

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

PETITIONER'S SUPPLEMENTAL BRIEF

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Brief for *Amicus Curiae* Colegio de Abogados de
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Support of Petitioner, No. 21-659 (Dec. 2, 2021)6

INTRODUCTION

Petitioner submits this supplemental brief under Supreme Court Rule 15.8 to bring to the Court's attention two statements issued by Puerto Rican officials that have a direct bearing on this Petition.

On December 7, 2021, Puerto Rico Solicitor General Fernando Figueroa Santiago ("Solicitor General") issued a statement agreeing that the sealed recordings of the judicial proceedings at issue in this case should be made public; on December 10, 2021, the Chief Justice of the Puerto Rico Supreme Court, Maite Oronoz Rodríguez ("Chief Justice"), announced a new "Court Watch" program through which volunteers will be permitted to observe some domestic violence proceedings, notwithstanding the ruling challenged in this Petition that those proceedings must be closed to the public without exception under Article 5.005 of Puerto Rico's Judiciary Act of 2003, 4 L.P.R.A. § 25e ("Article 5.005"). *See* Pet. 13-14. Copies of these statements are annexed for the Court's reference.

These two statements substantially alter the posture of this case. The Solicitor General's position that the records of the underlying domestic violence proceedings should be made public means that all parties to this proceeding agree that the contrary ruling by the Puerto Rico Supreme Court is in error. The announcement of a program to *permit* observers in future domestic violence proceedings means the Puerto Rican judiciary is not applying Article 5.005 as the flat prohibition the statute was held to be in this case. Rather, it now recognizes that public access is

needed to maintain public confidence in domestic violence proceedings—the very confidence sustained by the First Amendment access right that the court failed to address in its rush to rule in this case.

As set forth below, these developments suggest the proper path forward. The Court should grant *certiorari*, vacate the decision below, and remand with instructions to consider whether Article 5.005, as construed by the Puerto Rico Supreme Court, violates the public’s First Amendment right of access, after first affording the parties an opportunity to be heard. This is the appropriate step because the extraordinary procedures invoked by the Puerto Rico Supreme Court prevented Petitioner from arguing—to any court—the nature and scope of the First Amendment access right it was asserting, and the Puerto Rico Supreme Court denied access without ever addressing that First Amendment right. Pet. 26-28.

BACKGROUND

The instant petition seeks review of a decision by the Puerto Rico Supreme Court denying Petitioner’s motion for public access to the official audio recordings of criminal and civil proceedings in which the courts refused protection to a victim of domestic violence three times in one week shortly before she was murdered by her abuser. Pet. 3-5. A sharply divided Puerto Rico Supreme Court held that Article 5.005 prohibited disclosure of the audio recordings. Pet. 13. The court read Article 5.005 to require the automatic sealing of all domestic violence proceedings, without exception, despite plain

language in the statute granting judges the “discretion” to exclude the public from domestic violence courtrooms, or not. Pet. 2-3, 13.

As described in the petition, the Puerto Rico Supreme Court issued this ruling just three days after Petitioner first moved for access in the trial court. The Supreme Court majority invoked an extraordinary procedure that allowed it *sua sponte* to take jurisdiction over the access motion before the motion had been briefed and argued in the trial court, and simultaneously to deny the access motion on the merits without any briefing or argument at all. Pet. 11-13. The majority’s opinion failed to address how the mandatory closure of all domestic violence proceedings that it ordered was permissible in light of the First Amendment right of access Petitioner was seeking to assert. Pet. 13-14.

The deadline for a response to the instant petition was December 3, 2021. Respondents Olga E. Costas Rodríguez and Alfonso Ruiz Pérez, as next-of-kin for Andrea Cristina Ruiz Costas, filed a brief in support of Petitioner; Respondent Commonwealth of Puerto Rico filed no response.¹

On December 7, 2021, the Solicitor General issued a press release regarding this matter. The release states: “The Puerto Rico Department of Justice remains firm in its initial position that the recordings of the judicial proceedings in the case of Andrea Ruiz

¹ In addition, three *amicus curiae* briefs, plus a motion to file a fourth, were submitted in support of *certiorari*. No *amicus* has opposed *certiorari*.

Costas be made public.” App. 1a. The statement explains that the Department of Justice did not submit a response to the Petition due to its “general rule” that the Department does not “express[] itself” until “the judicial forum determines whether to accept the case,” or unless ordered by the Court. App. 2a.

On December 10, 2021, the Chief Justice issued a press release announcing a “collaborative agreement” with the Puerto Rico Health Justice Center to implement a “Court Watch project” in two judicial regions, including Caguas, the region from which this Petition arose. App. 5a. This project will allow volunteers from a non-profit organization “to observe and provide feedback on judicial procedures of a criminal nature in matters of sexual violence” in the specially designated domestic violence courtrooms. App. 6a. The Chief Justice states that the program “will facilitate an empowered and participatory citizenry that will have the opportunity to be present in criminal judicial proceedings of this nature, understand how they work and share recommendations.” App. 5a.

ARGUMENT**THE COURT SHOULD GRANT *CERTIORARI*,
VACATE THE DECISION BELOW, AND
REMAND FOR FURTHER PROCEEDINGS****A. All Parties Agree That Public Access
Should Be Granted To The Recordings
Of The Underlying Proceedings**

The Solicitor General’s statement that the judicial records sought in this case should properly be made public confirms that the Commonwealth of Puerto Rico endorses the ultimate relief sought by the petition: public access to the official audio recordings of the court proceedings involving the murdered Ms. Ruiz Costas. All parties to this proceeding oppose the order of the Puerto Rico Supreme Court majority barring disclosure.²

The Solicitor General’s public opposition to the outcome below—and the fact that the Commonwealth, too, was denied the opportunity to present its position in the courts below—highlights the errors made as a result of the highly irregular procedure adopted by the Puerto Rico Supreme Court. Its order mandating automatic sealing is based on an interpretation of Article 5.005 that directly contradicts its discretionary plain language. *See* Pet.App. 14a-15a (Oronoz Rodríguez, C.J., dissenting); Brief for *Amicus Curiae* Colegio de Abogados de Puerto Rico (Puerto Rico Bar Association) in Support of Petitioner at 14-

² Ms. Ruiz Costas’ killer, Miguel Ocasio Santiago, died before the petition was filed and took no position below. Pet. 5, 10.

18, No. 21-659 (Dec. 2, 2021) (discussing the plain and unambiguous language of Article 5.005). And the order was entered without ever addressing the First Amendment right of access asserted by Petitioner. Pet. 13-14.

**B. The Puerto Rican Judiciary Is Now
Disavowing The Interpretation Of Article
5.005 As Barring All Public Access To
Domestic Violence Courtrooms**

After the Petition was filed, the Puerto Rican judiciary reversed course on public access to criminal domestic violence proceedings. The ruling at issue construed a provision in Article 5.005 that grants courts the discretion to close domestic violence proceedings as a mandate requiring automatic closure in all cases. Pet.App. 7a-8a. Apparently recognizing that public access is needed for the public to have confidence that justice is being done in the domestic violence courtrooms, the judiciary has now backtracked. It will permit some members of the public to observe those courtrooms, notwithstanding the ruling in this case that Article 5.005 precludes all such public access. The new “Court Watch” program is impossible to square with the decision below.

It should not escape note that the motivation for the Court Watch program is the First Amendment values the Puerto Rico Supreme Court refused to consider when this proceeding was before it. In announcing the new program, the Chief Justice explained that allowing citizens to monitor domestic violence courtrooms will “facilitate an empowered and

participatory citizenry that will have the opportunity to be present in criminal judicial proceedings of this nature, understand how they work and share recommendations.” App. 5a; *see also* Pet. 33 (describing the importance of court monitoring in domestic violence cases). Petitioner advanced this very justification for access as part of its first motion for reconsideration and was promptly met with a summary denial without opinion. *See* Pet.App. 145a (noting that “protection of access to information guarantees that everyone can have an effective participation to be able to contribute as a citizen to the public discourse in a republican government system”); Pet.App. 69a (denying first motion for reconsideration).

That the Puerto Rican judiciary now recognizes the force of these considerations underscores the damage caused by the rushed procedure adopted to summarily deny Petitioner’s access motion without briefing or argument, and further demonstrates the need for relief from this Court.

C. Granting, Vacating, And Remanding With Instruction Is An Appropriate Remedy

While Petitioner would welcome this Court’s review in any form, these intervening events, combined with the truncated procedure below, suggest that the Puerto Rico courts should be given another chance to decide the issue. The courts lacked input from the parties on the proper disposition of the access motion, and the Puerto Rico Supreme Court

clearly rushed its decision without considering its implications or the constitutional right at stake.

In light of this, *certiorari* should be granted, the decision vacated, and the case remanded to the Puerto Rico Supreme Court with instructions that Petitioner’s unaddressed First Amendment access claim should be considered after affording the parties an opportunity to be heard. On remand, the novel interpretation given to the discretionary language in Article 5.005 may well be reconsidered in light of the serious First Amendment issues it raises.³ *See, e.g., Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Const. Trades Council*, 485 U.S. 568, 575 (1988) (“Where an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress.”); *see also Brau, Linares v. ELA*, 190 P.R. Dec. 315, 338 (2014) (articulating constitutional avoidance principles under Puerto Rican law).

³ Petitioner previously requested the Puerto Rico Supreme Court to reconsider that interpretation and take up its First Amendment claim. *See* Pet.App. 149a-51a; Pet.App. 183a-84a. Its requests were summarily denied without opinion. *See* Pet.App. 69a; Pet.App. 76a.

CONCLUSION

For the foregoing reasons, Petitioner submits that this Court should grant *certiorari*, vacate the decision below, and remand for further proceedings consistent with the decision of this Court.

Respectfully submitted,

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⁴ This brief does not purport to represent the institutional views of Yale Law School, if any.

APPENDIX

1a

APPENDIX A

(Government of Puerto Rico Seal)

Press Release

DEPARTMENT OF JUSTICE

December 7, 2021

**SOLICITOR GENERAL OF PUERTO RICO
CLARIFIES PROCESS IN CASE BROUGHT BY
JOURNALISTS BEFORE THE FEDERAL
SUPREME COURT**

Puerto Rico Department of Justice maintains its position that the recordings of the judicial proceedings in the case of Andrea Ruiz Costas be made public

The Puerto Rico Department of Justice remains firm in its initial position that the recordings of the judicial proceedings in the case of Andrea Ruiz Costas be made public. However, the solicitor general of Puerto Rico, attorney Fernando Figueroa Santiago, clarified that the request made by the Association of Puerto Rico Journalists (ASPPRO) to the United States Supreme Court is not limited to said case, but is more comprehensive.

“The request made by ASPPRO is for the purpose of the Federal Supreme Court to make a determination on a general question of Constitutional Law, the implications of which could go beyond the unfortunate case of the young Andrea Ruiz Costas. Specifically, ASPPRO requests that the Court determine if Article 5.005 of the Judiciary Law, which provides for the sealing and confidentiality of judicial processes in cases of gender violence, constitutes a violation of Freedom of the Press and of Expression, according to the provisions of the First

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Amendment to the United States Constitution,” stated the solicitor general.

The solicitor general explained why the Government of Puerto Rico did not oppose ASPPRO’s request at this stage of the procedure. “When a Petition for Certiorari is filed before the Supreme Court of Puerto Rico or the United States, the regulations do not establish as a mandatory requirement that the other party must express itself immediately, unless the court so orders, which is not usual at this stage of the proceedings. In accordance with this and as a general rule, the Office of the Solicitor General of Puerto Rico, as a division of the Puerto Rico Department of Justice, expresses itself once the judicial forum determines whether to accept the case,” Figueroa Santiago clarified.

On the other hand, the solicitor general highlighted that “in accordance with the provisions of the Federal Supreme Court Regulations, we have given the go-ahead for interested persons or entities to present appeals as friends of the court or Amicus Curiae, in support of the position stated by ASPPRO in its appeal.”

###

Certification of Translator’s Competence

I, Luis Gonzalez, hereby certify that the foregoing is an accurate translation of the documents in Spanish, and that I am competent in both English and Spanish to render such translation.

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(Government of Puerto Rico Seal)

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DEPARTAMENTO DE JUSTICIA

7 de diciembre de 2021

PROCURADOR GENERAL DE PUERTO RICO
ACLARA PROCESO EN CASO INCOADO
POR PERIODISTAS ANTE EL
TRIBUNAL SUPREMO FEDERAL

*Departamento de Justicia de Puerto Rico mantiene su
postura de que se hagan públicas las grabaciones de
los procesos judiciales en el caso de
Andrea Ruiz Costas*

El Departamento de Justicia de Puerto Rico se mantiene firme en su postura inicial de que se hagan públicas las grabaciones de los procesos judiciales en el caso de Andrea Ruiz Costas. Sin embargo, el procurador general de Puerto Rico, el licenciado Fernando Figueroa Santiago, aclaró que la petición realizada por la Asociación de Periodistas de Puerto Rico (ASPPRO) al Tribunal Supremo de Estados Unidos no se limita a dicho caso, sino que es más abarcadora.

“La petición realizada por la ASPPRO es a los efectos de que el Tribunal Supremo federal tome una determinación sobre una cuestión general de derecho de índole constitucional, cuyas implicaciones podrían ir más allá del lamentable caso de la joven Andrea Ruiz Costas. En específico, la ASPPRO petitiona que la Corte determine si el Artículo 5.005 de la Ley de la Judicatura, que dispone para el cierre y confidencialidad de los procesos judiciales en los casos de violencia de género, constituye una violación a la libertad de prensa y expresión, según lo dispuesto en la Primera

Enmienda de la Constitución de Estados Unidos”, expuso el procurador general.

El procurador general explicó por qué el Gobierno de Puerto Rico no se opuso a la petición de la ASPPRO en esta etapa del procedimiento. “Cuando se presenta una petición de *certiorari* ante el Tribunal Supremo de Puerto Rico o de Estados Unidos, el reglamento no dispone como requisito mandatorio que la otra parte deba expresarse de inmediato, salvo que el tribunal así lo ordene; lo cual no es usual en esta etapa de los procedimientos. Conforme a esto y como norma general, la Oficina del Procurador General de Puerto Rico de Puerto Rico, adscrita al Departamento de Justicia de Puerto Rico, se expresa una vez el foro judicial determina si acoge el caso”, aclaró Figueroa Santiago.

Por otra parte, el procurador general destacó que “conforme a lo establecido en el Reglamento del Tribunal Supremo federal, hemos brindado el visto bueno para que las personas o entidades interesadas presenten recursos como amigos de la corte o *amicus curiae*, en apoyo a la posición consignada por la ASPPRO en su recurso”.

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APPENDIX B

Court Watch project is implemented in criminal gender violence cases

Dec 10, 2021 | 2021, Press Releases

The initiative of the Judiciary and the Centro Salud Justicia (Health Justice Center) trains and integrates members of the community as observers of criminal gender violence proceedings in the judicial regions of Utuado and Caguas.

The Chief Justice of the Supreme Court of Puerto Rico, Hon. Maite D. Oronoz Rodríguez, signed a collaborative agreement today with the Puerto Rico Centro Salud Justicia (Health Justice Center) to implement the Court Watch project in the judicial regions of Caguas and Utuado. The foregoing as part of the actions that the Judiciary has taken to guarantee the proper handling of cases of gender violence.

“This collaboration agreement and the implementation of the Court Watch project is emblematic of the Judiciary’s commitment to transparency and accountability to improve the handling of cases of gender violence, since it will facilitate an empowered and participatory citizenry that will have the opportunity to be present in criminal judicial proceedings of this nature, understand how they work and share recommendations,” said the Presiding Judge.

The Court Watch project and the collaboration with the Centro Salud Justicia (Health Justice Center) arises with the goal of collecting data and observations and issuing recommendations on the judicial processes that will be used by the Judiciary in order to promote the improvement of the services offered by the Court

to the people involved in cases of gender violence. Through this new project, volunteers from the Centro Salud Justicia (Health Justice Center)—a non-profit organization directed by Dr. Linda Laras—and who have been previously trained, will be able to observe and provide feedback on judicial procedures of a criminal nature in matters of sexual violence, domestic violence, stalking in the context of gender violence, and dating violence. The initiative will be implemented in the Special Chamber in Cases of Gender Violence of the judicial region of Utuado and in the Domestic Violence Specialized Chamber of the judicial region of Caguas.

“The work of the Judiciary to eradicate gender violence is enhanced with citizen collaboration and especially with organizations such as the Centro Salud Justicia (Health Justice Center) that have the experience and knowledge necessary to address cases of gender violence from an interdisciplinary approach,” added Oronoz Rodríguez.

Through the project, the team that makes up the Centro Salud Justicia (Health Justice Center)—which includes professionals from fields of medicine, nursing, clinical and social psychology, social work, and epidemiology, among others—will train volunteers on judicial procedures of a criminal nature in cases of gender violence, the management of sensitive information related to them, and the collection of relevant data. Likewise, the Judiciary will provide volunteers with physical or virtual access to hearings of a criminal nature in cases of gender violence, while ensuring the protection of the rights of the parties in the process. In the same way, it will provide support in the training of the personnel of the Centro Salud Justicia (Health Justice Center) on the judicial processes.

Through the Strategic Plan of the Judiciary 2020-2025, *Map Towards a Vanguard Justice*, the Judiciary reiterates its duty to ensure gender equality in all spheres of judicial work, promoting adjudication with no discrimination based on gender. To delineate concrete action plans, the Judiciary, among other steps, makes agreements with different organizations such as the Centro Salud Justicia (Health Justice Center) in order to strengthen the collection of information that allows detecting discriminatory behaviors and implicit biases in the courts that prevent the administration of equitable justice.

For more information on gender violence and the initiatives that the Judiciary has implemented to confront it, [click here](#). In the same way, we invite the community to consult the social networks of the Judiciary on Facebook, Twitter, and Instagram for more information on the subject.

Certification of Translator's Competence

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Implementan proyecto Court Watch en casos criminales de violencia de género

Dec 10, 2021 | 2021, Comunicados de Prensa

La iniciativa del Poder Judicial y el Centro Salud Justicia capacita e integra a miembros de la comunidad como observadores de procedimientos criminales por violencia de género en las regiones judiciales de Utuado y Caguas.

La Jueza Presidenta del Tribunal Supremo de Puerto Rico, Hon. Maite D. Oronoz Rodríguez, firmó hoy un acuerdo colaborativo con el Centro Salud Justicia de Puerto Rico para implementar el proyecto *Court Watch* en las regiones judiciales de Caguas y Utuado. Lo anterior como parte de las acciones que ha tomado el Poder Judicial para garantizar el manejo adecuado de los casos de violencia de género.

“Este acuerdo de colaboración y la implementación del proyecto *Court Watch* es emblemático del compromiso del Poder Judicial con la transparencia y la rendición de cuentas para mejorar la atención de los casos de violencia de género, ya que facilitará una ciudadanía empoderada y participativa que tendrá la oportunidad de estar presente en los procedimientos judiciales criminales de esta índole, comprender su funcionamiento y compartir recomendaciones”, expresó la Jueza Presidenta.

El proyecto *Court Watch* y la colaboración con el Centro Salud Justicia surge con la meta de recopilar datos y observaciones y emitir recomendaciones sobre los procesos judiciales que serán utilizados por el Poder Judicial con el propósito de promover el mejoramiento de los servicios que ofrece el Tribunal a las personas involucradas en los casos de violencia de género. Mediante este nuevo proyecto, voluntarias y

voluntarios del Centro Salud Justicia—organización sin fines de lucro dirigida por la Dra. Linda Laras—y que han sido previamente adiestrados podrán observar y proveer retroalimentación sobre los procedimientos judiciales de naturaleza criminal en los temas de violencia sexual, violencia doméstica, acecho en el contexto de violencia de género y violencia en cita. La iniciativa se implementará en la Sala Especializada en Casos de Violencia de Género de la región judicial de Utuado y en la Sala Especializada en Casos de Violencia Doméstica de la región judicial de Caguas.

“La labor del Poder Judicial para erradicar la violencia de género se enaltece con la colaboración ciudadana y especialmente con organizaciones como el Centro Salud Justicia que cuentan con la experiencia y el conocimiento necesario para atender los casos de violencia de género desde un acercamiento interdisciplinario”, añadió Oronoz Rodríguez.

Por medio del proyecto, el equipo que compone el Centro Salud Justicia—que incluye profesionales de la medicina, enfermería, psicología clínica y social, trabajo social y epidemiología, entre otros—adiestrará personas voluntarias sobre los procedimientos judiciales de naturaleza penal en casos de violencia de género, el manejo de información sensitiva relacionada con estos y la recopilación de datos relevantes. Asimismo, el Poder Judicial proveerá al voluntariado acceso físico o virtual a las vistas de naturaleza criminal en los casos de violencia de género, a la vez que velará por la protección de los derechos de las partes en el proceso. De igual forma, proveerá apoyo en la capacitación del personal del Centro Salud Justicia sobre los procesos judiciales.

A través del Plan Estratégico del Poder Judicial 2020-2025, *Mapa hacia una justicia de vanguardia*, el

Poder Judicial reitera su deber de asegurar la igualdad y equidad de género en todas las esferas del quehacer judicial, promoviendo la adjudicación indiscriminada por razón de género. Para delinear planes de acción concretos, el Poder Judicial, entre otras gestiones, realiza acuerdos con distintas organizaciones como el Centro Salud Justicia con el fin de robustecer la recopilación de información que permita detectar conductas discriminatorias y sesgos implícitos en los tribunales que impiden una administración de la justicia equitativa.

Para más información sobre la violencia de género y las iniciativas que ha implementado el Poder Judicial para enfrentarla, presione [aquí](#). De igual forma, invitamos a la comunidad a que consulte las redes sociales del Poder Judicial en Facebook, Twitter e Instagram para más información sobre el tema.