

Statement of Congresswoman Stacey Plaskett (VI)

Committee on Natural Resources

Hearing: “On H.Res.279, "Insular Cases Resolution"”

Wednesday, May 12, 2021, 1:00 PM, via WebEx

Good afternoon, Chairman Grijalva, Ranking Member Westerman, members of the Committee, distinguished guests. My name is Stacey Plaskett. I represent the Virgin Islands of the United States in the House of Representatives. Thank you for holding this hearing on House Resolution 279, the Insular Cases Resolution.

More than 3.5 million United States citizens are denied constitutional rights because they reside in one of the five U.S. territories: American Samoa, Guam, the Northern Mariana Islands, Puerto Rico and the U.S. Virgin Islands. The combined population of the territories is greater than that of 22 states and that of the five smallest states combined. It is a central principle of our American democracy that Americans, through their votes, can have a say in their own governments, and yet these millions of Americans have almost no say in federal decision-making, even when it directly affects the islands they live on.

At the core of the disenfranchisement of territory residents are the racially charged series of Supreme Court decisions in the early 1900s – the *Insular Cases*. Prior to the *Insular Cases*, territories were viewed as inchoate states, areas on the path to full statehood. However, with the *Insular Cases*, the Supreme Court invented an unprecedented category of “unincorporated” territories not on the path to statehood and whose residents could be denied

the most basic constitutional rights. Those decisions were explicitly informed by racial assumptions – with residents of the territories described as “fierce, savage and restless people” who were “absolutely unfit” to be citizens as they could not comprehend American, Anglo-Saxon principles.

It comes as no surprise that one of the most influential of these cases, *Downes v. Bidwell*, was decided by the same Justices who invented the separate but equal doctrine of racial segregation in *Plessy v. Ferguson* just 3 years earlier. But the legal basis established by *Plessy* was reversed in *Brown v. Board of Education* in 1954 as the Court recognized the nation could not operate in the supposed “separate but equal” category, which in reality was separate and unequal. While the discriminatory precedent set by the *Insular Cases* continues to affect more than 3.5 million Americans residing in U.S. territory, the Supreme Court has yet to revisit this precedent. Furthermore, the past three administrations – Trump, Obama and Bush – have reaffirmed this position. I call upon this administration to chart a new course, reject the Supreme Court's decisions in the *Insular Cases*, and recognize the importance of supporting equal rights of Americans living in the U.S. territories.

The ramifications of the *Insular Cases* extend to all aspects of life for U.S. citizens in the territories. Residents are denied access to crucial federal support despite paying more in federal taxes collectively than several of the states. While in the recent case of *United States v. Vaello Madero*, the U.S. Department of Justice has disclaimed that the *Insular Cases* limit the application of equal protection in the territories, it nonetheless still continues to embrace their flawed logic that the Constitution applies “only in part” in so-called “unincorporated” territories. Ultimately, the ongoing discrimination

against Americans in the territories in federal benefits programs cannot be separated from the harmful legacy of the *Insular Cases*. As we have seen with the COVID-19 pandemic and recent major natural disasters, the territories are extremely vulnerable. This already precarious situation is exacerbated by delayed federal assistance and arbitrary formulas for infrastructure enhancement.

The *Insular Cases* set this precedent - and created a near permanent colonial status. It was never the intent of Congress for areas of the United States to be a territory for 100 years except for the fact that these are now people of color. These are communities of people of color. So, based on the *Insular Cases* 100 years ago which said that the people living in the territories were people of alien races who couldn't understand Anglo-Saxon principles of law, that is why we were not able to have the full-fledged rights of American citizens.

In the cases adjudicated following the *Insular Cases*, the Supreme Court has reaffirmed time after time that the current relationship between the United States and its territories – rooted in a racist, paternalistic basis that denies American citizens full constitutional rights – is acceptable. In a modern context, lower courts feel bound to apply the precedent established in the *Insular Cases*. In *Tuaua v. United States*, the federal government had the opportunity to address the sub-standard treatment of residents of territories. The premise of the argument presented in *Tuaua v. United States* was straightforward: individuals born in American Samoa are labeled as a “non-citizen national” despite the Citizenship Clause of the Constitution, which states, “All persons born...in the United States, and subject to the jurisdiction thereof, are citizens of the United States.” The federal government argued that Congress

has the power to exclude Americans born in U.S. territory from the Citizenship Clause based upon the doctrine established by the *Insular Cases*. However, the plaintiffs pointed to the Supreme Court's findings of *Boumediene v. Bush*: the Constitution grants Congress and the President "the power to acquire, dispose of, and govern territory, not the power to decide when and where its terms apply."

The petition for Supreme Court review was denied, leaving these pressing questions unanswered. Amici briefs were filed by elected leaders and former officials of the territories, well-informed government officials and scholars. Instead of using this opportunity to address the treatment of Americans residing in U.S. Territories, the Supreme Court left this matter for another day.

That is why the House must take up and pass House Resolution 279, and send an official message that the Supreme Court's decisions in the *Insular Cases* are contrary to the text and history of the Constitution, rest on racial views and stereotypes from the era of *Plessy v. Ferguson*, are contrary to our nation's most basic constitutional and democratic principles, and should be rejected as having no place in United States constitutional law. This hearing is an important step toward that goal. I thank Chairman Grijalva for introducing this legislation to address the pressing matter of the treatment of the U.S. territories. As a co-sponsor of this resolution and a resident of the U.S. Virgin Islands, it is of the utmost importance that we, as Members of Congress, confront the disenfranchisement of millions of Americans residing in the territories – most of whom are people of color. We deserve nothing less than the full rights of citizenship, with the full application of the constitutional and democratic principles of the United States.