



U.S. Department of Justice

Civil Rights Division

Appellate Section
P.O. Box 66078
Washington, DC 20035-6078

January 13, 2004

Richard C. Donovan, Clerk
U.S. Courthouse
1 Courthouse Way, Suite 2500
Boston, MA 02210

Re: *Badillo-Santiago v. Andrue-Garcia*, No. 01-2640

Dear Mr. Donovan:

We are writing in response to the Court's order of September 17, 2002, regarding the effects of the opinion of the Supreme Court of Puerto Rico in *Gonzales v. Badillo*, No. CC-2000-939 (P.R. Sept. 30, 2003), on the proper disposition of this case. The United States has intervened in this appeal for the limited purpose of defending the constitutionality of Congress's abrogation of the Commonwealth's Eleventh Amendment immunity to claims under Title II of the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.* The Puerto Rico Supreme Court's decision in *Gonzales* has no bearing on that question, since the validity of the Title II abrogation provision was not before the Court. The question is, however, currently pending before the United States Supreme Court in *Tennessee v. Lane*, No. 02-1667. In *Nieves-Marquez v. Puerto Rico*, No. 02-2721, 2003 WL 23008818, at *18 (1st Cir. Dec. 24, 2003), this Court recently declined to address an Eleventh Amendment challenge to Title II during pendency of *Lane*. Accordingly, if this Court must reach the Eleventh Amendment question in this appeal, it may wish to delay final decision in this case until *Lane* is decided.

Sincerely,

Jessica Dunsay Silver
Principal Deputy Section Chief

Kevin Russell
Attorney
Appellate Section
Kevin.Russell@usdoj.gov
(202) 305-4584

cc: Counsel of Record

CERTIFICATE OF SERVICE

I certify that copies of the foregoing supplemental letter brief were sent by first class mail

this 13th day of January, 2004, to the following counsel of record:

Marc P. Charmatz
Mary Vargas
Nat'l Assoc. of the Deaf Law Ctr
814 Thayer Avenue
Suite 208
Silver Spring, MD 20910
(301) 587-7732

Pedro E. Purcell-Ruiz
Thres Rios Building
27 Gonzalez Giusti Avenue
300 San Patricio
Guaynabo, PR 00969

Alfredo Fernandez Martinez
Delgado, Fernandez & Rodriguez
416 Ponce de Leon Avenue
Suite 600
San Juan, PR 00918

Salvador J. Antonetti-Stutts
Leticia Casaiduc Rabell
PR Department of Justice
Federal Litigation Division
P.O. Box 9020192
San Juan, PR 00902-0192

Gustavo A. Gelpi, Sr.
Gelpi & Gotay
P.O. Box 71417
San Juan, PR 00936-8517

Roberto A. Fernandez-Quiles
170 Los Mirtos
Hyde Park
San Juan, PR 00927-0429

KEVIN RUSSELL
Attorney