NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

JAVIER MANDRY, AKA JAVIER E. MANDRY-MERCADO,
Plaintiff-Appellant

v.

UNITED STATES,
Defendant-Appellee

2023-1693

Appeal from the United States Court of Federal Claims in No. 1:23-cv-00281-DAT, Judge David A. Tapp.

ON PETITION FOR PANEL REHEARING AND REHEARING EN BANC

Before MOORE, *Chief Judge*, LOURIE, DYK, PROST, REYNA, TARANTO, CHEN, HUGHES, STOLL, CUNNINGHAM, and STARK, *Circuit Judges*.[1]

PER CURIAM.

O R D E R

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[1] Circuit Judge Newman did not participate.

Javier Mandry filed a combined petition for panel rehearing and rehearing en banc. The petition was referred to the panel that heard the appeal, and thereafter the petition was referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for panel rehearing is denied.

The petition for rehearing en banc is denied.

The mandate of the court will issue February 8, 2024.

FOR THE COURT

Jarrett B. Perlow
Clerk of Court

February 1, 2024
Date

NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

JAVIER MANDRY, AKA JAVIER E. MANDRY-MERCADO,
Plaintiff-Appellant

v.

UNITED STATES,
Defendant-Appellee

2023-1693

Appeal from the United States Court of Federal Claims in No. 1:23-cv-00281-DAT, Judge David A. Tapp.

Decided: November 16, 2023

JAVIER MANDRY MERCADO, Ponce, PR, pro se.

PATRICK ANGULO, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, DC, for defendant-appellee. Also represented by BRIAN M. BOYNTON, PATRICIA M. MCCARTHY, LOREN MISHA PREHEIM.

Before LOURIE, REYNA, and HUGHES, *Circuit Judges*.

PER CURIAM.

Javier Mandry appeals from a decision of the United States Court of Federal Claims dismissing his complaint for lack of subject matter jurisdiction. We affirm.

BACKGROUND

Mr. Mandry, a resident and taxpayer of the Commonwealth of Puerto Rico, filed a complaint before the United States Court of Federal Claims ("Court of Federal Claims") seeking $5 million in damages and other relief. *See Mandry v. United States*, 165 Fed. Cl. 170, 171 (2023) ("*Decision*").

Among other things, Mr. Mandry's complaint sought to challenge the legality of the Puerto Rico Oversight, Management, and Economic Stability Act ("PROMESA"). Reply Br. 2, 5. Mr. Mandry had filed earlier lawsuits before the United States District Court for the District of Puerto Rico that were stayed as a result of PROMESA, and Mr. Mandry's complaint before the Court of Federal Claims alleged that those stays were unconstitutional. *Id.* at 3–4. Mr. Mandry also alleged that the passage of the 2014 Consolidated Appropriations Act, Pub. Law No. 113-76, required the United States to provide funds for a vote of all Puerto Rican residents to decide whether Puerto Rico should become the United States' fifty-first state.[1] *See, e.g.*, Appellant's Informal Br. 4–5; Reply Br. 2, 14.

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[1] Mr. Mandry's complaint also alleged other claims for relief that were addressed by the Court of Federal Claims, including under the First and Fourteenth Amendments. *See Decision*, at 172–73. On appeal, Mr. Mandry appears to state that he is no longer pursuing those claims. Reply Br. 2. Accordingly, they are not further addressed herein.

Mr. Mandry's informal complaint was filed on February 21, 2023. *Mandry v. United States*, No. 23-281, ECF 1 (Fed. Cl. Feb. 21, 2023). Approximately one month later, on March 27, 2023, the Court of Federal Claims dismissed it for lack of subject matter jurisdiction and failure to state a claim. *Decision*, at 172. The Court of Federal Claims interpreted Mr. Mandry's allegations regarding "Congressional inaction on the Puerto Rican statehood referendum and PROMESA" as a takings claim under the Fifth Amendment. *Id.* It concluded, however, that Mr. Mandry had failed to plead that "the United States took his private property for public use" as required to state such a claim. *Id.* at 173. As to Mr. Mandry's challenge to the stay of his other cases under PROMESA, the Court of Federal Claims explained, "[i]t is well-settled law that this [c]ourt lacks subject-matter jurisdiction to review the judicial decisions of other courts." *Id.* (citations omitted).

Mr. Mandry timely appeals. We have jurisdiction to review the Court of Federal Claims' decision under 28 U.S.C. § 1295(a)(3).

STANDARD OF REVIEW

We review *de novo* decisions by the Court of Federal Claims to dismiss a case for lack of subject matter jurisdiction. *See Diversified Grp. Inc. v. United States*, 841 F.3d 975, 980 (Fed. Cir. 2016).

DISCUSSION

We affirm the Court of Federal Claims' determination that it lacked subject matter jurisdiction over Mr. Mandry's claims.

The Court of Federal Claims is a court of limited jurisdiction. *United States v. Testan*, 424 U.S. 392, 397–99 (1976). That jurisdiction is established, at least in part, by the Tucker Act. 28 U.S.C. § 1491. Under the Tucker Act, the Court of Federal Claims can consider claims founded "upon any express or implied contract with the United

States." 28 U.S.C. § 1491(a)(1). The Tucker Act also gives the Court of Federal Claims jurisdiction over claims for money damages against the United States based on "the Constitution, or any Act of Congress or any regulation of an executive department." *Id.*; *Fisher v. United States*, 402 F.3d 1167, 1172 (Fed. Cir. 2005) (en banc) (explaining that "a plaintiff must identify a separate source of substantive law that creates the right to money damages").

To support his position that the Court of Federal Claims has jurisdiction to hear his case, Mr. Mandry states that he "assert[s] claims arising from a breach of contract and claims based on separate sources of law." Reply Br. 2. Mr. Mandry appears to allege that through the passage of the 2014 Consolidated Appropriations Act, as well as the enactment of PROMESA and other conduct, the United States entered into a contract with Puerto Rico regarding its residents' right to vote for Puerto Rico to join the Union, of which Mr. Mandry is a third-party beneficiary entitled to bring suit on Puerto Rico's behalf. Appellant's Informal Br. 13–17; Reply Br. 9–10, 13–14.

Although Mr. Mandry attempts to style his claims as breach of contract, he has not alleged the existence of an express or implied contract that supports the Court of Federal Claims' jurisdiction under the Tucker Act. Creating a contract with the United States requires showing mutuality of intent between the United States and the other contracting party, consideration, unambiguous offer and acceptance, and authority on the part of a government official to bind the United States. *See Biltmore Forest Broad. FM, Inc. v. United States*, 555 F.3d 1375, 1380 (Fed. Cir. 2009). Congress' passage of PROMESA does not fulfill these contract creation requirements, nor otherwise involve an earlier contract between the government and a private party that could implicate a breach of contract claim. *Cf. Conner Bros. Const. Co. v. Geren*, 550 F.3d 1368, 1371–72 (Fed. Cir. 2008) (discussing "the government's dual roles as contractor and sovereign" in the context of the

sovereign acts doctrine and reiterating that "the United States as a contractor cannot be held liable directly or indirectly for the public acts of the United States as a sovereign").

Because Mr. Mandry appears to hinge all his jurisdictional arguments on appeal on this breach of contract theory, and because that theory lacks merit, he has not shown that the Court of Federal Claims has jurisdiction over any of his claims. However, we also briefly address some of his other arguments.

Mr. Mandry asserts a right to challenge the constitutionality of PROMESA on behalf of himself as well as others similarly situated.[2] As the Court of Federal Claims explained, Mr. Mandry's challenge to PROMESA at most amounts to either a claim under the Fifth Amendment's Takings Clause or disagreement with another court's stay pursuant to PROMESA of other cases filed by Mr. Mandry. *Decision*, at 172–73. But at least as to his allegations seeking a vote for Puerto Rico to become the fifty-first state, Mr. Mandry has not alleged that the United States took his

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[2] The Court of Federal Claims declined to consider Mr. Mandry's class action claims because under the rules of the court, a pro se litigant cannot bring claims on behalf of a class. *Decision*, at 172. However, a few days before the Court of Federal Claims issued its decision, Mr. Mandry had submitted a request for appointment of temporary counsel with regard to his class claims. Appellant's Informal Br. 32–36. This request was not added to the court docket or resolved until after the Court of Federal Claims had issued its order dismissing the case. Because, as stated herein, the Court of Federal Claims would have lacked jurisdiction to hear Mr. Mandry's class claims even if he was represented by counsel, this unusual timeline of events does not affect the outcome of Mr. Mandry's case on appeal.

private property for public use without compensation. Mr. Mandry's argument that "the property interest at stake in this matter pertains to the certification of election results," Reply Br. 11, does not support a claim for the taking of Mr. Mandry's—or others'—pirvate property by the government.

In challenging the PROMESA stays of his other cases filed in the District of Puerto Rico, Mr. Mandry also fails to address the "well-settled law that [the Court of Federal Claims] lacks subject matter jurisdiction to review the judicial decisions of other courts." *Decision*, at 173 (citing *Innovair Aviation Ltd. v. United States*, 632 F.3d 1336, 1344 (Fed. Cir. 2011) and *Joshua v. United States*, 17 F.3d 378, 380 (Fed. Cir. 1994)). Nor does Mr. Mandry adequately develop the argument that he should be permitted to challenge the constitutionality of PROMESA's stay provisions on a class action basis before the Court of Federal Claims. *See Gelb v. Dept. of Veterans Affs.*, No. 2023-1157, 2023 WL 3493702, at *7 n.6 (Fed. Cir. May 17, 2023) (nonprecedential) (finding that pro se appellant, even with the pleadings liberally construed, waived arguments by failing to develop them). This is particularly true given that PROMESA's stay provisions state the District Court for the District of Puerto Rico has exclusive jurisdiction to provide relief from a stay under PROMESA in individual civil cases. *See, e.g.*, 48 U.S.C. § 2194(e). In these circumstances, we find insufficient support for Mr. Mandry's assertion that the Court of Federal Claims can maintain jurisdiction over either his personal or class-wide challenges to PROMESA.

Mr. Mandry expresses the importance of ensuring that pro se litigants receive meaningful access to the courts and justice. *See, e.g.*, Reply Br. 7–8. Public access to the courts is important, and one way we ensure that access is by holding a pro se litigant's complaint to a less stringent standard than a complaint filed by an attorney. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). But even a pro se plaintiff is

not excused from the burden of meeting the court's jurisdictional requirements. *Kelley v. Sec'y, U.S. Dep't of Labor*, 812 F.2d 1378, 1380 (Fed. Cir. 1987). Mr. Mandry has not met those requirements with his claims.

CONCLUSION

We have considered Mr. Mandry's other arguments and find them unpersuasive. We affirm the Court of Federal Claims' dismissal of Mr. Mandry's complaint.

AFFIRMED

COSTS

No costs.

In the United States Court of Federal Claims

No. 23-281
Filed: March 27, 2023

JAVIER MANDRY

Plaintiff,

v.

THE UNITED STATES,

Defendant.

MEMORANDUM OPINION AND ORDER

TAPP, Judge.

Pro se Plaintiff Javier Mandry ("Mr. Mandry")[1] brings this action seeking $5 million in damages and other relief. (Compl. at 1, 3, ECF No. 1; Civil Cover Sheet at 1, ECF No. 1-1). Mr. Mandry's allegations are extensive, but the Court understands Mr. Mandry to allege that the Puerto Rico Oversight, Management, and Economic Stability Act ("PROMESA Act")[2] improperly allocated Puerto Rican taxpayer funds and violated Puerto Ricans' constitutional rights. Pub. L. 114–187, 130 Stat. 549–610 (2016); (*Id.* at 1, 3). Mr. Mandry also alleges the District Court for the District of Puerto Rico and the Court of Appeals for the First Circuit improperly dismissed or stayed his claims. (*Id.* at 8–11). None of Mr. Mandry's claims establish subject-matter jurisdiction. Accordingly, the Court dismisses Mr. Mandry's Complaint under RCFC 12(h)(3).

Determining whether the Court has jurisdiction is a threshold inquiry in every case. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94–95 (1998). The Tucker Act establishes this Court's jurisdiction for claims (1) founded on an express or implied contract with the United States; (2) seeking a refund for a payment made to the government; and (3) arising from federal constitutional, statutory, or regulatory law mandating payment of money damages by the United States. 28 U.S.C. § 1491(a)(1). Generally, pro se plaintiffs are held to "less stringent standards" than those of professional lawyers, but such leniency does not extend to jurisdictional issues.

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[1] Mr. Mandry is also known as Javier E. Mandry-Mercado as shown in previous court filings. (Ex. at 1, ECF No. 1-2).

[2] The PROMESA Act provides the Government of Puerto Rico with access to resources and tools needed to address its debt crisis. §§ 101(a), 405(n), 130 Stat. at 553, 591.

Haines v. Kerner, 404 U.S. 519, 520–21 (1972); *Kelley v. Sec'y, U.S. Dep't of Labor*, 812 F.2d 1378, 1380 (Fed. Cir. 1987).

The Court may excuse a complaint's ambiguities in favor of liberal claim construction, however, there is "no duty on the part of the trial court to create a claim which [the plaintiff] has not spelled out in his pleading." *Lengen v. United States*, 100 Fed. Cl. 317, 328 (2011); *Colbert v. United States*, 617 F. App'x 981, 983 (Fed. Cir. 2015). A pro se plaintiff is still required to establish the Court's jurisdiction by pleading claims that satisfy the Tucker Act. *McNutt v. Gen. Motors Acceptance Corp. of Ind.*, 298 U.S. 178, 189 (1936) (determining proceeding pro se does not relieve plaintiffs from burden to demonstrate jurisdiction by a preponderance of the evidence). "If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." RCFC 12(h)(3).

As an initial matter, Mr. Mandry asserts that "he has legal capacity to represent the Commonwealth of Puerto Rico" in claims related to taxpayer funds under the PROMESA Act and Puerto Rican statehood. (Compl. at 3). Mr. Mandry brings a laundry list of claims on behalf of himself and "other Puerto Ricans." (*See generally id.*). Under RCFC 83.1, a pro se plaintiff may only represent himself.[3] *See, e.g., Fast Horse v. United States*, 101 Fed. Cl. 544, 547–48 (2011) (barring claims brought by pro se plaintiff predicated upon tribal kinship). The Commonwealth of Puerto Rico and other unnamed Puerto Ricans do not satisfy the requirements of RCFC 83.1; therefore, any claims brought on their behalf, such as under the PROMESA Act, are barred by this Court's rules. *Id.* Accordingly, the Court will only address Mr. Mandry's personal claims.

First, Mr. Mandry alleges that Congressional inaction on the Puerto Rican statehood referendum and PROMESA Act constitute a taking under the First and Fourteenth Amendments. (Compl. at 13). The Court reads these allegations liberally to implicate the Petitions Clause of the First Amendment, the Takings Clause of the Fifth Amendment, and the Due Process and Equal Protection clauses of the Fourteenth Amendment. *See Lengen*, 100 Fed. Cl. at 328. The First and Fourteenth Amendment provisions are not money-mandating. *Hawkins v. United States*, 748 F. App'x 325, 326 (Fed. Cir. 2019) ("[T]he Due Process and Equal Protection Clauses of the Fourteenth Amendment are not sources of substantive law that create the right to money damages, i.e., are not money-mandating."); *May v. United States*, 534 F. App'x 930, 933 (Fed. Cir. 2013) ("[T]he Petition Clause of the First Amendment . . . and the Equal Protection and Due Process Clauses of the Fourteenth Amendment do not mandate the payment of money by the government for violations."). Therefore, this Court lacks jurisdiction over Mr. Mandry's First and Fourteenth Amendment claims, and the Court will address only the claims tethered to the Fifth Amendment.

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[3] A limited exception exists under RCFC 83.1 for representation of immediate family members. *But see Ricks v. United States*, 159 Fed. Cl. 823, 824 n.1 (2022) (noting the disadvantages of familial representation under RCFC 83.1); *see also Kogan v. United States*, 107 Fed. Cl. 707 (2012) (discussing issues of confidential communications and attorney-client privileges related to representation by spouse under RCFC 83.1(a)(3)).

A plaintiff alleging a takings claim "must show that the United States, by some specific action, took a private property interest for public use without just compensation." *Arbelaez v. United States*, 94 Fed. Cl. 753, 762 (2010) (internal quotations and citations omitted). Although the Fifth Amendment's Takings Clause is a money-mandating source of law for purposes of Tucker Act jurisdiction, *Jan's Helicopter Serv., Inc. v. F.A.A.*, 525 F.3d 1299, 1309 (Fed. Cir. 2008), Mr. Mandry is still required to plead his claim by a preponderance of evidence. *McNutt*, 298 U.S. at 189. Here, Mr. Mandry fails to do so. Instead, he recites a speech by President Harry Truman, quotes statutory language, and reiterates that Congress did not certify the statehood election—none of which shows the United States took his private property for public use. (Compl. at 13–17). Because he fails to meet the elements necessary to plead a takings claim, this Court lacks jurisdiction. *See Parker v. United States*, 93 Fed. Cl. 159, 163 (2010) (invocation of the Fifth Amendment in "general and conclusory statements," with "no factual allegation or substantiating information" is insufficient to establish a valid takings claim).

Second, Mr. Mandry alleges that the District Court of the District of Puerto Rico and First Circuit improperly dismissed or stayed his claims, and the courts are improperly ordering status report filings and issuing subpoenas. (Compl. at 8–11). The first case Mr. Mandry cites, *Mandry-Mercado v. Consejo de Titulares Condminio el Senorial.*, No. 16-1314, 2017 WL 2729567 (D.P.R. June 26, 2017), involves a condominium homeowner's association ("HOA") dispute that the court dismissed for failure to state a claim upon which relief may be granted because Mr. Mandry raised constitutional challenges. The dismissal is currently stayed while on appeal before the First Circuit. (Ex. at 1–20, ECF No. 1-2). Mr. Mandry's second-cited case is *Mandry-Mercado v. Fingerhut-Mandry*, No. 16-2229, 2017 WL 5152177 (D.P.R. Jan. 26, 2017), which was dismissed because it alleged a conspiracy to deny him the right to defend his property rights. It is well-settled law that this Court lacks subject-matter jurisdiction to review the judicial decisions of other courts. *See, e.g.*, *Innovair Aviation Ltd. v. United States*, 632 F.3d 1336, 1344 (Fed. Cir. 2011) (the Court "cannot entertain . . . claim[s] that require[ ] the court to scrutinize the actions of another tribunal.") (internal citation omitted); *Joshua v. United States*, 17 F.3d 378, 380 (Fed. Cir. 1994) (the Court "does not have jurisdiction to review the decisions of district courts or the clerks of district courts relating to proceedings before those courts."). Accordingly, the Court lacks jurisdiction over these claims.

Finally, Mr. Mandry seeks relief that is beyond this Court's authority. Mr. Mandry seeks injunctive relief to "initiate annexation timeline to convert the territorial government of Puerto Rico to the [fifty-first] state" and to "force the United States to comply with its contractual obligations related to the referendum issue[.]" (Compl. at 27). The Court does not have authority to award injunctive or declaratory relief when it is not directly collateral to award of money damages. *James v. Caldera*, 159 F.3d 573, 580 (Fed. Cir. 1998) Similarly, Mr. Mandry requests injunctive relief for all cases under the PROMESA Act and to stop discrimination against Puerto Ricans. (Compl. at 27–28). Again, such authority does not exist within this Court. *See Joshua*, 17 F.3d at 380; *Caravetta v. United States*, 122 F. App'x 992, 993 (Fed. Cir. 2004) (finding the Court lacks jurisdiction over Civil Rights Act claims).

For the stated reasons, Mr. Mandry's Complaint, (ECF No. 1), is **DISMISSED** for lack of subject-matter jurisdiction under RCFC 12(h)(3) and Mr. Mandry's Motion for Leave to Proceed *in forma pauperis*, (ECF No. 2), is **GRANTED**. The Clerk **SHALL** enter judgment accordingly.

IT IS SO ORDERED.

David A. Tapp

DAVID A. TAPP, Judge

In the United States Court of Federal Claims

No. 23-281
Filed: March 28, 2023

JAVIER MANDRY

Plaintiff,

v.

THE UNITED STATES,

Defendant.

ORDER

On March 24, 2023, the Clerk of Court received a document styled as "Motion Requesting Assignment of Court Appointed Counsel." However, on March 27, the Court directed the Clerk to dismiss this case for lack of subject matter jurisdiction. (Opinion, ECF No. 8; Judgment, ECF No. 9). The Clerk has entered judgment, and this case is closed.[1] The Clerk is **DIRECTED TO REJECT** any future submissions in this case unless they comply with this Court's rules regarding post-dismissal submissions.

IT IS SO ORDERED.

s/ David A. Tapp
DAVID A. TAPP, Judge

[1] The document also does not comply with RCFC 10(a) regarding incorrect caption and names of parties. ("Every pleading must have a caption with the court's name, a title, a file number, and a RCFC 7(a) designation. The title of the complaint must name all the parties (*see* RCFC 20(a)), with the United States designated as the party defendant; the title of other pleadings, after naming the first party on each side, may refer generally to other parties.).

In the United States Court of Federal Claims

JAVIER MANDRY, PER SE, AND ON BEHALF OF THE COMMONWEALTH OF PR AND OTHERS SIMILARLY SITUATED	)	
Plaintiff,	)	**Case No. 1:23-CV-00281-DAT**
v.	)	**Judge DAVID TAPP**
THE UNITED STATES	)	
Defendant.	)	

COMPLAINT

1. JURISDICTION.

This court has jurisdiction under 28 U.S.C. §§ 1491-1509. Plaintiff asserts he has legal capacity to represent the Commonwealth of Puerto Rico in a derivative action claim for compliance of contract which has caused an improper allocation of Puerto Rican taxpayer funds, involving the PROMESA ACT and in a referendum matter. The court has jurisdiction over the Defendant the rights for Puerto Ricans to determine the status of their government, effecting in a taking constitutional rights to vote for representatives of the Senate and House of Representatives of the United States Congress, representing the state of Puerto Rico. The Defendant also passed a bankruptcy law just for Puerto Rico that violates the property rights of Puerto Ricans, without compensation.

2. PARTIES.

Plaintiff, or "lead plaintiff", Javier E. Mandry, resides at *3092 Ave Emilio Fagot, Ponce, Puerto Rico 00716. Tel.(904) 803-4813.* Plaintiff is an American citizen and disabled veteran of the United States Army; The Commonwealth of PR refers to the territorial government of Puerto Rico, better known as the Commonwealth of Puerto Rico, a legal entity.

"Others similarly situated" refers to other Puerto Ricans whose property rights were confiscated, seeing their cases unjustly and indefinitely stayed pursuant to the

PROMESA ACT, and whose voting rights were confiscated as a result of a contractual matter involving the Commonwealth of Puerto Rico and the admittance as the 51st state of the union of federalist states, better known as the United States of America.

3. PREVIOUS LAWSUITS.

No prior cases against the United States. However, this claim makes references to two cases which were stayed pursuant to the PROMESA ACT and its automatic stay provision. Although the United States is not a party to either claim, some of the issues that occurred in those cases, and in the complaint itself are applicable to the instant claim, but for different grounds.

4. STATEMENT OF THE CLAIM.

I - EXECUTIVE SUMMARY

1. Javier Mandry (herein forth "the plaintiff" or "Plaintiff" or "lead plaintiff") asserts to have studied Civil Engineering, cultural anthropology in France and has researched the philosophy of law and its relationship and rights arising from the Constitution of the United States and its Bill of Rights. Having lived "stateside", in the "mainland", near Washington D.C., plaintiff developed a sense of liberty rights in terms of degrees of restriction or tolerances, and the problem that politics poses against the resolution of certain issues, all which have developed his sensibility to detect discriminatory policies, procedural deficiencies, and covert fraudulent activity, referring to the HOA case, infra.

2. Plaintiff herein forth will call The United States of America a legal entity, "the defendant", referring to the US Department of Justice, the US Treasury Department, and to Congress.

3. Plaintiff resides in Ponce, Puerto Rico, where he was born, and represents "Puerto Ricans" who are to be considered American citizens with full constitutional rights and protections. In a sense, he represents all of Puerto Rico and its residents because I include herein a claim that the certification of election results for Puerto Rico to become a state was confiscated without due process of law, and without compensation.

4. The plaintiff's opinions in this complaint result from years of study regarding the Puerto Rican condition and its history, as well the history of annexation of territories and the covenants that led to their status as part of federalism. Some opinions within have been subjected to philosophical, anthropological and legal analysis by Plaintiff, attempting to maintain objectivity. His ideology is pro-statehood of Puerto Rico, representing what he voted for in the 2020 elections which were authorized by the defendant and its money mandating legislation.

5. The allegations within are real and not merely hypotheticals. Plaintiff claims that the venue is proper, the issues are justiciable, not tolled, and ripe, and asking for compensation in arrears for taking of property rights.

6. Plaintiff asserts has legal capacity to represent the Commonwealth of Puerto Rico in a derivative action claim for money claim related to the substantial compliance of contract which has caused an improper allocation of Puerto Rican taxpayer funds, as a result of the PROMESA ACT and in a referendum matter. Plaintiff further asserts to have a vested interest on the contractual matter with his pro- statehood vote should move Congress to certify election results, and to reimburse the Commonwealth of PR expenses proximately related to the PROMESA Act and in obligate funds related to contract involving the referendum of status of the territorial government, and involving the proper ownership of the territorial debt that moved Congress to enact the PROMESA ACT, which the Commonwealth is unwilling and/or unable to request on its own. Daily Income Fund v. Fox, 464 U.S. 523, 528-29, 104 S.Ct. 831, 78 L.Ed.2d 645 (1984), Boeing Company v. United States, 968 F.3d 1371 (Fed. Cir. 2020)

7. Plaintiff asserts that the defendant has been "dragging its feet" to prevent having to address the rights for Puerto Ricans to determine the status of our government, effecting in a taking constitutional rights to vote for representatives of the Senate and House of Representatives of the United States Congress, representing the state of Puerto Rico. In doing so, it resulted in the taking of his voting rights, as he voted in the 2017 and 2020 status elections by refusing to certify the election results.

8. Puerto Ricans have unequivocally made it clear that the territorial government is malfunctioning due to corruption and anti-democratic practices. Defendant has ignored the formal petition of the Puerto Ricans with the referendum to formally

admit Puerto Rico and the 51st state of the union of federalists' states, better known as a legal entity, titled "The United States of America. The fact that there exists a lack of trust between the members of Congress and the officers of the territorial government of Puerto Rico, this alone does not authorize the defendant to deprive plaintiff of his constitutional rights or deprive Plaintiff from voting for Congress and to be properly represented. Speaking as a US Army veteran who was injured during service, Plaintiff expects the defendant to respect the same Constitution that Plaintiff has always defended, as a prior serviceman, and as an American citizen.

9. With regards to the cases submitted to the automatic stay provision of the PROMESA ACT, the defendant abridged his rights only because he lives in Puerto Rico and because the debt situation of our local government "got out of hand", but the plaintiff also claims but the defendant has restricted his right to judicial relief of constitutional deprivation in federal courts. The defendant confiscated the constitutional violations claims with an automatic stay provision of PROMESA ACT, as if Americans living in Puerto Rico had less rights than other classes of citizens.

As Dr. Martin Luther King Jr. said, "***The time is always right to do what is right... You could start right now by doing a small part to treat people with dignity, courtesy and respect.***"

II - THE PROMESA ACT AS A RELIEF OF CREDITORS' FINANCIAL RISK AND A BURDEN TO THE PEOPLE OF PUERTO RICO

10. The Puerto Rico Oversight, Management, and Economic Stability Act (48 USC Ch. 20: PUERTO RICO OVERSIGHT, MANAGEMENT, AND ECONOMIC STABILITY) is a U.S. federal law enacted in 2016 that established a financial oversight board, a process for restructuring debt, and expedited procedures for approving critical infrastructure projects to combat the Puerto Rican government-debt crisis.

11. It is a commonly known fact in Puerto Rico that a high demand for these bonds was due to the rating of the funds being marketed as safer than they were, so this moved the Commonwealth of PR continued to issue bonds by disguising it as something else, a debt which has been "illegal debt" or unconstitutional in a manner similar to the background issues Limtiaco v. Camacho (2007), 549 U.S. 483, which is the only time SCOTUS has analyzed something related to the territorial debt, but did not address

responsibility for the constitutional limit which Congress imposed in the Constitution of Puerto Rico, as per Public Law 447 and Public Law 600 which authorized the territorial constitution.

12. During the PROMESA Congressional hearings, the Treasury admitted to being negligent to not having supervised the territorial debts due to lack of funding, pertaining to all territories and not just Puerto Rico. (Emphasis supplied. Exact reference not available.)

13. Per the PROMESA ACT, SECTION 2194...**(m) Findings**
Congress finds:

(1) A combination of severe economic decline, and accumulated operating deficits, lack of financial transparency, management inefficiencies, and excessive borrowing has created a fiscal emergency in Puerto Rico.

(2) As a result of its fiscal emergency, the Government of Puerto Rico has been unable to provide its citizens with effective services.

(3) The current fiscal emergency has also affected the long-term economic stability of Puerto Rico by contributing to the accelerated outmigration of residents and businesses.

(4) A comprehensive approach to fiscal, management, and structural problems and adjustments that exempts no part of the Government of Puerto Rico is necessary, involving independent oversight and a Federal statutory authority for the Government of Puerto Rico to restructure debts in a fair and orderly process.

(5) Additionally, an immediate—but temporary—stay is essential to stabilize the region for the purposes of resolving this territorial crisis.

(A) The stay advances the best interests common to all stakeholders, including but not limited to a functioning independent Oversight Board created pursuant to this chapter to determine whether to appear or intervene on behalf of the Government of Puerto Rico in any litigation that may have been commenced prior to the effectiveness or upon expiration of the stay.

(B) The stay is limited in nature and narrowly tailored to achieve the purposes of this chapter, including to ensure all creditors have a fair opportunity to consensually renegotiate terms of repayment based on accurate financial information that is reviewed by an independent authority or, at a minimum, receive a recovery from the Government of Puerto Rico equal to their best possible outcome absent the provisions of this chapter.

(6) Finally, the ability of the Government of Puerto Rico to obtain funds from capital markets in the future will be severely diminished without congressional action to restore its financial accountability and stability.

(n) Purposes

The purposes of this section are to—

(1) provide the Government of Puerto Rico with the resources and the tools it needs to address an immediate existing and imminent crisis.

(2) allow the Government of Puerto Rico a limited period during which it can focus its resources on negotiating a voluntary resolution with its creditors instead of defending numerous, costly creditor lawsuits.

(3) provide an oversight mechanism to assist the Government of Puerto Rico in reforming its fiscal governance and support the implementation of potential debt restructuring.

(4) make available a Federal restructuring authority, if necessary, to allow for an orderly adjustment of all the Government of Puerto Rico's liabilities; and

(5) ***benefit the lives of 3.5 million American citizens living in Puerto Rico by encouraging the Government of Puerto Rico to resolve its longstanding fiscal governance issues and return to economic growth.***

14. The Crisis Inquiry Report of 2011 of the Financial Crisis Inquiry Commission of Congress called out the "failures" of the Big Three rating agencies as "essential cogs in the wheel of financial destruction".

15. According to the Financial Crisis Inquiry Commission, and its report,
"*The three credit rating agencies (herein forth "the enablers") were key enablers of the financial meltdown. The mortgage-related securities at the heart of the crisis could not have been marketed and sold without their seal of approval. Investors relied on them, often blindly. In some cases, they were obligated to use them, or regulatory capital standards were hinged on them. This crisis could not have happened without the rating agencies.*"

16. **§2125. Exemption from liability for claims** *"The Oversight Board, its members, and its employees shall not be liable for any obligation of or claim against the Oversight Board or its members or employees or the territorial government resulting from actions taken to carry out this chapter."*

17. Section 2125, supra, bars liability of the PROMESA Fiscal Board, in their official capacity, but does not bar claims against the United States for the Fiscal Board's breach of fiduciary trust and/or vagueness arising from the law which caused for a misapplication of the Automatic Stay to impermissible types of cases, and not in a temporary basis, causing a taking of property over speedy trial, granting an quasi absolute immunity to the Commonwealth of PR and its officers for all types of wrongdoing.

18. Per Section ,2194, supra, under Findings of Congress (m)(2) and purposes of the section 2194 of the PROMESA ACT, (n)(5), CLEARLY intended for the act to benefit 3.5 million Americans living in Puerto Rico, establishing with this a relationship of trust between the Fiscal Board and 3.5 million Americans living because the act is supposed to benefit its longstanding fiscal governance issues and support ... debt structuring. Plaintiff opines that the burden is not benefiting Puerto Ricans.

19. §2103. Supremacy "*The provisions of this chapter shall prevail over any general or specific provisions of territory law, State law, or regulation that is inconsistent with this chapter.*"

Plaintiff asserts that nothing in this section states that the PROMESA ACT has supremacy over the Constitution of the United States.

III - THE PROMESA ACT AND ITS AUTOMATIC STAY PROVISION AS A TAKING OF DUE PROCESS RIGHTS

20. **In compliance with section 2194 (m)(1) of the PROMESA Act,** the Commonwealth of Puerto Rico and the federal courts placed all cases filed against the Commonwealth of Puerto Rico and its officers, in federal and local courts, including cases that make allegations of unconstitutional state statutes.

21. The automatic stay provision was initially implemented by Congress as a mechanism for personal and corporate bankruptcy, as a mechanism for the creditors to guarantee their debt. Applying this provision was highly expanded when applied to the bankruptcy of Puerto Rico, as included to the PROMESA ACT

22. The original definition and legislative intent arise from the Bankruptcy Code. Per senate report no. 95–989 "*The automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws. It gives the debtor a breathing spell from his creditors. It stops all collection efforts, all harassment, and all foreclosure actions. It permits the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy.*"

23. Per Section **2106. Compliance with Federal laws** "Except as otherwise provided in this chapter, nothing in this chapter shall be construed as impairing or in any manner relieving a territorial government, or any territorial instrumentality thereof, from compliance with Federal laws or requirements or territorial laws and requirements implementing a federally authorized or federally delegated program protecting the health, safety, and environment of persons in such territory."

24. This section above establishes a relationship of trust between the Fiscal Board and "persons in such territory". Plaintiff is a person in such territory, and a patient under close care of Veterans Administration due to his service-connected conditions.

25. The first claim, 16cv1314, the District Court summarily dismissed the claim under the Rooker-Feldman doctrine, not listing the causes of action individually, without regard that the court should have asserted jurisdiction because the failure to produce should have inverted the burden of proof that the documents existed.

26. When the case reached the appellate level, the Chief Judge of the First Circuit placed on PROMESA STAY, refused to resolve the preliminary injunction, or relief from stay motion, nor appointment of counsel, denying as well the certificate of appealability, which was considered a rehearing request. (See Exhibits 1,2,3, 4 stay order and docket)

27. While the HOA federal claim was still at the District Court level, this plaintiff moved the court to issue a subpoena to the Homeowners Association defendant, which they attempted to quash. The parties wanted to deal with an attorney, and because the plaintiff was "between assignments" due a change of legal counsel, the lower court magistrate Silvia Carreno postponed the execution of the subpoena, circumventing the fiduciary duty of the relationship. (This taking allegation will be discussed

separately, as it involves a taking arising from the defendant and a non-PROMESA related matter)

28. This plaintiff, appellant in the HOA claim, has refused to remove the officers of the state from the case at this stage because it would be done under coercion because of the defendant's PROMESA Act and its indefinite and impermissible application of the Automatic Stay Provision. Per Plaintiff's consultations, the only option to he had to request continuance was to remove from stay these cases is to remove the Commonwealth of PR from both cases. This does not seem reasonable because of the constitutional nature of the claim and the reason why the Commonwealth of Puerto Rico was due to allegations of constitutional torts and vague statutes.

29. Section 2194 moved the US Department of Justice placed two cases on PROMESA AUTOMATIC STAY, cases which the Plaintiff here originally filed in the Federal District Court of Puerto Rico, later appealed to the Federal Appellate Court of the First Circuit. There, the chief judge placed both cases on a permanent stay because of the bankruptcy of Puerto Rico and the PROMESA ACT.

30. The second case was filed in the District Court of Puerto Rico, case 3:16-cv-02229-JAG. This case was summarily dismissed without serving all parties. This plaintiff appealed to the First Circuit Court, case 17-1230. Before resolving the case and the brief, the First Circuit Court placed the case on PROMESA stay, ordering me to file a status report, which I have refused to file because it causes indignation to this Plaintiff to file a status report without explaining its contents and serving no purpose. Twice the court warned me of noncompliance. Plaintiff considers the status report to be an unnecessary burden since the status quo is not Plaintiff's doing. (See Exhibit 5,6)

31. As a fact, the governor of Puerto Rico was included as a co-defendant because the letter of the law, a rule of procedure, Rule 9.4, is alleged to discriminate against pro-se litigants, in violation of Faretta v. California, and its progeny. The rule of procedure gives too much latitude to a Puerto Rican judge to eliminate valid allegations against a pro-se, just because the attorney calls a pro-se a nuisance even if the cause is the attorney, but it is used to eliminate the opposing party in an extrinsic fraud. In Plaintiff's experience, the adverse part in a claim has used it to prevent discovery, like what occurred with the subpoena in the HOA case, infra.

32. Both cases have been on a stay that has lasted four years, with no end in sight, or until the PROMESA Board ends it. Plaintiff believes there are many others affected as well.

IV - THE TAKING OF PROPERTY RIGHTS OVER A SUBPOENA

33. During the claim against Homeowners Association ("HOA Case"), this Plaintiff got the court to issue a subpoena, as per Docket 102 of case 16-cv-1314, without the help of the assigned counsel. The HOA had refused to comply with documents they had in their possession, documents that should be available on their website, or at least to those with a legitimate interest. The attorneys complained that they preferred to deal with the assigned counsel. (See Exhibit 7, subpoena)

34. Per docket 113, Magistrate Carreno denied execution of the subpoena "*Seeing as, per plaintiff's request, a new attorney has been appointed to represent him on 10.6.2016, the request for protective order is temporarily granted until the new attorney has a chance to review the case and perhaps reach an amicable solution to the discovery dispute.*" This temporary protective order became permanent.

35. During the case, there were issues to secure counsel, none of which can be attributed to the plaintiff. Although this plaintiff attempted to discover how the assignment process works, this process is never revealed. Because of issues related to the assignment of counsel to the case, Plaintiff was forced to request this subpoena without the assistance of his counsel because he knew the documents requested were essential to proving his case.

36. The plaintiff in HOA had alleged that the HOA had fraudulently misrepresented and concealed plus used extrinsic fraud to confuse owners regarding how the condominium law worked, here used a strategy allowed by the court, to complain that they wanted to show documents to plaintiff's assigned counsel.

37. Extrinsic fraud is defined as "fraudulent acts which keep a person from obtaining information about his/her rights to enforce a contract or getting evidence to defend against a lawsuit. This could include destroying evidence or misleading an ignorant person about the right to sue.

38. Failing to produce documents should correspond to a noncompliance, and imposition of sanctions, but the attorneys knew that the documents were essential to prove the extrinsic fraud and fraudulent misrepresentation which I included in the claim, and furthermore Plaintiff would have requested summary judgment immediately after.

39. A discriminatory treatment is proven by demonstrating that the inverse argument used by another party could not only have been ineffective, but counterproductive. This Plaintiff could never claim not to want to deal with attorneys, to prevent the execution of a subpoena. To state such a preposterous statement could get me in serious trouble, as it would be interpreted as lack of courtroom decorum.

V - THE INSULAR CASES AND PUERTO RICO

40. The insular cases were cases heard by the Supreme Court from 1901 up to the 1920's for the purpose of defining how the U.S. would handle its relationship with these new territories and their governments. Many of the provisions of these cases are still in effect today.

41. Although these Insular Cases do not authorize for abridgment of constitutional rights, this allowed for a passive discrimination of Puerto Ricans, giving way to unwritten policy applicable to all matters related to Puerto Rico and its territorial government.

42. The historical source of this issue arises from the fact that the defendant acquired Puerto Rico, an island that measures 100 x 35 miles in the Caribbean Sea, among other properties, as result of the Spanish American War of 1898, act which was later ratified in Treaty of Paris of 1898. Partly in compliance with the treaty, the defendant passed the Foraker Act of 1900 which authorized the government of Puerto Rico and a resident commissioner at Washington DC. The original reasoning for the acquisition was because the defendant considered the property to be valuable as a military strategic location.

43. When the United States determined with respect to the citizenship of those born in Puerto Rico, it did not resolve the matter of the territorial government and its relationship to federalism, neither in the Jones Act 1917, nor its predecessor, the Foraker Act 1900, because it already "owned it", not realizing or considering that other states voluntarily signed a covenant, some of which include the right to repeal the contract. Other state predecessors' right to self-determination of their local

government was respected because of the voluntary nature of contracts. Puerto Rico has become stuck in "territorial mode" because of the defendant's unwritten policies and the Insular Cases.

44. The well-respected Puerto Rican federal appellate judge of the First Circuit, Gustavo A. Gelpi wrote:

"the Court devised the doctrine of 'territorial incorporation,' according to which two types of territories exist: incorporated territory, in which the Constitution fully applies and which is destined for statehood, and unincorporated territory, in which only 'fundamental' constitutional guarantees apply and which is not bound for statehood." The reason behind the decision was related to the fact that the new territories were "inhabited by alien races" that couldn't be governed by Anglo-Saxon principles.

45. Once the Constitution of Puerto Rico came into effect under Public Law 447 and Public Law 600, the Puerto Rico Federal Relations Act automatically continued in force and effected the Jones–Shafroth Act, while repealing some of its provisions. These two acts, along with Pub. L. 82–447, comprise the body of law that pertains Puerto Rico's government today.

46. Plaintiff opines that the doctrine of trust responsibility applies between the defendant and the Puerto Rican people, with special consideration that Plaintiff is a prior serviceman, because Plaintiff should not be forced to move to a state to be treated as an American.

47. The reason the American tribes obtained separation from the United States likens the background of Puerto Rico, but with marked differences requiring distinction. The American Indians tribes owned their land before the Declaration of Independence, when the United States declared federalism; In comparison, Puerto Rico belonged to Spain before the defendant acquired it. In or about 1896, Puerto Ricans attempted to declare independence from Spain, but Spain did not recognize that petition, but soon after the United States acquired it by force in 1898, even though Spain accepted a money exchange ratifying the military action.

48. Per historical accounts, the relationship between the defendant and the Puerto Rican people was not the best during the first half a century because the Puerto Ricans felt that the defendant imposed a government on them without their consent. Although

this improved after the Constitution was authorized, Puerto Ricans have always felt as second-class citizens.

49. Puerto Ricans, like Hawaiians, still refer to their island a "país" or country, because of its rich heritage and distance from Spain. Puerto Ricans also call themselves "Boricuas", as the Taíno Indians who inhabited the territory called the island of Puerto Rico, *Boriken or Borinquen* which means: "the great land of the valiant and noble Lord" or "land of the great lords". It is in the differences and the mutual respect that makes America resilient.

V - STATEHOOD REFERENDUM AS A TAKING OF FIRST AND FOURTEENTH AMENDMENT RIGHTS AND BREACH OF CONTRACT

50. A referendum of status took place among Puerto Ricans on March 3, 1952. It was a yes or no question. Neither independence nor statehood were offered, only FOR AND AGAINST the conditions that Congress offered. (Source: Wikipedia)

51. According to the then President of the United States, Harry Truman, in his statement July 3, 1952, "With the approval of H.J. Res. 430, the people of the United States and the people of Puerto Rico are about to enter a relationship based on mutual consent and esteem. The Constitution of the Commonwealth of Puerto Rico and the procedures by which it has come into being are matters of which every American can be justly proud. They are in accordance with principles we proclaim as the right of free peoples everywhere. July 3, 1952, should be a proud and happy day for all who have been associated in a great task." H.J. Res. 430 is Public Law 447, 82d Congress (66 Stat. 327).

52. Per Public Law 113-76, in 2014, page 57, Congress included a brief section of the legislative piece approved by both Senate and the House "***...$2,500,000 is for objective, nonpartisan voter education about, and a plebiscite on, options that would resolve Puerto Rico's future political status, which shall be provided to the State Elections Commission of Puerto Rico, $5,000,000 is for an initiative to support evidence-based policing, and $2,500,000 is for an initiative to enhance prosecutorial decision-making***"

53. The law authorized a plebiscite regarding the political status of Puerto Rico and established a no-year budget to pay for the special elections, with no detail or mention

as to what will happen once Puerto Ricans do decide for their local government would become a state of the union.

54. Because the legislation authorized an election, in 2017, an election on the status was held in Puerto Rico, however, USDOJ recommended against obligating funds because they did not agree with the ballot because it considered it potentially misleading. (See Exhibit 8, letter 2017 DOJ)

55. Although the requirements of their ballot were not clear from the legislative piece, the vagueness left it to the discretion of the contracted party, Commonwealth of PR, as to how the ballot should comply with the reasonable expectations of the contracting party, the defendant.

56. The Commonwealth of PR once again held a referendum of the status of Puerto Rico, on November 3, 2020, concurrently with the general election. The Referendum was announced by Puerto Rico Governor Wanda Vázquez Graced on May 16, 2020. This was the sixth referendum held on the status of Puerto Rico, with the previous one having taken place in 2017. This was the first referendum with a simple yes-or-no question, with voters having the option of voting for or against becoming a U.S. state. (Copied directly from Wikipedia)

57. Because the USDOJ provided a reason the election did not meet their expectations with little detail, the Commonwealth of Puerto Rico or its officers made the necessary changes, and had reasonable expectation for their expenses to be refunded once they complied with the arbitrary and capricious terms, as if a contracting party could amend at will the terms of a bilateral contract without the permission of, or compensation to, the contracted party.

58. Plaintiff believes there is no known policy in existence that sets out the clear rules or procedures as to how the United States would handle the transformation of a territorial government, having as the only known comparison the American Indian tribes, which decided opposite of what it entails here. The American Indian tribes interpret the US Constitution as they so desire.

59. Absent a clear policy regarding Puerto Rico, and the transition to federalism, plaintiff laments that the defendant has applied the archaic mentality arising from the Insular

Cases to prevent a conversion to state of the union from a territorial status, preserving the status quo of separate but equal, and ignoring the cry for help.

60. The Plaintiff in the instant claim voted for statehood, in the yes or no referendum of the 2020 elections, as well as in the 2017 elections. This matter is directly related to Plaintiff's First amendment rights and why Plaintiff asserts to have an interest in this contractual matter between the defendant and the Commonwealth of PR. Once this vote occurred, the defendant had a contractual obligation with the voters to certify the election results. The defendant never expected for the referendum to take place since the money mandating statute, as it forgot to include the People of Puerto Rico and its interests.

61. No letters are available regarding what happened next, but as per **thehill.com**, Statehood for Puerto Rico and the obstruction of justice "The Popular Democratic Party's ongoing push for tax benefits for American controlled multinational corporations under the Tax Code, while aiming to control the territorial government, is its main reason for opposing the political enfranchisement of its citizens."

62. Without a response on the payment issue or that it had expired, a new bill was in complete disregard of the breach of contract with the Commonwealth of PR, enacting The Puerto Rico Status Act, HR8393, Bill which cleared the House Natural Resources Committee in July, raising hopes among supporters it would quickly receive a House vote and go to the Senate. This legislation includes independence as one option, requiring independent status or statehood, different from the last one, but repeating the 2017 vote, in substantially the same terms but requiring outside supervision.

63. The Puerto Rico Status Act (HR 8393) passed the House on December 15, 2022. "*This bill provides for a plebiscite to be held on November 5, 2023, to resolve Puerto Rico's political status... Specifically, such plebiscite shall offer eligible voters a choice of independence, sovereignty in free association with the United States, or statehood.*
The Puerto Rico State Elections Commission shall

- **carry out a nonpartisan voter education campaign through traditional paid media and provide at all voting locations voter education materials related to the plebiscites, and**

- **invite national and international election observers to ensure transparency and confidence in the electoral process.**

All voter educational materials and ballots used to carry out this bill shall be made available in English and Spanish.

The bill sets forth transition and implementation provisions for each choice offered in the plebiscite."

64. Although the legislation requires voter education, failing to describe this will make it difficult for another administration to have any interest in abiding to any terms, and induce Congress about how Puerto Rico will convert to the 51st state of the union.

65. Three decades earlier, in January 1991, HR introduced bill HR316 Puerto Rico Self-Determination Act, which "Authorizes appropriations for grants to the State Election Commission of Puerto Rico to hold a referendum on September 16, 1991, or on a later date in 1991 agreed upon by the Dialogue Committee on the Status of Puerto Rico (Dialogue Committee), on the following political status options: (1) independence; (2) statehood; (3) a new commonwealth relationship; or (4) none of the above."

66. This bill was referred to the House Rules Subcommittee on Rules of the House on 03/01/1991, and the bill shows no activity, extinguished with no resolution.

67. Contractual bad faith, as defined by the Restatement of Contracts Second explains good faith in the negative; that is, what it does not include. It states that good faith "excludes a variety of types of conduct characterized as involving 'bad faith' because they violate community standards of decency, fairness or reasonableness.

68. Per the PROMESA ACT, **§2162. "(B)** a covered territorial instrumentality of a territory described in paragraph (1)(A)", meaning that only territorial governments would be applicable to the PROMESA ACT.

69. Per the PROMESA ACT **§2192. Right of Puerto Rico to determine its future political status** "Nothing in this chapter shall be interpreted to restrict Puerto Rico's right to determine its future political status, including by conducting the plebiscite as authorized by Public Law 113–76." This section makes direct reference to the

derivative action claim included in the instant complaint, as this is the money mandating statute referenced in the derivative action claim.

70. In passing both sections of the PROMESA ACT the defendant made the debt a priority over converting the territorial government to federalism.

71. Plaintiff considers it unfathomable that the defendant does not realize the constitutional significance of disregarding that Puerto Ricans, as American voters, who have voted to change their government in exercise of their First Amendment rights, as the only legal means to perform a "coup d'état" because of the prevalent corruptive practices of the government is invoking Congress to assist Puerto Ricans to restore order and true democracy.

72. The Constitution Amendment XVII (1913) states "The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures."

73. The Constitution Amendment XXIV (1964) states
"Section 1. The right of citizens of the United States to vote in any primary or other election for President or Vice President for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.
Section 2. The Congress shall have power to enforce this article by appropriate legislation."

CAUSE OF ACTION I - FACIAL CHALLENGE PROMESA ACT

74. The Puerto Rican people are being affected by a debt not caused or influenced by the ordinary citizen. In the Constitution of Puerto Rico, the defendant imposed a limitation of debt. The territorial government found creative ways to increase this debt beyond this limit, and during this time, it did not supervise it.

75. By implementing the Fiscal Board, the defendant transferred the investment risk of the bondholders and the culpability of those responsible for the high demand of overly exceptional "guaranteed" bonds which claimed to be as safe as US bonds but with

higher yields, injuring the Plaintiff and others similarly situated by placing cases unrelated to the territorial debt on a permanent automatic stay.

76. Because the defendant or the Treasury Department never budgeted for the supervision of the territorial debts, it was foreseeable that the unsupervised territories would resort to issuing bonds to increase the money supply, a matter which involves macroeconomics. This negligent act has caused a burden to the Plaintiff, as the defendant that the debt situation would tax American citizens living in Puerto Rico.

77. The defendant destroyed the fiduciary trust relationship between the defendant and the plaintiff as an American, in the implementation of a sovereign the Fiscal Control Board who has demonstrated little concern over the Americans they are affecting, and by refusing to adjudicate fiscal responsibility of neither the defendant, THE ENABLERS or THE CREDITORS in comparatively negligence for the financial crisis of Puerto Rico.

78. Per section 2194 (m)(1) of the PROMESA Act, supra, the defendant, clearly ignored the later findings of the before mentioned commission in passing the PROMESA ACT regarding THE ENABLERS "and did not pursue due diligence to protect Americans living in Puerto Rico from the effects of a debt that was not created by the Americans living in Puerto Rico. Although this report took place in 2011, but it was already an issue in Puerto Rico in 2006 and before.

79. The debt of Puerto Rico and/or its bankruptcy is interfering with the contractual obligation between the defendant and the Commonwealth of Puerto Rico regarding the payment for the special elections, although the 2014 legislation does not state it explicitly, a bilateral obligation of the defendant naturally requires the defendant to also comply with a transition and admission of Puerto Rico as the 51st state of the union.

80. Declaratory Relief. Plaintiff requests this Court would set aside the PROMESA ACT and adjudicate the liability of the debt attributable to the United States due to its negligence to supervise territorial debts in general.

CAUSE OF ACTION II - AS-APPLIED CONSTITUTIONAL CHALLENGE PROMESA ACT AND ILLEGAL TAKING OF TWO CASES AT THE FIRST CIRCUIT FEDERAL APPELLATE COURT

81. The Automatic Stay of the Bankruptcy Code provision was never meant to be applied to a "state" bankruptcy, or to affect regular citizens who are neither creditors nor guarantors of the territorial debt. This should have been obvious, as to allow the legislative mandate to allow the placement of cases against the Commonwealth of PR on a "temporary" basis, which has become indefinite.

82. The Defendant's goal or purpose for this stay serves no legitimate legislative purpose, other than authorizing the territorial government to save money by blocking all their cases, saving money with constitutional violations, allowing to reallocate funds without the express knowledge of the PROMESA BOARD, but mandated by the same act, and affecting Puerto Ricans in the process. This provision has served as a magic wand for the territorial government. The Fiscal Board has kept this matter quiet, never referring to it.

83. Plaintiff furthermore claims the application of Promesa Act's Automatic Stay should be considered as a violation of fiduciary trust that defendant owes the plaintiff, AND/OR a taking of due process without due process, entitling plaintiff of compensation illegal stagnation of the two constitutional rights cases, depriving plaintiff of the property right over the procedural efficiency and speedy trial.

84. Plaintiff has suffered from the effects of the PROMESA ACT and its Automatic Stay. He suffers from service-connected PTSD and the automatic stay is preventing him from obtaining a finality from two independently filed cases involving constitutional violations. The PROMESA Act and the defendant are causing insult to injury because the delay only benefits the defendants. This illegal stay is causing Plaintiff severe anguish and he needs an immediate relief for the taking of due process rights. Constitutional violations of this sort affect the integrity and one's self-worth and is especially hurtful when it happens to someone who served for his country as a prior serviceman.

85. In passing the PROMESA ACT and its automatic stay provision, a mechanism from the Bankruptcy Code lost its legislative purpose when applied to the PROMESA

ACT, because the bankruptcy code would consider Plaintiff unrelated to the Commonwealth of PR and its bankruptcy estate.

86. Declaratory relief. Plaintiff requests this court to condemn the defendant to compensate Plaintiff for the two cases being submitted to an illegal stay without due process during a period of four years and counting.

87. Injunctive remedy is requested to order the defendant the immediate relief from all cases where the Promesa Automatic stay, territorial or federal court for violating the 14th amendment by placing cases in an indefinite stay, for unduly placing normal litigants to complex state bankruptcy litigation and granting all officers of the territorial government an absolute immunity from all cases of all types.

CAUSE OF ACTION III - TAKING OF SUBPOENA EXECUTION

88. Although <<the pro se litigant has the right to make a fool of himself>>, paraphrasing of the Supreme Court justices commented in the Faretta v. California case, the defendant should forbid an attorney to use his license to exercise practice law by the state to interfere with the execution of a subpoena that the plaintiff has as a right because of the relationship between the HOA and the plaintiff. The effect was to extend the extrinsic fraud to the courtroom, with the court's consent. The reason for doing so was they knew that the proof lied in those documents, documents which Plaintiff claims that they cannot be revealed for fear of criminal action because there is an underlying mismanagement and misapplication of the law.

89. Faretta v. California has been attacked often, but SCOTUS has been emphatic in their message that pro se litigants have equal access to courts. Plaintiff opines there is a sense that pro se litigants are not always welcome, and to avoid the appearance of partiality, the court allows stumbling in procedural matters which could be guided using AI. Faretta v. California, and its progeny has created a body of law which arises from judicial interpretation that the defendant has mostly ignored, especially with respects to civil cases which involve matters based on the 14th Amendment to the United States and the Taking of property rights, where due process of law is due. Because Faretta v. California entailed the right to self-representation in a criminal case, the USDOJ appears to have followed an unwritten rule that does not consider that the pro se litigant as equal rights to an attorney, because although an attorney may represent an American citizen, an attorney self represents some rights that

pertain to the attorney, while most of the time the attorney represents the rights of his clients.

90. Plaintiff opines that courts can be very stressful for pro se litigants, and a pro se litigant should have some accommodation from the defendant, and the DOJ, as well as to policies that protect the litigant as a recognized class of litigant. This plaintiff has ideas as federal contractor, with respect to implementation of a system that would comply with the PAPER REDUCTION ACT, using machine learning and artificial intelligence that would assist the pro se litigant in certain procedural matters, as well as asking some questions to clarify the controversy which can suggest that the jurisdiction of the court and pleading sufficiency. The judge should not have to assist the pro se litigant in some matters, but in others, the defendant should clarify when "taking by the hand" is necessary and acceptable.

91. The defendant has been negligent in the recognition that Faretta v. California, and in the implementation of policies which recognize the rights of a pro se litigant, as a class of litigant, differs from that of a lawyer, and at times should be given a priority in issues involving violation of protected rights. The defendant's failure to recognize has led to procedures that overly allowed them to discriminate against a pro se litigant, because the courtroom can be brutal to pro se litigants, and this should not be so. The liberal interpretation of the pleadings is also not clear, possibly requiring of the defendant to clarify this matter, as well as online filing. Equal access to the courts means that the attorneys should be another kind of litigant, but in even keel.

92. In the HOA claim, the HOA moved the court to refuse reveal documents to which he has an entitlement and to whom the HOA owes a fiduciary duty. Relying on informal policies and unspoken rules of permissible conduct, the attorneys who represent defendants in the claim complained about having to deal with the plaintiff. Although the Court did not quash the subpoena, the effect was the same, as Plaintiff assures those documents do not exist.

93. Although certain matters of the court expressly handle issues of the practice of law, no policy or rule of procedure overtly allows an attorney to interfere with the execution of a subpoena and the production of evidence without having reason to believe that they could quash it.

94. The Court did not act under any standards or established law, but to an informal policy that gives priority to the attorney, considering somewhat that the pro-se litigant does not benefit from the protection that the ethics codes grant attorneys from unethical acts amongst themselves.

95. While lamenting the heavy burdens imposed by pro-se on American courts, the United States Court of Appeal (2nd Circuit) noted that '*even given those potential burdens, there still remains a citizen's right of access to courts, a strongly held notion stretching back to the beginnings of our Republic*': Iannaccone v Law 142 F3d 553 (1998) 557 (United States Court of Appeal, 2nd Circuit). See also Bloom and Hershkoff (n 12) 484–5; J McLaughlin, 'An Extension of the Right of Access: the Pro Se Litigant's Right to Notification of the Requirements of the Summary Judgment Rule' (1987) 55 Fordham Law Review 1105, 1110.

96. The defendant's failure to recognize or implement policies that incorporate Faretta v. California, which recognizes the rights of an American who represents himself as a right subject to equal protection of law, caused the subpoena to be "defused" as if it were quashed, corresponding to taking without due process of law and without compensation.

97. This action of the court on failing to execute the subpoena resulted in a nullification of the rights, when the expectation was that the court would sanction a party for violated the production of documents in the subpoena at District Court level. Shift of burden of proof would have evinced the extrinsic fraud, fraudulent misrepresentation and fraudulent concealment claims.

98. Declaratory Relief. Plaintiff requests this court to condemn the defendant to compensate Plaintiff for confiscation of the subpoena, well as order defendant to clarify pro se rights in civil cases and the relationship between an attorney towards a pro se litigant, and to prevent from something like this happening to other pro se litigants who may not have understood what really happened to their subpoena or other rights protected by the law of the case.

99. Injunctive relief to defendant to implement policies and codification of Faretta rights in civil cases and to improve the process of assignment of counsel and providing the litigant with prior notice of the process of assignment of counsel, as well as his rights during the process of assignment of counsel.

100. Injunctive remedy is requested to declare a restart of the process and reinstallation of the subpoena, for reasons which include the Improper representation and the defusing of the subpoena without legal grounds.

CAUSE OF ACTION IV - TAKING OF DUE PROCESS RIGHTS

101. The defendant's legislation placed two cases on automatic stay under the defendant's legislative mandate. The period of stay is close to four years, or 1460 days on February 14, 2023, making Plaintiff entitled to compensation for 2800 days without a closure to the Plaintiff's problems which moved him to file the claim in the first place.

102. The defendant has also blatantly refused to accept any referendum that clearly delivers the will of the people is an issue that can be demonstrated as fundamental when Congress originally authorized the Constitution of Puerto Rico of 1952.

103. Despite the right to self-determination being clear since public Law 600 in 1952, The defendant has remained aloof that Plaintiff and others have elected for Puerto Rico have become a state of the union called the United States of America.

104. By failing to comply with the contract with the Commonwealth of PR and the special elections, the defendant violated plaintiff's right to determine the status of the local government and caused the plaintiff's vote to fall into limbo status, without just compensation nor due process of law.

105. The defendant's failure to implement the body of law arising from Faretta vs. California and its progeny, and Equal Protection Clause caused for a taking of the subpoena as it allowed its effect to be diffused, without just compensation.

106. Defendant also has deprived plaintiff of his right to elect the President, Senators and members of the House of Representatives of the United States Congress, representing Puerto Rico, submitting Puerto Ricans to a resident commissioner who serves the political agendas of the current territorial government, and avoids any judicial interpretation that would significantly resolve the status of Puerto Rico.

CAUSE OF ACTION V - BREACH OF FIDUCIARY TRUST

107. The defendant's failure to prevent by exercise of due diligence, pursue or investigate those responsible for misrepresentation of the quality of the bonds breached the fiduciary trust between the defendant and Puerto Ricans, and the plaintiff, who expect the defendant to act in good faith in any contract that involves or affects its peoples and its rights and the plaintiff as a prior serviceman who so has been injured during service.

108. By ignoring its part of the financial fiasco and for failing to adjudicate the responsible parties, including the creditors, the defendant "cleaned all the dirty hands" and interfered with the procedural due process rights of plaintiff and others similarly situated.

109. If Puerto Rico becomes a state before having resolved the debt situation, it is uncertain whether the defendant would have to bail out Puerto Rico, as the effects of the PROMESA ACT would lose its legal force. Because the debt of Puerto Rico has only been reduced to 30 percent approximately, the bankruptcy matter and the creditors will likely be a matter which will cause or induce the defendant to breach any contract between the Commonwealth of Puerto Rico and the United States regarding plebiscite of status, referring to the obligation of funds designated for the plebiscite authorized by both the Senate and the House in 2014.

110. Alternatively, the matter was also included as a claim, in tandem or in the alternative, as a taking of voting rights.

CAUSE OF ACTION VI - DERIVATIVE ACTION CLAIM - MONEY CLAIM ON BEHALF OF THE COMMONWEALTH

111. Having celebrated the special congressional elections involving territorial status, in 2017 and 2020, the Commonwealth of PR, substantially complied with the terms of contract regarding the referendum of status, requiring of the defendant to comply with its bilateral contractual obligation, which occurs upon the substantial compliance of the Commonwealth of PR, which in turn requires the defendant to comply with its obligation to return of taxpayer funds to the Commonwealth of Puerto Rico that satisfy the Commonwealth of Puerto Rico and its officers' reasonable expectation that they would be obligated after the certification would have been requested, which

it appears that the request for certification never took place. It appears that the Commonwealth of PR only requested payment, not the certification of election results, to prevent any transition. This issue is not being conveyed truthfully to Puerto Rican people by the officials of the territorial government, as they always point to the defendant as the scapegoat for any lack of action in the defendant's part with respect to the transition to statehood.

112. The defendant acted in bad faith by placing vague language in the statute, as to prevent the Commonwealth of PR to ever comply with its contractual obligations, by prevent activating its bilateral obligation which involves the admittance of Puerto Rico as the 51st state of the union.

113. The defendant has blatantly refused to accept any referendum that clearly delivers the will of the people is an issue that can be demonstrated as fundamental when Congress originally authorized the Constitution of Puerto Rico of 1952, with the strict restrictions such as the fact that the defendant did not recognize the right to education as a fundamental right.

114. The defendant acted in bad faith by establishing new contractual terms every time the Commonwealth of PR attempted to request obligation of funds, causing Puerto Rican taxpayer funds to be misallocated when there was a contractual expectation that the funds would be returned.

115. Because of the defendant failing to obligate the funds, the defendant consequentially deprived plaintiff of certification of the election results where Plaintiff voted for statehood. Referring to the election in 2020 to decide for statehood: YES OR NO, the defendant simply stated would not take "yes" for an answer.

116. To further hinder Plaintiff's mentioned Constitutional right, the Defendant then acted in bad faith by passing the PROMESA ACT, where although it recognized the Puerto Rican's right to a referendum, defendant also included another section which makes the act only applicable to territories, making a priority the creditors over plaintiff's constitutional rights over making sure that my vote and the election results are meaningful. The 2017 and the 2020 status election should have activated action on behalf of the defendant to end the effects of the PROMESA ACT, given the findings of the financial commission in 2011.

117. While there was a rehearing request regarding the 2020 election and the 2014 legislation, the defendant passed a new bill in December 2022 with new terms, violating the contractual obligations that having celebrated the special elections entailed.

118. In passing the PROMESA ACT, the defendant placed the blame exclusively on the Commonwealth of PR, forcing the territorial government to reallocate taxpayer funds for PROMESA related expenses, inflicting injury on Americans living in Puerto Rico just because a bicameral bill was the easy way, but not the best way, to resolve such an important matter that would receive approval by both houses.

119. Declaratory Relief is requested to condemn the defendant to refund all expenses related to the PROMESA ACT and the expenses for the elections in 2017 and 2020, as well as compensatory damages.

CAUSE OF ACTION VII - CLASS ACTION CLAIMS

120. Plaintiff represents a class of litigant, mainly plaintiffs, in cases submitted to the confiscation of procedural rights, by staying unjustly during a period of four years, and counting, effecting in an absolute immunity to the officers of the Commonwealth of Puerto Rico from claims, including claims related to Takings based on the Fifth Amendment, placing them all on a permanent stay without a hearing and without a legitimate legislative purpose.

121. Because the defendant did not exercise due diligence in the text of the law, the defendant negligently placed on permanent stay the effects of the referendum without due process of law, resulting in a taking without due process of law, giving priority to the creditors who are partly to blame for the financial fiasco of Puerto Rico.

122. All voters who voted for the statehood status in 2017 and 2020, once again saw that their vote was disregarded, with no state or federal court having declared it invalid, and no act of Congress having declared them as invalid. This is degrading to those with an expectation that their vote would be meaningful, in expression of their authorized expression of their First Amendment rights.

123. The Insular Case have set groundwork to authorize Congress, means of judicial decree, to treat Puerto Rican-Americans as separate but equal, following the mentality of the era that preceded Brown vs. Board of Education. It often happens as the treatment to the territories often do affects its inhabitants, and their rights.

5. OTHER RELIEFS.

1. Declaratory Relief. Plaintiff requests this court condemn the defendant to compensate the voters (Plaintiff and others similarly situated) who voted for the statehood and the people subjected to the automatic stay of the PROMESA ACT unjustly.

2. Injunctive relief is requested to the defendant to initiate annexation timeline to convert the territorial government of Puerto Rico to the 51st state.

3. Injunctive relief to order release of all cases subjected to PROMESA ACT and its automatic stay provision. American citizens were deprived of their due process rights by being forbidden or deprived filing a case against the territorial government, both in federal and territorial courts, interfered the trial and review process, and not just in the execution of judgment but even in the process serving stage, severely hindering American citizens from obtaining any judicial relief from the local government.

4. Declaratory Relief is requested to declare the defendant liable for damages and/or responsible for the excessive debt completely, or in part, and be condemned to compensate Plaintiff for defendant's contribution to making plaintiff vote to not count, or any other solution that facilitates the right to self-determination of Puerto Ricans and prevent exacerbating the damages already caused.

5. Injunctive remedy is requested to force the United States to comply with its contractual obligations related to the referendum issue, as a matter of judicial decree since the United States has been unwilling and/or unable to do so.

6. Injunctive Relief or Cease and desist to the defendant to stop discriminating Puerto Ricans under the Insular Cases.

7. And such other relief as the Court may deem appropriate.

U.S. Department of Justice

Office of the Deputy Attorney General

Washington, DC 20530

April 13, 2017

The Honorable Ricardo A. Rosselló Nevares
Governor of Puerto Rico
La Fortaleza
Post Office Box 9020082
San Juan, Puerto Rico 00902-0082

Puerto Rico State Elections Commission
Post Office Box 195552
San Juan, Puerto Rico 00919-5552

Re: United States Department of Justice review of plebiscite ballot, voter education materials, and expenditure plan

Dear Governor Rosselló:

Thank you for your recent transmittals of the ballot, voter education materials, and expenditure plan relating to a plebiscite to be held on June 11, 2017. As you are aware, the Consolidated Appropriations Act of 2014 included a "no-year" appropriation of $2,500,000 for "objective, nonpartisan voter education about, and a plebiscite on, options that would resolve Puerto Rico's future political status." Pub. L. 113-76, 128 Stat. 5, 61 (2014) ("Appropriations Act"). Consistent with the House Report accompanying the legislation, the Department has reviewed the plebiscite materials to determine whether it may notify Congress that "the voter education materials, plebiscite ballot, and related materials are compatible with the Constitution and laws and policies of the United States" and obligate funds for the plebiscite. H.R. Rep. No. 113-171, at 54 (2014). The Department has determined that multiple considerations preclude it from notifying Congress that it approves of the plebiscite ballot and obligating the funds.

It has long been "the policy of the executive branch . . . to work with leaders of the Commonwealth and the Congress to clarify [Puerto Rico's status] options to enable Puerto Ricans to determine their preference among options for the islands' future status that are not incompatible with the Constitution and basic laws and policies of the United States." Exec. Order 13183 of Dec. 23, 2000 (Establishment of the President's Task Force on Puerto Rico's Status). Consistent with that policy, the President's Task Force on Puerto Rico's Status (the "Task Force") has maintained that the popular will of the people of Puerto Rico should be ascertained in a way that provides a clear result. *See* Report by the President's Task Force on Puerto Rico's Status, at 10 (2005) ("2005 Task Force Report"); Report by the President's Task Force on Puerto Rico's Status, at 10 (2007) ("2007 Task Force Report"). The Task Force's most recent report recommended support for efforts to determine the will of the people of Puerto Rico and emphasized that the available status

options should be "as clear as possible." Report by the President's Task Force on Puerto Rico's Status, at 23, 26 (2011) ("2011 Task Force Report").

The Department has concluded that the plebiscite ballot is not compatible with these policies, as it is not drafted in a way that ensures that its result will accurately reflect the current popular will of the people of Puerto Rico. As transmitted, the ballot omits Puerto Rico's current territorial status as an available option and instead provides the people of Puerto Rico with only two choices: "Statehood" or "Free Association/Proclamation of Independence." This omission appears to be based on a determination that the people of Puerto Rico definitively rejected Puerto Rico's current status in the plebiscite held on November 6, 2012. *See* Act No. 7-2017, Art. III § 1(a). The Department does not believe that the results of the 2012 plebiscite justify omitting Puerto Rico's current status as an option on the ballot. For a variety of reasons, the validity of the 2012 plebiscite's results "have been the subject of controversy" and debate. *See* Congressional Research Service, *Puerto Rico's Political Status and the 2012 Plebiscite: Background and Key Questions*, at 8 (June 25, 2013) ("CRS Report"). Furthermore, nearly five years have elapsed since that plebiscite, during which significant political, economic, and demographic changes have occurred in Puerto Rico and the United States. As a result, it is uncertain that it is the present will of the people to reject Puerto Rico's current status. Accordingly, any plebiscite that now seeks to "resolve Puerto Rico's future political status," as the Appropriations Act contemplates, should include the current territorial status as an option. *See* 2011 Task Force Report, at 26 (noting that the current status "must be an available option for the people of Puerto Rico"). Otherwise, there would be "real questions about the vote's legitimacy" and its ability to reflect accurately the will of the people. *Id.*

Furthermore, the Department has determined that the plebiscite ballot language contains several ambiguous and potentially misleading statements, which may hinder voters' ability to make a fully informed choice as well as efforts to ascertain the will of the people from the plebiscite results. The statements of concern are as follows:

- The ballot's description of the "Statehood" option contains the following statement: "I am aware that Statehood is [the] only option that guarantees the American citizenship by birth in Puerto Rico." This statement is inaccurate when considered in the context of all available status options, as under current law, Puerto Ricans have an unconditional statutory right to birthright citizenship. The sentence therefore is potentially misleading and reinforces the ballot's flawed omission of an option for retaining Puerto Rico's current territorial status.

- The description of the "Free Association" option contains the following statement: "Puerto Rico should adopt a status outside of the Territory Clause of the Constitution of the United States that recognizes the sovereignty of the People of Puerto Rico." This statement does not make clear that a vote for "Free Association" is a vote for complete and unencumbered independence. Describing Free Association in this manner may lead voters to think that this choice is an "enhanced Commonwealth" option. The Department and Task Force have rejected as unconstitutional previous "enhanced Commonwealth" proposals that would have given Puerto Rico a status outside of the Territory Clause, but short of full independence, and would have further provided that the relationship between the United

States and Puerto Rico could only be altered by mutual consent. *See* 2005 Task Force Report at 6; 2007 Task Force Report at 6; 2011 Task Force Report at 26; *see also* 2005 Task Force Report, App'x E (Letter from Ronald Raben, Assistant Attorney General, Office of Legislative Affairs, to Hon. Frank H. Murkowski, Chairman, Committee on Energy and Natural Resources, United States Senate (Jan. 18, 2001)); *cf. Mutual Consent Provisions in the Guam Commonwealth Legislation*, 1994 WL 16193765 (O.L.C.) (July 28, 1994).

- The description of "Free Association" states that "[u]nder this option the American citizenship would be subject to negotiation with the United States Government," but the description of "Independence" is silent as to citizenship. Voters may misperceive this difference to suggest that Free Association is an "enhanced Commonwealth" option, when the reality is that both choices would result in complete and unencumbered independence and both would require an assessment of a variety of issues related to citizenship.

For the reasons stated, the Department is unable to notify Congress that it approves of the plebiscite materials and is unable to obligate the appropriated funds.

Thank you for your continued service to Puerto Rico.

Sincerely,

Dana J. Boente
Acting Deputy Attorney General