

Memorandum of Law and Policy*

STATEMENT OF ISSUES:

As a general principle of federal law and policy practices, U.S. law allows Americans to acquire nationality and citizenship rights in foreign nations, as long as doing so is not incompatible with allegiance to the U.S. and the duties of U.S. nationality and citizenship. However, U.S. does not proactively create dual citizenship by operation of U.S. law. In other words, with only narrowly drawn exceptions the U.S. does not strip Americans of U.S. nationality and citizenship if another nationality is retained or acquired, but the U.S. holds every national and citizen to the full duties and obligations of allegiance, nationality and citizenship of the United States.¹

In addition to those general principles, the U.S. has not created dual citizenship in connection with acquiring sovereignty over a foreign territory and population through annexation or cession (Louisiana Purchase, Art. III, 1803; Alaska Cession, Art III 1867); Spanish Cession 1899, Art. IX; Hawaii Annexation, Territorial Organic Act, Sec. 4, 1900), or in divesting sovereignty over a U.S. territory and its population (Philippine Independence Act, Sec. 14, 1934-1946).²

Accordingly, if Puerto Rico ceases to be a U.S. territory and becomes a separate sovereign nation, applicable legal and policy precedent would require persons who acquired statutory U.S. nationality and citizenship based on birth in the territory to make an election between declaration of retained allegiance to and nationality of the United States, or declaration of allegiance to and nationality of the nation of Puerto Rico (Treaty of Paris, Art. IX, 1899; Foraker Act, Sec 7. 1900). To give that election prospective effect in accordance with precedent and enable orderly succession of Puerto Rico to nation status, including effective exercise of sovereign powers over a defined territory and population, the U.S. will require measures to ensure persons with statutory U.S. nationality and citizenship based on birth in Puerto Rico who acquire nationality and citizenship of Puerto Rico do not retain as a matter of statutory policy a status of dual U.S. and Puerto Rico nationality and citizenship by operation of U.S. law.³

Concomitantly, upon termination of current territorial status, conferral of U.S. citizenship for persons born in Puerto Rico will end due to succession of sovereignty and conformity of law requirement that 8 U.S.C. 1402 will be repealed as part of the succession to nationhood. Likewise, since children born in Puerto Rico will be foreign born but may have one or more parent who is a U.S. national and/or a U.S. citizen, 8 U.S.C. 1401 will be restricted to preclude

¹ [Dual Nationality \(state.gov\)](#):

"Section 101(a)(22) of the Immigration and Nationality Act (INA) states that 'the term 'national of the United States' means (A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.'" Therefore, U.S. citizens are also U.S. nationals...The concept of dual nationality means that a person is a national of two countries at the same time. Each country has its own nationality laws based on its own policy... Dual nationals...are required to obey the laws of both countries, and either country has the right to enforce its laws. It is important to note the problems attendant to dual nationality. Claims of other countries upon U.S. dual-nationals often place them in situations where their obligations to one country are in conflict with the laws of the other...U.S. nationals, including dual nationals, must use a U.S. passport to enter and leave the United States. Dual nationals may also be required by the foreign country to use its passport to enter and leave that country. Use of the foreign passport to travel to or from a country other than the United States is not inconsistent with U.S. law."

² "Puerto Rico's Future: A Time to Decide," Richard Thornburgh, Center for Strategic and International Studies (CSIS), Washington D.C. (2007).

³ "Citizens Without a State," Howard Hills, Pacific Noir Pulp Press, Laguna Beach CA (2016), 2nd Edition Washington D.C. (2021).

naturalization of children born in the nation of Puerto Rico based on U.S. nationality or citizenship of parents. Any proposal to extend U.S. naturalization for children born in Puerto Rico with citizenship of that nation after a proclamation of independence, or succession to separate sovereign nationhood with free association, if based on U.S. nationality or citizenship of parents acquired due to birth in Puerto Rico under 8 U.S.C. 1402 or naturalization in Puerto Rico under 8 U.S.C. 1401 during the period of territorial status, will constitute creation of dual U.S. and Puerto Rico citizenship by operation of U.S. law.⁴

Discussion:

If Puerto Rico is admitted as a state of the union, all persons born in Puerto Rico will acquire full equal rights of U.S. national citizenship and the full equal rights of state citizenship under Section 1 of the 14th Amendment. If Puerto Rico is not permanently incorporated into the union and admitted as a state, the current territorial status will end only when there is a succession of the territory and population of Puerto Rico to the political status of separate foreign sovereign nationhood consistent with the status and rights of independence.

The latter independent status can include national sovereignty under an international agreement on free association as defined by U.S. and international law (See, U.S. Public Law 99-239, U.S. Public Law 658, U.S. Public Law 108-188; United Nations General Assembly Resolution 1541 (XV), U.N. General Assembly Resolution 2625 (XXV)). Any form of separate nationhood with an agreement purporting to establish free association that does not establish full and effective separate nationality and citizenship, as well as the right of both governments unilaterally to terminate free association, would not meet U.S. or international standards of sovereignty consistent with the right of independence. Only based on full separate sovereignty, nationality and citizenship under free association terminable at will by either party has the U.S. acceded to free association agreements with three Pacific Island nation states, and only on that basis have those nations been admitted to the U.N. membership per the U.S. statutes cited above.

CONCLUSION:

If historical norms adhere, current U.S. statutory birthright citizenship for persons born in Puerto Rico under 8 U.S.C. 1402, as well as naturalization under 8 U.S.C. 1401 for children born outside the U.S. and its outlying possessions based on U.S. citizenship of parent(s) acquired under 8 U.S.C. 1402, will end upon termination of territorial status of Puerto Rico. It would be historically unprecedented and create conflicts of domestic constitutional statutory law, as well as conflicts with international law recognized by the United States, for the U.S. Congress to allow the temporary territorial statutory system of collective birthright citizenship based on birth in Puerto Rico during the territorial period under 8 U.S.C. 1402 to be misappropriated for exogenous and unintended purposes if Puerto Rico ceases to be a territory and becomes a sovereign nation.

That would be the result if 8 U.S.C. 1402 were hijacked and misapplied by ad hoc, sui generis statutory measures to convert statutory individual derivative citizenship procedure under 8 U.S.C. 1401 into a collective naturalization scheme for mass dual citizenship in an independent or sovereign free associated state of Puerto Rico. Free association as used here is not as defined by Puerto Rico law, but by U.S. and international law as cited above.

* **Prepared by:** Jose A. Fuentes-Agostini, former Attorney General of Puerto Rico, in consultation with other scholars

⁴ See, Congressional Research Service, Report 98-819, October 1, 1989 (*excerpts attached*).

Attachment:

Congressional Research Service, Report 98-819, October 1, 1989: Dual Citizenship

"There are several potential problem...first, actions which may result in expatriation from the U.S., i.e., loss of American citizenship, and second, potentially conflicting obligations to both countries, e.g., mandatory military service...double income taxation, voting privileges, public office or employment and repatriation of income from employment or investment abroad...potentially conflicting obligations of holding citizenship of the U.S. and another nation, the dual citizenship laws and legislative activity of selected countries in which a significant number of U.S. citizens may be eligible for dual citizenship There are several potential problems and issues falling into two categories..."

CRS Report 98-819 Analysis & Findings:

- "Actually, nationality and citizenship are distinct concepts. Citizenship concerns the political status and rights conferred on a person by a nation, such as the right to vote and to hold office... Nationality concerns the status of a person under international law, i.e., the allegiance which a person owes to a nation and the protection owed by a nation to a person vis-à-vis another nation. In the U.S., all citizens are nationals, but not all nationals are citizens. Nationals by birth who are citizens are those persons born or presumed to be born in the U.S., born in the outlying possessions to parents at least one of whom is a U.S. citizen who satisfies certain conditions precedent, or born outside the U.S. and its possessions to parents at least one of whom is a U.S. citizen who satisfies certain conditions precedent... Nationals by birth who are not citizens are those persons born or presumed to be born in an outlying possession of the U.S. on or after the date of formal acquisition of the possession or born to parents at least one of whom is a U.S. national who satisfies certain conditions precedent... Aside from this distinction, generally the terms seem to be used interchangeably, although citizenship is really a subset of nationality. Therefore, although the U.S. provision concerning loss of nationality is entitled "Loss of nationality by native-born or naturalized citizen," ...the courts also appear to have used the two terms interchangeably, so the loss of nationality seems to be understood usually to mean the loss of citizenship as well where both are involved.... Therefore, the terms will be used interchangeably in this report. Dual citizenship can arise in several ways, from naturalization and from two doctrines of citizenship. Jus soli is the principle that a person acquires citizenship in a nation by virtue of his birth in that nation or its territorial possessions... Jus sanguinis is the principle that a person acquires the citizenship of his parents, "citizenship of the blood."
- "...[Title 8 U.S.C.] Section 1481 includes acts demonstrating an allegiance to another nation which may be incompatible with allegiance to the U.S. Those acts include naturalization in a foreign country; taking an oath of allegiance to a foreign state or one of its political subdivisions; serving in the armed forces of a hostile foreign state or serving as a commissioned or non-commissioned officer in the armed forces of a foreign state; serving in any office, post or employment under a foreign state's government, if one is a national of that state; making a formal renunciation before a diplomatic or consular officer of the United States in

a 8 Constitution of the United States...making a formal renunciation in a manner prescribed by the Attorney General when the U.S. is at war; and committing treason. Section 1483 of Title 8 restricts the conditions for expatriation. Except for treason and formal renunciation in the U.S., a citizen cannot be expatriated while he is in the U.S. or its possessions. However, acts committed in the U.S. or its possessions can be grounds for expatriation once the citizen leaves the U.S. and resides outside it and its possessions. There has been at least one case which found that Congress could set conditions on the retention of U.S. citizenship for a person born abroad to parents only one of whom has U.S. citizenship. Since the person was neither born nor naturalized in the U.S. but merely derived his citizenship from the parent, he was not protected from denationalization by the Fourteenth Amendment...

- "...bilateral treaties between the U.S. and other countries to avoid double taxation but these address situations in which a citizen or national of one party is domiciled in another party; often they do not address the special issue of the dual national. The tax laws of the U.S. provide for foreign tax credit and a court has even found that taxes levied by a political subdivision of a country, not by the federal government, may be credited toward the taxes owed by a U.S. corporation; current regulations are consistent with this ruling. Laws governing the repatriation of income earned and investment by aliens and dual nationals may differentiate between the alien and the dual national; the dual national may not be permitted to take as much money out of the country because he is considered a national with not as much reason as an alien to remove assets to another country, even if he is a national of that other country. If there is no treaty to which the U.S. and the particular nation involved are parties, the U.S. and that nation can negotiate naturalization, tax or military obligation treaties in which they can resolve any conflicting obligations to make the status, rights and obligations of dual nationals clear. Historically, treaties of expatriation which resolved questions of dual nationality have been negotiated with a number of countries; however, some of these have terminated."
- "...the dual nationality or citizenship laws of selected countries in which it appears that a significant number of Americans possess nationality or citizenship, in particular, recent changes in the constitution and federal statutes of Mexico have received a great deal of attention in the United States, since those changes were apparently motivated, at least in part, by the effects of recent immigration law reforms in the United States on Mexican citizens who are permanent resident aliens in the United States. Additionally, the relevant citizenship and nationality laws of Israel, Ireland and Colombia will be discussed. The laws discussed here do not include the naturalization laws, which could result in dual citizenship if a U.S. citizen chose to apply for naturalization in those countries. Rather, this discussion focuses on describing those laws which provide for retention of nationality after naturalization in the United States or for acquisition of nationality by descent, a sort of jus sanguinis. It has been suggested that the exercise of the rights and privileges of a prior nationality by a naturalized U.S. citizen, after the date of naturalization, calls into question the truthfulness of the citizen's oath of allegiance to the United States and renunciation of other allegiances, and that therefore, the naturalization could be. For example, the United States has two taxation treaties with Ireland, a country in which many Americans hold nationality—Convention for the avoidance of double

taxation and the prevention of fiscal evasion with respect to taxes on the estates of deceased persons, invalidated on the grounds of fraud in the procurement. On the other hand, since some of the foreign laws provide for reacquisition of native nationality, it could be argued that persons who take advantage of reacquisition procedures are not acting differently from native-born U.S. citizens who seek naturalization in another country. Mexico Recent changes in the constitutional and federal statutory laws of Mexico have made possible the retention or reclamation of Mexican nationality for former Mexican citizens who are now naturalized U.S. citizens and for their U.S.-born children. In December 1996, both chambers of the Mexican federal legislature unanimously passed amendments to articles 30, 32, and 37 of the Constitución Política de los Estados Unidos Mexicanos [Political Constitution of the United Mexican States]. The effective date of these amendments was March 20, 1998, one year after the date of publication in the Diario Oficial de la Federación [Official Journal of the Federation]. Publication occurs upon ratification by a majority of the 31 state legislatures in Mexico. These amendments made possible the retention of Mexican nationality by Mexicans who possess the nationality of another country. Such persons can also transmit Mexican nationality to their children born outside Mexico. Transmission is limited to persons born outside Mexico to parents one or both of whom are Mexicans by birth or naturalization in Mexican territory. Only Mexicans with no other nationality may be appointed or elected to public offices where national security and sovereignty concerns are implicated. Mexican dual nationals will be able to hold passports and to own real property in restricted areas. Under Mexican law, foreigners are prohibited from owning land within 100 kilometers of borders and 50 kilometers of the coastline. Former Mexican nationals who have already lost their nationality through naturalization in another country have five years after the entry in force of the amendment to initiate the procedure for recovering their Mexican nationality, that is, until March 3, 2003. The law implementing the constitutional amendments with respect to dual nationality was passed by both chambers of the Mexican Congress in December 1997, published on January 23, 1998, and went into effect on March 20, 1998, the effective date of the underlying amendments. Mexican law distinguishes between nationality and citizenship with regard to the rights enjoyed. Although Mexican dual nationals will be able to travel and live in Mexico and to own property without restrictions, they will be exempted from certain obligations and also barred from certain privileges and rights associated with citizenship. As mentioned above, they will not be allowed to hold certain public offices. They will not be required to serve in the Mexican armed forces, but will have to register abroad at consulates or embassies. Significantly, the right to vote, the primary political right associated with citizenship, has not been extended to dual nationals by the new laws. Apparently, at the current time there are no procedures for absentee voting even by those possessing Mexican nationality and citizenship who reside outside of Mexico."

- "Israel The Law of Return in Israel provides for the right of every Jew to immigrate to Israel and become an Israeli citizen, unless it is determined that the person is engaged in activity directed against the Jewish people, may endanger public health or the security of the state, or has a criminal past, likely to endanger public welfare. A "Jew" is defined as a person born of a Jewish mother or who has converted to Judaism and is not a member of another religion. An extension has been made to cover the offspring of intermarriage between a Jewish man

and a non-Jewish woman. In that case, the right of return is extended to the child and grandchild of a Jew, the spouse of a Jew, the spouse of a child of a Jew, and the spouse of a grandchild of a Jew, except for a person who has been a Jew and has voluntarily changed his religion. Ireland Under the Nationality and Citizenship Acts of 1956 and 1986, a person born outside Ireland may acquire Irish nationality by descent transmitted up to three generations down from the person born in Ireland. A person born outside Ireland, whose mother or father was born in Ireland and was an Irish citizen at the time of his birth, is automatically an Irish citizen. A person whose grandfather or grandmother was born in Ireland, but whose parents were not, may acquire Irish citizenship by registering in the Foreign Births Register at a consulate or embassy of Ireland or at the Department of Foreign Affairs in Dublin, Ireland. other harbingers of a global trend toward liberalization of dual nationality laws. These foreign laws and foreign legislative activity potentially could have a particular impact on the United States, traditionally perceived as a nation of immigrants. On the one hand, concern has been expressed in the media and elsewhere about split loyalties and protecting the national interests of the United States in the face of the growing numbers of Americans who hold the nationality of other countries, regardless of whether those other countries are perceived as friendly to the United States or not. These concerns are reflected in some of the current policies in the federal government. In one reported instance, a renewal of security clearance was denied to a government employee when he informed authorities that he had acquired Irish nationality and possessed an Irish passport."



REPUBLICAN PARTY OF PUERTO RICO

ZORAIDA F. FONALLEDAS, ESQ.
NATIONAL COMMITTEEWOMAN

June 4, 2022

US House of Representatives
Committee on Natural Resources
1324 Longworth House Office Building
Washington, DC 20515

Re: Puerto Rico Status Act Discussion Draft

We wanted to start by thanking Majority Leader Hoyer, Chairman Grijalva and the other members of the Committee for this unprecedented effort to resolve Puerto Rico's centuries old colonial status; and finally, "bestow upon the Residents of Puerto Rico the full measure of democracy that is consistent with our nation's founding principles." This is the last unfinished business of American democracy and only you and the US Congress have the power to finally resolve it.

On May 23 of this year, the Republican Party of Puerto Rico approved a Resolution in Support of a Compromise Bill on Status, where it unequivocally supports the status resolution process and calls on Republican members of congress to vote for its passage.

As you are aware, following the directives established by Task Forces under Presidents Bush and Obama, Puerto Rico has sponsored 3 plebiscites in the last 10 years. They have included all possible options and all possible matchups amongst those options. Statehood has prevailed on all. Much spin has been authored as to why the referenda was unfair. But one issue has risen above all arguments and is undisputed; the people of Puerto Rico do not want to continue their present relationship with the United States. And although the Draft Bill we are discussing today does not recognize the favorable results for statehood, it at least recognizes the fact that the present territorial relationship is unfavored and unacceptable.

Because of the leadership shown by the sponsors of this bill, there is now no turning back from a bill empowering the people of Puerto Rico to end territory status. However, before this bill becomes law Congress will need to clarify and correct one provision of the bill that may seem appealing to some, but in reality, does not make much sense. Since 1917 Congress has conferred statutory U.S. nationality and citizenship under laws applicable only to persons born in Puerto Rico. Congress can repeal that law and end conferral of

citizenship based on Puerto Rico birth at any time. But Section 208 would in fact take away from Congress the ability to withdraw such conferral and create an international obligation encumbering Congressional power to end U. S citizenship under free association. In other words, this section 208 provides a higher order of citizenship under separate sovereignty, than we have now under the territorial relationship.

Why would Puerto Rico, after voting to become a separate sovereign from the United States, but in free association with it, want all its residents to be US citizens, and then hand that status down to succeeding generations in perpetuity? And why would the United States want to impose its citizenship on all citizens of a separate sovereign country? Where would the loyalty of these dual citizens fall? Could these dual citizens be called to fight in a war for the United States if selective service military draft were instituted?

We believe that independence and Sovereignty in Free Association, as Statehood, are noble and decolonizing aspirations for the People of Puerto Rico to consider. But Section 208 is misleading and voter education materials for the proposed plebiscite will not be able to clearly explain the reality that if the people of Puerto Rico decide to become a separate sovereign, their loyalty and allegiance will be to Puerto Rico and not the United States, as it is now.

We unequivocally support the status resolution process proposed by this compromise Bill except for the conferral of U. S. citizenship to citizens born on the sovereign Nation of Puerto Rico.

Cordially,



Zoraida F. Fonalledas
National Committeewoman
Republican Party of Puerto Rico

Resolution 2022-3 attached
Memorandum of Law and Policy attached



REPUBLICAN PARTY OF PUERTO RICO

Hon. Ángel Cintrón García
State Chairman

Zoraida F. Fonalledas, Esq.
National Committeewoman

Hon. Luis G. Fortuño
National Committeeman

RESOLUTION 2022-3

TO EXPRESS THE SUPPORT OF THE REPUBLICAN PARTY OF PUERTO RICO
FOR A COMPROMISE BILL ON STATUS BEFORE THE 117TH CONGRESS

WHEREAS, for over 60 years the Republican Platform and every Republican President have supported Statehood for Puerto Rico.

WHEREAS, the United States should move resolutely to ensure that the 3.2 million U.S. citizens in Puerto Rico can assume their full responsibilities and at the same time fully enjoy all their civil and democratic rights as citizens.

WHEREAS, the President's Task Force under President George W. Bush recommended that Puerto Ricans determine their preference regarding a fully democratic status for the islands by first voting on the current territory status and then voting on the alternatives and the Task Force under President Barack Obama also expressed a preference for a Puerto Rican status choice made through a referendum;

WHEREAS, along with the general elections on November 6th, 2012, Puerto Rico held a referendum on status options inspired by the recommendations of the President's Task Force on Puerto Rico's Status under Presidents George W. Bush

and Obama. Per the certified results by the Puerto Rico's Elections Commission, 54% of the vote opposed and rejected the current territorial status and 61.2% was for Statehood among the alternatives;

WHEREAS, no other U.S. territory in American history has remained subject to the power of Congress to govern territory outside the states of the union as long as Puerto Rico. No territory in U.S. history has remained a territory for as many decades after U.S. citizenship was granted as Puerto Rico.

WHEREAS, there are more U.S. citizens in Puerto Rico than in 25 states of the union. Americans from Puerto Rico serve in U.S. armed forces at a per capita rate higher than 49 states. In every war since citizenship was conferred in 1917, Puerto Ricans have defended with valor overseas for rights of equal national citizenship and democratic national government they are denied back home, and some of those who fought and died for our country won the Congressional Medal of Honor;

WHEREAS, U.S. citizens in Puerto Rico pay the same federal taxes as all Americans on income earned in the 50 states or foreign countries. The current exemption from federal income tax on local earnings is offset by local taxation that subsidizes the "commonwealth" regime of local territorial government established under the territorial power of Congress;

WHEREAS, the 2020 Republican National Convention Platform calls for Federal sponsorship of an informed process of self-determination for Puerto Rico to establish a "permanent non-territorial status with government by consent and full enfranchisement" for Puerto Ricans;

WHEREAS, under the leadership of Congresswoman Jenniffer Gonzalez Colon, the sole and duly elected representative of the people of Puerto Rico in Congress, on May 19th of 2022 a bipartisan agreement was announced under which legislation

would be introduced in the United States House of Representatives a congressionally sponsored status plebiscite to be held in Puerto Rico would be enacted into law;

WHEREAS, the bipartisan legislation specifies and defines the non-territorial status options for Puerto Rico: Statehood, Independence or another form of independence in the form of Separate Sovereignty in a treaty of free association with the United States;

WHEREAS, It is imperative that voters in Puerto Rico are fully informed about the options in the proposed ballot and what each option represents for future generations. Only through constitutionally valid options can the promise of American democracy be fulfilled. Statehood is the only status option that guarantees irrevocable U.S. citizenship for all residents of Puerto Rico currently and for future generations.

NOW, THEREFORE, BE IT RESOLVED, that the **REPUBLICAN PARTY OF PUERTO RICO**, unequivocally supports the status resolution process for Puerto Rico through the compromise bill co-sponsored by Congresswoman Jenniffer González Colón, calls on all republican members of Congress to vote for its passage and urges all Republican voters in the island to support Statehood for Puerto Rico in the plebiscite to be held in accordance to federal law. (Adopted by the State Committee of the Republican Party of Puerto Rico on May 23, 2022).