ORIGINAL

In the

Supreme Court of the United States

EXAMINING BOARD OF ENGINEERS, ARCHITECTS AND SURVEYORS, ETC., et al.,

Appellants,

--vs--

MARIA C. FLORES de OTERO and SERGIO PEREZ NOGUEIRO,

Appellees.

No. 74-1267

Washington, D.C.
December 8, 1975

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Appellants,

v. No. 74-1267

MARIA C. FLORES de OTERO and SERGIO PEREZ NOGUEIRO,

Appellees.

Washington, D. C.,

Monday, December 8, 1975.

The above-entitled matters came on for argument at 1:40 o'clock, p.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice
LEWIS F. POWELL, JR., Associate Justice
WILLIAM H. REHNQUIST, Associate Justice

APPEARANCES:

MRS. MIRIAM NAVEIRE de RODON, Solicitor General of Puerto Rico; on behalf of the Appellants.

MAX RAMIREZ de ARELLANO, ESQ., Avenida Borinquen,2067 Santurce, Puerto Rico 00914; on behalf of the Appellees.

C O N T E N T S

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We'll hear arguments next in Examining Board of Engineers against de Otero.

Mrs. de Rodon.

ORAL ARGUMENT OF MRS. MIRIAM NAVEIRA de RODON,

ON BEHALF OF THE APPELLANTS

MRS. DE RODON: Mr. Chief Justice, may it please the Court:

This case comes up before this Court on an appeal from a decision of a three-judge district court in Puerto Rico, which, in a divided opinion, declared unconstitutional the citizenship requirement of Section 689 of Title 20 of the Laws of Puerto Rico Annotated. The pertinent part is printed in italics on page 10a and following of the Jurisdictional Statement.

Appellees are resident aliens who applied to the Examining Board of Engineers in Puerto Rico for registrations as a licensed engineer. And even though they were non-citizens, they did not attempt to establish their eligibility under Section 689 by demonstrating that they had studied the total courses in Puerto Rico.

The Examining Board denied them the application and appelles, instead of availing themselves of the review established by law in Section 701, immediately repaired to the federal courts and applied under the jurisdiction of the Civil Rights

1983 and its jurisdictional counterpart, 1343.

It should be noted that Section 689 has never been construed by the local courts, and that the courts of Puerto Rico are courts of general jurisdiction, empowered to grant all remedies which can be granted by the federal courts; and, of course, the review can finally be granted to this Court.

Appellees are at present, as far as I was able to ascertain, working for the Government of Puerto Rico or its municipalities under a special license as provided by Section 689 of that very same law.

This case is of the utmost importance to the Commonwealth of Puerto Rico, and it has great significance because it raises two very important issues to us: whether Section 1983 of the Civil Rights Act and its jurisdictional counterpart, Section 1343, are applicable to Puerto Rico.

And, second, whether the district court should have abstained from passing upon the interpretation and validity of the statute which had never been construed by the Commonwealth courts.

QUESTION: Is there also a question of whether the Fourteenth Amendment applies to Puerto Rico?

MRS. DE RODON: Well, neither this Court nor the Circuit Court nor the District Court has ever found it necessary to determine whether the due process of the Fourteenth or the Fifth Amendment is applicable, since it found that the

fundamental rights of the Constitution are applicable to the people of Puerto Rico, and we think that that is the best way, not to specify.

QUESTION: But you do concede that either the Fourteenth Amendment or the Fifth Amendment is applicable to the people of Puerto Rico, --

MRS. DE RODON: Yes.

QUESTION: -- and that the net result is the same, whichever.

MRS. DE RODON: Yes.

QUESTION: That is, the due process clause of the Fourteenth Amendment, --

MRS. DE RODON: Yes.

QUESTION: -- and that the due process clause of the Fifth Amendment also embraces the concept of equal protection.

MRS. DE RODON: Yes.

It should be noted at present the misuse of Section 1983 and its jurisdictional counterpart, 1343, in the Federal District Court of Puerto Rico has literally flooded the Court with all conceivable types of cases, in which every facet of government action and decision-making, whether major or minor, is being questioned; to the point where there is a real question as to who is really running the government.

QUESTION: Is that different than from the fifty States of the Union?

MRS. DE RODON: I believe so, sir, because in Puerto Rico the civil rights actions that are being filed are not being filed, let's say, like in the prisoner cases and racial discrimination cases or in certain definite type of cases. In Puerto Rico they cover every government facet, for example -- I will give you an example:

The removal of employees, the approval of probationary periods, the transfer of employees, the disciplinary actions. Instead of going through the administrative processes available in law, they will repair to the federal court and the federal court will assume jurisdiction and there will be a trial, a complete -- the thing will be seen in the federal court. If the government announces a policy that it plans to drill oil in the outlying skirts, or that it plans to mine copper, immediately we get an action in the federal courts, and the court does assume jurisdiction, and the whole procedure goes on.

And I think that if one examines the types of actions that are being followed, one finds that there is definitely a difference between the fifty States and Puerto Rico.

Appellees invoked the district court's jurisdiction solely on the basis of Section 1343 and Section 1983 of the Civil Rights Act. And we submit that neither apply nor were intended to apply to Puerto Rico.

Our arguments are based on the Carter case, which was

decided by this Court and declared that neither Section 1983 or its jurisdictional counterpart, 1343, were applicable to the District of Columbia.

Now, in the case of the Commonwealth, as well as in the case of the District of Columbia, to determine whether a statute is applicable, one must examine not only the words but also the context, the purpose, and the circumstances in which the words are being used.

Sections 1983 and 1343 have their roots in the Ku Klux Klan Act of 1871, when it was first enacted to cover just States. It was not until 1874, when the substantive measure -- that is, the one 1983 was amended to include the Territories. No such amendment was made to the jurisdictional part.

It was in 1875 that the district courts got general jurisdiction over federal questions, and it was not until 1898 that the United States acquired Puerto Rico, after the Spanish-American War.

Ever since the very beginning, in the Insular cases, Puerto Rico has been considered an unincorporated Territory, not intended for Statehood.

And this Court, in Carter, said, when expressing its view on the Territories covered by Section 1983, that they were applicable to Territories in a transitory nature, in the process of becoming a State.

In 1952, the people of Puerto Rico and the people of

Puerto Rico entered into a complex and thereby created a new sovereign entity within the federal political structure, the Commonwealth of Puerto Rico.

Now, as stated in Carter, the Section 1983 was designed to apply to States and to Territories which were in the process of becoming a State. Puerto Rico is neither.

Furthermore, the conditions upon which Section 1983 was intended -- or had intended to correct, were never present in Puerto Rico. The courts of the Island have always been able and willing to vindicate the civil rights of individuals, and have the power and the procedural mechanism to grant all remedies that may be granted by federal courts.

We submit that in the absence of a more definite guidance from Congress, Section 1983 and 1343 should not be held applicable to the Commonwealth of Puerto Rico.

On the abstention question, we think that this Court, in the Calero-Toledo case, rendered an abstention doctrine which is quite wide and liberal for the Commonwealth. Citing from the Wackenhut opinion, it stated: Due regard to the statutes of the Commonwealth under its compact with the United States dictates that it should have the primary opportunity through its courts to determine the intended scope of its own legislation and to pass upon the validity of that legislation under its own as well as under the Constitution of the United States.

QUESTION: I gather this is an argument only if you

fail on the first one, is that it?

MRS. DE RODON: Yes, of course, on the alternative.

In this case, where the statute in question has never been construed by the courts of the Commonwealth, and where it may very well be interpreted in such a way as to avoid the constitutional question, abstention, we think, would be very appropriate.

Section 689 does not contain an absolute prohibition against non-citizens obtaining licenses. What is meant by total courses has never been interpreted by the Supreme Court of Puerto Rico, and could very well be interpreted to mean courses directly related to the peculiarities of a poor, over-populated, small tropical island, subject to such tropical hazards as earthquakes, hurricanes and flash floods.

The Supreme Court of Puerto Rico has been reluctant to attribute to the Legislature an intention to pass a statute raising constitutional problems, especially when the legislative intent is not clear, as in this case, where there is practically no legislative history to go upon.

It should also be noted that the Constitution of Puerto Rico contains, besides a general equal protection clause, a specific prohibition against discrimination on account of race, color, sex, birth, social origin, or condition, or political or religious ideas. If a statute does not measure up to these constitutional principles and standards,

the courts do not have to reach the federal constitutional question.

As was recognized by this Court in the Calero-Toledo case, the relationship between the United States and Puerto Rico has been the object of numerous debates in its international forums, especially in the United Nations, where the creation of a Commonwealth in 1952 prompted the United States to cease transmitting information concerning Puerto Rico under Article 73c of the Charter, which deals with non-self-governing Territories. Thus recognizing that a new independent sovereign entity had been created within the constitutional structure.

Whether Puerto Rico has two internal self-government is debated still in the international community, especially by the Third World. Thus, that this be so in fact as well as in theory is important to both the United States and Puerto Rico.

We submit, therefore, that the abstention in this case, in the case of Puerto Rico, is specially appropriate, and in accord with the Compact between the United States and Puerto Rico, and with the deference that this Court has always shown to the courts of the Commonwealth.

As this Court rightly pointed out in the Fornaris case, the relations of the federal courts to Puerto Rico have often raised delicate problems. This is especially true today.

When the misuse of Section 1983 and 1343 has produced a fantastic increase in the number of cases filed in the courts of Puerto Rico, and has led to an ever-increasing intervention of the federal judiciary into practically all aspects of governmental functions and even minor decision-making.

But even more disturbing than all this is the fact that federal juries have been handing down incredibly high amounts of damages in cases of this kind.

For example, they awarded $250,000 in damages in a case involving the removal of a local government employee where a violation of due process was alleged, based on a federal court interpretation of a local statute which had never been construed by the Supreme Court of Puerto Rico.

QUESTION: Were those compensatory damages or punitive damages?

MRS. DE RODON: They were divided; in compensatory -- they granted $100,000 in actual damages and I think $150,000 in punitive damages.

This case is actually on appeal before the First Circuit.

It should be borne in mind that the language requirement of federal jury service in Puerto Rico makes the federal jury a very selective one. For a large portion of the Island's inhabitants are not sufficiently bi-lingual as to enable them to qualify for jury service; Spanish being the native tongue.

Under Section 1983 and 1343, as I have already told this honorable Court, some purely local matters are taken before the court, and the court does assume jurisdiction.

All these cases which I'm talking about are normally taken directly to the federal court, bypassing the administrative procedures available and the local courts. We even have the situation where those cases which are pending, applications for dismissal are made, and people repair to the federal courts. No allegation is made that the administrative or local procedures are inadequate; it's just that they prefer the federal forum.

The congestion of the court calendar that has ensued has made it necessary sometimes to set cases for Saturdays, and for after five o'clock during the week.

We have had cases which have lasted until after midnight.

QUESTION: Mrs. de Rodon, let me ask you, if I may, about the language in which the federal court proceedings are conducted, and then the language in which the Commonwealth court proceedings are conducted.

MRS. DE RODON: Yes. The federal court proceedings are all conducted in English; the local court proceedings are all conducted in Spanish, save if the right of the individual before the court would be put in jeopardy, then they are carried on in English.

QUESTION: Well, then, that certainly puts at a disadvantage many lawyers, I suppose, who represent clients who speak only Spanish and who are brought into the federal court.

MRS. DE RODON: Well, also, the federal bar in Puerto Rico is also very selective. You find that there are few lawyers who practice in the federal bars, in contrast with the amount of lawyers that practice in the local bar. And not always by choice, but because of great difficulty in the language.

We have had a bill pending before Congress to try to remedy that, but still the proceedings have to be conducted in English.

And this is especially -- if the Court will pardon me the digression -- this is especially sad, in the case where you have a criminal or an accused person before the court, who speaks no English, and you have to have translators, where everybody in that court speaks Spanish; yet you have to go through the role of translating something that everybody understood in the original language, anyway.

QUESTION: I suppose that your argument is confined to Puerto Rico, and yet I suppose we have to think of, if we were to decide in your favor, of the possible application of it to Guam and the Virgin Islands, and others. Do you have any comment on that at all?

MRS. DE RODON: Well, I think that the test is that you should analyze the situation in each case in particular,

and find out if the same situations that are in Puerto Rico will be in Guam or the Virgin Islands, in order to determine whether they would be in the same position as we are, and the decision should be the same. That would have to --

QUESTION: But your Act is different from any of the others, is it not?

MRS. DE RODON: Excuse me?

QUESTION: The '53 Act, or whatever it is, for Puerto Rico is different from any other one, is it not?

MRS. DE RODON: Yes. Yes. After the 1952 Act, Puerto Rico is the only Commonwealth -- that's the only Commonwealth position within the federal structure, yes; that's true. There is none other like it.

QUESTION: That's what I thought.

MRS. DE RODON: Actually -- yes?

QUESTION: May I ask: you're familiar with our decision in the Bivens case?

MRS. DE RODON: Excuse me?

QUESTION: Are you familiar with our decision in the Bivens, B-i-v-e-n-s, case?

MRS. DE RODON: If you could refresh my memory -- I don't --

QUESTION: Well, I just wondered, that was a case in which we dealt with the possibility in the District of Columbia, notwithstanding 1983 -- does not apply to the District of

Columbia because it's not a State or Territory within 1983. It might, nevertheless, perhaps be an action for alleged deprivation of constitutional rights in the federal courts of the District. Without reference to 1983.

MRS. DE RODON: Yes.

QUESTION: Did you consider that?

MRS. DE RODON: No, I didn't, Your Honor; I'm sorry.

I would like to finish by stating that I think the Court should be aware, at present we have 106 cases filed and pending against Commonwealth officials in the federal courts and about 80 to 85 of these are predicated on Section 1983 and 1343.

These cases cover, as I told you, not just a few phases but every phase of government action that could be imaginable. I think the Commonwealth is advocating that the invasion into the Commonwealth governmental functions by the federal judiciary is not only having an undesirable paralyzing effect on government offidals due to the extraordinarily high awards that are gotten in the federal courts, but it is also causing a tramatic damage into the relations of Puerto Rico and the United States.

I think that, as this Court has already indicated in the Wackenhut and the Calero-Toledo cases, and we agree, the doctrine for abstention for Puerto Rico should be liberally construed and applied; and we submit that in this case the

district court should have abstained.

QUESTION: The Compact was 1952, --

MRS. DE RODON: Yes.

QUESTION: -- wasn't it?

MRS. DE RODON: In 1952.

QUESTION: Do you think prior to 1952, and subsequent to 1917 when citizenship was granted, do you think 1983 was applicable then?

MRS. DE RODON: Well, 1983, like I said before, the conditions which it was intended to correct were never passed, but --

QUESTION: Yes, I know, but you're also relying in part on the Compact.

MRS. DE RODON: Yes.

QUESTION: And I'm just trying to go back to the pre-Compact days and wonder whether the situation would be any different, without the Compact to rely on?

MRS. DE RODON: Well, it has to be jurisdictional, because 1343 was never amended to include Territories, it just included States; and that was approved under the Fourteenth Amendment. I don't think -- never intended to cover Territories. And in 1875 it was that the federal district courts got general federal question jurisdiction; and in the relations Act, the Foraker Act and the Jones Act and the Federal Relations Act that have applied to Puerto Rico, and they have a clause

concerning the district courts of Puerto Rico, they mention that in the District Court of Puerto Rico has the same jurisdiction as courts in the United States, but if Territories were not included in, as part of 1343, then that would not have made it applicable; they would have to go under the general federal question jurisdiction.

Thank you very much.

MR. CHIEF JUSTICE BURGER: Mr. de Arellano.

ORAL ARGUMENT OF MAX RAMIREZ de ARELLANO, ESQ.,

ON BEHALF OF THE APPELLEES

MR. DE ARELLANO: Mr. Chief Justice, and may it please the Court:

Before I enter into my argument proper, I would just like to make two comments on Mrs. De Rodon's introduction.

First of all, in the matter of no showing of eligibility, the fact is, and this is a fact, in both these cases, that these plaintiffs are completely eligible for unconditional licenses as engineers. Except for the requirement of citizenship, they have met every single other requirement under Section 689, Title 20.

Secondly, the matter of the multiplicity of civil rights actions in Puerto Rico, I think that's a wonderful thing, not a terrible thing. It shows, I think her statistics show and prove the great need in Puerto Rico for the statute.

QUESTION: Well, the need for it would have very little

to do with the jurisdiction; is that so?

MR. DE ARELLANO: That is true, Mr. Justice.

In any case, though, I think this Court is faced with a constitutional question of the first order. The effect of denying -- of accepting the Commonwealth argument in this case is to deny the three million citizens of the United States resident in Puerto Rico coverage under the Fourteenth Amendment; that is, denial against violations of their rights protected by the Fourteenth Amendment of the United States.

QUESTION: Well, you mean that if 1983 is inapplicable to Puerto Rico, there isn't any other source of jurisdiction of the substantive right in the district courts?

MR. DE ARELLANO: Only -- it would have to be under the Fifth Amendment to the Constitution of the United States.

QUESTION: I know, but what about our Bivens decision?

MR. DE ARELLANO: I'm not familiar with the decision in that.

QUESTION: Well, what about proceeding under 1331, as long as you can allege $10,000?

MR. DE ARELLANO: As a federal question, yes, -- well, the first limitation is the jurisdictional amount, of course.

QUESTION: Well, that's satisfied in this case, isn't it?

MR. DE ARELLANO: It might be. The Solicitor General, in his brief, thinks it might be.

QUESTION: Well, let's assume -- do you think that if you do not prevail in this case, if you lose this case, would you think it would mean that you could not proceed under 1331?

MR. DE ARELLANO: I think I could, Your Honor, yes.

QUESTION: You think you could proceed, and if you could satisfy the jurisdictional amount requirement, you could sue government officials under 1331?

MR. DE ARELLANO: Raising the federal question, yes.

QUESTION: Well, it's fairly -- a constitutional question is fairly federal, isn't it?

MR. DE ARELLANO: Of course.

QUESTION: Yes.

QUESTION: Did the argument you were making a moment ago suggest that there was some constitutional problem if Congress chose to exclude Puerto Rico from the ambit of 1983, or 1343?

MR. DE ARELLANO: No. No. No. The Court is faced with the matter of statutory interpretation of the Act -- the scope of 1983, because the Fourteenth Amendment, as I understand it, does not apply per se to the Territories.

It was applied to Territories in 1874, through Section 1983.

The main contention of the Commonwealth in this case

is that under this Court's decision in District of Columbia vs. Carter, there is no jurisdiction under Section 1334, because -- they try to raise a syllogism in this case, they say that the District of Columbia was found to be sui generis in the constitutional scheme, and that Puerto Rico is also sui generis in the constitutional scheme.

They say, under Carter, the Civil Rights Act was found not to apply; therefore, it doesn't apply in Puerto Rico. I think this is a false syllogism.

In Carter, this Court was also faced with the matter of statutory interpretation: what was the scope of Section 1983?

In trying to find this scope, it went back to the old case of Puerto Rico vs. The Shell Company, where it stated that it was the character and aim of a statute which serves to define the terms of the statute.

And specifically in Carter, the scope of the term "State or Territory"; and the Court asked, What was the purpose of the 1874 amendment to Section 1983.

And it found that it was the intent of Congress, when it amended the Civil Rights Act, to extend the Fourteenth Amendment protection to the Territories, acting under Article IV of the Constitution of the United States, the territorial power.

The reasons for this -- that is, the reasons for

Congress in passing this amendment were that it had experienced certain difficulties controlling what were then far-flung Territories, and Congress had delegated some of its law-making power to Territorial Legislatures. Therefore, these two factors combined to make the Territories more like States, insofar as problems of civil rights jurisdiction were concerned.

Therefore, they equated Territories with States insofar as Section 1983 was concerned.

The District of Columbia, on the other hand, in that case, was found to be under the direct control and supervision of Congress, it's the seat of the national government, therefore, the reasons that Congress had in extending the Fourteenth Amendment protection to the Territories did not exist in the case of the District of Columbia.

QUESTION: So would it be your position, then, that 1983 would not have applied to Puerto Rico up until 1952, but afterwards it did? Because --

MR. DE ARELLANO: No. No, on the contrary, under Shell Company, it would have to apply -- it would have been held to apply, had the issue been raised, to pre-1952 Puerto Rico. I don't think there can be any doubt about that.

QUESTION: Well, didn't Congress -- when did Congress lose its general authority to legislate for Puerto Rico?

MR. DE ARELLANO: My contention is that it hasn't.

QUESTION: Well, then, why isn't it governed by

District of Columbia vs. Carter?

MR. DE ARELLANO: Because Puerto Rico, in 1952, gained a certain amount of autonomy, and it is this autonomy which has made it more like a State.

QUESTION: But I thought that certainly one of the tests in Carter was the fact that Congress wouldn't have wanted to give a special cause of action in federal courts to people whose grievances could be corrected by Congress itself?

And I would take it that would be true in the case of Puerto Rico, if Congress still has general legislative authority.

MR. DE ARELLANO: Well, it's true in any of the Territories. In other words, Congress can act in Puerto Rico under Article IV, and grant -- and correct whatever grievances it may think need correcting.

This is both after and -- before and after 1952.

QUESTION: Doesn't Calero help you to some extent?

MR. DE ARELLANO: Yes. Calero-Toledo recognized or -- that in amending Section 1983, Congress was acting under Article IV. And that it also -- except in that same footnote states that it was not necessary in that case to decide whether it was the Fifth or Fourteenth Amendment which applied to Puerto Rico.

QUESTION: But is that the case that held that a statute of Puerto Rico is a statute of the States for purposes

of three-judge court jurisdiction?

MR. DE ARELLANO: Yes. For the purposes of three-judge court jurisdiction.

QUESTION: Unh-hunh.

MR. DE ARELLANO: Now, each of these appellate statutes is treated separately and differently by this Court.

So, to get back to Mr. Justice Rehnquist's question, if I may, the -- applying Shell Company to Puerto Rico at the present time, we find that Puerto Rico is autonomous as to local matters. There is no direct control as a practical matter right now by Congress. There's no day-to-day supervision the way there is here in the District. Therefore, Puerto Rico is the type of place where Congress wanted Section 1983 to apply, when it amended it.

QUESTION: Do you think that since Congress granted the District home rule a year ago, two years ago, the result should now be different in Carter?

MR. DE ARELLANO: I don't know how far home rule goes, or whether there are any actual elections in it -- I'm not familiar with home rule at all.

QUESTION: Well, they have independent courts, just as Puerto Rico does. They don't have Senators or Congressmen, as Puerto Rico does not. There are certain simirities, are there not?

MR. DE ARELLANO: Yes, but still there's the question

that this is the seat of the national government, it's the place created by the Constitution itself. And I don't think Puerto Rico can be equated to the District of Columbia in the constitutional scheme.

They both may be unique, but it's a different type of uniqueness.

QUESTION: Well, I gather your submission is that Puerto Rico remains a Territory.

MR. DE ARELLANO: For purposes --

QUESTION: Within the meaning of 1983, since even the Commonwealth Act, I gather, constitutionally has its source in the authority of Congress to regulate the Territory.

MR. DE ARELLANO: The Committee Reports to Public Law 600 specifically so stated.

QUESTION: Yes.

MR. DE ARELLANO: They stated that this Public Law 600 was a further act in the administrattion of Territories under Article IV of the Constitution.

So the question is, whether after 1952 Puerto Rico became any different as regards Section 1983.

QUESTION: Well, if there are, whatever the differences are between the District of Columbia and Puerto Rico, is Puerto Rico not more independent, and unique, than the District of Columbia, as compared with our States?

MR. DE ARELLANO: I was going to say it's more like

a State than it is like the old-time Territories.

QUESTION: Well, it does not have representation in the Congress.

MR. DE ARELLANO: Well, there is a Resident Commissioner, who does not have a vote.

QUESTION: Well, do you vote in federal elections?

MR. DE ARELLANO: No, sir.

QUESTION: The District of Columbia people do.

MR. DE ARELLANO: Because the Constitution so provides.

QUESTION: Only very recently.

Is there not much more reason for Puerto Rico to maintain an autonomy of traditions and customs and culture? There is in --

MR. DE ARELLANO: That's all very fine -- I'm sorry.

QUESTION: Than the District of Columbia, for example?

MR. DE ARELLANO: That's all very -- yes, as long as the Commonwealth government does not start impinging on rights guaranteed by the Constitution of the United States. That's as far as they can go. That's as far as any State can go, that's as far as any Territory can go, that's as far as the District of Columbia can go.

I don't think Puerto Rico has the right to go any farther than the District of Columbia, than the federal government, or than any other State or Territory.

QUESTION: Well, if we had held otherwise in Carter, at least the courts into which the State -- or District respondents would have been brought, albeit federal courts, would have been one that presented no language problem. Now, I certainly concede that you don't use that as a test for deciding whether the statute applies, but if you're thinking of the matter as rather closely balanced, it does strike me that the federal courts down there may be a fairly inhospitable forum to people who don't speak the language in which it's conducted.

MR. DE ARELLANO: Well, Your Honor, the language problem, I mean it's the same for everybody before the court, both plaintiffs and defendants.

Second, I don't think the proper solution to the language problem would be to say that there are no more civil rights in Puerto Rico; the solution is to say, Well, let the district court in Puerto Rico conduct its proceedings in Spanish.

Now, it is my contention, the contention of plaintiffs in this case, that after 1952, if anything, Puerto Rico became more like a State than anything else. I should point out that since 1952 not a single federal statute that had been held to apply to Puerto Rico before 1952 has ever been held inapplicable to post-1952 Puerto Rico.

In other words, to hold now that Section 1983 doesn't

apply would be the first time that this Court, or any court so far as I know, has held that a federal statute applicable to pre-1952 Puerto Rico is inapplicable to post-1952 Puerto Rico.

Going back again also to The Shell Company case, we have to find -- we have to look at the intent of Congress in 1952 when it granted Puerto Rico the power to draft its Constitution.

I think it is quite evident that Congress was very concerned that the constitutional rights, United States constitutional rights be preserved in Puerto Rico after 1952. The resolution, the Joint Resolution approving the Constitution of Puerto Rico provided that the Constitution would not go into effect unless it conformed with the applicable provisions of the Constitution of the United States.

Section 2 of the Federal Relations Act, which was continued in effect by Public Law 600, equates Puerto Rico with a State of the Union, insofar as the rights, privileges and immunities of its citizens are concerned.

It's interesting that this is the same language used in Section 1983.

When Congress was studying the proposed Constitution, it required an amendment to the proposed Article VII, to the effect that the applicable -- that no subsequent amendment to the Puerto Rico Constitution would be passed that did not conform to the applicable provisions of the United States

Constitution. The Conference Report to Senate 3336, which later became Public Law 600, stated that this matter -- that is, thatthe proposed Puerto Rico Constitution and Public Law 600 -- would be a fundamental contribution, and I quote, "A fundamental contribution to the art and practice of the government and administration of Territories under the sovereignty of the United States.

In other words, Congress -- Public Law 600 and the Constitution of Puerto Rico are merely a further step in the administration of Territories under Article IV of the Constitution of the United States.

Finally, on this point, the -- it is also clear from the legislative history surrounding Public Law 600 that the changes brought about by the law were only matters of "purely local concern". This is a quote from the Committee Report to Public Law 600.

So, in concluding on this point, the argument of the Commonwealth that, at least to the conclusion that Congress abdicated its responsibility under Article IV, that it just withdrew Section 1983 protection from post-1952 Puerto Rico, is contrary to all the legislative history surrounding Public Law 600.

Now, if this Court finds that Puerto Rico is a State or Territory within the meaning of Section 1983, then the substantive matter presented to the Court in this case, I

submit, has already been decided by the case of In re Griffiths.

Nevertheless, the Commonwealth is arguing that it is entitled to a broader or more liberal test regarding its justification for the discrimination against aliens.

I should point out that the discrimination here is not against just these plaintiffs, it's not a personal discrimination it's an across-the-board discrimination.

The justification presented by the -- or the reasons why the Commonwealth thinks it should be entitled to a broader test or a more liberal test is, first of all, because of its special position in the -- or, rather, because it's different from a State of the Union, and, second, because of the specific factual situation existing in present-day Puerto Rico.

On the first point, the position of the Commonwealth, it is my contention that constitutional uniqueness -- or uniqueness under the constitutional scheme, or in the constitutional scheme, is not the same as exemption from the requirements of that constitutional scheme.

The test of a justification should not be the position of the governmental authorities imposing the discrimination, but, rather, the effect of that discrimination on the person being discriminated against. The aliens in this case don't care whether, I don't know, the federal government or a territorial government or the government of something called the Commonwealth of Puerto Rico denying them equal protection

under the laws. They are still being denied equal protection of the laws.

And the effect is that they are being denied their right to work, to exercise their profession, solely because they are aliens.

In their brief, the Commonwealth cites, or refers to general unemployment figures in Puerto Rico, but it does not cite what it should cite, which is the unemployment figures for engineers in Puerto Rico. They do not cite general per capita income -- I mean they do cite general per capita income figures; they don't cite per capita income figures for engineers.

The reference to illegal immigration, I believe, is completely irrelevant. No showing was made that immigration tends to be among professionals or engineers or anything of the sort, and I'm sure this Court will agree that no such showing could probably be made.

Parenthetically, the Commonwealth, in its brief, seems to say on page 20 that the States have the right to regulate what they call the influx of aliens through their borders. I submit that this is incorrect, going back at least as far as Hines vs. Lavidowitz in 1941.

On the matter of employment of engineers in Puerto Rico, just ten days ago the president of the University of Puerto Rico, Dr. Arturo Morales Carrion, was quoted in an interview in a local newspaper, to the effect that in his opinion

the orientation of education at the University of Puerto Rico should change, from what it has been, in the future and is now from Liberal Arts towards Science and Engineering, because Puerto Rico needs people trained in sciences and engineering. There is a lack of this type of training in Puerto Rico, and the whole university orientation should shift toward this type of training.

QUESTION: What purpose would be served -- I gather this statute has not yet been before your Supreme Court, has it?

MR. DE ARELLANO: That's correct.

QUESTION: Would it serve any purpose, in light of the issue that's involved, the constitutional issue? To send it to that court?

MR. DE ARELLANO: I don't think so, Your Honor. There's nothing that needs to be interpreted.

QUESTION: I gather that what -- the interpretation, I gather, is satisfied -- it would have to be that aliens are not subject to it.

MR. DE ARELLANO: That's right, there's no question but that this statute, Section 689, applies to aliens. It says if you're an alien, you can't get a license.

QUESTION: And there's no way it can be construed not to apply to aliens?

MR. DE ARELLANO: Either you're an alien or you're not,

and either it does or it doesn't apply to aliens. And it says it does. There's nothing left there for the Supreme Court of Puerto Rico --

QUESTION: This is not like the Fornaris statute, then.

MR. DE ARELLANO: Where you had a vague statute. Nobody knows what just causes -- nobody knew then, and nobody still know what "just cause" means.

QUESTION: So I understand.

MR. DE ARELLANO: The compelling, so-called compelling State interest put forth by the Commonwealth, it boils down to denial of employment of aliens for the sole reason that they are aliens. This is abundantly evident in the Committee Report to the amendment to the engineering statute. The Committee Report said that other countries have requirements similar to ta requirement being considered in this amendment. That is, they require that people coming to work in these other countries be citizens of the country, and that the purpose of the amendment was to conform the law of Puerto Rico to the law of these other countries.

That is the only reason put forth in the reports, Committee Reports, on the amendment for the amendment itself.

The matter of civil code responsibility, raised by the Commonwealth in their brief is also a false issue. If we look at the statute, we find that aliens who receive their

education in Puerto Rico are entitled to unconditional licenses. Yet the Commonwealth forgets that these aliens are just as free to leave Puerto Rico as aliens who have studied elsewhere. to The same is true as/United States citizens who have received their education in States of the Union. They also are entitled to unconditional licenses.

The statute contemplates reciprocity agreements between Puerto Rico and the States of the Union. These United States citizens from other States are just as free to leave Puerto Rico, in case of trouble, as are aliens who have studied elsewhere.

I cite the case of Empresas Capote vs. Superior Court in my brief. In this case there is involved the question of the meaning of the term "contractor" in the civil code chapters concerning civil responsibility for construction defects.

The Supreme Court stated -- the Supreme Court of Puerto Rico stated that the term "contractor" is not limited to professional engineers or architects. It means anybody who has promised to produce a certain result, or to render a certain service. And the fact is that in Puerto Rico there are very many people who practice the profession, if I may call it that, cf contractor. That is, they put up buildings; they put up whole buildings, and they are not engineers.

If we're going to require some contractors to be citizens and others not, I understand there is a violation of

due process of the law, -- excuse me -- of equal protection.

In summary, if I may, in barring the abstention question, this Court, I think, has three courses open to it in this case. It can affirm the judgment in the district court, state that Section 1983 applies, and thus the Fourteenth Amendment. Secondly, it can state that only the Fifth Amendment applies to the -- to Puerto Rico. However, this, I think, would have the effect of equating Puerto Rico with an old-time Territory, subject to direct control by Congress under Article IV, and limited, then, by the due process clause of the Fifth Amendment.

I don't think that even the Commonwealth would agree to go this far.

Or it can determine that neither the Fifth nor the Fourteenth Amendment applies. This, I think, would result in, I think, an intolerable constitutional vacuum in Puerto Rico, because it would be the same as saying that Puerto Rico is an independent country, which it is not.

It would be the same as saying that the U.S. citizens residing in Puerto Rico are in the same position as U. S. citizens residing in, say, France.

Finally, the Commonwealth requests that if the Court finds that Section 1983 does not apply, -- well, now, there's my argument.

QUESTION: There's no real discussion of these

questions in the district court's opinion, is there?

MR. DE ARELLANO: No, there isn't. All this was raised before this Court.

QUESTION: I suppose the reason is that this had all been threshed out in the district court and in the First Circuit, and that the law had been established in your favor, is that it?

MR. DE ARELLANO: There are several cases in the district court that have already decided this same point against the Commonwealth.

QUESTION: Yes.

May I ask you one more question, not that you're responsible for this, but maybe you can clarify it.

I have before me two copies of what is labeled a "Brief for the United States as Amicus Curiae". Both seem to have been filed November 29th, 1975. One has a gray cover and one has a white cover. Have you any explanation for that?

MR. DE ARELLANO: I've only seen the one with the white cover.

QUESTION: Are they the same thing?

MR. DE ARELLANO: I have never seen the gray one before; I don't know.

QUESTION: Right. Thank you.

MR. CHIEF JUSTICE BURGER: Do you have anything further?

REBUTTAL ARGUMENT OF MRS. MIRIAM NAVEIRA de RODON,

ON BEHALF OF THE APPELLANTS

MRS. DE RODON: May it please the Court:

I was told by the Solicitor General that it had typographical errors, and that's why they have it printed again. I asked the question on the two briefs, and that's the answer the Solicitor General gave me.

QUESTION: Which is the corrected copy, do you know?

MRS. DE RODON: I think it's the gray one, because I got the one with the typographical errors, the white one, and I was told that they were going to print it again.

QUESTION: Thank you very much.

MRS. DE RODON: I wanted just to clarify a few points.

We do not agree with the fact that the statute is absolutely clear. The Commonwealth courts have not had the opportunity of interpreting what is meant by "have studied the total courses", whether this means to have gone through the three years of the university in Puerto Rico, whether these are topping-off courses necessary to practice engineering in Puerto Rico. This has never been interpreted.

My colleague interprets it to mean the whole three years in Puerto Rico. I don't know how this -- how the Supreme Court oc Puerto Rico would interpret that case, in particular, whether it's speaking about going through the entire university or just some specific courses which would

qualify the alien to practice law in Puerto Rico, due to unique circumstances of Puerto Rico itself.

I would also like to clarify that we are not alleging or contending that the Federal Constitution does not apply to Puerto Rico, and that the federal constitutional rights are not applicable to individuals in Puerto Rico. We're just contending that Section 1983 and 1343 are not applicable, but is a statutory construction in --

QUESTION: What about 1331, the federal question jurisdiction?

MRS. DE RODON: I think specifically Puerto Rico is mentioned in 1331, specifically as applicable. And I think it's --

QUESTION: Well, then, wasn't there jurisdiction here?

MRS. DE RODON: Excuse me?

QUESTION: Then, wasn't there jurisdiction in this case under 1331?

MRS. DE RODON: They did not -- they did not allege 1331 in the lower court; possibly there could have been.

QUESTION: Did they ask it?

MRS. DE RODON: No, no. Possibly there is. I --

QUESTION: They alleged $10,000 in dispute?

MRS. DE RODON: No. No.

QUESTION: Well, then, there wasn't 1331 jurisdiction,

I take it.

MRS. DE RODON: No. No. They didn't make any allegations, except 1343, in their jurisdictional basis --

QUESTION: What about at this stage of the litigation? How much damages were awarded?

MRS. DE RODON: Nothing.

QUESTION: Well, what is involved in the case?

MRS. DE RODON: And the constitutionality, the declaritory judgment and the constitutionality of the statute was one of the complaints under --

QUESTION: How much is -- so there's -- no one knows how much is involved?

MRS. DE RODON: No, and these people are --

QUESTION: If anything.

MRS. DE RODON: -- working with the government, so I really don't know how much damages, if any, could be -- if it is 10,000 -- I can't determine.

QUESTION: Well, it doesn't say so in the complaint. That's quite clear.

MRS. DE RODON: Yes, it does -- it does say so.

Thank you very much.

MR. CHIEF JUSTICE BURGER: Thank you.

The case is submitted.

[Whereupon, at 2:30 o'clock, p.m., the case in the above-entitled matter was submitted.]