No.

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 Petition for Writ of Certiorari
to the Supreme Court of Puerto Rico**

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Commonwealth of Puerto Rico and the Federal Government are separate sovereigns for purposes of the Double Jeopardy Clause of the United States Constitution.

PARTIES TO THE PROCEEDINGS BELOW

Petitioner, the Commonwealth of Puerto Rico, was respondent in the Puerto Rico Supreme Court.

Respondents, Luis M. Sánchez Valle and Jaime Gómez Vázquez, were petitioners in the Puerto Rico Supreme Court.

René Rivero Betancourt and Rafael A. Delgado Rodríguez were defendants below but did not participate in the proceedings before the Puerto Rico Supreme Court.

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INTRODUCTION

This is the most important case on the constitutional relationship between Puerto Rico and the United States since the establishment of the Commonwealth in 1952. A divided Puerto Rico Supreme Court overruled its prior decision in *People v. Castro García*, 20 P.R. Offic. Trans. 775 (1988), and held below that the Double Jeopardy Clause of the Federal Constitution prevents an individual who has been tried, acquitted, or convicted under federal law from being prosecuted for the same offense under Puerto Rico law. That is so, the court asserted, because the Federal Government and Puerto Rico are not "dual sovereigns" for federal double jeopardy purposes. Rather, the Court declared, all of Puerto Rico's laws—including its criminal laws—are based on authority delegated by the United States Congress, not on authority delegated by the people of Puerto Rico through their democratically enacted Constitution.

It is hard to overstate the legal, practical, and political implications of that erroneous holding. It strips Puerto Rico of the ability to enforce its own criminal laws without federal interference, and—as the First Circuit recognized more than half a century ago—"impute[s] to the Congress the perpetration of ... a monumental hoax." *Figueroa v. People of Puerto Rico*, 232 F.2d 615, 620 (1st Cir. 1956). In 1950, Congress enacted Public Law 600, which "offered to the people of Puerto Rico a 'compact' under which, if the people accepted it, as they did, they were authorized to 'organize a government pursuant to a constitution of their *own* adoption.'" *Id.* (emphasis added; quoting Pub. L. No. 81-600, 64 Stat. 319).

The Puerto Rico Constitution, thus, was not imposed by Congress, but adopted and ratified by "[w]e, the people of Puerto Rico." P.R. Const. pmbl. It follows that the laws of Puerto Rico enacted pursuant to that Constitution flow from sovereign authority delegated by the people of Puerto Rico, not from sovereign authority delegated by Congress.

The Puerto Rico Supreme Court's contrary conclusion is not only wrong, but deepens a direct and acknowledged circuit conflict on the specific question whether the Commonwealth of Puerto Rico and the Federal Government are separate sovereigns for federal double jeopardy purposes. In *United States v. López Andino*, 831 F.2d 1164 (1st Cir. 1987), the First Circuit held that "Puerto Rico's ... criminal laws, like those of a state, *emanate from a different source* than the federal laws," and thus Puerto Rico and the Federal Government are "dual sovereigns" for double jeopardy purposes, *id.* at 1167-68 (emphasis added). In the decision below, the Puerto Rico Supreme Court—which had previously adopted the First Circuit's *López Andino* analysis, *see Castro García*, 20 P.R. Offic. Trans. at 807-08—rejected that approach and instead endorsed the contrary approach of *United States v. Sánchez*, 992 F.2d 1143 (11th Cir. 1993). In that case, the Eleventh Circuit specifically "disagree[d] with the conclusion of the First Circuit [in *López Andino*] that Congress' decision to permit self-governance in Puerto Rico makes Puerto Rico a separate sovereign for double jeopardy purposes," and held—like the Puerto Rico Supreme Court in this case—that "Puerto Rican courts ... derive their authority to punish from the United States Congress," and thus "prosecutions in Puerto Rican courts do not fall

within the dual sovereignty exception to the Double Jeopardy Clause," *id.* at 1151, 1153.

This case, in short, has all the ingredients for a grant of certiorari: a manifestly erroneous decision by the Commonwealth's highest court that deepens a direct and acknowledged conflict among the federal courts of appeals on an important and recurring question of federal constitutional law. *See* U.S. S. Ct. R. 10. Indeed, the decision below leads to the anomalous and untenable result that an individual first prosecuted in federal court in Puerto Rico and then prosecuted in Commonwealth court for the same offense can raise a successful federal double jeopardy objection, while a person first prosecuted in Commonwealth court and then prosecuted in federal court in Puerto Rico cannot, *see López Andino*, 831 F.2d at 1167-68. The application of federal constitutional law in a particular jurisdiction should not turn on whether the issue arises in federal court or in the state or Commonwealth court across the street. Accordingly, this Court should grant the petition.

OPINIONS BELOW

The opinion of the Supreme Court of Puerto Rico is reported in the original Spanish at 2015 TSPR 25, 2015 WL 1317010, and a certified English translation is reprinted in the Appendix ("App.") at 1-242a. The opinion of the Court of Appeals of Puerto Rico is unreported, and a certified English translation is reprinted at App. 243-306a. The opinions of the trial court dismissing the indictments against respondents Sánchez Valle and Gómez Vásquez are unreported, and certified English

translations are reprinted at App. 307-29a and 330-52a respectively.

JURISDICTION

The Puerto Rico Supreme Court issued its decision on March 20, 2015. App. 1a. On June 5, 2015, Justice Breyer extended the time within which to file a petition for a writ of certiorari to and including July 20, 2015. This Court has jurisdiction under 28 U.S.C. § 1258.

PERTINENT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Double Jeopardy Clause of the United States Constitution provides that "[n]o person shall be … subject for the same offence to be twice put in jeopardy of life or limb." U.S. Const. amend. V.

The Territorial Clause of the U.S. Constitution provides in relevant part that "[t]he Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory … belonging to the United States." U.S. Const. art. IV, § 3, cl. 2.

Public Law 600 of 1950 (entitled "An Act to provide for the organization of a constitutional government by the people of Puerto Rico"), Pub. L. No. 81-600, 64 Stat. 319 (1950), codified at 48 U.S.C. § 731 *et seq.*, Public Law 447 of 1952 (entitled "Joint Resolution approving the constitution of the Commonwealth of Puerto Rico which was adopted by the people of Puerto Rico on March 3, 1952"), Pub. L. No. 82-447, 66 Stat. 327 (1952), and excerpts of the Puerto Rico Constitution are reproduced in the appendix to this petition. *See* App. 353-62a.

STATEMENT OF THE CASE

A. Background

The United States gained possession of Puerto Rico during the Spanish-American War of 1898, and Spain formally ceded the island under the Treaty of Paris signed in December 1898 and ratified in April 1899. *See* Treaty of Peace between the United States of America and the Kingdom of Spain, Apr. 11, 1899, 30 Stat. 1754. After a brief period of military rule, Congress enacted an organic act (widely known as the Foraker Act) to establish a civil government in Puerto Rico. *See* Organic Act of 1900, Ch. 191, 56th Cong., 1st Sess., 31 Stat. 77 (1900). That Act provided for an Executive Branch headed by a Governor appointed by the President of the United States, a House of Delegates elected by qualified voters of Puerto Rico, and a Judicial Branch appointed by the President of the United States. The Foraker Act was replaced in 1917 by a new organic act (widely known as the Jones Act), which created an elected Senate and gave the people of Puerto Rico a bill of rights and United States citizenship. *See* Organic Act of 1917, Pub. L. No. 64-368, 39 Stat. 951 (1917). Under both the Foraker and Jones Acts, all laws enacted by the elected Puerto Rico legislature were submitted to Congress, which retained the power to annul them. *See* 31 Stat. at 83; 39 Stat. at 961.

As pro-democratic and anti-colonial movements swept the globe after the Second World War, pressures for greater autonomy led Congress to revisit the governance of Puerto Rico. The result was the landmark Public Law 600 of 1950, Pub. L. No. 81-600, 64 Stat. 319, App. 353-54a. That statute,

"[f]ully recognizing the principle of government by consent," offered the people of Puerto Rico "in the nature of a compact" the authority to "organize a government pursuant to a constitution of their own adoption." App. 353a (codified at 48 U.S.C. § 731b). Upon approval of the statute by the qualified voters of Puerto Rico in a referendum, the legislature was authorized to call a constitutional convention to draft a constitution for Puerto Rico. *See id.* (codified at 48 U.S.C. § 731c).

In a popular referendum held on June 4, 1951, the people of Puerto Rico accepted the "compact" offered by Congress, and a Constitutional Convention was held from September 1951 to February 1952. App. 355a. That Convention drafted the Puerto Rico Constitution. *See id.* The proposed Constitution was then submitted to the people of Puerto Rico and approved in another popular referendum on March 3, 1952. *See id.*

The Puerto Rico Constitution created a new political entity, the Commonwealth of Puerto Rico ("*Estado Libre Asociado de Puerto Rico*"). P.R. Const. art. I § 1, App. 359a. It specified that the Commonwealth's "political power *emanates from the people* and shall be exercised in accordance with their will, within the terms of the compact agreed upon between the people of Puerto Rico and the United States of America." *Id.* (emphasis added); *see also id.* pmbl., App. 358a ("We understand that the democratic system of government is one in which the will of the people is the source of public power."). It divided the Commonwealth's political power between officials in the "legislative, judicial and executive branches" of the new government, none of the

members of which are appointed by the President of the United States or any other arm of the Federal Government. P.R. Const. art. I § 2, art. III § 1, art. IV § 1, art. V §§ 1, 8, art. VI § 4, App. 359-62a. Instead, all three branches of the government of the Commonwealth are "subordinate to the sovereignty of the people of Puerto Rico." P.R. Const. art. I § 2, App. 359a.

Pursuant to Public Law 600, the Constitution was then submitted to the President of the United States, who—after duly finding, among other things, that it provided for a republican form of government—in turn submitted it to Congress for review. App. 353-56a; *see generally* 48 U.S.C. §§ 731c, d. Congress considered the proposed Constitution, likewise found (among other things) that it provided for a republican form of government, and approved it conditioned on minor revisions to provisions addressing compulsory school attendance and the process for constitutional amendments and the elimination of section 20 recognizing a number of then-novel human rights. *See* Pub. L. No. 82-447, 66 Stat. 327, App. 356-57a. The Senate Report accompanying that legislation explained the Constitution's approval would mean "the people of Puerto Rico will exercise self-government." S. Rep. No. 82-1720, at 6, 7 (1952). President Truman echoed that view both when transmitting the Puerto Rico Constitution to Congress and when signing the Joint Resolution by which Congress approved the Constitution. Under the new Constitution, in President Truman's view, "full authority and responsibility of local self-government will be vested in the people of Puerto Rico." *Public Papers of the Presidents, Harry S. Truman 1952-53*, at 471 (1966),

quoted in *Córdova & Simonpietri Ins. Agency, Inc. v. Chase Manhattan Bank, N.A.*, 649 F.2d 36, 40 (1st Cir. 1981) (Breyer, J.).

Puerto Rico accepted the conditions set forth by Congress, and the Puerto Rico Constitution took effect on July 25, 1952, *see* 48 U.S.C. § 731d Note—a day still celebrated yearly in the Commonwealth as Constitution Day. As a result, numerous provisions of the organic acts governing Puerto Rico—including provisions giving Congress the authority to annul Puerto Rico laws—were repealed, and the remaining provisions were renamed the Federal Relations Act. *See* Pub. L. No. 81-600 §§ 4, 5, 64 Stat. at 319-20 (1950), App. 354a. Shortly thereafter, the United States informed the United Nations that it no longer considered itself obligated to provide reports on conditions in Puerto Rico under a provision of the U.N. Charter requiring such reports from member states responsible "for the administration of territories whose people have not yet attained the full measure of self-government." U.N. Charter art. 73. As the United States explained, in light of the 1952 Constitution, Puerto Rico had become a self-governing jurisdiction. *See* Mem. by Gov't of U.S.A. Concerning the Cessation of Information Under Article 73(e) of the Charter with regard to the Commonwealth of Puerto Rico, quoted in *Córdova*, 649 F.2d at 41 n.28. In response, the U.N. General Assembly acknowledged that "the people of the Commonwealth of Puerto Rico, by expressing their will in a free and democratic way, have achieved a new constitutional status," and "have effectively exercised their right to self-determination." G.A. Res. 748 (VIII), U.N. GAOR, 8th Sess., 459th plen. mtg. at

26 (1953), quoted in *Igartúa-De La Rosa v. United States*, 417 F.3d 145, 149 n.5 (1st Cir. 2005).

The Puerto Rico Constitution, as noted above, vests "[t]he legislative power ... in a Legislative Assembly," which consists of two houses, the Senate and the House of Representatives, whose members are elected by the people of Puerto Rico. P.R. Const. art. III § 1, App. 360a. All the laws of Puerto Rico—including the criminal laws—are enacted pursuant to that power. Indeed, the Constitution specifies that "[a]ll criminal actions in the courts of the Commonwealth shall be conducted *in the name and by the authority* of 'The People of Puerto Rico.'" P.R. Const. art. VI § 18, App. 362a (emphasis added). Thus, like the States, Puerto Rico is subject to two different criminal justice systems—one established by its own laws and enforced by its own prosecutors, and the other established by Congress and enforced by federal prosecutors.

B. Proceedings Below

On September 28, 2008, Puerto Rico prosecutors indicted respondent Luis Sánchez Valle for (1) the illegal sale of firearms and ammunition without a license, in violation of P.R. Laws Ann. tit. 25, § 458, and (2) the illegal carrying of a firearm, in violation of P.R. Laws Ann. tit. 25 § 458c. *See* App. 2a. Subsequently, while that Commonwealth prosecution was pending, a federal grand jury also indicted Sánchez Valle for the illegal sale of firearms and ammunition without a license. *See id.*; *see also* 18 U.S.C. §§ 922(a)(1)(A), 923(a), 924(a)(1)(D), 924(a)(2). Sánchez Valle pleaded guilty to the federal charges and received a five-month prison

sentence followed by five months' house arrest and three years' supervised release. App. 2-3a.

After pleading guilty to the federal charges, Sánchez Valle moved to dismiss the prosecution in Puerto Rico court—for which he was subject to a much longer sentence—as a violation of his rights under the Double Jeopardy Clause of the United States Constitution. The trial court agreed and dismissed the charges. *Id.* at 307-29a.

Similarly, on September 28, 2008, Puerto Rico prosecutors indicted respondent Jaime Gómez Vázquez for (1) the illegal sale of a firearm without a license, *see* P.R. Laws Ann. tit. 25, § 458, (2) the illegal carrying of a rifle, *see id.* § 458f, and (3) the illegal transfer of a mutilated weapon, *see id.* § 458i. App. 3-4a. As with Sánchez Valle, a federal grand jury subsequently indicted Gómez Vázquez for selling firearms in interstate commerce without a license. *Id.* at 4a. He pleaded guilty to the federal charges and received an eighteen-month prison sentence followed by three years' supervised release. *Id.* at 4-5a.

Gómez Vázquez, like Sánchez Valle, then moved to dismiss his pending prosecution in Puerto Rico court—for which, again like Sánchez Valle, he was subject to a much longer sentence—as a violation of his rights under the Double Jeopardy Clause of the Federal Constitution. Once again, the trial court agreed and dismissed the charges. *Id.* at 330-52a.

The Commonwealth appealed both dismissals to the Puerto Rico Court of Appeals, and that Court reversed. *Id.* at 243-306a. As the Court explained, the double jeopardy issue in the case was controlled by the Puerto Rico Supreme Court's decision in

Castro García, 20 P.R. Offic. Trans. 775, which held that the Commonwealth of Puerto Rico and the Federal Government are separate sovereigns for double jeopardy purposes, thus removing any double jeopardy bar to a subsequent prosecution by the other sovereign. App. 262a, 267-77a, 279-81a. Judge Medina Monteserín concurred on the ground that *Castro García* "prevails at this time in our jurisdiction," but expressed her view that "there is room to review and discuss said caselaw." App. 284a. Judge González Vargas also filed a separate statement underscoring his view that the authority for Puerto Rico's criminal laws "emanates ... from the People of Puerto Rico through their Constitution, which was democratically adopted as the ultimate expression of their will in the exercise of their self-government attributes," and that "[i]t is legally unacceptable and contrary to the dignity of every Puerto Rican to argue that even the adoption of their criminal laws and the indictment for the violation of same are merely the result of gifts or graces by the People of the United States, as if we found ourselves in the times of the crudest colonial regime." App. 304a.

The Puerto Rico Supreme Court granted respondents' petitions for certiorari and consolidated the cases. The Court began by analyzing whether each of the various crimes with which respondents were charged under Puerto Rico law was, for federal double jeopardy purposes, the "same offence" to which they had pleaded guilty under federal law. *See* App. 7-10a. To that end, the Court applied this Court's "same-elements" test. *See id.* (citing *Blockburger v. United States*, 284 U.S. 299, 304 (1932)). With respect to the crime of selling a

firearm or ammunition without a license, the Court held that the Puerto Rico crime is a lesser-included offense of its federal counterpart because the elements of both crimes are identical other than the additional interstate-commerce requirement of the federal crime. *See* App. 8-10a. Accordingly, the Court held that, under *Blockburger*, the Commonwealth and federal crimes are the "same offence" for federal double jeopardy purposes. *See* App. 9-10a. The remaining crimes with which respondents were charged under Puerto Rico law did not raise double jeopardy concerns, however, because respondents had not been charged with analogous federal offenses. *See* App. 10a. None of the Justices expressed any disagreement on these threshold issues.

The Justices divided sharply, however, on the question whether the Commonwealth could nevertheless prosecute respondents for the "same offence" to which they had pleaded guilty in federal court. The majority held that it could not, on the theory that the Commonwealth of Puerto Rico and the Federal Government are a single sovereign for purposes of the Double Jeopardy Clause of the Federal Constitution. In particular, the majority held, "Puerto Rico's authority to prosecute individuals is derived from its delegation by United States Congress and not by virtue of its own sovereignty." App. 65a (emphasis omitted); *id.* at 66a ("[T]he Commonwealth of Puerto Rico is not a sovereign entity inasmuch as, being a territory, its ultimate source of power to prosecute offenses is derived from the United States Congress.") (emphasis omitted). Unless and until Puerto Rico becomes a State, in the majority's view, it has no

claim to any form of sovereignty and the dual sovereign doctrine does not apply. App. 67-68a. The majority thus overruled its contrary holding in *Castro García* as "clearly erroneous," reversed the Court of Appeals' judgment with respect to the charges against respondents under Commonwealth law for the illegal sale of firearms and ammunition without a license, and ordered the dismissal of those charges. App. 69a.

The majority recognized that its decision conflicted with the First Circuit's decision in *López Andino*, which held that "the Puerto Rico Federal Relations Act and the creation of the Constitution of the Commonwealth of Puerto Rico altered the relationship between Puerto Rico and the United States," and rendered the Commonwealth "a sovereign for purposes of the dual sovereignty doctrine." App. 29-30a (citing *López Andino*, 831 F.2d at 1168). The majority pointed out, however, that "the Eleventh Circuit faced the same controversy" in *Sánchez*, and—"[c]ontrary to the First Circuit"—concluded that Puerto Rico is "not a separate sovereign" for federal double jeopardy purposes. *Id.* at 30a (citing 992 F.2d 1143). The majority praised the Eleventh Circuit's *Sánchez* ruling as "an exercise of intellectual honesty" for recognizing that "the development of the Commonwealth of Puerto Rico had not granted our courts a source of punitive authority derived from an inherent sovereignty." *Id.* at 30-31a.

Chief Justice Fiol Matta, joined by Justice Oronoz Rodríguez, concurred in the judgment. *See* App. 71-190a. The Chief Justice sharply disagreed with the majority's application of the dual sovereignty

doctrine as a matter of federal constitutional law. *Id.* at 72-73a. In her view, "the drafting and ratification of our Constitution by the People of Puerto Rico was not a marginal and insignificant event, as the Majority insists," but rather an exercise of popular sovereignty. *Id.* at 131a. Thus, even though Puerto Rico is not a State, its "ultimate source of power and authority to create and punish crimes has been the People of Puerto Rico" ever since the Puerto Rico Constitution took effect in 1952. *Id.* at 132a. She thus concluded that the Double Jeopardy Clause of the Federal Constitution did not bar respondents' prosecution by both Puerto Rico and federal authorities. *Id.* at 156-57a. Nonetheless, the Chief Justice would have held that Puerto Rico should not recognize the dual sovereignty doctrine for purposes of its *own* constitutional prohibition on Double Jeopardy, *see* P.R. Const. art. II § 11, App. 360a, and thus would have granted respondents relief under the Puerto Rico Constitution, *id.* at 164-90a.

Justice Rodríguez Rodríguez wrote a scathing dissent that also rejected the majority's federal dual sovereignty analysis. *See* App. 191-242a. She accused the majority of elevating its "ideological" views regarding Puerto Rico statehood over legal analysis. *Id.* at 241a. The majority's legal analysis, according to Justice Rodríguez Rodríguez, is "incompatible with" this Court's dual sovereignty cases. *Id.* at 195a; *see also id.* at 241-42a. She accordingly called upon "the United States Supreme Court to intervene in this case to bring the majority of this Court back to the fold of the United States Constitution." *Id.* at 196a.

This petition follows.

REASONS FOR GRANTING THE WRIT

I. The Decision Of The Puerto Rico Supreme Court Deepens A Direct And Acknowledged Circuit Conflict.

This case presents and deepens a circuit conflict about as stark as they come. The First Circuit, in *López Andino*, held that the Commonwealth of Puerto Rico and the Federal Government are not a single sovereign for purposes of the Double Jeopardy Clause of the Federal Constitution, so that the Clause does not prevent successive prosecution by each sovereign for the same offense. *See* 831 F.2d at 1167-68; *see also United States v. Bonilla Romero*, 836 F.2d 39, 42 n.2 (1st Cir. 1987) (reaffirming that *López Andino* "is the law of this Circuit"); *United States v. Benmuhar*, 658 F.2d 14, 18 (1st Cir. 1981) (rejecting double jeopardy challenge). The First Circuit in *López Andino* thus affirmed a federal conviction over an argument that it was barred by a prior Puerto Rico conviction on the ground that "the Commonwealth ... for double jeopardy purposes is treated as a state," and "[t]herefore, the fifth amendment does not prohibit the federal prosecution." 831 F.2d at 1168.

The Eleventh Circuit, in sharp contrast, held in *Sánchez* that the Commonwealth of Puerto Rico and the Federal Government *are* a single sovereign for purposes of the Double Jeopardy Clause of the Federal Constitution, so that the Clause *does* prevent successive prosecution by each sovereign for the same offense. *See* 992 F.2d at 1148-53. In so holding, the Eleventh Circuit specifically rejected *López Andino*. *See id.* at 1151 ("We disagree with the conclusion of the First Circuit that Congress'

decision to permit self-governance in Puerto Rico makes Puerto Rico a separate sovereign for double jeopardy purposes."). The Eleventh Circuit in *Sánchez* thus reversed a federal conviction of murder for hire on the ground that it was barred by a prior Puerto Rico conviction for the same offense. *See* 992 F.2d at 1159.

The Puerto Rico Supreme Court in this case flipped from one side of this direct and acknowledged circuit conflict to the other. In 1988, that Court in *Castro García* had endorsed *López Andino*, holding that "[t]he First Circuit Court of Appeals' approach to the specific question posed by the present case is very convincing." 20 P.R. Offic. Trans. at 807. Like *López Andino*, *Castro García* thus held that the Commonwealth of Puerto Rico and the Federal Government are not a single sovereign for federal double jeopardy purposes, so that the Clause does not prevent successive prosecution by each sovereign for the same offense. *See id.* at 782-819.

In this case, however, the Puerto Rico Supreme Court overruled *Castro García*. *See* App. 2a, 33a, 67a. The Court explained that, in *Castro García*, "this Court adopted the view of the court of Appeals for the First Circuit and held that the Commonwealth of Puerto Rico was a sovereign for purposes of the double jeopardy clause." App. 31a. The Court now, however, repudiated that approach. *See* App. 33a ("The grounds used by this Court [in *Castro García*] are wrong from a strictly legal point of view."); App. 67a ("[W]e overrule [*Castro García*] and conclude that a person who was prosecuted in federal court cannot be prosecuted for the same offense in the Puerto Rico courts because that would

constitute a violation of the constitutional protection against double jeopardy, as provided in the Fifth Amendment to the Constitution of the United States.").

The conflict between the First Circuit, on the one hand, and the Puerto Rico Supreme Court and the Eleventh Circuit, on the other, stems from a fundamental disagreement over the source of authority for Puerto Rico law. The First Circuit holds that "[Puerto Rico's] criminal laws, like those of a state, emanate from a different source than the federal laws"—from "'the people of Puerto Rico,'" who engaged in an exercise of popular sovereignty in 1952 by "'organiz[ing] a government pursuant to a constitution of their own adoption.'" *López Andino*, 831 F.2d at 1168 (quoting Pub. L. No. 81-600, 64 Stat. 319 (1950), App. 353a). Under this view, in light of the adoption of the 1952 Constitution, "the government of Puerto Rico is no longer a federal government agency exercising delegated power." *United States v. Quiñones*, 758 F.2d 40, 42 (1st Cir. 1985) (citing *Mora v. Mejías*, 206 F.2d 377, 386-88 (1st Cir. 1953)); *see also id.* ("'[T]he constitution of the Commonwealth is not just another Organic Act of the Congress.'") (quoting *Figueroa*, 232 F.2d at 620); *Córdova*, 649 F.2d at 39 ("The [Federal Relations Act] and the Puerto Rico Constitution were intended to work a significant change in the relation between Puerto Rico and the rest of the United States.").

The Puerto Rico Supreme Court and the Eleventh Circuit, in sharp contrast, hold that Puerto Rico law derives from delegated *federal* authority, so that the Puerto Rico legislature is essentially no more than an arm of Congress. *See* App. 65a ("Puerto Rico's

authority to prosecute individuals is derived from its delegation by United States Congress and not by virtue of its own sovereignty.") (emphasis omitted); *id.* at 66a ("[Puerto Rico's] ultimate source of power to prosecute offenses is derived from the United States Congress.") (emphasis omitted); *Sánchez*, 992 F.2d at 1152 ("The authority with which Puerto Rico brings charges as a prosecuting entity derives from the United States as sovereign."). Under this view, "[d]espite passage of the Federal Relations Act and the Puerto Rico Constitution, Puerto Rican courts continue to derive their authority to punish from the United States Congress." *Id.* at 1153.

This direct and acknowledged conflict on a question of federal constitutional law warrants this Court's review. The various opinions of the Justices of the Puerto Rico Supreme Court below could hardly have canvassed the relevant issues any more extensively, and confirmed that those Justices are firmly entrenched in their views. Likewise, the First Circuit's holding in *López Andino* reflects that court's longstanding, and often repeated, view that the constitutional relationship between Puerto Rico and the United States fundamentally changed as a result of the adoption of the Puerto Rico Constitution in 1952. *See, e.g.*, *Quiñones*, 758 F.2d at 41-43; *Córdova*, 649 F.2d at 39-42; *Figueroa*, 232 F.2d at 619-20; *Mora*, 206 F.2d at 386-88.

II. The Decision Of The Puerto Rico Supreme Court Is Manifestly Incorrect.

The Puerto Rico Supreme Court not only flipped sides on a direct and acknowledged circuit conflict, but chose the wrong side. Its decision reflects a manifest misunderstanding of this Court's double

jeopardy precedents, and in particular the dual sovereignty doctrine elaborated in those precedents.

The Double Jeopardy Clause of the Fifth Amendment, as this Court has long held, protects a defendant against successive prosecution for the same offense by the *same* sovereign, not by a *different* sovereign. *See, e.g.*, *Heath v. Alabama*, 474 U.S. 82, 87-88 (1985); *United States v. Wheeler*, 435 U.S. 313, 320 (1978); *Abbate v. United States*, 359 U.S. 187, 193-94 (1959); *Bartkus v. Illinois*, 359 U.S. 121, 128-39 (1959); *United States v. Lanza*, 260 U.S. 377, 382 (1922). That is because a crime is deemed to be an offense against a particular sovereign; "[w]hen a defendant in a single act violates the 'peace and dignity' of two sovereigns by breaking the laws of each, he has committed two distinct 'offences.'" *Heath*, 474 U.S. at 88 (quoting *Lanza*, 260 U.S. at 382); *see also id.* ("[W]hen the same act transgresses the laws of two sovereigns, 'it cannot be truly averred that the offender has been twice punished for the same offence; but only that by one act he has committed two offences, for each of which he is justly punishable.'") (quoting *Moore v. Illinois*, 55 U.S. (14 How.) 13, 19 (1852)); *see also Westfall v. United States*, 274 U.S. 256, 258 (1927) (Holmes, J.) (the proposition that different sovereigns may punish the same conduct "is too plain to need more than statement").

Because there is no question that the States and the Federal Government are separate sovereigns, a prior state prosecution poses no double jeopardy bar to a subsequent federal prosecution, *see, e.g.*, *Abbate*, 359 U.S. at 189-95; *Lanza*, 260 U.S. at 382, and a prior federal prosecution poses no federal double

jeopardy bar to a subsequent state prosecution, *see, e.g.*, *Bartkus*, 359 U.S. at 128-38. (States are free, of course, to reject the dual sovereignty doctrine as a matter of their *own* constitutional law, *see id.* at 135-36, as the concurring opinion below would have done, *see* App. 177-80a, 188-90a (Fiol Matta, C.J., concurring in the judgment) (citing *Commonwealth v. Mills*, 286 A.2d 638, 642 (Pa. 1971); *State v. Hogg*, 385 A.2d 844, 847 (N.H. 1978)). Similarly, because the various States are different sovereigns, a prior prosecution by one State poses no federal double jeopardy bar to a subsequent prosecution by another State. *See, e.g.*, *Heath*, 474 U.S. at 89-93.

The *same* sovereign, however, may not prosecute an individual twice for the same offense. *See, e.g.*, *Benton v. Maryland*, 395 U.S. 784, 793-98 (1969). And that is true even where that sovereign delegates its power to a different entity that enacts its own laws. Thus, a State may not prosecute an individual who has already been prosecuted for the same offense by a municipality of that State; even though the State may treat the municipality as a sovereign entity under its own law, the municipality's power to punish flows from state law. *See, e.g.*, *Waller v. Florida*, 397 U.S. 387, 391-95 (1970). Similarly, the government of a territory (at that time, the Philippine Islands) that "owes its existence wholly to the United States," and whose courts "exert all their powers under and by authority of the same government,—that of the United States" may not prosecute an individual who has already been prosecuted for the same offense by a federal military tribunal. *Grafton v. United States*, 206 U.S. 333, 354-55 (1907); *cf. Puerto Rico v. Shell Co. (P.R.)*, 302 U.S. 253, 264 (1937) (federal laws and territorial

laws of Puerto Rico before adoption of 1952 Constitution "are creations emanating from the same sovereignty" that would trigger federal double jeopardy protection) (dictum).

As this Court has emphasized, the key inquiry in determining whether two entities are separate sovereigns for federal double jeopardy purposes is "the ultimate *source* of the power under which the respective prosecutions were undertaken." *Wheeler*, 435 U.S. at 320 (emphasis added); *see also United States v. Lara*, 541 U.S. 193, 199 (2004); *Heath*, 474 U.S. at 90. The "extent of control exercised by one prosecuting authority over the other" is not material to that inquiry. *Wheeler*, 435 U.S. at 320. Thus, *Wheeler* held that the conviction of a member of the Navajo Tribe in tribal court did not bar a subsequent federal prosecution of that person for the same offense. Even though it was "undisputed" that "Congress has plenary authority to legislate for the Indian tribes in all matters, including their form of government," *id.* at 319, the Court held that the Navajo tribe was a separate sovereign for federal double jeopardy purposes, *see id.* at 322-32. That is because, although the tribe concededly was "subject to ultimate federal control," *id.* at 322, the source of its authority to punish was its own sovereignty, not any power delegated by Congress, *see id.* at 322-32; *see also Lara*, 541 U.S. at 199-200.

The Puerto Rico Supreme Court, like the Eleventh Circuit, erred by holding that the United States Congress, as opposed to the people of Puerto Rico through their Constitution, is the ultimate source of authority for the Commonwealth's criminal laws. *See* App. 65-66a; *Sánchez*, 992 F.2d at 1152-53. That

point may have been true prior to the adoption of the Puerto Rico Constitution in 1952, insofar as the Puerto Rico legislature at that time exercised authority delegated by Congress through organic acts. *See, e.g.*, *Shell*, 302 U.S. at 264 (dictum); *cf. Grafton*, 206 U.S. at 353-55. But it is manifestly not true after the adoption of the Commonwealth's Constitution in 1952, which "work[ed] a significant change in the relation between Puerto Rico and the rest of the United States." *Córdova*, 649 F.2d at 39.

Indeed, Congress itself could hardly have made this point more clear. Public Law 600 of 1950 offered the people of Puerto Rico a "compact" under which they could engage in an exercise of popular sovereignty by "organiz[ing] a government pursuant to a constitution of their *own* adoption." App. 353a (codified at 48 U.S.C. § 731b; emphasis added). The people of Puerto Rico accepted that offer, assembled a Constitutional Convention, and drafted their own Constitution.

That Constitution leaves no doubt about the source of its authority. It is ordained and established by "[w]e, the people of Puerto Rico." P.R. Constit. pmbl., App. 358a. It confirms that "the will of the people is the source of public power." *Id.* It creates a new political entity, the Commonwealth of Puerto Rico, and specifies that "[i]ts political power *emanates from the people* and shall be exercised in accordance with their will, within the terms of the compact agreed upon by the people of Puerto Rico and the United States of America." *Id.,* art. I § 1, App. 359a (emphasis added). It creates the "legislative, judicial and executive branches" of the Commonwealth government, and provides that all

three branches "shall be equally subordinate to the *sovereignty of the people of Puerto Rico*." *Id.*, art. I § 2, App. 359a (emphasis added). It vests "[t]he legislative power" of the Commonwealth "in a Legislative Assembly," *id.,* art. III § 1, App. 360a, and "[t]he judicial power" of the Commonwealth in "a Supreme Court, and in such other courts as may be established by law," *id.*, art. V § 1, App. 361a. And it provides that "[a]ll criminal actions in the courts of the Commonwealth shall be conducted in the name and by the authority of the 'People of Puerto Rico.'" *Id.*, art. VI § 18, App. 362a.

That Constitution was duly submitted to the President of the United States, who in turn submitted it to Congress for its approval. App. 355-56a. Congress considered the proposed Constitution, and approved it conditioned on minor revisions to provisions addressing compulsory school attendance and the process for constitutional amendments and the elimination of section 20 recognizing a number of then-novel human rights. *See* Pub. L. No. 82-447, 66 Stat. 327, App. 356-57a.

By approving the Constitution of the Commonwealth of Puerto Rico, Congress recognized that—as the Constitution makes clear on its face—the people of Puerto Rico had exercised their *own* sovereignty to establish their *own* government to enact their *own* laws. The fact that Congress reviewed the proposed Puerto Rico Constitution, and conditioned its approval thereof on certain changes, in no way negates the exercise of popular sovereignty that created that Constitution in the first place. To the contrary, the Constitution did not go into effect until the Puerto Rico Constitutional Convention

"declared in a formal resolution its acceptance *in the name of the people of Puerto Rico* of the conditions of approval" established by Congress. Pub. L. No. 82-447, 66 Stat. at 327-28, App. 357a (emphasis added). This is precisely the process followed by prospective States seeking admission to the Union. *See, e.g.*, Alaska Statehood Act, Pub. L. No. 85-508, 72 Stat. 339 (1958); Hawaii Admission Act, Pub. L. No. 86-3, 73 Stat. 4 (1959). And it would be fanciful to suggest that congressional approval of a state constitution, conditional or otherwise, in any way renders such a constitution nothing more than an act of Congress. *See, e.g.*, Nebraska Admissions Act, Ch. 36, 39th Cong., 2d Sess., 14 Stat. 391 (1867) (conditional approval of Nebraska Constitution).

Nor does the fact that Congress authorized the exercise of popular sovereignty that led to the adoption of the Puerto Rico Constitution render it any less an exercise of popular sovereignty. To the contrary, as this Court has explained, Congress can recognize and confirm an exercise of sovereignty by a dependent entity. *See Lara*, 541 U.S. at 203-04. In that case, Congress recognized and confirmed the sovereignty of an Indian tribe to apply its criminal laws to an Indian who was not a member of the tribe, *see* 25 U.S.C. § 1301(2), even though this Court had previously held that the tribe had no such sovereignty, *see Duro v. Reina*, 495 U.S. 676, 689-92 (1990). The Court held that this was a valid exercise of congressional power that rendered the tribe a separate sovereign for federal double jeopardy purposes. *See Lara*, 541 U.S. at 199-207. The Court justified that holding in part by noting that Congress had also "made adjustments to the autonomous status of other such dependent entities—sometimes

making far more radical adjustments than those at issue here." *Id.* at 203. In support of that point, the Court noted, among other examples, Public Law 600 and the Puerto Rico Constitution, and cited with approval the First Circuit's decision in *Córdova*. *See id.* at 204.

Other decisions of this Court only confirm that the laws of the Commonwealth of Puerto Rico derive from sovereign authority delegated by the people of Puerto Rico, not from Congress. In *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 670-73 (1974), this Court held that the laws of Puerto Rico were "State statute[s]" within the meaning of the Three-Judge Court Act, 28 U.S.C. § 2281. The Court based that holding on the "significant changes in Puerto Rico's governmental structure" resulting from the establishment of the Commonwealth by the 1952 Constitution. 416 U.S. at 672. As the Court explained, the Commonwealth was "'organized as a body politic *by the people of Puerto Rico* under their *own* constitution.'" *Id.* (emphasis added; quoting *Mora*, 206 F.2d at 387). The laws of the Commonwealth thus reflect the sovereign will of the people of Puerto Rico, and are worthy of the solicitude given to "[S]tate statutes" under the Three-Judge Court Act—in sharp contrast to laws enacted by a mere territorial legislature. *See id.* at 670-75 (distinguishing *Stainback v. Mo Hock Ke Lo Po*, 336 U.S. 368 (1949), which held that the Three-Judge Court Act did not apply to laws enacted by the Territory of Hawaii).

The Court built upon *Calero-Toledo* in *Examining Bd. of Engineers, Architects & Surveyors v. Flores de Otero*, 426 U.S. 572 (1976). The issue there was

whether a federal statute giving federal district courts jurisdiction over actions "to redress the deprivation, under color of any *State* law ... of any right, privilege or immunity" secured by federal law, applied to actions challenging laws of the Commonwealth of Puerto Rico. *Id.* at 574-75 & n.1 (emphasis added). In answering that question in the affirmative, the Court emphasized that Public Law 600 authorized the people of Puerto Rico "to draft their *own* constitution," and that, in light of that Constitution, "Puerto Rico now elects its Governor and legislature; appoints its judges, all cabinet officials, and lesser officials in the executive branch; ... and amends its *own* civil and criminal code." 426 U.S. at 593, 594 (emphasis added; internal quotation omitted); *see also id.* at 597 ("[A]fter 1952, ... Congress relinquished its control over the organization of the local affairs of the island and granted Puerto Rico a measure of autonomy comparable to that possessed by the States.").

And in *Rodríguez v. Popular Democratic Party*, 457 U.S. 1 (1982), this Court upheld "[t]he methods by which the people of Puerto Rico and their representatives have chosen to structure the Commonwealth's electoral system" against a federal constitutional challenge, *id.* at 8. In so ruling, this Court held that those methods are entitled to "substantial deference" precisely because "Puerto Rico, like a state, is an autonomous political entity, '*sovereign* over matters not ruled by the [federal] Constitution.'" *Id.* (quoting *Calero-Toledo*, 416 U.S. at 673, and citing *Córdova*, 649 F.2d at 39-42).

Indeed, to conclude that the Legislature of Puerto Rico is an arm of Congress exercising authority

delegated by Congress would be to deem the Puerto Rico Constitution and the establishment of the Commonwealth of Puerto Rico "a monumental hoax." *Figueroa*, 232 F.2d at 620. As specified in the Puerto Rico Constitution, which was adopted by the people of Puerto Rico and approved by Congress, the laws of Puerto Rico flow from sovereign authority delegated by the people of Puerto Rico. *See* P.R. Const. pmbl., App. 358a; art. I § 1, App. 359a. That simple point is the beginning and the end of this case.

The Puerto Rico Supreme Court and the Eleventh Circuit concluded otherwise only by adopting a narrow and wooden interpretation of sovereignty. In their view, federal power over Puerto Rico under the Territorial Clause, U.S. Const. art. IV § 3, cl. 2, necessarily negates any possibility of Puerto Rico sovereignty. *See* App. 65-67a; *Sánchez*, 992 F.2d at 1152-53. That approach, however, turns our entire system of government on its head. The genius of the Founders was to "split the atom of sovereignty," and thereby to establish "two orders of government, each with its own direct relationship, its own privity, its own set of mutual rights and obligations to the people who sustain it and are governed by it." *Alden v. Maine*, 527 U.S. 706, 751 (1999) (internal quotations and brackets omitted). There is no inconsistency in recognizing federal sovereignty in Puerto Rico while also recognizing Puerto Rico sovereignty, just as there is no inconsistency in recognizing federal sovereignty in California while also recognizing California sovereignty. Thus, to recognize that the laws of Puerto Rico stem from sovereign authority delegated by the people of Puerto Rico through their own Constitution is not to negate United States sovereignty in the Commonwealth.

Both flags can, and do, fly together side by side on the island.

The Puerto Rico Supreme Court and the Eleventh Circuit thus missed the point by focusing on the extent of Congress' authority over Puerto Rico under the Territorial Clause. *See* App. 51-52a, 65-67a; *Sánchez*, 992 F.2d at 1152-53. Whether Puerto Rico is a separate sovereign for federal double jeopardy purposes has nothing to do with the extent of any such authority. As noted above, that is the lesson of *Lara* and *Wheeler*—the Indian tribes are separate sovereigns for federal double jeopardy purposes *regardless* of the extent of congressional authority over them. *See Lara*, 541 U.S. at 204; *Wheeler*, 435 U.S. at 320, 326. The extent of Congress' ongoing authority over Puerto Rico under the Territorial Clause, if any, is similarly irrelevant to the application of the dual sovereignty doctrine. *Cf. Flores de Otero*, 426 U.S. 593-94, 597 (noting that, in light of the 1952 "'compact'" in which the people of Puerto Rico adopted their own Constitution, "Congress relinquished its control over the organization of local affairs of the island") (quoting 48 U.S.C. § 731b). Thus, the Puerto Rico Supreme Court's observation that "Puerto Rico did not cease to be a territory of the United States" within the meaning of the Territorial Clause after 1952, App. 65a, adds nothing to the analysis.

It follows that the summary decision in *Harris v. Rosario*, 446 U.S. 651, 651-52 (1980) (*per curiam*), which holds that Congress has the authority to treat Puerto Rico differently than a State under the Territorial Clause, has no bearing here. That case involved the scope of Congress' power under the

Federal Constitution to apply federal law to Puerto Rico, not the source of Puerto Rico's power under the *Commonwealth* Constitution to enact its own laws. Again, this case has nothing to do with the extent of Congress' power to apply *federal* law to Puerto Rico, but instead Puerto Rico's power to enforce its *own* criminal laws enacted under its *own* Constitution.

III. The Decision Of The Puerto Rico Supreme Court Presents An Important And Recurring Question Of Federal Law.

Finally, this Court's review is warranted because the decision below presents an important and recurring question of federal law. As a result of that decision, Puerto Rico authorities have lost the ability to enforce their own criminal laws without the prospect of federal interference. These cases prove the point. Both respondents were indicted for violations of Puerto Rico law *before* they were indicted for violations of federal law. *See* App. 2a, 4a; *id.* at 196a, 199a (Rodríguez Rodríguez, J., dissenting). They promptly pleaded guilty to the federal offenses, however, and received far lighter sentences than they might have received for their crimes under Puerto Rico law. *See* App. 197a n.5 (Rodríguez Rodríguez, J., dissenting). By holding that the Double Jeopardy Clause of the Federal Constitution requires dismissal of the Commonwealth prosecution, the Puerto Rico Supreme Court has essentially stripped the Commonwealth of control over its own criminal laws. *See* App. 194-95a (Rodríguez Rodríguez, J., dissenting).

This Court has specifically warned against "the 'undesirable consequences' that would result from

the imposition of a double jeopardy bar in such circumstances." *Wheeler*, 435 U.S. at 317 (quoting *Abbate*, 359 U.S. at 195). "Prosecution by one sovereign for a relatively minor offense might bar prosecution by the other for a much graver one, thus effectively depriving the latter of the right to enforce its own laws." *Id.* at 318. This "'shocking and untoward'" result, *id.* at 318 n.8 (quoting *Bartkus*, 359 U.S. at 137), which effectively puts Puerto Rico prosecutors in a "race to the courthouse" with federal prosecutors, *Heath*, 474 U.S. at 93, underscores the urgent need for this Court's review.

And the conflict presented by this case only compounds the anomaly. Because the First Circuit holds that there is *no* federal double jeopardy bar to a federal prosecution of an individual who has been tried, acquitted, or convicted for the same offense under Puerto Rico law, *see López Andino*, 831 F.2d at 1167-68, the application of the federal Double Jeopardy Clause in Puerto Rico now turns on whether a criminal defendant was prosecuted first under federal or Commonwealth law. *See e.g.*, *United States v. Barros-Villahermosa*, __ F. Supp. 3d __, 2015 WL 1254878, at *3-5 (D.P.R. Mar. 12, 2015) (rejecting Double Jeopardy challenge). Where the defendant was tried, acquitted or convicted first in Commonwealth court, the federal Double Jeopardy Clause poses no barrier to a subsequent federal prosecution, but where (as here) the defendant was tried, acquitted or convicted first in federal court, that same Clause bars a subsequent prosecution in Commonwealth court. This Court should not tolerate such an arbitrary and capricious state of affairs. Such a "conflict ... between two courts whose jurisdiction" covers the same territory "is, of course,

a substantial reason for granting certiorari under this Court's Rule 10." *Yee v. City of Escondido*, 503 U.S. 519, 537-38 (1992).

Finally, this case presents an excellent vehicle for resolving the conflict. There is no dispute here that the federal and Puerto Rico crimes are the "same offence" for federal double jeopardy purposes—none of the Justices of the Puerto Rico Supreme Court disputed that point, and indeed, a lesser included offense is paradigmatically the "same offense" for such purposes. *See*, *e.g.*, *Brown v. Ohio*, 432 U.S. 161, 169 (1977); *Illinois v. Vitale*, 447 U.S. 410, 420-21 (1980); *see generally* App. 8-10a; *id.* at 80-81a (Fiol Matta, C.J., concurring in judgment); *id.* at 196-200a (Rodríguez Rodríguez, J., dissenting). In addition, the various opinions of the Puerto Rico Supreme Court Justices below, as well as the First Circuit's opinion in *López Andino* and the Eleventh Circuit's opinion in *Sánchez*, set forth in great detail the conflicting positions on the question presented.

CONCLUSION

For the foregoing reasons, the Court should grant this petition for writ of certiorari.

Respectfully submitted,

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