

No. 21-659

In The
Supreme Court of the United States

ASOCIACIÓN DE PERIODISTAS DE PUERTO RICO,
Petitioner,

v.

COMMONWEALTH OF PUERTO RICO, ET AL.,
Respondents.

—◆—
**On Petition For Writ Of Certiorari
To The Supreme Court Of Puerto Rico**

—◆—
**BRIEF FOR RESPONDENTS
OLGA E. COSTAS RODRÍGUEZ
AND ALFONSO RUIZ PÉREZ
IN SUPPORT OF PETITIONER**

—◆—
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QUESTIONS PRESENTED

1. Whether courts may summarily close judicial proceedings and deny access to the official recordings of those proceedings without determining whether the First Amendment public access right attaches to them.

2. Whether Article 5.005 of Puerto Rico's Judiciary Act of 2003, 4 L.P.R.A. § 25e, as construed by the Puerto Rico Supreme Court to require automatic closure of all domestic violence proceedings and the official recordings of those proceedings, violates the First Amendment public access right under *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596 (1982).

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OPINION AND ORDERS BELOW

The May 10, 2021 Judgment of the Supreme Court of Puerto Rico (Pet. App. 24a-46a) assuming jurisdiction over the case and dismissing Petitioner's request for court recordings is published at 2021 TSPR 64. It is not yet published in *Decisiones de Puerto Rico*. A certified English translation of the Judgment can be found at Pet. App. 1a-22a.

The May 27, 2021 Resolution of the Supreme Court of Puerto Rico (Pet. App. 73a-75a) denying Petitioner's first motion for reconsideration is unpublished. A certified English translation of the Resolution can be found at Pet. App. 69a-71a.

The June 4, 2021 Resolution of the Supreme Court of Puerto Rico (Pet. App. 80a-82a) denying Petitioner's second motion for reconsideration is unpublished. A certified English translation of the Resolution can be found at Pet. App. 76a-78a.

The May 3, 2021 Protective Order issued by the Court of First Instance sealing the recordings at issue (Pet. App. 49a) is unpublished. A certified English translation of the Order can be found at Pet. App. 47a.

The May 7, 2021 Order of the Court of First Instance scheduling a hearing on Petitioner's request (Pet. App. 55a-58a) is unpublished. A certified English translation of the Order can be found at Pet. App. 50a-53a.



JURISDICTION

The judgment of the Supreme Court Puerto Rico was entered on May 10, 2021. Pet. App. 1a-22a. The Puerto Rico Supreme Court issued two Resolutions denying Petitioner’s timely requests for reconsideration (Pet. App. 137a-154a, 175a-188a) on May 27, 2021 and June 4, 2021. Pet. App. 69a-71a, 76a-78a.

Pursuant to this Court’s Order, 589 U.S. (Mar. 19, 2020) and Order, 594 U.S. (July 19, 2021), this Petition is timely filed within 150 days from the denial of Petitioner’s second motion for reconsideration on June 4, 2021. The jurisdiction of this Court rests on 28 U.S.C. § 1258.



CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the United States Constitution states that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” U.S. Const. amend. 1.

Article 5.005 of Puerto Rico’s Judiciary Act of 2003, 4 L.P.R.A. § 25e provides in relevant part:

The Judicial Branch shall designate specialized courtrooms with public access controls in

all judicial regions to hear cases of domestic abuse.

Domestic abuse cases shall be heard in a courtroom specifically designated therefor in each Judicial Region pursuant to Act No. 54 of August 15, 1989, as amended, known as the ‘Domestic Abuse Prevention and Intervention Act.’ This courtroom shall have public access controls to safeguard the identity of the victim, and the Judge presiding the specialized courtroom shall have discretion to determine which persons shall have access thereto.

◆

STATEMENT OF THE CASE

Andrea Cristina Ruiz Costas was brutally murdered by her ex-partner, Miguel Ocasio Santiago. Her partially burned body was found on April 29, 2021, at the side of a rural road located in the Municipality of Cayey, just a few days after Respondents Olga E. Costas Rodríguez and Alfonso Ruiz Pérez, her parents, found out she was missing.¹

At the time, Respondents were unaware that just over a month earlier, their daughter had sought an order of protection from Mr. Ocasio Santiago at the Caguas Court of First Instance, appearing in three

¹ *Ciencias Forenses identifica cuerpo hallado en Cayey como el de Andrea Ruiz Costas*, PRIMERA HORA (Apr. 30, 2021), <https://www.primerahora.com/noticias/policia-tribunales/notas/ciencias-forenses-identifica-cuerpo-hallado-en-cayey-como-el-de-andrea-ruiz-costas/>.

hearings held between March 25 and March 31, 2021. Two of the hearings dealt with Ms. Ruiz Costas' petition for a restraining order against her abuser; the third sought an order for Mr. Ocasio Santiago's arrest. None of the petitions were granted. In a voice message left to a friend during that time frame, she expressed frustration and disappointment with how the courts had treated her and stressed that she feared for her safety and lack of control over her life.²

This case deals with the Asociación de Periodistas de Puerto Rico (ASPPRO)'s request – with the support of Respondents, the surviving parents of Ms. Ruiz Costas – of access to the sealed court recordings of the three proceedings. While the Caguas Court of First Instance scheduled a hearing to address Petitioner's petition, and cited Respondents to appear, it was cancelled by order of the Supreme Court of Puerto Rico which issued a *sua sponte* Judgment, holding that pursuant to Article 5.005 of Puerto Rico's Judiciary Act of 2003, all judicial proceedings involving allegations of domestic abuse must be closed to the press and public, without exception. In light of the absolute nature of the decision below, even Respondents' access to the court recordings is now foreclosed: according to the Puerto Rico Supreme Court, no one, not even a party to the proceeding, or her next of kin, can obtain access to those records.

² *¡De su propia voz! | Audio revela la angustia de Andrea Ruiz Costas*, TELEMUNDO PUERTO RICO (May 4, 2021), <https://www.telemundopr.com/noticias/puerto-rico/de-su-propia-voz-audio-revela-la-angustia-de-andrea-ruiz-costas/2210164/>.

A. Background

This case arises against the backdrop of rampant domestic and gender-based violence in Puerto Rico. A 2012 report by the American Civil Liberties Union found that “Puerto Rico has the highest per capita rate in the world of women over 14 killed by their partners.”³ The report also found that “107 women were killed by their intimate partners” from 2007 to 2011.⁴ A 2019 joint report by Proyecto Matria, a non-profit organization that provides interdisciplinary services to victims of gender violence, and Kilómetro 0, a local, non-governmental police watchdog, showed that the problem continues. While stressing a high probability of underreporting due to lack of transparency and access to information concerns, the report still confirmed that, from 2014 to 2018, at least 75 women were killed by their intimate partners.⁵

The Government of Puerto Rico has promised action on the matter, declaring a state of emergency as a result of the rise in cases of gender-based violence in January of 2021.⁶ However, the Observatorio de

³ *Island of Impunity: Puerto Rico’s Outlaw Police Force*, ACLU, 103 (June 2012), https://www.aclu.org/files/assets/islandofimpunity_20120619.pdf.

⁴ *Id.*

⁵ *La persistencia de la indolencia: feminicidios en Puerto Rico 2014-2018*, Proyecto Matria & Kilómetro 0, 26-27 (November 2019), <https://www.kilometro0.org/s/La-persistencia-de-la-indolencia-20191112-vf.pdf>.

⁶ *Executive Order of the Governor of Puerto Rico, Hon. Pedro R. Pierluisi, declaring a state of emergency as a result of the rise in cases of gender-based violence in Puerto Rico*, OE-2021-013,

Equidad de Género de Puerto Rico, a joint project created by a coalition of human rights and feminist organizations in Puerto Rico, and tasked with monitoring and analyzing the situation of gender violence in Puerto Rico, has documented that at least 11 women have been killed by their intimate partners so far in 2021. Andrea Cristina Ruiz Costas is victim number 5 in the report.⁷

B. Facts and Procedural History

1. The March 25-31, 2021 hearings

On March 25, 2021, Ms. Ruiz Costas initiated an *ex parte* civil proceeding, in the Caguas Court of First Instance, seeking a provisional restraining order against her ex-partner and abuser, Miguel Ocasio Santiago, pursuant to Section 2.5 of Puerto Rico's Domestic Abuse Prevention and Intervention Act, Act No. 54 of August 15, 1989, as amended, 8 L.P.R.A. § 625. After hearing her testimony, the court denied her request for immediate relief and scheduled a hearing for March

https://basecero.ogp.pr.gov/apex/apex_util.get_blob?s=9325356982140&a=161&c=112063554695324788&p=15&k1=5793&k2=&ck=9tWTsH1gFLukeFHOp7wq39VxBroKxBCQi0Yld9CCRyKMiI9NX_6upih_blQNkQ9rLztbK7qnhXYOr6nqssfC2A&rt=IR.

⁷ *Feminicidios, Desapariciones y Violencia de Género 2021*, Observatorio de Equidad de Género PR, (November 2021), 2-5, <https://observatoriopr.org/feminicidios>.

31, 2021, so that Mr. Ocasio Santiago could appear and present his defense.⁸

The very next day, Ms. Ruiz Costas filed a criminal complaint against Mr. Ocasio Santiago, pursuant to Section 3.1 of Act No. 54, 8 L.P.R.A. § 631. Under P.R. R. CRIM. P. 6, she appeared that day before a municipal judge, who took her statement but found no probable cause to arrest.⁹

Finally, on March 31, 2021, Ms. Ruiz Costas appeared at the Caguas Court of First Instance for the final hearing on her petition for a restraining order, pursuant to Section 2.1 of Act No. 54, 8 L.P.R.A. § 621. Once again, the court did not grant the order.¹⁰

2. Andrea Cristina Ruiz Costas' perception of the process and murder

In a voice message left to a friend during that time frame, Ms. Ruiz Costas expressed her frustration and disappointment with the way she had been treated in the courts and stressed that she feared for her safety

⁸ See Oscar J. Serrano, *Conspiración de silencio en el Poder Judicial sobre el manejo del caso Andrea Ruiz Costas*, NOTICEL (May 5, 2021), <https://www.noticel.com/tribunales/ahora/top-stories/20210505/conspiracion-de-silencio-en-el-poder-judicial-sobre-el-manejo-del-caso-andrea-ruiz-costas/>.

⁹ See *id.*

¹⁰ See *id.*

and lack of control over her life.¹¹ Her words would prove to be a horrific omen.

On April 26, 2021, Respondents found out that their daughter was missing. Three days later, her body was found, partially burned, at the side of a rural road in the Municipality of Cayey. She was 35 years old.¹² Mr. Ocasio Santiago was arrested that same day and confessed to her murder.¹³ He committed suicide in jail on August 1, 2021, while his murder prosecution was ongoing.¹⁴

¹¹ *¡De su propia voz! | Audio revela la angustia de Andrea Ruiz Costas*, TELEMUNDO PUERTO RICO (May 4, 2021), <https://www.telemundopr.com/noticias/puerto-rico/de-su-propia-voz-audio-revela-la-angustia-de-andrea-ruiz-costas/2210164/>. See also “*Que sea lo que Dios quiera*”: *Andrea Ruiz Costas ya estaba defraudada por el sistema judicial*, METRO PUERTO RICO (May 4, 2021), <https://www.metro.pr/pr/noticias/2021/05/04/que-sea-lo-que-dios-quiera-andrea-ruiz-costas-ya-estaba-defraudada-por-el-sistema-judicial.html>.

¹² *Ciencias Forenses identifica cuerpo hallado en Cayey como el de Andrea Ruiz Costas*, PRIMERA HORA (Apr. 30, 2021), <https://www.primerahora.com/noticias/policia-tribunales/notas/ciencias-forenses-identifica-cuerpo-hallado-en-cayey-como-el-de-andrea-ruiz-costas/>.

¹³ *Radican cargos por asesinato contra expareja de Andrea Ruiz Costas*, NOTIUNO (May 1, 2021), https://www.notiuno.com/noticias/radican-cargos-por-asesinato-contr-expareja-de-andrea-ruiz-costas/article_efbbf360-aa81-11eb-912a-d7b5ebfc6deb.html.

¹⁴ *Lester Jiménez, Ocasio Santiago estaba aislado en una celda al momento de quitarse la vida*, NOTICEL (Aug. 2, 2021), <https://www.noticel.com/ahora/20210802/ocasio-santiago-estaba-aislado-en-una-celda-al-momento-de-quitarse-la-vida/>.

3. Noticel's and Overseas Press Club's requests

In response to a request filed by Puerto Rican online daily news site *Noticel*, on May 3, 2021,¹⁵ the Court of First Instance immediately issued *sua sponte* a protective order prohibiting access to the recordings. Pet. App. 47a. The Protective Order, directed at the Puerto Rico Department of Justice, who had previously obtained a copy of the recordings, prohibited the disclosure of the files or their contents, “[d]ue to the nature of the allegations made for the record by [Ms. Ruiz Costas], and in line with the public policy that seeks to avoid revictimization and the disclosure of intimate, personal, or family information.” *Id.*

After learning of the Protective Order, on May 5, 2021, the Overseas Press Club of Puerto Rico (OPC), filed an *ex parte* motion in the Supreme Court of Puerto Rico seeking the release of the audio recordings of the March 25, 26 and 31, 2021 hearings. Pet. App. 2a. That same day, Respondents, as well as several other members of Ms. Ruiz Costas’ family, issued public declarations in support of the disclosure of the recordings.¹⁶

¹⁵ Oscar J. Serrano, *Conspiración de silencio en el Poder Judicial sobre el manejo del caso Andrea Ruiz Costas*, NOTICEL (May 5, 2021), <https://www.noticel.com/tribunales/ahora/top-stories/20210505/conspiracion-de-silencio-en-el-poder-judicial-sobre-el-manejo-del-caso-andrea-ruiz-costas/>.

¹⁶ Aiola Virella, *Familia de Andrea Ruiz Costas pide se divulgen grabaciones de sus vistas judiciales*, METRO PUERTO RICO (May 5, 2021), <https://www.metro.pr/pr/noticias/2021/05/05/>

On May 6, 2021, a five-justice majority of the Puerto Rico Supreme Court issued a Resolution denying OPC's motion. Pet. App. 83a-102a. Although the Supreme Court reasoned that "the procedure used is not adequate to obtain the information requested," Pet. App. 84a, it nonetheless reached the merits and held that Article 5.005 of the Judiciary Act of 2003, 4 L.P.R.A. § 25e, which orders the creation of specialized courtrooms with "public access controls to safeguard the identity of the victim" and provides that "the Judge presiding the specialized courtroom shall have discretion to determine which persons shall have access thereto," requires that all proceedings involving domestic violence to be closed to the public. Pet. App. 84a.

In three separate dissents, Chief Justice Oronoz Rodríguez and Justices Estrella Martínez and Colón Pérez reasoned that Article 5.005 did not create a blanket confidentiality classification of all proceedings in domestic violence cases, and that, in light of Respondents' statements in support of the OPC's request, there was no valid reason to deny the petition to unseal the recordings. Pet. App. 88a-102a.

4. ASPPRO's request

After the denial of the OPC's motion, on May 6, 2021, ASPPRO filed a request for access to the recordings to the Court Administration Office, pursuant to

familia-andrea-ruiz-costas-pide-se-divulgen-grabaciones-vistas-judiciales.html.

Article 6 of Puerto Rico’s Transparency and Expedited Procedure for Public Records Access Act, Act No. 141 of 2019, 3 L.P.R.A. § 9916. Initially, Petitioner sought access to redacted recordings, in order to “omit[] the instances in which [Ms. Ruiz Costas] discloses sensitive information.” Pet. App. 104a-106a.

That same day, the Court Administration Office responded to ASPPRO’s request, stating that it had “no objection to the disclosure” of the recordings, but directed Petitioner to take the petition to the Caguas Court of First Instance, as custodian of the recordings, and in light of both its May 3, 2021 Protective Order and the Supreme Court of Puerto Rico’s Resolution in the OPC case. Pet. App. 111a-112a. Accordingly, on May 7, 2021, ASPPRO filed a motion requesting redacted recordings of the three hearings in question. Pet. App. 116a-118a.

Later that day, Respondent Olga Esther Costas Rodríguez, mother of Ms. Ruiz Costas, issued a Sworn Declaration requesting that she “be given access to the recordings” of the hearings, and expressing that “the disclosure of the recordings in this case would be key for the control of the processing of cases as sensitive as those related to gender violence,” and “would offer confidence to women in these circumstances that their case will be handled with deference and sensitivity.” Pet. App. 123a-124a.

In response to ASPPRO’s motion, the Caguas Court of First Instance issued an Order scheduling a hearing for May 11, 2021. Pet. App. 52 a-53a. The court

also summoned the next of kin of Andrea Cristina Ruiz Costas to the hearing, as well as the Office of the Ombudsman for Women and the Puerto Rico Department of Justice. Pet. App. 53a.

On May 10, 2021, ASPPRO amended its motion to request complete, unredacted versions of the recordings, in light of the petition contained in the sworn declaration issued by Respondent Costas Rodríguez, which was introduced to the record. Pet. App. 128a-130a.

5. The Puerto Rico Supreme Court’s *sua sponte* certification and immediate denial of Petitioner’s access motion

Finally, on May 10, 2021, the Puerto Rico Supreme Court issued its *sua sponte* Judgment, taking immediate jurisdiction over and, without affording the parties any opportunity to brief or argue on the issues presented, denying Petitioner’s motion, and cancelling the hearing scheduled for May 11, 2021. Pet. App. 9a-10a.

In order to exercise such an unorthodox instance of appellate jurisdiction, the Supreme Court first invoked its authority to issue writs of intra jurisdictional certification, which allows it to

bring forthwith, consider and resolve any matter pending in the Court of First Instance . . . when novel questions of law or of great public interest are raised that include any substantial constitutional issue under the

Constitution of the Commonwealth of Puerto Rico or the Constitution of the United States.

P.R. R. CIV. P. 52.2(d).

The Puerto Rico Supreme Court also invoked its authority pursuant to Rule 50 of the Rules of the Supreme Court, which permits it “to dispense with specific terms, writings, or procedures in order to achieve the fairest and most efficient dispatch of the case or matter in question,” P.R. Sup. Ct. R. 50, in order to sidestep all briefing in the matter, thus depriving Petitioner, as well the appearing Respondents – Ms. Ruiz Costas’ parents – an opportunity to be heard.

The same five-justice majority that had previously denied the OPC’s request again held that Article 5.005 of the Judiciary Act of 2003, 4 L.P.R.A. § 25e, imposed a total ban on public access to domestic violence proceedings. Pet. App. 8a. This, in turn, was “not compatible with the possibility that [a] recording may later be made public, even if it is limited or part of it is omitted, regardless of who requests it.” Pet. App. 8a.

Chief Justice Oronoz Rodríguez, Justice Estrella Martínez and Justice Colón Pérez dissented. Pet. App. 11a-22a. The dissents first chastised the majority for holding in the OPC that the request had been brought in the wrong forum, and then preventing the proper forum to rule on the request. Pet. App. 12a, 18a. The dissenting Justices also questioned the majority’s interpretation of Article 5.005, noting that the statute’s plain language, particularly its grant of discretion to “the Judge presiding the specialized courtroom . . . to

determine which persons shall have access thereto,” and the emphasis in linking the “controlled access to the public” to the protection of the “identity of the victim,” contradicted the notion that it imposes an absolute ban on public access. In this case, since Ms. Ruiz Costas’ name was already known given the widespread publicity concerning her death and the circumstances leading thereto, and her family, including Respondents, favored disclosure, the circumstances demanded disclosure. Pet. App. 14a-15a, 18a-19a, 20a-22a. Chief Justice Oronoz Rodríguez also highlighted the fact that not one party to the case had objected to Petitioner’s request, and that in fact the Public Ministry and the Governor had spoken in favor of the disclosure of the recordings. Pet. App. 12a, 15a.

Thus, while the case presented “one of the rare instances in which all the parties concerned” were “in favor of disclosure and transparency,” Pet. App. 15a, a majority of the Puerto Rico Supreme Court imposed a remedy prayed by no one.

ASPPRO moved twice for reconsideration. Pet. App. 137a-154a, 175a-188a. Petitioner argued that the *sua sponte* Judgment had deprived all parties an opportunity to be heard in a case involving an important First Amendment controversy. Additionally, ASPPRO averred that the court’s absolute ban on public access to civil and criminal domestic violence proceedings ran afoul of this Court’s decisions in *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596 (1982), and *El Vocero of Puerto Rico v. Puerto Rico*, 508 U.S. 147 (1993). Finally, Petitioner claimed that the Puerto Rico Supreme Court

had misapplied its own precedents on access to judicial proceedings, particularly in *Fulana de Tal & Sutana de Cual v. Demandante A*, 138 D.P.R. 610 (1995). The same five-justice majority of the court summarily denied both requests. Pet. App. 69a, 76a.



REASONS FOR GRANTING THE WRIT

Respondents Olga E. Costas Rodríguez and Alfonso Ruiz Pérez support in full the ASPPRO's Petition for a Writ of *Certiorari*, as well as its reasons for granting the Petition. In concluding that Article 5.005 of the Judiciary Act of 2003, 4 L.P.R.A. § 25e, imposes a total ban on public access to domestic violence proceedings, Pet. App. 8a, the Puerto Rico Supreme Court misconstrues the statute, and the Commonwealth's policy towards domestic violence proceedings, in a manner that places it in direct conflict this Court's reiterated application of a First Amendment right of access to criminal proceedings, as well as multiple decisions by the Court of Appeals and state courts of last resort, including prior decisions by the Supreme Court of Puerto Rico wholly absent in the majority's analysis, applying the First Amendment right of access to civil proceedings.

A. The decision conflicts with this Court's application of the First Amendment right of public access to criminal proceedings

The decision of the Puerto Rico Supreme Court to adopt a blanket denial of public access to all civil and criminal judicial proceedings involving victims of

domestic violence is incompatible with this Court's prior pronouncements on First Amendment protections and the ensuing right of public access to certain court proceedings. *See for example, Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580 (1980); *Globe Newspaper Co. v. Super. Ct.*, 457 U.S. 596, 603, 606-07 (1982); *Press-Enterprise Co. v. Super. Ct.*, 464 U.S. 501, 505-11 (1984) ("*Press-Enterprise I*"); *Press-Enterprise Co. v. Superior Ct.*, 478 U.S. 1, 9 (1986) ("*Press-Enterprise II*"); *El Vocero de P.R. v. P.R.*, 508 U.S. 147, 149-50 (1993) (per curiam).

As this Court has established, the First Amendment strongly favors granting public access to judicial proceedings and the records of those proceedings. Even so, the First Amendment right of access is not absolute. Court precedent has recognized limitations to public access when it may be demonstrated that it would harm an overriding interest and no alternative to the restriction of access would prevent that harm. *See, e.g., Press-Enterprise II*, 478 U.S. at 13-14.

For this reason, this Court has developed an "experience and logic" test to identify the types of proceedings and records to which the public access right attaches. First, the experience prong assesses "whether the place and process have historically been open to the press and general public." *Press-Enterprise II*, 478 U.S. at 8. Second, the logic prong considers whether public access "plays a significantly positive role in the functioning of the particular process in question." *Id.*; *see El Vocero*, 508 U.S. at 149-50 (per curiam); *Press-Enterprise I*, 464 U.S. at 505, 508-09; *Globe Newspaper*,

457 U.S. at 605-06; *Richmond Newspapers*, 448 U.S. at 589 (Brennan, J., concurring in the judgment).

This Court has previously addressed the Puerto Rico Supreme Court's conflicting approach to this issue, recognizing that the First Amendment right fully applies in Puerto Rico. *El Vocero*, 508 U.S. at 148 n.1. At that time, Puerto Rico's Rules of Criminal Procedure established that probable cause hearings were not open to the public. This Court rejected Puerto Rico's justification for denying public access to probable cause hearings and instead applied the experience and logic test to determine that these proceedings were subject to the First Amendment right of access. *El Vocero*, 508 U.S. at 149-51. The Puerto Rico Supreme Court has acted contrary to the holding in *El Vocero*, which requires it to apply the experience and logic test to determine whether the proceedings in question are subject to the First Amendment right of access.

B. The decision conflicts with holdings of the Courts of Appeals and state courts of last resort finding a constitutional access right in civil proceedings

In addition to this Court's jurisprudence, the decision of the Puerto Rico Supreme Court is also in conflict with a growing consensus in other judicial forums that the experience and logic test of the First Amendment right of access is not limited to criminal cases but applies to civil proceedings as well.

Courts of Appeals have been consistent in their application of the experience and logic test of the First Amendment right of access to civil proceedings. “The press’s right of access to civil proceedings and documents fits squarely within the First Amendment’s protections.” *Courthouse News Serv. v. Planet*, 947 F.3d 581, 591 (9th Cir. 2020) (quoting *Courthouse News Serv. v. Brown*, 908 F.3d 1063, 1069 (7th Cir. 2018)). See also, e.g., *Westmoreland v. CBS*, 752 F.2d 16, 22-23 (2d Cir. 1984) (holding that First Amendment access right attaches to a civil trial); *Publicker Indus. Inc. v. Cohen*, 733 F.2d 1059, 1070 (3d Cir. 1984) (same); *Rushford v. New Yorker Magazine, Inc.*, 846 F.2d 249, 253-54 (4th Cir. 1988) (right attaches to documents filed in support of motion for summary judgment); *Brown & Williamson Tobacco Corp. v. FTC*, 710 F.2d 1165, 1178 (6th Cir. 1983) (right attaches to administrative record and other documents filed by agency in litigation); *In re Cont’l Ill. Sec. Litig.*, 732 F.2d 1302, 1308 (7th Cir. 1984) (right attaches to hearings held and evidence introduced in connection with motion to terminate); *Courthouse News Serv. v. Planet*, 947 F.3d 581, 590-91 (9th Cir. 2020) (right attaches to civil complaints); *Newman v. Graddick*, 696 F.2d 796, 801 (11th Cir. 1983) (right attaches to civil trials, pre-trial hearings, and post-trial hearings concerning release of prisoners). These courts have recognized “a nationwide tradition and practice of access” to civil proceedings, *Courthouse News Serv. v. Schaefer*, 2021 U.S. App. LEXIS 18863, at *11 (4th Cir. June 24, 2021), and found that “[p]ublic access to civil trials, no less than criminal trials, plays an important role in the participation and the free

discussion of governmental affairs,” *Publicker*, 733 F.2d at 1070.

This has also been the case in several state supreme courts. *See, e.g., NBC Subsidiary (KNBC-TV), Inc. v. Superior Court*, 980 P.2d 337, 357 (Cal. 1999) (civil trials); *Boston Herald, Inc. v. Sharpe*, 737 N.E.2d 859, 873 (Mass. 2000) (affidavits in abuse prevention order proceedings); *N.J. Div. of Youth & Family Servs. v. J.B.*, 576 A.2d 261, 267 (N.J. 1990) (pre-trial hearing in cases involving termination of parental rights for alleged abuse or neglect); *Ex Parte Capital U-Drive-It, Inc.*, 630 S.E.2d 464, 469 (S.C. 2006) (family court records in divorce proceeding); *Rapid City Journal v. Delaney*, 804 N.W.2d 388, 395 (S.D. 2011) (civil trials).

Perhaps most importantly however, the Puerto Rico Supreme Court itself has previously applied the experience and logic test to civil proceedings. In *Fulana de Tal & Sutana de Cuál v. Demandado A*, 138 D.P.R. 610 (1995), the court upheld a narrowly-tailored restriction, excluding the public only for a specific part of the proceedings but requiring the rest of the trial to be public. In the present case, the Puerto Rico Supreme Court has unjustifiably deviated from its prior ruling, and also from numerous decisions in other forums.

C. The decision conflicts with this Court's requirement that those asserting a constitutional access right be afforded an opportunity to be heard

As Petitioner also asserts, the decision below also conflicts with the First Amendment guaranty that parties seeking access to judicial proceedings must be afforded “an opportunity to be heard on the question of their exclusion.” *Globe Newspaper*, 457 U.S. at 609 n.25 (quoting *Gannett Co. v. DePasquale*, 443 U.S. 368, 401 (1979) (Powell, J., concurring)). By combining the court’s authority under P.R. R. CIV. P. 52.2(d) to issue *sua sponte* a writ of intra jurisdictional certification with its discretionary power to “to dispense with specific terms, writings, or procedures,” P.R. Sup. Ct. R. 50, the Puerto Rico Supreme Court deprived ASPPRO an opportunity to challenge their exclusion and present and brief its constitutional rights before they were denied.

Even worse, the Puerto Rico Supreme Court also closed the courthouse doors to the only party that could adequately represent the interests that the specialized domestic abuse courtrooms with public access controls created by Article 5.005 of the Judiciary Act of 2003 seeks to safeguard: the victim. The Supreme Court’s handling of this matter forced Respondents to alternate between grieving with the whole family for the tragic loss of their daughter (April 29, 2021), arranging

for the funeral (May 8-9, 2021),¹⁷ while desperately attempting to have their voices in favor of public disclosure of the recordings heard via declarations (May 5, 2021)¹⁸ and a sworn statement (May 7, 2021), Pet. App. 123a-124a, before the Supreme Court closed the matter on those requests (May 10, 2021). Pet. App. 1a-10a. Thus, in holding that Petitioner’s First Amendment’s rights in this case “give[] way to the protection of confidentiality and the right to privacy that all future victims have,” Pet. App. 7a, the Court silenced the voice of the only representatives of the present victim.

D. The Supreme Court’s asserted exclusion interests have been previously rejected by this Court

Petitioner also correctly explains that the two interests advanced by the Puerto Rico Supreme Court in order to justify its interpretation of Article 5.005 of the Judiciary Act of 2003, 4 L.P.R.A. § 25e, (1) domestic violence victims’ interest in “confidentiality and the right to privacy,” Pet. App. 7a, and (2) the public interest in not “discourag[ing] and inhibit[ing] future victims of domestic violence from seeking protection in

¹⁷ Sara R. Marrero Cabán, *Se despiden de Andrea Ruiz Costas*, ES NOTICIA (May 9, 2021), <https://esnoticiapr.com/se-despiden-de-andrea-ruiz-costas/>.

¹⁸ Aiola Virella, *Familia de Andrea Ruiz Costas pide se divulgen grabaciones de sus vistas judiciales*, METRO PUERTO RICO (May 5, 2021), <https://www.metro.pr/pr/noticias/2021/05/05/familia-andrea-ruiz-costas-pide-se-divulgen-grabaciones-vistas-judiciales.html>.

our courts,” Pet. App. 8a, have been previously rejected by this Court in *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596 (1982), as insufficient to justify closing all proceedings during the testimony of a minor victim of an alleged sex crime.

In *Globe Newspaper*, this Court held that, while the state of Massachusetts had a compelling interest in protecting minor victims’ privacy and well-being, a blanket exclusion rule was not narrowly tailored to accommodate said interest. *Id.* at 607-09. To the contrary, the First Amendment right of access requires that courts “determine, on a case-by-case basis, whether closure is necessary to protect the welfare of a minor victim.” *Id.* at 608.

In this case, even though a plain reading of Article 5.005 seems to support the ‘case-by-case’ approach favored by the Court in *Globe Newspaper*, the Court’s interpretation of Article 5.005 as imposing an absolute ban on public access to civil and criminal domestic violence proceedings forecloses any possibility of narrowly tailoring the statute’s “public access controls.” This is particularly true in this case, in which the identity of the victim is very well known and its surviving family fully supports the disclosures.

Secondly, the Court in *Globe Newspaper* rejected as insufficient an interest in encouraging victims to come forward, given that it had no “empirical support,” and that it would open the doors to “support an array of mandatory closure rules designed to encourage victims to come forward” and “run contrary to the very

foundation of the right of access recognized in *Richmond Newspapers*.” *Globe Newspaper*, 457 U.S. at 610.

Here, as in *Globe Newspaper*, the Puerto Rico Supreme Court has offered no empirical support for the premise that a categorical closure of civil and criminal domestic violence proceedings is necessary to ensure that domestic violence victims come forward with their complaints. That said empirical support can be produced is dubious in itself, given that the special law that regulates domestic violence proceedings in Puerto Rico, the Domestic Abuse Prevention and Intervention Act, Act No. 54 of August 15, 1989, as amended, 8 L.P.R.A. §§ 601-664 (2020), does not require any sort of “public access controls.” In fact, it was not until 2011 that Article 5.005 of the Judiciary Act of 2003 was amended to incorporate the present language mandating the creation of specialized domestic abuse courtrooms with public access controls. *See* Act No. 30 of 2011. While the Statement of Motives of Act No. 30 acknowledges that the efforts made by the government had not been enough to empower women to turn to the system for help – indeed, that is still not the case – none of the proffered reasons for said deficiency (lack of empathy, delays in the handling of complaints and misinformation about the rights of women) were particularly related to confidentiality concerns, and no evidence is included supporting a finding that the lack of closure of the proceedings prior to 2011 hindered in any way the ability of victims to come forward.



CONCLUSION

For the foregoing reasons, respondents Olga E. Costas Rodríguez and Alfonso Ruiz Pérez, as next of kin to Andrea Cristina Ruiz Costas, request that this Court grant the Petition for a Writ of *Certiorari*.

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