

No. 21-659

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In the  
**Supreme Court of the United States**

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ASOCIACIÓN DE PERIODISTAS DE PUERTO RICO,  
*Petitioner,*  
v.  
COMMONWEALTH OF PUERTO RICO, ET AL.,  
*Respondents.*

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

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**BRIEF AMICUS CURIAE OF THE OVERSEAS PRESS CLUB  
OF PUERTO RICO IN SUPPORT OF PETITIONER**

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**QUESTION 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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**IDENTITY AND INTEREST OF  
AMICUS CURIAE**

Pursuant to Supreme Court Rule 37, the Overseas Press Club of Puerto Rico (OPC) respectfully submits this brief *amicus curiae* in support of Petitioner Asociación de Periodistas de Puerto Rico (ASPPRO).<sup>1</sup>

For more than fifty years, OPC has promoted and elevated excellence, ethics and superior standards for responsible and trustworthy journalism in Puerto Rico. The plea presented by the Petitioner is echoed, not only by the members of the OPC, but also by the public it serves which demands transparency from its institutions.

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<sup>1</sup> Pursuant to this Court's Rule 37.2, all parties with counsel listed on the docket have consented to the filing of this brief. Counsel of record for all listed parties received notice at least 10 days prior to the due date of the Amicus Curiae's intention to file this brief. Letters evidencing such consent have been filed with the Clerk of the Court.

Pursuant to Rule 37.6, Amicus Curiae affirms that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than Amicus Curiae, its members, or its counsel made a monetary contribution to its preparation or submission.

## SUMMARY OF ARGUMENT

The Petition presented by the Asociación de Periodistas de Puerto Rico (ASPPRO) seeks review of a sharply divided Puerto Rico Supreme Court's holding that all judicial proceedings involving allegations of domestic abuse must be closed to the press and public, without exception, pursuant to Article 5.005 of Puerto Rico's Judiciary Act of 2003. The decision refused a motion for access to the sealed recordings of civil and criminal judicial proceedings in which courts denied a victim of domestic violence protection from her abuser three times over the course of a single week. She was murdered by her abuser soon thereafter.

The holding's long-lasting effect is that the Puerto Rico Supreme Court practically closed judicial proceedings, both criminal and civil—present and future—without taking into account or even mentioning the First Amendment or citing this Court's precedent defining the scope of the access right.

**REASONS FOR GRANTING THE WRIT****I****THE PUERTO RICO SUPREME COURT'S HOLDING  
EFFECTIVELY BARS ALL FIRST AMENDMENT ACCESS  
TO PRESENT AND FUTURE CASES, IN DIRECT CONFLICT  
WITH THE DECISIONS OF THIS COURT**

By determining that all domestic violence cases held in a specialized court are entirely closed and confidential, without applying the test enunciated by this Court on *Press-Enterprise Co. v. Superior Court II*, 478 U.S. 1 (1986), the Puerto Rico Supreme Court has effectively denied all present and future First Amendment access. Nowhere to be found is the required weighing and balance of interests between potentially conflicting rights.

Ever since 1980, this Court has held that the U.S. Constitution guarantees to the press the right to attend criminal trials.<sup>2</sup> The Court described how the openness of these trials serves several purposes: it opens the judge, jury and attorneys up to public scrutiny, offering the public a check on their power; it provides an outlet for communal emotions of rage and pain that usually follows a crime; and people that are directly affected or indirectly involved are able to satisfy their desires for justice by watching a trial

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<sup>2</sup> *Richmond Newspapers v. Virginia*, 448 U.S. 555, 580 (1980).



unfold.<sup>3</sup> This is the basis for the *presumption of openness* in all criminal trials.<sup>4</sup>

We should not lose perspective that court records are analogous to trial transcripts and attendance. That is why this Court established, even on pre-trial proceedings, that there must be a criteria to be met in order to limit public access: (i) whether the press traditionally was allowed to attend, and (ii) whether allowing such attendance would maintain the proceeding's functioning. These prongs allow lower courts to consider any prejudice to any of the parties involved, as well as the benefits that access would bring to the justice system.<sup>5</sup> That is the balancing test that the Petitioner is claiming for in this case, and that the Puerto Rico Supreme Court entirely ignored.

By failing to apply this Court's experience and logic tests, the Puerto Rican court ignored this Court's holdings and forty years of lower court precedent recognizing the critical role the public access right plays in supporting the functioning and legitimacy of the courts. This substantial departure from settled law governing an important federal constitutional right warrants review by this Court.

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<sup>3</sup> *Id.* at 569-571.

<sup>4</sup> *Id.* at 573.

<sup>5</sup> Press Enterprise II, *supra*, at 89.

## II

### **THE PUERTO RICO SUPREME COURT'S HOLDING WILL TURN IT INTO THE ULTIMATE CENSOR, WITHOUT AN EFFECTIVE CHECK ON ITS ARBITRARY DECISION**

By interpreting that all domestic violence cases held in a specialized court are entirely closed and confidential, contrary to what the letter of the law states, the Puerto Rico Supreme Court has barred present and future First Amendment access, sidestepping the constitutional scrutiny required.

Domestic violence in Puerto Rico has reached alarming levels. Public consciousness on the matter hit a level of awareness that on January 25<sup>th</sup>, 2021, the Governor of Puerto Rico, Hon. Pedro Pierluisi, issued Executive Order OE-2021-013, declaring a State of Emergency that finally responded to the plea of thousands of Puerto Ricans who have asked the Island's leaders to address the ongoing crisis of gender and domestic violence. It is in that environment that Andrea Cristina Ruiz-Costas' murder became news.

After going missing for several days, Andrea's half-burned and half-naked body was found in the woods of Cayey, Puerto Rico, on April 29<sup>th</sup>, 2021. The news coverage went on a frenzy. Her ex-boyfriend, Miguel Ocasio-Santiago, was arrested on national television, later confessing his crime.

On April 30<sup>th</sup>, 2021, the Puerto Rico's Forensic Science Bureau confirmed that the 35-year-old body found was in fact Andrea's. Public interest and concern about this case increased even more as the

press published that she sought protection from local courts and was denied twice.

On her first attempt, on March 25<sup>th</sup>, 2021, Andrea requested from the First Instance Court a restraining order against her ex-boyfriend, an Ex Parte civil procedure under Act 54-1986 (Law Against Domestic Violence) in front of a Specialized Domestic Violence Court from the Caguas District of Puerto Rico. The presiding Judge did not grant the provisional restraining order but scheduled a second hearing to be held on March 31<sup>st</sup>, 6 days later, and summoned the alleged abuser so he could present a defense.

The following day, on March 26<sup>th</sup>, 2021, Andrea pressed charges against her ex-boyfriend for domestic abuse at the Police Department. One of the agents consulted with the prosecutor, who recommended to file a criminal action under Act 54-1986. That evening Andrea, the Police Agent and the accused appeared at the Criminal Court from the Caguas District of Puerto Rico, without a Prosecutor, and the presiding Judge did not find probable cause to order the arrest of Ocasio-Santiago.

Public interest in the case increased even more when the press published that the judge that presided the Criminal Court is the sister-in-law of the President of Puerto Rico's Senate. What caused an even bigger public uproar was a WhatsApp voice message that the press obtained, in which Andrea complained to a friend how that judge didn't seem to care about her or her safety, expressing frustration and hopelessness. The public will also find out later thru the press that Andrea withdrew her petition for

a restraining order to be held on March 31<sup>st</sup>, citing having no more interest in continuing the process.

Members of the press tried to obtain the recordings of the judicial proceedings related to Andrea Cristina Ruiz-Costas. After several days without response, they were confronted on May 3<sup>rd</sup>, 2021, with a “Protective Order” issued by the Administrative Judge for the Caguas District, banning the disclosure or discussion of any judicial proceeding that were recorded during Andrea’s both civil and criminal appearances, to anyone except the Puerto Rico’s Justice Department.

On May 5<sup>th</sup>, 2021, the OPC, on behalf of its members, filed directly to the Supreme Court of Puerto Rico via a special motion named “URGENT AND SPECIAL REQUEST FROM THE OVERSEAS PRESS CLUB OF PUERTO RICO”, under the provisions of the Puerto Rico Supreme Court Program for Access for Media to Judicial Proceedings, asking for access to the entire record of the case People of Puerto Rico vs. Miguel Ocasio Santiago, Case No.: CG2021CR00274, Rel: OPA 2021011403, pursuant Article 3.1 of Act 54. OPC specifically asked for the full disclosure of the content of the recordings of the judicial proceedings held on March 25<sup>th</sup>, 26<sup>th</sup>, and 31<sup>st</sup> of 2021 related to this case and also challenged the validity of the Caguas District’s “Protective Order”.

On May 6<sup>th</sup>, 2021, the Puerto Rico Supreme Court denied OPC’s Special Request stating that the recordings requested were confidential. Their determination was based on Article 5.005 of the Judiciary Act of 2003, as amended, Act No. 201-2003,

4 LPPA sec. 25e. Article 5.005 creates the Specialized Domestic Violence Courts, which allow presiding judges to control “access to the public”. The Supreme Court interpreted this access control by a presiding judge equals a full confidentiality of all judicial domestic violence records, enough to ban access to the press. The Final judgement came with dissents from the Chief Justice Maite Oronoz-Rodríguez and justices Luis Estrella-Martínez and Angel Colón-Pérez.

Prompted by the Supreme Court’s decision, Andrea’s family made public comments to the press questioning the reasons why the judicial proceedings would be kept secret and saying that they would rather have the recordings made public than be kept behind closed curtains. Public opinion peaked demanding accountability to the judicial branch.

In that very same day, ASPPRO presented an administrative petition via email, under the provisions of Puerto Rico’s Transparency Act 141-2019, requesting both the Courts Administration Office (“OAT” for its Spanish acronym) and the Puerto Rico Justice Department to disclose the aforementioned recordings of Andrea’s appearances before the Caguas District Court, "omitting the instances where sensitive information was divulged as part of her testimony".

Later that day, also on May 6<sup>th</sup>, 2021, right after the ASPPRO’s letter was sent, the OAT answered and expressed to have no objection and granted the petition the way it was requested by ASPPRO, acknowledging that its request was in accordance with the Protective Order issued by the Caguas District’s Administrative Judge.

On May 7<sup>th</sup>, ASPPRO filed a motion on the case of the People of Puerto Rico vs. Miguel Ocasio Santiago, *supra*, requesting the recordings of Andrea's appearances, as instructed by OAT Administrator. The Caguas District's Administrative Judge Marrero Guerrero issued an Order that same day, scheduling a hearing for May 11<sup>th</sup>, 2021.

On the morning of May 10<sup>th</sup>, 2021, OPC presented a MOTION FOR RECONSIDERATION AND TO PARALIZE INSTANCE PROCEEDINGS to the Supreme Court of Puerto Rico, stating that their decision infringed First Amendment rights and that allowing the hearing scheduled at the first instance level to determine which parts of the judicial proceedings' records could be considered sensitive will raise an even worse scenario of prior censorship. Also, a sworn statement of Olga E. Costas-Rodriguez, Andrea's mother, was attached to the motion, basically stating that she wanted the recordings of her daughter's court appearances to be public in their entirety.

Armed with the same sworn statement, ASSPRO filed a motion that very same morning but at first instance level, changing their original petition before the scheduled hearing, and asking for the full recordings, acknowledging that the victim's family consented for the full release of the recordings.

On the afternoon of May 10<sup>th</sup>, ASPPRO ironically learned from the press, and not through the proper notification channels, that the Supreme Court of Puerto Rico had "*sua sponte*" certificated ASPPRO's petition to the lower court via an Intra-jurisdictional Certification, citing Rule 52.2(d) of Puerto Rico's Rules

of Civil Procedure. Its effect was to paralyze all proceedings at the Caguas District Court and elevate ASPPRO's petition directly to the Supreme Court's immediate consideration. In that very same decision and based on Rule 50 of the Supreme Court's Rules, the Court made a final decision on the case, disposing of ASPPRO's petition in its entirety because allegedly any further proceeding would be inconsistent with their decision against OPC's original request.

On the evening of May 10<sup>th</sup>, OPC's reconsideration was denied without addressing any of the First Amendment's concerns raised. All three dissenting opinions stated they would not infringe the freedom of the press in this case.

The practical effect of the combined Puerto Rico Supreme Court decisions is that they are the *ultimate censor* of the content of domestic violence public judicial proceedings, that all domestic violence records are confidential on its face, and that there is no effective way to question the Supreme Court's censorship since all administrative, first instance and Supreme Court level press petitions were denied without even acknowledging the need for a First Amendment analysis.

Still, on May 13<sup>th</sup>, 2021, OPC presented a second and last MOTION FOR RECONSIDERATION AND ASKING FOR A PUBLIC HEARING. It was unceremoniously denied with one brief line the very next day. The same three judges dissented.

On May 25<sup>th</sup>, 2021, ASPPRO filed the only procedural option the Supreme Court left regarding their petition, a motion for reconsideration. In its first

written chance to present any argument at any level, ASPPRO challenged the Courts Ruling as it infringes access information rights upon the First Amendment. ASPPRO also questioned the ruling of the Supreme Court concerning the premature use of the Certification pursuant Rule 52.2 (d) and the use of Rule 50 to dispose of all terms and briefs from the parties and challenging the Art. 5.005. Neither the Department of Justice, the Attorney General, the victim's family, nor the Governmental Office of the Advocate for Women, opposed ASPPRO's Motion for Reconsideration.

On May 27<sup>th</sup>, 2021, the Supreme Court denied ASPPRO's reconsideration. Judges Oronoz-Rodríguez, Estrella-Martínez and Colón-Pérez dissented once again.

On June 2<sup>nd</sup>, 2021, ASPPRO filed a Second Motion for Reconsideration to the Supreme Court. On this time, ASPPRO also questioned the Court's obstinance avoiding to acknowledge and apply the First Amendment tests and scrutiny. On June 4<sup>th</sup>, 2021, the Supreme Court denied the Second Motion for reconsideration with dissenting opinions of judges Oronoz-Rodríguez, Estrella-Martínez and Colón-Pérez.

A narrow majority of the Puerto Rico Supreme Court seems to have their mind set on ***barring any procedural access*** to the judicial recordings, blatantly ignoring what this Court established on *Richmond Newspaper v. Virginia*:



“When a shocking crime occurs, a community reaction of outrage and public protest often follows. See H. Weihofen, *The Urge to Punish* 130-131 (1956). Thereafter the open processes of justice serve an important prophylactic purpose, providing an outlet for community concern, hostility, and emotion. Without an awareness that society's responses to criminal conduct are underway, natural human reactions of outrage and protest are frustrated, and may manifest themselves in some form of vengeful "self-help", as indeed they did regularly in the activities of vigilante "committees" on our frontiers.”<sup>6</sup>

In a case that has captured the attention of the People of Puerto Rico, the press has a responsibility to investigate, keep digging and inform. After all “[p]eople in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing”.<sup>7</sup>

The Puerto Rico Supreme Court could have easily applied to this case the proper analysis endorsed by this Court in cases permitting access to the judicial proceedings, established in *Press, Enterprise II, supra*. It could have also applied the criteria it adopted from *Publicker Industries, Inc. v. Cohen*<sup>8</sup> through their decision in *Fulana de Tal v. Demandado*

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<sup>6</sup> *Richmond Newspaper v. Virginia*, 448 U.S. 555, 571 (1980).

<sup>7</sup> *Id.* at 572.

<sup>8</sup> *Publicker Industries, Inc. v. Cohen*, 733 F. 2d 1059 (3<sup>rd</sup> Cir. 1984).

A<sup>9</sup>. In synthesis, it is the Judge at the First Instance Level who can only overcome the presumption of openness when it determines the existence of a compelling interest that outweighs the presumption, in which case the Judge has to narrowly tailor the limits of public access. This compelling interest has to be expressly articulated, with sufficiently specific determinations, so that a court of higher hierarchy can revise and decide if the limit was narrow enough.

Instead, the Puerto Rico Supreme Court has gone out of its way to avoid or even recognize the controversy in front of them as a First Amendment issue. *Instead of solving the controversy in front of them, the Puerto Rico Supreme Court created a whole new controversy of prior censorship.*

Journalism has changed as technology changes. Communications has forced journalism to adapt to a non-stop cycle, and the public demands information to consume.

“The press does not simply publish information about trials but guards against the miscarriage of justice by subjecting the police, prosecutors, and judicial processes to extensive public scrutiny and criticism.”<sup>10</sup>

Without a solid First Amendment right, the members of the OPC and ASPPRO are faced with the dilemma of knowingly reporting half truths or not reporting the story at all. In either case, the journalist would be failing its responsibility, and citizens lose

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<sup>9</sup> Fulana de Tal v. Demandado A, 138 D.P.R. 610 (1995).

<sup>10</sup> Sheppard v. Maxwell, 384 U.S. 333, 350 (1966)

valuable information that may be needed to fulfill their right to be informed, express freely and petition the government for redress of grievances.

“Democracies die behind closed doors. The First Amendment, through a free press, protects the people's right to know that their government acts fairly, lawfully, and accurately in deportation proceedings. When government begins closing doors, it selectively controls information rightfully belonging to the people. Selective information is misinformation.”<sup>11</sup>

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<sup>11</sup> Detroit Free Press v. Ashcroft, 303 F. 3d 681 (6<sup>th</sup> Cir. 2002).

**CONCLUSION**

For the reasons stated above, the Petition for Writ of Certiorari should be granted.

DATED: December 3<sup>rd</sup>, 2021.

Respectfully submitted,

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