THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

PENA MARTINEZ, *ET AL.*,
Plaintiff,
v.
UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES,
Defendant.

CIVIL NO. 3:18-cv-01206-WGY

# BRIEF OF AMICUS CURIAE

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## I. INTEREST OF THE AMICUS CURIAE

The Allard K. Lowenstein International Human Rights Clinic (the "Clinic") is a Yale Law School course that gives students direct experience in human rights advocacy under the supervision of human rights lawyers. The Clinic undertakes litigation and research projects on behalf of human rights organizations and victims of human rights abuse. The Clinic has prepared legal briefs and other documents for the U.S. Supreme Court and U.S. Circuit and District Courts and regional and international human rights bodies, including the Inter-American Court of Human Rights, the European Court of Human Rights, and various United Nations bodies. The Clinic has represented victims from other countries seeking to hold perpetrators of human rights abuses liable in U.S. courts. The questions presented here, regarding the obligation of the United States to avoid discriminatory treatment within its jurisdiction, concern fundamental principles of international law of great interest to the Clinic, its students, and its faculty.

## II. INTRODUCTION AND SUMMARY STATEMENT

Neither a U.S. state nor a sovereign country, Puerto Rico has suffered from mistreatment by the U.S. government for more than a century. Decades of colonial exploitation turned into devastating neglect, and although Puerto Ricans have been U.S. citizens since 1917, they do not have full representation in Congress, cannot vote for President, and have been denied their right to self-determination. See, e.g., Colonial Dilemma: Critical Perspectives on Contemporary Puerto Rico (Edwin Meléndez & Edgardo Meléndez eds., 1993); José Trías Monge, Puerto Rico: The Trials of the Oldest Colony in the World (1997); Vann R. Newkirk II, Puerto Rico's Plebiscite to Nowhere, Atlantic (June 13, 2017). In the second half of the twentieth century, the United States bound itself to a body of international law that mandated certain human rights

protections, including equal treatment of its citizens. Despite these commitments, the U.S. government's mistreatment of Puerto Ricans has continued.

Meanwhile, conditions in Puerto Rico have continued to deteriorate. For the past two decades, the island has struggled to fight crushing debt flowing directly from its colonial legacy, and the poverty rate in 2015 more than doubled that of the United States. Lara Merling, Puerto Rico's Colonial Legacy and its Continuing Economic Troubles, Ctr. for Econ. & Pol'y Res. (Sept. 20, 2018). Then, in September 2017, Hurricane Maria hit Puerto Rico at peak intensity, destroying infrastructure, flooding towns, and causing the largest blackout in U.S. history. Human rights organizations around the world raised concerns about the storm's impact and the inadequate emergency response. A group of human rights experts at the United Nations warned:

> Thousands of people are displaced, with homes destroyed, and without any relief in sight. More than 80 per cent of the population, or close to 2.8 million people, continue to live without electricity. Few hospitals are functioning . . . . After a natural disaster, with around 90 thousand homes totally destroyed, people are at their most vulnerable.

Puerto Rico: Human Rights Concerns Mount in Absence of Adequate Emergency Response, U.N. Off. of the High Comm'r for Hum. Rts. (Oct. 30, 2017). Researchers estimate that nearly 3,000 Puerto Ricans died in the aftermath of Hurricane Maria. Yet President Donald Trump has not only denied that fact, but has recently expressed his wish to end all emergency relief funds for the island. Sarah Westwood, Trump Does Not Want More Relief Funding Sent to Puerto Rico, CNN (Nov. 12, 2018), https://www.cnn.com/2018/11/12/politics/trump-puerto-rico/index.html.

At issue in this case is one fundamental and now-urgent part of the U.S. government's mistreatment of Puerto Rico: its facial denial of federal welfare benefits for the ill, the needy, the poor, and the disabled. Over the past seventy years, the United States has taken on obligations

under international law that prohibits such discrimination. The United States has ratified the International Covenant for Civil and Political Rights ("ICCPR"), which encompasses a broad guarantee of non-discrimination. The prohibition against discrimination applies to any field that Congress chooses to regulate, including welfare benefits. The United States has further bound itself to a responsibility of non-discrimination under the Charter of the Organization of American States, which gives the American Declaration of the Rights and Duties of Man legal weight. Discrimination based on place of residence burdens Puerto Ricans' freedom of movement, which is guaranteed by both the ICCPR and parallel U.S. constitutional principles.

U.S. mistreatment of Puerto Rico also impermissibly discriminates on the basis of ethnicity against Puerto Ricans—a recognized ethnic group. Although facially discriminating against all residents, not just ethnic Puerto Ricans, these laws *de facto* single out ethnic Puerto Ricans—their ill, needy, poor, and disabled—for unfavorable treatment. Customary international law, the ICCPR, and the International Convention on the Elimination of All Forms of Racial Discrimination all plainly obligate the United States to avoid and remedy ethnic discrimination.

The United States is not only bound by its international legal obligations, but it must also interpret domestic law in a way that is consistent with those international obligations. *See, e.g.*, RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 114 (AM. LAW INST. 1987) ("[A] United States statute is to be construed so as not to conflict with international law or an international agreement of the United States."); Ralph G. Steinhardt, Recovering the Charming Betsy Principle, 94 Am. Soc'y Int'l L. Proc. 49 (2000). Here, the plaintiffs' equal protection arguments must be considered in light of binding international legal obligations. After Hurricane Maria, the United States has a heightened duty to comply with these

obligations, given the magnitude of the disaster, the thousands of lives lost, and the continued vulnerability and suffering of the Puerto Rican people.

## III. THE UNITED STATES HAS OBLIGATIONS UNDER INTERNATIONAL LAW TO REFRAIN FROM DISCRIMINATION BASED ON PLACE OF RESIDENCE.

### A. The International Covenant on Civil and Political Rights prohibits discrimination on the basis of race, color, sex, language, political or other opinion, national or social origin, property, birth, or other status in the application of State laws.

The United States voluntarily assumed legal obligations toward the people of Puerto Rico when it ratified the ICCPR on June 8, 1992. ICCPR, Mar. 23, 1976, 999 U.N.T.S. 171, https://treaties.un.org/Pages/ViewDetails.aspx? chapter=4&clang=_en&mtdsg_no=IV-4&src=IND; see also RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 111 ("[I]nternational agreements of the United States are law of the United States."). The ICCPR guarantees a range of fundamental rights, including the right to be free from discrimination.

The ICCPR underscores the fundamental nature of the right to nondiscrimination by highlighting its role in the realization of other human rights. Article 2(1) provides:

> Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

ICCPR, art. 2(1). The ICCPR thus broadly prohibits discrimination against distinct groups in exercising the treaty's enumerated rights. Other provisions reinforce Article 2(1) by specifically prohibiting discrimination in relation to particular rights. See ICCPR, art. 3 (equal treatment of men and women); id. art. 24 (children's rights); id. art. 25 (right to political participation).

Article 26 further elaborates on the nondiscrimination guarantee by referring to both formal equality and substantive equality—equal protection "before the law" and "of the law," respectively. Article 26 states:

> All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

ICCPR, art. 26. The Human Rights Committee, the body established by the ICCPR to monitor implementation of the treaty, has defined "discrimination" as "any distinction, exclusion, restriction, or preference," encompassing a wide range of state actions. General Comment No. 18 ¶ 7, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. 1) (Nov. 10, 1989). Not only is the prohibition of discrimination "on any ground" broadly inclusive, but the Human Rights Committee has expressly found that "other status" encompasses place of residence. Lindgren et al. v. Sweden, Comm. No. 298/1998, Hum. Rts. Comm., 40th Sess., U.N. Doc. CCPR/C/40/D/298/1988 (Views adopted Nov. 9, 1990). This interpretation is supported by the plain text of Article 2(1), which requires State Parties to "ensure *all individuals within its territory and subject to its jurisdiction* the rights recognized in the present Covenant." ICCPR, art. 2(1) (emphasis added).

ICCPR Article 26 creates not only a negative right against discriminatory treatment, but also a positive obligation "to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant." General Comment No. 18 ¶ 10. Most importantly for this case, Article 26 "prohibits discrimination in law or in fact *in any field regulated and protected by public authorities* . . . . [W]hen legislation is adopted by a State party, it must comply with the requirement of article 26 that its content should not be discriminatory." *Id.* ¶ 12 (emphasis added). "Any field regulated and protected by public

authorities" covers socioeconomic interests, including government benefits. See, e.g., Zwaan-de Vries v. the Netherlands, Comm. No. 182/1984 ¶ 12, Hum. Rts. Comm., 42nd Sess., U.N. Supplement No. 40 (A/42/40) (Views adopted on Apr. 9, 1987) ("[Article 26] does not . . . require any State to enact legislation to provide for social security. However, when such legislation is adopted in the State's sovereign power, then such legislation must comply with article 26 of the Covenant.").

Disparate treatment is permissible under the ICCPR only "if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant." General Comment No. 18 ¶ 13. Thus, Article 26 creates a two-part test for discrimination: (1) the differentiation is based on one of the listed grounds, including grounds encompassed by "other status," and (2) the differentiation is not based on reasonable and objective criteria to further a legitimate purpose. See, e.g., Haraldsson and Sveinsson v. Iceland, Comm. No. 1306/2004, Hum. Rts. Comm., 91st Sess., U.N. Doc. CCPR/C/91/D/1306/2004 (Views adopted on Oct. 24, 2007) (finding that Iceland's fishing permit system violated Article 26 because the distinction between new and repeat fishing vessels was not based on reasonable or objective criteria, even though the law's purpose of preventing overfishing was legitimate). This test is consistent with equal protection principles in U.S. constitutional law, which also balance legitimate state interests against the rights of those discriminated against, according to varying standards of scrutiny.

### B. The American Declaration on the Rights and Duties of Man prohibits discrimination on the basis of race, sex, language, creed, or any other factor in the application of State laws.

The American Declaration on the Rights and Duties of Man ("American Declaration") prohibits discrimination based on "race, sex, language, creed, or any other factor." Organization

of American States, American Declaration, May 2, 1948, O.A.S. G. A. Res. XXX, art. II, O.A.S. Doc. OEA/Ser.L.V /11.82 doc. 6 rev. 1. The United States has obligations under the American Declaration as a member of the Organization of American States ("OAS"). See Charter of the Organization of American States: Signatories and Ratifications, OAS, http://www.oas.org/en/sla/dil/inter_american_treaties_A-41_charter_OAS_signatories.asp. The Charter of OAS (Bogotá, 1948) was amended by the Protocol of Buenos Aires on February 27, 1967, and ratified by the United States on April 23, 1968, placing the United States and other members of the OAS under the jurisdiction of the Inter-American Commission on Human Rights. Protocol of Amendment to the Charter of the Organization of American States, "Protocol of Buenos Aires", O.A.S. Treaty Series No. 1-A, entered into force March 12, 1970. The Commission, in its 1981 "Baby Boy" decision, held that under Articles 3 j, 16, 51 e, 112 and 150 of the Protocol, the American Declaration acquired binding force on state parties. White and Potter (Baby Boy) v. United States, Case 2141, Inter-Am. Comm'n H.R., Res. No. 23/81, OAS/Ser.L/VIII.52, doc. 48 (1981). Thus, by ratifying the Buenos Aires Protocol to the OAS Charter, the United States assumed an obligation not to discriminate against its citizens based on "race, sex, creed, or any other factor." American Declaration, art. II.

The right to be free of discrimination in the American Declaration includes discrimination based on place of residence. Although the Commission has not spoken directly to this issue, Article II of the American Declaration declares that "[a]ll persons are equal before the law . . . without distinction as to race, sex, language, creed or *any other factor*." American Declaration, art. II. Differentiation based on place of residence, as discussed in depth above, is encompassed by "any other factor."

### C. In excluding U.S. citizen residents of Puerto Rico from federal benefit programs, the United States has violated its obligation under the ICCPR and the American Declaration not to discriminate.

The U.S. government's practice of expressly awarding lower federal benefits to U.S. citizens residing in Puerto Rico than to similarly situated U.S. citizens residing in the fifty states constitutes facial discrimination in violation of the ICCPR and the American Declaration. As detailed in the Complaint, U.S. federal law completely excludes U.S. citizens residing in Puerto Rico from receiving Supplemental Security Income and food assistance through the Supplemental Nutrition Assistance Program. Complaint ¶ 9. U.S. citizens residing in Puerto Rico are also ineligible for certain low-income subsidies under the Medicare Part D program, which results in far fewer benefits. Id. Although such benefits are not required by the ICCPR or the American Declaration, once Congress adopted those welfare programs, Congress was barred from distributing the benefits in a discriminatory manner. See supra Part III.A-B.

This practice meets both prongs of the discrimination test under the ICCPR. First, the differentiation here is based on place of residence, which is encompassed by the "other status" designation in Articles 2(1) and 26, as well as the territorial language in Article 2(1). See supra Part III.A. Second, the differentiation is neither reasonable nor objective. Withholding benefits from equally needy *citizens*, simply because they are residents of an unincorporated territory rather than one of the fifty states, has no justifiable rationale. Congress appears to have singled out Puerto Rico for exclusion solely because it can, not because of any principled policy considerations.

U.S. practice also violates obligations under Article II of the American Declaration. The Inter-American Court (which, because the United States has not ratified the American Convention on Human Rights, from which the Court derives its authority, does not have

jurisdiction over the United States) authoritatively interprets a nearly identical provision of the American Convention on Human Rights in its Advisory Opinion Number 4, stating:

> [T]here would be no discrimination in differences in treatment of individuals by a state when the classifications selected are based on substantial factual differences and there exists a reasonable relationship of proportionality between these differences and the aims of the legal rule under review. These aims may not be unjust or unreasonable, that is, they may not be arbitrary, capricious, despotic or in conflict with the essential oneness and dignity of humankind.

Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica, Advisory Opinion OC-4/84, Inter-Am. Ct. H.R. (ser. A) No. 4, ¶ 57 (Jan. 19, 1984).

The U.S. federal benefits programs classify based on a "substantial factual difference"—the location of would-be recipients in an unincorporated territory—but that difference is not related in any reasonable way to the aims of the programs.[1] The only way that location could be claimed to be rationally related to the aims of the programs would require framing the laws in a way that would render them unjust and unreasonable. If the aim of the law is to support the neediest citizens, then status of residence in Puerto Rico has no rational connection to that objective. Either way, the federal laws' differentiation based on place of residence discriminates against U.S. citizens in Puerto Rico and violates U.S. obligations under the American Declaration.

The exacerbated suffering of Puerto Rican residents after Hurricane Maria makes such disparate treatment even less reasonable. If the purpose of such benefit programs is to provide a safety net for the neediest U.S. citizens, the current crisis in Puerto Rico objectively warrants greater benefits, not fewer.

[1] Supplemental Security Income and SNAP programs respectively define their purposes as the establishment of "a national program to provide supplemental security income to individuals who have attained age 65 or are blind or disabled" and "to provide for improved levels of nutrition among low-income households." Social Security Act, Title XVI, Supplemental Security Income for the Aged, Blind, and Disabled, § 1601, 42 U.S.C. 1381; Food and Nutrition Act of 2008, Preamble, 7 U.S.C. 2011.

### D. The United States' discrimination based on place of residence also restricts U.S. citizens' right to freedom of movement.

The discriminatory denial of essential federal benefits based on place of residence restricts citizens' freedom of movement, a right well established in international human rights law. Article 13 of the Universal Declaration of Human Rights ("UDHR"), which formed the cornerstone of later human rights instruments, states, "Everyone has the right to freedom of movement and residence within the borders of each state." UDHR, art. 13. The ICCPR incorporated the freedom of movement as a binding obligation on State Parties: "Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence." ICCPR, art. 12(1). The ICCPR further provides that the freedom of movement must be "consistent with the other rights recognized in the present Covenant," including the right to be free from discrimination. Id. art. 12(3).

In interpreting the right to freedom of movement, the Human Rights Committee emphasized: "The right to move freely relates to the whole territory of a State, including all parts of federal States. . . . [P]ersons are entitled to move from one place to another *and to establish themselves in a place of their choice*." General Comment No. 27 ¶ 5, U.N. Doc. CCPR/C/21/Rev.1/Add.9 (Nov. 2, 1999) (emphasis added). Furthermore, "States should always be guided by the principle that . . . restrictions must not impair the essence of the right." Id. ¶ 13. Laws that burden an individual's choice to move freely within his or her own State, even if they do not explicitly restrict such movement, are thus inherently suspect. This same principle is deeply embedded in U.S. constitutional law. In its "right to travel" cases, the U.S. Supreme Court found that states violated equal protection when they denied welfare benefits and state-provided medical care to residents with less than a year of in-state residency. See Memorial Hospital v. Maricopa County, 415 U.S. 250 (1974); Shapiro v. Thompson, 394 U.S. 618, 638

(1971). Fundamental guarantees of personal liberty "require that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement," and, thus, the "freedom to travel throughout the United States has long been recognized as a basic right under the Constitution." Shapiro, 394 U.S. at 630-31. A law need not explicitly restrict the right to travel to be impermissible: "If a law has 'no other purpose than to chill the assertion of constitutional rights by penalizing those who choose to exercise them, then it (is) patently unconstitutional.'" Id. at 631 (quoting United States v. Jackson, 390 U.S. 570, 581 (1968).

In practice, the U.S. government's facially discriminatory denial of critical health benefits based on place of residence limits the freedom of movement for U.S. citizens who live in Puerto Rico or who wish to relocate to Puerto Rico. Those living in the fifty states who depend on SSI, SNAP, or Medicare Part D cannot move to Puerto Rico if they wish to keep their federal benefits. Likewise, those living in Puerto Rico must move to a state if they wish to receive full benefits under the same programs. People who depend on welfare benefits are, by definition, needy and vulnerable, especially in the aftermath of a natural disaster. The availability of such benefits could be a controlling factor in a person's decision to relocate. Discriminatorily forcing some citizens to decide between receiving welfare benefits—for many in Puerto Rico today, a life-or-death matter—and living in a place of one's choice is exactly the type of burden that is prohibited under binding international law and parallel U.S. constitutional principles.

## IV. THE UNITED STATES HAS AN OBLIGATION UNDER INTERNATIONAL LAW TO AVOID DISCRIMINATION BASED ON ETHNICITY.

### A. Customary international law, the ICCPR, the American Convention, and the International Convention on the Elimination of All Forms of Racial Discrimination forbid the United States from discriminating on the basis of ethnicity.

Customary international law prohibits the United States from discriminating on the basis of ethnicity. As the United Kingdom's highest appellate body noted in a case where ethnic discrimination was at issue:

> The great theme which runs through subsequent human rights instruments, national, regional and international, is the legal right of equality with the correlative right of non-discrimination on the grounds of race . . . . It is true that in the world, as we know it, departures from this norm are only too many. But the international community has signed up to it. The moral norm has ripened into a rule of customary international law. It is binding on all states.

R. v. Immigration Officer at Prague Airport [2005] 2 AC 1 (HL) ¶ 46.

This rule against discrimination is widely recognized by international courts and human rights bodies. The International Court of Justice has found that States may not discriminate on the basis of ethnic origin. See Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Geor. v. Russ.), Provisional Measure, 2008 I.C.J. Rep. 353 ¶ 149 (Oct. 15) (rejecting discriminatory practices and holding that States must "do all in their power, whenever and wherever possible, to ensure, without distinction as to national or ethnic origin," the protection of rights). The Human Rights Committee has barred States from engaging in discrimination based on "ethnic characteristics." See Williams Lecraft v. Spain, Comm. No. 1493/2006, Hum. Rts. Comm., 99th Sess., U.N. Doc. CCPR/C/96/D/1493/2006 ¶ 7.2 (Views adopted July 27, 2009). Regional courts have rejected this type of discrimination as well. The European Court of Human Rights has consistently rejected ethnic discrimination, even when a challenged policy does not facially discriminate on the basis of ethnicity. See, e.g., DH v. Czech Republic, App. No. 57325/00 (2007). Similarly, the Inter-American Court of Human Rights has noted that "States must combat" discrimination on the basis of ethnicity "at all levels,

particularly in public bodies and, finally, must adopt the affirmative measures needed to ensure the effective right to equal protection for all individuals." Yean & Bosico v. Dominican Republic, Inter-Am. Ct. H.R. (ser. C) No. 130, ¶ 141 (Sept. 8, 2005). The decisions of international courts strongly support the conclusion that customary international law forbids discrimination on the basis of ethnicity. See Report on the Work of the Sixty-Eighth Session, Int'l L. Comm'n, Concl. 13 (2016) ("Decisions of international courts and tribunals, in particular of the International Court of Justice, concerning the existence and content of rules of customary international law are a subsidiary means for the determination of such rules.")

The United States is bound by rules of customary international law. See The Paquete Habana, 175 U.S. 677, 700 (1900) ("International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction as often as questions of right depending upon it are duly presented for their determination."); RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 102 (AM. L. INST. 1987) ("A rule of international law is one that has been accepted as such by the international community of states . . . in the form of customary law."); Id. at § 111 cmt.b ("A rule of international law . . . derives its status as law in the United States from its character as an international obligation of the United States.").

The United States has also signed and ratified international treaties barring ethnic discrimination. In addition to the ICCPR and the American Declaration, the International Convention on the Elimination of All Forms of Racial Discrimination ("CERD") requires that State parties refrain from discrimination based on ethnicity. See supra Part III.A-C.

CERD defines racial discrimination as "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or *ethnic origin* which has the purpose or

*effect* of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms." CERD, art. 1, ¶ 1, adopted Dec. 21, 1965, S. Treaty Doc. 95-18, 660 U.N.T.S. 195 (emphasis added). This definition includes situations like that in the present case, where there may be no intent to racially discriminate, but where the effect of the law impairs the equal exercise of a right by members of a particular racial or ethnic group.

The United States ratified CERD in 1994. CERD, adopted Dec. 21, 1965, S. Treaty Doc. 95-18, 660 U.N.T.S. 195 (entered into force Jan. 4, 1969, entered into force for the United States Oct. 21, 1994). Although the Senate subjected its advice and consent to the declaration that the Convention was not self-executing, that in no way lessens the legal obligations the United States took on when it ratified the Convention. The United States therefore has an obligation under CERD not to make any distinction based on ethnic origin that has the effect of impairing the exercise of a right by people of the relevant ethnicity.

### B. The United States' treatment of Puerto Rican residents constitutes prohibited ethnic discrimination under international law.

Federal laws depriving residents of Puerto Rico of life-sustaining benefits impermissibly target individuals for differential treatment based on their ethnic origin. As should be clear, the vast majority of residents of Puerto Rico are ethnically Puerto Rican. Laws that discriminate against residents of Puerto Rico, therefore, necessarily target ethnic Puerto Ricans for unequal treatment. The Supreme Court recognized this link by noting that the interest in avoiding discrimination "is peculiarly strong in the case of Puerto Rico simply because of the unfortunate fact that invidious discrimination frequently occurs along ethnic lines." Alfred L. Snapp & Son, Inc. v. Puerto Rico, 458 U.S. 592, 609 (1982). When the government discriminates against

citizen residents of Puerto Rico, it is impermissibly discriminating against U.S. citizens of Puerto Rican ethnicity, in violation of U.S. obligations under international law.

Although residents of Puerto Rico could, in theory, move to one of the states to receive benefits, this is, in reality, impossible for most residents. For the intended beneficiaries—the ill, the needy, the poor, and the disabled—moving to the United States is not a feasible choice. As recognized by international law, see, e.g., Committee on the Rights of Persons with Disabilities, General Comment No. 4: Article 24: Right to Inclusive Education, (Sept. 2, 2016) CRPD/C/GC/4, ¶ 13 (noting that disabled people face multifaceted "'discrimination based on disability, gender, religion, legal status, ethnic origin, age, sexual orientation or language' in relation to education"), targeting vulnerable subsets of a specific ethnicity (for example, people of Puerto Rican ethnicity who also have disabilities) only compounds the toxic effects of governmental ethnic discrimination.

## V. CONCLUSION

The U.S. practice of discriminating against citizens who are residents of Puerto Rico violates U.S. obligations under the ICCPR, the American Declaration, and CERD, as well as customary international law. By discriminatorily depriving U.S. citizens of critical health and welfare services simply because they live in Puerto Rico, the government is exacerbating, rather than relieving, the suffering of Puerto Ricans in the wake of the U.S. government's inadequate response to Hurricane Maria and the devastation it wrought to the island, its services, and its people's well-being.

## CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing complies with the form and length requirements of Local Rule 7(d) of the Local Rules of the United States District Court for the District of Puerto Rico because it has been prepared in a proportionally spaced 12 point Times New Roman font.

## CERTIFICATE OF SERVICE

I hereby certify that on December 14, 2018, I electronically filed the foregoing with the Clerk of this Court using the CM/ECF System, which will send notice of such filing to all counsel of record.

Respectfully submitted,

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