

JUSTICE MANUAL

Title 1: Organization and Functions

1-21.000 - Applicability of Constitutional Provisions to U.S. Territories

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General Guidance

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Coordination of Matters Addressing the Applicability of Constitutional Provisions to U.S. Territories

1-21.100 - General Guidance

The Insular Cases are a series of early-20th-century decisions in which the Supreme Court considered the applicability of the U.S. Constitution and other federal laws to newly acquired territories. See *De Lima v. Bidwell*, 182 U.S. 1 (1901); *Dooley v. United States*, 182 U.S. 222 (1901); *Armstrong v. United States*, 182 U.S. 243 (1901); *Downes v. Bidwell*, 182 U.S. 244 (1901); *Hawaii v. Manchiki*, 190 U.S. 197 (1903); *Dorr v. United States*, 195 U.S. 138 (1904); *Balzac v. Porto Rico*, 258 U.S. 298 (1922). In past filings, the Department has recognized that the Insular Cases contain reasoning and rhetoric that are “obviously anathema,”^[Footnote 1] and “indefensible and discredited,”^[Footnote 2] and that they invoke “racist stereotypes” that are “indefensible and repugnant.”^[Footnote 3] Consistent with these statements, it is the Department’s view that the racist language and logic of the Insular Cases deserve no place in our law. Department litigators can and should include similar statements, as appropriate, in filings addressing the Insular Cases.

^[Footnote 1] Tr. of Oral Arg. at 10, *United States v. Vaello Madero*, 596 U.S. 159 (2022) (No. 20-303).

^[Footnote 2] U.S. Br. in Opp. at 16, *Fitisemanu v. United States*, 143 S. Ct. 362 (2022) (No. 21-1394).

^[Footnote 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.

[added July 2024]

1-21.200 - Coordination of Matters Addressing the Applicability of Constitutional Provisions to U.S. Territories

To ensure consistency in the Department’s approach to the Insular Cases, Department litigators should notify the Office of the Associate Attorney General (OASG) of any matter addressing the applicability of constitutional provisions to U.S. territories as early in the litigation as possible. Litigators should provide OASG notice of any filing in such matters that is anticipated to address the Insular Cases at least two weeks in advance of the filing, and they should share a draft with OASG at least one week in advance of the filing. If a court sets an expedited briefing schedule that does not permit litigators to provide a draft filing at least a week in advance, or if there are other factors that make it impracticable to provide two weeks’ notice, litigators should notify OASG of the expected filing as soon as possible.

[added July 2024]

[1-20.000 - Civil Settlement Agreements and Consent Decrees Involving State and Local Governmental Entities](#)

[1-22.000 – Contested Subpoenas from the Department of Justice to Executive Branch Entities](#)



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