

June 28, 2018

Dr. Paulo Abrão
Executive Secretary
Inter-American Commission on Human Rights
Organization of American States
Washington, D.C. 20006

**Re: Igartua et al. (Four Million American Citizen Residents of Puerto Rico),
Case No. 13.154
Rosselló et al., Case No. 13.326
U.S. Consolidated Response to Petitioners' Merits Submissions**

Dear Dr. Abrão:

The United States of America respectfully submits herein its consolidated Response to the merits submissions filed by the respective Petitioners in the above-captioned Petitions. Your office transmitted these submissions to us in October and November 2017 and asked for U.S. observations on the merits.

As noted in previous U.S. submissions, the Petitions here raise similar issues and allegations concerning U.S. law and conduct and the American Declaration of the Rights and Duties of Man (“American Declaration”). Consequently, the United States renews its requests that the Commission join the Petitions pursuant to Article 29(5) of the Commission’s Rules of Procedure (“Rules”). Doing so will allow the Commission to consider the issues in a cohesive manner while conserving its limited resources, which should continue to be dedicated to

addressing its substantial backlog of petitions. Regardless of whether the Commission joins the two above-captioned Petitions, the United States will continue to file observations in these cases jointly, as appropriate, and it has done so here. The United States has no objection to the Commission sharing this Response with the Petitioners for both Petitions.

Procedural History

The Petitioners in *Four Million American Citizen Residents of Puerto Rico*, which we refer to under the name of the lead Petitioner, Gregorio Igartua, claimed that their right to vote in U.S. Presidential elections is denied on a discriminatory basis.¹ The Petitioners in *Rosselló* claimed that their right to vote in U.S. presidential and congressional elections is denied on a discriminatory basis.² The United States responded to Petitioners' assertions on June 25, 2010 and argued that the claims in both Petitions were inadmissible for failure to state facts which, if true, would tend to establish a "violation" of the American Declaration of the Rights and Duties of Man ("American Declaration"),³ the instrument over which this Commission has competence with respect to the United States and that also identifies U.S. human rights commitments in the Inter-American System.⁴

On January 27, 2017, the Commission decided that the *Rosselló* Petitioners' claims were admissible under Articles II, XVII, and XX of the American

¹ See *Igartua et al. v. United States*, Case No. 13.154, Report on Admissibility, Report No. 60/17, May 25, 2017, ¶ 1 [hereinafter *Igartua* Report on Admissibility].

² See *Rosselló et al. v. United States*, Case No. 13.326, Report on Admissibility, Report No. 17/17, Jan. 27, 2017, ¶ 1 [hereinafter *Rosselló* Report on Admissibility].

³ *Igartua et al. v. United States & Rosselló et al. v. United States*, Case Nos. P-776-06 & P-1105-06, Response of the United States of America, June 25, 2010, at 1–2.

⁴ For the United States, which is not a party to the American Convention on Human Rights, "human rights are understood to be ... [t]he rights set forth in the American Declaration of the Rights and Duties of Man ..." Statute of the Inter-American Commission on Human Rights art. 1(2)(b). Under Article 34 of the Commission's Rules of Procedure, a petition must state facts that tend to establish a violation of the American Declaration. The longstanding position of the United States is that the American Declaration is a non-binding instrument that does not itself create legal rights or impose legal duties on OAS Member States. For a further discussion of the U.S. position regarding the nonbinding nature of the American Declaration, see Request for an Advisory Opinion Submitted by the Government of Colombia to the Inter-American Court of Human Rights Concerning the Normative Status of the American Declaration of the Rights and Duties of Man, Observations of the United States of America, 1988, available at <http://www1.umn.edu/humanrts/iachr/B/10-esp-3.html>. Accordingly, the United States understands that any reference to "violations" in this context represents an allegation that a State has not lived up to its political commitment to uphold the American Declaration.

Declaration.⁵ On May 25, 2017, the Commission decided that the *Igartua* Petitioners' claims were admissible under Articles II, XVII, XVIII, and XX of the American Declaration.⁶ Both sets of Petitioners subsequently provided submissions on the merits.⁷

Argument

Under Article 38 of the Rules, the Commission should not presume the facts alleged in the present Petitions are true. The United States hereby incorporates by reference in this Response the detailed information in previous U.S. submissions rebutting Petitioners' many factual misstatements and demonstrating why Petitioners' claims are in error.

Additionally, the United States submits that its constitutional structure, under which citizens who reside in Puerto Rico do not have the same voting rights in Presidential and Congressional elections as citizens who reside in the 50 states, is not inconsistent with the rights expressed in Articles II, XVII, XVIII, and XX of the American Declaration. Puerto Rico is a self-governing territory of the United States and Petitioners may exercise their democratic rights in Puerto Rico elections under Puerto Rico law and the Commonwealth's Constitution.⁸

With respect to federal elections, it is important to clarify that Puerto Rico residents are not banned from voting in presidential elections. Puerto Rico residents can, and do, vote in the presidential primaries that occur in the spring every four years for the purpose of choosing the party candidates for President. Puerto Rico may also, if it wishes, organize a ballot for the general U.S. presidential election in November every four years. But as repeatedly reaffirmed by the U.S. Court of Appeals for the First Circuit, the U.S. Constitution does not

⁵ *Rosselló* Report on Admissibility, *supra* note 2, at ¶ 10.

⁶ *Igartua* Report on Admissibility, *supra* note 1, at ¶¶ 14–15.

⁷ The United States of America received a merits submission in *Igartua* on November 8, 2017 (even though the cover letter from the Commission was dated October 9, 2017) and in *Rosselló* on October 11, 2017 (by cover letter also dated October 11, 2017).

⁸ See P.R. CONST. art. VI, § 4 (“Every person over eighteen years of age shall be entitled to vote if he fulfills the other conditions determined by law.”).

allocate electoral votes to Puerto Rico,⁹ and so Puerto Rico's preference would not be added to the electoral vote tally in the general election.¹⁰

Puerto Rico residents vote in congressional elections, both in party primaries and in the general election. Specifically, the residents of Puerto Rico vote for Puerto Rico's delegate to the U.S. House of Representatives, known as the Resident Commissioner. Furthermore, if they wish, Puerto Rico residents, almost all of whom are U.S. citizens, are also free to move to any state of the United States, where they can take up residence and exercise their voting rights in local, state, and federal elections.¹¹ The U.S. Constitution applies in a fair and nondiscriminatory manner to all U.S. citizens.

Nothing in the American Declaration suggests that Organization of American States Member States may not maintain federal systems in which their citizens' participation in local and federal elections is determined by their residence or the status of the federal entity in which they reside. There is no allegation that Petitioners are prevented from residing anywhere they choose within the United States, including in states where they could vote in local, state, and federal elections. Petitioners' suggestion that the right to vote in particular U.S. federal elections is an intrinsic human right that flows from citizenship is simply not supported by the text of the American Declaration or by international law, and there is no basis for the Commission to infer such a right here.

⁹ See, e.g., *Igartua-De La Rosa v. United States*, 417 F.3d 145, 147 (1st Cir. 2005) ("As Puerto Rico has no electors, its citizens do not participate in the presidential voting, although they may do so if they take up residence in one of the 50 states and, of course, they elect the Governor of Puerto Rico, its legislature, and a non-voting delegate to Congress.").

¹⁰ The general U.S. presidential election is not conducted via direct ballot but rather through the Electoral College. U.S. states (in the original Constitution of 1787) and the District of Columbia (by virtue of an amendment to the Constitution in 1961) are allotted electoral votes which are cast by electors, and most states require that their electors vote for whichever candidate receives the most votes from the state's popular vote. The candidate that receives a majority of electoral votes in the Electoral College among all the U.S. states then wins the election.

¹¹ See, e.g., U.S. CONST. amend. XIV, § 2 ("Representatives shall be apportioned among the several *states* according to their respective numbers . . .") (emphasis added); *id.* amend. XXVI, § 1 ("The right of citizens of the United States, who are 18 years of age or older, to vote, shall not be denied or abridged by the United States or any *state* on account of age.") (emphasis added).

Efforts in Puerto Rico to Reevaluate the Territory's Political Status

The federal government has provided the residents of Puerto Rico multiple opportunities to review and reconsider Puerto Rico's legal relationship with the United States. In 1952, the people of Puerto Rico, in an act of self-determination, voted by referendum to become a self-governing Commonwealth, or *Estado Libre Asociado*.¹² The residents of Puerto Rico then participated in five different free and public referenda over the subsequent 65 years, and the majority of voters in each instance chose to retain the current Commonwealth status and relationship to the United States.¹³ In a sixth vote, through a plebiscite held on June 11, 2017,¹⁴ the majority of Puerto Rico voters indicated for the first time that they desired to pursue status for Puerto Rico as a U.S. state.¹⁵

Following the plebiscite, Puerto Rico's Governor, Ricardo Rosselló (son of lead Petitioner Pedro Rosselló) initiated an "offensive" to pursue statehood¹⁶ aided by his creation of the Puerto Rico Statehood Commission.¹⁷ The Statehood Commission has seven members, consisting of three Republicans, three Democrats, and "Major League Baseball Hall of Famer Ivan 'Pudge' Rodriguez" as an Independent.¹⁸ According to a joint statement issued by the members of the Statehood Commission, "[t]he purpose and the commitment of the Commission consist of claiming equal rights through statehood for [Puerto Rico] ... on various fronts and political scenarios."¹⁹

The Statehood Commission's "offensive" is part of Puerto Rico's declared intent to follow the "Tennessee Plan," whereby a U.S. territory holds a popular

¹² Letter from Vernon D. Northrop, Acting Secretary of the Interior, to Dean Acheson, Secretary of State (Oct. 9, 1952), available at <https://history.state.gov/historicaldocuments/frus1952-54v03/d902>.

¹³ R. Sam Garrett, *Political Status of Puerto Rico: Brief Background and Recent Developments for Congress*, CONG. RES. SERV. 7 (June 12, 2017).

¹⁴ *Id.* at 10.

¹⁵ *See id.* at 15 (97.2% of votes, representing 23% of eligible voters, favored statehood for Puerto Rico).

¹⁶ *Puerto Rico Statehood Commission Defines its Objectives for the New Year*, LA FORTALEZA (Dec. 27, 2017), at <http://www.fortaleza.pr.gov/content/puerto-rico-statehood-commission-defines-its-objectives-new-year>.

¹⁷ *See ABOUT US*, at <http://statehood4puertorico.com/about/> (last visited June 25, 2018) ("The Commission was announced by Governor Ricardo Rosselló on July 10th, 2017 ... in order to facilitate Puerto Rico's admittance into United States statehood.").

¹⁸ *Id.*

¹⁹ *Puerto Rico Statehood Commission Defines its Objectives for the New Year*, *supra* note 16.

vote that favors statehood, establishes a constitutional state government, and then sends putative representatives “to Washington to demand their seats [in Congress] and the admission of their territory into the Union as a state.”²⁰ Notably, on January 4, 2017, prior to the Statehood Commission’s creation, Puerto Rico’s Resident Commissioner to the U.S. House of Representatives, Jenniffer González-Colón, submitted proposed legislation to Congress that would grant statehood to Puerto Rico.²¹

The United States cannot predict the outcome of this political process. The United States emphasizes, however, that all past U.S. territories that became U.S. states, other than the territories for the original 13 states, completed a political process culminating in Congress granting the relevant territory statehood and extending to the residents of that territory all the rights of a state under the U.S. Constitution, including the right to vote in presidential general elections and the right to be represented in Congress by two senators and a number of representatives in the House of Representatives commensurate with the new state’s population. Puerto Rico has not yet completed this political process.

Further, legal issues relating to Puerto Rico’s status are actively reviewed, not ignored, by the independent federal judiciary. A 2016 U.S. Supreme Court case noted that, while not a distinct sovereign for the narrow purposes of the U.S. Constitution’s “double jeopardy” clause,²² “Puerto Rico today has a distinctive, indeed exceptional, status as a self-governing Commonwealth” with “wide-ranging self-rule.”²³ As noted above, the First Circuit Court of Appeals has also extensively and repeatedly reviewed Petitioner Igartua’s claims under the U.S. Constitution, which largely parallel the claims he has made before the Commission, and has found them lacking in merit. The Supreme Court has declined to review these decisions, including most recently with a denial of certiorari issued on June 18, 2018.²⁴ The Commission should defer to the requisite political process, which is

²⁰ ABOUT US, *supra* note 17.

²¹ H.R.260 - PUERTO RICO ADMISSION ACT, at <https://www.congress.gov/bill/115th-congress/house-bill/260/text> (last visited June 25, 2018).

²² Puerto Rico v. Sánchez Valle, 136 S. Ct. 1863, 1876–77 (2016).

²³ *Id.* at 1874, 1876.

²⁴ Igartua v. Trump, No. 17-1007, 2018 WL 490106, at *1 (June 18, 2018) (mem.).

being conducted consistent with the U.S. Constitution, and should dismiss the above-captioned Petitions.

* * *

Petitioners have failed to establish that their lack of voting rights in U.S. presidential or congressional elections while residing in Puerto Rico is inconsistent with provisions of the American Declaration. Accordingly, the United States respectfully requests that the Commission dismiss Petitioners' claims in their entirety.

Please accept renewed assurances of my highest consideration.

Sincerely,

Kevin K. Sullivan
Deputy Permanent Representative

Drafted: Matt Eible, L/WHA & L/HRR
Violanda Botet, L/WHA

Approved: Kevin K. Sullivan, Deputy Permanent Representative, USOAS

Cleared: USOAS: AStevenson (info)
L/HRR: JBischoff (ok)
L/WHA: JKovar (ok)