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Curtis returns to SCOTUS in historic sequel on the rights of citizens in Puerto Rico

New York, August 30, 2021 – Today, Curtis, Mallet-Prevost, Colt & Mosle LLP (“Curtis”) filed its principal brief in the Supreme Court on behalf of client José Luis Vaello Madero in *United States v. Vaello-Madero*—a case with historic significance for the constitutional rights of the residents of Puerto Rico and other U.S. territories. The Supreme Court is considering whether denying Supplemental Security Income (“SSI”) to citizens in Puerto Rico under the Social Security Act violates equal protection under the Fifth Amendment. The Curtis team is being led by litigation partner Hermann Ferré and associates Juan Perla, Robert Groot, and Andrew Larkin.

“This case means so much to so many Puerto Ricans in and outside the island, as well as residents of other U.S. territories that are routinely subject to less favorable treatment in national welfare laws as compared to their fellow Americans on the mainland,” said Ferré. “Curtis is honored to bring this historic equal protection challenge on behalf of Mr. Vaello Madero.”

Mr. Vaello Madero qualified for and received SSI benefits while he was residing in New York before he moved to Puerto Rico to be closer to family. The U.S. District Court for the District of Puerto Rico appointed Curtis as pro bono counsel for Mr. Vaello Madero after the government sued him to recover \$28,081 in SSI payments that, according to the government, Mr. Vaello Madero was not entitled to receive while he was residing on the island because he was “outside the United States.” Curtis won in the district court and successfully defended against an appeal in the First Circuit. The government petitioned for certiorari and simultaneously sought summary reversal based on two cases that the Curtis team is asking the Court to overrule. On March 1, 2021, the Court denied summary reversal and granted the petition to reconsider that precedent on plenary review.

The United States’ reply is due September 29, 2021. Oral argument has not yet been scheduled.

Curtis Has Played a Historic Role Litigating SCOTUS Cases Relating to the Status of Puerto Rico

Curtis has a storied history of litigating in the Supreme Court, with several of the firm’s name partners and other attorneys arguing cases pertaining to the status of Puerto Rico as far back as 1901, soon after the United States acquired the island at the end of the Spanish-American War. For instance, W. F.

Kingsbury Curtis successfully argued before the Supreme Court that Puerto Rico was part of the United States' domestic coasting trade in *Huus v. N.Y. & Porto Rico Steamship Co.*, 182 U.S. 392 (1901).

Curtis partner John G. Carlisle also acted as co-counsel in *Downes v. Bidwell*, 182 U.S. 244 (1901), the first of what are commonly known as the *Insular Cases*, which set the framework for Puerto Rico's status under the Constitution. Like Kingsbury Curtis, Carlisle was advocating on the side of treating Puerto Rico as part of the United States like other U.S. territories at the time.

However, in *Downes*, a majority of the Court was not prepared to treat Puerto Rico as fully part of the American family, holding instead that, as a matter of constitutional law, Puerto Rico was "foreign to the United States in a domestic sense," relying on the disparaging belief that the island's Spanish inhabitants, unlike the "native white inhabitants" of other U.S. territories, belonged to "uncivilized" and "alien races" who were "unfit" to handle the full benefits and duties of citizenship—racist stereotypes that were common for the period. The Court thus held that certain rights and protections of the Constitution do not automatically apply to U.S. territories such as Puerto Rico unless and until Congress decides to "incorporate" them into the Union. In the decades after *Downes*, Curtis attorneys litigated several other cases in the Supreme Court relating to Puerto Rico's relationship with the United States.

To this day, the Social Security Act singles out Puerto Rico residents for less favorable treatment on the premise that they are "outside the United States," even though Puerto Rico has been a U.S. territory for more than 120 years and the island's inhabitants are U.S. citizens by birthright.

In *Vaello Madero*, Curtis returns to the Supreme Court with an equal protection challenge that seeks to curtail the discriminatory treatment against Puerto Rico that has resulted from the second-class status imposed on the island's inhabitants under the *Insular Cases*.

Curtis' appellate lawyers, including members of Mr. Vaello Madero's team, remain at the forefront of litigating issues of international and constitutional import. They litigate routinely in federal courts at all levels, as well as international tribunals. Curtis' appellate lawyers have also represented clients at the certiorari and merits stages in other Supreme Court cases.

Curtis, Mallet-Prevost, Colt & Mosle LLP is a leading international law firm. Headquartered in New York, Curtis has 19 offices and affiliates in the United States, Latin America, Europe, the Middle East and Asia. Curtis represents a wide range of clients, including governments and state-owned companies, multinational corporations and financial institutions, sovereign wealth funds, money managers, privately held businesses, individuals and entrepreneurs. For more information about Curtis, please visit www.curtis.com.

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