



GOVERNOR OF PUERTO RICO
Pedro R. Pierluisi

June 9, 2023

Ever Padilla-Ruiz, Esq.
Executive Director
Puerto Rico Advisory Committee
to the U.S. Commission on Civil Rights

Dear Mr. Padilla-Ruiz:

I write to you today, on behalf of the 3.2 million American citizens residing in Puerto Rico. As governor of Puerto Rico, I welcome and appreciate the opportunity to collaborate with the U.S. Commission on Civil Rights on a matter that is of the utmost importance for the people of Puerto Rico. Our Island has been a territory of the United States of America for 125 years and Puerto Ricans have been American citizens since 1917. While we treasure and defend our citizenship, we must be blunt when discussing our reality: the unequal treatment of American citizens that reside in Puerto Rico is a failure of American democracy, as well as an offensive contradiction to the values of equality upon which our Nation was founded.

That inequality is an inherent dichotomy under the law: American citizens that reside in Puerto Rico lack fundamental rights when compared to those that reside in any other part of the country and those who have moved abroad. This, of course, was made possible by the United States Supreme Court in a series of judicial decisions collectively known as the *Insular Cases*. The *Insular Cases*, in a nutshell, determined that Congress has the authority to treat American citizens that reside in the nation's territories differently than stateside citizens.

I would like to point out a few examples of how American citizens that reside in Puerto Rico are victims of an unfair treatment solely because of where they live.

For instance, the Supplemental Security Income ("SSI") is a program that provides special assistance to Americans who need support to fulfill their basic needs. SSI recipients living in the states and the District of Columbia receive average benefits of \$574 per month, while alternative benefits available in Puerto Rico average \$82



GOVERNOR OF PUERTO RICO
Pedro R. Pierluisi

per month. A stark difference. Extension of this program to Puerto Rico would make a significant difference in the lives of hundreds of thousands of Americans whose only distinction is that they live in Puerto Rico.

In addition, in December 2022 Congress approved a bipartisan agreement to raise federal Medicaid funding for Puerto Rico, allowing us to improve our public health programs during the next five years. Although this enhanced funding changes will directly impact and improve the lives hundreds of thousands of Americans, it still falls well below what it would be if Puerto Rico were treated equally. Furthermore, in the coming years, Puerto Rico will again approach a looming fiscal cliff and face the uncertainty of not being able to have an adequate Medicaid program.

Moreover, with respect to the Medicare program, the Medicare Advantage ("MA") rate-setting formula that is used by the Centers for Medicare and Medicaid Services, places Puerto Rico at 42% below the National average and 37% below the lowest state rate (Hawaii). In fact, while MA plans across the U.S. have seen their reimbursement amounts increase, MA plans in Puerto Rico, which cover 85% of the Medicare beneficiaries on the Island, receive approximately \$1.1 billion less in reimbursement than they received in 2011. Also, the Medicare Savings Program ("MSP"), through which Medicaid pays some or all of Medicare Part B premiums for dual-eligibles, is mandatory in the states but optional in the U.S. possessions, and the Federal caps on Medicaid funding for Puerto Rico make the MSP generally unaffordable. These differences are particularly objectionable given that Puerto Rico residents pay Medicare payroll taxes just like any other citizen in the states.

Similarly, since the passage of the 1981 Budget Reconciliation Act Puerto Rico's low-income families no longer participate in the Supplemental Nutritional Assistance Program ("SNAP") and instead receive nutritional assistance through a block grant under the Puerto Rico Nutritional Assistance Program ("NAP"). It is important to note that SNAP applies to all the states.

NAP, unlike SNAP, is a block grant that falls significantly short of the nutritional needs of the American citizens living in Puerto Rico. Given the changes in SNAP due to the Thrifty Food Plan, the current disparity between maximum household benefits for Puerto Rico residents as compared to the states ranges from 21-24%. This gap exists even though Puerto Rico imports \$6.5B in agricultural products from the mainland yearly – a value surpassed only by Canada and Mexico.



GOVERNOR OF PUERTO RICO
Pedro R. Pierluisi

Additionally, as Puerto Rico has experienced during past emergencies, NAP lacks the flexibility provided in SNAP to meet the nutritional needs of its most vulnerable population in times of crises. For example, SNAP automatically activates enhanced funding to its beneficiaries following a formal declaration of emergency from the President. Whereas in that same scenario Puerto Rico needs an act of Congress to receive additional funding. While Congress has taken laudable steps toward providing temporary funding for Puerto Rico's nutrition programs, much work remains to be accomplished to achieve equitable treatment for needy families in Puerto Rico.

On the other hand, the people in Puerto Rico have no congressional representation that can address the local needs of the Island's population. Like other territories, Puerto Rico only has one delegate in the House of Representatives, the Resident Commissioner, who has a voice but no vote on laws that are debated and approved in Congress. That voice is totally absent in the U.S. Senate. It should be noted that Puerto Rico's Resident Commissioner represents 3.2 million American citizens, a population that is greater than 20 states, while Members of the U.S. House of Representatives only represent an average of 750,000 citizens.

The absence of voting representation in Congress is only made worse by the lack of voting rights for the American citizens residing in Puerto Rico. An American citizen that moves to any foreign country can request his or her absentee ballot to vote for President, Vice President and Members of Congress; however, if that citizen moves to Puerto Rico, the absentee ballot is unavailable.

As the First Circuit Court of Appeals has stated, "[u]ndoubtedly the most glaring evidence of this egregious disparity is the fact that [U.S. citizens residing in Puerto Rico] do not elect a single voting representative to a federal government that exercises almost absolute power over them". *Igartua de la Rosa v. U.S.*

Perhaps the clearest way to illustrate the discrimination and disparities suffered by the American citizens of Puerto Rico is to look at the way that members of the U.S. Armed Forces, as well as veterans and their families, are treated when they reside on the Island. Soldiers and veterans from Puerto Rico serve alongside their stateside counterparts at home and abroad, in times of peace and in times of war with the same commitment, gallantry and valor. They have put their lives at risk, and thousands have died, to defend the democratic values of our Nation;



GOVERNOR OF PUERTO RICO
Pedro R. Pierluisi

yet they do not have equal rights under the U.S. Constitution, they cannot vote for Members of Congress, or for the President who sends them in harm's way, and they do not receive the same benefits as their brothers and sisters in arms after they come home to Puerto Rico. No interpretation of what the founding fathers envisioned can or should include such discrimination.

It is clear the Insular Cases, which validate the territorial relationship between Puerto Rico and the United States, have resulted in significant disparities in the rights and responsibilities of American citizens, as well as in their access to federal programs and benefits. Those disparities contribute to Puerto Rico's ongoing social and economic challenges, hindering the Island's full potential and progress.

Puerto Rico's colonial status also undermines the identity of Puerto Ricans. We are American citizens who proudly contribute to the fabric of this great Nation. However, our voices are not fully heard when it comes to decisions that directly affect our lives.

It is imperative to reaffirm our Nation's principles of democracy, equality, and justice by addressing the lack of voting and civil rights endured by the American citizens that reside in Puerto Rico. By doing so, we can strive towards a more inclusive and equitable society, where all American citizens, regardless of their place of residence, are treated with the dignity and respect they deserve.

The path ahead must be furthered by finally resolving Puerto Rico's political status. After repeated U.S. Supreme Court decisions directly refuting the false notion of Puerto Rican sovereignty, the solution to Puerto Rico's political status and the discriminatory treatment it allows lies in two main areas: (1) judicial actions aimed at overturning—or, at least, eroding—the legal foundation and root cause of inequality for Puerto Ricans, the *Insular Cases*; and (2) an Act of Congress enabling Puerto Rico to have a non-territorial, non-colonial, and permanent political status.

As for to the judicial path, the fight in the courts must continue. Although the U.S. Supreme Court has not shown a willingness to depart from the *Insular Cases* jurisprudence, a silver lining can be found in Associate Justice Neil Gorsuch's concurring opinion in *United States v. Vaello-Madero*,¹ where he stated that:

¹ 142 S.Ct. 1539 (2022).



GOVERNOR OF PUERTO RICO
Pedro R. Pierluisi

A century ago in the *Insular Cases*, this Court held that the federal government could rule Puerto Rico and other Territories largely without regard to the Constitution. It is past time to acknowledge the gravity of this error and admit what we know to be true: The *Insular Cases* have no foundation in the Constitution and rest instead on racial stereotypes. They deserve no place in our law... Because no party asks us to overrule the *Insular Cases* to resolve today's dispute, I join the Court's opinion. But the time has come to recognize that the *Insular Cases* rest on a rotten foundation. And I hope the day comes soon when the Court squarely overrules them.

Accordingly, Justice Gorsuch's statement in *Vaello-Madero* is a clear opening and should lead us to maintain the fight on the judicial front.

As for the political path, namely, a change of political status through an Act of Congress, the route is no less difficult. Since Congress approved Puerto Rico's Constitution in 1952, there has been no meaningful action at the federal level concerning Puerto Rico's political status. In the past 16 years, no less than 12 bills dealing with the matter have been introduced in Congress, but none have become law.²

It is not only Puerto Rico's responsibility to take steps to address and resolve its political status, Congress needs to take action on this matter. In fact, Puerto Ricans have voted three times for statehood during the past 11 years (2012, 2017 and

² (1) the Puerto Rico Democracy Act of 2006 (H.R. 4867); (2) the Puerto Rico Democracy Act of 2007 (H.R. 900); (3) the Puerto Rico Democracy Act of 2009 (H.R. 2499); (4) the Puerto Rico Status Resolution Act of 2013 (H.R. 2000); (5) the Puerto Rico Admission Process Act of 2015 (H.R. 727); (6) the Puerto Rico Admission Act of 2017 (H.R. 260); (7) Puerto Rico Admission Act (H.R. 1965); (8) Puerto Rico Statehood Admission Act of 2019; (8) Puerto Rico Statehood Admission Act of 2021; (10) Puerto Rico Self-Determination Act (H.R. 2070); (11) Puerto Rico Status Act of 2022 (H.R. 8393); and (12) the Puerto Rico Status Act of 2023 (H.R. 2757).



GOVERNOR OF PUERTO RICO
Pedro R. Pierluisi

2020), but Congress has failed to act. There can be no real democracy where there is no self-determination. The work to further perfect our American democracy remains incomplete.

I thank you again for the opportunity of expressing my views on this important subject. Should you need further information, please feel free to contact me.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Pierluisi".