



Puerto Rico Advisory Committee to the U.S. Commission on Civil Rights The Effects of the Insular Cases and the Non-Incorporation Doctrine on the Civil Rights of Residents of Puerto Rico

During its inaugural 2022-2026 term, the Puerto Rico Advisory Committee (the Committee) completed a four-part study on the Insular Cases and their effects on the civil rights of residents of Puerto Rico. The Committee published a memorandum for each priority area, including: a general overview, economic perspectives, voting rights at the federal level, and a combined memorandum on access to federal benefits and the role of race in the relationship between Puerto Rico and the federal government.

What are the Insular Cases?

The Insular Cases are a series of Supreme Court decisions that set a legal framework for territories acquired by the U.S., including Puerto Rico. The Insular Cases declare that full constitutional rights do not automatically apply to certain territories because they are not incorporated into the U.S. In one of these cases, *Downes v. Bidwell*, it is stated that Puerto Rico belongs to, but is not a part of, the U.S. This case also dehumanizes the residents of Puerto Rico by describing them as “alien races,” who are different from other U.S. citizens.

According to the U.S. Constitution, Congress has plenary power over the territories. There has been broad interpretation of the Insular Cases, which has led to unequal treatment of the U.S. citizens in Puerto Rico in various aspects of civic life, including voting at the federal level and allocation of funding and resources for federal programs.

What is the Non-incorporation Doctrine?

The territories acquired by the U.S. after the Spanish American War were different both racially and culturally. To confront these differences, the U.S. government created the categories of “incorporated” and unincorporated” territories to distinguish between annexed territories with a path to statehood and newly acquired territories. Although Congress took actions in the 20th century to naturalize the residents of Puerto Rico, it has not been specified whether birth in an unincorporated U.S. territory guarantees citizenship under the Constitution. While the Non-incorporation Doctrine was intended as a temporary solution, Puerto Ricans experience the effects of these categorizations every day.

Key Points (selected):

- Despite having a population of over 3.2 million residents, which is larger than at least 20 states, Puerto Rico is limited in its access to full constitutional rights and resources from the federal government.
- The investment in Medicaid for a person in Puerto Rico is \$1,980 annually, while in the U.S. it is just over \$6,000.
- In Puerto Rico, over 20% of the population are people with disabilities, and almost half of them live below the poverty line.
- Puerto Rico ranks 7th in the world in having the oldest population. 87% of older adults there want to age in their home, yet Puerto Rico does not have the funds or infrastructure for those services.

How are residents of Puerto Rico affected by the Insular Cases and the Non-incorporation Doctrine?

Puerto Rico receives less funding for healthcare programs, disproportionately affecting people with disabilities, veterans, and the elderly. For example, Medicare reimbursement rates in Puerto Rico are 43% below the national average, which has resulted in a brain drain of health professionals from the island and has left patients in an even more vulnerable situation. Additionally, Supplemental Security Income (SSI) is not available to Puerto Ricans, leaving many potential beneficiaries, including the approximately 30,000 veterans on the island who live below the poverty line, without this critical resource.

The lack of resources from the federal government, as determined by the Insular Cases and the Non-incorporation Doctrine, have led many residents to migrate to the continental U.S. After Hurricane Maria, for example, there was an 11% drop in Puerto Rico’s population, which is understood to symbolize the cumulative result of unequal treatment on the island. The ongoing migration and depopulation are having long-lasting impacts on the social and cultural life of Puerto Rico.

Memorandum II – Economic Perspectives

The Committee’s second memorandum was also the second part of the study’s General Overview and focused specifically on Economic Perspectives. When Puerto Rico established its Constitution in 1950, Congress acknowledged Puerto Rico’s authority to create its own local laws and tax policies, and since then, the island has enacted its income tax laws. Tax incentives have been used to stimulate Puerto Rico’s economy throughout its history, although they have also been criticized for benefiting wealthy foreign investors instead of the local economy.

Puerto Rico’s economy was especially vulnerable during the Great Recession, when it reached its highest fiscal deficit of \$2.9B in 2009 and faced mounting public debt. This led the U.S. Congress to pass the PROMESA Act, which established the Fiscal Oversight and Management Board. PROMESA has raised important questions about Congress’ authority to act on local issues in Puerto Rico.

What was IRS Section 936, and how was it relevant to the use of tax incentives in Puerto Rico?

IRS Section 936 (now repealed) was first established in the 1970s and allowed U.S. corporations with operations in Puerto Rico to repatriate tax-free profits earned there. Even though Section 936 operated for 20 years, Puerto Rico’s economy grew by only 2.5% annually. Section 936 generated significant profits for U.S. corporations with subsidiaries in Puerto Rico, but the same level of benefits was not observed for local residents. By the time it was phased out in 2006, Puerto Rico’s economy fell into a crisis as there was no alternative plan. The phase-out of Section 936 resulted in the loss of almost 100,000 jobs and corporations leaving the U.S. entirely.

Such practices contradict the purpose of the Uniformity Clause, which requires that certain taxes imposed by Congress be applied uniformly across the U.S. Since 2006, the only time Puerto Rico’s economy has grown has been when there was a massive influx of federal funds, which has not been sustainable or predictable funding source.

How has Puerto Rico’s territorial status created tax barriers for residents?

Territorial status has created confusion and contradictions in Puerto Rico’s financial classifications. For example, corporations established in Puerto Rico are considered foreign under the IRS Code, even though the business owner is a U.S. citizen.

Additionally, 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. However, since most Puerto Rican residents do not file federal tax returns, accessing this credit was difficult and unclear despite attempts from national-level advocates to seek clarity.

Do the residents of Puerto Rico pay federal taxes?

While Puerto Ricans do not pay federal income taxes, they do pay federal taxes through other means. Payment of federal income taxes is not required of Puerto Ricans if their only income was generated in Puerto Rico.

Many residents do pay federal taxes through the employment-based Federal Insurance Contributions Act, taxes on Social Insurance, Medicare, and the Federal Unemployment Tax Act. Employers are required to withhold, report, and pay employment taxes on wages paid. Separately, families eligible for the Child Tax Credit are required to file a federal income tax return.

The lack of federal income tax payment is commonly used at the federal level as a reason to deny the application of certain federal resources.

Recommendations from Panelists (*selected*):

- 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.
- 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.
- It is recommended that increased local production and exports replace imports and that local companies are further developed.

The current incentive code should be changed 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.

Memorandum III – Federal Voting Rights

The third memorandum published by the Committee focused on Puerto Rico’s limited voting rights at the federal level. The Committee studied the historical, legal, and political theory perspectives behind Puerto Rico’s inability to vote at the federal level.

Can the residents of Puerto Rico vote for president?

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. As a territory, Puerto Rico is not eligible to appoint electors and, as a result, cannot vote for president.

Puerto Rico only has a Resident Commissioner in the U.S. House of Representatives who does not have the authority to vote in Congressional plenary sessions. 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. This exclusion from voting at the federal level places Puerto Ricans without the same right as other U.S. citizens or even citizens of independent nations.

While electoral representation will not solve all the problems in Puerto Rico, it would solve the lack of power in the legislative processes that affect the lives of residents and is a basic requirement of a legitimate and responsible government.

In what other ways do federal laws limit the rights of the residents of Puerto Rico?

The 14th Amendment of the U.S. Constitution, for example, speaks to the rights of U.S. 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. The emphasis on states raises the question of how these protections apply to territories.

Separately, the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), which allows voting for military personnel and citizens abroad, includes Puerto Rico within its definition of “state,” but it is not considered a state for federal voting rights.

The Territorial Clause of the Constitution, adopted in 1787, authorizes Congress to “dispose of,” or have discretion over, the territories but it does not allow Congress to govern the territories indefinitely. This has essentially become a system of governing the people without their consent.

These factors have kept Puerto Rico in a limbo where its U.S. citizen population does not have access to the fundamental right to vote at the federal level.

What steps can be taken to improve the treatment of Puerto Rico at the federal level?

Panelists stated that Congress can use several strategies to influence other entities with the authority to implement laws such as pressuring the Supreme Court to reconsider previous determinations like the Insular Cases. Other options include members of Congress taking the initiative to foster alliances with coalitions focused on a variety of issues to elevate Puerto Rico on the national agenda. Additionally, more communication with the other territories is needed to strengthen the case for their collective rights.

Separately, allowing a process of self-determination for the residents of Puerto Rico would be an important step toward defining their future and their form of government. If consensus were reached on what the non-territorial options would be and if the meanings of statehood, independence, or a Freely Associated State were well defined, a self-determination process 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.

Recommendations from Panelists (*selected*):

- 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.
- Support the residents of Puerto Rico in deciding their future through self-determination.
- Advocate for a binding plebiscite that is inclusive, consensual, civil, peaceful, and not biased towards one outcome or another.
- Declare that rights that are being denied to the people of Puerto Rico due to the constitutional, statutory and territorial policy framework.
- Insist on the repeal of the Insular Cases immediately.

Memorandum IV – Access to Federal Benefits & the Role of Race in the Relationship Between Puerto Rico and the Federal Government

The Committee’s final memorandum focused on two major focus areas that exemplify the daily effects of the Insular Cases and the Non-incorporation Doctrine in Puerto Rico. The Committee learned about the limited access to federal benefits and how this is impacted by racial classifications and the lack of federal data collection.

What are examples of federal programs that Puerto Rico has limited or no access to?

The Committee learned about Puerto Rico’s lack of access to federal benefits such as Medicaid, SSI, Veteran’s benefits, and nutrition assistance. Congress’ refusal to extend full federal benefits to the territories comes at a significant cost to the health and welfare of these American citizens.

For example, the federal funding allotted to the island’s Medicaid program is expected to lapse in 2027. The federal medical assistance percentage rate (FMAP), which currently stands at 76% in Puerto Rico, is expected to decrease significantly to 55% in fiscal year 2028 if action is not taken to extend funding.

Supplemental Security Income (SSI) is not extended to the territories. In its place, the Aid to the Aged, Blind, or Disabled (AABD) program, is available to Puerto Rico and other territories. However, the average monthly AABD benefit in Puerto Rico is less than \$100, compared to the over \$500 eligible recipients receive under SSI.

While Puerto Rico currently does not have access to Supplemental Nutrition Assistance Program (SNAP), the Nutrition Assistance Program (NAP) is available and is administered through a block grant, which limits funding more than SNAP and results in stricter eligibility criteria and reduced benefit amounts.

Although there are over 73,000 veterans in Puerto Rico, there is only one Department of Veterans Affairs (VA) medical center and eight outpatient clinics. The VA in Puerto Rico faces a critical shortage of lifesaving equipment, such as cardiac devices and scopes for colonoscopies.

In what ways has race and data collection affected the relationship between Puerto Rico and the federal government?

The way that race and ethnicity are classified by the U.S. Census Bureau does not accurately reflect the meaning and history of race in Puerto Rico. Since the U.S. government began conducting the Census in 1899, Puerto Ricans did not have authority on how racial categories were recorded.

Enumerators used their discretion to mark responses to the racial category question in Puerto Rico until the 2000 decennial survey, the first time the question was placed on the questionnaire and that residents had an opportunity to respond directly. Since 2000, many Puerto Ricans have identified either as “White” or “some other race” likely due to the gap between their racial conceptions and the lack of federal racial categories that they identify with.

Another major challenge to better understanding the population in Puerto Rico is the lack of data collection, specifically aggregated data, in a variety of areas including housing, employment, and education. There are nearly thirty U.S. Census Bureau programs and surveys that do not include Puerto Rico. The Bureau of Labor Statistics also excludes Puerto Rico from its monthly current population survey. This lack of data leads to inefficient or no policymaking which contributes to the continued neglect on behalf of the government. Congress often legislates without specialized knowledge of Puerto Rico and there is an urgent need for capacity building about Puerto Rico among policymakers.

Key Points (*selected*):

- 40% of Puerto Rican residents live in poverty, a rate 4 times greater than the national poverty rate.
- Panelists urged innovative solutions to combat hunger, such as using USDA agricultural funds to incentivize local food production within Puerto Rico in a way that directly aids farmers, community land trusts and other partners. This could create a stronger and more sustainable local economy.
- There is a need for veteran-serving professionals such as attorneys accredited to practice before the U.S. Court of Appeals for Veterans Claims and VetSuccess Counselors on college campuses. There is no such a counselor available on the island and there are over 14,000 Puerto Rican veterans using the GI Bill.
- An increased number of Puerto Ricans have identified as “white” in the U.S. Census since 2000, at a rate larger than the proportion of people who identified as “white” throughout the United States.
- The lack of vernacular or locale-specific racial terminology that captures the contextual racial formation among Puerto Ricans contributes to the distrust in Census results.
- 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

Committee Conclusions:

- The Committee concludes that 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.
- Congress must attend to the issue of the Insular Cases based on their plenary powers.

Committee Recommendations (*selected*):

U.S. Commission on Civil Rights:

- Should promote that all American citizens hold the same rights in all states and territories regarding socioeconomic matters
- Recognize the need to define and resolve the political status through a plebiscite.

U.S. Congress:

- Promote legislation ensuring that all American citizens can exercise their rights on equal conditions;
- 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.

The Governor, Resident Commissioner, Legislature, and Supreme Court of Puerto Rico:

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

The United States Commission on Civil Rights maintains 56 Advisory Committees. Each committee is composed of citizen volunteers familiar with local civil rights issues. The members assist the Commission with its fact-finding, investigative, and information dissemination functions.

This product is part of the Puerto Rico Advisory Committee's study on The Effects of the Insular Cases and the Non-Incorporation Doctrine on the Civil Rights of the Residents of Puerto Rico. This summary of the published report is intended to aid stakeholders seeking solutions to this complex issue. You can find the full report here <https://www.usccr.gov/reports/2026/insular-cases-and-doctrine-unincorporated-territory-and-its-effects-civil-rights>.

The brief may rely on testimony, studies, and data generated from third parties. The views, findings, and recommendations expressed in this report are those of a majority of the Puerto Rico Advisory Committee, and do not necessarily represent the views of the Commission, nor do they represent the policies of the U.S. Government. For more information, please contact Victoria Moreno at vmoreno@usccr.gov.