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Puerto Rico Questions [2]

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**U.S. DEPARTMENT OF JUSTICE
OFFICE OF LEGAL COUNSEL
WASHINGTON, D.C. 20530**

FACSIMILE TRANSMISSION SHEET

DATE: October 11, 1995

FROM: Teresa Roseborough, DAAG/Rebecca Arbogast

OFFICE PHONE: 202/514-4487

TO: Elena Kagan, White House Counsel

OFFICE PHONE: 202/456-7903

NUMBER OF PAGES 9 (W/O COVER SHEET)

FACSIMILE NUMBER: 202/456-1647

REMARKS:

This is still a preliminary, but we welcome your comments.

4:13 mtg in E. Wing.
- 112 -
Rebecca Arbogast
Adrian Atlas

Jeff Farrow

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Draft Testimony

Mr. Chairman and Members of the Subcommittee:

My name is _____ . I am _____ .
I am accompanied by _____ who is _____ .
We are pleased to be here today on behalf of the Department of Justice to respond to your request for testimony on the status of legal issues arising from the 1993 political status plebiscite in Puerto Rico.

As you know, the President is strongly committed to the right of the citizens of Puerto Rico to chart their own political future, including their future political relationship with the United States. The 1993 plebiscite presented three proposals: statehood, commonwealth, and independence. The plebiscite, while failing to reveal a consensus view of the people of Puerto Rico as to what political status they hope ultimately to achieve¹, was nonetheless an important step in the self-determination process. We hope that these hearings will continue to further that process.

The consideration of the three plebiscite proposals raises primarily questions of policy. The President looks forward to working with Congress and the people of Puerto Rico in addressing those policy issues. We have been asked to address two specific legal issues of concern. First, whether it is within the power of Congress to form a compact with Puerto Rico that cannot be altered without the mutual consent of Puerto Rico and the United States. And, second, whether the United States citizenship of the people of Puerto Rico may be revoked by Congress.

I.

We will discuss first the question of whether Congress can require mutual consent to any alteration of the relationship between the federal government and Puerto Rico.

We start with the acknowledgment that "Puerto Rico has a unique status in our federal system." Puerto Rico Department of Consumer Affairs v. Isla Petroleum Corp., 485 U.S. 495, 499 (1988). Under the Puerto Rico Federal Relations Act, Pub. L. 600 (81st Cong. 2d Sess. 1950), 64 Stat. 319, 48 U.S.C. § 731b-e, an act "in the nature of a compact," Congress provided the people of Puerto Rico with the opportunity to "organize a government pursuant to a constitution of their own adoption." P.L. 600 was

¹ Just over 48% of the voters selected retention of commonwealth status, 46% voted for statehood; 5% voted for independence.

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"designed to complete the full measure of local self-government in the island by enabling the . . . American citizens there to express their will and to create their own territorial government." S. Rep. No. 1779, 81st Cong. 2d Sess. at 2 (1950); see also Examining Board of Engineers, Architects and Surveyors v. Flores de Otero, 426 U.S. 572, 594 (1976) ("purpose of Congress in the 1950 and 1953 legislation was to accord to Puerto Rico the degree of autonomy and independence normally associated with States of the Union"). A constitution was thereafter adopted by the voters of Puerto Rico and presented to the President and Congress for approval. After being amended to comply with certain Congressional requirements, the constitution was again adopted by Puerto Rico and took effect in 1952.

Despite the great degree of autonomy and self-government enjoyed by Puerto Rico, the Supreme Court has affirmed that Congress continues to have the power under the Territory Clause to treat Puerto Rico differently from a State, and its citizens differently from citizens of a State. For example, in Califano v. Torres, 435 U.S. 1 (1978) (per curiam), the Court held that persons who moved to Puerto Rico could be excluded from the benefits of the Supplemental Security Income to which they had been entitled while living in the United States. The Court observed that "Congress has the power to treat Puerto Rico differently, and . . . every federal program does not have to be extended to it." Id. at 3, n.4. Again, in Harris v. Rosario, 446 U.S. 651 (1980) (per curiam), the Court sustained a level of assistance for Puerto Rico under the Aid to Families with Dependent Children program lower than the States received. It stated even more emphatically than it had in Torres that the Territory Clause governs the relationship between the United States and Puerto Rico: "Congress, which is empowered under the Territory Clause of the Constitution, U.S. Const., Art. IV, § 3, cl. 2, to 'make all needful Rules and Regulations respecting the Territory . . . belonging to the United States,' may treat Puerto Rico differently from States so long as there is a rational basis for its actions." 446 U.S. at 651-52. See also Igartua de la Rosa v. United States, 32 F.3d 8, 9-10 (1st Cir. 1994), cert. denied, 115 S.Ct. 1426 (1995) (affirming that only citizens of States can participate in Presidential elections and holding that Congress can constitutionally deny Puerto Ricans the right to retain the citizenship of a state in which they formerly resided for voting purposes when they return to Puerto Rico, even though they could have retained such citizenship if they had gone to a foreign country).

Accordingly, although Puerto Rico's status in relation to the United States is "unique," it remains a territory in the constitutional sense. Moreover, there is no provision of the Constitution under which Puerto Rico could cease to be under Congress's Territory Clause jurisdiction, unless it were either admitted into the Union as a State, U.S. Const. art. IV, § 3, or

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became an independent nation (as, e.g., the Republic of the Philippines has done). See National Bank v. County of Yankton, 101 U.S. 129, 133 (1880) ("All territory within the jurisdiction of the United States not included in any State must necessarily be governed by or under the authority of Congress.").

Public Law 600 fittingly delegates to the people of Puerto Rico broad powers of self-government, but as it recognizes, it is in the "nature" of a compact rather than a permanent agreement. It would be beyond the power of Congress to make it otherwise. Although in the over forty years since the inception of Puerto Rican self-government there has been no indication of any desire to dictate a change in the relationship between Puerto Rico and the United States without the expressed desire of Puerto Rico, the fact remains that Congress could not by statute irreversibly ordain that the congressional delegation of power to Puerto Rico could be changed only with Puerto Rico's consent.

Such a legislative attempt would be ineffective for at least two reasons. First, although Congress can delegate to Puerto Rico full powers of self government, such a delegation must be "consistent with the supremacy and supervision of National authority." Clinton v. Englebrecht, 80 U.S. (13 Wall.) 434, 441 (1872); Puerto Rico v. Shell Co., 302 U.S. 253, 260-62 (1937). All delegations of power from the federal government to a territory are necessarily subject to the right of Congress to revise, alter, or revoke the authority granted. District of Columbia v. Thompson Co., 346 U.S. 100, 106, 109 (1953).

Second, the principle that legislation delegating governmental powers to Puerto Rico would be subject to amendment and repeal is simply a manifestation of the general maxim that one Congress cannot bind a subsequent Congress. As early as 1803, Chief Justice Marshall noted in Marbury v. Madison, 5 U.S. (1 Cranch) 137, 177 (1803), that, in contrast to a constitution, ordinary legislative acts are "alterable when the legislature shall please to alter [them]." Explaining this principle, and its limits, more fully in Fletcher v. Peck, 10 U.S. (6 Cranch) 87, 135 (1810), Chief Justice Marshall stated:

The principle asserted is that one legislature is competent to repeal any act which a former legislature was competent to pass; and that one legislature cannot abridge the powers of a succeeding legislature.

The correctness of this principle, so far as respects general legislation, can never be controverted. But, if an act be done under a law, a succeeding legislature cannot undo it. The past cannot be recalled by the most absolute power. Conveyances have been made, those conveyances have vested legal estates, and if those estates may be seized by

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the sovereign authority, still, that they originally vested is a fact, and cannot cease to be a fact.

When, then, a law is in its nature a contract, when absolute rights have vested under that contract, a repeal of the law cannot divest (sic) those rights.

Under this maxim, one Congress cannot put beyond the power of a future Congress the authority prospectively to change the relationship between Puerto Rico and the United States, though that future Congress may not be able to "undo" acts that were lawfully executed under the prior arrangement.

We are aware that the Justice Department has in the past opined that Congress could create a vested right in self governance in Puerto Rico that could not be taken away by subsequent legislation. See Memorandum Re: Power of the United States to conclude with the Commonwealth of Puerto Rico a compact which could be modified only by mutual consent (July 23, 1963). That view, however, which was loosely based on the concept that the Fifth Amendment of the Constitution protects political status as a property right, cannot be supported under present Supreme Court precedent. Subsequent to the issuance of the Department's 1963 opinion, the Supreme Court held that the due process guarantee of the Fifth Amendment ("[n]o person shall . . . be deprived of life, liberty, or property without due process of law") applies only to persons, and not to States. South Carolina v. Katzenbach, 383 U.S. 301, 323-24 (1966); see also Alabama v. EPA, 871 F.2d 1548, 1554 (11th Cir.), cert. denied, 493 U.S. 991 (1989) (State of Alabama not protected by the Fifth Amendment). This holding forecloses a conclusion that a territory like Puerto Rico could assert a due process right to a particular political status.

Although it is beyond the power of Congress to prevent a future Congress, without Puerto Rico's consent, from modifying or repealing legislation delegating governmental authority to Puerto Rico, it is not beyond the power of Congress to enact measures designed to prevent or remedy unnecessary or unintended federal interference with the internal affairs of Puerto Rico. For example, Congress could provide that:

(1) future legislation that is of general application to the states shall apply to Puerto Rico, as if Puerto Rico were a state, unless the legislation specifically provides otherwise;

(2) future legislation that cannot be made applicable to the states shall apply to Puerto Rico only if Puerto Rico is specifically named therein;

(3) a Commission on Federal Laws be established to recommend to Congress the extent and the manner in which federal laws now

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applicable to Puerto Rico shall remain applicable to it, and the extent and the manner in which federal laws now not applicable to Puerto Rico shall be made applicable to it; and

(4) that legislation designed to exempt Puerto Rico from the application of federal laws that are unsuited for it for climatic, geographic or similar local reasons, or that conflict with the Constitution of Puerto Rico, be considered on an expedited basis.

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II.

We have also been asked whether the United States citizenship of persons born in Puerto Rico can be revoked, either retroactively or prospectively.

If persons born in Puerto Rico possess citizenship encompassed by the Fourteenth Amendment, then there can be no question that Congress could not revoke their citizenship, either retroactively or prospectively. Afroyim v. Rusk, 387 U.S. 253 (1967). However, the question whether persons born in Puerto Rico possess a constitutional right of U.S. citizenship has never been decided by the Supreme Court. It has generally been assumed that their citizenship is based on statute only, and, thus is not covered by the Fourteenth Amendment.² However, an argument can be made that Puerto Rico should be deemed part of the United States for purposes of the Citizenship Clause of the Fourteenth Amendment.³ We do not resolve that issue today, and it is not clear how the Supreme Court would rule if faced with the issue.

In 1917, Congress conferred U.S. citizenship by statute upon persons born in Puerto Rico. Sec. 302 of the Immigration and Nationality Act of 1952, 8 U.S.C. § 1402, provides roughly that all persons born in Puerto Rico on or after April 11, 1899, and residing there or in any other area over which the United States exercises sovereignty, are declared citizens of the United States as of January 13, 1941, unless they had acquired United States citizenship from another source. "All persons born in Puerto Rico on or after January 13, 1941, and subject to the

² This view finds support in Downes v. Bidwell, 182 U.S. 244 (1901), which held that Puerto Rico is not "incorporated" into the United States for the purpose of the Revenue Clause, and Rogers v. Bellei, 401 U.S. 815 (1971), which held that persons not born or naturalized "in" the United States are not Fourteenth Amendment citizens.

³ This argument is based primarily on U.S. v. Wong Kim Ark, 169 U.S. 649 (1898). The Court in a comprehensive opinion concluded that the Citizenship Clause of the Fourteenth Amendment was meant to codify existing common law of U.S. citizenship, which in turn was based in large part on English common law. Wong Kim Ark can reasonably be read to demonstrate that the common law conferred citizenship upon persons born in territories of the sovereign. The Ninth Circuit, in a split decision, rejected essentially the same argument in a case brought by persons claiming U.S. citizenship by virtue of their or their parents' birth in the Philippines during its period of territoriality. Rabang v. INS, 35 F.3d 1449 (9th Cir., 1994).

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jurisdiction of the United States, are citizens of the United States at birth." Id.

There is no authoritative answer to the question whether persons who acquired U.S. citizenship under Sec. 302 can be deprived of it against their will. We are, however, reasonably certain that a person holding U.S. citizenship under section 302 cannot be deprived of it as long as Puerto Rico remains under U.S. sovereignty. The question of the revocability of Sec. 302 citizenship falls in the gap between two pertinent decisions of the Supreme Court. One case, Afroyim v. Rusk, 387 U.S. 253 (1967), holds that persons who are citizens of the United States by operation of the Fourteenth Amendment, including naturalized citizens, cannot be deprived of that citizenship against their will. The petitioner had been naturalized in the United States. The other relevant precedent is Rogers v. Bellei, 401 U.S. 815 (1971), which held that when Congress provides for the U.S. citizenship of a person born in a foreign country whose parent is a citizen of the United States, it may subject that citizenship to the condition subsequent that the person loses that citizenship unless he or she satisfies certain residency requirements.

The situation of a person who acquires United States citizenship by naturalization by virtue of birth in Puerto Rico falls between those two cases. A person born in Puerto Rico arguably does not hold Fourteenth Amendment citizenship because he or she is not born or naturalized in the United States. On the other hand such person was born under the sovereignty and within the jurisdiction of the United States, and his or her citizenship is not subject to a condition subsequent. In our view the critical point is not whether the citizenship is based on the Fourteenth Amendment or on a statute, but whether the grant of citizenship was unconditional or subject to a condition subsequent, hence that the unconditional citizenship of Puerto Ricans cannot be revoked against their will.

Our conclusion that Congress could not take away the U.S. citizenship held by Puerto Ricans without their consent does not necessarily resolve the issue raised in the event that United States were to give up its sovereignty over Puerto Rico and the island were to become a sovereign, independent nation. During and after the War of Independence a substantial body of law -- both in the United States and in Britain -- dealt with the effect of the change of sovereignty on the citizenship and allegiance of the inhabitants of the former British colonies. The issues in those cases varied from the question whether a person born in the Colonies who fought on the side of the British was guilty of treason against the Colony in which he had lived, to the question whether a person who had left the Colony of his birth had become an alien and incapable of inheriting. The pertinent considerations were restated by Chief Justice Marshall in

Why does this matter? why isn't the key - statute or Const

This stuff seems vt, tho re are 2. below.

See naturalization provisions of next page

So, in Popul - 1st to U.S. - write a bill - later - in 1900? Why doesn't that limit what Congress can do?

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American Insurance Co. v. Canter, 26 U.S. at 542: He pointed out that upon the cession of territory the relations of the inhabitants "with their former sovereign are dissolved, and new relations are created between them, and the government which has acquired their territory. The same Act which transfers their country, transfers the allegiance of those who remain in it." Emphasis added. In other words, upon a transfer of sovereignty the nationality of the inhabitants is changed to that of the new sovereign, but the inhabitants have the option to retain their nationality by leaving their former residence.

In recent years the Supreme Court has had no opportunity to address this issue; the last case reaffirming this rule was decided in 1892. See Boyd v. Thayer, 143 U.S. 135, 162 (1892). The rule, however, is not obsolete. It was applied in 38 Op. Atty Gen. 525, 530 (1936); and in United States ex rel. Schwartzkopf v. Uhl, 137 F.2d 898, 902 (2d Cir. 1943). The authorities referred to in both opinions show that the rule represents generally recognized U.S. as well as international law.

The rule that, in case of a change of sovereignty, citizenship follows sovereignty is not inconsistent with the reasons underlying the holdings that a person cannot be deprived of his citizenship against his or her will. Afroyim v. Rusk, to which I already have referred and which held that a person could not be deprived involuntarily of his or her citizenship, was largely based on two considerations -- that citizenship should not depend on the whim of Congress, and that the deprivation of citizenship may make a person stateless. 387 U.S. at 268. These rationales are inapplicable where there is a transfer of citizenship as the result of a change of sovereignty. In that circumstance the loss of citizenship would not result from an arbitrary act of Congress, but by operation of law as the result of an act of cession that the United States as a sovereign nation is capable of making. Furthermore, the loss of U.S. citizenship would not result in statelessness, but in the acquisition of another nationality. It would also avoid the dangers inherent in dual nationality on such a large scale, including the dilemma of conflicting duties of allegiance. See, Bellei, 401 U.S. at 831-33, Shanks v. Dupont, 28 U.S. (3 Pet.) 242, 247 (1830). Moreover, as suggested in Rabang v. Boyd, 353 U.S. 427, 430 (1957) the notion that residents of Puerto Rico could retain their U.S. citizenship and continue to owe allegiance to the United States if the latter granted independence to Puerto Rico would be inconsistent with that independence. Finally a resident of Puerto Rico could preserve his U.S. citizenship by moving to an area under the sovereignty of the United States.

The rule that citizenship follows nationality applies only where the treaty of cession is silent. That agreement can make specific provisions on this issue. Thus Art. VIII of the Peace

but in the case of a state granted by definition does!

still an act of Congress, no?

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Treaty with Mexico, 9 Stat. 929; Art. IX of the Peace Treaty with Spain, 30 Stat. 1759; Art. 6 of the Treaty with Denmark relating to the cession of the Danish Virgin Islands, 39 Stat. Vol. 2, 1713, all provide that residents of the ceded areas may opt to retain their original citizenship, the implication being that they then would not acquire the nationality of the new sovereign. Article VI B(1) of the Boundary Treaty with Mexico of April 18, 1972, 23 U.S.T. 371, 399, which involved the exchange of small and sparsely populated areas, provided that the transfer of territory should not affect the citizenship of the residents. This indicates the awareness of the negotiators of the treaty that, absent this clause, the transfer of the territory would have resulted in the transfer of citizenship. Accordingly, the question whether in the event of independence the people of Puerto Rico should be permitted to retain their U.S. citizenship is a matter entrusted to the discretion of Congress or the President and Senate under the Treaty power.

The last question is whether Congress has the power to repeal section 302 of the Immigration and Nationality Act prospectively, i.e., without affecting the U.S. citizenship of those who already have acquired it, but to deny it to persons born in Puerto Rico after the effective date of the repealing statute. In the light of our previous discussion that Congress has the power to repeal or to amend earlier legislation, such legislation would likely be effective. Of course, as already discussed, if Puerto Rican's U.S. citizenship were encompassed by the Fourteenth Amendment, then Congress could not deny citizenship to those persons born in Puerto Rico.

?

Of course this might that the
 by distinction is const v stat.

Elina,
Please note. *pp*

PUERTO RICAN CITIZENSHIP VS. UNITED STATES CITIZENSHIP

<u>SOURCE</u>	<u>QUESTION ASKED</u>	<u>FINDINGS</u>
El Nuevo Dia Poll May 1996	Which one is your nation: Puerto Rico or the United States?	62% Puerto Rico 25% United States
	If you must decide on only one citizenship, which one would you choose?	54% U.S. 39% Puerto Rican
University of Puerto Rico Poll October 1995	What is more important to you: being a Puerto Rican citizen or a U.S. citizen?	<u>Statehooders</u> 44% Puerto Rican 26% U.S. <u>Commonwealthers</u> 61% Puerto Rican 11% U.S. <u>Pro-Independence</u> 79% Puerto Rican 10% U.S.

PUERTO RICO STATUS BILL ISSUES

A. Overall Issue

- Bill was House-drafted
- Negotiations for a bill

B. Related Matters

1. 'Bush Memo'
2. Guam Commonwealth Bill

C. Bill Provisions

In the Bill

1. Requiring a referendum
2. Says Puerto Rico is subject to federal territories governing powers under commonwealth
3. Choices of 1) status quo v. full self-government (i.e., independence, free association, or statehood) and 2) independence or free association v. statehood
4. Requiring revoting every four years in the event of no status change majority
5. Descriptions of commonwealth
6. Applying 'national language requirements'
7. Two more votes in Congress and the islands (one on a transition plan and another to implement the selected status)
8. Requiring at least 10 years for a transition
9. Including free association

Preferred Alternatives

- Providing for it
- Saying we can commit to not unilaterally change provisions of a commonwealth agreement
- Enhanced commonwealth v. statehood v. independence
- 1) status quo v. status change and 2) enhanced commonwealth v. statehood v. independence
- Revoting less often (e.g. every 10 years)
- Revoting at Puerto Rico's or the President's call
- The President recommending the next step
- Do not dispute
- Delete
- One more vote in both (on a self-executing plan)
- Leaving this to the plan
- Do not dispute

June 16, 1996

MEMORANDUM FOR HAROLD ICKES ✓
MARCIA HALE
JANET MURGUIA

FROM: JEFFREY FARROW JF

SUBJECT: THE PUERTO RICO STATUS BILL AND OUR POSITION

Developments

The bill approved by the House insular subcommittee:

- would require referenda every four years beginning before 1999 until Puerto Ricans choose nationhood or statehood;
- takes pains to make Congress' broad territories governing powers over Puerto Rico explicit as well as suggest that 'commonwealth' is transitory and insecure; and
- addresses none of the commonwealth party's aspirations.

It would require votes on two questions. The first is a choice between A) the current governing arrangement (commonwealth) with quadrennial revotes and B) "a permanent status of full self-government" through nationhood or statehood. The second is a choice between nationhood and statehood to be effective if self-government wins. Status change would require congressional and referendum approval of both a presidential transition plan of at least 10 years and another bill at the end of the period.

Primary sponsor and Resources Chairman Don Young wants his full committee to act soon and is expected to ask for our comments shortly. He may be willing to obtain our views in writing -- rather than a hearing -- and not delay the mark-up for them.

The commonwealthers strongly oppose the bill, which follows the post-'92 election Bush policy that they have repeatedly asked us to rescind. 1) They don't even want the 1998 vote proposed by the statehood party. 2) The bill rebuts their contentions about commonwealth and dismisses their 1993 plurality victory.

It was influenced by statehood activists and the Independence Party...but the bill may also be so uncharitable to commonwealth because the commonwealthers refused to provide any input.

Commissioner Romero is working for the bill with support from Gov. Rossello and Rep. Serrano. Critics include: Committee Ranking Dem. George Miller; Reps. Gutierrez and Velazquez; and Rules Chairman Solomon and Rep. Roth, who have called for English language and other amendments to its statehood option.

Recommendations

Although there are some important arguments that support the bill, it would be more prudent for our response to be more consistent with our past positions. (See the attached.)

This would involve --

- 1) opposing the bill as currently written and
- 2) reiterating our willingness to work on a bill to fairly respond to Puerto Ricans' expressed aspirations under each status and provide for further action on a majority choice.

I would specifically object to the following.

- The lack of a fairer commonwealth option. (Some of the commonwealth agenda is viable, even if most is not.)
- Creating an artificial majority for another option by requiring commonwealth supporters to select a second choice.
- Revoting a status quo majority. (A better idea is already in the bill: a recommendation from the President and island leaders. A compromise could be less frequent revotes.)
- The votes on implementing the status chosen 12 years or so earlier -- the third in the process. They would weaken the commitment that there ought to be when making the major policy shifts entailed in transitioning to a new status. Most Puerto Ricans would prefer not even having a second round of votes (which would occur on the transition plan).
- The length of the transition. Rossello wants less. Ten years wouldn't make sense for commonwealth, at least.

I would try to avoid commenting on the many statements about commonwealth to minimize entanglement in the ideological debate.

Commonwealthers would appreciate our opposition to the bill. Statehooders could take comfort in our willingness to have a bill and another vote and silence on some of the language. Both would be disappointed where its better for the other side; but that would be due to the context -- and not our position -- changing.

A response of this nature should make it easier to do the NGA trip in a way that the Gov. would prefer.

It is also warranted by the law regarding the Northern Mariana Islands and positions being developed on Guam's commonwealth bill.

SELECTED STATEMENTS ON PUERTO RICO'S POLITICAL STATUS

1992 Democratic Platform **(Proposed by the Campaign)**

We recognize the existing status of the Commonwealth of Puerto Rico...We pledge to support the right of the people of the Commonwealth of Puerto Rico to choose freely, and in concert with the U.S. Congress, their relationship with the United States, either as an enhanced commonwealth, a state or an independent nation.

The President **Telemundo interview - 1993**

I wanted the people of Puerto Rico to chart their own destiny. If they wanted to stay a commonwealth, I would do my best to make this present situation work better for them...If they want to become a state, then I think that we should support that...But the citizens there should make the decision. I shouldn't make it for them.

Administration Statement before U.S. House of Representatives **Subcommittees, October 17, 1995**

President Clinton['s] vision of how the status dilemma should be solved was laid out in the Democratic Platform...The President believes that the answers need to be developed together with the people of Puerto Rico. The Administration is, therefore, willing to work with the islands' leaders and Congress to develop a process that would enable the self-determination aspirations of Puerto Ricans to be fulfilled. Such a process would build upon their expressions in the 1993 plebiscite and resolve what the options can be...it would commit both governments to act in response to the will of the majority of the islands' people. ...We look forward to working with their various elected leaders and you for the consensus process that is needed.

Administration Public Statement, March 11, 1996

The President is committed to supporting the status of Puerto Rico as determined by its people among commonwealth, statehood, and independence options. He continues to be willing to work with their various representatives and the United States Congress to develop a process that would enable their aspirations for self-determination to be fulfilled.



U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

Honorable Don Young
Chairman
Resources Committee
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Young:

This letter presents the views of the Justice Department on H.R. 3024, the "United States-Puerto Rico Political Status Act." H.R. 3024 would provide for a referendum on the status of Puerto Rico; a commitment by the Congress to vote on the status selected; a ten-year transition plan; and a second referendum to ratify by majority vote the terms of implementation which the Congress would establish. We support a plebiscite to permit the inhabitants of Puerto Rico to express their views. We have several recommendations for improving the bill.

First, part II(A) in subsection 4(a) delineates the likely ramifications of independence. This subsection would provide for separate Puerto Rico sovereignty leading to "independence or free association." The clause "independence or free association" is misleading because the Spanish translation of "commonwealth" is "estado libre asociado," which also means "free association." Hence, voters might believe that "independence" contains a "commonwealth" option and vote accordingly. This confusion might be deepened by part II(A)(2), which provides for a choice between a treaty between the United States and Puerto Rico, on the one hand, and a free association relationship on the other. Deleting the phrase "or free association" where it exists throughout the bill would eliminate this source of possible confusion.

Second, part II(A)(4) in subsection 4, provides that an independent Puerto Rico "exercises the sovereign power to determine and control its own nationality and citizenship." This subsection generally would withdraw from the Puerto Rican people United States citizenship conferred upon them based upon their birth in the territory during the period in which the United

Free association is an international status and we have to say its not available to P.R.

States exercised sovereignty and jurisdiction over Puerto Rico. This subsection would authorize Congress to establish criteria for "affected individuals," under which these individuals could retain United States nationality and citizenship or could be naturalized in the United States, as long as this would not create an exception to the principle of separate United States and Puerto Rican nationality and citizenship. We understand that this provision would be limited to individuals and would not authorize the establishment of broad categories of residents of Puerto Ricans who could retain their United States citizenship.

However, we object to this provision unless the withdrawal of United States citizenship is limited to persons who were born in Puerto Rico and are domiciled there at the time of independence. Moreover, in our view, the Constitution requires that the bill give those United States citizens residing but not born in Puerto Rico an option either of United States citizenship or of Puerto Rican citizenship. Finally, an individual who maintained United States citizenship under this clause would have to forfeit Puerto Rican citizenship or impinge upon the principle of separate United States and Puerto Rican citizenship.

We should resolve it or not say it

We note that if the independence option prevailed, there likely would be a substantial number of persons who would seek to retain their United States citizenship. We note, but do not resolve at this juncture, the complexity of providing to all residents of Puerto Rico an option to remain citizens of the United States while residing in Puerto Rico. An option of this nature might create a very large population of persons domiciled in Puerto Rico who would be aliens from Puerto Rico's perspective. Moreover, in view of the responsibility of the United States to protect the safety, rights and welfare of United States citizens abroad, the retention of United States citizenship by a sizeable portion of the residents of Puerto Rico could lead to significant interventions by the United States into an independent Puerto Rico's affairs. We believe that continued dialogue with all interested parties would assist in resolving this issue.

Third, part II(A)(8) in subsection 4(a), would remove Puerto Rico from the customs territory of the United States and provide that trade between the United States and Puerto Rico would be based on a treaty. At least insofar as the tariff treatment of Puerto Rico is at issue, a separate treaty would be unnecessary. Congress could address tariff treatment in the legislation implementing independence by granting Puerto Rico treatment under General Notes 3, 4, 7 or 10 of the Harmonized Tariff Schedules of the United States. For example, the Congress could apply to Puerto Rico the Caribbean Basin Economic Recovery Act (General Note 7) or confer upon it Freely Associated States status (General Note 10).

3

Fourth, part II(B) in subsection 4(a), delineates the ramifications of statehood. Express language should be added that Puerto Rico would become a "State in all respects on an equal footing with the other States."

Fifth, part II(B)(7) in subsection 4(a) of the bill would require that Puerto Ricans who wish to support statehood in the referendum express support for "adhere[nce] to the same language requirement as in the several States." We oppose this provision. In becoming a State, Puerto Rico automatically would become subject to all laws generally applicable to the States. Therefore, the provision is unnecessary and language should not be singled out from among the many areas of law that affect the various States. Furthermore, there is no single language requirement governing all of the States. Moreover, since many of the residents of Puerto Rico speak Spanish as their first language, they might interpret the provision as branding Puerto Rican culture an "alien" culture, to be eliminated, rather than incorporated, in the event of statehood. This interpretation might skew a referendum vote arbitrarily against statehood.

The Administration is committed to working with Congress and with Puerto Rico's leaders to develop a process that would enable Puerto Ricans to fulfill their aspirations for self-determination. Such a process would build upon the expressions of those aspirations in the 1993 plebiscite. It would resolve what the options for self-determination should be. It would commit both the United States Government and the Government of Puerto Rico to act in response to the will of a majority of the people of Puerto Rico.

We appreciate the opportunity to share our views on this bill. The Office of Management and Budget has advised that from the standpoint of the Administration's program, there is no objection to the submission of this report.

Sincerely,

Andrew Fois
Assistant Attorney General

cc: Honorable George Miller
Ranking Minority Member
Committee on Resources

4

Honorable Elton Gallegly
Chairman
Subcommittee on Native American and Insular Affairs
Committee on Resources

Honorable Eni F. H. Faleomavaega
Ranking Minority Member
Subcommittee on Native American and Insular Affairs
Committee on Resources

[COMMITTEE PRINT]

H.R. 3024

AS APPROVED BY THE SUBCOMMITTEE ON NATIVE
AMERICAN AND INSULAR AFFAIRS

6/12/96

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

2 (a) SHORT TITLE.—This Act may be cited as the
3 “United States-Puerto Rico Political Status Act”.

4 (b) TABLE OF CONTENTS.—The table of contents for
5 this Act is as follows:

Sec. 1. Short title.

Sec. 2. Findings.

Sec. 3. Policy.

Sec. 4. Process for Puerto Rican full self-government, including the initial decision stage, transition stage, and implementation stage.

Sec. 5. Requirements relating to referenda, including inconclusive referendum and applicable laws.

Sec. 6. Congressional procedures for consideration of legislation.

Sec. 7. Availability of funds for the referenda.

6 SEC. 2. FINDINGS.

7 The Congress finds the following:

8 (1) Puerto Rico was ceded to the United States
9 and came under this Nation’s sovereignty pursuant
10 to the Treaty of Paris ending the Spanish-American
11 War in 1898. Article IX of the Treaty of Paris expressly
12 recognizes the authority of Congress to pro-

1 vide for the political status of the inhabitants of the
2 territory.

3 (2) Consistent with establishment of United
4 States nationality for inhabitants of Puerto Rico
5 under the Treaty of Paris, Congress has exercised
6 its powers under the Territorial Clause of the Con-
7 stitution (article IV, section 3, clause 2) to provide
8 by statute for the citizenship status of persons born
9 in Puerto Rico, including extension of special statu-
10 tory United States citizenship from 1917 to the
11 present.

12 (3) Consistent with the Territorial Clause and
13 rulings of the United States Supreme Court, partial
14 application of the United States Constitution has
15 been established in the unincorporated territories of
16 the United States including Puerto Rico.

17 (4) In 1950 Congress prescribed a procedure
18 for instituting internal self-government for Puerto
19 Rico pursuant to statutory authorization for a local
20 constitution. A local constitution was approved by
21 the people, amended and approved by Congress, and
22 thereupon given effect in 1952 after approval by the
23 Puerto Rico Constitutional Convention and an ap-
24 propriate proclamation by the Governor. The ap-
25 proved constitution established the structure for con-

1 stitutional government in respect of internal affairs
2 without altering Puerto Rico's fundamental political,
3 social, and economic relationship with the United
4 States and without restricting the authority of Con-
5 gress under the Territorial Clause to determine the
6 application of Federal law to Puerto Rico, resulting
7 in the present "Commonwealth" structure for local
8 self-government. The Commonwealth remains an un-
9 incorporated territory and does not have the status
10 of "free association" with the United States as that
11 status is defined under United States law or inter-
12 national practice.

13 (5) In 1953 the United States notified the
14 United Nations that the degree of local self-govern-
15 ment under the new constitution was limited to in-
16 ternal affairs and administration compatible with
17 the Federal structure of the United States political
18 system, subject to compliance with the applicable
19 provisions of the Federal Constitution, and that the
20 definition of the new constitutional status would be
21 subject to interpretation by judicial decision. There-
22 after, the United Nations General Assembly, based
23 on the process whereby the new constitutional gov-
24 ernment was instituted after approval by Congress
25 and the inhabitants of the territory, adopted Resolu-

1 tion 748 (VIII) by a vote of 22 to 18 with 19 ab-
2 stentions, thereby accepting the United States deter-
3 mination that it no longer would transmit informa-
4 tion to the United Nations regarding Puerto Rico's
5 status.

6 (6) In 1960 the United Nations General Assem-
7 bly approved Resolution 1541 (XV), clarifying that
8 under United Nations standards regarding the polit-
9 ical status options available to the people of terri-
10 tories yet to complete the process for achieving full
11 self-government, the three established forms of full
12 self-government are national independence, free as-
13 sociation based on separate sovereignty, or full inte-
14 gration with another nation on the basis of equality.

15 (7) In the case of *Harris v. Rosario* (446 U.S.
16 651, 1980) the Supreme Court of the United States
17 expressly confirmed that Puerto Rico remains a ter-
18 ritory of the United States subject to the authority
19 of Congress under the Territorial Clause of the
20 United States Constitution, a ruling consistent with
21 congressional intent that the establishment of inter-
22 nal self-government under a local constitution in
23 1952 did not alter Puerto Rico's unincorporated ter-
24 ritory status.

1 (8) In a joint letter dated January 17, 1989,
2 cosigned by the Governor of Puerto Rico in his ca-
3 pacity as president of one of Puerto Rico's principal
4 political parties and the presidents of the two other
5 principal political parties of Puerto Rico, the United
6 States was formally advised that ". . . the People of
7 Puerto Rico wish to be consulted as to their pref-
8 erence with regards to their ultimate political sta-
9 tus", and the joint letter stated ". . . that since
10 Puerto Rico came under the sovereignty of the Unit-
11 ed States of America through the Treaty of Paris in
12 1898, the People of Puerto Rico have not been for-
13 mally consulted by the United States of America as
14 to their choice of their ultimate political status".

15 (9) In the 1989 State of the Union Message,
16 President George Bush urged the Congress to take
17 the necessary steps to authorize a federally recog-
18 nized process allowing the people of Puerto Rico, for
19 the first time since the Treaty of Paris entered into
20 force, to freely express their wishes regarding their
21 future political status in a congressionally recognized
22 referendum, a step in the process of self-determina-
23 tion which the Congress has yet to authorize.

24 (10) In November of 1993, the Government of
25 Puerto Rico conducted a plebiscite initiated under

1 local law on Puerto Rico's political status. In that
2 vote none of the three status propositions received a
3 majority of the votes cast. The results of that vote
4 were: 48.6 percent commonwealth, 46.3 percent
5 statehood, and 4.4 percent independence.

6 (11) In 1994, President William Jefferson Clin-
7 ton established the Executive Branch Interagency
8 Working Group on Puerto Rico to coordinate the re-
9 view, development, and implementation of executive
10 branch policy concerning issues affecting Puerto
11 Rico, including the November 1993 plebiscite.

12 (12) There have been inconsistent and conflict-
13 ing interpretations of the 1993 plebiscite results,
14 and under the Territorial Clause of the Constitution,
15 Congress has the authority and responsibility to de-
16 termine Federal policy and clarify status issues in
17 order to advance the self-determination process in
18 Puerto Rico.

19 (13) On December 14, 1994, the Puerto Rico
20 Legislature enacted Concurrent Resolution 62, which
21 requested the 104th Congress to respond to the re-
22 sults of the 1993 Puerto Rico Status Plebiscite and
23 to indicate the next steps in resolving Puerto Rico's
24 political status.

1 (14) Nearly 4,000,000 United States citizens
2 live in the islands of Puerto Rico, which have been
3 under United States sovereignty and within the
4 United States customs territory for almost 100
5 years, making Puerto Rico the oldest, largest, and
6 most populous United States island territory at the
7 southeastern-most boundary of our Nation, located
8 astride the strategic shipping lanes of the Atlantic
9 Ocean and Caribbean Sea.

10 (15) Full self-government for Puerto Rico is at-
11 tainable only through establishment of a political
12 status which is based on either separate Puerto
13 Rican sovereignty and nationality or full and equal
14 United States nationality and citizenship through
15 membership in the Union and under which Puerto
16 Rico is no longer an unincorporated territory subject
17 to the plenary authority of Congress arising from
18 the Territorial Clause.

19 **SEC. 3. POLICY.**

20 In recognition of the significant level of local self-gov-
21 ernment which has been attained by Puerto Rico, and the
22 responsibility of the Federal Government to enable the
23 people of the territory to freely express their wishes re-
24 garding political status and achieve full self-government,
25 this Act is adopted with a commitment to encourage the

1 development and implementation of procedures through
2 which the permanent political status of the people of Puer-
3 to Rico can be determined.

4 **SEC. 4. PROCESS FOR PUERTO RICAN FULL SELF-GOVERN-**
5 **MENT, INCLUDING THE INITIAL DECISION**
6 **STAGE, TRANSITION STAGE, AND IMPLEMEN-**
7 **TATION STAGE.**

8 (a) **INITIAL DECISION STAGE.**—A referendum on
9 Puerto Rico's political status shall be held not later than
10 December 31, 1998. The referendum shall be held pursu-
11 ant to this Act and in accordance with the applicable pro-
12 visions of Puerto Rico's electoral law and other relevant
13 statutes consistent with this Act. Approval of a status op-
14 tion must be by a majority of the valid votes cast. The
15 referendum shall be on the following questions presented
16 on the ballot as options A and B in a side-by-side format
17 in Parts I and II:

18 "PART I

19 "Instructions: Mark the option you choose. Ballots
20 with both options marked in Part I will not be counted.

21 "A. Puerto Rico should continue the present Com-
22 monwealth structure for self-government with respect to
23 internal affairs and administration, subject to the provi-
24 sions of the Constitution and laws of the United States
25 which apply to Puerto Rico. Puerto Rico remains a locally

1 Puerto Rico do you prefer to be developed through a tran-
2 sition plan enacted by the Congress and approved by the
3 people of Puerto Rico?

4 "A. Puerto Rico should become fully self-governing
5 through separate sovereignty leading to independence or
6 free association as defined below. If you agree, mark here:

7 _____

8 "The path of separate Puerto Rican sovereignty lead-
9 ing to independence or free association is one in which—

10 "(1) Puerto Rico is a sovereign nation with full
11 authority and responsibility for its internal and ex-
12 ternal affairs and has the capacity to exercise in its
13 own name and right the powers of government with
14 respect to its territory and population;

15 "(2) a negotiated treaty of friendship and co-
16 operation, or an international bilateral pact of free
17 association terminable at will by either Puerto Rico
18 or the United States, defines future relations be-
19 tween Puerto Rico and the United States, providing
20 for cooperation and assistance in matters of shared
21 interest as agreed and approved by Puerto Rico and
22 the United States pursuant to this Act and their re-
23 spective constitutional processes;

24 "(3) a constitution democratically instituted by
25 the people of Puerto Rico, establishing a republican

1 form of full self-government and securing the rights
2 of citizens of the Puerto Rican nation, is the su-
3 preme law, and the Constitution and laws of the
4 United States no longer apply in Puerto Rico;

5 “(4) Puerto Rico exercises the sovereign power
6 to determine and control its own nationality and citi-
7 zenship, and United States nationality and citizen-
8 ship conferred on the people of Puerto Rico based
9 upon birth in the territory during the period in
10 which the United States exercised sovereignty and
11 jurisdiction over Puerto Rico is withdrawn in favor
12 of Puerto Rican nationality and citizenship, and the
13 United States Congress has authority to prescribe
14 criteria for affected individuals to establish eligibility
15 for retention of United States nationality and citi-
16 zenship or naturalization in the United States on a
17 basis which does not create an exception to the es-
18 tablishment and preservation of separate United
19 States and Puerto Rican nationality and citizenship;

20 “(5) upon recognition of Puerto Rico by the
21 United States as a sovereign nation and establish-
22 ment of government-to-government relations on the
23 basis of comity and reciprocity, Puerto Rico’s rep-
24 resentation to the United States is accorded full dip-
25 lomatic status;

1 “(6) Puerto Rico is eligible for United States
2 assistance provided on a government-to-government
3 basis, including foreign aid or programmatic assist-
4 ance, at levels subject to agreement by the United
5 States and Puerto Rico;

6 “(7) property rights and previously acquired
7 rights vested by employment under laws of Puerto
8 Rico or the United States are honored, and where
9 determined necessary such rights are promptly ad-
10 justed and settled consistent with government-to-
11 government agreements implementing the separation
12 of sovereignty; and

13 “(8) Puerto Rico is outside the customs terri-
14 tory of the United States, and trade between the
15 United States and Puerto Rico is based on a treaty.

16 “B. Puerto Rico should become fully self-governing
17 through United States sovereignty leading to statehood as
18 defined below. If you agree, mark here: _____

19 “The path through United States sovereignty leading
20 to statehood is one in which—

21 “(1) the people of Puerto Rico are fully self-
22 governing with their rights secured under the United
23 States Constitution, which is the supreme law and
24 has the same force and effect as in the other States
25 of the Union;

1 “(2) the sovereign State of Puerto Rico is in
2 permanent union with the United States, and powers
3 not delegated to the Federal Government or prohib-
4 ited to the States by the United States Constitution
5 are reserved to the people of Puerto Rico or the
6 State Government;

7 “(3) United States citizenship of those born in
8 Puerto Rico is guaranteed, protected and secured in
9 the same way it is for all United States citizens born
10 in the other States;

11 “(4) residents of Puerto Rico have equal rights
12 and benefits as well as equal duties and responsibil-
13 ities of citizenship, including payment of Federal
14 taxes, as those in the several States;

15 “(5) Puerto Rico is represented by two mem-
16 bers in the United States Senate and is represented
17 in the House of Representatives proportionate to the
18 population;

19 “(6) United States citizens in Puerto Rico are
20 enfranchised to vote in elections for the President
21 and Vice President of the United States; and

22 “(7) Puerto Rico adheres to the same language
23 requirement as in the several States.”.

24 (b) TRANSITION STAGE.—

1 (1) PLAN.—(A) Within 180 days of the receipt
2 of the results of the referendum from the Govern-
3 ment of Puerto Rico certifying approval of a ballot
4 choice in a referendum held pursuant to subsection
5 (a), the President shall develop and submit to Con-
6 gress legislation for a transition plan of 10 years
7 minimum which leads to full self-government for
8 Puerto Rico consistent with the terms of this Act
9 and in consultation with officials of the three
10 branches of the Government of Puerto Rico, the
11 principal political parties of Puerto Rico, and other
12 interested persons as may be appropriate.

13 (B) Additionally, in the event of a vote in favor
14 of separate sovereignty, Congress recognizes the dis-
15 cretionary authority of the Legislature of Puerto
16 Rico, if deemed appropriate, to provide by law for
17 the calling of a constituent convention to formulate,
18 in accordance with procedures prescribed by law,
19 Puerto Rico's proposals and recommendations to im-
20 plement the referendum results. If a convention is
21 called for this purpose, any proposals and rec-
22 ommendations formally adopted by such convention
23 within time limits of this Act shall be transmitted to
24 Congress by the President with the transition plan
25 required by this section, along with the views of the

1 President regarding the compatibility of such pro-
2 posals and recommendations with the United States
3 Constitution and this Act, and identifying which, if
4 any, of such proposals and recommendations have
5 been addressed in the President's proposed transi-
6 tion plan.

7 (2) CONGRESSIONAL CONSIDERATION.—The
8 plan shall be considered by the Congress in accord-
9 ance with section 6.

10 (3) PUERTO RICAN APPROVAL.—

11 (A) Not later than 180 days after enact-
12 ment of an Act pursuant to paragraph (1) pro-
13 viding for the transition to full self-government
14 for Puerto Rico as approved in the initial deci-
15 sion referendum held under subsection (a), a
16 referendum shall be held under the applicable
17 provisions of Puerto Rico's electoral law on the
18 question of approval of the transition plan.

19 (B) Approval must be by a majority of the
20 valid votes cast. The results of the referendum
21 shall be certified to the President of the United
22 States.

23 (4) EFFECTIVE DATE FOR TRANSITION PLAN.—

24 The President of the United States shall issue a
25 proclamation announcing the effective date of the

1 transition plan to full self-government for Puerto
2 Rico.

3 (c) IMPLEMENTATION STAGE.—

4 (1) PRESIDENTIAL RECOMMENDATION.—Not
5 less than two years prior to the end of the period
6 of the transition provided for in the transition plan
7 approved under subsection (b), the President shall
8 submit to Congress legislation with a recommenda-
9 tion for the implementation of full self-government
10 for Puerto Rico consistent with the ballot choice ap-
11 proved under subsection (a).

12 (2) CONGRESSIONAL CONSIDERATION.—The
13 plan shall be considered by the Congress in accord-
14 ance with section 6.

15 (3) PUERTO RICAN APPROVAL.—

16 (A) Within 180 days after enactment of
17 the terms of implementation for full self-govern-
18 ment for Puerto Rico, a referendum shall be
19 held under the applicable provisions of Puerto
20 Rico's electoral laws on the question of the ap-
21 proval of the terms of implementation for full
22 self-government for Puerto Rico.

23 (B) Approval must be by a majority of the
24 valid votes cast. The results of the referendum

1 shall be certified to the President of the United
2 States.

3 (4) EFFECTIVE DATE OF FULL SELF-GOVERN-
4 MENT.—The President of the United States shall
5 issue a proclamation announcing the date of imple-
6 mentation of full self-government for Puerto Rico.

7 SEC. 5. REQUIREMENTS RELATING TO REFERENDA, IN-
8 CLUDING INCONCLUSIVE REFERENDUM AND
9 APPLICABLE LAWS.

10 (a) APPLICABLE LAWS.—

11 (1) REFERENDA UNDER PUERTO RICAN
12 LAWS.—The referenda held under this Act shall be
13 conducted in accordance with the applicable laws of
14 Puerto Rico, including laws of Puerto Rico under
15 which voter eligibility is determined and which re-
16 quire United States citizenship and establish other
17 statutory requirements for voter eligibility of resi-
18 dents and nonresidents.

19 (2) FEDERAL LAWS.—The Federal laws appli-
20 cable to the election of the Resident Commissioner
21 of Puerto Rico shall, as appropriate and consistent
22 with this Act, also apply to the referenda. Any ref-
23 erence in such Federal laws to elections shall be con-
24 sidered, as appropriate, to be a reference to the

1 referenda, unless it would frustrate the purposes of
2 this Act.

3 (b) CERTIFICATION OF REFERENDA RESULTS.—The
4 results of each referendum held under this Act shall be
5 certified to the President of the United States and the
6 Senate and House of Representatives of the United States
7 by the Government of Puerto Rico.

8 (c) CONSULTATION AND RECOMMENDATIONS FOR IN-
9 CONCLUSIVE REFERENDUM.—

10 (1) IN GENERAL.—If a referendum provided in
11 this Act does not result in approval of a fully self-
12 governing status, the President, in consultation with
13 officials of the three branches of the Government of
14 Puerto Rico, the principal political parties of Puerto
15 Rico, and other interested persons as may be appro-
16 priate, shall make recommendations to the Congress
17 within 180 days of receipt of the results of the ref-
18 erendum.

19 (2) EXISTING STRUCTURE TO REMAIN IN EF-
20 FECT.—If the inhabitants of the territory do not
21 achieve full self-governance through either integra-
22 tion into the Union or separate sovereignty in the
23 form of independence or free association, Puerto
24 Rico will remain an unincorporated territory of the
25 United States, subject to the authority of Congress

1 under Article IV, Section 3, Clause 2 of the United
2 States Constitution. In that event, the existing Com-
3 monwealth of Puerto Rico structure for local self-
4 government will remain in effect, subject to such
5 other measures as may be adopted by Congress in
6 the exercise of it's Territorial Clause powers to de-
7 termine the disposition of the territory and status of
8 it's inhabitants.

9 (3) AUTHORITY OF CONGRESS TO DETERMINE
10 STATUS.—Since current unincorporated territory
11 status of the Commonwealth of Puerto Rico is not
12 a permanent, unalterable or guaranteed status under
13 the Constitution of the United States, Congress re-
14 tains plenary authority and responsibility to deter-
15 mine a permanent status for Puerto Rico consistent
16 with the national interest. The Congress historically
17 has recognized a commitment to take into consider-
18 ation the freely expressed wishes of the people of
19 Puerto Rico regarding their future political status.
20 This policy is consistent with respect for the right of
21 self-determination in areas which are not fully self-
22 governing, but does not constitute a legal restriction
23 or binding limitation on the Territorial Clause pow-
24 ers of Congress to determine a permanent status of
25 Puerto Rico. Nor does any such restriction or limita-

1 tion arise from the Puerto Rico Federal Relations
2 Act (48 U.S.C. 731 et seq.).

3 (4) **ADDITIONAL REFERENDA.**—To ensure that
4 the Congress is able on a continuing basis to exer-
5 cise its Territorial Clause powers with due regard
6 for the wishes of the people of Puerto Rico respect-
7 ing resolution of Puerto Rico's permanent future po-
8 litical status, in the event that a referendum con-
9 ducted under section four is inconclusive as provided
10 in this subsection there shall be another referendum
11 in accordance with this Act prior to the expiration
12 of a period of four years from the date such incon-
13 clusive results are certified or determined. This pro-
14 cedure shall be repeated every four years, but not in
15 a general election year, until Puerto Rico's unincor-
16 porated territory status is terminated in favor of a
17 recognized form of full self-government in accord-
18 ance with this Act.

19 **SEC. 6. CONGRESSIONAL PROCEDURES FOR CONSIDER-**
20 **ATION OF LEGISLATION.**

21 (a) **IN GENERAL.**—The Chairman of the Committee
22 on Energy and Natural Resources shall introduce legisla-
23 tion providing for the transition plan under section 4(b)
24 and the implementation recommendation under section
25 4(c), as appropriate, in the United States Senate and the

1 Chairman of the Committee on Resources shall introduce
2 such legislation in the United States House of Representa-
3 tives, providing adequate time for the consideration of the
4 legislation pursuant to the following provisions:

5 (1) At any time after the close of the 180th cal-
6 endar day beginning after the date of introduction of
7 such legislation, it shall be in order for any Member
8 of the United States House of Representatives or
9 the United States Senate to move to discharge any
10 committee of that House from further consideration
11 of the legislation. A motion to discharge shall be
12 highly privileged, and debate thereon shall be limited
13 to not more than two hours, to be divided equally
14 between those supporting and those opposing the
15 motion. An amendment to the motion shall not be in
16 order, and it shall not be in order to move to recon-
17 sider the vote by which the motion was agreed to or
18 disagreed to.

19 (2) At any time after the close of the 14th leg-
20 islative day beginning after the last committee of
21 that House has reported or been discharged from
22 further consideration of such legislation, it shall be
23 in order for any Member of that House to move to
24 proceed to the immediate consideration of the legis-
25 lation (such motion not being debatable), and such

1 motion is hereby made of high privilege. An amend-
2 ment to the motion shall not be in order, and it shall
3 not be in order to move to reconsider the vote by
4 which the motion was agreed to or disagreed to. For
5 the purposes of this paragraph, the term "legislative
6 day" means a day on which the United States
7 House of Representatives or the United States Sen-
8 ate, as appropriate, is in session.

9 (b) COMMITMENT OF CONGRESS.—Enactment of this
10 section constitutes a commitment that the United States
11 Congress will vote on legislation establishing appropriate
12 mechanisms and procedures to implement the political sta-
13 tus selected by the people of Puerto Rico.

14 (c) EXERCISE OF RULEMAKING POWER.—The provi-
15 sions of this section are enacted by the Congress—

16 (1) as an exercise of the rulemaking power of
17 the Senate and the House of Representatives and, as
18 such, shall be considered as part of the rules of each
19 House and shall supersede other rules only to the
20 extent that they are inconsistent therewith; and

21 (2) with full recognition of the constitutional
22 right of either House to change the rules (so far as
23 they relate to the procedures of that House) at any
24 time, in the same manner, and to the same extent
25 as in the case of any other rule of that House.

1 SEC. 7. AVAILABILITY OF FUNDS FOR THE REFERENDA.

2 (a) IN GENERAL.—

3 (1) AVAILABILITY OF AMOUNTS DERIVED FROM
4 TAX ON FOREIGN RUM.—During the period begin-
5 ning on October 1, 1996, and ending on the date the
6 President determines that all referenda required by
7 this Act have been held, the Secretary of the Treas-
8 ury, upon request from time to time by the Presi-
9 dent and in lieu of covering amounts into the treas-
10 ury of Puerto Rico under section 7652(e)(1) of the
11 Internal Revenue Code of 1986, shall make such
12 amounts available to the President for the purposes
13 specified in subsection (b).

14 (2) USE OF UNEXPENDED AMOUNTS.—Follow-
15 ing each referendum required by this Act and after
16 the end of the period specified in paragraph (1), the
17 President shall transfer all unobligated and unex-
18 pended amounts received by the President under
19 paragraph (1) to the treasury of Puerto Rico for use
20 in the same manner and for the same purposes as
21 all other amounts covered into the treasury of Puer-
22 to Rico under such section 7652(e)(1).

23 (b) GRANTS FOR CONDUCTING REFERENDA AND
24 VOTER EDUCATION.—From amounts made available
25 under subsection (a)(1), the President shall make grants
26 to the State Elections Commission of Puerto Rico for

1 referenda held pursuant to the terms of this Act, as fol-
2 lows:

3 (1) 50 percent shall be available only for costs
4 of conducting the referenda.

5 (2) 50 percent shall be available only for voter
6 education funds for the central ruling body of the
7 political party or parties advocating a particular bal-
8 lot choice. The amount allocated for advocating a
9 ballot choice under this paragraph shall be appor-
10 tioned equally among the parties advocating that
11 choice.

12 (c) **ADDITIONAL RESOURCES.**—In addition to
13 amounts made available by this Act, the Puerto Rico Leg-
14 islature may allocate additional resources for administra-
15 tive and voter education costs to each party so long as
16 the distribution of funds is consistent with the apportion-
17 ment requirements of subsection (b).

SEC. 7. AVAILABILITY OF FUNDS FOR THE REFERENDA.

(a) In GENERAL.--

(1) AVAILABILITY OF AMOUNTS DERIVED FROM TAX ON FOREIGN RUM.--

During the period beginning on October 1, 1996, and ending on the date the President determines that all referenda required by the Act have been held, the Secretary of the Treasury, upon request and as identified from time to time by the President, shall make just amounts under section 7652 (e)(1) for the Internal Revenue code of 1986 available to the Treasury of Puerto Rico for the purposes specified in subsection (b).

(2) USE OF UNIDENTIFIED AMOUNTS. - All other amounts not identified by the President under paragraph (1) shall be transferred to the Treasury of Puerto Rico for use in the same manner and for the same purposes as all other amounts covered into the treasury of Puerto Rico under such section 7652 (e)(1).

(3) REPORT OF REFERENDA EXPENDITURES - Within 180 days following each referendum required by this Act and after the end of the period specified in paragraph (1), the Secretary of the Treasury, in consultation with the Government of Puerto Rico shall report to the President of the United States and the Senate and House of Representatives of the United States on the amounts made available under Section 7652 (e)(1) and all other amounts expended by the State Elections Commission of Puerto Rico for referenda pursuant to this Act.



THE SECRETARY OF THE INTERIOR
WASHINGTON

October 17, 1994

The Honorable Joseph F. Ada
Chairman
Guam Commission on Self-Determination
Agana, Guam 96910

Dear Governor Ada:

Mutual consent to the political relationship between the federal government and Guam is critical to the realization of Guam's quest for commonwealth status. As a result of our negotiations, the Guam Commission on Self-Determination and I have agreed on the following language:

The Congress, acting to the extent constitutionally permissible, in the exercise of its plenary authority under Article IV, Section 3, Clause 2 of the Constitution, and the people of Guam agree that no provision of this covenant may be altered, amended, or repealed without the mutual consent of the Government of Guam and the United States Congress.

As you know, an OMB legislative referral process for the entire package we agree to is required prior to submission to Congress as proposed legislation. The Department of Justice has been involved in the negotiation process on mutual consent and has agreed that this language is acceptable. I am therefore confident that final approval of this provision will be achieved.

Sincerely,

I. MICHAEL HEYMAN
Special Representative

The "Bush Memo"

Background

The "Bush Memorandum" is the basic Executive Branch policy regarding Puerto Rico. It was issued after the 1992 election in fulfillment of a campaign pledge to Republican statehooders to replace a directive that had been issued by President Kennedy.

The Kennedy order was one of the main items of 'evidence' that the party that supports the governing arrangement for Puerto Rico had that the 'commonwealth' agreement made Puerto Rico more autonomous than a territory subject to 'colonial' Federal governing powers (although the memo merely suggested that).

The Bush order:

- • describes Puerto Rico as a territory subject to the Federal Government's broad territories governing powers;
- • calls for continued plebiscites until this status changes;
- directs that the islands be administratively treated as a State;
- continued the Kennedy memo's assignment of relations matters to the White House; and
- provides that it remains in effect until Puerto Rico's status changes.

One of those who lobbied for the memo said that it leaves commonwealth without any legal basis to survive. Gov.-elect Rossello said that it put Puerto Rico on a course to statehood.

A Bush aide said that the policy was largely symbolic and that Pres.-elect Clinton was expected to review it. Shortly after the Inauguration, a White House aide said that it would be reviewed.

Replacing the policy has been a priority of the pro-commonwealth party. The party's leader, San Juan Mayor Acevedo, has personally raised the issue with the President twice. In 1994, the President told him that he would consult with Congress on it. In July, ⁽¹⁹⁹⁵⁾ the President said that he would review the matter.

Acevedo raised it again w. the POTUS 6/18/96
Commonwealthers say that replacing the memo is necessary to partially fulfill the President's promise made before Puerto Rico's 1993 vote on status aspirations to try to make the current arrangement work better if another status was not sought.

Governor Rossello and Resident Commissioner Romero-Barcelo have opposed replacing the policy. Another supporter of the memo, Representative Toricelli, got the Foreign Affairs Committee to tell the State Department to adhere to it in 1993. ~~It is not clear if~~

Discussion

→ The memo's definition of the islands' status has constitutional

basis. But it is inconsistent with representations to the U.N. Further, it is unnecessary since it does not affect the definition of Puerto Rico's status made by law and by the courts.

→ The call for further status votes would support a bill first sponsored by Toricelli that he and his successor as Western Hemisphere Subcommittee Chair, Dan Burton, are planning to revive. It would also support the statehood party's plan -- opposed by the commonwealthers -- to hold another status vote.

The directive that Puerto Rico be administratively treated as a State had little effect since the Commonwealth is generally treated as one in administrative matters.

Perhaps the best course would be to replace the order with one that does not purport to define Puerto Rico's status. (Gov. Rossello's chief advisor acknowledged that a Clinton policy would not necessarily be objectionable if it were not seen as being issued in response to commonwealth concerns.)

Puerto Rico's local parties would examine any action on this matter very closely, though, in efforts to discern an Administration status preference.

Inaction would be perceived as undermining commonwealth.

12/3/95

§ 734. United States laws extended to Puerto Rico; internal revenue receipts covered into Treasury

MEMORANDA OF PRESIDENT

Nov. 30, 1992. 57 F.R. 57093

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

Puerto Rico is a self-governing territory of the United States whose residents have been United States citizens since 1917 and have fought valorously in five wars in the defense of our Nation and the liberty of others.

On July 25, 1952, as a consequence of steps taken by both the United States Government and the people of Puerto Rico voting in a referendum, a new constitution was promulgated establishing the Commonwealth of Puerto Rico. The Commonwealth structure provides for self-government in respect of internal affairs and administration, subject to relevant portions of the Constitution and the laws of the United States. As long as Puerto Rico is a territory, however, the will of its people regarding their political status should be ascertained periodically by means of a general right of referendum or specific referenda sponsored either by the United States Government or the Legislature of Puerto Rico.

Because Puerto Rico's degree of constitutional self-government, population, and size set it apart from other areas also subject to Federal jurisdiction under Article IV, section 3, clause 2 of the Constitution, I hereby direct all Federal departments, agencies, and officials, to the extent consistent with the Constitution and the laws of the United States, henceforward to treat Puerto Rico administratively as if it were a

State, except insofar as doing so with respect to an existing Federal program or activity would increase or decrease Federal receipts or expenditures, or would seriously disrupt the operation of such program or activity. With respect to a Federal program or activity for which no fiscal baseline has been established, this memorandum shall not be construed to require that such program or activity be conducted in a way that increases or decreases Federal receipts or expenditures relative to the level that would obtain if Puerto Rico were treated other than as a State.

If any matters arise involving the fundamentals of Puerto Rico's status, they shall be referred to the Office of the President.

This guidance shall remain in effect until Federal legislation is enacted altering the current status of Puerto Rico in accordance with the freely expressed wishes of the people of Puerto Rico.

The memorandum for the heads of executive departments and agencies on this subject, issued July 25, 1961 [not classified to the Code], is hereby rescinded.

This memorandum shall be published in the Federal Register.

GEORGE BUSH

NOTES OF DECISIONS

Freedom of speech and press

Generally 8a

Access to criminal proceedings 8b

8a. Freedom of speech and press—Generally

Rights protected by free speech clause of First Amendment apply in Puerto Rico. Rivera-Puig v. Garcia-Rosario, C.A.1 (Puerto Rico) 1992, 983 F.2d 311.

8b. — Access to criminal proceedings

Qualified First Amendment right of access to criminal proceedings applies to preliminary

hearings in felony cases in Puerto Rico, and closure provisions of Rule of Criminal Procedure are thus unconstitutional; although traditionally Puerto Rico's preliminary hearings have been private, they duplicate preliminary hearings in other jurisdictions with tradition of openness, and preliminary hearings are sufficiently similar to criminal trials at which public access plays a significant positive role by giving appearance of fairness essential to public confidence. Rivera-Puig v. Garcia-Rosario, C.A.1 (Puerto Rico) 1992, 983 F.2d 311.

SUBCHAPTER III—THE LEGISLATURE

§ 821. Legislative power

NOTES OF DECISIONS

Automobiles 8a

Commerce clause 2a

2a. Commerce clause

Puerto Rico is subject to constraints of dormant commerce clause doctrine in same fashion as the states. Trailer Marine Transport Corp.

8a. Automobiles

Transitory trailer fee that Puerto Rico collected on all trailers temporarily within its boundaries violated commerce clause, though fee was not, in absolute dollar amount, any greater than that collected on local vehicles and trailers, as transient trailers present in Puerto Rico for 30 days or less were presumptively going to cause

Session Laws of Hawaii, 1990;

Session Laws of Hawaii,

ed to insurance of mortgages
Hawaii. See section 1715d of
Banking.

NS

Rico" in the Act entitled
her purposes," approved
"Puerto Rico." All laws,
ates in which such island
shall be held to refer to

the Code, see Short Title
ection 731 of this title and

ected as part of the Puerto
ons Act which comprises

people of Puerto Rico
vention; requisites of

respect certain rights;
for holding of referendum
anism and guidelines for
ere not inconsistent
quirement that people of
ublican form of govern-
e Party (Partido Nuevo
lez Colon, D.Puerto Rico

body politic; name

DOCUMENT 80

MEMORANDUM OF THE PRESIDENT
(JULY 25, 1961)

Because of the importance and significance of Puerto Rico in the relations of the United States with Latin America and other nations, it is essential that the executive departments and agencies be completely aware of the unique position of the Commonwealth, and that policies, actions, reports on legislation, and other activities affecting the Commonwealth should be consistent with the structure and basic principles of the Commonwealth.

On July 25, 1952, the Governor of Puerto Rico proclaimed the establishment of the Commonwealth of Puerto Rico under its constitution. This proclamation was the culmination of a series of legislative and electoral steps which began with the passage of Public Law 600, 81st Congress, 64 Stat. 319 (1956). Public Law 600 made provision for the organization of a constitutional government by the people of Puerto Rico. In a referendum, held on June 4, 1951, the proposals of this law received the overwhelming approval of the people of Puerto Rico.

Following approval, a Puerto Rican constitutional convention drafted a constitution, which was approved by a referendum held on March 3, 1952. The Congress in turn approved this constitution. Public Law 447, 82d Congress, 68 Stat. 327 (1952).

The Commonwealth structure, and its relationship to the United States which is in the nature of a compact, provide for self-government in respect of internal affairs and administration, subject only to the applicable provisions of the Federal Constitution, the Puerto Rican Federal Relations Act, and the acts of Congress authorizing and approving the constitution.

On November 27, 1953, the General Assembly of the United Nations recognized that the people of the Commonwealth of Puerto Rico, exercising effectively the right of self-determination in a free and democratic way, had achieved a new constitutional status and that, in view of this new status, it was appropriate that the United States should cease the transmission of information with regard to Puerto Rico under article 73(e) of the Charter. U.N. Gen. Ass. Res. 748 (VIII) (1953).

All departments, agencies, and officials of the executive branch of the Government should faithfully and carefully observe and respect this arrangement in relation to all matters affecting the Commonwealth of Puerto Rico. If any matters arise involving the fundamen-

tals of this arrangement, they should be referred to the Office of the President.

The legislative steps which have led to the achievement by Puerto Rico of Commonwealth status have made inapplicable the provisions of Executive Order No. 6726 of May 29, 1934, insofar as they pertain to or are connected with the administration of the Government of Puerto Rico. This order no longer applies to Puerto Rico.

This memorandum shall be published in the Federal Register.

JOHN F. KENNEDY

12:30

Puerto Rico Mtg

PR Statute Bill

Reqs PR to vote every 4 yrs till it chooses laws

Describes PR as territory - "enhancements"

Addresses name of CW's aspirations

Marked up thru full committee

Asked to provide views.

Miller to offer amendments

1. Chair show 3 options

2. If maj vote for Sec 1, Pres will
proclaim that statute by 1998 -
transmit implementing leg to Cong.

Cost before house

Leg 1st; then - PR becomes state

2. notes to keep in mind -

1. Powell memo - PR is territ; should have
continuing plebiscites.

Remains in effect

Pres asked abt this last wk.

Guam CW bill - give CW status

Provisions of CW subj to mutual consent -
can't be modified by fed govt.

Purpose to emulate

N. Mariana Islands -

Also cert provisions can't be changed
w/out consent of Island - espec as to
citshp.

9th Cir. approved this - fed
govt can enter into ags of
this kind.

This is the same basic issue of PR CW.

We've tried to avoid festivity
havent wanted to say what fed power
remain in PR

No dispositive judicial determ of PR's status

New - what comments?

a. ^{Bill} Regs ref to 1999 / 1998 (Miller)

CWers don't want ref at all

we should say permanent, but not ref +
not at a date certain.

(Both sides can live).

b. Options of ref.

"Territory" — codify current understanding
or

Put in ballot "Commonwealth" - ag w/ PR -

"mutual guarantees"

(unbinding commitment)

...

kill does
Maybe just say ^{not} a fair CW ^{of h} -
cent specificity.

Shouldn't comment ~~to~~ - w.

Try to say - not going ~~to~~ ~~be~~ down right path -
try to broker.

Not going to pass.

about
H1 - Discuss w/ [^] pps -
→ to def of CW.

(say in way that's not so clear
as to what PR is now)

but this will disappoint owners -
they think CW is enhanced now.

Geremendi - Gaur - stop taking pos to -

Kill DOT letter - has to be party wished
response.

To: Elena
Memorandum
From: JJP Faraw



Subject Political Status of Puerto Rico	Date May 9, 1996
--	---------------------

To
Andrew Fois
Assistant Attorney General
Office of Legislative Affairs
Attention: Adrien Silas

From
H. Jefferson Powell *JJP*
Deputy Assistant Attorney
General
Office of Legal Counsel

Pursuant to your request we are transmitting ~~additions to our~~
~~advisory comments on H.R. 3024~~

Section 4(a)(1)(D) would provide that an independent Puerto Rico would control its own nationality and citizenship, and that United States nationality and citizenship, based on birth in Puerto Rico while under United States sovereignty, would be withdrawn in favor of Puerto Rican nationality and citizenship. The subsection would also authorize Congress to establish criteria for "affected individuals" under which they could retain United States nationality and citizenship or could be naturalized in the United States, as long as this would not create an exception to the principle of separate United States and Puerto Rican nationality and citizenship.

We have the following comments. First, we object to this paragraph unless the transfer of citizenship is limited to those persons born in Puerto Rico who are domiciled in Puerto Rico at the time of independence. Moreover, in our view the Constitution required that the bill give those citizens of the United States residing, but not born, in, Puerto Rico an option to choose between United States and Puerto Rican citizenship.

Second, we have difficulties in understanding the practical operation of the clause authorizing Congress to establish criteria for the retention of United States citizenship provided they do not interfere with the establishment and preservation of separate United States and Puerto Rican nationality and citizenship. It would appear that any provision enabling a person residing in Puerto Rico to retain his or her United States citizenship would impinge on the principle of separate United States and Puerto Rican citizenship, unless a person who avails

himself or herself of the benefit of this clause forfeits his or her Puerto Rican citizenship. We understand that this clause would be limited to individuals and that it would not authorize the establishment of broad categories of residents of Puerto Rico who would be permitted to retain their United States citizenship.

Third, considering that, even if the independence option prevails, there will be a considerable body of persons who would cherish their United States citizenship and would seek to retain it, thought should be given to permitting the residents of Puerto Rico to opt to remain citizens of the United States without acquiring Puerto Rican citizenship, or to hold dual United States and Puerto Rican citizenship. This alternative, however, would require further study of the effect on the status of Puerto Rico of creating a sizeable number of persons who are either aliens from Puerto Rico's perspectives, or who would owe dual and possible conflicting allegiance to the United States and Puerto Rico. Moreover, in view of the responsibility of the United States to protect the safety, rights and welfare of United States citizens abroad, the retention of United States citizenship by a sizeable portion of the residents of Puerto Rico could lead to significant interventions by the United States into Puerto Rican affairs.

While we believe that the bill should contain a Commonwealth option, we realize that it would be difficult to formulate one. Statehood is defined in the Constitution, and international law determines the parameters of independence. There is, however, no specific model of political organization designed by the term Commonwealth. What that status means depends upon result of the formula reached in each individual case.

The Commonwealth option presented in the November 18, 1993 plebiscite cannot serve as a model for this bill in view of its emphasis on "the execution of a bilateral pact between Puerto Rico and the United States that would be unalterable, except by mutual consent". Included in the statement delivered at the time of his introduction of the bill in Congress by Chairman Young was a response to the Puerto Rican legislature concerning the viability of the elements of the Commonwealth status option. That response signed by four House Committee Chairmen concluded that as long as Puerto Rico remains an unincorporated territory under the sovereignty of the United States, a mutual consent provision would not be legally enforceable or constitutionally binding upon a future Congress. 142 Cong. Rec. Daily Ed. March 6, 1996, E299-300. For the reasons set forth in the attached memorandum we agree with that conclusion. In brief, an area under the sovereignty of the United States that is not a State is a Territory subject to the plenary powers of Congress under the Territory Clause, Article IV, Section 3, Clause 2 of the Constitution. And while Congress can confer on the Territory

significant powers of self-government, that grant is always and necessarily subject to recall by Congress. Congress cannot divest itself fully of its powers and responsibilities under the Territories Clause, and no Congress can bind a future Congress on such matters.

Hence, we believe that the present Commonwealth relationship is the best model for a Commonwealth option in this bill. It may be that this option would be "improved" by providing for an irrevocable United States citizenship for the inhabitants of Puerto Rico by making the first sentence of the first section of the Fourteenth Amendment (citizenship by birth in the United States) applicable to Puerto Rico as if it were a State, in analogy to section 501(a) of the Covenant with the Northern Mariana Islands, and by including other elements of the Commonwealth option contained in the November 1993 referendum that are constitutionally and fiscally viable, or that are already in effect but not spelled out in the Puerto Rico Federal Relations Act, such as a Common Market, (inclusion in the customs territory of the United States), a common currency, and common defense.

U. S. Department of Justice

Office of Legal Counsel

Enclosure

Office of the
Deputy Assistant Attorney General

Washington, D. C. 20530

July 28, 1994

**MEMORANDUM FOR
THE SPECIAL REPRESENTATIVE
FOR GUAM COMMONWEALTH**

From: Teresa Wynn Roseborough *TWR*
Deputy Assistant Attorney General

Re: Mutual Consent Provisions in
The Guam Commonwealth Legislation

The Guam Commonwealth Bill, H.R. 1521, 103d Cong., 1st Sess. (1993) contains two sections requiring the mutual consent of the Government of the United States and the Government of Guam. Section 103 provides that the Commonwealth Act could be amended only with mutual consent of the two governments. Section 202 provides that no Federal laws, rules, and regulations passed after the enactment of the Commonwealth Act would apply to Guam without the mutual consent of the two governments. The Representatives of Guam insist that these two sections are crucial for the autonomy and economy of Guam. The former views of this Office on the validity or efficacy of mutual consent requirements included in legislation governing the relationship between the federal government and non-state areas, i.e. areas under the sovereignty of the United States that are not States,¹ have

¹ Territories that have developed from the stage of a classical territory to that of a Commonwealth with a constitution of their own adoption and an elective governor, resent being called Territories and claim that that legal term and its implications are not applicable to them. We therefore shall refer to all Territories and Commonwealths as non-state areas under the sovereignty of the United States or briefly as non-state areas.

not been consistent.² We therefore have carefully reexamined this issue. Our conclusion is that these clauses raise serious constitutional issues and are legally unenforceable.³

In our view, it is important that the text of the Guam Commonwealth Act not create any illusory expectations that might to mislead the electorate of Guam about the consequences of the legislation. We must therefore oppose the inclusion in the Commonwealth Act of any provisions, such as mutual consent clauses, that are legally unenforceable, unless their unenforceability (or precatory nature) is clearly stated in the document itself.

I.

The Power of Congress to Govern the Non-State Areas under the Sovereignty of the United States is Plenary within Constitutional Limitations

All territory under the sovereignty of the United States falls into two groups: the States and the areas that are not States. The latter, whether called territories, possessions, or commonwealths, are governed by and under the authority of Congress. As to those areas, Congress exercises the combined powers of the federal and of a state government. These basic considerations were set out in the leading case of National Bank v. County of Yankton, 101 U.S. 129, 132-33 (1880). There the Court held:

² To our knowledge the first consideration of the validity of mutual consent clauses occurred in 1959 in connection with proposals to amend the Puerto Rico Federal Relations Act. At that time the Department took the position that the answer to this question was doubtful but that such clauses should not be opposed on the ground that they go beyond the constitutional power of Congress. In 1963 the Department of Justice opined that such clauses were legally effective because Congress could create vested rights in the status of a territory that could not be revoked unilaterally. The Department adhered to this position in 1973 in connection with then pending Micronesians status negotiations in a memorandum approved by then Assistant Attorney General Rehnquist. On the basis of this advice, a mutual consent clause was inserted in Section 105 of the Covenant with the Northern Mariana Islands. The Department continued to support the validity of mutual consent clauses in connection with the First 1989 Task Force Report on the Guam Commonwealth Bill. The Department revisited this issue in the early 1990's in connection with the Puerto Rico Status Referendum Bill in light of Bowen v. Agencies Opposed to Soc. Sec. Entrapment, 477 U.S. 41, 55 (1986), and concluded that there could not be an enforceable vested right in a political status; hence that mutual consent clauses were ineffective because they would not bind a subsequent Congress. We took the same position in the Second Guam Task Force Report issued during the last days of the Bush Administration in January 1993.

³ Mutual consent clauses are not a novel phenomenon; indeed they antedate the Constitution. Section 14 of the Northwest Ordinance contained six "articles of compact, between the original States and the people and States in the said territory, and [shall] forever remain unalterable, unless by common consent." These articles were incorporated either expressly or by reference into many early territorial organic acts. Clinton v. Englebrecht, 80 U.S. (13 Wall.) 434, 442 (1872). The copious litigation under these "unalterable articles" focussed largely on the question whether the territories' obligations under them were superseded by the Constitution, or when the territory became a State, as the result of the equal footing doctrine. We have, however, not found any cases dealing with the question whether the Congress had the power to modify any duty imposed on the United States by those articles.

It is certainly now too late to doubt the power of Congress to govern the Territories. There have been some differences of opinion as to the particular clause of the Constitution from which the power is derived, but that it exists has always been conceded.⁴

* * *

All territory within the jurisdiction of the United States not included in any State must necessarily be governed by or under the authority of Congress. The Territories are but political subdivisions of the outlying dominion of the United States. Their relation to the general government is much the same as that which counties bear to the respective States, and Congress may legislate for them as a State does for its municipal organizations. The organic law of a Territory takes the place of a constitution as the fundamental law of the local government. It is obligatory on and binds the territorial authorities; but Congress is supreme, and for the purposes of this department of its governmental authority has all the powers of the people of the United States, except such as have been expressly or by implication reserved in the prohibitions of the Constitution.

Yankton was anticipated in Chief Justice Marshall's seminal opinion in American Insurance Co. v. Canter, 26 U.S. (1 Pet.) 511, 542-43, 546 (1828). The Chief Justice explained:

In the mean time [i.e. the interval between acquisition and statehood], Florida continues to be a territory of the United States; governed by virtue of that clause in the Constitution, which empowers Congress "to make all needful rules and regulations, respecting the territory, or other property belonging to the United States."

Perhaps the power of governing a territory belonging to the United States, which has not, by becoming a state, acquired the means of self-

⁴ Some derived that power from the authority of the United States to acquire territory, others from the mere fact of sovereignty, others from the Territory Clause of the Constitution of the United States (Art. IV, Sec. 3, Cl. 2) pursuant to which Congress has "Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States". See e.g. American Insurance Co. v. Canter, 26 U.S. (1 Pet.) 511, 542 (1828); Mormon Church v. United States, 136 U.S. 1, 42-44 (1890); Downes v. Bidwell, 182 U.S. 244, 290 (1901).

At present, the Territory Clause of the Constitution is generally considered to be the source of the power of Congress to govern the non-state areas. Hooven & Allison Co. v. Evatt, 324 U.S. 652, 673-674 (1945); Examining Board v. Flores de Otero, 426 U.S. 572, 586 (1976); Harris v. Rosario, 446 U.S. 651 (1980); see also Wabol v. Villacrusis, 958 F.2d 1450, 1459 (9th Cir. 1992), cert. denied sub nom. Philippine Goods, Inc. v. Wabol, ___ U.S. ___, 113 S.Ct. 675 (1992). (Footnote supplied.)

government. may result necessarily from the facts. that it is not within the jurisdiction of any particular state. and is within the power and jurisdiction of the United States.

* * *

"In legislating for them [the Territories], Congress exercises the combined powers of the general, and of a state government."

Id. at 542-43, 546.

The power of Congress to govern the non-state areas is plenary like every other legislative power of Congress but it is nevertheless subject to the applicable provisions of the Constitution. As Chief Justice Marshall stated in Gibbons v. Ogden, 22 U.S. (9 Wheat) 1, 196 (1824), with respect to the Commerce Power:

This power [the Commerce Power], like all others vested in Congress is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the constitution. (Emphasis added.)

This limitation on the plenary legislative power of Congress is self-evident. It necessarily follows from the supremacy of the Constitution. See e.g., Hodel v. Virginia Surface Mining and Reclamation Assoc., 452 U.S. 264, 276 (1981). That the power of Congress under the Territory Clause is subject to constitutional limitations has been recognized in County of Yankton, 101 U.S. at 133; Downes v. Bidwell, 182 U.S. 244, 290-91 (1901); District of Columbia v. Thompson Co., 346 U.S. 100, 109 (1953).

Finally, the power of Congress over the non-state areas persists "so long as they remain in a territorial condition." Shively v. Bowlby, 152 U.S. 1, 48 (1894). See also, Hooven & Allison Co. v. Evatt, 324 U.S. 652, 675 (1945) (recognizing that during the intermediary period between the establishment of the Commonwealth of the Philippine Islands and the final withdrawal of United States sovereignty from those islands "Congress retains plenary power over the territorial government").

The plenary Congressional authority over a non-state area thus lasts as long as the area retains that status. It terminates when the area loses that status either by virtue of its admission as a State, or by the termination of the sovereignty of the United States over the area by the grant of independence, or by its surrender to the sovereignty of another country.

II.

The Revocable Nature of Congressional Legislation Relating to the Government of Non-State Areas

While Congress has the power to govern the non-state areas it need not exercise that power itself. Congress can delegate to the inhabitants of non-state areas full powers of self-government and an autonomy similar to that of States and has done so since the beginning of the Republic. Such delegation, however, must be "consistent with the supremacy and supervision of National authority". Clinton v. Englebrecht, 80 U.S. (13 Wall.) 434, 441 (1872); Puerto Rico v. Shell Co., 302 U.S. 253, 260, 261-62 (1937). The requirement that the delegation of governmental authority to the non-state areas be subject to federal supremacy and federal supervision means that such delegation is necessarily subject to the right of Congress to revise, alter, or revoke the authority granted. District of Columbia v. Thompson Co., 346 U.S. 100, 106, 109 (1953).⁵ See also, United States v. Sharpnack, 355 U.S. 286, 296 (1958), Harris v. Boreham, 233 F.2d 110, 113 (3rd Cir. 1956), Firemen's Insurance Co. v. Washington, 483 F.2d 1323, 1327 (D.C. Cir. 1973). The power of Congress to delegate governmental powers to non-state areas thus is contingent on the retention by Congress of its power to revise, alter, and revoke that legislation.⁶ Congress therefore cannot subject the amendment or repeal of such legislation to the consent of the non-state area.

This consideration also disposes of the argument that the power of Congress under the Territory Clause to give up its sovereignty over a non-state area includes the power to make a partial disposition of that authority, hence that Congress could give up its power to amend or repeal statutes relating to the governance of non-state areas. But, as shown above, the retention of the power to amend or repeal legislation delegating governmental powers to a non-state area is an integral element of the delegation power. Congress therefore has no

⁵ Thompson dealt with the District of Columbia's government which is provided for by Art. I, Sec. 8, Cl. 17 of the Constitution, rather than with the non-state areas as to whom the Congressional power is derived from the Territory Clause. The Court, however, held that in this area the rules relating to the Congressional power to govern the District of Columbia and the non-state areas are identical. Indeed, the Court relied on cases dealing with non-state areas, e.g., Hornbuckle v. Toombs, 85 U.S. (18 Wall.) 648, 655 (1874), and Christianson v. King County, 239 U.S. 365 (1915), where it held that Congress can delegate its legislative authority under Art. I, Sec. 8, Cl. 17 of the Constitution to the District, subject to the power of Congress at any time to revise, alter, or revoke that authority.

⁶ Congress has exercised this power with respect to the District of Columbia. The Act of February 21, 1871, 16 Stat. 419 gave the District of Columbia virtual territorial status, with a governor appointed by the President, a legislative assembly that included an elected house of delegates, and a delegate in Congress. The 1871 Act was repealed by the Act of June 20, 1874, 18 Stat. 116, which abrogated among others the provisions for the legislative assembly and a delegate in Congress, and established a government by a Commission appointed by the President.

authority to enact legislation under the Territory Clause that would limit the unfettered exercise of its power to amend or repeal.

The same result flows from the consideration that all non-state areas are subject to the authority of Congress, which, as shown above, is plenary. This basic rule does not permit the creation of non-state areas that are only partially subject to Congressional authority. The plenary power of Congress over a non-state area persists as long as the area remains in that condition and terminates only when the area becomes a State or ceases to be under United States sovereignty. There is no intermediary status as far as the Congressional power is concerned.

The two mutual consent clauses contained in the proposed Commonwealth Act therefore are subject to Congressional modification and repeal.

III.

The rule that legislation delegating governmental powers to a non-state area must be subject to amendment and repeal is but a manifestation of the general rule that one Congress cannot bind a subsequent Congress, except where it creates vested rights enforceable under the Due Process Clause of the Fifth Amendment.

The rule that Congress cannot surrender its power to amend or repeal legislation relating to the government of non-state areas is but a specific application of the maxim that one Congress cannot bind a subsequent Congress and the case law developed under it.

The rationale underlying that principle is the consideration that if one Congress could prevent the subsequent amendment or repeal of legislation enacted by it, such legislation would be frozen permanently and would acquire virtually constitutional status. Justice Brennan expressed this thought in his dissenting opinion in United States Trust Co. v. New Jersey, 431 U.S. 1, 45 (1977), a case involving the Impairment of the Obligation of Contracts Clause of the Constitution (Art. I, Sec 10, Cl. 1):

One of the fundamental premises of our popular democracy is that each generation of representatives can and will remain responsive to the needs and desires of those whom they represent. Crucial to this end is the assurance that new legislators will not automatically be bound by the policies and undertakings of earlier days.... The Framers fully recognized that nothing would so jeopardize the legitimacy of a system of government that relies upon the ebbs and flows of politics to "clean out the rascals" than the possibility that those same rascals might perpetuate their policies simply by locking them into binding contracts.

Nonetheless, the maxim that one Congress cannot bind future Congress, like every legal rule, has its limits. As early as 1810, Chief Justice Marshall explained in Fletcher v. Peck, 10 U.S. (6 Cranch) 87, 135 (1810):

The principle asserted is that one legislature is competent to repeal any act which a former legislature was competent to pass; and that one legislature cannot abridge the powers of a succeeding legislature.

The correctness of this principle, so far as respects general legislation, can never be controverted. But, if an act be done under a law, a succeeding legislature cannot undo it. The past cannot be recalled by the most absolute power. Conveyances have been made, those conveyances have vested legal estates, and if those estates may be seized by the sovereign authority, still, that they originally vested is a fact, and cannot cease to be a fact.

When, then, a law is in its nature a contract, when absolute rights have vested under that contract, a repeal of the law cannot divest (sic) those rights.

The powers of one legislature to repeal or amend the acts of the preceding one are limited in the case of States by the Obligation of Contracts Clause (Art. I, Sec. 10, Cl. 1) of the Constitution and the Due Process Clause of the Fourteenth Amendment, and in the case of Congressional legislation by the Due Process Clause of the Fifth Amendment. This principle was recognized in the Sinking-Fund Cases, 98 U.S. 700, 718-19 (1879):

The United States cannot any more than a State interfere with private rights, except for legitimate governmental purposes. They are not included within the constitutional prohibition which prevents States from passing laws impairing the obligation of contracts, but equally with the States they are prohibited from depriving persons or corporations of property without due process of law. They cannot legislate back to themselves, without making compensation, the lands they have given this corporation to aid in the construction of its railroad. Neither can they by legislation compel the corporation to discharge its obligations in respect to the subsidy bonds otherwise than according to the terms of the contract already made in that connection. The United States are as much bound by their contracts as are individuals. (emphasis supplied.)

See also Bowen v. Agencies Opposed to Soc. Sec. Entrapment, 477 U.S. 41, 54-56 (1986).

IV.

The Due Process Clause does not Preclude Congress from Amending or Repealing the two Mutual Consent Clauses

The question therefore is whether the Due Process Clause of the Fifth Amendment precludes a subsequent Congress from repealing legislation for the governance of non-state areas enacted by an earlier Congress under the Territory Clause. This question must be answered in the negative.

The Due Process Clause of the Fifth Amendment provides:

No person shall . . . be deprived of life, liberty, or property without due process of law. (emphasis supplied.)

This Clause is inapplicable to the repeal or amendment of the two mutual consent clauses here involved for two reasons. First, a non-state area is not a "person" within the meaning of the Fifth Amendment, and, second, such repeal or amendment would not deprive the non-state area of a property right within the meaning of the Fifth Amendment.

A.

A non-state area is not a person in the meaning of the Due Process Clause of the Fifth Amendment.

In South Carolina v. Katzenbach, 383 U.S. 301, 323-24 (1966), the Court held that a State is not a person within the meaning of the Due Process Clause of the Fifth Amendment. See also, Alabama v. EPA, 871 F.2d 1548, 1554 (11th Cir.), cert. denied, 493 U.S. 991 (1989) ("The State of Alabama is not included among the entities protected by the due process clause of the fifth amendment"); and State of Oklahoma v. Federal Energy Regulatory Comm., 494 F.Supp. 636, 661 (W.D. Okl. 1980), aff'd, 661 F.2d 832 (10th Cir. 1981), cert. denied, sub. nom. Texas v. Federal Energy Regulatory Comm., 457 U.S. 1105 (1982).

Similarly it has been held that creatures or instrumentalities of a State, such as cities or water improvement districts, are not persons within the meaning of the Due Process Clause of the Fifth Amendment. City of Sault Ste. Marie, Mich. v. Andrus, 532 F. Supp. 157, 167 (D.D.C. 1980); El Paso, County Water Improvement District v. IBWC/US, 701 F. Supp. 121, 123-24 (W.D. Tex 1988).

The non-state areas, concededly, are not States or instrumentalities of States, and we have not found any case holding directly that they are not persons within the meaning of the Due Process Clause of the Fifth Amendment. They are, however, governmental bodies, and

the rationale of South Carolina v. Katzenbach, 383 U.S. at 301, appears to be that such bodies are not protected by the Due Process Clause of the Fifth Amendment. Moreover, it is well established that the political subdivisions of a State are not considered persons protected as against the State by the provisions of the Fourteenth Amendment. See, e.g., Newark v. New Jersey, 262 U.S. 192, 196 (1923); Williams v. Mayor of Baltimore, 289 U.S. 36, 40 (1933); South Macomb Disposal Authority v. Township of Washington, 790 F.2d 500, 505, 507 (6th Cir. 1986) and the authorities there cited. The relationship of the non-state areas to the Federal Government has been analogized to that of a city or county to a State. As stated, *supra*, the Court held in National Bank v. County of Yankton, 101 U.S. 129, 133 (1880):

The territories are but political subdivisions of the outlying dominion of the United States. Their relation to the general government is much the same as that which counties bear to the respective States ...

More recently, the Court explained that a non-state area is entirely the creation of Congress and compared the relationship between the Nation and a non-state area to that between a State and a city. United States v. Wheeler, 435 U.S. 313, 321 (1978). It follows that, since States are not persons within the meaning of the Fifth Amendment and since the political subdivisions of States are not persons within the meaning of the Fourteenth Amendment, the non-state areas are not persons within the meaning of the Due Process Clause of the Fifth Amendment.

B.

Legislation relating to the governance of non-state areas does not create any rights or status protected by the Due Process Clause against repeal or amendment by subsequent legislation.

As explained earlier, a subsequent Congress cannot amend or repeal earlier legislation if such repeal or amendment would violate the Due Process Clause of the Fifth Amendment, *i.e.*, if such amending or repealing legislation would deprive a person of property without due process of law. It has been shown in the preceding part of this memorandum, that a non-state area is not a person with the meaning of the Due Process Clause. Here it will be shown that mutual consent provisions in legislation, such as the ones envisaged in the Guam Commonwealth Act, would not create property rights within the meaning of that Clause.

Legislation concerning the governance of a non-state area, whether called organic act, federal relations act, or commonwealth act, that does not contain a mutual consent clause is clearly subject to amendment or repeal by subsequent legislation. A non-state area does not acquire a vested interest in a particular stage of self government that subsequent legislation could not diminish or abrogate. While such legislation has not been frequent, it has occurred in connection with the District of Columbia. See District of Columbia v. Thompson Co., 346 U.S. 100, 104-05 (1953); *supra* n.6. Hence, in the absence of a mutual consent clause,

legislation concerning the government of a non-state area is subject to amendment or repeal by subsequent legislation.

This leads to the question whether the addition of a mutual consent clause, *i.e.* of a provision that the legislation shall not be modified or repealed without the consent of the Government of the United States and the Government of the non-state area, has the effect of creating in the non-state areas a specific status amounting to a property right within the meaning of the Due Process Clause. It is our conclusion that this question must be answered in the negative because (1) sovereign governmental powers cannot be contracted away, and (2) because a specific political relationship does not constitute "property" within the meaning of the Fifth Amendment.

1. As a body politic the Government of the United States has the general capacity to enter into contracts. United States v. Tingey, 30 U.S. (5 Pet.) 115, 128 (1831). This power, however, is generally limited to those types of contracts in which private persons or corporations can engage. By contrast [sovereign] "governmental powers cannot be contracted away," North American Coml. Co. v. United States, 171 U.S. 110, 137 (1898). More recently the Supreme Court held in connection with legislation arising under the Contract Clause (Art. I, Sec. 10, Cl. 1) of the Constitution that "the Contract Clause does not require a State to adhere to a contract that surrenders an essential attribute of its sovereignty." United States Trust Co. v. New Jersey, 431 U.S. 1, 23 (1977).⁷ In a similar context Mr. Justice Holmes stated:

One whose rights, such as they are, are subject to state restriction, cannot remove them from the power of the State by making a contract about them. Hudson Water Co. v. McCarter, 209 U.S. 349, 357 (1908).⁸

Agreements or compacts to the effect that the Congress may not amend legislation relating to the government of a non-state area without the consent of the latter, or that federal legislation shall not apply to Guam unless consented to by the Government of Guam would unquestionably purport to surrender essential powers of the federal government. They are

⁷ Cases arising under the Contract Clause holding that a State cannot contract away a sovereign power are also applicable to the contracts made by the federal government because the Contract Clause imposes more rigorous restrictions on the States than the Fifth Amendment imposes on the federal government. Pension Benefit Guaranty Corp. v. R.A. Gray Co., 467 U.S. 717, 733 (1984); National Railroad Passenger Corp. v. A.T. & S.F.R., 470 U.S. 451, 472-73 n.25 (1985). Hence, when state legislation does not violate the Contract Clause, analogous federal legislation is all the more permissible under the Due Process Clause of the Fifth Amendment.

⁸ Cited with approval with respect to federal legislation in Norman v. B. & O.R., 294 U.S. 240, 308 (1935).

therefore not binding on the United States and cannot confer a property interest protected by the Fifth Amendment.⁹

More generally, the Supreme Court held in Bowen v. Agencies Opposed to Soc. Sec. Entrapment, 477 U.S. 41, 55 (1986), that the contractual property rights protected by the Due Process Clause of the Fifth Amendment are the traditional private contractual rights, such as those arising from bonds or insurance contracts, but not arrangements that are part of a regulatory program such as a State's privilege to withdraw its participation in the Social Security system with respect to its employees. Specifically, the Court stated:

But the "contractual right" at issue in this case bears little, if any, resemblance to rights held to constitute "property" within the meaning of the Fifth Amendment. The termination provision in the Agreement exactly tracked the language of the statute, conferring no right on the State beyond that contained in § 418 itself. The provision constituted neither a debt of the United States, see Perry v. United States, supra, nor an obligation of the United States to provide benefits under a contract for which the obligee paid a monetary premium, see Lynch v. United States, supra. The termination clause was not unique to this Agreement; nor was it a term over which the State had any bargaining power or for which the State provided independent consideration. Rather, the provision simply was part of a regulatory program over which Congress retained authority to amend in the exercise of its power to provide for the general welfare.

Agreements that the Guam Commonwealth Act may not be amended without the consent of the Government of Guam, or that future federal statutes and regulations shall not apply to Guam without the consent of the Government of Guam clearly do not constitute conventional private contracts; they are elements of a regulatory system.

In the past the Department of Justice at times has concluded that a non-State area may have a vested interest in a specific status which would be immune from unilateral Congressional amendment or repeal.¹⁰ We cannot continue to adhere to that position in

⁹ Cases such as Lynch v. United States, 292 U.S. 571 (1934), and Perry v. United States, 294 U.S. 330 (1935), are not contrary to this conclusion. Both cases involved commercial agreements (Lynch: insurance; Perry: Government bonds). In Lynch the Court held that Congress could not amend the contract merely to save money "unless, indeed the action falls within the federal police power or some other paramount power." 292 U.S. at 579. Perry involved bonds issued by the United States under the authority of Art. I, Sec. 8, Cl. 2 of the Constitution, to borrow money on the credit of the United States. The Court held that Congress did not have the power to destroy the credit of the United States or to render it illusory by unilaterally abrogating one of the pivotal terms of the bonds to save money. While the Court held that the United States had broken the agreement, it nevertheless held that plaintiff could not recover because, as the result of regulations validly issued by the United States, he had not suffered any monetary damages.

¹⁰ Cf. n.2.

view of the rulings of the Supreme Court that legislation concerning the governance of a non-state area is necessarily subject to Congressional amendment and repeal; that governmental bodies are not persons within the meaning of the Due Process Clause; that governmental powers cannot be contracted away, and especially the exposition in the recent Bowen case, that the property rights protected by the Due Process Clause are those arising from private law or commercial contracts and not those arising from governmental relations.¹¹

Sections 103 and 202 therefore do not create vested property rights protected by the Due Process Clause of the Fifth Amendment.¹² Congress thus retains the power to amend the Guam Commonwealth Act unilaterally or to provide that its legislation shall apply to Guam without the consent of the government of the Commonwealth. The inclusion of such provisions, therefore, in the Commonwealth Act would be misleading. Honesty and fair dealing forbid the inclusion of such illusory and deceptive provisions in the Guam Commonwealth Act.¹³

Finally, the Department of Justice has indicated that it would honor past commitments with respect to the mutual consent issue, such as Section 105 of the Covenant with the Northern Mariana Islands, in spite of its reevaluation of this problem. The question whether the 1989 Task force proposal to amend Section 103 of the Guam Commonwealth Act so as to limit the mutual consent requirement to Sections 101, 103, 201, and 301 constitutes such prior commitment appears to have been rendered moot by the rejection of that proposal by the Guam Commission.

¹¹ It is significant that the circumstances in which Congress can effectively agree not to repeal or amend legislation were discussed in the context of commercial contracts. Bowen, 477 U.S. at 52.

¹² Bowen, it is true, dealt with legislation that expressly reserved the right of Congress to amend, while the proposed Guam Commonwealth Act would expressly preclude the right of Congress to amend without the consent of the Government of Guam. The underlying agreements, however, are not of a private contractual nature, and, hence, are not property within the meaning of the Due Process Clause. We cannot perceive how they can be converted into "property" by the addition of a provision that Congress foregoes the right of amendment.

¹³ The conclusion that Section 202 of the Guam Commonwealth Act (inapplicability of future federal legislation to Guam without the consent of Guam) would not bind a future Congress obviates the need to examine the constitutionality of Section 202. In Currin v. Wallace, 306 U.S. 1, 15-16 (1939), and United States v. Rock Royal Co-op. 307 U.S. 533, 577-78 (1939), the Court upheld legislation that made the effectiveness of regulations dependent on the approval of tobacco farmers or milk producers affected by them. The Court held that this approval was a legitimate condition for making the legislation applicable. Similarly, it could be argued that the approval of federal legislation by the Government of Guam is a legitimate condition for making that legislation applicable to Guam. Since, as stated above, a future Congress would not be bound by Section 202, we need not decide the question whether the requirement of approval by the Government of Guam for every future federal statute and regulation is excessive and inconsistent with the federal sovereignty over Guam.



U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

Honorable Elton Gallegly
Chairman
Subcommittee on Native American and Insular Affairs
Resources Committee
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Gallegly:

This letter presents the views of the Justice Department on H.R. 3024, the "United States-Puerto Rico Political Status Act." H.R. 3024 would provide for a referendum on the status of Puerto Rico, a commitment by the Congress to vote on the status selected, a ten-year transition plan, and a second referendum to ratify by majority vote the terms of implementation which the Congress would establish. We support a plebiscite to permit the inhabitants of Puerto Rico to express their views. However, we have serious concerns about H.R. 3024, especially its requirement that Puerto Ricans select only between national independence and statehood.

First, H.R. 3024 would require that no later than December 31, 1998, the Commonwealth of Puerto Rico hold a referendum on its political status. Puerto Ricans would choose between two forms of government: national independence and statehood.

We believe that the status of Puerto Rico must reflect the wishes of the Puerto Rican people. H.R. 3024 does not permit the people of Puerto Rico to express their wishes from the full range of available options, which would include continued commonwealth status. Instead, section 4 of the bill would permit only a choice between independence and statehood. This is especially troubling because in the last plebiscite on political status, almost one-half of all votes cast supported continued commonwealth status.

Under commonwealth status, Puerto Rico enjoys a "degree of autonomy and independence normally associated with a State of the

Union," Examining Board v. Flores de Otero, 426 U.S. 572, 594 (1976), and most provisions of the Bill of Rights apply to Puerto Rico by their own force. On the other hand, the Uniformity Clauses of Article I, Sec. 8 of the Constitution do not apply to Puerto Rico. Hence, the Congress may exempt Puerto Rico from Federal taxation, exclude it from the customs territory of the United States, and modify the application of the bankruptcy and immigration laws to it.

We believe that the inhabitants of Puerto Rico should be given the opportunity to weigh the increments in autonomy that would result from independence and statehood against the associated costs. For example, statehood would result in the loss of exemption from Federal taxation and national independence would result ultimately in the loss of United States citizenship. Having balanced these interests, the inhabitants should be able to express their preferences.

Second, subsection 4(a)(1) delineates the likely ramifications of independence. This subsection would provide for separate Puerto Rico sovereignty leading to "independence or free association". The clause "independence or free association" is misleading because the Spanish phrase of which "commonwealth" is the translation is "estado libre asociado". Hence, voters might believe that "independence" contains a "commonwealth" option and vote accordingly. This misconception might be deepened by subparagraph (B), which provides for a choice between a treaty or a free-association relationship between the United States and Puerto Rico. Deleting the phrase "or free association" would eliminate this source of possible confusion.

Third, subparagraph 4(a)(1)(D) provides that an independent Puerto Rico would determine and control its own nationality and citizenship. This subparagraph generally would withdraw from the Puerto Rican people United States citizenship based upon birth in a United States territory. However, the subparagraph implies that under some unspecified circumstances, the Congress might permit inhabitants to retain their United States citizenship after independence. This provision should make clear that citizenship implies allegiance and that Puerto Rico would not be truly independent unless the allegiance inherent in United States citizenship is unambiguously replaced by a sole Puerto Rican citizenship for those who remain in Puerto Rico. Cf. Rabang v. Boyd, 353 U.S. 430 (1957).

Fourth, subparagraph (H) would remove Puerto Rico from the customs territory of the United States and provide that the trade between the United States and Puerto Rico would be based on a treaty. At least insofar as the tariff treatment of Puerto Rico is at issue, a separate treaty would be unnecessary. The Congress could address tariff treatment in the legislation implementing independence by granting Puerto Rico treatment under

General Notes 3, 4, 7 or 10 of the Harmonized Tariff Schedules of the United States. For example, the Congress could apply to Puerto Rico the Caribbean Basin Economic Recovery Act (General Note 7) or confer upon it Freely Associated States status (General Note 10).

Fifth, subsection 4(a)(2) delineates the ramifications of statehood but does not state explicitly that even if a majority of the voters of Puerto Rico should vote for the statehood option, there is no requirement that the Congress ultimately admit Puerto Rico as a State. Additionally, the subsection should state expressly that Puerto Rico would become a "State in all respects on an equal footing with the other States".

Sixth, subsection 4(b)(1) provides that after the referendum on political status, a ten-year transition period would follow. Not less than two years before the expiration of the transition stage, *i.e.*, approximately eight years after the status choice referendum, the President would have to submit to the Congress a recommendation for implementing full self-government of Puerto Rico that is consistent with the original ballot choice. On the basis of that recommendation the chairs of the appropriate congressional committees are to introduce legislation that would be governed by the fast track procedures set forth in section 6. The subsection commits the Congress to vote on the implementing legislation but not to adopt it.

We note that H.R. 3024 might produce a result not in accord with the preference of a majority of Puerto Ricans. The Congress might fail to pass the implementing legislation and the ten-year transition period might be for naught. Even if the Congress voted to bestow upon Puerto Rico a status consistent with the expressed preference of its inhabitants, the inhabitants might reject the terms of implementation approved by the Congress. Indeed, the inhabitants might reject the terms solely because of a shift in public preference from one option of full self-government to the other. In any event, section 5(c)(2) of H.R. 3024 would retain the commonwealth status for Puerto Rico. We have serious concerns about a process that fails to give the citizens of Puerto Rico a mechanism to register any changes in their preferences that might have occurred over the ten years since the initial referendum. Substantially reducing the period of time between the initial and second referenda would improve the likelihood that the preferences of inhabitants would remain consistent.

Seventh, subparagraph 4(a)(2)(G) of the bill would require that Puerto Ricans who wish to support statehood in the referendum express support for "adherence to the same language requirement as in the several States." We oppose this provision. In becoming a State, Puerto Rico automatically would become subject to all laws generally applicable to the States.

Therefore, the provision is unnecessary. Moreover, since many of the residents of Puerto Rico speak Spanish as their first language, they might interpret the provision as branding Puerto Rican culture an "alien" culture, to be eliminated rather than incorporated in the event of statehood. This interpretation might skew a referendum vote arbitrarily against statehood.

The Administration is committed to working with Puerto Rico's leaders and with the Congress to develop a process that would enable Puerto Ricans to fulfill their aspirations for self-determination. Such a process would build upon the expressions of those aspirations in the 1993 plebiscite. It would resolve what the options for self-determination should be. It would commit both the United States Government and the Government of Puerto Rico to act in response to the will of a majority of the people of Puerto Rico.

We appreciate the opportunity to share our views on this bill. The Office of Management and Budget has advised that from the standpoint of the Administration's program, there is no objection to the submission of this report.

Sincerely,

Andrew Fois
Assistant Attorney General

cc: George Miller
Ranking Minority Member
Committee on Government Reform and Oversight

Dale E. Kildee
Ranking Minority Member
Subcommittee on Native American and Insular Affairs



**U.S. DEPARTMENT OF STATE
OVERSEAS CITIZENS SERVICES
OFFICE OF POLICY REVIEW & INTERAGENCY LIAISON
FAX NO. (202) 647-0103 TEL NO. (202) 647-3666**

DATE: 5/7/96

TO: ADRIAN SILAS

ORGANIZATION: CA/OCS/PRI

FAX# ~~202 647 0103~~

FROM: MIKE MESZAROS
202 647 1980 PHONE

PHONE: 202 647 0103 FAX

NUMBER OF PAGES 21 (INCLUDING THE FAX SHEET)

COMMENTS: OUR RESPONSE TO CALLEGLY
& LETTER FROM INS.



United States Department of State

Washington, D.C. 20520

Dear Mr. Gallegly:

I am writing in response to your letter of February 21 regarding cases in which U.S. citizen residents of Puerto Rico have recently renounced their U.S. citizenship. We understand your concerns regarding any individual or group of individuals misleading the public regarding citizenship law and immigration status.

The right of a person to expatriate is a long established tenet of the law of the United States. As your letter correctly points out, formal renunciation of citizenship pursuant to Section 349(a)(5) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(5), is one of the ways a citizen may voluntarily expatriate himself. In processing a renunciation case under Section 349(a)(5), a consular officer must ensure that the act of renunciation is voluntary. The consular officer should also stress that the act of renunciation is irrevocable. If a renunciant has any questions about the process, the consular officer will do whatever he or she can to respond to the questions with accurate information. We have attached copies of State Department guidelines on administering renunciations pursuant to Section 349(a)(5), along with copies of the appropriate forms. It is important to note that potential renunciants are counseled to consider carefully the finality of a renunciation.

Please note that one of the attached forms is the Statement of Understanding. All renunciants must read and sign the Statement of Understanding. Statement 3 in the Statement of Understanding asserts that "[u]pon renouncing my citizenship I will become an alien with respect to the United States, subject to all laws and procedures of the United States regarding entry and control of aliens." Statement 6 in the Statement of Understanding asserts "[i]f I do not possess the nationality of any country other than the United States, upon my renunciation I will become a stateless person and may face extreme difficulties in traveling internationally and entering most

The Honorable
Elton Gallegly,
House of Representatives.

FROM :

DAVIS v. DISTRICT DIRECTOR, IMMIGRATION, ETC.

1179

Cite as 481 F.Supp. 1178 (1979)

6. Treaties ⇐ 11

United Nations Charter does not supersede United States law.

7. Aliens ⇐ 1

Any person not a United States citizen or national is classified as an "alien." Immigration and Nationality Act, § 101(a)(3), 8 U.S.C.A. § 1101(a)(3).

8. Aliens ⇐ 1

Individual who expatriated himself by signing an oath of renunciation of American citizenship was an "alien." Immigration and Nationality Act, § 101(a)(3, 22), 8 U.S.C.A. § 1101(a)(3, 22).

9. Citizens ⇐ 10.2

Passport issued by the "World Service Authority" of which the holder was president was not a proper entry document. Immigration and Nationality Act, § 212, 8 U.S.C.A. § 1182.

10. Aliens ⇐ 46

Alien who did not have proper entry document was excludable. Immigration and Nationality Act, § 212(a)(20), 8 U.S.C.A. § 1182(a)(20).

11. Constitutional Law ⇐ 207(1)

Former citizen who had renounced his citizenship was not entitled under the privileges and immunities clause to enter and remain in the United States by virtue of being a citizen of Maine. U.S.C.A. Const. art. 1, § 8, cl. 4; art. 4, § 2.

David Carliner, Carliner & Gordon, Washington, D.C., for plaintiff.

Eric A. Fisher, U. S. Dept. of Justice, Washington, D.C., for defendant.

MEMORANDUM OPINION & ORDER

FLANNERY, District Judge.

This case presents the issue whether a native born American may renounce primary allegiance to the United States and still retain rights to enter and remain in this country without a proper visa. Petitioner Garry Davis brings this suit in the form of a writ of habeas corpus. The peti-

tioner seeks the writ to relieve him of the restraint and custody imposed by the Immigration and Naturalization Service ("INS"). The Board of Immigration Appeals on May 24, 1978 voted to exclude and deport the petitioner.

The petitioner is a native of the United States and served as a bomber pilot during World War II. On May 25, 1948, he voluntarily signed an oath of renunciation of United States nationality at the American Embassy in Paris, France.

The petitioner executed the oath in conformity with then Section 401(f) of the Nationality Act. Now codified at 8 U.S.C. § 1481(a)(5), this section allows a native born American to voluntarily renounce United States citizenship. The statute reads the same today as in 1948:

(a) . . . a person who is a national of the United States whether by birth or naturalization, shall lose his nationality by—

(5) making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State

The petitioner signed the oath of renunciation before the United States Consul. The oath of renunciation included the statement:

I desire to make a formal renunciation of my American nationality, as provided by Section 401(f) of the Nationality Act of 1940, and pursuant thereto I hereby absolutely and entirely renounce my nationality in the United States, and all rights and privileges thereunder pertaining and abjure all allegiance and fidelity to the United States of America.

The petitioner, on May 25, 1948, also filed a statement of his beliefs with the United States Consul in Paris. The relevant portion of this statement, which forms the basis of one of petitioner's legal arguments, reads as follows:

I no longer find it compatible with my inner convictions . . . by remaining

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FROM :

solely loyal to one of these sovereign nation-states. I must extend the little sovereignty I possess, as a member of the world community, to the whole community, and to the international vacuum of its government . . . I should like to consider myself a citizen of the world.

The United States Consul issued the petitioner a Certificate of Loss of Nationality of the United States on May 25, 1948. Petitioner henceforth devoted his time and energy toward the establishment of world government and the furtherance of world citizenship. He frequently travels abroad to promote these principles and goals. He has at various times entered the United States on a permanent resident alien or on a visitor's visa.

On May 13, 1977, the petitioner attempted to enter the United States on a passport issued by the "World Service Authority", an organization formed to promote world citizenship. The Immigration and Naturalization Service conducted an exclusion hearing four days later, on May 17, 1977. The petitioner stated at the hearing that "I am the president and the chairman of the Board of an organization called the World Service Authority." The administrative law judge found the petitioner deportable. The Board of Immigration Appeals affirmed this decision on May 24, 1978. The Board, relying on 8 U.S.C. § 1182(a)(20), found the petitioner excludable because he lacked a valid document of entry. The petitioner filed the instant writ of habeas corpus on July 19, 1979.

The petitioner contends that he never expatriated himself. He alleges that the statement of beliefs he filed with the United States Embassy creates sufficient ambiguity to preclude renunciation of citizenship. The petitioner secondly argues that renunciation of citizenship requires the acquisition of another nationality. Finally, the petitioner alleges that Article 13(2) of the Universal Declaration of Human Rights, providing that "everyone has the

right . . . to return to his country," requires the INS to allow the petitioner to enter and remain in the United States without any immigration papers.

The Immigration and Naturalization Service argues that the petitioner is neither a citizen nor a national of the United States. He therefore qualifies only as an alien who must be excluded under 8 U.S.C. § 1182(a)(20). This statute requires exclusion if a person does not possess a "valid unexpired immigration visa." The court agrees with the INS and will order the dismissal of the habeas petition.

I. PETITIONER LACKS THE STATUS OF A UNITED STATES CITIZEN

[1] 8 U.S.C. § 1481(a) codifies a long standing though little recognized principle of the United States: the right of expatriation. This principle establishes the libertarian concept that a citizen may voluntarily surrender his citizenship along with the panoply of rights and obligations that attach thereto. Federal statutory law sets forth numerous avenues by which a United States citizen may voluntarily expatriate himself.¹ Federal courts require only voluntariness and sometimes intent to uphold the validity of the expatriating act.

A. Petitioner's Intent Was Unambiguous

The petitioner alleges that his statement of beliefs, submitted on the same day he signed his oath of renunciation, creates ambiguity whether expatriation occurred. If factually correct, then the intent of the petitioner is open to question.

Whether subjective intent is a prerequisite to expatriation is an unresolved issue. Until the decision of *Afroyim v. Rusk*, 387 U.S. 253, 87 S.Ct. 1660, 18 L.Ed.2d 757 (1967), the Supreme Court consistently held that objective proof of the voluntary act

are independently self-executing; a citizen satisfying the provisions of one subsection may be expatriated pursuant to that provision.

1. Each subdivision under 8 U.S.C. § 1481(a) represents a separate and independent process that leads to expatriation. These subdivisions

was enough; voluntarily may be inquiry in inquiry of the is conceivable to relinquish may object act enumerated

A voluntary clear statement of intent under 8 U.S.C. & H. Rosen procedure § (subjective to some extent" to citizenship) the petitioner by suggests ambiguous occurred. affirm the not intend therefore

[2] Constitution, the effect the May 25 petitioner found. That the petitioner as a United the petitioner remain States; ins sovereignty world comm

2. See, e.g., 136, 78 S.Ct. ("Unless Government: the object: *Brownell*, 3 L.Ed.2d 603 of citizenship engaged in States, 336

DAVIS v. DISTRICT DIRECTOR, IMMIGRATION, ETC.

Cite as 481 F.Supp. 1178 (1979)

was enough to surrender citizenship.² The voluntariness concept espoused in *Afroyim* may be read, however, to encompass an inquiry into subjective intent.³ Such an inquiry could be determinative of the validity of the expatriating act. For example, it is conceivable that a person may not intend to relinquish United States citizenship yet may objectively perform an expatriating act enumerated in 8 U.S.C. § 1481(a).

A voluntary oath of renunciation is a clear statement of desire to relinquish United States citizenship; therefore, the question of intent would normally not arise under 8 U.S.C. § 1481(a)(5). See 3 C. Gordon & H. Rosenfield, *Immigration Law and Procedure* § 201.10b at 20-62, 78 (1979 ed.)

(subjective intent, though perhaps relevant to some methods of expatriation, "irrelevant" to formal renunciation of American citizenship). In the instant case, however, the petitioner has raised the issue of intent by suggesting his statement of beliefs creates ambiguity over whether expatriation occurred. The court would be reluctant to affirm the expatriation of a person who did not intend to relinquish citizenship. We therefore address the question of intent.

[2] Contrary to the petitioner's allegation, the court recognizes no ambiguity in the May 25, 1948 statement of beliefs the petitioner filed with the United States Consul. That statement leaves little doubt that the petitioner sought to relinquish his rights as a United States citizen. According to the petitioner's statement, he could no longer remain "solely loyal" to the United States; instead, "I must extend the little sovereignty I possess, as a member of the world community, to the whole community

The statement of beliefs was devoid of any language recognizing a continued primary allegiance to the United States. Rather, the petitioner renounced his claim of sovereignty to any specific nation. His primary loyalty, according to his own language, belongs to "the world community." The court finds that language renouncing primary loyalty to the United States and affirming primary allegiance to a world community complements, rather than conflicts with, a formal oath of renunciation of citizenship. The statement of beliefs therefore creates no ambiguity; it supplements the petitioner's clear intent to renounce United States citizenship.

B. Petitioner's Renunciation Was Voluntary

Voluntariness is uniformly recognized as a requirement toward upholding the validity of an expatriating act. The Supreme Court accordingly has reversed the expatriation of an American involuntarily conscripted into the Japanese Army, *Nishikawa v. Dulles*, 356 U.S. 129, 138, 78 S.Ct. 612, 2 L.Ed.2d 659 (1958), reversed expatriation based solely on a conviction for military desertion absent a voluntary desire to renounce citizenship, *Trop v. Dulles*, 356 U.S. 86, 92-93, 78 S.Ct. 590, 2 L.Ed.2d 630 (1958), and reversed the expatriation of a person who voted in a foreign election but who did not voluntarily relinquish citizenship. *Afroyim v. Rusk*, 387 U.S. 253, 268, 87 S.Ct. 1660, 18 L.Ed.2d 757 (1967). The Court recognized in *Afroyim* "that the only way the citizenship it [Congress] conferred could be lost was by the voluntary renunciation or abandonment by the citizen himself." *Id.* at 266, 87 S.Ct. at 1667.

287 (1950) (voluntariness, despite contrary intent, sufficient to uphold expatriation).

3. See *United States v. Matheson*, 532 F.2d 809, 814 (2d Cir.) (interprets *Afroyim* to require subjective intent), cert. denied, 429 U.S. 823, 97 S.Ct. 75, 50 L.Ed.2d 185 (1976); 42 Op. Atty. Gen. 397 (1969) (*Afroyim* leaves open to individual petitioner whether to raise issue of intent).

2. See, e.g., *Nishikawa v. Dulles*, 356 U.S. 129, 138, 78 S.Ct. 612, 617, 2 L.Ed.2d 659 (1958) ("Unless voluntariness is put in issue, the Government makes its case simply by proving the objective expatriating act."); *Perez v. Brownell*, 356 U.S. 44, 61, 78 S.Ct. 568, 577, 2 L.Ed.2d 603 (1958) ("Congress can attach loss of citizenship only as a consequence of conduct engaged in voluntarily"); *Savorgnan v. United States*, 338 U.S. 491, 502, 70 S.Ct. 292, 94 L.Ed.

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[3] Voluntariness was never at issue in the instant case. The petitioner independently and without duress renounced his citizenship by signing an oath of renunciation on May 25, 1948. The court therefore finds that the petitioner's voluntary and unambiguous renunciation meets the strictures of 8 U.S.C. § 1481(a)(5).

This finding necessitates a ruling that the petitioner expatriated himself. In many circumstances, a finding of voluntariness alone would be sufficient to uphold the act of expatriation.⁴ In the instant case, as explained above, it was also incumbent upon the court to examine intent. Having scrutinized these elements of expatriation, and having found that the petitioner's intent was unambiguous and the petitioner's renunciation was voluntary, the court rules the petitioner no longer qualifies as a United States citizen.

C. Renunciation of Citizenship Does Not Require Acquisition of Another Nationality

[4] The Oath of Renunciation recited by the petitioner, as applied to the applicable federal law, revoked the petitioner's citizenship. 8 U.S.C. § 1481(a)(5) does not require allegiance to another nation; it only requires renunciation of United States nationality.

The framework of 8 U.S.C. § 1481(a) reinforces the plain meaning of the statute. 8 U.S.C. § 1481(a)(1) provides that an American national can lose his nationality by declaring allegiance to a foreign state, whereas 8 U.S.C. § 1481(a)(5) provides a separate category for those who renounce United States nationality. By creating two separate categories—one for the acquisition of a foreign nationality and one for the renunciation

4. These circumstances occur when intent is not at issue. The question of intent will seldom be raised in adjudicating several types of expatriation. See 3 C. Gordon & H. Rosenfield, *Immigration Law & Procedure* § 20.8b at 20-61-62 (1979 ed.) (subjective intent normally irrelevant to expatriation based on acquisition of another nationality and voluntary renunciation of citizenship). In these cases, the court need only examine voluntariness. However, where, as

in *Jolley v. Immigration and Naturalization Service*, 441 F.2d 1245 (5th Cir.), cert. denied, 404 U.S. 946, 92 S.Ct. 302, 30 L.Ed.2d 262 (1971), the petitioner executed a formal renunciation of citizenship before a United States Consul in Canada. *Id.* at 1249. The petitioner subsequently returned to the United States without a visa. In affirming the INS's deportation order, the Fifth Circuit recognized that Jolley's oath of renunciation alone was enough to deprive him of citizenship:

The imposition of statelessness upon the petitioner cannot deter this court from the requirements of the federal nationality law.⁶ The Supreme Court recognized that expatriation may result in statelessness in *Afroyim v. Rusk*, supra. In *Afroyim* the Court declared that "[i]n some instances, loss of citizenship can mean that a man is left without the protection of citizenship in any country in the world—as a man without a country." 887 U.S. at 268, 87 S.Ct. at 1668.

Expatriation previously resulted in statelessness in *Jolley v. Immigration and Naturalization Service*, 441 F.2d 1245 (5th Cir.), cert. denied, 404 U.S. 946, 92 S.Ct. 302, 30 L.Ed.2d 262 (1971). In *Jolley*, the petitioner executed a formal renunciation of citizenship before a United States Consul in Canada. *Id.* at 1249. The petitioner subsequently returned to the United States without a visa. In affirming the INS's deportation order, the Fifth Circuit recognized that Jolley's oath of renunciation alone was enough to deprive him of citizenship:

Recognizing that a citizen has a right to renounce his citizenship, Congress has provided in 8 U.S.C. § 1481(a)(6) [now (5)] formal procedures for doing so. Jolley's renunciation satisfied these procedures. *Id.* at 1249 n. 6; see also *id.* at 1259 (Rives, J., dissenting) (dissents because unclear if petitioner intended to become stateless person). *Jolley* thus demonstrates that expatriation, effectuated pursuant to 8 U.S.C. § 1481(a)(5), requires only the renunciation of United States citizenship, and not the acquisition of a foreign nationality.

here, the question of intent is raised by the petitioner, we believe it is appropriate to examine intent.

5. "[T]he citizen's voluntary abandonment of his citizenship apparently will be effectuated if accomplished in compliance with law, even though statelessness may result." Gordon, *The Citizen and the State*, 53 *Geo. L.J.* 315, 360-61 (1965).

[5, 6] Final cognizant that ed consequenc 1948 actions at The petitioner cated that rat al to one sove consider myse an interview 1977, the pet no nationality 1948 in Pari World Citize tively sought ever harshne is therefore case.⁷

II. PETITIONER'S REQUEST FOR GRATUITOUS REMAINDER

[7] Any citizen or nation U.S.C. § 11 Rosenfield, procedure § 2.3d tioner's vol him of citizen of a United

[8] The court concludes that petitioner's voluntary relinquishment of citizenship under 8 U.S.C. § 1481(a)(5) is a formal renunciation.

6. This finding in *Jolley* is because, if petitioner were stateless, the petitioner would be a citizen of no country.

7. The petitioner's request for the United States to require the petitioner to uphold the Universal Declaration of Human Rights is well within the Charter of the United Nations. See, e.g., *Jolley v. Immigration and Naturalization Service*, 441 F.2d 1245 (5th Cir. 1971), cert. denied, 404 U.S. 946 (1965); *Jolley v. Immigration and Naturalization Service*, 53 *Geo. L.J.* 315, 360-61 (1965).

Cite as 481 F.Supp. 1178 (1979)

[5, 6] Finally, the court must remain cognizant that statelessness was the intended consequence of the petitioner's May 24, 1948 actions at the United States Embassy.⁶ The petitioner's statement of beliefs explicated that rather than remaining solely loyal to one sovereign state, "I would like to consider myself a citizen of the world." In an interview with INS officials on May 13, 1977, the petitioner affirmed that "I have no nationality. I renounced my nationality 1948 in Paris, France . . . I am a World Citizen." The petitioner affirmatively sought his stateless existence. Whatever harshness may attach to statelessness is therefore inapplicable to the instant case.⁷

II. PETITIONER IS AN ALIEN AND THUS REQUIRES PROPER IMMIGRATION PAPERS TO ENTER AND REMAIN IN THE UNITED STATES

[7] Any person not a United States citizen or national is classified as an alien. 8 U.S.C. § 1101(a)(3); see C. Gordon & H. Rosenfield, 1 *Immigration Law and Procedure* § 2.3d at 2-22 (1979 ed.). The petitioner's voluntary expatriation deprived him of citizenship. He also lacks the status of a United States national.

[8] The Section of the expatriation statute that allowed the petitioner to voluntarily relinquish citizenship, 8 U.S.C. § 1481(a)(5), speaks in terms of "making a formal renunciation of *nationality* before a

6. This finding answers the objection raised in the *Jolley* dissent. Judge Rives dissented there because, *inter alia*, he was unsure whether the petitioner intended statelessness. Herein, statelessness was the calculated result of the petitioner's actions.

7. The petitioner's contention that Article 15 of the Universal Declaration of Human Rights requires the acquisition of another nationality to uphold expatriation is without merit. The Universal Declaration of Human Rights is a United Nations Document. 3 U.N.Doc. a/810 (1948). It is well established that the United Nations Charter does not supersede United States law. See, e. g., *Hitai v. Immigration and Naturalization Service*, 343 F.2d 466, 468 (2d Cir.), cert. denied, 382 U.S. 816, 86 S.Ct. 36, 15 L.Ed.2d 63 (1965); *Vlissidis v. Anadell*, 262 F.2d 398, 400 (7th Cir. 1959).

diplomatic or consular officer . . ." (emphasis added). Moreover, 8 U.S.C. § 1101(a)(22) defines a national as either a citizen or a person who owes permanent allegiance to the United States. The petitioner's expatriation deprives him of citizenship; his oath of renunciation stated that "I . . . abjure all allegiance and fidelity to the United States of America." The petitioner is therefore an alien by virtue of lacking the status of a citizen or national.

An alien must possess a proper entry document upon entering the United States. 8 U.S.C. § 1182(a)(20) provides:

. . . any immigrant who at the time of application for admission is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this chapter [is excludable].

[9-11] The petitioner's World Service Authority Passport fails to qualify as one of the documents required by 8 U.S.C. § 1182. The Board of Immigration Appeals thus properly found the petitioner excludable. We therefore affirm that ruling and order the dismissal of this habeas petition. Because the petitioner has close relations in the United States who may apply on his behalf for a visa, the petitioner may remain in this country by merely assenting to permanent resident alien status.⁸

The petitioner's argument based on Article 13(2) of the Universal Declaration of Human Rights fails for the same reason.

8. The petitioner raised for the first time at oral argument the theory that the Privileges and Immunities Clause of the Constitution, Article IV, Section 2, allows the petitioner to enter and remain in the United States by virtue of being a citizen of Maine. This argument, though novel, fails to take account of Congressional power to establish nationality laws.

The Privileges and Immunities clause of Article IV, Section 2, serves to prevent one state from discriminating against another state. Article I, Section 8 of the Constitution establishes that "Congress shall have power . . . To establish an uniform Rule of Naturalization." This Constitutional mandate empowers Congress to define "the processes through which

FROM :

The court in no way wishes to deprecate the honesty of belief or depth of conviction that the petitioner feels for the cause of world citizenship. This opinion fails to prevent the petitioner or any other person from continuing to work for world peace through the vehicle of world citizenship and world government. Any person who desires to pursue this goal while residing in the United States, however, must obey this nation's immigration and naturalization laws. We therefore only hold that if a person intentionally and voluntarily renounces United States citizenship, then such person must obtain proper visa certification to enter and remain in the United States.



SK&F CO., Plaintiff.

v.

PREMO PHARMACEUTICAL LABORATORIES, INC., Defendant.

Civ. A. No. 79-3434.

United States District Court,
D. New Jersey.

Dec. 19, 1979.

Drug manufacturer brought action seeking to enjoin defendant manufacturer from distributing allegedly generic equivalent of plaintiff's drug in trade dress which concededly imitated as closely as possible capsule trade dress of plaintiff's drug. The District Court, Biunno, J., held that: (1)

citizenship is acquired or lost," to determine "the criteria by which citizenship is judged," and to fix "the consequences citizenship or noncitizenship entail." L. Tribe, *American Constitutional Law* 277 (1978).

These two constitutional provisions are not in conflict: a state may not discriminate against a citizen of another state, by, for example, restricting travel or access, but Congress

injunction would be granted, where plaintiff established strong case for ultimate success on merits, damage was irreparable, not only as to plaintiff, but as to potentially large class of unidentifiable individual patients using drug in question, balancing of equities between parties favored immediate injunctive relief pending final hearing, and public interest required that if substitutions were allowed by law their trade dress should be as different as possible from that of prescribed brand, so as to provide patient with reasonable basis for informed consent to accept substitute, and (2) injunction would not be stayed pending appeal, where there should not be one patient exposed to risk of being harmed by a generic substitution of which patient was given no fair basis for informed consent, and there was uncontradicted evidence indicating financial inability of defendant to pay damages, not only in instant action but in number of others which were pending in various courts.

Ordered accordingly.

1. Trade Regulation §44

Proposition that no one can obtain a monopoly in a color or combination of colors may be true in a general sense, but it does not follow that composite of a specific trade dress may be copied with impunity merely because one of the features happens to be color.

2. Trade Regulation §413

Trade dress is a complex composite of features, including, among other things, size, color or color combinations, texture, graphics and arrangement, and trade dress is a term reflecting overall general impact, usually visual, but sometimes also tactile, of all these features taken together, and law

has the power to determine the standards by which a person lacking the status of United States citizen shall enter and remain in the United States. Because Congress has determined that an alien must possess a proper document of entry to enter and remain in this country, the petitioner must either obtain a proper visa or be subjected to deportation.

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United States Department of State

Washington, D.C. 20520

February 13, 1996

Jose Rodriguez-Suarez
Deputy Secretary for External Affairs
Government of Puerto Rico
P.O. Box 3274
San Juan, Puerto Rico 00902-3274

Dear Mr. Rodriguez-Suarez:

This correspondence is a response to your letter of December 7, 1995. In that letter you asked that our office determine the citizenship status of Mr. Juan Mari Bras. Mr. Bras formally renounced his U.S. nationality on July 11, 1994, under Section 349(a)(5) of the Immigration and Nationality Act (INA). On November 22, 1995, a certificate of loss of nationality was approved in his name under Section 358 of the INA.

Due to the above renunciation, Mr. Mari Bras is not a U.S. citizen. Moreover, Mr. Mari Bras cannot assert that he is a citizen of an individual state, territory or commonwealth of the United States. In Davis v. INS., 481 F. Supp. 1178 (1979), it was held that a U.S. citizen who had renounced his U.S. nationality was not entitled to enter the U.S. as a citizen of his former state.

The Foraker Act, which is quoted by Mr. Mari Bras, deemed that "all inhabitants of Puerto Rico who had not declared allegiance to Spain were citizens of Puerto Rico and entitled to the protection of the United States." The Jones Act of 1917 extended U.S. nationality to inhabitants of Puerto Rico. The citizenship provisions of the Foraker Act and the Jones Act were superceded by Section 202 of the Nationality Act of 1940. The citizenship of Puerto Rico provisions of the Foraker Act have no legal effect today.

Mr. Bras is an attorney and was clearly aware of the above facts. Moreover, when he renounced his U.S. citizenship, he knew, having signed a Statement of Understanding, that if he did not possess another nationality or could shortly acquire one, that he would be rendered stateless.

If you have further questions, please do not hesitate to contact me at (202) 647-3666.

Sincerely yours,



Carmen A. DiPlacido
Director
Office of Policy Review
and Interagency Liaison



U.S. Department of Justice
Immigration and Naturalization Service

to
C.D. Place
for
response

HQ 70/40-P

Office of the General Counsel

425 1 Street, N.W.
Washington, D.C. 20536

MAR 27 1996

The Honorable Mary A. Ryan
Assistant Secretary of State
Bureau of Consular Affairs
United States Department of State
2201 C Street NW Suite 6811
Washington, DC 20520-4818

RE: Juan Mari Bras
Born December 2, 1927, Mayaguez, PR

Madame Secretary:

On November 27, 1995, your Department approved a certificate of loss of nationality relating to Juan Mari Bras, a citizen of the United States by virtue of his birth in Puerto Rico. See Immigration and Nationality Act § 358, 8 U.S.C. § 1501. The certificate is based on Mr. Mari Bras' having taken the requisite renunciatory oath on July 11, 1994, before the United States Consul in Caracas, Venezuela. Approval of this certificate is "a final administrative determination of loss of United States nationality . . . subject to such procedures for administrative appeal as the Secretary may prescribe." *Id.* We respectfully ask for a reconsideration of the approval of this certificate of loss of nationality, 22 C.F.R. § 7.2(b), and for a determination that Mr. Mari Bras did not expatriate.

Performance of an expatriating act, without more, is not enough to effect expatriation. The person must have performed the act "with the intention of relinquishing United States nationality." INA § 349(a), 8 U.S.C. § 1481(a). In seeking the loss of nationality certificate, Mr. Mari Bras bore the burden of proving an extent to expatriate "by a preponderance of the evidence." *Id.* § 349(b), 8 U.S.C. § 1481(b). Ordinarily, we agree, voluntarily taking an oath of renunciation would be enough to prove this intention. See *Vance v. Terrazas*, 444 U.S. 252 (1980). Given the particular circumstances of Mr. Mari Bras' case, however, we do not think his taking of the oath of renunciation was sufficient.

Mr. Mari Bras has been quoted as claiming that his renunciation of nationality has had no effect on his status as a citizen of Puerto Rico. See, e.g., J. Ghigliotty, "U.S. Certifies Mari Bras' Loss of Nationality," *The San Juan Star*, December 5, 1995, at 3. It appears that he and others in the Puerto Rican independence movement believe that section 7 of the Foraker Act, Act of April 12, 1900, ch. 191, § 7, 31 Stat. 77, 79 (1900), provides for a Puerto Rican citizenship that does not

depend on United States nationality. Section 7 of the Foraker Act, codified as 48 U.S.C. § 733, provides that:

[a]ll inhabitants continuing to reside in Puerto Rico who were Spanish subjects on the 11th day of April 1899, and then resided in Puerto Rico, and their children born subsequent thereto, shall be deemed and held to be citizens of Puerto Rico, and as such entitled to the protection of the United States, except such as shall have elected to preserve their allegiance to the Crown of Spain on or before the 11th day of April 1900, in accordance with the provisions of the treaty of peace between the United States and Spain entered into on the 11th day of April 1899.

48 U.S.C. § 733. In 1917, Congress extend United States citizenship to persons who acquired Puerto Rican citizenship under section 733, unless they elected by September 2, 1917, not to become United States citizens. Act of March 2, 1917, ch. 145, § 5, 39 Stat. 951, 953 (1917). The 1917 Act also extended to Puerto Rico all Federal statutory law, other than revenue laws and other laws "not locally applicable." *Id.* § 9, 39 Stat. at 954. After the 1917 Act entered into force, those born in Puerto Rico subject to the jurisdiction of the United States were United States citizens from birth. Rev. Stat. § 1992 (1878); *cf.* INA § 302, 8 U.S.C. § 1402. Only United States citizens may hold public office in Puerto Rico. 48 U.S.C. § 874. It does not appear, however, that Congress has ever repealed 48 U.S.C. § 733.

Mr. Mari Bras and his colleagues are, simply, mistaken about the effect of 48 U.S.C. § 733. This statute did not create a Puerto Rican citizenship that is independent of United States nationality. Rather, 48 U.S.C. § 733 extended to Puerto Ricans the status of non-citizen nationals of the United States. *Gonzales v. Williams*, 192 U.S. 1 (1904). Once section 733 took effect, those subject to its terms owed permanent allegiance to the United States. *Id.* at 9. "The nationality of the island became American," as did the nationality of any residents who did not explicitly choose to remain Spanish subjects. *Id.* at 10; *cf.* *Memorandum for the Secretary of the Treasury*, 24 Op. Atty. Gen. 40 (1902). Note that Ms. Gonzales sought to enter the United States through a port of entry in New York, not in Puerto Rico. 192 U.S. at 7. Consequently, the *Gonzales* opinion makes it clear that "Puerto Rican citizenship" is a species of United States nationality, not some separate legal genus.

All citizens of Puerto Rico are *necessarily* United States nationals. The oath of renunciation results in the loss, not only of United States citizenship, but of United States nationality. INA §§ 349(a) and 358, 8 U.S.C. §§ 1481(a) and 1501. The INA does provide a means by which non-citizen nationals may become citizens. *Id.* § 325, 8 U.S.C. § 1436. But there is no way under the law by which a United States citizen may surrender United States citizenship, while retaining United States nationality. *Santori v. United States*, No. 94-1164 (1st Cir. June 28, 1994), 1994 WESTLAW 362,221.

If Mr. Mari Bras had known that expatriation as a United States national would extinguish his Puerto Rican citizenship as well, then we would agree that approval of the loss of nationality certificate was proper. He did indicate an understanding that he would "become an alien" upon

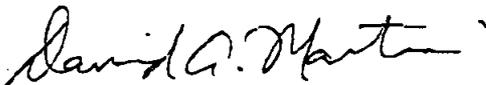
renunciation. Statement of Understanding at 3. An alien, by definition, is neither a citizen nor a national of the United States. INA § 101(a)(3), 8 U.S.C. § 1101(a)(3). But it appears that he honestly, though mistakenly, believed that he could give up United States citizenship, but retain Puerto Rican citizenship. The papers that accompany the certificate of loss of nationality, arguably, reflect this ambiguity. Mr. Mari Bras signed an oath declaring:

... I hereby absolutely and entirely renounce my United States *nationality* together with all rights and privileges and duties of allegiance and fidelity thereunto pertaining.

"Oath of Renunciation of the Nationality of the United States," (*emphasis added*). Yet the accompanying Statement of Understanding refers, repeatedly, to renunciation of *citizenship*, rather than *nationality*. Since we would not lightly find that a United States national has given up his birthright, we believe that the preponderance of the evidence would not show that Mr. Mari Bras intended to do so.

Please reconsider this case. We understand that Mr. Mari Bras has returned to Puerto Rico. The certificate of loss of nationality shows an address for him in Mayaguez, PR. If the Service can assist your reconsideration in any way, such as by questioning Mr. Mari Bras under oath, please let us know.

Sincerely,



David A. Martin
General Counsel

-2-

countries." Thus, all renunciants should be well aware of the possibility of being rendered stateless.

In your correspondence, you make the point that the State Department makes its determination upon finding that the renunciation was voluntary. Due to the fact that U.S. citizens have a right to renounce, consular officers do not inquire about the reasons for renunciation. However, a person may append his reasons in a supplemental statement which is included with the Oath of Renunciation and the Statement of Understanding. The renunciant's belief that he has another citizenship, even if it is not well founded, cannot deter the consular officer from carrying out his statutory responsibilities. However, if a potential renunciant raises an issue that indicates a faulty understanding of the relevant law, such as becoming a Puerto Rican citizen after renunciation, we would correct that view. For your information, please find attached a copy of the case Davis v. INS, 481 F. Supp. 1178 (1979). which addresses many of the legal issues presented by the recent renunciations of U.S. citizen residents of Puerto Rico.

To the best of the Department's knowledge, our officers are applying the governing laws and regulations correctly and consistently with respect to Puerto Rican residents (and persons born in Puerto Rico) who wish to renounce their U.S. citizenship. In addition, we are, where appropriate, seeking to dispel misconceptions about U.S. immigration law and regulations. We will, consistent with your concerns, pay particular attention to Puerto Rican residents (and persons born in Puerto Rico) who wish to renounce their U.S. citizenship.

For your information, please find attached our correspondence with Jose Rodriguez-Suarez, the Deputy Secretary for External Affairs of the Government of Puerto Rico. This is the only correspondence between the State Department and the Government of Puerto Rico on this issue. Please note that the INS concurred in the views expressed in that letter.

-3-

If you have further questions, please contact Carmen DiPlacido in the Office of Policy Review and Interagency Liaison at (202) 647-3666.

Sincerely,

Barbara Larkin
Acting Assistant Secretary
Legislative Affairs

Enclosures:

1. Oath of Renunciation, Statement of Understanding and State Department Guidelines on Renunciation of Citizenship.
2. The case Davis v. INS.
3. Correspondence with Jose Rodriguez-Suarez, the Deputy Secretary for External Affairs of the Government of Puerto Rico.

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RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Sample of the Oath of Renunciation

[001]

OATH OF RENUNCIATION OF THE NATIONALITY
OF THE UNITED STATES

(This form has been prescribed by the Secretary of State pursuant to Section 349(a)(5) of the Immigration and Nationality Act, 66 Stat. 268, as amended by Public Law 95-432, October 10, 1978, 92 Stat. 1046.)

Consulate General of the United States of America at
Toronto, Canada , ss:

I, John J. LaSalle , a national of the United States.
(Name)
solemnly swear that I was born at Denver ,
(City or town)
Colorado , on P6/(b)(6) .
(Province or country) (State or country) (Date)

That I formerly resided in the United States at 133 King Street
(Street)
Denver, Colorado .
(City) (State)

That I am a national of the United States by virtue of
birth in the United States
(If a national by birth in the United States, or abroad, so state; if
naturalized, give the name and place of the court in the United States before
which naturalization was granted and the date of such naturalization.)

That I desire to make a formal renunciation of my American
nationality, as provided by section 349(a)(5) of the Immigration and
Nationality Act and pursuant thereto I hereby absolutely and entirely
~~without mental reservation, coercion or duress,~~ renounce my United
States nationality together with all rights and privileges and all
duties of allegiance and fidelity thereunto pertaining.

John J. LaSalle
(Signature)

Subscribed and sworn to before me this 12th day of May ,
1983, in the American Consulate General at Toronto, Canada.

George J. Sanders
(Signature of officer)

SEAL

George J. Sanders
(Typed name of officer)

Consul of the United States of America
(Title of officer)

Sample of a Statement of Understanding — ContinuedCONSULAR OFFICER'S ATTESTATION

John J. LaSalle appeared personally and (read, had read to him)
 (Name) (Circle one verb)

this Statement after my explanation of its meaning and the consequences of renunciation of United States citizenship and signed this Statement (under oath, by affirmation) before me this
 (Circle one)

12th day of May 1983
 (Day of month) (Month) (Year)

Seal

George J. Sanders
 (V/V) Consul of the United States of America

WITNESSES' ATTESTATION

The undersigned persons certify that they witnessed the personal appearance of John J. LaSalle before the consular officer
 (Name)

George J. Sanders, who explained the seriousness and
 (Name)

consequences of renunciation of United States citizenship and the meaning of the attached Statement of Understanding, after which this Statement was signed (under oath, by affirmation) before the named
 (Circle one)

consular officer and undersigned witnesses this 12th day of
 (Day of month)

May 1983
 (Month) (Year)

Richard B. Roebuck
 Witness Richard B. Roebuck 650 Elm St., Toronto, Canada
 (Full name) (Complete address)

Susan Adams
 Witness Susan Adams 3012 Maple St., Toronto, Canada
 (Full name) (Complete address)

FROM :

Sample of a Statement of Understanding — Continued

7. The extremely serious and irrevocable nature of the act of renunciation has been explained to me by (N/A) Consul George J. Sanders (Name)

at the American Consulate General at
(Fill in rank of post)

Toronto, and I fully understand its consequences.
(City)

I (do not) choose to make a separate written explanation of my reasons for renouncing my United States citizenship. I

(swear, affirm) that I have (read, had read to me) this Statement
(Circle one verb) (Circle one verb)

in the English language and fully understand its
(Name the language)

contents.

John J. LaSalle
(Signature)

John J. LaSalle
(Renunciant's typed name)

Sample of a Statement of UnderstandingSTATEMENT OF UNDERSTANDING

I, John J. LaBalle, understand that:
(Name)

1. I have a right to renounce my United States citizenship.
2. I am exercising my right of renunciation freely and voluntarily without any force, compulsion, or undue influence placed upon me by any person.
3. Upon renouncing my citizenship I will become an alien with respect to the United States, subject to all the laws and procedures of the United States regarding entry and control of aliens.
4. My renunciation may not affect my military or Selective Service status, if any, and may not exempt me from income taxation. I understand that any problems in these areas must be resolved with the appropriate agencies.
5. My renunciation may not affect my liability, if any, to prosecution for any crimes which I may have committed or may commit in the future which violate United States law.
6. If I do not possess the nationality of any country other than the United States, upon my renunciation I will become a stateless person and may face extreme difficulties in traveling internationally and entering most countries.

7. If I am found to be deportable by a foreign country, my renunciation may not prevent my involuntary return to the U.S.
per 87 Stat 386507.

m. Execution and Disposition of
Oath of Renunciation

Execute the form in quadruplicate; send the original and two copies to the Department and retain the fourth copy at the post. When formal renunciations of United States nationality are submitted to the Department, they must be accompanied by an appropriate certificate attesting to the loss of United States nationality by the renunciant and the original Statement of Understanding. * That Statement should not be noted in paragraphs 8 or 9 of the certificate of loss of nationality. * (See section 224.2.)

It should be noted that expatriation does not depend upon approval of the certificate. If the oath of renunciation is in the form approved by the Secretary and it is taken voluntarily by a mentally competent person, expatriation occurs at the time of renunciation. Approval of the Certificate of Loss of United States Nationality, indicated by a stamp endorsement signed by an officer of the Passport Office, will establish for the record the validity of the renunciation and that it was executed in the form prescribed by the Secretary of State. A copy of the oath of renunciation and a copy of the approved Certificate of Loss of Nationality showing the date of approval will be returned to the post. That copy of the oath of renunciation and the approved certificate of loss, together with the copy of the Statement of Understanding retained at the post, shall be forwarded to the renunciant. Destroy the fourth copy of the Oath and the Certificate retained by the post and note the action taken on the subject's form FS-558, Passport and Nationality Card.

*n. Passport to be Forwarded to Department

At the time renunciation is effected, the United States passport of the renunciant shall be taken up and a receipt given for the passport. Forward the passport to the Department with the documents noted above. *

o. Affidavit of Expatriation Not Required

The affidavit of the expatriated person referred to in section 224.4 is not required when nationality is lost under section 349(a)(6) of the Immigration and Nationality Act.

p. Fees Chargeable

The services set forth in the above-quoted regulations are performed gratis under Item 58(a) of the Tariff of Fees, Foreign Service of the United States of American.

1178

481 FEDERAL SUPPLEMENT

Accordingly, it is

ORDERED (1) that plaintiffs' motions for civil contempt should be and are hereby granted. It is further

ORDERED (2) that on or before January 14, 1980, counsel shall convene an across-the-table conference to determine whether this Court should seek the views of the Secretary of the Department of Health and Welfare as either a party or as an *amicus* to assist it in designing an appropriate remedy consistent with the order granting plaintiffs' motions for contempt. It is further

ORDERED (3) that the Clerk shall forward a copy of this opinion to the Honorable Patricia Harris, Secretary of the Department of Health and Welfare, in order that she may communicate any views which that Department may have to counsel for their consideration. It is further

ORDERED (4) that the Court will give appropriate consideration to a request by counsel to extend the January 14, 1980 deadline should such extension be sought before that date.



Garry DAVIS, Plaintiff,

v.

DISTRICT DIRECTOR, IMMIGRATION
& NATURALIZATION
SERVICE, Defendant.

Civ. A. No. 79-1874.

United States District Court,
District of Columbia.

Dec. 19, 1979.

Native born American sought habeas corpus to challenge his exclusion from the United States. The District Court, Flannery, J., held that: (1) petitioner had made an intentional and voluntary renunciation

of his United States citizenship; (2) revocation of citizenship pursuant to the oath of renunciation did not require allegiance to another nation; (3) petitioner was an alien; (4) passport issued by the "World Service Authority" of which petitioner was president was not a proper entry document; and (5) the petitioner's alleged citizenship in Maine did not entitle him, under the privileges and immunities clause, to enter and remain in the United States.

Petition denied.

1. Citizens ⇐ 10.1

Citizen may voluntarily surrender his citizenship, along with the panoply of rights and obligations that attach thereto. Immigration and Nationality Act, § 349(a), 8 U.S.C.A. § 1481(a).

2. Citizens ⇐ 15

Statement given by petitioner when he signed a renunciation of his American citizenship to the effect that he wanted to be considered a citizen of the world created no ambiguity as to his intent so that the renunciation effectively expatriated the petitioner. Immigration and Nationality Act, § 349(a), 8 U.S.C.A. § 1481(a).

3. Citizens ⇐ 19

Evidence demonstrated that petitioner acted voluntarily at the time that he renounced his citizenship. Immigration and Nationality Act, § 349(a), 8 U.S.C.A. § 1481(a).

4. Citizens ⇐ 16

Statute dealing with renunciation of citizenship under oath does not require allegiance to another nation; it only requires renunciation of United States nationality. Immigration and Nationality Act, § 349(a), 8 U.S.C.A. § 1481(a).

5. Citizens ⇐ 16

Neither Article 13(2) nor Article 15 of the Universal Declaration of Human Rights require the acquisition of another nationality to uphold expatriation. Immigration and Nationality Act, § 349(a), 8 U.S.C.A. § 1481(a).

6. Treaties of
United States
with
Foreign
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Under
United States

7. Aliens ⇐
Any person
or national
immigration
8 U.S.C.A. §

8. Aliens ⇐
Individual
signing an
oath of
citizenship
and Natural
8 U.S.C.A. §

9. Citizens
"World Service
Authority"
petitioner was
not a
national
8 U.S.C.A. §

10. Aliens
Alien
document
and National
8 U.S.C.A. § 1182

11. Constitution
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David C.
Flannery, D.C.
Eric A.
Washington

MEMORANDUM
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DAVIS v. DISTRICT DIRECTOR, IMMIGRATION, ETC.

1183

Cite as 481 F.Supp. 1178 (1979)

[5, 6] Finally, the court must remain cognizant that statelessness was the intended consequence of the petitioner's May 24, 1948 actions at the United States Embassy.⁶ The petitioner's statement of beliefs explicated that rather than remaining solely loyal to one sovereign state, "I would like to consider myself a citizen of the world." In an interview with INS officials on May 13, 1977, the petitioner affirmed that "I have no nationality. I renounced my nationality 1948 in Paris, France . . . I am a World Citizen." The petitioner affirmatively sought his stateless existence. Whatever harshness may attach to statelessness is therefore inapplicable to the instant case.⁷

II. PETITIONER IS AN ALIEN AND THUS REQUIRES PROPER IMMIGRATION PAPERS TO ENTER AND REMAIN IN THE UNITED STATES

[7] Any person not a United States citizen or national is classified as an alien. 8 U.S.C. § 1101(a)(3); see C. Gordon & H. Rosenfield, 1 *Immigration Law and Procedure* § 2.3d at 2-22 (1979 ed.). The petitioner's voluntary expatriation deprived him of citizenship. He also lacks the status of a United States national.

[8] The Section of the expatriation statute that allowed the petitioner to voluntarily relinquish citizenship, 8 U.S.C. § 1481(a)(5), speaks in terms of "making a formal renunciation of *nationality* before a

6. This finding answers the objection raised in the *Jolley* dissent. Judge Rives dissented there because, *inter alia*, he was unsure whether the petitioner intended statelessness. Herein, statelessness was the calculated result of the petitioner's actions.

7. The petitioner's contention that Article 15 of the Universal Declaration of Human Rights requires the acquisition of another nationality to uphold expatriation is without merit. The Universal Declaration of Human Rights is a United Nations Document. 3 U.N.Doc. 2/810 (1948). It is well established that the United Nations Charter does not supersede United States law. See, e. g., *Hitai v. Immigration and Naturalization Service*, 343 F.2d 466, 468 (2d Cir.), cert. denied, 382 U.S. 816, 86 S.Ct. 36, 15 L.Ed.2d 63 (1965); *Vlissidis v. Anadell*, 262 F.2d 398, 400 (7th Cir. 1959).

diplomatic or consular officer . . ." (emphasis added). Moreover, 8 U.S.C. § 1101(a)(22) defines a national as either a citizen or a person who owes permanent allegiance to the United States. The petitioner's expatriation deprives him of citizenship; his oath of renunciation stated that "I . . . abjure all allegiance and fidelity to the United States of America." The petitioner is therefore an alien by virtue of lacking the status of a citizen or national.

An alien must possess a proper entry document upon entering the United States. 8 U.S.C. § 1182(a)(20) provides:

. . . any immigrant who at the time of application for admission is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this chapter [is excludable].

[9-11] The petitioner's World Service Authority Passport fails to qualify as one of the documents required by 8 U.S.C. § 1182. The Board of Immigration Appeals thus properly found the petitioner excludable. We therefore affirm that ruling and order the dismissal of this habeas petition. Because the petitioner has close relations in the United States who may apply on his behalf for a visa, the petitioner may remain in this country by merely assenting to permanent resident alien status.⁸

The petitioner's argument based on Article 13(2) of the Universal Declaration of Human Rights fails for the same reason.

8. The petitioner raised for the first time at oral argument the theory that the Privileges and Immunities Clause of the Constitution, Article IV, Section 2, allows the petitioner to enter and remain in the United States by virtue of being a citizen of Maine. This argument, though novel, fails to take account of Congressional power to establish nationality laws.

The Privileges and Immunities clause of Article IV, Section 2, serves to prevent one state from discriminating against another state. Article I, Section 8 of the Constitution establishes that "Congress shall have power . . . To establish an uniform Rule of Naturalization." This Constitutional mandate empowers Congress to define "the processes through which

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depend on United States nationality. Section 7 of the Foraker Act, codified as 48 U.S.C. § 733, provides that:

[a]ll inhabitants continuing to reside in Puerto Rico who were Spanish subjects on the 11th day of April 1899, and then resided in Puerto Rico, and their children born subsequent thereto, shall be deemed and held to be citizens of Puerto Rico, and as such entitled to the protection of the United States, except such as shall have elected to preserve their allegiance to the Crown of Spain on or before the 11th day of April 1900, in accordance with the provisions of the treaty of peace between the United States and Spain entered into on the 11th day of April 1899.

48 U.S.C. § 733. In 1917, Congress extend United States citizenship to persons who acquired Puerto Rican citizenship under section 733, unless they elected by September 2, 1917, not to become United States citizens. Act of March 2, 1917, ch. 145, § 5, 39 Stat. 951, 953 (1917). The 1917 Act also extended to Puerto Rico all Federal statutory law, other than revenue laws and other laws "not locally applicable." *Id.* § 9, 39 Stat. at 954. After the 1917 Act entered into force, those born in Puerto Rico subject to the jurisdiction of the United States were United States citizens from birth. Rev. Stat. § 1992 (1878); *cf.* INA § 302, 8 U.S.C. § 1402. Only United States citizens may hold public office in Puerto Rico. 48 U.S.C. § 874. It does not appear, however, that Congress has ever repealed 48 U.S.C. § 733.

Mr. Mari Bras and his colleagues are, simply, mistaken about the effect of 48 U.S.C. § 733. This statute did not create a Puerto Rican citizenship that is independent of United States nationality. Rather, 48 U.S.C. § 733 extended to Puerto Ricans the status of non-citizen nationals of the United States. *Gonzales v. Williams*, 192 U.S. 1 (1904). Once section 733 took effect, those subject to its terms owed permanent allegiance to the United States. *Id.* at 9. "The nationality of the island became American," as did the nationality of any residents who did not explicitly choose to remain Spanish subjects. *Id.* at 10; *cf.* *Memorandum for the Secretary of the Treasury*, 24 Op. Atty. Gen. 40 (1902). Note that Ms. Gonzales sought to enter the United States through a port of entry in New York, not in Puerto Rico. 192 U.S. at 7. Consequently, the *Gonzales* opinion makes it clear that "Puerto Rican citizenship" is a species of United States nationality, not some separate legal genus.

All citizens of Puerto Rico are *necessarily* United States nationals. The oath of renunciation results in the loss, not only of United States citizenship, but of United States nationality. INA §§ 349(a) and 358, 8 U.S.C. §§ 1481(a) and 1501. The INA does provide a means by which non-citizen nationals may become citizens. *Id.* § 325, 8 U.S.C. § 1436. But there is no way under the law by which a United States citizen may surrender United States citizenship, while retaining United States nationality. *Santori v. United States*, No. 94-1164 (1st Cir. June 28, 1994), 1994 WESTLAW 362,221.

If Mr. Mari Bras had known that expatriation as a United States national would extinguish his Puerto Rican citizenship as well, then we would agree that approval of the loss of nationality certificate was proper. He did indicate an understanding that he would "become an alien" upon

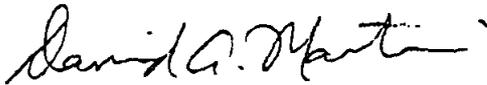
renunciation. Statement of Understanding at 3. An alien, by definition, is neither a citizen nor a national of the United States. INA § 101(a)(3), 8 U.S.C. § 1101(a)(3). But it appears that he honestly, though mistakenly, believed that he could give up United States citizenship, but retain Puerto Rican citizenship. The papers that accompany the certificate of loss of nationality, arguably, reflect this ambiguity. Mr. Mari Bras signed an oath declaring:

... I hereby absolutely and entirely renounce my United States *nationality* together with all rights and privileges and duties of allegiance and fidelity thereunto pertaining.

"Oath of Renunciation of the Nationality of the United States," (*emphasis added*). Yet the accompanying Statement of Understanding refers, repeatedly, to renunciation of *citizenship*, rather than *nationality*. Since we would not lightly find that a United States national has given up his birthright, we believe that the preponderance of the evidence would not show that Mr. Mari Bras intended to do so.

Please reconsider this case. We understand that Mr. Mari Bras has returned to Puerto Rico. The certificate of loss of nationality shows an address for him in Mayaguez, PR. If the Service can assist your reconsideration in any way, such as by questioning Mr. Mari Bras under oath, please let us know.

Sincerely,



David A. Martin
General Counsel

D
J

U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

Honorable Elton Gallegly
Chairman
Subcommittee on Native American and Insular Affairs
Resources Committee
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Gallegly:

This letter presents the views of the Justice Department on H.R. 3024, the "United States-Puerto Rico Political Status Act." H.R. 3024 would provide for a referendum on the status of Puerto Rico, a commitment by the Congress to vote on the status selected, a ten-year transition plan, and a second referendum to ratify by majority vote the terms of implementation which the Congress would establish. We support a plebiscite to permit the inhabitants of Puerto Rico to express their views. However, we have serious concerns about H.R. 3024, especially its requirement that Puerto Ricans select only between national independence and statehood.

First, H.R. 3024 would require that no later than December 31, 1998, the Commonwealth of Puerto Rico hold a referendum on its political status. Puerto Ricans would choose between two forms of government: national independence and statehood.

We believe that the status of Puerto Rico must reflect the wishes of the Puerto Rican people. H.R. 3024 does not permit the people of Puerto Rico to express their wishes from the full range of available options, which would include continued commonwealth status. Instead, section 4 of the bill would permit only a choice between independence and statehood. This is especially troubling because in the last plebiscite on political status, almost one-half of all votes cast supported continued commonwealth status.

Under commonwealth status, Puerto Rico enjoys a "degree of autonomy and independence normally associated with a State of the

Union," Examining Board v. Flores de Otero, 426 U.S. 572, 594 (1976), and most provisions of the Bill of Rights apply to Puerto Rico by their own force. On the other hand, the Uniformity Clauses of Article I, Sec. 8 of the Constitution do not apply to Puerto Rico. Hence, the Congress may exempt Puerto Rico from Federal taxation, exclude it from the customs territory of the United States, and modify the application of the bankruptcy and immigration laws to it.

We believe that the inhabitants of Puerto Rico should be given the opportunity to weigh the increments in autonomy that would result from independence and statehood against the associated costs. For example, statehood would result in the loss of exemption from Federal taxation and national independence would result ultimately in the loss of United States citizenship. Having balanced these interests, the inhabitants should be able to express their preferences.

Second, subsection 4(a)(1) delineates the likely ramifications of independence. This subsection would provide for separate Puerto Rico sovereignty leading to "independence or free association". The clause "independence or free association" is misleading because the Spanish phrase of which "commonwealth" is the translation is "estado libre asociado". Hence, voters might believe that "independence" contains a "commonwealth" option and vote accordingly. This misconception might be deepened by subparagraph (B), which provides for a choice between a treaty or a free-association relationship between the United States and Puerto Rico. Deleting the phrase "or free association" would eliminate this source of possible confusion.

Third, subparagraph 4(a)(1)(D) provides that an independent Puerto Rico would determine and control its own nationality and citizenship. This subparagraph generally would withdraw from the Puerto Rican people United States citizenship based upon birth in a United States territory. However, the subparagraph implies that under some unspecified circumstances, the Congress might permit inhabitants to retain their United States citizenship. This provision should make clear that citizenship implies allegiance and that Puerto Rico would not be truly independent unless the allegiance inherent in United States citizenship is unambiguously replaced by a sole Puerto Rican citizenship for those who remain in Puerto Rico. Cf. Rabang v. Boyd, 353 U.S. 430 (1957).

*Immediately?
has been already
been?*

Fourth, subparagraph (H) would remove Puerto Rico from the customs territory of the United States and provide that the trade between the United States and Puerto Rico would be based on a treaty. At least insofar as the tariff treatment of Puerto Rico is at issue, a separate treaty would be unnecessary. The Congress could address tariff treatment in the legislation implementing independence by granting Puerto Rico treatment under

General Notes 3, 4, 7 or 10 of the Harmonized Tariff Schedules of the United States. For example, the Congress could apply to Puerto Rico the Caribbean Basin Economic Recovery Act (General Note 7) or confer upon it Freely Associated States status (General Note 10).

Fifth, subsection 4(a)(2) delineates the ramifications of statehood but does not state explicitly that even if a majority of the voters of Puerto Rico should vote for the statehood option, there is no requirement that the Congress ultimately admit Puerto Rico as a State. Additionally, the subsection should state expressly that Puerto Rico would become a "State in all respects on an equal footing with the other States".

Sixth, subsection 4(b)(1) provides that after the referendum on political status, a ten-year transition period would follow. Not less than two years before the expiration of the transition stage, i.e., approximately eight years after the status choice referendum, the President would have to submit to the Congress a recommendation for implementing full self-government of Puerto Rico that is consistent with the original ballot choice. On the basis of that recommendation the chairs of the appropriate congressional committees are to introduce legislation that would be governed by the fast track procedures set forth in section 6. The subsection commits the Congress to vote on the implementing legislation but not to adopt it.

We note that H.R. 3024 might produce a result not in accord with the preference of a majority of Puerto Ricans. The Congress might fail to pass the implementing legislation and the ten-year transition period might be for naught. Even if the Congress voted to bestow upon Puerto Rico a status consistent with the expressed preference of its inhabitants, the inhabitants might reject the terms of implementation approved by the Congress. Indeed, the inhabitants might reject the terms solely because of a shift in public preference from one option of full self-government to the other. In any event, section 5(c)(2) of H.R. 3024 would retain the commonwealth status for Puerto Rico. We have serious concerns about a process that fails to give the citizens of Puerto Rico a mechanism to register any changes in their preferences that might have occurred over the ten years since the initial referendum. Substantially reducing the period of time between the initial and second referenda would improve the likelihood that the preferences of inhabitants would remain consistent.

Seventh, subparagraph 4(a)(2)(G) of the bill would require that Puerto Ricans who wish to support statehood in the referendum express support for "adherence to the same language requirement as in the several States." We oppose this provision. In becoming a State, Puerto Rico ~~automatically would become~~ subject to all laws generally applicable to the States.

Therefore, the provision is unnecessary. Moreover, since many of the residents of Puerto Rico speak Spanish as their first language, they might interpret the provision as branding Puerto Rican culture an "alien" culture, to be eliminated rather than incorporated in the event of statehood. This interpretation might skew a referendum vote arbitrarily against statehood.

We appreciate the opportunity to share our views on this bill. The Office of Management and Budget has advised that from the standpoint of the Administration's program, there is no objection to the submission of this report.

Sincerely,

John Tassima
 Andrew Fois
 Assistant Attorney General

cc: George Miller
 Ranking Minority Member
 Committee on Government Reform and Oversight

Falco
 Dale E. Kildee
 Ranking Minority Member
 Subcommittee on Native American and Insular Affairs

H.R. 3024

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
OFFERED BY MR. GALLEGLY**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “United States-Puerto Rico Political Status Act”.

4 (b) **TABLE OF CONTENTS.**—The table of contents for
5 this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Findings.
- Sec. 3. Policy.
- Sec. 4. Process for Puerto Rican full self-government, including the initial decision stage, transition stage, and implementation stage.
- Sec. 5. Requirements relating to referenda, including inconclusive referendum and applicable laws.
- Sec. 6. Congressional procedures for consideration of legislation.
- Sec. 7. Availability of funds for the referenda.

6 SEC. 2. FINDINGS.

7 The Congress finds the following:

8 (1) Puerto Rico was ceded to the United States
9 and came under this Nation’s sovereignty pursuant
10 to the Treaty of Paris ending the Spanish-American
11 War in 1898. Article IX of the Treaty of Paris ex-
12 pressly recognizes the authority of Congress to pro-
13 vide for the political status of the inhabitants of the
14 territory.

1 (2) Consistent with establishment of United
2 States nationality for inhabitants of Puerto Rico
3 under the Treaty of Paris, Congress has exercised
4 its powers under the Territorial Clause of the Con-
5 stitution (article IV, section 3, clause 2) to provide
6 by statute for the citizenship status of persons born
7 in Puerto Rico, including extension of special statu-
8 tory United States citizenship from 1917 to the
9 present.

10 (3) Consistent with the Territorial Clause and
11 rulings of the United States Supreme Court, partial
12 application of the United States Constitution has
13 been established in the unincorporated territories of
14 the United States including Puerto Rico.

15 (4) In 1950 Congress prescribed a procedure
16 for instituting internal self-government for Puerto
17 Rico pursuant to statutory authorization for a local
18 constitution. A local constitution was approved by
19 the people, amended and approved by Congress, and
20 thereupon given effect in 1952 after approval by the
21 Puerto Rico Constitutional Convention and an ap-
22 propriate proclamation by the Governor. The ap-
23 proved constitution established the structure for con-
24 stitutional government in respect of internal affairs
25 without altering Puerto Rico's fundamental political,

1 social, and economic relationship with the United
2 States and without restricting the authority of Con-
3 gress under the Territorial Clause to determine the
4 application of Federal law to Puerto Rico, resulting
5 in the present "Commonwealth" structure for local
6 self-government. The Commonwealth remains an un-
7 incorporated territory and does not have the status
8 of "free association" with the United States as that
9 status is defined under United States law or inter-
10 national practice.

11 (5) In 1953 the United States notified the
12 United Nations that the degree of local self-govern-
13 ment under the new constitution was limited to in-
14 ternal affairs and administration compatible with
15 the Federal structure of the United States political
16 system, subject to compliance with the applicable
17 provisions of the Federal Constitution, and that the
18 definition of the new constitutional status would be
19 subject to interpretation by judicial decision. There-
20 after, the United Nations General Assembly, based
21 on the process whereby the new constitutional gov-
22 ernment was instituted after approval by Congress
23 and the inhabitants of the territory, adopted Resolu-
24 tion 748 (VIII) by a vote of 22 to 18 with 19 ab-
25 stentions, thereby accepting the United States deter-

1 mination that it no longer would transmit informa-
2 tion to the United Nations regarding Puerto Rico's
3 status.

4 (6) In 1960 the United Nations General Assem-
5 bly approved Resolution 1541 (XV), clarifying that
6 under United Nations standards regarding the polit-
7 ical status options available to the people of terri-
8 tories yet to complete the process for achieving full
9 self-government, the three established forms of full
10 self-government are national independence, free as-
11 sociation based on separate sovereignty, or full inte-
12 gration with another nation on the basis of equality.

13 (7) In the case of *Harris v. Rosario* (446 U.S.
14 651, 1980) the Supreme Court of the United States
15 expressly confirmed that Puerto Rico remains a ter-
16 ritory of the United States subject to the authority
17 of Congress under the Territorial Clause of the
18 United States Constitution, a ruling consistent with
19 congressional intent that the establishment of inter-
20 nal self-government under a local constitution in
21 1952 did not alter Puerto Rico's unincorporated ter-
22 ritory status.

23 (8) In a joint letter dated January 17, 1989,
24 cosigned by the Governor of Puerto Rico in his ca-
25 pacity as president of one of Puerto Rico's principal

1 political parties and the presidents of the two other
2 principal political parties of Puerto Rico, the United
3 States was formally advised that “. . . the People of
4 Puerto Rico wish to be consulted as to their pref-
5 erence with regards to their ultimate political sta-
6 tus”, and the joint letter stated “. . . that since
7 Puerto Rico came under the sovereignty of the Unit-
8 ed States of America through the Treaty of Paris in
9 1898, the People of Puerto Rico have not been for-
10 mally consulted by the United States of America as
11 to their choice of their ultimate political status”.

12 (9) In the 1989 State of the Union Message,
13 President George Bush urged the Congress to take
14 the necessary steps to authorize a federally recog-
15 nized process allowing the people of Puerto Rico, for
16 the first time since the Treaty of Paris entered into
17 force, to freely express their wishes regarding their
18 future political status in a congressionally recognized
19 referendum, a step in the process of self-determina-
20 tion which the Congress has yet to authorize.

21 (10) In November of 1993, the Government of
22 Puerto Rico conducted a plebiscite initiated under
23 local law on Puerto Rico's political status. In that
24 vote none of the three status propositions received a
25 majority of the votes cast. The results of that vote

1 were: 48.6 percent commonwealth, 46.3 percent
2 statehood, and 4.4 percent independence.

3 (11) In 1994, President William Jefferson Clin-
4 ton established the Executive Branch Interagency
5 Working Group on Puerto Rico to coordinate the re-
6 view, development, and implementation of executive
7 branch policy concerning issues affecting Puerto
8 Rico, including the November 1993 plebiscite.

9 (12) There have been inconsistent and conflict-
10 ing interpretations of the 1993 plebiscite results,
11 and under the Territorial Clause of the Constitution,
12 Congress has the authority and responsibility to de-
13 termine Federal policy and clarify status issues in
14 order to advance the self-determination process in
15 Puerto Rico.

16 (13) On December 14, 1994, the Puerto Rico
17 Legislature enacted Concurrent Resolution 62, which
18 requested the 104th Congress to respond to the re-
19 sults of the 1993 Puerto Rico Status Plebiscite and
20 to indicate the next steps in resolving Puerto Rico's
21 political status.

22 (14) Nearly 4,000,000 United States citizens
23 live in the islands of Puerto Rico, which have been
24 under United States sovereignty and within the
25 United States customs territory for almost 100

1 years, making Puerto Rico the oldest, largest, and
2 most populous United States island territory at the
3 southeastern-most boundary of our Nation, located
4 astride the strategic shipping lanes of the Atlantic
5 Ocean and Caribbean Sea.

6 (15) Full self-government for Puerto Rico is at-
7 tainable only through establishment of a political
8 status which is based on either separate Puerto
9 Rican sovereignty and nationality or full and equal
10 United States nationality and citizenship through
11 membership in the Union and under which Puerto
12 Rico is no longer an unincorporated territory subject
13 to the plenary authority of Congress arising from
14 the Territorial Clause.

15 **SEC. 3. POLICY.**

16 In recognition of the significant level of local self-gov-
17 ernment which has been attained by Puerto Rico, and the
18 responsibility of the Federal Government to enable the
19 people of the territory to freely express their wishes re-
20 garding political status and achieve full self-government,
21 this Act is adopted with a commitment to encourage the
22 development and implementation of procedures through
23 which the permanent political status of the people of Puer-
24 to Rico can be determined.

1 **SEC. 4. PROCESS FOR PUERTO RICAN FULL SELF-GOVERN-**
 2 **MENT, INCLUDING THE INITIAL DECISION**
 3 **STAGE, TRANSITION STAGE, AND IMPLEMEN-**
 4 **TATION STAGE.**

5 (a) **INITIAL DECISION STAGE.**—A referendum on
 6 Puerto Rico’s political status shall be held not later than
 7 December 31, 1998. The referendum shall be held pursu-
 8 ant to this Act and in accordance with the applicable pro-
 9 visions of Puerto Rico’s electoral law and other relevant
 10 statutes consistent with this Act. Approval of a status op-
 11 tion must be by a majority of the valid votes cast. The
 12 referendum shall be on the following questions presented
 13 on the ballot as options A and B in a side-by-side format
 14 in Parts I and II:

15 **“PART I**

16 **“Instructions: Mark the option you choose. Ballots**
 17 **with both options marked in Part I will not be counted.**

18 **“A. Puerto Rico should continue the present Com-**
 19 **monwealth structure for self-government with respect to**
 20 **internal affairs and administration, subject to the provi-**
 21 **sions of the Constitution and laws of the United States**
 22 **which apply to Puerto Rico. Puerto Rico remains a locally**
 23 **self-governing unincorporated territory of the United**
 24 **States, and continuation or modification of current Fed-**
 25 **eral law and policy to Puerto Rico remains within the dis-**

1 cretion of Congress. The ultimate status of Puerto Rico
2 will be determined through a process authorized by Con-
3 gress which includes self-determination by the people of
4 Puerto Rico in periodic referenda. If you agree, mark here
5 ____.

6 "B. Puerto Rico should complete the process leading
7 to full self-government through separate Puerto Rican sov-
8 ereignty or United States sovereignty as defined in Part
9 II of this ballot. Full self-government will be achieved in
10 accordance with a transition plan approved by the Con-
11 gress and the people of Puerto Rico in a later vote. A third
12 vote will take place at the end of the transition period in
13 which the people of Puerto Rico will be able to approve
14 final implementation of full self-government. This will es-
15 tablish a permanent political status under the constitu-
16 tional system chosen by the people. If you agree, mark
17 here: ____

18 "PART II

19 "Instructions: Mark the option you choose. Ballots
20 with both options marked in Part II will not be counted.

21 "If full self-government is approved by the majority
22 of voters, which path leading to full self-government for
23 Puerto Rico do you prefer to be developed through a tran-
24 sition plan enacted by the Congress and approved by the
25 people of Puerto Rico?

1 “A. Puerto Rico should become fully self-governing
 2 through separate sovereignty leading to independence or
 3 free association as defined below. If you agree, mark here:

4 _____

5 “The path of separate Puerto Rican sovereignty lead-
 6 ing to independence or free association is one in which—

7 “(1) Puerto Rico is a sovereign nation with full
 8 authority and responsibility for its internal and ex-
 9 ternal affairs and has the capacity to exercise in its
 10 own name and right the powers of government with
 11 respect to its territory and population;

12 “(2) a negotiated treaty of friendship and co-
 13 operation, or an international bilateral pact of free
 14 association terminable at will by either Puerto Rico
 15 or the United States, defines future relations be-
 16 tween Puerto Rico and the United States, providing
 17 for cooperation and assistance in matters of shared
 18 interest as agreed and approved by Puerto Rico and
 19 the United States pursuant to this Act and their re-
 20 spective constitutional processes;

21 “(3) a constitution democratically instituted by
 22 the people of Puerto Rico, establishing a republican
 23 form of full self-government and securing the rights
 24 of citizens of the Puerto Rican nation, is the su-

1 preme law, and the Constitution and laws of the
2 United States no longer apply in Puerto Rico;

3 “(4) Puerto Rico exercises the sovereign power
4 to determine and control its own nationality and citi-
5 zenship, and United States nationality and citizen-
6 ship conferred on the people of Puerto Rico based
7 upon birth in the territory during the period in
8 which the United States exercised sovereignty and
9 jurisdiction over Puerto Rico is withdrawn in favor
10 of Puerto Rican nationality and citizenship, and the
11 United States Congress has authority to prescribe
12 criteria for affected individuals to establish eligibility
13 for retention of United States nationality and citi-
14 zenship or naturalization in the United States on a
15 basis which does not create an exception to the es-
16 tablishment and preservation of separate United
17 States and Puerto Rican nationality and citizenship;

18 “(5) upon recognition of Puerto Rico by the
19 United States as a sovereign nation and establish-
20 ment of government-to-government relations on the
21 basis of comity and reciprocity, Puerto Rico’s rep-
22 resentation to the United States is accorded full dip-
23 lomatic status;

24 “(6) Puerto Rico is eligible for United States
25 assistance provided on a government-to-government

1 basis, including foreign aid or programmatic assist-
2 ance, at levels subject to agreement by the United
3 States and Puerto Rico;

4 “(7) property rights and previously acquired
5 rights vested by employment under laws of Puerto
6 Rico or the United States are honored, and where
7 determined necessary such rights are promptly ad-
8 justed and settled consistent with government-to-
9 government agreements implementing the separation
10 of sovereignty; and

11 “(8) Puerto Rico is outside the customs terri-
12 tory of the United States, and trade between the
13 United States and Puerto Rico is based on a treaty.

14 “B. Puerto Rico should become fully self-governing
15 through United States sovereignty leading to statehood as
16 defined below. If you agree, mark here: _____

17 “The path through United States sovereignty leading
18 to statehood is one in which—

19 “(1) the people of Puerto Rico are fully self-
20 governing with their rights secured under the United
21 States Constitution, which is the supreme law and
22 has the same force and effect as in the other States
23 of the Union;

24 “(2) the sovereign State of Puerto Rico is in
25 permanent union with the United States, and powers

1 not delegated to the Federal Government or prohib-
2 ited to the States by the United States Constitution
3 are reserved to the people of Puerto Rico or the
4 State Government;

5 “(3) United States citizenship of those born in
6 Puerto Rico is guaranteed, protected and secured in
7 the same way it is for all United States citizens born
8 in the other States;

9 “(4) residents of Puerto Rico have equal rights
10 and benefits as well as equal duties and responsibil-
11 ities of citizenship, including payment of Federal
12 taxes, as those in the several States;

13 “(5) Puerto Rico is represented by two mem-
14 bers in the United States Senate and is represented
15 in the House of Representatives proportionate to the
16 population;

17 “(6) United States citizens in Puerto Rico are
18 enfranchised to vote in elections for the President
19 and Vice President of the United States; and

20 “(7) Puerto Rico adheres to the same language
21 requirement as in the several States.”.

22 (b) TRANSITION STAGE.—

23 (1) PLAN.—(A) Within 180 days of the receipt
24 of the results of the referendum from the Govern-
25 ment of Puerto Rico certifying approval of a ballot

1 choice in a referendum held pursuant to subsection
2 (a), the President shall develop and submit to Con-
3 gress legislation for a transition plan of 10 years
4 minimum which leads to full self-government for
5 Puerto Rico consistent with the terms of this Act
6 and in consultation with officials of the three
7 branches of the Government of Puerto Rico, the
8 principal political parties of Puerto Rico, and other
9 interested persons as may be appropriate.

10 (B) Additionally, in the event of a vote in favor
11 of separate sovereignty, Congress recognizes the dis-
12 cretionary authority of the Legislature of Puerto
13 Rico, if deemed appropriate, to provide by law for
14 the calling of a constituent convention to formulate,
15 in accordance with procedures prescribed by law,
16 Puerto Rico's proposals and recommendations to im-
17 plement the referendum results. If a convention is
18 called for this purpose, any proposals and rec-
19 ommendations formally adopted by such convention
20 within time limits of this Act shall be transmitted to
21 Congress by the President with the transition plan
22 required by this section, along with the views of the
23 President regarding the compatibility of such pro-
24 posals and recommendations with the United States
25 Constitution and this Act, and identifying which, if

1 any, of such proposals and recommendations have
2 been addressed in the President's proposed transi-
3 tion plan.

4 (2) CONGRESSIONAL CONSIDERATION.—The
5 plan shall be considered by the Congress in accord-
6 ance with section 6.

7 (3) PUERTO RICAN APPROVAL.—

8 (A) Not later than 180 days after enact-
9 ment of an Act pursuant to paragraph (1) pro-
10 viding for the transition to full self-government
11 for Puerto Rico as approved in the initial deci-
12 sion referendum held under subsection (a), a
13 referendum shall be held under the applicable
14 provisions of Puerto Rico's electoral law on the
15 question of approval of the transition plan.

16 (B) Approval must be by a majority of the
17 valid votes cast. The results of the referendum
18 shall be certified to the President of the United
19 States.

20 (4) EFFECTIVE DATE FOR TRANSITION PLAN.—

21 The President of the United States shall issue a
22 proclamation announcing the effective date of the
23 transition plan to full self-government for Puerto
24 Rico.

25 (c) IMPLEMENTATION STAGE.—

1 (1) PRESIDENTIAL RECOMMENDATION.—Not
 2 less than two years prior to the end of the period
 3 of the transition provided for in the transition plan
 4 approved under subsection (b), the President shall
 5 submit to Congress legislation with a recommenda-
 6 tion for the implementation of full self-government
 7 for Puerto Rico consistent with the ballot choice ap-
 8 proved under subsection (a).

9 (2) CONGRESSIONAL CONSIDERATION.—The
 10 plan shall be considered by the Congress in accord-
 11 ance with section 6.

12 (3) PUERTO RICAN APPROVAL.—

13 (A) Within 180 days after enactment of
 14 the terms of implementation for full self-govern-
 15 ment for Puerto Rico, a referendum shall be
 16 held under the applicable provisions of Puerto
 17 Rico's electoral laws on the question of the ap-
 18 proval of the terms of implementation for full
 19 self-government for Puerto Rico.

20 (B) Approval must be by a majority of the
 21 valid votes cast. The results of the referendum
 22 shall be certified to the President of the United
 23 States.

24 (4) EFFECTIVE DATE OF FULL SELF-GOVERN-
 25 MENT.—The President of the United States shall

1 issue a proclamation announcing the date of imple-
2 mentation of full self-government for Puerto Rico.

3 **SEC. 5. REQUIREMENTS RELATING TO REFERENDA, IN-**
4 **CLUDING INCONCLUSIVE REFERENDUM AND**
5 **APPLICABLE LAWS.**

6 (a) **APPLICABLE LAWS.—**

7 (1) **REFERENDA UNDER PUERTO RICAN**
8 **LAWS.—**The referenda held under this Act shall be
9 conducted in accordance with the applicable laws of
10 Puerto Rico, including laws of Puerto Rico under
11 which voter eligibility is determined and which re-
12 quire United States citizenship and establish other
13 statutory requirements for voter eligibility of resi-
14 dents and nonresidents.

15 (2) **FEDERAL LAWS.—**The Federal laws appli-
16 cable to the election of the Resident Commissioner
17 of Puerto Rico shall, as appropriate and consistent
18 with this Act, also apply to the referenda. Any ref-
19 erence in such Federal laws to elections shall be con-
20 sidered, as appropriate, to be a reference to the
21 referenda, unless it would frustrate the purposes of
22 this Act.

23 (b) **CERTIFICATION OF REFERENDA RESULTS.—**The
24 results of each referendum held under this Act shall be
25 certified to the President of the United States and the

1 Senate and House of Representatives of the United States
2 by the Government of Puerto Rico.

3 (c) CONSULTATION AND RECOMMENDATIONS FOR IN-
4 CONCLUSIVE REFERENDUM.—

5 (1) IN GENERAL.—If a referendum provided in
6 this Act does not result in approval of a fully self-
7 governing status, the President, in consultation with
8 officials of the three branches of the Government of
9 Puerto Rico, the principal political parties of Puerto
10 Rico, and other interested persons as may be appro-
11 priate, shall make recommendations to the Congress
12 within 180 days of receipt of the results of the ref-
13 erendum.

14 (2) EXISTING STRUCTURE TO REMAIN IN EF-
15 FECT.—If the inhabitants of the territory do not
16 achieve full self-governance through either integra-
17 tion into the Union or separate sovereignty in the
18 form of independence or free association, Puerto
19 Rico will remain an unincorporated territory of the
20 United States, subject to the authority of Congress
21 under Article IV, Section 3, Clause 2 of the United
22 States Constitution. In that event, the existing Com-
23 monwealth of Puerto Rico structure for local self-
24 government will remain in effect, subject to such
25 other measures as may be adopted by Congress in

1 the exercise of it's Territorial Clause powers to de-
2 termine the disposition of the territory and status of
3 it's inhabitants.

4 (3) AUTHORITY OF CONGRESS TO DETERMINE
5 STATUS.—Since current unincorporated territory
6 status of the Commonwealth of Puerto Rico is not
7 a permanent, unalterable or guaranteed status under
8 the Constitution of the United States, Congress re-
9 tains plenary authority and responsibility to deter-
10 mine a permanent status for Puerto Rico consistent
11 with the national interest. The Congress historically
12 has recognized a commitment to take into consider-
13 ation the freely expressed wishes of the people of
14 Puerto Rico regarding their future political status.
15 This policy is consistent with respect for the right of
16 self-determination in areas which are not fully self-
17 governing, but does not constitute a legal restriction
18 or binding limitation on the Territorial Clause pow-
19 ers of Congress to determine a permanent status of
20 Puerto Rico. Nor does any such restriction or limita-
21 tion arise from the Puerto Rico Federal Relations
22 Act (48 U.S.C. 731 et seq.).

23 (4) ADDITIONAL REFERENDA.—To ensure that
24 the Congress is able on a continuing basis to exer-
25 cise its Territorial Clause powers with due regard

1 for the wishes of the people of Puerto Rico respect-
2 ing resolution of Puerto Rico's permanent future po-
3 litical status, in the event that a referendum con-
4 ducted under section four is inconclusive as provided
5 in this subsection there shall be another referendum
6 in accordance with this Act prior to the expiration
7 of a period of four years from the date such incon-
8 clusive results are certified or determined. This pro-
9 cedure shall be repeated every four years, but not in
10 a general election year, until Puerto Rico's unincor-
11 porated territory status is terminated in favor of a
12 recognized form of full self-government in accord-
13 ance with this Act.

14 **SEC. 6. CONGRESSIONAL PROCEDURES FOR CONSIDER-**
15 **ATION OF LEGISLATION.**

16 (a) **IN GENERAL.**—The Chairman of the Committee
17 on Energy and Natural Resources shall introduce legisla-
18 tion providing for the transition plan under section 4(b)
19 and the implementation recommendation under section
20 4(c), as appropriate, in the United States Senate and the
21 Chairman of the Committee on Resources shall introduce
22 such legislation in the United States House of Representa-
23 tives, providing adequate time for the consideration of the
24 legislation pursuant to the following provisions:

1 (1) At any time after the close of the 180th cal-
2 endar day beginning after the date of introduction of
3 such legislation, it shall be in order for any Member
4 of the United States House of Representatives or
5 the United States Senate to move to discharge any
6 committee of that House from further consideration
7 of the legislation. A motion to discharge shall be
8 highly privileged, and debate thereon shall be limited
9 to not more than two hours, to be divided equally
10 between those supporting and those opposing the
11 motion. An amendment to the motion shall not be in
12 order, and it shall not be in order to move to recon-
13 sider the vote by which the motion was agreed to or
14 disagreed to.

15 (2) At any time after the close of the 14th leg-
16 islative day beginning after the last committee of
17 that House has reported or been discharged from
18 further consideration of such legislation, it shall be
19 in order for any Member of that House to move to
20 proceed to the immediate consideration of the legis-
21 lation (such motion not being debatable), and such
22 motion is hereby made of high privilege. An amend-
23 ment to the motion shall not be in order, and it shall
24 not be in order to move to reconsider the vote by
25 which the motion was agreed to or disagreed to. For

1 the purposes of this paragraph, the term “legislative
2 day” means a day on which the United States
3 House of Representatives or the United States Sen-
4 ate, as appropriate, is in session.

5 (b) **COMMITMENT OF CONGRESS.**—Enactment of this
6 section constitutes a commitment that the United States
7 Congress will vote on legislation establishing appropriate
8 mechanisms and procedures to implement the political sta-
9 tus selected by the people of Puerto Rico.

10 (c) **EXERCISE OF RULEMAKING POWER.**—The provi-
11 sions of this section are enacted by the Congress—

12 (1) as an exercise of the rulemaking power of
13 the Senate and the House of Representatives and, as
14 such, shall be considered as part of the rules of each
15 House and shall supersede other rules only to the
16 extent that they are inconsistent therewith; and

17 (2) with full recognition of the constitutional
18 right of either House to change the rules (so far as
19 they relate to the procedures of that House) at any
20 time, in the same manner, and to the same extent
21 as in the case of any other rule of that House.

22 **SEC. 7. AVAILABILITY OF FUNDS FOR THE REFERENDA.**

23 (a) **IN GENERAL.**—

24 (1) **AVAILABILITY OF AMOUNTS DERIVED FROM**
25 **TAX ON FOREIGN RUM.**—During the period begin-

1 ning on October 1, 1996, and ending on the date the
2 President determines that all referenda required by
3 this Act have been held, the Secretary of the Treas-
4 ury, upon request from time to time by the Presi-
5 dent and in lieu of covering amounts into the treas-
6 ury of Puerto Rico under section 7652(e)(1) of the
7 Internal Revenue Code of 1986, shall make such
8 amounts available to the President for the purposes
9 specified in subsection (b).

10 (2) USE OF UNEXPENDED AMOUNTS.—Follow-
11 ing each referendum required by this Act and after
12 the end of the period specified in paragraph (1), the
13 President shall transfer all unobligated and unex-
14 pended amounts received by the President under
15 paragraph (1) to the treasury of Puerto Rico for use
16 in the same manner and for the same purposes as
17 all other amounts covered into the treasury of Puer-
18 to Rico under such section 7652(e)(1).

19 (b) GRANTS FOR CONDUCTING REFERENDA AND
20 VOTER EDUCATION.—From amounts made available
21 under subsection (a)(1), the President shall make grants
22 to the State Elections Commission of Puerto Rico for
23 referenda held pursuant to the terms of this Act, as fol-
24 lows:

1 (1) 50 percent shall be available only for costs
2 of conducting the referenda.

3 (2) 50 percent shall be available only for voter
4 education funds for the central ruling body of the
5 political party or parties advocating a particular bal-
6 lot choice. The amount allocated for advocating a
7 ballot choice under this paragraph shall be appor-
8 tioned equally among the parties advocating that
9 choice.

10 (c) **ADDITIONAL RESOURCES.**—In addition to
11 amounts made available by this Act, the Puerto Rico Leg-
12 islature may allocate additional resources for administra-
13 tive and voter education costs to each party so long as
14 the distribution of funds is consistent with the apportion-
15 ment requirements of subsection (b).