

ORIGINAL

Telephone: (202) 554-2345

1 IN THE SUPREME COURT OF THE UNITED STATES

2 - - - - -x

3 ALFRED L. SNAPP & SON, INC., :

4 ET AL., :

5 Petitioners, :

6 v. : No. 80-1305

7 PUERTO RICO, EX REL. PEDRO BAREZ, :

8 SECRETARY OF LABOR AND HUMAN :

9 RESOURCES :

10 - - - - -x

11 Washington, D.C.

12 Tuesday, April 20, 1982

13 The above-entitled matter came on for oral
14 argument before the Supreme Court of the United States
15 at 1:01 o'clock p.m.

16 APPEARANCES:

17 THOMAS J. BACAS, ESQ., Washington, D.C.: on behalf of
18 the Petitioners.

19 PAUL A. LENZINI, ESQ., Washington, D.C.; on behalf of
20 the Respondent.

21

22

23

24

25

1	<u>C O N T E N T S</u>	
2	ORAL ARGUMENT OF	PAGE
3	THOMAS J. BACAS, ESQ.,	
4	on behalf of the Petitioners	3
5	PAUL A. LENZINI, ESQ.,	
6	on behalf of the Respondent	xx
7	THOMAS J. BACAS, ESQ.,	
8	on behalf of the Petitioners - Rebuttal	xx
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 P R O C E E D I N G S

2 CHIEF JUSTICE BURGER: We will hear arguments
3 next in Alfred L. Snapp and Son against Puerto Rico.

4 Mr. Bacas, you may proceed whenever you are
5 ready.

6 ORAL ARGUMENT OF THOMAS J. BACAS, ESQ.,

7 ON BEHALF OF THE PETITIONERS

8 MR. BACAS: Mr. Chief Justice, and may it
9 please the Court, the issue in this case is whether the
10 Commonwealth of Puerto Rico has standing as parens
11 patriae to sue 32 individual apple growers from the
12 Commonwealth of Virginia for allegedly breaching the
13 employment contracts and allegedly violating the federal
14 statutory and regulatory rights of a small number of
15 Puerto Rican workers during the 1978 apple harvest.

16 I am going to get into these points in more
17 detail later, but we think there are three major reasons
18 why the Commonwealth of Puerto Rico lacks parens patriae
19 standing in this case. First, the injuries alleged did
20 not affect the general population of Puerto Rico in a
21 substantial way. Secondly, we believe that Puerto Rico
22 in affect is attempting to litigate the personal claims
23 of a small group of its citizens. Thirdly, we believe
24 that the Puerto Rican workers allegedly aggrieved have
25 adequate remedies and have clearly demonstrated their

1 ability to litigate the issues themselves.

2 QUESTION: Could they have brought a class
3 action here?

4 MR. BACAS: Have they brought a class action?
5 Not in this case, Your Honor, unless you count the
6 action in Puerto Rico. There have been a number of
7 cases that have been brought. Not all the cases involve
8 all of the defendants in this particular case.

9 QUESTION: Could the individuals or
10 respondents here have brought a class action on the same
11 general allegations?

12 MR. BACAS: The individuals are not
13 respondents in this case. It is the Commonwealth --

14 QUESTION: But could they have brought an
15 action?

16 MR. BACAS: Could they have brought?

17 QUESTION: The employees, I am speaking of. I
18 misspoke myself when I said Respondents. The employees.

19 MR. BACAS: Your Honor, there have been cases
20 where they have brought purported class actions, and we
21 have opposed those -- the class certification in those
22 cases. We just do not believe that those cases satisfy
23 the Rule 23 requirements for class action. It is that
24 simple. For the very same reason --

25 QUESTION: But you have lost all those cases

1 so far.

2 MR. BACAS: No, sir, we have not lost or won
3 those cases.

4 QUESTION: Okay.

5 MR. BACAS: They are all pending.

6 QUESTION: But they were all certified.

7 MR. BACAS: No, sir.

8 QUESTION: No. Okay.

9 MR. BACAS: The court in New York in the case
10 of Rios v. Donovan, which was originally styled Rios v.
11 Marshall, has not yet made a ruling on whether to
12 certify the class. We have opposed it, and we
13 strenuously oppose it because we don't think it is class
14 action material. Basically, you have a number of
15 individual workers who have claims against individual
16 growers. A particular Puerto Rican worker, if he
17 accepted a job offer, accepted the job offer of one
18 grower. If he was discriminated against, he was
19 discriminated against by that one grower. He does not
20 have a grievance against any other growers, and yet what
21 they have attempted to do in this case and what they
22 have attempted, the individual Puerto Ricans have
23 attempted to do in these purported class actions is to
24 lump together into one case something which really
25 shouldn't be brought as one case.

1 The facts in the case, in this case are
2 relatively simple. Since the case was decided on the
3 basis of a motion to dismiss pursuant to Rule 12(b), we
4 must accept as true all the material allegations of fact
5 in the complaint. The facts are basically these. There
6 are 32 Virginia apple growers who were sued in the
7 district court and are Petitioners in this Court. Each
8 Virginia grower in the spring of 1978 -- I think the
9 complaint says April 28th, 1978 -- filed individual
10 applications to the United States Department of Labor
11 for permission to bring in temporary foreign workers
12 under the H2 program.

13 The H2 program was created pursuant to the
14 Immigration and Nationality Act of 1952, and it provides
15 for the admission of temporary foreign workers into this
16 country when not enough qualified U.S. workers are
17 available. There are very detailed procedures set out
18 in the regulations promulgated by the Department of
19 Labor at 20 CFR Part 655. The H2 program is
20 administered jointly by the Immigration and
21 Naturalization Service and the U.S. Department of
22 Labor. The Commonwealth of Puerto Rico and its
23 Department of Labor plays only a very perhipheral role
24 in the administration of this program, and its role is
25 severely circumscribed by these regulations.

1 For reasons that are set forth in greater
2 detail in the brief, the clearance orders or the job
3 offers of these individual Virginia growers, even though
4 they were filed as early as April of 1978, were not sent
5 to Puerto Rico until early August of 1978. This was
6 less than two weeks before the growers were due to be
7 certified as to their needs to bring in temporary
8 foreign workers. This -- The resulting last minute
9 recruitment by the Commonwealth of Puerto Rico allegedly
10 produced names of enough Puerto Rican workers to fill
11 all the jobs of all the 32 Virginia growers, a total of
12 787 jobs for all 32 growers.

13 However, only -- when the apple harvest
14 arrived, only 420 of the Puerto Ricans actually arrived
15 in the Commonwealth of Virginia. The remainder never
16 left the Commonwealth. The United States Department of
17 Labor in effect ordered the cancellation of the
18 remaining flights, allegedly because "Certain growers
19 had refused to employ individuals referred by Puerto
20 Rico."

21 Of the 420 Puerto Ricans who did arrive at the
22 orchards, allegedly fewer than 30 had employment three
23 weeks later.

24 QUESTION: Mr. Bacas, I gather, at least by
25 statute, Puerto Rico has put a special burden on the

1 Puerto Rican Commissioner of Labor to protect the rights
2 of Puerto Ricans participating in this program, has it
3 not?

4 MR. BACAS: They do under Public Law 87.

5 QUESTION: And that is a rather broad
6 responsibility, isn't it?

7 MR. BACAS: I would say it is, Your Honor.

8 QUESTION: So, do you think that the
9 Commonwealth -- I guess it is commonwealth law, not
10 state, isn't it? -- that commonwealth law has any role
11 to play in deciding a parens patriae issue?

12 MR. BACAS: Absolutely none, Your Honor.

13 QUESTION: None. Why not?

14 MR. BACAS: The concept of standing is a
15 federal constitutional concept --

16 QUESTION: Is parens patriae --

17 MR. BACAS: -- even parens patriae standing.

18 Well, they -- in fact, they rely on it in a very limited
19 sense. They say that, well, the Department of Labor of
20 Puerto Rico is the proper party to bring this parens
21 patriae action as a result of Public Law 87 if parens
22 patriae action is permitted to be brought, so that law
23 is --

24 QUESTION: Well, are you suggesting that
25 parens patriae is a jurisdictional Article III problem?

1 MR. BACAS: Yes, I do, Your Honor.

2 QUESTION: Where do you get that?

3 MR. BACAS: Where do I get that? Article III
4 limits the jurisdiction of federal courts to cases and
5 controversies, and the courts have generally, as I will
6 discuss in greater detail in my argument --

7 QUESTION: Well, the cases and controversies,
8 but it is between -- controversies between the person
9 bringing the suit and the defendant.

10 MR. BACAS: Yes.

11 QUESTION: And didn't we have something to say
12 about that in the case five or six years ago?

13 MR. BACAS: Which case is that, Your Honor?

14 QUESTION: The name eludes me at the moment,
15 but it is discussed in some of the briefs. All I can
16 remember about it is, it was written by Mr. Justice
17 Marshal.

18 MR. BACAS: Are you talking about Hawaii, Your
19 Honor? Are you talking about Hawaii v. Standard Oil?

20 QUESTION: Yes. That's the one.

21 MR. BACAS: The Hawaii v. Standard Oil, there
22 was extensive discussion of parens patriae standing in
23 that case, which was, incidentally, brought in the
24 district court. It was not an original action in this
25 Court. The -- I think Justice Marshal -- he may correct

1 me, but I believe he made the reference that parens
2 patriae -- the case did not ultimately turn on the
3 question of parens patriae standing, but there was an
4 extensive discussion --

5 QUESTION: It was on antitrust, wasn't it?
6 Wasn't it on antitrust, and parens patriae was just a
7 little narrow slice of it?

8 MR. BACAS: Yes. It did, but the ultimate
9 issue in Hawaii really turned on the question of damages
10 under the antitrust laws, and whether a state was
11 entitled to bring, in effect, a treble damage claim
12 under the antitrust law, and the Court held it did not.

13 QUESTION: Well, what concerns me, and the
14 reason I asked you the question, if a state, and let's
15 for this purpose treat Puerto Rico as a state, and it's
16 a sovereign state, and adopts a rather, as it has here,
17 a system for implementing the federal statute, why can't
18 we defer to the state's view of its policy and
19 sovereignty interest instead of substituting our own?
20 Are you going to suggest we can't because there is an
21 Article III limitation?

22 MR. BACAS: Yes, sir.

23 QUESTION: Where do you get that? I still
24 don't understand that.

25 MR. BACAS: Article III limits the

1 jurisdiction of courts to cases and controversies, and
2 we don't believe that there is a case and controversy
3 between the Commonwealth of Puerto Rico and these
4 individual growers. There might be a case and
5 controversy between the individual Puerto Rican workers
6 who allegedly were -- applied for these jobs and
7 allegedly were discriminated against, or were denied
8 employment.

9 QUESTION: In other words, are you saying that
10 an individual Puerto Rican who got drawn into this and
11 came up here and sat idle and didn't get a job or some
12 other comparable complaint could sue that particular
13 apple grower?

14 MR. BACAS: Certainly. There is no question
15 about that, Your Honor. We have never contested the
16 jurisdiction of the courts to hear a claim of a
17 particular worker, whether it be Puerto Rican or from
18 some other state, to sue a particular grower.

19 QUESTION: Of course, we have had original
20 cases in which we have thought that we ought not allow a
21 state suing another state to invoke our original
22 jurisdiction if all it is doing is fronting for some
23 private interest in the state, but that is a matter of
24 protecting our original jurisdiction, but I still wonder
25 why in the district courts a state isn't, in the context

1 of this kind of case, with this kind of implementation,
2 why a sovereign state ought not be welcome in a federal
3 district court to represent the citizens --

4 MR. BACAS: Your Honor, I --

5 QUESTION: -- to protect their federal rights
6 as the federal government has set them up. Why not?

7 MR. BACAS: Your Honor, you are right that
8 most of the cases, especially the cases in this Court,
9 have involved the question of the original jurisdiction
10 of this Court, and I think the Court has, justifiably
11 so, been very protective of that, to limit cases which
12 truly merit the --

13 QUESTION: I know, but those reasons are --
14 those considerations don't apply to a suit in the
15 federal district court.

16 MR. BACAS: They don't, Your Honor, but this
17 Court has never so limited the -- in stating the test
18 for parens patriae standing, this Court has never so
19 discriminated between those cases of parens patriae
20 brought as original cases in this Court and those cases
21 brought in the district court. For example, Justice
22 Marshal's discussion in Hawaii v. Standard Oil, that was
23 not an original -- case of original jurisdiction.

24 QUESTION: Of course, we allow private
25 organizations to bring lawsuits in the federal district

1 courts on behalf of their members, don't we?

2 MR. BACAS: Yes, sir.

3 QUESTION: Well, then, why can't we allow
4 states, sovereign states to bring proceedings on behalf
5 of their citizens in district court?

6 MR. BACAS: There are a couple of reasons,
7 Your Honor. One is, the state is presuming here to
8 speak for all of its workers. We don't know whether all
9 of those workers actually even have complaints. That is
10 one reason why we limit cases generally to those people
11 who are actually aggrieved.

12 QUESTION: Well, apparently the Puerto Rican
13 legislature thought there were a number of Puerto Rican
14 citizens who had interests under this federal setup to
15 be protected and imposed the burden on the Commissioner
16 of Labor --

17 MR. BACAS: Yes, sir.

18 QUESTION: -- to take the necessary steps to
19 protect them.

20 MR. BACAS: The legislature of Puerto Rico did
21 enact Public Law 87, and that Public Law 87 has been in
22 effect overruled by the First Circuit in the case of
23 Hernandez Flecha v. Quiros. In effect, they said, it is
24 not the function or the role of the legislature of
25 Puerto Rico to dictate the requirements of the job

1 orders that are sent through this federal system. That
2 is up to the United States Department of Labor to
3 determine those requirements, which it does under those
4 extensive regulations that I have referred to at --

5 QUESTION: But I thought this lawsuit by
6 Puerto Rico was for the purpose of enforcing these
7 rights of Puerto Rican citizens consistently with the
8 regulations and federal rules of the Department of
9 Labor, aren't they?

10 MR. BACAS: The suit does purport to do that,
11 Your Honor. However, I would suggest that there is a
12 procedure set forth in the regulations which the
13 Commonwealth is purporting to enforce. These
14 regulations specify a procedure. When an employee has a
15 complaint against a grower, he can file a grievance with
16 the Commonwealth of Puerto Rico. Under those
17 regulations, a worker from Puerto Rico who works in
18 Virginia and goes back to Puerto Rico believing he has a
19 grievance can file a complaint with the Department of
20 Labor of Puerto Rico.

21 Under the regulations, the Department of Labor
22 of Puerto Rico must refer that complaint to the state
23 agency in the state where the work was performed. That
24 state agency investigates, gives a hearing if necessary,
25 and there is even a right of appeal. If the worker --

1 the determination is not to the worker's liking, he can
2 appeal that to the regional administrator, where the
3 same process works again, even the provision of a full
4 hearing.

5 QUESTION: Well, why can't all that operate
6 and yet allow Puerto Rico to maintain this suit?

7 MR. BACAS: In effect, you would be having a
8 complete duplication of litigation. The mere fact that
9 the Commonwealth of Puerto Rico is bringing this lawsuit
10 has certainly not stopped the workers from bringing
11 their own lawsuits or even filing their own complaints
12 with the employment service system. If what you want to
13 do is create a situation where everybody is suing
14 everybody on the same issue --

15 QUESTION: Incidentally, all we have got in
16 the way of remedy involved here is injunctive relief,
17 isn't it?

18 MR. BACAS: I'm sorry, Your Honor?

19 QUESTION: It is only injunctive relief, isn't
20 it, that --

21 MR. BACAS: They are seeking both declaratory
22 and injunctive relief.

23 QUESTION: Not damages, however.

24 MR. BACAS: No, sir.

25 QUESTION: No.

1 QUESTION: Well, are you suggesting that this
2 would just be an application of the ordinary rule of
3 exhaustion of administrative remedies?

4 MR. BACAS: I think that might --

5 QUESTION: Or not?

6 MR. BACAS: There is a factor --

7 QUESTION: Or is it different from that?

8 MR. BACAS: It is not quite that, because the
9 workers themselves are really not the plaintiffs here.
10 We are arguing against the Commonwealth, and not the --
11 not the worker.

12 QUESTION: Well, I know, but they are suing on
13 behalf of citizens nevertheless.

14 MR. BACAS: Yes. I would say that it is in
15 part a corollary of that rule, that in effect what they
16 should have said to their workers, look, there is a
17 complaint system that is set up. If you have a
18 grievance, file your complaint and we will assist you.
19 In fact, the regulations actually say that the state
20 agency should assist the worker in pursuing its claim.

21 QUESTION: But if that is all there is to it,
22 then that would be on the assumption that even if there
23 is standing in the sense of case or controversy, that
24 federal courts should refrain from exercising its
25 jurisdiction.

1 MR. BACAS: I don't concede that there is
2 jurisdiction, for the reason that --

3 QUESTION: Well, I know that, but assume we
4 didn't agree with you about case or controversy, that
5 there was jurisdiction, case or controversy. You are
6 suggesting that there is still another reason why it
7 should not be exercised --

8 MR. BACAS: Yes.

9 QUESTION: -- that there is an administrative
10 remedy that should be resorted to first.

11 MR. BACAS: Oh, yes.

12 QUESTION: Certainly it is not the ordinary
13 exhaustion doctrine that you are talking about, I take
14 it, since that is ordinarily raised by the state or
15 saying you should have tried your state remedies first.
16 Here, the state is saying, in effect, you don't have to
17 use your administrative remedies. I mean, in fact, we
18 will sue on your behalf.

19 MR. BACAS: Well, I think we would have that
20 right to raise that, too, Your Honor, not just the state
21 has the right to raise that argument. I think we -- you
22 know, we are the targets -- we are the targets of these
23 complaints, and if there is a procedure, an
24 administrative procedure set forth, especially with a
25 party which is a member of this employment service

1 system. You know, they receive funding from the United
2 States Department of Labor to participate in this
3 system, and it seems to me that they must have some
4 obligation to follow the regulations which administer
5 this system and regulate the system.

6 QUESTION: You are talking about federal
7 regulations --

8 MR. BACAS: Yes.

9 QUESTION: -- and not Puerto Rican regulations.

10 MR. BACAS: Yes.

11 QUESTION: For purposes of this case, counsel,
12 are the workers in Puerto Rico or the government of the
13 Commonwealth of Puerto Rico any different from the State
14 of Michigan with respect to all the automobile workers
15 of Detroit, for example? Is there anything special
16 about the commonwealth status that gives it a special
17 parens patriae status?

18 MR. BACAS: I would say no, Your Honor.

19 QUESTION: In other words --

20 MR. BACAS: There is no difference. In
21 effect, the Puerto Rican workers are considered U.S.
22 workers for purposes of the law --

23 QUESTION: So for these purposes, this case
24 would have to be decided, would you say, on the same
25 basis as though the State of Michigan brought a suit

1 against a lot of people on behalf of the automobile
2 workers?

3 MR. BACAS: It seems to me the same principle
4 would apply. The same principle would apply whether we
5 are talking about Puerto Rico or the State of Michigan
6 or the State of Texas or the State of Florida. States
7 which -- the southern states are most of the labor
8 supply states in this program. That is where most of
9 the farm labor comes from. So it seems to me that if
10 you are going to grant parens patriae standing to the
11 Commonwealth, which I don't think you should, I am not
12 sure how you distinguish the commonwealth situation from
13 the State of Texas or the State of Florida.

14 As a matter of fact, there have been a couple
15 of amicus curiae briefs filed by the State of New York
16 and the Commonwealth of Massachusetts, so there is
17 obviously -- there are some states out there who are
18 anxious to pursue their rights and bring lawsuits if the
19 Court so permits.

20 The complaint in this case sets forth three
21 different categories of alleged violations.

22 QUESTION: Excuse me, Mr. Bacas. May I ask
23 you one other question? If we have to deny, and it is
24 not to be denied on jurisdictional grounds and Article
25 III grounds, then where does the federal courts'

1 authority to deny a sovereign state parens patriae come
2 from? If it is not Article III, where is it?

3 MR. BACAS: If it is not under Article III, I
4 am not sure where else you would find it --

5 QUESTION: There isn't any other place.

6 MR. BACAS: -- Your Honor.

7 QUESTION: So if we don't agree with you on
8 Article III, that would be the end of it?

9 MR. BACAS: I would be hard-pressed to give
10 you another basis for that, Your Honor.

11 QUESTION: Did you read Hawaii against
12 Standard Oil, which of course originated in the district
13 court, as turning on Article III considerations?

14 MR. BACAS: Ultimately, it really, it seems to
15 me it turned on an interpretation of the Sherman
16 Antitrust Act, and not really Article III
17 considerations. It got into a question of double
18 recovery of damages --

19 QUESTION: But all of the parens patriae cases
20 were cited. The original jurisdiction parens patriae
21 cases were cited --

22 MR. BACAS: Yes, they were.

23 QUESTION: -- weren't they?

24 MR. BACAS: Yes, they were, Your Honor, but I
25 think Justice Marshal noted early on that even though he

1 was going to explore the history of parens patriae, the
2 case really did not turn on the concept of parens
3 patriae. I think Hawaii is important because of its
4 discussion that there was reference to the answer from
5 Justice Brennan earlier that there has never been this
6 distinction certainly in this Court and most certainly
7 in the lower courts, the courts of appeals, that these
8 -- the standards that apply to parens patriae apply
9 whether we are talking about a case arising under the
10 original jurisdiction of this Court or one that is
11 brought in the district court, and it applies whether we
12 are talking about damages or it applies whether we are
13 talking about injunctive relief.

14 I would note that in Pennsylvania v. New
15 Jersey, the State of -- the Commonwealth of Pennsylvania
16 was seeking declaratory and injunctive relief. They
17 weren't really seeking damages in that case, and yet
18 this Court denied parens patriae standing. The Court
19 said that in effect they were trying to sue on behalf
20 of their individual citizens claims which those citizens
21 could bring on their own.

22 QUESTION: So why couldn't they do that?

23 MR. BACAS: Why couldn't who do that, Your
24 Honor?

25 QUESTION: The state.

1 MR. BACAS: They couldn't. You say --

2 QUESTION: Well, I know they couldn't, but

3 what was the reason? Do you -- Could you get it out of

4 the opinion?

5 MR. BACAS: What was the reason? The fact

6 that they were in effect pursuing the individual claims

7 of their citizens which those citizens could pursue

8 themselves.

9 QUESTION: So is that just an application of

10 an ancient rule that the real party in interest should

11 sue, or was it an Article III decision like you

12 suggested earlier?

13 MR. BACAS: I would say it is both.

14 QUESTION: Then you do have a fall-back

15 position. The fall-back position is that even if the

16 case or controversy limitation doesn't bar you, bar this

17 action, that even more ancient principles, namely, that

18 the party in interest, that Puerto Rico has no real

19 interest in this case.

20 MR. BACAS: I would say that, Your Honor.

21 QUESTION: Mr. Bacas, in analyzing this,

22 should we consider some of the same factors that the

23 Court considered in determining standing for a private

24 organization such as in Havens Realty Corp. opinion

25 decided this term?

1 MR. BACAS: I believe they should, Your
2 Honor. They should use the same standards. In fact,
3 they generally have used the same standards. We have --

4 QUESTION: In applying those, then, how is
5 Puerto Rico different from the Organization Home which
6 was found to have standing in Havens Realty?

7 MR. BACAS: When an association is suing on
8 behalf of its members, its members actually have -- or
9 at least the association must allege that the actions
10 affect the members, and therefore that the members are
11 synonymous with the association. I am not so sure we
12 can make this assumption in the case of a state. The --
13 cannot identify the state or the Commonwealth of Puerto
14 Rico necessarily with the individual citizens.
15 Otherwise, all elections would be decided 100 percent to
16 zero percent.

17 QUESTION: Wasn't it in the Sierra Club case
18 or something that it was recognized that even if an
19 association has 10,000 members, if it is alleged that at
20 least two or three of them use that area along the river
21 for camping, that that is enough to give the association
22 standing, or is that not right?

23 MR. BACAS: I don't --

24 QUESTION: It doesn't have to affect all the
25 members, does it?

1 MR. BACAS: Your Honor, I don't recall the
2 details of the Sierra Club case, but I would be bothered
3 by that analysis if that were the case.

4 QUESTION: I would think you would, yes.
5 Thank you.

6 MR. BACAS: The complaint alleges three
7 categories of violations, and I think it is important to
8 focus on the violations that are alleged. The first
9 category is an alleged failure to provide employment to
10 Puerto Ricans, and here, however, we have two
11 subcategories. With respect to ten growers, the alleged
12 failure to provide employment is based on the fact that
13 their Puerto Rican workers never left the Island of
14 Puerto Rico as a result of the cancellation of their
15 flights.

16 In fact, this is the only allegation in the
17 complaint against four of the Virginia growers named in
18 this complaint, the fact that their workers never left
19 Puerto Rico because the United States Department of
20 Labor cancelled their flights. Eight other growers
21 allegedly denied employment to Puerto Ricans who showed
22 up at their orchards. With respect to these eight, at
23 least seven of them also allegedly did other things to
24 their workers.

25 So we are not talking about a blanket refusal

1 to employ. Even in the case of the eight who allegedly
2 refused to hire those who arrived, they actually hired
3 other Puerto Rican workers, even if we accept the
4 allegations of the complaint here.

5 I see that I have five minutes left, and I
6 would like to reserve some time for rebuttal.

7 CHIEF JUSTICE BURGER: Very well.

8 Mr. Lenzini?

9 ORAL ARGUMENT OF PAUL A. LENZINI, ESQ.,

10 ON BEHALF OF THE RESPONDENT

11 MR. LENZINI: Mr. Chief Justice, members of
12 the Court, this litigation is only one chapter in an
13 attempt by the Commonwealth of Puerto Rico to place
14 unemployed farm workers in jobs in the east coast apple
15 harvest. The 1978 conduct complained of is not an
16 isolated occurrence, but part of a continuing effort by
17 certain apple growers to discourage referral of Puerto
18 Rican labor.

19 This is a claim for equitable relief, but much
20 of the equity of the claim is not before the Court.
21 Money damages were not sought. Because the complaint
22 was dismissed for lack of standing, the factual
23 allegations are to be taken as true for present purposes.

24 QUESTION: Suppose there were two residents of
25 Puerto Rico who were advancing this claim, instead of --

1 MR. LENZINI: If this were being advanced on
2 behalf of two Puerto Rican workers? I think that parens
3 patriae standing would not exist, if that were all.

4 QUESTION: How about 20? Where do you draw
5 the line?

6 MR. LENZINI: The line is hard to draw, Your
7 Honor, but in this particular case we have a history of
8 three years of attempts by the Commonwealth of Puerto
9 Rico to place workers, and we have had in 1978
10 particularly a complete frustration of a very large
11 government effort to place workers in the east coast
12 apple harvest. If a single worker, or if two workers
13 were fired by the growers, I do not see that we would
14 have parens patriae standing, because I believe that it
15 is different from --

16 QUESTION: You must have some theory. What
17 proportion of the total market or the total population,
18 or where -- there must be a line somewhere.

19 MR. LENZINI: The harm must be serious. It is
20 very hard to draw the line, Your Honor. The harm must
21 be serious, and this is serious harm particularly
22 because it is addressed at a group boycott in effect.
23 In Georgia versus Pennsylvania Railroad, the gravamen of
24 that complaint was that the 20 railroads had conspired
25 to prefer other ports to Georgia ports, and therefore it

1 was an attempt, Justice Douglas held, to discriminate
2 against the State of Georgia, and thereby to place her
3 citizens in an inferior position vis-a-vis other
4 states. This is what we have here.

5 QUESTION: Is that what you alleged?

6 MR. LENZINI: This is what we allege. We
7 allege the --

8 QUESTION: And so in a sense you are saying it
9 is an ethnic discrimination.

10 MR. LENZINI: Puerto Rican discrimination.

11 QUESTION: And it would affect everybody in
12 Puerto Rico.

13 MR. LENZINI: Puerto Rican discrimination,
14 Your Honor, because Puerto Ricans represent the only
15 large labor pool that can compete with the alien
16 workers. Puerto Rican workers represent a threat to the
17 use of alien workers.

18 QUESTION: Let me put it another way, and tell
19 me if I am wrong. I thought your position was that the
20 interests of Puerto Rico transcends the interest of the
21 individual worker.

22 MR. LENZINI: Exactly.

23 QUESTION: And hence supports your parents
24 patriae theory.

25 MR. LENZINI: That's correct. It is our

1 position that there --

2 QUESTION: Well, then, why would you say -- if
3 there were just two involved, just two workers, you
4 really should come out with the same result, that it is
5 really a discrimination against Puerto Ricans.

6 MR. LENZINI: I think, Your Honor, that in
7 parens patriae actions, while it has not been really
8 articulated, there has been a reluctance to permit the
9 sovereign to unleash his majesty upon private litigants,
10 and therefore as in In Re Debs, before the government is
11 going to be permitted to come in against private
12 parties, there must be a public wrong, and that the
13 sovereign may not vindicate the rights of individuals, a
14 small number of individuals.

15 QUESTION: Is that an Article III standing --

16 MR. LENZINI: No, I don't think it's Article
17 III except in the larger sense of justiciability. I
18 believe that if a -- if 95 percent of the people of the
19 state were affected, and the state went in to seek an
20 advisory opinion, there would be no Article III
21 jurisdiction.

22 QUESTION: What would happen if a complaint
23 were filed by the State of North Carolina against the
24 State of New York alleging that New York growers
25 wouldn't hire North Carolina fruit pickers? Would we

1 have jurisdiction?

2 MR. LENZINI: In the Supreme Court.

3 QUESTION: Would we have jurisdiction?

4 MR. LENZINI: Original jurisdiction?

5 QUESTION: No, any jurisdiction.

6 MR. LENZINI: The State of North Carolina sues
7 the State of New York.

8 QUESTION: No, sues the apple growers of New
9 York, saying that they won't hire citizens of North
10 Carolina to pick apples.

11 MR. LENZINI: I think there may be
12 jurisdiction parens patriae.

13 QUESTION: On what -- on parens patriae?

14 MR. LENZINI: Yes.

15 QUESTION: Well, then, that opens up the whole
16 can of worms, doesn't it? Every state can sue on
17 anything on parens patriae.

18 MR. LENZINI: No, I think, as I say, this is
19 not associational standing. I believe that this is not
20 like the Sierra Club.

21 QUESTION: Well, how is Puerto Rico qua Puerto
22 Rico injured in this case?

23 MR. LENZINI: Puerto Rico is injured like
24 Georgia was injured in the Pennsylvania Railroad case.
25 It is injured because the treatment of the workers has

1 been a systematic attempt --

2 QUESTION: Of some of its citizens.

3 MR. LENZINI: Of some of its citizens. Of

4 those citizens --

5 QUESTION: The number being unimportant.

6 MR. LENZINI: The question is how much of the

7 effort --

8 QUESTION: I come back to the Chief Justice.

9 Would it apply to two?

10 MR. LENZINI: -- how much of the effort was

11 frustrated. This has been an effort by the Commonwealth

12 of Puerto Rico, an important effort, to send workers to

13 the east coast apple harvest --

14 QUESTION: But the state -- does the

15 Commonwealth of Puerto Rico have the right to make

16 American citizens hire their people?

17 MR. LENZINI: The Commonwealth of Puerto Rico

18 is a part of the Federal Employment Service System. A

19 major facet of that system is that a strong

20 Congressional preference has been established for

21 domestic workers over foreign workers. As part of the

22 Federal Employment Service System --

23 QUESTION: Well, is the Federal Employment

24 Service involved in this case?

25 MR. LENZINI: Indeed it is. The Puerto Rico

1 Department of Labor is a part of the Federal Employment
2 Service System.

3 QUESTION: Is the Federal Employment Services
4 in this case?

5 MR. LENZINI: Yes, it is.

6 QUESTION: How?

7 MR. LENZINI: I am sorry. The Federal
8 Employment Service System is involved in the case
9 because the workers' job orders were sent through the
10 Federal Employment Service System to Puerto Rico. They
11 are not a party.

12 QUESTION: Well, they are not up here --

13 MR. LENZINI: They are not a party to the
14 case. The Department of Labor is not a party to the
15 case.

16 QUESTION: And it is not here in any other way.

17 MR. LENZINI: Nor is it here in any other way.

18 QUESTION: Do I assume they are not interested?

19 MR. LENZINI: They have filed an amicus brief
20 in which they have said that this case by the
21 Commonwealth does not impair or in any way contradict
22 the interests of the United States. They agree with us
23 that the administrative remedies are ineffective, and
24 they do not lend themselves to be used in a situation
25 where there is a systemic violation, an industry-wide

1 violation by the apple growers. I think that the
2 Secretary of Labor has been given no statutory
3 authorization to bring actions against the growers. I
4 believe that the United States, however, is in no worse
5 position than the Commonwealth of Puerto Rico, because I
6 think under 28 USC Section 1345, that the Attorney
7 General on behalf of the United States would have the
8 right if he chose to do so to go in to enforce an action
9 against large-scale violations --

10 QUESTION: But he has not done so.

11 MR. LENZINI: He has not done so.

12 QUESTION: So I don't see what interest that
13 is of ours. I mean, I am just --

14 QUESTION: Suppose --

15 QUESTION: I still just don't see how the
16 Commonwealth as a unit is injured, because --

17 MR. LENZINI: The Commonwealth as a unit --

18 QUESTION: -- of 700, a maximum of 700 of
19 their citizens are unemployed.

20 MR. LENZINI: Justice Marshal, that is --

21 QUESTION: They've got more than that
22 unemployed in San Juan alone.

23 MR. LENZINI: We have 2.7 million people in
24 Puerto Rico --

25 QUESTION: That's right.

1 MR. LENZINI: -- as of the 1970 census.

2 QUESTION: And so 700 is a very small
3 proportion.

4 MR. LENZINI: If you stop it at that, Justice
5 Marshal, it is a small proportion. It is --

6 QUESTION: That is just what I thought you
7 were. You want to sue everybody now, don't you?

8 MR. LENZINI: I don't want to sue everybody.
9 I want to not take that narrow, that inhospitable a view
10 of the complaint, because we have more people injured
11 than those who are directly harmed by the growers'
12 actions. We have the people who didn't come in 1979,
13 who didn't come in 1980. We have the frustration by the
14 Commonwealth of its effort. It is being denied the
15 right to send workers in to a major crop in the United
16 States. That crop, the east coast apple harvest, every
17 year utilizes 5,000 to 6,000 aliens. Now, 5,000 to
18 6,000 jobs every year from here on out -- when you have
19 an unemployment rate --

20 QUESTION: I thought it was less than 1,000
21 involved in this case.

22 MR. LENZINI: In this case we --

23 QUESTION: Where do you get the 7,000.

24 MR. LENZINI: Seven -- 6,000 aliens, visas are
25 usually granted for around 6,000 aliens.

1 QUESTION: Puerto Ricans?

2 MR. LENZINI: Aliens. Puerto Ricans are --

3 QUESTION: Well, you don't represent all of

4 them, do you?

5 MR. LENZINI: No, we --

6 QUESTION: You are only talking about Puerto

7 Ricans.

8 MR. LENZINI: But we have a right to a

9 preference over the aliens, and if we show up at the

10 orchards, we are entitled to a preference. Now, they

11 have said that the Puerto Ricans, they have tried to

12 make them appear to be unavailable. We are available,

13 and if we are available, we are entitled to a preference

14 over the alien workers. The Congress has provided a

15 very strong preference for the domestic worker.

16 QUESTION: Mr. Lenzini, did you say that the

17 government had filed a brief in this case, or --

18 MR. LENZINI: The government filed an amicus

19 brief in the Brancamp case, Justice Rehnquist.

20 QUESTION: Which isn't before us now.

21 MR. LENZINI: It is -- A petition for writ of

22 cert was filed in Brancamp, and it is pending, but I

23 have --

24 QUESTION: Stay close to the microphone,

25 counsel.

1 QUESTION: Is that the Second Circuit case?

2 MR. LENZINI: That's the Second Circuit case,
3 but in this case, I have filed a supplemental brief in
4 which I appended the amicus brief of the Department of
5 Labor in the Brancamp case.

6 QUESTION: Was that filed in this Court or in
7 the Second Circuit?

8 MR. LENZINI: The amicus brief was filed in
9 the Second Circuit at the request of the panel. The day
10 after the argument was held, they requested the
11 Solicitor General to file an expression -- the interest
12 of the United States. The Department of Labor, as it
13 turned out, filed a brief for the Secretary, because his
14 was the primary responsibility for carrying out the
15 statute, and in that brief, the question had been raised
16 as to whether or not the Employment System -- the
17 Employment Service complaint system, which is this
18 administrative relief provision available to the
19 workers, whether or not that was an adequate remedy for
20 these workers, and the answer given there was no, it is
21 not, it does not address the type of widespread,
22 industry-wide, systematic discrimination which was the
23 subject of this case.

24 And more than that, the ultimate relief that
25 could be granted would be the denial of the right of the

1 growers to bring in aliens in the following year, and
2 they would not be entitled to use the Employment Service
3 System. That is of no use to the Commonwealth of Puerto
4 Rico, because we want to send workers up here to pick
5 apples.

6 QUESTION: The amicus brief you are referring
7 to of the United States you filed as an appendix to your
8 brief filed here.

9 MR. LENZINI: Correct.

10 QUESTION: And that was in the response --
11 that was at the petition of cert stage.

12 MR. LENZINI: Correct, Your Honor.

13 QUESTION: That was filed on May 8th, 1981?

14 MR. LENZINI: April, 1981. It is entitled --
15 it's a brown brief entitled Response of Commonwealth of
16 Puerto Rico to Supplemental Brief in Support of Petition
17 for Writ of Cert.

18 QUESTION: Right. Thank you.

19 QUESTION: Let me try another hypothetical to
20 see if I can understand. Suppose an action is brought
21 by the State of Georgia against all the hotel and
22 restaurant owners in New York City, where probably there
23 is the largest concentration of that group in the
24 country. Assume it, anyway. And they allege that the
25 minority unemployment in the State of Georgia is 25,000

1 people, and that they want jobs in New York in hotels
2 and restaurants, and that those jobs are now held
3 two-thirds by Puerto Ricans, and that there is a plan
4 and scheme to hire Puerto Ricans for these positions in
5 New York, and that therefore the unemployed of Georgia
6 are being denied something.

7 Now, laying aside all the merits, does Georgia
8 have parens patriae standing to bring that suit?

9 MR. LENZINI: There is no federal right, Mr.
10 Chief Justice. In this case, we have a strong
11 Congressional preference articulated in the Immigration
12 and Nationality Act. That preference is brought forward
13 by the Federal Employment Service System whenever
14 growers choose to try and get alien workers brought in.
15 The privilege to bring in alien workers is a privilege
16 granted to few industries in this country. You can name
17 them on the fingers of one hand. The apple growers is
18 one industry that may use alien workers. Now, Detroit
19 may like to do that, and the steel mills may like to do
20 that, but they cannot do that.

21 The apple growers can do that, and when the
22 apple growers go out for this privilege, they take on
23 certain duties and responsibilities, and one of the
24 duties and responsibilities is to make available on a
25 non-discriminatory basis jobs to U.S. citizens who show

1 up, and I believe that that would not be the situation
2 in your hypothetical. There is a federal right here.

3 QUESTION: Isn't there a federal right in any
4 collective minority group not to be discriminated
5 against on the -- at least on the allegations that I
6 have hypothesized to you?

7 MR. LENZINI: There is a right not to be
8 denied equal treatment, except by due process standard.
9 Gonzalez versus Freeman is a case that comes to mind.
10 But in the situation you -- your hypothetical, you -- I
11 don't think that Georgia is --

12 QUESTION: Georgia's economy is being injured
13 by reason of having to have all these alleged thousands
14 of people on relief and unemployed, and so the state of
15 Georgia and its taxpayers have certainly, if the
16 allegations can be established, but the allegations
17 certainly make an injury to the State of Florida as
18 such, do they not?

19 MR. LENZINI: I don't see the right -- I don't
20 see the right, Mr. Chief Justice. I see the right
21 here. I don't see the right there. If all you are
22 saying is that --

23 QUESTION: You mean the federal right.

24 MR. LENZINI: The federal right.

25 QUESTION: Don't you think there is a -- You

1 are saying to us then there is no federal right on
2 minorities as a group not to have some other category of
3 minorities also preferred over them?

4 MR. LENZINI: Well, we certainly have Title VI
5 of the Civil Rights Act, and we have Title VII of the
6 Civil Rights Act, and we have the right -- we have
7 federal enforcement of these, and we have private
8 enforcement of these. We usually have individual
9 complaints. In this particular case, we have an entire
10 government program which is being defeated. The Puerto
11 Rican government is being defeated in its attempt to
12 send workers into the east coast apple orchards. They
13 are being frustrated almost completely.

14 QUESTION: And the statutory right is to be
15 hired before foreign workers?

16 MR. LENZINI: That is the statutory right. A
17 strong Congressional preference has been established.

18 QUESTION: But all you are saying is that
19 these people who are discriminated against according to
20 you have a right of action, but that doesn't give the
21 right of action to Puerto Rico. If so, the statute
22 should have said so. Is it that simple?

23 MR. LENZINI: No, I don't think it is quite
24 that simple, because I don't know of any federal statute
25 which has ever established a parens patriae right,

1 because a parens patriae right has always depended upon
2 the circumstances of the particular case. It is a very
3 elusive concept, and the concept is, when the injury --

4 QUESTION: Do you think that the Commonwealth
5 of Puerto Rico has a parens patriae right superior to
6 the states'?

7 MR. LENZINI: No, I think it is the same as
8 the states'.

9 QUESTION: The same as the states', and the
10 only case you can get is the Georgia case.

11 MR. LENZINI: Georgia versus Tennessee Copper.

12 QUESTION: That is the only one.

13 MR. LENZINI: Georgia versus Pennsylvania
14 Railroad.

15 QUESTION: That's the only one.

16 MR. LENZINI: I suppose there are some others.

17 QUESTION: What about --

18 QUESTION: You suppose? You didn't look
19 long? If there were others, wouldn't you have cited
20 them?

21 MR. LENZINI: Well, those are the cases in the
22 Supreme Court.

23 QUESTION: Well, the Supreme Court cases
24 aren't really very consistent, are they? Do you see any
25 way of reconciling Georgia versus Pennsylvania Railroad

1 with Oklahoma versus Santa Fe Railroad?

2 MR. LENZINI: Yes, I think so, because I think
3 in Georgia versus Pennsylvania Railroad, the question
4 was one of discrimination of a particular sector of the
5 country. Georgia was being put in an inferior position
6 by railroads who were preferring the ports of other
7 nearby states, and I think that was not a concept. It's
8 the discriminatory element in Georgia versus
9 Pennsylvania Railroad that distinguishes it, I think,
10 from the Atchison case, and that's what we have here,
11 because we have here an attempt by the growers to
12 prevent the Puerto Ricans from being a threat to their
13 use of alien labor.

14 QUESTION: Well, do you think that threat --
15 do you think the action of the growers was directed
16 against Puerto Ricans in a different sense than it would
17 have been directed against people from Maryland or
18 people from Michigan, or were they just anxious to use
19 alien labor and exclude whatever citizens they might
20 want to, or might have to?

21 MR. LENZINI: I think that's right. We have
22 23 percent rural unemployment, which means we have a
23 body of workers who are unemployed, rural laborers, and
24 who are available as a pool to supply, to be a labor
25 supply for agricultural pursuits.

1 QUESTION: Well, supposing Michigan had
2 exactly that same situation, 23 percent unemployed.
3 Would they have any lesser a claim than Puerto Rico did?

4 MR. LENZINI: No, I think not. I think not.

5 QUESTION: So there is nothing peculiar about
6 the Puerto Rican labor force or the status of Puerto
7 Ricans that gives you any special standing.

8 MR. LENZINI: I think that's correct. I think
9 there's nothing special about Puerto Rico in this
10 respect.

11 Public Law 87 was enacted by the Commonwealth
12 legislature in 1962, and it set forth special
13 obligations on the part of workers who would hire for
14 off-Island use Puerto Rican laborers. In the
15 mid-seventies, 1975, 1976, the U.S. Department of Labor
16 held that if the Puerto Ricans were to insist upon these
17 extra conditions that were not available, not required
18 under the Federal Employment Service System, then they
19 would be held legally unavailable in terms of the
20 Immigration and Nationality Act. That is to say, even
21 though they were in fact available to work in these
22 orchards, they would not be held to be legally available
23 because they were asking for more burdensome conditions.
24 When this Court denied certiorari in the
25 Flecha, Flecha versus Quiros, the Commonwealth

1 legislature said, we will have to act, because Public
2 Law 87, designed to help the workers, is being used to
3 bar the workers, and so, they said, if jobs come through
4 the Federal Employment Service System, the Secretary of
5 Labor is permitted, given the discretion to exempt these
6 workers -- these growers, pardon me, from the additional
7 conditions of Public Law 87.

8 In due course, then 2,000 Puerto Rican workers
9 were recruited to work in the 1970 apple harvest, but
10 immediately four associations of apple growers went into
11 court in the Western District of Virginia. They had
12 initially complained that they were subject to the terms
13 of Public Law 87, and they now complained that they were
14 exempted from the provisions of Public Law 87. On the
15 strength of their assurances to the district court that
16 giving an injunction permitting all of these immigrant
17 visas -- non-immigrant visas would not in any way harm
18 the domestic workers. On the strength of that, they
19 obtained an injunction permitting them to bring in 1,000
20 additional alien laborers.

21 Thereafter, there were too many workers in the
22 orchards, and the massive firings and the failure to
23 hire at the orchard gates ensued in the Virginia
24 orchards.

25 Mr. Bacas, opposing counsel, says that the

1 individuals can sue on their own. There is no need for
2 this parens patriae action. He has a problem, however,
3 because we have people who were left at the gates in
4 Puerto Rico. When the growers were not hiring these
5 people in the orchards, the U.S. Secretary of Labor
6 advised Secretary Quiros that he could not send up any
7 more, he should not send up any more, and so these
8 workers who were ready to go up to Virginia were
9 cancelled.

10 Where is the remedy? Is it breach of contract
11 for those workers who were left at the airport? Where
12 is the remedy? Is it breach of contract for those
13 workers who didn't come up in 1979? They have no
14 remedy. There is no remedy under the employment service
15 complaint system. That is futile. There is no remedy
16 in Puerto Rico, we believe, that is a secure remedy. In
17 Maryland versus Louisiana, just last term, the question
18 was whether or not this first use tax, 7 cents per MCF
19 on gas coming into Louisiana, would that give rise to a
20 parens patriae claim on the part of eight states who
21 sued in the original jurisdiction of this Court.

22 The Court held that there was parens patriae
23 jurisdiction. It involved many people, no doubt. It
24 was 7 cents per MCF. But there were claim -- there were
25 forums available in Louisiana. There was a tax refund

1 suit filed by a natural gas carrier, but the Court in a
2 footnote held that because there was no injunction,
3 preliminary injunction available prior to decision on
4 the merits, that was an imperfect forum. Well, we have
5 a number of imperfect fora in this situation. The
6 administrative forum is certainly imperfect. Suits by
7 individuals either in Puerto Rico or in Virginia, a very
8 imperfect form, given the nature of these immigrant
9 laborers.

10 We have the class action suit up in New York
11 involving New York growers. That comes fairly close to
12 getting the kind of thing, the kind of relief that we
13 are seeking, except that there is no class action suit
14 against the Virginia growers.

15 We finally have the statement of the
16 Department of Labor that the parens patriae action of
17 the Commonwealth does not infringe any U.S. interest.
18 It is consistent with the interests of the Department of
19 Labor, because it is consistent with the strong policy
20 preference. If that policy preference is to be
21 established, we can send workers up to Virginia. If it
22 is not, we cannot, and this suit, we submit, is the only
23 effective vehicle to establish in the Western District
24 of Virginia the strong preference of Congress that U.S.
25 workers be preferred over aliens. I submit that the

1 decision of the Fourth Circuit along with the decision
2 of the Second Circuit on these issues should be affirmed.

3 CHIEF JUSTICE BURGER: Mr. Bacas.

4 ORAL ARGUMENT OF THOMAS J. BACAS, ESQ.,

5 ON BEHALF OF THE PETITIONERS - REBUTTAL

6 MR. BACAS: Mr. Chief Justice, and may it
7 please the Court, I just have a few points. First, I
8 would like to emphasize that both the district court and
9 the court of appeals in this case agreed on the proper
10 test to apply in determining parens patriae standing.
11 Both courts said, you look at the size of the segment of
12 the population affected. You look at the magnitude of
13 the harm, and you look at the ability of those injured
14 to rectify the alleged wrongs on their own. The
15 disagreement between the court of appeals and the
16 district court was not on what test to apply, but how
17 that test applied to these particular facts.

18 We agree with Justice Marshal that 787
19 workers, which are the only workers that are covered by
20 this particular complaint, despite insinuations by
21 counsel to the contrary, the only growers involved in
22 this case are the Virginia apple growers, 32 Virginia
23 apple growers. The only Puerto Ricans involved are the
24 787 who allegedly accepted those jobs in 1978. That 787
25 number constitutes 3/100ths of 1 percent of the 1970

1 population of Puerto Rico.

2 QUESTION: Yes, but it is still a pretty large
3 labor force, isn't it? You don't have 787 in your law
4 firm, I am sure.

5 MR. BACAS: I am sorry, Your Honor? I didn't
6 catch that. I didn't catch the question, Your Honor.

7 QUESTION: I said, it is still a fairly large
8 working force, over 700. It is a lot larger than any
9 law firm in the country.

10 MR. BACAS: But it is still not a significant
11 portion of the population --

12 QUESTION: Well, are we --

13 MR. BACAS: -- or of the labor force of Puerto
14 Rico, Your Honor.

15 QUESTION: Are we dealing in percentages? You
16 take the case of North Dakota against Minnesota. That
17 didn't involve many people either who were flooded out.

18 MR. BACAS: I believe, if -- there have been
19 many parens patriae suits. I believe that is probably
20 one of the ones involving diversion of water or some
21 other injury to the land, and also a dispute between
22 actions in one state that have an immediate effect in
23 another state. I would submit that those are
24 substantially different from this case, where the
25 alleged quasi-sovereign interest turns on the harm to

1 the general economy of the state. If the parens patriae
2 test could be satisfied in this case, it could be
3 satisfied in virtually any case, and I don't believe the
4 parens patriae test has been broadened that much over
5 the years.

6 Mr. Lenzini made a reference to the fact that
7 there are upwards of five to 7,000 jobs in which he can
8 place Puerto Rican workers, but what he is talking
9 about, he is talking about the entire east coast apple
10 harvest, and I want to stress, we have states which
11 aren't even involved in the 1978 program. The complaint
12 alleges that Puerto Rican workers were sent to only four
13 states. They were sent to Virginia, West Virginia,
14 Maryland, and New York. He leaves out the six New
15 England states, which evidently received no Puerto Rican
16 workers in 1978. So when he talks about a larger
17 number, he is not talking about this case.

18 In this case, we are talking about 787 Puerto
19 Rican workers. We are talking about 32 Virginia apple
20 growers. Obviously, a number of you have pointed out,
21 the standing cannot turn on the unemployment rate in
22 Puerto Rico, or in any state. I would note that the
23 unemployment figures are cited in the -- Page 8 of the
24 amicus curiae brief of the State of New York, and they
25 show that the unemployment rate was 19.9 in 1977, the

1 year before. In 1978, it was 18.1 percent. In 1979,
2 the year after, it was 17 percent. I don't know how a
3 constitutional concept of standing can turn on such a
4 fluctuating standard of unemployment rate.

5 The other point I want to make, the last
6 point, is that there is no allegation of a boycott in
7 the complaint, and there is no allegation of conspiracy
8 in the complaint. The complaint merely alleges that
9 certain individual Puerto Ricans have individual
10 grievances against individual growers.

11 Thank you.

12 CHIEF JUSTICE BURGER: Thank you, gentlemen.
13 The case is submitted.

14 (Whereupon, at 1:56 o'clock p.m., the case in
15 the above-entitled matter was submitted.)

16

17

18

19

20

21

22

23

24

25

CERTIFICATION

Alderson Reporting Company, Inc. hereby certifies that the attached pages represent an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of the United States in the matter of:

ALFRED L. SNAPP & SON, INC., ET AL. vs. PUERTO RICO, EX. REL. PEDRO BAREZ, SECRETARY OF LABOR AND HUMAN RESOURCES # 80-1305

and that these pages constitute the original transcript of the proceedings for the records of the Court.

BY Reene Hammond

RECEIVED
SUPREME COURT, U.S.
MARSHAL'S OFFICE

982 APR 27 PM 3 30