



Governor of Puerto Rico
WANDA VÁZQUEZ GARCED

September 16, 2020

The Honorable William P. Barr
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

The Honorable Jeffrey A. Rosen
Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Attorney General Barr and Deputy Attorney General Rosen:

I write to you in regard to the U.S. Department of Justice's ("DOJ") July 29, 2020 decision to deny the obligation of the \$2.5 million appropriated under the *Consolidated Appropriations Act, 2014* (P.L. 113-76), which was made available to the DOJ to help oversee and administer a plebiscite to resolve Puerto Rico's political status, in accordance with the *Consolidated Appropriations Act, 2020* (P.L. 116-93) and House Report 116-101 (H. Rept. 116-101).

After careful review of the determination, I must express my disappointment with it and take this opportunity to address some misconceptions, oversights, and misguided reasoning described in the letter. I also wish to clarify some of the points of misconceptions in the July 29th letter, and urge the DOJ to continue working with Puerto Rico to obligate the \$2.5 million in federal funding for the 2020 general election plebiscite.

Puerto Rico will move forward with our 2020 general election plebiscite to resolve the island's status. Despite the DOJ's unfortunate determination to deny the obligations of the \$2.5 million in appropriated funds for this purpose, I am committed to our U.S. citizens on the island expressing their will to resolve Puerto Rico's status as a matter of principle and basic civil rights. However, while the obligation of the \$2.5 million in funds is not a requisite for the plebiscite, the recent failure by Puerto Rico's State Elections Commission (CEE, for its Spanish acronym) to deliver ballots to all polling centers in time for the August 9, 2020 primary election demonstrates Puerto Rico's need for additional resources and funding. The \$2.5 million would help ensure the timely delivery of ballots and the count of every voter's choice for the future of Puerto Rico's status. Furthermore, to restore the confidence that the integrity of the general election and plebiscite are

maintained, I requested the resignation of the President of the CEE, Juan E. Dávila Rivera, and on September 3, 2020, he officially submitted his resignation.

Regarding the DOJ's denial of the obligation of funds, the July 29th letter states that the agency's reasoning was in accordance with the policy of the U.S. to remain neutral. Yet, the explanation offered to deny the obligation of funds seems to favor the current territorial status, despite the clear mandate from Congress to disregard that option in future plebiscites. The DOJ also claims that it was not given enough time to process the ballot and educational materials. However, it was the DOJ that did not meet the required deadlines or provide guidance as required by law, thus causing the need for an expeditious review period.

As you may be aware, these funds were originally appropriated under P.L. 113-76, and guidance was originally provided under House Report 113-171 (H. Rept. 113-171). In 2017, although the 113th Congress report did not require the inclusion of specific language, the DOJ nonetheless objected to the original proposed ballot language because it only included "statehood" and "free association/independence." In response, the Government of Puerto Rico included the "current territorial status" option to the 2017 plebiscite. However, despite the inclusion of the requested language, the DOJ failed to obligate funds for the 2017 plebiscite. Therefore, Congress provided new guidance during the fiscal year (FY) 2020 appropriation cycle on the requirements to obligate funds and actions the DOJ was mandated to perform.

On June 25, 2019, H. Rept. 116-101 was originally included in H.R. 3055, *Commerce, Justice, Science, Agriculture, Rural Development, Food and Drug Administration, Interior, Environment, Military Construction, Veterans Affairs, Transportation, and Housing and Urban Development Appropriations Act, 2020*, when it passed the House of Representatives. While H.R. 3055 would be amended to become a continuing resolution titled *Further Continuing Appropriations Act, 2020, and Further Health Extenders Act of 2019* (P.L. 116-69), H. Rept. 116-101 was later included in the Joint Explanatory Statement (JES) for Division B of P.L. 116-93. The JES explicitly states that report language included in H. Rprt. 116-101 is approved unless changed by the JES or the bill itself. The language regarding Puerto Rico's plebiscite remained unchanged. Yet, the July 29th letter cites the outdated former Congressional directives of H. Rprt. 113-171 that became obsolete with the enactment of P.L. 116-93. The new directives in H. Rprt. 116-101 gave precise directives and mandates that were not part of DOJ's considerations as outlined in the July 29th letter.

The DOJ further states that Puerto Rico "did not provide sufficient time [for the agency] to complete a multi-layered analysis." Yet, in accordance with H. Rprt. 116-101, the DOJ was required within 45 days of enactment of P.L. 116-93 "to provide the Committee, as well as the Puerto Rico State Elections Commission, with a report regarding the acceptable versions of voter education materials, plebiscite ballot formats, and related

materials that would allow the Department to obligate this funding for a future plebiscite” and to “expeditiously act upon any request for this funding.”¹ Unfortunately, this was not done. As such, the DOJ’s own disregard of the new Congressional deadlines and directives to provide acceptable plebiscite materials to the required parties caused the delayed and limited timeframe for review. Therefore, the request for expeditious review was appropriate given the DOJ’s failure to meet Congressional deadlines needed to provide appropriate educational materials to the public.

The July 29th letter further states that “the people of Puerto Rico and not the federal government should determine the preference among options.” However, the DOJ fails to recognize that the language for the 2020 plebiscite was selected by Puerto Rico’s elected officials. And in selecting this language, the Government of Puerto Rico correctly followed federal directives in the drafting of the 2020 plebiscite question, “Should Puerto Rico be admitted immediately into the Union as a State? Yes or No,” to become eligible for the obligation and disbursement of the \$2.5 million in federal funds because the directives in H. Rpt. 116-101 state very clearly that “the current territorial/Commonwealth status should be excluded from any future plebiscite, since it fails to address key inequities.”²

The DOJ also asserts that the plebiscite materials may cause misperceptions amongst voters, expressing concern that the word “immediately” on the ballot would confuse voters to think admission will be automatic following a “yes” vote. However, as the DOJ admits in its letter, Act 51-2020 details that admission as a state would still require the enactment of federal legislation to establish the terms of admission. By asking “Should Puerto Rico be admitted immediately into the Union as a State? Yes or No,” the plebiscite inquires as to what is the sense and will of the people on whether statehood should move forward. The language does not say “will” or “shall” admit Puerto Rico into the Union, but instead says “should” in the acknowledgement that federal legislation with the terms of admission is still required. In the last ten years, the people of Puerto Rico have been asked the question regarding the island’s status on two previous occasions with different language, and twice “statehood” has gained the majority. As Congress has not voted on the results of the last two plebiscites, despite bipartisan support and the filing of bipartisan legislation, Puerto Ricans are aware that federal legislation must be enacted prior to admission. The claim that the language of the submitted materials may confuse the voting public of Puerto Rico lacks merit. This argument tries to veil the DOJ’s animus

¹ House Report 116-101, Commerce Justice, Science, and Related Agencies Appropriation Bill, 2020, <https://www.congress.gov/congressional-report/116th-congress/house-report/101/1?q=%7B%22search%22%3A%5B%22House+Report+116-101%22%5D%7D&s=1&r=1>

² Id.

against the people of Puerto Rico finally achieving equal rights and representation under the law.

Therefore, Puerto Rico will move forward with our 2020 general election plebiscite to provide equal rights and representation for the people of Puerto Rico, and to resolve the island's status. While Puerto Rico does not require the funding nor DOJ's approval for the plebiscite to occur, to safeguard the integrity of the election and plebiscite results, I request that you continue working with my Administration to obligate the \$2.5 million in federal funding for the 2020 general election plebiscite.

Thank you in advance for your attention to this matter. If you require additional information or have any questions, please do not hesitate to contact Jennifer M. Storipan, Esq., Executive Director of the Puerto Rico Federal Affairs Administration at (202) 778-0710 or via email at jstoripan@prfaa.pr.gov.

Sincerely,



Wanda Vázquez Garced
Governor of Puerto Rico