

To: President Donald J. Trump and Members of the U.S. Government

Subject: Addressing Puerto Rico's Political Status through Executive Action

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I. PURPOSE

This memorandum aims to provide a thorough assessment of the legal, political, and policy options available to the President for addressing Puerto Rico's longstanding political status through executive action. The analysis examines viable courses of action while balancing constitutional authority, domestic legal obligations, and the practical challenges and opportunities inherent in resolving Puerto Rico's status.

It is imperative to recognize that statehood is not a viable and feasible option for either Puerto Rico or the United States, as highlighted in the **2014 Government Accountability Office (GAO)** report. The report detailed the significant economic, fiscal, and political challenges that statehood would impose, including the substantial strain on federal resources and potential disruptions to Puerto Rico's unique cultural and national identity. Understanding this, the U.S. administration must prioritize viable national sovereignty options—*independence* or *free association*—that uphold the principles of self-determination and offer a sustainable path forward for Puerto Rico's future. This prioritization of national sovereignty options is particularly significant today, as the 2024 status referendum revealed that 43% of Puerto Ricans support sovereignty options—a historic milestone that reflects a growing and undeniable trend in Puerto Rico's modern political landscape.

The memorandum also considers the aspirations of those Puerto Ricans who strongly identify with the United States and may prefer statehood. These individuals will have every opportunity to move freely to the United States to fully participate in U.S. society and exercise their rights as American citizens. For the broader Puerto Rican population (in Puerto Rico and its diaspora), however, national sovereignty represents the most equitable and pragmatic resolution to Puerto Rico's colonial status, fostering political and economic independence while allowing Puerto Rico to cultivate its cultural and national identity.

The United States, by supporting this transition, can reaffirm its commitment to democratic values and human rights, while also redefining its relationship with Puerto Rico based on mutual respect, cooperation, and partnership. This memorandum underscores the critical importance of aligning executive action with these goals to ensure a fair and sustainable resolution for Puerto Rico and the United States alike.

II. BACKGROUND

Puerto Rico's territorial status under the U.S. Constitution's **Territorial Clause** (Article IV, Section 3, Clause 2) grants Congress plenary authority over its governance. However, legal statutes and Supreme Court rulings highlight avenues through which the Executive Branch can address Puerto Rico's political future.

1. Key Legal Frameworks:

- **48 U.S.C. § 891** governs the election of Puerto Rico's Resident Commissioner and implicates foreign relations by directing the U.S. Department of State to oversee eligibility for this role. This can be interpreted to support executive involvement in Puerto Rico's political representation.
- **26 U.S.C. § 2209** classifies U.S. citizens born or residing in Puerto Rico as "nonresidents not citizens of the United States" for estate tax purposes. This distinction underscores Puerto Rico's unique legal status and highlights a potential basis for recognizing greater autonomy or supporting independence initiatives.

2. Relevant Supreme Court Decisions:

- ***Puerto Rico v. Sanchez Valle (2016)***: Confirmed that Puerto Rico's sovereignty emanates from Congress, underscoring its lack of independent constitutional authority.
- ***United States v. Vaello Madero (2022)***: Highlighted Congress's discretion in extending federal benefits to Puerto Rico, further emphasizing its distinct legal status.
- **Insular Cases** (e.g., ***Downes v. Bidwell, 1901***): Reinforced that Puerto Rico "belongs to" but is not fully part of the United States, enabling unequal application of constitutional rights.

3. Historical Context:

- The **Jones–Shafroth Act of 1917** unilaterally imposed U.S. citizenship on Puerto Ricans without granting full political rights, raising questions about the legitimacy and voluntary nature of their political association with the United States.

These legal and historical precedents provide a foundation for executive action to address Puerto Rico's unique status and advance its political aspirations, including potential independence initiatives.

III. OPTIONS

Option 1: Issue an Executive Order Recognizing Puerto Rico's Right to Declare National Sovereignty

- **Description:** Affirm Puerto Rico's right to national sovereignty (either through *independence* or *free association*), direct federal agencies to engage with Puerto Rican pro-independence and sovereignty leaders, and initiate a legally sound transition process to a national sovereignty status as previously detailed in U.S. Senate bill **S.712**. Puerto Ricans

would then vote, via a referendum, whether they prefer full “independence” or “sovereignty in free association” with the United States.

- **Legal Basis:** Executive authority under 48 U.S.C. § 891 and 26 U.S.C. § 2209.
- **Pros:**
 - Demonstrates U.S. commitment to democratic principles and self-determination.
 - Encourages Congressional action and public discourse.
 - Establishes a federal framework for the transition to national sovereignty.
- **Cons:**
 - Risk of legal challenges under the Territorial Clause.
 - Potential Congressional resistance or inaction.
 - Limited immediate effect without legislative support.

Option 2: Establish a Federal Task Force on Puerto Rico’s Transition to Sovereignty

- **Description:** The proposed course of action involves creating an interagency task force composed of federal agencies, Congress, and Puerto Rican experts and stakeholders to develop actionable steps for Puerto Rico’s transition to sovereignty, whether through *independence* or *free association*. This task force would be mandated to deliver, within two years, a detailed and comprehensive transition plan outlining the legal, political, economic, and administrative measures required for Puerto Rico to achieve sovereign nationhood. The plan would address critical areas such as economic stabilization and development, security, defense, the establishment of bilateral agreements with the United States (regarding tax, citizenship, and free transit, etc.), and the development of democratic governance structures for a sovereign Puerto Rico.

By the third year, Puerto Rico would be prepared to transition from territorial governance to sovereign nationhood, which would include the establishment of a transitional government, a formal declaration of national sovereignty, a referendum whether Puerto Rico will choose *independence* or *free association*, the convening of a Constitutional Convention, and the implementation of a new democratic and sovereign government. This structured timeline ensures a deliberate and inclusive process, fostering collaboration between all relevant parties while prioritizing the aspirations and self-determination of the Puerto Rican people. It also sets a precedent for decolonization efforts grounded in transparency, equity, and mutual respect.

- **Legal Basis:** Territorial administration policy and executive discretion, supported by 48 U.S.C. § 891 and 26 U.S.C. § 2209.
- **Pros:**
 - Promotes inclusivity and collaboration between the Puerto Rican and U.S. delegations; Congress; and federal agencies as to the transition process, a viable and beneficial definition of free association, and a *Treaty of Friendship & Cooperation* between Puerto Rico and the United States.
 - Provides a structured framework for policy recommendations.
 - Builds credibility and public trust.

- **Cons:**
 - Delays immediate action and prolongs uncertainty.
 - May appear redundant given prior reports.

Option 3: Utilize Emergency Powers to Advance Autonomy Measures

- **Description:** Declare an economic or humanitarian emergency under the National Emergencies Act to take immediate executive action addressing Puerto Rico's corrupt territorial governance. A Transitional Council (similar to the current *Fiscal Control Board*) would be appointed by the U.S. President (made up of Puerto Rican and American experts) that would be tasked with developing a viable transitional plan to reform the current territorial government (laws, institutions, agencies) into a viable, democratic, and economically prosperous sovereign nation. Puerto Ricans would then vote, via a referendum, whether they prefer full "*independence*" or "*sovereignty in free association*" with the United States.
- **Legal Basis:** Precedents in disaster response and national security under executive emergency powers.
- **Pros:**
 - Allows for rapid response to crises in Puerto Rico.
 - Aligns with ongoing disaster recovery efforts.
- **Cons:**
 - High risk of judicial challenges.
 - Politically contentious and potentially divisive.

IV. RECOMMENDATION

The most viable course of action is to establish a **Federal Task Force on Puerto Rico's Transition to Sovereignty**. This interagency task force would bring together federal agencies, Congress, and Puerto Rican stakeholders to develop actionable steps for Puerto Rico's transition to sovereignty, whether as an independent nation or through a free association arrangement. The task force would be tasked with presenting a detailed, comprehensive, and viable transition plan within two years. The task force would submit quarterly status reports to the President of the United States and Congress. This framework would include defining the legal, economic, and political mechanisms necessary for Puerto Rico's successful transition, as well as establishing the parameters of a mutually beneficial *Treaty of Friendship & Cooperation* or *Compact of Free Association* between Puerto Rico and the United States. This inclusive and collaborative process would demonstrate U.S. commitment to democratic principles, foster public trust, and ensure that all parties have a voice in shaping Puerto Rico's future.

This approach strikes a balance between legal considerations and political feasibility, while providing the structure necessary to achieve meaningful progress. By fostering collaboration among key stakeholders, the task force would ensure a comprehensive analysis of the social, economic, and legal implications of sovereignty. It would also provide a transparent framework to engage Puerto Rican citizens in the decision-making process, promoting trust and inclusivity. While this approach may delay immediate action and could appear redundant to past efforts, its structured and deliberate nature ensures that the transition plan is thorough, viable, and sustainable,

addressing long-standing uncertainties and aligning with both U.S. and Puerto Rican interests. This recommendation is the most prudent and effective pathway to advance Puerto Rico's decolonization and transition to sovereignty.

V. NEXT STEPS

1. Draft an executive order to establish the task force, outlining its objectives, operational structure, and time-bound objectives that must be met and accomplished by specific dates.
2. Consult with key Congressional leaders to secure bipartisan support and necessary resources.
3. Launch stakeholder engagement efforts, including public forums and consultations with Puerto Rican leaders.
4. Develop a public communication strategy to ensure transparency and maintain public trust.

VI. CONCLUSION

Addressing Puerto Rico's political status is a legally intricate and politically sensitive challenge, but one that demands decisive action to resolve more than a century of territorial governance. The prospect of statehood, while occasionally promoted as a solution, is neither politically nor economically viable for Puerto Rico or the United States. Statehood would impose significant economic and political challenges, including federal financial obligations, resistance to assimilation, cultural and language conflicts, and an erosion of Puerto Rico's cultural and national identity.

In contrast, supporting a pathway toward **national sovereignty**, whether through *independence* or *free association*, offers a more sustainable and equitable resolution. Sovereignty would allow Puerto Rico to assert control over its political and economic destiny while fostering a dignified relationship with the United States grounded in mutual respect, cooperation, and partnership rather than colonial subjugation.

Meaningful progress toward resolving Puerto Rico's status can be achieved within the bounds of constitutional authority through a measured, transparent, and collaborative approach. By establishing a dedicated task force, the Administration can create the conditions for a consensus-driven process that addresses the aspirations and needs of the Puerto Rican people. This task force would ensure the involvement of key stakeholders, including Puerto Rican leaders, federal agencies, and Congress, while engaging the public in an inclusive and transparent manner. Such an initiative would demonstrate U.S. commitment to democratic values, signal a long-overdue acknowledgment of Puerto Rico's right to self-determination, and establish a framework for lasting decolonization. By pursuing sovereignty as the ultimate goal, the Administration would set a precedent for addressing territorial issues with integrity, fairness, and respect for the principles of self-governance.