



National Association for Uniformed Services
Vice-President SE Region (FL, GA, SC, AL, MS, MO, AR, & PR)
www.naus.org // VP: dennisfreytes@hotmail.com / L: (407) 298-1151

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RE: End 2d Class US Citizenship; Puerto Rico's Un-Democratic Status!

Dear President Obama:

Please, join American Patriots that do right; help get the Federal Government to end a 2d Class US Citizenship. This complex equal rights quandary that affects millions is not only about a "Group" Vote on the status question, but, more important, it's about protecting individual civil rights in our representative democracy-where the US Citizen should be the epicenter of our Republic, not the un-democratic territorial control of the land... We must end political oppression with truth and fairness!

Our factual history states: in **1898**, the U.S invaded Puerto Rico (PR), as part of the Spanish American War, and forcefully took it as a spoil of war...made it a US Territory (Colony) that falls under the absolute un-democratic control of the Federal Government (per the *U.S. Constitution Article 4, trite Territorial Clause that states: "**The Congress shall have power to dispose of and make all needful Rules and Regulations respecting the Territory...or property belonging to the U.S.**")

In 1917, Congress erred in imposing on PR- a statutory "**2d Class US Citizenship**" (without all rights responsibilities, & benefits) that doesn't permit loyal US Citizens (including fighting US Veterans) to vote in Federal elections nor have just representation in the Congress that determines their destiny nor permanent US Citizenship, under our USA Flag--actions that conflicts with the vital "Bill of Rights"...

This iconic American Hispanic civil rights issue that strikes at the **Soul of our Democracy**--"consent of the governed"-- has not received the National attention it merits! But, now we must be fair...; soar above political rhetoric, demagoguery, lies, misinformation, excuses...; educate the gullible and all on the truth; advance our democracy; ensure equality; break Puerto Rico's trite Territorial un-democratic shackles.

You said "We commit to moving the resolution of the status issue forward with the goal of resolving it expeditiously." "It is time for PR to take the next step in the history of its status and its relationship to the rest of the United States." Well, now is the time to resolve the voting segregation, and colonial condition of millions of US Citizens... We must make political equality a reality... It is time for bold leadership-ensure the Equality Dream (for all) of our beloved Dr. Martin Luther King comes true!

Puerto Rico held an internal plebiscite (Nov. 2012). About 78%+ voted--resulting: **54%** (958,915) want to end the current Territorial Status (ELA-Free Associated State); **61%+** (824,195) voted for Statehood; and only **5.55%** (74,812) for total Independence. (ELA Soberano-which wasn't properly defined- got **33%**). However, the political cover-up, misinformation, and misinterpretation of the results have begun; some are trying to discredit a democratic Plebiscite where everyone had the opportunity and duty to vote; the results are clear (even if some Voters left some questions in blank... The Governor got elected with 47%): a Non-Territorial Status through Statehood won! The democratic vote must be respected!

After 115 years of non-action, the Federal Government must not obfuscate nor provide discriminatory excuses, but, educate, and promptly intervene to protect all individual civil rights; end an un-democratic Federal Territorial Status that goes against the grain of our American democracy; start the transition process (which should not take more than 3-5 years) to admit Puerto Rico as the 51st State of our Union.

Option 2 is to end Federal political subjugation; promptly conduct a federally sanctioned Plebiscite that is non-territorial & self-determined; let all that have "standing" vote (born in PR with a non-permanent US Citizenship); truthfully define US Constitutional Options that don't fool or confuse, which are:

1. **Statehood**: US Constitution=US Citizenship-all rights, responsibilities & benefits; State Sovereignty

2. **Independence:** PR Sovereignty= PR Constitution; PR Citizenship; ends protection and benefits of US Constitution...: **Total** or **Associated** (Free Association or “ELA Soberana”...-negotiated Pact that either Party can end.)

*Note: A Nation can't be sovereign or enact a pact when under the Citizenship & Constitution of another Nation... Per US Constitution-PR can be: a State or Territory. Free Association or ELA Soberana is a form of Independence.

Puerto Ricans are born US Citizens-the 2d largest American Hispanic segment of our US population- about 9 million strong with most residing in the States (5m) & 4m in PR-- whose Ancestors (roots/ heritage) led to the discovery of Florida; brought advance civilization (of the times), Christianity, Horses, Cattle, Pigs... to the settlement of the USA-- 107 years before the Pilgrims landed... Plus, Puerto Ricans, Mexicans, and Cubans fought together in the US War of Independence with General George Washington.

Puerto Rico (with more population than 24 States) is the oldest Territory in US History; has bravely defended the US Flag (since 1898) to include the US 65th Infantry Regiment (Borinqueneers) that suffered segregation, discrimination, and un-equal US Citizenship, yet, bravely fought for all of us. Its Colors were passed to the PR National Guard which is serving, along with other Patriots from PR, in the Global War on Terrorism. They loyally sacrifice; fight... shed blood in defending the US--for the good of all.

NOTE: General of the Armies (5 Stars) Douglas MacArthur once said: “...the Puerto Ricans...of the gallant 65th Infantry on the battlefields of Korea by valor, determination and a resolute will to victory give daily testament to their invincible loyalty to the United States...They write a brilliant record of achievement in battle and I am proud indeed to have them in this command. I wish that we might have many more like them!”

PR is a valuable US Territory, with an educated work force, that serves, among other things, as a unique open market that fuels about one million American jobs; buys \$20.4 billion in US Goods & Services; is the US world's eighth trading partner and 4th largest purchaser of goods, an important defense outpost, a big pool for military personnel...; buys more products from the U.S. mainland than many larger countries such as Italy, Russia or China; is a pharmaceutical, Microsoft Computer Programs...center of Excellence!

Our Nation is formed by the union of States (focused on Equality, Justice, Liberty...for all)-with own State sovereignty, identity, uniqueness, diversity... US Citizens in PR, like other States, are a very complex group of people that are legally born US Citizens- part of our US multi-ethnic and beautiful “Tapestry” of vibrant colors that is united and bonded together by common values and purpose for the good of all. They are very proud of their roots, lineage, and heritage as part of the shared macro Western culture. Plus, as most enlighten US Citizens, they believe in: God, love, truth, fairness, justice...; are hard workers, family oriented; community servants...-- US values engrained!

We must stop confusing the People by calling PR a “Commonwealth” or as translated in Spanish-ELA (Free Associated State); overcome the un-fair oppressive tactics of the misinformed, closet bigots... hidden agendas; not discriminate or provide poor age old excuses (consensus, language...) to keep PR a federal un-democratic US Territory. Remember, we are dealing with born US Citizens... More Spanish is spoken in the States than in Puerto Rico or Spain! (US is the 2d largest Spanish Nation in the World.)

Also, the original Territorial Clause was written in another era...when the founding Fathers (with no Women, Blacks, or Hispanics participation; some had slaves...) were more focused on uniting sovereign States...forming a representative democracy under a Federal Government..., organizing the boundaries of the US... not on an equal US Citizenship. But, our democracy has evolved with its amendments! Today, US Citizenship equality (per the US Constitution's Amendments/Bill of Rights) is more important...

We now own our Constitution; not our fore Fathers! If there are constitutional contradictions--conflict between the old un-democratic Territorial clause (land domain laws) and the Bill of Rights and other amendments, the Federal Courts should favor individual civil rights...; ensure the US Citizen is the focus

of our democracy...Plus, the 14th Amendment states that you are a US Citizen if you are born in a State or Naturalized... The only Status that can guarantee an equal and permanent US Citizenship is Statehood.

Abraham Lincoln & Martin Luther King (which stood for a government of the People and equality) would be appalled that the US Territory of PR is still an un-democratic dinosaur of our trite colonial past! US President Regan said: it was an “un-natural” state (favored statehood); is among other US Presidents, Gov. Jeb Bush, Rep. Serrano, Attorney General Thornburg...and Others that favor ending a 2d Class US Citizenship; un-democratic Territorial Status. (Even if one US Citizen can’t vote...it is one too many!)

Don’t be incongruent! The US Constitution should equally apply to all US Citizens residing in Puerto Rico (under our grand USA Flag)! If not, there is discrimination...; no Federal consent of the governed!

Individual Civil Rights is totemic to our democracy; must be protected against “Federal political oppression” or like former US Patriots said, the “tyranny of a majority”! Congress with truth, fairness, & justice must promptly do right; admit the born US Citizens of the US Territory of Puerto Rico as the 51st State of the Union or give them Independence Total or Associated (as self-determined)!

Please, meet with us on this and other American Hispanics/US Puerto Ricans vital issues (Florida Discovery, US 65th INF Congressional Gold Medal...); know that I’m at your patriotic service! THANKS for the great things you do for the good of all: Family, Community, USA, and Humanity!

Best Wishes; Very Respectfully,

Dennis

Dennis O. Freytes (MPA, MHR, BBA); L Colonel US Army Ret.; Community Servant
Vice-President NAUS SE Region (7 States + PR), Former Commander of: Infantry, Special Forces, Airborne, Engineers, Medical & ROTC Units; University Professor; Trustee Valencia College.; Advised Governor, Congressmen, Mayors; served on Florida Governor & US President Transition Teams; Senate confirmed twice; Honorary Deputy Sheriff... (See Resume).

We leave no American Veteran behind!

PS: My Father (Celio Freytes Menendez) and my Mother (Gloria E. Gonzalez Marrero) asked me to take on this righteous quest that affects millions of 2d Class US Citizens-- that want to have equal civil rights as other Citizens... My Father has the Combat Infantryman’s Badge-with star (World War II & Korea); fought with the Hispanic segregated 65th Infantry (The Borinqueneers). My Mother was a Teacher and Social Worker. They deserve better treatment! On their behalf, and millions of other patriotic loyal US Citizens—join me in this just cause!

***NOTES:** (Please, see below some supporting History, Facts, Federal & Supreme Court Decisions...)

- 1. The US Supreme Court** (Harris vs Rosario and in other Cases) has wrongly determined (interpreted) that Congress can differentiate (discriminate) in respect to non-basic Constitutional rights (not outlined in cases...).
Congress hasn’t written any laws-- that clearly state or the US Supreme Court hasn’t decided:
 - a. Puerto Rico is not an un-incorporated foreign Territory or is covered by the 14th Amendment...
 - b. US Citizens born in Puerto Rico don’t have a non-permanent statutory US Citizenship...
 - c. A future Congress is not bound by a past Congress... (Laws passed by Congress can be revoked...)
- 2. In short term, Congress can start redressing an un-democratic wrong:**
 - a. Incorporate the US Territory of Puerto Rico; protect individual civil rights-permanent US Citizenship (under 14th Amendment- which a future Congress can’t change).
 - b. Allow just representation in the US House (Voice/ Vote) for 4 million US Citizens residing in PR (not prohibited by our US Constitution). (Title: PR Congressman or ?)
 - c. Increase (proportionally) the number of US Representatives, based on the enormous population increases of the last Century..., and include 6 or 7 US Representatives from Puerto Rico...

US President Reagan and other Patriots have it right...this is an “un-natural state...” of affairs for the USA—the shining world example of equality and just representative Democracy! We need to do right—advance American Democracy; end un-equal statutory US Citizenship and Puerto Rico’s un-democratic territorial Status now!

PETITION: We patriotically petition our Federal Government to uphold the essence of our representative democracy: “consent of the governed”/political equality-- by ending Puerto Rico’s federal un-democratic territorial Status and 2d Class US Citizenship (where born US Citizens/ US Veterans can’t vote in Federal elections nor have just representation in Congress...; respect the PR internal democratic plebiscite (Nov. 2012) results (Non-Territorial Status =54% ; Statehood=61%; Undefined ELA “Soberano” (Free Association)=33%; Total Independence=5%).

OTHER SUPPORTING FACTS:

1. **Former Chief Judge Torruella (US 1st Circuit Court of Appeals) published:** "The Supreme Court and Puerto Rico: The Doctrine of Separate and Unequal-1985": This book critiques the judicial system and compares the “Insular Cases” (1902-1922), that defined the status of Puerto Rico/US Citizenship, to Plessy v. Ferguson (separate but equal doctrine to justify racial segregation) that was overturned with Brown v Board of Education (1954)-- to Puerto Rico’s case of un-democratic inequality... (where there exists a 2d Class US Citizenship...)
2. **Chief Judge Torruellas further states: :** "The Supreme Court continues to cling to this anachronistic remnants of the stone age of American constitutional law notwithstanding that the doctrines espoused by the "Insular Cases" seriously curtail the rights of several million citizens... of the US." Reflecting on over 115 years of US un-democratic control of Puerto Rico, he further says: "the disparity of rights that result from this relationship has in my opinion for too long been **relegated to the back burners of American constitutional thought and dialogue...**" and “whatever the future holds for this island, its people should strive for the equality which has too long eluded them”.
3. **US Attorney General Thornburg,** Sen. Bob Graham (read one of my letters on the US Senate Floor), Gov. Jeb Bush, and others have stated that those US Citizens that live in PR are “2d Class Citizens”. Besides, Supreme Court decisions, Congressional and Presidential Reports... state that PR is a US Territory (possession... under our Constitution...)-not a Commonwealth (or Free Associated State) terms that confuse or fool people...
4. A report from the **University of Connecticut** on US Citizenship states, the *Insular Cases* established that “Puerto Rico could be treated as an unincorporated territory.... because the population of the island was racially inferior and unfit to share in the rights and responsibilities of the United States”...
5. More importantly, majority opinion written by Justice Henry Billings Brown, the same judge who wrote the infamous decision *Plessy v. Ferguson* [153 U.S. 537 (1896)], also argued that the United States was **only comprised of states and that territories, incorporated or otherwise, were located outside of the United States for constitutional purposes.** Although it is true that Judge Brown stood alone in making this interpretation, the U.S. government subsequently accepted this argument. There has been no change enacted by Congress to incorporate Puerto Rico which to the eyes of the statutory Law is a non-incorporated Territory possession belonging to the USA.
6. Also, the **Supreme Court has made an interpretation** of the US Constitution & / ruled that Congress, under Article 4, (**Harris vs Rosario**) can “differentiate”-set aside some of the equal voting protection of the US Constitution... (This is not democracy, but, fig leaf tyranny of a majority!)
7. Finally in 1940 Congress enacted new corrective legislation that sought to resolve the continuing growth of this undocumented population in Puerto Rico with the enactment of the **Nationality Act of 1940** [54 Stat. 1137 (1940)].
8. This legislation included specific provisions that retroactively naturalized all persons born in Puerto Rico after April 11, 1899 and extended **birthright or jus soli citizenship** to all persons born in the island after 1941. For the purposes of this act, Puerto Rico was distinguished from other outlying or unincorporated territories and became a geographical part of the United States (Section 101d). In addition, Section 202 extended birthright or *jus soli* citizenship to all persons born in the island without any restrictions.
9. This law was subsequently codified in 1952 [8 U.S.C. §1402, 66 Stat. 236 (1952)] and remains the main source of U.S. citizenship for all persons born in Puerto Rico. Persons born in Puerto Rico after 1941 are presently entitled to acquire a form of birthright or *jus soli* citizenship. **The question however is whether the extension of birthright citizenship without explicitly changing the unincorporated territorial status of the island guarantees that persons born in Puerto Rico can be entitled to a constitutional (14th Amendment) form of birthright citizenship, a form of *jus***

***sol*i citizenship that extends to the children of citizens or undocumented migrants alike that are born in the United States.**

10. Most policymakers and academics suggest that Congress merely extended a **statutory or legislative form of birthright citizenship** to the island because Congress has never explicitly recognized the extension of the 14th Amendment to Puerto Rico. Alternatively, others argue that in order to extend *jus soli* citizenship to the island the Federal government had to treat Puerto Rico as an incorporated territory of the United States.
11. This latter argument suggests that Congress can selectively incorporate Puerto Ricans for citizenship purposes without having to change the island's political status. **Suffice it to say that this is an open question that has been lingering for more than half a century. (It is time to end un-equal US Citizenship; PR's Territorial Status! Truth, Fairness, Equality, & Justice under our gran American Flag!)**
12. The US Constitution original un-democratic **Territorial Clause**, was written when the founding Fathers that had slaves... (With no Women, Blacks, or Hispanics participation) were focused on developing a Federal democratic Government; the boundaries of the US... not on an equal US Citizenship. It worked during the forming of America, but, today the US Citizen is the epicenter of our representative democracy with protected individual civil rights for all... (per the US Constitution's Bill of Rights and other Amendments).
13. ***US Territory of Puerto Rico local Plebiscite results** (6 Nov. 2012) **78+% US Citizens voted:** (two questions)
 - a. Q1: Whether they agreed to continue with Puerto Rico's territorial status: 958,915 (54.00%) voted "**No**" (expression against maintaining the current political status) (65,863 left the question blank)
 - b. Q2: To indicate the political status they preferred from three possibilities: **Statehood, Independence (Total), or ELA Soberano** (a sovereign nation in free association with the USA) (which was not properly defined...)
 - (1) **Statehood:** 824,195 (61.15%)
 - (2) **Independence (Total):** 74,812 (5.55%)
 - (3) **ELA Soberano/Free Association:** 449,679 (33.34%) (which was not properly defined; confused Voters as to the true definition under our Constitution...)

(NOTE: **All had the opportunity and duty to vote.** The elected PR Governor received a minority vote of 47% in this very tight race...yet got elected...; PR's Representative in Congress Pierluisi, who is for Statehood, received more votes than the Governor... Whatever, the case no one should try to diminish or undermine a democratic vote, but, move to ensure an equal US Citizenship; advance American Democracy.)

14. **US Citizenship: 8 U.S.C. Code:** "All persons born in Puerto Rico on or after April 11, 1899, and prior to January 13, 1941, subject to the jurisdiction of the United States, residing on January 13, 1941, in Puerto Rico or other territory over which the United States exercises rights of sovereignty and not citizens of the United States under any other Act, are declared to be citizens of the United States as of January 13, 1941. All persons born in Puerto Rico on or after January 13, 1941, and subject to the jurisdiction of the United States, are citizens of the United States at birth."
15. **Nowhere does the 8 U.S.C. states permanent or naturalized US Citizenship...!** Q: Can Congress use its naturalization powers (for the totality of a population) in an un-incorporated Territory that according to US Supreme Court decisions is more foreign..., not "part", but, a possession that belongs to the USA...or make the 14th amendment apply in this type of Status...? Can a future Congress revoke its law...?

QUESTION: If you support the essence of our Democracy-consent of the governed (just representation); an equal US Citizenship under our US Flag-- what prompt actions will you take to end an un-equal non-permanent 2d Class US Citizenship (that affects millions of US Citizens-including fighting American Veterans); end the US Territory of Puerto Rico's (115 year) trite federally undemocratic politically oppressed Status?

Sooner or later, we must **amend the US Constitution (which we now own)**; end misinterpretations of its essence, which is: the US Citizen with protected civil individual rights (so there can be "consent of the governed" in a representative democracy; not un-democratic Federal Government...political oppression).

We must make it clear that, when acquired our US Citizenship, under the American Flag, must come with protected individual civil rights for all...; Territories are a Transition Status of no more than 15 years...; will have proportional voice and vote in the US House...

In sum: This isn't just about a Group question on the Status issue; but, more importantly it's about equal US Citizenship—protecting individual civil rights—essence of our representative democracy... We must advance American Democracy; ensure equal US Citizenship, under our grand USA Flag!

REFERENCES: US Constitution, US History, Supreme Court interpretative decisions, Presidential (W. Bush/Obama), Congressional Reports/Testimonies, Univ. of Connecticut Citizenship and other Reports...

ENCLOSURE: US District Judge GUSTAVO A. GELPÍ: (*Consejo de Salud Playa de Ponce vs Rullan*), 2008 Decision includes: [Civil Nos. 06-1260\(GAG\), 06-1524\(GAG\)](#). (Part II & III)

II. Overview of the Constitutional Issues Presented

- The unequal and discriminatory fiscal treatment given to Puerto Rico by the Medicaid wraparound scheme is conspicuous and egregious. **More so, it is not an isolated incident of the federal government disparately treating Puerto Rico and the nearly four million United States citizens** living in or moving to this territory, insofar health and welfare benefits are concerned. See, e.g., Supplemental Security Income Program of the Social Security Act, 42 U.S.C. § 1381 et. seq. (only applicable to United States citizens residing in the fifty states and the District of Columbia); Aid to Families with Dependent Children Program, 42 U.S.C. § 601 et. seq. (providing lower level of aid to families with dependent children reimbursement to Puerto Rico).
- ***Under the Insular Cases doctrine**, only fundamental constitutional rights extend to unincorporated United States territories, whereas in incorporated territories all constitutional provisions are in force. [Balzac v. Puerto Rico, 258 U.S. 298, 42 S.Ct. 343, 66 L.Ed. 627 \(1922\)](#). **In Balzac, the Court determined that Puerto Rico was an unincorporated territory.** Thus, in order for the Spending Clause protections to apply to Puerto Rico, Congress must have subsequently incorporated the territory. Otherwise, the Clause would not apply because it is not the source of any fundamental rights.^[3] See [De Lima v. Bidwell, 182 U.S. 1, 21 S.Ct. 743, 45 L.Ed. 1041 \(1900\)](#) (holding that Article I, § 8 cl. 1 of the Constitution did not apply to Puerto Rico).^[4]
- ***In an unincorporated United States territory Congress can also discriminate against the territory and its citizens so long as there exists a rational basis for such disparate treatment.** [Califano v. Torres, 435 U.S. 1, 98 S.Ct. 906, 55 L.Ed.2d 65 \(1984\)](#); [Harris v. Rosario, 446 U.S. 651, 100 S.Ct. 1929, 64 L.Ed.2d 587 \(1980\)](#). **Contrariwise, in an incorporated territory, just as in a state, heightened constitutional scrutiny will apply.** The Court's analysis of the issues presented, thus, must necessarily commence by determining whether Puerto Rico remains an unincorporated territory, or if Congress, on the other hand, post-Balzac, incorporated the territory.