



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, DC 20530

The Honorable Raúl M. Grijalva
U.S. House of Representatives
Washington, DC 20515

Dear Representative Grijalva:

This responds to your letter to the Department of Justice (Department), dated April 15, 2024, regarding your request that the Department condemn the *Insular Cases* and the doctrine of territorial incorporation. The Department shares your commitment to protecting civil rights and treating everyone with fairness, dignity, and compassion. We are sending identical responses to the other Members who joined your letter.

The Department emphatically agrees with you that the racist language and logic of the *Insular Cases* deserve no place in our law. As your letter notes, the Department has recognized that the *Insular Cases* contain reasoning and rhetoric that are “obviously anathema”¹ and “indefensible and discredited.”² In fact, the Department affirmatively emphasized in a recent filing that the “racist stereotypes” invoked in the *Insular Cases* were “indefensible and repugnant.”³ The Department unequivocally condemns the racist rhetoric and reasoning of the *Insular Cases*, and unambiguously shares your view that such reasoning and rhetoric are irreconcilable with foundational American principles of equality, justice, and democracy.

The Department’s approach to issues involving the application of the Constitution to U.S. territories is illustrated by its brief in the Supreme Court in *Fitisemanu v. United States* in that case, 143 S. Ct. 362 (2022). In addition to clearly repudiating the racist rhetoric and reasoning of the *Insular Cases*, the Department emphasized that it did not rely on or seek to extend the doctrine of territorial incorporation established by the *Insular Cases*.⁴ Instead, the Department argued that a question about the application of the Constitution to the territories should be

¹ Transcript of Oral Argument at 10, *United States v. Vaello Madero*, 596 U.S. 159 (2022) (“The government’s position on the *Insular Cases* is that some of the reasoning and rhetoric there is obviously anathema, has been for decades, if not from the outset . . .”).

² Brief for the Federal Respondents in Opposition at 16, *Fitisemanu v. United States*, 143 S. Ct. 362 (2022) (*Fitisemanu Br.*) (“And the government in no way relies on the indefensible and discredited aspects of the *Insular Cases*’ reasoning and rhetoric that petitioners highlight here . . .”).

³ Memorandum of Law of the United States in Support of the Constitutionality of PROMESA at 16, *In re: The Financial Oversight and Management Board for Puerto Rico*, No. 17-bk-4780-LTS (D.P.R. filed Mar. 13, 2024), ECF No. 5069 (“The United States agrees that aspects of the *Insular Cases*’ reasoning and rhetoric, which invoke racist stereotypes, are indefensible and repugnant.”).

⁴ *Fitisemanu Br.* 16 (“The government’s argument here does not rest on that framework.”).

decided “using the ordinary tools of constitutional interpretation—including text, context, historical practice, and precedent.”⁵ The Department has taken active steps to coordinate across components and offices—and will continue to do so—to ensure that Department litigators consistently apply the same approach to analogous questions and will not rely on the racist rhetoric and reasoning of the *Insular Cases*.

We hope this information is helpful. Please do not hesitate to contact this Office if we may provide additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in dark ink, appearing to read 'C. Uriarte', with a stylized, cursive script.

Carlos Felipe Uriarte
Assistant Attorney General

⁵ *Fitisemanu Br. 16*.