

April 17, 2023

Honorable Raul Grijalva  
1511 Longworth House Office Building  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Grijalva:

I write to convey the American Bar Association's support for your upcoming reintroduction of a House resolution that "recognizes that our constitutional and democratic principles apply throughout the United States, including both States and territories...and rejects the Insular cases and their application to all present and future cases and controversies involving the application of the Constitution in United States Territories."

The ABA adopted policy last summer that states:

RESOLVED, That the American Bar Association supports the efforts to restore the rights, liberties, and protections provided by the United States Constitution to the people of the United States territories, so that they are afforded the same rights, liberties, and protections as the people of the states;

FURTHER RESOLVED, That the American Bar Association opposes the "territorial incorporation doctrine" established by the Insular Cases, as contrary to the principles enunciated by the United States Constitution and subsequent civil rights jurisprudence; and

FURTHER RESOLVED, That the American Bar Association urges Congress to enact legislation that provides the people of the United States territories the same rights, liberties, and protections as those afforded to the people of the states.

Today, more than 3.5 million Americans—98% of whom are racial or ethnic minorities—reside in the territories of the U.S. Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, and Puerto Rico. They are treated differently from the approximately 330 million people that live in the 50 states and the District of Columbia. While those who live in the mainland United States know they enjoy the full protections of the Bill of Rights of the United States Constitution, the extension of those rights to the people of these five territories is not a guarantee, but a matter of legislative and judicial discretion.

The Insular Cases are not a mere historic relic that, if overturned, would have nothing but a symbolic effect. Although Congress has extended most constitutional rights by statute, it has not extended every right to every territory. For example, Congress has not enacted legislation to provide those born in American Samoa with birthright citizenship, and it has exempted the U.S. Virgin Islands from the requirement that prosecutions—even federal prosecutions—be by grand jury indictment.

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Last Spring, the U.S. Supreme Court declined to overrule the Insular Cases and used other grounds to deny Jose Louis Vaello-Madero, a Puerto Rican New Yorker, his social security benefits when he became a resident of Puerto Rico. *United States v. Vaello-Madero*, 142 S. Ct. 1539 (2022).

As stated by Justice Gorsuch in a concurring opinion in *Vaello-Madero*, “[t]he flaws in the Insular Cases are as fundamental as they are shameful. Nothing in the Constitution speaks of “incorporated” and “unincorporated” Territories. Nothing in it extends to the latter only certain supposedly “fundamental” constitutional guarantees. Nothing in it authorizes judges to engage in the sordid business of segregating Territories and the people who live in them on the basis of race, ethnicity, or religion.”

Unfortunately, in the fall of 2022, the Supreme Court again chose not to revisit the Insular Cases when it denied certiorari in *Fitisemanu v. United States*, 143 S. Ct. 362 (2022), a case that asked whether persons born in U.S. territories are entitled to birthright citizenship under the 14<sup>th</sup> Amendment, including whether the Insular cases should be overruled.

While your proposed House resolution is an important step in raising awareness of the grave injustices imposed by the Insular Cases, more is needed. In accordance with our recently adopted policy, we urge you to consider introducing legislation that affirmatively provides the people of the United States territories the same rights, liberties, and protections as those afforded to the people of the states.

Sincerely,

A handwritten signature in black ink, appearing to read "Deborah Enix-Ross". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Deborah Enix-Ross