

PUERTO RICO

HEARING BEFORE THE COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE ONE HUNDRED NINTH CONGRESS

SECOND SESSION

ON

THE REPORT BY THE PRESIDENT'S TASK FORCE ON
PUERTO RICO'S STATUS

NOVEMBER 15, 2006



Printed for the use of the
Committee on Energy and Natural Resources

U.S. GOVERNMENT PRINTING OFFICE

33-148 PDF

WASHINGTON : 2007

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2250 Mail: Stop SSOP, Washington, DC 20402-0001

side, one a new member—not the newest, but a new member from Colorado, Senator Salazar.

It's always a privilege. I'm sure we will hear some insightful questions from you about this situation.

And then we have Senator Menendez. He's newly elected also, so we congratulate you, for the record, on your election and we're glad that you were able to make it here with us today, Senator. Thank you very, very much.

I think the rules would now say we go to Senator Martinez, and then to the Democratic side, to Senator Menendez. Please proceed, Senator. Whatever time you want is yours.

**STATEMENT OF HON. MEL MARTINEZ, U.S. SENATOR
FROM FLORIDA**

Senator MARTINEZ. Thank you, Mr. Chairman, and thank you so much for holding this very important hearing today. I want to express to you my real personal gratitude for making time for this, for the diligent work of the staff. I also want to thank Ranking Member Bingaman for his work on making this hearing possible.

I also just want to take a moment to recognize de una calidad bienvenida to so many people who have traveled here from Puerto Rico to be with us today; most of all, and first and foremost, Governor Acevedo, but also, of course, our Congressman, Luis Fortuño, and the many other elected officials. Mayor O'Neil I know is here and I'm sure there are many others that represent the people of Puerto Rico in different elected offices. So I welcome all of you and look forward to continuing this discussion on this very important issue.

When considering Puerto Rico's status, it is clear that we have been left in an untenable circumstance regarding what the future will hold for the citizens of Puerto Rico. This hearing is critical in answering many of the questions that have, for too long now, gone unanswered. Although it isn't likely that we will hear all the answers today, we are certainly moving in the right direction. This hearing will give us an opportunity to review our Nation's policy toward Puerto Rico—how we got it where we are—and it will also give us an opportunity to discuss where we are heading.

However, first and foremost, we should start by clarifying one point: Puerto Rico is undoubtedly a territory of the United States. Puerto Rico is subject to the Territorial Clause of the U.S. Constitution and, therefore, a territory of the United States since 1898. That has not changed in the last 108 years.

Federal authorities including GAO, CRS, DOJ, State, the Supreme Court, the U.S. House of Representatives and successive U.S. Presidents, including the legislative history of Law 600, which provided Puerto Rico to write a local constitution, and the record of this committee, all make clear that the status of Puerto Rico remains under the Territorial Clause since 1898.

It is for this reason that, as we begin our debate on Puerto Rico's future, we do not forget the obvious—that Puerto Rico is a territory of the United States. What does this mean? Practically, it means that our Federal laws are applicable in Puerto Rico, yet the U.S. citizens of Puerto Rico do not have adequate or proportionate representation to decide those laws. And a government based on rep-

representative democracy clarifying this situation is an absolute necessity.

Mr. Chairman, in order to begin the process of resolving this matter, we need to start by asking one important question: Why is Puerto Rico the only territory in the United States to be granted U.S. citizenship by Congress, while at the same time not being put in a position to establish a permanent relationship with the United States? When the Congress conferred U.S. citizenship for the territories of Alaska and Hawaii, the U.S. Supreme Court interpreted it to mean that the U.S. Constitution applied and those territories were incorporated into the Union. When Congress conferred U.S. citizenship for Puerto Rico, the U.S. Supreme Court deviated from the Alaska and Hawaii precedents and ruled that the Constitution did not apply.

This meant that Congress could govern the U.S. citizens of Puerto Rico under the same unincorporated territory doctrine that applied to non-citizens in the Philippines when it was in transition to independence. Although Congress has been active on this issue, it has not taken the necessary steps to resolve Puerto Rico's status. As a result, some U.S. citizens of Puerto Rico have created a number of unconventional status ideologies and doctrines that combine features of statehood, territorial status and independence. The ideologies and doctrines may be ill-advised or even legally flawed in some respect but they are a direct result of U.S. citizens simply trying to fill the void left by the U.S. Congress.

These doctrines, which now complicate the issue of Puerto Rico's status, most likely would not have been created had Congress not overlooked its responsibility for a territorial status resolution.

I mention this not to chastise previous Congresses but to urge my colleagues to take this matter up in an expeditious fashion, to address it fully and to resolve it finally. As I said earlier, this is long overdue and the people of Puerto Rico deserve their say.

As a result, I have introduced legislation that would move this process forward. It would not dictate the status of Puerto Rico but it would begin a process whereby a resolution of this matter could be reached. This hearing is a critical step toward finding a workable solution and I'm pleased that both sides of this important debate are represented here today and will present testimony to our committee.

While some people support the White House report, others oppose it. Both sides have valuable perspectives and are important to this debate, because both sides have the best interests of Puerto Rico at heart. It is with a tone of civility that we should open this hearing, because there is, I believe, a firm understanding that we are here today to determine what is in the best interests of all U.S. citizens in Puerto Rico and are here to better understand the constitutional options available to future generations of U.S. citizens living in Puerto Rico. Thank you, Mr. Chairman.

[The prepared statement of Senator Martinez follows:]

PREPARED STATEMENT OF HON. MEL MARTINEZ, U.S. SENATOR FROM FLORIDA

Mr. Chairman, I want to personally thank you for calling this important hearing. The issue of Puerto Rico's status is of great interest to me and many of my constituents in Florida, and it is an issue where a meaningful resolution is well overdue.

When considering Puerto Rico's status, it is clear that we have been left in an untenable circumstance regarding what the future will hold for the citizens of Puerto Rico.

This hearing is critical in answering many of the questions that have, for too long now, gone unanswered. Although it is unlikely that we will hear all the answers today, we are certainly moving in the right direction.

This hearing will give us an opportunity to review our nation's policy toward Puerto Rico, how we got where we are, and will also give us an opportunity to discuss where it is we are heading.

However, first and foremost, we should start by clarifying one point: Puerto Rico is undoubtedly a territory of the United States.

Puerto Rico is subject to the Territorial Clause of the US Constitution, and therefore a Territory of the US since 1898. That has not changed in the last 108 years.

Federal authorities (including GAO, CRS, DOJ, State, US Supreme Court, US House of Representatives, successive US Presidents) including the legislative history of Law 600 (which provided for Puerto Rico to write a local constitution), and the record of this Committee, all make clear that the status of Puerto Rico remains under the Territorial Clause since 1898.

And it is for this reason that, as we begin our debate on Puerto Rico's future, we do not forget the obvious—that Puerto Rico is a territory of the United States.

What does this mean? Practically, it means that our federal laws are applicable in Puerto Rico, yet the United States citizens of Puerto Rico do not have adequate or proportional representation to decide those laws. In a government based on representative democracy, clarifying this situation is of absolute necessity.

Mr. Chairman, in order to begin the process of resolving this matter, we need to start by asking one important question: why is Puerto Rico the only territory in U.S. history to be granted U.S. citizenship by Congress, while, at the same time, not being put in a position to establish a permanent relationship with the United States?

When the Congress conferred U.S. citizenship for the territories of Alaska and Hawaii, the U.S. Supreme Court interpreted that to mean the U.S. Constitution applied and those territories were incorporated into the union.

When Congress conferred U.S. citizenship for Puerto Rico, the U.S. Supreme Court deviated from the Alaska and Hawaii precedents and ruled that the Constitution did not apply.

This meant that Congress could govern the U.S. citizens of Puerto Rico under the same unincorporated territory doctrine that applied to non-citizens in the Philippines when it was in transition to independence.

Although Congress has been active on this issue, it has not taken the necessary steps to resolve Puerto Rico's status.

As a result, some U.S. citizens of Puerto Rico have created a number of unconventional status ideologies and doctrines that combine features of statehood, territorial status and independence.

These ideologies and doctrines may be ill-advised or even legally flawed in some respects, but they are the direct result of U.S. citizens simply trying to fill the void left by Congress.

These doctrines, which now complicate the issue of Puerto Rico's status, most likely would not have been created, had Congress not overlooked its responsibility for a territorial status resolution.

I mention this not to chastise previous Congresses, but to urge my colleagues to take this matter up in an expeditious fashion, to address it fully, and to resolve it, finally. As I said earlier, this is long overdue, and the people of Puerto Rico deserve their say.

As a result, I have introduced legislation that would move this process forward. It would not dictate the status of Puerto Rico, but it would begin a process whereby a resolution on this matter could be reached.

This hearing is a critical step toward finding a workable solution, and I am pleased that both sides of this important debate are represented here today and will be presenting testimony to our Committee.

While some people support the White House report; others oppose it—both sides have valuable perspectives and are important to this debate, because both sides have the best interests of Puerto Rico at heart.

It is with a tone of civility that we should open this hearing, because there is, I believe, a firm understanding that we are here today to determine what is in the best interests of all U.S. citizens in Puerto Rico and are here to better understand the constitutional options available to future generations of U.S. citizens living in Puerto Rico.

The CHAIRMAN. Thank you very much, Senator.
Now it's the Senator from Colorado.

**STATEMENT OF HON. KEN SALAZAR, U.S. SENATOR
FROM COLORADO**

Senator SALAZAR. Thank you very much, Chairman Domenici and Ranking Member Bingaman, for holding this hearing on this very important issue. I also shout out my greetings to Governor Acevedo, as well as to Luis Fortuño and Ken McClintock and others who are here from Puerto Rico, who have traveled so far. Welcome here to your Nation's capital as well.

When President Clinton signed Executive Order 13183, establishing the President's task force on Puerto Rico, to help answer the questions that the people of Puerto Rico have asked for years regarding the options for their future status and the process for realizing an option, I doubt that he or those advising him expected that the task force would take so many years to make a recommendation.

However, now that the task force has acted, I believe that the 3.9 million people of Puerto Rico deserve a response from this Congress. With Capitol Hill buzzing from the election and the changes in the House and the Senate, I appreciate very much the attention that the Energy Committee is giving to this issue today. Not all issues are receiving this kind of attention in Washington on these days.

I am very eager to hear from today's panels of leaders and experts on this issue of the future of Puerto Rico. I look forward to hearing from the Deputy Assistant Attorney General, Kevin Marshall, with respect to the task force report. Likewise, I am very interested in learning more about the thoughts and reactions to the report from representatives from Puerto Rico's political parties, Governor Acevedo, Resident Commissioner Fortuño and Rubén Berríos Martínez.

All of you in Puerto Rico and those of us who are interested in the future of the island have lived with this issue for a very long time. Notwithstanding the status of Puerto Rico, the people of Puerto Rico have been great citizens of the United States and have contributed greatly to this Nation.

I am sure you will use this forum to share your unique perspective. I believe that our committee will benefit very much from your views. I hope you can offer us clear and practical ideas for moving forward. I have come to learn more about the unresolved question of what is Puerto Rico's status through conversations with Puerto Rican leaders on different sides of this issue and by traveling, within the last year, to Puerto Rico with my friend, Senator Mel Martínez.

I recognize the great responsibility that this committee placed in providing Puerto Ricans with the means to determine the ultimate status of their island. That is why, with 13 other Senators, we introduced the Puerto Rico Democracy Act.

Our bill would implement the first step of the task force recommendations by authorizing a plebiscite that would ask Puerto Ricans to decide if they would like to remain in their current status as a U.S. territory or pursue some other permanent, non-territory