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**REPORT No. 60/17**  
**PETITION 776-06**  
REPORT ON ADMISSIBILITY

FOUR MILLION AMERICAN CITIZENS RESIDENTS IN PUERTO  
RICO  
UNITED STATES

Approved by the Commission at its session No. 2085 held on May 25, 2017  
162<sup>nd</sup> Extraordinary Period of Sessions

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Citizens Residents in Puerto Rico. United States. May 25, 2017.

**REPORT No. 60/17<sup>1</sup>**  
**PETITION P-776-06**  
 REPORT ON ADMISSIBILITY  
 FOUR MILLION AMERICAN CITIZENS RESIDENTS IN PUERTO RICO  
 UNITED STATES  
 MAY 25, 2017

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioners:</b>	Gregorio Igartua De La Rosa, Carlos Méndez Martínez, Rafael Zeruto Soto, Fred Soltero Harrington, Jorge Luis Pérez Díaz, Pedro Méndez Soto, Luis Soltero Harrington
<b>Alleged victims:</b>	Four Million American Citizens Residents in Puerto Rico
<b>State denounced:</b>	United States
<b>Rights invoked:</b>	Articles XX (right to vote and to participate in government) of the American Declaration on the Rights and Duties of Man <sup>2</sup> ; Article 3 of the Inter-American Democratic Charter; Article 21 of the Universal Declaration of Human Rights; and Articles 2 and 25 of the International Covenant on Civil and Political Rights <sup>3</sup>

**II. PROCEDURE BEFORE THE IACHR<sup>4</sup>**

<b>Date on which the petition was received:</b>	July 27, 2006
<b>Date on which the petition was transmitted to the State:</b>	April 27, 2009
<b>Date of the State's first response:</b>	June 28, 2010
<b>Additional observations from the petitioner:</b>	August 11, 2010; May 5, 2011; May 10, 2011; March 31, 2015
<b>Additional observations from the State:</b>	April 15, 2011

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	Yes, American Declaration (ratification of the OAS Charter on June 19, 1951 and in conformity with Article 20 of the IACHR's Statute and Article 51 of its Rules of Procedure)

<sup>1</sup> Commissioner James L. Cavallaro did not take part in the discussion or voting on this petition, pursuant to Article 17(2) of the Inter-American Commission's Rules of Procedure.

<sup>2</sup> Hereinafter referred to as "Declaration" or "American Declaration".

<sup>3</sup> Hereinafter referred to as "ICCPR".

<sup>4</sup> The observations from each party were duly transmitted to the opposing party.

**IV. ANALYSIS OF DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION**

Duplication of procedures and International <i>res judicata</i> :	No
Rights declared admissible	Articles II (right to equality before the law), XVII (recognition of juridical personality and civil rights), XVIII (right to a fair trial) and XX (right to vote and to participate in government) of the American Declaration
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, March 20, 2006
Timeliness of the petition:	Yes, July 27, 2006

**V. ALLEGED FACTS**

1. According to the petitioners, all American citizens residing in Puerto Rico are denied the right to vote in the U.S. presidential elections on the discriminatory basis that they reside in a U.S. territory and not in a state; while other American citizens can change their residence from one state to another, or even to foreign countries, and continue to vote, this is not the case for Puerto Rico. They submit that there are over four million U.S. citizens residing in Puerto Rico, a population which is larger than that of 25 or 26 states and which meets the minimum required to qualify for electors for the electoral college. They claim, however, that their right to vote in U.S. presidential elections is denied even though U.S. citizens residing in Puerto Rico have the same obligations as citizens residing in other states and also serve in the armed forces.

2. The petitioners allege having filed judicial complaints on their behalf and on behalf of all persons similarly situated and to have exhausted domestic remedies on several occasions seeking the recognition of their right to vote in U.S. presidential elections. The initial complaint (hereinafter, "Igartúa I") was filed before the Federal District Court of Puerto Rico (henceforth, "the District Court") in 1992. The District Court dismissed that complaint and its decision was upheld by the United States Court of Appeals for the First Circuit (hereinafter, "the Appeals Court") on the basis that American citizens resident in Puerto Rico do not have a right to vote in presidential elections because Puerto Rico is not entitled under Article II of the U.S. Constitution to choose electors for the electoral college, the body responsible for electing the President. According to the petitioners, their *writ of certiorari* was also dismissed by the Supreme Court. In 2000, the petitioners filed a second complaint before the District Court, which found in favor of the petitioners in light of two decisions issued by the Supreme Court after the dismissal of the first case. However, this decision was appealed and the Appeals Court, on the basis of *stare decisis*, overturned the District Court's decision, reaffirming its previous decision from Igartúa I. They claim that their *writ of certiorari* was once again dismissed by the Supreme Court. A third complaint was filed in 2003 and dismissed by the District Court on August 19, 2004. This decision was appealed and on August 3, 2005, the Appeals Court, in an *en banc* decision, dismissed the case on the basis of *stare decisis*, once again reaffirming its finding that American citizens residing in Puerto Rico do not have a constitutional right to vote in U.S. presidential elections. The petitioners filed a *writ of certiorari* before the Supreme Court and it was dismissed on March 20, 2006.

3. The petitioners claim that the inaction of Congress and of the Executive Branch with respect to federal voting rights for U.S. citizens residing in Puerto Rico and the restrictive interpretation of the Federal Courts are confining these persons to government without consent and to a state of servitude by disenfranchisement. They assert that Federal Courts are adhering to the procedural element of the presidential election, the electors requirement, in order to deny their right to vote, thus ignoring the substantive element, the right to vote which flows to the people through U.S. citizenship. They allege that the right to vote in U.S. presidential elections has evolved since the adoption of the U.S. Constitution by amendments, legislation, jurisprudence and treaty law, and claim that their right to vote in presidential elections should be determined by their citizenship and not statehood. They submit, however, that Federal

Courts have ignored U.S. treaty obligations, which have been labeled as mere aspirational instruments, and that the State's lack of compliance with its international obligations is at issue in the present petition.

4. Moreover the petitioners assert that contradictory, and/or conflicting opinions by Federal Courts are also affecting their request for relief in their claim for voting rights. In this regard, they submit that for some purposes, the U.S. Constitution is applied by the Federal Courts to American citizens residing in Puerto Rico without considering any need for constitutional amendment, Congressional Legislation or without the requirement that Puerto Rico become a state, and different treatment is given in other cases, including those dealing with fundamental rights.

5. The State acknowledges that American citizens residing in Puerto Rico cannot vote in U.S. presidential elections since the U.S. Constitution only affords this right to citizens residing in states and in the District of Columbia. It claims, however, that this does not constitute a violation of the American Declaration since the facts alleged by the petitioners do not establish any discrimination against specific individuals or any inappropriate denial of the rights to vote or participate in government.

6. With regard to the alleged discriminatory restriction of voting rights, the State submits that the right to equal treatment before the law means that the law may not treat similarly situated persons differently and claims that American citizens residing Puerto Rico are not in the same situation as citizens residing in states and the District of Columbia, but rather in the same situation as citizens residing in other U.S. territories such as Guam and the U.S. Virgin Islands. It asserts that citizens residing in Puerto Rico are treated equally to citizens residing in other U.S. territories.

7. The State asserts that the difference in voting rights of these two groups is not based on race, sex, language, creed or any other invidious distinction barred by Article II of the American Declaration, but rather on the very nature of statehood under the U.S. Constitution. It submits that through the Constitution, the people of the United States created a federal union, and provided for the structured distribution of political power among states in the union. Within that structure, states that elected to join the union gave up a portion of their sovereignty, took on certain responsibilities and obligations, and at the same time acquired certain rights, for themselves or their citizens, including the rights to choose the President, Vice President, and members of Congress. Citizens residing in Puerto Rico cannot participate in U.S. presidential elections, but they can elect their own Governor and legislature and the Commonwealth government exercises a range of autonomous authority similar to that of the state. As all states, Puerto Rico has its own local court system and a Federal District Court. They are also represented in the United States House of Representatives by a Resident Commissioner. Residents of Puerto Rico enjoy the freedom to move inside the United States with no restrictions and they automatically gain the right to vote in U.S. presidential elections if they take up residence in any of the states or the District of Columbia.

8. With regard to the alleged infringement of voting rights, the State submits that the system adopted by the U.S. Constitution is not inconsistent with Article XX of the American Declaration. In this regard, it claims that this article provides for the right to take part in the governance of one's country and to vote in popular elections, which shall be by secret ballot, honest, periodic, and free, but neither it nor any other provision of the American Declaration or the Inter-American Democratic Charter dictates the exact modalities of such participation.

9. The State submits that there is nothing unreasonable or discriminatory in its constitutional structure and that American citizens residing in Puerto Rico have accepted this system by voting to reject statehood and independence on three separate occasions. Moreover, it claims that all of the petitioners' claims have been litigated and rejected in domestic courts.

10. Finally, the State notes that the present petition is similar to petition P-1105-06 in the sense that both petitions claim that U.S. citizens residing in Puerto Rico do not enjoy the same rights to vote in U.S. national elections as U.S. citizens residing in the fifty states. It notes however, that the present petition raises this matter with regard to U.S. presidential elections while petition P-1105-06 raises it with regard to presidential and congressional elections.

## VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

11. The petitioners submit that after the dismissal of their original complaint, Igartúa I, a new complaint was filed in 2000 and the District Court ruled in their favor in light of decisions rendered by the U.S. Supreme Court subsequent to the dismissal of Iguartúa I. They claim, however, that this decision was later overturned by the Appeals Court on the basis of *stare decisis* and the U.S. Supreme Court later dismissed their *writ of certiorari*. After the dismissal of their second complaint, the petitioners filed a new complaint in 2003, one which was rejected by the District Court, a decision later confirmed by the Appeal Court *en banc* in 2005. They assert that domestic remedies were then exhausted on March 20, 2006, when the U.S. Supreme dismissed their *writ of certiorari*. The State does not challenge the petitioners' compliance with Articles 31.1 and 32.1 of the IACHR Rules of Procedure.

12. The IACHR notes that several complaints were filed by the petitioners with the same objective but that certain circumstances differentiate each complaint and procedure. In this regard, the Commission notes that the second complaint was filed based on new jurisprudence and that the third complaint was heard for the first time by the Appeals Court *en banc*. The Commission therefore considers that each complaint was properly exhausted, that the petitioners exhausted domestic remedies on March 20, 2006, and then filed their petition in a timely manner on July 27, 2006, thus satisfying the requirements set forth in Articles 31.1 and 32.1 of the IACHR Rules of Procedure.

13. With respect to Article 33 of the IACHR Rules, which specifies that the Commission will not admit a petition that essentially duplicates one that is pending or already decided by it or by another international governmental organization of which the State concerned is a member, the Commission notes that it admitted the Case of Rosello et al., P-1105-06, on January 27, 2017. That case, as the State indicated, presents claims concerning the inability of American citizens residing in Puerto Rico to vote in federal elections for congress and the presidency. In contrast, the petition presented by Mr. Igartúa focuses exclusively on elections for the presidency. Further, there are distinctions in the arguments presented in the two petitions. For example, the present petition presents distinct arguments concerning the judicial decisions issued in response to the constitutional claims he brought in the domestic courts. In this sense, while there is some overlap in the subject matter and juridical interests presented in the two petitions, the distinctions indicated demonstrate that the petitions are not substantially identical in the juridical interests and claims presented.

## VII. COLORABLE CLAIM

14. In light of the submissions from both parties, the Commission considers that the alleged facts, if proven, could constitute possible violations of the rights set forth in Articles II (right to equality before the law) and XX (right to vote and to participate in government) of the American Declaration. The IACHR will also consider at the merits stage whether the situation presented could constitute a violation of Article XVII (right to recognition of juridical personality and civil rights) of the American Declaration. The Commission considers that the claims presented by the petitioners raise questions concerning the rights of those named as presumed victims and the corresponding obligations of the State that require an analysis at the merits stage.

15. Moreover, at the merits stage the Commission will analyze whether the allegedly contradictory and restrictive decisions of Federal Courts could constitute a violation of the petitioners' right to effective judicial remedies.

16. With respect to the Inter-American Democratic Charter, the Commission notes that this instrument was adopted by the General Assembly of the OAS and provides an important statement of principles and standards concerning the relationship between democracy and human rights. It has been referred to by the Commission many times in interpreting and applying related articles of the American Declaration and Convention. The Democratic Charter does not refer to the individual petition system as a direct mechanism of implementation; rather it has served to inform the interpretation of certain rights protected under the American Declaration and Convention. In accordance with basic canons of

interpretation, the Commission will take the terms of the Democratic Charter into account in applying the American Declaration, in relation to the OAS Charter and its Statute and Rules of Procedure, in the present case. Similarly, the IACHR will also take into account the terms of the Universal Declaration of Human Rights and the ICCPR into account in applying the American Declaration in the present case.

#### **VIII. DECISION**

1. To find the present petition admissible in relation to Articles II, XVII, XVIII, and XX of the American Declaration;
2. To notify the parties of this decision;
3. To continue with the analysis on the merits; and
4. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights in the city of Buenos Aires, Argentina, on the 25<sup>th</sup> day of the month of May, 2017. (Signed): Francisco José Eguiguren, President; Margarete May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, and Luis Ernesto Vargas Silva, Commissioners.