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REPORT No. 17/17
PETITION P-1105-06
REPORT ON ADMISSIBILITY

PEDRO ROSELLÓ *ET AL*
UNITED STATES

Approved by the Commission on January 27, 2017.

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 UNITED STATES
 JANUARY 27, 2017

I. INFORMATION ABOUT THE PETITION

Petitioner:	Orlando E. Vidal
Alleged victims:	Pedro Roselló, The Unfinished Business of American Democracy Committee, and four million U.S. citizens residing in Puerto Rico
State denounced:	United States
Rights invoked:	Articles II (right to equality before the law), XX (right to vote and to participate in government), XXXII (duty to vote), and XXXIV (duty to serve the community and the nation) of the American Declaration on the Rights and Duties of Man ² ; and Articles 1, 3, 6, 8, 9, 23 of the Inter-American Democratic Charter

II. PROCEDURE BEFORE THE IACHR³

Date on which the petition was received:	October 17, 2006
Date on which the petition was transmitted to the State:	April 29, 2009
Date of the State's first response:	June 28, 2010
Additional observations from the petitioner:	August 16, 2010; June 8, 2011; September 12, 2012; and September 16, 2016
Additional observations from the State:	April 15, 2011

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	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).

¹ Commissioner James L. Cavallaro, a United States national, 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.

² Hereinafter referred to as "Declaration" or "American Declaration".

³ 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) 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, exception set forth in Article 31.2.a of the IACHR's Rules of Procedure
Timeliness of the petition:	Yes, in terms of section VI

V. ALLEGED FACTS

1. The petitioners affirm that all American citizens residing in Puerto Rico are denied the right to vote and elect the President, the Vice-President and voting members of the Congress of the United States of America on the discriminatory basis that they reside in a U.S. territory and not in a state. They indicate that Puerto Rico has been a territory of the United States since 1898, and its residents have been recognized as U.S. citizens since 1917. However, with respect to federal elections, they are only permitted the right to send a non-voting delegate (known as "Resident Commissioner") to the U.S. Congress. Puerto Ricans can vote in primaries, but not in presidential elections. Only states and the District of Columbia -and not territories- have electors in the National Electoral College.

2. They claim that U.S. federal law applies to Puerto Rico without the consent of its residents, notwithstanding that its residents pay U.S. taxes and must also serve in the United States military whenever it is compulsory in the mainland United States. They emphasize that the inhabitants of Puerto Rico have the same duties and obligations as U.S. citizens residing in the 50 states. Nevertheless, they are not allowed to have any true political participation in the Senate or House of Representatives, and are constantly discriminated against with respect to federal programs. They allege, for example, that citizens residing in Puerto Rico are subjected to unfair treatment in the area of healthcare, notwithstanding that they are required to pay the same amount of taxes as any other U.S. citizen. They indicate that a local plebiscite was held in Puerto Rico in November 2012, in which 54% of the voters disagreed with the island's current political status, and 61% of those casting ballots chose statehood among the available status options.

3. The petitioners claim that the U.S. Constitution does not afford due process of law for the protection of the rights at stake and all attempts to seek judicial redress have been futile. They mention the U.S. court decisions in the case of *Igartúa de la Rosa v. United States*, in which the plaintiff sought judicial protection for the right of Puerto Ricans to vote in presidential and vice presidential elections. They state that the holdings below, which were effectively affirmed by the U.S. Supreme Court's denial of a *writ of certiorari* on March 20, 2006, apply as well to their claim for voting representation in Congress. They refer to other litigation brought by the same plaintiff seeking judicial protection of Puerto Ricans' right to participate in government, including the right to elect representatives to the House. Those claims were also denied in multiple instances of judicial review. Petitioners also refer to an extensive list of failed congressional actions related to Puerto Rico's status. Finally, they allege that the United States has ignored the standards established by the IACHR in the *DC Statehood* case, which held that "the United States may not deprive its citizens of their right to voting representation in the Congress because of their place of residence."⁴

4. 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

⁴ Petitioners cite IACHR, Report No 98/03. Case 11,204. Statehood Solidarity Committee. United States, December 29, 2003.

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.

5. 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. The State maintains that American citizens residing in 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 in a way that is equal to the treatment accorded to citizens residing in other U.S. territories.

6. The State indicates that the difference in voting rights between 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 is based on the very nature of statehood under the U.S. Constitution. Citizens residing in Puerto Rico cannot participate in U.S. presidential elections. However, they can elect their own Governor and legislature, and the Commonwealth government exercises a range of autonomous functions and authority similar to that of a state. The U.S. submits that residents of Puerto Rico enjoy the freedom to move within 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. The State concludes 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 (in 1967, 1993 and 1998).

7. 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, honest, periodic, and free ballot, but neither it nor any other provision of the American Declaration or the Democratic Charter dictates the exact modalities of such participation.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

8. The petitioners submit that the domestic legislation of the State does not afford due process of law to bring about the right to vote for President, Vice President and voting representation in Congress; and that multiple attempts to seek judicial redress have been undertaken with futile results. The State does not challenge the petitioners' allegation regarding the exhaustion of domestic remedies. In light of the foregoing, and taking into account that the efforts made to seek judicial recognition and protection of the voting rights of Puerto Ricans through multiple cases at the domestic level have met with consistent rejection, the IACHR is satisfied that the claims of the petitioners regarding the right to vote would have no reasonable prospect of success through further domestic proceedings. The petitioners are thus excused from exhausting domestic remedies on this claim, pursuant to Article 31.2(a) of the IACHR's Rules of Procedure.

9. These violations are allegedly of an ongoing nature, as they began when Puerto Rican residents became U.S. citizens and have allegedly continued during the period in which the U.S. has been a Member of the OAS and up to the date of the present report. Therefore, since the petition was presented in October 17, 2006, the IACHR concludes that the claims were lodged within a reasonable period of time.

VII. COLORABLE CLAIM

10. 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.

11. 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. The petition does not present elements that would require the admissibility of Articles XXXII (duty to vote) and XXXIV (duty to serve the community and the nation) of the American Declaration. These articles form part of the Declaration, but when they have been referred to it has generally been for the purpose of interpretation of the balance between the rights set out in the first part of the instrument and the duties individuals may have as citizens. The Commission considers that the petition does not provide a basis to deem these articles admissible for the purpose of pronouncing upon their alleged violation.

12. 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.

VIII. DECISION

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

Done and signed in the city of San Francisco, California, on the 27 day of the month of January, 2017.
(Signed): Francisco José Eguiguren, First Vice President; Margarete May Macaulay, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, Esmeralda E. Arosemena Bernal de Troitiño and Enrique Gil Botero, Commissioners.