House Committee on Natural Resources
Legislative Hearing on H.R. 2070, "Puerto Rico Self-Determination Act of 2021" and H.R. 1522, "Puerto Rico Statehood Admission Act of 2021"
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Testimony (Revised)[1]

Good afternoon. My name is Christina D. Ponsa-Kraus. I am a law professor at Columbia University and a scholar of Puerto Rico's constitutional status, and I am Puerto Rican. I testified at the hearing in April and I appreciate the invitation to appear again today.

At the April hearing, I explained why I support H.R. 1522 and oppose H.R. 2070. Today, I will comment the DOJ's legal analysis, with which I agree; I will take issue with one policy conclusion in the DOJ report; and I will respond to several criticisms of H.R. 1522 that have been made by its opponents.

First: In April, I identified two flaws in H.R. 2070: that it opens the door to unconstitutional status options and that it purports to bind Congress to ratify whatever option the people of Puerto Rico choose. The DOJ report confirms the existence of both of these flaws.

On the first flaw, the DOJ report confirms that by failing to specify the available options, 2070 implicitly includes non-territorial commonwealth, which is not a constitutional option.

On the second flaw, the DOJ confirms that 2070 makes an illusory promise by stating that Congress "shall approve" a joint resolution ratifying whatever option Puerto Ricans choose following a convention. The DOJ explains that, instead, Congress may *offer* one or more constitutionally valid options to Puerto Rico and give Puerto Ricans the option to accept or reject the offer. That, of course, is exactly what H.R. 1522 does.

As this last point suggests, the DOJ approves of two basic approaches to Puerto Rican self-determination: a referendum (which is a Yes/No vote on one option) or a plebiscite (which is a vote among all the options). I agree. However, I disagree with the DOJ's policy conclusion that a plebiscite must also include the current territorial status.

The DOJ defends this conclusion on the ground that it is simply adhering to the longstanding Executive Branch policy of neutrality among the legally permissible options. But the fact that an option is legally permissible does not mean it is legally required. The sole purpose of *both* bills is to end Puerto Rico's perpetual territorial status.

[1] [This oral testimony was revised in light of the Department of Justice's analysis of the two bills issued two days before the hearing.]

With all due respect to the Executive Branch, it is nothing short of incoherent to insist that territorial status be included among the options for ending it. The Executive Branch should remain faithful to the principle of democratic equality for all U.S. citizens and abandon its neutrality toward continued colonialism. The United States should enthusiastically support the ending of Puerto Rico's territorial status, while remaining neutral among Puerto Rico's *constitutional, non-territorial* options: statehood and independence, with or without free association.

Finally, I will respond to three criticisms of H.R. 1522:

First: Critics of 1522 argue that Congress should not respond to the November referendum with an offer of statehood because voter turnout was too low and the margin of victory was too slim. These objections are factually baseless: Neither the turnout nor margin of victory was abnormally low. But even if they had been, the objections are a red-herring: Neither international law nor U.S domestic law predicates the legitimacy of a democratic vote—including a self-determination vote—on turnout or supermajority requirements.

Second: Critics of 1522 argue that it is not inclusive whereas 2070 is. The criticism fails to recognize that 1522 is merely one step in a larger process, including a fully inclusive debate in Puerto Rico that led to the election of a government that ran on a platform of holding a vote on statehood. It also fails to recognize that a Yes/No referendum is a valid self-determination process—under *both* domestic and international law.

Third: Some statehood opponents object to 1522 on the ground that Puerto Rico is a nation and that self-determination for a nation cannot include statehood. But international law itself recognizes the right of a nation to choose full integration into another nation.

In sum, these criticisms of H.R. 1522 are without merit. H.R. 1522 provides a clear, careful, and constitutionally sound self-determination process, and Congress should enact it without further delay.