In the Supreme Court of the United States



IN RE SALLY PRIESTER,

Petitioner.

On Petition for an Extraordinary Writ of Mandamus to the United States Court of Appeals for the First Circuit

PETITION FOR AN EXTRAORDINARY WRIT OF MANDAMUS

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QUESTION PRESENTED

On March 17, 2023, Petitioner filed her opening brief in case number 22-1694 before the United States Court of Appeals for the First Circuit requesting the reversal of the district court's decision upholding an unconstitutional gag order issued against a licensed medical doctor, prohibiting her free speech. On May 17, 2023. Respondents filed a motion requesting summary disposition. At the behest of Respondents, on June 8, 2023, the court of appeals entered an Order staying the briefing of the case while it determined if it would summarily dismiss the appeal. The court of appeals also exempted Appellees from filing a reply brief, and since then has failed to rule on the matter that is within its jurisdiction. Never in United States Judicial history has a court of appeals stayed a ruling for two years.

THE QUESTION PRESENTED IS:

The question presented is whether this Court should issue a writ of mandamus directing the United States Court of Appeals for the First Circuit to proceed with its duty to rule on Petitioner's appeal and continue its briefing on a case that has been stayed for twenty-two months prolonging the irreparable harm restricting her First Amendment rights.

PARTIES TO THE PROCEEDINGS Petitioner and Plaintiff-Appellant below

• Sally Priester, M.D.

Respondent Court

• U.S. Court of Appeals for the First Circuit

Respondents and Defendants-Appellees below

- Puerto Rico Department of Health
- Victor Ramos
- Colegio de Médicos-Cirujanos de Puerto Rico
- John Doe
- Richard Roe
- John Smith
- Peter Poe
- Freddie Roman-Aviles
- Veronica Rodriguez-de la Cruz.

STATEMENT OF RELATED PROCEEDINGS

U.S. District Court for the District of Puerto Rico No. 22-1035

Sally Priester, Plaintiff v. Puerto Rico Department of Health et al., Defendants Omnibus Opinion: August 10, 2022 (App.5a)

U.S. Court of Appeals for the First Circuit No. 22-1694

Sally Priester, Plaintiff-Appellant v. Puerto Rico Department of Health et al., Defendants-Appellees

Order staying briefing: June 8, 2023 (App.3a)

Order to show cause: November 22, 2024 (App.1a)

Note: There has not been a final judgment in this case. Petitioner seeks mandamus directing the First Circuit to adjudicate the appeal which has been stayed for two years.

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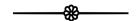
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PETITION FOR AN EXTRAORDINARY WRIT OF MANDAMUS

Petitioner respectfully petitions for an extraordinary writ of mandamus to the United States Court of Appeals for the First Circuit, requesting that the First Circuit be directed to adjudicate the controversy before its consideration.



OPINIONS BELOW

The United States District Court for the District of Puerto Rico's "Omnibus Opinion and Order", dated August 10, 2022, appears in the Appendix to this Petition ("App.") at 5a.

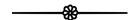
The U.S. Court of Appeals for the First Circuit's June 8, 2023, Order staying proceedings appears at App.3a.

The U.S. Court of Appeals for the First Circuit's Order to show cause why the appeal should not be dismissed for lack of jurisdiction, dated November 22, 2024, appears at App.1a.



JURISDICTION

The First Circuit has stayed the appeal for almost two years and entered an order to show cause for why the appeal should not be dismissed for lack of jurisdiction on December 6, 2024. The Petitioner has exhausted remedies below. The jurisdiction of this Court's Rule 20.



STATUTORY PROVISIONS INVOLVED

The All Writs Act, 28 U.S.C. § 1651(a), provides:

The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.



STATEMENT OF THE CASE

The underlying case stagnant at the court of appeals entails Petitioner's challenge of an unconstitutional gag order that the Puerto Rico Department of Health's Medical Licensing Board (PRDH) imposed on her on April 14, 2021 to prevent her from expressing her protected speech regarding the government's management of the COVID-19 emergency and vaccination

campaign. App.6a. The gag order prohibited Petitioner from exercising her First Amendment right to express any opinion contrary to the government narrative regarding COVID-19. *Id.* Violation of the gag order could entail a revocation of her license to practice medicine and/or a hefty fine.

For almost twenty-two months, the court of appeals has stayed Petitioner's appeal seeking to reverse the district court's dismissal of her petition for injunctive relief requesting to have Respondent PRDH's gag order declared unconstitutional. App.5a.

On July 10, 2024, Respondent PRDH notified it substituted its original gag order for a new one. App.54a.

A. Factual Background

Petitioner Dr. Sally Priester is a medical doctor and scientist with more than 20 years of clinical experience in disaster medicine and public health, and 10 peer-reviewed abstract, book chapter, or medical journal manuscript publications. Doc. No. 00117987-018. She has a license to practice medicine in Puerto Rico and, by operation of law, is required to be a member of the Association to practice medicine in Puerto Rico. P.R. Laws Ann. tit. 20 § 73(g). *Id*.

Since the early days of the COVID-19 health emergency in Puerto Rico beginning in March 16, 2020, Petitioner exercised her First Amendment right to criticize PRDH's management of the situation. App.45a. She raised reasonable concerns regarding the PRDH'S COVID-19 response and restrictive measures imposed on the population. Doc. No. 00117987018.

Days prior to the announcement of the Food and Drug Administration's approval of the experimental vaccine for COVID-19, on December 1, 2020, Defendant Victor Ramos, acting under color of state law as the President of the Association of Doctors and Surgeons ("Colegio de Médicos Cirujanos"), sent a complaint letter to Respondent Puerto Rico Department of Health's Medical Licensing and Disciplinary Board (PRDH), requesting that Petitioner be investigated for "unethical conduct." Ramos based his complaint on Petitioner's public expressions regarding the government's handling of the COVID-19 emergency. He sought to silence Petitioner infringing on her protected rights under the First Amendment. Respondent Ramos further requested that the Licensing Board issue a gag order against Dr. Priester precluding her from expressing any opinions regarding COVID-19 and the government's response thereto. App.6a: Doc. No. 00117987018.

As a result of Respondent Ramos' complaint letter, on April 14, 2021, Respondent PRDH issued Resolution and Order 2021-04 prohibiting Dr. Priester from speaking out against the efforts of the Government of Puerto Rico and other private entities with respect to the COVID-19 pandemic. App.48a. The order provided as follows:

[Petitioner] is ordered to CEASE AND DESIST from making, expressing, communicating, disseminating, publishing, supporting, sharing and/or endorsing, by any means of communication or in person, messages without any legitimate scientific basis against the health efforts being carried out by government or private authorities recognized and respect-

ed by the scientific and medical community to alert and protect the society with respect to the spread and propagation of the SARS-CoV-2 virus, the Coronavirus Pandemic and/or Covid-19, as well as any of its variants...

Failure to comply with this Order may entail severe monetary and disciplinary penalties and/or even judicial contempt. . . . (The "gag order"). App.29a-30a.

B. District Court Proceedings

On January 19, 2022, Petitioner filed a lawsuit seeking injunctive and declaratory relief under 42 U.S.C. 1983 against, *inter alia*, Respondent PRDH and damages against Respondent Ramos and other defendants resulting from her deprivation of constitutional rights ECF No. 1. On February 2, 2022, Petitioner sought a Preliminary Injunction under F. Civ. Proc. 65 requesting relief from PRDH's gag order on First Amendment grounds. ECF No. 4.

On May 26, 2022, Petitioner filed an Amended Complaint, setting forth the known details of Respondent Ramos's conspiracy with PRDH and third parties to curtail her First Amendment rights and censor her speech through the use of frivolous ethical complaints against her with the PRDH Medical Licensing Board. ECF No. 84.

On June 6, 2022, PRDH moved to dismiss the case on *Younger v. Harris*, 401 U.S. 37 (1971), *res judicata* and *Rooker-Feldman* abstention grounds. ECF No. 88. On June 13, 2022, Petitioner duly opposed it. ECF No. 92.

Even though Petitioner insisted on a hearing to argue the request for preliminary injunction (ECF No. 106), on August 10, 2022, the district court summarily dismissed the Petition for Injunctive relief against PRDH, but retained jurisdiction over Petitioner's complaint for damages against Ramos. (D. Ct. Order issued August 10, 2022), App.5a.

On September 1, 2022, Petitioner filed a notice of appeal to the First Circuit Court of Appeals. ECF No. 111.

C. Court of Appeals Proceedings

On March 17, 2023, Petitioner filed her conforming opening brief. Doc. No. 00117987018.

Instead of filing a reply brief, on May 17, 2023, Respondent PRDH filed a "Motion for Summary Affirmance" requesting that the court of appeals summarily affirm the district court's decision. Doc. No. 00118011062.

On the same date, Respondent PRDH filed a "Motion for Stay or Extension of Briefing Schedule" requesting that the court stay the proceedings until it adjudicated its motion for summary disposition. Doc. No. 00118011072. Appellee Ramos adopted by reference PRHD's request. Doc. No. 00118012636.

Despite Petitioner's opposition (Doc. No. 001180-15445), on June 8, 2023, the court of appeals acquiesced to PRDH's request. It stayed the proceedings until it adjudicated Respondent PRDH's motion, and relieved appellees from having to file a reply brief. App.3a. (1st Circuit, June 8, 2023), (Doc. No. 00118018886).

In light of the impasse at the court of appeals' proceedings for over a year, Petitioner retained new legal representation that made her appearance on September 16, 2024. Doc. No. 00118190312.

On October 22, 2024, Petitioner filed a "Motion Requesting Procedural Order to Vacate Stay of Proceedings and Continuation of the Case" requesting the court to vacate the stay of proceedings. App.24a. Doc. No. 00118204810. Along with her motion, Petitioner included a newly minted PRDH Resolution 24-22, a gag order that Respondent notified on July 10, 2024. Resolution 24-22 expressly ordered the dismissal and conclusion of the original administrative proceeding against Petitioner without the imposition of any disciplinary sanctions against her. However, it imposed a new general and permanent gag order against Petitioner precluding her from criticizing any future government health initiatives regarding pandemics or health emergencies. App.54a, Doc. No. 00118223300 at 4.

Instead of proceeding with the course of the case, the court of appeals *sua sponte* sought to dismiss the case on mootness grounds. In so doing, it cited inapplicable case law relevant to situations that are not capable of repetition and justify dismissal. App.1a (1st Cir. November 22, 2024) Doc. No. 00118218075.

On December 6, 2024, Petitioner replied, opposing dismissal. Doc. No. 00118223300. She argued, *inter alia*, that *Harris v. Univ. of Mass. Lowell*, 43 F.4th 187 (1st Cir. 2022) was inapplicable and did not warrant dismissal of the appeal because her case exemplified the exception to the mootness doctrine. Citing First Circuit precedent, Petitioner argued that her "specific claims" are "capable of repetition," Doc. No. 00118-223300 at 6. First, because she is a medical doctor

subjected to the PRDH's licensing Board. Second, because PRDH's expressions contained in Resolution 24-04 establish that there is a "reasonable expectation" and a "demonstrated probability" that Petitioner "will again be subjected to the alleged illegality." *ACLU of Mass. v. U.S. Conf. of Cath. Bishops*, 705 F.3d 44, 57 (1st Cir. 2013); *Thomas R.W. v. Mass. Dep't of Ed.*, 130 F.3d 477, 480 (1st Cir. 1997). Doc. No. 00118223300 at 6. She argued that there is unequivocal and reasonable expectation that PRDH curtailed, curtails, and will continue to curtail Petitioner's free speech in the future. *Id.*

Petitioner reiterated that her rights under the First Amendment will forever be in jeopardy if the court of appeals did not adjudicate her meritorious claims. Doc. No. 00118223300 at 5.

The court of appeals has remained silent since then.

Even though "the loss of First Amendment rights for even a short period constitutes irreparable harm," *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. ____, 208 L.Ed. 206, 209 (2020), for almost twenty-two months the court of appeals has not complied with its obligation to adjudicate Petitioner's case before its consideration.

REASONS FOR GRANTING THE PETITION

The Court may "issue all writs necessary or appropriate in the aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a).

The writ of mandamus is a "drastic and extraordinary" remedy "reserved for really extraordinary causes." *Cheney v. United States District Court*, 542 U.S. 367, 380 (2004) quoting *Ex parte Fahey*, 332 U.S. 258, 259–260 (1947). While the conditions for obtaining it may be demanding, they are not insuperable. *Cheney*, *supra*, 542 U.S. at 380.

Given its extraordinary nature, only "exceptional circumstances amounting to a judicial 'usurpation of power,' or a 'clear abuse of discretion,' 'will justify the invocation of this extraordinary remedy," *Cheney, supra*, 542 U.S. at 380 (citations omitted).

The writ of mandamus is warranted where "(1) no other adequate means exist to attain the relief [a party] desires, (2) a party's right to issuance of the writ is clear and indisputable, and (3) the writ is appropriate under the circumstances." *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010), (quoting *Cheney*, supra, 542 U.S. at 380–381 (2004)).

"The traditional use of the writ in aid of appellate jurisdiction both at common Law and in the federal courts has been to confine [the court against which mandamus is sought] to a lawful exercise of its prescribed jurisdiction," or "to compel it to exercise its authority when it is its duty to do so." Roche v. Evaporated Milk, 319 U.S. 21, 26 (1943).

Before a writ of mandamus will be issued, a petitioner must meet three conditions for the writ to succeed, all of which are present here. *See* U.S. Sup. Ct. Rule 20.1.

Exceptional circumstances are present here, where a court of appeals has refused to exercise its jurisdiction and adjudicate the controversies before it.

This Court should exercise its authority and issue the writ.

I. PETITIONER'S RIGHT TO ISSUANCE OF A WRIT IS CLEAR

The first criteria that Petitioner must establish for this Court to issue the writ of mandamus is that her right to its issuance is "clear and indisputable." *Kerr v. United States District Court*, 426 U.S. 394, 403 (1976).

Two years ago, Petitioner filed her appeal brief. At the behest of Appellees, the court of appeals exempted them from filing a reply brief and stayed the proceedings until it adjudicated the "Motion for Summary Affirmance." App.3a.

For over twenty-one months, the court of appeals has neither adjudicated the "Motion for Summary Affirmance" nor entered a briefing schedule.

The court of appeals' delay in adjudicating Petitioner's case has unnecessarily extended the unconstitutional censorship that Respondent PRDH has subjected her to, exacerbating the violations to Petitioner's First Amendment rights. Furthermore, Petitioner's

right to pursue the damages aspect of her complaint has been indefinitely suspended.

Six months ago, Petitioner asked the court of appeals to move along with the adjudication of her case. App.24a; Doc. No. 00118204810. Petitioner included the new gag order that PRDH issued against her. App.42a.

In response, instead of accelerating the adjudication of the case, honoring Petitioner's due process rights, the court of appeals sought to dismiss her appeal on inapplicable mootness grounds. App.1a (1st Cir. November 22, 2024) Doc. No. 00118218075.

More than three months have elapsed since Petitioner' filed her opposition to this last order (Doc. No. 00118223300).

The court of appeals has not adjudicated it or entered any other order.

Petitioner has no other choice but to seek relief with this Court's assistance through a writ of mandamus to direct the court of appeals to act on Petitioner's appeal. This Court should not allow the court of appeals' delay in ruling on Petitioner's case to continue.

"Power to issue the writ of mandamus to the circuit courts is exercised by this Court to compel the circuit court to proceed to a final judgment or decree in a cause, in order that this court may exercise the jurisdiction of review given by law." *Insurance Co. v. Comstock*, 83 U.S. (16 Wall) 258, 270 (1872).

Issuance of the writ of mandamus is proper where a court has refused to exercise its jurisdiction. *LaBuy* v. *Howes Leather Co.*, 352 U.S. 249, 260 (1957).

Petitioner is entitled to a writ directing the First Circuit to exercise jurisdiction over her case and fully and expeditiously resolve the controversies presented in it.

II. A WRIT OF MANDAMUS IS WARRANTED GIVEN THE URGENT CIRCUMSTANCES OF THIS CASE

The "loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Perpetuating the two-year delay in the adjudication of Petitioner's cause contradicts the court of appeals' own precedent that recognizes "Irreparable injury is presumed upon a determination that the movants are likely to prevail on their First Amendment claim." *Sindicato Puertorriqueño de Trabajadores v. Fortuño*, 699 F.3d 1, 10–11 (1st Cir. 2012).

The court of appeals' delay in ruling on a matter under its jurisdiction causes prejudice to the party seeking redress. When constitutional rights are involved, the urgency to adjudicate the controversy becomes more patent. Given the chilling effect of the gag orders issued against Petitioner, this Court should issue the writ ordering the court of appeals to adjudicate the controversy without further delay.

Because the Court of Appeals is acting in clear violation of its jurisdiction, a writ of mandamus from this Court is the appropriate vehicle to rectify the error. See, e.g., Ex parte Republic of Peru, 318 U.S. 578, 583 (1943).

For almost twenty-two months Petitioner has been waiting on Respondents' briefs and the continuation of the proceedings in her appeal.

Given the magnitude of the constitutional questions presented, this Court should order the court of appeals to proceed in the adjudication of the pending motions and briefing of the case without further delay.

Allowing the court of appeals to derail indefinitely the timely resolution of the merits of Petitioner's case unnecessarily extends the harm inflicted by Respondent's gag orders.

III. NO OTHER ADEQUATE MEANS TO OBTAIN RELIEF EXIST

Petitioner sought relief in the First Circuit Court of Appeals. After months of inactivity in the case, she retained new legal representation. Prior to the filing of this Petition, Petitioner gave the court of appeals an opportunity to correct its course by requesting that the stay of proceedings be lifted. App.24a, Doc. No. 00118204810. In reply, the court of appeals sought to dismiss the case on inapplicable grounds. App.1a.

Three months have elapsed since then, and the court of appeals has abused its discretion by indefinitely maintaining the case in a judicial limbo in open disregard of the jeopardized First Amendment rights.

The court of appeals' twenty-two-month stay of the case warrants the issuance of the writ because there are no other adequate means to compel the court of appeals to proceed with Petitioners' case.

This Court has reiterated that "the rule that this Court has power to issue a Mandamus, in the exercise of its appellate jurisdiction, and that the writ will lie in a proper case to direct a subordinate Federal Court to decide a pending cause." *Insurance Co. v.*

Comstock, supra, 83 U.S. at 270; Will v. Calvert Fire Ins. Co., 437 U.S. 655, 662 (1978).

It has been recognized by this Court that when a court has lawful jurisdiction on a matter it is to exercise that jurisdiction when it is obligated to do so. This Court has acknowledged this point on multiple rulings in the past that federal courts have a strict duty to exercise the jurisdiction that is conferred upon them by Congress. See e.g., Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 821 (1976). ("[F]ederal courts have a 'virtually unflagging obligation... to exercise the jurisdiction given them."); England v. Louisiana Bd. of Medical Examiners, 375 U.S. 411, 415 (1964).

"When a federal court is properly appealed to in a case over which it has by law jurisdiction, it is its duty to take such jurisdiction." Willcox v. Consolidated Gas Co., 212 U.S. 19, 409 (1909). "Federal courts have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not." Quackenbush v. Allstate Ins. Co., 517 U.S. 706, 716 (1996).

Since there is no other form or court to request assistance and relief from, Petitioner's last resort to end this unnecessarily prolonged period of waiting on a ruling of her appeal is within this Court's overseeing jurisdiction.

Petitioner is asking this Court to issue the writ of mandamus it cannot ask from any other forum and consequently order the court of appeals to exercise its jurisdiction and rule on Petitioner's case as there is no other avenue for her to pursue.



CONCLUSION

For the foregoing reasons, the Court should issue a writ of mandamus directing the court of appeals to remand this case to the district court.

Respectfully submitted,

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Counsel for Petitioner

March 28, 2025