

Legal Sidebar

Tropical Storm? The Supreme Court Considers Double Jeopardy and the Sovereign Status of Puerto Rico

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Acquired by treaty after the Spanish-American War of 1898, the Commonwealth of Puerto Rico has been granted self-government, it has adopted a constitution, and its residents have been given U.S. citizenship. The nature of the relationship between the United States territory and the federal government, however, remains the subject of a long-standing legal and [political dispute](#). Based in part on statutory language providing that the relationship between Puerto Rico and the United States is “[in the nature of a compact](#),” [arguments have been made](#) that any change in Puerto Rico’s political status must be consented to by both parties. Others [argue that](#), under the [Territory Clause](#), the United States has plenary authority to legislate regarding Puerto Rico without first obtaining the Puerto Rican government’s consent.

A case recently accepted by the Supreme Court will consider anew the relationship between Puerto Rico and the United States. In [Puerto Rico v. Sanchez Valle](#), the Court will decide whether defendants in a criminal case can be prosecuted under the local laws of Puerto Rico if they have been previously convicted under federal criminal law for the same offense. The [Double Jeopardy Clause of the Fifth Amendment](#) provides that no person shall “for the same offense . . . be twice put in jeopardy of life or limb.” Under the dual sovereignty doctrine, however, if two separate sovereigns prosecute a person for the same offense, the constitutional protection against double jeopardy is not triggered. Thus, the Supreme Court has [held](#) that state and federal prosecutions can be brought for the same offense, and similarly, it has [allowed](#) dual prosecutions by the federal government and Indian tribes. The Court, however, has also [held](#) that, as territories operate under power delegated to them by Congress, they are not to be treated as separate sovereigns for purposes of the Double Jeopardy Clause.

The case being considered by the Court comes from the Supreme Court of Puerto Rico, the island’s highest territorial court, which [held](#), consistent with U.S. Supreme Court precedent, that since Puerto Rico is not a separate sovereign, it cannot prosecute a person who has been convicted in federal court for the same crime. This decision, however, creates a conflict with an earlier [opinion](#) by the federal appellate court with jurisdiction over Puerto Rico, the United States Court of Appeals for the First Circuit (First Circuit), which held that Puerto Rico should be treated as a state for purposes of double jeopardy, allowing a person to be prosecuted for the same crime under Puerto Rican and federal laws. There is also a long-standing circuit split between the First Circuit decision and an [opinion](#) by the United States Court of Appeals for the Eleventh Circuit on this issue.

Puerto Rico, in its petition to the Court for a [writ of certiorari](#), concedes that the dual sovereignty doctrine has not previously been applied to a territory, but it argues that the nature of Puerto Rico’s relationship with the United States changed in 1950. In that year, Congress passed [P.L. 81-600](#) (Public Law 600), which contains the “compact” language noted above and which allowed Puerto Rico to “[organize a government pursuant to a constitution of their own adoption](#),” subject to congressional approval. Puerto Rico argues that when Congress subsequently approved its constitution, this approval established the sovereignty of Puerto Rico in much the same way that other territories have achieved statehood. Puerto Rico analogizes this legislatively created sovereignty to the sovereignty of Indian tribes, and further notes instances where Puerto Rico has been treated as a state in statutory contexts.

The defendants, in their [response to the petition](#), argue that the passage of Public Law 600 did not change the nature of the relationship between Puerto Rico and the United States, noting Congress’s retention of plenary authority to review

Puerto Rico's constitution before it became effective. Further, the defendants argue, the legislative history of Public Law 600 provided that nothing in the law would change Puerto Rico's political, social, and economic relationship to the United States. The defendants also cautioned the Supreme Court against accepting a case that appears likely to have political implications beyond the narrow legal questions raised in the petition. This latter argument appears to be a caution that the Court disregarded.

If the Court finds that Puerto Rico is not a separate sovereign, then this might bring into question prior convictions in the Puerto Rico courts where an individual was prosecuted in both federal and territorial courts for the same crime. If the Court finds that Puerto Rico is a separate sovereign, this would allow future prosecutions in both the federal and territorial courts for the same crime. Oral arguments before the Supreme Court have not yet been scheduled.

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