

# **The Insular Cases and the Doctrine of the Unincorporated Territory and its Effects on the Civil Rights of the Residents of Puerto Rico**



A Report of the  
Puerto Rico Advisory Committee to the  
U.S. Commission on Civil Rights

February 2026

## **Advisory Committees to the U.S. Commission on Civil Rights**

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states, the District of Columbia, and the U.S. Territories. The committees are composed of state and territory citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states and territories that are within the Commission's jurisdiction. They are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

## **Acknowledgments**

The Puerto Rico Advisory Committee (Committee) would like to acknowledge all the panelists and members of the public who participated in this study.

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**Puerto Rico Advisory Committee to the  
U.S. Commission on Civil Rights**

**Letter of Transmittal**

The Puerto Advisory Committee to the U.S. Commission on Civil Rights submits this report regarding the Insular Cases and the Doctrine of Unincorporated Territory and their effects on the civil rights of Puerto Rico residents, with a focus on: (1) voting rights/lack of political representation, (2) racial/national discrimination, and (3) access to public programs.

The Committee submits this report as part of its responsibility to study and report on civil rights issues in Puerto Rico. The contents of this report are primarily based on testimony the Committee heard during public briefings throughout its term. Testimony for the general overview memorandums was received during an in-person briefing in Hato Rey, Puerto Rico on May 10, 2023 and through a web briefing on September 14, 2023. Testimony for the federal voting rights memorandum was received during a series of web briefings held on May 21, May 30, and June 4, 2024. Testimony on the access to federal programs and the role of race and ethnicity in the relationship between Puerto Rico and federal government was received during a series of web briefings held on March 6, March 13, and March 14, 2025. The Committee also includes related testimony submitted in writing during the relevant periods of public comment.

This report is a collection of memoranda published by the Committee on their topic of study and include Committee findings, conclusions, and recommendations. Memorandums may present a brief background on the focus area considered by the Committee, preliminary findings as they emerged from the testimony, as well as recommendations from panelists and preliminary recommendations from the Committee for addressing areas of civil-rights concerns of each focus area. While additional important topics may have surfaced throughout the Committee’s inquiry, those matters that are outside the scope of this specific civil rights mandate are left for another discussion.

**Puerto Rico Advisory Committee to the U.S. Commission on Civil Rights**

Andrés L. Córdova Phelps, Chair, San Juan  
Ramón Barquín, Vice-Chair, San Juan  
Ever Padilla-Ruíz, Secretary, San Juan

Frank Arenal, Carolina  
Ramón C. Barquín III, Guaynabo  
Manuel “Lin” Iglesias-Beléndez, San Juan  
Sergio Marxuach, Dorado

José O. Olmos, Guaynabo  
Dan Santiago, San Juan  
William E. Villafañe Ramos, Bayamon

**Puerto Rico Advisory Committee to the  
U.S. Commission on Civil Rights**

**Letter from the Chair**

The Puerto Rico Advisory Committee to the U.S. Commission on Civil Rights was authorized and chartered in 2020. As its first charge, the Committee decided to review and gather testimony bearing on The Insular Cases and the Doctrine of the Unincorporated Territory and its Effects on the Civil Rights of the Residents of Puerto Rico. Given the broad and complex scope of the subject matter, the Committee decided that it was best to divide the issues and address each topic in a more comprehensive manner. To such end the charge was divided in four distinct parts: (i) General Overview; (ii) Economic Perspectives; (iii) Federal Voting Rights and (iv) Access to Federal Programs and the Role of Race in the Relationship Between the Federal Government and Puerto Rico.

Each of the memorandums includes factual findings based on the testimonies presented at the multiple hearings held throughout the past two years. Based on these findings, the Puerto Rico Advisory Committee reached the relevant conclusions to each part and made preliminary recommendations, all of which have been periodically submitted at the time of publication of each memorandum. The final report is a summary of the four separate memorandums and includes final findings of fact, conclusions and recommendations by the Puerto Rico Advisory Committee.

The Puerto Rico Advisory Committee strongly believes that these memorandums make the case for the urgent need of all branches of the United States government – legislative, executive and judicial - to address and solve the underlying cause for the disenfranchisement of American citizens in Puerto Rico that has been ongoing for over one hundred years. We echo Justice Gorsuch’s statement in his concurrent opinion in *United States vs. Vaello Madero*, 596 U.S. \_\_\_\_ (2022), “[a] century ago in the Insular Cases, this Court held that the federal government could rule Puerto Rico and other Territories largely without regard to the Constitution. It is past time to acknowledge the gravity of this error and admit what we know to be true: The Insular Cases have no foundation in the Constitution and rest instead on racial stereotypes. They deserve no place in our law.”

We urge the United States Commission on Civil Rights to take a hard look on how this jurisprudential Unincorporated Territory doctrine has hardened and perpetuated discriminatory practices across the board on the American citizens in Puerto Rico.

On a final note, the Puerto Rico Advisory Committee wishes to express its gratitude to the federal staff in the United States Commission on Civil Rights who have been instrumental in helping produce these memorandums, and whom without their professional commitment, the project would have been impossible to bring to fruition.

Cordially,

Andrés L. Córdova, Chair

## **Introduction**

On December 14, 2022, the Puerto Rico Advisory Committee (Committee) to the U.S. Commission on Civil Rights (Commission) adopted a proposal to undertake a study on the Insular Cases and the Doctrine of Unincorporated Territory and their effects on the civil rights of Puerto Rico residents. The focus of the Committee's inquiry was to examine (1) voting rights/lack of political representation, (2) racial/national discrimination, and (3) access to public programs.

Testimony for the general overview memorandums was received during an in-person briefing in Hato Rey, Puerto Rico on May 10, 2023, and through a web briefing on September 14, 2023. Testimony for the federal voting rights memorandum was received during a series of web briefings held on May 21, May 30, and June 4, 2024. Testimony on the access to federal programs and the role of race and ethnicity in the relationship between Puerto Rico and federal government was received during a series of web briefings held on March 6, March 13, and March 14, 2025.<sup>1</sup> The Committee also includes related testimony submitted in writing during the relevant periods of public comment. While other important topics may have surfaced throughout the Committee's inquiry, matters that are outside the scope of this specific civil rights mandate are left for another discussion. This report and the recommendations included within it were adopted by a roll call of members present at a Committee business meeting on January 14, 2026.<sup>2</sup>

## **Methodology**

As a matter of historical precedent, and in order to achieve transparency, Committee studies involve a collection of public, testimonial evidence and written comments from individuals directly impacted by the civil rights topic at hand; researchers and experts that have rigorously studied and reported on the topic; community organizations and advocates representing a broad range of backgrounds and perspectives related to the topic; and government officials tasked with related policy decisions and the administration of those policies.

Committee studies require Committee members to utilize their expertise in selecting a sample of panelists that is the most useful to the purposes of the study and will result in a broad and diverse understanding of the issue. This method of (non-probability) judgment sampling requires Committee members to draw from their own experiences, knowledge, opinions, and views to gain understanding of the issue and possible policy solutions. Committees are composed of volunteer professionals that are familiar with civil rights issues in their state or territory. Members represent a variety of political viewpoints, occupations, races, ages, and gender identities, as well as a variety of backgrounds, skills, and experiences. The intentional diversity of each Committee promotes

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<sup>1</sup> Meeting records and transcripts are available at:

<https://usccr.app.box.com/folder/292312893562?s=yo7wsul0yb8dmrvvm2ywc5q9otj7knnj>

<sup>2</sup> See Final Report Appendix for Committee Member Statements on the report as a whole.

vigorous debate and full exploration of the issues. It also serves to assist in offsetting biases that can result in oversight of nuances in the testimony.

In fulfillment of Committees' responsibility to advise the Commission of civil rights matters in their locales, Committees conduct an in-depth review and thematic analysis of the testimony received and other data gathered throughout the course of their inquiry. Committee members use this publicly collected information, often from those directly impacted by the civil rights topic of study, or others with direct expert knowledge of such matters, to identify findings and recommendations to report to the Commission. Drafts of the Committee's report are publicly available and shared with panelists and other contributors to ensure that their testimony was accurately captured. Reports are also shared with affected agencies to request for clarification regarding allegations noted in testimony.

For the purposes of this study, **Findings** are defined as what the testimony and other data *suggested, revealed, or indicated* based upon the data collected by the Committee. Findings refer to a synthesis of observations confirmed by majority vote of members, rather than conclusions drawn by any one member. **Recommendations** are specific actions or proposed policy interventions intended to address or alleviate the civil rights concerns raised in the related finding(s). Where findings indicate a lack of sufficient knowledge or available data to fully understand the civil rights issues at hand, recommendations may also target specific directed areas in need of further, more rigorous study. Recommendations are directed to the Commission; they request that the Commission itself take aspecific action, or that the Commission forward recommendations to other federal or local agencies, policy makers, or stakeholders.

**Memorandum I: General Overview –  
Historical, Legal, and Community  
Perspectives**



**The Insular Cases and the Doctrine of the Unincorporated Territory and its Effects on the Civil Rights of the Residents of Puerto Rico  
Overview Memorandum – Part I**

**Puerto Rico Advisory Committee to the U.S. Commission on Civil Rights  
February 2024**

**I. Introduction**

In July 2022, the Puerto Rico Advisory Committee to the United States Commission on Civil Rights ("Committee") voted to examine the Insular Cases and the Doctrine of the Unincorporated Territory and its effects on the civil rights of the residents of Puerto Rico. To this end, the Committee agreed to focus on the following subtopics: (1) voting rights and lack of political representation, (2) racial and national discrimination, and (3) access to federal public programs. The Committee's plan includes organizing a series of briefings to receive input on these issues and publishing a memorandum for each subtopic over the course of its term, concluding in a final report with recommendations prepared by the Committee.

On May 10, 2023, the Committee held an in-person briefing to hear testimony focused on an overview of the main topic, the Insular Cases and the Doctrine of Unincorporated Territory and its effects on the civil rights of the residents of Puerto Rico.<sup>3</sup> The Committee invited a variety of stakeholders to serve as panelists and prioritized a balance of different perspectives. They heard testimony from a historical, academic, and legal perspective and also from community representatives of organizations and individuals speaking about their own experiences and those of their respective communities. This memorandum is based on those testimonies. The Committee also held a virtual briefing on September 14, 2023, as a second part of this overview phase of the project, which focused on the economic perspective of this topic. Most of that testimony will be the main focus of the upcoming memorandum – a second part of the overview.<sup>4</sup>

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<sup>3</sup> Meeting records and transcripts are available in Appendix A.

Briefing before the Puerto Rico Advisory Committee to the U.S. Commission on Civil Rights, May 10, 2023, (In-person), Transcript (hereinafter cited as "Transcript 1").

Briefing before the Puerto Rico Advisory Committee to the U.S. Commission on Civil Rights, September 14, 2023, (web-based), Transcript (hereinafter cited as "Transcript 2").

<sup>4</sup> In accordance with the theme of each memorandum, the Committee has decided to use additional testimony from Dr. Iyari Ríos in the second memorandum on economic perspectives. Likewise, it includes testimony from Dr. María Enchautegui who participated in the September 2023 virtual panel within this memorandum, since her testimony is largely related to public benefits.

This memorandum is intended to share the main findings identified in the testimony as they were directly described by the panelists, including most of the written testimony. It begins with historical context prepared by the Committee shortly after it selected its topic as part of its project proposal. It is followed by additional context provided and expanded upon by testimonials received. The final section is based on recommendations shared in the testimony.

The findings and recommendations in this report do not reflect the views of the Committee. The Committee's recommendations will be included in this project's final report. The Committee offers these findings and its recommendations in order to provide a context to begin evaluating and analyzing the impact that the Insular Cases and the Unincorporated Territory Doctrine have had on the civil rights of the residents of Puerto Rico as a foundation for the rest of its project.

## II. Historical Context

The *Treaty of Paris* of 1898 sealed the end of the Spanish-American War that same year.<sup>5</sup> Spain renounced all rights it had over Puerto Rico and ceded its territorial possessions to the United States.<sup>6</sup> One of the provisions of the Treaty, specifically Article IX, stated that “the civil rights and political condition of the natural inhabitants of the territories ceded to the United States shall be determined by Congress.”<sup>7</sup>

The Supreme Court of the United States presided over several controversial cases related to the laws Congress enacted for the acquired territories, including the Philippines, Guam, Cuba, and Puerto Rico. These cases are referred to as *the Insular Cases*, in which the Supreme Court has articulated a theory of selective application of constitutional rights to newly acquired territories.<sup>8</sup> Since the beginning of the 20th century, this series of opinions has declared that full constitutional law does not automatically apply in certain territories of the United States because they have not been incorporated into the Union.<sup>9</sup>

In 1900, Congress passed the *Foraker Act* that transitioned the military government to a civil one in Puerto Rico. The legislation affirmed American sovereignty and imposed a local government beholden to federal authority in Puerto Rico.<sup>10</sup> This included the power to repeal legislation and the creation of a government structure that consolidated legislative and executive functions in a

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<sup>5</sup> Treaty of Paris of 1898 (30 Stat. 1758).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> See examples: *De Lima v. Bidwell*, 182 U.S. 1 (1901); *Goetze v. United States*, 182 U.S. 221 (1901); *Dooley v. United States*, 182 U.S. 222 (1901); *Dooley v. United States*, 183 U.S. 151 (1901); *Armstrong v. United States*, 182 U.S. 243 (1901); *Downes v. Bidwell*, 182 U.S. 244 (1901); *Crossman v. United States*, 182 U.S. 221 (1901); *Huus v. New York and Porto Rico Steamship Co.*, 182 U.S. 392 (1901); *Balzac v. Porto Rico*, 258 U.S. 298 (1922).

<sup>9</sup> *Id.*

<sup>10</sup> Foraker Act of April 12, 1900, 31 Stat. 77, c. 191, 48 U.S.C. § 731.

single body – composed for the majority by mostly non-native inhabitants – that imposed tariffs on goods exchanged between Puerto Rico and the United States and defined the limits of territorial authority.<sup>11</sup>

The Insular Cases have established a constitutional justification for the consolidation of different and unequal norms that have determined the indefinite relationship between the territories and the United States. These cases also established a political and racial framework that treats its inhabitants unequally and without voting representation, subject to the plenary powers of Congress under Article IV, Section 3 of the Constitution.<sup>12</sup>

The Committee will examine the Insular Cases and their continued applications by the Supreme Court of the United States and their effects on the civil rights of residents of Puerto Rico, beginning with *Downes v. Bidwell* (1901) to *United States v. Vaello Madero* (2022).

One of the most notorious Insular Cases, and perhaps most important with respect to Puerto Rico, is *Downes v. Bidwell*.<sup>13</sup> The plaintiff argued that Puerto Rico ceased to be a foreign country in relation to the United States since the invasion of 1898.<sup>14</sup> Therefore, a fifteen percent tariff could not be charged on goods from the island since the federal Constitution establishes that taxes and tariffs will be uniform in all parts of the United States.<sup>15</sup>

The Supreme Court decided that the tariff was valid as Puerto Rico belongs to, although it is not part of, the United States.<sup>16</sup> To support this reasoning, a legal distinction was created by the United States Supreme Court based on its interpretation of the territorial clause.<sup>17</sup> While incorporated territories were already part of the United States, unincorporated territories, such as Puerto Rico and Guam, were not.<sup>18</sup> This decision recognized Congressional authority over the territory of Puerto Rico, allowing for the selective application of constitutional protections.

Associate Justice Edward Douglass White stated the following in his concurring opinion in *Downes v. Bidwell*: "there may nevertheless be restrictions of so fundamental a nature that they cannot be transgressed although not expressed in so many words in the Constitution."<sup>19</sup> In other words, all constitutional clauses that were not reserved for the states would have applied to the incorporated territories; however, only the protection of "those rights that are considered fundamental" would have applied to unincorporated territories, although the Court failed to define

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<sup>11</sup> Foraker Act of April 12, 1900, 31 Stat. 77, c. 191, 48 U.S.C. § 731.

<sup>12</sup> U.S. Const. art. IV, § 3.

<sup>13</sup> *Downes v. Bidwell*, 182 U.S. 244, 244 & n.1 (1901).

<sup>14</sup> *Downes v. Bidwell*, 182 U.S. 244, 244 & n.1 (1901).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> U.S. Const. art. IV, § 3.

<sup>18</sup> *Downes v. Bidwell*, 182 U.S. 244, 244 & n.1 (1901).

<sup>19</sup> *Id.*

what rights those were. White's concurring opinion became the legal justification for the Insular Cases.<sup>20</sup>

Congress passed the *Jones-Shafroth Act* in 1917, which conferred U.S. citizenship on residents of Puerto Rico and changed the government structure. This included the separation of Executive, Legal and Legislative powers; the provision of civil rights to people; and the creation of a locally elected bicameral legislature at the local level.<sup>21</sup>

The decisions made subsequently by the Supreme Court reaffirmed the continued territorial status of Puerto Rico. In *Balzac v Porto Rico* (1922) the Supreme Court decided that, although residents of Puerto Rico enjoy statutory citizenship, they are not guaranteed a jury trial in criminal cases as would be required under the Fifth Amendment of the United States.<sup>22</sup> This opinion exemplifies the doctrine of Insular Cases regarding the selective application of constitutional rights to territories.

The Insular Cases doctrine and its broad interpretation of Congressional powers makes it possible for federal programs and benefits that are applied on the continent to be limited or inapplicable in Puerto Rico. This result was recently exemplified in *U.S. v. Vaello Madero* (2022) which recognized the Congressional authority to legislate different eligibility criteria in federal programs for American citizens residing in Puerto Rico.<sup>23</sup>

Furthermore, the Insular Cases doctrine, as recently reaffirmed by Justice Gorsuch in *U.S. v. Vaello Madero*, is explicitly racist and discriminatory against residents of Puerto Rico and other territorial jurisdictions. The Insular Cases were decided on the grounds of an alleged inherent difference between residents of the United States and “alien races.”<sup>24</sup> As Justice Gorsuch indicated in his concurring opinion in *U.S. v. Vaello Madero*, “The Insular Cases have no foundation in the Constitution and rest instead on racial stereotypes. They deserve no place in our law.”<sup>25</sup>

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<sup>20</sup> *Downes v. Bidwell*, 182 U.S. 244, 244 & n.1 (1901).

<sup>21</sup> Jones-Shafroth Act, Pub. L. No. 64-368, 39 Stat. 951 (1917), codified as amended at 48 U.S.C. § 731–751.

<sup>22</sup> *Balzac v. Porto Rico*, 258 U.S. 298 (1922).

<sup>23</sup> *United States v. Vaello Madero*, 212 L. Ed. 2d 496, 142 S. Ct. 1539 (2022).

<sup>24</sup> *Downes v. Bidwell*, 182 U.S. 244, 244 & n.1 (1901); The Committee would like to highlight the following quote from *Downes v. Bidwell* (1901) that reiterates the alleged inherent differences between United States residents and “alien races”: If those possessions are inhabited by alien races, differing from us in religion, customs, laws, methods of taxation, and modes of thought, the administration of government and justice according to Anglo-Saxon principles may for a time be impossible, and the question at once arises whether large concessions ought not to be made for a time, that ultimately our own theories may be carried out and the blessings of a free government under the Constitution extended to them. We decline to hold that there is anything in the Constitution to forbid such action. These cases are part of a broader jurisprudence framework that institutionalized doctrines such as “separated but equal,” chastised by civil rights advocates.”

<sup>25</sup> *United States v. Vaello Madero*, 212 L. Ed. 2d 496, 142 S. Ct. 1539 (2022).

## *The Territorial Doctrine in the Context of Racism in the United States*

When evaluating the effects of the Insular Cases on Puerto Rico, it is important to highlight that Puerto Rico differs from the other territories due to its significantly larger population size. With a population of over 3.2 million residents, which is larger than at least 20 U.S. states,<sup>26</sup> its status as a territory hinders its full access to rights and resources.<sup>27</sup>

For Panelist Sam C. Erman, law professor at the University of Michigan, the origins of the Insular Cases date back to the U.S. annexation of Puerto Rico and the Philippines after the conclusion of the Spanish-American War.<sup>28</sup> Dr. Erman explained that the U.S. authorities viewed Filipinos as racially degraded people who should not receive U.S. citizenship or full constitutional rights.<sup>29</sup> This idea clashed with the constitutional principles of the time as agreed by what Dr. Erman calls the “Constitution of Reconstruction.”<sup>30</sup> These principles stated that Americans who were not American Indians were American citizens, all American lands were or would become states, and the Constitution applied in its entirety wherever the borders of the United States extended.<sup>31</sup> If these applied to the Philippines, then Filipinos were full-fledged American citizens who would participate in the national government when the Philippines became a state.<sup>32</sup> To avoid this, the American authorities invented a new constitutional theory that is known today as the doctrine of territorial non-incorporation.<sup>33</sup> Its purpose was to deny statehood, rights, and citizenship to Americans whom the U.S. authorities considered racially inferior and marked unincorporated territories as disadvantaged spaces and their residents as disadvantaged peoples, using terms such as “foreign races” and “savage tribes” to describe the people in the territories.<sup>34</sup>

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<sup>26</sup> Governor Pedro Pierluisi, Governor of Puerto Rico, Written Statement submitted for Puerto Rico Advisory Committee to the United States Commission on Civil Rights Briefing, May 10, 2023, p. 3 (cited herein after as Pierluisi statement); *See also*: Puerto Rico Report. “The Population of Puerto Rico Exceeds the Populations of 20 States.” <https://www.puertoricoreport.com/population-puerto-rico-exceeds-populations-21-states/#:~:text=This%20puts%20Puerto%20Rico%E2%80%99s%20population%20among%20U.S.%20States,all%20the%20other%20U.S.%20territories%2C%20and%20Washington%2C%20D.C> (accessed November 3, 2023); *See also*: U.S. Census Bureau. “Quick Facts, Puerto Rico.” Population estimates as of July 2023. <https://www.census.gov/quickfacts/fact/table/PR/PST045222> (accessed February 15, 2024).

<sup>27</sup>*Administrative Note*: The U.S. Commission on Civil Rights (USCCR) has revised this paragraph from its original version published on February 12, 2024 that referenced panelist Gregorio Igartúa’s testimony on Puerto Rico being the only territory that meets the criteria to become a state due to its population. (*See*: Gregorio Igartúa, testimony. Public Briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, Hato Rey, PR, May 10, 2023, transcript. p. 12, 16 – p. 13, 7.) USCCR notes that there is currently no single process for state admission and the U.S. Congress has discretion on admission of states per Article IV, Section 3 of the U.S. Constitution.

<sup>28</sup> Sam C. Erman, testimony. Public Briefing before the *Puerto Rico Advisory Committee to the United States Commission on Civil Rights*, Hato Rey, PR, May 10, 2023, transcript. p. 20, 7-11 (hereinafter cited as Hato Rey Briefing, Transcript 1).

<sup>29</sup> Erman Testimony, Hato Rey Briefing, Transcript 1, p. 20, 12-18.

<sup>30</sup> Erman Testimony, Hato Rey Briefing, Transcript 1, p. 20, 23 – p. 21, 3.

<sup>31</sup> Erman Testimony, Hato Rey Briefing, Transcript 1, p. 21, 1-11.

<sup>32</sup> Erman Testimony, Hato Rey Briefing, Transcript 1, p. 21, 12-17.

<sup>33</sup> Erman Testimony, Hato Rey Briefing, Transcript 1, p. 21, 18-22.

<sup>34</sup> Erman Testimony, Hato Rey Briefing, Transcript 1, p. 24, 19 - p. 25, 3; *See also*: Anita Teekah, Chief of Advocacy, and Lia Fiol-Matta, Senior Counsel, LatinoJustice PRLDEF, Written Statement submitted for Puerto

Other panelists argued that the Insular Cases were used to legitimize colonialism and create the legal framework to govern the territory, based on anachronistic concepts, since several of the judges who participated in the *Downes v. Bidwell* also participated in the *Plessy v. Ferguson* decision, which established the discriminatory practice in the United States of treating people “separate, but equal.”<sup>35</sup> This group of opinions produced by the Supreme Court between 1901 and 1922 articulated and consolidated the doctrine of unincorporated territories, allowing a selective application of constitutional rights that are considered fundamental.<sup>36</sup>

Having acquired Puerto Rico and other jurisdictions following the conclusion of the Spanish-American War, the United States decided to incorporate the new territories as its property but did not apply the Constitution in its entirety based on the *Downes v. Bidwell* decision, in which it was established that there could be incorporated and unincorporated territories.<sup>37</sup> Panelist Charles Venator Santiago, Professor of Political Science at the University of Connecticut, commented that “although some fundamental rights are recognized for the residents of Puerto Rico, those fundamental rights are not defined, and it will be a historic process of determining which ones will be applied. There is a selective application of the Constitution.”<sup>38</sup> Furthermore, Dr. Venator Santiago mentioned that *Downes v. Bidwell* creates contradictions that have not yet been resolved by establishing that an annexed territory can be governed as an external territory when convenient.<sup>39</sup> Among the reasons given in *Downes v. Bidwell* for not applying the Constitution in its entirety in these new territories, it was believed that this would not be appropriate for “distant ocean communities of a different origin and language from those of our continental people.”<sup>40</sup> In additional testimony received by the Committee, it was also stated that it is important to take note that Judge Henry Brown wrote in the decision that Puerto Ricans are “foreign to the United States

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Rico Advisory Committee to the United States Commission on Civil Rights Briefing, May 10, 2023 (cited herein after as Teekah and Fiol-Matta statement).

<sup>35</sup> *Downes v. Bidwell*, 182 U.S. 244, 244 & n.1 (1901); *See also: Plessy v. Ferguson*, 163 U.S. 537 (1896); *See also: Efrén Rivera Ramos*, testimony. Public Briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, Hato Rey, PR, May 10, 2023, transcript. p. 36, 8-25 (hereinafter cited as Hato Rey Hearing, Transcript 1); *See also: Igartúa Testimony*, Hato Rey Briefing, Transcript 1, p. 15, lines 10-18.

<sup>36</sup> Córdova, Andrés L. “Puerto Rico and the Politics of Political Identity.” *The Hill*. July 29, 2017. <https://thehill.com/blogs/congress-blog/politics/344362-puerto-rico-and-the-politics-of-legal-identity> (accessed October 18, 2023).

<sup>37</sup> Treaty of Paris of 1898 (30 Stat. 1758); *See also: Downes v. Bidwell*, 182 U.S. 244, 244 & n.1 (1901); *See also: Erman Testimony*, Hato Rey Briefing, Transcription 1. p. 21, 18 - p. 22, 4; *See also: George H. Laws García*, testimony. *Public Briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights*, Hato Rey, PR, May 10, 2023, transcript p. 285, 10-23 (cited herein after as Hato Rey, Transcript 1); *See also: Igartúa Testimony*, Hato Rey Briefing, Transcript 1. p. 14, 23-25; *See also: Erman Testimony*, Hato Rey Briefing, Transcript 1. p. 23, 6 - p. 24, 8.

<sup>38</sup> Charles Venator Santiago, testimony. *Public Briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights*, Hato Rey, PR, May 10, 2023, transcript. p. 48, 25 - p. 49, 19 (cited herein after as Hato Rey, Transcript 1).

<sup>39</sup> *Downes v. Bidwell*, 182 U.S. 244, 244 & n.1 (1901); *See also: Venator Santiago Testimony*, Hato Rey Briefing, Transcript 1. p. 49, 20 - p. 50, 5.

<sup>40</sup> *Downes v. Bidwell*, 182 U.S. 244, 244 & n.1 (1901); *See also: Omar Marrero Díaz*, Esq., Secretary of State, Department of State of the Government of Puerto Rico. Written Statement submitted for Puerto Rico Advisory Committee to the United States Commission on Civil Rights Briefing, May 10, 2023 (cited herein after as Marrero Díaz statement).

in a domestic sense.”<sup>41</sup> This doctrine changed the trajectory of the territories because, prior to the Insular Cases, all the territories had followed a process towards statehood, and being a territory was considered a transitory status.<sup>42</sup> It also allowed the United States to have control over the territory without establishing a path towards statehood in the future.<sup>43</sup> There is no text within the United States Constitution that supports the doctrine, and it is predicated on an ethnic and racial distinction that Puerto Ricans are political subjects who do not deserve the full protection of rights in the Constitution.<sup>44</sup>

### ***The Balzac v. Porto Rico Case***

Another of the Insular Cases, *Balzac v. Porto Rico*, reiterates that the right to a jury trial within the Sixth Amendment of the Constitution does not apply to unincorporated territories.<sup>45</sup> Panelist Francisco Ortiz Santini, Professor at the University of Puerto Rico, Río Piedras Campus, explained that the Balzac case, which originates in a dispute over control of the mayor's office of Arecibo and has its origin in two articles published by Jesús María Balzac, editor of the newspaper El Baluarte who criticized the governor of that time, and this led to him being accused of criminal libel.<sup>46</sup> For Dr. Ortiz Santini, this decision is an example that for the Supreme Court, locality was more important in considerations of how to apply the Constitution than the fact that the affected people were U.S. citizens.<sup>47</sup> This case reiterates that providing citizenship does not change the unincorporated status in Puerto Rico politics.<sup>48</sup> The irony of this, as Dr. Venator Santiago pointed out in his testimony, is that the case of *Balzac v. Porto Rico* applies the doctrine of the Insular Cases to a territory with citizens, although it had originally been designed to govern territories without citizens, and despite this dichotomy, it is still in force.<sup>49</sup>

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<sup>41</sup> *Downes v. Bidwell*, 182 U.S. 244, 244 & n.1 (1901); *See also*: Nathaniel Morrell González, Secretary, National Puerto Rican Equality Coalition, Written Statement submitted for Puerto Rico Advisory Committee to the United States Commission on Civil Rights Briefing, May 10, 2023, p. 2. (cited herein after as Morrell González statement).

<sup>42</sup> Laws García Testimony, Hato Rey Briefing, Transcript 1. p. 284, 24 - p. 285, 9; *See also*: Lopez-Morales, C. A. “Making the Constitutional Case for decolonization: Reclaiming the Original Meaning of the Territory Clause.” Columbia Human Rights Law Review. <https://blogs.law.columbia.edu/hrlr/files/2022/04/Making-the-Constitutional-Case-for-Decolonization-Cesar-A.-Lopez-Morales.pdf> (accessed December 18, 2023); *See also*: Igartúa Testimony, Hato Rey Briefing, Transcript 1. p. 12, 25 - 13, 6.

<sup>43</sup> U.S. Const. art. IV, § 3; *See also*: Iyari Ríos González, testimony. *Public Briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, Hato Rey, PR*, May 10, 2023, transcript p. 139, 6-15. (cited herein after as Hato Rey, Transcript 1).

<sup>44</sup> Córdova, Andrés L. “A statehood manifesto: After 120 years, the US needs to fully embrace Puerto Rico.” The Hill. January 9, 2018. <https://thehill.com/opinion/civil-rights/368128-a-statehood-manifesto-after-120-years-the-us-needs-to-fully-embrace> (accessed October 18, 2023).

<sup>45</sup> *Balzac v. Porto Rico*, 258 U.S. 298 (1922).

<sup>46</sup> Francisco Ortiz Santini, testimony. *Public Briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, Hato Rey, PR*, May 10, 2023, transcript p. 31, 5 - p. 32, 4 (cited herein after as Hato Rey, Transcript 1).

<sup>47</sup> Ortiz Santini Testimony, Hato Rey Briefing, Transcript 1. p. 34, 6-12.

<sup>48</sup> Córdova, Andrés L. “A statehood manifesto: After 120 years, the US needs to fully embrace Puerto Rico.” The Hill. January 9, 2018. <https://thehill.com/opinion/civil-rights/368128-a-statehood-manifesto-after-120-years-the-us-needs-to-fully-embrace> (accessed October 18, 2023).

<sup>49</sup> Venator Santiago Testimony, Hato Rey Briefing, Transcript 1. p. 51, 1-12.

### ***Role of the Constitution***

Protected by the Territorial Clause, the U.S. federal government exercised its power to authorize the territorial legislature in Puerto Rico to convene the residents of the island to draft and approve a constitution while reserving the right to give final approval of said constitution.<sup>50</sup> When Puerto Rico approved its Constitution through a plebiscite in 1952, it did not come into effect until it was approved by Congress and the President of the United States.<sup>51</sup> Although Congress approved the Constitution, it amended it significantly, for example, removing Section 20 of Article II, which established the right to work, an adequate standard of living, and social protection in old age or disease.<sup>52</sup> This was the version that President Truman signed, and that the local legislature in Puerto Rico ratified.<sup>53</sup> This local Constitution gave Puerto Rico the same level of autonomy over its jurisdiction as a state; however, the actions taken by Congress and the President demonstrated that Puerto Rico remained under the authority of Congress and received differential treatment from it.<sup>54</sup>

The power of Congress to selectively apply the Constitution and have control over local government has influenced arguments that the Constitution should be interpreted as a 'living' document, in which rights should be applied using current standards and not based on outdated decisions.<sup>55</sup>

### **III. Preliminary Findings**

#### **FINDING I - Panelists pointed to a colonial relationship between the United States government and Puerto Rico.**

##### ***Colonial Relationship between Puerto Rico and the United States***

Among the arguments provided by the panelists, testimony about the colonial relationship between Puerto Rico and the United States stood out as one of the main problems facing Puerto Rico, and

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<sup>50</sup> Puerto Rico Federal Relations Act. Pub.L. 81-600.

<sup>51</sup> *Id.*

<sup>52</sup> PR Const art II § 20, By Resolution number 34, approved by the Constitutional Convention and ratified in the Referendum held on November 4, 1962, section 20 of article II was eliminated.

<sup>53</sup> PR Const art II § 20, By Resolution number 34, approved by the Constitutional Convention and ratified in the Referendum held on November 4, 1962, section 20 of article II was eliminated; *See also*: Pinto Lugo, Rene. “Puerto Ricans: The Inequality of “Equals” Through Time.” Law Review of the Universidad Interamericana de Puerto Rico. <https://www.derecho.inter.edu/wp-content/uploads/2022/01/PUERTO-RICANS-THE-INEQUALITY-OF-EQUALS-THROUGH-TIME-.pdf> (accessed November 1, 2023).

<sup>54</sup> Marrero Diaz Statement, at 4-5.

<sup>55</sup> Pinto Lugo, Rene. “Puerto Ricans: The Inequality of “Equals” Through Time.” Law Review of the Universidad Interamericana de Puerto Rico. <https://www.derecho.inter.edu/wp-content/uploads/2022/01/PUERTO-RICANS-THE-INEQUALITY-OF-EQUALS-THROUGH-TIME-.pdf> (accessed November 1, 2023).

they highlighted the fact that several constitutional rights do not extend to the island.<sup>56</sup> Panelist Rafael Rodríguez, a lawyer at the Community Legal Office, Inc., stated that the fact that Puerto Rico a territory in itself constitutes its position as a colony, and argued that the colonies “have never been made so that they have all the corresponding benefits; however, they have been made to respond to the interests of the metropolis.”<sup>57</sup> This idea that the colony benefits the entity with the power in the relationship is shared by Dr. Venator Santiago, who described two types of colonization in the 19th century – one based on expansionism that, after annexing the territory, organizes it and acquires it; and the other type that is based on imperialism, and uses the territory strategically to obtain economic and military benefit.<sup>58</sup> The irony in the case of Puerto Rico and the United States is that the United States is based on the idea that the government derives power from those it governs as part of a social contract, and because of this, it has been a global example of democracy.<sup>59</sup> However, these ideals have not materialized in the relationship between the United States and Puerto Rico. Panelist George H. Laws García, director of the Puerto Rico Statehood Council, commented that “unfortunately for 125 of those years, the United States government has not fulfilled the promise of government by consent in Puerto Rico, denying the residents of the island the right to vote at the federal level. This discrimination and political exclusion against the 3.1 million American citizens in Puerto Rico has its roots in the legal doctrine established by the so-called Insular Cases at the beginning of the 20th century.”<sup>60</sup>

Several panelists highlighted that these arguments have been validated by the United Nations and the treatment that Puerto Rico has received from the Supreme Court. Mr. Rodríguez shared that United Nations representatives commented during a visit to Puerto Rico that the populations of the territories are separate and distinct and have the right to self-determination.<sup>61</sup> The United Nations agreed that “Puerto Rico is being controlled by an overseas colonial power to the detriment of its people, without any significant representation at the national level and without real capacity to govern itself as a non-self-governing territory, in the international sense.”<sup>62</sup> As for the Supreme Court, in deciding that rights can be applied selectively, Mr. Laws García believes that it has allowed “systematic discrimination against the residents of the island as the indefinite perpetuation of a system of government where there is a clear democratic deficit that directly contradicts the fundamental principles of the American democratic system.”<sup>63</sup>

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<sup>56</sup> Rivera Ramos Testimony, Hato Rey Briefing, Transcript 1. p. 40, 15-21.

<sup>57</sup> Rafael E. Rodríguez Rivera, testimony. *Public Briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, Hato Rey, PR*, May 10, 2023, transcript p. p. 175, 1-9 (cited herein after as Hato Rey, Transcript 1);

<sup>58</sup> Venator Santiago Testimony, Hato Rey Briefing, Transcript 1. p. 44, 18 - p. 45, 5.

<sup>59</sup> Laws García Testimony, Hato Rey Briefing, p. 283, 13 - p. 284, 12.

<sup>60</sup> Ibid.

<sup>61</sup> Rodríguez Rivera Testimony, Hato Rey Briefing. p. 155, 7 - p. 156, 4.

<sup>62</sup> Rodríguez Rivera Testimony, Hato Rey Briefing. p. 155, 7 - p. 156, 4; *See also*: Human Rights Council. “Report of the Special Rapporteur on minority issues, Fernand de Varennes, on his visit to the United States of America.” <https://www.splcenter.org/sites/default/files/report-un-special-rapporteur-minority-issues-march-2022.pdf> (accessed November 7, 2023).

<sup>63</sup> Laws García Testimony, Hato Rey Briefing, Transcript 1. p. 285, 24 - p. 286, 10.

## *Civil Society and Political Participation*

The Committee heard arguments about the instability that this colonial relationship creates and the negative effects it has had on civic participation in Puerto Rico. “Puerto Rican communities fighting more and more for their empowerment and sustainable development,” said Adi Martínez Román, law professor and Co-Founder and Co-Director of the organization Right to Democracy in her public comment, “The government does not attend to their needs” and this does not allow people to have a direct role in determining their situation.<sup>64</sup> This limitation extends from the community level to the leadership of local government agencies. Edison Avilés Deliz, President of the Public Service Regulatory Board in Puerto Rico, submitted written testimony which said that “the lack of effective political participation at all levels of government of the residents of Puerto Rico not only greatly hinders our management, but delays our impact. Maintaining these discrepancies or rationalizing inferior treatment arbitrarily restricts our ability to fully develop within the United States.”<sup>65</sup> Furthermore, Director Avilés Deliz cited the preamble of the Inter-American Democratic Charter of the Organization of American States, an international, regional organization to which the United States belongs, and emphasized the declaration that “democracy is essential for social, political, and economic development of the peoples of the Americas.”<sup>66</sup>

The limitations imposed by the colonial relationship extend inequality in access and implementation of health programs, public education, and environmental protection, according to Dr. Michael González Cruz, Professor at the University of Puerto Rico, who shared a public comment and written testimony with the Committee.<sup>67</sup> Additionally, Dr. González Cruz referred to the plebiscite of November 6, 2012, when the majority of voters voted that they did not want to continue with the current territorial status of Puerto Rico.<sup>68</sup> “Failure to comply with the will of the citizenry as expressed in a duly convened and held referendum constitutes a violation of the civil, constitutional, and human rights of the Puerto Rican electorate,” said González Cruz.<sup>69</sup> According to Panelist Efrén Rivera Ramos, Law Professor at the University of Puerto Rico, Río Piedras

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<sup>64</sup> Adi Martínez Román, Co-Founder and Co-Director, Right to Democracy, Public Comment for *Puerto Rico Advisory Committee to the United States Commission on Civil Rights Briefing, Hato Rey, PR* May 10, 2023, p. 322, 25 - p. 323, 6 (cited herein after as Martínez Román statement).: *See also*: Martínez Román, public comment. Hato Rey Briefing, Transcript 1, p. 323, 25 - p. 324, 5.

<sup>65</sup> Edison Avilés Deliz, President, Public Service Regulatory Board of the Government of Puerto Rico, Written Statement submitted for Puerto Rico Advisory Committee to the United States Commission on Civil Rights Briefing, May 10, 2023, p. 7 (cited herein after as Avilés Deliz statement).

<sup>66</sup> Organization of American States. “Carta Democrática Americana.” [https://www.oas.org/dil/esp/carta\\_democratica\\_interamericana\\_11sep2001.pdf](https://www.oas.org/dil/esp/carta_democratica_interamericana_11sep2001.pdf) (accessed November 7, 2023).

<sup>67</sup> Michael González Cruz, Professor, University of Puerto Rico, Written Statement submitted for Puerto Rico Advisory Committee to the United States Commission on Civil Rights Briefing, May 10, 2023, p. 2 (cited herein after as González Cruz statement).

<sup>68</sup> Comisión Estatal de Elecciones. “Condición Política Territorial Actual.” [http://168.62.166.179/eg2012/REYDI\\_Escrutinio/index.html#es/default/CONDICION\\_POLITICA\\_TERRITORIAL\\_ACTUAL\\_ISLA.xml](http://168.62.166.179/eg2012/REYDI_Escrutinio/index.html#es/default/CONDICION_POLITICA_TERRITORIAL_ACTUAL_ISLA.xml) (accessed November 2, 2023); *See also*: González Cruz Statement, at 2.

<sup>69</sup> González Cruz Statement, at 2.

Campus, this non-compliance is part of a political problem that could be resolved if the United States wanted.<sup>70</sup>

## **FINDING II - The testimony indicates that Puerto Rico has lived under unequal and discriminatory treatment by the United States government.**

Several panelists shared that the fact that Puerto Rico is an unincorporated territory has left the island in a state of limbo, and this has been an excuse that the United States Congress has used to not address civil rights or the political status of Puerto Rico in full.<sup>71</sup> Yet, as American citizens, residents of Puerto Rico do not have many guaranteed civil rights, including the right to vote federally, nor do they have representation in Congress with voting power, which results in unequal treatment between citizens living in the states and those who live on the island.<sup>72</sup> According to Mr. Laws García, “This represents a fundamental democratic deficit because the residents of Puerto Rico are subject to the laws passed by Congress, the decisions of the Supreme Court, and the actions and public policy established by the president without being able to offer their consent through suffrage.”<sup>73</sup> This creates two levels of discrimination for Puerto Rico – aside from not being able to practice self-determination, U.S. law continually prevents this from happening.<sup>74</sup> According to the written testimony submitted by social worker and attorney Hilda Sciera, “everything that is unequal or perceived as unfair or unjust is justified by 'status.’”<sup>75</sup>

The testimony also attributes this discrimination to the territorial clause, which indicates that territory is property.<sup>76</sup> This clause has been used as a basis to deny various rights, including equal access to federal programs such as nutrition assistance or Medicaid and Medicare, to which a different formula applies than to the states.<sup>77</sup> The testimony received suggests that a formal plan and long-term resources are needed because the current situation has created an environment of uncertainty and instability that requires local agencies to adjust their plans and projections

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<sup>70</sup> Rivera Ramos Testimony, Hato Rey Briefing, Transcript 1. p. 42, 17-25.

<sup>71</sup> Laws García Testimony, Hato Rey Briefing, Transcript 1. p. 287, 1 - p. 288, 5.

<sup>72</sup> Laws García Testimony, Hato Rey Briefing, Transcript 1. p. 287, 1 - p. 288, 5; *See also*: Otoniel Font Nadal, testimony. *Public Briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, Hato Rey, PR*, May 10, 2023, transcript p. 202, 24 - p. 203, 9 (cited herein after as Hato Rey, Transcript 1); *See also*: Roberto Ariel Fernández, Written Statement submitted for Puerto Rico Advisory Committee to the United States Commission on Civil Rights Briefing, May 10, 2023, p. 1 (cited herein after as Fernández statement); *See also*: Governor Pierluisi Statement, at 1.

<sup>73</sup> Laws García Testimony, Hato Rey Briefing, Transcript 1. p. 287, 1 - p. 288, 5.

<sup>74</sup> Rodríguez Rivera Testimony, Hato Rey Briefing, Transcript 1. p. 151, 10-16.

<sup>75</sup> Hilda Sciera, Written Statement submitted for Puerto Rico Advisory Committee to the United States Commission on Civil Rights Briefing, May 10, 2023, p. 1 (cited herein after as Sciera statement).

<sup>76</sup> U.S. Const. art. IV, § 3.

<sup>77</sup> Luis Dávila Pernas, Executive Director, Federal Affairs Administration, Government of Puerto Rico, Public Comment for *Puerto Rico Advisory Committee to the United States Commission on Civil Rights Briefing, Hato Rey, PR* May 10, 2023, p. 338, 23 - p. 339, 22. (cited herein after as Dávila Pernas public comment).

constantly.<sup>78</sup> There can be no intermediate space for Puerto Ricans. Calling them equal citizens but, at the same time, treating them differently by limiting their rights is a contradiction and a stigma without justification.<sup>79</sup>

### **FINDING III - Panelists agreed that the Supreme Court is not the ideal vehicle through which to solve the problems caused by the Non-Incorporation Doctrine.**

The Committee heard testimony that pointed out that the status as a territory under the non-incorporation doctrine has placed Puerto Rico in a unique legal space because it represents the history of complex and discriminatory treatment towards the island.<sup>80</sup> The non-incorporation doctrine treats residents of the territory as “less than” and has been used as an excuse for the continuation of colonial status for quite some time, indicating that it is one of the main obstacles to achieving decolonization.<sup>81</sup> However, the Supreme Court cites the Insular Cases as legal precedent and panelists such as Brig. Gen. Victor Pérez, argued that the Insular Cases should not have to be recognized just because they have been a legal norm.<sup>82</sup>

Dr. Erman commented that the non-incorporation doctrine should have been rejected long ago, and that doing so would not present any major disruption to existing law because very little depends on the distinction between incorporated and unincorporated territories.<sup>83</sup> Regarding statehood, the Constitution leaves to Congress the question of when and whether to admit new states.<sup>84</sup> That has never been a question for the federal courts.<sup>85</sup> Other contributions to the testimony established that, over time, it has emerged that, regardless of the Insular Cases, most of the fundamental rights in the Constitution extend to Puerto Rico, including freedom of speech and due process of law.<sup>86</sup> It is worth mentioning that other constitutional rights, such as the right to trial by jury, do not extend to Puerto Rico.<sup>87</sup>

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<sup>78</sup> Avilés Deliz Statement, at 6.

<sup>79</sup> Pinto Lugo, Rene. “Puerto Ricans: The Inequality of “Equals” Through Time.” Law Review of the Universidad Interamericana de Puerto Rico. <https://www.derecho.inter.edu/wp-content/uploads/2022/01/PUERTO-RICANS-THE-INEQUALITY-OF-EQUALS-THROUGH-TIME-.pdf> (accessed November 1, 2023).

<sup>80</sup> Erman Testimony, Hato Rey Briefing, Transcript 1. p. 24, 9-17.

<sup>81</sup> Erman Testimony, Hato Rey Briefing, Transcript 1, p. 25, 4-16.

<sup>82</sup> Brig. Gen. Victor Pérez, testimony. *Public Briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, Hato Rey, PR*, May 10, 2023, transcript. p. 277, 6-11, p. 278, 1-4.

<sup>83</sup> Erman Testimony, Hato Rey Briefing, Transcript 1. p. 25, 22 - p. 26, 15.

<sup>84</sup> Erman Testimony, Hato Rey Briefing, Transcript 1. p. 26, 11-15.

<sup>85</sup> U.S. Const. art. IV, § 3; *See also*: Erman Testimony, Hato Rey Briefing, Transcript 1. p. 25, 22 - p. 26, 15.

<sup>86</sup> Judicial Branch of Puerto Rico. “About the Judicial Branch.” <https://poderjudicial.pr/eng/community-education/legal-topics/rights-and-duties/our-rights/> (accessed October 27, 2023); *See also*: Rivera Ramos Testimony. Hato Rey Briefing, Transcript 1. p. 39, 2-21.

<sup>87</sup> Judicial Branch of Puerto Rico. “About the Judicial Branch.” <https://poderjudicial.pr/eng/community-education/legal-topics/rights-and-duties/our-rights/> (accessed October 27, 2023); *See also*: Rivera Ramos Testimony. Hato Rey Briefing, Transcript 1. p. 55, 17-20.

The United States Congress has unilateral power over the territory and can also modify local government within Puerto Rico.<sup>88</sup> Mr. Laws García shared an example from 2016, when Congress took action at the local level in Puerto Rico and approved the Puerto Rico Oversight Management and Economic Stability Act, better known as PROMESA.<sup>89</sup> As part of the law, Congress established a Fiscal Oversight and Management Board comprised of appointed members with authority that allows them to review and determine the conformity of the laws that have been passed by the legislature and signed by the Governor with the Fiscal Plan approved by the Board, which has further increased what Mr. Laws García calls the democratic deficit.<sup>90</sup> Congress had given the Board the authority to block or nullify any local law that they did not believe was consistent with their financial priorities for Puerto Rico, a practice that gives extraordinary power to Congress that would not normally apply to a state and serves as another example of differential treatment under the Insular Cases.<sup>91</sup> Dr. Rivera Ramos commented that Congress has used this power to discriminate against Puerto Rico, especially regarding public benefits.<sup>92</sup>

#### **FINDING IV - The Committee heard testimony regarding the contradictions in the U.S. citizenship of residents of Puerto Rico.**

Although the residents of Puerto Rico are American citizens, this citizenship holds various contradictions and interpretations resulting from the Insular Cases. Dr. Venator Santiago commented that although the Supreme Court treats Puerto Rico as an external territory, “foreign in a domestic sense,” Congress has determined that being born in Puerto Rico after 1940 is being born in the United States - “In other words, citizenship by birth in an external territory, a contradiction.”<sup>93</sup> In 1917, Congress collectively naturalized the residents of Puerto Rico.<sup>94</sup> Later, in 1940, Congress provided in the Immigration and Nationality Act that all persons born in Puerto Rico between the date of ratification of the Treaty of Paris in 1899 and January 12, 1941, were retroactively converted into citizens of the United States and that anyone born after January 13, 1941, would be a citizen of the United States at birth.<sup>95</sup> Before the Treaty of Paris, residents of

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<sup>88</sup> U.S. Const. art. IV, § 3; *See also*: Laws García Testimony, Hato Rey Briefing, Transcript 1. p. 288, 5-21.

<sup>89</sup> 48 U.S.C Chapter 20; *See also*: Laws García Testimony, Hato Rey Briefing, Transcript 1. p. 288, 5-21.

<sup>90</sup> 48 U.S.C. § 2121(e)(2)(A); *See also*: 48 U.S.C. § 2128(a); *See also*: 48 U.S.C. § 2142(d)(1)(B); *See also*: 48 U.S.C. § 2144(a)(5); *See also*: Pierluisi v. Financial Oversight & Management Board for Puerto Rico, No. 21-1071 (1st Cir. 2022); *See also*: Laws García Testimony, Hato Rey Briefing, Transcript 1. p. 288, 5-21.

<sup>91</sup> 48 U.S.C. Chapter 20; *See also*: Marrero Diaz Statement, at 6.

<sup>92</sup> Rivera Ramos Testimony, Hato Rey Briefing, Transcript 1. p. 40, 2-14.

<sup>93</sup> *Downes v. Bidwell*, 182 U.S. 244, 244 & n.1 (1901); *See also*: Nationality Act of 1940, P.L. 76-853; 54 Stat. 1137; *See also*: Venator Santiago Testimony, Hato Rey Briefing, Transcript 1. p. 67, 9-19.

<sup>94</sup> Jones-Shafroth Act, Pub. L. No. 64-368, 39 Stat. 951 (1917), codified as amended at 48 U.S.C. § 731-751; *See also*: Venator Santiago Testimony, Hato Rey Briefing, Transcript 1. p. 50, 22-25.

<sup>95</sup> Nationality Act of 1940, P.L. 76-853; 54 Stat. 1137; *See also*: José Julián Álvarez González, testimony. *Public Briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, Hato Rey, PR*, May 10, 2023, transcript p.128, 20 - p. 129, 5 (cited herein after as Hato Rey, Transcript 1); *See also*: Dennis

Puerto Rico were citizens of Spain and could vote for their representatives there.<sup>96</sup> The Treaty had no provision for the transfer of United States citizenship to Puerto Ricans; it did not specify the relationship they were going to have with the federal government.<sup>97</sup>

Dr. Erman explained that the Supreme Court has never taken a formal position on this issue – it has not answered whether birth in an unincorporated United States territory guarantees citizenship under the Constitution.<sup>98</sup> Dr. Erman continued that Congress has granted citizenship based on place of birth in the United States Territories (with the exception of American Samoa), and it is unclear whether local birth makes one a U.S. citizen or a U.S. national without citizenship.<sup>99</sup> Furthermore, he proposed that this can be resolved by abandoning the doctrine of non-incorporation.<sup>100</sup> Panelist José Julián Álvarez González, Professor at the School of Law at the University of Puerto Rico, supports an idea related to the fact that the United States citizenship of those born in Puerto Rico comes from the laws that have granted it and not from the 14th Amendment. Under the principles established in the Insular Cases, those born in Puerto Rico were not born in the United States.<sup>101</sup> Other testimony received in writing indicates that the only way to have all rights permanently is under the 14th Amendment to the Constitution, which does not mention the territories.<sup>102</sup> In the case *Rogers v. Bellei* 401 US 815 (1970), it was decided that even if citizenship were to be granted on a statutory basis as an extension of the 14th Amendment, this would also be under the discretion of Congress.<sup>103</sup> The other way that citizenship can be conferred would be under a status determined by Congress, which occurred in Puerto Rico under 8 USC § 1402 that established that all persons born in Puerto Rico on or after April 11, 1899, and before January 13, 1941 would be declared citizens of the United States as of January 13, 1941.<sup>104</sup>

Regarding whether imposing Compulsory Military Service on American citizens of Puerto Rico constitutes a violation of their civil rights, Dr. Rivera Ramos stated, “If you accept the legitimacy, validity, etc., of the doctrine established by the Insular Cases, what has been said about the power of Congress under the ‘Territorial Clause,’ it can be concluded that under its full powers, Congress

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Freytes, Written Statement submitted for Puerto Rico Advisory Committee to the United States Commission on Civil Rights Briefing, May 10, 2023, p. 7 (cited herein after as Freytes statement).

<sup>96</sup> Marrero Diaz Statement, at 2. *Note from the Committee*: Before the Treaty of Paris, residents of Puerto Rico born in Spain were considered citizens of Spain. When the Treaty of Paris was implemented, they had the option to declare their allegiance to Spain (“*opt-in*”) and those who did not opt for this automatically renounced it and adopted the nationality of the territory (“*opt-out*”). See Treaty of Paris of 1898 (30 Stat. 1758), Article IX.

<sup>97</sup> Treaty of Paris of 1898 (30 Stat. 1758); Marrero Diaz Statement, at 2. *Note from the Committee*: The Treaty of Paris did not have a provision for residents of Puerto Rico to opt for U.S. citizenship.

<sup>98</sup> Erman Testimony, Hato Rey Briefing, Transcript 1. p. 26, 16-22.

<sup>99</sup> Erman Testimony, Hato Rey Briefing, Transcript 1. p. 27, 2-12.

<sup>100</sup> *Ibid.*

<sup>101</sup> Álvarez González Testimony, Hato Rey Briefing, Transcript 1. p. 132, 12-22.

<sup>102</sup> Freytes Statement, at 2.

<sup>103</sup> *Rogers v. Bellei* 401 U.S. 815 (1970); *See also*: Freytes Statement, at 6.

<sup>104</sup> 8 USC § 1402; *See also*: Freytes Statement, at 6.

can establish mandatory military service in Puerto Rico. I go further, it is possible that it could also be said that it could be established only for Puerto Rico under the ‘Territorial Clause.’”<sup>105</sup>

These contradictions that exist in the citizenship of the residents of Puerto Rico extend to the right to vote, a topic that the Committee will study in more depth in the near future as part of this project. However, it is relevant to mention that although residents of Puerto Rico are subject to federal laws without being able to participate in the federal legislative process, they can only exercise their right to vote at the federal level when they live permanently in a state, but not in Puerto Rico due to its status as a territory.<sup>106</sup> Furthermore, Puerto Rico only has one representative in Congress – the Resident Commissioner who cannot vote, even though they represent a population of more than 3 million people.<sup>107</sup> This population is larger than 20 states and there are other members of Congress with full authority who represent significantly smaller populations.<sup>108</sup> Only an amendment at the constitutional level could allow Puerto Ricans to vote in a presidential election, which Professor Álvarez González described in his testimony as something very difficult to achieve.<sup>109</sup>

**FINDING V – Throughout the testimony, the Committee heard about the significant impact that Puerto Rico’s status as an unincorporated territory has had on the limited access to social welfare programs.**

***Experience of José A. Hernández***

The Committee heard the testimony of José A. Hernández, a member of the Board of Directors of the organization Movement for the Attainment of Independent Living, who shared his experience as a person with a physical disability in need of federal assistance programs when he lived temporarily in Florida after Hurricane María. Mr. Hernández experienced firsthand the differential treatment towards Puerto Rico residents when it came to accessing public benefits. Within the first month of being in Florida, Mr. Hernández was able to seamlessly enroll in several programs including Medicare (including his choice of a new Medicare Advantage Plan), Medicare drug savings programs provided by funds from the supplemental assistance program, Supplemental

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<sup>105</sup> Rivera Ramos Testimony, Hato Rey Briefing, Transcript 1. p. 94, 6-16.

<sup>106</sup> U.S. Const. art. IV, § 3; *See also*: Pinto Lugo, Rene. “Puerto Ricans: The Inequality of “Equals” Through Time.” Law Review of the Universidad Interamericana de Puerto Rico. <https://www.derecho.inter.edu/wp-content/uploads/2022/01/PUERTO-RICANS-THE-INEQUALITY-OF-EQUALS-THROUGH-TIME-.pdf> (accessed November 1, 2023).

<sup>107</sup> U.S. Const. art. IV, § 3; *See also*: Governor Pierluisi Statement, at 3.

<sup>108</sup> Governor Pierluisi Statement, at 3; *See also*: Puerto Rico Report. “The Population of Puerto Rico Exceeds the Populations of 20 States.” <https://www.puertoricoreport.com/population-puerto-rico-exceeds-populations-21-states/#:~:text=This%20puts%20Puerto%20Rico%E2%80%99s%20population%20among%20U.S.%20States,all%20the%20other%20U.S.%20territories%2C%20and%20Washington%2C%20D.C> (accessed November 3, 2023).

<sup>109</sup> Álvarez González Testimony, Hato Rey Briefing, Transcript 1. p.190, 19 - p. 191, 2.

Nutrition Assistance Program (SNAP), and gained access to group transportation services for people with physical disabilities.<sup>110</sup>

However, upon returning to Puerto Rico after the federal government ended a housing waiver for Puerto Ricans affected by the hurricane emergency that included seeking alternative housing in the states, Mr. Hernández had to re-register for all the services he had before leaving.<sup>111</sup> He explained that the Social Security Administration required him to report when he was back in Puerto Rico because if he didn't do so, it would be considered a violation.<sup>112</sup> Upon his return to Puerto Rico, Mr. Hernández had to follow the re-registration process for each program individually, and he lost access to the transportation service.<sup>113</sup> The process of accessing his medical services again and returning to his routine took him between six to twelve months, which caused his vulnerable health condition to worsen.<sup>114</sup> Mr. Hernández described receiving unequal treatment after having the experience of accessing medical services in a state and on the island.<sup>115</sup>

### ***Inequality in Federal Social Welfare Programs***

Panelist Betzaida Ramos, Director of the organization, Movimiento para el Alcance de Vida Independiente (MAVI), based her testimony on a study that was carried out in collaboration with the federal agency National Disability Council on the state of the quality of life and resources for people with disabilities in Puerto Rico.<sup>116</sup> She shared that the study's results prove that there are disparities in assistance programs such as Medicaid, SSI, Medicare, NAP versus SNAP, and disaster assistance when comparing Puerto Rico with the states and other territories.<sup>117</sup>

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<sup>110</sup> José A. Hernández, testimony. *Public Briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, Hato Rey, PR*, May 10, 2023, transcript. p. 101, 24 - p. 102, 18 (cited herein after as Hato Rey, Transcript 1).

<sup>111</sup> Federal Emergency Management Agency. "FEMA provides update on status of Transitional Sheltering Assistance as program deadline nears." <https://www.fema.gov/press-release/20230425/fema-provides-update-status-transitional-sheltering-assistance-program> (accessed October 31, 2023).

<sup>112</sup> Hernández Testimony, Hato Rey Briefing, Transcript 1, p. 109, 13-22; *See also*: "How do I report a change of name or address to Medicare?" U.S. Department of Health and Human Services. December 8, 2022. <https://www.hhs.gov/answers/medicare-and-medicaid/how-do-i-change-my-name-or-address-with-medicare/index.html> (accessed January 25, 2024); *See also*: "Reporting Changes is Your Responsibility." Social Security Matters. November 6, 2023. <https://blog.ssa.gov/reporting-changes-is-your-responsibility/> (accessed January 25, 2023).

<sup>113</sup> Hernández Testimony, Hato Rey Briefing, Transcript 1, p. 109, 6 - p. 110, 10; *See also*: Hernández Testimony, Hato Rey Briefing, Transcript 1. p. 103, 12 - 104, 23.

<sup>114</sup> Hernández Testimony, Hato Rey Briefing, Transcript 1, p. 103, 12 - 104, 23.

<sup>115</sup> Hernández Testimony, Hato Rey Briefing, Transcript 1, p. 108, 7-19.

<sup>116</sup> National Council on Disability. "Disparate Treatment of Puerto Rico Residents with Disabilities in Federal Programs and Benefits." <https://ncd.gov/publications/2022/disparate-treatment-puerto-rico-residents-disabilities-federal-programs> (accessed November 6, 2023); *See also*: Betzaida Ramos, testimonio. *Audiencia Pública ante el Comité Asesor de Puerto Rico ante la Comisión de Derechos Civiles de los Estados Unidos, Hato Rey, PR*, 10 de mayo de 2023, transcripción. p. 193 – 201. (citado en adelante como Audiencia Hato Rey, Transcripción 1).

<sup>117</sup> Ramos Testimony, Hato Rey Briefing, Transcript 1. p.195, 14 23; *See also*: National Council on Disability. "Disparate Treatment of Puerto Rico Residents with Disabilities in Federal Programs and Benefits." <https://ncd.gov/publications/2022/disparate-treatment-puerto-rico-residents-disabilities-federal-programs> (accessed November 6, 2023); *See also*: Congressional Research Service. "Community Services Block Grants (CSBG): Background and Funding." <https://crsreports.congress.gov/product/pdf/RL/RL32872> (accessed November 6, 2023).

Additionally, Ms. Ramos explained that the amount of funds allocated to these programs is calculated through “block grant” programs, which are appropriated by Congress through formulas used for the territories, and these funds are considerably lower than what is allocated to the same programs in the states.<sup>118</sup> For example, the investment in Medicaid for a person in Puerto Rico is \$1,980 annually, while in the United States it is \$6,060 annually.<sup>119</sup> Similarly, a person who receives nutrition assistance (NAP) in Puerto Rico receives, on average, 60 percent fewer benefits than those who receive SNAP in the United States.<sup>120</sup>

Regarding medical benefits, Ms. Ramos stated that there is disparate treatment in the Medicare program when it comes to the reimbursement rates for providers.<sup>121</sup> Ms. Ramos explained that the reimbursement rate “is 43 percent below the national average and 26 percent below the US Virgin Islands, which shows us the reason why there is a current brain drain of health professionals in Puerto Rico.”<sup>122</sup> More than 1,000 health professionals have migrated to the mainland in the last five years, leaving the residents of Puerto Rico with disabilities even more vulnerable.<sup>123</sup>

Regarding the Medicaid program, 39 percent of all residents of Puerto Rico receive health insurance through the Medicaid program compared to 10 percent in the states, even though Puerto Rico receives less federal funding than any state.<sup>124</sup> Appropriations for the Medicaid program, in part, are calculated using the Federal Medical Assistance Percentage (FMAP) formula, which calculates per capita income against the nation's per capita income.<sup>125</sup> Although this is intended to provide support to the poorest regions, Ms. Ramos explained that in Puerto Rico, despite being

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<sup>118</sup> Ramos Testimony, Hato Rey Briefing, Transcript 1. p. 196, 6-24.

<sup>119</sup> Ramos Testimony, Hato Rey Briefing, Transcript 1, p.197, 11-21; *See also*: Medicaid.gov. “State Overviews.” <https://www.medicaid.gov/state-overviews/index.html> (accessed November 2, 2023).

<sup>120</sup> Ramos Testimony, Hato Rey Briefing, Transcript 1. p.199, 8-16; *See also*: Center on Budget and Policy Priorities. “A Brief Overview of Puerto Rico's Nutrition Assistance Program.” <https://www.cbpp.org/research/a-brief-overview-of-the-nutrition-assistance-program#:~:text=Under%20regular%20NAP%20rules%20%28not%20including%20the%20recent,monthly%20NAP%20benefits%20in%20March%20through%20June%202019.> (accessed November 2, 2023).

<sup>121</sup> Ramos Testimony, Hato Rey Briefing, Transcript 1. p. 200, 2-5.

<sup>122</sup> Ramos Testimony, Hato Rey Briefing, Transcript, p. 200, 6-11; *See also*: National Council on Disability. “Disparate Treatment of Puerto Rico Residents with Disabilities in Federal Programs and Benefits.” <https://ncd.gov/publications/2022/disparate-treatment-puerto-rico-residents-disabilities-federal-programs> (accessed November 6, 2023).

<sup>123</sup> National Council on Disability. “Disparate Treatment of Puerto Rico Residents with Disabilities in Federal Programs and Benefits.” <https://ncd.gov/publications/2022/disparate-treatment-puerto-rico-residents-disabilities-federal-programs> (accessed November 6, 2023).

<sup>124</sup> *Ibid.*

<sup>125</sup> Ramos Testimony, Hato Rey Briefing, Transcript 1. p. 197, 22 – p. 198, 1; *See also*: “...the U.S. Territories are assigned a permanent FMAP of 50 percent, which was subsequently increased to 55 percent with the Patient Protection and Affordable Care Act (ACA)... If Medicaid coverage in Puerto Rico was the same as in the states, its FMAP rate would be 87 percent.” in National Council on Disability. “Disparate Treatment of Puerto Rico Residents with Disabilities in Federal Programs and Benefits.” <https://ncd.gov/publications/2022/disparate-treatment-puerto-rico-residents-disabilities-federal-programs> (accessed November 6, 2023). *Note from the Committee*: The Consolidated Appropriations Act of 2023 amends the Social Security Act to increase the FMAP to 76% in Puerto Rico until fiscal year 2027. For more information, see: Public Law 117 - 328 - Consolidated Appropriations Act, 2023; and, Congressional Research Service. “Consolidated Appropriations Act, 2023 (P.L. 117-328): Medicaid and CHIP Provisions.” <https://crsreports.congress.gov/product/pdf/R/R47821> (accessed December 18, 2023).

one of the poorest jurisdictions in the United States, the FMAP has been applied below other states and other territories, directly affecting the quality of life of the people who most need these resources.<sup>126</sup> Panelist José Acarón, Director of AARP Puerto Rico, said that a possible reason behind this differential treatment in benefits is that with 3.2 million inhabitants, Puerto Rico has a larger population than other territories, and this can influence the costs for extend programs in Puerto Rico.<sup>127</sup>

Another factor that increases the level of inequality is the fact that the Supplemental Security Income (SSI) program, which provides financial support to people with low incomes, is not available to residents of Puerto Rico.<sup>128</sup> In written testimony submitted by Anita Teekah and Lia Fiol-Matta of the organization Latino Justice PRLDEF, SSI is available in all 50 states, the District of Columbia, and the Mariana Islands, and it is estimated that 436,000 people in Puerto Rico can qualify for SSI if not for discriminatory treatment by Congress.<sup>129</sup> Furthermore, they commented that “While this program was specifically designed to assist those ‘who have little to no income’ with their basic needs and is intended for those who cannot work and, therefore, do not pay federal taxes, this clearly does not extend to those living in Puerto Rico.”<sup>130</sup> The Aged, Blind, and Disabled Program (AABD), which is similar to SSI, does exist in Puerto Rico but provides a minimum amount of assistance compared to what SSI would provide if it were available - a person in Puerto Rico would receive 75 dollars per month [with AABD], while in the United States, it [the amount received] would be 841 dollars with SSI.<sup>131</sup> Panelist Alex Ortiz, a military veteran and leader in Puerto Rico's veteran community, explained that this disproportionately affects disabled veterans who often need financial supports due to their inability to work or the additional costs associated with their disabilities in service to the American nation.<sup>132</sup>

### ***Lack of Access to Supplemental Security Income (SSI)***

As part of the written testimony for this project, the Committee also received legal reports on a pending case seeking access to SSI from attorney Isabel Abislaimán-Quílez, who represents

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<sup>126</sup> Ramos Testimony, Hato Rey Briefing, Transcript 1. p. 197, 22 – p. 198, 20.

<sup>127</sup> José Acarón, testimony. *Public Briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, Hato Rey, PR*, May 10, 2023, transcript p. 311, 12 – p. 312, 7 (cited herein after as Hato Rey, Transcript 1).

<sup>128</sup> *United States v. Vaello Madero*, 596 U.S. \_\_\_\_ (2022); *See also*: Alex Ortiz, testimony. *Public Briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, Hato Rey, PR*, May 10, 2023, transcript p. 227, 18 - p. 228, 7 (cited herein after as Hato Rey, Transcript 1); *See also*: Lucy Cruz, testimony. *Public Briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, Hato Rey, PR*, May 10, 2023, transcript p. p. 221, 14 - p. 222, 2 (cited herein after as Hato Rey, Transcript 1).

<sup>129</sup> Teekah and Fiol-Matta Statement, at 1; *See also*: Konish, Lorie. “Supreme Court decision may hurt Puerto Rico residents who need access to federal disability program, expert says.” CNBC. April 21, 2022. <https://www.cnbc.com/2022/04/21/supreme-court-decision-hurts-puerto-ricans-who-need-federal-benefits.html> (accessed October 20, 2023).

<sup>130</sup> Teekah and Fiol-Matta Statement, at 3; *See also*: Social Security. “Supplemental Security Income (SSI).” <https://www.ssa.gov/ssi/> (accessed October 20, 2023).

<sup>131</sup> Ramos Testimony, Hato Rey Briefing, Transcript 1. p.199, 18 - p. 200, 1; *See also*: Benefits.gov. “Assistance in Puerto Rico, U.S. Virgin Islands, and Guam”. <https://www.benefits.gov/benefit/632> (accessed October 20, 2023).

<sup>132</sup> Ortiz Testimony, Hato Rey Briefing, Transcript 1. p. 227, 18 - p. 228, 7.

Emanuel Rivera Fuentes through his father, and several individuals in need of SSI assistance as an example of the impact of differential treatment and the arguments in favor of expanding SSI to Puerto Rico.<sup>133</sup> In 2019, Rivera Fuentes, who suffers from severe disabilities due to cerebral palsy, went to the Social Security Administration offices in Puerto Rico to apply for SSI and was placed on a waiting list. In July of that year, he received a letter with the determination of ineligibility saying: “SSI benefit (sic) are not payable in Puerto Rico.”<sup>134</sup> Since this case began, 11 additional people have joined as plaintiffs.<sup>135</sup> Notably, this case was delayed waiting for the decision in the *United case States v. Vaello Madero*, 142 S. Ct. 1539 (2022), which also raised important questions about equal protection in access to SSI but was rejected by the Supreme Court.<sup>136</sup>

Attorney Abislaimán-Quílez argued that the plaintiffs have a constitutional right to the same protections and guarantees as other citizens of the United States, including equality before the law and freedom from discrimination by the federal government based on race or ethnicity, and since the Constitution applies wherever a citizen is, the rights of the plaintiffs are protected while in Puerto Rico.<sup>137</sup> Attorney Abislaimán-Quílez added that the plaintiffs have natural rights such as protecting their life and dignity, among other factors, and SSI has been fundamental in protecting the natural rights of people in need, so they should be eligible for this program.<sup>138</sup> SSI exists to support seniors, people who are blind, and people with disabilities who are eligible based on income and other eligibility criteria.<sup>139</sup> As one of these requirements, the individual must be a resident of the United States, but for the purposes of SSI, the United States is defined in a geographic manner that includes the continental states and the District of Columbia.<sup>140</sup> Furthermore, Abislaimán-Quílez argues that the Privileges and Immunities Clause of the 14th Amendment places limits on the Territorial Clause because it does not allow a separate category of citizens to be formed when Congress establishes statutes that are intended to benefit individuals with uniformity at the national level.<sup>141</sup> According to the brief, the interpretation that the Territorial Clause gives complete power over the territories and their inhabitants is equivalent to treating those

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<sup>133</sup> *Rivera Fuentes, et al. v. Kijakazi, et al.*, No. 23-1511, U.S. Court of Appeals, 1<sup>st</sup> Circuit. Brief of Plaintiffs-Appellants, Filed June 9, 2023.

<sup>134</sup> *Id.*, p. 29-32.

<sup>135</sup> *Id.*

<sup>136</sup> *United States v. Vaello Madero*, 142 S. Ct. 1539 (2022); *See also: Rivera Fuentes, et al. v. Kijakazi, et al.*, No. 23-1511, U.S. Court of Appeals, 1<sup>st</sup> Circuit, Brief for Appellees, Filed September 6, 2023, p. 10.

<sup>137</sup> *Rivera Fuentes, et al. v. Kijakazi, et al.*, No. 23-1511, U.S. Court of Appeals, 1<sup>st</sup>. Brief of Plaintiffs-Appellants, Filed June 9, 2023. p. 37-38.

<sup>138</sup> *Id.*

<sup>139</sup> 42 U.S.C. § 1382; *See also: Rivera Fuentes, et al. v. Kijakazi, et al.*, No. 23-1511, U.S. Court of Appeals, 1<sup>st</sup> Circuit. Brief for Appellees, Filed September 6, 2023, p. 11.

<sup>140</sup> 42 U.S.C. § 1382c(a)(1); *See also: 42 U.S.C. § 1382c(c)(e); See also: Rivera Fuentes, et al. v. Kijakazi, et al.*, No. 23-1511, U.S. Court of Appeals, 1<sup>st</sup> Circuit. Brief for Appellees, Filed September 6, 2023, p. 11, 12; *Note from the Committee*: There is an exception regarding the geographical definition of the Northern Mariana Islands through the Pact that converted them into a territory. For more information, see: Pub. L. No. 94-241, § 502(a)(1), 90 Stat. 263, 268 (1976) (codified at 48 U.S.C. § 1801).

<sup>141</sup> U.S. Const. amend. XIV, § 1; *See also: U.S. Const. art. IV, § 3; See also: Rivera Fuentes, et al. v. Kijakazi, et al.*, No. 23-1511, U.S. Court of Appeals, 1<sup>st</sup> Circuit. Brief of Plaintiffs-Appellants, Filed June 9, 2023. p. 38.

inhabitants as property at the discretion of Congress, which is only one branch of the federal government.<sup>142</sup> The Territorial Clause does not describe or stratify different categories of territories or citizens.<sup>143</sup>

As part of the Rivera Fuentes case, the U.S. Department of Justice submitted a brief in September 2023 against the expansion of SSI in Puerto Rico. The Department of Justice said that participation in SSI is not a privilege of citizenship and agree that the Supreme Court's decision was appropriate.<sup>144</sup> They explained that residents of the territories (except for the Mariana Islands) are not eligible for SSI and anyone who spends 30 consecutive days or more in the territories would not receive the benefit for that period.<sup>145</sup> Instead, Congress offers the AABD program to help the same population, although it does not receive the same level of federal funding for this program.<sup>146</sup> The difference between the two programs is important since the amount of SSI aid increases each year (\$914 dollars in January 2023) while in Puerto Rico, the amount of the AABD program is set at \$58 dollars.<sup>147</sup> Abislaimán-Quílez argues that SSI is an advanced version of AABD.<sup>148</sup>

The U.S. Department of Justice argued why this case cannot be successful after the decision in *United States v. Vaello Madero*, which establishes that Puerto Rico's unique tax situation provides a rational basis for exclusion.<sup>149</sup> They say that the exclusion of Puerto Rican residents is not racial discrimination and that, as in the *Vaello Madero* case, it is not necessary to involve the Insular Cases to resolve this case.<sup>150</sup> Despite this statement that exclusion from SSI is not racial discrimination, attorney Abislaimán-Quílez emphasizes in her response that race and disability are overlapping identities, and that is why there is inequality before the law based on race.<sup>151</sup> According to Abislaimán-Quílez, plaintiffs meet all SSI requirements, except for geographic exclusion, and the need for this assistance is more and more urgent, especially due to the growing elderly population.<sup>152</sup> “SSI does not provide a definition of geography. However, SSI does not

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<sup>142</sup> *Rivera Fuentes, et al. v. Kijakazi, et al.*, No. 23-1511, U.S. Court of Appeals, 1<sup>st</sup> Circuit. Brief of Plaintiffs-Appellants, Filed June 9, 2023, p. 57.

<sup>143</sup> *Rivera Fuentes, et al. v. Kijakazi, et al.*, No. 23-1511, U.S. Court of Appeals, 1<sup>st</sup> Circuit. Reply Brief of Plaintiffs-Appellants, Filed October 11, 2023, p. 11.

<sup>144</sup> *Rivera Fuentes, et al. v. Kijakazi, et al.*, No. 23-1511, U.S. Court of Appeals, 1<sup>st</sup> Circuit. Brief for Appellees, Filed September 6, 2023, p. 10.

<sup>145</sup> C.F.R. § 416.1327(a); *See also: Rivera Fuentes, et al. v. Kijakazi, et al.*, No. 23-1511, U.S. Court of Appeals, 1<sup>st</sup> Circuit. Brief for Appellees, Filed September 6, 2023, p. 12.

<sup>146</sup> 42 U.S.C. §§ 301-306, 1201-1206, 1351-1355, 1381 note; 42 U.S.C. §§ 1381 note, 1382 note, 1383 note, 1384 note, 1385 note; *See also: Rivera Fuentes, et al. v. Kijakazi, et al.*, No. 23-1511, U.S. Court of Appeals, 1<sup>st</sup> Circuit. Brief for Appellees, Filed September 6, 2023, p. 12.

<sup>147</sup> *Rivera Fuentes, et al. v. Kijakazi, et al.*, No. 23-1511, U.S. Court of Appeals, 1<sup>st</sup> Circuit. Reply Brief of Plaintiffs-Appellants, Filed October 11, 2023, p. 12-13.

<sup>148</sup> *Rivera Fuentes, et al. v. Kijakazi, et al.*, No. 23-1511, U.S. Court of Appeals, 1<sup>st</sup> Circuit. Brief of Plaintiffs-Appellants, Filed June 9, 2023, p. 24.

<sup>149</sup> *United States v. Vaello Madero*, 142 S. Ct. 1539 (2022); *See also: Rivera Fuentes, et al. v. Kijakazi, et al.*, No. 23-1511, U.S. Court of Appeals, 1<sup>st</sup> Circuit. Brief for Appellees, Filed September 6, 2023, p. 16-17.

<sup>150</sup> *Rivera Fuentes, et al. v. Kijakazi, et al.*, No. 23-1511, U.S. Court of Appeals, 1<sup>st</sup> Circuit. Brief for Appellees, Filed September 6, 2023, p. 18.

<sup>151</sup> *Rivera Fuentes, et al. v. Kijakazi, et al.*, No. 23-1511, U.S. Court of Appeals, 1<sup>st</sup> Circuit. Reply Brief of Plaintiffs-Appellants, Filed October 11, 2023, p. 13.

<sup>152</sup> *Id.*, p. 14.

apply to physical characteristics of the landscape; it applies to people,” says Abislaimán-Quílez.<sup>153</sup> Geography considers the racial, ethnic, and ancestral characteristics of the inhabitants, and therefore exclusion based on geography does not ignore color [race].<sup>154</sup> Abislaimán-Quílez argues that the fact that this emphasis on geography excludes a primarily Hispanic population demonstrates that it is at least partially based on race, ethnicity, and ancestry.<sup>155</sup> This opinion is shared by Judge Gustavo Gelpí, who in his opinion in the *Vaello Madero* case, stressed that this exclusion from federal law that is part *de facto* on a suspicious classification based on the Hispanic origin of its population, is constitutionally impermissible.<sup>156</sup> Regarding differential treatment, Abislaimán-Quílez writes that “there is only one citizenry in one nation. Nowhere does the Constitution authorize Congress to redesign national lines, much less create categories of citizenship.”<sup>157</sup> This most recent response filed in October 2023 asks the District Court to reverse its decision.<sup>158</sup> In *Rivera-Fuentes*, plaintiffs reserved the argument to repeal the Insular Cases because these cases create a system of inequality before the law by separating territories and citizens residing in them, without basis on the Constitution.<sup>159</sup>

### ***Access to Benefits for People with Disabilities***

In her testimony, Panelist Betzaida Ramos indicated that, in Puerto Rico, 21.7% of the population are people with disabilities, which represents around 687,000 people in Puerto Rico.<sup>160</sup> The poverty level of people with disabilities in Puerto Rico is close to 48%; that is, almost half of the population are currently living below the poverty level. And of this nearly 50%, only 23.7% are people who work, compared to 36% in the United States and 44% in the other territories.<sup>161</sup>

The inequality in the level of assistance provided through various federal programs imposes a unique challenge on people with disabilities in Puerto Rico. Even if a person with disabilities wants to work, they must meet Medicaid eligibility criteria in order to continue receiving that assistance.<sup>162</sup> This requirement forces individuals to decide between continuing to receive the

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<sup>153</sup> *Rivera Fuentes, et al. v. Kijakazi, et al.*, No. 23-1511, U.S. Court of Appeals, 1<sup>st</sup> Circuit. Reply Brief of Plaintiffs-Appellants, Filed October 11, 2023, p. 24.

<sup>154</sup> *Id.*, p. 35.

<sup>155</sup> *Id.*, p. 24.

<sup>156</sup> Córdova, Andrés L. “Algunos apuntes a U.S. v. Vaello Madero”. El Vocero. September 2, 2019.

[https://www.elvocero.com/opinion/algunos-apuntes-a-u-s-v-vaello-madero/article\\_e665c354-2c0c-11e9-9f28-8378d31aff1c.html](https://www.elvocero.com/opinion/algunos-apuntes-a-u-s-v-vaello-madero/article_e665c354-2c0c-11e9-9f28-8378d31aff1c.html) (accessed November 8, 2023).

<sup>157</sup> *Rivera Fuentes, et al. v. Kijakazi, et al.*, No. 23-1511, U.S. Court of Appeals, 1<sup>st</sup> Circuit. Reply Brief of Plaintiffs-Appellants, Filed October 11, 2023, p. 28.

<sup>158</sup> *Id.*, p. 36.

<sup>159</sup> *Rivera Fuentes, et al. v. Kijakazi, et al.*, No. 23-1511, U.S. Court of Appeals, 1<sup>st</sup> Circuit. Brief of Plaintiffs-Appellants, Filed June 9, 2023, p. 64.

<sup>160</sup> Ramos Testimony, Hato Rey Briefing, Transcript 1. p. 193, 24 - p. 194, 11.

<sup>161</sup> Ramos Testimony, Hato Rey Briefing, Transcript 1. p. 193, 24 - p. 194, 11; *See also*: National Council on Disability. “Disparate Treatment of Puerto Rico Residents with Disabilities in Federal Programs and Benefits.” <https://ncd.gov/publications/2022/disparate-treatment-puerto-rico-residents-disabilities-federal-programs> (accessed November 6, 2023).

<sup>162</sup> “Quality of Care in Puerto Rico – Medicaid Overview.” Medicaid.gov. <https://www.medicaid.gov/state-overviews/puerto-rico.html> (accessed January 22, 2024).

minimum benefit that is barely enough to cover their expenses, or working and risking earning more than the eligibility cap and losing the benefit they need to maintain their health.<sup>163</sup> That is why many individuals often have to decide on what they will spend their minimal income on—whether on food or medicine- and often, they face having to go to the United States to preserve their lives.<sup>164</sup> Ms. Ramos said: “If we eliminate these barriers of discrimination, we allow them to contribute to life in society actively, and we would have more Puerto Ricans working, working hand in hand and demonstrating the capacity of Puerto Ricans in any area of life in society.”<sup>165</sup>

In the testimony, there were arguments about how disparities in access to federal programs and benefits contribute to social and economic challenges in Puerto Rico.<sup>166</sup> In written testimony submitted by Resident Commissioner Jenniffer González Colón, she commented that “in those instances when Congress has chosen to treat Puerto Rico differently under a particular federal assistance program, it has relied, either explicitly or implicitly, on the argument that such differential treatment is warranted because individuals and businesses in Puerto Rico do not contribute federal income taxes into the general fund to the same degree as their counterparts in the states.”<sup>167</sup> The testimony of veteran Alex Ortiz captures the frustration of the residents of Puerto Rico regarding this inequality – “What many of us do not understand is why Congress and the judicial branch do not act on the issue in favor of the equality of the rights [of] Puerto Ricans who live on the island. At the center of the Insular Cases is the denial of basic civil rights guaranteed by the United States Constitution.”<sup>168</sup>

## **FINDING VI - The Committee heard testimony about the effects that limitations on access to public programs have had on certain social groups, including older adults, veterans, and families with minors.**

### ***Description of Effects on Older Adults***

The Committee heard testimony about one of the most vulnerable populations who experience the impact of inequality in Puerto Rico every day – older adults, one of the largest social groups in Puerto Rico.<sup>169</sup> Panelist Lucy Cruz, President of the community group Grupo de Ocho Comunidades Aledañas al Caño Martín Peña (G8), shared that her organization sees this reality

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<sup>163</sup> Ramos Testimony, Hato Rey Briefing, Transcript 1. p.198, 21 - p. 199, 7; *See also*: Departamento de Salud. “Programa Medicaid”.

<https://www.salud.pr.gov/CMS/85#:~:text=Documentos%20que%20debe%20proveer%20cuando%20acuda%20a%20su,menores%20que%20vivan%20en%20el%20hogar%20More%20items> (accessed November 1, 2023).

<sup>164</sup> Ramos Testimony, Hato Rey Briefing, Transcript 1, p. 200, 20 - p. 201, 9.

<sup>165</sup> Ramos Testimony, Hato Rey Briefing, Transcript 1, p. 238, 20 - p. 239, 7.

<sup>166</sup> Governor Pierluisi Statement, at 4.

<sup>167</sup> Jenniffer González Colón, Resident Commissioner, U.S. Congress, Written Statement submitted for Puerto Rico Advisory Committee to the United States Commission on Civil Rights Briefing, May 10, 2023 (cited herein after as Resident Commissioner González Colón statement).

<sup>168</sup> Ortiz Testimony, Hato Rey Briefing, Transcript 1, p. 224, 24 - p. 225, 11.

<sup>169</sup> Cruz Testimony, Hato Rey Briefing, Transcript 1, p. 239, 16 - p. 241, 3.

often and sees how government aid is among the few support systems that older adults receive, although it is not enough for their daily needs. She stated that local resources for this population have also decreased – “Almost all the senior centers in the Municipality of San Juan have closed for us. And we have been fighting for years to reopen help centers for the elderly because at least one plate of food a day, at least solves something for them.”<sup>170</sup>

Mr. José Acarón of AARP Puerto Rico shared that “Puerto Rico ranks seventh in the world in terms of having the oldest population.”<sup>171</sup> Additionally, the poverty level in Puerto Rico is four times greater than in the states - in 2019, the poverty level was 43%, while in the United States, the average was 10.5%.<sup>172</sup>

Mr. Acarón also noted that although many older adults live alone in the United States, there is usually some access to services in their communities, while, in contrast, that type of network does not exist in Puerto Rico.<sup>173</sup> The loneliness of older adults was evident after Hurricane Maria, where it was observed that in many homes, older adults were living alone or even taking care of older people without support from anyone else.<sup>174</sup> Mr. Acarón said that “finally, people understood that Puerto Rico is a country that has already aged. It is not aging; it has already aged, and we have not wanted to acknowledge our reality and create a support system for the population.”<sup>175</sup> The experience of older adults in Puerto Rico points to the urgent need for programs like fully covered Medicaid and SSI, which could help approximately 700,000 residents.<sup>176</sup>

Another challenge this population faces is the lack of a system of long-term care institutions in Puerto Rico. Mr. Acarón mentioned, “an industry of long-term care institutions has not developed, because Medicaid does not pay for the long-term care part either.”<sup>177</sup> Along these lines, one of the services required under Medicaid that do not apply to Puerto Rico includes community-based

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<sup>170</sup> Cruz Testimony, Hato Rey Briefing, Transcript 1. p. 239, 16 - p. 241, 3.

<sup>171</sup> Acarón Testimony, Hato Rey Briefing, Transcript 1. p. 266, 15-17; *See also*: Rivera Marrero, Mildred. “Puerto Rico es uno de los países con más adultos mayores en el mundo”. *El Nuevo Día*. February 26, 2023. <https://www.elnuevodia.com/noticias/locales/notas/puerto-rico-es-uno-de-los-paises-con-mas-adultos-mayores-en-el-mundo/#:~:text=Puerto%20Rico%20ocupa%20el%20s%C3%A9ptimo%20lugar%20en%20el,las%20Naciones%20Unidas%20%28ONU%29%20que%20fue%20publicado%20recientemente> (accessed November 3, 2023).

<sup>172</sup> Acarón Testimony, Hato Rey Briefing, Transcript 1. p. 269, 7-11; *See also*: Vargas-Ramos, Carlos, et al. “Pervasive Poverty in Puerto Rico: a Closer Look.” Center for Puerto Rican Studies at Hunter College. <https://centopr.hunter.cuny.edu/reports/pervasive-poverty-in-puerto-rico/> (accessed November 3, 2023).

<sup>173</sup> Acarón Testimony, Hato Rey Briefing, Transcript 1. p. 317, 14-21; *See also*: Matos-Moreno, Amílcar., et al. “Aging and the Left Behind: Puerto Rico and Its Unconventional Rapid Aging.” *The Gerontologist*. September 2022. <https://academic.oup.com/gerontologist/article/62/7/964/6607773> (accessed November 3, 2023).

<sup>174</sup> Acarón Testimony, Hato Rey Briefing, Transcript 1. p. 317, 25 - p. 318, 15; *See also*: Varney, Sarah. “Amid new hurricane season, Maria still taking a toll on Puerto Rico’s elderly.” *PBS Newshour*. <https://www.pbs.org/newshour/show/amid-new-hurricane-season-maria-still-taking-a-toll-on-puerto-ricos-elderly> (accessed November 3, 2023).

<sup>175</sup> Acarón Testimony, Hato Rey Briefing, Transcript 1. p. 317, 25 - p. 318, 15.

<sup>176</sup> Acarón Testimony, Hato Rey Briefing, Transcript 1, p. 269, 12 - p. 271, 5; *See also*: Coto, Danica. “US court upholds SSI for Puerto Ricans in key ruling.” *Associated Press*. April 10, 2020. <https://apnews.com/article/908aeca623bc4a07b6c90ad8ac86d047> (accessed November 3, 2020).

<sup>177</sup> Acarón Testimony, Hato Rey Briefing, Transcript 1. p. 272, 15-20.

home care services that help older adults receive the necessary care without leaving their homes.<sup>178</sup> Acarón shared that AARP Puerto Rico conducted a survey in which "87% of the population wants to age in their home, but we do not have the funds, nor do we have the structure to provide those services. And what's happening, the social evils of, 'I don't have transportation, I live in isolation.' Social isolation causes cognitive conditions, it causes depression, it causes health conditions."<sup>179</sup>

### *Description of Effects on Veterans*

The Committee also received testimony relevant to the experience of veterans in Puerto Rico and how differential treatment affects them. Panelist Alex Ortiz stated: "The Insular Cases have left Puerto Rican veterans in a state of limbo, denying them certain rights and benefits that they otherwise enjoy with their veterans in the United States. To enjoy these benefits, a veteran living in Puerto Rico only has to move to another state and that's it, as if nothing had happened."<sup>180</sup>

Puerto Rican veterans have contributed significantly to United States conflicts. Mr. Ortiz informed the Committee that: "In the First World War, there were about 18,000; in the Second, over 65,000; in the Korean War, about 61,000 and where our "Borinqueneers" showed how valuable we have been since then; 48,000 in the Vietnam War. And we still do not have official data on how many Puerto Ricans have participated in the war against terrorism, which includes Iraq and Afghanistan. We do know that since 2001 the Puerto Rico National Guard has been deployed more than 18,000 times in service to the nation, including combat zones."<sup>181</sup>

The panelist Brig. Gen. Victor Pérez shared the following data about the participation of Puerto Rican residents in the Armed Forces: "More than 250,000 Puerto Ricans have served honorably and bravely throughout history, in all wars, and all contingencies. Per capita, more Puerto Ricans have served than most states in the United States. More than 100,000 veterans live on the island today, and approximately 35,000 men and women currently serve in different regions. It is incredible, after the service and sacrifice defending democracy, freedom, and justice around the world, we return to our country Puerto Rico and we are denied equality and the right to vote for senators and representatives and for the commander in chief of the Armed Forces, the president of the United States, who are the ones who send us to war."<sup>182</sup> Mr. Ortiz shares this frustration saying, "This lack of representation is what allows us to be subject to discriminatory treatment in many federal programs."<sup>183</sup> Given this limitation of being unable to participate as a citizen fully, testimony pointed out that from a pro-self-determination perspective, the requirement to register for military service can be seen as another form of discrimination resulting from the Territorial Clause.<sup>184</sup>

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<sup>178</sup> Acarón Testimony, Hato Rey Briefing, Transcript 1, p. 271, 20 - p. 272, 13.

<sup>179</sup> Ibid.

<sup>180</sup> Ortiz Testimony, Hato Rey Briefing, Transcript 1, p. 224, 19 - p. 225, 2.

<sup>181</sup> Ortiz Testimony, Hato Rey Briefing, Transcript 1, p. 226, 2-16.

<sup>182</sup> Pérez Testimony, Hato Rey Briefing, Transcript 1. p. 280, 13 - p. 281, 7.

<sup>183</sup> Ortiz Testimony, Hato Rey Briefing, Transcript 1. p. 224, 24 - p. 225, 12-24.

<sup>184</sup> Rivera Ramos Testimony, Hato Rey Briefing, Transcript 1. p. 94, 4-22.

## *Access to Federal Programs for Puerto Rican Veterans*

Panelist Alex Ortiz shared that many veterans in Puerto Rico live below the poverty level and are of the age to qualify for Social Security.<sup>185</sup> Regarding income, approximately 30,117 veterans in Puerto Rico live below the poverty line.<sup>186</sup> He argued that SSI would be essential to help these veterans.

Aside from these alarming income-related numbers, Puerto Rican veterans also face limited access to health services, including mental health services. Mr. Ortiz explained that retired veterans in the states have TRICARE Prime coverage, a free health plan option that is not available in Puerto Rico.<sup>187</sup> Mr. Ortiz shared that according to the 2020 Census, 67.7% of veterans in Puerto Rico are over 55 years old.<sup>188</sup> A significant problem that many of these veterans face is that in order to process any document with the Department of Veterans or the Department of Defense, most of the information is online only and is primarily in English.<sup>189</sup> The DD-214 form required to request assistance is only in English, presenting barriers for Spanish-speaking veterans in their requests.<sup>190</sup> Additionally, a decline in the veteran population in Puerto Rico is projected in the coming decades, and this means that federal investments for medical services at the local level may also decline - one more reason why veterans who have gone to the United States do not want to return.<sup>191</sup>

Educational benefits are also applied differently in Puerto Rico. Mr. Ortiz explained that Puerto Rico is considered a foreign place for the GI Bill purposes, which means that the cost-of-living increase is not provided for this benefit.<sup>192</sup> Compared to the states, these reduced benefits make it more difficult for veterans to achieve their educational and career goals within the island.<sup>193</sup> Mr. Ortiz said that in his own experience, he received \$2,700 through the GI Bill when he lived in Rhode Island and only \$1,900 under the same law as a student in Puerto Rico.<sup>194</sup>

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<sup>185</sup> Ortiz Testimony, Hato Rey Briefing, Transcript 1. p. 228, 13 - p. 229, 10; *See also*: U.S. Department of Veteran Affairs. "Puerto Rico." [https://www.va.gov/vetdata/docs/SpecialReports/State\\_Summaries\\_Puerto\\_Rico.pdf](https://www.va.gov/vetdata/docs/SpecialReports/State_Summaries_Puerto_Rico.pdf) (accessed December 29, 2023).

<sup>186</sup> United States Department of Veterans Affairs. "PACT Act Overview." <https://www.va.gov/ADVISORY/docs/2021213FASFACSlides.pdf> (accessed December 29, 2023).

<sup>187</sup> Ortiz Testimony, Hato Rey Briefing, Transcript 1. p. 229, 12 - p. 231, 1; *See also*: TRICARE. "TRICARE Prime." <https://www.tricare.mil/Plans/HealthPlans/Prime> (accessed October 30, 2023). *Note from the Committee*: Although the basic TRICARE plan exists in Puerto Rico, other options do not apply, including TRICARE Prime, which would offer more flexibility to beneficiaries in regard to their health care options.

<sup>188</sup> Ortiz Testimony, Hato Rey Briefing, Transcript 1. p. 241, 4-7; *See also*: United States Census Bureau. "Veteran Status." <https://data.census.gov/table/ACSST5Y2020.S2101?g=040XX00US72> (accessed December 29, 2023).

<sup>189</sup> Ortiz Testimony, Hato Rey Briefing, Transcript 1. p. 241, 5 - p. 243, 3 y p. 247, 7 - p. 248, 9.

<sup>190</sup> Ortiz Testimony, Hato Rey Briefing, Transcript 1, p. 247, 7 - p. 248, 9.

<sup>191</sup> Ortiz Testimony, Hato Rey Briefing, Transcript 1. p. 250, 5 - p. 251, 6.

<sup>192</sup> Ortiz Testimony, Hato Rey Briefing, Transcript 1. p. 231, 16 - p. 232, 8; *See also*: U.S. Department of Veterans Affairs. "GI Bill Comparison Tool." <https://www.va.gov/education/gi-bill-comparison-tool/?search=location&location=San%20Juan%2C%20Puerto%20Rico> (accessed December 29, 2023). *Note from the Committee*: The benefit related to cost-of-living applies to housing, not tuition.

<sup>193</sup> Ortiz Testimony, Hato Rey Briefing, Transcript 1. p. 231, 16 - p. 232, 8.

<sup>194</sup> Ortiz Testimony, Hato Rey Briefing, Transcript 1, p. 264, 1-22.

Among the veteran community in Puerto Rico, many people left for the states after Hurricane Maria, mainly Florida and Connecticut, to be with their families and receive an increase in benefits. In his testimony, Mr. Ortiz regrets that the same level of federal resources cannot be offered within Puerto Rico, something that could help keep the community intact in Puerto Rico.<sup>195</sup> He said: “The reality is that many veterans leave for the United States precisely because they do not have the equality that they know you have when you are in one of the United States. They have SSI, better Medicaid, and better medical services, but not only that, we talk about the family and the children; they have better education. And then all that makes them stay there.”<sup>196</sup>

### ***Child Tax Credit (CTC)***

Panelist María Enchautegui, Director of Research and Public Policy at the Youth Development Institute, presented data on the Child Tax Credit (CTC) and its effect on the economy of Puerto Rico. Dr. Enchautegui explained how the child poverty rate has been relatively high and has changed less than the senior poverty rate since the year 2000.<sup>197</sup> According to a report published in 2022 by the Youth Development Institute, “approximately 326,000 children, and young people live below the poverty level in Puerto Rico. Of these, over 75% live in households headed by women, with a median of \$8,400 annually.”<sup>198</sup>

The CTC benefit began in Puerto Rico in 1997 with the Taxpayer Relief Act for families with three or more children and was mainly based on people who file income tax.<sup>199</sup> In 2021, the benefit was significantly expanded under the American Rescue Plan (ARPA) and applied to all families with children up to age 17 and there was no requirement for proof of income.<sup>200</sup> One significant

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<sup>195</sup> Ortiz Testimony, Hato Rey Briefing, Transcript 1, p. 260, 23 - p. 261, 25.

<sup>196</sup> Pérez Testimony, Hato Rey Briefing, Transcript 1. p. 297, 22 - p. 298, 7.

<sup>197</sup> Maria Enchautegui, testimony. *Public Briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, Virtual*, September 14, 2023, transcript p. 20 (cited herein after as Transcript 2).

<sup>198</sup> Instituto del Desarrollo de la Juventud. “Child Tax Credit (CTC) Impacto trascendental a las familias con menores en Puerto Rico y aportación millonaria a la economía local”. January 11, 2022.

[https://mcusercontent.com/35b40b9cf147af1ed5717180c/files/812ac348-c1a4-ce60-c924-7856ccbe747e/Child\\_Tax\\_Credit\\_impacto\\_trascendental\\_a\\_las\\_familias\\_conmenores\\_IDJ\\_enero\\_2022\\_.pdf](https://mcusercontent.com/35b40b9cf147af1ed5717180c/files/812ac348-c1a4-ce60-c924-7856ccbe747e/Child_Tax_Credit_impacto_trascendental_a_las_familias_conmenores_IDJ_enero_2022_.pdf) (accessed October 30, 2022).

<sup>199</sup> Enchautegui Testimony, Transcript 2. p. 20; *See also*: Sperling, Gene. “Getting the Child Tax Credit Right for Puerto Rico: The American Rescue Plan’s Permanent, Historic Changes to Tax Relief in Puerto Rico.” The White House. April 14, 2022. <https://www.whitehouse.gov/briefing-room/blog/2022/04/14/getting-the-child-tax-credit-right-for-puerto-rico-the-american-rescue-plans-permanent-historic-changes-to-tax-relief-in-puerto-rico/> (accessed October 30, 2023).

<sup>200</sup> Enchautegui Testimony, Transcript 2. p. 20; *See also*: Internal Revenue Service. “Resources and Guidance for Puerto Rico families that may qualify for the Child Tax Credit.” <https://www.irs.gov/credits-deductions/individuals/resources-and-guidance-for-puerto-rico-families-that-may-qualify-for-the-child-tax-credit> (accessed October 30, 2023); *See also*: Sperling, Gene. “Getting the Child Tax Credit Right for Puerto Rico: The American Rescue Plan’s Permanent, Historic Changes to Tax Relief in Puerto Rico.” The White House. April 14, 2022. <https://www.whitehouse.gov/briefing-room/blog/2022/04/14/getting-the-child-tax-credit-right-for-puerto-rico-the-american-rescue-plans-permanent-historic-changes-to-tax-relief-in-puerto-rico/> (accessed October 30, 2023).

*Note from the Committee:* The American Rescue Plan was a program to appropriate funds to the American population as financial support during the emergency of the coronavirus pandemic. It was approved by Congress in 2021. *For more information see:* U.S. Department of the Treasury. “About the American Rescue Plan.” <https://home.treasury.gov/policy-issues/coronavirus/about-the-american-rescue-plan> (accessed October 30, 2023).

update was that families with fewer than three children were eligible for the first time.<sup>201</sup> Under ARPA, the CTC had a \$1.78 billion impact on the economy and a 16% increase in the average family income.<sup>202</sup>

Since most people in Puerto Rico do not have a federal tax liability, the “Additional Child Tax Credit” applies to them, which calculates 7.6% of their income and results in \$1,500 per minor, while, in the United States, 15% of income is calculated.<sup>203</sup> This remains one of the most significant differences between Puerto Rico and the United States regarding the CTC.<sup>204</sup> Under the current CTC, we have only seen a 1% reduction in the child poverty rate and a 5% change in household income.<sup>205</sup>

An example of how differential treatment is materialized through the CTC is that it is determined that the funds are paid to taxpayers, and this is the argument for not giving certain funds to Puerto Rico.<sup>206</sup> Dr. Enchautegui explained that the Youth Development Institute published a report in which they analyzed the social welfare system in Puerto Rico and came to the conclusion that Puerto Rico is treated in a discretionary manner - sometimes as a state, sometimes like the other territories, and sometimes in a unique way – and frequently it has nothing to do with paying taxes.<sup>207</sup>

## **FINDING VII - Discrimination and differential treatment have directly affected the quality of life of the residents of Puerto Rico and have caused an increase in displacement from the island.**

Several panelists agreed that, over time, the differential treatment towards residents of Puerto Rico, with roots in the Insular Cases, has had a negative effect on the general well-being of the population. Pastor Otoniel Font Nadal of the Fuente de Agua Viva Council of Churches shared in his testimony that the Insular Cases and the territorial doctrine “have affected the identity, the culture of the people of Puerto Rico, understood as culture, knowledge, beliefs, values, customs,

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<sup>201</sup> Enchautegui Testimony, Transcript 2. p. 18; *See also*: Balmaceda, Javier. “Tax Credit Expansions Expected to Significantly Reduce Poverty in Puerto Rico.” Center on Budget and Policy Priorities. March 14, 2022. <https://www.cbpp.org/blog/tax-credit-expansions-expected-to-significantly-reduce-poverty-in-puerto-rico> (accessed October 30, 2023).

<sup>202</sup> Enchautegui Testimony, Transcript 2. p. 21; *See also*: Balmaceda, Javier. “Tax Credit Expansions Expected to Significantly Reduce Poverty in Puerto Rico.” Center on Budget and Policy Priorities. March 14, 2022. <https://www.cbpp.org/blog/tax-credit-expansions-expected-to-significantly-reduce-poverty-in-puerto-rico> (accessed October 30, 2023).

<sup>203</sup> Enchautegui Testimony, Transcript 2. p. 20-21.

<sup>204</sup> Enchautegui Testimony, Transcript 2. p. 21.

<sup>205</sup> Enchautegui Testimony, Transcript 2. p. 22.

<sup>206</sup> *Ibid*.

<sup>207</sup> Enchautegui Testimony, Transcript 2. p. 22-23; *See also*: Enchautegui Román, María, Arroyo Quijano, Caridad, y Blakely Vallecillo, Vallerie. “Hanging by a thread: Puerto Rico's Safety Net and the economic mobility of families.” Instituto del Desarrollo de la Juventud. <https://www.juventudpr.org/publicaciones/colgando-de-un-hilo> (accessed December 6, 2023).

and opinions of our people, among other factors. The ambivalence and insecurity of who we are, where we are, and where we are going has impacted the lives, mental health, self-esteem, ability for empowerment, and self-realization of many Puerto Ricans.”<sup>208</sup> As a pastor, he has seen firsthand the people of his congregation go to the States to improve their quality of life and obtain benefits that they do not have on the island, and that is why he has opened churches in Florida to serve the community there.<sup>209</sup> Pastor Font Nadal shared that he has seen the effect of the emotional issues this has created in the community – the depression that comes with leaving family and home for long periods – and he believes this is part of the social and mental crisis that exists.<sup>210</sup>

Panelist Lucy Cruz also spoke about seeing firsthand the effects of people leaving Puerto Rico. She described that after Hurricane Maria, people with damaged or destroyed homes received funds to go to the states for temporary shelter because the deeds to their property were not acknowledged in order to receive assistance for repairs or their homes had been destroyed.<sup>211</sup> Although this was meant to be a short-term solution, some people stayed in the States because they no longer had the resources to rebuild their homes.<sup>212</sup> While communities are being displaced in this way, Ms. Cruz said that Puerto Rico has been changing, attracting new people through Airbnb, and she suggests that it is urgent to find alternatives so that Puerto Rican residents can stay on the island.<sup>213</sup>

This departure of Puerto Rico residents to the States coincides with data shared by Mr. Laws García, who quoted a drop in population of 11% according to the Census and said, “This means that the discrimination and inequality institutionalized by the Insular Cases are separating families and destroying communities on the island.”<sup>214</sup> Laws García added that this is the cumulative result of the unequal treatment of Puerto Rico.<sup>215</sup> This can also harm Puerto Rico since funds are received according to the population census numbers.<sup>216</sup> Migration to the states reflects the urgent need to resolve the inequities faced by the residents of Puerto Rico, who seek the same opportunities to

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<sup>208</sup> Font Nadal Testimony, Hato Rey Briefing, Transcript 1. p. 209, 7-17.

<sup>209</sup> Font Nadal Testimony, Hato Rey Briefing, Transcript 1. p. 211, 22 - p. 212, 19.

<sup>210</sup> Font Nadal Testimony, Hato Rey Briefing, Transcript 1. p. 243, 5-24.

<sup>211</sup> Cruz Testimony, Hato Rey Briefing, Transcript 1. p. 219, 10-22; *See also*: Silva, Daniella. “2,300 Puerto Rican families displaced by Hurricane Maria are about to lose their FEMA housing assistance.” NBC News. June 6, 2018. <https://www.nbcnews.com/storyline/puerto-rico-crisis/2-300-puerto-rican-families-displaced-hurricane-maria-are-about-n880356> (accessed October 26, 2023).

<sup>212</sup> Cruz Testimony, Hato Rey Briefing, Transcript 1. p. 245, 12-22; *See also*: Schachter, Jason y Bruce, Antonio. “Estimating Puerto Rico’s Population After Hurricane Maria.” United States Census Bureau. August 19, 2020. <https://www.census.gov/library/stories/2020/08/estimating-puerto-rico-population-after-hurricane-maria.html> (accessed October 26, 2023).

<sup>213</sup> Cruz Testimony, Hato Rey Briefing, Transcript 1. p. 244, 19 - p. 246, 8; *See also*: Santiago-Bartolomei, Raúl, et al. “The Impact of Short-Term Rentals in Puerto Rico: 2014-2020.” Center for a New Economy. December 12, 2022. <https://grupocne.org/2022/12/12/the-impact-of-short-term-rentals-in-puerto-rico-2014-2020/#conclusion> (consultado el 26 de octubre de 2023). (accessed October 26, 2023).

<sup>214</sup> Laws García Testimony, Hato Rey Briefing, Transcript 1. p. 290, 7-14; *See also*: United States Census Bureau. “Puerto Rico Population Declined 11.8% from 2010 to 2020”. August 25, 2021. <https://www.census.gov/library/stories/state-by-state/puerto-rico-population-change-between-census-decade.html> (accessed October 26, 2023).

<sup>215</sup> Laws García Testimony, Hato Rey Briefing, Transcript 1. p. 289, 23 - p. 290, 3.

<sup>216</sup> Rodríguez Rivera Testimony, Hato Rey Briefing, Transcript 1. p. 150, 10-21.

improve their quality of life as any other citizen.<sup>217</sup> According to Mr. Acarón, this can only change with the creation of a holistic economic development plan that includes various social determinants and prioritizes quality of life and access to resources for Puerto Ricans.<sup>218</sup>

#### **IV. Recommendations Proposed in the Testimony**

Throughout the testimony, the Committee heard different perspectives on how the political situation and quality of life in Puerto Rico could be improved. Although these ideas are not recommendations that were formulated by the Committee, it is important to integrate them in this memorandum to present the options that stand out in the testimony. The Committee will use this information to develop its recommendations for the final report of this project.

##### ***The Role of the Courts vs. the Political Process***

According to several panelists, Puerto Rico will only emerge from the limitations it currently faces with the Insular Cases through a political process, and not a judicial one, since the courts have continually refused to resolve this problem.<sup>219</sup> Dr. Rivera Ramos commented that the Supreme Court has “created a kind of political doctrine concerning the condition of the territories...therefore, the way out is the political route: putting pressure on Congress, putting pressure on the Executive, trying to join alliances, solidarity with sectors of the population of the United States that can understand this idea...it has to be a movement that is not focused only on the political issue, but that in some way has to be associated with social, economic, cultural aspects of the various sectors of the Puerto Rican population.”<sup>220</sup> Several panelists argued that it must be demanded that Congress take action, although this is difficult without adequate representation.<sup>221</sup> Currently, attention is only paid to Puerto Rico's situation periodically when there is a relevant case before the Supreme Court, but without this, there has been no action.<sup>222</sup>

##### ***The Role of International Law***

Some panelists shared testimonies about the importance of managing Puerto Rico's territorial situation through the perspective of international law and not as a domestic issue of the United States. The United States has signed and ratified the 1966 International Covenant on Civil and Political Rights, which in its first article proclaims: “All peoples have the right to self-

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<sup>217</sup> Luis Figueroa, Former Regional Director, Puerto Rico Federal Affairs Administration in Florida, Written Statement submitted for Puerto Rico Advisory Committee to the United States Commission on Civil Rights Briefing, May 10, 2023 (cited herein after as Figueroa statement).

<sup>218</sup> Acarón Testimony, Hato Rey Briefing, Transcript 1. p. 300, 18 - p. 301, 9.

<sup>219</sup> Venator Santiago Testimony, Hato Rey Briefing, Transcript 1. p. 70, 25 - p. 71, 7; *See also*: Rivera Ramos Testimony, Hato Rey Briefing, Transcript 1. p. 71, 20 - p. 73, 8.

<sup>220</sup> Rivera Ramos Testimony, Hato Rey Briefing, Transcript 1. p. 71, 20 - p. 73, 8.

<sup>221</sup> Ortiz Testimony, Hato Rey Briefing, Transcript 1. p. 234, 7-20.

<sup>222</sup> *Ibid*.

determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development."<sup>223</sup> Along these lines, additional arguments maintain that Puerto Rico should not be considered an internal issue of the United States but rather as a nation that has been occupied for more than 125 years, whose access to international law has been violated, and can only move forward through decolonization and independence.<sup>224</sup>

Panelists recommended analyzing the issue of Puerto Rico within the global context with an emphasis on human rights.<sup>225</sup> The challenge would be whether the United States government would be willing to pass this situation on to international organizations with experience on colonial issues, since the United States has not complied with the International Covenant on Civil and Political Rights.<sup>226</sup> The U.S. Congress must also confront the question of whether Puerto Rico is a colony under current understanding of international law.<sup>227</sup>

According to the testimony of Panelist Dr. Iyari Ríos González of the Association of Economists of Puerto Rico, this would be the best-case scenario since the problem of colonization is aggravated when the territory's residents are forced to depend on and migrate to the other entity.<sup>228</sup> Panelist Rafael Rodríguez argued that Puerto Rico's territorial status has been the focus of countless forums, working groups, and other efforts. Still, these have not had significant results because they have not addressed the root of the problem – prioritizing self-determination under international law.<sup>229</sup> Treating this as a domestic issue would be a repetition of previous efforts.<sup>230</sup>

### ***Self-Determination***

If self-determination were to be considered as an option for Puerto Rico, within a referendum, for example, the testimony maintains that the United States must comply with the principles of international law and collaborate with international organizations in the monitoring of the process

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<sup>223</sup> Rivera Ramos Testimony, Hato Rey Briefing, Transcript 1. p. 43, 2 - p. 44, 6; *See also*: United Nations General Assembly. "Resolution 2200A (XXI), International Covenant on Civil and Political Rights." December 16, 1966. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> (accessed October 24, 2023).

<sup>224</sup> Carlos Rafael Alicea Negrón, public comment. *Public Briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, Hato Rey, PR*, May 10, 2023, transcript p. 329, 12 - p. 331, 2 (cited herein after as Hato Rey, Transcript 1); *See also*: Carlos Rafael Alicea Negrón, Movimiento Ñin Negrón, Written Statement submitted for Puerto Rico Advisory Committee to the United States Commission on Civil Rights Briefing, May 10, 2023 (cited herein after as Alicea Negrón statement); *See also*: Rodríguez Rivera Testimony, Hato Rey Briefing, Transcript 1. p. 148, 14-25.

<sup>225</sup> Rivera Ramos Testimony, Hato Rey Briefing, Transcript 1. p. 74, 1-24; *See also*: Rodríguez Rivera Testimony, Hato Rey Briefing, Transcript 1. p. 149, 1-24.

<sup>226</sup> Rodríguez Rivera Testimony, Hato Rey Briefing, Transcript 1. p. 149, 1-24; *See also*: *See also*: United Nations General Assembly. "Resolution 2200A (XXI), International Covenant on Civil and Political Rights." December 16, 1966. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> (accessed October 24, 2023).

<sup>227</sup> Córdova, Andrés L. "Why Puerto Rico cannot govern itself." *The Hill*. February 13, 2018. <https://thehill.com/opinion/campaign/373683-why-puerto-rico-cannot-govern-itself> (accessed October 23, 2023).

<sup>228</sup> Ríos González Testimony, Hato Rey Briefing, Transcript 1. p. 167, 14 - p. 168, 8.

<sup>229</sup> Rodríguez Rivera Testimony, Hato Rey Briefing, Transcript 1. p. 154, 10 - p. 155, 1.

<sup>230</sup> Ríos González Testimony, Hato Rey Briefing, Transcript 1. p. 169, 14 - p. 170, 1.

to ensure that voters have access to all the information and be aware of the specific consequences of each option.<sup>231</sup> For the United States Congress to hold a public hearing on this issue to better understand the mechanics of how this process could be carried out would be an essential step forward.<sup>232</sup> A self-determination process would be an essential step for democracy.<sup>233</sup> According to Mr. Laws García, “For Puerto Rico to have an opportunity to definitively address its civil rights and the civil rights of American citizens in Puerto Rico, Congress must pass legislation to offer Puerto Rico the opportunity to decide between options that are not territorial. That would be the most important recommendation I think this Committee can make for the Commission.”<sup>234</sup> In Mr. Laws García's perspective, Congress has the responsibility to legislate so that Puerto Rico can choose its political future and, in doing so, would act following its ideal of government by consent.<sup>235</sup> Additionally, it was recommended that the Committee follow developments on legislative proposals that support self-determination.<sup>236</sup> Bills proposing a plebiscite between three options for voters in Puerto Rico were introduced in 2023 in both the House of Representatives (HR 2757, introduced for a second time) and Senate (S. 3231).<sup>237</sup>

### ***Elimination of the Insular Cases***

Revoking the Insular Cases would not be the only solution since it does not resolve political discrimination, such as the inability to vote at the federal level, which is only reserved for the states. On the other hand, decolonization does not require the revocation of the Insular Cases.<sup>238</sup> In written testimony submitted by Resident Commissioner Jenniffer González Colón, she also mentions that, furthermore, eliminating the Insular Cases would not put an end to discrimination, especially regarding the appropriation of funds and the availability of social programs.<sup>239</sup> “Only by achieving a non-territorial status – either Statehood or Nationhood – can do that [resolving inequalities in Puerto Rico]; and only the U.S. Congress – not the courts – achieve that.”<sup>240</sup>

In general, panelists stated that a political movement that transcends traditional divisions is necessary to decolonize Puerto Rico.<sup>241</sup> Eliminating the Insular Cases could reduce disparities in society and eliminate the harmful contradictions with which Congress and the Supreme Court treat Puerto Rico – this would result in a different experience for residents.<sup>242</sup> Calling for the revocation

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<sup>231</sup> Álvarez González Testimony, Hato Rey Briefing, Transcript 1. p. 166, 8-20; *See also*: Avilés Deliz Statement, at 5.

<sup>232</sup> Avilés Deliz Statement, at 5.

<sup>233</sup> Laws García Testimony, Hato Rey Briefing, Transcript 1. p. 294, 7 - p. 295, 8.

<sup>234</sup> Laws García Testimony, Hato Rey Briefing, Transcript 1. p. 319, 14 - p. 320, 19.

<sup>235</sup> Laws García Testimony, Hato Rey Briefing, Transcript 1. p. 291, 21 - p. 292, 13.

<sup>236</sup> González Cruz Statement, at 2.

<sup>237</sup> Puerto Rico Status Act, H.R.2757, 118<sup>th</sup> Cong. (2023); *See also*: Puerto Rico Status Act, S. 3231, 118<sup>th</sup> Congress. (2023); *See also*: Laws García Testimony, Hato Rey Briefing, Transcript 1. p. 291, 4-20.

<sup>238</sup> Rivera Ramos Testimony, Hato Rey Briefing, Transcript 1. p. 42, 1-15.

<sup>239</sup> Resident Commissioner González Colón Statement, at 5.

<sup>240</sup> *Ibid*.

<sup>241</sup> Rivera Ramos Testimony, Hato Rey Briefing, Transcript 1. p. 66, 14-21.

<sup>242</sup> Venator Santiago Testimony, Hato Rey Briefing, Transcript 1. p. 88, 16-24; *See also*: Igartúa Testimony, Hato Rey Briefing, Transcript 1. p. 90, 20-25.

of the Insular Cases could be an important action taken by the U.S. Commission on Civil Rights that would promote recognition towards equality for Puerto Rico.<sup>243</sup> It is important to reevaluate the relationship between Puerto Rico and the United States and work toward a solution, not only for the current problems but to advance equality and justice for the residents of Puerto Rico.<sup>244</sup>

### ***Statehood***

Another perspective is that, although there are three non-territorial options for Puerto Rico – statehood, independence, and free association – statehood is the only one that offers equal treatment and the right to vote.<sup>245</sup>

### ***Other Recommendations***

- Support House Resolution 314 which recognizes that the decisions of the United States Supreme Court discriminate against Puerto Ricans.<sup>246</sup>
- The Committee should recommend that Puerto Rico receive equal treatment under the TRICARE Prime program.<sup>247</sup>
- It is recommended that the Committee consider a declaration that the Insular Cases are a form of discrimination against the civil rights of the residents of Puerto Rico.<sup>248</sup>

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<sup>243</sup> Adi Martínez Román, public comment. *Public Briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, Hato Rey, PR, May 10, 2023*, transcript p. 325, 1-8.

<sup>244</sup> Figueroa Statement, at 1-2.

<sup>245</sup> Freytes Statement, at 2.

<sup>246</sup> H.R. Res. 314, 118<sup>th</sup> Cong. (2023); *See also*: Anthony Carrillo, public comment. *Public Briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, Hato Rey, PR, May 10, 2023*, transcript p. 327, 14 - p. 328, 25.

<sup>247</sup> Carrillo, public comment, p. 327, 14 - p. 328, 25.

<sup>248</sup> Morell González Statement, at 4.

## **Memorandum I Conclusion**

This memorandum was adopted by a unanimous vote of 9 to 0 at a Committee meeting held on January 24, 2024. There were no dissents or concurrences.

## **Memorandum I Appendix**

Documents related to the Committee's study of this topic may be accessed at the following link:

[https://securisync.intermedia.net/us2/s/folder?public\\_share=409J0xbKeIQ2vuMJBvQond0011ef58&id=L1BSL0luc3VsYXlqQ2FzZXM%3D](https://securisync.intermedia.net/us2/s/folder?public_share=409J0xbKeIQ2vuMJBvQond0011ef58&id=L1BSL0luc3VsYXlqQ2FzZXM%3D)

**A.** Briefing Agendas, Minutes, and Presentation Slides

**B.** Transcripts

**C.** Written Testimony

**Puerto Rico Advisory Committee to the U.S. Commission on Civil Rights**

Term: January 21, 2022 to January 20, 2026

Andrés L. Córdova Phelps, Chair, Puerto Rico Advisory Committee, San Juan

Dan Santiago, Vice Chair, San Juan

Ever Padilla-Ruíz, Secretary, San Juan

Frank Arenal, Carolina

Sergio Marxuach, Dorado

Ramón C. Barquín III, Guaynabo

Cristina M. Miranda-Palacios, San Juan\*

Ariadna M. Godreau-Aubert, San Juan\*

José O. Olmos, Guaynabo

Charlotte Gossett Navarro, San Juan\*

William E. Villafañe Ramos, Bayamon

Manuel “Lin” Iglesias-Beléndez, San Juan

\*Former members.

# **Memorandum II: General Overview – Economic Perspectives**



## **The Insular Cases and the Doctrine of Unincorporated Territory and Their Effects on the Civil Rights of Puerto Rico Residents**

### **General Overview Memorandum – Part II Economic Perspectives**

**Puerto Rico Advisory Committee to the United States Commission on Civil Rights  
November 2024**

#### **I. Introduction**

On September 14, 2023, the Puerto Rico Advisory Committee held a virtual briefing to receive testimony on economic perspectives concerning the Insular Cases and the Doctrine of Unincorporated Territory and their effects on the civil rights of Puerto Rico residents. This was a continuation of the in-person briefing held on May 10, 2023, which resulted in the Committee's first memorandum.<sup>249</sup> This memorandum is the second and final part of the "General Overview" phase of this study.<sup>250</sup>

The Committee plans to continue organizing briefings to receive input on the following subtopics approved in July 2022: (1) voting rights/lack of political representation, (2) racial/national discrimination, and (3) access to public programs. The Committee will publish memoranda on these subtopics throughout its term, culminating in a final report with the recommendations developed by the Committee.

This memorandum is organized to share the main findings identified in the testimony directly described by the panelists and includes external sources where necessary. It begins with historical context, and the final sections focus on recommendations shared in the testimony along with the

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<sup>249</sup> Puerto Rico Advisory Committee to the United States Commission on Civil Rights. "The Insular Cases and the Unincorporated Territory Doctrine and Their Effects on the Civil Rights of Residents of Puerto Rico." February 2024. United States Commission on Civil Rights. [https://www.usccr.gov/files/2024-02/english\\_pr-ac\\_memo-1.pdf](https://www.usccr.gov/files/2024-02/english_pr-ac_memo-1.pdf) (accessed on February 12, 2024); Due to its focus on economic issues, this memorandum includes the testimony from Dr. Iyari Río González, who participated in the in-person briefing in May 2023.

<sup>250</sup> Records of the meetings and transcripts can be found in Appendix A and B. Public briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, May 10, 2023, (in-person), Transcript (from now on referred to as "Transcript 1"). Public briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, September 14, 2023, (virtual briefing), Transcript (from now on referred to as "Transcript 2").

Committee’s preliminary recommendations regarding the “General Overview” phase. The Committee’s final recommendations will be included in the final report of this study.

In the first memorandum, The Committee summarized significant testimony highlighting a colonial relationship between the United States government and Puerto Rico based on the Insular Cases and the complex challenges faced by the island’s population.<sup>251</sup> Testimony analyzed for this memorandum reiterated similar arguments.

The Committee listened to testimony establishing that the colonial relation between Puerto Rico and the United States has prevented Puerto from developing its economic growth and fully exercising fundamental rights of the population, such as the right to work, access to food, and quality services in health, housing, and education.<sup>252</sup> From the perspective of panelist Carlos Díaz Olivo, Professor at the University of Puerto Rico School of Law in Río Piedras, this equates to Puerto Rican residents being treated as property, which he claims goes against the very ideals and foundations on which the United States was established.<sup>253</sup>

For this memorandum, the Committee analyzed perspectives on Puerto Rico’s economic situation, considering the Uniformity Clause. The Uniformity Clause requires certain taxes imposed by Congress to be uniform across the United States.<sup>254</sup> In *Downes v. Bidwell*, the Supreme Court ruled that the Uniformity Clause did not apply to Puerto Rico because the island was not considered part of the “United States.”<sup>255</sup> This designation has affected the fiscal and tax relationship between Puerto Rico and the United States to this day.

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<sup>251</sup> Puerto Rico Advisory Committee to the United States Commission on Civil Rights. “The Insular Cases and the Unincorporated Territory Doctrine and Their Effects on the Civil Rights of Residents of Puerto Rico.” February 2024. United States Commission on Civil Rights. [https://www.usccr.gov/files/2024-02/english\\_pr-ac\\_memo-1.pdf](https://www.usccr.gov/files/2024-02/english_pr-ac_memo-1.pdf) (accessed on February 12, 2024);

<sup>252</sup> Iyari Ríos González, testimony. Public Briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, Hato Rey, PR, May 10, 2023, transcript 1, p. 137, 14 – p. 137, 25. (cited herein after as Hato Rey, Transcript 1).

<sup>253</sup> Carlos Díaz Olivo testimony. Public Briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, Web Briefing, September 14, 2023, p. 13, 14 (hereinafter cited as Transcript 2). Atty. Díaz Olivo argues that the 13th Amendment of the Constitution, which prohibits slavery, does not apply to Puerto Rico because residents are treated as property of the United States. *See*: Transcript 2, p. 11-15.

<sup>254</sup> U.S. Const. art. I, sec. 8, cl. 1; *See also*: Government Accountability Office. “U.S. Insular Areas, Applicability of Relevant Provisions of the U.S. Constitution.” June 1991. <https://www.gao.gov/assets/hrd-91-18.pdf> (accessed on March 20, 2024).

<sup>255</sup> *Downes v. Bidwell*, 182 U.S. 244 (1901); *See also*: Government Accountability Office. “U.S. Insular Areas, Applicability of Relevant Provisions of the U.S. Constitution.” June 1991. <https://www.gao.gov/assets/hrd-91-18.pdf> (accessed on March 20, 2024).

## II. Historical Context

Puerto Rico has experienced erratic economic growth since becoming a United States territory.<sup>256</sup> Both the Foraker Act of 1900 and the Jones Act of 1917 granted the United States government access to Puerto Rico's sugar industry, agriculture, and ports.<sup>257</sup> However, the Great Depression caused a drop in the gross natural product and per capita income although the sugar industry activity increased during the early 1930s.<sup>258</sup>

In the 1940s, the “Manos a la Obra” economic project aimed to modernize Puerto Rico's economy through industrialization and job growth, integrating the local economy with the United States economy through foreign investment and different types of incentives.<sup>259</sup> Shortly after, the United States Congress passed Public Law 600, which established a legislature in Puerto Rico and authorized the island to adopt its first Constitution.<sup>260</sup> As part of this process, Congress acknowledged Puerto Rico's authority to create its own local laws and tax policies, and since then, Puerto Rico has enacted its income tax laws.<sup>261</sup>

Puerto Rico continued to industrialize its economy in the post-war decades and had one of the highest economic growth rates globally between 1955 and 1980, positioning the island among the top 14 economies worldwide in terms of per capita income growth, but its weakness lay in not developing the rest of its economic sectors and not linking the multinational manufacturing sector with its local manufacturing sectors.<sup>262</sup>

Throughout Puerto Rico's history, tax incentives have been used to stimulate the economy. One of these incentives, Section 936,<sup>263</sup> which had a significant impact in the late 20th century, will be discussed in more detail in Finding I of this memorandum.

The global financial crisis between 2006 and 2009 was complex and multi-causal. Locally, Puerto Rico experienced a more severe crisis due to global economic stressors and other challenges, such

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<sup>256</sup> José Caraballo-Cueto, testimony. Public Briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, Web Briefing, September 14, 2023, p. 3 (hereinafter cited as Transcript 2).

<sup>257</sup> Foraker Act, Pub. L. No. 56-191, ch. 191, 31 Stat. 77 (1900), (codified as amended in scattered sections of 48 U.S.C. § 731); Jones-Shafroth Act, Pub. L. No. 64-368, 39 Stat. 951 (1917), codified as amended in U.S.C. 48 § 731-751; *See also*: Ríos González Testimony, Transcript 1, p. 138, 9 – p. 139, 15.

<sup>258</sup> Ríos González Testimony, Transcript 1, p. 139, 24- p. 140, 24.

<sup>259</sup> Ríos González Testimony, Transcript 1, p. 141, 13 – p. 142, 8; *See also*: Ruiz Toro, Juan. “Puerto Rico's Operation Bootstrap.” Brown University Library.

<https://library.brown.edu/create/modernlatinamerica/chapters/chapter-12-strategies-for-economic-development/puerto-ricos-operation-bootstrap/> (accessed on February 20, 2024).

<sup>260</sup> Puerto Rico Federal Relations Act. Pub. L. No. 81-600, 64 Stat. 319 (1950).

<sup>261</sup> Lowry, Sean. “Tax Policy and U.S. Territories: Overview and Issues for Congress.” Updated on October 7, 2016. Congressional Research Service. <https://crsreports.congress.gov/product/pdf/R/R44651> (accessed on March 10, 2024).

<sup>262</sup> Caraballo Cueto Testimony, Transcript 2, p. 3; *See also*: Caraballo-Cueto, José. “El impacto económico del cambio en el estatus político de Puerto Rico”. May 2023.

[https://www.researchgate.net/publication/370602961\\_Impacto\\_economico\\_de\\_cambiar\\_el\\_estatus\\_de\\_Puerto\\_Rico](https://www.researchgate.net/publication/370602961_Impacto_economico_de_cambiar_el_estatus_de_Puerto_Rico) (accessed on October 18, 2023).

<sup>263</sup> 26 U.S.C. § 936 (Repealed).

as changes in key economic incentives and federal spending, including the closure of the Roosevelt Roads Naval Base and its economic consequences, which had been the pillars of the local economy strategy.<sup>264</sup> Although these issues fall outside the scope of the testimony for this memorandum, it is important to acknowledge their impact.

Puerto Rico's recession began in 2006, and the economy contracted every fiscal year from 2007 to 2011.<sup>265</sup> During that period, the gross domestic product, which measures both residents' and non-residents' income, was approximately \$95 billion.<sup>266</sup> The gross national product, which only measures resident income, was approximately \$65 billion.<sup>267</sup> The gap between these amounts was larger than in other similarly sized economies with the presence of foreign multinational corporations.<sup>268</sup> Furthermore, in fiscal year 2009, Puerto Rico reached its highest fiscal deficit at \$2.9 billion, leading to an increase in Puerto Rico's public debt.<sup>269</sup>

At the onset of the economic crisis, the Puerto Rican government implemented austerity measures through Law 7 of 2009 and Law 66 of 2014, resulting in public employee layoffs, pension system reforms, and other negative effects on workers.<sup>270</sup> Additionally, the Puerto Rican government attempted to reactivate the economy by offering more tax incentives through Laws 20 and 22 of 2012 (later consolidated into Law 60 in 2019) to attract investment to the island and increase employment, but these efforts had minimal impact on the local economy and have been criticized of benefiting wealthy foreign investors.<sup>271</sup> It is argued that those interests have been prioritized over the long-term stability and growth of the local economy, as well as the political and constitutional rights of Puerto Rican residents.<sup>272</sup>

The economic crisis and the insurmountable public debt led the United States Congress to pass the PROMESA Act, resulting in the creation of the Fiscal Oversight and Management Board, which

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<sup>264</sup> Hispanic Federation. "La crisis económica de Puerto Rico: Panorama general y recomendaciones para la acción". October 1, 2015. <https://www.hispanicfederation.org/es/report/puerto-ricos-economic-crisis-overview-and-recommendations-for-action/> (accessed on August 16, 2024); *See also*: Pub.L. 108-87 §8132(a).

<sup>265</sup> Government Accountability Office. "Puerto Rico - Information on How Statehood Would Potentially Affect Selected Federal Programs and Revenue Sources." March 2014. <https://www.gao.gov/products/gao-14-31> (accessed on April 15, 2024).

<sup>266</sup> *Ibid.*

<sup>267</sup> *Ibid.*

<sup>268</sup> *Ibid.*

<sup>269</sup> *Ibid.*

<sup>270</sup> P.R. Act 7-2009, 1326, "*Special Law Declaring a State of Fiscal Emergency and Establishing an Integral Plan of Fiscal Stabilization to Save the Credit of Puerto Rico*"; *See also*: P.R. Act 66-2014, 1922, "*Special Law of Fiscal and Operational Sustainability of the Government of the Freely Associated State of Puerto Rico*"; *See also*: Ríos González Testimony, Transcript 1, p. 144, 2 – p. 145, 5.

<sup>271</sup> P.R. Act 20-2012, "*Act to Strengthen Export Services*"; *See also*: P.R. Act 22-2012, 3657, "*Individual Investors Act*"; *See also*: P.R. Act 60-2019, 1635, "*Puerto Rico Incentives Code*"; *See also*: Caraballo Cueto Testimony, Transcript 2, p. 32; *See also*: Acevedo, Nicole. "Do Puerto Rico tax breaks displace locals to benefit the wealthy? Here are 5 things to know." September 13, 2023, NBC News. <https://www.nbcnews.com/news/latino/tax-breaks-puerto-rico-wealthy-displacement-five-things-to-know-rcna104683> (accessed on November 18th, 2023).

<sup>272</sup> Córdova, Andrés L. "Congress can't dodge Puerto Rico's status in tax debate." November 14, 2017. The Hill. <https://thehill.com/opinion/energy-environment/360370-congress-cant-dodge-puerto-ricos-status-in-tax-debate/> (accessed on October 3, 2023).

has led to further cuts affecting public services and has raised important questions about Congress' authority to take action on local issues in Puerto Rico.<sup>273</sup> Currently, the White House has expressed support for strengthening Puerto Rico's economy.<sup>274</sup> For instance, in a 2023 statement, the White House described Puerto Rico as an attractive location for corporate investment and for expanding American competitiveness.<sup>275</sup> Among several efforts, it was mentioned that the White House Task Force on Puerto Rico aims to achieve the following economic goals: 1) Developing the workforce, 2) Enhancing infrastructure, energy, and resilience capacity, 3) strengthening a diversified economy, and 4) improving governance and information.<sup>276</sup>

### III. Preliminary Findings

**FINDING I – Section 936 (now repealed) was an example of how tax policy has historically benefited certain economic sectors at the expense of sustainable economic development in Puerto Rico.**

#### *Historical Context of the Incentive*

Panelist Dr. Iyari Ríos González, President of the Puerto Rico Economists Association, shared with the Committee that during the 1970s, the United States government sought to stimulate Puerto Rico's economy by amending the Internal Revenue Code to include section 936.<sup>277</sup> Dr. Ríos González explained that this allowed American corporations with operations in Puerto Rico to repatriate tax-free profits earned in the country.<sup>278</sup> “Despite such changes,” Dr. Ríos González emphasized, “There was no strengthening of the labor market in the following decades. It also facilitated the out-flows of investments and eroded the tax base of the government causing the undermining of the ability of the public sector to generate enough income that would allow it to offer essential services for the population.”<sup>279</sup>

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<sup>273</sup> Puerto Rico Oversight, Management, and Economic Stability Act, Pub. L. No. 114-187, 130 Stat. 549, codified at 48 U.S.C. §§ 2101-2241; *See also*: Ríos González Testimony, Transcript 1, p. 147, 7-23; *See also*: Puerto Rico Advisory Committee to the United States Commission on Civil Rights. “The Insular Cases and the Unincorporated Territory Doctrine and Their Effects on the Civil Rights of Residents of Puerto Rico.” February 2024. United States Commission on Civil Rights. [https://www.usccr.gov/files/2024-02/english\\_pr-ac\\_memo-1.pdf](https://www.usccr.gov/files/2024-02/english_pr-ac_memo-1.pdf) (accessed on February 12, 2024).

<sup>274</sup> Juan A. Villeta-Trigo testimony. Public Briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, Web Briefing, September 14, 2023, p. 9 (hereinafter cited as Transcript 2).

<sup>275</sup> The White House. “FACT SHEET: Biden-Harris Administration Steadfast in Support of Puerto Rico's Renewal.” The White House Briefing Room.

<https://www.whitehouse.gov/briefing-room/statements-releases/2023/06/26/fact-sheet-biden-harris-administration-steadfast-in-support-of-puerto-ricos-renewal/> (consulted on February 26, 2024).

<sup>276</sup> *Ibid*.

<sup>277</sup> 26 U.S.C. § 936 (Repealed); *See also*: Ríos González Testimony, Transcript 1, p. 142, 9 – p. 143, 5.

<sup>278</sup> Ríos González Testimony, Transcript 1, p. 142, 9 – p. 143, 5.

<sup>279</sup> *Ibid*.

Since 1948, Puerto Rico has adjusted its fiscal policies through the Industrial Incentives Act of 1948, and since then, the American subsidiaries in Puerto Rico have been partially or fully exempt from taxes in both Puerto Rico and the United States.<sup>280</sup> With the implementation of the Revenue Act of 1921, the United States government provided tax exemptions to multinational American corporations for income generated in Puerto Rico.<sup>281</sup> Since the 1940s, Puerto Rico has used tax incentives as a central element in economic development and promoted them as a tool to strengthen economic growth and employment.<sup>282</sup> According to a 1976 report by the Senate Finance Committee, the year when Section 936 was implemented as part of the Tax Reform Act of 1976, the Committee believed this change “would help American possessions attract job-producing investments from U.S. corporations while, at the same time, allowing these corporations to bring back to the United States the profits from these investments if they could not be reinvested productively in the possession.”<sup>283</sup>

Puerto Rico was considered a safe destination for corporations due to its ties with the United States and because business operations were approved by the United States Treasury.<sup>284</sup> According to a 1993 Government Accountability Office report, corporations were also drawn to Puerto Rico due to its high-quality workforce, adequate transportation, and communication systems, along with a skilled and productive labor force.<sup>285</sup> As panelist Attorney Carlos Díaz Olivo explained, “...the fact that we do not pay federal taxes does not negate that this was not designed to exempt us from federal taxes but rather to benefit American capital, allowing it to move freely and have a zone within the United States, under the American flag, but free from taxation..”<sup>286</sup>

### ***Benefits to Corporations***

Section 936 operated from 1976 when it was implemented until 1996 when its gradual phase-out began. During this time, Puerto Rico’s economy grew by only 2.5% annually, while the United

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<sup>280</sup> Industrial Incentives Act of 1948, Act Num. 184 of May 13, 1948; *See also*: U.S. Government Accountability Office. “Tax Policy: Puerto Rico and the Section 936 Tax Credit.” GGD-93-109. July 9th, 1993.

<https://www.gao.gov/assets/ggd-93-109.pdf> (accessed on March 15, 2024).

<sup>281</sup> Revenue Act of 1921: P.L. 67-98, 42 Stat. 227, November 23, 1921. [Washington, D.C.]; *See also*: Suárez Serrato, Juan Carlos. “Unintended Consequences of Eliminating Tax Havens.” July 2018, amended in December 2019. National Bureau of Economic Research.

[https://www.nber.org/system/files/working\\_papers/w24850/w24850.pdf](https://www.nber.org/system/files/working_papers/w24850/w24850.pdf) (accessed on April 9, 2024).

<sup>282</sup> MacEwan, Arthur. “The Effect of 936.” Brandeis University.

[https://www.finance.senate.gov/imo/media/doc/Arthur%20MacEwan%20and%20J.%20Tomas%20Hexner%20\(Sub%20mission%206\).pdf](https://www.finance.senate.gov/imo/media/doc/Arthur%20MacEwan%20and%20J.%20Tomas%20Hexner%20(Sub%20mission%206).pdf) (accessed on March 15, 2024).

<sup>283</sup> U.S. Senate Committee on Finance. “Tax Reform Act of 1976, Report of the Committee on Finance, United States Senate on H.R. 10612.” Calendar No. 891. 94<sup>th</sup> Congress, 2d Session. Report No. 94-938.

<https://www.finance.senate.gov/imo/media/doc/tax6.pdf> (accessed on April 5, 2024).

<sup>284</sup> Suárez Serrato, Juan Carlos. “Unintended Consequences of Eliminating Tax Havens.” July 2018, amended in December 2019. National Bureau of Economic Research.

[https://www.nber.org/system/files/working\\_papers/w24850/w24850.pdf](https://www.nber.org/system/files/working_papers/w24850/w24850.pdf) (accessed on April 9, 2024).

<sup>285</sup> U.S. Government Accountability Office. “Tax Policy: Puerto Rico and the Section 936 Tax Credit.” GGD-93-109. July 9th, 1993. <https://www.gao.gov/assets/ggd-93-109.pdf> (accessed on March 15th, 2024).

<sup>286</sup> Díaz Olivo Testimony, Transcript 2, p. 24.

States economy grew by 3% annually.<sup>287</sup> Section 936 generated significant profits for United States corporations with subsidiaries in Puerto Rico, but the same level of benefits was not observed for residents.<sup>288</sup> For example, in 1989, American corporate subsidiaries in Puerto Rico earned \$2.6 billion in profits.<sup>289</sup> The increase in corporate profits led to a rise in bank deposits in Puerto Rico, but these funds were not used to support local economic development or establish practices that would benefit local business activity.<sup>290</sup>

Most of the corporations that benefited from the incentive were in the manufacturing and electronic sectors.<sup>291</sup> To this day, manufacturing accounts for more than 40% of Puerto Rico's Gross Domestic Product.<sup>292</sup> The incentives were so attractive to the manufacturing sector that Puerto Rico's Gross National Product grew more than fourfold between 1947 and the era of Section 936.<sup>293</sup> This dependence on the incentives made Puerto Rico more vulnerable to a recession if the tax incentives were ever terminated.<sup>294</sup>

### ***Termination of the Incentive and the Negative Effects on Puerto Rico's Economy***

In the 1990s, when the federal government considered eliminating Section 936, there was significant opposition from officials in Puerto Rico.<sup>295</sup> During this decade, the United States government began a phase-out period for Section 936 and a transition away from this economic

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<sup>287</sup> MacEwan, Arthur. "The Effect of 936." Brandeis University.

[https://www.finance.senate.gov/imo/media/doc/Arthur%20MacEwan%20and%20J.%20Tomas%20Hexner%20\(Sub%20mission%206\).pdf](https://www.finance.senate.gov/imo/media/doc/Arthur%20MacEwan%20and%20J.%20Tomas%20Hexner%20(Sub%20mission%206).pdf) (accessed on March 15, 2024).

<sup>288</sup> MacEwan, Arthur. "The Effect of 936." Brandeis University.

[https://www.finance.senate.gov/imo/media/doc/Arthur%20MacEwan%20and%20J.%20Tomas%20Hexner%20\(Sub%20mission%206\).pdf](https://www.finance.senate.gov/imo/media/doc/Arthur%20MacEwan%20and%20J.%20Tomas%20Hexner%20(Sub%20mission%206).pdf) (accessed on March 15, 2024).

<sup>289</sup> U.S. Government Accountability Office. "Tax Policy: Puerto Rico and the Section 936 Tax Credit." GGD-93-109. July 9, 1993. <https://www.gao.gov/assets/ggd-93-109.pdf> (accessed on March 15, 2024); *See also*: Act 184 of May 13, 1948, amended.

<sup>290</sup> MacEwan, Arthur. "The Effect of 936." Brandeis University.

[https://www.finance.senate.gov/imo/media/doc/Arthur%20MacEwan%20and%20J.%20Tomas%20Hexner%20\(Sub%20mission%206\).pdf](https://www.finance.senate.gov/imo/media/doc/Arthur%20MacEwan%20and%20J.%20Tomas%20Hexner%20(Sub%20mission%206).pdf) (accessed on March 15, 2024).

<sup>291</sup> Suárez Serrato, Juan Carlos. "Unintended Consequences of Eliminating Tax Havens." July 2018, amended in December 2019. National Bureau of Economic Research.

[https://www.nber.org/system/files/working\\_papers/w24850/w24850.pdf](https://www.nber.org/system/files/working_papers/w24850/w24850.pdf) (accessed on April 9, 2024); *See also*: Díaz Olivo Testimony, Transcript 2, p. 24.

<sup>292</sup> The World Bank. "Manufacturing, value added (% of GDP) - Puerto Rico."

<https://data.worldbank.org/indicator/NV.IND.MANF.ZS?locations=PR> (consulted on February 20, 2024); *See also*: Kenneth Rivera-Robles testimony. Public Briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, Web Briefing, September 14, 2023, p. 18-19 (hereinafter cited as Transcript 2).

<sup>293</sup> Rivera-Robles Testimony, Transcript 2, p. 18-19; *See also*: U.S. Government Accountability Office. "Tax Policy: Puerto Rico and the Section 936 Tax Credit." GGD-93-109. July 9, 1993. <https://www.gao.gov/assets/ggd-93-109.pdf> (accessed on March 15, 2024).

<sup>294</sup> Greenberg, Scott, Ekins, Gavin. "Tax Policy Helped Create Puerto Rico's Fiscal Crisis." June 30, 2015. Tax Foundation. (<https://taxfoundation.org/blog/tax-policy-helped-create-puerto-rico-fiscal-crisis/>) (accessed on April 9, 2024).

<sup>295</sup> MacEwan, Arthur. "The Effect of 936." Brandeis University.

[https://www.finance.senate.gov/imo/media/doc/Arthur%20MacEwan%20and%20J.%20Tomas%20Hexner%20\(Sub%20mission%206\).pdf](https://www.finance.senate.gov/imo/media/doc/Arthur%20MacEwan%20and%20J.%20Tomas%20Hexner%20(Sub%20mission%206).pdf) (accessed on March 15, 2024).

model.<sup>296</sup> Section 936 was repealed in 1996 as part of the Small Business Jobs Protection Act, and the phase-out process lasted 10 years.<sup>297</sup> However, the crisis began after this phase-out period, and employment in Puerto Rico continued to grow until the crisis of 2006 began.<sup>298</sup> The reduction in Puerto Rico's attractiveness as a safe location for corporations also led to decreased employment and investments.<sup>299</sup> As panelist Dr. Ríos González explained, there was not an alternative plan, and the economic crisis in Puerto Rico began soon after the incentive ended.<sup>300</sup> Dr. Ríos González emphasized, “Instead, it was believed that market forces combined with neoliberal and austerity policies would create the right conditions to overcome the crisis, promote economic growth, and improve the quality of life for families. The material reality of the country shows the opposite.”<sup>301</sup> With no strong corporate presence in Puerto Rico to fill the void left by departing corporations, the economy began to contract.<sup>302</sup>

Even after the repeal of Section 936, some corporations were able to obtain "Controlled Foreign Corporation" status, which allowed them to avoid paying federal taxes if they continued the practice of not repatriating profits to their United States headquarters.<sup>303</sup> Corporations with this status are considered foreign for the purpose of being exempted from federal taxes.<sup>304</sup> This practice fundamentally contradicts the purpose of the Uniformity Clause. Controlled Foreign Corporation status applies to the foreign subsidiaries of corporations headquartered in the United States and they can defer taxes on foreign income, including those generated in Puerto Rico.<sup>305</sup>

Employment in the manufacturing sector began to decline during this period and was taken as evidence that the termination of the incentive was causing the economy to weaken.<sup>306</sup> Panelist

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<sup>296</sup> Ríos González Testimony, Transcript 1, p. 143, 6-24.

<sup>297</sup> Pub.L. 104-188. Small Business Job Protection Act of 1996; *See also*: Suárez Serrato, Juan Carlos. “Unintended Consequences of Eliminating Tax Havens.” July 2018, amended in December 2019. National Bureau of Economic Research. [https://www.nber.org/system/files/working\\_papers/w24850/w24850.pdf](https://www.nber.org/system/files/working_papers/w24850/w24850.pdf) (accessed on April 9, 2024).

<sup>298</sup> Suárez Serrato, Juan Carlos. “Unintended Consequences of Eliminating Tax Havens.” July 2018, amended in December 2019. National Bureau of Economic Research. [https://www.nber.org/system/files/working\\_papers/w24850/w24850.pdf](https://www.nber.org/system/files/working_papers/w24850/w24850.pdf) (accessed on April 9, 2024).

<sup>299</sup> *Ibid.*

<sup>300</sup> Ríos González Testimony, Transcript 1, p. 143, 6-24.

<sup>301</sup> *Ibid.*

<sup>302</sup> Greenberg, Scott, Ekins, Gavin. “Tax Policy Helped Create Puerto Rico’s Fiscal Crisis.” June 30, 2015. Tax Foundation. <https://taxfoundation.org/blog/tax-policy-helped-create-puerto-rico-fiscal-crisis/> (accessed on April 9, 2024).

<sup>303</sup> 26 USC § 957; *See also*: MacEwan, Arthur. “The Effect of 936.” Brandeis University. [https://www.finance.senate.gov/imo/media/doc/Arthur%20MacEwan%20and%20J.%20Tomas%20Hexner%20\(Sub%20mission%206\).pdf](https://www.finance.senate.gov/imo/media/doc/Arthur%20MacEwan%20and%20J.%20Tomas%20Hexner%20(Sub%20mission%206).pdf) (accessed on March 15, 2024).

<sup>304</sup> Córdova, Andrés L. “Congress can’t dodge Puerto Rico’s status in tax debate.” November 14, 2017. The Hill. <https://thehill.com/opinion/energy-environment/360370-congress-cant-dodge-puerto-ricos-status-in-tax-debate/> (accessed on October 3rd, 2023).

<sup>305</sup> Government Accountability Office. “Puerto Rico - Information on How Statehood Would Potentially Affect Selected Federal Programs and Revenue Sources.” March 2014. <https://www.gao.gov/products/gao-14-31> (accessed on April 15, 2024).

<sup>306</sup> MacEwan, Arthur. “The Effect of 936.” Brandeis University. [https://www.finance.senate.gov/imo/media/doc/Arthur%20MacEwan%20and%20J.%20Tomas%20Hexner%20\(Sub%20mission%206\).pdf](https://www.finance.senate.gov/imo/media/doc/Arthur%20MacEwan%20and%20J.%20Tomas%20Hexner%20(Sub%20mission%206).pdf) (accessed on March 15, 2024).

Kenneth Rivera-Robles, CPA and Former President of the Puerto Rico Chamber of Commerce, explained that a Government Accountability Office analysis of Section 936 did not take into account the multiplier effect the termination of the incentive would have on Puerto Rico’s workforce. Mr. Rivera-Robles mentioned that essential employees who worked at corporations benefiting from the incentive were not considered.<sup>307</sup> After Section 936 ended, Puerto Rico lost between 80,000-90,000 jobs, and capital investment decreased by between 10% and 18.7%.<sup>308</sup>

Additionally, panelist Rivera-Robles explained that another unforeseen consequence of the termination of Section 936 was that corporations did not return to their United States headquarters, but instead relocated to other countries in Asia and Europe.<sup>309</sup> As Puerto Rico’s tax rate increased following the termination of the incentive, corporations decided not only to leave Puerto Rico but also the United States entirely.<sup>310</sup> Corporations became subject to the same taxes as any foreign subsidiary.<sup>311</sup> The government has attempted to revive economic growth with new incentives and additional federal funding, but so far results have been minimal.<sup>312</sup> Since 2006, the only time Puerto Rico’s economy has grown has been when there was a massive influx of federal funds, which by their nature are not recurrent, and once those funds were exhausted, the economy declined.<sup>313</sup>

**FINDING II – Due to its status as a territory, Puerto Rico has faced a confusing and quite different tax system compared to the states.**

***Categorization of Corporations as Foreign***

It is important to note that corporations established in Puerto Rico are considered foreign under the United States Internal Revenue Code, as domestic corporations are those created under the laws of the United States.<sup>314</sup> This creates a dichotomy, as both the owner and the corporation are

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<sup>307</sup> Rivera-Robles Testimony, Transcript 2, p. 16; *See also*: U.S. Government Accountability Office. “Tax Policy: Puerto Rico and the Section 936 Tax Credit.” GGD-93-109. July 9, 1993. <https://www.gao.gov/assets/ggd-93-109.pdf> (accessed on March 15, 2024).

<sup>308</sup> Rivera-Robles Testimony, *September 14, 2023, Web Briefing*, supplemental slides, slide 12.

<sup>309</sup> Rivera-Robles Testimony, Transcript 2, p. 16.

<sup>310</sup> Rivera-Robles Testimony, Transcript 2, p. 16; *See also*: Suárez Serrato, Juan Carlos. “Economic Effects of Repealing the US Possessions Corporation Tax Credit.” July 9th, 2020. National Bureau of Economic Research. <https://www.nber.org/reporter-2020-02/economic-effects-repealing-us-possession-corporation-tax-credit> (accessed on March 15, 2024).

<sup>311</sup> Greenberg, Scott, Ekins, Gavin. “Tax Policy Helped Create Puerto Rico’s Fiscal Crisis.” June 30, 2015. Tax Foundation. <https://taxfoundation.org/blog/tax-policy-helped-create-puerto-rico-fiscal-crisis/> (accessed on April 9, 2024).

<sup>312</sup> Caraballo Cueto Testimony, Transcript 2, p. 3.

<sup>313</sup> Caraballo Cueto Testimony, Transcript 2, p. 32.

<sup>314</sup> 26 U.S.C. § 7701 (a)(4); *See also*: 26 U.S.C. § 7701 (a)(5); *See also*: Rivera-Robles Testimony, Transcript 2, p. 14-15.

treated as foreign, even though the owner is a United States citizen.<sup>315</sup> The classification of “foreign” can present certain challenges for Puerto Rican corporations, as seen with the Global Intangible Low-Taxed Income (GILTI, a provision of the Tax Cuts and Jobs Act of 2017), which calculates foreign corporations’ income to ensure a minimum contribution to the United States government.<sup>316</sup> This automatically places corporations established in Puerto Rico at a disadvantage.<sup>317</sup>

### ***Myth Regarding Federal Contributions***

Panelist Rivera-Robles emphasized the erroneous stereotype that Puerto Rico does not pay federal taxes.<sup>318</sup> On the contrary, under the Internal Revenue Service, employers in Puerto Rico, and thus employees, are subject to taxes required by the Federal Insurance Contributions Act (FICA), taxes on Social Insurance and Medicare, and the Federal Unemployment Tax Act (FUTA).<sup>319</sup> Employers are required to withhold, report, and pay employment taxes on wages paid.<sup>320</sup> Most residents of Puerto Rico do not have to pay federal income taxes if their only income is generated in Puerto Rico, but they do have to pay federal income taxes if they have income from sources outside of Puerto Rico.<sup>321</sup> Families eligible for the Child Tax Credit are required to file a federal income tax return.<sup>322</sup> According to Mr. Rivera-Robles, the fact that most Puerto Rican residents do not pay federal income taxes has been used as an excuse for unequal tax treatment.<sup>323</sup> He remarked, “...we did not ask for this. This was something the United States decided over 100 years ago to make United States companies have a cheaper place to invest. That is the situation we were given.”<sup>324</sup>

Even in the 2022 *United States v. Vaello Madero* case, the lack of federal income tax contributions was the reason it was concluded that the Supplemental Security Income (SSI) program could not be applied to Puerto Rico, limiting a critical resource for many people living in poverty and with disabilities.<sup>325</sup> The SSI is funded through a combination of contributions, including federal income

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<sup>315</sup> Rivera-Robles Testimony. Transcript 2, p. 14-15; Lowry, Sean. “Tax Policy and U.S. Territories: Overview and Issues for Congress.” Updated on October 7, 2016. Congressional Research Service. <https://crsreports.congress.gov/product/pdf/R/R44651> (accessed on March 10, 2024).

<sup>316</sup> Tax Cuts and Jobs Act of 2017, P.L. 115-97 § 951 A; *See also*: “Global Intangible Low-Taxed Income (GILTI).” Tax Foundation. <https://taxfoundation.org/taxedu/glossary/global-intangible-low-tax-income-gilti/> (accessed on March 10, 2024).

<sup>317</sup> Rivera-Robles Testimony, Transcript 2, p. 17.

<sup>318</sup> Rivera-Robles Testimony, Transcript 2, p. 16.

<sup>319</sup> Internal Revenue Service. “Topic no. 903, U.S. employment tax in Puerto Rico.” Tax Topics, Internal Revenue Service. Date of most recent review or update: February 29, 2024. <https://www.irs.gov/taxtopics/tc903> (accessed on April 1, 2024).

<sup>320</sup> *Ibid.*

<sup>321</sup> Internal Revenue Service. “Topic no. 901, Is a person with income from Puerto Rico required to file a U.S. federal income tax return?” Tax Topics, Internal Revenue Service. Date of most recent review or update: March 11, 2024. <https://www.irs.gov/taxtopics/tc901> (accessed on April 1, 2024).

<sup>322</sup> *Ibid.*

<sup>323</sup> Rivera-Robles Testimony, Transcript 2, p. 17-18.

<sup>324</sup> *Ibid.*

<sup>325</sup> *United States v. Vaello Madero*, 596 U.S. \_\_\_\_ (2022); *See also*: Rivera-Robles Testimony. Transcript 2, p. 17; *See also*: Puerto Rico Advisory Committee to the United States Commission on Civil Rights. “The Insular Cases and the Unincorporated Territory Doctrine and Their Effects on the Civil Rights of Residents of Puerto Rico.”

taxes paid by most United States residents, but not by employer contributions paid by most residents of Puerto Rico.<sup>326</sup> “So, the reasoning given is that if he does not pay income tax, he can’t expect to have the same benefits as other people,” commented panelist Rivera-Robles.<sup>327</sup> Additionally, any changes to the tax rate must be revenue-neutral, because if Puerto Rico were integrated into the federal system, it would have to coexist with both federal and Puerto Rican tax rates.<sup>328</sup>

### ***Challenges in Accessing Tax Credits***

As part of the Inflation Reduction Act of 2022, a series of energy credits was established for United States citizens to make environmentally efficient home upgrades.<sup>329</sup> However, since most Puerto Rican residents do not file federal tax returns, accessing this credit has been difficult.<sup>330</sup> This lack of clarity led the Center for American Progress, along with more than twenty other organizations, to submit a letter to the United States Treasury demanding that the Treasury clarify the eligibility criteria for Puerto Rico so that the territory can benefit equally with the states under this law.<sup>331</sup>

### **FINDING III – A change of political status would be one factor among others in creating a sustainable economy in Puerto Rico.**

Panelist Dr. José Caraballo Cueto, Associate Professor at the Graduate School of Business Administration at the University of Puerto Rico, Río Piedras Campus, focused his presentation to the Committee on a study he conducted with Dr. Massimiliano La Marca on how a change in Puerto Rico’s political status would affect the island’s economy.<sup>332</sup> He used 2017 as the reference

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February 2024. United States Commission on Civil Rights. [https://www.usccr.gov/files/2024-02/english\\_pr-ac\\_memo-1.pdf](https://www.usccr.gov/files/2024-02/english_pr-ac_memo-1.pdf) (accessed on February 12, 2024);

<sup>326</sup> Social Security Administration. “Supplemental Security Income (SSI) Overview.” 2024 Edition. Understanding SSI. <https://www.ssa.gov/ssi/text-over-ussi.htm> (accessed on April 1, 2024); *Committee Note*: See Espacios Abiertos. “Aportación federal del Crédito por Trabajo en Puerto Rico: avances, retos y oportunidades”. April 2024. [https://drive.google.com/file/d/1JHdgdXXYPSmBms8Dw\\_JZHDxwARgdhSF3/view?pli=1](https://drive.google.com/file/d/1JHdgdXXYPSmBms8Dw_JZHDxwARgdhSF3/view?pli=1) (accessed on August 23, 2024) where data on per capita net transfers to states and Puerto Rico. A total of 25 states has a negative per capita transfer balance (receiving more federal funds than they are paid on taxes) and 7 (Connecticut, Indiana, South Carolina, Alaska, Minnesota, Kentucky and North Dakota) have a deficit greater than that of Puerto Rico.

<sup>327</sup> Rivera-Robles Testimony. Transcript 2, p. 17.

<sup>328</sup> Rivera-Robles Testimony. Transcript 2, p. 19.

<sup>329</sup> Inflation Reduction Act of 2022, P.L. No: 117-169; *See also*: Internal Revenue Service. “Inflation Reduction Act of 2022.” Date of most recent review or update: April 12, 2024. <https://www.irs.gov/inflation-reduction-act-of-2022> (accessed on April 13, 2024); *See also*: Rivera-Robles Testimony. Transcript 2, p. 17.

<sup>330</sup> Rivera-Robles Testimony. Transcript 2, p. 17.

<sup>331</sup> Center for American Progress. “CAP Leads Letter to Treasury on Puerto Rico’s Eligibility for Critical Inflation Reduction Act Investments.” June 7, 2023. <https://www.americanprogress.org/article/cap-leads-letter-to-treasury-on-puerto-ricos-eligibility-for-critical-inflation-reduction-act-investments/> (accessed on March 20, 2024).

<sup>332</sup> Caraballo Cueto Testimony, Transcript 2; *See also*: Caraballo-Cueto, José. “El impacto económico del cambio en el estatus político de Puerto Rico”. May 2023. [https://www.researchgate.net/publication/370602961\\_Impacto\\_economico\\_de\\_cambiar\\_el\\_estatus\\_de\\_Puerto\\_Rico](https://www.researchgate.net/publication/370602961_Impacto_economico_de_cambiar_el_estatus_de_Puerto_Rico) (accessed on October 18, 2023); *See also*: Appendix C.

year for his study, as the economy had been inflated during post-Hurricane María reconstruction beyond its normal structure.<sup>333</sup> As part of the study, economic and historical data were also evaluated from former colonies turned states of the United States, particularly New Mexico, Hawaii, and Alaska, as well as those that gained independence from 1960 onward.<sup>334</sup> The study does not seek to promote any specific option and is limited to analyzing the economic impact of each option.<sup>335</sup> The main points identified in his study are described below:

### ***Statehood***

If there were a political change toward statehood, Dr. Caraballo-Cueto offers two scenarios:

- a. Parity in federal programs and federal income taxes are offset by local taxes. This would be the ideal scenario under this political change.<sup>336</sup> Additionally, in this scenario, the manufacturing sector remains indifferent to the change in political status, whereas other sectors, such as services and tourism, increase.<sup>337</sup> Furthermore, there would be more security for tourism under statehood, as happened in Hawaii, and there would be more investments in sectors such as finance, insurance, and real estate.<sup>338</sup>
- b. Local taxes are reduced to accommodate federal taxes, but this would imply a deep austerity in Puerto Rico to avoid a fiscal deficit. This scenario would be disastrous for the local economy, as there would be a massive loss of jobs affecting the government and other sectors. Funds from federal programs would not compensate for the difference.<sup>339</sup>

With the implementation of federal income taxes, Dr. Caraballo Cueto’s analysis indicates that in 2011, Puerto Rico residents would have paid \$1.9 million at the individual level for people earning \$50,000 or more annually, and at the corporate level, \$758 million in taxes would have been paid by businesses with a gross revenue of over \$50 million.<sup>340</sup> However, it would be very difficult for the Puerto Rican government to make room for federal taxes due to the limitations it faces from its debt.<sup>341</sup>

Dr. Caraballo Cueto explains that “the Jones Act of 1920 and federal regulations on foreign trade and migration will not change if the economy moves towards statehood. Thus, without changes in productive sectors, it would be difficult to observe positive effects from statehood based only on additional federal funds.”<sup>342</sup> Additionally, upon becoming a state, federal income taxes would

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<sup>333</sup> Caraballo Cueto Testimony, Transcript 2, p. 5.

<sup>334</sup> Caraballo Cueto Testimony, Transcript 2, p. 3.

<sup>335</sup> Caraballo Cueto Testimony, Transcript 2, p. 5.

<sup>336</sup> Caraballo Cueto Testimony, Transcript 2, p. 25.

<sup>337</sup> Caraballo Cueto Testimony, Transcript 2, p. 6.

<sup>338</sup> Caraballo Cueto Testimony, Transcript 2, p. 33.

<sup>339</sup> Caraballo Cueto Testimony, Transcript 2, p. 25.

<sup>340</sup> Caraballo-Cueto, José. “El impacto económico del cambio en el estatus político de Puerto Rico”. May 2023.

[https://www.researchgate.net/publication/370602961\\_Impacto\\_economico\\_de\\_cambiar\\_el\\_estatus\\_de\\_Puerto\\_Rico](https://www.researchgate.net/publication/370602961_Impacto_economico_de_cambiar_el_estatus_de_Puerto_Rico) (accessed on October 18, 2023).

<sup>341</sup> Ibid.

<sup>342</sup> Caraballo Cueto Testimony, Transcript 2, p. 6.

apply to corporations, which presents the possibility that American and foreign corporations may relocate to lower-taxed areas.<sup>343</sup>

Also, Dr. Caraballo Cueto's study confirms that under statehood, Puerto Rico would receive federal funding through programs such as Supplemental Security Income (SSI), Medicaid, Medicare, and the Supplemental Nutrition Assistance Program (SNAP).<sup>344</sup> Dr. Caraballo Cueto offers examples of the impact these programs would have had on the Puerto Rican residents' incomes:

- SSI – It is estimated that had SSI been available in 2016, the projected income for the eligible population would have been \$2.6 billion, and the number of people with incomes between 51% and 99% of the poverty threshold would have decreased by more than 200,000.<sup>345</sup>
- SNAP – Parity in the SNAP program would have represented over \$242 million in additional income for eligible Puerto Rican residents. Access to both programs (SSI and SNAP) would have reduced Puerto Rico's poverty level by 14 percentage points.<sup>346</sup>
- Medicare – With full access to Medicare benefits, hospitals would receive higher payments for their services, and the patients would be automatically enrolled in Medicare Part B, allowing them to participate in savings programs.<sup>347</sup>

Panelist Dr. Juan Villeta-Trigo, Economist and Professor of Economics of the Economy Department at the University of Puerto Rico, Mayagüez Campus, and President of the Puerto Rican Association of Financial Analysts (APAF), also argued before the Committee that Puerto Rico has lost revenue due to the lack of equality in access to public programs. He shared estimates that

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<sup>343</sup> Government Accountability Office. "Puerto Rico - Information on How Statehood Would Potentially Affect Selected Federal Programs and Revenue Sources." March 2014. <https://www.gao.gov/products/gao-14-31> (accessed on April 15, 2024).

<sup>344</sup> Caraballo-Cueto, José. "El impacto económico del cambio en el estatus político de Puerto Rico". May 2023. [https://www.researchgate.net/publication/370602961\\_Impacto\\_economico\\_de\\_cambiar\\_el\\_estatus\\_de\\_Puerto\\_Rico](https://www.researchgate.net/publication/370602961_Impacto_economico_de_cambiar_el_estatus_de_Puerto_Rico) (accessed on October 18, 2023).

<sup>345</sup> Caraballo-Cueto, José. "El impacto económico del cambio en el estatus político de Puerto Rico." May 2023. [https://www.researchgate.net/publication/370602961\\_Impacto\\_economico\\_de\\_cambiar\\_el\\_estatus\\_de\\_Puerto\\_Rico](https://www.researchgate.net/publication/370602961_Impacto_economico_de_cambiar_el_estatus_de_Puerto_Rico) (accessed on October 18, 2023). *See also:* Torres, Rosanna. "Impact of the Supplemental Security Income in Puerto Rico." Center for a New Economy. June 25, 2020. <https://grupocne.org/2020/06/25/impact-of-the-ssi-in-puerto-rico/> (accessed on August 23, 2024). Using 2018 Census data, the analysis calculates the total income for eligible individuals would have been \$2.6 billion.

<sup>346</sup> Caraballo-Cueto, José. "El impacto económico del cambio en el estatus político de Puerto Rico". May 2023. [https://www.researchgate.net/publication/370602961\\_Impacto\\_economico\\_de\\_cambiar\\_el\\_estatus\\_de\\_Puerto\\_Rico](https://www.researchgate.net/publication/370602961_Impacto_economico_de_cambiar_el_estatus_de_Puerto_Rico) (accessed on October 18, 2023); *See also:* United States Department of Agriculture, Food and Nutrition Service. "Update to Feasibility Study on Implementing SNAP in Puerto Rico, Final Report." July 2022. [prod.azureedge.us/sites/default/files/resource-files/PRSNAP-Feasibility-Report.pdf](https://prod.azureedge.us/sites/default/files/resource-files/PRSNAP-Feasibility-Report.pdf) (accessed on August 23, 2024) where they conclude that SNAP benefits would increase to \$4.5 billion in 2031.

<sup>347</sup> Caraballo-Cueto, José. "El impacto económico del cambio en el estatus político de Puerto Rico". May 2023. [https://www.researchgate.net/publication/370602961\\_Impacto\\_economico\\_de\\_cambiar\\_el\\_estatus\\_de\\_Puerto\\_Rico](https://www.researchgate.net/publication/370602961_Impacto_economico_de_cambiar_el_estatus_de_Puerto_Rico) (accessed on October 18, 2023).

stated that if there were access to SSI and parity in SNAP and Medicaid programs, Puerto Rico would have received approximately \$97 million in funds between 2020 and 2032.<sup>348</sup>

### *Incorporated Territory*

Dr. Caraballo Cueto's study concludes that the status of the incorporated territory would be the worst of all possible statuses for Puerto Rico's economy because high levels of federal taxes would be imposed on the productive sector, commerce, and the middle and upper classes without parity in federal funding. This status would be even worse than the current unincorporated status.<sup>349</sup>

### *Independence*

In his analysis of former colonies that gained independence, Dr. Caraballo Cueto explained that they found that sovereignty helped most countries compete to a limited extent, but other growth factors had a greater impact on these countries' economies.<sup>350</sup> Dr. Caraballo Cueto clarifies that free association has different legal implications than independence, but economically it is very similar to independence, with the exception that American citizenship, under free association, would allow for a shared labor market with the United States.<sup>351</sup>

A precaution that should be considered under sovereignty is relying solely on the elimination of trade barriers, most of them imposed by the government of the United States, and the availability of the monetary policy to adjust exchange rates, currently imposed by the Federal Reserve of the United States.<sup>352</sup> This would not be enough to compensate for the loss of federal funds in the economy, which could also increase income inequality, even in the best scenario under independence. Successful sovereignty with competitive trade could be achieved by increasing the following factors: international tourism, private sector participation in foreign trade, and labor participation.<sup>353</sup> Tourism could increase because no tourist visa would be required to visit Puerto Rico from third countries, and there would be more investments in sectors such as service and manufacturing because federal taxes would not apply.<sup>354</sup> In his study, Dr. Caraballo Cueto points out that "Puerto Rico could not only maintain but also improve its industrial development thanks to independence. This would mainly be due to the ability to expand sources of capital and foreign markets while simultaneously facilitating the development of entrepreneurial capital."<sup>355</sup>

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<sup>348</sup> Villeta-Trigo Testimony, Transcript 2, p. 10.

<sup>349</sup> Caraballo Cueto Testimony, Transcript 2, p. 25.

<sup>350</sup> Caraballo Cueto Testimony, Transcript 2, p. 5.

<sup>351</sup> Caraballo Cueto Testimony, Transcript 2, p. 5, 30.

<sup>352</sup> Caraballo Cueto Testimony, Transcript 2, p. 6-7.

<sup>353</sup> Caraballo Cueto Testimony, Transcript 2, p. 7.

<sup>354</sup> Caraballo Cueto Testimony, Transcript 2, p. 33.

<sup>355</sup> Caraballo-Cueto, José. "El impacto económico del cambio en el estatus político de Puerto Rico". May 2023.

[https://www.researchgate.net/publication/370602961\\_Impacto\\_economico\\_de\\_cambiar\\_el\\_estatus\\_de\\_Puerto\\_Rico](https://www.researchgate.net/publication/370602961_Impacto_economico_de_cambiar_el_estatus_de_Puerto_Rico) (accessed on October 18, 2023).

Additionally, if there were economic reparations for Puerto Rico under independence, this could be more effective and beneficial in the long term if used to strengthen the infrastructure there.<sup>356</sup>

A relevant consideration described by Dr. Caraballo Cueto in his study is that under independence, apart from the fact that approximately 41% of Puerto Rican households would lose current access to one or more federal programs, the minimum wage could also be lower than the federal level, factors that may lead to migration from the island.<sup>357</sup> Between 2010 and 2020 alone, Puerto Rico's population decreased by almost 12%.<sup>358</sup> An effective immigration policy would be needed to counteract this.<sup>359</sup> Even under the independence scenario, an increase in remittances could be observed. Currently, Puerto Rico receives around \$500 million in remittances.<sup>360</sup> However, an increase in remittance will not compensate for the significant loss of federal funds.<sup>361</sup>

### ***Conclusions of the Study***

Dr. Caraballo Cueto concludes that there is no clear path to prosperity, but it is evident that the current model under territorial status does not work economically.<sup>362</sup> Evidence of this is that since the repeal of Section 936, sustained economic growth has not been generated, except when non-recurring federal funds are flowing into the economy.<sup>363</sup> Dr. Caraballo Cueto also warns against economic freedom as this would mean non-intervention by the government.<sup>364</sup> On the other hand, better government intervention is needed to create improved conditions and training for entrepreneurs.<sup>365</sup> For a jurisdiction with a small local economy like Puerto Rico, an emphasis on exports can be highly beneficial.<sup>366</sup>

## **IV. Recommendations Proposed in the Testimony**

Throughout the testimony, the Committee heard various perspectives on how Puerto Rico's economic situation could be improved. Although these ideas are not recommendations formulated

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<sup>356</sup> Caraballo Cueto Testimony, Transcript 2, p. 6-7.

<sup>357</sup> Caraballo-Cueto, José. "El impacto económico del cambio en el estatus político de Puerto Rico". May 2023. [https://www.researchgate.net/publication/370602961\\_Impacto\\_economico\\_de\\_cambiar\\_el\\_estatus\\_de\\_Puerto\\_Rico](https://www.researchgate.net/publication/370602961_Impacto_economico_de_cambiar_el_estatus_de_Puerto_Rico) (accessed on October 18, 2023).

<sup>358</sup> United States Census Bureau. "Puerto Rico Population Declined 11.8% from 2010 to 2020." August 25, 2021. <https://www.census.gov/library/stories/state-by-state/puerto-rico-population-change-between-census-decade.html> (accessed on November 1, 2023).

<sup>359</sup> Caraballo-Cueto, José. "El impacto económico del cambio en el estatus político de Puerto Rico". May 2023. [https://www.researchgate.net/publication/370602961\\_Impacto\\_economico\\_de\\_cambiar\\_el\\_estatus\\_de\\_Puerto\\_Rico](https://www.researchgate.net/publication/370602961_Impacto_economico_de_cambiar_el_estatus_de_Puerto_Rico) (accessed on October 18, 2023).

<sup>360</sup> Caraballo Cueto Testimony, Transcript 2, p. 29-30.

<sup>361</sup> Ibid.

<sup>362</sup> Caraballo Cueto Testimony, Transcript 2, p. 7.

<sup>363</sup> Caraballo Cueto Testimony, Transcript 2, p. 33.

<sup>364</sup> Caraballo Cueto Testimony, Transcript 2, p. 34-35.

<sup>365</sup> Ibid.

<sup>366</sup> Ibid.

by the Committee, it is important to integrate them into this document to present the options highlighted by panelists. The Committee does not express itself on the content of these recommendations.

- Puerto Rico does not control its fiscal and monetary policies, among other critical aspects of its economy, and for this reason, an institutional change is necessary to overcome the colonial relationship with the United States, supported by the right to self-determination proposed by international law, as the United Nations has outlined in Resolutions 1514(XV) and 1541(XV).<sup>367</sup>
- Puerto Rico's economy needs to develop its small private sector to take full advantage of opportunities that will arise once the institutional framework changes along with the political status. A change in political status is not in itself a sufficient or instantaneous condition for sustained prosperity but it is a necessary condition for generating sustained economic growth in Puerto Rico.<sup>368</sup>
- The elimination of the Insular Cases would stop the regulation of Puerto Rico and its residents as possessions and would give an immediate economic advantage that would begin to impact Puerto Rico and could more effectively force a decolonization process.<sup>369</sup>
- It is proposed to replace more imports with local production, export more, and further develop companies. The current incentive code should be changed, as it is currently very generous and unconditional, to make it more conditional on companies exporting and growing because most of the private sector in Puerto Rico is a small private sector, except for multinationals operating in Puerto Rico.<sup>370</sup>

## V. Preliminary Committee Recommendations on the General Overview of the Project

After analyzing the testimony presented in this “General Overview” phase of the project, the Advisory Committee offers the following preliminary recommendations:

1. The United States Commission on Civil Rights should:

- Promote that all American citizens hold the same rights in all states and territories regarding socio-economic matters;*
- Encourage a space of dialogue with representation from all five territories to highlight the challenges their residents face in socio-economic matters.*

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<sup>367</sup> Ríos González Testimony, Transcript 1, p. 147, 5-20.

<sup>368</sup> Caraballo Cueto Testimony, Transcript 2, p. 7.

<sup>369</sup> Díaz Olivo Testimony, Transcript 2, p. 31-32.

<sup>370</sup> Caraballo Cueto Testimony, Transcript 2, p. 33.

2. The United States Commission on Civil Rights must send this report to and request that the United States Congress and President take the following actions:

- a. *Congress should promote legislation ensuring that all American citizens can exercise their rights on equal conditions;*
- b. *Request the President of the United States to reestablish the White House Task Force on Puerto Rico with the representation from residents of Puerto Rico to present alternatives for the full recognition of the rights of American citizens residing in Puerto Rico.*

3. The United States Commission on Civil Rights should send this report and request the Governor, Resident Commissioner, Legislature and Supreme Court of Puerto Rico take the following actions:

- a. *Require that all government officials in Puerto Rico incorporate addressing the political status and its relationship with the United States into their public policies.*

## **Memorandum II Conclusion**

This memorandum was adopted by a unanimous vote of 6 to 0 at a Committee meeting held on October 30, 2024. One Committee Member statement was submitted as part of this memorandum.

## Memorandum II Appendix

Documents related to the study of this subject by the Committee can be consulted in the folder for Memorandum II at the following link:

<https://usccr.app.box.com/folder/292312893562?s=yo7wsul0yb8dmrvvm2ywc5q9otj7knuj>

- A. Schedule, minutes, and presentation slides
- B. Transcripts
- C. Additional information
- D. Committee Member Statements

- Statement from Member José O. Olmos

JOSÉ O. OLMOS

Member of the Puerto Rico Advisory Committee to the  
United States Commission on Civil Rights

November 13, 2024

**Subject:** Concurring and partially dissenting statement and inclusion of documents to the second memorandum on Economic Perspectives corresponding to the work related to the study entitled “The Insular Cases and the Doctrine of the Unincorporated Territory and its effects on the civil rights of the residents of Puerto Rico.”

**Articles to be included in memorandum number two:**<sup>371</sup>

Caban, Pedro, "PROMESA, Puerto Rico and the American Empire" (2018). Latin American, Caribbean, and US Latino Studies Faculty Scholarship. 33.

[https://scholarsarchive.library.albany.edu/lacs\\_fac\\_scholar/33](https://scholarsarchive.library.albany.edu/lacs_fac_scholar/33)

Congressional Research Service, “Vieques, Puerto Rico Naval Training Range Background and Issues,” August 20, 2024, <https://crsreport.congress.gov> RS20458

Cimadevilla, Francisco Javier. "The Imminent Shutdown of Naval Station Roosevelt Roads Will Wreak Economic Havoc Throughout Eastern Puerto Rico." Caribbean Business, 17 July 2003

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<sup>371</sup> Vea Apéndice C del Memorando II.

## **Dissenting Statement:**

By vote of the advisory committee members, it was determined not to include the proposed language submitted by the signatory in the Historical Context section of the memorandum, which related to the economic impact suffered by Puerto Rico as a result of the hasty closure of the operations of the Roosevelt Roads Naval Base located in Ceiba, Puerto Rico.

This information is pertinent to this report because the speaker, Dr. Caraballo Cueto, replied to our questions about the impact of the closure of the Roosevelt Roads Naval Base on Puerto Rico's economy. His analysis was limited to analyzing the economic impact after Hurricane Maria.

The paragraph proposed to be included in memorandum number two is as follows.

“The economic collapse after 2006 was not only due to the elimination of Section 936, but the closure of Roosevelt Roads Naval Station also contributed to it.<sup>372</sup> The 2004 House Defense Appropriations Bill included a provision that would close Roosevelt Roads Naval Station, the largest employer in Puerto Rico. Under Section 8132 of the Department of Defense Appropriations Act for Fiscal Year 2004 (PL 108-87), the Secretary of the Navy was directed to close Roosevelt Roads Naval Station no later than six months after its enactment, which occurred on September 30, 2003.<sup>373</sup>

It is important to note the impact that the closure of military operations in Puerto Rico has had on the economy. The closure of Roosevelt Roads Naval Station resulted in the loss of 2,500 civilian jobs and injected 300 million dollars annually into the local economy. The southeastern region of Puerto Rico lost 6,000 jobs. In addition, the Puerto Rico Electric Power Authority lost a customer who paid \$25,000,000 annually on their electric bill. 16 In 2016, the unemployment rate exceeded 17 percent, and poverty afflicted approximately half of the 77,000 residents of the surrounding communities of Fajardo, Ceiba, and Naguabo.<sup>374</sup>”

Ignoring this information harms the conclusion of our analysis because it limits the assessment of the economic impact of the insular cases by ignoring the actions of the territorial political leadership. The island's economic activity is undoubtedly impacted by its territorial relationship

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<sup>372</sup> Caban, Pedro, "PROMESA, Puerto Rico and the American Empire" (2018). Latin American, Caribbean, and US Latino Studies Faculty Scholarship. 33.

[https://scholarsarchive.library.albany.edu/lacs\\_fac\\_scholar/33](https://scholarsarchive.library.albany.edu/lacs_fac_scholar/33)

<sup>373</sup> Congressional Research Service, "Vieques, Puerto Rico Naval Training Range Background and Issues" August 20, 2024, <https://crsreport.congress.gov> RS20458.

<sup>374</sup> Cimadevilla, Francisco Javier. "The Imminent Shutdown of Naval Station Roosevelt Roads Will Wreak Economic Havoc Throughout Eastern Puerto Rico." Caribbean Business, 17 July 2003.

with the United States. Still, it is primarily directed and managed by the American citizen residents of Puerto Rico, who delegate to their political leadership. As a consequence of their bad decisions, they caused the government to suffer bankruptcy. The closure of the Roosevelt Roads Naval Base, caused by the interests of the island's political leadership, is a fundamental link in the chain of events that led to the island's bankruptcy and opened the door for the United States Congress to approve the PROMESA Law.

**Puerto Rico Advisory Committee to the United States Commission on Civil Rights**

Term: January 21, 2022, to January 20, 2026

Andrés L. Córdova Phelps, Chair, Puerto Rico Advisory Committee, San Juan

Ramón Barquín, Vice-Chair, San Juan

Ever Padilla-Ruíz, Secretary, San Juan

Frank Arenal, Carolina

Ramón C. Barquín III, Guaynabo

Manuel “Lin” Iglesias-Beléndez, San Juan

Sergio Marxuach, Dorado

José O. Olmos, Guaynabo

Dan Santiago, San Juan

William E. Villafaña Ramos, Bayamon

## **Memorandum III: Federal Voting Rights**



## **The Insular Cases and the Unincorporated Territory Doctrine and their Effects on the Civil Rights of Residents of Puerto Rico**

### **Memorandum on Federal Voting Rights**

**Puerto Rico Advisory Committee to the United States Commission on Civil Rights  
March 2025**

#### **I. Introduction**

The Puerto Rico Advisory Committee hosted three virtual briefings on May 21, May 30, and June 4, 2024, to hear testimony on the right to vote at the federal level relative to the Insular Cases and the Doctrine of the Unincorporated Territory and its effects on the civil rights of Puerto Rican residents.<sup>375</sup> This memorandum follows two others that focused on the “Overview” phase of this study.<sup>376</sup>

The Committee plans to continue holding briefings to receive input on the following subtopics approved in July 2022: access to public programs and racial/national discrimination. Over its term, the Committee will publish an additional memorandum on these subtopics, culminating in a final report with recommendations developed by the Committee.

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<sup>375</sup> Meeting records and transcripts can be found in Appendix A and B.

Public hearing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights United States, May 21, 2024, (virtual hearing), Transcript (hereinafter “Transcript 3”).

Public Hearing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, May 30, 2024, (virtual hearing), Transcript (hereinafter “Transcript 4”).

Public Hearing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, June 4, 2024, (virtual hearing), Transcript (hereinafter “Transcript 5”).

<sup>376</sup> Puerto Rico Advisory Committee to the United States Commission on Civil Rights. “The Insular Cases and the Unincorporated Territory Doctrine and Their Effects on the Civil Rights of Residents of Puerto Rico.” February 2024. United States Commission on Civil Rights. [https://www.usccr.gov/files/2024-02/english\\_pr-ac\\_memo-1.pdf](https://www.usccr.gov/files/2024-02/english_pr-ac_memo-1.pdf) (accessed February 12, 2024).

Puerto Rico Advisory Committee to the United States Commission on Civil Rights. “The Insular Cases and the Unincorporated Territory Doctrine and Their Effects on the Civil Rights of Residents of Puerto Rico – Part II, Economic Perspectives.” November 2024. United States Commission on Civil Rights. [https://www.usccr.gov/files/2024-11/english\\_pr-ac-memo-2.pdf](https://www.usccr.gov/files/2024-11/english_pr-ac-memo-2.pdf) (accessed November 22, 2024).

This memorandum shares the key findings identified in the testimony described directly by the panelists and includes external sources where necessary. It begins with historical context, and the final sections draw on recommendations shared in the testimony and with the Committee's preliminary recommendations regarding voting rights at the federal level. This final report will include the Committee's recommendations.

The Committee heard testimony on voting rights from various historical, legal, and political theory perspectives, and attempted to understand Puerto Rico's unique situation within the historical and sociopolitical context of the United States based on the testimony received. The Committee recognizes that the Puerto Rican Constitution in Article II, Section 2, guarantees the right to vote at the local level.<sup>377</sup>

## II. Historical Context

### *Changes in U.S. Expansionism Resulting from the Spanish-American War*

Until the *Treaty of Paris of 1898*, when Spain ceded its territories at the end of the Spanish-American War - including Puerto Rico - to the United States, there was a scheme through the *Northwest Ordinance* that guided the expansion of the country and the way that territories became states.<sup>378</sup> The *Northwest Ordinance*, approved in its final version in 1787, was an effort to manage the vast land between the original colonies and the Mississippi River and required three stages for the admission of new states.<sup>379</sup> These three stages included: 1) Congressional organization of a provisional government in the territory, 2) the attainment of a minimum population to establish a constitution, and 3) a population of 60,000 to be admitted to the Union.<sup>380</sup> During the 18th Century, the nation's founders believed territorial expansion was necessary for social stability, economic well-being, and liberty.<sup>381</sup> New states were treated as temporary territories under this ordinance.<sup>382</sup>

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<sup>377</sup> Puerto Rico Const. art. II, § II.

<sup>378</sup> Treaty of Paris of 1898, U.S.-Spain, Dec. 10, 1898, Treaty Series 343; *See also: An ordinance for the Government of the Territory of the United States, Northwest of the River Ohio, Congressional Confederacy (1787).*

<sup>379</sup> *An ordinance for the Government of the Territory of the United States, Northwest of the River Ohio, Congressional Confederacy (1787).*

<sup>380</sup> *An Ordinance for the Government of the Territory of the United States, Northwest of the Ohio River, Congressional Confederacy (1787)*, Sec. 3-7, p.1, Art. 5, 2; *See also:* Carlos I. Gorrin Peralta, testimony. Public Briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, Web Briefing, June 4, 2024, transcript 5. p. 10-11 (hereinafter cited as Transcript 5); *See also:* Carlos I. Gorrin Peralta, "The Law of the Territories of the United States in Puerto Rico, the Oldest Colony in the World," Rev. 54(2), University of Miami Inter-American L. Rev. p. 33, 80-81, June 21, 2023. <https://repository.law.miami.edu/cgi/viewcontent.cgi?article=2663&context=umialr> (accessed October 21, 2024).

<sup>381</sup> Carlos I. Gorrin Peralta, "Historical Analysis of the Insular Cases: Colonial Constitutionalism Revisited." 56, Revista del Colegio de Abogados de Puerto Rico, p. 31, 50, 1995.

<sup>382</sup> Carlos I. Gorrin Peralta. "The Law of the Territories of the United States in Puerto Rico, the Oldest Colony in the World," Rev. 54(2), University of Miami Inter-American L. Rev. p. 33, 39, June 21, 2023. <https://repository.law.miami.edu/cgi/viewcontent.cgi?article=2663&context=umialr> (accessed October 21, 2024).

The Committee received testimony indicating that this process changed dramatically with the Spanish-American War, which panelists argue was part of the United States' plan to take control of the Caribbean and consolidate its own economic and political power.<sup>383</sup> The United States initially entered the War by supporting Cuba in its struggle to gain independence from Spain.<sup>384</sup> In this process, Spain defended its other territories, including Puerto Rico; later, the United States admitted its interest in obtaining Puerto Rico and other territories.<sup>385</sup> The culmination of the War and the acquisition of Puerto Rico and other territories by the United States has led historians to argue that the War was only a transition from Spanish imperialism to American imperialism.<sup>386</sup> From this point on, the annexation of territories no longer responded to the ideology of territorial expansionism, but to economic, strategic, and geopolitical interests in territories with demographic characteristics that were very different from the territories admitted as states under the *Northwest Ordinance*.<sup>387</sup> This new stage paved the way for the differential treatment Puerto Rico has received from the federal government for more than 126 years in which a “legal but illegal regime” operates, where the government *does not* respond to the sovereignty of the people.<sup>388</sup>

### ***Racist Perspectives in the Acquisition and Classification of Territories and the Application of the Constitution in Puerto Rico***

When annexing new territories, the United States faced with what to do with such racially and culturally diverse populations. Some argue that, with the *Treaty of Paris of 1898*, the United States decided to become an empire.<sup>389</sup> The Treaty stipulated that Congress would determine the civil rights and political status of the territories' native inhabitants.<sup>390</sup>

The nine Supreme Court justices who heard the first Insular Cases — which contain explicitly racist language describing the territories as peopled by “alien races” and “savage tribes”<sup>391</sup> —

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<sup>383</sup> Michael González-Cruz, testimony. Public Briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, Web Briefing, May 21, 2024, transcript 3. p. 4 (hereinafter cited as Transcript 3).

<sup>384</sup> Trask, David. “The Spanish-American War.” Library of Congress Research Guides. <https://guides.loc.gov/world-of-1898/overview-essay> (accessed October 21, 2024).

<sup>385</sup> Ibid.

<sup>386</sup> Ibid.

<sup>387</sup> Gorrín Peralta Testimony, Transcript 5, p. 11, 12.

<sup>388</sup> Gorrín Peralta Testimony, Transcript 5, p. 11; *See also*: Adi Martínez Román, testimony. Public Briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, Web Briefing, May 21, 2024, transcript 3. p. 10 (hereinafter cited as Transcript 3). For more information on federal acts implemented by the United States in Puerto Rico after obtaining the territory, please see: [https://www.usccr.gov/files/2024-02/spanish\\_pr-ac\\_memo-1.pdf](https://www.usccr.gov/files/2024-02/spanish_pr-ac_memo-1.pdf).

<sup>389</sup> Martínez Román Testimony, Transcript 3, p. 10-11; *See also*: National Public Radio. “The History of US Intervention And The ‘Birth Of The American Empire.’” January 24, 2017. <https://www.npr.org/2017/01/24/511387528/the-history-of-us-intervention-and-the-birth-of-the-american-empire> (accessed October 21, 2024).

<sup>390</sup> *Treaty of Paris of 1898*, U.S.-Spain, Dec. 10, 1898, Treaty Series 343; *See also*: Carlos I. Gorrín Peralta. “¿Son los proyectos congresionales sobre Puerto Rico instrumentos de descolonización y libre determinación?” 4 AMICUS Rev. Pol. Pub. and Leg. UIPR, p.1. 4, 2021. <https://aldia.microjuris.com/wp-content/uploads/2022/04/Separata-Gorrin.pdf> (accessed August 15, 2024).

<sup>391</sup> *Downes v. Bidwell*, 182 U.S. 244 (1901); *See also*: *DeLima v. Bidwell*, 182 U.S. 1 (1901).

established the controversial, unprecedented categories of “incorporated territory” and “unincorporated territory” to distinguish between annexed territories with a path to statehood and newly acquired territories.<sup>392</sup> Panelists argued that the title “unincorporated territory” was associated with territories populated mostly by people of color, where the application of the Constitution is limited.<sup>393</sup>

Given the so-called inferiority of the inhabitants of the new territories, Congress had difficulty in deciding to what extent the Constitution applied to Puerto Rico and whether or not the inhabitants were eligible for U.S. citizenship.<sup>394</sup> Congress was advised that the Constitution, created by “civilized and educated people,” should not be extended to the “ignorant and lawless brigands who infest Puerto Rico.”<sup>395</sup> In *Downes v. Bidwell*, Justice White’s opinion argued that these unknown islands, “peopled with an uncivilized race,” were “unfit” to receive citizenship and that if the “conquered are a fierce, savage, and restless people, the conqueror may govern them with a stronger rein to stop their impetuosity and keep them in subjection.”<sup>396</sup> This distinction between two types of territories, which were supposed to have been temporary categorizations and are based on racist ideas, still affects more than 3 million U.S. citizens living in Puerto Rico today.<sup>397</sup>

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<sup>392</sup> *Downes v. Bidwell*, 182 U.S. 244 (1901); *See also*: Gorrín Peralta Testimony, Transcript 5, p. 12; *See also*: Martínez Román Testimony, Transcript 3, p. 11; *See also*: Adriel Cepeda Derieux & Rafael Cox Alomar, “Saying What Everyone Knows to be True: Why Stare Decisis is Not an Obstacle to Overruling the Insular Cases,” *Columbia Human Rights Law Rev*, Vol. 53:3. HRLR. p. 721, 733, May 2022. <https://hrlr.law.columbia.edu/hrlr/saying-what-everyone-knows-to-be-true-why-stare-decisis-is-not-an-obstacle-to-overruling-the-insular-cases/> (accessed on October 22, 2024); *See also*: CORRECTED Brief for Financial Oversight and Management Board for Puerto Rico as Amici Curiae supporting the First Circuit’s Ruling on the Appointments Clause Issue, *Financial Oversight and Management Board for Puerto Rico v. Aurelius Investment, LLC*, 590 U.S. 48 (2020) (No.18-1334), p. 2.; *See, by way of example*: *Dooley v. United States*, 182 US 222 (1901); *Dooley v. United States*, 183 US 151 (1901); *Armstrong v. United States*, 182 US 243 (1901); *Downes v. Bidwell*, 182 US 244 (1901); *Crossman v. United States*, 182 US 221 (1901); *Huus v. New York and Porto Rico Steamship Co.*, 182 US 392 (1901); *Balzac v. Porto Rico*, 258 US 298 (1922).

<sup>393</sup> Martínez Román Testimony, Transcript 3, p. 11; *See also*: Brief for Financial Oversight and Management Board for Puerto Rico as Amici Curiae supporting the First Circuit’s Ruling on the Appointments Clause Issue, *Financial Oversight and Management Board for Puerto Rico v. Aurelius Investment, LLC*, 590 U.S. 48 (2020) (No.18-1334), p. 20.

<sup>394</sup> *Downes v. Bidwell* 182 U.S. 244 (1901); *See also*: Brief for Financial Oversight and Management Board for Puerto Rico as Amici Curiae supporting the First Circuit’s Ruling on the Appointments Clause Issue, *Financial Oversight and Management Board for Puerto Rico v. Aurelius Investment, LLC*, 590 U.S. 48 (2020) (No.18-1334), p. 21.

<sup>395</sup> Brief for Financial Oversight and Management Board for Puerto Rico as Amici Curiae supporting the First Circuit’s Ruling on the Appointments Clause Issue, *Financial Oversight and Management Board for Puerto Rico v. Aurelius Investment, LLC*, 590 U.S. 48 (2020) (No.18-1334), p. 20; *See also*: Simeon E. Baldwin, The Constitutional Questions Incident to the Acquisition and Government by the United States of Island Territory, 12, no. 6, *Harvard Law Rev.* 393 (1899) <https://doi.org/10.2307/1321530>, p. 415.

<sup>396</sup> *Downes v. Bidwell*, 182 US 244 (1901), p. 306; *See also*: Brief for Financial Oversight and Management Board for Puerto Rico as Amici Curiae supporting the First Circuit’s Ruling on the Appointments Clause Issue, *Financial Oversight and Management Board for Puerto Rico v. Aurelius Investment, LLC*, 590 U.S. 48 (2020) (No.18-1334), p. 21.

<sup>397</sup> Brief for Financial Oversight and Management Board for Puerto Rico as Amici Curiae supporting the First Circuit’s Ruling on the Appointments Clause Issue, *Financial Oversight and Management Board for Puerto Rico v. Aurelius Investment, LLC*, 590 U.S. 48 (2020) (No.18-1334), p. 2; *See also*: US Census Bureau. “Quick Facts,

Congress reached an agreement to pass the *Foraker Act* in 1900, establishing a civil government obligated to federal authority in Puerto Rico under the understanding that it would not become a state.<sup>398</sup>

The testimony received by the Committee indicates that the Insular Cases have provided a justification for the continuation of unconstitutional practices.<sup>399</sup> Today, these practices would not withstand careful legal scrutiny.<sup>400</sup> The racist motivations and lack of support in constitutional text, structure, and history would make them a legal anomaly.<sup>401</sup> *Reid v. Covert* is an exception, with four of the justices describing territorial incorporation as a dangerous doctrine that undermines the government.<sup>402</sup>

### ***Territorial Status was Originally Understood to be Temporary***

The Territorial Clause of the Constitution, adopted in 1787, authorizes Congress to “dispose of,” or have discretion over, the territories.<sup>403</sup> At that moment in history, however, this power would have been understood to be temporary since, until the beginning of the 20th Century, the acquired territories were on a path to becoming states under *the Northwest Ordinance*.<sup>404</sup> The Territorial

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Puerto Rico.” July 2023 Population Estimates. <https://www.census.gov/quickfacts/fact/table/PR/PST045222> (accessed February 15, 2024).

<sup>398</sup> *Foraker Act of 1900*, Pub. L. No. 56-191, 31 Stat. 77, c. 191 (codified in scattered sections of 48 U.S.C.); *See also*: Brief for Financial Oversight and Management Board for Puerto Rico as Amici Curiae supporting the First Circuit’s Ruling on the Appointments Clause Issue, Financial Oversight and Management Board for Puerto Rico v. Aurelius Investment, LLC, 590 U.S. 48 (2020) (No.18-1334), p. 20.

<sup>399</sup> Adriel Cepeda Derieux & Rafael Cox Alomar, “Saying What Everyone Knows to be True: Why Stare Decisis is Not an Obstacle to Overruling the Insular Cases,” *Columbia Human Rights Law Rev*, Vol. 53:3. HRLR. p. 721, 771, May 2022. <https://hrlr.law.columbia.edu/hrlr/saying-what-everyone-knows-to-be-true-why-stare-decisis-is-not-an-obstacle-to-overruling-the-insular-cases/> (accessed on October 22, 2024); *See also*: Brief for Financial Oversight and Management Board for Puerto Rico as Amici Curiae supporting the First Circuit’s Ruling on the Appointments Clause Issue, Financial Oversight and Management Board for Puerto Rico v. Aurelius Investment, LLC, 590 U.S. 48 (2020) (No.18-1334), p. 15; *See also*: Christina D. Ponsa-Kraus, George Welwood Murray Professor of Legal History, Columbia Law School, Written Statement for the Briefing before the Puerto Rico Advisory Committee to the U.S. Commission on Civil Rights, June 4, 2024, at 3 (hereinafter Ponsa-Kraus Statement).

<sup>400</sup> *Ibid*.

<sup>401</sup> *Ibid*.

<sup>402</sup> *Reid v. Covert*, 354 US 1, 14 (1957); *See also*: Adriel Cepeda Derieux & Rafael Cox Alomar, “Saying What Everyone Knows to be True: Why Stare Decisis is Not an Obstacle to Overruling the Insular Cases,” *Columbia Human Rights Law Rev*, Vol. 53:3. HRLR. p. 721, 768, May 2022. <https://hrlr.law.columbia.edu/hrlr/saying-what-everyone-knows-to-be-true-why-stare-decisis-is-not-an-obstacle-to-overruling-the-insular-cases/> (accessed on October 22, 2024).

<sup>403</sup> US Const. art. IV, § 3, Clause 2.

<sup>404</sup> *An Ordinance for the Government of the Territory of the United States, Northwest of the Ohio River, Congressional Confederation (1787)*; *See also*: Martínez Román Testimony, Transcript 3, p. 10; *See also*: José Manuel Saldaña, testimony. Public Briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, Web Briefing, May 21, 2024, transcript 3. p. 22 (hereinafter cited as Transcript 3); *See also*: Cepeda Derieux Testimony, Transcript 3, p. 14; *See also*: César A. López Morales. “Making the Constitutional Case for Decolonization: Reclaiming the Original Meaning of the Territory Clause.” *Columbia Human Rights Law Rev*. Vol. 53:3. HRLR, p. 772, 799, May 2022. <https://hrlr.law.columbia.edu/hrlr/making-the-constitutional-case-for-decolonization-reclaiming-the-original-meaning-of-the-territory-clause/> (accessed October 22, 2024).

Clause does not authorize Congress to govern the territories indefinitely.<sup>405</sup> Furthermore, it does not allow Congress to govern indefinitely under racist ideologies without the participation of the people, a practice that changed with the Insular Cases and that has kept Puerto Rico trapped within an uncertain and degrading space.<sup>406</sup> Panelist Adriel Cepeda Derieux, Deputy Director of the Voting Rights Project at the American Civil Liberties Union, told the Committee that the democratic deficit that characterizes the relationship between the United States and Puerto Rico “has no parallel in the legal framework” of the country, and, unlike other shameful deficits in the history of the country – such as slavery – no steps have been taken to remedy this relationship.<sup>407</sup> The creation of the non-incorporation doctrine departs from more than a century of precedent and conflicts with the enumerated powers of government.<sup>408</sup>

### ***The Sociopolitical Context in the United States During the Annexation of Puerto Rico may have Greatly Influenced the Federal Government's Treatment of the Island***

The social and political context that the United States was experiencing at the time Puerto Rico was annexed may have influenced the federal government's treatment of the island.<sup>409</sup> Testimony indicates that from the time the Constitution was written through the Reconstruction era after the Civil War (roughly 1787 to 1877, before the Spanish-American War), there was an increase in faith in democracy and an expansion in access to the right to vote.<sup>410</sup> For example, state legislatures eliminated the requirement of owning property in order to vote.<sup>411</sup> When the Constitution was originally written, the right to vote was primarily restricted to White male property owners and

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<sup>405</sup> Martínez Román Testimony, Transcript 3, p. 10; *See also*: Adriel I. Cepeda Derieux, testimony. Public Briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, Web Briefing, May 21, 2024, transcript 3, p. 14 (hereinafter cited as Transcript 3); *See also*: César A. López Morales. “Making the Constitutional Case for Decolonization: Reclaiming the Original Meaning of the Territory Clause.” *Columbia Human Rights Law Rev.* Vol. 53:3. HRLR, p. 772, 792, May 2022. <https://hrlr.law.columbia.edu/hrlr/making-the-constitutional-case-for-decolonization-reclaiming-the-original-meaning-of-the-territory-claim/> (accessed October 22, 2024); *See also*: Carlos I. Gorrin Peralta. “The Law of the Territories of the United States in Puerto Rico, the Oldest Colony in the World,” *Rev.* 54(2), *University of Miami Inter-American L. Rev.* p. 33, 75, June 21, 2023. <https://repository.law.miami.edu/cgi/viewcontent.cgi?article=2663&context=umialr> (accessed October 21, 2024).

<sup>406</sup> Cepeda Derieux Testimony, Transcript 3, p. 14; *See also*: José Manuel Saldaña, President of Puerto Rico Statehood Project, p. 3. Written Statement submitted for Puerto Rico Advisory Committee to the United States Commission on Civil Rights Briefing, May 21, 2024 (cited herein after as Saldaña statement).

<sup>407</sup> Cepeda Derieux Testimony, Transcript 3, p. 14.

<sup>408</sup> U.S. Const. art. I, § 8; *See also*: Brief for Financial Oversight and Management Board for Puerto Rico as Amici Curiae supporting the First Circuit’s Ruling on the Appointments Clause Issue, *Financial Oversight and Management Board for Puerto Rico v. Aurelius Investment, LLC*, 590 U.S. 48 (2020) (No.18-1334), p. 3.

<sup>409</sup> Alexander Keyssar, testimony. Public Briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, Web Briefing, June 4, 2024, transcript 5, p. 4 (hereinafter cited as Transcript 5).

<sup>410</sup> Keyssar Testimony, Transcript 5, p. 4-5.

<sup>411</sup> Keyssar Testimony, Transcript 5, p. 4-5; *See also*: U.S. National Archives. “Road to the Voting Rights Act – Voting Rights from 1789 to 1869.” *The Reagan Library Education Blog.* March 29, 2022. <https://reagan.blogs.archives.gov/2022/03/29/road-to-the-voting-rights-act-voting-rights-from-1789-to-1869/#:~:text=These%20movements%20proved%20to%20be.before%20the%20Civil%20War%20began> (accessed October 21, 2024).

taxpayers.<sup>412</sup> In addition, three significant amendments to the Constitution were approved. The 13th Amendment abolished slavery in 1865 at the end of the Civil War.<sup>413</sup> The 14th Amendment, which, in its first clause, established that every person born or naturalized in the United States is a citizen and prohibited states from depriving citizens of the equal protection of the law within their jurisdictions.<sup>414</sup> When it was ratified, the citizenship clause of the 14th Amendment was directed toward people who had been enslaved, but has since generally instituted the concept of birthright citizenship.<sup>415</sup> The 15th Amendment, instituted in 1870, stated that the right to vote could not be denied to anyone because of race, color, or previous condition of servitude.<sup>416</sup>

Although the Constitutional convention briefly considered the adoption of a national voting rights law, it rejected this idea and gave authority over elections to the states.<sup>417</sup> The first Article of the Constitution states that the conduct of elections shall be the responsibility of state legislatures.<sup>418</sup> This individual state authority paved the way for discriminatory laws that limited voting access for certain members of the population, a practice that was expanded after Reconstruction.<sup>419</sup> Despite new amendments to the Constitution, states across the South implemented laws that restricted the voting rights of Black people, such as poll taxes and literacy requirements.<sup>420</sup> Northern states also used similar practices, like making voter registration more complicated for foreign-born and poor workers to vote.<sup>421</sup>

Racial divisions increased further in the years leading up to the Spanish–American War, when, in 1896, the Supreme Court ruled in favor of the United States in *Plessy v. Ferguson*.<sup>422</sup> This decision legalized racial segregation in the country and tested the “equal protection” principle of the 14th

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<sup>412</sup> Keyssar Testimony, Transcript 5, p. 4; *See also*: Torres McBride, Angelys. “The Evolution of Voting Rights in America.” National Constitution Center. May 27, 2021. <https://constitutioncenter.org/blog/the-evolution-of-voting-rights-in-america> (accessed October 21, 2024).

<sup>413</sup> United States Constitution (U.S. Const.), 13th Amendment, § 1.

<sup>414</sup> United States Constitution (U.S. Const.), 14th Amendment, § 1; *See also*: Keyssar Testimony, Transcript 5, p. 4-5.

<sup>415</sup> United States Constitution (U.S. Const.), 14th Amendment, § 1; *See also*: U.S. Congress. “Amendment 14.S1.1.1 Historical Background on Citizenship Clause.” Constitution Annotated.

[https://constitution.congress.gov/browse/essay/amdt14-S1-1-1/ALDE\\_00000811/](https://constitution.congress.gov/browse/essay/amdt14-S1-1-1/ALDE_00000811/) (accessed October 21, 2024).

<sup>416</sup> United States Constitution (U.S. Const.), 15th Amendment, § 1.

<sup>417</sup> *Federal Elections Bill of 1890*, H.R. 11045, 51<sup>st</sup> Cong. (1890); *See also*: Keyssar Testimony, Transcript 5, p. 5.

<sup>418</sup> United States Constitution (U.S. Const.) art. I, § IV.

<sup>419</sup> United States Constitution (U.S. Const.) art. I, § IV; *See also*: Library of Congress. “Voters and Voting Rights.” Presidential Elections and Voting in U.S. History. <https://www.loc.gov/classroom-materials/elections/voters/> (accessed October 22, 2024); *See also*: Keyssar Testimony, Transcript 5, p. 5.

<sup>420</sup> Keyssar Testimony, Transcript 5, p. 5; *See also*: Library of Congress. “African American Voting Rights.” Presidential Elections and Voting in U.S. History. <https://www.loc.gov/classroom-materials/elections/voters/african-americans/> (accessed October 22, 2024).

<sup>421</sup> Keyssar Testimony, Transcript 5, p. 5-6; *See also*: National Humanities Center. “Voter Suppression in the 19th Century North: The Other Disfranchisement and What It Tells Us About Voter Rights Today.” <https://nationalhumanitiescenter.org/education-material/voter-suppression-in-the-19th-century-north-the-other-disfranchisement-and-what-it-tells-us-about-voter-rights-today/> (accessed October 23, 2024).

<sup>422</sup> *Plessy v. Ferguson*, 163 U.S. 537 (1896).

Amendment.<sup>423</sup> Notably, several of the justices who participated in the *Plessy v. Ferguson* decision later participated in *Downes v. Bidwell*, one of the Insular Cases.<sup>424</sup>

Another relevant example of voter suppression from this era was the lack of access to voting for American women. In *Minor v. Happersett*, the Supreme Court ruled against a woman who was not allowed to register to vote.<sup>425</sup> She argued that she had been denied her rights under the 14th Amendment, and the Supreme Court unanimously found that the right to vote was not guaranteed under the 14th Amendment, stating that citizenship does not guarantee suffrage.<sup>426</sup>

After the Spanish-American War, the United States acquired Puerto Rico and other territories under these sociopolitical conditions and a bleak democratic environment. In this context, it became acceptable to deny the right to vote to people considered "inferior."<sup>427</sup> This was likely the worst moment for democracy in the country at that time, and it points to future restrictive policies imposed by the federal government toward Puerto Rico—such as the Foraker Act and the Insular Cases—that were consistent with the discriminatory practices that had emerged.<sup>428</sup>

### III. Preliminary Findings

**FINDING I - Puerto Rico's territorial relationship with the United States is the main limitation to obtaining the right to vote at the federal level.**

#### ***The Lack of Voting Rights at the Federal Level Excludes Puerto Rican Residents from Democratic Participation***

Article II of the U.S. Constitution outlines how the nation's president is elected; electors are appointed in each state based on the number of senators and representatives in Congress from each jurisdiction.<sup>429</sup> As a territory, Puerto Rico is not eligible to appoint electors and, as a result, cannot vote for president.<sup>430</sup> In addition, it has very limited representation in Congress, having only a Resident Commissioner in the House of Representatives who does not have the authority to vote in Congress plenary sessions.<sup>431</sup> According to testimony received by the Committee, Puerto Rico's territorial status has impeded the island's sovereignty and limited residents' participation in

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<sup>423</sup> *Plessy v. Ferguson*, 163 U.S. 537 (1896); *See also*: U.S. Constitution (U.S. Const.) 14th Amendment, § 1; *See also*: Keyssar Testimony, Transcript 5, p. 5.

<sup>424</sup> *Plessy v. Ferguson*, 163 U.S. 537 (1896); *See also*: *Downes v. Bidwell*, 182 U.S. 244, 244 & n.1 (1901).

<sup>425</sup> *Minor v. Happersett*, 88 U.S. 162 (1874); *See also*: Keyssar Testimony, Transcript 5, p. 6.

<sup>426</sup> *Minor v. Happersett*, 88 U.S. 162 (1874), p. 88 U.S. 178; *See also*: Keyssar Testimony, Transcript 5, p. 6.

<sup>427</sup> Keyssar Testimony, Transcript 5, p. 6.

<sup>428</sup> *Foraker Act of April 12, 1900*, 31 Statute 77, c. 191, 48 United States Code Annotated (USC) § 731; *See also*: Keyssar Testimony, Transcript 5, p. 4, 6.

<sup>429</sup> United States Constitution (U.S. Const.) art. II, § 1.

<sup>430</sup> *Ibid*.

<sup>431</sup> 48 USC § 891.

decisions that impact their lives.<sup>432</sup> Excluded from democratic participation in the United States by the lack of voting rights at the federal level, Puerto Rico does not have the same rights as U.S. citizens in the states or residents of an independent nation.<sup>433</sup>

Panelist Dr. Michael González-Cruz, Professor of Social Sciences at the University of Puerto Rico, Mayagüez Campus, quoted historian Ernest Renan in describing this situation as a “daily plebiscite” in which “colonized peoples do not have the sovereignty required to produce the goods and services their citizens need to validate their most basic human rights.”<sup>434</sup> In her written testimony, Dr. Christina Ponsa-Kraus, George Welwood Murray Professor of Legal History at Columbia University Law School, described the denial of the federal vote as an indefensible action that represents a profound violation of citizen equality and is the basic premise of a democratic government.<sup>435</sup>

Panelist Cepeda Derieux stated that the lack of representation in the federal government, coupled with the establishment through the Insular Cases that only fundamental rights apply to Puerto Rico, has created the feeling that “the rights of the United States Bill of Rights are for others, not for the residents of Puerto Rico.”<sup>436</sup> In a brief submitted to the Committee, panelist Professor Carlos Gorrín Peralta, Professor of Constitutional Law at the Interamerican University of Puerto Rico, stressed that the federal government is not a government for the people of Puerto Rico since they are subject to the application of laws by entities over which they have no nominal participation.<sup>437</sup> Dr. Ponsa-Kraus shared that electoral representation will not solve all the problems in Puerto Rico or anywhere else.<sup>438</sup> Still, it does solve the lack of power in the legislative processes that affect the lives of all people and is a basic requirement of a legitimate and responsible government.<sup>439</sup> Dr. Ponsa-Kraus said, this “achievement would finally eliminate the rot at the core of Puerto Rico’s relationship with the United States and open the door to a new relationship based on citizen equality and sovereignty under statehood, or equality as a separate and sovereign nation under independence.”<sup>440</sup>

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<sup>432</sup> González-Cruz Testimony, Transcript 3, p. 6; *See also*: Martínez Román Testimony, Transcript 3, p. 9.

<sup>433</sup> United States Constitution (U.S. Const.) art. II, § 1; *See also*: González-Cruz Testimony, Transcript 3, p. 6; *See also*: Saldaña Testimony, Transcript 3, p. 25.

<sup>434</sup> González-Cruz Testimony, Transcript 3, p. 8; *See also*: Renan, Ernest. *What is a Nation?* (New York, Columbia University Press, 1882.) <https://doi.org/10.7312/rena17430> (accessed August 13, 2024).

<sup>435</sup> Ponsa-Kraus Statement, at 1.

<sup>436</sup> Cepeda Derieux Testimony, Transcript 3, p. 16.

<sup>437</sup> Gorrín Peralta, Carlos I. “Puerto Rico and the United States at the Crossroads,” in *Reconsidering the Insular Cases: The Past and Future of the American Empire* (Gerald Neuman & Tomiko Brown-Nagin eds., Harvard Univ. Press 2015) <https://doi.org/10.2307/j.ctvjz81gw>.

<sup>438</sup> Ponsa-Kraus Statement, at 1.

<sup>439</sup> *Ibid.*

<sup>440</sup> Ponsa-Kraus Statement, at 4.

## ***The Lack of Democratic Participation in Puerto Rico is Due to the Colonial Relationship with the United States***

Some panelists agreed that this lack of democratic participation resulted from the colonial relationship between Puerto Rico and the United States and the lack of application of all constitutional rights, including the deprivation of the federal vote.<sup>441</sup> It is important to note that Puerto Rico does not have the right to the federal vote because it is not a state, not because it is an incorporated or unincorporated territory.<sup>442</sup> According to panelist Cepeda Derieux, “It is not understood whether Puerto Rico could have federal representation even if Congress were to say tomorrow that it is now an incorporated territory. Puerto Rico is where 37 other territories were before being admitted as states.”<sup>443</sup>

Even if the distinction between incorporated and unincorporated territories is eliminated, Congress’ plenary powers and its ability to continue discriminating against Puerto Rico remain intact.<sup>444</sup> Panelist Dr. Rafael Cox Alomar, Attorney and Professor of Law at the UDC David A. Clarke School of Law, explained that “as long as Puerto Rico is a territory, whether incorporated or unincorporated, Congress will continue to exercise its plenary powers under the Territorial Clause to treat Puerto Rico differently than the states in the allocation of federal funds, among other things, as long as there is a rational basis to justify the unequal treatment.”<sup>445</sup> Dr. Cox Alomar summarized: “Even if the Insular Cases were abolished, our colonial problem would remain intact.”<sup>446</sup>

Cepeda Derieux shared the example of the federal district of Washington DC, which, in not being a state, needed a federal constitutional amendment so that its residents could vote for president.<sup>447</sup> The Constitution authorized the creation of an area “not exceeding 10 miles square” that would not be a state to serve as the federal district.<sup>448</sup> Washington D.C. residents have not had federal representation and pro-statehood bills have called for the federal district to be even more limited to an area including only the White House, Congress, and other federal buildings since they have

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<sup>441</sup> Martínez Román Testimony, Transcript 3, p. 27-28; *See also*: Gorrín Peralta Testimony, Transcript 5, p. 12.

<sup>442</sup> Cepeda Derieux Testimony, Transcript 3, p. 14-15.

<sup>443</sup> Cepeda Derieux Testimony, Transcript 3, p. 15.

<sup>444</sup> Rafael Cox Alomar, testimony. Public Briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, Web Briefing, June 4, 2024, transcript 5, p. 8 (hereinafter cited as Transcript 5).

<sup>445</sup> United States Constitution (U.S. Const.) art. IV, § 3; *See also*: Cox Alomar Testimony, Transcript 5, p. 8; *See also*: Ponsa-Kraus Statement, at 3.

<sup>446</sup> Cox Alomar Testimony, Transcript 5, p. 7-8.

<sup>447</sup> United States Constitution (U.S. Const.), 23rd Amendment, § I; *See also*: Cepeda Derieux Testimony, Transcript 3, p. 15.

<sup>448</sup> United States Constitution (U.S. Const.) art. I, § VIII; *See also*: Cepeda Derieux Testimony, Transcript 3, p. 20; *See also*: CORRECTED Carlos I. Gorrín Peralta. “Voto presidencial en Puerto Rico: ¿Otra vez?” Vol. 1:2 AMICUS Rev. Pol. Pub. & Leg. UIPR 130, p. 130, 133, (May 2018). <https://www.derecho.inter.edu/wp-content/uploads/2019/05/AMICUS-VoI-Num2-Final.pdf> (accessed October 30, 2024).

no residential population.<sup>449</sup> This example demonstrated that the title of “incorporated” or “non-incorporated” did not impact the outcome and that the Insular Cases have been an obstacle to a democratic resolution in Puerto Rico.<sup>450</sup>

### ***The Constitution Excludes Territories from the Right to Vote***

The Committee heard testimony on the paradox of how several sections of the Constitution implement federal voting rights for the states while excluding citizens in the territories. Panelist Dr. Luis Fuentes-Rohwer, Professor of Law at the Maurer School of Law at Indiana University, Bloomington, reviewed the relevant sections of the Constitution on states’ rights in federal elections. The second section of Article I states that “The House of Representatives shall be composed of Members chosen every second year by the people of the several States.”<sup>451</sup> Regarding electors, Dr. Fuentes-Rohwer explained that Article II states that “Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors equal to the total number of Senators and Representatives that to which the State may be entitled in Congress” and shared these examples to emphasize how the language of the Constitution clearly applies only to the states.<sup>452</sup>

This exclusion exists in the Constitution's amendments as well. The 14th Amendment, for example, speaks to the rights of American citizens and says that no state may deprive any person of life, liberty, and property without due process of law, and may not deny the equal protection of the laws.<sup>453</sup> The emphasis on states raises the question of how these protections apply to territories.

Panelist Dr. Alexander Keyssar, Matthew W. Stirling, Jr. Professor of History and Social Policy at Harvard University's John F. Kennedy School of Government, explained that the 14th and 15th Amendments to the Constitution were the first interventions by the federal government to define the scope of suffrage and, although they did not confer the right to vote upon anyone specifically, they specified that the right to vote could not be denied or abridged ‘on account of race, color, or previous condition of servitude.’<sup>454</sup> He further explained that even with these amendments, African Americans in the Southern U.S. faced obstacles in accessing the right to vote after the Civil War.<sup>455</sup> Even though the Supreme Court established that the right to vote is a fundamental right in a free and democratic society, the testimony indicated that this was not considered in a way that could

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<sup>449</sup> Washington, D.C. Admission Act, H.R. 51, 117th Cong. (2021); *See also*: Cepeda Derieux Testimony, Transcript 3, p. 20.

<sup>450</sup> Cepeda Derieux Testimony, Transcript 3, p. 15.

<sup>451</sup> United States Constitution (U.S. Const.) art. I, § II; *See also*: Luis Fuentes-Rohwer, testimony. Public Briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, Web Briefing, June 4, 2024, transcript 5, p. 15 (hereinafter cited as Transcript 5).

<sup>452</sup> United States Constitution (U.S. Const.) art. II, § II; *See also*: Fuentes-Rohwer Testimony, Transcript 5, p. 15.

<sup>453</sup> United States Constitution (U.S. Const.), 14th Amendment, § I; *See also*: Fuentes-Rohwer Testimony, Transcript 5, p. 16.

<sup>454</sup> United States Constitution (U.S. Const.) 14th and 15th Amendments; *See also*: Keyssar Testimony, Transcript 5, p. 5.

<sup>455</sup> Keyssar Testimony, Transcript 5, p. 5.

benefit Puerto Rico.<sup>456</sup> Dr. Fuentes-Rohwer mentioned that the federal law UOCAVA (“*Uniformed and Overseas Citizens Absentee Voting Act*”), which allows voting for military personnel and citizens abroad, includes Puerto Rico and the other territories within its definition of “state,” but it is not considered a state for federal voting rights.<sup>457</sup> This lack of clarity keeps Puerto Rico in limbo, where it does not have access to the fundamental right to vote at the federal level while its residents are U.S. citizens.

**FINDING II—The Committee heard testimony on strategies for making Puerto Rico a priority at the federal level since the country's current treatment of the island goes against its fundamental principles.**

***Strategies Congress Can Take to Drive Action on Puerto Rico***

Panelists argued that Congress can use several strategies to influence other entities with the authority to implement laws. One of them, according to panelist Eduardo Bhatia Gautier, former President of the Senate of Puerto Rico and John L. Weinberg/Goldman Sachs & Co. Visiting Professor at the School of Public and International Affairs at Princeton University, would be to act at the congressional level to pressure the Supreme Court to reconsider previous determinations. He said, “Congress has the responsibility not to wait for the Supreme Court to repeal, it has the responsibility to address these issues of the Insular Cases and make it clear that this doctrine should not be the supreme law of the United States.”<sup>458</sup> Panelists commented that there is only legislative action on public policy when there is a crisis; otherwise, nowadays, bills are approved very slowly.<sup>459</sup> This stalemate has become more common within such a polarized political environment, but even so, affirmative actions by Congress are significant.<sup>460</sup> Panelist Dr. Keyssar shared his impression of this impasse:

“There is a serious concern that if Puerto Rico had electoral votes, those votes would go to the Democratic Party, and right now they are fighting over every possible electoral vote. But the point is to make clear the inconsistency of our practice with our values and to keep pushing that point, year after year, until a

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<sup>456</sup> *Yick Wo vs. Hopkins*, 118 U.S. 356, 370 (1886); *See also: Reynolds vs. Sims*, 377 U.S. 533, 554 (1964); *See also: Fuentes-Rohwer Testimony*, Transcript 5, p. 15-16.

<sup>457</sup> 52 USC Ch. 203, §20310(6); *See also: Congressional Research Service. “Absentee Voting for Uniformed Services and Overseas Citizens: Roles and Process, In Brief.”* September 4, 2020. <https://crsreports.congress.gov/product/pdf/IF/IF11642> (accessed August 13, 2024); *See also: Fuentes-Rohwer Testimony*, Transcript 5, p. 16–17.

<sup>458</sup> Eduardo Bhatia Gautier, testimony. Public Briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, Web Briefing, May 30, 2024, transcript 4. p. 16 (hereinafter cited as Transcript 4).

<sup>459</sup> Bhatia Gautier Testimony, Transcript 4, p. 17.

<sup>460</sup> Kenneth Davison McClintock-Hernandez, testimony. Public Briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, Web Briefing, May 30, 2024, transcript 4. p. 16 (hereinafter cited as Transcript 4).

political moment presents itself where we can mobilize behind that and get something done.”<sup>461</sup>

### ***The Importance of Strengthening Alliances with a Diversity of Coalitions Across the Country***

Panelists suggested that members of Congress should take the initiative to foster alliances with coalitions focused on a variety of issues to elevate Puerto Rico on the national agenda.<sup>462</sup> Bhatia Gautier emphasized that the number of Hispanic members of Congress has grown dramatically in the last twenty years, which could create the opportunity to place the issue of Puerto Rico more consistently on the agenda.<sup>463</sup> Despite the stereotype that Hispanics are primarily concerned with immigration, and Puerto Rico is inserted into the Hispanic demographic of the United States, Bhatia Gautier argued that Puerto Rico can insert itself into this and other issues effectively to advance the discussion on the challenges it faces from numerous angles.<sup>464</sup>

To be even more effective, panelists commented that Puerto Rico should create partnerships at the local level across the country, not just with stakeholders in Washington D.C., to identify common challenges.<sup>465</sup> Although local challenges may vary, there are issues in each place where alliances, unity, and brotherhood can be established.<sup>466</sup> It would be important to collaborate in bringing these issues forward, thus integrating the problems that Puerto Rico faces as a territory.<sup>467</sup> In addition, they commented that more communication with the other territories is needed to strengthen the case for the rights of the territories.<sup>468</sup> Bhatia Gautier stated, “I do believe that Puerto Rico has many spheres, many places where it could join forces and create alliances that are not being created at this time.”<sup>469</sup>

### ***The Treatment of Puerto Rico is in Conflict with the Fundamental Principles of the United States***

Panelists agreed that the treatment of Puerto Rico by the federal government goes against the United States's fundamental principles. Current practices are completely inconsistent with the formal and proclaimed values of the United States as a country, especially when it likes to see itself as the oldest democracy in the world and as a great defender of political rights at the international level.<sup>470</sup> Panelist Dr. Adi Martínez Román, Co-Founder and Co-Director of the

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<sup>461</sup> Keyssar Testimony, Transcript 5, p. 31-32.

<sup>462</sup> McClintock-Hernandez Testimony, Transcript 4, p. 18.

<sup>463</sup> Bhatia Gautier Testimony, Transcript 4, p. 19-20; *See also*: Congressional Hispanic Caucus. “Members.” <https://chc.house.gov/members> (accessed August 13, 2024).

<sup>464</sup> Bhatia Gautier Testimony, Transcript 4, p. 19-20.

<sup>465</sup> Bhatia Gautier Testimony, Transcript 4, p. 21-22.

<sup>466</sup> McClintock-Hernandez Testimony, Transcript 4, p. 23.

<sup>467</sup> Bhatia Gautier Testimony, Transcript 4, p. 21-22.

<sup>468</sup> *Ibid.*

<sup>469</sup> *Ibid.*

<sup>470</sup> Keyssar Testimony, Transcript 5, p. 31-32; Philip Alston, “Statement on Visit to USA” (by UN Special Rapporteur on Extreme Poverty and Human Rights) December 15, 2017 <https://www.ohchr.org/en/statements/2017/12/statement-visit-usa-professor-philip-alston-united-nations-special-rapporteur> (accessed October 22, 2024).

organization Right to Democracy, referred to the country's Declaration of Independence and its focus on the role of the people within governance.<sup>471</sup> "That is something that is at the root of the very founding of the United States because they recognized that importance [of public participation]," Dr. Martínez Román shared.<sup>472</sup> Similarly, Cepeda Derieux argued "That foundation, that the government derives its power from the governed, is the premise from which the United States Constitution is based on. By suggesting that a people can be governed indefinitely, without their consent, and by doing so for decidedly racist reasons, the Insular Cases remain a stain on federal jurisprudence."<sup>473</sup>

The Insular Cases have allowed for a blatant denial of the territories' capacity for self-determination and are gravely inconsistent with U.S. ideology.<sup>474</sup> In her written testimony, Dr. Ponsa-Kraus explained "The fundamental essence of voting representation within a democratic society is to ensure that citizens of that society have a clear voice, choice, and opportunity to participate in democratic deliberation and decision-making. The denial of voting representation subverts the very essence of democracy."<sup>475</sup>

### ***Treating Puerto Rican Residents as Second-class Citizens***

Panelists also discussed the federal government's treatment of Puerto Rican residents as "second-class citizens" in which the island's issues are not prioritized, even though the United States is considered the most democratic country in the world.<sup>476</sup> Professor Kenneth Davison McClintock-Hernández, former Secretary of State of Puerto Rico, Senior Public Policy Advisor at POLITANK\*, and Adjunct Professor at Interamerican University and EDP University, argued before the Committee that citizenship itself is unique and not second-class. He commented that "the locality is second-class in terms of not being allowed to exercise a function."<sup>477</sup>

The Amici Curiae legal brief in *US v. Vaello Madero* (2022), emphasized that none of the territories are inhabited by a White, non-Hispanic majority, while most of the states do have a White, non-Hispanic majority population. It is argued that the fact that Congress treats regions of the country with a majority Black population differently should not be ignored.<sup>478</sup> The Amici Curiae highlights that in Puerto Rico specifically, over 99% of the population is of Hispanic origin and that residents of all territories have been subject to race-based discrimination.<sup>479</sup>

Dr. Ponsa-Kraus commented in her written testimony that the denial of federal voting rights in Puerto Rico creates a structural relationship of subordination between the island and the United

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<sup>471</sup> United States Declaration of Independence, 1776; *See also*: Martínez Román Testimony, Transcript 3, p. 10.

<sup>472</sup> Martínez Román Testimony, Transcript 3, p. 10.

<sup>473</sup> Cepeda Derieux Testimony, Transcript 3, p. 13.

<sup>474</sup> Carlos I. Gorrín Peralta, "Historical Analysis of the Insular Cases: Colonial Constitutionalism Revisited." 56, *Revista del Colegio de Abogados de Puerto Rico*, p. 31, 50, 1995.

<sup>475</sup> Ponsa-Kraus Statement, at 3.

<sup>476</sup> Bhatia Gautier Testimony, Transcript 4, p. 14-15.

<sup>477</sup> McClintock-Hernández Testimony, Transcript 4, p. 15.

<sup>478</sup> *United States v. Vaello Madero*, 596 U.S. \_\_\_\_ (2022). No. 20-303. Amici Curiae Brief.

<sup>479</sup> *Ibid*.

States that imposes second-class citizenship in an offensive way and reinforces the inferiority of an entire people on a daily basis.<sup>480</sup> She writes that this rejection leads to the denial of other civil rights.<sup>481</sup>

**FINDING III – Despite not having the right to vote at the federal level, Puerto Rico has authority over its local elections.**

*The Constitution of Puerto Rico Authorizes Local Elections*

Despite the lack of voting rights at the federal level, Puerto Rico is responsible for its elections at the local level, which are not affected by the U.S. Constitution.<sup>482</sup> This right was established as part of the Constitution of Puerto Rico.<sup>483</sup> The Constitution includes the Bill of Rights and the responsibilities of local governments. Although citizenship was declared a matter for the federal government, the right to vote operates separately and is determined largely by law at the state level.<sup>484</sup>

*The Role of the Resident Commissioner*

Federal law allows Puerto Rico to elect a Resident Commissioner to the United States House of Representatives every four years, but this person cannot vote in the House, only within the Committees of which they are a member.<sup>485</sup> The Resident Commissioner represents more than three million residents of Puerto Rico, while, by comparison, this same population would require at least four representatives in any of the states.<sup>486</sup> Furthermore, by not being able to vote in Congress, they have limited influence in negotiating legislation.<sup>487</sup> The Resident Commissioner advocates for the inclusion of Puerto Rico in the allocation of federal programs, an area which also lacks parity compared with the states.<sup>488</sup> Furthermore, there is no counterpart to the Resident Commissioner in the United States Senate, a body that does not include any representation for Puerto Rico or the other territories.<sup>489</sup>

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<sup>480</sup> Ponsa-Kraus Statement, at 1.

<sup>481</sup> Ponsa-Kraus Statement, at 2.

<sup>482</sup> Cepeda Derieux Testimony, Transcript 3, p. 15, 27.

<sup>483</sup> Puerto Rico Const. art. VI, sec. IV.

<sup>484</sup> Keyssar Testimony, Transcript 5, p. 4; *See also*: National Constitution Center. “The Citizenship Clause.” <https://constitutioncenter.org/the-constitution/articles/amendment-xiv/clauses/700> (accessed August 28, 2024).

<sup>485</sup> 48 USC §891; *See also*: U.S. Const. Art. I, sec. II; *See also*: Saldaña Testimony, Transcript 3, p. 24.

<sup>486</sup> Ponsa-Kraus Statement, at 1.

<sup>487</sup> *Ibid*.

<sup>488</sup> *Ibid*.

<sup>489</sup> Ponsa-Kraus Statement, at 1-2; *See also*: McClintock-Hernández Testimony, Transcript 4, p. 8-9.

### ***Other Public Positions in Local Government***

Notably, Puerto Rico's lack of representation in the Senate also means it is not represented in the selection of federal judges, who make many important decisions that affect the island.<sup>490</sup> Professor McClintock Hernández explained that there is no debate about this in Puerto Rico and argues that “we have become a submissive people, who beyond saying that we are pro-independence or pro-freestate or pro-statehood, we do not really discuss the negative impact of not being able to participate in the election of these officials.”<sup>491</sup>

Panelists highlighted the issue of electoral equality. They argue that Puerto Rican residents should have a say in their representation and the actions taken regarding pressing issues, such as climate change.<sup>492</sup> They also argue that the right to an “equal, direct, and secret” vote, as described in the Puerto Rican Constitution, is at risk under the PROMESA law. They consider it an imposition of Congress's plenary powers on the island.<sup>493</sup> Furthermore, any amendment that could be made to the Puerto Rican Constitution must be compatible with the United States Constitution.<sup>494</sup>

### ***The Centralization of the Federal Government has Alienated Puerto Rico's Voice and Participation***

Panelists spoke about the centralization of the federal government and how this has alienated the voice of Puerto Rican residents. Bhatia Gautier spoke about how the federal government has left federalism behind and has made important decisions based in the nation's capital that are applicable in each state and territory in a unitary manner.<sup>495</sup> He stated:

“The will of the people of Puerto Rico is not reflected anywhere there. That was not the idea in 1952; it could not be the idea, and that cannot be the plan for democratic political development for Puerto Rico. What changed dramatically here in the last 65 years was the way the United States governs all its states. This is an assertion that I do not make only about the territories, but the difference is that the states of the United States have representation in Congress.”<sup>496</sup>

This has led to a decline in democracy for jurisdictions such as the territories, which do not have federal representation.<sup>497</sup>

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<sup>490</sup> McClintock-Hernandez Testimony, Transcript 4, p. 9; *See also*: United States Courts. “FAQs: Federal Judges.” <https://www.uscourts.gov/faqs-federal-judges> (accessed September 13, 2024).

<sup>491</sup> McClintock-Hernandez Testimony, Transcript 4, p. 9.

<sup>492</sup> McClintock-Hernandez Testimony, Transcript 4, p. 12.

<sup>493</sup> Puerto Rico Const. art. II, sec. II; *See also*: 48 U.S. Code Chapter 20; *See also*: Cox Alomar Testimony, Transcript 5, p. 7.

<sup>494</sup> Puerto Rico Const. art. VII, sec. III; *See also*: Gorrín Peralta Testimony, Transcript 5, p. 27-28.

<sup>495</sup> Bhatia Gautier Testimony, Transcript 4, p. 5, 6.

<sup>496</sup> Bhatia Gautier Testimony, Transcript 4, p. 6.

<sup>497</sup> Bhatia Gautier Testimony, Transcript 4, p. 6-7.

**FINDING IV - The Committee heard testimony on the debate concerning the different visions of American citizenship and Puerto Rican cultural identity.**

***Limitations of Centralized Government and the Concept of Territorial Autonomy***

Panelists discussed the fact that Puerto Rico's options for its future status exist within a framework in which the United States has not been flexible in creating official spaces for ethnic groups and territorial enclaves.<sup>498</sup> Bhatia Gautier told the Committee: “Contrary to the experiences of other countries, which have opened important and valuable spaces with their political enclaves, the polarized reality and internal political struggles of the United States do not allow the opportunity to create democratic institutions outside of being a federated state.”<sup>499</sup> Bhatia Gautier referred to enclaves in Scotland, Spain, Canada, and Ireland and pointed out how these places have survived conflicts, problems of identity and democracy and have managed to ensure that all residents have representation—something that is lacking in Puerto Rico.<sup>500</sup> “At the height of the 21st Century, none of these communities face the inflexibility, intransigence, and rigidity that the United States federal government has shown towards its territories,” said Bhatia Gautier.<sup>501</sup>

This concept, also known as territorial autonomy, has emerged as a form of decentralization following a rejection of uniform models of government which allows a region to organize its affairs without interference from the central government and to empower its minority population.<sup>502</sup> Territorial autonomy exists in several forms, including democratic autonomy – achieved through voting (e.g., Quebec and Scotland) – and post-conflict autonomy, achieved through peace agreements (i.e., Northern Ireland).<sup>503</sup> The characteristics of territorial autonomy include self-government and a defined territory with its own borders, symbols, and policies.<sup>504</sup> Territorial autonomy is an evolving institution about which there is little knowledge and has been analyzed from different academic perspectives with a focus on the West.<sup>505</sup> The literature indicates that the case of Puerto Rico, long considered under the colonial framework, shares several important characteristics with the concept of democratic territorial autonomy.<sup>506</sup>

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<sup>498</sup> Bhatia Gautier Testimony, Transcript 4, p. 4.

<sup>499</sup> Bhatia Gautier Testimony, Transcript 4, p. 7.

<sup>500</sup> Ibid.

<sup>501</sup> Ibid.

<sup>502</sup> Barter, Shane Joshua. “Understanding Self-Government: Varieties of Territorial Autonomy.” *Journal of Autonomy and Security Studies*. 8(1) 2024, 6-30. DOI: <https://doi.org/10.61199/jass.142991> (accessed October, 21, 2024).

<sup>503</sup> Ibid.

<sup>504</sup> Ibid.

<sup>505</sup> Ibid.

<sup>506</sup> Ibid.

## ***The Role of Language in American Citizenship and Inclusion and the Significance for Puerto Rico***

The Committee received testimony on how the United States addresses language and cultural diversity issues. The United States has never had an official language.<sup>507</sup> Despite legislative efforts to amend the Constitution, the reality is that English functions as the national language.<sup>508</sup> By comparison, at the local level, Puerto Rico has declared both English and Spanish as official languages on the Island, and they can be used interchangeably throughout the government.<sup>509</sup> The Equal Protection Clause under the 14th Amendment to the United States Constitution protects people on the basis of race, ancestry, national origin, or ethnicity; the rights of racial and ethnic minorities must be protected in order to fulfill civil rights purposes.<sup>510</sup> Although the term “national origin” is found in the Constitution and the Civil Rights Act of 1964, it has been argued that the term should be amended and defined to include “language” as one of the protected classes because it is currently unclear what language practices are included under “national origin.”<sup>511</sup>

Professor Gorrín Peralta spoke about the start of the bilingual education movement during the 1960s and 1970s in the United States.<sup>512</sup> This movement was intended to protect cultural minorities and create a melting pot of cultures so that immigrants could learn English quickly and assimilate into American society.<sup>513</sup> Bilingual education has several meanings. On the one hand, it has a bilingual-bicultural approach that includes the study of the history and culture of the student's native language, and on the other hand, it uses the native language for the purpose of a swift and effective transition to the English language and American culture.<sup>514</sup> In 1967, the Bilingual Education Act was passed, and it was the first time that Congress recognized the importance of bilingual education.<sup>515</sup> In 1978, one of several amendments to the act was made to support educational opportunities for children with limited English proficiency to learn the language

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<sup>507</sup> Faingold, Eduardo D. “Language Rights and the Law in the United States and the Territories”. Lexington Books. 2018, p. 8; *See also*: Raúl Serrano Geys, Raúl, Carlos I. Gorrín Peralta. “Puerto Rico y la estadidad: Problemas constitucionales”. Vol. 40. Revista del Colegio de Abogados de Puerto Rico, p. 3. 1979. *Note*: English was declared the official language of the United States on March 1, 2025, after the Committee approved the text of this memorandum. *See*: Executive Office of the President, “Designating English as the Official Language of the United States.” Executive Order 14224 of March 1, 2025 <https://www.federalregister.gov/documents/2025/03/06/2025-03694/designating-english-as-the-official-language-of-the-united-states>.

<sup>508</sup> *Ibid*.

<sup>509</sup> PR Title I, Chapter V, §59; *See also*: Faingold, Eduardo D. “Language Rights and the Law in the United States and the Territories”. Lexington Books. 2018, p. 19, 22-23.

<sup>510</sup> Constitution of the United States (U.S. Const.) amend. XIV, § I; *See also*: Faingold, Eduardo D. “Language Rights and the Law in the United States and the Territories”. Lexington Books. 2018, p. 29.

<sup>511</sup> Constitution of the United States (U.S. Const.) amend. XIV, § I; *See also*: Civil Rights Act of 1964, Pub.L. 88-352, 78 Stat. 241 (1964); *See also*: Faingold, Eduardo D. “Language Rights and the Law in the United States and the Territories”. Lexington Books. 2018, p. 63.

<sup>512</sup> Gorrín Peralta Testimony, Transcript 5, p. 24-25.

<sup>513</sup> *Ibid*.

<sup>514</sup> Raúl Serrano Geys, Raúl, Carlos I. Gorrín Peralta. “Puerto Rico y la estadidad: Problemas constitucionales”. Vol. 40. Revista del Colegio de Abogados de Puerto Rico, p. 8. 1979.

<sup>515</sup> Pub.L. 90-247; *See also*: Raúl Serrano Geys, Raúl, Carlos I. Gorrín Peralta. “Puerto Rico y la estadidad: Problemas constitucionales”. Vol. 40. Revista del Colegio de Abogados de Puerto Rico, p. 7. 1979.

through their own language and culture.<sup>516</sup> For Professor Gorrín Peralta, these advances were not necessarily due to respect for cultural diversity, but rather as an effort to separate people from their nationality so that they could become part of the “melting pot of cultures.”<sup>517</sup>

It was during this period of bilingual education proliferation that voting access for citizens with limited English proficiency expanded. Notably, the Voting Rights Act of 1965, as amended in 1975, prohibits any citizen from being denied the right to vote for failure to comply with a “test or device” in a federal or state election and expands protections for persons with limited English proficiency in elections.<sup>518</sup>

It has been argued that the Spanish language will continue to be fundamental to the future of Puerto Rico even if there is a change in its status, as debated during the Congressional plebiscite hearings in 1989.<sup>519</sup> At that time, Congressman J. Bennett Johnston said it would be best to leave the language issue out of the bill to avoid attempts to reinforce English as the official language. By including it, Puerto Rico would be interpreted as insisting on separatism due to its cultural differences.<sup>520</sup>

### ***Panelists Expressed Pessimism on there being Interest in Multinationalism in the United States***

Aside from its cultural and linguistic differences, the Committee heard testimony about the difficulties Puerto Rico may face by not having enough collaborators to develop alternative options to territorial status, such as multinationalism. Panelists shared that the territories are challenged by the lack of political space or allies to prioritize arguments for their struggles. Bhatia Gautier commented that it would be ideal to diversify how the issue of Puerto Rico is understood in the United States, saying:

“The vast majority believes that either Puerto Rico becomes a state of the union or becomes an independent republic. The focus of this discussion, however, is the citizenship of the United States as well as the cultural identity of Puerto Rico and the other territories. Other countries were able to reconcile both things. In the scenario of opportunities given to Puerto Rico, it does not appear...The agenda,

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<sup>516</sup> Pub.L. 90-247, amended in 1978; *See also*: Raúl Serrano Geyls, Raúl, Carlos I. Gorrín Peralta. “Puerto Rico y la estadidad: Problemas constitucionales”. Vol. 40. Revista del Colegio de Abogados de Puerto Rico, p. 10. 1979.

<sup>517</sup> Gorrín Peralta Testimony, Transcript 5, p. 24-25.

<sup>518</sup> Pub.L. 89-110, as amended in 1975; *See also*: Raúl Serrano Geyls, Raúl, Carlos I. Gorrín Peralta. “Puerto Rico y la estadidad: Problemas constitucionales”. Vol. 40. Revista del Colegio de Abogados de Puerto Rico, p. 22. 1979.

<sup>519</sup> Gorrín Peralta Testimony, Transcript 5, p. 24-25; *See also*: United States Senate. “Hearings before the Committee on Energy and Natural Resources. 101st Congress. First Session on S. 710, S. 711, and S. 712 To provide a Referendum on the Political Status of Puerto Rico. June 1 and 2, 1989. Part 1.”

[https://www.google.com/books/edition/\\_/Z040AAAIAAJ?hl=en&gbpv=1](https://www.google.com/books/edition/_/Z040AAAIAAJ?hl=en&gbpv=1) (accessed August 14, 2024).

<sup>520</sup> United States Senate. “Hearings before the Committee on Energy and Natural Resources. 101st Congress. First Session on S. 710, S. 711, and S. 712 To provide a Referendum on the Political Status of Puerto Rico. June 1 and 2, 1989. Part 1.” [https://www.google.com/books/edition/\\_/Z040AAAIAAJ?hl=en&gbpv=1](https://www.google.com/books/edition/_/Z040AAAIAAJ?hl=en&gbpv=1) (accessed August 14, 2024).

therefore, is to explore the importance of political representation at the federal level for the national enclaves.”<sup>521</sup>

For Bhatia Gautier, this would be important for all territories to strengthen national unity and democracy.<sup>522</sup> However, panelists discussed how these ideas do not enter the current political debate. Dr. Cox Alomar said:

“American liberals fundamentally believe that Puerto Rico is subsumed within the American whole. The liberal movement in the United States ironically does not recognize that Puerto Rico is a sociologically defined nation. Through this, they are benevolently applying American exceptionalism.”<sup>523</sup>

Professor Gorrín Peralta does not believe that a multinational federation can exist because, in his opinion, the United States does not accept multinational diversity.<sup>524</sup> According to Dr. Keyssar, the assimilation norm known as the “melting pot” of the 20th Century has disappeared.<sup>525</sup> However, cultural differences are being accepted, and this has materialized through access to voting ballots in various languages as a result of the amendments to the Voting Rights Act, for example.<sup>526</sup> Keyssar said that although there is a line of thought in the United States open to multinational and multicultural practices, the current political moment is one of a reactionary and uncertain environment that goes against these ideas.<sup>527</sup>

**FINDING V - Panelists agreed that residents of Puerto Rico have the political right to a process of self-determination.**

***Right to Self-determination as a Political Right***

Panelist Dr. Gorrín Peralta spoke about the seriousness of the fact that Puerto Rico has not had the right to its own determination despite being under American colonialism for more than a century and commented:

“We have never been able to exercise our right to self-determination to get out of the colonial situation and move freely towards our development as a people. Legally, this constitutional right has been denied. Judicially, according to the constitutional law of the United States, the right of the people to vote, which is

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<sup>521</sup> Bhatia Gautier Testimony, Transcript 4, p. 7-8.

<sup>522</sup> Ibid.

<sup>523</sup> Cox Alomar Testimony, Transcript 5, p. 24.

<sup>524</sup> Gorrín Peralta Testimony, Transcript 5, p. 24-25.

<sup>525</sup> Keyssar Testimony, Transcript 5, p. 26.

<sup>526</sup> Pub.L. 89-110, as amended in 1975; *See also*: Keyssar Testimony, Transcript 5, p. 26.

<sup>527</sup> Keyssar Testimony, Transcript 5, p. 26.

guaranteed by the International Covenant on Civil and Political Rights, has been denied.”<sup>528</sup>

In the case of Puerto Rico, the right to vote at the federal level and the right to self-determination have been denied, and the difference between the two was discussed in the testimony. Panelist Gorrín Peralta commented that the right to vote is an individual right and the right to self-determination where a people determines its future and its forms of government and development, is a collective right.<sup>529</sup> In a document submitted to the Committee, Professor Gorrín Peralta comments, "Ours is not a problem of “civil rights” of individuals, as that concept is used in the United States, limited to the historical problem of racism and discrimination. It is a problem of violating the collective right of peoples to self-determination.”<sup>530</sup> Regarding current legislative efforts in Congress on non-territorial options for Puerto Rico, Professor Gorrín Peralta explained that the challenge is that the meaning of statehood, independence, or a Freely-Associated State has not been well defined, but if consensus were reached on non-territorial options, it could lead to a new relationship with the United States that is not subject to the exercise of plenary powers by Congress under the territorial clause.<sup>531</sup>

Several panelists agreed that self-determination is a fundamental political right that allows people to belong to a society where they can participate in creating dialogue.<sup>532</sup> Dr. Martínez Román mentioned “it is through speech, through participation, that we are part of society. Therefore, speech cannot be a privilege for some; it must be a right of all.”<sup>533</sup> She commented that voting is only one element of democracy, but it is important as part of constructing the system in which we live.<sup>534</sup> The fact that millions of people remain in an anti-democratic limbo goes against the United States Constitution.<sup>535</sup>

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<sup>528</sup> Gorrín Peralta Testimony, Transcript 5, p. 14; *See also*: Assembly General Assembly of the United Nations. “Resolution 2200A (XXI), International Covenant on Civil and Political Rights.” 16 December 1966. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> (accessed 24 October 2023); *Committee note*: The right to self-determination is recognized statutorily but constitutionally in the United States.

<sup>529</sup> Gorrín Peralta Testimony, Transcript 5, p. 29; *See also*: Gorrín Peralta, Carlos I. “Puerto Rico and the United States at the Crossroads,” in *Reconsidering the Insular Cases: The Past and Future of the American Empire* (Gerald Neuman & Tomiko Brown-Nagin eds., Harvard Univ. Press 2015) <https://doi.org/10.2307/j.ctvjz81gw>; *Committee Note*: The Committee considers that the right to self-determination, in addition to being a collective right, is also an individual right. See the footnote above for the link to the International Covenant on Civil and Political Rights.

<sup>530</sup> Carlos I. Gorrín Peralta. “¿Son los proyectos congresionales sobre Puerto Rico instrumentos de descolonización y libre determinación?” 4 *AMICUS Rev. Pol. Pub. and Leg. UIPR*, p.1, 13, 2021. <https://aldia.microjuris.com/wp-content/uploads/2022/04/Separata-Gorriin.pdf> (accessed August 15, 2024).

<sup>531</sup> Gorrín Peralta Testimony, Transcript 5, p. 28.

<sup>532</sup> Martínez Román Testimony, Transcript 3, p. 9.

<sup>533</sup> *Ibid*.

<sup>534</sup> Martínez Román Testimony, Transcript 3, p. 12.

<sup>535</sup> Cepeda Derieux Testimony, Transcript 3, p. 14.

### ***Puerto Rico can Use the Social Struggles of the United States as an Example to Follow***

Panelists commented that Puerto Rico's situation is a moral and political issue that could find inspiration in the civil rights movement in the United States.<sup>536</sup> Dr. Fuentes-Rohwer said:

“It took the Voting Rights Act of 1965 to allow people, African Americans, to vote in numbers that we haven’t seen since the 19th Century. So, when I think about that, I think about how people fought in the streets, on Bloody Sunday, in Birmingham, in the Civil Rights Movement and what it took to move the country, this country, forward.”<sup>537</sup>

Furthermore, Dr. Keyssar argued that making a substantive change in Puerto Rico's situation is a matter of political will. He gave the example of the subtitle of the Voting Rights Act of 1965, a law to enforce the 15th Amendment, which was implemented a century after the 15th Amendment.<sup>538</sup> This shows that it is possible to take action after a long period of time and political mobilization and activity to push for change are absolutely essential.<sup>539</sup> However, Dr. Keyssar clarified that at that time, the Republican Party had some interest in emancipating African Americans for its political benefit. In this moment of extreme political polarization, he is pessimistic that Puerto Rico can achieve access to the rights it is entitled to.<sup>540</sup>

Panelists also commented that it is difficult to link the right to self-determination with the right to vote within the context of the United States. There have been attempts to connect the issue of the territories within the framework of international law, but, according to Dr. Fuentes-Rowher, “citizenship and the right to vote are not greatly understood in the ways most of us have come to understand them.”<sup>541</sup>

The Committee heard testimony indicating that the problems facing Puerto Rico have always been separate from the civil rights struggle in the United States. “...It was always divorced from the struggle for civil rights and voting rights at the federal level,” said Dr. Cox Alomar, “...that is, by the time Puerto Rico entered the American orbit, the 15th Amendment was already in place and had already been addressed and fought for.”<sup>542</sup>

Dr. Cox Alomar explained that the barriers Puerto Rico faces in terms of federal voting in the United States should not be confused with those of African Americans. In his perspective, Puerto Rico is a nation, a people of its own, that was invaded by the federal government, with a robust political and legal link to the United States, and this was not the experience of African

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<sup>536</sup> Fuentes-Rohwer Testimony, Transcript 5, p. 19.

<sup>537</sup> Pub. L. 89–110 (1965); *See also*: Fuentes-Rohwer Testimony, Transcript 5, p. 19.

<sup>538</sup> Pub. L. 89–110 (1965); *See also*: United States Constitution (U.S. Const.) 15th Amendment; *See also*: Keyssar Testimony, Transcript 5, p. 19–20.

<sup>539</sup> Keyssar Testimony, Transcript 5, p. 19-20.

<sup>540</sup> Keyssar Testimony, Transcript 5, p. 19-20.

<sup>541</sup> Fuentes-Rohwer Testimony, Transcript 5, p. 29.

<sup>542</sup> Cox Alomar Testimony, Transcript 5, p. 7.

Americans.<sup>543</sup> For him, this situation cannot be resolved through an amendment, as in the case of Washington, D.C., but through self-determination because there is no parallel.<sup>544</sup> “The Puerto Rican context really has no parallel in the American expansionist experience...,” says Dr. Cox Alomar “...Puerto Rico has been traversing a rather unique but unfortunate path, and that is something we must constantly remind our colleagues on the mainland.”<sup>545</sup> Professor Gorrín Peralta agrees with this perspective. The 15th Amendment states that the right to vote cannot be denied or restricted on the basis of race, color, or previous condition of servitude. In his opinion, this does not apply to Puerto Rico because it is a colonial issue.<sup>546</sup>

#### **IV. Recommendations Proposed in the Testimony**

Throughout the testimony received, the Committee heard different perspectives on how the lack of federal voting rights in Puerto Rico could be improved. Although these ideas are not recommendations formulated by the Committee, it is important to integrate them into this document to present the options highlighted by panelists. In this memorandum, the Committee does not take a stance on the content of these recommendations and will submit its own recommendations in the final report.

##### ***Relationship between Puerto Rico and the United States***

- Support the movement holding conversations about the existence of the colonial framework and confront it with the United States. There has been no recognition of the fact that the colonial framework affects Puerto Rico and the other territories, and the United States has a responsibility to act based on its constitutional and international obligations. This would be an important step before considering a solution on status.<sup>547</sup>
- Support educating elected officials and clarifying that granting federal voting rights is not just about increasing the number of members of Congress. It is important to understand the full picture - the past, present, and future of the relationship with Puerto Rico - using legitimate data.<sup>548</sup>
- Consider applying the 14th Amendment to Puerto Rico. The Equal Protection Clause could certainly be invoked with respect to Puerto Rican citizens if the courts or political authorities decided to do so, which they have not had in mind so far.<sup>549</sup>

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<sup>543</sup> Cox Alomar Testimony, Transcript 5, p. 20-21.

<sup>544</sup> Ibid. See: Finding I.

<sup>545</sup> Cox Alomar Testimony, Transcript 5, p. 21.

<sup>546</sup> United States Constitution (U.S. Const.), 15th Amendment, § I; See also Gorrín Peralta Testimony, Transcript 5, p. 21.

<sup>547</sup> Martínez Román Testimony, Transcript 3, p. 21.

<sup>548</sup> Fuentes-Rohwer Testimony, Transcript 5, p. 31.

<sup>549</sup> Keyssar Testimony, Transcript 5, p. 26.

### ***Self-determination***

- Support people in deciding their future through self-determination.<sup>550</sup>
- Advocate for a binding plebiscite that is inclusive, consensual, civil, peaceful, and not biased towards one outcome or another, to advance the cause of decolonization.<sup>551</sup>
- The Commission should consider promoting an educational campaign through civic organizations, universities, and the media on the right of Puerto Rican citizens to participate in a plebiscite that allows them to choose a non-colonial political relationship recognized by the United States and international law. The Commission should support the institution of observers during the eventual plebiscite, the dissemination of expert observations on the plebiscite process and the reporting of the plebiscite election results to Congress, and the reporting of the results of the decolonization process to international organizations with which the United States is affiliated.<sup>552</sup>
- The Commission should declare that rights that are being denied to the people of Puerto Rico due to the constitutional, statutory and territorial policy framework. The Commission should advise the government of the United States to take affirmative measures under the third paragraph of Article I of the International Covenant on Civil and Political Rights. This Article has been in force for the United States since June 1994 and states that all peoples have the right to self-determination and that countries that have others under their control have the affirmative obligation to respect and promote it. One option to promote self-determination is to organize a constitutional status assembly that would elaborate the various options that the people of Puerto Rico can have, as a way to resolve this situation which has contradicted the founding values of the American republic. The assembly could negotiate terms with the government and the Congress of the United States that would be acceptable for the various options. With that information, the people of Puerto Rico and Congress could then decide what path Puerto Rico should follow in the future.<sup>553</sup>

### ***Alternatives for the Territory***

- Consider examples of status beyond just statehood or independence. The simplest way for citizens in the territories to gain the right to vote is for the territories to achieve statehood. However, one has to consider that for legitimate reasons of cultural or ethnic identity, the territories may not be interested in full integration. There are already many examples of countries that have opened their constitutional space to include the vote of citizens residing in territorial enclaves while protecting their autonomy and national integrity. The alternatives cannot be only the fusion as a state or independence as a republic. Examples from other countries can be an option in exploring how to create opportunities to access

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<sup>550</sup> Cox Alomar Testimony, Transcript 5, p. 9.

<sup>551</sup> González-Cruz Testimony, Transcript 3, p. 31; *See also*: Gorrín Peralta Testimony, Transcript 5, p. 30.

<sup>552</sup> González-Cruz Testimony, Transcript 3, p. 7-8.

<sup>553</sup> Gorrín Peralta Testimony, Transcript 5, p. 17-18.

the vote, although the United States has been so intransigent and uninterested in undertaking this.<sup>554</sup>

### *Insular Cases*

- We must insist on the repeal of the Insular Cases immediately.<sup>555</sup>

## **V. Preliminary Recommendations of the Committee on the Subtopic of Federal Voting Rights**

Having reviewed the testimony at this stage of the study’s “Federal Voting Rights” subtopic, the Advisory Committee offers the following preliminary recommendations:

1. The United States Commission on Civil Rights should:

- Speak out about the right to vote as a fundamental right.*
- Recognize the need to define and resolve the political status through electoral consultation.*

2. The U.S. Commission on Civil Rights should submit this memorandum to and ask the U.S. Congress to:

- Enable a valid electoral process to address the issue of Puerto Rico's political status under the direction of Congress.*
- Draft, along with representatives of each of the status options, clear and precise definitions so that the people of Puerto Rico can exercise their right to self-determination in an informed manner.*

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<sup>554</sup> Bhatia Gautier Testimony, Transcript 4, p. 8.

<sup>555</sup> Bhatia Gautier Testimony, Transcript 4, p. 4; *Committee Note*: In 2024, the Department of Justice announced a change in its practice whereby it will no longer include reference to the Insular Cases in its litigation. *See*: <https://www.justice.gov/jm/1-21000-applicability-constitutional-provisions-us-territories>

### **Memorandum III Conclusion**

This memorandum was approved by a majority vote of 4 to 1 at a meeting of the Committee held on February 26, 2025. One Committee Member statement was submitted as part of this memorandum.

## Memorandum III Appendix

Documents related to the Committee's study of this topic can be consulted in the Memorandum III folder at the following link:

<https://usccr.app.box.com/folder/292312893562?s=yo7wsul0yb8dmrvvm2ywc5q9otj7knnj>

- A. Agendas, minutes and presentation slides
- B. Transcripts
- C. Written testimony and sources submitted by panelists
- D. Committee Member Statements

- Statement from Committee Member José O. Olmos

The Insular Cases and the Unincorporated Territory Doctrine and its effects on the civil rights of the residents of Puerto Rico

Puerto Rico Advisory Committee to the United States Commission on Civil Rights  
United States Civil Rights Commission

Commentary in Opposition to Federal Voting Rights Memorandum # 3 by José O. Olmos

On February 26, 2025, I voted against Memorandum #3 on federal voting rights, developed by the Puerto Rico Advisory Committee to the U.S. Commission on Civil Rights. My opposition is based on the fact that, in order to exercise the right to vote at the federal level, it is essential that the expressed will of the citizens residing in Puerto Rico, through their vote, and in accordance with the electoral laws of the territory, be recognized, respected, and accepted by Congress, without being sabotaged by the opposing factions in Puerto Rico.

The task that this committee has undertaken, of investigating the impact of the Insular Cases and the Unincorporated Territory Doctrine, and its effects on the civil rights of the residents of Puerto Rico, is of the utmost importance. The search for the truth and the identification of solutions to the problems of the unequal relationship between the world's most powerful nation and the territory of Puerto Rico has been carried out with diligence. In evaluating all of the presentations and memoranda submitted by the committee, especially the most recent one, it is apparent that the final report will have four clear conclusions:

- Denying the full access of U.S. fundamental rights to Puerto Ricans is a political decision.

- The U.S. government could, at any time, unilaterally extend all constitutional rights to Puerto Rico through statehood. It could also grant it national sovereignty.
- Political and economic factors have kept Puerto Rico in limbo for more than 125 years.
- The exercise of the vote by Puerto Ricans to express their preference on status does not exert enough pressure on the U.S. Congress to move them to resolve the status issue.

This committee's research focuses on Puerto Rico's political relationship with the United States. A relationship framed by constitutional and legal precedent, especially the Insular Cases (1901-1905). The two previous memoranda submitted by the committee reiterate that the island's status is subordinate to the legal doctrine set forth by the Supreme Court in the Insular Cases. This doctrine establishes the following:

- Puerto Rico is an unincorporated territory, which means that the U.S. Constitution does not fully apply here.
- Congress, authorized by the Territorial Clause and the judicial interpretations of the Insular Cases, has the power to determine which rights Puerto Ricans enjoy.
- Puerto Ricans are U.S. citizens, but they do not have the same political rights as citizens of the states. They do not have voting representation in Congress or the right to vote for the president.

The legal, political, and academic consensus in Puerto Rico and in the United States that Puerto Rico is that it is a separate jurisdiction under the federal supervision of the U.S. Congress, and that the political rights of Puerto Ricans depend on the legislative discretion of Congress.

In the quest for Congress to heed the demands of the people of Puerto Rico, citizens have resorted to the exercise of the vote as a means to demand their rights and present their demands to Congress. Since 2012, the people of Puerto Rico have responded to four convenings from their leaders to express themselves through referendums. In these four convenings, the people of Puerto Rico have expressed themselves in favor of the union with the U.S. as a federated state. Despite exercising the right to a democratic vote, in an exercise of voting validated by the laws of the Government of Puerto Rico, and presenting the results to Congress, it has been impossible to obtain a response to the demands of the voters. It is important to note that the government of Puerto Rico has the inherent power in its constitution and laws to call for a vote without the need for the authorization of Congress.

Since none of the members of the U.S. Congress have direct accountability to the island's voters, they are not incentivized to respect the will of American citizens in Puerto Rico. This indifference is compounded by the political and propaganda activism of the Puerto Rican political opposition and its allies in the United States, and potential foreign allies, to discredit the Puerto Rican electoral process. This anti-democratic coalition, which is against statehood, has been defeated in every referendum voted on the island in the past 15 years.

Inquiring<sup>556</sup> about the evident campaign to discredit Puerto Rico's electoral process by the political opposition, Professor Carlo Gorrin, a defender of convening the Constituent Assembly, could not explain this conduct.

“José: Yes. Good afternoon, everyone. Excellent panel, thank you for dedicating your time to this event [Inaudible 01:17:11]. I am struck by the situation that once the Insular Cases disappear, which everyone predicts, what will replace them? I am also intrigued by the repeated assertion by various panelists that the solution is not judicial or legal, but political. My question is directed to Professor Gorrín. He suggests calling a Constituent Assembly, but I find this vision interesting because the Constituent Assembly must be called and organized through state law, the electoral law of the territory of Puerto Rico, as it was for the 1952 plebiscite and all other convocations of the state assemblies where the Puerto Rican Assembly has called the people to make a decision.

There is talk of a Constituent Assembly that must also be called because it is within Puerto Rico's legal framework, where the legislative assembly calls the people to vote through a law. However, there is a tendency to discredit the results of legislative assemblies, electoral, political calls, referendums, and plebiscites that have been in recent years duly and legally convened by the Puerto Rican Assembly, and the legislators, and to create the laws. Yet, it is inferred that the Constituent Assembly, which must go through the legislative assembly to be carried out, has a superior moral standing compared to the others. Could you explain this situation to me, how some have an inferior level while the Constituent Assembly is seen as the ultimate moral solution to Puerto Rico's colonial problem? Thank you very much.”

The investigative effort of this committee, in relation to the vote, has focused on the federal level. A fundamental factor has been overlooked: for citizens residing in Puerto Rico to vote at the federal level, Puerto Rico must first become a state of the U.S. federation.

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<sup>556</sup> Insular Cases Project – Voting Rights Panel #3 Transcript – June 4, 2024, pg. 24.

On several occasions, I asked the speakers: How can we get the United States to really respond to the request of Puerto Ricans? Is that likely to change? How can we achieve statehood in Puerto Rico? Despite the diverse opinions of the speakers, these questions have not been conclusively answered. I also asked the speakers and expressed in public hearings to the other members of the committee my concern about the persistence of the political opposition to attack and try to discredit the electoral process when the results are in favor of statehood and their insistence to use that same electoral process to advance their political vision. In other words, to achieve political objectives in favor of statehood, the electoral system is useless. But it does serve to advance their separatist desires.

If the goal of our effort is to end the territorial status, either by making the island a state of the U.S. federation, or a sovereign and independent nation, it is fundamental that the citizens' vote, exercised subject to the electoral Laws and Regulations of Puerto Rico, be recognized, accepted, and abided by the U.S. Congress and the island's political opposition.

Conclusion.

I reiterate my opposition to the contents of Memorandum # 3 on Federal Voting Rights. The focus on the right to vote at the federal level without being a state of the Union is incorrect, since in order to exercise that right, it is necessary to first be a state. The path to statehood is through the vote of U.S. citizens residing in Puerto Rico, a process regulated by local laws.

I recommend that the Commission on Civil Rights organize an investigation on how some political and civil factions violate the civil rights of Puerto Rican voters by declaring, propagandizing, and attempting to delegitimize the electoral process regulated by the Puerto Rico Electoral Law.

Submitted today, March 11, 2025, to be included as part of Memorandum #3, via email to [vmoreno@usccr.gov](mailto:vmoreno@usccr.gov).

José O. Olmos

787-433-1822

[joolmos@hotmail.com](mailto:joolmos@hotmail.com)

**Puerto Rico Advisory Committee to the United States Commission on Civil Rights**

*Term: January 21, 2022, to January 20, 2026*

Andrés L. Córdova Phelps, Chair, Puerto Rico Advisory Committee, San Juan

Ramon Barquin, Vice-Chair, San Juan

Ever Padilla-Ruiz, Secretary, San Juan

Frank Arenal, Carolina

Ramon C. Barquin III, Guaynabo

Manuel “Lin” Iglesias-Beléndez, San Juan

Sergio Marxuach, Dorado

Jose O. Olmos, Guaynabo

Dan Santiago, San Juan

William E. Villafañe Ramos, Bayamón

**Memorandum IV: Access to Federal  
Programs and the Role of Race in the  
Relationship Between the Federal  
Government and Puerto Rico**



## **The Insular Cases and the Unincorporated Territory Doctrine and their Effects on the Civil Rights of Residents of Puerto Rico**

### **Memorandum on Access to Federal Programs and the Role of Race in the Relationship Between the Federal Government and Puerto Rico**

**Puerto Rico Advisory Committee to the United States Commission on Civil Rights  
January 2026**

#### **I. Introduction**

The Puerto Rico Advisory Committee hosted three virtual briefings on March 6, 13, and 14, 2025 to hear testimony on the access that residents of Puerto Rico have to federal programs and the role of race in the relationship between the federal government and Puerto Rico. These briefings were part of the Committee’s larger study on the Insular Cases and the Doctrine of the Unincorporated Territory and its effects on the civil rights of Puerto Rican residents.<sup>557</sup> This memorandum follows three others that have been published as part of the study and is the last in this series.<sup>558</sup> The

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<sup>557</sup> Meeting records and transcripts can be found in Appendix A and B.

Public hearing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights United States, March 6, 2025, (virtual hearing), Transcript (hereinafter “Transcript 6”).

Public Hearing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, March 13, 2025, (virtual hearing), Transcript (hereinafter “Transcript 7”).

Public Hearing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, March 14, 2025, (virtual hearing), Transcript (hereinafter “Transcript 8”).

<sup>558</sup> Puerto Rico Advisory Committee to the United States Commission on Civil Rights. “The Insular Cases and the Unincorporated Territory Doctrine and Their Effects on the Civil Rights of Residents of Puerto Rico.” February 2024. United States Commission on Civil Rights. [https://www.usccr.gov/files/2024-02/english\\_pr-ac\\_memo-1.pdf](https://www.usccr.gov/files/2024-02/english_pr-ac_memo-1.pdf) (accessed February 12, 2024).

Puerto Rico Advisory Committee to the United States Commission on Civil Rights. “The Insular Cases and the Unincorporated Territory Doctrine and Their Effects on the Civil Rights of Residents of Puerto Rico – Part II, Economic Perspectives.” November 2024. United States Commission on Civil Rights. [https://www.usccr.gov/files/2024-11/english\\_pr-ac-memo-2.pdf](https://www.usccr.gov/files/2024-11/english_pr-ac-memo-2.pdf) (accessed November 22, 2024).

Puerto Rico Advisory Committee to the United States Commission on Civil Rights. “The Insular Cases and the Unincorporated Territory Doctrine and Their Effects on the Civil Rights of Residents of Puerto Rico – Part III, Federal Voting Rights.” March 2025. United States Commission on Civil Rights. <https://www.usccr.gov/files/2025-03/english-pr-memo-3.pdf> (accessed September 30, 2025).

Committee plans to issue a final report with recommendations developed by committee members by the end of their term.

This memorandum shares the key findings identified in the testimony as described directly by the panelists and includes external sources where necessary. It begins with an overview, then highlights notable points raised by panelists throughout the findings. The Committee heard testimony on this subtopic from various legal and organizational perspectives and attempted to understand Puerto Rico's unique situation within the sociopolitical context of the United States based on the testimony received. The Committee would like to note that this memorandum primarily reflects information received through testimony as of March 2025 and does not address the various policy changes at the federal level that have occurred throughout 2025.

## II. Overview

### *Limited Access to Federal Programs*

The Committee received testimony indicating that the fact that Puerto Rico is a U.S. territory does not justify unequal treatment in the access to federal programs.<sup>559</sup> Javier Balmaceda, Senior Policy Analyst at the Center on Budget & Policy Priorities, highlighted that federal programs are not allocated in a uniform manner across the U.S. Territories and there is no territory that has full access to the entire safety net.<sup>560</sup>

U.S. citizens in Puerto Rico are deprived of public benefits for simply living in the U.S. territory whereas benefits such as Supplemental Security Income (SSI) are available to citizens regardless of what state they live in.<sup>561</sup> This refusal on behalf of Congress to extend full federal benefits to the territories comes at a significant cost to the health and welfare of these American citizens.<sup>562</sup> This divide in access to resources between Puerto Ricans who live in the contiguous states and those who live on the island is stark and has a direct effect on the livelihoods of individuals.<sup>563</sup> Panelist Yomaira Figueroa-Vásquez, Director of CENTRO, the Center for Puerto Rican Studies at

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<sup>559</sup> Javier Balmaceda, testimony. Public Briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, Web Briefing, March 13, 2025, transcript 7. p. 18 (hereinafter cited as Transcript 7).

<sup>560</sup> Ibid.

<sup>561</sup> Andrew Hammond. "Territorial Exceptionalism and the American Welfare State." Vol. 119, Issue 8. Michigan Law Review, p. 1639. 2021. doi: <https://doi.org/10.36644/mlr.119.8.territorial>; See also: Acevedo, Nicole. "Family who lost federal benefits for living in Puerto Rico looks to Supreme Court." NBC News. <https://www.nbcnews.com/news/latino/family-lost-federal-benefits-living-puerto-rico-looks-supreme-court-rcna4682> (accessed May 12, 2025).

<sup>562</sup> Brief for the Public Benefits Scholars as Amicus Curiae, p. 19, *United States v. Vaello Madero*, 596 U.S. 159 (2022).

<sup>563</sup> Yomaira Figueroa-Vásquez, testimony. Public Briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, Web Briefing, March 14, 2025, transcript 8. p. 22-23 (hereinafter cited as Transcript 8).

the City University of New York, shared the example of her mother, who has lived and worked in the mainland United States for over 50 years, but would not be able to return to Puerto Rico to retire comfortably, as she would lose access to the benefits she currently receives.<sup>564</sup> Dr. Figueroa-Vásquez described this inability to return home due to federal legislative impediments as “a question of forced depopulation for our folks who have to leave because they will not get the same level of support and resources in Puerto Rico that they will if they leave to the United States...then we have not only an aging population in Puerto Rico, but more and more depopulation in Puerto Rico.”<sup>565</sup>

### *Arguments in Favor of Limited Access*

A common argument used to justify why Puerto Rico is excluded from certain federal programs is that residents on the island do not pay federal income taxes and therefore cannot fully participate in these programs.<sup>566</sup> As this Committee studied in its second memorandum on Economic Perspectives published in November 2024, Puerto Ricans do contribute through other federal taxes such as those required by the Federal Insurance Contributions Act (FICA), taxes on Social Insurance and Medicare, and the Federal Unemployment Tax Act (FUTA).<sup>567</sup> Employers are required to withhold, report, and pay employment taxes on wages paid.<sup>568</sup> Additionally, Puerto Rico’s contributions to the Federal Treasury are comparable to those of certain states such as Alaska and Vermont.<sup>569</sup>

### *Discretion of Congress in Decision-making and Allocation of Funds*

Panelist Jeffrey Farrow, a Government Policy Advisor who previously worked as an advisor on and coordinator of policies regarding Puerto Rico and the other territories in the Carter as well as the Clinton White Houses and in the U.S. House of Representatives in between those Administrations, shared that in 1980, the Supreme Court of the United States ruled that Puerto Rico could be treated differently from the states regarding federal programs so long as there is a

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<sup>564</sup> Figueroa-Vásquez Testimony, Transcript 8, p. 22-23.

<sup>565</sup> Figueroa-Vásquez Testimony, Transcript 8, p. 23.

<sup>566</sup> Balmaceda Testimony, Transcript 7, p. 18.

<sup>567</sup> Internal Revenue Service. “Topic no. 903, U.S. employment tax in Puerto Rico.” Tax Topics, Internal Revenue Service. Date of most recent review or update: February 29, 2024. <https://www.irs.gov/taxtopics/tc903> (accessed on April 1, 2024); *See also*: Puerto Rico Advisory Committee to the United States Commission on Civil Rights. “The Insular Cases and the Unincorporated Territory Doctrine and their Effects on the Civil Rights of Residents of Puerto Rico.” February 2024. United States Commission on Civil Rights. [https://www.usccr.gov/files/2024-11/english\\_pr-ac-memo-2.pdf](https://www.usccr.gov/files/2024-11/english_pr-ac-memo-2.pdf) (accessed on May 12, 2025).

<sup>568</sup> *Ibid*.

<sup>569</sup> Internal Revenue Service. “SOI Tax Stats – Gross collections by type of tax and state – IRS Data Book Table 5, 2023 Gross collection, by type of tax and state and fiscal year.” <https://www.irs.gov/statistics/soi-tax-stats-gross-collections-by-type-of-tax-and-state-irs-data-book-table-5> (accessed May 19, 2025).

rational basis for its actions.<sup>570</sup> Based on his direct experience, the application of rational basis can be very subjective.<sup>571</sup> Congress has continued to make clear that not paying federal taxes equally is a rational basis.<sup>572</sup> Panelist testimony indicates there is a belief that recipients of assistance in Puerto Rico would draw in more benefits than they contribute.<sup>573</sup> Mr. Farrow shared the example of speaking with government leaders who believed it was not beneficial to provide parity in benefits to Puerto Rico because a greater proportion of residents there would receive assistance compared to the residents in the states.<sup>574</sup>

This treatment appears to be unique to the territories, as highlighted in *United State v. Vaello Madero*, a case in which the Supreme Court determined that Congress is not constitutionally required to apply Supplemental Security Income benefits to Puerto Rico due to its broad authority over the territories based on the Territory Clause and where it is noted that the decision “should not be read to imply that Congress may exclude residents of individual States from benefits programs.”<sup>575</sup> Mainon Schwartz, a Legislative Attorney at the Congressional Research Service shared with the Committee that “there is something particular about the territorial status that gives Congress broader authority to draw distinctions...that constitutional basis for that authority doesn't exist when it comes to treating states differently from one another.”<sup>576</sup> Mr. Farrow mentioned that during his time working in federal government, he was part of discussions where decisions on funding for the territories were made and he shared that the allocated funding was usually “leftover” from what was distributed in the states and was then divided among the territories.<sup>577</sup> Mr. Farrow stated “if the territories are treated differently than one another, Puerto Rico tends to be treated worse because it's so much larger and has so much greater need.”<sup>578</sup>

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<sup>570</sup> *Harris v. Rosario*, 446 U.S. 651 (1980); *See also*: Jeffrey L. Farrow, testimony. Public Briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, Web Briefing, March 6, 2025, transcript 6. p. 4 (hereinafter cited as Transcript 6).

<sup>571</sup> Farrow Testimony, Transcript 6, p. 14-15.

<sup>572</sup> Farrow Testimony, Transcript 6, p. 4.

<sup>573</sup> Andrew Hammond, Professor of Law at the Indiana University Maurer School of Law, Written Statement, p.5, submitted for Puerto Rico Advisory Committee to the United States Commission on Civil Rights Briefing, March 13, 2025 (cited herein after as Hammond statement).

<sup>574</sup> Farrow Testimony, Transcript 6, p. 5-6.

<sup>575</sup> *United States v. Vaello Madero*, 596 U.S.159; *See also*: U.S. Const. Art. IV, § 3; *See also*: Mainon Schwartz, testimony. Public Briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, Web Briefing, March 6, 2025, transcript 6. p. 12 (hereinafter cited as Transcript 6).

<sup>576</sup> Schwartz Testimony, Transcript 6, p. 12.

<sup>577</sup> Farrow Testimony, Transcript 6, p. 15.

<sup>578</sup> *Ibid*.

### III. Preliminary Findings

#### **FINDING I – There is an urgency in the lack of program equity in Puerto Rico.**

According to the U.S. Census Bureau, a critical number of residents of Puerto Rico, approximately 40%, are living in poverty.<sup>579</sup> This is more than double the 18.9% poverty rate in Louisiana, the highest of any state.<sup>580</sup> The poverty rate in Puerto Rico is nearly four times greater than the national poverty rate in the U.S., which stands at 11.1%, which underlines the need for social welfare resources in Puerto Rico.<sup>581</sup> As emphasized by Javier Balmaceda, Senior Policy Analyst at the Center on Budget and Policy Priorities, “Puerto Rico also has experienced a devastating series of natural and man-made disasters over the past 20 years or so that have greatly exacerbated hardship, including a prolonged economic recession, massive outmigration bankruptcy, hurricanes, earthquakes, and more recently, the Covid-19 pandemic.”<sup>582</sup> Puerto Rico has also exhibited higher unemployment rates and weaker public infrastructure when compared to the rest of the United States.<sup>583</sup>

Panelists believe that there is no legal or economic argument preventing the government from providing full access to the safety net in Puerto Rico and that doing so would result in bringing poverty levels down immediately.<sup>584</sup> The testimony urges for such actions to be taken sooner rather than later, as full implementation of programs would be a multi-year process that includes statutory changes, regulation development, program design, planning phases, training for administrative staff, testing and rollouts.<sup>585</sup> For example, a 2022 U.S. Department of Agriculture report estimated that it can take approximately ten years for the full implementation of the Supplemental Nutrition Assistance Program in Puerto Rico.<sup>586</sup>

This Finding focuses on the testimony received by the Committee which emphasized programs where there is partial or no parity, specifically: Medicaid, Supplemental Security Income, Veterans’ benefits, and nutrition assistance. Furthermore, while outside the scope of the study, the

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<sup>579</sup> U.S. Census Bureau. “Quick Facts – Puerto Rico.” <https://www.census.gov/quickfacts/fact/table/PR/PST045224> (accessed May 20, 2025).

<sup>580</sup> U.S. Census Bureau. “Quick Facts – Puerto Rico.” <https://www.census.gov/quickfacts/fact/table/PR/PST045224> (accessed May 20, 2025); *See also*: U.S. Census Bureau. “Quick Facts – Louisiana.” <https://www.census.gov/quickfacts/fact/table/LA/PST045223> (accessed May 20, 2025); *See also*: Balmaceda Testimony, Transcript 7, p. 8.

<sup>581</sup> U.S. Census Bureau. “Poverty in the United States: 2023.” <https://www.census.gov/library/publications/2024/demo/p60-283.html> (accessed May 20, 2025).

<sup>582</sup> Balmaceda Testimony, Transcript 7, p. 8.

<sup>583</sup> Andrew Hammond. “Territorial Exceptionalism and the American Welfare State.” Vol. 119, Issue 8. Michigan Law Review, p. 1661. 2021. doi: <https://doi.org/10.36644/mlr.119.8.territorial>

<sup>584</sup> Balmaceda Testimony, Transcript 7, p. 18.

<sup>585</sup> Balmaceda Testimony, Transcript 7, p. 10.

<sup>586</sup> Balmaceda Testimony, Transcript 7, p. 10; *See also*: U.S. Department of Agriculture. “Research Summary: Update to Feasibility Study of Implementing USDA’s Supplemental Nutrition Assistance Program (SNAP) in Puerto Rico (Summary).” USDA Food and Nutrition Service. July 2022. <https://fns-prod.azureedge.us/sites/default/files/resource-files/PRSNAP-Feasibility-Summary.pdf> (accessed May 20, 2025).

Committee notes that there are certain programs – including but not limited to the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), the Child Nutrition Programs including the National School Lunch Program and Summer Electronic Benefits Transfer, and the Children’s Health Insurance Program, among other programs, where Puerto Rico has full parity.<sup>587</sup> The Committee did not cover such programs in this study.

### ***Examples of Successful Implementation of Federal Programs***

The Committee heard testimony supporting Puerto Rico’s full and equitable inclusion as a recipient of federal programs. Mr. Balmaceda shared the example of how the expansion of the Child Tax Credit (CTC) and the Earned Income Tax Credit (EITC) in Puerto Rico after the passage of the American Rescue Plan Act of 2021 (ARPA) led to transformational outcomes for residents.<sup>588</sup> The expansion of the CTC drastically reduced Puerto Rico's child poverty rate from 55% to 39% in 2021 alone.<sup>589</sup> As the Committee noted in its first memorandum published in 2024, under ARPA, the CTC had a \$1.78 billion impact on the economy and a 16% increase in the average family income.<sup>590</sup> Additionally, ARPA extended an annual federal supplement of approximately \$600 million to complement the local EITC program, signifying the first time federal funds were allocated to Puerto Rico since the establishment of the EITC in 1975.<sup>591</sup> It was projected that these changes to the EITC would help more than 125,000 people rise above the federal poverty line.<sup>592</sup>

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<sup>587</sup> Balmaceda Testimony, Transcript 7, p. 9; *See also*: U.S. Department of Agriculture. “WIC Program Contacts.” USDA Food and Nutrition Service. <https://www.fns.usda.gov/wic/program-contacts> (accessed May 23, 2025); *See also*: U.S. Department of Agriculture. “FNS Contacts.” USDA Food and Nutrition Service. [https://www.fns.usda.gov/fns-contacts?sort\\_bef\\_combine=title\\_fulltext\\_ASC&f%5B0%5D=fns\\_contact\\_related\\_programs%3A39&f%5B1%5D=fns\\_contact\\_state%3A277](https://www.fns.usda.gov/fns-contacts?sort_bef_combine=title_fulltext_ASC&f%5B0%5D=fns_contact_related_programs%3A39&f%5B1%5D=fns_contact_state%3A277) (accessed May 23, 2025); *See also*: Departamento de la Familia ADSEF. “Summer Pandemic EBT.” Gobierno de Puerto Rico. <https://serviciosonline.adsef.pr.gov/programas/summer-pandemic-ebt.html> (accessed May 23, 2025); *See also*: Andrew Hammond, Ariel Jurow Kleiman, Gabriel Scheffler. “The Future of Anti-Poverty Legislation.” *The Georgetown Law Journal*. Vol. 112:349, p. 361.

<sup>588</sup> 117 P.L. 2. (2021); *See also*: Balmaceda Testimony, Transcript 7, p. 9.

<sup>589</sup> Balmaceda Testimony, Transcript 7, p. 9; *See also*: Maria Enchautegui et al., “The Child Tax Credit in Puerto Rico: Impacts on Poverty and the Lives of Families,” Instituto del Desarrollo de la Juventud, December 2022, [https://cdn.prod.website-files.com/60f311e9e2e57d523d28bba2/63daae156a73f956790a4e30\\_EN-CTC2022-20230123.pdf](https://cdn.prod.website-files.com/60f311e9e2e57d523d28bba2/63daae156a73f956790a4e30_EN-CTC2022-20230123.pdf).

<sup>590</sup> Puerto Rico Advisory Committee to the United States Commission on Civil Rights. “The Insular Cases and the Doctrine of Unincorporated Territory and Their Effects on the Civil Rights of Puerto Rico Residents.” February 2024. United States Commission on Civil Rights. [https://www.usccr.gov/files/2024-02/english\\_pr-ac\\_memo-1.pdf](https://www.usccr.gov/files/2024-02/english_pr-ac_memo-1.pdf) (accessed on February 12, 2024).

<sup>591</sup> H.R. 1319, 117th Cong. (2021); *See also*: Internal Revenue Service. “Celebrating 50 years of Earned Income Tax Credit.” Earned Income Tax Credit & Other Refundable Credits. Page Last Reviewed or Updated April 10, 2025. <https://www.eitc.irs.gov/eitc-central/50-years-of-earned-income-tax-credit> (accessed May 22, 2025); *See also*: Balmaceda Testimony, Transcript 7, p. 9; *See also*: Daniel Santamaría et al., “Federal Contribution to Puerto Rico’s Earned Income Tax Credit Program: Progress, Challenges, and Opportunities,” *Espacios Abiertos*, April 5, 2024 [https://drive.google.com/file/d/1UEywCnPxJrwHVMHwyBpxmBs\\_OqbDY0nG/view](https://drive.google.com/file/d/1UEywCnPxJrwHVMHwyBpxmBs_OqbDY0nG/view).

<sup>592</sup> *Ibid*.

## ***Expected 2027 Lapse in Federal Funding for Medicaid***

Despite these positive outcomes, a major concern facing the future of federal benefits in Puerto Rico is that the current package of federal funding allotted to the island's Medicaid program is expected to lapse. Although the Consolidated Appropriations Act of 2023 provided Puerto Rico with the highest ever annual allotments awarded to the territory, it is a 5-year funding package that will expire in 2027.<sup>593</sup> Among other benefits, the package extends certain adjustments to federal Medicaid payments to the U.S. Territories.<sup>594</sup> According to the testimony, it is estimated that this increased funding provides approximately \$3 billion on average, per year, for Medicaid in Puerto Rico, while the statutory amount typically stands at approximately \$400 million.<sup>595</sup> A lapse in this funding would be catastrophic and Puerto Rico would not be able to make up the difference.<sup>596</sup>

## ***Federal Programs as Described in the Testimony***

### ***Medicaid***

Medicaid is a joint federal-state program that finances the delivery of medical services to low-income individuals.<sup>597</sup> The Committee heard testimony about how the U.S. Territories receive federal funding for Medicaid differently than in the states.<sup>598</sup> Panelist Allison Mitchell, Specialist in Health Care Financing at the Congressional Research Service, explained to the Committee that Medicaid funding to the territories has changed over time. Funding was initially open-ended for the territories when Medicaid was first established in 1965 and was later capped at specific amounts codified in law for each territory starting in fiscal year 1968 through fiscal year 1994.<sup>599</sup> Starting in fiscal year 1995, the funding was determined by each territory's prior year funding, increased by the change in the medical component for the consumer price index (CPIU).<sup>600</sup>

Over time, the U.S. Territories have tended to exhaust their federal funding amounts on an annual basis until the Patient Protection and Affordable Care Act of 2010 provided significant additional federal funding for the territories that has been consistent since it was implemented in 2011.<sup>601</sup> Current Medicaid funding for Puerto Rico, as established by the Consolidated Appropriations Act

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<sup>593</sup> Consolidated Appropriations Act, 2023, P.L. 117-328, section 5101; *See also*: Balmaceda Testimony, Transcript 7, p. 9-10.

<sup>594</sup> Consolidated Appropriations Act, 2023, P.L. 117-328, section 5101.

<sup>595</sup> Balmaceda Testimony, Transcript 7, p. 15.

<sup>596</sup> Balmaceda Testimony, Transcript 7, p. 15, 9-10.

<sup>597</sup> Alison Mitchell, testimony. Public Briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, Web Briefing, March 6, 2025, transcript 6. p. 7 (hereinafter cited as Transcript 6).

<sup>598</sup> *Committee Note*: In addition to funding differences between the states and territories, Medicaid rules apply differently among the territories themselves as well. Please see the written testimony submitted by Allison Mitchell (Appendix C) for additional information on Section 1902J waivers applied in American Samoa and Guam.

<sup>599</sup> Mitchell Testimony, Transcript 6. p. 7-8; *See also*: Alison Mitchell, Specialist in Healthcare Financing, Congressional Research Service, Library of Congress, Written Statement, p.1, submitted for Puerto Rico Advisory Committee to the United States Commission on Civil Rights Briefing, March 6, 2025 (cited herein after as Mitchell statement).

<sup>600</sup> Mitchell Testimony, Transcript 6. p. 7-8.

<sup>601</sup> Patient Protection and Affordable Care Act of 2010, Pub L. 111-148, 124 Stat. 119 (codified as 42 U.S.C. Ch. 157); *See also*: Mitchell Testimony, Transcript 6. p. 8; *See also*: Mitchell Statement, at 2.

of 2023, is set at specific capped amounts until fiscal year 2027.<sup>602</sup> This is in contrast to the other territories, where funding is dependent on a review of funding from the prior year.<sup>603</sup> Puerto Rico can also receive additional federal Medicaid funding if it meets certain conditions related to Medicaid physician payment rates and program integrity in addition to the Enhance Allotment Program which can be used to provide prescription drug coverage for low-income Medicare beneficiaries.<sup>604</sup> Despite this, the capped funding does not allow for federal matching funds for all medical assistance provided to eligible residents in Puerto Rico as in the states.<sup>605</sup>

Panelists indicated that the lack of open-ended funding in the territories leads to inadequate health services and enhances vulnerability if healthcare needs increase due to emergencies.<sup>606</sup> Furthermore, Puerto Rico's Medicaid program cannot cover certain services such as care in nursing homes, home health services and the full range of benefits for children.<sup>607</sup> If Medicaid were to ever be fully implemented in Puerto Rico, it is likely that a lengthy implementation timeline would be needed as the island would need to gradually develop a large amount of physical infrastructure to provide mandatory Medicaid services, such as long-term care.<sup>608</sup>

Federal Medicaid expenditures are determined at the state level annually by the federal medical assistance percentage rate (FMAP rate), which can range from 50% to 83%, and depends on each state's per capita income.<sup>609</sup> As panelist Allison Mitchell explained,

“States with a higher per capita income have a lower FMAP or federal matching rate, and states with a lower per capita income have a higher FMAP or federal matching rate. And this amount is set in statute...for a state that has a 50% FMAP, how that operates is that the state pays a dollar in most Medicaid expenditures and they can draw down 50 cents from the federal government.”<sup>610</sup>

Notably, per capita income data is reported by the U.S. Department of Commerce's Bureau of Economic Analysis, which is not collected in the territories.<sup>611</sup> If the formula used in the states to

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<sup>602</sup> Consolidated Appropriations Act, 2023, 117 P.L. 328 §5101. 117<sup>th</sup> Cong. (2021-2022); *See also*: Mitchell Statement, at 3.

<sup>603</sup> Mitchell Testimony, Transcript 6. p. 8.

<sup>604</sup> 42 C.F.R. § 438.6(c), special contract provisions related to payment; *See also*, Mitchell Statement, at 4-5.

<sup>605</sup> Andrew Hammond. “Territorial Exceptionalism and the American Welfare State.” Vol. 119, Issue 8. Michigan Law Review, p. 1667. 2021. doi: <https://doi.org/10.36644/mlr.119.8.territorial>

<sup>606</sup> Roberto Cruz, testimony. Public Briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, Web Briefing, March 13, 2025, transcript 7. p. 12 (hereinafter cited as Transcript 7); *See also*: Balmaceda Testimony, Transcript 7, p. 8.

<sup>607</sup> Balmaceda Testimony, Transcript 7, p. 10.

<sup>608</sup> *Ibid*.

<sup>609</sup> Congressional Research Service. “Medicaid’s Federal Medical Assistance Percentage (FMAP).” CRS Report R43847. <https://www.congress.gov/crs-product/R43847> (accessed June 2, 2025); *See also*: Mitchell Statement, at 3.

<sup>610</sup> Mitchell Testimony, Transcript 6. p. 8-9.

<sup>611</sup> Mitchell Statement, at 3.

determine the FMAP rate was applied in the territories, it is likely that the rates would be higher than in the states.<sup>612</sup>

According to panelist Alison Mitchell, for most of Medicaid’s history, the FMAP rate has fluctuated in the territories between 50% to 55%, although it has increased since fiscal year 2020 as a result of various laws.<sup>613</sup> The FMAP rate currently stands at 83% for American Samoa, the Northern Mariana Islands, Guam, and the U.S. Virgin Islands, and at 76% for Puerto Rico.<sup>614</sup> This increased FMAP rate, along with the funding allocated through the Consolidated Appropriations Act of 2023, has allowed Puerto Rico’s Medicaid program to provide Hepatitis C drug coverage, increase reimbursement rates to specialty and primary care providers and hospitals, and increase coverage by expanding Medicaid eligibility in the territory.<sup>615</sup>

Starting in fiscal year 2028, funding is expected to decrease significantly to amounts comparable to those prior to 2010.<sup>616</sup> The FMAP rate in Puerto Rico will return to 55% if no legislative action is taken at the time the current funding expires in fiscal year 2027.<sup>617</sup> The current FMAP rates in Puerto Rico through fiscal year 2027 are as follows:

- \$3.275 billion for FY2023;
- \$3.325 billion for FY2024,
- \$3.475 billion for FY2025,
- \$3.645 billion for FY2026, and
- \$3.825 billion for FY2027.<sup>618</sup>

### ***Supplemental Security Income***<sup>619</sup>

Supplemental Security Income (SSI) is a federal program that provides monthly payments to people with disabilities and older adults who have little or no income or resources.<sup>620</sup> The program represents the notion that people with disabilities are entitled to lead dignified lives no matter

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<sup>612</sup> Mitchell Statement, at 3.

<sup>613</sup> Ibid.

<sup>614</sup> Congressional Research Service. “Medicaid Financing for the Territories.” Updated June 22, 2023.

[https://www.congress.gov/crs\\_external\\_products/IF/PDF/IF11012/IF11012.11.pdf](https://www.congress.gov/crs_external_products/IF/PDF/IF11012/IF11012.11.pdf) (accessed December 11, 2025).

<sup>615</sup> Consolidated Appropriations Act, 2023, H.R. 2617 §5101. 117<sup>th</sup> Cong. (2021-2022); *See also*: Javier Balmaceda, Senior Policy Analyst on Puerto Rico, Center on Budget and Policy Priorities, Written Statement, p.4, submitted for Puerto Rico Advisory Committee to the United States Commission on Civil Rights Briefing, March 13, 2025 (cited herein after as Balmaceda statement).

<sup>616</sup> Mitchell Statement, at 3.

<sup>617</sup> Ibid.

<sup>618</sup> Mitchell Statement, at 4.

<sup>619</sup> For additional testimony on challenges related to the lack of access to SSI, please see Preliminary Finding V in the Puerto Rico Advisory Committee Memorandum “The Insular Cases and the Doctrine of the Unincorporated Territory and its Effects on the Civil Rights of the Residents of Puerto Rico Overview Memorandum – Part I,” p. 15-22, [https://www.usccr.gov/files/2024-02/english\\_pr-ac\\_memo-1.pdf](https://www.usccr.gov/files/2024-02/english_pr-ac_memo-1.pdf) (accessed June 5, 2025).

<sup>620</sup> Social Security. “Supplemental Security Income (SSI).” <https://www.ssa.gov/ssi> (accessed June 5, 2025).

where they live.<sup>621</sup> Recipients must be residents of the United States in order to be eligible for SSI benefits.<sup>622</sup> For the purposes of the statute that establishes SSI, the United States is defined in a geographical sense as including the 50 states and the District of Columbia and does not include the U.S. Territories except for the Northern Mariana Islands.<sup>623</sup>

The Aid to the Aged, Blind, or Disabled (AABD) program, which predates SSI, is available to eligible residents in Puerto Rico, Guam, and the U.S. Virgin Islands, although its benefit amounts are smaller than SSI and the program requirements vary.<sup>624</sup> For example, the average monthly AABD benefit in Puerto Rico is less than \$100, compared to the over \$500 eligible recipients receive under SSI.<sup>625</sup> Like the Medicaid program, Puerto Rico receives capped federal funding for AABD, which limits the services it can provide when compared to the states.<sup>626</sup> According to panelists, this lesser quantity of services provided, combined with the lack of SSI benefits in Puerto Rico “deprive low-income, elderly, and disabled individuals of necessary support.”<sup>627</sup>

In 2022, the Supreme Court of the United States decided to not extend SSI benefits to Puerto Rico in the *United States v. Vaello-Madero* case.<sup>628</sup> Written testimony submitted by Mainon Schwartz of the Congressional Research Services explains the basis for the case:

“While living in New York, José Luis Vaello-Madero became eligible for, and began receiving, SSI disability benefits. He later moved to Puerto Rico, where he continued to receive SSI payments.

When the Social Security Administration became aware of Vaello-Madero’s continued receipt of SSI payments, it sued Vaello-Madero to recover the payments he received while living in Puerto Rico on the grounds that Puerto Rico residents are ineligible to receive SSI benefits. In response, Vaello-Madero argued that excluding Puerto Rico residents from SSI eligibility was unconstitutional—

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<sup>621</sup> Brief for the Public Benefits Scholars as Amicus Curiae, p. 2, *United States v. Vaello Madero*, 596 U.S. 159 (2022).

<sup>622</sup> 42 U.S.C. §1382c(a)(1)(B)(i); *See also*: Mainon Schwartz, Legislative Attorney, Congressional Research Service, Library of Congress, Written Statement, p. 1, submitted for Puerto Rico Advisory Committee to the United States Commission on Civil Rights Briefing, March 6, 2025 (cited herein after as Schwartz statement).

<sup>623</sup> 42 U.S. Code §1382c(e); *See also*: Schwartz Statement, at 1; *See also*: Brief for the Public Benefits Scholars as Amicus Curiae, p. 5, *United States v. Vaello Madero*, 596 U.S. 159 (2022).

<sup>624</sup> Social Security Office of the Chief Actuary Letter to Puerto Rico Senator William E. Villafañe Ramos. November 8, 2024. Social Security Administration

[https://www.ssa.gov/oact/solvency/VillafaneRamos\\_20241108.pdf](https://www.ssa.gov/oact/solvency/VillafaneRamos_20241108.pdf) (accessed June 5, 2024); *See also*: Balmaceda Testimony, Transcript 7, p. 8, 24; *See also*: Farrow Testimony, Transcript 6, p. 5; *See also*: Brief for the Public Benefits Scholars as Amicus Curiae, p. 5, *United States v. Vaello Madero*, 596 U.S. 159 (2022).

<sup>625</sup> Brief for the Public Benefits Scholars as Amicus Curiae, p. 5, *United States v. Vaello Madero*, 596 U.S. 159 (2022).

<sup>626</sup> Center on Budget and Policy Priorities. “Policy Basics: Aid to the Aged, Blind, and Disabled.” Updated January 15, 2021. <https://www.cbpp.org/research/social-security/policy-basics-aid-to-the-aged-blind-and-disabled> (accessed June 5, 2024).

<sup>627</sup> Cruz Testimony, Transcript 7, p. 12.

<sup>628</sup> *United States v. Vaello Madero*, 596 U.S. 159 (2022).

specifically, that it violated his Fifth Amendment right to equal protection under the law.”<sup>629</sup>

Despite the District Court and Court of Appeals agreeing with Mr. Vaello Madero, the Supreme Court used the rational basis test to determine that Congress was not required to extend SSI to Puerto Rico.<sup>630</sup> In addition to invoking Congress’ discretion over the territories through the Territory Clause, the Supreme Court highlighted that the fact that residents of Puerto Rico are exempt from federal income, gift, estate, and excise taxes provides a rational basis for treating them differently than residents of the states for purposes of SSI.<sup>631</sup> Furthermore, the Court stated that extending SSI to Puerto Rico could lead to “far-reaching consequences” such as Congress needing to extend other federal benefit programs to the territories, resulting in the possibility of federal taxes – and a significantly increased financial burden – being imposed on Puerto Rico.<sup>632</sup>

Panelist Jeffrey Farrow spoke to the Committee about his experience in hearing arguments that used Puerto Rico’s tax status and the fear of heightened costs to deny the extension of SSI to Puerto Rico. He shared with the Committee that the chairman of the Finance Committee in the Senate blocked SSI because “income that U.S. companies received through Puerto Rico was exempt from federal taxes.”<sup>633</sup> Additionally, he shared that the Bush Administration had seriously considered extending SSI to Guam but stopped short of doing so because it “would have buttressed the case for extending it to Puerto Rico. And the [Office of Management and Budget] felt the cost would be too great to extend it to Puerto Rico.”<sup>634</sup>

In written materials submitted to the Committee, Andrew Hammond, Professor of Law at the Indiana University Maurer School of Law, stated that basing the decision on Puerto Rico’s exclusion from federal taxes is:

“a confused justification for excluding any group of Americans from SSI. As a means-tested program, SSI’s eligibility rules are not based on past or future federal tax payments. SSI is a program that only kicks in when an applicant has been shown to have insufficient work history to qualify for Social Security Disability Insurance and has little or no income. The idea that Congress could use a logic of contributory insurance to justify a noncontributory (i.e., means-tested) program is odd.”<sup>635</sup>

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<sup>629</sup> *United States v. Vaello Madero*, 596 U.S. 159 (2022); See also: Schwartz Statement, at 3.

<sup>630</sup> *United States v. Vaello Madero*, 596 U.S. 159 (2022); See also: Schwartz Statement, at 4.

<sup>631</sup> *United States v. Vaello Madero*, 596 U.S. 159 (2022); See also: U.S. Const. art. IV, § 3.

<sup>632</sup> *United States v. Vaello Madero*, 596 U.S. 159 (2022).

<sup>633</sup> Farrow Testimony, Transcript 6, p. 5.

<sup>634</sup> Farrow Testimony, Transcript 6, p. 5.

<sup>635</sup> Andrew Hammond. “Territorial Exceptionalism and the American Welfare State.” Vol. 119, Issue 8. Michigan Law Review, p. 1683. 2021. doi: <https://doi.org/10.36644/mlr.119.8.territorial>

Professor Hammond further wrote about how no other group of Americans are excluded from programs because they do not pay income taxes and that it is “highly unlikely that many Americans who receive SNAP, SSI, or Medicare Part D have any federal income tax liability.”<sup>636</sup>

### ***The Nutrition Assistance Program and Food Sovereignty in Puerto Rico***

Since 1982, the Nutrition Assistance Program (NAP) offers financial assistance to over 1 million eligible low-income households in Puerto Rico to help fulfill their nutrition needs.<sup>637</sup> Previous to NAP, the Supplemental Nutrition Assistance Program (SNAP) that currently operates in the states was also available in Puerto Rico from 1974 to 1981.<sup>638</sup> Puerto Rico was removed from the national food assistance program as a result of the Omnibus Budget Reconciliation Act of 1981.<sup>639</sup> In addition to Puerto Rico, NAP also operated in American Samoa and the Northern Mariana Islands.<sup>640</sup>

NAP is administered by the local government agency Administration for Socioeconomic Development of Family which designs its own program rules that are approved by the U.S. Department of Agriculture Food and Nutrition Service.<sup>641</sup> The NAP program is funded through a federal block grant which pays for 100 percent of benefits and 50 percent of administrative costs.<sup>642</sup> Due to the limited funding through the block grant, there is increased NAP participation and decreased benefits.<sup>643</sup> As a result, the U.S. Territories that manage NAP tend to “impose stricter eligibility requirements and confer reduced benefit amounts.”<sup>644</sup> NAP differs from SNAP in that the general income limits and benefit levels are lower, although there are incentives to purchase

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<sup>636</sup> Andrew Hammond. “Territorial Exceptionalism and the American Welfare State.” Vol. 119, Issue 8. Michigan Law Review, p. 1683. 2021. doi: <https://doi.org/10.36644/mlr.119.8.territorial>

<sup>637</sup> USDA Food and Nutrition Service. “Summary of Nutrition Assistance Program – Puerto Rico (NAP).” <https://fns-prod.azureedge.us/sites/default/files/resource-files/Puerto-Rico-NAP-Summary.pdf> (accessed June 10, 2025); *See also*: Departamento de la Familia. “Programa de Asistencia Nutricional – PAN.” Administración de Desarrollo Socioeconómico de la Familia <https://serviciosonline.adsef.pr.gov/adsefdigital/Pdf/PAN%20Requisitos.pdf> (accessed June 10, 2025); *See also*: Balmaceda Testimony, Transcript 7, p. 8.

<sup>638</sup> USDA Food and Nutrition Service. “Summary of Nutrition Assistance Program – Puerto Rico (NAP).” <https://fns-prod.azureedge.us/sites/default/files/resource-files/Puerto-Rico-NAP-Summary.pdf> (accessed June 10, 2025); *See also*: Balmaceda Testimony, Transcript 7, p. 24.

<sup>639</sup> Andrew Hammond. “Territorial Exceptionalism and the American Welfare State.” Vol. 119, Issue 8. Michigan Law Review, p. 1683. 2021. doi: <https://doi.org/10.36644/mlr.119.8.territorial>; *See also*: Balmaceda Testimony, Transcript 7, p. 24; *See also*: Farrow Testimony, Transcript 6, p. 5.

<sup>640</sup> Andrew Hammond. “Territorial Exceptionalism and the American Welfare State.” Vol. 119, Issue 8. Michigan Law Review, p. 1683. 2021. doi: <https://doi.org/10.36644/mlr.119.8.territorial>.

<sup>641</sup> USDA Food and Nutrition Service. “Summary of Nutrition Assistance Program – Puerto Rico (NAP).” <https://fns-prod.azureedge.us/sites/default/files/resource-files/Puerto-Rico-NAP-Summary.pdf> (accessed June 10, 2025).

<sup>642</sup> USDA Food and Nutrition Service. “Summary of Nutrition Assistance Program – Puerto Rico (NAP).” <https://fns-prod.azureedge.us/sites/default/files/resource-files/Puerto-Rico-NAP-Summary.pdf> (accessed June 10, 2025); *See also*: Hammond Statement, at 3.

<sup>643</sup> *Ibid*.

<sup>644</sup> Hammond Statement, at 3.

from local markets in Puerto Rico and there is a 20 percent increased benefit amount for elderly recipients.<sup>645</sup>

Panelists highlighted that when Puerto Rico transitioned from SNAP to NAP, participation rates fell dramatically from 60 percent to 30 percent due to the limited funding and inability to assist the same number of people.<sup>646</sup> Professor Hammond indicated in his written testimony that “the families that do receive assistance get less than their mainland counterparts: A family of three in the lower 48 can receive up to \$535 in food assistance while that same family in Puerto Rico can receive only \$315. The average benefit is even smaller - just \$149.51.”<sup>647</sup>

In response to the ongoing nutritional needs in Puerto Rico, panelist Roberto Cruz, Managing Attorney at Latino Justice PRLDEF, focused his testimony not only on the importance of securing parity in nutritional assistance but in achieving food sovereignty. He explained that “the island imports approximately 85% of its food, making it highly vulnerable to supply chain disruptions and price fluctuations.”<sup>648</sup> This reliance on outside food sources keeps Puerto Rico from becoming self-sustainable, which would be especially vital in the aftermaths of natural disasters, as was seen after Hurricane Maria.<sup>649</sup> As Mr. Cruz explained, “the lack of a robust local agricultural system resulted in thousands of Puerto Ricans going hungry as ships could not dock at the storm-battered ports. Today, Puerto Rico is vulnerable still in the face of the climate and geopolitical events that disrupt its food supply chain.”<sup>650</sup>

Mr. Cruz brought forth a proposed solution of redirecting USDA agricultural funds to incentivize local food production within Puerto Rico.<sup>651</sup> This could be done in a culturally competent way that directly aids farmers, community land trusts and other partners and could assist in a potential transition back to the SNAP program.<sup>652</sup> Mr. Cruz suggested that the funds be designed as a way to incentivize the local economy and be provided directly to farmers and business owners who are likely to invest in the community as this would be an effective strategy in strengthening the local economy.<sup>653</sup>

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<sup>645</sup> USDA Food and Nutrition Service. “Summary of Nutrition Assistance Program – Puerto Rico (NAP).” <https://fns-prod.azureedge.us/sites/default/files/resource-files/Puerto-Rico-NAP-Summary.pdf> (accessed June 10, 2025).

<sup>646</sup> Brief for the Public Benefits Scholars as Amicus Curiae, p. 20-21, *United States v. Vaello Madero*, 596 U.S. 159 (2022); *See also*: Hammond Statement, at 4.

<sup>647</sup> Hammond Statement, at 4.

<sup>648</sup> Cruz Testimony, Transcript 7, p. 12.

<sup>649</sup> *Ibid.*

<sup>650</sup> Cruz Testimony, Transcript 7, p. 12.

<sup>651</sup> Cruz Testimony, Transcript 7, p. 12-13.

<sup>652</sup> *Ibid.*

<sup>653</sup> Cruz Testimony, Transcript 7, p. 17.

## *Resources for Veterans*

### *Healthcare*

One of the populations that is greatly affected by the inequitable access to federal programs is U.S. veterans residing in Puerto Rico, where there is a population of over 73,000 veterans and only one Department of Veterans Affairs medical center and eight outpatient clinics.<sup>654</sup> Mr. Alex Ortiz<sup>655</sup>, a Veterans Policy Analyst and Member of the Advisory Committee on Outlying Areas and Freely Associated States under the Department of Veterans Affairs, focused his testimony on the implications of limited access to benefits for veterans and highlighted the issues they face in relation to healthcare.

In addition to being excluded from Supplemental Security Income like other residents of Puerto Rico, Mr. Ortiz estimated based on his analysis that there are approximately 36,000 veterans who do not receive disability compensation, resulting in a loss of \$134 million worth of benefits, per month.<sup>656</sup>

The effects of inequitable access to federal programs extend beyond monthly benefits for veterans and impact various aspects of the healthcare system, including the infrastructure of healthcare facilities. Mr. Ortiz shared the example of the efforts to build a Fisher House at the San Juan Department of Veterans Affairs Medical Center.<sup>657</sup> There are dozens of Fisher Houses throughout the country and even internationally that offer accommodations to military families while their loved ones are hospitalized.<sup>658</sup> Mr. Ortiz explained that although funding for the project had been approved, it did not advance as scheduled.<sup>659</sup> Similarly, funding that had been approved by Congress for Department of Veterans Affairs hospital and clinic repairs and improvements in Puerto Rico after Hurricanes Maria and Irma in 2017 were substantially delayed, leaving buildings in a vulnerable state for extended periods of time.<sup>660</sup>

Additionally, a 2024 U.S. Government Accountability Office report highlighted how veterans in Puerto Rico have faced challenges in being reimbursed for travel to medical appointments in the mainland and that the Veterans Health Administration had not sufficiently addressed access to care

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<sup>654</sup> United States Government Accountability Office. “Veterans Affairs: Actions Needed to Improve Access to Care in the U.S. Territories and Freely Associated States.” May 2024, GAO-24-106364, p. 6, 10. <https://www.gao.gov/assets/gao-24-106364.pdf> (accessed June 20, 2025).

<sup>655</sup> Mr. Ortiz also served as a panelist at the Puerto Rico Advisory Committee’s inaugural briefing in May 2023. The memorandum and associated briefing records based on testimony received at that briefing can be found here: [https://www.usccr.gov/files/2024-02/english\\_pr-ac\\_memo-1.pdf](https://www.usccr.gov/files/2024-02/english_pr-ac_memo-1.pdf).

<sup>656</sup> Alex Ortiz, testimony. Public Briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, Web Briefing, March 13, 2025, transcript 7. p. 5, 17 (hereinafter cited as Transcript 7).

<sup>657</sup> Ortiz Testimony, Transcript 7, p. 4.

<sup>658</sup> Fisher House. “Fisher House Directory.”

<file:///C:/Users/vmoreno/Downloads/CURRENT%20Fisher%20House%20Foundation%20Directory.pdf> (accessed June 20, 2025); See also: Fisher House. “About.” <https://fisherhouse.org/about/> (accessed June 20, 2025).

<sup>659</sup> Ortiz Testimony, Transcript 7, p. 4.

<sup>660</sup> Ibid.

in the U.S. Territories.<sup>661</sup> The Department of Veteran Affairs provides reimbursements to qualifying veterans for medical appointments.<sup>662</sup> Although Puerto Rico is listed in the definition of the United States for purposes of geographic qualifications for the travel benefit, 51% of veterans in Puerto Rico were not eligible for travel reimbursement because they were seeking care for services that did not meet the required criteria.<sup>663</sup> This results in veterans themselves being responsible for their travel costs for needed care.<sup>664</sup>

Oftentimes, veterans in Puerto Rico must travel outside the island for healthcare services due to the lack of subspecialties and advanced treatment facilities at the San Juan Department of Veterans Affairs Medical Center in comparison other such centers on the mainland.<sup>665</sup> Mr. Ortiz noted: “There is no Department of Veterans Affairs Trauma Center on the island and only recently was a full service inpatient psychiatric unit in Puerto Rico inaugurated, and that had its own shortcomings.”<sup>666</sup> This deficiency in specialized services, as described below by Mr. Ortiz, has also led to a “brain drain” of physicians who have left Puerto Rico:

“Certain care, for example, specialized surgery, some cancer treatment, spinal cord injury rehabilitation, and bariatric surgeries which have been risen in the amounts that are being done every year often cannot be performed on the island. The Department of Veterans Affairs has tried to bridge these gaps by contracting private sector providers in Puerto Rico throughout community care programs, but there are too many significant hurdles. Puerto Rico has suffered the general exodus of healthcare professionals in recent years because physicians are getting paid more on the mainland and have less issues to deal with, leaving critical shortages of specialists such as neurologists, oncologists, and orthopedic surgeons at the VA hospital.”<sup>667</sup>

Mr. Ortiz further described a dire situation in the healthcare system in Puerto Rico, in which providers typically complain about “slow reimbursements and bureaucratic hassles, outdated forms, and having to deal with electronic system that Department of Veterans Affairs usually doesn't train them in order to be able to participate.”<sup>668</sup> This environment has also negatively

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<sup>661</sup> United States Government Accountability Office. “Veterans Affairs: Actions Needed to Improve Access to Care in the U.S. Territories and Freely Associated States.” May 2024, GAO-24-106364, p. 15. <https://www.gao.gov/assets/gao-24-106364.pdf> (accessed June 20, 2025); *See also*: Ortiz Testimony, Transcript 7, p. 5.

<sup>662</sup> 38 U.S.C. §111(b).

<sup>663</sup> 38 C.F.R. §70.2; *See also*: 38 U.S.C. §111(b); *See also*: United States Government Accountability Office. “Veterans Affairs: Actions Needed to Improve Access to Care in the U.S. Territories and Freely Associated States.” May 2024, GAO-24-106364, p. 20. <https://www.gao.gov/assets/gao-24-106364.pdf> (accessed June 20, 2025).

<sup>664</sup> United States Government Accountability Office. “Veterans Affairs: Actions Needed to Improve Access to Care in the U.S. Territories and Freely Associated States.” May 2024, GAO-24-106364, p. 20. <https://www.gao.gov/assets/gao-24-106364.pdf> (accessed June 20, 2025).

<sup>665</sup> Ortiz Testimony, Transcript 7, p. 4-5.

<sup>666</sup> *Ibid*.

<sup>667</sup> Ortiz Testimony, Transcript 7, p. 5.

<sup>668</sup> *Ibid*.

affected the acquisition of needed medical equipment. For example, the VA Medical Center in San Juan lags behind other VA medical centers in receiving new medical services and devices.<sup>669</sup> Certain services, such as cardiac device monitoring services, have had a delay of up to 10 years.<sup>670</sup> There have been vendors for such services that have built their systems only for the continental U.S. and have had to adjust their system to include Puerto Rico after intervention from the VA’s Strategic Acquisition Center.<sup>671</sup> Similar contractual issues have occurred for acquiring equipment such as scopes for medical procedures such as colonoscopies.<sup>672</sup> This, along with delayed reimbursements and outdated technology, has created a challenging environment for a smaller network of specialists available to treat veterans on the island. According to Mr. Ortiz, “Puerto Rico continues to face significant obstacles further hindering veterans access to timely and quality medical care. Veterans should never be forced to navigate complex jurisdictional mazes solely because of their place of residence.”<sup>673</sup>

### ***Other Barriers that Hinder Full Benefits for Veterans***

Mr. Ortiz provided various examples in which a lack of awareness of federal programs and procedures as well as staffing in key positions has led to limited awareness and distribution of the full scope of benefits available to veterans.

### ***The Need for Increased Participation and Awareness***

Despite a lack of prioritization at the federal level, Mr. Ortiz believes more can be done at the local level for Puerto Rico to be more vocal in federal affairs and educate professionals across different sectors on the impact of federal laws. For example, in Mr. Ortiz’s opinion, the U.S. Department of Veterans Affairs’ Intergovernmental Affairs unit is underutilized as a resource by the government of Puerto Rico. If there were increased engagement, Puerto Rico can amplify its decision-making role in matters related to territorial laws affecting veterans.<sup>674</sup> Furthermore, Mr. Ortiz shared the example of how many attorneys and certified public accountants in Puerto Rico were not aware of the benefits that could be derived from the Haven Act of 2019, which excludes certain veterans’ benefits as monthly income as defined by the Bankruptcy Code.<sup>675</sup> This lack of awareness has

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<sup>669</sup> Ortiz Testimony, Transcript 7, p. 6; *See also*: United States Government Accountability Office. “Veterans Affairs: Actions Needed to Improve Access to Care in the U.S. Territories and Freely Associated States.” May 2024, GAO-24-106364, p. 27. <https://www.gao.gov/assets/gao-24-106364.pdf> (accessed June 20, 2025).

<sup>670</sup> *Ibid*.

<sup>671</sup> Ortiz Testimony, Transcript 7, p. 4, 5; *See also*: United States Government Accountability Office. “Veterans Affairs: Actions Needed to Improve Access to Care in the U.S. Territories and Freely Associated States.” May 2024, GAO-24-106364, p. 28. <https://www.gao.gov/assets/gao-24-106364.pdf> (accessed June 20, 2025).

<sup>672</sup> Ortiz Testimony, Transcript 7, p. 6; *See also*: United States Government Accountability Office. “Veterans Affairs: Actions Needed to Improve Access to Care in the U.S. Territories and Freely Associated States.” May 2024, GAO-24-106364, p. 28. <https://www.gao.gov/assets/gao-24-106364.pdf> (accessed June 20, 2025).

<sup>673</sup> Ortiz Testimony, Transcript 7, p. 6-7.

<sup>674</sup> *Ibid*.

<sup>675</sup> 116 P.L. 52(2019), HAVEN Act; *See also*: Ortiz Testimony, Transcript 7, p. 20.

caused confusion on which income is considered taxable or not taxable and is an area that demonstrates the need for more education on the impact of federal laws on the island.<sup>676</sup>

### ***Administrative Hurdles***

Veterans in Puerto Rico also face various administrative hurdles to accessing benefits such as language barriers and, in some instances, their place of residence being designated as foreign. Many veterans in Puerto Rico who are monolingual Spanish speakers - especially those who served in Vietnam and did not have a choice in being drafted - face access issues since some, but not all, U.S. Department of Veterans Affairs communications are sent in Spanish.<sup>677</sup>

Furthermore, the Veteran Readiness and Employment Manual (M28C), which establishes procedures for VA counselors on veterans benefits, lists several jurisdictions considered as foreign where other countries need to coordinate services for claimants.<sup>678</sup> As part of this list, the islands of Culebra and Vieques, which are part of Puerto Rico, are considered foreign.<sup>679</sup> The list also includes the U.S. Virgin Islands.<sup>680</sup> Mr. Ortiz stated that he and other advocates have spent years trying to obtain a response from the VA on why these islands are considered a foreign nation. This is an example of why he believes that Congressional action on ending the Insular Cases and deciding whether Puerto Rico will be an incorporated territory can be pivotal for the parity of veterans in Puerto Rico.<sup>681</sup>

Despite these inconsistencies, there are positive examples in which the federal government has provided resources to veterans in Puerto Rico. The Veterans Small Business Enhancement Act of 2018 allowed veterans who own small businesses to access a surplus of federal property through the Federal Surplus Personal Property Donation Program at General Services Administration. However, Freedom of Information Act requests must be submitted to obtain needed information, a requirement which is likely to be an administrative challenge for some qualifying veterans.<sup>682</sup>

### ***Lack of Needed Veteran-Serving Professionals***

Key staffing is needed in areas that veterans interface with regarding their benefits and professional development. For example, veterans in Puerto Rico face increased legal hurdles in appealing U.S. Department of Veterans Affairs decisions and asserting their rights in other matters unique to this population since, as of 2023, there were only fourteen attorneys throughout the entire island who

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<sup>676</sup> Ortiz Testimony, Transcript 7, p. 20.

<sup>677</sup> Ortiz Testimony, Transcript 7, p. 14; *See also*: U.S. Department of Veterans Affairs. "Asistencia y recursos del VA en español". <https://www.va.gov/asistencia-y-recursos-en-espanol/> (accessed June 30, 2025).

<sup>678</sup> U.S. Department of Veterans Affairs. "M28C.V.C.1 Foreign Cases, Chapter 1, Section 1.02 Jurisdiction for Foreign Cases." [https://knowva.ebenefits.va.gov/system/templates/selfservice/va\\_ssnew/help/customer/locale/en-US/portal/55440000001018/content/554400000146267/M28CIA1-Veteran-Readiness-and-Employment-Manual](https://knowva.ebenefits.va.gov/system/templates/selfservice/va_ssnew/help/customer/locale/en-US/portal/55440000001018/content/554400000146267/M28CIA1-Veteran-Readiness-and-Employment-Manual) (accessed June 30, 2025).

<sup>679</sup> *Ibid.*

<sup>680</sup> *Ibid.*

<sup>681</sup> Ortiz Testimony, Transcript 7, p. 19-20.

<sup>682</sup> Ortiz Testimony, Transcript 7, p. 7.

had accreditation to practice before the U.S. Court of Appeals for Veterans Claims, which reviews benefits-related decisions.<sup>683</sup>

Another example of a field where more veteran-serving professionals are needed is higher education. As part of the Veteran Readiness and Employment program under the U.S. Department of Veterans Affairs, VetSuccess on Campus (VSOC) Counselors are available on college campuses throughout the country to aid veterans in their transition to college life.<sup>684</sup> VSOC Counselors provide guidance to veterans on the most efficient ways to use their benefits to achieve their educational goals.<sup>685</sup> Puerto Rico does not have such a counselor available on the island.<sup>686</sup> According to Mr. Ortiz, there are over 14,000 veterans in Puerto Rico with the post-September 11<sup>th</sup> GI Bill, and having at least one VSOC Counselor would be beneficial not only to the students but to the local economy.<sup>687</sup> Mr. Ortiz shared about his own experience in making the most of his GI benefits after speaking with a VSOC Counselor:

“I used all of my GI bill benefits when I went to college in Arizona back in 2014. I used all three years of it. A new law passed that said, ““You know what? If you are a disabled veteran with a rated disability of 10% or more, you could have applied for vocational rehabilitation, and now we need to refund you that GI bill money, all 36 months of it, and everything else you spent, and now we're going to move you to this program, and this program will rehabilitate you until you meet your goal.”“ For me, that goal was to become an attorney. So they not only gave me three years back of those benefits, but they also paid for me to finish my bachelor's degree and all three years, plus all the books, everything I need to pass the bar exam.

So after I pass my bar exam and I've already used eight years of entitlement because of a court decision, now I have an additional three years of benefits that the monetary value of those three years is over \$150,000 that could stay here in Puerto Rico, simply because I talked to a VSOC counselor that was able to tell me how to do that. So if we can get one of those VSOC counselors on the island and have Congress give us priority because we have all these other issues as a territory, because we don't have access, because all the materials are in English, because we're highly discriminated on it, because all the textbooks are local to here for law schools...”<sup>688</sup>

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<sup>683</sup> Ortiz Testimony, Transcript 7, p. 7.

<sup>684</sup> U.S. Department of Veterans Affairs. “Veteran Readiness and Employment (VR&E), VetSuccess on Campus.” <https://www.benefits.va.gov/vocrehab/vsoc.asp> (accessed July 1, 2025).

<sup>685</sup> Ortiz Testimony, Transcript 7, p. 25; *See also*: U.S. Department of Veterans Affairs. “Veteran Readiness and Employment (VR&E) VetSuccess on Campus.” <https://www.benefits.va.gov/vocrehab/vsoc.asp> (accessed July 1, 2025).

<sup>686</sup> *Ibid.*

<sup>687</sup> Ortiz Testimony, Transcript 7, p. 25.

<sup>688</sup> Ortiz Testimony, Transcript 7, p. 25-26.

Mr. Ortiz believes that having a VSOC Counselor in Puerto Rico who can speak to the VA about the unique challenges students face on the island can be a first step in federal agencies establishing evidence for Congress about the parity issues in Puerto Rico.<sup>689</sup> This can complement the efforts of advocates and make a stronger case for change.<sup>690</sup>

**FINDING II – The Committee found that racial formation in Puerto Rico has been complex and has faced challenges in accuracy through data collection.**

***Shifting of Racial Categories Over Time***

The Committee sought to incorporate an analysis of the role of race in Puerto Rico and in its relationship with the federal government. As part of this effort, the Committee invited expert panelists to speak on the subject. Dr. Yomaira Figueroa-Vásquez, Director of the Center for Puerto Rican Studies at Hunter College at the City University of New York, and Dr. Carlos Vargas-Ramos, Director of Public Policy, Media Relations and Development at the City University of New York, co-led an in-depth presentation before the Committee on this subject area.

The Committee heard about how the United States has changed racial classifications in Puerto Rico over time, especially for Afro-Puerto Rican populations, and how the inaccuracies of these categorizations have complicated the official record of race in Puerto Rico. Dr. Figueroa-Vásquez shared about her lived experience in speaking with her grandfather about the Census when she was a child. While her family identified simply as Puerto Rican, Dr. Figueroa-Vásquez spoke about an analysis she conducted of her family history in which Census records showed how the Afro-Puerto Rican population was shifted towards whiteness over time:

“In 1910, my great-grandparents noted as Negros are shown to have four children, which each are shown as mulatos. And again, the question of how two Negros can make four mulatos is quite interesting in the racial category of mestizaje. But these same people in the census of 1920, 1930, 1940 and 1950, continue to change the racial categorizations. They become mulatos in the 1920s. By the 1930s and '40s, they are considered *de color* [of color]. And then what we see telegraphed years later in death certificates and other documents, these very same populations of people who are Black and Afro descendant, descendants of enslaved people, are categorized as white, particularly in the death certificates.”<sup>691</sup>

According to historical Census records, the percent of White individuals in Puerto Rico grew by nearly 28 percent, from 48 percent to 75.8 percent from 1802 through 2010:

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<sup>689</sup> Ortiz Testimony, Transcript 7, p. 26.

<sup>690</sup> Ibid.

<sup>691</sup> Figueroa-Vásquez Testimony, Transcript 8, p. 5.

*Table 1. Historical Population Counts for Puerto Rico 1802-2010.*

Census Year	Total Population	Per cent White	Per cent Non-White
1802	163,192	48	52
1812	183,014	46.8	53.2
1820	230,622	44.4	55.6
1827	302,672	49.7	50.3
1830	323,838	50.1	49.9
1836	357,086	52.9	47.1
1860	583,308	51.5	48.5
1877	731,648	56.3	43.7
1887	798,565	59.5	40.5
1897	890,911	64.3	35.7
1899	953,243	61.8	38.2
1910	1,118,012	65.5	34.5
1920	1,299,809	73	27
1930	1,543,013	74.3	25.7
1940	1,869,255	76.5	23.5
<b>1950</b>	<b>2,210,703</b>	<b>79.7</b>	<b>20.3</b>
<b>2000</b>	<b>3,808,610</b>	<b>80.5</b>	<b>19.5</b>
<b>2010</b>	<b>3,725,789</b>	<b>75.8</b>	<b>24.2</b>

Sources: For 1802 to 1899 data, U.S. War Department (1900), p. 57; for 1910 to 2010 decennial data, U.S. Bureau of the Census.

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Dr. Vargas-Ramos shared that the proportion of the population in Puerto Rico that identified as White on the Census for the years 2000 (80.5 percent) and 2010 (75.8 percent), as shown in Table 1 above, is larger than the proportion of people who identified as White throughout the United States.<sup>693</sup> In comparison, the White population in the U.S. was 75 percent of the total population and in 2010 it comprised 72 percent of the population.<sup>694</sup>

<sup>692</sup> Figueroa-Vásquez Testimony, *March 14, 2025, Web Briefing*, supplemental slides, slide 9.

<sup>693</sup> Carlos Vargas-Ramos, testimony. Public Briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, *Web Briefing, March 14, 2025*, transcript 8. p. 9 (hereinafter cited as Transcript 8).

<sup>694</sup> Vargas-Ramos Testimony, Transcript 8, p. 9-10; *See also*: U.S. Census Bureau. “The White Population: 2010.” 2010 Census Briefs. September 2011.

<https://www.census.gov/content/dam/Census/library/publications/2011/dec/c2010br-05.pdf> (accessed July 24, 2025).

The panelists spoke about how the increase of White identity in Puerto Rico stood in opposition to the one-drop rule in the mainland United States, in which any level of relation to Black ancestry would tie the individual to that racial category.<sup>695</sup> Additionally, Puerto Rico is also a jurisdiction with a strong history of *mestizaje* as a result of Spanish colonial rule. As explained by Dr. Figueroa-Vásquez, this “racial framework is a vigorous form of racial mixing, promoted as part of a nation-building project and it was one that was asking folks to move towards whiteness.”<sup>696</sup> During the Spanish rule, White individuals occupied the highest ranks in society while the bottom of the social scale was an enslaved population equated with individuals of African origin and their descendants.<sup>697</sup> This practice of *Blanqueamiento* [whitening] is described by Dr. Vargas-Ramos as “a social escape route over the generations for disparaged racial groups.”<sup>698</sup>

Dr. Vargas-Ramos explained that since the U.S. government began conducting the Census in 1899, U.S. Census enumerators tended to record more individuals as White than there really were in the community and that this was done to conform with U.S. specifications of racial categories.<sup>699</sup> Puerto Ricans did not have authority on how racial categories were recorded. Enumerators used their own discretion to mark responses to the racial category question in Puerto Rico based on their observations until the 2000 decennial survey, the first time the question was placed on the questionnaire and that residents had an opportunity to respond directly.<sup>700</sup> Since then, significant shifts have occurred. Regarding the category of “some other race,” approximately between one quarter and one third of the population have selected this category although based on data from 2019 – 2023, the White identification decreased under 50 percent and the selection of two or more racial categories increased to 37 percent.<sup>701</sup>

The panelists shared that it is common for the Office of Management and Budget (OMB) to modify responses to the Census questionnaire to have them be compatible with their overall reporting standards.<sup>702</sup> This is consistently seen in the case of Latinos, one of the groups most likely to select

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<sup>695</sup> Figueroa-Vásquez Testimony, Transcript 8, p. 5-6.

<sup>696</sup> Figueroa-Vásquez Testimony, Transcript 8, p. 6.

<sup>697</sup> Vargas-Ramos Testimony, Transcript 8, p. 9-10.

<sup>698</sup> Vargas-Ramos Testimony, Transcript 8, p. 8-9.

<sup>699</sup> Vargas-Ramos Testimony, Transcript 8, p. 6-7.

<sup>700</sup> Vargas-Ramos Testimony, Transcript 8, p. 9; *See also*: Yomaira Figueroa-Vásquez, Professor of Africana, Puerto Rican and Latino Studies, Director of the Center for Puerto Rican Studies (CENTRO), Hunter College at the The City University of New York and Carlos Vargas-Ramos, Director of Public Policy, External and Media Relations, and Development, Hunter College at The City University of New York. Written Statement, p. 5, submitted for Puerto Rico Advisory Committee to the United States Commission on Civil Rights Briefing, March 14, 2025 (cited herein after as Figueroa-Vásquez and Vargas-Ramos statement).; *See also*: Christenson, Matthew. “Puerto Rico Census 2000 Responses to the Race and Ethnicity Questions - FINAL REPORT.” U.S. Census Bureau. July 14, 2003. <https://estadisticas.pr/files/BibliotecaVirtual/estadisticas/biblioteca/USCB/B12.pdf> (accessed July 24, 2025).

<sup>701</sup> Vargas-Ramos Testimony, Transcript 8, p. 8-9.

<sup>702</sup> Vargas-Ramos Testimony, Transcript 8, p. 9; *See also*: As stated in Figueroa-Vásquez and Vargas-Ramos Statement, footnote 17, “[b]ecause of needs to have census data comparable with reporting the reporting categories used by state and local agencies and for compiling other administrative data used in producing population estimates and projections, the Census Bureau developed a procedure to assign an OMB race to those who reported Some Other Race.” (Modified Race Summary File Methodology. U.S. Census Bureau, Population Division). Updated:

the response “some other race” in regards to the racial identity question.<sup>703</sup> Dr. Vargas-Ramos shared that the Census Bureau updated its methodology for modifying responses to questions on race for the 2020 Census, which may have influenced patterns in the data.<sup>704</sup>

### ***Differences in the Understanding of Race in Puerto Rico as Compared to the Rest of the U.S.***

The presence of Puerto Ricans in the mainland United States is now larger than the population living on the island itself due to a combination of factors, including economic need.<sup>705</sup> They now comprise the second-largest Hispanic origin population on the mainland.<sup>706</sup> This is relevant because Puerto Ricans have a unique migratory pattern in the U.S. that differs from every other Hispanic origin population group and migrant group in the country.<sup>707</sup> Dr. Figueroa-Vásquez described Puerto Rico as an anomaly when thinking about Hispanics and migration due to the ability to move back and forth and the growth of the Puerto Rican population in the mainland. Based on these factors, she believes there is an opportunity for the U.S. to approach Puerto Rico differently in a way that perhaps may not be replicated elsewhere in the country.<sup>708</sup>

Additionally, Dr. Figueroa-Vásquez shared that many of the migrants from Puerto Rico to the mainland come from rural, mountainous regions of the island and have brought with them specific aspects of the culture and language that have persisted in the Puerto Rican diaspora, despite communities moving beyond these customs on the island.<sup>709</sup> While she describes these cultural characteristics as very important marks of the time periods when people migrated, they have also had the potential to “other” the population in the diaspora as they might face racism in the mainland and express outdated cultural norms when visiting Puerto Rico.<sup>710</sup> This can raise the question of who is “more” Puerto Rican, although Dr. Figueroa-Vásquez stated that this tension has decreased since the large out-migration that occurred after Hurricane María.<sup>711</sup>

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07/05/2012. <https://www2.census.gov/programs-surveys/popest/technical-documentation/methodology/modified-race-summary-file-method/mrsf2010.pdf>

<sup>703</sup> Vargas-Ramos Testimony, Transcript 8, p. 9.

<sup>704</sup> Vargas-Ramos Testimony, Transcript 8, p. 9.; *See also*: U.S. Census Bureau. “2020 Modified Age & Race Census File Methodology Statement.” <https://www2.census.gov/programs-surveys/popest/technical-documentation/methodology/modified-race-summary-file-method/marc2020-imprace-us.pdf> (accessed July 24, 2025).

<sup>705</sup> Figueroa-Vásquez Testimony, Transcript 8, p. 20; *See also*: Cohn, D’Vera, Patten, Eileen, and Lopez, Mark Hugo. “Puerto Rican Population Declines on Island, Grows on U.S. Mainland.” Pew Research Center. August 11, 2014. <https://www.pewresearch.org/race-and-ethnicity/2014/08/11/puerto-rican-population-declines-on-island-grows-on-u-s-mainland/> (accessed July 24, 2025).

<sup>706</sup> Cohn, D’Vera, Patten, Eileen, and Lopez, Mark Hugo. “Puerto Rican Population Declines on Island, Grows on U.S. Mainland.” Pew Research Center. August 11, 2014. <https://www.pewresearch.org/race-and-ethnicity/2014/08/11/puerto-rican-population-declines-on-island-grows-on-u-s-mainland/> (accessed July 24, 2025).

<sup>707</sup> Figueroa-Vásquez Testimony, Transcript 8, p. 20.

<sup>708</sup> Figueroa-Vásquez Testimony, Transcript 8, p. 14.

<sup>709</sup> Figueroa-Vásquez Testimony, Transcript 8, p. 21.

<sup>710</sup> Figueroa-Vásquez Testimony, Transcript 8, p. 22.

<sup>711</sup> Figueroa-Vásquez Testimony, Transcript 8, p. 22; *See also*: Schachter, Jason y Bruce, Antonio. “Estimating Puerto Rico’s Population After Hurricane Maria.” United States Census Bureau. August 19, 2020. <https://www.census.gov/library/stories/2020/08/estimating-puerto-rico-population-after-hurricane-maria.html> (accessed October 26, 2023).

Panelists spoke about how Puerto Ricans can *code-switch* depending on the context they are in both in the mainland United States and in Puerto Rico.<sup>712</sup> Dr. Figueroa-Vásquez stated:

“We have an ability to do this as do millions of Puerto Ricans who are living in the United States, this ability to manage through these different racial formations and also sociopolitical and economic structures that we have to inhabit and often move in between.”<sup>713</sup> This is significant because the mainland United States and Puerto Rico each have their own views on racial formation. The United States has historically held a dichotomous perspective which has broadened due to diversity in immigration since 1965, while Puerto Rico has not had a strict binary system.<sup>714</sup> In Puerto Rico, mixed race is more normalized and accepted than in the mainland.<sup>715</sup> For example, someone who may be of African descent but whose bloodline has been mixed over time may not identify as Black, but they are likely to be labeled as such in the mainland U.S. despite these nuances.<sup>716</sup>

Despite these demographic shifts over time and the broad acceptance of mixed race in Puerto Rico, the majority of Census responses from Puerto Ricans on the island and in the diaspora have, up until recently, demonstrated a preference towards White identity.<sup>717</sup> The figure below shows how the decennial census results on racial identification between 2000 and 2020 from Hispanics in Puerto Rico predominantly selected the “White alone” racial category in 2000 and 2010:

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<sup>712</sup> Figueroa-Vásquez Testimony, Transcript 8, p. 19.

<sup>713</sup> Ibid.

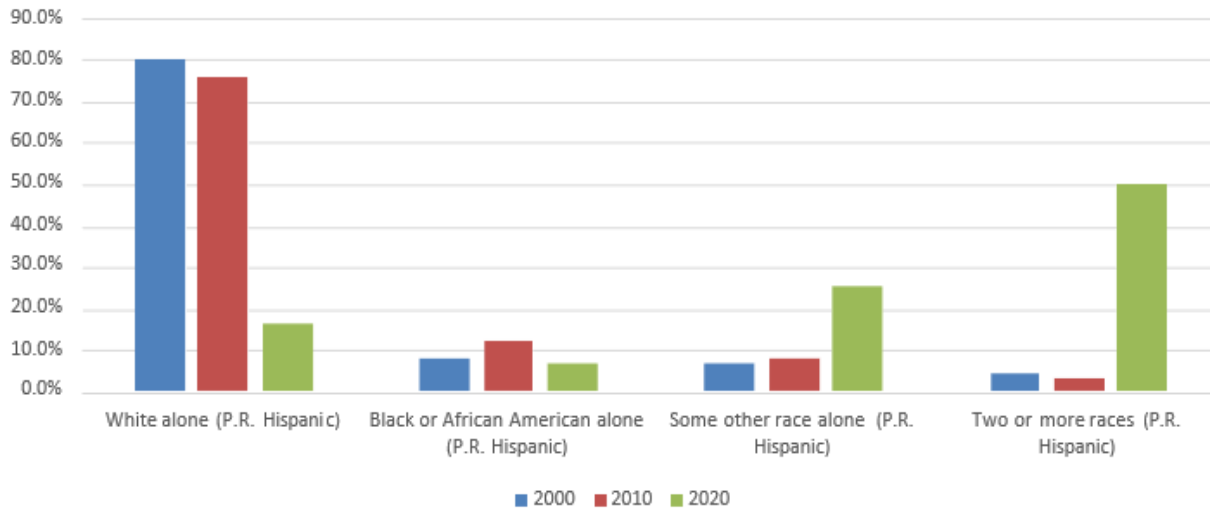
<sup>714</sup> Vargas-Ramos Testimony, Transcript 8, p. 20.

<sup>715</sup> Figueroa-Vásquez Testimony, Transcript 8, p. 21.

<sup>716</sup> Figueroa-Vásquez Testimony, Transcript 8, p. 20.

<sup>717</sup> Vargas-Ramos Testimony, Transcript 8, p. 25-26.

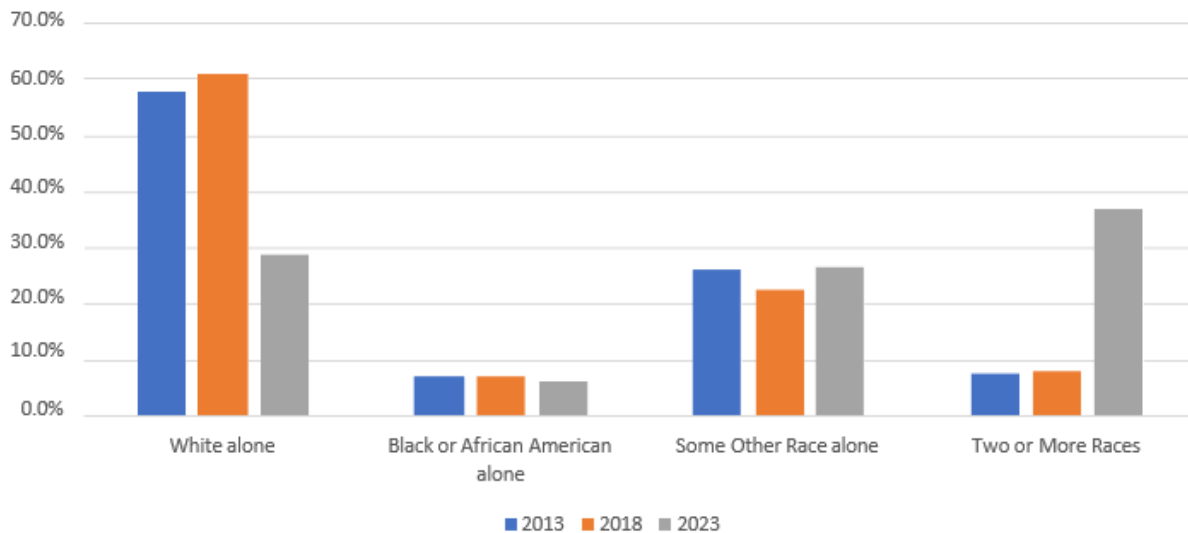
## Racial Identification among Hispanics in P.R., 2000-2020, decennial censuses



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This aligns with the American Community Survey results of racial identification among and Puerto Ricans in the United States between 2013 and 2023:

## Racial Identification, Puerto Ricans in the U.S. 2009-2023, ACS 5-yr estimates (PUMS)



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<sup>718</sup> Vargas-Ramos Testimony, *March 14, 2025, Web Briefing*, supplemental slides, slide 12.

<sup>719</sup> Vargas-Ramos Testimony, *March 14, 2025, Web Briefing*, supplemental slides, slide 14.

However, as shown in the figures above, the most recent data demonstrate a significant drop in the “White alone” category and an increase in the “Two or More Races” category.<sup>720</sup> According to the panelists, the increase in the “Two or More Races” category is a new phenomenon.<sup>721</sup> Although more research is needed, they believe this is a result of administrative manipulation and not necessarily a change of attitude among Puerto Ricans, especially since there is a problematic pattern of non-response to Census Bureau questionnaires.<sup>722</sup> Regarding these fluctuations, Dr. Vargas-Ramos commented the following: “This variability in racial identification among residents of Puerto Rico underscored the questionable reliability and therefore validity of U.S. and sanctioned racial categories to analyze material differences among Puerto Ricans, both in Puerto Rico and in the United States, as well as other Hispanics in the United States.”<sup>723</sup>

The panelists also pointed out that the low response rates for the “Black or African American alone” category are likely due to Puerto Rican’s conception of Black identity as one limited to Black individuals who are English-speaking or are African American only, not Afro-descendant.<sup>724</sup> This may lead Puerto Ricans to select other categories and speaks to the limitations cause by racial categories that are created from Anglo perspectives.<sup>725</sup>

### ***Issues with U.S. Government Data Collection of the Population in Puerto Rico***

According to the panelists, a major challenge to better understanding the population in Puerto Rico is the lack of data collection, specifically aggregated data, of racial categories in the context of areas including discrimination, femicide, employment, the prison system, housing, education, and so on.<sup>726</sup> One of the causes of this has been the reliance on government-based data tools which are based on the United States’ approach to social and racial classifications.<sup>727</sup> In Dr. Figueroa-Vásquez’s words, these instruments are “insufficient, invalid, and unreliable in Puerto Rico.”<sup>728</sup> The lack of vernacular or locale-specific racial terminology that captures the contextual racial formation among Puerto Ricans contributes to the distrust in these results.<sup>729</sup>

By maintaining the same standards of racial and ethnic data collection in Puerto Rico as in the mainland United States, it is difficult to capture distinctions and different treatment among Puerto Rico residents themselves.<sup>730</sup> In addition to the differential treatment already experienced by Puerto Rico in regards to the administrations of federal programs due to its unincorporated status that has been highlighted earlier in this Finding, the Committee heard that the uniform application

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<sup>720</sup> Vargas-Ramos Testimony, *March 14, 2025, Web Briefing*, supplemental slides, slide 12; *See also*: Vargas-Ramos Testimony, *March 14, 2025, Web Briefing*, supplemental slides, slide 14.

<sup>721</sup> Vargas-Ramos Testimony, Transcript 8, p. 26.

<sup>722</sup> *Ibid.*

<sup>723</sup> Vargas-Ramos Testimony, Transcript 8, p. 8.

<sup>724</sup> Figueroa-Vásquez Testimony, Transcript 8, p. 26.

<sup>725</sup> *Ibid.*

<sup>726</sup> Figueroa-Vásquez Testimony, Transcript 8, p. 6.

<sup>727</sup> Figueroa-Vásquez Testimony, Transcript 8, p. 6-7.

<sup>728</sup> *Ibid.*

<sup>729</sup> Vargas-Ramos Testimony, Transcript 8, p. 8.

<sup>730</sup> Vargas-Ramos Testimony, Transcript 8, p. 7.

of federal administrative rules and procedures may actually limit the equal protection under the law and civil rights of Puerto Rico residents.<sup>731</sup> For example, Dr. Vargas-Ramos shared how employees in Puerto Rico must complete an Equal Employment Opportunity form where they must select either ethnicity or race for their self-identification, and not both.<sup>732</sup> If an Afro-descendant Puerto Rican employee who presents as Black is discriminated against, it is difficult for them to submit a racial discrimination claim since 99% of the population identify as Hispanic, and the nuances of their race will not be evident in the data collection.<sup>733</sup>

The use of a blanket term such as “Hispanic” also impedes a detailed understanding of the various voting patterns among Puerto Ricans. Dr. Figueroa-Vásquez commented the following on this matter:

“We're actually not capturing the complexity and the nuances within the "Hispanic" vote, in particular within the Puerto Rican context. What does a White Puerto Rican or a mixed race Puerto Rican or an Afro-Puerto Rican, what are their votes? What are their concerns, right? So I think the lack of this kind of nuanced data then leads to the kind of taking up of an entire community under these umbrella terms that actually don't serve to get a deeper sense of what's happening on the ground in communities and in the society as a whole.”<sup>734</sup>

Since the patterns of racial formation in Puerto Rico are so distinct from the rest of the U.S., the uniform application of federal administrative rules and procedures can have counterproductive results.<sup>735</sup>

### ***The Exclusion of Puerto Rico in Various U.S. Government Data Collection Tools***

A 2016 report by the Congressional Task Force on Economic Growth in Puerto Rico listed nearly thirty Census Bureau programs and surveys that do not include Puerto Rico, such as the National Health Interview Survey, the Small Area Income and Poverty Estimates, the Survey of Income and Program Participation.<sup>736</sup> Besides the U.S. Census Bureau, the Bureau of Labor Statistics also excludes Puerto Rico from its monthly current population survey. According to the panelists, this lack of data has a direct effect on policy, as little to no data leads to inefficient or no policymaking which contributes to the continued neglect of the U.S. Territories on behalf of the federal government.<sup>737</sup> Dr. Vargas-Ramos stated: “the U.S. Government Accountability Office has indicated that data gaps affect Puerto Rico in particular fashion. Puerto Rico has more population

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<sup>731</sup> Vargas-Ramos Testimony, Transcript 8, p. 7.

<sup>732</sup> Vargas-Ramos Testimony, Transcript 8, p. 7-8.

<sup>733</sup> Ibid.

<sup>734</sup> Figueroa-Vásquez Testimony, Transcript 8, p. 13.

<sup>735</sup> Figueroa-Vásquez and Vargas-Ramos Statement, at 5.

<sup>736</sup> Vargas-Ramos Testimony, Transcript 8, p. 11; *See also*: Congressional Task Force on Economic Growth in Puerto Rico. “Report to the House and Senate, 114<sup>th</sup> Congress.” December 20, 2016.

<https://www.finance.senate.gov/imo/media/doc/Bipartisan%20Congressional%20Task%20Force%20on%20Economic%20Growth%20in%20Puerto%20Rico%20Releases%20Final%20Report.pdf> (accessed July 15, 2025).

<sup>737</sup> Vargas-Ramos Testimony, Transcript 8, p. 11.

and housing units than 22 states of the union. To ignore statistically and policy-wise this large population does not make good government sense."<sup>738</sup>

The panelists indicated that the other U.S. Territories also experience inconsistency with data collection.<sup>739</sup> This gap in data on the territories has a direct effect on federal policymaking regarding these jurisdictions. The panelists cited a 2024 report from the U.S. Government Accountability Office (GAO) that highlights the negative effects of these data gaps which include “gaps in coverage, disparities and lags in reporting, and different mechanisms for measuring data quality.”<sup>740</sup> Territories are also treated differently across federal agencies and the efforts to collect data are limited and uncoordinated.<sup>741</sup>

In the case of Puerto Rico, the GAO found that the island is covered in 1 of 52 data products of the National Agricultural Statistical Service and 4 of 21 data products of the Bureau of Labor Statistics.<sup>742</sup> Furthermore, Puerto Rico’s exclusion from the Current Population Survey complicates the local government’s ability to address the labor-force needs of populations such as veterans and individuals with disabilities.<sup>743</sup> For example, in a separate report, the GAO indicated that the Department of Veterans Affairs’ model to estimate the veteran population, known as Vet Pop, is inaccurate for the territories.<sup>744</sup> This model is used to allocate resources and likely undercounted the veteran population in Puerto Rico.<sup>745</sup> This can lead to fewer clinics, staff, and needed services.<sup>746</sup>

Another example includes the Department of Veterans Affairs Veterans Population Survey, which is comprised of a combination of census data and internal dates, to provide official information on the veteran population.<sup>747</sup> The issue is that, since Puerto Rico is excluded from several census surveys, an accurate picture of the Puerto Rico veteran population cannot be provided. Mr. Ortiz

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<sup>738</sup> Vargas-Ramos Testimony, Transcript 8, p. 11.

<sup>739</sup> Vargas-Ramos Testimony, Transcript 8, p. 11-12.

<sup>740</sup> Vargas-Ramos Testimony, Transcript 8, p. 11-12; *See also*: U.S. Government Accountability Office. “U.S. Territories: Coordinated Federal Approach Needed to Better Address Data Gaps.” GAO-24-106574. May 9, 2024, p. 6 <https://www.gao.gov/assets/870/869103.pdf> (accessed August 13, 2025).

<sup>741</sup> U.S. Government Accountability Office. “U.S. Territories: Coordinated Federal Approach Needed to Better Address Data Gaps.” GAO-24-106574. May 9, 2024, p. 1 <https://www.gao.gov/assets/870/869103.pdf> (accessed August 13, 2025).

<sup>742</sup> Vargas-Ramos Testimony, Transcript 8, p. 11-12; *See also*: U.S. Government Accountability Office. “U.S. Territories: Coordinated Federal Approach Needed to Better Address Data Gaps.” GAO-24-106574. May 9, 2024, p. 6 <https://www.gao.gov/assets/870/869103.pdf> (accessed August 13, 2025).

<sup>743</sup> U.S. Government Accountability Office. “U.S. Territories: Coordinated Federal Approach Needed to Better Address Data Gaps.” GAO-24-106574. May 9, 2024, p. 10 <https://www.gao.gov/assets/870/869103.pdf> (accessed August 13, 2025).

<sup>744</sup> Ortiz Testimony, Transcript 7, p. 4; *See also*: U.S. Government Accountability Office. “Veterans Affairs: Actions Needed to Improve Access to Care in the U.S.” GAO-24-106364. May 2024, p. 11. <https://www.gao.gov/assets/gao-24-106364.pdf> (accessed June 20, 2025).

<sup>745</sup> *Ibid*.

<sup>746</sup> Ortiz Testimony, Transcript 7, p. 4.

<sup>747</sup> Ortiz Testimony, Transcript 7, p. 23; *See also*: U.S. Department of Veterans Affairs. “National Center for Veterans Analysis and Statistics.” Last Updated: March 26, 2025. [https://www.va.gov/vetdata/Veteran\\_Population.asp](https://www.va.gov/vetdata/Veteran_Population.asp) (accessed September 25, 2025).

shared that while efforts have been made to carry out surveys at the local level by the Ombudsman’s Office for Veteran Affairs in Puerto Rico, barriers such as cost and engagement have not produced the appropriate data.<sup>748</sup>

Dr. Vargas-Ramos stated that he has heard from colleagues in agencies in Puerto Rico that the U.S. Congress, as the entity responsible for Puerto Rico and the allocation of federal funds, is not allocating sufficient funds to include Puerto Rico in many of the programs it currently does not have access to.<sup>749</sup> Nothing is preventing the U.S. Congress from treating Puerto Rico equal to or better than a U.S. state such as including them in various statistical programs and providing the assistance and funding needed to provide good government policymaking.<sup>750</sup>

### **FINDING III – There is a deficit of political will to make change and knowledge of the issues in Puerto Rico among elected officials at the federal level.**

#### ***Lack of Political Will at the Federal Level in Taking Action on Parity in Puerto Rico***

The Committee heard testimony about how the federal government has made a political choice in limiting access to benefits in Puerto Rico, which has resulted in an ad hoc and arbitrary application of funding and resources.<sup>751</sup> Panelists pointed out that unlike residents of the states and tribal reservations who have received public benefits based on need, the federal government has argued that cost and the lack of federal income tax paid in Puerto Rico are reasons to not allocate benefits.<sup>752</sup> As stated by Professor Andrew Hammond in a brief submitted as part of the *U.S. v. Vaello Madero* case, “Means-tested programs, like SSI, aim to extend benefits based on need, not tax contributions.”<sup>753</sup> Furthermore, due to the fact that SSI eligibility requires certain income limitations, the argument about not paying federal income tax can also be applied to many recipients in the fifty states.<sup>754</sup> In referencing the U.S. Supreme Court decision in the *U.S. v. Vaello Madero* case, panelist Mainon Schwartz stated: “It may be important to note that while this decision underscores that the Constitution does not prohibit Congress from treating Puerto Rico differently so long as it remains a territory, it is also true that nothing obligates Congress to treat Puerto Rico differently.”<sup>755</sup>

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<sup>748</sup> Ortiz Testimony, Transcript 7, p. 23.

<sup>749</sup> Vargas-Ramos Testimony, Transcript 8, p. 11-14.

<sup>750</sup> Vargas-Ramos Testimony, Transcript 8, p. 15-16.

<sup>751</sup> Balmaceda Testimony, Transcript 7, p. 8-9; *See also*: Farrow Testimony, Transcript 6, p. 4, 6.

<sup>752</sup> Brief for the Public Benefits Scholars as Amicus Curiae, p. 22-23, *United States v. Vaello Madero*, 596 U.S. 159 (2022); *See also*: Farrow Testimony, Transcript 6, p. 6.

<sup>753</sup> Brief for the Public Benefits Scholars as Amicus Curiae, p. 24, *United States v. Vaello Madero*, 596 U.S. 159 (2022).

<sup>754</sup> *United States v. Vaello-Madero*, 596 U.S. 159 (2022); *See also*: Schwartz Statement, at 3.

<sup>755</sup> Schwartz Testimony, Transcript 6, p. 10.

Panelist Jeffrey Farrow argued that Puerto Rico needs to make a “more compelling petition” to the federal government on its status in order to garner action.<sup>756</sup> He described a law that was approved by Congress as part of an appropriations package in 2014 that would permit a federal supported plebiscite.<sup>757</sup> The language in the appropriations reads as follows:

“\$2,500,000 is for objective, nonpartisan voter education about, and a plebiscite on, options that would resolve Puerto Rico’s future political status, which shall be provided to the State Elections Commission of Puerto Rico.”<sup>758</sup>

Mr. Farrow explained that such a plebiscite would need to include options that do not conflict with the Constitution and basic laws and policies of the U.S.<sup>759</sup> Unlike other plebiscites held in Puerto Rico, he stated that this would be considered a federal plebiscite that can put pressure on Congress to respect its results.<sup>760</sup> In addition to these appropriations, panelists also indicated that Congress has the option to do a joint resolution to incorporate Puerto Rico on its own initiative.<sup>761</sup>

### ***The U.S. Congress’ Limited Awareness on Issues Facing Puerto Rico***

Another barrier preventing federal action on Puerto Rico is what panelists described as the limited awareness among members of Congress on issues affecting the island. The onus of advocating for progress on these issues tends to fall on those who identify directly with Puerto Rico. On this, panelist Vargas-Ramos stated the following:

"Evidently, there is only one federal official elected from Puerto Rico, which is the resident commissioner. Any other ‘pressure’ that is put on the U.S. Congress comes from members of Congress already elected in Congress from other states, many of them, most of them Puerto Ricans themselves, or descendants of Puerto Ricans who have been elected to Congress. They tend to be the ones who advocate for Puerto Rico most often.

So in that sense, the political participation of Puerto Ricans in the United States through the representatives in Congress is one avenue to direct the attention of the U.S. Congress to what is happening in Puerto Rico. And you have seen that increasingly in the United States Congress, however it is only five members of Congress and their access to perhaps colleagues where they can create coalitions of members of Congress to advance the interest of Puerto Rico."<sup>762</sup>

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<sup>756</sup> Farrow Testimony, Transcript 6, p. 11.

<sup>757</sup> Farrow Testimony, Transcript 6, p. 13.

<sup>758</sup> Consolidated Appropriations Act, 2014: P.L. 113-76, 128 Stat. 61, January 17, 2014; *See also*: Farrow Testimony, Transcript 6, p. 13.

<sup>759</sup> Farrow Testimony, Transcript 6, p. 13.

<sup>760</sup> Farrow Testimony, Transcript 6, p. 13, 16.

<sup>761</sup> Farrow Testimony, Transcript 6, p. 18; *See also*: Schwartz Testimony, Transcript 6, p. 18.

<sup>762</sup> Vargas-Ramos Testimony, Transcript 8, p. 16.

Due to this finite reach among policymakers, it has been difficult to amass sustained congressional attention and laws often either do not include Puerto Rico or treat it as an afterthought.<sup>763</sup>

Panelist Alex Ortiz illustrated this challenge in sharing an example of how Puerto Rico's Resident Commissioner, a non-voting member of Congress, needs to rely on colleagues to highlight the ongoing differential treatment faced by residents. Mr. Ortiz explained:

“In early 2023, Puerto Rico's Resident Commissioner introduced bills to address some of these disparities. One to include Puerto Rico's Supplemental Social Security Income. Another to improve TRICARE healthcare program for veterans and active-duty military on the island. But those proposals highlight that such inequities have been allowed to persist for years. With no voting representatives, Puerto Rico has only had to rely on sporadic Senate or House members to voice veterans concerns on the islands. As I testify in other forums, Congress often legislates without specialized knowledge of Puerto Rico resulting in differential treatment of island veterans in many of the programs that we have available to us. The consequence is a legal framework full of holes and exceptions that disadvantage veterans who reside on the island. Because of the unequal laws and underrepresentation, veterans who reside on the island experience significant funding shortfalls.”<sup>764</sup>

According to Professor Hammond, this lack of political representation in our national government has left Americans in the U.S. Territories especially vulnerable to federal experimentation, disregard, and outright cuts.<sup>765</sup> This challenge is not only associated with the unequal distribution of benefits to residents of Puerto Rico but also affects the way Puerto Ricans are understood more broadly, both on the island and in the states. Panelist Dr. Figueroa-Vázquez urged that there needs to be more capacity building about Puerto Rico, Puerto Ricans, the Puerto Rican condition, and Puerto Rico's relationship with the United States among elected officials, including basic knowledge around the U.S. citizenship of Puerto Ricans.<sup>766</sup>

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<sup>763</sup> Ortiz Testimony, Transcript 7, p. 3.

<sup>764</sup> Supplemental Security Income Equality Act, H.R. 256, 118<sup>th</sup> Cong. (2023-2024); *See also*: TRICARE Equality Act, H.R. 254, 118<sup>th</sup> Cong. (2023-2024); *See also*: Ortiz Testimony, Transcript 7, p. 3.

<sup>765</sup> Hammond Territorial Exceptionalism p. 1664.

<sup>766</sup> Figueroa-Vázquez Testimony, Transcript 8, p. 16-17.

#### IV. Recommendations Proposed in the Testimony

Throughout the testimony received, the Committee heard different perspectives on how these issues can be improved. Although these ideas are not recommendations formulated by the Committee, it is important to integrate them into this document to present the options highlighted by panelists. In this memorandum, the Committee does not take a stance on the content of these recommendations and will submit its own recommendations in the final report.

##### *Insular Cases*

- "We believe that a strong declaration by the three branches of government expressly stating that these cases were decided wrongly, and that a new interpretation should be given to the relationship between Puerto Rico and the United States should be included. I still believe because of our experience with some of the cases in the U.S. Supreme Court, that we would need Congress to help us to set aside some of the rulings in the Insular Cases."<sup>767</sup>

##### *Parity in Federal Benefits*

- "Efforts should be directed to Congress and the White House...because the courts are not going to provide the relief that people might want. And as I've tried to explain, the only reliable way of obtaining equal treatment and programs is to become a permanent part of the United States. That's a decision that ultimately rests with the Congress and the President. But the United States has democratic traditions and believes that if Puerto Rico wants to become a permanent part of the United States, it should petition for that."<sup>768</sup>
- "Congress is the one that needs to act. So we call on Congress to include language in the farm bill that reprograms all USDA agricultural programming and grant funding to be strictly devoted to local farms, community agricultural trust, and the University of Puerto Rico as part of the transition from the NAP block grant that we are currently receiving, to SNAP. These programs need to be conducted in Puerto Rican Spanish to make sure that we guarantee that all farmers are able to access the benefits they are entitled to in a culturally competent manner."<sup>769</sup>

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<sup>767</sup> Cruz Testimony, Transcript 7, p. 19.

<sup>768</sup> Farrow Testimony, Transcript 6, p. 11.

<sup>769</sup> Cruz Testimony, Transcript 7, p. 13.

#### **Memo IV Conclusion**

This memorandum was approved by a vote of members present resulting in 7 in favor and 0 opposed at a meeting of the Committee held on December 3, 2025.

## **Memorandum IV Appendix**

Documents related to the Committee's study of this topic can be consulted in the Memorandum IV folder at the following link:

<https://usccr.app.box.com/folder/292312893562?s=yo7wsul0yb8dmrvvm2ywc5q9otj7knnj>

- A. Agendas, minutes and presentation slides
- B. Transcripts
- C. Written testimony and sources submitted by panelists

**Puerto Rico Advisory Committee to the United States Commission on Civil Rights**

*Term: January 21, 2022, to January 20, 2026*

Andrés L. Córdova Phelps, Chair, Puerto Rico Advisory Committee, San Juan

Ramon Barquin, Vice-Chair, San Juan

Ever Padilla-Ruiz, Secretary, San Juan

Frank Arenal, Carolina

Ramon C. Barquin III, Guaynabo

Manuel “Lin” Iglesias-Beléndez, San Juan

Sergio Marxuach, Dorado

Jose O. Olmos, Guaynabo

Dan Santiago, San Juan

William E. Villafaña Ramos, Bayamón

# **Committee Factual Findings, Conclusions, and Recommendations**

## **Factual Findings**

### **Memorandum I – General Overview, Part I**

1. Panelists pointed to a colonial relationship between the United States government and Puerto Rico.<sup>770</sup>
2. The testimony indicates that Puerto Rico has lived under unequal and discriminatory treatment by the United States government.
3. Panelists agreed that the Supreme Court is not the ideal vehicle through which to solve the problems caused by the Non-Incorporation Doctrine.
4. The Committee heard testimony regarding the contradictions in the U.S. citizenship of residents of Puerto Rico.
5. Throughout the testimony, the Committee heard about the significant impact that Puerto Rico's status as an unincorporated territory has had on the limited access to social welfare programs.
6. The Committee heard testimony about the effects that limitations on access to public programs have had on certain social groups, including older adults, veterans, and families with minors.
7. Discrimination and differential treatment have directly affected the quality of life of the residents of Puerto Rico and have caused an increase in displacement from the island.

### **Memorandum II – General Overview, Part 2**

1. Federal tax policy, including former section 936 of the U.S. Internal Revenue Code, has had a strong impact on economic activity in Puerto Rico and has created incentives for investment in sectors where Puerto Rico does not have a long-term comparative advantage.
2. The exclusion of Puerto Rico from the application of the U.S. Uniformity Clause has exempted residents of Puerto Rico from the payment of certain federal taxes and allowed the territorial legislature to enact a tax system that differs significantly from those of the fifty states.

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<sup>770</sup> The Committee would like to note that references to a territorial or colonial relationship between Puerto Rico and the federal government of the United States are a legal conclusion and not a fact.

3. A change of political status would be one factor among others in creating a sustainable economy in Puerto Rico.

### **Memorandum III – Voting Rights at the Federal Level**

1. Puerto Rico's territorial relationship with the United States is the main limitation to obtaining the right to vote at the federal level.
2. The Committee heard testimony on strategies for making Puerto Rico a priority at the federal level since the country's current treatment of the island goes against its fundamental principles.
3. Despite not having the right to vote at the federal level, Puerto Rico has authority over its local elections.
4. The Committee heard testimony on the debate concerning the different visions of American citizenship and Puerto Rican cultural identity.
5. Panelists agreed that residents of Puerto Rico have the political right to a process of self-determination.

### **Memorandum IV – Access to Federal Benefits & Role of Race in Relationship with U.S. Government**

1. There is an urgency in the lack of program equity in Puerto Rico.
2. The Committee found that racial formation in Puerto Rico has been complex and has faced challenges in accuracy through data collection.
3. There is a deficit of political will to make change and knowledge of the issues in Puerto Rico among elected officials at the federal level.

## **Committee Conclusions**

1. Congress has to act on appropriating resources to Puerto Rico as a state based on the fact that the people of Puerto Rico are citizens of the United States of America.
2. Congress must attend to the issue of the Insular Cases based on their plenary powers.

## Final Committee Recommendations

1. The United States Commission on Civil Rights should:
  - a. *Promote that all American citizens hold the same rights in all states and territories regarding socioeconomic matters;*
  - b. *Encourage a space of dialogue with representation from all five territories to highlight the challenges their residents face in socio-economic matters;*
  - c. *Speak out about the right to vote as a fundamental right;*
  - d. *Recognize the need to define and resolve the political status through a plebiscite.*
  
2. The U.S. Commission on Civil Rights should submit this memorandum to and ask the U.S. Congress to:
  - a. *Enable a valid plebiscite to address the issue of Puerto Rico's political status under the direction of Congress;*
  - b. *Draft, along with representatives of each of the status options, clear and precise definitions so that the people of Puerto Rico can exercise their right to self-determination in an informed manner.*
  
3. The United States Commission on Civil Rights must send this report to and request that the United States Congress and President take the following actions:
  - a. *Congress should promote legislation ensuring that all American citizens can exercise their rights on equal conditions;*
  - b. *Request the President of the United States to reestablish the White House Task Force on Puerto Rico with the representation from residents of Puerto Rico to present alternatives for the full recognition of the rights of American citizens residing in Puerto Rico.*
  
4. The United States Commission on Civil Rights should send this report and request the Governor, Resident Commissioner, Legislature and Supreme Court of Puerto Rico take the following actions:

- a. *Require that all government officials in Puerto Rico incorporate addressing the political status and its relationship with the United States into their public policies.*

## **Vote on Final Report**

This final report was approved by a unanimous vote of members present resulting in 7 in favor and 0 opposed at a meeting of the Committee held on January 14, 2026. One Committee Member statement was submitted as part of the Final Report.

## **Final Report Appendix**

Outreach records for all memorandums and Committee Member Statements as part of the Final Report can be found in the Final Report folder at the following link:

<https://usccr.app.box.com/folder/292312893562?s=yo7wsul0yb8dmrvvm2ywc5q9otj7knnj>

### **A. Outreach Records**

### **B. Committee Member Statement for Final Report Submitted by Member José O. Olmos**

**José O. Olmos**  
**Member of the Puerto Rico Advisory Committee**  
**to the United States Commission on Civil Rights.**

Statement to the Final Report on the study on Insular Cases and the Doctrine of the Unincorporated Territory and its effects on the civil rights of residents of Puerto Rico.

#### **The Limits of Research in the Face of Political Realities**

After 4 years of voluntary work this committee has finalized its study on Insular Cases and the Doctrine of the Unincorporated Territory and its effects on the civil rights of residents of Puerto Rico. All members of the committee worked diligently to fulfill their responsibilities, guided by the sincere expectation that submitting this report to the United States Commission on Civil Rights would allow its conclusions and recommendations to reach the highest levels of government and inspire a genuine commitment to remedy the disenfranchisement of American citizens in Puerto Rico. However, it must be acknowledged that this report joins a long history of investigations and extensive discussions efforts which, despite their serious intentions, have failed in achieving our aspiration of redefining Puerto Rico's political relationship with the United States by ending the current political status and moving to either statehood or sovereignty.

We can agree that developing well-researched recommendations is often regarded as a critical step toward effective public policy. Yet, the process of translating research findings into actionable decisions is far from direct. While analysis aims to provide objective and rational solutions, these recommendations frequently encounter barriers rooted in political realities. After 127 years of interactions with the United States Government, the citizens of Puerto Rico have suffered the overpowering reality that the government decision-making is shaped by competing interests, shifting priorities, and the need to balance diverse stakeholder demands, which can overshadow even the most compelling evidence. As a result, it is not farfetched to state that even the most technically sound proposals, well documented and argued like this report, remain unimplemented not because they lack merit, but because they fail to align with the prevailing political climate or strategic objectives of the United States. This misalignment is at the heart of Puerto Rico's ongoing struggle to redefine its political relationship with the United States. What will it take to bridge the

gap between 127 years of rigorous, well-articulated analysis and the political realities necessary to turn those arguments into actionable policy? This very question surfaced during the investigations, through expert testimony and committee deliberations, but it was never answered. Getting the federal government to act takes more than strong research it requires the right timing, tough negotiations, and a rare alignment of political priorities, all of which are often harder to achieve than the analysis itself.

### **Example: Strategic Reliance on Puerto Rico and Democratic Asymmetry**

A clear illustration of the conflict between investigation and national political interests emerges in the contemporary United States posture expressed in National Security Statement<sup>771</sup> narrative of a “renewed focus on the Western Hemisphere.” As the United States emphasizes regional security and stability, Puerto Rico’s strategic value is leveraged as a logistics and redeployment hub essential to global power projection. This strategic reliance is undeniable; yet it exists alongside a democratic asymmetry in which more than three million U.S. citizens in Puerto Rico lack voting representation in Congress and cannot vote for the president or have representation in Congress whose policies shape the island’s role in national defense.

This contradiction, treating Puerto Rico as integral to “homeland security” while excluding its residents from fundamental political rights, carries consequences beyond domestic governance. It weakens democratic legitimacy at home and undermines the credibility of U.S. commitments to democracy abroad. Moreover, the increasing overlap between civilian and military domains on the island, where ports, airports, and other infrastructure serve dual defense purposes, raises pressing questions about oversight, consent, and accountability. These are not abstract concerns; they directly implicate how national security priorities are balanced against self-governance and civil rights.

Any serious assessment of U.S. strategic objectives in the Western Hemisphere must confront this contradiction. Puerto Rico cannot remain both a cornerstone of regional security and a political afterthought. The manifested inconformity of American Citizens in Puerto Rico with the current political relation with the United States is ignored while the island’s role in defense operations deepens, the failure to reconcile strategic ambitions with democratic principles is not merely incomplete, it is untenable. Ultimately, the strength of U.S. policy in the region will be measured less by deployments and installations than by the consistency of the values the nation claims to defend. Puerto Rico’s unresolved status undermines that integrity, and until it is resolved, any “renewed focus” on hemispheric security remains compromised at its core.

### **Position on Memorandum #3 and the Preconditions of Federal Voting Rights**

On February 26, 2025, I voted against Memorandum #3 on federal voting rights developed by the Puerto Rico Advisory Committee to the U.S. Commission on Civil Rights. My opposition rests on

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<sup>771</sup> The White House. (2025). National Security Strategy of the United States of America. Washington, DC: The White House. Retrieved from <https://www.whitehouse.gov/>

a fundamental premise: to exercise federal voting rights, specifically voting representation in Congress and in presidential elections Puerto Rico must first become a state within the U.S. federation. Any discussion of federal voting rights absent statehood risks dislocating legal realities from policy aspirations. In this context, the recognition of the will of Puerto Rico's voters, expressed through lawfully conducted electoral processes pursuant to territorial statutes, must be respected by Congress and should not be undermined by local political factions.

Within this framework, Puerto Rico has repeatedly resorted to democratic mandates to communicate status preferences. Since 2012, voters have participated in multiple referendums, each expressing support for union with the United States as a federated state. These processes were convened under Puerto Rico's constitutional and statutory authority, independent of congressional approval, and their results were transmitted to Congress. Yet, the absence of congressional accountability to Puerto Rico's electorate diminishes the incentives to respond, creating a structural gap between democratic expression on the island and legislative action in Washington.

This gap is further widened by organized efforts from anti-statehood political opponents and allied actors to discredit Puerto Rico's electoral laws and processes. Although these campaigns have not succeeded in recent referendums, their attempts to delegitimize pro-statehood outcomes, while advocating for their own alternative, erode public confidence in the island's democratic institutions. The efforts to delegitimize voters' preference for statehood, expressed through plebiscites conducted under Puerto Rico's electoral laws, are advanced by the same actors who promote other alternatives that would also require those very laws to convene and operate. If both processes depend on the identical legal framework, dismissing one as illegitimate while claiming greater moral authority for the other is logically inconsistent.

### **The Practical Path to Rights and Status Resolution**

Throughout hearings, I repeatedly asked central questions: How can Puerto Rico secure a substantive congressional response? Is there a credible pathway to achieve statehood? How can we translate repeated electoral mandates into federal action? Despite thorough deliberation and diverse expert views, conclusive answers remain elusive.

What is clear, however, is that Puerto Rico's democratic processes, conducted under its Electoral Law and Regulations, must be recognized and respected by both Congress and local political actors. Electoral outcomes cannot be selectively validated: rejecting the legitimacy of plebiscites favoring statehood while employing the same system to advance other political visions erodes democratic norms and fractures civic trust.

### **Conclusion and Recommendations**

After four years of rigorous research and deliberation, this committee has produced a comprehensive study. Yet, as history repeatedly demonstrates, even the most well-documented and technically sound proposals often fail to translate into policy when they collide with entrenched political realities. Puerto Rico's unresolved status is not merely a constitutional

anomaly; it is a democratic deficit that undermines the integrity of United States governance and its credibility abroad. The contradiction is stark: while Puerto Rico serves as a strategic asset in national security planning, its citizens remain excluded from fundamental rights of representation. This imbalance is untenable and erodes both domestic legitimacy and international standing.

Bridging the gap between analysis and action requires political will, congressional accountability, and respect for democratic mandates expressed through lawful electoral processes. Selective validation of plebiscites, accepting some outcomes while rejecting others, fractures civic trust and perpetuates disenfranchisement. Until Congress confronts this contradiction, Puerto Rico's political future will remain hostage to competing interests rather than guided by democratic principles.

The foundation for resolving Puerto Rico's future rests on the democratic mandate of United States citizens residing on the island, expressed through elections and referendums regulated by local law, and ultimately requires congressional recognition of that will. Accordingly, I recommend:

- Congressional Action on Status – Initiate a binding process to resolve Puerto Rico's political status.
- Respect for Electoral Legitimacy – Uphold the validity of plebiscites conducted under Puerto Rico's Electoral Law.
- Investigation into Civil Rights Violations – Examine efforts to delegitimize lawful electoral processes.
- Integration of Civil Rights and Strategic Policy – Align national security priorities with democratic principles.
- Establishment of Congressional Oversight – Create a mechanism to monitor progress toward status resolution.

This statement is submitted for inclusion in the Final Report titled Insular Cases and the Doctrine of the Unincorporated Territory and Their Effects on the Civil Rights of Residents of Puerto Rico, prepared by the Puerto Rico Advisory Committee to the U.S. Commission on Civil Rights.

Sent via email to Ms. Victoria Moreno [vmoreno@usccr.gov](mailto:vmoreno@usccr.gov)

**Puerto Rico Advisory Committee to the United States Commission on Civil Rights**

*Term: January 21, 2022, to January 20, 2026*

Andrés L. Córdova Phelps, Chair, Puerto Rico Advisory Committee, San Juan

Ramon Barquin, Vice-Chair, San Juan

Ever Padilla-Ruiz, Secretary, San Juan

Frank Arenal, Carolina

Ramon C. Barquin III, Guaynabo

Manuel “Lin” Iglesias-Beléndez, San Juan

Sergio Marxuach, Dorado

Jose O. Olmos, Guaynabo

Dan Santiago, San Juan

William E. Villafaña Ramos, Bayamón

**Puerto Rico Advisory Committee to the  
United States Commission on Civil Rights**



**U.S. Commission on Civil Rights Contact**

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USCCR Contact:       Regional Programs Unit  
                              U.S. Commission on Civil Rights  
                              230 S. Dearborn, Suite 2120  
                              Chicago, IL 60604  
                              (312) 353-8311

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