

No. 16-1313

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

IN RE: ADA MERCEDES CONDE-VIDAL; MARITZA LOPEZ-AVILES; IRIS DELIA RIVERA-RIVERA; JOSE A. TORRUELLAS-IGLESIAS; THOMAS J. ROBINSON; ZULMA OLIVERAS-VEGA; YOLANDA ARROYO-PIZARRO; JOHANNE VELEZ-GARCIA; FAVIOLA MELENDEZ-RODRIGUEZ; PUERTO RICO PARA TOD@S; IVONNE ALVAREZ-VELEZ,

Petitioners

On Petition for a Writ of Mandamus to the United States District Court for the District of Puerto Rico
Case No. 3:14-cv-01253, Judge Juan M. Pérez-Giménez

MOTION TO JOIN PETITION FOR WRIT OF MANDAMUS

TO THE HONORABLE COURT:

COME NOW Alejandro J. García-Padilla, in his official capacity as Governor of the Commonwealth of Puerto Rico; Dr. Ríus-Armendáriz, in her official capacity as Secretary of the Health Department of the Commonwealth of Puerto Rico; Wanda Llovet-Díaz, in her official capacity as the Director of the Commonwealth of Puerto Rico Registrar of Vital Records; and Juan C. Zaragoza-Gómez, in his official capacity as Director of the Treasury in Puerto Rico, through the undersigned counsel, and respectfully aver and pray:

The Commonwealth of Puerto Rico is committed to guaranteeing Petitioners' fundamental right to marry, as recognized by the Supreme Court in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015). To that end, the Governor of the Commonwealth of Puerto Rico issued Executive Order No. 2015-021, stating that all agencies and officers of the Commonwealth of Puerto Rico should guarantee marriage rights to all persons, including same-sex couples. Since the issuance of Executive Order 2015-021, the Health Department has issued marriage licenses to same-sex couples and several Commonwealth agencies are constantly working to execute the constitutional mandate of marriage equality.

In furtherance of the important interest of ensuring marriage equality in the Commonwealth, Defendants support and join Petitioners' request for a writ of mandamus.

Appellate proceedings in this case regarding the validity of Puerto Rico's marriage ban, concluded after the Supreme Court issued its opinion in *Obergefell*. To wit, on July 8, 2015, this Court agreed with the parties that the marriage ban is unconstitutional. This Court remanded the case for entry of a final judgment. Accordingly, the parties filed a joint request for entry of a judgment declaring Puerto Rico's marriage ban unconstitutional. Regrettably, the district court declined to follow this Court's mandate and refused to apply binding Supreme Court precedent on the fundamental right to marry. As Petitioners explain, this

Honorable Court should intervene to remedy the district court's refusal to enter judgment in this case.

The district court also erred in raising *sua sponte*, the issue whether the fundamental right to marry applies in Puerto Rico. It is beyond cavil that fundamental rights apply automatically and with full force to the citizens of Puerto Rico. *See e.g. Rodríguez v. Popular Democratic Party*, 457 U.S. 1, 7 (1982) (“It is not disputed that the fundamental protections of the United States Constitution extend to the inhabitants of Puerto Rico. In particular, we have held that Puerto Rico is subject to the constitutional guarantees of due process and equal protection of the laws”); *Examining Bd. of Engineers, Architects & Surveyors v. Flores de Otero*, 426 U.S. 572, 600 (1976) (“It is clear now, however, 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.”). Simply put, it cannot be seriously disputed that the citizens of the Commonwealth of Puerto Rico are entitled to exercise the full panoply of fundamental rights, including the right to marry.

Defendants respectfully agree with Petitioners' plea to put an end to this litigation. This Court should direct the district court to immediately enter a final judgment on the basis that all persons and citizens of the Commonwealth of Puerto Rico enjoy, on equal terms, the fundamental right to marry.

WHEREFORE, Defendants-Appellees respectfully support and join
Petitioners' request for issuance of a writ of mandamus.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico this 31st day of March, 2016.

s/Margarita Mercado-Echegaray
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