12-445

No. _____

In the
Supreme Court of the United States

ESSO STANDARD OIL COMPANY (PUERTO RICO),

PETITIONER,

v.

JESÚS F. TRILLA PIÑERO D/B/A PUERTO RICO MOTOR COACH, ET AL.,

RESPONDENTS.

On Petition for a Writ of Certiorari to the Supreme Court of the Commonwealth of Puerto Rico

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

In 1996, Puerto Rico passed a law that imposed a new legal obligation on gasoline wholesalers but unequivocally provided that the obligation "shall not commence until" a government agency adopted regulations establishing a mechanism for compliance. Notwithstanding that no such regulations were adopted until 2005, the Puerto Rico commonwealth courts retroactively held petitioner liable for failing to comply with that law from 1997 through 2005, even though the courts implicitly acknowledged that petitioner could not possibly have complied until the 2005 regulations were adopted. In clear contradiction to the text of two more duly enacted laws, the courts imposed punitive double damages under a statute that allows recovery of only actual damages, and refused to dismiss the case even after the Puerto Rico Supreme Court acknowledged that the statute under which it was brought does not provide a private right of action. As a result of these remarkable proceedings, petitioner faces a more than $70 million judgment for failure to comply with an obligation retroactively imposed by the judiciary, in direct contradiction to an express condition rendering that obligation prospective only.

The question presented is:

Did the proceedings below, in particular the imposition of retroactive liability despite an express statutory proviso that any legal obligation would not arise until the promulgation of regulations that provided the mechanism for compliance, violate Esso's constitutional right not to be deprived of property without due process of law?

PARTIES TO THE PROCEEDINGS

Petitioner, who was defendant, appellant/cross-appellee, and petitioner/cross-respondent below, is Esso Standard Oil Company (Puerto Rico), Inc. The named consumer respondents, who were plaintiffs, appellees/cross-appellants, and respondents/cross-petitioners below, are Jesús F. Trilla Piñero d/b/a Puerto Rico Motor Coach, Transporte Instalación y Restauración de Muebles de Oficina, Inc. (T.I.R.M.O. Inc.), Elías Rubén Gutiérrez Sánchez, and Manuel Saldaña. Those respondents represent a class composed of all motor vehicle owners who purchased gasoline in Puerto Rico from 1997 through 2008. The Asociación de Detallistas de Gasolina de Puerto Rico, Inc. (or Puerto Rico Gasoline Retailers Association, Inc.), which was a defendant/cross-plaintiff, appellee, and respondent/cross-petitioner below, is also a respondent.

The Commonwealth of Puerto Rico, the Secretary of the Puerto Rico Department of Consumer Affairs, the Shell Company (Puerto Rico) Limited, Total Petroleum Corporation, Chevron Puerto Rico LLC, and Caribbean Petroleum Corporation were originally defendants in the case but were dismissed before trial. Accordingly, they are not parties to these proceedings.

RULE 29.6 STATEMENT

All of the stock of Esso Standard Oil Company (Puerto Rico), Inc., is owned directly or indirectly by Exxon Mobil Corporation. Exxon Mobil Corporation has no parent corporation, and no person or entity owns 10% or more of its stock.

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PETITION FOR CERTIORARI

This case involves a series of legal rulings that simply should not be possible in a jurisdiction governed by the Due Process Clause of the United States Constitution. In clear contradiction of no fewer than three unambiguous Puerto Rico laws, the Puerto Rico courts retroactively held petitioner Esso Standard Oil Company, Inc. ("Esso"), liable for failing to comply with a legal obligation that was not yet in force, imposed double damages under a statute that limits recovery to actual damages, and refused to dismiss this case even after the Puerto Rico Supreme Court acknowledged that the relevant statute does not provide a private cause of action. Those due process deprivations culminated in a more than $70 million judgment against Esso for failure to comply with a law that expressly provided there would be no legal obligation until government officials promulgated regulations explaining how to comply.

The resulting award violates nearly every fundamental tenet of this Court's due process jurisprudence. The government has imposed massive retroactive liability under a statute that is expressly prospective. The award makes a mockery of the fundamental due process requirement of notice and the equally fundamental prohibition on vagueness: Not only was Esso told it would have no legal obligation until regulations were promulgated; there was literally no way for Esso to comply until the regulations were promulgated. Nor did Esso have any notice of liability for double damages, or that it alone would face a private cause of action under a statute that provides none. The award below is simply a

retroactive exaction, not a liability judgment that comports with even the most rudimentary principles of due process. This Court should grant review to rectify these fundamental constitutional violations, and to reassure those who live and do business in Puerto Rico that its courts remain bound to provide litigants with the basic safeguards of due process of law.

This case arose out of a 1996 law in which the Puerto Rico legislature established a new obligation for gasoline wholesalers to transfer to gasoline retailers what is known in the industry as a "temperature adjustment." Those retailers, in turn, would be obligated to transfer that adjustment to consumers. Since determining how best to accomplish that transfer is complicated, the legislature tasked a regulatory agency with establishing a mechanism for doing so, and then imposed an explicit condition "that the transfer for temperature adjustments *shall not commence until this mechanism has been established.*" 23 L.P.R.A. § 1105a (emphasis added). The agency did not establish that mechanism until 2005.

Notwithstanding that unequivocal command and the agency's delay, the Puerto Rico Supreme Court concluded that a class of consumers could hold Esso liable for failing to transfer the temperature adjustment in every year *since 1997*, even though there was no way for Esso to comply *until 2005*. On remand from that decision, the trial court implicitly acknowledged that Esso could not comply with the transfer obligation until the 2005 regulation was promulgated, yet nonetheless held Esso liable for

failing to do so from 1997 through 2005, and imposed $30 million in damages to boot. The court thus converted an expressly prospective-only regulatory obligation into a retroactive exaction, even though Esso had no means to comply. Not content with one utterly irrational and fundamentally unfair result, the court of appeals then made matters worse by *doubling* the damages award under a law that, in its 40-year existence, had *never* before been interpreted to allow recovery of double damages.

The Puerto Rico Supreme Court refused to correct these glaring errors, and instead added one more due process violation to the list, declining to review the case on the basis of a service issue in the appellate court that the appellate court had deemed immaterial. The court did so even though it had recognized in an opinion issued mere months earlier that private parties do not even have a cause of action to enforce the transfer obligation. What is more, the court would not relent even after the Commonwealth *twice* intervened to urge it to reconsider its indefensible jurisdictional denial and correct the many errors in this high-profile and consequential case.

The proceedings below fell well short of the standard demanded in any jurisdiction that, like Puerto Rico, is bound by the Due Process Clause of the United States Constitution. While due process frowns on retroactive liability and demands notice, the courts below imposed massive retroactive liability based on a statute that expressly notified parties there would be no obligations or liability until regulations were promulgated. While due process prohibits vagueness,

not only did the statute deprive Esso of any clear route to compliance, but the courts below remarkably imposed liability while implicitly acknowledging that Esso could not comply until the regulations were promulgated. And to add insult to injury, Esso's damages were doubled and its ability to receive the benefit of a decision recognizing the absence of a cause of action inexplicably foreclosed. In short, the proceedings below converted a prospective regulatory statute into an unauthorized retroactive exaction. They worked a deprivation of property without due process of law, pure and simple. Puerto Rico courts have the exclusive power to interpret Puerto Rico law, but "they must, in so doing, accord the parties due process of law." *Brinkerhoff-Faris Trust & Savings Co. v. Hill*, 281 U.S. 673, 682 (1930). In the nearly two decades that have passed since this Court last reviewed a case out of the Puerto Rico courts, they plainly have lost sight of that most basic constitutional obligation. This Court's intervention is long overdue.

OPINIONS BELOW

Certified translations of the Puerto Rico Supreme Court's 2012 orders denying review and its June 20, 2003 judgment are reproduced at App. 1–9, 297–328. Certified translations of the court of appeals' October 25, 2011 and June 28, 2001 opinions are reproduced at App. 14–116, 335–59. Certified translations of the trial court's November 24, 2010 and September 18,

2000 opinions are reproduced at App. 126–301, 360–84.[1]

JURISDICTION

The Puerto Rico Supreme Court denied Esso's petition for certiorari on February 24, 2012, and denied Esso's timely motions for reconsideration on April 13, 2012, and May 11, 2012. App. 1–9. On June 24, 2012, Justice Breyer extended the time for filing a petition to and including October 8, 2012. This Court has jurisdiction under 28 U.S.C. § 1258.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth and Fourteenth Amendments to the United States Constitution and the relevant Puerto Rico statutes are reproduced at App. 385–412.

STATEMENT OF THE CASE

This petition arises out of a lawsuit filed more than a decade ago by a class of gasoline and diesel consumers in Puerto Rico.[2] As its remarkable history reflects, the case has been marred by due process violations at every turn, including, *inter alia*, the imposition of retroactive liability for conduct that was not unlawful when it occurred, an award of punitive double damages under a law that does not

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[1] At the Court's request, Esso can provide certified translations of any other Spanish documents or sources referenced in this petition.

[2] For purposes of this petition, the term "gasoline" is generally intended to be inclusive of both gasoline and diesel.

allow them, and the refusal to dismiss the case after the legislature made clear and the Puerto Rico Supreme Court implicitly acknowledged that the consumers never had a cause of action in the first place. The fundamentally flawed proceedings culminated in a massive judgment in excess of $70 million.

A. Puerto Rico's Gasoline Industry

For decades, the gasoline industry in Puerto Rico has been divided into two distinct groups—wholesalers and retailers—both of which are regulated by the Department of Consumer Affairs ("DACO"). As a primarily local group operating in a critical sector of Puerto Rico's economy, retailers historically have enjoyed significant political power. In the 1970s, they successfully lobbied the legislature to pass a law prohibiting most wholesalers from operating as retailers. *See* Law 3 of March 21, 1978, 23 L.P.R.A. § 1101 *et seq.* Combined with other aspects of Puerto Rico's restrictive regulatory climate, that unusual and inefficient restriction has severely impeded wholesalers' profitability and forced major wholesalers to exit the market over the past few decades. App. 151–52.

DACO enjoys wide discretion in regulating the gasoline industry, including discretion to deregulate to the extent it considers appropriate. After federal regulation of the industry ceased in 1981, DACO resumed its regulatory role and imposed profit

margin controls on both wholesalers and retailers.[3] But as market studies consistently indicated competition was so fierce that margins would remain lower than in comparable jurisdictions even without controls, DACO began to shift toward a policy of deregulation. In 1993, it eliminated margin controls for retailers, with a plan to continue evaluating the wholesaler situation over the next few years. On December 31, 1997, DACO eliminated margin controls for wholesalers as well. DACO's hypothesis that market forces alone would control wholesalers' margins quickly proved true: In 1998, the average profit margin for the four principal wholesalers was 17.39 cents per gallon, which was markedly lower than the 18.49-cent margin that DACO would have allowed under its proposed regulations, and lower even than the 17.53-cent margin DACO had in place in 1997. App. 153.

Because of Puerto Rico's warm climate, its gasoline industry is affected by an international phenomenon known as "temperature adjustment." The physical properties of gasoline are such that its volume changes according to changes in temperature: It expands in higher temperatures and contracts in

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[3] Due to litigation over whether the federal government's decision to lift controls imposed under the Emergency Petroleum Allocation Act of 1973, as amended, Pub. L. No. 93-159, 87 Stat. 167, precluded DACO from reestablishing margin controls of its own, DACO regulation was not fully re-implemented until 1989, after this Court held in *Puerto Rico Department of Consumer Affairs v. Isla Petroleum Corp.*, 485 U.S. 495 (1988), that federal deregulation had no preemptive force.

lower ones. As a result, a gallon of gasoline obtained in a warmer climate and then transferred to a cooler climate will shrink to slightly less than a gallon; conversely, a gallon obtained in a cooler climate will expand to slightly more than a gallon in a warmer one. Because temperature varies throughout exploration, exploitation, refinement, and transportation of gasoline, the international gasoline industry has adopted a standard reference temperature for all transactions: A gallon is measured as the amount of gasoline that constitutes a gallon at 60 degrees Fahrenheit. Thus, for each gallon purchased, a wholesaler receives whatever volume of gasoline constitutes a gallon at 60 degrees, even if the gasoline actually delivered has contracted or expanded due to the ambient temperate at the site of the transaction. That standard practice is known as "temperature adjustment."

As in most U.S. jurisdictions, in Puerto Rico, once a wholesaler obtains gasoline, it sells it to retailers at ambient temperature, without adjusting the volume to compensate for any temperature change. Given Puerto Rico's climate, the gasoline sold to retailers (and to consumers, in turn) is typically warmer than 60 degrees, meaning the temperature adjustment practice at the wholesale level results in a marginal difference between the amount of gasoline the wholesaler receives when purchasing a standard gallon and the amount it supplies when selling one. Wholesalers typically compensate for that slight difference by a corresponding reduction built into their pricing structure.

B. Article 5A

On August 21, 1996, Puerto Rico enacted Law 157 to amend Law 3, the law that prohibits most wholesalers from operating as retailers. In addition to eliminating remaining exceptions to that prohibition, Law 157 contains a provision designed to benefit consumers by ensuring that they receive any pricing reduction attributable to the temperature adjustment practice. That provision, Article 5A, states:

> Every wholesaler-distributor shall be bound to pass on, transfer, and acknowledge to the retailer any temperature adjustment received at its origin by said wholesaler-distributor for the amount of gasoline and/or special fuels purchased. This temperature adjustment shall, in turn, be acknowledged and transferred by the retailer to the consumer through a lowering of the price at the retail sales level. The Department of Consumer Affairs shall establish through regulations, within a term of one hundred and twenty (120) days from the approval of this act, a system that guarantees that said transfer will be received by the consumer. *Provided, that the transfer for temperature adjustments shall not commence until this mechanism has been established.*

23 L.P.R.A. § 1105a (emphasis added).

Article 5A is straightforward: It gives DACO 120 days to establish a mechanism for transferring the temperature adjustment and makes the obligation to

transfer that adjustment conditional on DACO's doing so. The conditional nature of the legal obligation reflects the legislature's common-sense recognition that wholesalers and retailers could hardly be expected to comply with a generic transfer requirement absent some law or regulation telling them how to do so.

Notwithstanding the 120-day directive, DACO did not adopt regulations implementing Article 5A for several years after its enactment. DACO's noncompliance was not for lack of trying. It did not adopt regulations because it could not establish a mechanism for transferring the temperature adjustment without undermining its own regulatory policies. DACO's predicament stemmed from the problem that Law 157 was enacted in late 1996, when DACO still imposed margin controls on wholesalers. On December 31, 1997, however, DACO eliminated those controls after concluding that market forces alone would keep profits within (or even below) reasonable margins. To establish a mechanism that would "guarantee" transfer of the temperature adjustment, DACO not only would have to reintroduce the very controls it considered detrimental, but also would have to reduce even further the wholesalers' already slim profit margins, thereby heightening the risk that the few remaining large-scale wholesalers would leave Puerto Rico. *See* App. 147–57 (detailing how "intense competition" and "excessive regulation" drove Mobil, ARCO, and Chevron out of Puerto Rico). After DACO explained to the legislature that Article 5A could not be implemented without undermining its intended purpose of benefiting consumers, on November 11,

1999, the House of Representatives unanimously passed legislation to repeal it. App. 138. That first repeal effort stalled in the Senate.

C. The Instant Litigation

On March 6, 2000, a group of consumers filed a class action complaint in the Puerto Rico Court of First Instance on behalf of all gasoline and diesel consumers in Puerto Rico, naming as defendants the Commonwealth of Puerto Rico; the Secretary of DACO; all gasoline and diesel wholesalers in Puerto Rico (including Esso); and the Puerto Rico Gasoline Retailers Association ("ADG").[4] The complaint alleged that DACO had violated Article 5A's mandate to establish a mechanism for transferring the temperature adjustment within 120 days. In addition, notwithstanding Article 5A's unambiguous condition "that the transfer for temperature adjustments shall not commence until this mechanism has been established," and the fact that they were suing DACO for failure to fulfill that very condition, the plaintiffs also alleged that wholesalers and retailers had been violating Article 5A since 1997 by failing to transfer the temperature adjustment in some not-yet-specified manner. The retailers' association responded by, *inter alia*, filing a cross-claim against the wholesalers, alleging that they had violated Article 5A by failing to transfer the temperature adjustment to retailers.

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[4] The class was subsequently limited to all motor vehicle owners who purchased gasoline or diesel during the relevant time frame without receiving the temperature adjustment. App. 328.

The wholesalers moved to dismiss all claims against them, arguing that they could not be held liable under Article 5A because DACO had yet to establish the requisite transfer mechanism. They also argued that there is no private cause of action to enforce Article 5A. As they explained, Article 8 of Law 3 renders certain of the law's provisions unfair trade practices under Puerto Rico's anti-trust act, which makes them subject to exclusive enforcement by the Office of Monopolistic Affairs ("OAM"). *See* 23 L.P.R.A. § 1108; 10 L.P.R.A. § 268(a) (exempting unfair trade practices from provision authorizing private cause of action); *Diaz-Ramos v. Hyundai Motor Co.*, 501 F.3d 12, 15 (1st Cir. 2007) (holding unfair trade practices exempt from private cause of action). As originally drafted, Law 157 amended Article 8 to include what became Article 5A among those provisions, but a scrivener's error caused the final version to refer to articles 1, 2, 3, 4, and 5, rather than, as intended, 2, 2A, 4, 4A, 5, and 5A. *See* 23 L.P.R.A. § 1108 (1997).[5] Accordingly, the wholesalers argued, the legislature did not intend to authorize private enforcement of Article 5A.

The trial court refused to dismiss any claims after concluding that the consumers had stated a potentially viable claim against DACO. App. 360–84. The wholesalers appealed, and the Puerto Rico Court of Appeals unanimously reversed. The court agreed with the wholesalers that neither the consumers nor

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[5] That this was a scrivener's error, not a deliberate change, was confirmed when the legislature subsequently corrected it. *See infra* p. 17.

ADG could state a claim against them since "Section 5A ... clearly provides that the transfer of the temperature adjustment shall not be commenced until such time as DACO approves regulations to guarantee that consumers will receive said transfer." App. 353. "Without the DACO regulations," the court concluded, "there can be no violation of any law on the part of the wholesale distributors." App. 353. The court also agreed with the wholesalers that Article 8 eliminated any private cause of action to enforce Article 5A. App. 355.

Respondents petitioned the Puerto Rico Supreme Court for review, and, in an unpublished judgment, the court reversed by a 3-2 vote, with two justices recusing. In plain contradiction to Article 5A's explicit directive, the majority concluded that the wholesalers' obligation to transfer the temperature adjustment to retailers "has *at no time* been subject to the approval of regulation by DACO," but instead was in force "from the moment" Article 5A took effect. App. 317 (emphasis added). The court did not attempt to reconcile that conclusion with the unequivocal final sentence of the statute, but instead grounded it in its independent judgment that imposing an immediate obligation on wholesalers would help "limit the control that wholesalers have over the market vis-à-vis retailers." App. 316.

In keeping with its professed goal of rendering Article 5A as beneficial to retailers as possible, the court then concluded that retailers were *not* obligated to transfer the temperature adjustment to *consumers* until DACO established a mechanism for doing so. App. 317. In other words, notwithstanding its ready

acknowledgment that "[b]enefiting consumers is the purpose of the entirety of the article," App. 317–18, the court reached the puzzling conclusion that Article 5A entitled retailers to immediate receipt of a benefit from wholesalers, but did not obligate retailers to pass that same benefit along to consumers. Although the logical import of that conclusion was that the consumers had not yet suffered any legal injury, the court nonetheless authorized the *consumers* to seek compensation from the *wholesalers* for their purported failure to transfer the temperature adjustment to *retailers*. The court dismissed in a footnote the argument that the consumers had no private cause of action to do so, refusing to acknowledge the legislature's scrivener's error "[a]bsent a statement by the legislature" directly addressing Article 5A. App. 320 n.4.

The court remanded for the trial court to determine in the first instance, *inter alia*, "whether effectively the aforesaid price adjustment has or has not occurred," and "whether in marketing [*sic*] practices, the transfer of one link to another has or has not in fact occurred." App. 321. The dissenting justices authored no opinion.

D. Post-Remand Developments

On remand, the wholesalers continued to argue that Article 5A plainly and explicitly renders any legal obligation contingent on the existence of a transfer mechanism DACO still had not established. They further argued that imposing retroactive liability and damages for conduct that was not unlawful until the Puerto Rico Supreme Court's 2003 judgment made it so would violate their fundamental

federal constitutional right to due process of law. In addition, they argued that even if the court's 2003 decision might constitute notice of a transfer obligation going forward, Article 5A would still be unconstitutionally vague because the law itself recognizes the need for DACO to explain how to comply with that obligation. Thus, even after the court's 2003 decision, wholesalers remained at a loss as to how to comply with the judicially manufactured transfer obligation.

Over the next five years, the parties litigated preliminary issues and sought interlocutory appellate review on multiple occasions. In addition, several key out-of-court developments occurred.

1. DACO continued to advocate repeal of Article 5A, and, in June 2000, both the House and the Senate passed repeal legislation. That legislation was presented to the governor, but he vetoed it shortly after a publicized visit from the consumers' counsel. App. 139. When subsequent repeal efforts DACO pressed over the next few years failed, DACO finally relented and adopted a regulation to implement Article 5A. *See* Regulation to Implement the Temperature Adjustment in the Volumes of Fuels Derived from Petroleum, DACO Regulation PM-12 (May 4, 2005). That regulation went into effect for retailers on July 3, 2005, and for wholesalers on September 21, 2005.

As to retailers, Regulation PM-12 is the very model of arbitrary regulation. To "guarantee" that retailers would transfer the temperature adjustment to consumers, DACO ordered them to sell gasoline at a price that ends in a number no higher than .7

cents. *See* Regulation PM-12, Art. 8. In other words, a retailer may sell gas at *any* price it chooses, so long as that price ends in any decimal other than .8 or .9. So a retailer who charges 90.7 cents per liter is in compliance with the regulation, but one who charges 79.9 cents per liter is not.[6] The apparent thinking behind that nonsensical rule was that, because gasoline had typically been sold at prices ending in .9, retailers would comply by lowering their prices .2 cents, which DACO deemed the appropriate compensation to consumers for the temperature adjustment. App. 141. Of course, as some retailers later testified at trial, it did not escape retailers' attention that, given DACO's elimination of margin controls, they could comply just as easily by *raising* their prices .8 cents (or 1.8 cents, for that matter).

As to wholesalers, Regulation PM-12 requires them to indicate on their invoices to retailers the amount of gasoline dispatched as measured at both ambient temperature and 60 degrees. *See* Regulation PM-12, Art. 7. In a separate guidance letter, DACO instructed wholesalers to transfer the temperature adjustment through either a volumetric adjustment or its equivalent in price. *See* Letter from DACO to All Distributors-Wholesalers, June 23, 2005.

2. While the Puerto Rico legislature never managed to repeal Article 5A, it did enact another law that should have ended this litigation. In response to the Puerto Rico Supreme Court's request for express

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[6] In Puerto Rico, local regulations require gasoline to be measured and sold in liters at the retail level.

guidance on whether private parties have a cause of action to enforce Article 5A, the legislature corrected its scrivener's error by amending Article 8 to provide that "[a]ny violations of Articles 2, 2A, 4, 4A, 5, and 5A shall constitute an unfair or fraudulent practice" under the anti-trust act, thus explicitly bringing Article 5A within the exclusive enforcement authority of OAM. *See* Law 74 of August 25, 2005, § 4.

A few years later, the Puerto Rico Supreme Court recognized the impact of that amendment in a case involving a private action to enforce Article 4A, which, like Article 5A, had been mistakenly excluded from Article 8. *See Aguadilla Paint Ctr. Inc. v. Esso Standard Oil, Co.*, 183 D.P.R. 901 (2011). After examining the amendment, the court concluded that "the intention of Law No. 157 was to include Arts. 4, 4A, 5 and 5A in" Article 8, and that their "exclusion was the product of a simple clerical error." *Id.* at 921–22. Accordingly, the court concluded that "a private person cannot present a cause of action for alleged violation of Art. 4A." *Id.* at 932. The court also rejected the argument that the claim should be able to go forward because it had been brought before Article 8 was amended. In doing so, the court reiterated that the legislature had *always* intended Article 8 to encompass the articles specified by amendment, but also that, even were that not the case, an amendment ousting the court of jurisdiction could and should have immediate effect. *Id.* at 934–36.

3. After experiencing significant and continuous losses on its Puerto Rico operations due to intense competition and a cumbersome regulatory climate, Esso, like other large-scale wholesalers before it,

began exploring the possibility of leaving the market in late 2006. Esso ultimately decided to do so and ceased operations in Puerto Rico on October 31, 2008, about a year before this case proceeded to trial. In the meantime, as the trial date approached, the parties began discussing the possibility of settlement. They eventually agreed to a settlement under which the consumers themselves would not receive any compensation at all; wholesalers instead would prospectively reduce their prices to retailers, and also would pay the consumers' *counsel* millions of dollars in attorneys' fees. Esso, which had exited the market and thus could not make a prospective pricing change, did not take part in the settlement. Accordingly, the case proceeded to trial with Esso as the sole defendant.

E. Remand and Subsequent Appeals

1. The Trial Court

After an 11-week trial, on November 24, 2010, the trial court held Esso liable for failing to comply with Article 5A from 1997 through 2008. According to the court, Esso's extensive evidence that it transferred the temperature adjustment through its cost and price structure was legally irrelevant because the legislature had determined "it necessary that DACO, with its expert knowledge, should establish the parameters under which compliance for Article 5A ... would be guaranteed." App. 283. In other words, the court concluded that Article 5A embodies the legislature's judgment that the *only* way to avoid liability is by complying with whatever transfer mechanism DACO established—even though the court imposed liability for the nearly nine years

before DACO established that mechanism. The court thus reached the patently illogical conclusion that Esso was liable for failing to comply with a regulation that did not yet exist.

To remedy Esso's purported violation from 1997 through 2005, the court ordered Esso to pay the consumers $26,560,326.53, plus 25% in attorneys' fees, costs, and prejudgment interest. App. 299.[7] The court ordered $16,201,799.18 of that amount to be paid to ADG to transfer to consumers in an unspecified manner. App. 299. In addition to that $26 million award, the court ordered Esso to pay another $3,968,346.36 to ADG to compensate for its purported failure to transfer the adjustment to retailers from 2005 through 2008. App. 299–300. Although the consumers also sought double damages, the court concluded that their request was prohibited by Puerto Rico's consumer class action statute, which it found "clear and free of ambiguity" in limiting recovery to "'an amount *equal* to the damages determined.'" App. 297–98 (quoting 32 L.P.R.A. § 3343) (emphasis altered).

2. The Court of Appeals

Esso appealed, arguing that the imposition of retroactive liability and damages violated its federal constitutional right to due process, and that the trial court made numerous legal, evidentiary, and factual errors. Not content with their $26 million windfall,

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[7] Unlike ADG, the consumers had limited their claim to years before Regulation PM-12 was adopted. App. 136.

the consumers also appealed and, *inter alia*, renewed their request for double damages.

On October 25, 2011, the court of appeals issued an opinion affirming the trial court's liability judgment but doubling the consumers' damages award. As to Esso's due process arguments, although the court deemed law of the case the Puerto Rico Supreme Court's conclusion that Article 5A imposed an immediate obligation on wholesalers, it acknowledged that Article 5A "does not define with precision the manner of carrying out the temperature adjustment" because "the legislator [*sic*] entrusted on DACO the duty to approve a regulation through which that procedure is set forth." App. 36. Yet despite the fact that Esso was challenging the imposition of retroactive liability and damages for the nearly nine years *before* DACO adopted Regulation PM-12, the court rejected Esso's due process argument on the ground that Regulation PM-12 cured any fair notice problem with Article 5A. App. 36. The court also invoked law of the case to reject Esso's argument that the legislature had now confirmed that there is no private cause of action to enforce Article 5A. App. 24.

As to the consumers' double damages request, the court summarily declared that the phrase "amount *equal* to the damages determined" should in fact be read to mean "equal to a *doubling* of the amount that the [trial] court finally determined as compensation for damages." App. 100–01 (emphasis added). The court acknowledged that neither the consumer class action statute nor its legislative history supports that proposition, but nonetheless

posited that the legislature had presciently "ratifi[ed]" its novel holding two years earlier by describing the class action statute as allowing double damages in unrelated draft legislation that never became law. App. 100.[8] Accordingly, the court doubled the consumers' damages to $53,120,653.06, thus producing a judgment that, with interest, will exceed $70 million.

On November 14, 2011, Esso filed a timely motion for reconsideration. While that motion was still pending, the consumers filed a petition for certiorari in the Puerto Rico Supreme Court seeking to increase the interest rate on their award. Esso promptly informed that court that the petition was premature since the court of appeals had yet to rule on its motion for reconsideration. That same day, the consumers' counsel notified Esso that he was unaware that Esso had moved for reconsideration. The parties then discovered that Esso had transposed one letter in opposing counsel's e-mail address, mistakenly sending the motion to jamh@mac.com instead of jahm@mac.com. Esso immediately rectified the situation by sending the motion to the correct e-mail address.[9]

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[8] The court neglected to mention that that erroneous characterization prompted the Puerto Rico Department of Justice to issue a statement informing the drafters of that never-enacted legislation that the class action statute does *not* allow double damages. *See* Esso's Amended Cert. Pet. 26 (Feb. 8, 2012).

[9] The consumers filed their petition on November 28, 2011, the very last day to file a petition from an October 25 decision.

Notwithstanding Esso's prompt response, the consumers moved to dismiss Esso's motion for reconsideration, insisting that the inadvertent delay in serving opposing counsel deprived the court of jurisdiction to entertain the motion. Four days later, on December 5, 2011, the court of appeals denied Esso's motion for reconsideration. App. 118. Due to a slight delay in transmission of that order, the parties continued to brief the consumers' motion to dismiss. In a December 6, 2011 response, Esso explained that timely service to opposing counsel is a non-jurisdictional requirement that can be waived for good cause, which unquestionably existed here because the transposed e-mail address had been listed on and used in numerous official case filings and had never been corrected by the consumers' counsel.

On December 12, the court of appeals issued a second resolution denying the consumers' motion to dismiss. App. 121. On December 16, the court issued a third and final resolution referencing its earlier resolutions and declaring "that there is nothing left to rule." App. 124.

3. The Puerto Rico Supreme Court

On January 17, 2012, Esso filed its own petition for certiorari, arguing that imposition of liability and damages under Article 5A violated its due process rights under the United States Constitution; that, in

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Accordingly, by the time Esso learned of the e-mail issue, under the consumers' theory, it was also too late for Esso to file its own petition for certiorari.

light of the legislature's intervening amendment to Article 8 and the court's decision one month earlier in *Aguadilla Paint*, it was now clear no private cause of action to enforce Article 5A exists; and that, in all events, the court of appeals erred by awarding unauthorized and unforeseeable punitive double damages. Notwithstanding the court of appeals' denial of their motion to dismiss Esso's motion for reconsideration and rejection of that motion, the consumers responded to Esso's petition by continuing to argue that the time for filing had expired because of the e-mail address mix-up. On February 24, 2012, the Puerto Rico Supreme Court issued a resolution denying Esso's petition "for lack of jurisdiction." The court offered no explanation for that conclusion, which appeared to plainly contradict the court of appeals' handling of the reconsideration motion.

The court's refusal to hear this high-profile case prompted the Commonwealth to immediate action. The Commonwealth filed an urgent request for leave to provide the court with its position on the "issues of grave importance" presented by Esso's petition. Urgent Req. from Solicitor Gen. for Leave Under Rule 43 of Sup. Ct.'s Regulation to File Its Position as to Important Aspects of Pet. for Cert. 3 (Mar. 26, 2012) ("Solicitor Gen.'s Req."). The Commonwealth explained that the court had just recently correctly recognized in *Aguadilla Paint* "that the responsibility of ensuring compliance of Articles 4A and 5A of Law No. 3 ... was assigned exclusively to the Secretary of Justice through [OAM]," and also argued that the double damages award was "particularly striking" since even "a cursory review of the [consumer class action] statute does not appear to support such

holding." *Id.* at 2. The Commonwealth warned that this "unexpected result not contemplated by law" will "certainly discourage[] capital investment in Puerto Rico," and urged the court to reconsider its unexplained resolution denying review, which appeared to be based on "non-fatal procedural errors." *Id.*

After the court denied Esso's first motion for reconsideration on April 13, 2012, Esso filed a permissible second motion for reconsideration. The Commonwealth once again implored the court to review the lower courts' "usurpation of the authority exclusively assigned" to OAM, and also to correct its imposition of double damages in contravention of the plain text of the statute and legislative intent. Mot. to the Honorable Sup. Ct. by Solicitor Gen. 1 (Apr. 27, 2012) ("Solicitor Gen.'s Second Mot."). It further urged the court not to deny review "due to an error in the notification that .... can be excused since it was ... non-jurisdictional." *Id.* at 2. The court denied Esso's motion on May 11, 2012.

REASONS FOR GRANTING THE PETITION

The procedural history of this case may be complex, but Esso's constitutional claim is simple: Its property was taken through proceedings that lacked any semblance of due process of law. The Puerto Rico courts held Esso liable for violating a legal obligation that was not yet in force and literally impossible to comply with, imposed punitive double damages under a law that plainly limits recovery to actual damages, and did so even after the legislature intervened to eliminate any doubt that the plaintiffs have no cause of action whatsoever. When Esso

attempted to present its substantial constitutional grievances to the Puerto Rico Supreme Court—the only court in a position to remedy the due process problems its 2003 decision had created—the court deprived Esso of that opportunity by invoking an unidentified but non-existent jurisdictional defect. As the Commonwealth urged below, those repeated and flagrant due process deprivations not only violated Esso's constitutional rights, but also undermine the stability of the rule of law in Puerto Rico. This Court should grant review to rectify the Puerto Rico courts' blatant disregard for this Court's precedents and reassure those who live and do business in Puerto Rico that the Commonwealth and its courts are in fact bound by the Due Process Clause of the United States Constitution.

I. The Decisions Below Effect Egregious Due Process Violations and Cannot Be Reconciled with this Court's Precedents.

A. The Puerto Rico Courts Deprived Esso of Property Without Fair Notice by Imposing Liability for Failure to Comply with an Obligation that Was Not Yet in Force.

"Living under a rule of law entails various suppositions, one of which is that '(all persons) are entitled to be informed as to what the State commands or forbids.'" *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162 (1972). It is thus "[a] fundamental principle in our legal system ... that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required." *FCC v. Fox Television Stations, Inc.*, 132 S. Ct. 2307, 2317

(2012). That principle ensures both that "laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly," and that laws do not "impermissibly delegate[] basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory applications." *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972).[10]

Perhaps the most frequent articulation of that fair notice principle is the bedrock rule that "a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process." *Connally v. Gen. Constr. Co.*, 269 U.S. 385, 391 (1926). "There can be no doubt," however, "that a deprivation of the right of fair warning can result not only from vague statutory language but also from an unforeseeable and retroactive judicial expansion of narrow and precise statutory language." *Bouie v. City of Columbia*, 378 U.S. 347, 352 (1964); *see also Brinkerhoff-Faris*, 281 U.S. at 680 ("The federal guaranty of due process extends to state action through its judicial as well as

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[10] This Court has held "that the protections accorded by either the Due Process Clause of the Fifth Amendment or the Due Process and Equal Protection Clauses of the Fourteenth Amendment apply to residents of Puerto Rico." *Examining Bd. of Engineers, Architects & Surveyors v. Flores de Otero*, 426 U.S. 572, 600 (1976).

through its legislative, executive, or administrative branch of government.").

Indeed, the due process "violation is that much greater" when "a statute precise on its face has been unforeseeably and retroactively expanded by judicial construction." *Bouie*, 378 U.S. at 352. A precise statute "lulls the potential defendant into a false sense of security, giving him no reason even to suspect that conduct clearly outside the scope of the statute as written will be retroactively brought within it by an act of judicial construction." *Id.* Thus, when the judiciary unforeseeably and retroactively imposes liability that a statute does not allow, it not only has engaged in precisely the sort of "arbitrary and discriminatory application[]" the statute is intended to guard against, but also has deprived the defendant of any opportunity "to steer between lawful and unlawful conduct." *Grayned*, 408 U.S. at 108.

The decisions below put those principles into stark relief and cannot be reconciled with these foundational precedents of this Court. Esso could not possibly have foreseen the liability that the Puerto Rico courts imposed because the statute in question *explicitly relieved* Esso of the very legal obligation that the courts claimed it violated. Article 5A states in crystal clear terms "that the transfer for temperature adjustments *shall not commence* until" DACO establishes a mechanism for accomplishing it. 23 L.P.R.A. § 1105a (emphasis added). There is no dispute that DACO had established no such mechanism in 2003, when the case first reached the Puerto Rico Supreme Court. Accordingly, no person

of ordinary intelligence would or could have understood Article 5A to impose a transfer obligation until the Puerto Rico Supreme Court created one. Nor is there anything Esso could have done to comply with the law until the regulations were promulgated two years later. The courts below said as much in rejecting Esso's arguments that it was in substantial compliance. App. 283; *see also, e.g.*, App. 36. That is exactly the kind of "unforeseeable and retroactive judicial expansion of narrow and precise statutory language" that the Due Process Clause forbids. *Bouie*, 378 U.S. at 352.

In truth, to call it a "judicial expansion" gives the Puerto Rico Supreme Court too much credit. The court did not just expand Article 5A to sweep in conduct that was "clearly outside the scope of the statute as written." *Id.* It cast aside Article 5A's *explicit command* that the transfer obligation "shall not commence" until DACO established a mechanism for accomplishing it. It is difficult to conceive of a more acute deprivation of the right to fair notice than imposition of retroactive liability under a law that *expressly* declares liability contingent upon a prospective condition that has not yet come to pass.

The Puerto Rico courts' retroactive imposition of an obligation that the legislature expressly rendered contingent and prospective is also fundamentally inconsistent with the strong presumption against application of laws "affecting substantive rights, liabilities, or duties to conduct arising before their enactment." *Landgraf v. USI Film Prods.*, 511 U.S. 244, 278 (1994). As this Court concluded long ago, retroactive liability is so repugnant to "[e]lementary

considerations of fairness," *id.* at 265, that a law "*never* should be allowed a retroactive operation where this is not required by express command or by necessary and unavoidable implication." *Murray v. Gibson*, 56 U.S. 421, 423 (1853) (emphasis added). That principle, which is "deeply rooted in [this Court's] jurisprudence, and embodies a legal doctrine centuries older than our Republic," ensures that the governed "have an opportunity to know what the law is and to conform their conduct accordingly." *Landgraf*, 511 U.S. at 265–66; *see also, e.g.*, 2 J. Story, Commentaries on the Constitution § 1398 (5th ed. 1891) ("Retrospective laws are, indeed, generally unjust; and, as has been forcibly said, neither accord with sound legislation nor with the fundamental principles of the social compact.").

It is bad enough for a court to impose retroactive liability under a law that does not clearly provide for retroactive effect. To do so when, as here, the legislature expressly instructs that a law should *not* have retroactive effect, and should apply only prospectively, is indefensible. That is particularly true given that prospective or retroactive effect can be the difference between a permissible regulatory burden and an impermissible regulatory taking. *See, e.g.*, *E. Ent. v. Apfel*, 524 U.S. 498, 533 (1998); *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 601 (1935).

And that is not the only way "unforeseeable and retroactive judicial expansion of narrow and precise statutory language," *Bouie*, 378 U.S. at 352, can convert a constitutional law into an unconstitutional one. A retroactive law can also violate the Due

Process Clause. *See, e.g.*, *Apfel*, 524 U.S. at 539 (Kennedy, J., concurring in the judgment and dissenting in part). While retroactive civil legislation is not *per se* unconstitutional, "due process requires an inquiry into whether a legislature acted in an arbitrary and irrational way when enacting a retroactive law." *id.* at 502 (majority opinion); *accord id.* at 548 (Kennedy, J.). Here, the legislature had a very good reason for expressly rendering the obligation to comply with Article 5A prospective from DACO's adoption of implementing regulation: It would be irrational to expect regulated entities to employ a specific transfer mechanism before they were told what that mechanism was. By retroactively imposing an arbitrary obligation that the legislature did not intend and Esso could neither foresee nor fulfill, the Puerto Rico courts converted a rational law into an entirely irrational one.

In doing so, the courts also created a related but independent due process problem: They imposed an obligation under a law that is utterly devoid of any guidance as to how to comply with it. That inherent vagueness was no oversight—the legislature intentionally left that critical detail to DACO, which is why it made the transfer obligation contingent on DACO's adoption of a mechanism for compliance in the first place. The trial court implicitly acknowledged as much when it concluded that Esso could not prove compliance with Article 5A by any means other than those ultimately established by DACO, thereby confirming that Esso was effectively incapable of avoiding the massive liability that the judiciary imposed. App. 283 ("It was the legislator [*sic*] who felt it necessary that DACO, with its expert

knowledge, should establish the parameters under which compliance of Article 5A ... would be guaranteed."); *see also, e.g.*, App. 36 ("the legislator [*sic*] entrusted on DACO the duty to approve a regulation through which that procedure is set forth").

According to the court of appeals, that extreme form of vagueness—where the means of compliance was literally impossible to discern—is of no constitutional concern because DACO cured the vagueness problem when it adopted Regulation PM-12. That may be true enough prospectively, but it utterly ignores the fact that the trial court imposed nearly nine years of liability and damages based on Esso's purported failure to comply with Article 5A *before* DACO adopted Regulation PM-12. The notion that the fair notice problem with an unduly vague statute used to impose retroactive liability could be cured by a regulation adopted *after* the purported violation occurred is nothing short of absurd. That the court below actually relied on such nonsense is a vivid illustration of just how far from the first principles of our Constitution and this Court's precedents the Puerto Rico courts have strayed.

B. That Core Due Process Violation Was Compounded by the Courts' Blatant Disregard for Other Puerto Rico Laws.

"Elementary notions of fairness enshrined in our constitutional jurisprudence dictate that a person receive fair notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty that a State may impose." *BMW of N. America, Inc. v. Gore*, 517 U.S. 559, 574 (1996).

Here, the due process violation is magnified by the fact that Esso not only had no notice of the conduct that would subject it to liability, but also had no notice of the punitive double damages award that would result.

Puerto Rico's consumer class action statute explicitly limits recovery to "an amount *equal* to the damages determined." 32 L.P.R.A. § 3343 (emphasis added). That stands in stark and deliberate contrast to the many Puerto Rico statutes that explicitly authorize double damages by allowing recovery in an amount "equal to *double*" the damages determined. App. 299 & n.164 (citing 29 L.P.R.A. §§ 146, 147, 147A); *see also, e.g.*, 29 L.P.R.A. §§ 155J, 175, 282, 469; Solicitor Gen.'s Second Mot. 2 (urging that double damages award was "obviously contrary to the clear text of the law"). Yet notwithstanding another unmistakably clear directive from the legislature, the court of appeals imposed what is by all accounts the first *ever* double damages award under Puerto Rico's 40-year-old consumer class action statute. In doing so, the court compounded the constitutional violation, both by depriving Esso of fair notice of the penalty that would result from violating Article 5A's non-existent obligation, and also by adding a punitive component that further heightened the need for the safeguards of due process. *Cf. Gore*, 517 U.S. at 574 n.22; *Landgraf*, 511 U.S. at 281.

If all that were not enough, the proceedings below suffered from a more fatal and fundamental flaw: Esso could not have foreseen even the *existence* of this litigation because there is no private cause of action to enforce Article 5A. To the extent there was

any doubt about that when this case began, the legislature eliminated it by amending Article 8 to include Article 5A among the provisions subject to exclusive OAM enforcement. The Puerto Rico Supreme Court itself recognized as much last year in its *Aguadilla Paint* decision. *See* 183 D.P.R. at 921.

The Puerto Rico Supreme Court only avoided the insuperable task of explaining the lower courts' continued exercise of jurisdiction over this case—not to mention confronting the massive due process problems that its 2003 judgment created—by manufacturing an unidentified jurisdictional defect to declare itself unable to entertain Esso's petition for certiorari. That indefensible conclusion, which appears to be based on the inadvertent service delay in the court of appeals, underscores the remarkable breadth of the due process deprivations in this case. The Puerto Rico procedural rules plainly provide that notice requirements are non-jurisdictional and can be excused for good cause—a standard the court of appeals implicitly deemed satisfied when it *denied* the consumers' motion to dismiss. *See* P.R. App. Ct. R. 12.1 ("For duly justified reasons, the Court of Appeals shall provide reasonable opportunity to correct defects of form or notice without prejudice to the rights of the parties."); App. 121.

In all events, the Puerto Rico Supreme Court's dubious and unexplained jurisdictional dodge has no bearing on *this* Court's jurisdiction to entertain Esso's petition and rectify the Puerto Rico courts' blatant disregard for the Court's precedents. "Whatever [springs] the State may set for those who are endeavoring to assert rights that the State

confers, the assertion of federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice." *Davis v. Wechsler*, 263 U.S. 22, 24 (1923). Any argument that the Court is precluded from remedying the grave due process violations below because of Esso's inadvertent and obviously non-prejudicial delay in serving opposing counsel with a motion that was *denied* on the merits is rooted in precisely the sort of "arid ritual of meaningless form" that this Court has long eschewed. *Staub v. City of Baxley*, 355 U.S. 313, 320 (1958); *see also Bouie*, 378 U.S. at 354 ("an unforeseeable and unsupported state-court decision on a question of state procedure does not constitute an adequate ground to preclude this Court's review of a federal question").

II. This Case Presents Issues of Paramount Importance to Puerto Rico and Its Economy.

"Certainly one of the basic purposes of the Due Process Clause has always been to protect a person against having the Government impose burdens upon him except in accordance with the valid laws of the land." *Giaccio v. Pennsylvania*, 382 U.S. 399, 403 (1966). By brazenly flouting that first principle, the Puerto Rico courts not only violated Esso's constitutional rights and disregarded this Court's precedents, but also cast a cloud of uncertainty over the Court's assurance that "inhabitants of Puerto Rico are protected ... from the official taking of property without due process of law." *Examining Bd. of Engineers, Architects & Surveyors v. Flores de Otero*, 426 U.S. 572, 601 (1976). Left standing, the

decisions below will seriously "undermin[e] the stability and reliability of [Puerto Rico's] legal system" in ways that threaten repercussions far beyond this case. Solicitor Gen.'s Second Mot. 2.

That is particularly true given that the case is of "fundamental importance to the gasoline industry," which is one of the most critical sectors of Puerto Rico's economy. Solicitor Gen.'s Req. 2; *see also* App. 311 ("the industry of gasoline and other fuels in Puerto Rico is of the highest public interest"); *Isla Petroleum*, 485 U.S. at 499 (granting certiorari in case involving DACO's regulatory authority over gasoline industry "[b]ecause of the importance of the issue"). As DACO explained when repeatedly advocating repeal of Article 5A, Esso is not the first major wholesaler to leave the Puerto Rico market because of its unpredictable and cumbersome regulatory climate. *See* App. 151–52 (noting that "intense competition" and "excessive regulation" drove Mobil, ARCO, and Chevron out of Puerto Rico market). By "send[ing] an erred message to the local and international entrepreneurial world of a lack of certainty and consistency in the application of [Puerto Rico's] code of law," Req. by the Puerto Rico Chamber of Commerce to be Authorized to Appear as *Amicus Curiae* 2 (Feb. 6, 2012), the Puerto Rico courts have made it that much harder to attract and retain outside participation and investment in Puerto Rico's gasoline industry.

And that problem will not end with the gasoline industry. As the Commonwealth stressed in urging the Puerto Rico Supreme Court to reconsider its indefensible refusal to review this prominent case,

the instability that the "unexpected result[s]" below will engender "discourages capital investment in Puerto Rico and, thus, affects its economic development" on a massive scale. Solicitor Gen.'s Req. 2; *see also* Mem. Law from Pet'r for *Amicus Curiae*, the Puerto Rico Chamber of Commerce 4 (Feb. 16, 2012) (emphasizing "material and immediate negative effect" case will have by "discourag[ing] local and international business owners and investors from investing in [Puerto Rico's] economy"). So long as Puerto Rico's judiciary does not view itself as governed by the Due Process Clause, both its economy and its population will continue to decline. *See, e.g.*, *id.* at 3 (noting that, over past five years, "the only export that has increased is that of our people").

It has been nearly 20 years since this Court last decided a case arising out of the Puerto Rico commonwealth courts, *see El Vocero de Puerto Rico (Caribbean Int'l. News Corp.) v. Puerto Rico*, 508 U.S. 147 (1993) (summarily reversing Puerto Rico Supreme Court judgment), and even longer since the Court did so after full briefing and argument, *see Posadas de Puerto Rico Assocs. v. Tourism Co. of Puerto Rico*, 478 U.S. 328 (1986). The proceedings below leave little doubt that the Court's intervention is long overdue. Indeed, the Puerto Rico courts' imposition of retroactive liability and punitive double damages in blatant contradiction to the laws of Puerto Rico and this Court's precedents is surely a sufficiently egregious due process violation to warrant summary reversal if the Court is so inclined. In all events, whether through summary disposition or full merits briefing, this Court's review is essential

to restoring the guarantee of due process of law in Puerto Rico.

CONCLUSION

The Court should grant the petition.

Respectfully submitted,

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