No. 15-108

IN THE
Supreme Court of the United States

THE COMMONWEALTH OF PUERTO RICO,

Petitioner,

v.

LUIS M. SÁNCHEZ VALLE AND
JAIME GÓMEZ VÁZQUEZ,

Respondents.

On Writ of Certiorari
to the Supreme Court of Puerto Rico

SUPPLEMENTAL BRIEF FOR PETITIONER

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SUPPLEMENTAL BRIEF FOR PETITIONER

Amicus VIBA contends that this Court lacks jurisdiction over this case on the theory that the Puerto Rico Supreme Court decision below is not a "final judgment[]" under 28 U.S.C. § 1258. *See* VIBA Br. 7-17. While this Court certainly has "an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party," *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006), there is a good reason why neither respondents nor any of the other *amici*, including the United States, raised this ostensible jurisdictional issue—it has no merit.

The Commonwealth issued three separate criminal complaints against each respondent. Respondent Sánchez Valle was charged with (1) selling a firearm without a permit in violation of Section 5.01 of the Puerto Rico Weapons Act, 25 P.R. Laws Ann. § 458, JA11, (2) selling ammunition without a permit in violation of Section 5.01 of the Puerto Rico Weapons Act, 25 P.R. Laws Ann. § 458, JA12, and (3) carrying a firearm in violation of Section 5.04 of the Puerto Rico Weapons Act, 25 P.R. Laws Ann. § 458c, JA13; *see generally* Pet. App. 2a (describing charges against respondent Sánchez Valle); JA7 (describing filing of "3 Complaints," numbered VP08-2802 to VPO8-2804, against Sánchez Valle); Pet. App. 244a (describing "the decisions issued in criminal cases numbers ... VP2008-2802 to 2804"). Respondent Gómez Vázquez, for his part, was charged with (1) selling a firearm without a permit in violation of Section 5.01 of the Puerto Rico Weapons Act, 25 P.R. Laws Ann. § 458, JA31, (2) carrying a rifle in violation of Section

5.07 of the Puerto Rico Weapons Act, 25 P.R. Laws Ann. § 458f, JA32, and (3) carrying and selling a mutilated firearm in violation of Section 5.10 of the Puerto Rico Weapons Act, 25 P.R. Laws Ann. § 458i, JA33; *see generally* Pet. App. 4a (describing charges against respondent Gómez Vázquez); JA9 (describing filing of "3 Complaints," numbered VP2008-2805 to VP2008-2807, against Gómez Vázquez); Pet. App. 244a (describing "the decisions issued in criminal cases numbers ... VP2008-2805 to 2807").

VIBA argues that the judgment below is not "final" because the Puerto Rico Supreme Court "ordered dismissal of *only* the count in each indictment related to § 458 of the Puerto Rico Weapons Act," the unlawful *sale* of a firearm or ammunition. VIBA Br. 9 (citing Pet. App. 69a; emphasis in original). In VIBA's view, "[b]ecause the Supreme Court's decision affected some but not all of the counts against Respondents, it was not a final judgment." VIBA Br. 9; *see generally* Pet. App. 10a.

That is so, VIBA argues, because "there exists in criminal cases a 'firm congressional policy against interlocutory or "piecemeal" appeals,'" and the Puerto Rico Supreme Court decision does not "fall within the 'collateral order' exception" to that policy. VIBA Br. 10-11 (quoting *Abney v. United States*, 431 U.S. 651, 656 (1977)). But that argument displays a fundamental misunderstanding of appellate procedure. *Abney* and the "collateral order" doctrine involve finality under 28 U.S.C. § 1291 for purposes of appeal from a United States district court to a United States court of appeals. Section 1291 and the "collateral order doctrine" are not implicated in a case arising from state (or Puerto Rico) court.

Rather, in cases arising from state (or Puerto Rico) court, the question is whether the judgment of the State's "highest court," 28 U.S.C. § 1257(a)—or, in the case of Puerto Rico, "the Supreme Court of the Commonwealth of Puerto Rico," *id.* § 1258(a)—is "final." The Puerto Rico Supreme Court's judgment in this case readily satisfies this standard.

As a threshold matter, VIBA errs by describing the three charges against each respondents as different "counts" of a "multi-count indictment." VIBA Br. 3. Although Puerto Rico law provides that "[t]wo or more offenses *may* be charged in the same information or complaint in a separate count for each offense," P.R. R. Crim. P. 37(a) (emphasis added), a prosecuting attorney is not *required* to charge multiple related offenses in a single complaint, *see, e.g.*, *Fuentes Morales v. Superior Ct.*, 2 P.R. Offic. Trans. 910, 913 (1974) (*per curiam*), and that is not the common practice. Thus, in this case, there was no "multi-count indictment." Rather, as explained above, *each* of the charges against respondents was filed in a *separate* complaint with its *own* docket number. Accordingly, as a matter of Puerto Rico law, each complaint stands on its own, and each complaint ordered dismissed by the Puerto Rico Supreme Court is now completely finished, independent of the other charges. (The Court of Appeals consolidated the various appeals, but not the underlying cases. *See* Pet. App. 245a.) Regardless of the resolution of the other charges, petitioner has no further ability to pursue appellate review of the dismissed charges.

And the result would be the same even if each of the separate complaints were considered separate

counts of a single complaint. As this Court has long explained in construing 28 U.S.C. § 1257—the state-law analogue to § 1258, which contains materially identical finality language—a judgment may be final even in a single case "in which the highest court of a State has finally determined the federal issue present ..., but in which there are further proceedings in the lower courts to come." *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 477 (1975).[1]

In particular, this is a case "in which the federal issue, finally decided by the highest court in the State, will survive and require decision regardless of the outcome of future state-court proceedings." *Id.* at 480. "Nothing that could happen in the course of the [future state-court proceedings], short of settlement of the case, would foreclose or make unnecessary decision on the federal question." *Id.*

The same is true here. The Puerto Rico Supreme Court has conclusively decided that the federal

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[1] VIBA asserts that because "a judgment rendered in the Puerto Rico Supreme Court is not a state court judgment under § 1257," then "arguably, *Cox* does not apply." VIBA Br. 15. The premise is correct, but the conclusion is not. Congress enacted § 1258 precisely because Puerto Rico is not covered by § 1257. VIBA suggests no reason why the *Cox* finality standard applicable to state courts under § 1257 should not apply to Puerto Rico courts under § 1258, when the relevant finality language and the policies served by both provisions are the same. VIBA's reliance on *Fornaris v. Ridge Tool Co.*, 400 U.S. 41, 42 n.1 (1970) (*per curiam*), *see* VIBA Br. 15, is inexplicable: the cited footnote has nothing to do with the *Cox* issue, but instead discusses a long-repealed provision vesting this Court with appellate jurisdiction over cases in which a federal court of appeals invalidated a state statute.

Double Jeopardy Clause bars the Commonwealth from trying respondents on Commonwealth charges involving the sale of a weapon or ammunition in violation of Section 5.01 of the Puerto Rico Weapons Act, 25 P.R. Laws Ann. § 458. *See* Pet. App. 9-10a, 69a. Nothing that can happen with respect to the remaining charges could "foreclose or make unnecessary decision on the federal question." *Cox*, 420 U.S. at 480.

VIBA asserts that the federal issue presented here will not "necessarily survive regardless of the outcome" of any proceedings on the other charges. VIBA Br. 16. According to VIBA, "if the Respondents are ultimately acquitted on the remaining charges—Sections 458c (illegally carrying a firearm), 458f (illegally carrying a rifle), and 458i (transferring a mutilated weapon) charges—then collateral estoppel would *likely* prevent a prosecution under Section 458 (illegally selling and transferring a firearm), since the jury would have necessarily found that the Respondents never possessed a firearm." *Id.* (emphasis added).

But that speculative argument fails on its own terms. There is no legal or logical reason why *sale* presupposes *possession*, as one can sell something that one does not carry or possess. *See, e.g.*, *Henderson v. United States,* 135 S. Ct. 1780, 1785 (2015); *Albrecht v. United States*, 273 U.S. 1, 11-12 (1927). And regardless of the legal and logical relationship between sale and possession, VIBA's argument assumes that respondents were charged with selling and possessing *the same thing*. But that assumption is manifestly incorrect with respect to respondent Sánchez Valle: one of the charges ordered

dismissed by the decision below on double jeopardy grounds involves the unlawful sale of *ammunition*, *see* JA12, while the surviving charge against him involves the unlawful possession of a *firearm*, *see* JA13. Thus, even if VIBA were correct that an acquittal on the surviving *firearm*-related charge against Sánchez Valle might have preclusive effects on the dismissed *firearm*-related charge at issue here, VIBA has identified nothing in the record to suggest it would have any preclusive effect with respect to the distinct *ammunition*-related charge at issue here. Whether Sánchez Valle possessed any firearm is not essential or even relevant to his guilt or innocence on the dismissed ammunition-sale charge, and VIBA has not identified any defense respondents could plausibly raise that would cut across the firearm- and ammunition-related charges. *See, e.g., Bobby v. Bies*, 556 U.S. 825, 834-35 (2009); *Ashe v. Swenson*, 397 U.S. 436, 443-54 (1970).

CONCLUSION

For the foregoing reasons, this Court has jurisdiction over this case under 28 U.S.C. § 1258.

Respectfully submitted,

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