches in Puerto Rico*, 15 *Revista de Derecho Puertorriqueño* 307, 307-08 (1976); App.79-80; 1983 Code cc.393, 515, 520, 532. Accordingly, there is no single Catholic entity on the island that represents or oversees all of the dioceses and parishes in Puerto Rico—let alone all of the many Catholic schools and other entities that provide critical services to Puerto Ricans.

B. Proceedings Below

1. In 1979, the Office of the Superintendent of Catholic Schools of the Archdiocese of San Juan decided to sponsor a pension and trust fund. The Catholic School Employee Pension Plan Trust Fund (the “Trust”) administers the plan, which is known as the Catholic Schools Employee Pension Plan (the

“Plan”). App.60. The Plan was designed to provide compensation above and beyond the Social Security and Medicare benefits that employees of Catholic schools and other Catholic entities receive. Employees themselves are not asked—indeed, have never been asked—to contribute to the Trust. *Id.* Instead, each participating employer contributes between 2% and 6% of its payroll to sustain the payment of employees’ pensions. *See id.* The beneficiaries of the Plan include both retired and current teachers and other former and current employees of participating Catholic entities.

Originally, 83 Catholic institutions participated in the plan, including the Archdiocese of San Juan (as an employer) and the three Catholic schools that underlie this litigation: Perpetuo Socorro Academy, San Ignacio de Loyola Academy, and San José Academy. Over the past several years, however, enrollment at all Puerto Rico schools—including Catholic schools—has declined for a variety of reasons, including reduced birthrates and migration of large numbers of Puerto Ricans to other locations. This, in turn, has caused a stark reduction in the number of institutions participating in the Plan—from 83 down to 43. As a result, the Trust found itself unable to pay full pensions to its beneficiaries and eventually was forced to cease distributing pension payments entirely. *See App.101.*

In June 2016, a group of employees and former employees of the Perpetuo Socorro Academy filed suit in the Puerto Rico Court of First Instance seeking to force the Trust to continue making pension payments. App.60-61. Employees and former employees from

San Ignacio de Loyola Academy and San José Academy brought similar actions, and the three suits were consolidated. *Id.*

Although each of the three schools has a distinct legal capacity and status, either on its own or as part of a Catholic parish, *see* App.150-51, respondents insisted on also suing the Archdiocese of San Juan, as well as trying to sue some overarching, island-wide Catholic entity. Initially, they named as a defendant the “Holy Catholic Apostolic Church on the Island of Puerto Rico, Inc.” But while that is indeed a distinct and extant legal entity, it is an Orthodox Christian Church with no relation to the Roman Catholic Church. When confronted with this problem, respondents maintained that they really meant to sue the “Roman Catholic and Apostolic Church in Puerto Rico,” which they claimed is the legal entity with supervisory authority over every Catholic entity in Puerto Rico. But there is not and never has been any such entity. Indeed, as the Archbishop of San Juan subsequently explained, there is no “single entity of the Catholic Church in Puerto Rico that represents or oversees all Catholic entities in the territory.” Stay.App.K-1, No. 17A1375 (2018). The only Catholic entity with any such general oversight is the Holy See, which is headquartered at the Vatican and protected by the Foreign Sovereign Immunities Act.

Respondents nonetheless insisted that the Archdiocese of San Juan, the Superintendence of Catholic Schools for the Archdiocese of San Juan, the Superintendence of Catholic Schools for the Diocese of Caguas, and the named schools (among others) were in fact dependents of this nonexistent Commonwealth-

wide Catholic entity. They then made the sweeping request that the trial court issue a preliminary injunction ordering the seizure of more than \$4 million in assets owned by any Catholic entity in Puerto Rico to secure continued payment of pension obligations under the now-discontinued Plan. *See* App.61.

2. After a series of initial proceedings, the Puerto Rico Supreme Court held that respondents' request for a preliminary injunction should be granted, but determined that it was unclear who—the three schools themselves, or some other entity—should be obligated to foot the bill. *See id.* The court thus remanded to the court of first instance with instructions to determine whether the three schools had distinct legal personhood, such that the pension payment obligations could be imposed on them, or whether those obligations should instead be imposed on some other Catholic entity (or entities). App.62.

On remand, respondents refused to acknowledge the independent “legal personhood” of the schools—and indeed of all Catholic entities in Puerto Rico. In their view, all Catholic entities in Puerto Rico “belong to the Catholic Church,” which is the sole Catholic entity with legal personhood. App.231. The defendants, on the other hand, maintained that, as a matter of Catholic canon law and ecclesiastical governance, each of these separate and distinct Catholic entities has its “own legal personhood independent of the Roman Apostolic Catholic Church (Church).” App.230. The defendants further maintained that the First Amendment precludes civil courts from “ignor[ing] the existence” of that distinct

personhood because it is a matter of internal Church structure established by canon law. *Id.*

The court of first instance disagreed, refusing to defer to the defendants' view and holding that the three Catholic "church-schools, as well as the Archdiocese of San Juan and the Office of the Superintendent of Catholic Schools of San Juan, do not have their own legal personhood because they are part of the Roman Catholic and Apostolic Church, as an entity with its own legal personhood." App.240. It further concluded that *all* Catholic entities in Puerto Rico "belong[] to" the sole, unified "legal personhood held by the Catholic Church." *Id.* Given this understanding of the Catholic Church's ecclesiastical structure, the court ordered the purportedly single-and-unified (but, in both doctrine and secular reality, nonexistent) "Roman Catholic and Apostolic Church in Puerto Rico" to "immediately and without any further delay proceed to continue to make payments to plaintiffs as provided in the pension Plan." App.240-41. The court further "ordered the Roman Catholic and Apostolic Church in Puerto Rico to proceed immediately and without further delay ... to deposit the sum of 4.7 million dollars in the Unit of Accounts of this Court." App.227 (emphasis omitted).

When the court did not receive that sum from that nonexistent legal entity within 24 hours (owing to, *inter alia*, the difficulty that the order was directed at a nonexistent entity), the court ordered its sheriff to seize all "assets and moneys of the Holy Roman Catholic and Apostolic Church in an amount of \$4,700,000 to secure the payment of plaintiffs' pensions, including bonds, values, motor vehicles,

works of art, equipment, furniture, accounts, real estate, and any other asset belonging to the Holy Roman Catholic and Apostolic Church, and any of its dependencies, that are located in Puerto Rico.” App.223. The court empowered the sheriff to “open[] doors, break[] locks, or forc[e] entry ... night or day” into any Catholic entity in Puerto Rico to execute this command. App.223-24.

3. The defendants appealed to the Puerto Rico Circuit Court of Appeals, arguing that the lower court “gravely and manifestly erred by concluding that the Archdiocese[] of San Juan,” among other Catholic entities in Puerto Rico, “does not have its own legal personhood independent from the Roman Catholic and Apostolic Church.” App.109. The court of appeals emphatically agreed. It granted review and reversed, holding that “it is firmly established that the Courts ‘cannot exercise their jurisdiction to determine disputes regarding property rights related to a church when to do so it has to irremediably pass judgment over matters of teachings, discipline and faith of an internal ecclesiastical body.’” App.114-15 (emphasis omitted) (citing *Jones v. Wolf*, 443 U.S. 595, 604 (1979)).

As to the “nature and legal personhood of the Roman Catholic and Apostolic Church in Puerto Rico,” the court explained that “although there exists in Puerto Rico, and in other parts of the world, the Roman Catholic and Apostolic religion, said religion operates on the Island through various entities for whom canonical law recognizes their own legal personhood,” including “dioceses, parishes, and religious orders, among others.” App.133. This

conclusion, the court explained, “is especially clear ... given the hierarchical equality among the bishops, and the autonomous or separate nature of their dioceses, including among them, the Archdiocese of San Juan.” App.133-34.

Contrary to the lower court’s effort to convert all of Catholic entities in Puerto Rico into a single, undifferentiated mass, the appellate court recognized that “there is no structure on the Island that comprises under any single authority all the dioceses and to which their bishops are subordinated.” App.133-34. Instead, “[e]ach diocese is the official representative of the Catholic faith within its particular territorial demarcation and is absolutely autonomous, ... subordinated exclusively to the Universal Church, whose Representative Authority is held by the Bishop of Rome (the Pope).” App.134 (citing 1983 Code c.368-69). Put simply, “each diocese, including the Archdiocese, is absolutely autonomous from one another.” App.135. “Such is precisely the consequence and nature of an apostolic church, according to canon law.” *Id.*; *see also* App.136 (“Such is the hierarchical structure of said religion, pursuant to its dogmas of faith and the canonical law that governs it.”); App.143 (“Such is the rule of law which binds us in Puerto Rico regarding this matter, and therefore, the legal treatment that we must apply and recognize for the entities of the Catholic Church with respect to their legal personhood....”).

The court of appeals further concluded that the court of first instance not only misunderstood canon law, but ran afoul of the First Amendment by claiming the power to reconfigure the Catholic Church. As the

court of appeals explained, “[a]ny action of the State, ... aimed at intervening or seeking to alter the way in which internally [the Catholic Church] or any other religion operates or is organized, infringes upon the clause of separation of Church and State of the Constitutions of the United States and Puerto Rico.” App.136. Church governance and structure “was and is,” the court recognized, “an attribute of that religion, in accordance with the First Amendment, as regulated by Canonical Law.” App.145 (citing *Ponce v. Roman Catholic Apostolic Church*, 210 U.S. 296 (1908)). It is therefore “not up to the [civil courts], as a State body, to define, much less intervene, in the Church’s internal structure, nor in its functioning or organization.” App.145. Accordingly, the court of appeals found that the lower court’s decision and seizure order, “to the extent in which it is aimed against a legally nonexistent entity in light of the internal organization of the Church[,] contravenes the ... constitutional clause.” App.136.

One judge dissented on other grounds, but agreed with the majority in relevant part, concurring that the Catholic Church in Puerto Rico (like everywhere else) “is a *numerus apertus* concept that includes countless entities within the Roman Catholic and Apostolic Church with their own legal personhood independent of the others.” App.210 (Colón, J., dissenting).

4. Respondents appealed to the Puerto Rico Supreme Court, which ordered the parties to show cause why the court of appeals’ decision should not be reversed, granted review, and reversed. The dioceses, who had never been named as parties but were directly impacted by the court of first instance’s

sweeping seizure order, petitioned to join the proceedings to defend the court of appeals' decision and their interests, but to no avail.¹ App.5. The Puerto Rico Supreme Court thus proceeded to adjudicate their interests without giving them an opportunity to be heard.

Although the court acknowledged that, “according to the [defendants], the internal determinations of the Catholic Church, as to how to administer its institutions must be respected,” App.8, it refused to accord those determinations any such respect. Instead, the court concluded that determining whether Catholic entities in Puerto Rico have distinct personhood is not the type of “state court action[] that result[s] in an inappropriate interference on the part of those courts regarding matters of organization or internal dispute[]” because that determination purportedly can be made pursuant to “neutral principles of law.” App.9-10. Thus, notwithstanding the fact that the structure of the Catholic Church is established by canon law, the court insisted that determining the structure of the Church would not require it to “take into consideration or inquire about matters of doctrine and faith.” App.10.

The court then embarked on its own analysis of “the legal and historical context in which the Catholic Church in Puerto Rico” exists, including the purportedly *sui generis* “relationship between Spain, the Catholic Church, and Puerto Rico, ... given the particularities of [the Church’s] development and

¹ The dioceses had also asked to intervene in the court of appeals, but the court permitted only the Diocese of Arecibo to file an *amicus* brief.

historical context.” App.5. Relying principally on two law review articles, the court found it “undeniable **that each entity created that operates separately and with a certain degree of autonomy from the Catholic Church is in reality a fragment of only one entity that possesses legal personality.**” App.13 (citing J. Gelpi Barrios, *Personalidad Jurídica de la Iglesia en Puerto Rico* [‘Legal Personality of the Church in Puerto Rico’], 95 Rev. Esp. Der Canónico 395, 403, 410 (1977); A. Colon Rosado, *Relation Between Church and State in Puerto Rico*, 46 Rev. Jur. Col. Ab. 51, 54-57 (1985)). Thus, in the Puerto Rico Supreme Court’s view, “the entities created as a result of any internal configuration of the Catholic Church ... are merely indivisible fragments of the legal personality that the Catholic Church has.” App.13-14. Remarkably, the court insisted that it was *constitutionally compelled* to reach this startling conclusion because it believed that respecting the distinct ecclesiastical governance of the Catholic Church would amount “the recognition of an official or privileged religion in Puerto Rico.” App.14.

Two justices dissented. Both emphatically explained how the majority misconstrued both canon and constitutional law. As a matter of canon law, “the Archdiocese of San Juan and the other dioceses and parochial churches in Puerto Rico are not ‘the sum of the parties.’” App.42 (Rodríguez, J., dissenting) (quoting Daniel Cenalmor & Jorge Miras, *El Derecho de la Iglesia: Curso básico de Derecho canónico* 271 (1st ed. Pamplona 2004)); *see also* App.79-84, 88-92 (Colón-Pérez, J., dissenting). And as a matter of constitutional law, “[t]he definition of what the Church is and what it is not is the responsibility in

purity of said institution, and not of the civil courts.” App.42. To conclude otherwise “would be to render judgment on the internal ecclesiastical organization and the hierarchy of the Catholic Church, in clear contravention of the total separation between Church and State.” App.42 (citing *Presbyterian Church*, 393 U.S. at 449).

5. After this Court denied an emergency stay application, *see Roman Catholic Archdiocese of San Juan, Puerto Rico v. Feliciano*, No. 17A1375 (2018), the court of first instance began implementing the sweeping seizure order that the Puerto Rico Supreme Court had reinstated. In attempting to execute the order, however, the court has continued to encounter problems based on its profound misunderstanding of Church structure. For example, the court’s marshal first attempted to execute the order against an Orthodox entity that it believed to be the Archdiocese of San Juan. After realizing its mistake, the court of first instance *sua sponte* added the Archdiocese and all of the dioceses as the targets of its earlier order without providing any notice or hearing. As a result of the seizure efforts, petitioners and other Catholic entities in Puerto Rico have had their assets seized or frozen, forcing the Archdiocese into bankruptcy and leaving Catholic entities throughout the island hamstrung in their efforts to minister to the faithful, fulfill their financial obligations, and provide vital social services (including hurricane relief) to their communities.

REASONS FOR GRANTING THE PETITION

The decision below is a manifestly erroneous and blatant departure from this Court’s well-established

precedents. For well over a century and a half, it has been clear beyond cavil that civil authorities, including courts, are not free to disregard a church's own determinations about its doctrine and hierarchy. Here, it is crystal clear that the Catholic Church does not view the Archdiocese of San Juan or any other entity as the overarching parent organization of every Catholic entity on the island of Puerto Rico. To the contrary, each diocese and each parish is an independent legal entity as a matter of doctrine and reality. Thus, the court of appeals had no trouble applying this Court's precedents, deferring to the Church's sense of its own organization, and reversing the trial court's extraordinary orders to liquidate churches across the island to satisfy the obligations of three Catholic schools.

The Puerto Rico Supreme Court reached the opposite conclusion by not only ignoring this Court's precedents, but flipping them on their head, declaring that a failure to second-guess the Church's own organizational chart would be an unconstitutional establishment of religion. In the court's view, it had no choice but to unilaterally declare each of the myriad Catholic dioceses, parishes, schools, and other entities operating in Puerto Rico merely "a fragment" of this (nonexistent) all-encompassing "Roman Catholic and Apostolic Church in Puerto Rico." That conclusion is simply and obviously wrong, and directly conflicts with more than a century of this Court's settled precedents.

This inversion of constitutional principles has had a dramatic and direct effect on religious freedom. The Commonwealth courts went so far as to order a sheriff

to “open[] doors, break[] locks, or forc[e] entry” into Catholic churches throughout Puerto Rico “night or day” to seize artwork and anything else of value. App.223-24. The remarkable and predictable result has been for the Archdiocese to declare bankruptcy and for the dioceses to scale back efforts to minister to the faithful and needy. Moreover, on top of directly imperiling religious liberty and exercise on the island, the decision below embraces the ultimate constitutional vice of discriminating among religions, by declaring the Catholic Church alone constitutionally *prohibited* from employing the same structural formalities that every other organization—religious or not—may invoke to protect its mission and its assets. Simply put, the need for this Court’s intervention is truly imperative.

I. The Court Should Grant Certiorari To Bring The Puerto Rico Courts In Line With Centuries Of Unbroken First Amendment Jurisprudence.

A. The First Amendment Forbids Civil Courts From Interfering With Matters of Church Structure and Governance.

The First Amendment is premised on the notion that “both religion and government can best work to achieve their lofty aims if each is left free from the other within its respective sphere.” *Aguilar v. Felton*, 473 U.S. 402, 410 (1985) (quoting *McCullum v. Bd. of Educ.*, 333 U.S. 203, 212 (1948)). To that end, both Religion Clauses—the Establishment Clause and the Free Exercise Clause—work together to protect the autonomy of religious organizations and avoid excessive entanglement of secular and religious

authorities. Based on these reinforcing First Amendment protections, civil courts have long abstained from interfering with the internal affairs of religious organizations under the religious autonomy doctrine.² Over the past 150 years, this Court has articulated the contours of that doctrine, as applied to disputes involving church property, in at least four landmark cases.

1. The religious autonomy doctrine dates back to this Court's decision in *Watson v. Jones*, 80 U.S. 679 (1871). *Watson* set forth a general "rule of action which should govern the civil courts": "whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them." *Id.* at 727. The Court explained that this principle of deference to religious organizations on questions of doctrine and faith is "founded in a broad and sound view of the relations of church and state under our system of laws, and supported by a preponderating weight of judicial authority." *Id.*

In so doing, this Court broke from the contrary English tradition. There, as "laid down by Lord Eldon, ... it is the duty of the court in such cases to inquire and decide for itself, not only what was the nature and power of these church judicatories, but what is the true standard of faith in the church

² The "religious autonomy" doctrine is sometimes referred to as the "church autonomy" or "ecclesiastical abstention" doctrine.

organization, and which of the contending parties before the court holds to this standard.” *Id.* at 727; *see also id.* at 724 n.42 (citing *Attorney-General v. Pearson* (1817) 3 Merivale 353). In the United States, however, the Court made clear that there can be no such secular adjudication over such “strictly and purely ecclesiastical” disputes. *Id.* at 733.

As the Court explained:

[I]t is easy to see that if the civil courts are to inquire into all these matters, the whole subject of the doctrinal theology, the usages and customs, the written laws, and fundamental organization of every religious denomination may, and must, be examined into with minuteness and care, for they would become, in almost every case, the *criteria* by which the validity of the ecclesiastical decree would be determined in the civil court. This principle would deprive these bodies of the right of construing their own church laws, would open the way to all the evils which we have depicted as attendant upon the doctrine of Lord Eldon, and would, in effect, transfer to the civil courts where property rights were concerned the decision of all ecclesiastical questions.

Id. at 733-34. To avoid those “evils,” and to secure a “full, entire, and practical freedom for all forms of religious belief and practice which lies at the foundation of our political principles”—*i.e.*, “the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of

morality and property, and which does not infringe personal rights”—the religious autonomy doctrine was born. *Id.* at 728.

2. After the First Amendment was extended to the states through the Fourteenth Amendment,³ the Court reaffirmed *Watson. Kedroff* confirmed that the First Amendment grants to “religious organizations, an independence from secular control or manipulation, in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.” 344 U.S. at 116.

The underlying dispute in *Kedroff* concerned the contested “right to the use and occupancy of a church in the city of New York” after “the head of the American churches, religiously affiliated with the Russian Orthodox Church,” sought to take possession of Saint Nicholas Cathedral, which was occupied by appointees of the Supreme Church of the Russian Orthodox Church in Moscow. *Id.* at 95-96. As framed by the Court, “[d]etermination of the right to use and occupy Saint Nicholas depends upon whether the appointment of Benjamin [Fedchenkoff] by the Patriarch or the election of the Archbishop for North America by the convention of the American churches

³ The Commonwealth of Puerto Rico is not a state, but it is clear that fundamental First Amendment protections apply with equal force within its borders. See *Examining Bd. of Eng'rs, Architects & Surveyors v. Flores de Otero*, 426 U.S. 572, 599 n.30 (1976) (discussing the *Insular Cases* and application of “fundamental constitutional rights” to all inhabitants of U.S. territories); cf. *Posadas de Puerto Rico Assocs. v. Tourism Co. of Puerto Rico*, 478 U.S. 328 (1986) (analyzing First Amendment free speech challenges to Puerto Rico legislation); see also 28 U.S.C. §1258.

validly selects the ruling hierarch for the American churches.” *Id.* at 96-97. Applying New York state law regarding the incorporation of religious organizations, the Court of Appeals of New York had “determined that the prelate appointed by the Moscow ecclesiastical authorities was not entitled to the Cathedral and directed entry of a judgment that [the American entities] be reinvested with the possession and administration” of the Cathedral. *See id.* at 97.

This Court reversed. To the extent New York law purported “by its terms to transfer the control of the New York churches of the Russian Orthodox religion from the central governing hierarchy of the Russian Orthodox Church, the Patriarch of Moscow and the Holy Synod, to the governing authorities of the Russian Church in America,” the Court concluded that it violated the First Amendment by “directly prohibit[ing] the free exercise of an ecclesiastical right, the Church’s choice of its hierarchy.” *Id.* at 107, 119. The civil courts, the Court explained, cannot “displace[] one church administrator with another,” “pass[] the control of matters strictly ecclesiastical from one church authority to another,” or otherwise “intrude[] for the benefit of one segment of a church the power of the state into the forbidden area of religious freedom contrary to the principles of the First Amendment.” *Id.* at 119.

On remand, the New York courts continued to try to circumvent the church’s authority—this time by judicial rather than legislative fiat—and the Court had to intervene once more. *Kreshik v. St. Nicholas Cathedral*, 363 U.S. 190, 190-91 (1960) (*per curiam*). The Court found it “not of moment that the State has

here acted solely through its judicial branch, for whether legislative or judicial, it is still the application of state power which we are asked to scrutinize.” *Id.* at 191 (quoting *NAACP v. Patterson*, 357 U.S. 449, 463 (1958)). *Kreshik* thus leaves no doubt that *no* state authority—whether judicial, legislative, or otherwise—has the power to impair matters of ecclesiastical government.

3. This Court reinforced the principles of *Kedroff* and *Kreshik* in *Presbyterian Church*. That case involved “a church property dispute which arose when two local churches withdrew from a hierarchical general church organization.” *Presbyterian Church*, 393 U.S. at 441. Under the applicable state law, “the right to the property previously used by the local churches was made to turn on a civil court jury decision as to whether the general church abandoned or departed from the tenets of faith and practice it held at the time the local churches affiliated with it.” *Id.* After the question was submitted to the jury and the verdict affirmed through the Georgia courts, this Court unanimously reversed. While civil courts may have “a legitimate interest in resolving property disputes,” the Court emphasized that “[s]pecial problems arise ... when these disputes implicate controversies over church doctrine and practice.” *Id.* at 445.

The Court explained that in that case, as in *Watson*, “it was wholly inconsistent with the American concept of the relationship between church and state to permit civil courts to determine ecclesiastical questions.” *Id.* at 445-46. “The logic of [*Watson*’s] language,” the Court held in no uncertain terms,

“leaves the civil courts *no role* in determining ecclesiastical questions in the process of resolving property disputes.” *Id.* at 447 (emphasis added). As the Court explained, “First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice.” *Id.* at 449. Indeed, “[i]f civil courts undertake to resolve such controversies in order to adjudicate the property dispute, the hazards are ever present of inhibiting the free development of religious doctrine and of implicating secular interests in matters of purely ecclesiastical concern.” *Id.*

4. In the next landmark case involving a dispute over church property, the “basic dispute [wa]s over control of the Serbian Eastern Orthodox Diocese for the United States of America and Canada ..., its property and assets” after the reorganization of the American-Canadian Diocese into three new dioceses and Bishop Dionisije’s subsequent defrockment. *Milivojevich*, 426 U.S. at 698, 703. Dionisije filed suit in Illinois state court, seeking to enjoin other church entities from interfering with church assets and to have himself declared “the true Diocesan Bishop.” *Id.* at 707. The church entities countered with their own complaint, “seeking declaratory relief that Dionisije had been removed as Bishop of the Diocese and that the Diocese had been properly reorganized into three Dioceses, and injunctive relief granting [them] control of the reorganized Dioceses and their property.” *Id.* Following protracted litigation that entangled the civil courts with this ecclesiastical dispute for more than *13 years*, the Illinois courts eventually held “that the Diocesan reorganization was invalid” and “purported

in effect to reinstate Dionisije as Diocesan Bishop.” *Id.* at 708.

This Court granted certiorari and reversed. “The fallacy fatal to the judgment of the” state courts, the Court explained, “is that it rests upon an impermissible rejection of the decisions of the highest ecclesiastical tribunals of this hierarchical church upon the issues in dispute, and impermissibly substitutes its own inquiry into church polity and resolutions based thereon of those disputes.” *Id.* While “the Illinois Supreme Court relied on purported ‘neutral principles’ for resolving property disputes which would ‘not in any way entangle the court in the determination of theological or doctrinal matters,’” the state court in fact “substituted its interpretation of the Diocesan and Mother Church constitutions for that of the highest ecclesiastical tribunals in which church law vests authority to make that interpretation.” *Id.* at 721 (quoting *Serbian E. Orthodox Diocese for U.S. of Am. & Can. v. Milivojevich*, 328 N.E.2d 268, 282 (Ill. 1975)). “This the First and Fourteenth Amendments forbid.” *Id.*

* * *

As 150 years of this Court’s jurisprudence confirm, deference to religious authorities on matters of organization and doctrine is essential both to prevent Establishment Clause concerns with excessive entanglement and to promote free religious exercise. “If civil courts undertake to resolve such controversies ..., the hazards are ever present of inhibiting the free development of religious doctrine and of implicating secular interests in matters of purely ecclesiastical concern.” *Presbyterian Church*,

393 U.S. at 449. In short, “[t]his is a situation where the two clauses work to the same end.” Paul G. Kauper, *Church Autonomy and the First Amendment: The Presbyterian Church Case*, 1969 S. Ct. Rev. 347, 375 (1969).

B. The Decision Below Eviscerates the First Amendment Right of Religious Organizations to Determine Their Own Ecclesiastical Structure.

Despite this unbroken line of First Amendment cases (not to mention other decisions from this Court and myriad state and federal courts across the country⁴), the court below failed to accept what this Court has made abundantly clear—*i.e.*, that the Constitution protects “the free exercise of an ecclesiastical right, the Church’s choice of its hierarchy.” *Kedroff*, 344 U.S. at 119. Instead, the Puerto Rico Supreme Court purported to determine that all Roman Catholic entities in the Commonwealth of Puerto Rico—including the Archdiocese of San Juan, five Roman Catholic dioceses, 338 separate parishes, and all other Catholic entities—lack their own distinct legal personality and are instead “merely indivisible fragments of the legal personality that the Catholic Church has.” App.13-14.

That conclusion not only defies canon law and the Church’s own conception of its structure, *see supra* pp.4-7, but also flatly contradicts centuries of this

⁴ See, e.g., Mark E. Chopko & Michael F. Moses, *Freedom to be a Church: Confronting Challenges to the Right of Church Autonomy*, 3 Geo. J.L. & Pub. Pol’y 387 (2005) (summarizing numerous church autonomy cases).

Court's First Amendment precedent and perpetrates the precise species of secular intrusion into religious affairs that the First Amendment and the religious autonomy doctrine are designed to prevent. This Court has explained in no uncertain terms that the "[o]rganization of the Diocese *involves a matter of internal church government, an issue at the core of ecclesiastical affairs.*" *Milivojevich*, 426 U.S. at 721 (emphasis added). Indeed, there is no "dispute that questions of ... the composition of the church hierarchy are at the core of ecclesiastical concern." *Id.* at 717. Yet the decision below declares it for the courts, not the Church, to decide how the Church is (and must be) organized. That is *precisely* what this Court's cases forbid.

The Puerto Rico Supreme Court seemed to think it could evade this Court's commands because it professed to be applying "neutral principles of law." App.9-10. That is exactly what the Illinois Supreme Court said in *Milivojevich*—only to be reversed by this Court. As the Court explained, no matter what principles a civil court purports to invoke, it necessarily "entangle[s] the court in the determination of theological or doctrinal matters" when it "substitute[s] its interpretation of" ecclesiastical law for "for that of the highest ecclesiastical tribunals in which church law vests authority to make that interpretation." *Milivojevich*, 426 U.S. at 721. Likewise, in *Presbyterian Church*, this Court confirmed that the lower court's "departure-from-doctrine element of the Georgia implied trust theory require[d] the civil court to determine matters at the very core of a religion—the interpretation of particular church doctrines and the importance of those

doctrines to the religion.” 393 U.S. at 450. When this Court intervened, it reiterated that this was blatantly improper: “Plainly, the First Amendment forbids civil courts from playing such a role.” *Id.*; *see also id.* at 451 (“To reach those questions ... require[s] the civil courts to engage in the forbidden process of interpreting and weighing church doctrine.”).

Here, the Church has already decided through its canon law how the myriad entities that comprise the Catholic Church are to be structured. There is no serious dispute that the Catholic Church does not view the Archdiocese of San Juan, or any other entity on the island, whether extant or imagined, to be the parent entity of the various dioceses and parishes. The court of appeals, for its part, had no difficulty identifying the Church’s view and deferring to it. And there is no dispute that the Puerto Rico Supreme Court simply overrode the Church’s views as to how the Church is organized. Indeed, the court openly admitted as much. According to the court, “[t]he contention that the Catholic Church ... can establish entities with legal personality by decree or papal bull from Rome, is—for all practical effects—the recognition of an official or privileged religion in Puerto Rico. That is prohibited by the First Amendment of the Constitution of the United States....” App.14.

The decision below thus holds that the Commonwealth courts are not only empowered, but constitutionally *compelled*, to decide how a religious organization may be structured. That extraordinary conclusion defies this Court’s precedents and turns the religious autonomy doctrine on its head. In short, as

dissenting Justice Rodríguez correctly explains, the decision below effectively “reconfigur[es] the internal and hierarchical ecclesiastical organization of the Roman Catholic and Apostolic Church.” App.22 (Rodríguez, J., dissenting). That radical intervention into ecclesiastical governance obliterates the constitutionally protected “free exercise of an ecclesiastical right, the Church’s choice of its hierarchy.” *Kedroff*, 344 U.S. at 119.⁵

II. The Question Presented Is Exceptionally Important.

As dissenting Justice Colón-Pérez recognized, this case “has all the necessary elements to be reviewed by the [] Supreme Court of the United States.” App.58 (emphasis omitted) (Colón-Pérez, J., dissenting).⁶ Not only does it involve “a matter of particular importance regarding the separation of Church and State,” *id.*, but unlike some disputes over religious liberty where the principles are large but the immediate impact is less dramatic, *cf. Wisconsin v. Yoder*, 406 U.S. 205 (1972) (holding imposition of \$5 fine to violate the Free Exercise Clause), here the immediate real-world consequences of disregarding doctrines designed to

⁵ For all the same reasons, the decision below also violates the Religious Freedom Restoration Act of 1993, 42 U.S.C. §2000bb-4 *et seq.*

⁶ The time for that review is now. Although the underlying dispute about the pension obligations has not yet been resolved, the decision below conclusively resolves the entirely collateral issue of who must fund those obligations during the pendency of the litigation. This Court therefore has jurisdiction under both the collateral order doctrine and *Cox Broadcasting*. See *Mohawk Indus.*, 558 U.S. at 106; *Cox Broad.*, 420 U.S. at 480-85.

protect religious liberty are enormous. It is no exaggeration to say that the decision below threatens the ability of Catholic churches throughout Puerto Rico to continue to fulfill their religious missions.

The court-ordered seizure of all Catholic property in Puerto Rico—including “bonds, values, motor vehicles, works of art, equipment, furniture, accounts, real estate, and any other asset belonging to the Holy Roman Catholic and Apostolic Church, and any of its dependencies, that are located in Puerto Rico,” App.223—interferes with the ability of Puerto Rican Catholics to access the basic rites of their faith and meet their charge to preach the gospel, and has forced the Archdiocese into bankruptcy. Several parishes have been unable to use seized or frozen funds to conduct their normal operations and, pending the resolution of the bankruptcy proceedings, the decision below risks further impairing the parishes’ ability to hold their scheduled masses, conduct marriages, baptisms, and first communions; impacting their means for evangelization (including television stations, radio stations, and newspapers); and even affecting those who live or sleep on church property (including clergy, nuns, monks, employees, seminarians, and the homeless). It also interferes with the duty of priests and nuns to collect church offerings because church leaders cannot collect funds without risking those funds being seized. And it is interfering with the ability of Catholic organizations to provide social services to the people of Puerto Rico, whether Catholic or not, at a time of widespread need on the island.

Making matters worse, this radical result was entirely unnecessary. When the court of appeals applied this Court's precedents and reversed the trial court, it issued an order that would have kept pension payments flowing to respondents without ignoring the Church's structure, by requiring the actual defendants to this case to fund them. App.166-67. And the Archdiocese of San Juan, which was one of those defendants, informed the court that it was willing to ensure compliance. There was thus no need to effectively restructure the Church to protect respondents' financial interests, which makes the Puerto Rico Supreme Court's insistence on doing so all the more inexplicable.

As dramatic as the immediate real-world effects of the decision below have been, the adverse consequences are not limited to the immediate devastation. The Puerto Rico Supreme Court's unprecedented judicial overreach and interference with the same matters of church hierarchy that this Court has repeatedly held "are at the core of ecclesiastical concern," *Milivojevich*, 426 U.S. at 717, threatens all manner of Free Exercise and Establishment Clause problems in the long run. As it currently stands, for example, Catholic entities in Puerto Rico have fewer rights than other entities in Puerto Rico—whether religious or not. All other organizations remain free to protect their mission and their assets by forming distinct legal entities and having those distinctions honored by the Puerto Rico courts. Yet according to the Puerto Rico Supreme Court, the Catholic Church is *forbidden* from doing the same. To be sure, this discrimination is confined to the Catholic Church, but that is hardly an

Establishment Clause virtue. *See, e.g., Larson v. Valente*, 456 U.S. 228, 244-46 (1982). Indeed, it is precisely because the Catholic Church has a substantial presence on the island that civilian judges may feel confident to second-guess matters of doctrine or fear the perception of an establishment. But the lesson of this Court's cases is that the only course that honors the Religion Clauses is deference to all religions' determinations about matters of doctrine and organization. *See supra* Part I.A.

At bottom, there is no escaping the conclusion that the Puerto Rico Supreme Court has declared itself entitled—indeed, obligated—to effectively “reconfigur[e] the internal and hierarchical ecclesiastical organization of the Roman Catholic and Apostolic Church.” App.22 (Rodríguez, J., dissenting). Nor is there any escaping the devastating results that this decision has had, forcing the Archdiocese into bankruptcy and stripping churches throughout Puerto Rico of essential assets, treasured artworks, and all manner of other belongings. In short, the decision below is both profoundly wrong and profoundly consequential. The Court should not allow it to stand.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for certiorari.

Respectfully submitted,

PEDRO A. BUSÓ-GARCÍA
SCHUSTER & AGUILÓ
LLC–LITTLER
P.O. Box 363128
San Juan, PR 00936

GARY E. RAMIREZ
RAMIREZ LAW
OFFICES, PC
555 N. Carancahua,
Suite 880
Corpus Christi, TX 78401

*Counsel for the
Archdiocese of San Juan*

FÉLIX J. MONTAÑEZ-
MIRANDA
P.O. Box 364131
San Juan, PR 00936

*Counsel for the Dioceses of
Caguas and Fajardo–
Humacao*

PAUL D. CLEMENT
Counsel of Record
ERIN E. MURPHY
LAUREN N. BEEBE
MICHAEL FRANCUS
KIRKLAND & ELLIS LLP
655 Fifteenth Street, NW
Washington, DC 20005
(202) 879-5000
paul.clement@kirkland.com

Counsel for Petitioners

FERNANDO E.
AGRAIT-BETANCOURT
Centro de Seguros Bldg.,
Suite 414
701 Ponce de León Ave.
San Juan, PR 00907

*Counsel for the Dioceses of
Mayagüez and Ponce*

January 14, 2019