

In the Supreme Court of the United States

Roman Catholic Archdiocese of San Juan, Puerto Rico, and the Roman Catholic
Dioceses of Ponce, Arecibo, Caguas, Mayagüez, and Fajardo-Humacao, Puerto Rico,

Petitioners,

v.

Yalí Acevedo Feliciano, Sonia Arroyo Velázquez, Elsie Alvarado Rivera, et al.,

Respondents

**APPLICATION FOR STAY
PENDING PETITION FOR CERTIORARI**

**Directed to the Honorable Stephen Breyer,
Justice of the Supreme Court of the United States and
Circuit Justice for the United States Court of Appeals for the First Circuit**

PEDRO A. BUSÓ-GARCÍA
SCHUSTER AGUILÓ LLC
221 Ponce de León Avenue
15th Floor
San Juan, PR 00917
Counsel for Archdiocese of San Juan

GENE C. SCHAERR
Counsel of Record
MICHAEL T. WORLEY
SCHAERR | DUNCAN LLP
1717 K Street NW, Suite 900
Washington, DC 20006
(202) 787-1060
gschaerr@schaerr-duncan.com
Counsel for all Petitioners/Applicants

Additional Counsel listed on Inside Cover

June 15, 2018

FRANK TORRES VIADA
BUFETE FRANK TORRES-VIADA,
PO Box 192084
San Juan, Puerto Rico 00919-2084
Counsel for Diocese of Arecibo

FERNANDO E. AGRAIT-BETANCOURT
Centro de Seguros Bldg., Suite 414,
701 Ponce de León Avenue
San Juan, Puerto Rico 00907
Counsel for Diocese of Mayagüez

FÉLIX J. MONTAÑEZ-MIRANDA
PO Box 364131
San Juan, Puerto Rico 00936-4131
*Counsel for Diocese of Caguas and
Diocese of Fajardo – Humacao*

JORGE ALEXIS TORRES-MONTES
3260 Emilio Fagot Ave.
Ponce, Puerto Rico 00730-4603
Counsel for Diocese of Ponce

PARTIES TO THE PROCEEDING

The names of Applicants are listed on the cover. Because Respondents include some 180 current or former employees of various Catholic entities and their spouses (collectively “Plaintiffs”), a full list of Plaintiffs is included in the Appendix to this Application, at Q-1. Additionally, the Catholic School Employees Pension Trust and three schools—adverse to the Plaintiffs below—are not joining Applicants’ petition and are therefore technical Respondents. The schools are Perpetuo Socorro Academy, San José Academy, and San Ignacio de Loyola Academy. Likewise, Father P. Milton Rivera, one of the Trust’s fiduciaries, filed an informative motion at the Puerto Rico Supreme Court and is thus technically a Respondent.

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Applicants Roman Catholic Archdiocese of San Juan, Puerto Rico, and the Roman Catholic Dioceses of Ponce, Arecibo, Caguas, Mayagüez and Fajardo-Humacao, Puerto Rico (“Dioceses” or “Applicants”) respectfully request a stay—before Monday, June 25—of final orders of the Puerto Rico Supreme Court pending this Court’s disposition of the Applicants’ forthcoming certiorari petition.

INTRODUCTION

In a move reminiscent of church property seizures during the French Revolution, a 6-2 majority of the Puerto Rico Supreme Court has issued a final order that directs the seizure of property of all six separate and independent Roman Catholic dioceses in Puerto Rico—as well as all 338 of their constituent parishes and other Catholic entities—to secure a potential judgment against *three* Catholic schools. This and a related order also “pierces”—and thereby obliterates—the established distinctions among the hundreds of distinct entities of the Roman Catholic Church in Puerto Rico, and in so doing holds that none of those entities has “legal capacity” or personhood. As Justice Rodriguez notes in dissent, the majority has thus improperly “reconfigure[ed]” the Church’s “internal and hierarchical ecclesiastical organization ...” App. A-28. And because, as Justice Colon urges, “we are dealing with a matter of particular importance regarding the separation of Church and State,” this Court should intervene to “rectify the error.” App. A-68.

The underlying lawsuit effectively seeks to hold all Catholic entities in Puerto Rico jointly and severally liable for the three schools’ alleged failure to fulfill pension obligations to their teachers, the Plaintiffs below. The lawsuit does so by asserting broad claims against the entire “Holy Catholic Apostolic Church on the Island of

Puerto Rico.” Because there is no entity by that name, the generic reference can only mean—and has been taken by the Puerto Rico courts to include—every Roman Catholic entity in the Commonwealth.

Moreover, a narrower order by the intermediate Puerto Rico Court of Appeals, which Applicant Archdiocese is willing to comply with, would keep pension payments flowing to the Plaintiffs without threatening the structure of the Catholic Church. But the Puerto Rico Supreme Court, apparently seeking deeper pockets, has “reconfigured” the structure of the Catholic Church so as to authorize the seizure of millions of dollars of assets from all Catholic entities.

In two core respects, the Seizure Order (and related orders) departs from settled federal constitutional and statutory law. Not surprisingly, therefore, it starkly conflicts with decisions of this Court on critical issues of federal law, and therefore merits this Court’s review and reversal—perhaps summarily.

First, the Seizure Order conflicts with this Court’s consistent holding that the First Amendment (among other constitutional and statutory provisions) forbids government entities from second-guessing churches’ organizational structures. *E.g. Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 709 (1976). The Seizure Order does just that: It ignores the carefully crafted legal structure by which the Catholic Church operates in Puerto Rico pursuant to both the civil law under the 1898 Treaty of Paris and Roman Catholic Canon Law, which grants separate, independent dioceses, and individual parishes within those dioceses, the authority to enter into contracts and to sue and be sued. Instead of recognizing and accepting

these structures, the Seizure Order lumps all these entities into a single undifferentiated mass, thereby making each of them jointly and severally liable—and subject to property seizures—for the alleged liabilities of the three schools.

Second, the Seizure Order conflicts with this Court’s decision in *Connecticut v. Doebr*, 501 U.S. 1, 4 (1991), which held that notice, a hearing, and a bond are all required for a court to attach—much less seize—an entity’s assets to secure payment of a possible future judgment. Here the orders affirmed by the Seizure Order were issued without notice to most of the Dioceses, without any opportunity for most of them to be heard, and without a bond protecting *any* of the Dioceses and their constituent parishes against the risk of loss entailed by those orders—including the obvious risk of ongoing pension payments to individuals who will not be able to repay them if their claims prove unjustified. Those orders also violate the federal Religious Freedom Restoration Act, which Congress has made applicable to the Puerto Rico government, and the Free Exercise Clause.

Astonishingly, the Puerto Rico Supreme Court’s final decision does not even specifically mention—let alone respond to—the federal statutory and constitutional issues that Applicants raised below. Yet because of these conflicts with governing law, there is at least a reasonable probability that the Court will grant review on one or both of these issues, and a fair prospect that it will reverse on at least one of them.

Moreover, there can be no doubt that a failure to grant the stay requested here will impose enormous irreparable injury on the Dioceses, their constituent parishes, the Commonwealth’s 2.5 million Catholics, and other citizens throughout Puerto

Rico. For example, the immediate seizure of Catholic property—including “bonds, values, motor vehicles, works of art, equipment, furniture, accounts, [and] real estate,” App. G-2, will likely interfere with the ability of Puerto Rican Catholics to access the basic rites of their faith. And the seizure of real estate will likely make dozens of priests, nuns, seminarians, and students homeless.

Moreover, the forced seizure of property and loss of legal capacity will make it much more difficult for those parishes, the Dioceses, and other Catholic entities to provide relief to victims of Hurricane Maria and the overwhelming poverty that pervades many parts of Puerto Rico. If enforced according to its terms, the Seizure Order will also render unavailable the assets that Catholic radio and television stations need to meet their charge to preach the gospel. And the property seizure and loss of legal capacity will make it difficult for the Archdiocese, the Dioceses, their many parishes, and all associated Catholic entities, to make their payrolls or meet other financial obligations—including, among others, to other school teachers.

Despite all this, the Puerto Rico Supreme Court has denied—without analysis—the stay requests Applicant has filed there. Under that court’s rules, absent a stay, the mandate associated with the Seizure Order will issue on Monday, June 25, 2018, bringing with it all the ruinous effects described above.

For all these reasons, and others explained below, a stay should be granted before Monday, June 25.

QUESTIONS PRESENTED

The petition for certiorari will present two important issues concerning attempts by courts to hold religious (and other) organizations financially responsible for an alleged breach of contract by a related organization:

1. Do the First Amendment and the Religious Freedom Restoration Act (RFRA) permit a court, in granting financial relief based on an alleged contract with a constituent entity of a religious organization, to ignore or “pierce” the organization’s own juridical structure and, without attempting to satisfy strict scrutiny, impose relief on every entity associated with the organization?
2. Do the federal Due Process Clause, the First Amendment, and RFRA permit a court, without attempting to satisfy strict scrutiny, to attach, seize, or freeze a religious entity’s assets to secure a possible future judgment, without a bond, hearing, or prior notice?

BACKGROUND

A proper understanding of this dispute requires familiarity with the organization of the Catholic Church in Puerto Rico; the Catholic Schools’ pension plan; the proceedings leading to the seizure orders by the trial court; and subsequent proceedings, including the Puerto Rico Supreme Court’s own Seizure Order.

A. Organization of the Roman Catholic Church in Puerto Rico

This Court has already recognized that the Roman Catholic Church has inherent rights in Puerto Rico under the 1898 Treaty of Paris. Under that treaty, as this Court put it, “the Roman Catholic Church has been recognized as possessing legal personality [with] its property rights solemnly safeguarded.” *Ponce v. Roman Catholic Apostolic Church*, 210 U.S. 296, 323–324 (1908). Rejecting an argument that the Catholic Church needed to be incorporated, this Court held that the Treaty of Paris inherently gave the Church “juristic personality and legal status.” *Id.* at 309–

310. As the Puerto Rico State Department also acknowledges, the Roman Catholic Church recognized in that treaty is not a Puerto Rico-specific entity but is rather (according to the Department) a “Part of the Vatican State.” App. R-1 (Spanish).¹

To date, the Holy See—the governing body of the worldwide Roman Catholic Church—has created six Dioceses in the Puerto Rican Commonwealth. The Diocese of San Juan has operated on the island of Puerto Rico since 1511, becoming an Archdiocese in 1960. Five additional Dioceses have also been formed—in Ponce (1924), Arecibo (1960), Caguas (1964), Mayagüez (1976), and Fajardo-Humacao (2008). When each new Diocese was formed, it oversaw area formerly overseen by the previously-existing Dioceses.

Together, these six Dioceses—Applicants here—serve and oversee 338 parishes. And the Dioceses’ property, as well as property held by individual parishes—currently provides living quarters for dozens of people, including priests, nuns, seminarians, students, and the homeless. Archbishop Declaration, App. K-2.

There is, moreover, no single entity of the Catholic Church in Puerto Rico that represents or oversees all Catholic entities in the Commonwealth. *Id.* K-1. For example, the Archdiocese of San Juan has no independent authority over the other Dioceses. App. F-29–30 (Court of Appeals decision). Rather, each Diocese operates under the direction of its local bishop, in accordance with Canon Law. App. F-15–16 (Court of Appeals decision); Catholic Canon Law §§ 515, 520, 532.

¹ See Bishop Fremiot Torres Oliver, *Comment: Juridical personality of the Roman Catholic Churches [sic] in Puerto Rico*, 15 *Revista de Derecho Puertorriqueño* 307, 307–308 (1976) (hereinafter “Torres Oliver”).

B. The Catholic Schools Employee Pension Plan

In 1979, the Superintendence of Catholic Schools of the Archdiocese of San Juan sponsored a pension plan and trust fund. App. F-4 (Court of Appeals decision).

1. Some eighty-three Catholic institutions were originally part of this plan, including the Archdiocese (as an employer) and the three schools that are the subject of this litigation—Perpetuo Socorro Academy, San José Academy, and San Ignacio de Loyola Academy. The plan is known as the Catholic Schools Employee Pension Plan. App. F-4 (Court of Appeals decision).

Under the plan, each participant organization contributes between two and six percent of its payroll to the fund. App. F-52 (Court of Appeals decision). Employees are not asked to contribute—and, in fact, have never contributed. App. F-4 (Court of Appeals decision). The beneficiaries of the plan include both retired and current teachers and other former and current employees of participating Catholic entities. The plan was designed to provide compensation above and beyond the Social Security and Medicare benefits that the teachers also receive.

Before the Seizure Order, each of the sued schools also had a separate legal capacity and status, either on its own or as part of a Catholic parish. The Perpetuo Socorro Academy is part of the Perpetuo Socorro Parish. App. F-40 (Court of Appeals decision). The San José Academy has legal personality through the San José Parish. App. F-41 (Court of Appeals decision). San Ignacio Academy is both a parochial school of the San Ignacio Parish, and attached to a Jesuit Order, known as the Order of the Company of Jesus in Puerto Rico, Inc. App. F-41 (Court of Appeals decision).

2. The pension plan was successful for many years. However, for the past several years enrollment at all Puerto Rico schools—including Catholic schools—has declined because of reduced birthrates and migration of large numbers of Puerto Ricans to other locations.² This also caused a stark reduction in the number of institutions participating in the Plan—from the original eighty-three down to forty-three.

As some Catholic schools have been forced to shut down and leave the plan, the Fund could no longer pay full pensions to its beneficiaries. App. F-38 (Court of Appeals decision). As its liabilities increased, the Fund was eventually forced to cease distributing pensions. App. F-2–5 (Court of Appeals decision).

C. Preliminary Trial Court Proceedings

Plaintiffs here—some of the plan’s beneficiaries from the three schools listed above—seek to compel other Catholic entities to fund their pensions. To that end, Plaintiffs originally purported to sue an entity called “The Holy Catholic Apostolic Church in the Island of Puerto Rico, Inc.” (“La Santa Iglesia Católica y Apostólica en la Isla de Puerto Rico, Inc.” in Spanish).³ This is a legally recognized entity, but it is an Orthodox Christian entity, with no relation to the Roman Catholic Church.

² See, e.g., Jens Manuel Krogstad, et al., *Puerto Rico’s losses are not just economic, but in people, too*, Pew Research (July 1, 2015), available at: <http://www.pewresearch.org/fact-tank/2015/07/01/puerto-ricos-losses-are-not-just-economic-but-in-people-too/>

³ The complaint, in Spanish, appears beginning on page N-1 of the appendix. No translation is presently available.

Faced with this problem, the Plaintiffs asserted that they were really suing the “Roman Catholic and Apostolic Church in Puerto Rico”— which was not included as a defendant, but which they claimed to be a distinct legal entity with supervisory authority over all Roman Catholic entities in the Commonwealth. See App. I-7, H-2; see also P-6 (Spanish). In fact, however, there is no Puerto Rican Roman Catholic entity with supervisory authority over all such entities. App. L-1 (Archbishop Affidavit). The only Roman Catholic entity with such general oversight responsibility is the Holy See, headquartered at the Vatican, which can only be sued pursuant to the Foreign Sovereign Immunities Act (FSIA). *Id.*

Nevertheless, in an apparent effort to find a “deep pocket” on which to impose liability, Plaintiffs claimed that the Archdiocese of San Juan, the Superintendence of Catholic Schools for the Archdiocese of San Juan, the Superintendence of Catholic Schools of Caguas, and the named schools (among others) were in fact dependents of a Commonwealth-wide Catholic entity. App. P-6 (Fourth Amended Complaint) (Spanish). Moreover, to secure payment of their claims, Plaintiffs made a sweeping request for “seizure of the assets of the Roman Catholic and Apostolic Church in Puerto Rico[.]” App. F-5 (Court of Appeals decision).

Plaintiffs also sought a preliminary injunction forcing all Catholic entities in Puerto Rico to fund the now-defunct pension plan while the litigation proceeds. The Superior Court of San Juan originally denied the plaintiffs’ motion, and the Puerto Rico intermediate appellate court—the Court of Appeals—affirmed that denial. But in July 2017, the Puerto Rico Supreme Court reversed. That court granted the

preliminary injunction and instructed the trial court to consider whether the three schools had “legal capacity” or instead are “doing business as” “the Roman Catholic Apostolic Church,” rather than as separate entities. App. J-11.

D. The Trial Court’s Rulings on Remand

On remand, the trial court pierced the veil of the Catholic entities, concluding “that the sued schools, as well as the Archdiocese[] of San Juan and the Superintendence of Catholic Schools, did not have [their] own legal capacity.” App F-8 (Court of Appeals decision) (describing trial court decision); App. I-7 (trial court decision).

First, the trial court (on March 16, 2018) issued a decision concluding that the schools and other defendant entities “were part of, or were dependencies of, the Catholic, Apostolic and Roman Church in Puerto Rico, who has its own legal capacity by virtue of the Treaty of Paris of December 10, 1898.” App. F-8 (Court of Appeals decision) (describing trial court decision); see also App. I-7 (trial court decision). Even though two of the schools were incorporated, or were at a minimum part of the associated parishes, the trial court denied the schools (or their parishes) legal status, *id.*

In holding that the schools were instead part of a Puerto Rico-wide Catholic entity, the trial court relied upon a certification from the Puerto Rico Department of State. That certification declares that: “pursuant to the Treaty of Paris of December 10, 1898, the ‘Roman Catholic Apostolic Church’ has its own legal personality *as it is part of the Vatican State* and, thus, does not have to register as a corporation in the Department of State.” see App. R-1 (Spanish) (emphasis added).

Next, on March 26, the trial court effectuated its March 16 findings: Having rejected the legal personhood of all other Catholic entities in Puerto Rico, the court ordered “the Roman Catholic and Apostolic Church in Puerto Rico ... to immediately and without any further delay [] continue issuance of payments to plaintiffs according to the pension Plan[.]” App. H-2. It further ordered the same entity to “proceed to deposit the sum of 4.7 million dollars” to the court, presumably to fund the Plan. App. H-2. It ordered these payments under the threat that the court would next “order the seizure of the banking accounts of the Roman Catholic and Apostolic Church in Puerto Rico.” App. H-2.

Then, on March 27, the trial court issued its promised seizure order, but in expanded form: It ordered the court’s Sheriff “to seize assets [] of the Holy Roman and Apostolic Catholic Church in an amount of \$4,700,000 to secure the payment of plaintiffs’ pensions.” App. G-2. This seizure includes the right to confiscate “bonds, values, motor vehicles, works of art, equipment, furniture, accounts, real estate and any other asset belonging to the Holy Roman and Apostolic Catholic Church, and any of its dependencies, which is located in Puerto Rico.” App. G-2. This seizure order expressly orders the Sheriff to “break[] locks,” “open[] doors,” or “forc[e] entry ... night or day” in any Catholic Church entity in Puerto Rico. App. G-2–3.

E. The Puerto Rico Court of Appeals’ Decision

The Court of Appeals reversed. It began by accepting the plaintiffs’ argument that they were not in fact suing the worldwide Roman Catholic Church, including “the Holy See or the State of Vatican City[.]” App. F-28. Correctly recognizing that

the worldwide Catholic Church was not being sued, and could not be sued under the FSIA, the Court of Appeals examined the church's organization in Puerto Rico.

Citing the Treaty of Paris, the court ruled that “the legal personhood of the Catholic Church *or its components* in Puerto Rico is recognized with the same scope, conditions, and content as it was recognized by the Spanish State.” App. F-34 (emphasis added). Based on this premise, as well as the First Amendment requirement to respect the Church's own organizational choices, the court concluded that each Diocese “has its own legal personality separate from the others.” App. F-37. The court thus rejected the plaintiffs' attempt to reach the assets of every Catholic entity through the fiction of suing the entire “Roman Catholic Apostolic Church in Puerto Rico”—an entity the court correctly held does not exist. App. F-2, F-31.

Having held that the other specifically named defendants were the only proper defendants, the Court of Appeals concluded that it “cannot impose additional obligations on the codefendants other than the ones they had initially undertaken, since it is not appropriate under the law. Furthermore, such a scheme would be tantamount to giving way to a new pension plan through a legal process.” App. F-40.

The Court of Appeals, however, issued a revised preliminary injunction requiring the specific Catholic entities that *are* parties to the suit to resume their regular payments, but to make them to the trial court (rather than the Plan), so that the court can in turn resume pension payments to the Plaintiffs. App. F-53–54. The court also held that Plaintiffs were required by the local rules to post a bond. App. F-55. The Archdiocese has stated its willingness to comply with this revised

preliminary injunction—which would allow the Plaintiffs to resume receiving their pension payments immediately. App. F-53–54.

F. The Puerto Rico Supreme Court’s Final Decisions

That, however, was not good enough for the Plaintiffs, who immediately (on May 14, 2018) filed a “Motion in Aid of Jurisdiction and/or Expedited Processing,” asking the Puerto Rico Supreme Court to reinstate the trial court’s March 16 and March 26 piercing decisions. It was also not good enough for the Puerto Rico Supreme Court. App. A-1, B-1, C-1, D-1, E-1.

First, on May 24, in a 6-2 decision, that court granted the Plaintiffs’ request to “confirm” or reinstate the trial court’s March 16, 2018 decision. As noted earlier, that decision had held that none of the specific Roman Catholic defendants has “its own legal capacity,” App. F-8, I-7, and therefore that the only proper defendant is “the Roman Catholic and Apostolic Church in Puerto Rico.” App. I-7. Without addressing the Court of Appeals’ First Amendment analysis, the Puerto Rico Supreme Court thus effectively “pierced the corporate veil” of all 300-plus Roman Catholic entities in the Commonwealth, lumping them into a single, undifferentiated mass it dubbed the “Roman Catholic and Apostolic Church in Puerto Rico.”

The other key component of the May 24 decision was the granting of Plaintiffs’ request to confirm the trial court’s March 16 decision directing the undifferentiated Church “to proceed immediately with the issuance of payments to plaintiffs under the Pension Plan,” and to do so without a bond. App. E-2. The court likewise ordered compliance with the trial court’s March 26, 2018 threat to “order the seizure of the

banking accounts of the Roman Catholic and Apostolic Church in Puerto Rico” unless the Church made a payment of \$4.7 million to the trial court. App. H-2.

The Archdiocese filed a motion for reconsideration on May 25, 2018, which was denied without substantive analysis approximately two and a half hours after it was filed. App. D-1. The Archdiocese then filed a Second Motion for Reconsideration, which included an affidavit from Archbishop Roberto Octavio González-Nieves. App. K-1–2. Like the Court of Appeals’ decision, the affidavit explained that the structure of the Catholic Church did not create any “single entity of the Catholic Church in Puerto Rico that represents or oversees all Catholic entities in the territory.” App. K-1. The affidavit also summarized the impact of a freeze or seizure of the Catholic Church’s bank accounts or property in Puerto Rico. App. K-1–2. For example, the Archbishop explained that “the seizure of funds or property will impact the parishes’ ability to hold their scheduled masses” and even the parishes’ ability to “conduct marriages, baptisms and first communions.” App. K-2. The Puerto Rico Supreme Court denied the Second Motion for Reconsideration without opinion. App. C-1–2

Not content with this victory, Plaintiffs requested that the Puerto Rico Supreme Court specifically reconfirm the trial court’s March 27 seizure order. That order instructs the Sheriff “to seize assets [] of the Holy Roman and Apostolic Catholic Church in an amount of \$4,700,000,” including “bonds, values, motor vehicles, works of art, equipment, furniture, accounts, real estate and any other asset belonging to the Holy Roman and Apostolic Catholic Church, and any of its dependencies, which is located in Puerto Rico.” App. G-2. The Archdiocese opposed this Motion, filing

another affidavit from the Archbishop explaining that he was not authorized to comply with any order directed against any entity known as the “Roman Catholic and Apostolic Church in Puerto Rico.” App. L-1. He further explained that “the Archdiocese of San Juan cannot comply with [the] orders because *none* of them, based on their plain language, are directed to the Archdiocese of San Juan, or me, as the Archbishop of the Archdiocese of San Juan.” App. L-1.

Meanwhile, in response to an order from the Puerto Rico Supreme Court to “show cause” why the Court of Appeals’ decision should not be reversed, all of the Dioceses joined in defending that decision. They pointed out that the Court of Appeals’ conclusions about the structure of the Catholic Church were required by the First Amendment and RFRA. See App. N-6–10. They further pointed out that the trial court’s effort to subject the non-party Dioceses to liability, and the trial court’s threat to seize church assets without a bond, were both violations of federal due process requirements, as interpreted by this Court in *Doehr*. App. N-13–14.

Nevertheless, in another 6-2 opinion, the Puerto Rico Supreme Court fully reversed the Court of Appeals’ decision and reconfirmed the trial court’s March 27 order. This latest Seizure Order—issued on June 11, 2018—did not even acknowledge Applicants’ persistent showings under *Doehr*, RFRA, or the First Amendment, except to claim that Applicants were not substantially burdened, App. A-13–14, and that the court was required to apply neutral principles of law, App. A-16. Instead, the Puerto Rico Supreme Court reversed and remanded to the trial court to oversee enforcement of its March 26 and March 27 orders. That decision also denied the pending motions

of the various other Dioceses (besides the Archdiocese) to intervene to protect their interests. App. A-6 n.3.

In separate dissents, Justices Rodriguez and Colón sharply criticized the majority for violating (among other things) federal due process and First Amendment principles. For example, Justice Rodriguez accused the majority of improperly “*de facto* and *de jure* reconfiguring the internal and hierarchical ecclesiastical organization of the Roman Catholic and Apostolic Church.” App. A-28. And Justice Colón-Pérez noted that this case “has all the necessary elements to be reviewed by” this Court, and expressly urged this Court to “rectify the error committed by” the Puerto Rico Supreme Court, since “we are dealing with a matter of particular importance regarding the separation of Church and State.” A-68 (emphasis removed).

G. Stay Proceedings

On June 7, 2018, while the Plaintiffs’ motion to seize assets was still pending, the Archdiocese, joined by the other Dioceses, filed a request in the Puerto Rico Supreme Court for a stay of that Court’s May 24 order. The Applicants also filed a sworn affidavit by the Vicar General of the Archdiocese, explaining the practical impacts of the loss of legal status on the ability of the Archdiocese to “achieve her religious mission.” App. M-3. The morning after the June 11 Seizure Order, Applicants also moved to stay that Order, which will go into effect once the mandate issues, which is currently scheduled to occur on Monday, June 25. On June 14, the Puerto Rico Supreme Court denied both stay motions. App. B

JURISDICTION

The opinion of the Puerto Rico Supreme Court adopting the trial court's orders is subject to review by this Court under 28 U.S.C. § 1258. The Puerto Rico Supreme Court has issued a final order authorizing the trial court to seize the property of Catholic entities in Puerto Rico and restructuring the Catholic Church in the process. Accordingly, under 28 U.S.C. § 2101(f), this Court has jurisdiction to entertain and grant a request to stay the orders pending the filing of a petition for certiorari. Additionally, this Court has authority under the All Writs Act, 28 U.S.C. § 1651(a), to stay all orders by the courts below, in aid of its jurisdiction.

REASONS FOR STAYING THE SEIZURE ORDER

The standards for granting a stay pending review are “well settled.” *Deaver v. United States*, 483 U.S. 1301, 1302 (1987) (Rehnquist, C.J., in chambers). Preliminarily, the applicant must show that “the relief sought is not available from any other court or judge,” Sup. Ct. R. 23.3—a conclusion established here by the fact that the Puerto Rico Supreme Court denied the Archdiocese's requests to stay the Seizure Order and related orders. App. B-1; C-1; D-1; E-1. A stay is then appropriate if there is “(1) a reasonable probability that four Justices [of this Court] will consider the issue sufficiently meritorious to grant certiorari; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay.” *Hollingsworth v. Perry*, 558 U.S. 183, 189 (2010) (per curiam). Moreover, in close cases the Circuit Justice or the Court will “balance the equities” by exploring the relative harms to applicant and

respondent, as well as the interests of the public at large. *Rostker v. Goldberg*, 448 U.S. 1306, 1308 (1980) (Brennan, J., in chambers).

Each of these considerations points decisively toward issuing a stay of the Seizure Order and related orders pending this Court’s disposition of the Applicants’ forthcoming certiorari petition.

I. There is a reasonable probability that four Justices will vote to grant certiorari, and a fair prospect the Court will reverse.

As to the first two requirements: There is a reasonable probability that four Justices will vote to grant certiorari on each question presented, and a fair prospect this Court will reverse the Puerto Rico Supreme Court on both questions. *A fortiori*, there is at least a fair prospect of certiorari and reversal—perhaps even summary reversal—on at least one of those two issues.

A. The religious organization “piercing” issue satisfies the “reasonable probability” and “fair prospect” requirements.

As noted, rather than respecting the hierarchical structure and organization of the Roman Catholic faith, the Puerto Rico Supreme Court has re-envisioned the Church in its preferred image and engaged in ecclesial “veil-piercing”: Rather than focusing on the specific Catholic entities that allegedly breached the employment contracts underlying the plaintiffs’ pension claims, and thus respecting the Church’s own canonical and civil legal structure, the Puerto Rico Supreme Court has improperly imposed what amounts to joint and several liability upon every Catholic entity in Puerto Rico. The court has done this by imagining a non-existent, overarching Catholic entity *in Puerto Rico* that controls all other Catholic entities, and on that basis has ordered the seizure of all the assets of every Catholic entity in the

Commonwealth. Faced with so flagrant a violation of the Religion Clauses and other federal law, there is a reasonable probability that four Justices will vote to grant certiorari on this issue, and a fair prospect that the Court will reverse the decisions below—perhaps summarily.

1. The orders below contradict the settled First Amendment rule—rooted in the Free Exercise and Establishment Clauses—that “civil courts shall not disturb the decisions of the highest ecclesiastical tribunal within a church of hierarchical polity.” *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 709 (1976). Rather, courts “must accept such decisions as binding on them, in their application to the religious issues of doctrine or polity before them.” *Ibid.* These principles apply not just in disputes over doctrine and “the control of church policy,” but also in disputes over churches’ “*structure* and administration.” *Ibid.* (emphasis added).

For example, *Milivojevich* involved a challenge by a pastor to the actions of his central church in defrocking him. *Id.* at 698. He claimed the church’s actions were “defective under the internal regulations of the Mother Church and were therefore arbitrary and invalid.” *Ibid.* The Illinois Supreme Court accepted this argument, but this Court reversed. It ruled that the Illinois court had resolved a “quintessentially religious controvers[y] whose resolution the First Amendment commits exclusively to the highest ecclesiastical tribunals of this hierarchical church.” *Id.* at 720; *accord Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 187 (2012); see also *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church*, 344 U.S. 94, 120–121 (1952); Mark E. Chopko & Michael F. Moses, *Freedom to be a*

Church: Confronting Challenges to the Right of Church Autonomy, 3 Geo. J.L. & Pub. Pol’y 387 (2005) (summarizing numerous church autonomy cases).

Like the Illinois Supreme Court in *Milivojevich*, the Puerto Rico Supreme Court has resolved a “quintessentially religious controvers[y]”—namely, the proper “structure” of the Roman Catholic Church in Puerto Rico—in a way contrary to the Church’s own decisions. Although there was once an entity known as the Diocese of Puerto Rico that oversaw the whole island, that entity no longer exists. App. A-90–92 (Colón-Pérez, J., dissenting). In its footprint, the Catholic Church has created six distinct, independent dioceses. App. A-92–93. (Colón-Pérez, J., dissenting) (citing canon law). And, as Fremiot Torres Oliver, the former Bishop of Ponce, explained, “[e]ach diocese . . . enjoys the same legal status as the original Diocese of Puerto Rico.” Torres Oliver, *supra* n. 1, at 307–308.

That is why the core of the Seizure Order is a reformulation of the Catholic Church’s “structure and administration,” one that invents out of whole cloth a single Catholic juridical entity covering all of Puerto Rico.⁴ That order further rejects the

⁴ Indeed, parts of the record suggest Plaintiffs are really trying to seek relief against the Holy See. As Justice Colón stated in his dissenting opinion, “Some say that ‘*all roads lead to Rome*’ . . . and that is exactly where a majority of this Court has sent a group of teachers to reclaim their right to a dignified retirement—to Rome, the seat of the Roman Catholic Church.” App. A-67. But because, as Justice Colón also recognized, any such action would violate the Foreign Sovereign Immunities Act, the Holy See is not and cannot be a party to this case.

legal organization of the schools, their parishes and the Dioceses in order to graft them into the made-up Roman Catholic entity.⁵

This creation of a new church structure thus transforms a claim against three schools (and their home parishes) into a claim against every Catholic entity in the Commonwealth. Such an intrusion upon—indeed, a wholesale reorganization of—the internal governance of any religious entity falls well beyond the competence or legitimate authority of any court subject to the Constitution of the United States.

2. As shown by the sworn statements of the Archbishop of San Juan in the Puerto Rico courts (at App. K, L), the Seizure Order also ignores the carefully designed legal structure by which the Catholic Church operates in Puerto Rico. Catholic Canon Law grants independent dioceses and individual parishes within those dioceses the authority to enter into contracts and to sue and be sued. *E.g.* Catholic Canon Law §§ 515, 520, 532. But instead of recognizing and accepting that structure, the Seizure Order tries to lump all these organizations into a single entity—with the effect of making every Catholic entity jointly and severally liable, and subject to seizure of its property—for the alleged breaches by three specific Catholic schools.

To be sure, unlike in many church autonomy cases, the dispute here is not between two factions of a church, each claiming control over church property or the right to make a particular ecclesiastical decision. But what the Puerto Rico Supreme Court has done in this case is even more egregious than what the lower courts did in

⁵ The Seizure Order also relies on this reformation to justify its refusal to let the Dioceses (other than the Archdiocese) intervene to protect their property. App. A-6 n.3. The Applicants other than the Archdiocese challenge that decision as well.

Milivojevich and similar cases—namely, substituting its judgment for that of the established hierarchy on matters of church doctrine and structure. See App. J-11; App. F-8 (Court of Appeals decision) (describing trial court decision); App. I-7 (trial court decision). In this case, the Puerto Rico Supreme Court has dictated a particular view of the Catholic Church’s structure and organization without even citing any ecclesiastical support. The absence of even purported ecclesiastical authority for this restructuring shows that, for First Amendment purposes, “this wolf comes as a wolf.” Cf. *Morrison v. Olson*, 487 U.S. 654, 699 (1988) (Scalia J., dissenting).

Given the clear violation of established church autonomy principles, there is at least a reasonable probability that four justices will vote to grant certiorari—and indeed, a majority may vote to grant and summarily reverse.

2. The Puerto Rico Supreme Court’s decision also conflicts with the Tenth Circuit’s decision in *Colorado Christian University v. Weaver*. 534 F.3d 1245, 1258 (10th Cir. 2008). There a statute allowed state funding to “sectarian” schools but not “pervasively sectarian” schools. *Id.* In an opinion by then-Judge McConnell, the Circuit noted that “Colorado necessarily and explicitly discriminates among religious institutions, extending scholarships to students at some religious institutions, but not those deemed too thoroughly ‘sectarian’ by governmental officials.” *Id.*, Thus, “this is discrimination ‘on the basis of religious views or religious status,’ and is subject to heightened constitutional scrutiny.” *Id.* (citing *Employment Division v. Smith*, 494 U.S. 872, 877 (1990)).

Here, the Catholic Church is the only church whose legal status has been drastically altered by the Puerto Rico courts. Indeed, all other churches in Puerto Rico remain free to incorporate distinct legal entities and have them respected by the courts. Those churches and schools thus do not face the risk of having all their entities financially ruined based on a lawsuit against only one or a few of those churches' entities. Only Catholic entities face this risk. This is the kind of discrimination among religious institutions that the Tenth Circuit forbids.

Such discrimination also comes very close to the discrimination this Court held foreclosed by the First Amendment in *Trinity Lutheran v. Comer*, 137 S. Ct. 2012 (2017). To be sure, that decision by its terms addressed only the distinction between religious and non-religious status. *Id.* at 2024–2025.⁶ But the First Amendment has long been held to foreclose discrimination, not only between religious and secular institutions, but also *among* religions. *E.g.*, *Larson v. Valente*, 456 U.S. 228, 244 (1981); *Everson v. Board of Education*, 330 U.S. 1, 15 (1947). In light of that tradition, and the conflict the Puerto Rico Supreme Court has now created with the Tenth Circuit, there is a reasonable probability that four justices will vote to grant certiorari, and a fair prospect the Court will reverse.⁷

⁶ Indeed, *Trinity Lutheran's* condemnation of discrimination between religious and secular entities is also directly implicated here: The Puerto Rico's decisions leave in place the legal structure allowing non-religious schools to enjoy legal personhood, while denying that right to Catholic schools.

⁷ Remarkably, the Puerto Rico Supreme Court concludes that, by allowing the Catholic Church to create its own legal entities, Puerto Rico has allowed Catholicism to become the official state religion. App. A-15. But this ignores this Court's decision in *Ponce* U.S. at 323–324 (1908), which, as explained above, correctly held that the Treaty of Paris granted such rights to the Church, including the rights to create new

3. There is also a reasonable probability that four Justices will vote to grant review because the Puerto Rico Supreme Court’s decisions violate the Religious Freedom Restoration Act. Under RFRA, governmental entities—including the Puerto Rico courts—may not substantially burden a religious organization’s exercise of religion unless they demonstrate that there is a compelling interest in burdening the organization and that the order is the least restrictive means of doing so. 42 U.S.C. 2000bb-1; *id.* at 2000bb-2(2) (applicability to Puerto Rico); see also, *e.g.*, *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 430 (2006).

Here, there is obviously a substantial burden on the Applicants’ religious exercise. As the Affidavit of the Archdiocese’s Vicar General explains, “The Archdiocese needs legal capacity to acquire goods and property; maintain bank accounts; execute contracts; [and] provide services[.]” App. M-2. And, as the Vicar General also explains, the Puerto Rico Supreme Court’s order seizing the Archdiocese’s assets and denying legal personhood to the Archdiocese means that the Archdiocese:

- “cannot purchase means that are necessary for providing religious services. This includes religious objects (hosts, etc.) needed for mass, baptisms, marriages and confirmations,”
- “would have no safe place to store contributions provided by members,”
- “would be seriously impaired in its ability to pay and retain employees,” and

legal entities to protect “solemnly safeguarded” property rights. *Id.* Rejecting an argument that the Catholic Church needed to be incorporated, this Court held that the Treaty of Paris inherently gave the church “juristic personality and legal status.” *Id.* at 309 – 310. By rejecting the church’s chosen legal structure, the Puerto Rico Supreme Court runs afoul of the Church’s right, recognized in *Ponce*, to protect its property.

- would be hindered in providing “assistance to the needy [and] care for its religious buildings;” in paying “costs for seminarians, monks and nuns; in “operat[ing] health clinics and catechesis centers;” and in “maintain[ing] a Metropolitan Ecclesiastical Tribunal to adjudicate penal and marital controversies.”

App. M-2–3.

There is also no doubt that the seizure and loss of legal status or personhood substantially burdens the Archdiocese: “Each of these effects will seriously impair the Archdiocese’s ability to achieve her religious mission.” App. M-3. Other Dioceses will experience similar burdens if the Seizure Order and related orders are enforced.

In addition, the requirement that the Applicants together pay \$4.7 million creates religious burdens of its own. For one thing, the courts’ orders do not specify which of the hundreds of Catholic entities in Puerto Rico must pay, or in what amounts. See App. A-36–37, 63–64 (Rodriguez, J., dissenting). But even if the latter problem could be solved, the payment of \$4.7 million—far more than any payments arguably owed to the plaintiffs here—would itself be a burden on religious exercise because it would require a substantial curtailment of the Church’s religious activities. See App. K, L, M. Indeed, the burden created by the seizure and payment mandate is more pronounced because of Puerto Rico’s current financial conditions: Puerto Rico’s decade-long recession has burdened the efforts of the Dioceses and their parishes to care for Puerto Rico’s population. These burdens were only compounded when Hurricanes Irma and Maria hit Puerto Rico—killing, as a recent Harvard study

estimates, over 4,600 people.⁸ Immediate seizure of millions of dollars of Applicants' assets would devastate their efforts to help Puerto Ricans overcome these tragedies.

Meanwhile, the Puerto Rico government—including its courts—lacks a compelling interest in forcing some Catholic institutions to pay the (alleged) pension obligations of other Catholic institutions. And Plaintiffs cannot possibly show that the least restrictive means of meeting that interest is to invent an entirely new entity, remaking the structure of Puerto Rico's six Dioceses by linking them in a way that the Church's hierarchical structure forbids.

4. The Puerto Rico Supreme Court nevertheless claimed (at App. A-13) that there is no substantial burden because (1) there was no interference with the selection of ministers and (2) this is simply a local contract dispute. But that ignores the point: Being subjected to liability on a contract that only some Catholic entities signed is a substantial burden on the other entities.

And even if one indulges the Puerto Rico Supreme Court's (false) conclusion that every Catholic entity is really just part of a single undifferentiated Roman Catholic Church, the burden is no less severe, especially in this context. As explained in the dissents by Justices Rodriguez and Colón, the Catholic Church in Puerto Rico has operated for centuries on the belief—reinforced by multiple decisions of the Puerto Rico courts—that the Church has authority to create independent entities, including dioceses and parishes, with legal personhood and all that implies for

⁸ Nishant Kishore, et al., *Mortality in Puerto Rico after Hurricane Maria*, 378 New Eng. J. Med., (Special Article) 1 (2018), <https://www.nejm.org/doi/full/10.1056/NEJMsa1803972>. .

liability for each other's actions. See A-46–65 (Rodriguez, J., dissenting); A-88–97 (Colón, J., dissenting). It is an enormous burden on all those entities to now be told that this long-held understanding is incorrect, and that all such entities are now subject to liability for the acts of any of the hundreds of Catholic entities now operating throughout the Commonwealth.

The Puerto Rico Supreme Court also claimed (at App. A-11) that, because it must apply “neutral principles of law” under *Jones v. Wolf*, 443 U.S. 595 (1979), and this is supposedly not a matter of “doctrine and faith,” it must simply view this as a contract case. App A-11–13. But this dodges the central dispute—namely, who, exactly contracted with the Plaintiffs? Was it the specific schools (and/or their parishes) that were sued and were named in the Plan agreement, or was it an amorphous collection of all Catholic entities throughout the Commonwealth? As the dissents and the various affidavits from the Archbishop make clear, under Catholic doctrine, it was the schools and their home parishes, not the entire collection of 300-plus Catholic entities in the Commonwealth. See App. A-46–65 (Rodriguez, J., dissenting); A-88–97 (Colón-Pérez, J., dissenting); L, M, N. Thus, the Puerto Rico Supreme Court has necessarily resolved a matter of “doctrine and faith”—the creation and structure of a diocese—and has done so *against* the Applicants.

Moreover, *Jones* instructs that a hierarchical church's determination of who holds the relevant rights and responsibilities should occur “before the dispute erupts.” 443 U.S. at 606. Here, *Ponce* makes it clear that the Catholic Church has always had the authority to protect its property in Puerto Rico as it sees fit. 210 U.S. 323–324. It

did so by organizing different legal entities, each with a legal capacity that is central to that entity's operation. Torres Oliver, *supra* n. 1, at 307–308. *Jones* itself forbids the Puerto Rico Supreme Court from now depriving that entity of the legal status that was created before this dispute began and is crucial to the operation of the Catholic Church in Puerto Rico, see App. M. Indeed, the restructuring creates a perpetual risk to all the Dioceses: A successful suit against one of them would endanger all of them—even when the other Dioceses had nothing to do with the suit. The creation of such an artificial, Commonwealth-wide legal entity is not the least restrictive means of fulfilling any purported compelling interest in forcing Catholic entities to pay the pensions of people employed by other Catholic entities.

For this reason too, there is a reasonable probability that four Justices will vote to grant review.

5. For many of the reasons already explained, there is also a fair prospect this Court will reverse if certiorari is granted—perhaps summarily. The Puerto Rico Supreme Court's invention of a new legal entity in the hierarchy of the Catholic Church violates core principles of church autonomy, and this Court will only need to follow those basic principles to reverse. Further, there is a fair prospect that this Court will find that the strict scrutiny required by RFRA is not satisfied here: The forced revision of the Catholic Church's hierarchical structure is not the least restrictive means of fulfilling any purported interest (if there is any) in forcing some Catholic entities to pay the pensions of people employed by other Catholic entities.

B. The legal standard for attaching or seizing assets of related entities satisfies the “reasonable probability” and “fair prospect” requirements.

As with the church autonomy question, there is a reasonable probability that four Justices will vote to grant certiorari to correct the legal standard used by the Puerto Rico Supreme Court in ordering the seizure of church assets to secure a possible future judgment based on the alleged failure of three Catholic schools to comply with their contractual pension obligations. In requiring the posting of such security by entities—such as the Applicant Dioceses—that were not even parties to the suit below, the Seizure Order squarely conflicts with the holding of *Connecticut v. Doebr*, 501 U.S. at 24, that such interim measures cannot be ordered without prior notice or a hearing. This case also gives the Court an opportunity to resolve an additional important issue addressed by only four Justices in *Doebr*: Is a government allowed to secure payment of a possible future judgment without a bond?

1. As this Court held in *Doebr*, the federal Due Process Clause forbids a court from “authorizing prejudgment attachment without prior notice or a hearing,” 501 U.S. at 24. Indeed, “even [] temporary or partial impairments to property rights that attachments, liens, and similar encumbrances entail are sufficient to merit due process protection.” *Id.* at 12. Since *Doebr*, the Court has also ruled that due process standards apply to all personal and real property, particularly “the security and privacy of the home and those who take shelter within it.” *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 61 (1993).

There is no doubt that the Puerto Rico Supreme Court’s decision conflicts with the holding in *Doebr*, which that decision ignores. The trial court orders affirmed by

that decision expressly direct the seizure of *all* of Applicants’ assets. Yet there has not been any evidentiary hearing as required by *Doehr*. And five of the Applicants—all the Dioceses save the Archdiocese of San Juan—have not even been *parties* to the case. This direct conflict with *Doehr* creates a reasonable probability that four justices will consider this question meritorious and vote to grant certiorari—if only for purposes of summary reversal.

2. Certiorari will be warranted for another reason as well: A bare plurality in *Doehr* held that due process also requires the posting of a bond when assets are seized or attached. 501 U.S. at 21–22. This is especially true, the plurality explained, when there has been no more than an “initial assessment of each party’s case[.]” *Id.* at 20. According to the plurality, this due process requirement is necessary to reduce the “risk of erroneous deprivation.” *Id.* at 21.

That risk of erroneous deprivation is readily apparent here: If Applicants and their parishes are forced to make a massive payment of \$4.7 million,⁹ and the plaintiffs’ claims are ultimately rejected by the courts, it is very unlikely that the plaintiffs will be able to repay whatever they will have drawn from those funds. Under the *Doehr* plurality opinion, a bond should therefore be required. The Puerto Rico Supreme Court’s conclusion (at App. A-22) that extraordinary circumstances

⁹ Given the median income for Puerto Rico—*before* Hurricane Maria—was only \$19,600, it is obvious why a \$4.7 million judgment would affect Puerto Rican dioceses far more severely than other Catholic dioceses in the United States. See U.S. Census Bureau, QuickFacts: Puerto Rico, available at: <https://www.census.gov/quickfacts/PR>.

justify not having a bond simply ignores *Doehr*, which does not contemplate such an exception.

True, this court has yet to squarely decide the issue addressed by the *Doehr* plurality. But this case gives the Court an opportunity to do just that—although resolution of that issue would likely require plenary review rather than summary reversal.

In any event, given the importance of the issue to some 2.5 million Puerto Rican Catholics, and to other institutions and individuals throughout the country, there is a reasonable probability that four Justices will vote to grant review to decide the question addressed by the *Doehr* plurality, i.e., whether attaching or seizing assets also requires a reasonable bond.

3. For many of the same reasons, the financial security aspect of the Seizure Order also violates RFRA and the Free Exercise Clause. As explained above, under RFRA, a governmental entity, including Puerto Rico, may not burden a religious organization’s rights unless the order is the least restrictive means of achieving a compelling governmental interest in forcing that organization to act or refrain from acting. 42 U.S.C. 2000bb-1, 2000bb-2(2); *accord Gonzales*, 546 U.S. at 430–431.¹⁰ Likewise, the Free Exercise Clause forbids intrusion into “the internal governance of the church,” *Hosanna-Tabor*, 565 U.S. at 188, actions targeted against just one

¹⁰ The Sixth Circuit has also recently misapplied RFRA by mistakenly applying the “to the person” analysis this Court adopted unanimously in *Gonzales* to the party *opposing* a RFRA defense instead of the party *claiming* that defense. See *EEOC v. R.G. & G. R. Harris Funeral Home*, 884 F.3d 560, 590–592 (6th Cir. 2018), *application to extend time for filing a petition for certiorari granted*, 17A1267.

religion, *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520 (1993), and incidental burdens on religious entities' other constitutional rights, including procedural due process rights, see *Employment Division v. Smith*, 494 U.S. 872, 881 (1990). Indeed, the Free Exercise Clause protects religious bodies even in the face of neutral and generally applicable laws. See *Hosanna-Tabor*, 565 U.S. at 188.¹¹ While the Seizure Order here is targeted against the Catholic Church, that order would still be subject to strict scrutiny absent targeting.

Yet the Seizure Order cannot possibly satisfy strict scrutiny. As shown above, there is no doubt that Applicants are substantially burdened by that aspect of the order. Moreover, as the Court of Appeals explained, there has been no showing of a compelling governmental interest in forcing the Applicants, in essence, to create a new pension plan out of whole cloth. App. F-40. And the lack of notice to most Applicants, or a bond as required by *Doehr*, demonstrates that the order is not the least restrictive alternative.

Moreover, the plain text of the Seizure Order demonstrates a lack of tailoring: The court's Sheriff is given unlimited rights to take any of seven enumerated categories of property from all Catholic entities throughout the territory, plus additional categories of property as needed. App. G-2. There is no effort to tailor the order to limit the burden on Applicants—let alone to identify the least restrictive means of achieving the court's objectives. Even worse, under the plain language of

¹¹ See also Oral Argument Transcript at 38. *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171 (2012) (Scalia, J.); *id.* at 57 (Kagan J.) (suggesting a distinction between institutional autonomy and individual conscience).

the order, the Sheriff has complete discretion to take religious items or materials used for worship, regardless of the items' religious significance to the church or its members. App. G-2–3. And there is certainly no effort to comply with the standards in *Doehr*, which is a minimum requirement for all entities, religious or not.

Aside from this devastating impact, property owned by the Dioceses is also home to dozens of students, priests, nuns and some individuals who would otherwise be homeless. App. K-2. These individuals' homes may be seized at any moment, creating a risk that these individuals will be displaced. As noted, such actions—which affect “the security and privacy of the home and those who take shelter within it,” *James Daniel Good Real Prop.*, 510 U.S. at 61, require even greater scrutiny.

These impacts on potentially tens of thousands of Puerto Ricans—including hurricane victims struggling to find sustenance, children looking forward to summer day camps, and lay Catholics hoping they will be able to attend Mass, further establish a reasonable probability that four Justices will vote to grant review.

4. Assuming certiorari is granted, there is also a fair prospect of reversal—indeed, summary reversal. As already explained, the Seizure Order (1) contradicts the holding in *Connecticut v. Doehr* by ordering the Sheriff to seize assets without prior notice or opportunity for a hearing; (2) contradicts the plurality in *Doehr* by seizing assets without a bond; (3) contradicts RFRA's instruction—restated in *O Centro*—that a covered government may substantially burden religious entities only if it shows it is employing the least restrictive means of achieving a compelling governmental interest; and (4) violates the Free Exercise Clause's protections for

religious entities. There is a fair prospect that the Seizure Order imposed by the Puerto Rico courts will be reversed on each of these grounds.

* * * * *

In short, there is a reasonable likelihood of certiorari, and a fair prospect of reversal, on both questions that the Applicants intend to present in their forthcoming petition. Indeed, as shown above, each of these issues would be an appropriate basis for summary reversal. It follows that there is at least a fair prospect of certiorari and reversal on at least one of those questions.

II. Without a stay, the Applicants, many other Catholic entities, Puerto Rico’s 2.5 million Catholics, and other Puerto Rico residents will suffer irreparable harm.

Not only is there a sufficient probability of review and reversal, but there is a clear likelihood that, absent a stay, the Seizure Order will produce irreparable harm. As shown above, two effects of that Order (among others) are (1) seizing the assets of all Catholic entities in Puerto Rico, and (2) restructuring the organization of the Catholic Church, stripping the Dioceses and parishes of the ability to contract or hold property. The Seizure Order and related orders will cause irreparable harm in at least five ways.

First, the seizure and loss of legal capacity will burden the free exercise rights of all Puerto Rican Catholics. Burdens on free exercise rights, like free speech rights, cause irreparable harm. See *Elrod*, 427 U.S. at 373 (“The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.”). Indeed, two circuits have found irreparable injury or harm when free exercise rights are violated under RFRA. *Kikumura v. Hurley*, 242 F.3d 950, 963

(10th Cir. 2001); *Jolly v. Coughlin*, 76 F.3d 468, 482 (2d Cir. 1996). And of course, free exercise rights have special force when the burden is shouldered by only one faith, and when only that faith's religious rites are affected. See *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520 (1993).

Here, the seizure of funds and property—never mind the lack of ability to contract or hold property—will hurt the Dioceses' vehicles for evangelization work—their television stations, radio stations, and newspapers—causing irreparable harm to the Dioceses' religious mission. Moreover, as the Archbishop and Vicar General note, both the lack of legal capacity and “the seizure of funds ... will even impair the parishes' ability to hold their scheduled masses[.]” App. K-2; see also App M-2. Such actions will also impair the parishes' ability to “conduct marriages, baptisms and first communions.” App. K-2; see also App. M-2.

To take just one example, if the Seizure Order stands, pregnant mothers and their families may well lose access to the sacred rite of baptism when their babies are born. Given an annual birth rate of 8.1 births per one thousand Puerto Ricans,¹² during the next year the Catholic mothers of some twenty thousand Puerto Rican babies will face this risk. Likewise, the marriage rate of 4.9 marriages per one thousand Puerto Ricans,¹³ means that over twelve thousand Catholic couples

¹² Central Intelligence Agency, *The World Factbook: Birth Rate*, <https://www.cia.gov/library/publications/the-world-factbook/fields/2054.html>

¹³ World in Figures, *Lowest Marriage Rates*, *The Economist*, available at: <https://worldinfigures.com/rankings/index/218>.

annually—twenty-four thousand individuals—would risk losing access to the Catholic rite of marriage.

Moreover, all 2.5 million of Puerto Rico’s Catholics will also face the risk of being unable to attend church services once the seizure of Roman Catholic assets makes their parishes unable “to hold their scheduled masses[.]” App. K-2.¹⁴

It is difficult to imagine a more direct attack on free exercise rights than preventing followers of a faith (and only one faith) from participating in their faith’s sacred rites. For this reason alone, there is a likelihood of irreparable harm absent a stay.

Second, the Seizure Order will suppress the Dioceses’ free speech rights, which itself constitutes irreparable harm. As Justice Blackmun once noted, irreparable harm occurs whenever the “suppression of protected speech” occurs. *CBS v. Davis*, 510 U.S. 1315, 1318 (1994) (Blackmun, J., in chambers). This principle follows from the more general rule forbidding prior restraints on media. See, e.g., *New York Times Co. v. United States*, 403 U.S. 713 (1971). And, of course, religious speech is protected under the First Amendment in its own right. Cf., e.g., *Widmar v. Vincent*, 454 U.S. 263, 276 (1981). Violations of this right likewise create irreparable harm. See *Elrod*

¹⁴ All Catholics will also face disrupted access to their spiritual leaders if “Catholic clergy, nuns, [and] monks” are displaced from their dwellings as a result of the Seizure Orders. App. K-2. Such displacement may make such Catholic spiritual leaders and teachers incapable of ministering to the faithful—again, both a Free Exercise Clause and Establishment Clause violation. Cf. *Hosanna-Tabor*, 565 U.S. at 195.

v. Burns, 427 U.S. 347, 373 (1976) (“The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.”).

Here, the seizure of property and loss of legal capacity will make it impossible for the Dioceses’ radio and television stations, and their newspapers, to “preach[] the gospel to Puerto Rico’s residents.” See App. K-2. This loss of ability to engage in protected speech will thus hurt the Dioceses’ religious missions, causing irreparable harm. The Dioceses’ missionary efforts will also be hindered, as they are placed at a competitive disadvantage in seeking new converts.

Third, there is a likelihood of harm to the public safety—which the Chief Justice has recognized as a distinct type of irreparable harm. *Maryland v. King*, 133 S. Ct. 1, 3 (2012) (Roberts, C.J., in chambers). Here, Puerto Rico is facing a massive humanitarian crisis. As the Archbishop explained below, “[a] freeze”—or seizure—“will ... make it difficult if not impossible for the Archdiocese, parishes and other Catholic entities to provide ongoing relief to victims of Hurricane Maria and of the general poverty that pervades some parts of Puerto Rico.” App. K-2. Fighting poverty and disasters enhances public safety. As the Catholic Church is the largest religion in Puerto Rico and a major source of relief for the many poor and needy in the Commonwealth, the public will face greater safety risks if the church is unable to provide humanitarian relief.

Fourth, under this Court’s decisions, irreparable harm necessarily occurs when a party is forced to pay money that is unlikely to be returned if the party ultimately prevails. See *Teva Pharm. USA, Inc. v. Sandoz, Inc.*, 134 S. Ct. 1621, 1621 (2014)

(Roberts, C.J., in chambers); *Philip Morris USA Inc. v. Scott*, 561 U.S. 1301, 1304–1305 (2010) (Scalia, J., in chambers). Indeed, if “it appears that, before this Court will be able to consider and resolve applicants’ claims, a substantial portion of the fund established by [Applicants’] payment will be irrevocably expended,” the applicant for a stay has established a likelihood of irreparable harm. *Id.*

In this case, it would be unrealistic (to say the least) to anticipate that Plaintiffs and other non-party recipients of pensions under the pension plan will be able to repay if the orders below are eventually reversed. Thus, as the orders below order immediate seizure of \$4.7 million in assets so the trial court can fund the pension fund’s obligations, the money spent will be “irrevocably expended.” This too constitutes irreparable injury.

Fifth, there is a likelihood of harm to the dozens of individuals “who currently live and/or sleep on property owned by the Archdiocese, its parishes or other affiliated institutions.” App. K-2. The safety of these “Catholic clergy, nuns, monks, employees and otherwise homeless people,” as well as seminarians—will be put in jeopardy if the Seizure Order is enforced. App. K-2.

Each of these harms—never mind the combination of harms—establishes a strong likelihood of irreparable harm if the orders at issue are not stayed.

III. The balance of equities strongly favors a stay.

The balance of equities also tips decidedly in favor of a stay. As noted above, in close cases the Circuit Justice or the Court will “balance the equities” to explore “the relative harms to applicant and respondent, as well as the interests of the public at large.” *Rostker v. Goldberg*, 448 U.S. 1306, 1308 (1980) (Brennan, J., in chambers).

Here, as explained above, all of the Applicants, their constituent parishes, other Catholic entities, the Commonwealth's 2.5 million Catholics, and many other Puerto Rico residents will suffer several kinds of irreparable injury absent a stay. By contrast, there would likely be *no* harm to the Plaintiffs if they and the Puerto Rico Supreme Court would simply accept the decision of the Court of Appeals. As noted, that decision requires the specific Catholic entities involved in the underlying dispute to continue making their pension payments to the trial court for distribution to the Plaintiffs. App. F-53–54. And the Archbishop of the Archdiocese of San Juan—where the three schools are located—has indicated his willingness to accept the Court of Appeals' decision. See App. N-19.

Apparently, Plaintiffs and the Puerto Rico Supreme Court majority want access to a “deeper pocket,” and therefore are not satisfied with the Court of Appeals' resolution. But they have not even attempted to show that the Court of Appeals' approach would leave them with any harm.

A proper balancing of the equities also requires consideration of the harm caused by the Puerto Rico court's orders to the Commonwealth's entire population. Where, as here, religious institutions that have provided services to both believers and the larger public are forced to change their religious missions, the public they serve is inevitably burdened. While this is true for all religious institutions, it is particularly true where, as here, the *majority* faith faces the threat of seizure: All Puerto Ricans would be damaged if, because of the Seizure Order, the Catholic Church became unable to respond to any additional natural disasters.

Ironically, moreover, the Seizure Order may hurt some of the Plaintiffs—those who are still employees. Drained of their resources, their Catholic employers may well be forced to close their doors for inability to pay wages, which are much more valuable than the modest pensions these employees receive.

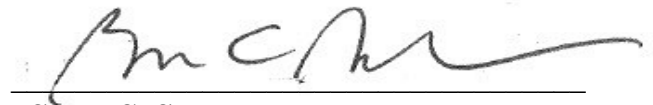
In short, any harm to the Plaintiffs if the stay is granted simply does not compare to the harms that Applicants, Catholic Puerto Ricans—and, indeed, all Puerto Ricans—will face if the stay is denied. Thus, the balance of the equities tips decidedly in favor of the Applicants.

CONCLUSION

Under the 6-2 decisions of the Puerto Rico Supreme Court, all the assets of *all* Roman Catholic entities in Puerto Rico are now subject to seizure. That court has accomplished this astounding feat by, in Justice Rodriguez’s words, “reconfiguring the internal and hierarchical ecclesiastical organization of the Roman Catholic and Apostolic Church.” This violates the First and Fourteenth Amendments, never mind the Religious Freedom Restoration Act. If enforced, the orders will be devastating to Applicants, other Catholic Puerto Rican entities, and almost all Puerto Ricans.

The Seizure Order and related orders should be stayed pending disposition of Applicants’ forthcoming petition for certiorari, which should be granted for the reasons explained above, and by Justices Rodriguez and Colon.

Respectfully submitted,



GENE C. SCHAERR

Counsel of Record

MICHAEL T. WORLEY

SCHAERR | DUNCAN LLP

1717 K Street NW, Suite 900

Washington, DC 20006

(202) 787-1060

gschaerr@schaerr-duncan.com

Counsel for all Petitioners/Applicants

PEDRO A. BUSÓ-GARCÍA

SCHUSTER AGUILÓ LLC

LITTLER GLOBAL

221 Ponce de León Avenue

15th Floor

San Juan, PR 00917

Counsel for Archdiocese of San Juan

FRANK TORRES VIADA

BUFETE FRANK TORRES-VIADA,

PO Box 192084

San Juan, Puerto Rico 00919-2084;

Counsel for Diocese of Arecibo

FERNANDO E. AGRAIT-BETANCOURT

Centro de Seguros Bldg., Suite 414,

701 Ponce de León Avenue

San Juan, Puerto Rico 00907

Counsel for Diocese of Mayagüez

FÉLIX J. MONTAÑEZ-MIRANDA

PO Box 364131

San Juan, Puerto Rico 00936-4131

Counsel for Diocese of Caguas and

Diocese of Fajardo – Humacao

JORGE ALEXIS TORRES-MONTES

3260 Emilio Fagot Ave.,

Ponce, Puerto Rico 00730-4603

Counsel for Diocese of Ponce

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CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2018, I caused to be sent by United States mail as well as email a copy of the foregoing to the following counsel of record:

JOSÉ R. RIVERA-MORALES
JIMÉNEZ, GRAFFAM & LAUSELL
PO Box 366104
San Juan, Puerto Rico 00936-6104
rrivera@jgl.com

FRANK ZORRILLA-MALDONADO
PO Box 191783
San Juan, Puerto Rico 00919-1786
fzorrilla@fzmlaw.com

EDA MARIEL AYALA-MORALES
PO Box 360481
San Juan, Puerto Rico 00936-4428
emayalam@hotmail.com

JESÚS R. RABELL-MÉNDEZ
PO Box 195580
San Juan, Puerto Rico 00919-5580
jesusrabell@gmail.com

CÉSAR ROSARIO VEGA
ADSUAR MUÑIZ GOYCO SEDA & PEREZ-
OCHOA, P.S.C.
PO Box 70294
San Juan PR 00936-8294
rosario@amgprlaw.com

ANTONIO BAUZA
GERMAN BRAU
GUILLERMO SILVA
PO Box 13369
Santurce Station
San Juan, PR 00908
antonio.bauza@bioslawpr.com
german.brau@bioslawpr.com
gsilva@bioslawpr.com

CARLOS A. PADILLA-VÉLEZ
PO Box 194109
San Juan, Puerto Rico 00919-4109

JESÚS M. JIMÉNEZ GONZÁLEZ-RUBIO
Apartado 3025
Guayama, Puerto Rico 00785
jimesensei@yahoo.com



Gene C. Schaerr
Counsel for Petitioners/Applicants