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Puerto Rico's Separate and Unequal Status Under U.S. Law

Brendan Williams¹

When Puerto Rico is in the news, it is usually for challenging reasons. Governor Ricardo Rosselló resigned in July 2019 amidst protests over profane private chats and charges of corruption regarding the ongoing recovery efforts from the catastrophic effects of Hurricane Maria in 2017.² Allegations of corruption have only fed the antipathy of President Trump toward the United States island territory—President Trump has consistently misrepresented the amount of hurricane recovery aid provided to it,³ and even blamed the island for being in the path of storms.⁴ The President had gone so far as to make fun of the accents of Puerto Ricans.⁵

It is estimated that over 3,000 residents of Puerto Rico died as a result of Hurricane Maria, although President Trump disputed this fact.⁶ In a post-Maria diaspora, over 300,000

1. Attorney Brendan Williams is the author of over 30 law review articles, predominantly on civil rights and health care issues.

2. See Amber Phillips, *Why Puerto Rico's Governor Is Resigning*, WASH. POST (July 25, 2019, 11:01 AM), <https://www.washingtonpost.com/politics/2019/07/19/why-puerto-rico-is-crisis/>.

3. See Jane C. Timm, *Fact check: Trump Says Puerto Rico Got \$92 Billion. They've Seen Only a Fraction.*, NBC NEWS (July 18, 2019, 2:04 PM), <https://www.nbcnews.com/politics/donald-trump/fact-check-trump-says-puerto-rico-got-92-billion-they-n1031276>.

4. See generally John Wagner, *Trump Complains of 'Yet Another Big Storm' as Puerto Rico Comes Under a Hurricane Watch*, WASH. POST (Aug. 27, 2019, 1:10 PM), https://www.washingtonpost.com/politics/trump-complains-of-yet-another-big-storm-as-puerto-rico-comes-under-a-hurricane-watch/2019/08/27/34dc5946-c8e6-11e9-a1fe-ca46e8d573c0_story.html.

5. Meredith Clark, *Watch Donald Trump Mock Puerto Rican Accents at Hispanic Heritage Event*, GLAMOUR (Oct. 6, 2017), <https://www.glamour.com/story/watch-donald-trump-mock-puerto-rican-accent-hispanic-heritage-month>.

6. Ari Shapiro, *Fact Check: Trump's Claim About Puerto Rico Hurricane Death Toll*, NPR (Sept. 13, 2018, 4:25 PM), <https://www.npr.org/2018/09/13/647559553/fact-check-trumps-claim-about-puerto-rico-hurricane-death-toll>.

Puerto Ricans had moved to Florida by January 2018.⁷

The COVID-19 pandemic was yet another blow to the island territory, with suspicion that Puerto Rico was undercounting deaths attributable to the virus,⁸ coupled with the fact that its struggling residents were seemingly last in line to receive \$1,200 stimulus checks as part of the federal government's COVID-19 response.⁹

In an early case involving Puerto Rico's status, a Supreme Court Justice once infamously stated that it is "not a foreign country," but it is instead "foreign to the United States in a domestic sense."¹⁰ That incoherence persists today, and it speaks to the United States' treatment of Latin America in general. If even the rights of Puerto Ricans are not honored by the United States government, what hope do immigrants from *other nations* have? This essay examines Puerto Rico, and its status, in the context of its past and future.

I. CONQUEST AND SUBJUGATION

In 1898, a treaty was signed following the Spanish-American War; Spain ceded "to the United States the island of Porto Rico [sic] and other islands now under Spanish sovereignty in the West Indies, and the island of Guam in the Marianas or Ladrones."¹¹ In a perhaps telling indication of how these new United States islands would fare, the treaty's

7. Drew Dixon, *Florida Has Handled Nearly 300,000 Puerto Rican Refugees since Hurricane Maria; Gov. Scott Says State Will Welcome More*, FLA. TIMES UNION (Jan. 2, 2018, 4:20 PM), <https://www.jacksonville.com/business/metro/2018-01-02/florida-has-handled-nearly-300000-puerto-rican-refugees-hurricane-maria> ("If there was any doubt about the dramatic impact the aftermath of Hurricane Maria has had on Puerto Rico, Florida Gov. Rick Scott emphasized the state has now taken in between one-fifth to one-tenth of the entire population of the U.S. territorial island since the storm.").

8. See Jim Wyss, *Puerto Rico Tops 2,000 Coronavirus Cases, 100 Deaths Amid Gradual Reopening*, MIA. HERALD (May 7, 2020, 3:18 PM), <https://www.miamiherald.com/news/nation-world/world/americas/article242562216.html>.

9. Tara Law, *San Juan Mayor Says 'No One' in Puerto Rico Has Received a COVID-19 Stimulus Check*, TIME (Apr. 26, 2020, 4:11 PM), <https://time.com/5827679/puerto-rico-stimulus-checks-mayor-coronavirus/>.

10. *Downes v. Bidwell*, 182 U.S. 244, 341 (1901) (White, J., concurring).

11. Treaty of Peace between the United States and the Kingdom of Spain, U.S.-Spain, art. II, Dec. 10, 1898, 30 U.S.T. 1754.

spelling error became the United States government's official usage until an act of Congress changed the spelling in 1932.¹²

Citizenship for Puerto Ricans was debated on the United States Senate floor in 1900; in an exhaustive 1979 law review article, José A. Cabranes noted:

The author of the first legislative proposal to make Puerto Ricans citizens of the United States . . . acknowledged, as others would in the years to come, that the principal objective of granting American citizenship to Puerto Ricans was neither to incorporate Puerto Rico into the United States (and thereby to have the Constitution apply in all respects to the island and its people) nor to grant Puerto Ricans political and civil rights equal to those of citizens in the American Union proper. The objective, rather, was 'to recognize that Puerto Rico *belongs to the United States of America*.'¹³

Indeed, the initial law that passed

gave Puerto Ricans less rights than they had under Spanish rule at the time of the U.S. invasion. At that time, Puerto Ricans were full Spanish citizens, had voting delegates in the Spanish parliament, and, pursuant to a new Charter of Autonomy that had gone into effect shortly before the U.S. invasion, possessed a degree of autonomy bordering on national sovereignty.¹⁴

In 1917, President Woodrow Wilson signed a law granting full United States citizenship to residents of Puerto Rico.¹⁵

12. 48 U.S.C. § 731(a).

13. José A. Cabranes, *Citizenship and the American Empire*, 127 U. PA. L. REV. 391, 427–28 (1979) (citations omitted).

14. Juan R. Torruella, *Ruling America's Colonies: The Insular Cases*, 32 YALE L. & POL'Y REV. 57, 65–66 n.31 (2013).

15. Jones Act of 1917, Pub. L. No. 64-368, 39 Stat. 951; *see also* Andrew Glass, *Puerto Ricans Granted U.S. Citizenship March 2, 1917*, POLITICO (Mar.

However, as Cabranes notes:

Congress did, however, impose severe restrictions on the citizenship conferred on the Puerto Rican people; in spite of the protests of some Puerto Rican leaders, for the first time in history, citizenship was granted to a people without the promise of eventual statehood and without the full panoply of rights guaranteed by the United States Constitution.¹⁶

The status of Puerto Rican citizens was further marginalized in subsequent United States Supreme Court decisions, showing the lasting effect of Justice White's 1901 contorted analysis was that Puerto Rico is "foreign to the United States in a domestic sense."¹⁷ In the 1921 United States Supreme Court case of *Balzac v. Porto Rico*, it was held that Puerto Ricans had no constitutional right to a trial by jury.¹⁸ Writing for the majority, Chief Justice William Howard Taft stated remarkably that "[i]t is locality that is determinative of the application of the Constitution, in such matters as judicial procedure"—citizenship was, therefore, irrelevant.¹⁹

Not every Justice has agreed with this approach though. In a prescient dissent penned in 1901, Chief Justice Melville Fuller warned of keeping Puerto Rico "like a disembodied shade, in an intermediate state of ambiguous existence for an

2, 2008, 7:42 AM), <https://www.politico.com/story/2008/03/puerto-ricans-granted-us-citizenship-march-2-1917-008771> ("At the time, many Puerto Ricans believed the act's true purpose was to conscript them into the armed forces.").

16. Cabranes, *supra* note 13, at 490.

17. *Downes v. Bidwell*, 182 U.S. 244, at 341–42 (1901) (White, J., concurring).

18. *Balzac v. Porto Rico*, 258 U.S. 298, 309 (1922).

19. *Id.* *Balzac* has never been overturned, and its legacy continues today—in 2016, a U.S. District Court judge in Puerto Rico even ruled that the Supreme Court's landmark decision legalizing gay marriage did not apply in Puerto Rico. Noah Feldman, *The Constitution Rules. (Not Valid in Puerto Rico.)*, BLOOMBERG (Mar. 9, 2016, 4:14 PM), <https://www.bloomberg.com/opinion/articles/2016-03-09/the-constitution-rules-except-in-puerto-rico>.

indefinite period.”²⁰ His dissent disputed what he described as a “theory” that assumes “the Constitution created a government empowered to acquire countries throughout the world, to be governed by different rules than those obtaining in the original states and territories.”²¹ Justice John Marshall Harlan agreed with the Chief Justice, writing:

The idea that this country may acquire territories anywhere upon the earth, by conquest or treaty, and hold them as mere colonies or provinces—the people inhabiting them to enjoy only such rights as Congress chooses to accord them—is wholly inconsistent with the spirit and genius, as well as the words, of the Constitution.²²

Subjugation carried with it the price of a growing Puerto Rican nationalist movement.²³ In 1947, United States federal law was changed to allow Puerto Rico to elect its own governor.²⁴ In 1950, a United States federal law was enacted to allow Puerto Rico to adopt a constitution.²⁵ The law was enacted in the same year an effort by two Puerto Rican nationalists to assassinate President Harry Truman failed—although the assassins were successful in killing a Secret Service Agent.²⁶ Discrimination persisted, even for those Puerto Ricans who had moved to states; it took a 1966 United States Supreme Court decision to affirm that the Voting Rights Act had overturned a New York English literacy law aimed at barring voting amongst citizens born in Puerto Rico.²⁷

20. *Downes*, 182 U.S. at 372 (Fuller, C.J., dissenting).

21. *Id.* at 372–73 (Fuller, C.J., dissenting).

22. *Id.* at 380 (Harlan, J., dissenting).

23. Torruella, *supra* note 14, at 80.

24. Organic Act of Puerto Rico, Amendment, Pub. L. No. 80-362, § 2, 39 Stat. 955 (1947) (including a requirement that any candidate be “able to read and write the English language”).

25. Act of July 3, 1950, Pub. L. No. 81-600, 64 Stat. 319.

26. Andrew Glass, *Puerto Rican Militants Try to Assassinate Truman*, *Nov. 1, 1950*, POLITICO (Nov. 1, 2017, 12:02 AM), <https://www.politico.com/story/2008/03/puerto-ricans-granted-us-citizenship-march-2-1917-008771>.

27. *Katzenbach v. Morgan*, 384 U.S. 641 (1966). The Voting Rights Act,

In 1982, President Ronald Reagan expressed support for Puerto Rican statehood after meeting with Puerto Rican leaders.²⁸ It was reported that “[i]n his statement, Mr. Reagan said that if Puerto Rico should become the 51st state ‘the language and culture of the island, rich in history and tradition, would be respected.’”²⁹ President Gerald Ford, following his 1976 election defeat, had also supported statehood for Puerto Rico if its residents approved a referendum calling for it.³⁰ Such a referendum failed in 1993, despite messages of support from former Presidents Ford, Reagan, and Bush Sr.³¹

While President Barack Obama pledged to support Puerto Rico’s choices on statehood,³² President Trump stated he would oppose statehood if the mayor of San Juan, who publicly criticized him, remained in office.³³ However, this seemed consistent with President Trump’s past practice of trolling and placing petty conditions upon promised outcomes, as when he promised in 2011 to release his tax returns if Obama proved

“in the respects pertinent in these cases, provides that no person who has successfully completed the sixth primary grade in a public school in, or a private school accredited by, the Commonwealth of Puerto Rico in which the language of instruction was other than English shall be denied the right to vote in any election because of his inability to read or write English.” *Id.* at 643. Remarkably, the dissent would have allowed New York to maintain its discriminatory law, providing some tortured reasoning: “Most candidates, certainly those campaigning on a national or statewide level, make their speeches in English. New York may justifiably want its voters to be able to understand candidates directly, rather than through possibly imprecise translations or summaries reported in a limited number of Spanish news media.” *Id.* at 662–63, (Harlan, J., dissenting).

28. Steven R. Weisman, *Reagan Pledges His Support for Puerto Rican Statehood*, N.Y. TIMES, Jan. 13, 1982, at A10.

29. *Id.*

30. *See id.*

31. William Booth, *Puerto Rico Rejects Statehood*, WASH. POST (Nov. 15, 1993), <https://www.washingtonpost.com/archive/politics/1993/11/15/puerto-rico-rejects-statehood/7dd03a6d-839a-44d8-b626-dd186377f8ea/>.

32. Helene Cooper, *In Visit to Puerto Rico, Obama Offers (and Seeks Out) Support*, N.Y. TIMES (June 14, 2011), <https://www.nytimes.com/2011/06/15/us/politics/15obama.html>.

33. Hayley Miller, *Donald Trump: ‘Absolute No’ On Puerto Rican Statehood Bid If San Juan Mayor Stays*, HUFFINGTON POST (Sept. 24, 2018, 2:48 PM), https://www.huffpost.com/entry/donald-trump-puerto-rico-statehood_n_5ba9132de4b0181540df617f (“I will tell you this, with the mayor of San Juan as bad as she is and as incompetent as she is, Puerto Rico shouldn’t be talking about statehood until they get some people that really know what they’re doing.”).

his United States citizenship.³⁴ More unconditionally, former Senate Majority Leader Mitch McConnell (R-Ky.) called a statehood push for Puerto Rico “full-bore socialism” that would lead to two more Democratic senators.³⁵ A prominent surrogate for former Vice President Joe Biden’s Democratic presidential campaign, former Puerto Rico Governor Alejandro García-Padilla, referred to statehood proponents as monkeys or worse.³⁶ Statehood debates, such as the longstanding debate over the District of Columbia’s status, have long had undercurrents of racism and partisanship.³⁷

Why was Hurricane Maria such a game-changer? It certainly revealed an ugly colonialism that exists between the territory and the United States mainland. In the weeks following the hurricane, it was reported:

Despite the Trump administration’s insistence that it is on top of the crisis, some 3.4 million Puerto Ricans—basically the entire population—remain without regular electricity. An estimated 1.5 million are without access to clean drinking

34. Glenn Kessler, *A Look at Trump’s ‘Birther’ Statements*, WASH. POST (Apr. 28, 2011), https://www.washingtonpost.com/blogs/fact-checker/post/a-look-at-trumps-birther-statements/2011/04/27/AFeOYb1E_blog.html.

35. Danielle Wallace, *Statehood Push for DC, Puerto Rico Part of Dems’ ‘Full-Bore Socialism,’ McConnell Says*, FOX NEWS (June 19, 2019), <https://www.foxnews.com/politics/mitch-mcconnell-dem-d-c-statehood-full-bore-socialism>. It cannot be assumed that Puerto Ricans would elect Democrats to Congress. See, e.g., Olivia Reingold, *Is Puerto Rico the Next Senate Battleground?*, POLITICO (Sept. 9, 2020, 11:55 AM), <https://www.politico.com/news/magazine/2020/09/09/puerto-rico-statehood-politics-democrats-republicans-senate-409191> (“Puerto Rico’s Legislature, which has made a mark in recent years by enacting conservative laws including restrictions on abortion and expressions of gender identity, is led by registered Republicans in both its House and Senate.”).

36. Marc Caputo, *‘Monkey’ or ‘Moor’? Biden Surrogate Under Fire for Bizarre Metaphor*, POLITICO (Aug. 7, 2020, 8:30 PM), <https://www.politico.com/news/2020/08/07/biden-surrogate-garcia-padilla-puerto-rico-remark-392614>.

37. Paul Frymer, *The Politics of D.C. Statehood Follow a Well-Worn Path. Here’s Why.*, WASH. POST (July 6, 2020, 7:00 AM), <https://www.washingtonpost.com/politics/2020/07/06/politics-dc-statehood-follow-well-worn-path-heres-why/> (noting that “[q]uestions regarding the District’s fuller inclusion into the American polity importantly engender questions about the meaning of citizenship and representation, as well as the restraints the nation has historically imposed on people of color”).

water. It is a remarkable, shocking state of affairs for an island inhabited by more American citizens than 21 individual states on the U.S. mainland. Countless residents are cut off by collapsed physical infrastructure and the failure of communications systems on the island.³⁸

According to Ishaan Tharoor of *The Washington Post*, “[a] new Morning Consult poll of 2,200 U.S. adults found that only 54 percent of Americans knew that people born in Puerto Rico were American citizens. Tellingly, the majority of those who were not aware of their compatriots’ status did not approve of sending aid to the island.”³⁹

Given the Trump Administration’s indifferent response to the storm, arguably the most effective post-Maria relief effort in Puerto Rico was provided by a celebrity chef, José Andrés, as *The New York Times* reported in October 2017:

Since he hit the ground five days after the hurricane devastated this island of 3.4 million on Sept. 20, he has built a network of kitchens, supply chains and delivery services that as of Monday had served more than 2.2 million warm meals and sandwiches. No other single agency — not the Red Cross, the Salvation Army nor any government entity — has fed more people freshly cooked food since the hurricane, or done it in such a nurturing way.⁴⁰

In visiting Puerto Rico in Hurricane Maria’s aftermath, President Trump was criticized for throwing rolls of paper towels at residents staying in a church.⁴¹ President Trump had

38. Ishaan Tharoor, *Puerto Rico Is Still a Victim of Colonial Neglect*, WASH. POST (Sept. 27, 2017, 1:00 AM), <https://www.washingtonpost.com/news/worldviews/wp/2017/09/27/puerto-rico-is-still-a-victim-of-colonial-neglect/>.

39. *Id.*

40. Kim Severson, *José Andrés Fed Puerto Rico, and May Change How Aid Is Given*, N.Y. TIMES (Oct. 30, 2017), <https://www.nytimes.com/2017/10/30/dining/jose-andres-puerto-rico.html>.

41. David Nakamura & Ashley Parker, *‘It Totally Belittled the Moment’: Many Look Back in Dismay at Trump’s Tossing of Paper Towels in Puerto*

even joked about trading the island of Puerto Rico for Greenland.⁴² He publicly, and almost obsessively, criticized Puerto Rico; at one point, in April 2019, he unleashed “a torrent of tweets” that “seemed to imply . . . that Puerto Rico was not part of the United States, noting that local elected officials ‘only take from USA.’”⁴³ Following those remarks, it was reported that “Hogan Gidley, a White House spokesman, seemed to underscore the view in the White House that Puerto Ricans were not Americans when he twice referred to the island as ‘that country’ during an appearance on MSNBC.”⁴⁴

To be sure, Puerto Rico has been plagued by corruption. For example, in restoring power following Maria, the Puerto Rico Electric Power Authority went through five chief executive officers in eleven months; it was reported in 2018 that “PREPA is bankrupt and \$9 billion in debt.”⁴⁵ However, it probably did not help that President Trump associates feasted on the chaos; it was reported that a \$300 million contract was “awarded to a tiny electrical firm in Interior Secretary Ryan Zinke’s small Montana hometown to help rebuild Puerto Rico’s power grid.”⁴⁶ The firm only had two employees upon receiving the lucrative

Rico, WASH. POST (Sept. 13, 2018, 7:56 PM), https://www.washingtonpost.com/politics/it-totally-belittled-the-moment-many-look-back-in-anger-at-trumps-tossing-of-paper-towels-in-puerto-rico/2018/09/13/8a3647d2-b77e-11e8-a2c5-3187f427e253_story.html

(“Trump’s day in San Juan—limited to the better fortified neighborhoods of the capital and far from the most catastrophic destruction—included other scenes that suggested the president was eager to congratulate himself prematurely and to minimize a rapidly deepening tragedy.”).

42. Nicole Acevedo, *Trump Joked About Trading Puerto Rico for Greenland. Puerto Ricans Are Joking Back.*, NBC NEWS (Aug. 22, 2019, 4:03 PM), <https://www.nbcnews.com/news/latino/trump-joked-about-trading-puerto-rico-greenland-puerto-ricans-are-n1045296>.

43. Annie Karni & Patricia Mazzei, *Trump Lashes Out Again at Puerto Rico, Bewildering the Island*, N.Y. TIMES (Apr. 2, 2019), <https://www.nytimes.com/2019/04/02/us/trump-puerto-rico.html>.

44. *Id.*

45. Emily Sullivan, *Nearly A Year After Maria, Puerto Rico Officials Claim Power Is Totally Restored*, NPR (Aug. 15, 2018, 2:22 AM), <https://www.npr.org/2018/08/15/638739819/nearly-a-year-after-maria-puerto-rico-officials-claim-power-totally-restored>.

46. Allan Smith, *Here Are the Craziest Terms of the \$300 Million Government Contract Given to a Tiny Electrical Firm in a Trump Cabinet Secretary’s Hometown*, BUS. INSIDER (Oct. 27, 2017, 2:47 PM), <https://www.businessinsider.com/300-million-contract-whitefish-puerto-rico-ryan-zinke-2017-10>.

contract.⁴⁷

An article in the *Los Angeles Times* noted former Gov. Ricardo Rosselló was

a political neophyte viewed largely as an extension of his father, Pedro Rossello — a former governor whose tenure from 1993 to 2001 was also mired in scandal. His father's executive assistant and the former secretary of education were convicted of kickback schemes. Pedro Rossello lost his reelection campaign in 2004, tainted by a stream of corruption cases brought by federal prosecutors.⁴⁸

When Puerto Rico attempted to hold its August 2020 primary, the territory's election commission failed to distribute ballots to many voting centers, thus creating a legal snafu as to the legitimacy of any effort to make up for the mistake.⁴⁹ Voters who had taken the risk to go out and vote amidst the COVID-19 pandemic were frustrated: “Yadira Pizarro, a 44-year-old teacher, ran out of patience at a shuttered voting

47. *Id.*

48. Suhauna Hussain & Marisa Gerber, *The Massive Push for Puerto Rico Gov. Rossello to Resign Grew from Several Key Factors*, L.A. TIMES (July 23, 2019, 3:00 AM), <https://www.latimes.com/world-nation/story/2019-07-22/the-push-for-puerto-rico-gov-rossello-to-resign-grew-from-several-key-factors>. However, we cannot pretend corruption does not exist in the states; for example, Alabama is notorious for being a one-party ruled state riddled with political corruption. See, e.g., John Sharp, *Corruption, Ethics Top List of Voters Concerns in Alabama*, AL.COM (Oct. 29, 2018), <https://www.al.com/election/2018/10/corruption-ethics-top-list-of-voters-concerns-in-alabama.html> (“Alabama state politics in this decade may best be remembered years from now for its sensational scandals.”); Gigi Douban, *Alabama Governor's Primary Race Is All About Corruption*, NPR (June 3, 2018, 8:14 AM), <https://www.npr.org/2018/06/03/616551967/alabama-governors-primary-race-is-all-about-corruption>. Seemingly ironic, Alabama is perhaps President Trump's favorite state. See Aaron Blake, *Trump Is Completely Devoted to Alabama. It Has Rewarded Him with a Series of Embarrassments.*, WASH. POST (Sept. 6, 2019, 12:28 PM), <https://www.washingtonpost.com/politics/2019/09/06/trump-is-completely-devoted-alabama-it-has-rewarded-him-with-series-embarrassments/>.

49. See Associated Press, *Puerto Rico's Primary Goes Off the Rails*, POLITICO (Aug. 9, 2020, 6:18 PM), <https://www.politico.com/news/2020/08/09/puerto-rico-primary-ballots-392958>.

center in Carolina where she had waited more than four hours under a blistering sun.”⁵⁰

Can we be surprised by these failings of a political system that has no real standing at the federal level? As Antonio Weiss and Brad Setser noted, “the U.S. government also bears a great deal of responsibility for the island’s plight. When federal policies that aided Puerto Rico’s economic development were repealed, no enduring replacements were put in place.”⁵¹

Puerto Rico’s status as a vassal state is evident; “Puerto Rico cannot get funding even for its food stamp program without approval from Congress, but it has no congressional representation to make its case in Washington.”⁵² With Trump balking at aid, in 2019 it was reported “Puerto Rico had reduced food stamp benefits by an average of 25 percent for 676,898 people” pending a congressional resolution.⁵³ That affected forty-three percent of all Puerto Ricans.⁵⁴

As a 2018 *NPR* article reported, “Puerto Rico faces a crushing debt of more than \$70 billion — much of it due to the territory’s large Medicaid expenses. That is on an island where the average household earns \$20,000 annually and diabetes and hypertension are widespread.”⁵⁵ Under an agreement with the federal government, Puerto Rico must obtain \$840.2 million in cuts from Medicaid by 2023,⁵⁶ which seems an impossible,

50. *Id.*

51. Antonio Weiss & Brad Setser, *America’s Forgotten Colony: Ending Puerto Rico’s Perpetual Crisis*, FOREIGN AFFS., (July/Aug. 2019), <https://www.foreignaffairs.com/articles/puerto-rico/2019-06-11/americas-forgotten-colony>.

52. Karni & Mazzei, *supra* note 43.

53. Jeff Stein, *More Than 670,000 Puerto Rico Residents Have Received Cuts to Food Stamp Benefits Amid Congressional Impasse*, WASH. POST (Mar. 12, 2019, 10:40 AM), <https://www.washingtonpost.com/us-policy/2019/03/08/puerto-rico-starts-cutting-food-stamp-benefits-used-by-more-than-million-people-amid-congressional-impasse/>. As a territory, and unlike states, “the island administers a separate program—called the Nutrition Assistance Program, rather than the Supplemental Assistance Nutrition Program (or “SNAP”) received by mainland states—through an annual block grant provided by the federal government.” *Id.*

54. *Id.*

55. Sarah Varney & Carmen Heredia Rodriguez, *Puerto Rico’s Wounded Medicaid Program Faces Even Deeper Cuts*, NPR (Aug. 1, 2018, 7:00 AM), <https://www.npr.org/sections/health-shots/2018/08/01/632804633/puerto-ricos-wounded-medicaid-program-faces-even-deeper-cuts>.

56. *Id.*

inhumane task. This again reveals Puerto Rico's colonized status:

If Puerto Rico were a state, the federal government would pay 83 percent of its Medicaid costs. (It pays upward of 70 percent of Medicaid expenses in 10 states, according to a formula that takes a state's economy into account.) But because of a 1968 law capping the amount of Medicaid money Washington sends to U.S. territories, the federal government pays only about 19 percent of Puerto Rico's Medicaid costs, and as a fixed annual payment, or block grant.⁵⁷

As a consequence, "[t]he economic overhaul doesn't rectify Puerto Rico's fundamental problem—it can't sustain its Medicaid program so long as Congress treats the territory differently than it treats states."⁵⁸ The United States Supreme Court has summarily upheld Puerto Rico's disparate treatment when it comes to the provision of safety net benefits.⁵⁹ This is despite an argument from Justice Thurgood Marshall that such disparateness should be viewed under an equal protection analysis.⁶⁰

Trump's animus toward spending money on his fellow Americans in Puerto Rico was shown in September 2018 when "Trump told then-White House Chief of Staff John F. Kelly and then-Office of Management and Budget Director Mick Mulvaney that he did not want a single dollar going to Puerto Rico . . . Instead, he wanted more of the money to go to Texas

57. *Id.*

58. *Id.*

59. *See, e.g.,* Harris v. Rosario, 446 U.S. 651 (1980).

60. *See id.* at 654 (Marshall, J., dissenting) ("[T]he Court suggests today, without benefit of briefing or argument, that Congress needs only a rational basis to support less beneficial treatment for Puerto Rico, and the citizens residing there, than is provided to the States and citizens residing in the States. Heightened scrutiny under the equal protection component of the Fifth Amendment, the Court concludes, is simply unavailable to protect Puerto Rico or the citizens who reside there from discriminatory legislation, as long as Congress acts pursuant to the Territory Clause. Such a proposition surely warrants the full attention of this Court before it is made part of our constitutional jurisprudence.").

and Florida.”⁶¹ As *The New York Times* editorialized:

The Trump recovery imprint has been far clearer in Gulf Coast states hit by hurricanes this year than on an island that has so little political clout. A double standard in the law was quickly clear after the storm when a federal cap on Puerto Rico’s food stamps limited the amount of emergency food aid. Texas and Florida had no such restraints after their hurricanes.⁶²

In October 2019, it was reported that officials from the United States Department of Housing and Urban Development (“HUD”) “told bewildered lawmakers that the agency missed the congressionally mandated deadline to issue a notice that would have kicked off a months-long process to help Puerto Rico get billions in federal housing funds Congress allocated after Hurricane Maria devastated the island in 2017.”⁶³ An

61. Tracy Jan et al., *After Butting Heads with Trump Administration, Top HUD Official Departs Agency*, WASH. POST (Jan. 16, 2019, 6:06 PM), https://www.washingtonpost.com/business/economy/top-hud-officials-departure-follows-disagreements-over-housing-policy-and-puerto-rico-disaster-funds/2019/01/16/e6ba5be4-1839-11e9-9ebf-c5fed1b7a081_story.html.

62. Editorial Board, *The Spiraling Diaspora from Puerto Rico*, N.Y. TIMES (Dec. 17, 2017), <https://www.nytimes.com/2017/12/17/opinion/puerto-rico-diaspora.html>. This disparate treatment has continued; in August 2019, it was reported that the Trump Administration would “allow states such as Florida, Texas and California to apply for the disaster mitigation funding approved by Congress, while adding new restrictions for Puerto Rico’s funding.” Jeff Stein & Josh Dawsey, *Trump Administration to Place New Restrictions on Billions in Aid for Puerto Rico Amid Island’s Political Crisis*, WASH. POST (Aug. 5, 2019, 10:06 AM), <https://www.washingtonpost.com/business/2019/08/01/trump-administration-place-new-restrictions-billions-aid-puerto-rico-amid-islands-political-crisis/>. That same month, when Hurricane Dorian appeared headed toward Puerto Rico, Trump complained as if the residents there had conjured up the storm, but then showed concern when Dorian instead headed toward Florida that he cancelled an overseas trip. Devan Cole, *Democratic Congressman: Trump Worried About Hurricane Hitting Florida Because It’s ‘Not an Island Full of People of Color,’* CNN (Aug. 30, 2019, 6:27 AM), <https://www.cnn.com/2019/08/29/politics/don-beyer-donald-trump-hurricane-dorian-puerto-rico-cnntv/index.html>.

63. Nicole Acevedo, *HUD Officials Knowingly Failed ‘to Comply with the Law,’ Stalled Puerto Rico Hurricane Relief Funds*, NBC NEWS (Oct. 18, 2019, 7:01 PM), <https://www.nbcnews.com/news/latino/hud-officials-knowingly->

official candidly admitted, in his congressional testimony, that HUD had no statutory authority for such a delay.⁶⁴

Despite controlling the United States House of Representatives, Democrats acceded to a federal budget for the 2020 fiscal year, which slashed Medicaid funding for Puerto Rico in half, from what both parties had agreed to legislatively. The reduction was specifically at the request of President Trump; “A White House spokesperson characterized the Puerto Rico funding deal as a ‘win for President Trump and the American people.’”⁶⁵

President Trump’s shocking racism in office manifested in many forms,⁶⁶ with Puerto Ricans living under a president who holds such views. As Nelson Denis wrote in *The Nation*:

failed-comply-law-stalled-puerto-rico-hurricane-n1068761.

64. *See id.*

65. Rachana Pradhan, *Trump Slashed Puerto Rico’s Medicaid Money as Part of Budget Deal*, POLITICO (Dec. 17, 2019, 5:59 PM), <https://www.politico.com/news/2019/12/17/trump-puerto-rico-medicaid-budget-086674>. This characterization ignores, as usual, the fact that Puerto Ricans are “the American people.”

66. *See, e.g.*, Eli Watkins & Abby Phillip, *Trump Decries Immigrants from ‘Shithole Countries’ Coming to US*, CNN (Jan. 12, 2018, 9:53 AM), <https://www.cnn.com/2018/01/11/politics/immigrants-shithole-countries-trump/index.html>; Stephen Collinson, *Trump Shocks with Racist New Ad Days Before Midterms*, CNN (Nov. 1, 2018, 8:53 AM), <https://www.cnn.com/2018/10/31/politics/donald-trump-immigration-paul-ryan-midterms/index.html>; Julie Hirschfeld Davis, *House Condemns Trump’s Attack on Four Congresswomen as Racist*, N.Y. TIMES (July 16, 2019), <https://www.nytimes.com/2019/07/16/us/politics/trump-tweet-house-vote.html>; Peter Wade, *Trump Used Asian Accent to Mock US Allies at Fundraiser*, ROLLING STONE (Aug. 11, 2019, 5:09 PM), <https://www.rollingstone.com/politics/politics-news/trump-asian-accent-mock-south-korea-japan-870252/>; Felicia Sonmez & John Wagner, *Trump Says Any Jewish People Who Vote for Democrats Are Showing ‘Great Disloyalty’ or ‘Lack of Knowledge,’* WASH. POST (Aug. 21, 2019, 10:26 AM), https://www.washingtonpost.com/politics/trump-questions-sincerity-of-tlaib-tears-as-she-talked-about-her-grandmother/2019/08/20/03d7b532-c339-11e9-b72f-b31d7faa77212_story.html; Philip Bump, *In a Pair of Interviews, Trump Highlights White Victimhood*, WASH. POST (July 14, 2020, 5:30 PM), <https://www.washingtonpost.com/politics/2020/07/14/pair-interviews-trump-highlights-white-victimhood>. In his discordant fashion, though, Trump has made “sweeping declarations of Latino support for his reelection.” Philip Rucker & Reis Thebault, *In New Mexico Rally, Trump Makes a Direct Appeal to Hispanic Voters*, WASH. POST (Sept. 16, 2019, 11:17 PM), https://www.washingtonpost.com/politics/in-new-mexico-rally-trump-makes-a-direct-appeal-to-hispanic-voters/2019/09/16/69cec6c6-d89e-11e9-a688-303693fb4b0b_story.html.

After one hundred years of citizenship, Puerto Ricans are prohibited from managing their own economy, negotiating their own trade relations, or setting their own consumer prices. Puerto Rico has been little more than a profit center for the United States: first as a naval coaling station, then as a sugar empire, a cheap labor supply, a tax haven, a captive market, and now as a municipal bond debtor and target for privatization.⁶⁷

In fact, Puerto Rico's debt includes the 2015 bankruptcy of a former Trump International Golf Club in Puerto Rico.⁶⁸ The territory's Tourism Development Fund is seeking to recover \$32.1 million in bond debt for a club whose vice president was Ivanka Trump.⁶⁹

In 2016, when Puerto Rico's finances were placed in the hands of an unelected seven-member oversight board by Congress,⁷⁰ the board was referred to disparagingly as "the junta" by many Puerto Ricans.⁷¹ One Puerto Rican journalist wrote, "Puerto Rico has been stripped naked and put on show to be shamed."⁷² A critic of this arrangement notes, "since the program is governed by a control board run by the same financiers responsible for driving the debt crisis in the first

67. Nelson Denis, *After a Century of American Citizenship, Puerto Ricans Have Little to Show for It*, NATION (Mar. 2, 2017), <https://www.thenation.com/article/archive/after-a-century-of-american-citizenship-puerto-ricans-have-little-to-show-for-it/>; see Puerto Rico Oversight, Management, and Economic Stability Act, Pub. L. No. 114-187, 130 Stat. 549.

68. Peter Overby, *Trump's Puerto Rico Golf Venture: Not Such a Great Deal*, NPR (Oct. 5, 2017, 5:01 AM), <https://www.npr.org/2017/10/05/555457046/trumps-puerto-rico-golf-venture-not-such-a-great-deal>.

69. *Id.*

70. Puerto Rico Oversight, Management, and Economic Stability Act, Pub. L. No. 114-187, 130 Stat. 549.

71. Mary Williams Walsh, *Puerto Rico Debt Relief Law Stirs Colonial Resentment*, N.Y. TIMES (June 30, 2016), <https://www.nytimes.com/2016/07/01/business/dealbook/puerto-rico-debt-relief-law-stirs-colonial-resentment.html>.

72. Rafael Matos, *Puerto Rico's Rude Awakening*, N.Y. TIMES (July 14, 2016), <https://www.nytimes.com/2016/07/14/opinion/puerto-ricos-rude-awakening.html>.

place, the island continues to sink into poverty while its creditors feast on the spoils.”⁷³ Remarkably, the ability of the board to enact a budget *without the consent of either the governor or legislature* has been upheld in court.⁷⁴

As if matters were not troubled enough, under the Tax Cuts and Jobs Act signed by President Trump in 2017,⁷⁵ there is

a new 12.5% tax on income generated from intellectual property held by foreign corporations outside of the United States— but the Code now defines corporations in Puerto Rico as *foreign corporations*, even when such a corporation is affiliated with a mainland company and *even though Puerto Rico is not a foreign country*.⁷⁶

This may be, in the opinion of one commentator, “the last nail in the coffin.”⁷⁷

As austerity tightens, schools are closing—with Hurricane Maria’s aftermath accelerating the pace; “[o]f the roughly 1,100 public schools left in Puerto Rico at the time of the storms, more than 250 simply didn’t open again. Most of those abandoned were elementary or middle schools.”⁷⁸ A swarm of earthquakes beginning in December 2019 added to the

73. Michelle Chen, *The Bankers Behind Puerto Rico’s Debt Crisis*, NATION (June 8, 2017), <https://www.thenation.com/article/archive/bankers-behind-puerto-ricos-debt-crisis>. Touting his ties to President Trump, Chris Christie, the Republican former New Jersey governor, was hired as a “consultant” for Puerto Rico’s Fiscal Agency and Financial Advisory Authority for \$25,000 a month. Theodor Meyer & Adam Cancryn, *Chris Christie Cashes in on Coronavirus Lobbying*, POLITICO (July 23, 2020, 7:55 PM), <https://www.politico.com/news/2020/07/23/chris-christie-cashes-in-on-coronavirus-lobbying-380640>.

74. *In re Fin. Oversight & Mgmt. Bd. for P.R.*, 916 F.3d 98 (1st Cir. 2019).

75. Tax Cuts and Jobs Act, Pub. L. No. 115-97, 131 Stat. 2054.

76. Juan R. Torruella, *Why Puerto Rico Does Not Need Further Experimentation with Its Future: A Reply to the Notion of “Territorial Federalism,”* 131 HARV. L. REV. F. 65, 97 (2018) (emphasis added).

77. *Id.* at 96.

78. Jonathan M. Katz, *The Disappearing Schools of Puerto Rico*, N.Y. TIMES (Sept. 12, 2019), <https://www.nytimes.com/interactive/2019/09/12/magazine/puerto-rico-schools-hurricane-maria.html>.

territory's plight, with one writer noting:

While Puerto Ricans are reproached for not having emergency backpacks — or for living in homes that aren't properly reinforced — we come to learn that 95 percent of our public schools aren't built to withstand earthquakes, and that the government didn't take structural integrity into account when it decided to close a quarter of the schools in the name of austerity.⁷⁹

In January 2020, outrage was sparked when an activist's video revealed the government had failed to distribute emergency aid discovered in a “43,000-square-foot warehouse.”⁸⁰ The governor “fired Puerto Rico's chief of emergency management, temporarily handed the reins of the agency over to the National Guard and ordered an investigation into why the supplies had not been given to people in need.”⁸¹ Two other cabinet officials were also fired.⁸² The situation prompted a gleeful response from a President Trump family member:

President Trump, who has been quick to accuse

79. Yarimar Bonilla, *How Much More Do We Puerto Ricans Have to Do for Ourselves?*, WASH. POST (Jan. 13, 2020, 6:00 AM), <https://www.washingtonpost.com/outlook/2020/01/13/how-much-more-do-puerto-ricans-have-do-ourselves/>. An article reported that “[f]or the very old and the very young, in particular, this is an age of suffering here.” Arelis R. Hernández & Cristina Corujo, *Puerto Rico Earthquake Aftershocks Again Rattle Coastline as Residents Deal with Disaster After Disaster*, WASH. POST (Jan. 11, 2020, 5:35 PM), https://www.washingtonpost.com/national/puerto-rico-earthquake-aftershocks-again-rattle-coastline-as-residents-deal-with-disaster-after-disaster/2020/01/11/f3c843a6-347f-11ea-9313-6cba89b1b9fb_story.html. In makeshift camps where residents had fled to avoid unsafe housing, “[t]here is usually one toilet for more than 50 people. Dialysis patients sit out in the sun. The infirm sleep on the ground or in cars. Children go to bed wearing sneakers, ready to run if they feel a rumble.” *Id.*

80. Alejandra Rosa & Patricia Mazzei, *Video Reveals Unused Earthquake Aid in Puerto Rico: ‘We Are Outraged,’* N.Y. TIMES (Jan. 20, 2020), <https://www.nytimes.com/2020/01/20/us/puerto-rico-protests-emergency-supplies.html>.

81. *Id.*

82. *Id.*

Puerto Rican leaders of corruption and delayed federal disaster aid to the island after Hurricane Maria, did not immediately weigh in. But his son Donald Trump Jr. linked to an article . . . and wrote on Twitter, ‘So Trump was right after all!!! As usual.’⁸³

Even as a viral threat began emerging, Puerto Rico residents were still living outside.⁸⁴ The COVID-19 pandemic presented another crisis, with reporting in April 2020 that Puerto Rico was “trying to claw back a \$19 million deposit it paid for 1 million COVID-19 tests that it now says were never approved by the Food and Drug Administration and didn’t arrive on the agreed-upon date.”⁸⁵ By the end of May 2020, it was reported that “Puerto Rico is on its third health secretary since March. The state epidemiologist resigned after her lack of credentials was revealed, and other health officials have also left their jobs. Critics say data collection has been abysmal, and Puerto Rico is not testing enough people for the virus.”⁸⁶

II. A PATH TOWARD EMPOWERMENT?

Today, despite President Trump’s open hostility, the territory’s resident commissioner—effectively a nonvoting United States House of Representatives delegate—is a Republican; former Governor Wanda Vázquez Garced, who replaced Rosselló, had “said she is ‘inclined toward Republican

83. *Id.*

84. Frances Robles, *Months After Puerto Rico Earthquakes, Thousands Are Still Living Outside*, N.Y. TIMES (Mar. 1, 2020), <https://www.nytimes.com/2020/03/01/us/puerto-rico-earthquakes-fema.html> (“Out of the roughly 8,300 houses that were damaged in the Jan. 7 earthquake, about 2,500 are uninhabitable, according to the Puerto Rico Department of Housing.”).

85. Jim Wyss, *Puerto Rico Cancels Order for Coronavirus Tests, as Questions Swirl Around Response*, MIA. HERALD (Apr. 6, 2020, 4:39 PM), <https://www.miamiherald.com/news/nation-world/world/americas/article241798951.html>.

86. Arelis R. Hernández, *In Puerto Rico, An Economic Disaster Looms Amid Fears of Coronavirus*, WASH. POST (May 28, 2020, 5:27 PM), https://www.washingtonpost.com/national/in-puerto-rico-an-economic-disaster-looms-amid-fears-of-coronavirus/2020/05/28/d4b11e62-9f0e-11ea-81bb-c2f70f01034b_story.html.

philosophies.”⁸⁷ Indeed, the governor endorsed Trump’s re-election campaign, although it was reported that her “endorsement is unlikely to sway significant numbers of Puerto Rican voters given her own unpopularity on the island.”⁸⁸ She had lost her own party’s August 2020 primary.⁸⁹

Although Trump also lost, the fact that Puerto Ricans voted for statehood in the November 2020 election was weaponized by U.S. Senate Republicans in two Georgia Senate runoff races—with an article noting that, despite the national Republican platform’s rhetorical support for Puerto Rico statehood, “for about a year, as Republicans became fearful of losing their majority in the Senate, the statehood of Puerto Rico and the District of Columbia began to be equated with socialism and the Senate majority.”⁹⁰ Yet, revealing the paradoxes of the island’s politics, Puerto Ricans had also re-elected Jenniffer González-Colón as their voice in Congress, who served as one of the chairs of “Latinos for Trump.”⁹¹

One author had predicted that “[t]he more Trump and the federal government treat Puerto Ricans as second class citizens, the more beneficial it is in Puerto Ricans’ minds for them to achieve statehood in order to be better positioned to fight for their rights.”⁹² Were Puerto Rico to achieve statehood, “Puerto Rico would immediately become the 30th-largest state by population, with two senators and perhaps five representatives.”⁹³ Polling suggests that Puerto Rico’s

87. Rafael Bernal, *Puerto Ricans Joke Online About What It Would Be Like to Be Part of Denmark*, HILL (Aug. 22, 2019, 4:06 PM), <https://thehill.com/latino/458462-puerto-ricans-joke-online-about-what-it-would-be-like-to-be-part-of-denmark>.

88. Sabrina Rodriguez, *Puerto Rico Governor Endorses Trump*, POLITICO (Oct. 6, 2020), <https://www.politico.com/news/2020/10/06/puerto-rico-governor-endorses-trump-426926>.

89. *Id.*

90. Suzanne Gamboa, *What Do Senate Runoffs in Georgia Have to do with Puerto Rico Statehood?*, NBC NEWS (Dec. 6, 2020, 6:52 AM), <https://www.nbcnews.com/news/latino/what-do-u-s-senate-runoffs-georgia-have-do-puerto-n1250033>.

91. *Id.*

92. Beverly Brown, *Presidential Blunders and a Path to Statehood*, HARV. POL. REV. (Aug. 27, 2019), <https://harvardpolitics.com/united-states/puerto-rico-statehood/>.

93. Weiss & Setser, *supra* note 51. In a 2017 referendum, “designed by the current, pro-statehood government, statehood received 97 percent of the vote, but turnout was a mere 23 percent, as both pro-independence and pro-

admission into statehood is supported by the broader United States.⁹⁴ Already, more Puerto Ricans live on the mainland than on the island—roughly 5.6 million versus 3.4 million.⁹⁵ While living on the mainland, these Puerto Ricans enjoy the rights denied to them in the territory.⁹⁶ Would we deny Puerto Ricans their full-fledged rights simply out of the paternalistic fear as to how such residents would exercise those rights?⁹⁷

That for four years Puerto Ricans were subject to the rages and whims of a faraway president, a modern-day version of a “Great White Father,”⁹⁸ only compounds the injuries of the

commonwealth parties boycotted the referendum.” *Id.* The 2020 referendum was dismissed by some as a ploy by the “Republican” governor to turn out her party members. See Julio Ricardo Varela, *Is Puerto Rico Having a Defining Vote on Statehood? No, It's Just a Political Stunt.*, WASH. POST (May 21, 2020, 12:12 PM), <https://www.washingtonpost.com/opinions/2020/05/21/is-puerto-rico-having-defining-vote-statehood-no-its-just-political-stunt/> (arguing the outcome did not matter, as “[t]he Trump administration is just not that into Puerto Rico, even with a local government led by Republicans”).

94. See Alice Miranda Ollstein, *Poll: Two-Thirds of Country Favors Statehood for Puerto Rico*, POLITICO (July 18, 2019, 9:00 AM), <https://www.politico.com/story/2019/07/18/puerto-rico-statehood-poll-1419203> (“The 66 percent support for admitting the island as the 51st state is consistent with polling dating to the early 1960s.”).

95. See Jimena Tavel, *‘Miami Is with You, Puerto Rico’: Diaspora Speaks Out for Island in Crisis*, MIA. HERALD (July 24, 2019, 12:32 PM), <https://www.miamiherald.com/news/local/article232846647.html>.

96. That includes political success—for example, in 2014, Melissa Mark-Viverito, who was born in Puerto Rico, was elected by the New York City Council as its speaker. Michael M. Grynbaum & Kate Taylor, *Mayoral Ally Elected Speaker, Furthering City’s Liberal Shift*, N.Y. TIMES (Jan. 8, 2014), <https://www.nytimes.com/2014/01/09/nyregion/mark-viverito-is-elected-city-council-speaker.html> (“Spectators waved Puerto Rican flags, and there were murmurs of approval at a mention of Ms. Mark-Viverito’s protests against the Navy’s use of a Puerto Rican island.”).

97. A bill introduced in August 2020 by two New York U.S. House members of Puerto Rican descent would have Puerto Rico voters elect delegates to a self-determination convention, which, in the opinion of one newspaper, “would set the stage for a more meaningful debate over the island’s status. And, crucially, it asks Congress to respond to whatever solution Puerto Ricans propose.” Editorial, *A Light at the End of the Political Tunnel for Puerto Rico*, BOS. GLOBE (Sept. 13, 2020, 4:00 AM), <https://www.bostonglobe.com/2020/09/13/opinion/light-end-political-tunnel-puerto-rico/>.

98. Russel Lawrence Barsh, *An American Heart of Darkness: The 1913 Expedition for American Indian Citizenship*, 751 GREAT PLAINS Q. 91, 102 (1993). In 1913, President Woodrow Wilson, in an address to Native Americans, stated, that “[t]he Great White Father now calls you his ‘brothers,’ not his ‘children.’” *Id.*

past. At the same time President Trump attacked Puerto Rico as “one of the most corrupt places on earth[,]” he also claimed to be the “best thing that’s ever happened to Puerto Rico.”⁹⁹ He claimed that “Puerto Rico has been taken care of better by Donald Trump than by any living human being, and I think the people of Puerto Rico understand it,” while citing, as evidence for his empathy, the fact that he formerly staged Miss Universe pageants there.¹⁰⁰ Despite his comments regarding the benefits his administration has conferred on Puerto Rico, during the 2019 hurricane season President Trump diverted more money from Puerto Rico than any state to continue his crusade to build a border wall.¹⁰¹

Our immigration debate today not only shows signs of our colonial past, but our colonial *present*. Our treatment of Puerto Rico sheds light on the ugly racial undercurrent in the debate. We have not made large enough strides from the 1901 United States Supreme Court decision endorsing “action on the part of Congress that would be quite unnecessary in the annexation of contiguous territory inhabited only by people of the *same race*, or by scattered bodies of native Indians.”¹⁰² Indeed, President Trump’s words do not diverge greatly from a 1909 message to Congress from President Taft, in which he “stated that Puerto Ricans had forgotten the generosity of the United States toward them, ‘something to be expected of people with such little education.’”¹⁰³

In conclusion, the fact that we treat immigrants so cruelly, to the point of the Trump Administration even seeking to

99. *Trump: ‘I’m the Best Thing That’s Ever Happened to Puerto Rico,’* CARIBBEAN BUS. (Aug. 28, 2019), <https://caribbeanbusiness.com/trump-im-the-best-thing-thats-ever-happened-to-puerto-rico/>.

100. Julian Shen-Berro, *Trump: ‘I’m the Best Thing That Ever Happened to Puerto Rico,’* HUFFINGTON POST (July 22, 2019, 4:06 PM), https://www.huffpost.com/entry/trump-puerto-rico_n_5d3608d9e4b020cd9947ad21.

101. See Caitlyn Oprysko et al., *Trump Defends Cash Grab for Border Projects as Lawmakers Lash Out*, POLITICO (Sept. 4, 2019, 11:43 PM), <https://www.politico.com/story/2019/09/04/trump-defends-border-wall-1481001>.

102. *Downes v. Bidwell*, 182 U.S. 244, 282 (1901) (emphasis added).

103. Torruella, *supra* note 76, at 72 (citing WILLIAM HOWARD TAFT, 3 THE COLLECTED WORKS OF WILLIAM HOWARD TAFT: PRESIDENTIAL ADDRESSES AND STATE 96 (David H. Burton ed., 2002)).

deport children with life-threatening illnesses,¹⁰⁴ can be no surprise. Our treatment of immigrants should be a given, as we have abused—and continue to abuse—the *Americans* living in Puerto Rico.

104. Suzanne Gamboa, *Trump Administration Seeks to Deport Children with Life-Threatening Illnesses*, NBC NEWS (Aug. 29, 2019, 2:01 PM), <https://www.nbcnews.com/news/latino/new-low-trump-immigration-policy-seeks-deport-sick-dying-children-n1047901>.