

December 11, 2023

Re: ACLU Urges Cosponsorship of H. Res. 314

Dear Representative:

On behalf of the American Civil Liberties Union (ACLU), we urge you to cosponsor H. Res. 314, a resolution rejecting the deeply racist U.S. Supreme Court cases known as the *Insular Cases*, which established the unjust and ongoing colonial relationship between the U.S. and its territories.



**National Political
Advocacy Department**
915 15th Street, NW, 6th Floor
Washington, DC 20005-2112
aclu.org

Deirdre Schifeling
National Political Director

Anthony D. Romero
Executive Director

Deborah N. Archer
President

Decided in the early 1900s, the *Insular Cases* are a series of explicitly racist, precedent-breaking Supreme Court decisions issued to justify colonial rule over and deny self-determination to Puerto Rico, Guam, and other territories. These cases held that the residents of Puerto Rico and other territories acquired during the Spanish-American War were not entitled to the same constitutional rights and protections afforded to residents of the states, nor were they on a path to full political participation as states—or to freedom as independent sovereigns. In unabashedly racist reasoning, the justices wrote that the “alien races”¹ and “savage tribes”² living in these territories should not enjoy the Constitution’s full protections due to their perceived racial and cultural inferiority to Anglo-Saxon whites.

As shocking and disturbing as it is to read these cases today, the fact that they have yet to be overturned and continue to deprive the people of the territories of their fundamental right to democracy and self-determination is even more appalling. The inequality that these decisions endorse has no place in our nation and is starkly antithetical to our values and the Constitution itself.

As the United States marks 125 years of American colonialism, Congress must unequivocally declare that the racist *Insular Cases* and the colonial framework they uphold never should have happened and must be corrected. Just last year, Supreme Court Justices Neil Gorsuch and Sonia Sotomayor agreed that it “is past time to acknowledge the gravity” of the

¹ *Downes v. Bidwell*, 182 U.S. 244, 380 (1901), at 286-87 (Brown, J.).

² *De Lima v. Bidwell*, 182 U.S. 1, 219 (1901) (McKenna, J., dissenting).

See Brief of ACLU and ACLU of P.R. as Amici Curiae at 4–5, *Fin. Oversight & Mgmt. Bd. for P.R. v. Aurelius Inv., LLC*, 140 S. Ct. 1649 (2020) (Nos. 18-1334, 18-1475, 18-1496, 18-1514, 18-1521), 2019 WL 4192294, at *4–5 (describing, with citations to cases and other authorities, the race-based reasoning underlying the *Insular Cases*’ doctrine of territorial incorporation).

error of the *Insular Cases*, and “that the Constitution’s application should never turn on ... the misguided framework of the *Insular Cases*.”³ While the Supreme Court ultimately bears the authority and responsibility to overturn these decisions, Congress’s condemnation is an important first step in shedding light on the ongoing injustices these rulings perpetuate and helps move us closer to turning the page on the undemocratic colonial framework they uphold.

We urge you to acknowledge the continued gross inequities caused by the racist *Insular Cases* by cosponsoring H. Res. 314, and we call upon Congress to quickly pass this resolution rejecting any continued use of the *Insular Cases* to deny equal protection and the right to self-determination to residents of the territories.

Please contact Ivan Robles at Ivan.Robles@mail.house.gov to cosponsor H. Res. 314.

Sincerely,



Alejandro A. Ortiz
Senior Staff Attorney
Racial Justice Program



Adriel I. Cepeda Derieux
Deputy Project Director
Voting Rights Project



Xavier Persad
Senior Policy Counsel
National Political Advocacy Department

³ *United States v. Vaello Madero*, 142 S. Ct. 1539, 1552 (2022) (Gorsuch, J., concurring); *Id.* at 1560 n.4 (Sotomayor, J., dissenting).