

CASE SCHEDULED FOR ORAL ARGUMENT ON MARCH 19, 1999

BRIEF FOR APPELLEES

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 98-5179

ALBERTO G. LOZADA COLON,

Appellant,

v.

DEPARTMENT OF STATE, et al.,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES
Attorneys.

R. CRAIG LAWRENCE,
DARIA J. ZANE,
Assistant United States Attorneys.

FRANK W. HUNGER,
Assistant Attorney General.

MARK C. WALTERS,
LINDA S. WERNERY,
Attorneys
Office of Immigration Litigation
Civil Division
U.S. Department of Justice.

OF COUNSEL:

CATHERINE W. BROWN
Assistant Legal Adviser
United States Department of State
Washington, D.C.

C.A. No. 97-1831

pursuant to a constitution of their own adoption." 48 U.S.C. § 731b. The Act provided that the matter was to be submitted to qualified voters of Puerto Rico for acceptance or rejection through an island-wide referendum. 48 U.S.C. § 731c. The compact was approved by the voters of Puerto Rico on June 4, 1951.

Pursuant to Section 731c, upon approval of the voters, a constitutional convention was convened. The constitution drafted by it was ratified by the people of Puerto Rico on March 3, 1952. 48 U.S.C. § 731d note. The President submitted it to Congress which, with minor amendments, approved it by Joint Resolution of Congress, 66 Stat. 327, on July 3, 1952. 48 U.S.C. § 731d. The Governor of Puerto Rico proclaimed the constitution of the Commonwealth of Puerto Rico to be in force on July 25, 1952. Americana of Puerto Rico, Inc. v. Kaplus, 368 F.2d 431, 434 (3d Cir. 1966), cert. denied, 386 U.S. 943 (1967).

As shown by the Amicus Curiae brief of the Commonwealth of Puerto Rico, the status of Puerto Rico since the creation of the Commonwealth system is that Puerto Rico's status remains the same. Amicus Curiae Brief at 6-8. Puerto Rico remains a territory subject to the plenary power of Congress. Cases also indicate that Puerto Rico's status in relation to the United States remained the same following the establishment of the Commonwealth system. E.g., Harris v. Rosario, 446 U.S. 651 (1980). In fact, the House Report accompanying Public Law 600 specifically states that the bill "would not change Puerto Rico's

fundamental political, social, and economic relationship to the United States." 48 U.S.C. § 731b, note.

Further, although Congress, through the 1950 Act, authorized the process for democratically instituting a local constitutional government in Puerto Rico, Congress retained the authority to legislate with regard to Puerto Rico. For purposes of citizenship and immigration, Congress determined in the INA that Puerto Rico is a part of the United States. Section 101(a)(38) of the INA, 8 U.S.C. § 1101(a)(38), defines the term "United States" as including Puerto Rico. The plain language of the statute makes clear that for purposes of the INA, Congress has explicitly determined under its authority that Puerto Rico is part of the United States.¹⁴

Lozada argues that the District Court characterized Puerto Rico as an incorporated territory or state similar to the District of Columbia. First, with regard to the characterization, the Court's reference was in the context of a hypothetical question. (Excerpt from Transcript of Hearing, April 15, 1998, pp. 26-31). More importantly, the Court's ruling

¹⁴ It is clear that Congress continues to consider Puerto Rico part of the United States for purposes of citizenship and nationality. Recently, in March, 1998, H.R. 856, the United States-Puerto Rico Political Status Act was passed by the House of Representatives. The Act describes the current status of Puerto Rico as an "unincorporated territory of the United States" and that "persons born in Puerto Rico have statutory United States nationality and citizenship." H.R. Rep. 105-131, Part I, 105th Cong., 1st Sess. (1997). Today Congress continues to have the view that Puerto Rico is part of the United States for purposes of citizenship, and that its citizens are citizens of the United States.