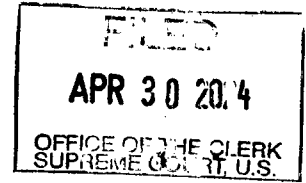


ORIGINAL

23-7384  
No. \_\_\_\_\_



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**In the  
Supreme Court of the United States**

\_\_\_\_\_  
JAVIER E. MANDRY - MERCADO, *Petitioner*

v.

THE UNITED STATES, *Respondent.*

\_\_\_\_\_  
On Petition For A Writ Of Certiorari to the  
United States Court of Appeals For the Federal Circuit

\_\_\_\_\_  
PETITION FOR A WRIT OF CERTIORARI

\_\_\_\_\_  
JAVIER E. MANDRY-MERCADO  
3092 AVENIDA EMILIO FAGOT  
PONCE, PUERTO RICO 00716  
(904) 803-4813

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APR 23 2017

## QUESTIONS PRESENTED

1. Whether participation in the Congress–authorized 2017 and 2020 plebiscite for Puerto Ricans, on statehood elections, constitutes an implied in fact contract for the purposes of a Tucker Act claim against the United States?
2. Whether Petitioner under the Tucker Act is entitled to compensatory and injunctive relief compelling the United States to recognize the outcome of the plebiscites, which unequivocally demonstrated the majority's desire for Puerto Rico to become the 51st state under the U.S. Constitution?
3. Local court rules that systematically hinder *pro se* litigants' access to justice can be interpreted as a regulatory encroachment on their constitutional right to seek redress. This infringement amounts to a violation of the Fifth Amendment, warranting compensation under the Tucker Act. The petitioner argues that by leaving *pro se* matters to judicial discretion, Congress has inadvertently created a policy that unfairly treats *pro se* litigants as second–class participants in the legal process, abridging due process rights. Additionally, considering *pro se* litigants as a distinct class, there may be an

implicit contractual obligation for the courts to ensure equitable treatment and facilitate their access to the judicial system

4. How does the Fifth Amendment, in conjunction with Pub. L. No. 113–76 and the implied–in–fact contractual relationship between the United States and the Commonwealth of Puerto Rico arising from the plebiscites, confer standing upon a Puerto Rican resident, an American citizen, to bring monetary claims against the United States under the Tucker Act, particularly in cases involving nullified election results and withheld disbursements, despite the lower court's dismissal for lack of subject matter jurisdiction?
  
5. Does a Puerto Rican taxpayer, acknowledged as a vital stakeholder in the Commonwealth's fiscal affairs and duty–bound to safeguard the local treasury, wield legal standing to initiate litigation against the United States, premised on alleged violations of provisions delineated within the 2014 Appropriations Bill? Moreover, considering the taxpayer's imperative role in preserving the local treasury and the apparent inertia of the Commonwealth subsequent to payment denials and the disregard of plebiscite mandates — which underscored a prevailing desire for statehood — does a cogent legal argument emerge for petitioning the nullification of the PROMESA Act? This

argument, rooted in Puerto Rico's potential status as a state vis-a-vis its current territorial designation. Additionally, does the taxpayer possess grounds to pursue reimbursement for pertinent expenses borne by the Commonwealth of Puerto Rico due to the United States' failure to accord Puerto Rico statehood recognition? Such failure may arguably constitute an illegal exaction against the taxpayer, thereby implicating all Puerto Rican taxpayers in a manner warranting redress and protection under federal law.

6. Does the Tucker Act offer a viable recourse for individuals to pursue compensation for purported unconstitutional deprivations by state condemnation proceedings at state courts and all cases and appeals, specifically in scenarios where private property is seized for public bankruptcy proceedings, constituting a potential Fifth Amendment taking for public use? Furthermore, does this avenue remain accessible when such cases are indefinitely stayed under the automatic stay provision of the PROMESA Act, effectively halting proceedings against the Commonwealth of Puerto Rico until the dissolution of the PROMESA Fiscal Board?

## **PARTIES TO THE PROCEEDINGS AND RELATED CASES**

All parties to the proceedings are listed in the caption.

The proceedings in federal trial and appellate courts identified below are directly related to the above captioned case in this Court.

### **RELATED CASES**

*Javier Mandry, Aka Javier E. Mandry– Mercado v. United States*, Case: 23–1693, U.S. Court of Appeals for the Federal Circuit. Judgment entered November 16, 2023. See Appendix B

Petition for rehearing and rehearing en banc resolved entered February 1, 2024. See appendix A

*Javier Mandry, Per Se, and On Behalf Of The Commonwealth Of Pr And Others Similarly Situated v. The United States*, No. 1:23–CV–00281–DAT, U. S. Court of Federal Claims. Judgment entered March 28, 2023. See Appendix C

## TABLE OF CONTENTS

OPINIONS BELOW .....	1
JURISDICTION .....	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	1
STATEMENT OF THE CASE .....	2
REASONS FOR GRANTING THE WRIT .....	4
CONCLUSION .....	28

## INDEX TO APPENDICES

Appendix A Order Denying Petition for Rehearing and for Rehearing En Banc in the United States Court of Appeals For the Federal Circuit (Feb 1, 2024).

Appendix B Decision in United States Court of Appeals For the Federal Circuit (Nov 16, 2023).

Appendix C Opinion Court of Federal Claims, Mandry v. United States, No. 23-0281(Fed. Cl. Mar. 27, 2023)

Appendix D Order denying “Motion Requesting Court Appointed Counsel” on March 27, 2023.

Appendix E Complaint filed at the Court of Federal Claims

Appendix F: Response Letter from the US Department of Justice to the Governor  
of Puerto Rico Regarding the 2017 Plebiscite

## TABLE OF AUTHORITIES

### Cases

	<i>page</i>
<i>Aerolineas Argentinas v. United States</i> 939 F.2d 537 (2d Cir. 1991)	9–10
<i>Baltimore &amp; Ohio R. Co. v. United States</i> , 261 U.S. 592 (1923)	6
<i>Barrows v. Jackson</i> , 346 U.S. 249 (1953)	7–8
<i>Coleman v. Miller</i> , 307 U.S. 433 (1939)	10
<i>Eisenstadt v. Baird</i> , 405 U.S. 438 (1972)	8
<i>Ex Parte Young</i> , 209 U.S. 123 (1908)	26–27
<i>Faretta v. California</i> , 422 U.S. 806 (1975)	14–15, 19–20
<i>Frothingham v. Mellon</i> , 262 U.S. 447 (1923)	10

<i>Hawke v. Smith (No. 1), 253 U.S. 221 (1920)</i>	7,8
<i>Leser v. Garnett, 258 U.S. 130 (1922)</i>	10
<i>Lynch v. United States, 292 U.S. 571 (1934)</i>	10–11
<i>Mandry v. United States, No.2023–1693 (Fed. Cir. Nov. 16, 2023)</i>	3,5
<i>Pennsylvania Coal Co. v. Mahon, 260 U.S. 393 (1922)</i>	12
<i>Smiley v. Holm, 285 U.S. 355 (1932)</i>	7
<i>United States v. Armstrong, 364 U.S. 40 (1960)</i>	14
<i>United States v. Minnesota Mutual Investment Co., 271 U.S. 212 (1926)</i>	5
<i>United States v. Testan et al., 424 U.S. 392 (1976)</i>	13
<i>United States v. Winstar Corp., 518 U.S. 839 (1996)</i>	6

## **STATUTES**

28 U.S.C § 1491(a)(1).....	4,5,24
28 U.S.C. §§ 1346(a).....	24



**ACTS**

Consolidated Appropriations Act, 2014, H.R. 3547,  
Pub. L. No. 113–76 (2014) .....2,27

Pub. L. 114–187, June 30, 2016, 130 Stat. 549, known as The Puerto Rico  
Oversight, Management, and Economic Stability Act, (PROMESA  
Act)..... 9,11,12,23,25

## **OPINIONS BELOW**

The opinion of the Federal Claims Court is reported at 165 Fed. Cl. 170, 171 (2023).

The opinion of the Federal Circuit is reported at No.2023–1693 (Fed. Cir. Nov. 16, 2023).

## **JURISDICTION**

The U.S. Court of Appeals for the Federal Circuit entered Judgment on November 16, 2023, and denied a timely combined petition for panel rehearing and rehearing en banc on February 1, 2024. This Court has jurisdiction under 28 U.S.C. § 1254(1).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

The appendix reproduces parts of Page 128 STAT. 61 of Consolidated Appropriations Act of 2014, H.R. 3547, Pub. L. No. 113–76 and § 1491(a)(1) of the Tucker Act (28 U.S.C), the PROMESA Act, The Fifth amendment.

## STATEMENT OF THE CASE

Petitioner, a disabled U.S. Army veteran and American citizen residing in Puerto Rico, participated in plebiscites duly authorized by an act of Congress in 2014, H.R. 3547, Pub. L. No. 113-76, 128 STAT. 61, which mandated a plebiscite to resolve the statehood matter of Puerto Rico. The majority unequivocally expressed the desire for Puerto Rico to become the 51st state. The United States, however, has refused to recognize the outcome of the plebiscites as it continues to deny payments to the Commonwealth of Puerto Rico.

Further, the United States has failed to address the rights of Puerto Ricans to determine the status of their government. Namely, the right to vote and send their own representatives to the Senate and House of the United States Congress. This non-action by the United States has resulted in a breach of contract, furthermore an annulment of Due Process and Petitioner's voting rights, as he voted in the 2017 and 2020, status elections, results of which are yet to be certified.

The money-mandating statute which authorized the 2014 plebiscite is by virtue an implied- in-fact contract between the United States and the Commonwealth of Puerto Rico, and inherently confers voter standing to sue the U.S. under the Tucker Act as a third-party beneficiary. More so, it allows for

compensatory and injunctive relief compelling the United States to recognize the outcome of the plebiscites (in which a majority of Puerto Ricans voted to become the 51st state).

Petitioner initiated action in the United States Court of Federal Claims on February 16, 2023. The U.S. Court of Federal Claims entered judgment on March 27, 2023, dismissing complaint for lack of subject-matter jurisdiction pursuant to Rule 58.

Petitioner filed an appeal to the U.S. Court of Appeals for the Federal Circuit on May 28th, 2023. Petitioner urged the court to vacate dismissal, and remand case, and assign a different judge for the remand proceedings (Informal. Br. at 3).

The Court of Appeals entered Judgment on November 16, 2023, holding that Petitioner “has not alleged the existence of an express or implied contract that supports the Court of Federal Claims’ jurisdiction under the Tucker Act.” *Mandry v. United States*, No.2023–1693 (Fed. Cir. Nov. 16, 2023) at 4. The Federal Circuit denied Petitioner’s timely combined petition for panel rehearing and rehearing en banc on February 1, 2024.

As a result, the lower court judge dismissed the petitioner's claims, citing the inability of a pro se litigant to represent a legal entity and rejecting a motion to assign legal counsel [see Appendix D]. Furthermore, the court neglected to consider the issue of derivative standing for representing the territorial government

of Puerto Rico in state matters. Additionally, the court overlooked a pre-existing motion, filed prior to the judgment, which requested the assignment of legal counsel and resulted in the denial of most claims due to the petitioner's pro se status. This motion was submitted before the court rendered its decision. It is worth noting that had the petitioner been represented by legal counsel, the court might have addressed the derivative claims. The petitioner attributes these shortcomings to local rules and the failure of the United States to adequately address pro se matters in civil cases, along with its obligations regarding due process and reasonable accommodation.

## **REASONS FOR GRANTING THE PETITION**

### **I. Does participation in the Congress-authorized 2017 and 2020 plebiscites on statehood elections by Puerto Ricans constitute an implied-in-fact contract, thereby establishing grounds for a Tucker Act claim against the United States?**

According to the governing statute, “The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States....” 28 U.S.C § 1491(a)(1). More so, the language utilized by

Congress in the 2014 Appropriations Act unambiguously creates an implied-in-fact contract. It states:

“\$2,500,000 is for objective, nonpartisan voter education about, and a plebiscite on, options that would resolve Puerto Rico’s future political status...” Page 128 STAT. 61 of Consolidated Appropriations Act, 2014, H.R. 3547, Pub. L. No. 113–76 (2014). Relatively, the Federal Circuit was in error when it stated that Petitioner “Has not alleged the existence of an express or implied contract that supports the Court of Federal Claims’ jurisdiction under the Tucker Act” *Mandry v. United States*, No.2023–1693 (Fed. Cir. Nov. 16, 2023) at 4. To the contrary, the intention of Congress in the 2014 Appropriations Act is quite clear, it meets and exceeds the standard of a contract i.e., offer, consideration, acceptance and mutuality. In the above instance, the United States offered Puerto Rico a said sum which is inseparable from the plebiscite. Puerto Rico considered, and accepted, and both parties mutually assented to Pub. L. No. 113–76. Accordingly, this court has made clear that “An implied contract in order to give the Court of Claims or a district court under the Tucker Act jurisdiction to give judgment against the Government must be one implied in fact and not one based merely on equitable considerations and implied in law.” *United States v. Minnesota Mutual Investment Co.*, 271 U.S. 212 (1926). Further, this court has interpreted “§ 1491(a)(1) to permit claims for relief based on an “implied in fact” promise, which can be a promise “founded

upon a meeting of minds, which, although not embodied in an express contract, is inferred, as a fact, from conduct of the parties showing, in the light of the surrounding circumstances, their tacit understanding” *United States v. Winstar Corp.*, 518 U.S. 839 (1996).<sup>1</sup> The arguments above underscore the undeniable fact that the United States and Puerto Rico both entered into an implied-in-fact contract. This court should grant certiorari to reverse lower court’s errors.

**a. The Federal Circuit Abused Its Discretion When it Held That Petitioner Did Not Establish Grounds For Which Jurisdiction May Be Invoked.**

The Consolidated Appropriations Act of 2014, H.R. 3547, Pub. L. No. 113–76 (2014), is an instrument to bring Puerto Rico closer to statehood. This instrument results from the meeting of minds, specifically it is the fruit of mutual necessity. Without which objective may not move forward. Objective / end goal as conveyed, more or less exemplifies an implied contract.

**b. Pub. L. No. 113–76 is a Money –Mandating Statute Which Confer Voter Standing To Sue The U.S. Under The Tucker Act As A Third–Party Beneficiary**

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<sup>1</sup> See *Baltimore & Ohio R. Co. v. United States*, 261 U. S. 592, 597 (1923)

Petitioner has standing to sue as third party under the Tucker Act because he as a Puerto Rican is directly affected by the issues involved in the action, and whose action first requires the Commonwealth of PR to comply with the mandate to hold a Congressionally authorized plebiscite. Petitioner, like a majority of Puerto Ricans who participated in the 2014 plebiscite voted for statehood. More particularly, the United States made promises of financial support to Puerto Rico prior to the plebiscite, which it failed to keep. This breach of contract is sufficient grounds for a third party claim to move forward.

To bring a claim under the Tucker Act, a third-party must establish an implied-in-fact contract or violation of a property right in the broad sense. The Appropriations Act of 2014 initiated “an implied-in-fact contract” with the United States, and a contract with the Commonwealth of Puerto Rico. Accordingly, Petitioner is a third party, whether alone or representing the territorial government, and has standing to bring forth claims, some personal and others which belong to the territorial government because he voted for statehood.

Petitioner as a third party, under an implied-in-fact contract has the right to bring claims as a third party. *See Barrows v. Jackson*, 346 U.S. 249 (1953) (“...A seller of land is entitled to defend against an action for damages for breach of a racially restrictive covenant on the ground that enforcement of the covenant violated the equal protection rights of prospective non-Caucasian purchasers”).



Further, relative to *Barrows v. Jackson*, the United States Supreme Court reasoned that “The relationship there between the defendant and those whose rights he sought to assert was not simply the fortuitous connection between a vendor and potential vendees, but the relationship between one who acted to protect the rights of a minority and the minority itself. “ *Eisenstadt v. Baird*, 405 U.S. 438 (1972). By the same logic, Petitioner has third party standing to assert the rights of all voters who, contrary to the constitution, were denied their desire for Puerto Rico to become the 51st state.

### **c. Taxpayer Standing – Illegal Exaction**

The Court of Appeals for the Federal Circuit rendered an opinion regarding taxpayer standing to bring a claim, yet it overlooked arguments concerning proximate cause. Specifically, my claims on behalf of the Commonwealth of Puerto Rico are rooted in the money mandating statute. I assert standing to sue on behalf of the government to compel the United States to reimburse Puerto Rico for ensuing costs and expenses. These stem from the failure to fund plebiscites and the pursuit of bankruptcy proceedings for a territory that, under the Constitution's provisions in section 3 et seq., should have been recognized as a state immediately after voting for statehood, with the added emphasis that the statehood vote emerged victorious. Petitioner considers that the claim should be considered a derivative action claim.

Specifically, we contend that the Act's imposition of financial burdens on Puerto Rico, particularly regarding bankruptcy-related expenses and plebiscite expenses<sup>2</sup>, constitutes an illegal exaction under the Tucker Act. This argument is grounded in the principles elucidated by this Court in *Aerolineas Argentinas v. United States* 939 F.2d 537 (2d Cir. 1991) where the Federal Circuit established that government actions compelling financial outlays from private entities, contrary to law, constitute illegal exactions. This is forcing taxation to the people, which is included in electricity bills and tolls, as well as reduced benefits.

The PROMESA Act, enacted in 2006, was ostensibly crafted to address Puerto Rico's fiscal challenges and facilitate its economic recovery. However, certain provisions within the Act have effectively burdened Puerto Rico with significant financial obligations, particularly in the context of bankruptcy proceedings. These expenses, which are subject to the discretion of the Fiscal Oversight and Management Board, persist indefinitely and have the potential to impede Puerto Rico's fiscal sovereignty and its path towards statehood.

The illegal exaction doctrine, as expounded upon by this Court in *Aerolineas Argentinas*, extends Tucker Act jurisdiction to cases where the government compels financial outlays from private entities without legal authority. While the government may not directly appropriate property, it effectively exerts control over private resources, akin to a regulatory taking. This principle underscores the broader notion that government actions compelling financial burdens from private entities, contrary to law, constitute illegal exactions.

The provisions of the PROMESA Act that mandate Puerto Rico to bear the expenses of bankruptcy proceedings, including costs that persist indefinitely,

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<sup>2</sup> See Appendix F

represent a clear departure from legal norms. By imposing these financial obligations on Puerto Rico, the Act interrupts the Commonwealth's trajectory towards statehood and undermines its fiscal sovereignty. Furthermore, such impositions constitute a regulatory taking of private property for public use, akin to the scenarios addressed in *Aerolíneas Argentinas*.

In *Coleman v. Miller*, 307 U.S. 433, the Court stated: "While one who asserts the mere right of a citizen and taxpayer of the United States to complain of the alleged invalid outlay of public moneys has no standing to invoke the jurisdiction of the federal courts (*Frothingham v. Mellon*, 262 U.S. 447, 262 U.S. 480, 262 U.S. 486–487), the Court has sustained the more immediate and substantial right of a resident taxpayer to invoke the interposition of a court of equity to enjoin an illegal use of moneys by a municipal corporation."

In *Coleman v. Miller*, 307 U.S. 433 (1939), the Supreme Court also referenced *Smiley v. Holm*, 285 U.S. 355 (1932) and *Hawke v. Smith* (No. 1), 253 U.S. 221 (1920), as well as *Leser v. Garnett*, 258 U.S. 130 (1922). In *Smiley v. Holm*, the Court granted certiorari on the application of an elector, citizen, and taxpayer who challenged the constitutionality of a state statute establishing congressional districts. The Court held that state legislatures have the authority to prescribe the time, place, and manner of holding elections for representatives in Congress under Article I, Section 4 of the U.S. Constitution. This case was cited to illustrate the

Court's previous acknowledgment of the standing of citizens and voters to challenge state statutes affecting their rights under the Constitution.

*Hawke v. Smith* (No. 1), 253 U.S. 221 (1920), the plaintiff challenged the authority of the state to require submission of the ratification of the Eighteenth Amendment to a referendum. The Supreme Court entertained jurisdiction and held that the state court had erred in deciding that the state had authority to subject the ratification to a referendum. This case demonstrated the Court's jurisdiction to review state court decisions regarding constitutional questions.

In *Leser v. Garnett*, 258 U.S. 130 (1922) qualified voters in Maryland brought suit to challenge the validity of the Nineteenth Amendment to the U.S. Constitution, which granted women the right to vote. The state court upheld the validity of the amendment, and the Supreme Court granted certiorari to review the decision. The Court affirmed the judgment of the state court, holding that the official notice of ratification to the Secretary of State, duly authenticated, was conclusive.

Applying the principles established in these cases, it becomes evident that taxpayers have a substantial interest in ensuring the proper use of public funds and the adherence to constitutional principles by government entities. In the context of matters related to funds paid by the territorial government involving the PROMESA Act, taxpayers in Puerto Rico may similarly assert their standing to challenge the legality or constitutionality of such expenditures.

Given the significant impact of governmental actions on the financial interests of taxpayers, it is imperative that taxpayers have the standing to challenge any misuse of public funds or actions that may contravene constitutional principles. Thus, recognizing taxpayer standing in cases related to the PROMESA Act ensures accountability, transparency, and adherence to constitutional governance principles.

In summary, I respectfully contend that recognizing third-party standing in this matter is not only justified but imperative in upholding the principles of fairness and justice. It ensures that the interests of all taxpayers in Puerto Rico are adequately represented and protected before this Honorable Court.

**II. Does the denial of compensation to Puerto Rico, as mandated by a money-mandating statute, despite its overwhelming vote in favor of statehood in plebiscites, constitute a violation of its residents' constitutional rights and obligations under an implied-in-fact contract with the United States?**

The petitioner asserts that relief is warranted based on two primary grounds. Firstly, there exists an implied-in-fact contract between the United States and Puerto Rico, stemming from their historical relationship and mutual obligations. Secondly, the petitioner argues that their constitutional right to vote in a plebiscite, particularly one with potential ramifications for the number of seats in the House

of Representatives and the Senate, has been deprived. It is believed that such changes could disproportionately impact one party over another, thereby necessitating redress.

More specifically, after numerous plebiscites, the last of which Puerto Ricans voted overwhelmingly to become the 51st state, but the United States has refused to accord Puerto Rico its right of statehood and did so by denying payment for the plebiscite by claiming some terms which were never included in the money mandating statute. This court has made clear that "The asserted entitlement to money damages depends upon whether any federal statute "can fairly be interpreted as mandating compensation by the Federal Government for the damage sustained. *United States v. Testan et al.*, 424 U.S. 392 (1976), in the instance at hand, congress in 2014, infused Pub. L. No. 113-76 with money-mandating language. It made \$2,500,000 available for the purposes of "nonpartisan voter education...plebiscite...on, options that would resolve Puerto Rico's future political status..." Further, Petitioner, among other Puerto Ricans voted to become part of the Union. The United States, however, refused to provide funds as promised. Accordingly, Petitioner suffered injury because his vote was diluted and devalued. This court should issue certiorari. It would bring Puerto Rican voters closer to having their wish of becoming the 51st state. Because the source of the controversy is a money mandating statute, the Court of Federal Claims

should be considered to have subject matter jurisdiction to resolve the case in its merits.

**III. Local court rules that systematically hinder pro se litigants' access to justice can be interpreted as a regulatory encroachment on their constitutional right to seek redress. This infringement amounts to a violation of the Fifth Amendment, warranting compensation under the Tucker Act. The petitioner argues that by leaving pro se matters to judicial discretion, Congress has inadvertently created a policy that unfairly treats pro se litigants as second-class participants in the legal process, inconsistent with principles of fairness and equality. Additionally, considering pro se litigants as a distinct class, there may be an implicit contractual obligation for the courts to ensure equitable treatment and facilitate their access to the judicial system.**

The petitioner argues that the U.S. Congress has effectively delegated the regulation of pro se matters to the courts, creating a policy that disadvantages pro se litigants compared to lawyers. Notably, the landmark case of *Faretta v. California*, arising from the needs of a criminal defendant, did not stem from a civil plaintiff seeking redress for constitutional violations. Subsequent interpretations of *Faretta* have mainly underscored the challenges faced by pro se litigants, highlighting a lack of legislation affirming their rights as a matter of course.

Importantly, there is no comprehensive legal framework recognizing pro se litigants as a distinct class, separate from licensed attorneys authorized to practice

law and represent others. Historically, prior to the Faretta decision, civil plaintiffs were prohibited from securing legal counsel, a practice dating back to the earliest days of the United States.

The failure to address these fundamental issues has led some courts to view *pro se* representation as disruptive to courtroom decorum. Despite attorneys serving as officers of the court rather than proprietors of the legal process, challenges against *pro se* litigants persist, reinforcing the understanding that they represent a class of litigants that cannot be disregarded or disparaged.

In this case, the petitioner, seeking to advocate for the interests of the Commonwealth of Puerto Rico as a taxpayer, encountered significant obstacles due to his *pro se* status. Despite filing a motion requesting the assignment of counsel and emphasizing the need for legal representation, the petitioner's plea was disregarded<sup>3</sup>. Furthermore, the lower court's ruling failed to address crucial issues concerning Puerto Rico, citing the petitioner's *pro se* status as grounds for dismissal, rather than considering the substantive merits of the claims.

The appellate court's refusal to acknowledge this oversight perpetuates systemic injustices and denies the petitioner the fundamental right to fair treatment and meaningful access to justice. This underscores the urgent need to

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<sup>3</sup> See Appendix D



address barriers faced by pro se litigants, ensuring equal protection under the law and effective presentation of cases in court.

Moreover, the petitioner faced additional challenges due to local court rules and unwritten policies, such as the inability to file electronically and encounters with aggressive legal tactics. When federal courts fail to provide a reasonable framework for *pro se* litigation and impose rules that burden litigants, it constitutes an unconstitutional "taking" of a citizen's property right to seek redress, justifying compensation under the 5th Amendment and the Tucker Act.

These issues, though not initially part of the complaint, surfaced during the course of the case proceedings and were subsequently incorporated into the appeal to the Court of Appeals for the Federal Circuit. They highlight the systemic challenges encountered by pro se litigants within the legal system. Additionally, other claims within my complaint sought compensation for further instances where the failure to address these issues resulted in adverse consequences. For instance, the lack of compliance led to the effective quashing of a subpoena, crucial for the petitioner's case against a homeowners' association (HOA). Moreover, this non-compliance ultimately contributed to a dismissal, despite the necessity of such evidence to establish fraudulent concealment.

Access to justice is the cornerstone of our legal system, enshrined in the very fabric of our Constitution. Yet, in the realm of litigation against the federal

government under the Tucker Act, a critical aspect of this access is at risk: the rights of *pro se* litigants. *Pro se* litigants, those who appear in court without representation by an attorney, often face significant hurdles in navigating complex legal proceedings. The Tucker Act, while providing a mechanism for seeking redress against the government, must also ensure that *pro se* litigants are afforded fair treatment and meaningful access to justice.

First and foremost, it is essential to recognize that *pro se* litigants are not merely individuals representing themselves; they are individuals, American citizens, exercising their constitutional right to access the courts. This fundamental right, deeply ingrained in our legal tradition, demands that all litigants, regardless of representation status, be given a fair opportunity to present their case. To deny *pro se* litigants such an opportunity is to undermine the very foundation of our judicial system.

Furthermore, the Tucker Act itself embodies principles of fairness and equity. By waiving sovereign immunity and allowing individuals to seek monetary damages from the federal government, the Act acknowledges the government's accountability to its citizens. However, this accountability must extend to ensuring that *pro se* litigants are not disadvantaged in the pursuit of justice. To fulfill the spirit of the Tucker Act, the court must actively safeguard the rights of *pro se*

litigants, providing necessary accommodations and support to level the playing field.

Moreover, upholding the rights of *pro se* litigants under the Tucker Act is not merely a matter of principle; it is a pragmatic necessity. *Pro se* litigants, often lacking the financial means to hire legal representation, play a vital role in the functioning of our legal system. By providing accommodations such as simplified procedures, clear instructions, and access to legal resources, the court can enhance the efficiency of judicial proceedings and reduce burdensome delays.

In *Pennsylvania Coal Co. v. Mahon*, a landmark case decided by the United States Supreme Court in 1922, the Court established a principle known as the "regulatory takings doctrine." This doctrine states that if government regulations significantly diminish the value of private property, it can be considered a "taking" under the Fifth Amendment to the U.S. Constitution. According to the Fifth Amendment, if the government takes private property for public use, it must provide just compensation to the property owner.

In the case of *Pennsylvania Coal Co. v. Mahon*, the Court held that a state law prohibiting coal mining under certain circumstances amounted to a regulatory taking because it substantially diminished the value of the coal company's property. The Court ruled that such regulations required the government to provide compensation to the property owner for the loss of value caused by the regulation.

Drawing from this precedent, the argument posits that local court rules that disproportionately hinder pro se litigants' access to the courts could be construed as a regulatory taking of their right to seek redress. If these rules substantially diminish the value of the pro se litigants' right to access the courts, it could be deemed a violation of their Fifth Amendment rights, entitling them to compensation under the Tucker Act. This analogy emphasizes the seriousness of denying pro se litigants' meaningful access to the legal system and highlights the potential constitutional implications of such actions.

Your Honors, the duty rests with this esteemed court to ensure that the principles of fairness, equity, and access to justice are upheld in all matters brought before it. In the context of litigation under the Tucker Act, this duty requires a steadfast commitment to protecting the rights of pro se litigants. By doing so, the court not only honors the fundamental precepts of our legal system but also reaffirms its dedication to serving the interests of justice for all.

The petitioner contends that the U.S. Congress has delegated the regulation of *pro se* matters to the courts, effectively establishing a policy that marginalizes pro se litigants in comparison to lawyers. Notably, the landmark case of *Faretta v. California*, emerging from the needs of a criminal defendant, did not originate from a civil plaintiff seeking redress for constitutional violations. The subsequent interpretations of Faretta's legacy have highlighted restrictions to this pro se

representation, suggesting an absence of legislation affirming pro se litigants' rights as a matter of course.

Significantly, there exists no comprehensive legal framework recognizing *pro se* litigants as a distinct class of litigants, separate from licensed attorneys who possess the state-sanctioned authority to practice law and represent others. Historically, prior to the *Faretta* decision, civil plaintiffs were barred from securing legal counsel, a practice dating back to the earliest days of the United States.

The failure to address these fundamental issues has led some courts to view pro se representation as disruptive to courtroom decorum. Despite the attorney's role as an officer of the court rather than the proprietor of the legal process, challenges against pro se litigants persist, reinforcing the understanding that pro se litigants represent a class of litigant that cannot be disregarded or disparaged.

**IV. How does the Fifth Amendment, in conjunction with Pub. L. No. 113-76 and the implied-in-fact contractual relationship between the United States and the Commonwealth of Puerto Rico arising from the plebiscites, confer standing upon the petitioner who is Puerto Rican resident, an American citizen, to bring monetary claims against the United States under the Tucker Act, particularly in cases involving nullified election results and withheld disbursements, despite the lower court's dismissal for lack of subject matter jurisdiction?**

The Fifth Amendment is by virtue money mandating and Pub. L. No. 113-76 created a contractual obligation. i.e., the vote for statehood. Statehood was won and Puerto Rico was denied the promised disbursements. The Commonwealth of Puerto Rico kept to terms of the contract. The United States breached it. Vis-a-vis Pub. L. No. 113-76, "As Congress had the power to authorize the Bureau of War Risk Insurance to issue them, the due process clause prohibits the United States from annulling them, unless, indeed, the action taken falls within the federal police power or some other paramount power." *Lynch v. United States*, 292 U.S. 571 (1934). The former and the latter are by and large irrelevant in the action at hand. Beyond breaching contract, the United States, in addition, violated Due Process of law because all Puerto Rico's vote for statehood was nullified.

The United States Supreme Court has found other kinds of intangible interests to be property for purposes of the Fifth Amendment. In *United States v. Armstrong* this court held that the destruction of liens was a taking "for which just compensation is due under the Fifth Amendment." 364 U. S. 40, 44, 46 (1960). Further "Valid contracts are property, whether the obligor be a private individual, a municipality, a State or the United States." 292 U.S. 571 (1934). Further that "Rights against the United States arising out of a contract with it are protected by the Fifth Amendment." *Id.* Accordingly, the act of nullifying votes and disbursements, that is of a valid contract between the United States and Puerto

Rico constitutes an act of taking under the 5th Amendment. Consequently, the lower court is in error for not allowing Petitioner to move forward with claim.

A voter's standing as a third-party beneficiary to the implied-in-fact contract between the United States and the Commonwealth of Puerto Rico is inseparable from Petitioner's constitutional interest in the election results. The plebiscites gave rise to an implied-in-fact contract. This contract, rooted in constitutional principles and the specific directive of Congress, obliges the U.S. to acknowledge the outcome of the plebiscites. The lower court abused its discretion when it dismissed action for lack of subject matter jurisdiction despite the presence of a money-mandating statute.

Above all, Petitioner belongs to a class intended to benefit from the contractual relationship between the United States government and the Commonwealth of Puerto Rico (he is a citizen participating in a referendum which authorized the Commonwealth of PR to act on its behalf). Accordingly, Petitioner has standing as third-party beneficiary to sue the United States under the Tucker Act.

**V. Does a Puerto Rican taxpayer, vested as a key stakeholder in the Commonwealth's affairs, possess legal standing to sue the United States for its failure to adhere to the mandate outlined in the 2014 Appropriations Bill? Furthermore, considering the Commonwealth's inaction following the denial of**

**payment and the disregard of the plebiscite outcome indicating a majority desire for statehood, does this failure to act justify a request for nullification of the PROMESA Act on grounds of inconsistency with Puerto Rico's status as a potential state rather than a territory? Additionally, can the taxpayer claim relevant expenses the Commonwealth of PR incurred in proximate cause to the United States' failure to recognize Puerto Rico within a state framework?**

In considering the Tucker Act as the legal vehicle for seeking redress, it's crucial to recognize that the question of whether the United States bears a contractual obligation can indeed be analyzed through the lens of contract law. The deprivation of voting rights, resulting from the failure to recognize the plebiscite's outcome, constitutes a breach of the implicit contract between the United States and the territorial government concerning the rights of American citizens residing in Puerto Rico. The essence of this contract was to allow for the democratic resolution of Puerto Rico's political status through a plebiscite, and the severance of voting rights following this contractual breach should inherently compel the United States to honor the outcome of that election, which was consequential to authorizing the Commonwealth of PR funds to celebrate such a plebiscite. Thus, the Tucker Act serves as the legal avenue through which this contractual violation can be rectified, ensuring that the principles of democracy and contractual integrity are upheld.



Furthermore, it's imperative to address the issue of sovereign immunity within the context of our argument. Under the Tucker Act of 1887, the United States waived its sovereign immunity for specific types of claims, thereby allowing individuals to seek redress for grievances against the government. While sovereign immunity typically shields the government from lawsuits, the Tucker Act carves out exceptions, exposing the government to liability in certain circumstances.

Specifically, the Tucker Act extends the jurisdiction of the Court of Claims to encompass claims arising from constitutional violations, including takings claims under the Fifth Amendment, as well as claims stemming from federal statutes or regulations. This statutory provision, codified in 28 U.S.C. §§ 1346(a) and 1491, forms the backbone of our argument for seeking relief under the Tucker Act.

By permitting three categories of claims against the government—contractual claims, noncontractual claims for the return of money paid to the government, and noncontractual claims asserting entitlement to payment—the Tucker Act provides a legal avenue for addressing grievances arising from governmental actions.

Today, jurisdiction over Tucker Act claims resides with the United States Court of Federal Claims. This court holds exclusive jurisdiction over Tucker Act claims exceeding \$10,000, while the "Little Tucker Act" allows for concurrent jurisdiction with federal district courts for claims under \$10,000.

**VI. Does the Tucker Act offer a viable recourse for individuals to pursue compensation for purported unconstitutional deprivations by the Commonwealth of PR to due process in all forced condemnation proceedings and all cases and appeals, specifically in scenarios where private property is seized for public bankruptcy proceedings, constituting a potential Fifth Amendment taking for public use? Furthermore, does this avenue remain accessible when such cases are indefinitely stayed under the automatic stay provision of the PROMESA Act, effectively halting proceedings against the Commonwealth of Puerto Rico until the dissolution of the PROMESA Fiscal Board?**

The complaint<sup>4</sup> alleges that the PROMESA Act, initially intended to provide temporary relief, has resulted in an indefinite stay of two cases, leading to a prolonged delay of five years without resolution. Despite the initial expectation of a temporary stay, the situation has evolved into a scenario where there seems to be no end in sight. Moreover, the court mandates a status report every 90 days, indicating a prolonged and burdensome process for the plaintiffs.

The stay was initiated at the request of the petitioner, who sought damages against state officers for constitutional violations and sought the nullification of Puerto Rico's Homeowners Association Act. Consequently, the stay has effectively halted legal proceedings and prevented the adjudication of the plaintiff's claims.

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<sup>4</sup> APPENDIX E

This prolonged delay not only undermines the plaintiff's pursuit of justice but also obstructs the resolution of legal disputes that are essential for upholding the rule of law.

Furthermore, the extended stay imposed by the PROMESA Act constitutes a significant infringement on the rights of Puerto Ricans to access the courts. By obstructing the legal process and preventing the resolution of legal disputes, the stay effectively deprives individuals of their fundamental right to seek redress for grievances through the judicial system. This denial of access to justice undermines the principles of fairness and equality under the law, which are fundamental tenets of the American legal system.

Additionally, the extended stay has resulted in a regulatory taking of private property for public use. By preventing individuals from pursuing legal remedies and seeking compensation for constitutional violations, the stay effectively deprives them of their property rights without just compensation. This regulatory taking not only violates the Fifth Amendment's Takings Clause but also undermines the principles of property rights and due process enshrined in the Constitution.

In light of these considerations, the petitioner contends that the extended stay imposed by the PROMESA Act constitutes a violation of their rights pursuant to *Ex Parte Young*. This landmark legal principle, established by the Supreme Court, allows individuals to seek injunctive relief against state officers who are acting in

violation of federal law. By invoking *Ex Parte Young*, the petitioner seeks to challenge the constitutionality of the extended stay and restore their fundamental rights to access the courts and seek redress for constitutional violations.

### CONCLUSION

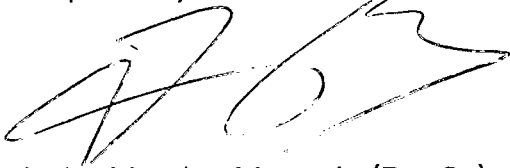
As a proud American citizen by birth and a disabled veteran of the U.S. Army, my voice carries the weight of both duty and patriotism. It is imperative that the United States upholds its legislative commitments, especially when they afford avenues for democratic expression, as evidenced by the authorization of the plebiscite through the 2014 Appropriations Bill. This legislation remains unaltered and unchallenged in the courts, cementing its legal validity and the obligation for compliance.

In the quest for justice and the upholding of democratic values, it is imperative that the petition for a writ of certiorari be accepted. It is both my entitlement and obligation to pursue remedies and restitution through established legal avenues. This ensures that the voice of the people of Puerto Rico resonates and is accorded due respect within the confines of our nation's legal framework. Furthermore, it presents an opportunity to reevaluate the rights of pro se litigants in civil cases, a matter that poses challenges to the legal system and often leads to frustration among individuals representing themselves, who face discrimination due to their lack of legal representation.

The petition for a writ of certiorari should be granted.

In Ponce, Puerto Rico, this 30<sup>th</sup> day of April, 2024.

Respectfully Submitted via USPS

A handwritten signature in black ink, appearing to be 'JM' with a stylized flourish extending to the right.

Javier Mandry-Mercado (Pro Se)