Linguistic Colonialism: Law, Independence, and Language Rights in Puerto Rico

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LINGUISTIC COLONIALISM: LAW, INDEPENDENCE, AND LANGUAGE RIGHTS IN PUERTO RICO

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ABSTRACT

Events surrounding Puerto Rico’s 2004 and 2008 gubernatorial elections highlight two of the problems that exemplify the current state of linguistic colonialism that characterizes the relationship between the United States and Puerto Rico. One arose from the requirement that federal jurors be proficient in English, a mandate that conflicts with the Sixth Amendment’s guarantee of a jury representing a fair cross-section of the community. The other stemmed from a lack of anticipation of the existence of an English-speaking minority in a territory ruled by the United States, compelling the district court to struggle for authority to order bilingual ballots for the island’s English-speaking minority.

This essay supplements existing arguments for Puerto Rico’s independence with an analysis of the inability to reconcile language, constitutional, and statutory rights in either the present Commonwealth or, in the event that the United States fully incorporated the island, under statehood. While resolution of Puerto Rico’s status remains pending, ad hoc solutions for crises fueled by the limits of United States law are unacceptable. Instead, the United States must overhaul the legal rules and procedures that adversely affect the island, to maintain respect for both the long-held territory and the integrity of American law.

INTRODUCTION

In March 2008, after a two-year grand jury investigation, the federal government indicted then-governor Aníbal S. Acevedo Vilá, * Teaching Fellow, California Western School of Law, San Diego, afreeman@cwsl.edu. Many thanks to Steven Macias at the University of Oregon School of Law and to my colleagues at California Western, Ruben Garcia, Tom Barton, and William Aceves, for their insightful comments on earlier drafts of this essay. I am also grateful to friends and colleagues in Puerto Rico who brought this issue to my attention.
leader of the pro-Commonwealth Popular Democratic Party (“PDP”), on nineteen counts of campaign finance fraud.\(^1\) Members of the pro-statehood National Progressive Party (“NPP”) clamored for Acevedo Vilá’s impeachment.\(^2\) Attempting to imbue the subsequent proceedings with the appearance of neutrality, the court brought in District of New Hampshire Judge Paul Barbadoro to try the case. On an island where over eighty percent of the population votes in gubernatorial elections, it would be virtually impossible to find a jury of individuals without strong ties to either the PDP or the NPP.\(^3\) Nonetheless, Judge Barbadoro preemptively announced that he would deny all motions for a change of venue and declared his intention to brook few delays in the commencement of the trial. His statements satisfied the public’s desire for a speedy resolution of the drama that had been brewing on the island for many months,\(^4\) but in the federal courthouse, they mandated immediate attention to a serious problem.

At the time of Barbadoro’s announcement, the entire federal jury pool for the District of Puerto Rico numbered fewer than five hundred people out of the island’s four million inhabitants.\(^5\) Due to the English-language requirement for jurors, this pool was smaller than ones from which courts often draw to create a jury for only one controversial case.\(^6\) Not only was the pool impossibly small, it was also highly imbalanced, consisting almost entirely of the island’s elite: a group of financially secure, educated individuals, many of whom

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2. *Id.*


had studied in the United States. In short, the jury would not represent a cross-section of the community, as required by the Sixth Amendment and federal law.

The district court faced another language rights challenge preceding the November 2008 election, in which Acevedo Vilá still intended to run, is spite of his pending trial. A group of minority English-speakers, eager to participate in this controversial election, moved the court to order Puerto Rico’s election committee to print ballots in English for the first time. Granting this request, the district court invoked as authority the Voting Rights Act, a statute that, read literally, bestows no rights on minority English-speakers. The law was simply not written to accommodate this group whose existence legislators failed to anticipate. The court also ordered English ballots based on the Equal Protection clause of the Fourteenth Amendment. To support this aspect of the decision, the court created a racial category of ‘natives of the continental United States’ and equated language with national origin.

The injustice that comes to light upon analysis of the deprivation of Sixth Amendment rights in Puerto Rico and the absurdity of applying the Voting Rights Act to an English minority or creating a racial category of continental Americans demonstrate the legally untenable state of linguistic colonialism presently existing between the United States and Puerto Rico. After exploring the tension between federal and constitutional law and the linguistic reality of the

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9. 28 U.S.C. § 1861 (2010) (“It is the policy of the United States that all litigants in federal courts entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the community in the district or division wherein the court convenes.”)


Commonwealth of Puerto Rico by delving into these two examples, this essay will call for a dramatic change in Puerto Rico’s relationship with the United States to prevent further contradictions and inequities.

Part I reviews and analyzes the courts’ attempts to reconcile the conflict between the statutory English language requirement for federal jurors, \(14\) Puerto Rico’s almost entirely Spanish-speaking population, and the Sixth Amendment’s constitutional mandate. This part consists of three sub-parts: a description of Puerto Rico’s linguistic landscape in comparison with that of the United States; a history of fair cross-section challenges pertaining to the District of Puerto Rico; and a comparative look at fair cross-section challenges in the Ninth Circuit. Part II examines the tension between language and constitutional rights through the lens of one case, \(\text{Diffenderfer v. Gomez-Colon.} 15\) In this challenge to the policies of Puerto Rico’s election commission, the district court relied on the Voting Rights Act, the Equal Protection clause, and the First Amendment to order the printing of English ballots for the 2008 gubernatorial election. In light of the legal gymnastics and concessions required to reach the courts’ holdings on both of these matters, this essay concludes that Puerto Rico’s unique linguistic demographics in comparison with all the states in the union results in a form of linguistic colonialism that is legally and morally untenable.

I: THE ENGLISH LANGUAGE REQUIREMENT AND THE SIXTH AMENDMENT

To qualify for jury service in a federal district court, a person must be able to speak English and to read, write, and understand it “with a degree of proficiency sufficient to fill out satisfactorily the juror qualification form.”\(16\) Both the United States Constitution, under the Sixth Amendment, and federal law, under 28 U.S.C. § 1861, require federal juries to represent a cross-section of the community in which judicial proceedings occur.\(17\) Nonetheless, courts have

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17. See 28 U.S.C. § 1861 (“It is the policy of the United States that all litigants in Federal courts entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the community in the district or
consistently rejected challenges to the English language requirement as it applies to the District of Puerto Rico, where the requirement excludes approximately eighty percent of the district’s population from federal jury service and renders the remaining pool relatively homogenous with regard to class and education levels.\textsuperscript{18} Although the First Circuit’s response to this question is consistent with outcomes reached in other circuits facing fair cross-section challenges, it is far from clear that it should be.\textsuperscript{19}

In other federal judicial districts, most notably in the Ninth Circuit, defendants have failed to establish a prima facie case of unconstitutional underrepresentation based on a comparison of the percentage of Spanish-speakers, or ‘Hispanics,’ on a jury and the number of jury-eligible Hispanics in the community. The law has developed with a focus on the narrow question of whether the proper point of comparison is the whole, or the jury-eligible, population, without reaching the issue of whether underrepresentation is justified by significant national interests.\textsuperscript{20} In contrast, cases arising in Puerto Rico, an almost entirely homogenous island of Spanish-speaking Puerto Ricans, have focused solely on the second question.\textsuperscript{21}

Part I begins with a description of Puerto Rico’s linguistic landscape as well as the statistics and court rules relevant to an inquiry into the effect of the English-language requirement. It then reviews the most significant First Circuit and District of Puerto Rico cases analyzing and establishing the constitutionality of the English-language requirement in the face of fair cross-section challenges. Next, it traces the development of fair cross-section law in the Ninth Circuit, where, due to the high number of Spanish speakers in the Circuit, the courts have generated the greatest amount of law on this issue. Finally, it compares the reasoning and results of fair cross-section cases in these two circuits, and concludes that the law as

\begin{enumerate}
\item \textsuperscript{18} See, e.g., \textit{Miranda v. United States}, 255 F.2d 9 (1st Cir. 1958); \textit{United States v. Benmahur}, 658 F.2d 14 (1st Cir. 1981); \textit{United States v. Aponte Suarez}, 905 F.2d 483 (1st Cir. 1990); \textit{United States v. Gonzalez Velez}, 466 F.3d 27 (1st Cir. 2006), all discussed infra.
\item \textsuperscript{19} \textit{United States v. Torres Hernandez}, 447 F.3d 699 (9th Cir. 2006).
\item \textsuperscript{20} \textit{Torres Hernandez}, 447 F.3d 699.
\item \textsuperscript{21} See footnote 16, supra.
\end{enumerate}
applied in the First Circuit is unjust.

A. Puerto Rico’s Linguistic Landscape

In most states, the majority of residents meet the requirements of federal jury service of citizenship, no felony record, age greater than eighteen, and proficiency in English.\footnote{See Juror Qualifications, Exemptions, and Excuses United States Courts, http://www.uscourts.gov/FederalCourts/JuryService/JurorQualifications.aspx.} Even in California, the state with the greatest percentage of Spanish-speakers after Puerto Rico, Spanish-speakers represent only approximately one quarter of the state’s population, and although there are no accurate statistics showing the number of non-citizens living in the state, it is unlikely that they comprise over half of the population.\footnote{Race and Ethnicity in California: Demographic Report Series-No. 14 (June 2003), Californians’ Use of English and Other Languages: Census 2000 Summary, Center for Comparative Studies in Race and Ethnicity, Stanford University, http://www.stanford.edu/dept/csre/reports/execsum_14.pdf.} Conversely, eighty percent of Puerto Ricans identify themselves as unable to communicate effectively in English.\footnote{2006 United States census, \url{http://factfinder.census.gov/servlet/ACSSAFFacts?_event=Search&geo_id=&_geoContext=&_street=&_county=&_cityTown=&_state=04000US72&_zip=&_lang=en&_sse=on&pctxt=fph&gsf=100}. As demographics in the United States continue to change, the question of whether statistically significant underrepresentation on juries of group members who make up the majority of a state’s residents may eventually become relevant to courts outside the District of Puerto Rico.\footnote{Some studies indicate that Hispanics may comprise the majority of Americans by the year 2042. See, e.g., U.S. Minorities Will Be the Majority by 2042, Census Bureau Says, August 15, 2008, \url{http://www.america.gov/st/peopleplace-english/2008/August/200808151400005xrenef0.1078106.html}. It is difficult to estimate what percentage of this majority might not be jury-eligible due to age, English proficiency, or citizenship.} Currently, however, Puerto Rico’s situation is unique, requiring different analysis and different results. On the mainland United States, non-English-speaking children must learn English at school and often attend special programs to accelerate this
process. Scholastic success and, in most instances, the acquisition of gainful employment, depend on a firm grasp of the English language. Most daily transactions, such as banking, purchasing goods, navigating public transportation systems and roads, and accessing social services, require a high degree of competency in English. Although there are many insulated communities in the United States, particularly in larger cities, where social and business interactions occur exclusively in a language other than English, stepping outside these communities requires some degree of language assimilation.

Puerto Rico’s linguistic landscape is precisely the opposite. Although wealthy Puerto Ricans, particularly those who were born or educated in the continental United States, often send their children to the island’s few private English schools, the majority of Puerto Rican children receive an education exclusively in Spanish. Although an English class is part of most schools’ curriculum, without immersion, all but the most exceptional students retain little of what they learn in school. Business in Puerto Rico is conducted in Spanish. Newspapers, radio, television, and film are in Spanish (or subtitled in Spanish). Puerto Rico’s one English-language newspaper, the San Juan Star, stopped publishing in August 2009.

26. For example, California passed proposition 227, the English in Public Schools initiative, in 1998, requiring California public schools to teach “Limited English Proficient (LEP)” students in special, virtually all-English classes, eliminating previous bilingual ones. Enrolment in an LEP class was not expected to last for more than a year. See http://primary98.sos.ca.gov/VoterGuide/Propositions/227.htm.


28. The situation is similar to the teaching of French in Canada, an officially bilingual country. Canadian Charter of Rights and Freedoms 16.1, http://laws.justice.gc.ca/en/charter/1.html#anchorbo-ga:1_l-gb:s_16 (“English and French are the official languages of Canada and have equality of equal rights and status and privileges.”). Although every Canadian child studies French in school, very few retain enough of the language to enable them to work or live in French.

29. See Alvarez Gonzalez, supra, at p. 290-91 for another portrait of the island’s linguistic landscape.

All Commonwealth legal proceedings take place in Spanish.\textsuperscript{31} Puerto Rican law schools teach in Spanish, and the Puerto Rico bar exam is in Spanish. Although English is a requirement for all jobs with the federal government, fluency varies greatly. Almost all communication within federal buildings occurs in Spanish, aside from formal proceedings, which federal law mandates must take place in English.\textsuperscript{32} In the federal courts, defendants, witnesses, and pro se parties speak to the Spanish-speaking judges and juries in Spanish.\textsuperscript{33} Lawyers argue in varying degrees of English proficiency. An interpreter translates the Spanish testimony for the benefit of the court reporter, who creates an English transcript. The reviewing court will base its decision on the English record, but the judge and jury in the district court inevitably reach their conclusions based on the testimony they heard in their native tongue. In their chambers, judges communicate with lawyers, the press, their staff, and their Spanish-speaking clerks in Spanish, and secretaries and court employees conduct office business in Spanish. A small number of law clerks and other employees within the federal system, such as Assistant United States Attorneys, come from the mainland. Puerto Ricans usually speak English in their presence.

According to the District of Puerto Rico’s website, every four years, after an election, the court randomly selects jurors from certified lists of registered voters.\textsuperscript{34} The court mails out questionnaires to these individuals, explaining the grounds for both automatic excusal and excusal upon request.\textsuperscript{35} The website states that

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\item \textsuperscript{31} See \textit{People v. Superior Court}, 92 P.R.R. 580, 588-89 (1965); P.R. R Civ. P. 96(d); P.R. R Civ. P. 8.5.
\item \textsuperscript{32} 42 U.S.C. § 864. “(All pleadings and proceedings in the United States District Court for the District of Puerto Rico shall be conducted in the English language.).”
\item \textsuperscript{33} As of August 2010, there was one native English-speaking judge in the District of Puerto Rico, magistrate judge Bruce McGiverin.
\item \textsuperscript{34} District of Puerto Rico website, http://www.prd.uscourts.gov/usdcpr/g_juryservice.htm. This method of selection accords with the Federal Jury Service and Selection Act, which designates voter registration lists as the main, but not exclusive, source of potential juror selection. 28 U.S.C. § 1863(b)(2).
\item \textsuperscript{35} Automatic excusal applies to active members of the armed forces or reserve, firefighters, police or law enforcement agents, and public officers in the executive, legislative, or judicial branches of the federal, state, or municipal
“[m]ost people that are able to read, write, speak, and understand the English language are qualified to become jurors.”

The 2006 United States census reported that 95.3% of Puerto Rico’s population spoke a language other than English at home. Other states with significant numbers of Spanish-speakers trailed far behind: 29.1% in Texas, 28.8% in New Mexico, 28.4% in California, 21.9% in Arizona, 19.3% in Nevada, 18.7% in Florida, and 14.2% in New York. The percentage of Puerto Ricans who spoke English at a level less than ‘very well,’ a fact that likely would exclude them from jury service, was 80.9%. In California that number was 20.1%, 14.5% in Texas, 13.1% in New York, 12.8% in Nevada, and 12.2% in Arizona. Only 47.6% of Puerto Ricans were employed, with 45% living under the poverty level. Regarding education, 20.7% of Puerto Ricans had at least a bachelor’s degree, and 66.1% had at least a high school degree – a percentage twelve points lower than in any state.

Conducting court proceedings in English on an island where the vast majority of participants in the legal system can communicate more effectively in their native tongue is a manifestation of the colonialist relationship that began when the United States took Puerto Rico from Spain in the Spanish-American war of 1898.

36. Id.
38. Id.
39. Id.
40. Id.
41. Id.
42. Id.
Circuit has justified the upholding of this tradition by putting the federal justice system’s interest in consistency above the constitutional mandate that parties face a jury composed of a cross-section of their community. A comparison between this legal reasoning, employed in cases arising in Puerto Rico, with that applied in other circuits, where courts have not reached this harsh conclusion, suggests that this reasoning is not legally sound.

B. Fair Cross-Section Challenges in the First Circuit

In 1958, the First Circuit first entertained the question of whether the systematic exclusion of non-English speakers from federal juries in Puerto Rico was constitutional.44 The defendant in Miranda v. United States was a Puerto Rican attorney convicted of subornation of perjury during the trial of three servicemen he represented in a burglary case.45 Miranda argued that his indictment was defective because individuals who could not speak and understand English were systematically excluded from the grand jury.46 The court disagreed, holding that the provision that “[a]ll pleadings and proceedings in the United States District Court for the District of Puerto Rico shall be conducted in the English language” was necessary to the proper functioning of the court.47 The court declared that “it is reasonable that a court conduct its proceeding in a single language and it is obviously essential that the judge, the counsel and all the jurors have a working knowledge of that language if the judicial machinery is to function efficiently.”48 The court failed to entertain the idea that, in light of the fact that the judge, attorneys, and jurors all spoke Spanish, with proficiency in English ranging from good to poor, conducting proceedings in Spanish would in fact achieve the greatest efficiency.49

The court also did not consider any issues beyond efficiency.

44. Miranda v. United States, 255 F. 2d 9, 16-17 (1958).
45. Id. at 11.
46. Id. at 16.
47. Id. at 16-17.
49. In 1952, the first Puerto Rican judge was appointed to the District of Puerto Rico. After that date, all judges were bilingual. In 1958, when the First Circuit decided Miranda, the sole District Court Judge, the Honorable Clemente Ruiz-Nazario, was a native Spanish speaker.
In 1968, the District of Puerto Rico faced an attack on the constitutionality of the statutory requirement that proceedings be conducted in English, the statutory English language requirement for jurors, and the failure of the grand and petit juries to constitute a cross-section of the community.\(^50\) The defendants had been indicted for refusing to submit to induction into the United States Armed Forces.\(^51\) The court noted Puerto Rico’s unique status as the only “state or territory in which the primary language of the majority of American citizens resident therein is other than English.”\(^52\) Significantly, the court stated that forcing nonresidents to litigate through interpreters would “compromise[]” and “unreasonably restrict[]” the court’s function of offering nonresidents resort to a tribunal not subject to local influence.\(^53\) The court did not demonstrate similar sympathy for Puerto Rican residents, the majority of the court’s users, who, by virtue of the court’s decision to uphold the constitutionality of the statutes, have been compelled to litigate virtually all of their cases through interpreters.

The court viewed the use of Spanish during proceedings as a significant limitation on the ability of the Attorney General, his staff, and judges from other districts sitting by designation to participate in judicial proceedings in the district.\(^54\) The court also decried “the strong possibility of injustice through distortion of meaning in translation” of federal statutes, written in English, along with “the body of law developed throughout the rest of the federal system.”\(^55\) The court acknowledged in a footnote that appeals from the Commonwealth required translation, but dismissed potential injustice in these types of situations by stating that “the final judgments of the commonwealth courts are rarely subject to federal review, and such review rarely raises questions whose resolution necessitates a precise paring of the language appearing in the record.”\(^56\) The court likely did not anticipate that, over forty years later, the federal court would engage

\(^{51}\) Id. at 961.
\(^{52}\) Id. at 963.
\(^{53}\) Id. at 964.
\(^{54}\) Id.
\(^{55}\) Id. at 964-65.
\(^{56}\) Id. at 965 n. 9.
in extensive review of Commonwealth cases. Also, despite noting that the annotated laws of Puerto Rico and its supreme court cases were translated into English, the court failed to acknowledge the fact that these translations are often poor, if not completely nonsensical, and thus of little assistance to federal clerks and judges conducting review.\footnote{57}

Declaring a defendant’s right to a fair trial to be personal, not collective, the court stated that it is “no more of a constitutional violation to try non-English speaking defendants in English in [Puerto Rico’s district] court than to try other non-English speaking defendants in English in any other federal district court.”\footnote{58} Rejecting the defendants’ contention that the English language requirement represented an unjust qualification for jury service, the court asserted that there is no constitutional requirement that “juries be drawn from a cross section of the total population without the imposition of any qualifications.”\footnote{59}

In 1981, in \textit{Benmuhar v. United States}, a Puerto Rican defendant convicted of arson argued to the First Circuit that the Supreme Court decision in \textit{Duren v. Missouri} demanded an outcome different from the result in \textit{Miranda} and a holding that the jury selection process violated his Sixth Amendment right to a jury comprised of a fair cross-section of the community.\footnote{60} Reversing the Missouri Supreme Court, \textit{Duren} held that the systematic exclusion of women from jury service in Missouri through automatic exemption upon request resulting in jury venires averaging less than fifteen percent female jurors violated the Constitution’s fair cross-section requirement.\footnote{61} \textit{Duren} laid out three factors necessary to establish a prima facie case of unconstitutional jury disproportionality:

\begin{quote}
(1) the group alleged to be excluded is a ‘distinctive group’ in the community; (2) the representation of this group in venires from
\end{quote}

\footnote{57. \textit{Id.} at 965 n. 10.}
\footnote{58. \textit{Id.} at 965.}
\footnote{59. \textit{Id.} (citing \textit{Smith v. State of Texas}, 311 U.S. 128, 130 (1940) for the proposition that racial discrimination in jury service may occur based on the exclusion of “otherwise qualified groups”) (emphasis in original).}
\footnote{61. \textit{Duren}, 439 U.S. at 360.}
which juries are selected is not fair and reasonable in relation to the
number of such persons in the community; and (3) this
underrepresentation is due to systematic exclusion of the group in
the jury-selection process.\footnote{62}

After a defendant successfully establishes a prima facie case of
disproportionality, the government has the opportunity to show that no
constitutional violation has occurred by demonstrating that the jury
qualification “manifestly and primarily” advances a “significant state
interest.”\footnote{63}

Although the First Circuit did not explore this issue, the second
prong of this test leaves open the question of whether representation
should be measured by comparing the number of group members in
jury venires with the number of group members in the community as a
whole, or solely with jury-eligible group members. In a district
completely made up of group members, such as Spanish-speakers in
Puerto Rico, this distinction is simply not relevant.

The court did discuss the potential exclusion of some group
members from the statistical analysis, however, as it pertained to the
ultimate inquiry into whether a constitutional violation occurred, as
opposed to the initial establishment of a prima facie case. The court
noted that “[s]tates remain free to prescribe relevant qualifications for
their jurors and to provide reasonable exemptions so long as it may be
fairly said that the jury lists or panels are representative of the
community.”\footnote{64} Nonetheless, where a significant state interest in their
implementation provides “adequate justification,” these exemptions
may result in disproportionate exclusion that passes constitutional
muster.\footnote{65} Missouri suggested but failed to demonstrate that other
exemptions furthering significant state interests, such as those for
individuals over age sixty-five, teachers, and government workers,
caus[ed the underrepresentation, leading the Court to believe that the
exclusion of women resulted from the systematic application of their
automatic exemption, for which Missouri did not offer any substantial

\footnote{62. \textit{Id.} at 364.}
\footnote{63. \textit{Id.} at 367-68.}
\footnote{64. \textit{Id.} at 367 (quoting \textit{Taylor v. Louisiana}, 419 U.S. 522, 538 (1975)).}
\footnote{65. \textit{Id.} at 367-68 n. 26.}
justification.  

In *Benmuhar*, the defendant identified nine distinctive groups that he claimed did not have fair and reasonable representation on Puerto Rican juries: San Juan residents; women; professional/managerial/white collar workers; industrial/farming/fishing workers; unemployed/retired/housewives; people with eighth grade or lower educations; people with more than a high school education; whites; and blacks.  

Benmahur attributed all of the alleged disproportionality to the English language requirement.  

Applying the *Duren* test and the reasoning of *Valentine*, the court held that the English language requirement primarily and manifestly advanced the government’s significant interest in “having a branch of the national court system operate in the national language.”  

Although the court upheld the requirement, it labeled its judgment “a narrow one” and expressed no opinion “as to the ability of Congress to achieve different results through legislation or as to a case in which the appellant identified and the government did not respond to policy accommodations that could achieve the national language interest without the need for such an English proficiency requirement for jurors.”  

The First Circuit chose not to deviate from *Benmuhar*, however, when it faced a new challenge to the composition of grand and petit juries nine years later.  

The defendants in *United States v. Aponte Suarez* argued that their indictment was defective because the grand and petit jurors lacked proficiency in English, and sought to prove that English proficiency among Puerto Ricans had declined to such an

66. *Id.* at 368-69 (“Assuming, arguendo, that the exemptions mentioned by the court below would justify failure to achieve a fair community cross section on jury venires, the State must demonstrate that these exemptions caused the underrepresentation complained of”).  
68. *Id.*  
69. *Id.* at 19-20 (citing *Valentine*, 288 F. Supp. at 964-65).  
70. *Id.*  
71. *United States v. Aponte Suarez*, 905 F.2d 483, 491-92 (1st Cir. 1990). Federal law requires grand and petit jurors both to speak English and to possess the reading, writing, and comprehension skills necessary to complete a juror qualification form. 28 U.S.C. § 1865(b)(2) and (3).
extent that it created an adverse effect on Puerto Rican federal juries.\footnote{15}

The court applied the \textit{Duren} test, concluding that even if the defendants proved the existence of a smaller pool of eligible jurors and systematic exclusion in the jury selection process, “the overwhelming national interest served by the use of English in a United States court justifies conducting proceedings in the District of Puerto Rico in English and requiring jurors to be proficient in that language.”\footnote{72}

The First Circuit followed \textit{Aponte Suarez} in \textit{United States v. Flores-Rivera}, dismissing the defendant’s contention that the exclusion of two-thirds of Puerto Rico’s population from federal jury duty violated his Fifth and Sixth Amendment rights.\footnote{73} In 2002, in response to a suggestion that Puerto Rico’s district court provide simultaneous translation to prevent exclusion of the poor from the petit juror pool, the First Circuit rejected the defendants’ contention that \textit{Benmuhar} relied on the fact that its defendants did not propose any viable alternatives to the current system.\footnote{74} In the same year, the First Circuit declared that “[i]t is clear, to the point of perfect transparency, that federal court proceedings must be conducted in English.”\footnote{75} Analyzing a challenge to the introduction into evidence of Spanish transcripts based on the district court’s finding that the English translations were inaccurate, the court pronounced that “[t]he policy interest in keeping the District of Puerto Rico as an integrated part of the federal judiciary is too great to allow parties to convert that court into a Spanish language court at their whim.”\footnote{76} It further explained:

> With a disturbing frequency, district courts in Puerto Rico have allowed parties to offer briefs, documents, and testimony in Spanish without translation. Though we recognize that most jurors, and even judges, may be more comfortable speaking in Spanish than in English, district courts must be faithfully committed to the English

\footnotesize{\textit{Id}. at 491-92.}
\footnotesize{\textit{Id}. (citing \textit{Benmuhar}, 658 F.2d at 19).}
\footnotesize{\textit{United States v. Flores-Rivera}, 56 F.3d 319, 326 (1st Cir. 1995); see also \textit{United States v. Escobar de Jesus}, 187 F.3d 148, 166 (1st Cir. 1999).}
\footnotesize{\textit{United States v. Dubon-Otero}, 292 F.3d 1, 17 (1st Cir. 2002).}
\footnotesize{\textit{United States v. Rivera-Rosario}, 300 F.3d 1, 5 (1st Cir. 2002).}
\footnotesize{\textit{Id}. at 9 n.15.}
language requirement. If not, the district court risks disassociating itself from the rest of the federal judiciary. More importantly, appellate courts cannot properly review district court convictions on the basis of translations, later claimed as evidence, that were neither read nor heard by the jury.  

More recently, rejecting a Sixth Amendment claim based on a defendant’s contention that public housing residents have been systematically excluded from Puerto Rico federal juries, the First Circuit reasserted the validity of the English language requirement based on “the overwhelming national interest” in the use of English in United States’ courts.  

In spite of Puerto Rico’s unique demographics rendering the effects of disproportionality more extreme than in any other district that has contemplated similar challenges, the First Circuit’s commitment to upholding the constitutionality of the English language requirement has become increasingly entrenched.

C. Fair Cross-Section Challenges in the Ninth Circuit

Other circuit and district courts located in areas with large Spanish-speaking communities have faced similar challenges by defendants alleging unconstitutional underrepresentation of Spanish-speakers, or ‘Hispanics,’ on the juries they faced. In these cases, the English-language requirement, though often comprising one factor in the analysis, has not been the sole concern. In communities made up largely of immigrants from Spanish-speaking countries such as Mexico, other jury qualifications, such as United States citizenship, have caused courts to grapple with the question of whether the analysis under Duren’s second prong, seeking to determine if representation is “fair and reasonable in relation to the number of such persons in the community,” should be based on the total number of community members or the subset of eligible jurors within that

78. Id. at 20-21; see also United States v. Gonzalez-Maldonado, 115 F.3d 9, 19 (1st Cir. 1997) (stating that the use of English is necessary for the creation of an appellate record because appellate judges do not have the benefit of an official translator enjoyed by district court judges).

79. United States v. Gonzalez-Velez, 466 F.3d 27, 40 (1st Cir. 2006) (quoting Aponte Suarez, 905 F.3d at 492).
community. The Ninth Circuit has generated the greatest amount of law on this issue, ultimately denying all of the fair cross-section challenges it considered based on the conclusion that only jury-eligible members are relevant to the analysis and the challengers’ inability to establish unconstitutional underrepresentation grounded in the resulting statistical comparison.

In *United States v. Esquivel*, the defendant, charged with bringing an illegal alien into the United States, challenged the partiality of the jury based on the fair cross-section requirement of the Sixth Amendment and the Equal Protection clause of the Fourteenth Amendment. The court agreed with the government that, to establish a prima facie case of a Sixth Amendment violation under *Duren’s* second prong, the relevant Hispanic community with which the percentage of Hispanics on the jury should be compared should include only jury-eligible community members. Calculating, according to census data, the number of Hispanic citizens in the Southern District of California over eighteen years of age significantly reduced the total relevant population, rendering the defendant unable to establish an unconstitutional disparity.

The next year, in *United States v. Artero*, the defendant, convicted of smuggling marijuana across the border and possession with intent to distribute, challenged the representation of Hispanics on the grand jury that indicted him. Noting that the Southern District of California judges had stated that the two counties comprising the

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80. The fact that these issues arise in the context of immigrant communities also accounts for the use of the word Hispanic to describe a racial/ethnic category, as opposed to Spanish-speaker, which, in Puerto Rico, differentiates potential jurors solely on the basis of their language skills.


82. *Esquivel*, 88 F.3d at 726-27.

83. *Id.* at 727 (“Once the category of Hispanics was narrowed down to those Hispanics eligible to serve on juries, the disparity dropped from the defense claim of 14.5% to 4.9.%.”). The court assumed that all of these individuals had sufficient fluency in English to qualify for jury service.

84. *United States v. Artero*, 121 F.3d 1256, 1257, 1260 (9th Cir. 1997).
district, both of which bordered on Mexico, “would likely have many Hispanic residents who had not yet attained citizenship or English proficiency because they had only recently come to the United States,” the Ninth Circuit concluded that “the percentage of Hispanics eligible for federal jury service in those two counties was likely to be lower than the ratio for the general population.”85 The court rejected the defendant’s expert’s testimony regarding the likely Hispanic population of the counties because the demographer did not answer the “right question” of “whether Hispanics eligible to serve on federal juries were unreasonably underrepresented because of systematic exclusion.”86

Acknowledging Duren’s failure to make this distinction, the court commented that, in Duren, “there was no reason to doubt the usefulness of comparing the percentage of women summoned for jury service to the percentage of women in the district, because there is no reason to think women would be disproportionately ineligible to serve on juries.”87 The court contrasted this situation with that of immigrants in border counties and ports of entry, explaining that it “took many of our ancestors a while to learn English and become citizens.”88 The court also announced that, in reaching its conclusion, it was following the Fifth Circuit’s holding in United States v. Douglas that “the pertinent inquiry is the pool of [members of the relevant group] in the district who are eligible to serve as jurors.”89

Eight years later, in United States v. Rodriguez-Lara, the Ninth Circuit reached a different conclusion.90 Charged with being a

85. Id. at 1261.
86. Id. (emphasis added).
87. Id. at 1262.
88. Id.
89. Id. (citing United States v. Douglas, 82 F.3d 1315, 1321 (5th Cir. 1996) (analyzing representation of African-Americans on venire panel under Duren)). Courts in other districts have reached similar conclusions. See, e.g., Silva v. Secretary, DOC, No. 8:06-2257-T-17TBM, 2008 U.S. Dist. LEXIS 102759, at *17 (M.D. Fla Dec. 10, 2008) (stating that “any claim of underrepresentation would still require an accounting of such factors as citizenship, prior felony conviction, as well as the ability to speak and understand English”).
90. United States v. Rodriguez-Lara, 421 F.3d 932, 947 (9th Cir. 2005) (holding that the district court abused its discretion by denying the defendant’s motion to appoint an expert to establish his Sixth Amendment cross section claim in
deported alien found in the United States and acting pro se, the defendant moved to dismiss the indictment based on the underrepresentation of Hispanics in the Fresno Division of the Eastern District of California and sought appointment of a demographic expert to assist him in developing this claim. The district court denied the motion, holding that, based on evidence submitted by the government, the defendant could not demonstrate underrepresentation in relation to “the subset of the population meeting all the federal juror-eligibility requirements.”

The Ninth Circuit disagreed with the district court’s use of the jury-eligible population as the measure of comparison to establish a prima facie case. Emphasizing Duren’s use of the word ‘community’ without modification and the Court’s subsequent reiteration of this standard in Teague v. Lane, the court stated that the “weight of Supreme Court and circuit authority teaches that, for purposes of the prima facie case, the proportion of the distinctive group in the jury pool is to be compared with the proportion of the group in the whole community.” The court distinguished Esquivel on the grounds that, in Esquivel, the record contained population data broken down by age, then acknowledged a conflict in the circuit between the line of cases it cited to support its position and Artero, as well as a decision following Artero, Sanders v. Woodford. The court dismissed Artero as wrongly decided, identified a Ninth Circuit case decided eight years before Artero, United States v. Sanchez-Lopez, as the binding authority on the issue, and held that a “defendant’s prima facie case for a fair cross-section claim may rely on a comparison to total population data or, where available in the record, age-eligible

light of the strength of the showing the defendant established without an expert).

91. Id. at 937-38.
92. Id. at 938.
94. Id. at 942-43 (citing Esquivel, 88 F.3d at 726-27, Artero, 121 F.3d at 1262-62, and Sanders v. Woodford, 373 F.3d 1054, 1069-70 (9th Cir. 2004) (faulting the defendant’s expert for his “assumption that every adult Hispanic person in Kern County who was not a legal, registered immigrant from Mexico was a jury-eligible United States citizen”)).
population data.” The court bolstered its holding with its view that requiring defendants to sort out from the general population figures numbers of individuals not fluent in English would impose a potentially insuperable burden on fair cross-section claimants.

The Ninth Circuit resolved the conflict between Artero and Rodriguez-Lara in United States v. Torres-Hernandez by holding that “a district court need not and may not take into account Hispanics who are ineligible for jury service to determine whether Hispanics are underrepresented on grand jury venires.” To support this ruling, the court relied on Esquivel’s principle that when “presented with various types of data to determine whether Hispanics are underrepresented on grand jury venires, a court must rely on the statistical data that best approximates the percentage of jury-eligible Hispanics in the district.” In light of both Artero’s and Rodriguez-Lara’s approval of Esquivel, the Ninth Circuit’s reasoning appears sound.

Interestingly, the Ninth Circuit never analyzed a fair cross-section challenge on its merits, due to defendants’ consistent failure to establish a prima facie case. If the court had, however, held that a constitutional violation had occurred, it could have easily remedied the situation by assembling a new and more representative jury, simply by drawing on more group members in the community, of which there would presumably be a sufficient number of jury-eligible individuals. This solution is not available in the District of Puerto Rico. Absent a legal remedy for the differential treatment, an inquiry into the root of the problem, the imposition of federal law in the territory, is necessary. First, Part II examines the District of Puerto Rico’s manipulation of federal and constitutional law to mete out justice to a minority it identified as the island’s English speakers.

95. Id. at 943 (citing United States v. Sanchez-Lopez, 879 F.2d 541, 547 (9th Cir. 1989)) (relying on Castaneda’s acceptance of total population figures to establish a prima facie case of an equal protection violation and interpreting Duren to “suggest[]” that where the government does not present evidence to challenge a defendant’s statistics, it could assume that the statistics were valid).
96. Id. at 943 n. 9.
98. Id. at 704.
99. See Artero, 121 F.3d at 1260-61; Rodriguez-Lara, 421 F.3d at 942
II. A CASE STUDY

As explored above, most federal law is based on an underlying assumption that United States citizens are, or should be, English-speaking. As a result, courts’ interpretations of federal and constitutional law as applied to Puerto Rico may be convoluted and even entirely inapposite to plain or well-established meaning. A 2008 District of Puerto Rico case concerning voters’ rights, Diffenderfer v. Gomez-Colon, illustrates this problem well. Part II therefore dissects the court’s opinion and explains how the case reflects another dimension of the conflict between language, statutory, and constitutional rights.

In Diffenderfer, the plaintiffs brought a class action under 42 U.S.C. §1983 of “eligible voters in Puerto Rico who do not speak Spanish” against the state election commission and its four commissioners, seeking an injunction requiring the commission to print ballots for the highly contentious 2008 gubernatorial election in both English and Spanish. According to the 2000 census, the number of affected voters was approximately 362,000 out of the island’s population of approximately four million, or nine percent. Ruling in the plaintiffs’ favor, the district court held that Spanish-only ballots violated the Voting Rights Act (“VRA”), the Equal Protection clause of the Fourteenth Amendment, and the First Amendment.

The VRA provides that no “standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote because he is a member of a language minority group.” Rights protected under this statute include “casting a ballot and having such ballot counted properly.” “[T]he critical question . . . is whether the use of a contested electoral practice or structure results in members of a protected group having less opportunity than other members of the

101. Id. at 341.
102. Id. at n. 2.
103. Id. at 343.
electorate to participate in the political process.”  

The Act also specifically prohibits the use of English-only ballots where more than five percent of the citizens of voting age belong to a minority language group. For purposes of the Act, the term “‘language minorities’ or ‘language minority group’ means persons who are American Indian, Asian American, Alaskan natives, or of Spanish heritage.”

The Diffenderfer court acknowledged that, in light of the VRA’s specificity about qualifying linguistic minorities, the court could not apply the Act according to its “explicit terms.” Nonetheless, deferring to the Supreme Court’s instruction in Chisom v. Roemer that the VRA be interpreted “in a manner that provides ‘the broadest possible scope’ in combating . . . discrimination,” the court decided to “look to the spirit and the intent of the law” and accordingly held that Spanish-only ballots violated section two of the VRA. Stating that the existence of an English-monolingual minority group was “clearly not contemplated by Congress,” the court chose to write this group into the VRA, adding a fifth group to the definition of language minorities.

The court also, and alternatively, held that a Spanish-only ballot system “discriminates against Plaintiffs on the basis of their national origin, ethnicity, and/or race” in violation of the Equal Protection clause of the Fourteenth Amendment. Courts analyze racial classifications under strict scrutiny, requiring the classification to be narrowly tailored to further a compelling government interest. Other classifications are subject to rational basis review, requiring the regulation to be rationally related to a legitimate state interest. The Diffenderfer court held that the decision to print ballots only in

108. § 1973l(c)(3).
110. Id. at 345 (quoting Chisom v. Roemer, 501 U.S. 380, 403 (1991)).
111. Id.
112. Id.
Spanish failed to survive either level of review.\(^ {115} \)

Strict scrutiny applies not only to racial classifications, but also to fundamental rights, such as the right to vote, when the burden on this right is severe.\(^ {116} \) The court based its strict scrutiny analysis on its assertion that the English-only ballot system encompassed both racial discrimination and a threat to voting rights, concluding that it need not, under those circumstances, prove intentional discrimination.\(^ {117} \) The court briefly discussed the history of anti-American sentiment on the island, and explained that the “use of English is frequently identified with natives of the continental United States, as a distinct national category apart from native-born Puerto Ricans.”\(^ {118} \) The court then drew the conclusion that, “in the context of the Commonwealth of Puerto Rico, membership in a linguistic group is essentially identical to a national, ethnic, or even racial classification,” making strict scrutiny appropriate.\(^ {119} \) There was no precedent for this pronouncement. Stating that the defendants had not put forth any compelling interests to justify the system, the court held that Spanish-only elections did not withstand strict scrutiny.\(^ {120} \)

The court also determined that Spanish-only ballots did not satisfy the highly deferential rational basis review, because the defendants justified them based on the impracticality of creating new ballots within the tight deadline before the election, and the high cost that doing so would entail.\(^ {121} \) After hearing testimony from the printer contracted to make the ballots, who stated that he could in fact create English ballots in time, the court found that the defendants’ proffered reason did not represent a legitimate state interest.\(^ {122} \)

Finally, the court analyzed the Spanish-only ballots under the First

\(^{115}\) Diffenderfer, 587 F. Supp. 2d at 346.


\(^{117}\) Diffenderfer, 587 F. Supp. 2d at 346. (citing Coalition for Education v. Board of Elections, 370 F. Supp. 42 (S.D.N.Y. 1974) (“Racial discrimination, whether intentional or unintentional, has been condemned as unconstitutional when the right to an effective vote is at stake.”).)

\(^{118}\) Id. at 347.

\(^{119}\) Id.

\(^{120}\) Id.

\(^{121}\) Id.

\(^{122}\) Id. at 348.
Amendment. Describing the complexity of the ballots’ instructions, the court declared that “[r]equiring non-Spanish speakers to navigate these ballots entirely in Spanish effectively limits the political participation of a significant percentage of Puerto Rico’s eligible voters.” The court also noted, however, that the ballots were likely to create confusion among Spanish-speakers as well, as demonstrated by a heated dispute over contested ballots in the 2004 election.

Relying on the First Circuit’s holding that “federal intervention into a state election was appropriate where a significant percentage of the qualified and voting electorate was, in effect, denied its vote,” the court concluded that the defendants had substantial First Amendment interests at stake. The court again examined the defendants’ proffered reasons for the Spanish-only ballots of increased costs and the difficulty of meeting the printing deadline before the election. Dismissing the logistical reason for the second time, based on the printer’s testimony that he had sufficient time to print the ballots, the court held that the “increase in cost alone does not justify a substantial burden on Plaintiffs’ First Amendment right to express themselves by voting” and declared the Spanish-only ballots unconstitutional.

The election commission complied with the injunction by printing English ballots. In April 2009, the district court ordered the defendants to pay the plaintiffs’ attorneys’ fees. The defendants appealed both the underlying decision and the award of attorneys’ fees. While the appeal was pending, Puerto Rico enacted Law No. 90, mandating the use of bilingual ballots in all future Puerto Rican elections. Law No. 90 rendered the appeal on the merits moot.

The First Circuit vacated the district court’s opinion “because it

123. Id. at 350.
124. Id. at 350 n.10 (citing Rossello-Gonzalez v. Calderon-Serra, 398 F.3d 1, 4-7 (1st Cir. 2004)).
125. Id. at 349 (quoting Calderon-Serra, 398 F.3d at 16 (citing Griffin v. Burns, 570 F.2d 1065, 1078-79 (1st Cir. 1978))).
126. Id. at 350.
127. Id.
130. Id. at 450.
131. Id.
was rendered moot by an independent, intervening act of legislation.”132 It also ruled that, because the plaintiffs successfully obtained the relief they sought in the district court, they remained prevailing parties for purposes of attorneys’ fees.133 The First Circuit therefore affirmed the fees award without ever examining the merits of the case.

The timing of the passage of Law No. 90 and the First Circuit’s subsequent ruling likely afforded the plaintiffs a windfall. Although the district court’s decision was fair, the court lacked the authority to reach its result under the statutes and constitutional principles it invoked. It is therefore highly unlikely that the opinion would have survived First Circuit review on the merits. As the court acknowledged, the VRA does not cover individuals in the plaintiffs’ unique position.134 Specifically, the court stated that Puerto Rico is not a covered jurisdiction under section four of the Act, which forbids certain jurisdictions from denying any citizen the right to vote based on any test or device, including language-based instruments.135 It further noted that section two is equally unavailing because the Act does not include English speakers in its definition of a language minority.136 The VRA could therefore not support an order to print English ballots.

In its Equal Protection analysis, the court provided no support for its proposition that “in the context of the Commonwealth of Puerto Rico, membership in a linguistic group is essentially identical to a national, ethnic, or even racial classification” and that, therefore, it was appropriate to apply strict scrutiny to the election commission’s refusal to print English ballots.137 Without precedent to establish the application of strict scrutiny under these circumstances, only the court’s rational basis review was proper.138 Under rational basis

132. Id. at 451.
133. Id. at 454. This ruling decided this issue for the first time in the First Circuit.
134. Diffenderfer, 587 F. Supp. 2d at 346.
136. Id.
137. Diffenderfer, 587 F. Supp. 2d at 347.
138. The Supreme Court has stated that “it may well be, for certain ethnic groups and in some communities, that proficiency in a particular language, like skin color, should be treated as a surrogate for race under an equal protection analysis.”
review, the commission’s decision was valid unless it bore no rational relationship to its legitimate interests.\textsuperscript{139} One of the proffered reasons for the commission’s decision, heightened costs, rationally relates to its interest in conducting elections at the least possible expense, and would therefore likely survive rational basis review upon appeal.

Finally, the court’s First Amendment analysis relied on the fact that the Puerto Rican election ballot “is complex and difficult to understand.”\textsuperscript{140} The court described four methods of voting (straight, mixed, candidate, and write-in), and three different types of ballots (governor and resident commissioner, state legislature, and municipal legislature), each of which come with a different set of instructions.\textsuperscript{141} The result of this elaborate voting scheme, the court concluded, was to “effectively” limit “the political participation of a significant percentage” of Puerto Rican voters.\textsuperscript{142} The fact that the ballots presented equivalent obstacles to communicating Spanish voters’ intentions, however, weakens the court’s language-based arguments and suggests that a challenge to the overall presentation of the ballots, in a different context, would be a more appropriate method to resolve this particular problem.

The merits of the \textit{Diffenderfer} plaintiffs’ claims and the court’s opinion are moot, but the legal contortions in which the court engaged to reach its desired result leaves a lasting impression. The necessity of rewriting a statute and creating a new Equal Protection category stems from the same problem identified in the fair cross-section analysis above. The proper application of constitutional and federal law in Puerto Rico does not lead to equitable outcomes.

\textbf{CONCLUSION}

Language is at the heart of the debate concerning Puerto Rico’s relationship with the United States.\textsuperscript{143} Faced with the choice between

\begin{itemize}
\item \textit{Hernandez v. New York}, 500 U.S. 352, 413 (1991). The First Circuit may have held that this was one of those cases.
\item \textit{Diffenderfer}, 587 F. Supp. 2d at 349.
\item \textit{Id.} at 349-50.
\item \textit{Id.} at 350.
\item \textit{Id.} at 350.
\item For an excellent summary of the issues, \textit{see} Jose Julian Alvarez Gonzalez, \textit{Law, Language, and Statehood: The Role of English in the Great State of
giving Puerto Rico independence and embracing it as a full state, the American government has adopted a third option - a quasi-Commonwealth status that likely no one envisioned would last over a hundred years. In a 1998 referendum conducted on the island to determine Puerto Ricans’ positions regarding their relationship with the United States, when faced with a choice between statehood and independence, 50.3 percent of the voters selected ‘None of the above.’ 144 46.5 percent voted for statehood and 2.5 percent voted for independence.145 In similar referenda conducted in 1993 and 1967, Puerto Ricans chose the option to retain their current political status over both statehood and independence.146 Acevedo Vilá was acquitted of all the charges against him in March 2009.147 By the time the jury reached this verdict, he had long lost the election to his rival, Luis G. Fortuño.148 The election of a pro-statehood governor was accompanied by a push for a new referendum, one that some believe might finally result in a majority vote for statehood.149 These referenda, however, are non-binding, and any future change to Puerto Rico’s status will require Congressional approval.150

The imposition of English as the official language on this Spanish-speaking island that would almost certainly accompany a transition from Commonwealth to state would wreak havoc on all of Puerto Rico’s institutions as well as present a logistical nightmare. The alternative, allowing a state to function in a language other than English, would pose a substantial set of challenges. Both the present

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145. Id.


149. Arce, supra.

150. Id.
situation and possible statehood thus relegate the island to a status of linguistic colonialism, a problem to which no solution, save independence, presents itself. Any other option deprives Puerto Ricans of either their language and culture, or certain fundamental constitutional and statutory rights.\textsuperscript{151}

There are myriad and complex explanations for the United States’ reluctance to relinquish its ownership of Puerto Rico. These include a desire to control the island’s resources and to maintain a supply of fresh military personnel to fight in its overseas wars, and the tax breaks enjoyed by the major American pharmaceutical companies on the island.\textsuperscript{152} Puerto Ricans, in turn, have ample reasons to desire a strong connection to the United States, including annual injections of federal funds and massive job creation by the federal government. Puerto Ricans must weigh these benefits with the potential loss of their linguistic and cultural identity, while the United States grapples with possible challenges to its language laws if a change in Puerto Rico’s status results in mass migration or immigration to the mainland.

These issues do not lend themselves to easy resolution. But it is clear that Puerto Ricans should not have to continue to struggle for basic legal rights such as a jury made up of a fair cross-section of the community and the ability to communicate in their own language in their own courts. To this end, while the question of Puerto Rico’s status remains pending, the United States should implement certain changes in the law that would lead to a more equitable system immediately.

To ensure that federal juries in the District of Puerto Rico comply with the Sixth Amendment and its statutory equivalent, Congress should suspend the law requiring that all proceedings in the district court take place in English. Instead, the courts should function bilingually, with federal money funding translation into either Spanish or English for all parties, witnesses, attorneys, court reporters, clerks,

\textsuperscript{151} For interesting and comprehensive arguments for Puerto Rico’s independence, see Luis Fuentes-Rohwer, \textit{Bringing Democracy to Puerto Rico: A Rejoinder}, 11 Harv. Latino L. Rev. 157 (2008).

judges, and observers. This includes translation of the record into English for the First Circuit when necessary. The qualifications to serve on a federal jury should reflect this change, allowing for proficiency in either English or Spanish. Creating a bilingual court would lead to greater participation in the federal judicial system by the island’s residents and potentially increase the federal courts’ credibility as an external institution that passes judgment on Puerto Rican citizens, often depriving them of their liberty and property.

Congress should also amend other laws pertaining to language rights, such as the Voting Rights Act, or Title VII, which does not protect individuals from discrimination based on language, to accommodate Puerto Rico’s unique linguistic situation. Courts should be mindful that, instead of asking Puerto Rican citizens to give up their rights for the sake of the “national interest,” the federal judicial system should strive, through flexibility and creativity, to bestow rights on Puerto Ricans, even if the exercise results in a different rule for the territory than the one applicable to the incorporated states. To maintain the integrity of American law and the dignity of Puerto Rico’s citizens, the United States should act swiftly and decisively to conform federal law to the realities of Puerto Rico, and end linguistic colonialism.