



July 21, 2020

Paulo Abrão  
Executive Secretary  
Inter-American Commission on Human Rights (IACHR)  
1889 F Street, N.W.  
Washington, DC 20006

**Re: Request for thematic hearing on political participation in U.S. territories and the District of Columbia**

Dear Executive Secretary Abrão:

Equally American and DC Vote, along with the co-sponsoring organizations listed below, submit this request for a thematic hearing before the Inter-American Commission on Human Rights (“Commission”) for the upcoming 177th Period of Sessions to discuss the ongoing denial of full political participation for residents of U.S. territories, namely Puerto Rico, Guam, the U.S. Virgin Islands, American Samoa, and the Northern Mariana Islands (together, the “Territories”), and the District of Columbia (“DC”).

Purpose and Objectives of Hearing

Petitioners for this hearing seek to highlight violations of the right to political participation of the nearly five million people living in the Territories and DC—more than 90% of whom are racial or ethnic minorities. A thematic hearing will provide a critical forum to (1) gather the varied experiences, interests, and opinions within and among the Territories and DC on the issue of political participation; (2) raise awareness of the U.S. obligation under international human rights law to respect and ensure the right to political participation in the Territories and DC; and (3) engage representatives of the U.S. government on the issue of citizenship and voting rights in advance of national elections that exclude residents of the Territories and DC from full participation.

Timeliness of this Hearing

A hearing on the issues of citizenship and voting for residents of the Territories and DC is timely and will have a significant impact on the ongoing efforts of these disenfranchised groups to achieve their right to political participation.

Most significantly, a hearing is necessary given that 2020 is a presidential election year in the United States. Residents of the Territories fully participate in the nomination process to select

among party candidates for President. Yet voters in the Territories—who have a higher rate of participation in the U.S. Armed Forces than any State—will be completely excluded from participating in the November 2020 election.

Further, residents of both the Territories and DC are denied any voting representation in Congress, with only a “non-voting” Delegate in the U.S. House of Representatives and no representation at all in the U.S. Senate. Despite this lack of political representation, Congress has complete authority to govern both DC and the Territories, often enacting local legislation for these areas over the express objections of their citizens. With the United States and the world focused on the upcoming U.S. elections, this is a critical opportunity for the Commission to help elevate constructive conversations around expanding political participation for disenfranchised residents of the Territories and DC.

Recent developments in constitutional jurisprudence related to the Territories also make a hearing particularly timely. In December 2019, a federal district court issued a historic ruling in *Fitisemanu v. United States* that people born in the Territories have a constitutional right to be recognized as U.S. citizens.<sup>1</sup> Plaintiffs in the case, who were born in American Samoa but now live in Utah, are disenfranchised in federal, state, and local elections because the federal government labels them “nationals, but not citizens, of the United States.”<sup>2</sup> In February 2020, the United States announced that it is appealing the decision, arguing that despite the U.S. Constitution’s guarantee of birthright citizenship for those born on U.S. soil, Congress may withhold recognition of citizenship to those born in the Territories. Following this appeal, the American Bar Association passed a resolution supporting the court’s recognition that the U.S. Constitution guarantees U.S. citizenship to all persons born in the Territories.<sup>3</sup> Briefing in the case is complete, with an argument before the U.S. Court of Appeals for the Tenth Circuit likely in September 2020. A hearing would provide an opportunity to address core questions about citizenship and political participation in the Territories at a time these issues are attracting significant attention.<sup>4</sup>

Conversations about political participation for residents of DC are also at a critical juncture. In 2016, more than 85% of DC voters expressed their support for forming a new State. In June 2020 the Washington, DC Admission Act passed the U.S. House of Representatives, making history as the first time a DC statehood bill passed either the House or Senate.<sup>5</sup> The question of DC statehood is now before the U.S. Senate, where Senate Majority Leader Mitch McConnell has said the bill is not “going anywhere,” and with President Donald Trump threatening to veto any DC statehood bill that reaches his desk.<sup>6</sup> A hearing would provide an important forum to discuss

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<sup>1</sup> *Fitisemanu v. United States* (D. Utah 2019) F.Supp. 3d 2019 WL 6766502.

<sup>2</sup> Immigration and Nationality Act, 8 U.S.C. § 1408.

<sup>3</sup> Equally American, American Bar Association Supports Birthright Citizenship in U.S. Territories (Feb. 18, 2020).

<sup>4</sup> See, e.g., Michael Levenson, *American Samoans Should Be Granted U.S. Citizenship, Judge Rules*, New York Times, December 13, 2019; Mark Joseph Stern, *Federal Judge Rules American Samoans Are U.S. Citizens by Birth. Finally*, Slate.com, December 12, 2019.

<sup>5</sup> Emily Cochrane, *In Historic Vote, House Approves Statehood for the District of Columbia*, NY Times (June 26, 2020).

<sup>6</sup> Barbara Sprunt, *In Historic Vote, House Backs Statehood For D.C.; Trump And The Senate Say No*, NPR (June 26, 2020).

issues of political participation in DC, the only capital in the Americas whose residents are disenfranchised.

### Scope of Hearing

The proposed focus of this hearing is the right to political participation, as embodied in article XX of the American Declaration of the Rights and Duties of Man (“American Declaration”) and article 25 of the International Covenant on Civil and Political Rights (“ICCPR”). Maintaining a narrow focus on this right will enable the Commission to consider the issue comprehensively across the Territories and DC, where it has previously considered only specific cases brought with respect to Puerto Rico<sup>7</sup> and the District of Columbia.<sup>8</sup> The commonalities between DC and each of the Territories will demonstrate the breadth of the issue, while the differences between them will help the Commission to be fully informed in its response.

Currently, the federal government takes an array of conflicting policy positions with respect to citizenship and the right to vote in the Territories. For example, Congress recognizes those born in Puerto Rico, Guam, the U.S. Virgin Islands, and the Northern Mariana Islands as U.S. citizens, while labeling those born in American Samoa with the inferior status of “national, but not citizen of the United States.” Under federal law, U.S. citizens moving from a State to the Northern Mariana Islands may maintain their ability to vote for President and voting representation in Congress in their former State of residence, while those who move to other Territories cannot.<sup>9</sup> Congressional legislation that would amend the Constitution to allow for voting rights in the Territories or that would admit certain Territories as States has been proposed, but Congress has not acted on it. Instead, the federal government labels these areas “unincorporated” territories, which means that there is no assumption that they are on the path to full political participation.

Like those living in the Territories, residents of DC have no representation in the Senate and no voting representation in the House of Representatives, although they are able to vote for President. DC is also required to submit all local legislation to Congress for review. Moreover, DC’s local budget requires affirmative congressional approval for the use of both federal and local funds. At the same time as they are disenfranchised, DC residents pay higher federal taxes, per capita, than the residents of any State.

In total, full political participation is denied to nearly five million people in the Territories and DC, a population larger than half the States and larger than the six smallest States combined.<sup>10</sup>

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<sup>7</sup> Inter-American Commission on Human Rights (IACHR), *Rosselló v. United States*, Report No. 17/17, Petition P-1105-06, 2017, Inter-Am. C.H.R., OEA/Ser.L/V/II. Doc. 18. Oral argument in *Rosselló v. United States* took place before the Commission on October 5, 2018, with a decision still pending.

<sup>8</sup> Inter-American Commission on Human Rights (IACHR), *Statehood Solidarity Committee v. United States*, Case 11.204, Report No. 98/03, Inter-Am. C.H.R., OEA/Ser.L/V/II.114 Doc. 70 rev. 1 (2003).

<sup>9</sup> *Equally American, Disenfranchised Residents of U.S. Territories Seek Supreme Court Review*, (April 23, 2018), [http://www.equalrightsnow.org/disenfranchised\\_residents\\_of\\_u\\_s\\_territories\\_seek\\_supreme\\_court\\_review](http://www.equalrightsnow.org/disenfranchised_residents_of_u_s_territories_seek_supreme_court_review).

<sup>10</sup> U.S. Census data from 2010 shows that the population of the District of Columbia is 601,723, Puerto Rico 3,725,789, Guam 159,358, the U.S. Virgin Islands 106,405, the Northern Mariana Islands 53,883, and American

The primary focus of the hearing would be on political participation, but, in order to illustrate the origins of the irregular status of the Territories and DC, the hearing will necessarily touch on the right to equality and, in particular, on the right to be free from racial discrimination. The perpetual denial of political participation in the Territories originated with the *Insular Cases*, a notoriously racist line of jurisprudence that established a doctrine of “separate and unequal” status for so-called “unincorporated” territories.<sup>11</sup> Today, U.S. courts continue to affirm the *Insular Cases* to deny political participation even while acknowledging their racist character.<sup>12</sup> A hearing on political participation in the Territories would be incomplete without consideration of principles of equality and non-discrimination, which exist not only under article II of the American Declaration and article 26 of the ICCPR, but are also *jus cogens* norms.<sup>13</sup>

The hearing will also provide an opportunity to illustrate the ramifications of the lack of political participation, which implicate an even wider range of rights. Since residents of the Territories and DC do not have a full voice in the U.S. federal government, they are vulnerable to a broad spectrum of rights violations. The right to health under article XVI of the American Declaration, for example, is implicated because the U.S. territories receive a fraction of what mainlanders receive in programs like Medicaid.<sup>14</sup> With respect to DC, Congress regularly prohibits the District from using its own local funds to support abortion or needle-exchange programs.<sup>15</sup> Well-being has been further imperiled in Puerto Rico and the U.S. Virgin Islands not only because of the recent hurricanes and earthquakes but also because, as the Commission has noted, “the U.S. response . . . has been slower and less efficient than to situations in other parts of the country.”<sup>16</sup> The arrival of Covid-19 in the Territories has highlighted the fragility of their healthcare systems and the inability of residents of the Territories to benefit fully from welfare programs.<sup>17</sup> At the same time, the U.S. government’s response to Covid-19 has been to set aside a lump sum to be distributed among the Territories and DC that guarantees them less funding than that which is available to States.<sup>18</sup>

A hearing by the Commission to address issues of political participation would be an important complement to other international forums that have focused on broader issues of decolonization

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Samoa 55,519, for a total population of 4,702,677. United States Summary: 2010 Population and Housing Units Count, U.S. CENSUS BUREAU (Sept. 2012), available at <https://www.census.gov/prod/cen2010/cph-2-1.pdf>.

<sup>11</sup> Juan R. Torruella, *The Insular Cases: The Establishment of a Regime of Political Apartheid*, 29 U. Pa. J. Int’l L. 283 (2007).

<sup>12</sup> See, e.g., *Segovia v. Bd. of Election Commissioners*, 201 F. Supp. 3d 924 (N.D.IL 2016).

<sup>13</sup> Inter-American Court of Human Rights, *Juridical Condition and Rights of Undocumented Migrants*, Advisory Opinion OC-18/03, September 17, 2003, Inter-Am. Ct. H.R. (Ser. A) No. 18 ¶ 101 (2003).

<sup>14</sup> Maria Levis, *The Price of Inequality for Puerto Rico*, Health Affairs Blog (December 29, 2015), <https://www.healthaffairs.org/doi/10.1377/hblog20151229.052430/full>.

<sup>15</sup> Rachel Kurzius, *Policy Riders and Lack of Statehood Put a Major Burden on Abortion Care in D.C.*, DCist.com (September 26, 2016), <https://dcist.com/story/16/09/26/new-federal-law-could-give-dc-power>.

<sup>16</sup> Inter-American Commission on Human Rights (IACHR), *Press Release, IACHR Expresses Deep Concern about the Human Rights Situation in Puerto Rico* (January 18, 2018), [http://www.oas.org/en/iachr/media\\_center/preleases/2018/004.asp](http://www.oas.org/en/iachr/media_center/preleases/2018/004.asp).

<sup>17</sup> Neil Weare, Rosa Hayes & Mary Charlotte Carroll, *The Constitution, Covid-19, and Growing Healthcare Disparities in U.S. Territories*, ACS ExpertForum (April 28, 2020), <https://www.acslaw.org/expertforum/the-constitution-covid-19-and-growing-healthcare-disparities-in-u-s-territories>.

<sup>18</sup> *Coronavirus Aid, Relief, and Economic Security Act*, Pub. L. 116-136 (2020).

and self-determination, such as the Special Committee on Decolonization at the United Nations. As efforts to achieve self-determination and decolonization continue, it is important also to have conversations about advancing human rights issues in these areas today.

Should the Commission grant this request for a thematic hearing, petitioners will provide a list of experts and interested parties, include high-ranking government officials from the Territories and DC, to be invited to participate in the hearing alongside representatives from the U.S. federal government.

Should the Commission have any questions regarding this request, please do not hesitate to contact the petitioners.

We thank the Commission in advance for its consideration of this request.

Sincerely,

Neil Weare  
President, Equally American

Bo Shuff  
Executive Director, DC Vote

Co-Sponsors:

FairVote  
National Equality Action Team  
Virgin Islands Youth Advocacy Coalition  
U.S. Citizens for Equal Protection  
NETWORK Lobby for Catholic Social Justice  
Harlan Group for Civil Rights  
Greenpeace USA  
National Center for Transgender Equality  
Alianza Americas  
Samoan Federation of America  
League of Conservation Voters  
Yale Law School's Lowenstein International Human Rights Law Clinic  
National Civic League  
St. John Community Foundation