



**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>1</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>2</sup>

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<sup>1</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>2</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 (upcoming) 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 from 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>3</sup> Spain renounced all rights it had over Puerto Rico and ceded its territorial possessions to the United States.<sup>4</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>5</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>6</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>7</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>8</sup> This included the power to repeal legislation and the creation of a government structure that consolidated legislative and executive functions in a 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>9</sup>

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<sup>3</sup> Treaty of Paris of 1898 (30 Stat. 1758).

<sup>4</sup> Id.

<sup>5</sup> Id.

<sup>6</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>7</sup> Id.

<sup>8</sup> Foraker Act of April 12, 1900, 31 Stat. 77, c. 191, 48 U.S.C. § 731.

<sup>9</sup> Id.

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>10</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>11</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>12</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>13</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>14</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>15</sup> While incorporated territories were already part of the United States, unincorporated territories, such as Puerto Rico and Guam, were not.<sup>16</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>17</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 what rights those were. White's concurring opinion became the legal justification for the Insular Cases.<sup>18</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,

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<sup>10</sup> U.S. Const. art. IV, § 3.

<sup>11</sup> *Downes v. Bidwell*, 182 U.S. 244, 244 & n.1 (1901).

<sup>12</sup> *Downes v. Bidwell*, 182 U.S. 244, 244 & n.1 (1901).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> U.S. Const. art. IV, § 3.

<sup>16</sup> *Downes v. Bidwell*, 182 U.S. 244, 244 & n.1 (1901).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

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>19</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>20</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>21</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>22</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>23</sup>

### ***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

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<sup>19</sup> Jones-Shafroth Act, Pub. L. No. 64-368, 39 Stat. 951 (1917), codified as amended at 48 U.S.C. § 731–751.

<sup>20</sup> *Balzac v. Porto Rico*, 258 U.S. 298 (1922).

<sup>21</sup> *United States v. Vaello Madero*, 212 L. Ed. 2d 496, 142 S. Ct. 1539 (2022).

<sup>22</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>23</sup> *United States v. Vaello Madero*, 212 L. Ed. 2d 496, 142 S. Ct. 1539 (2022).

population of over 3.2 million residents, which is larger than at least 20 U.S. states,<sup>24</sup> its status as a territory hinders its full access to rights and resources.<sup>25</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>26</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>27</sup> This idea clashed with the constitutional principles of the time as agreed by what Dr. Erman calls the “Constitution of Reconstruction.”<sup>28</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>29</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>30</sup> To avoid this, the American authorities invented a new constitutional theory that is known today as the doctrine of territorial non-incorporation.<sup>31</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>32</sup>

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

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<sup>24</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>25</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>26</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>27</sup> Erman Testimony, Hato Rey Briefing, Transcript 1, p. 20, 12-18.

<sup>28</sup> Erman Testimony, Hato Rey Briefing, Transcript 1, p. 20, 23 – p. 21, 3.

<sup>29</sup> Erman Testimony, Hato Rey Briefing, Transcript 1. p. 21, 1-11.

<sup>30</sup> Erman Testimony, Hato Rey Briefing, Transcript 1, p. 21, 12-17.

<sup>31</sup> Erman Testimony, Hato Rey Briefing, Transcript 1, p. 21, 18-22.

<sup>32</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 Rico Advisory Committee to the United States Commission on Civil Rights Briefing, May 10, 2023 (cited herein after as Teekah and Fiol-Matta statement).

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>33</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>34</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>35</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>36</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>37</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>38</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 in a domestic sense.”<sup>39</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

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<sup>33</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>34</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> (Consultado el 18 de octubre de 2023).

<sup>35</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>36</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>37</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>38</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).

<sup>39</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).

territory was considered a transitory status.<sup>40</sup> It also allowed the United States to have control over the territory without establishing a path towards statehood in the future.<sup>41</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>42</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>43</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>44</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>45</sup> This case reiterates that providing citizenship does not change the unincorporated status in Puerto Rico politics.<sup>46</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>47</sup>

### ***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

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<sup>40</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>41</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. p. 139, 6-15. (cited herein after as Hato Rey, Transcript 1).

<sup>42</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>43</sup> *Balzac v. Porto Rico*, 258 U.S. 298 (1922).

<sup>44</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>45</sup> Ortiz Santini, testimony. Hato Rey Briefing, Transcript 1. p. 34, 6-12.

<sup>46</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>47</sup> Venator Santiago, testimony. Hato Rey Briefing, Transcript 1. p. 51, 1-12.



approve a constitution while reserving the right to give final approval of said constitution.<sup>48</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>49</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>50</sup> This was the version that President Truman signed, and that the local legislature in Puerto Rico ratified.<sup>51</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>52</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>53</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 they highlighted the fact that several constitutional rights do not extend to the island.<sup>54</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>55</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

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<sup>48</sup> Puerto Rico Federal Relations Act. Pub.L. 81-600.

<sup>49</sup> Id.

<sup>50</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 eliminat

<sup>51</sup> Id; *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>52</sup> Marrero Diaz, Written Statement. p. 4-5.

<sup>53</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>54</sup> Rivera Ramos, testimony. Hato Rey Briefing, Transcript 1. p. 40, 15-21.

<sup>55</sup> Rafael E. Rodriguez 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);



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>56</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>57</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>58</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>59</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>60</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>61</sup>

### ***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>62</sup> This limitation extends from the

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<sup>56</sup> Venator Santiago, testimony. Hato Rey Briefing, Transcript 1. p. 44, 18 - p. 45, 5.

<sup>57</sup> Laws García, testimony. Hato Rey Briefing, p. 283, 13 - p. 284, 12.

<sup>58</sup> Laws García, testimony. Hato Rey Briefing, p. 283, 13 - p. 284, 12.

<sup>59</sup> Rodríguez Rivera, testimony. Hato Rey Briefing. p. 155, 7 - p. 156, 4.

<sup>60</sup> Ibid; *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>61</sup> Laws García, testimony. Hato Rey Briefing, Transcript 1. p. 285, 24 - p. 286, 10.

<sup>62</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.

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>63</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>64</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>65</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>66</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>67</sup> According to Panelist Efrén Rivera Ramos, Law Professor at the University of Puerto Rico, Río Piedras Campus, this non-compliance is part of a political problem that could be resolved if the United States wanted.<sup>68</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>69</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

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<sup>63</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>64</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>65</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>66</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, Written Statement, p. 2.

<sup>67</sup> González Cruz, Written Statement, p. 2.

<sup>68</sup> Rivera Ramos, testimony. Hato Rey Briefing, Transcript 1. p. 42, 17-25.

<sup>69</sup> Laws García, testimony. Hato Rey Briefing, Transcript 1. p. 287, 1 - p. 288, 5.

unequal treatment between citizens living in the states and those who live on the island.<sup>70</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>71</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>72</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>73</sup>

The testimony also attributes this discrimination to the territorial clause, which indicates that territory is property.<sup>74</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>75</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 constantly.<sup>76</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>77</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>78</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

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<sup>70</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, Written Statement, p. 1.

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

<sup>72</sup> Rodríguez Rivera, testimony. Hato Rey Briefing, Transcript 1. p. 151, 10-16.

<sup>73</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>74</sup> U.S. Const. art. IV, § 3.

<sup>75</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).

<sup>76</sup> Avilés Deliz, Written Statement, p. 6.

<sup>77</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>78</sup> Erman, testimony. Hato Rey Briefing, Transcript 1. p. 24, 9-17.

to achieving decolonization.<sup>79</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>80</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>81</sup> Regarding statehood, the Constitution leaves to Congress the question of when and whether to admit new states.<sup>82</sup> That has never been a question for the federal courts.<sup>83</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>84</sup> It is worth mentioning that other constitutional rights, such as the right to trial by jury, do not extend to Puerto Rico.<sup>85</sup>

The United States Congress has unilateral power over the territory and can also modify local government within Puerto Rico.<sup>86</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>87</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>88</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>89</sup> Dr. Rivera Ramos commented that

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<sup>79</sup> Erman, testimony. Hato Rey Briefing, Transcript 1, p. 25, 4-16.

<sup>80</sup> Pérez, Brig. Gen. Victor, 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; Pérez, testimony. Hato Rey Briefing, Transcript 1. p. 278, 1-4.

<sup>81</sup> Erman, testimony. Hato Rey Briefing, Transcript 1. p. 25, 22 - p. 26, 15.

<sup>82</sup> Erman, testimony. Hato Rey Briefing, Transcript 1. p. 26, 11-15.

<sup>83</sup> U.S. Const. art. IV, § 3; *See also*: Erman, testimony. Hato Rey Briefing, Transcript 1. p. 25, 22 - p. 26, 15.

<sup>84</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>85</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.

<sup>86</sup> U.S. Const. art. IV, § 3; *See also*: Laws García, testimony. Hato Rey Briefing, Transcript 1. p. 288, 5-21.

<sup>87</sup> 48 U.S.C Chapter 20; *See also*: Laws García, testimony. Hato Rey Briefing, Transcript 1. p. 288, 5-21.

<sup>88</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>89</sup> 48 U.S.C. Chapter 20; Marrero Diaz, Written Statement, p. 6.

Congress has used this power to discriminate against Puerto Rico, especially regarding public benefits.<sup>90</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>91</sup> In 1917, Congress collectively naturalized the residents of Puerto Rico.<sup>92</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>93</sup> Before the Treaty of Paris, residents of Puerto Rico were citizens of Spain and could vote for their representatives there.<sup>94</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>95</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>96</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>97</sup> Furthermore, he proposed that this can be resolved by abandoning the doctrine of non-incorporation.<sup>98</sup> Panelist José Julián Álvarez González, Professor at the School of Law at the

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<sup>90</sup> Rivera Ramos, testimony. Hato Rey Briefing, Transcript 1. p. 40, 2-14.

<sup>91</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>92</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>93</sup> Nationality Act of 1940, P.L. 76-853; 54 Stat. 1137; *See also*: Álvarez González, José Julián, 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 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>94</sup> Marrero Diaz, Written Statement, p. 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>95</sup> Treaty of Paris of 1898 (30 Stat. 1758); Marrero Diaz, Written Statement, p. 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>96</sup> Erman, testimony. Hato Rey Briefing, Transcript 1. p. 26, 16-22.

<sup>97</sup> Erman, testimony. Hato Rey Briefing, Transcript 1. p. 27, 2-12.

<sup>98</sup> *Ibid*.

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>99</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>100</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>101</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>102</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 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>103</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>104</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>105</sup> This population is larger than 20 states and there are other members of Congress with full authority who represent significantly smaller populations.<sup>106</sup> Only an amendment at the constitutional level could allow Puerto Ricans to vote

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<sup>99</sup> Álvarez González, testimony. Hato Rey Briefing, Transcript 1. p. 132, 12-22.

<sup>100</sup> Freytes, Written Statement, p. 2.

<sup>101</sup> *Rogers v. Bellei* 401 U.S. 815 (1970); *See also*: Freytes Written Statement, p. 6.

<sup>102</sup> 8 USC § 1402; *See also*: Freytes Written Statement, p. 6.

<sup>103</sup> Rivera Ramos, testimony. Hato Rey Briefing, Transcript 1. p. 94, 6-16.

<sup>104</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>105</sup> U.S. Const. art. IV, § 3; *See also*: Governor Pierluisi, Written Statement, p. 3.

<sup>106</sup> Governor Pierluisi, Written Statement, p. 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).



in a presidential election, which Professor Álvarez González described in his testimony as something very difficult to achieve.<sup>107</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 Nutrition Assistance Program (SNAP), and gained access to group transportation services for people with physical disabilities.<sup>108</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>109</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>110</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>111</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>112</sup> Mr. Hernández described receiving

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<sup>107</sup> Álvarez González, testimony. Hato Rey Briefing, Transcript 1. p.190, 19 - p. 191, 2.

<sup>108</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>109</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>110</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>111</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>112</sup> Hernández, testimony. Hato Rey Briefing, Transcript 1, p. 103, 12 - 104, 23.



unequal treatment after having the experience of accessing medical services in a state and on the island.<sup>113</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>114</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>115</sup> 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>116</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>117</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>118</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>119</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>120</sup> More than 1,000 health professionals have migrated to the

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<sup>113</sup> Hernández, testimony. Hato Rey Briefing, Transcript 1, p. 108, 7-19.

<sup>114</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>115</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).

<sup>116</sup> Ramos, testimony. Hato Rey Briefing, Transcript 1. p. 196, 6-24.

<sup>117</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>118</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>119</sup> Ramos, testimony. Hato Rey Briefing, Transcript 1. p. 200, 2-5.

<sup>120</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.”

mainland in the last five years, leaving the residents of Puerto Rico with disabilities even more vulnerable.<sup>121</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>122</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>123</sup> Although this is intended to provide support to the poorest regions, Ms. Ramos explained that in Puerto Rico, despite being 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>124</sup> Panelist José Acaron, 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>125</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>126</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>127</sup> Furthermore, they

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<https://ncd.gov/publications/2022/disparate-treatment-puerto-rico-residents-disabilities-federal-programs> (accessed November 6, 2023).

<sup>121</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>122</sup> Ibid.

<sup>123</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).

<sup>124</sup> Ramos, testimony. Hato Rey Briefing, Transcript 1. p. 197, 22 – p. 198, 20.

<sup>125</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>126</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>127</sup> Teekah and Fiol-Matta, Written Statement, p. 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.

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>128</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>129</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>130</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 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>131</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>132</sup> Since this case began, 11 additional people have joined as plaintiffs.<sup>133</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>134</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

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<https://www.cnbc.com/2022/04/21/supreme-court-decision-hurts-puerto-ricans-who-need-federal-benefits.html> (accessed October 20, 2023).

<sup>128</sup> Teekah and Fiol-Matta, Written Statement, p. 3; *See also*: Social Security. “Supplemental Security Income (SSI). <https://www.ssa.gov/ssi/> (accessed October 20, 2023).

<sup>129</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>130</sup> Ortiz, testimony. Hato Rey Briefing, Transcript 1. p. 227, 18 - p. 228, 7.

<sup>131</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>132</sup> *Id.*, p. 29-32.

<sup>133</sup> *Id.*

<sup>134</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.

in Puerto Rico.<sup>135</sup> Attorney Abislaímán-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>136</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>137</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>138</sup> Furthermore, Abislaímán-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>139</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 inhabitants as property at the discretion of Congress, which is only one branch of the federal government.<sup>140</sup> The Territorial Clause does not describe or stratify different categories of territories or citizens.<sup>141</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>142</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>143</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>144</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

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<sup>135</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>136</sup> Id.

<sup>137</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>138</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>139</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.

<sup>140</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>141</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>142</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>143</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>144</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.

amount of the AABD program is set at \$58 dollars.<sup>145</sup> Abislaimán-Quílez argues that SSI is an advanced version of AABD.<sup>146</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>147</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>148</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>149</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>150</sup> “SSI does not provide a definition of geography. However, SSI does not apply to physical characteristics of the landscape; it applies to people,” says Abislaimán-Quílez.<sup>151</sup> Geography considers the racial, ethnic, and ancestral characteristics of the inhabitants, and therefore exclusion based on geography does not ignore color [race].<sup>152</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>153</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>154</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>155</sup> This most recent response filed in October 2023 asks the District Court to reverse its decision.<sup>156</sup> In *Rivera-Fuentes*, plaintiffs reserved the argument to

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<sup>145</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>146</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>147</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>148</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>149</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>150</sup> *Id.*, p. 14.

<sup>151</sup> *Id.*, p. 24.

<sup>152</sup> *Id.*, p. 35.

<sup>153</sup> *Id.*, p. 24.

<sup>154</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>155</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>156</sup> *Id.*, p. 36.

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>157</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>158</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>159</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>160</sup> This requirement forces individuals to decide between continuing to receive the 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>161</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>162</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>163</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>164</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

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<sup>157</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>158</sup> Ramos, testimony. Hato Rey Briefing, Transcript 1. p. 193, 24 - p. 194, 11.

<sup>159</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>160</sup> “Quality of Care in Puerto Rico – Medicaid Overview.” Medicaid.gov. <https://www.medicaid.gov/state-overviews/puerto-rico.html> (accessed January 22, 2024).

<sup>161</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>162</sup> Ramos, testimony. Hato Rey Briefing, Transcript 1. p. 200, 20 - p. 201, 9.

<sup>163</sup> *Id.*, p. 238, 20 - p. 239, 7.

<sup>164</sup> Governor Pierluisi, Written Statement, p. 4.



contribute federal income taxes into the general fund to the same degree as their counterparts in the states.”<sup>165</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>166</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>167</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 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>168</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>169</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>170</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

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<sup>165</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>166</sup> Ortiz, testimony. Hato Rey Briefing, Transcript . p. 224, 24 - p. 225, 11.

<sup>167</sup> Cruz, testimony. Hato Rey Briefing, Transcript 1. p. 239, 16 - p. 241, 3.

<sup>168</sup> Ibid.

<sup>169</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>170</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).



does not exist in Puerto Rico.<sup>171</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>172</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>173</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>174</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>175</sup> Along these lines, one of the services required under Medicaid that do not apply to Puerto Rico includes community-based home care services that help older adults receive the necessary care without leaving their homes.<sup>176</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>177</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>178</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

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<sup>171</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>172</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>173</sup> Acarón, testimony. Hato Rey Briefing, Transcript 1. p. 317, 25 - p. 318, 15.

<sup>174</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>175</sup> Acarón, testimony. Hato Rey Briefing, Transcript 1. p. 272, 15-20.

<sup>176</sup> Acarón, testimony. Hato Rey Briefing, Transcript 1, p. 271, 20 - p. 272, 13.

<sup>177</sup> *Ibid*.

<sup>178</sup> Ortiz, testimony. Hato Rey Briefing, Transcript 1, p 224, 19 – p. 225, 2.

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>179</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>180</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>181</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>182</sup>

### *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>183</sup> Regarding income, approximately 30,117 veterans in Puerto Rico live below the poverty line.<sup>184</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>185</sup> Mr. Ortiz shared that according to the 2020 Census, 67.7% of

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<sup>179</sup> Ortiz, testimony. Hato Rey Briefing, Transcript 1, p. 226, 2-16.

<sup>180</sup> Pérez, testimony. Hato Rey Briefing, Transcript 1. p. 280, 13 - p. 281, 7.

<sup>181</sup> Ortiz, testimony. Hato Rey Briefing, Transcript 1. p. 224, 24 - p. 225, 12-24.

<sup>182</sup> Rivera Ramos, testimony. Hato Rey Briefing, Transcript 1. p. 94, 4-22.

<sup>183</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>184</sup> United States Department of Veterans Affairs. “PACT Act Overview.” <https://www.va.gov/ADVISORY/docs/2021213FASFACSlides.pdf> (accessed December 29, 2023).

<sup>185</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.

veterans in Puerto Rico are over 55 years old.<sup>186</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>187</sup> The DD-214 form required to request assistance is only in English, presenting barriers for Spanish-speaking veterans in their requests.<sup>188</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>189</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>190</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>191</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>192</sup>

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>193</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>194</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

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<sup>186</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>187</sup> Ortiz, testimony. Hato Rey Briefing, Transcript 1. p. 241, 5 - p. 243, 3 y p. 247, 7 - p. 248, 9.

<sup>188</sup> Ortiz, testimony. Hato Rey Briefing, Transcript 1, p. 247, 7 - p. 248, 9.

<sup>189</sup> Ortiz, testimony. Hato Rey Briefing, Transcript 1. p. 250, 5 - p. 251, 6.

<sup>190</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>191</sup> Ortiz, testimony. Hato Rey Briefing, Transcript 1. p. 231, 16 - p. 232, 8.

<sup>192</sup> Ortiz, testimony. Hato Rey Briefing, Transcript 1, p. 264, 1-22.

<sup>193</sup> Ortiz, testimony. Hato Rey Briefing, Transcript 1, p. 260, 23 - p. 261, 25.

<sup>194</sup> Pérez, testimony. Hato Rey Briefing, Transcript 1. p. 297, 22 - p. 298, 7.

changed less than the senior poverty rate since the year 2000.<sup>195</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>196</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>197</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>198</sup> One significant update was that families with fewer than three children were eligible for the first time.<sup>199</sup> Under ARPA, the CTC had a \$1.78 billion impact on the economy and a 16% increase in the average family income.<sup>200</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>201</sup> This remains one of the most significant differences between Puerto Rico and the United States regarding the CTC.<sup>202</sup> Under

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<sup>195</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 Virtual Briefing Transcript 2).

<sup>196</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-c924-7856ccb747e/Child\\_Tax\\_Credit\\_impacto\\_trascendental\\_a\\_las\\_familias\\_conmenores\\_IDJ\\_enero\\_2022\\_.pdf](https://mcusercontent.com/35b40b9cf147af1ed5717180c/files/812ac348-c1a4-ce60-c924-7856ccb747e/Child_Tax_Credit_impacto_trascendental_a_las_familias_conmenores_IDJ_enero_2022_.pdf) (accessed October 30, 2022).

<sup>197</sup> Enchautegui, testimony. Virtual Briefing, 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>198</sup> Enchautegui, testimony. Virtual Briefing, 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).

<sup>199</sup> Enchautegui, testimony. Virtual Briefing, 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>200</sup> Enchautegui, testimony. Virtual Briefing, 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>201</sup> Enchautegui, testimony. Virtual Briefing, Transcript 2. p. 20-21.

<sup>202</sup> Enchautegui, testimony. Virtual Briefing, Transcript 2. p. 21.

the current CTC, we have only seen a 1% reduction in the child poverty rate and a 5% change in household income.<sup>203</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>204</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>205</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, 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>206</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>207</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>208</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>209</sup>

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<sup>203</sup> Enchautegui, testimony. Virtual Briefing, Transcript 2. p. 22.

<sup>204</sup> Ibid.

<sup>205</sup> Enchautegui, testimony. Virtual Briefing, 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).

<sup>206</sup> Font Nadal, testimony. Hato Rey Briefing, Transcript 1. p. 209, 7-17.

<sup>207</sup> Font Nadal, testimony. Hato Rey Briefing, Transcript 1. p. 211, 22 - p. 212, 19.

<sup>208</sup> Font Nadal, testimony. Hato Rey Briefing, Transcript 1. p. 243, 5-24.

<sup>209</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).



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>210</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>211</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>212</sup> Laws García added that this is the cumulative result of the unequal treatment of Puerto Rico.<sup>213</sup> This can also harm Puerto Rico since funds are received according to the population census numbers.<sup>214</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 improve their quality of life as any other citizen.<sup>215</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>216</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.

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<sup>210</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>211</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>212</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>213</sup> Laws García, testimony. Hato Rey Briefing, Transcript 1. p. 289, 23 - p. 290, 3.

<sup>214</sup> Rodríguez Rivera, testimony. Hato Rey Briefing, Transcript 1. p. 150, 10-21.

<sup>215</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>216</sup> Acarón, testimony. Hato Rey Briefing, Transcript 1. p. 300, 18 - p. 301, 9.

### ***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>217</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>218</sup> Several panelists argued that it must be demanded that Congress take action, although this is difficult without adequate representation.<sup>219</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>220</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-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development.”<sup>221</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>222</sup>

Panelists recommended analyzing the issue of Puerto Rico within the global context with an emphasis on human rights.<sup>223</sup> The challenge would be whether the United States government

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<sup>217</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>218</sup> Rivera Ramos, testimony. Hato Rey Briefing, Transcript 1. p. 71, 20 - p. 73, 8.

<sup>219</sup> Ortiz, testimony. Hato Rey Briefing, Transcript 1. p. 234, 7-20.

<sup>220</sup> *Ibid.*

<sup>221</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>222</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>223</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.



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>224</sup> The U.S. Congress must also confront the question of whether Puerto Rico is a colony under current understanding of international law.<sup>225</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>226</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>227</sup> Treating this as a domestic issue would be a repetition of previous efforts.<sup>228</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 to ensure that voters have access to all the information and be aware of the specific consequences of each option.<sup>229</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>230</sup> A self-determination process would be an essential step for democracy.<sup>231</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>232</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>233</sup> Additionally, it was recommended

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<sup>224</sup> Rodríguez Rivera, testimony. Hato Rey Briefing, Transcript 1. p. 149, 1-24; *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>225</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>226</sup> Ríos González, testimony. Hato Rey Briefing, Transcript 1. p. 167, 14 - p. 168, 8.

<sup>227</sup> Rodríguez Rivera, testimony. Hato Rey Briefing, Transcript 1. p. 154, 10 - p. 155, 1.

<sup>228</sup> Ríos González, testimony. Hato Rey Briefing, Transcript 1. p. 169, 14 - p. 170, 1.

<sup>229</sup> Álvarez González, testimony. Hato Rey Briefing, Transcript 1. p. 166, 8-20; *See also*: Avilés Deliz, Written Statement p. 5.

<sup>230</sup> Avilés Deliz, Written Statement, p. 5.

<sup>231</sup> Laws García, testimony. Hato Rey Briefing, Transcript 1. p. 294, 7 - p. 295, 8.

<sup>232</sup> Laws García, testimony. Hato Rey Briefing, Transcript 1. p. 319, 14 - p. 320, 19.

<sup>233</sup> Laws García, testimony. Hato Rey Briefing, Transcript 1. p. 291, 21 - p. 292, 13.

that the Committee follow developments on legislative proposals that support self-determination.<sup>234</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>235</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>236</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>237</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>238</sup>

In general, panelists stated that a political movement that transcends traditional divisions is necessary to decolonize Puerto Rico.<sup>239</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>240</sup> Calling for the revocation 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>241</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>242</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>243</sup>

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<sup>234</sup> González Cruz, Written Statement, p. 2.

<sup>235</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>236</sup> Rivera Ramos, testimony. Hato Rey Briefing, Transcript 1. p. 42, 1-15.

<sup>237</sup> González Colón, Written Statement, p. 5.

<sup>238</sup> *Ibid.*

<sup>239</sup> Rivera Ramos, testimony. Hato Rey Briefing, Transcript 1. p. 66, 14-21.

<sup>240</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.

<sup>241</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>242</sup> Figueroa, Written Statement, p. 1-2.

<sup>243</sup> Freytes, Written Statement, p. 2.

### ***Other Recommendations***

- Support House Resolution 314 which recognizes that the decisions of the United States Supreme Court discriminate against Puerto Ricans.<sup>244</sup>
- The Committee should recommend that Puerto Rico receive equal treatment under the TRICARE Prime program.<sup>245</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>246</sup>

### **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.

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<sup>244</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>245</sup> Carrillo, public comment, p. 327, 14 - p. 328, 25.

<sup>246</sup> Morell González, Written Statement, p. 4.

## **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=L1BSL0luc3VsYXlIgQ2FzZXM%3D](https://securisync.intermedia.net/us2/s/folder?public_share=409J0xbKeIQ2vuMJBvQond0011ef58&id=L1BSL0luc3VsYXlIgQ2FzZXM%3D)

- A.** Briefing Agendas, Minutes, and Presentation Slides
- B.** Transcripts
- C.** Written Testimony

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