Congress of the United States
Washington, DC 20515

September 25, 2024

The Honorable Kristen Clarke
Assistant Attorney General
Voting Section, Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530

The Honorable Brianna Schletz
Executive Director
Office of Grants Management
U.S. Election Assistance Commission
633 3rd Street NW, Suite 200
Washington, D.C. 20001

Dear Assistant Attorney General Clarke and Executive Director Schletz:

I. INTRODUCTION

We are hereby requesting that the Civil Rights Division of the US Department of Justice sends federal poll monitors to oversee the Puerto Rico Elections Board's[1] ("CEE") compliance (or non-compliance) with federal voting rights laws for the island's upcoming November 5 territorial election.

Similarly, we are also asking the US Election Assistance Commission (EAC) to immediately audit, through a detailed examination of the Puerto Rico Elections Board's financial statements and accounts, the Board's use of the $6.9 million it has already received in federal funds for purposes of complying with the strictures of the Help America Vote Act ("HAVA" as amended).[2]

Because this election cycle has already been marred by numerous allegations of fraud, irregularities, and attempts at diluting the right to vote of a sizeable proportion of the local electorate (American citizens by birth) the federal government must do right by the people of Puerto Rico, which in this context means defending their fundamental right to vote per the safeguards and guarantees enshrined in the US Constitution's Fifth and Fourteenth Amendments.[3]

[1] Comisión Estatal de Elecciones ("CEE" Spanish abbreviation).
[2] U.S. Election Assistance Commission, PR Election Security 2023 Annual FFR (2023), https://www.eac.gov/sites/default/files/2024-07/PR_ES_2023_Annual_FFR.pdf.https://www.eac.gov/sites/default/files/2024-07/PR_ES_2023_Annual_FFR.pdf
[3] Most specifically, in the Equal Protection component of the Fifth Amendment and the Equal Protection Clause of the Fourteenth Amendment.

II. THE PUERTO RICO 2020 ELECTORAL CODE RESTS ON INFIRM LEGAL FOUNDATIONS

The Puerto Rico Electoral Code[4] (the "2020 Electoral Code") came to life on June 20, 2020, just five months before the 2020 territorial election. It was passed by the local legislature then controlled by the ruling Partido Nuevo Progresista ("PNP") and subsequently signed into law by then PNP Governor Wanda Vázquez.

The 2020 Electoral Code immediately destroyed the institutional balance that had historically existed among the island's political parties, which together co-governed the CEE on the basis of equality. The 2020 Electoral Code turned the concept of "shared governance" on its head.[5] Placing in the hands of the ruling PNP plenary power over the CEE and, more importantly, over the latter's rule-making authority.[6]

Upon entering into full force and effect, the 2020 Electoral Code opened the door to unimaginable levels of cronyism and corruption. A considerable number of civil servants with invaluable experience at the CEE has been replaced by PNP political hacks, while the minority parties have been consistently denied the support they require.

It is essential to note, moreover, that the 2020 Electoral Code has severely impacted voter registration and participation (both in primaries and general elections), prompting allegations of disenfranchisement. As of July 31, 2024, only 55,147 new voters had been registered --- a 63% decline if compared to the average number of new voters registering over the past three elections.[7]

[4] Código Electoral de Puerto Rico de 2020, Ley Núm. 58 de 20 de junio de 2020, según enmendada (P.R.), (containing amendments incorporated by Ley Núm. 25 de 16 de enero de 2024), https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/58-2020.pdf.

[5] El Banquete total del PNP en la Comisión Estatal de Elecciones controló todo el proceso electoral del 2020, Centro de Periodismo Investigativo (Feb. 4, 2021), https://periodismoinvestigativo.com/2021/02/el-banquete-total-del-pnp-en-la-comision-estatal-de-elecciones-controlo-todo-el-proceso-electoral-del-2020/.

[6] The law helped CEE's president to be from the PNP by establishing that such role must be appointed by the party with the majority of the full vote. Historically, the PNP has secured the majority of the full vote. Further, the law empowered the CEE's president to nominate the directors of the administrative offices, which perform key functions, such as managing early voting, solving issues with voters' electoral transactions, and keeping electoral files. Before the law's enactment, these directors had to be approved by the majority of the electoral commissioners. Additionally, executive positions that gave representation to the minority parties and oversight of administrative offices, such as deputy secretaries and vice presidents, were eliminated.

[7] Histórica baja en la participación e inscripción de nuevos electores, Noticel, https://www.noticel.com/elecciones/la-calle/top-stories/20240827/historica-baja-en-la-participacion-e-inscripcion-de-nuevos-electores/ (Aug. 27, 2024).

III. THE PUERTO RICO ELECTIONS BOARD GROSSLY MISMANAGED THE 2020 TERRITORIAL PRIMARIES AND GENERAL ELECTION

According to the American Civil Liberties Union of Puerto Rico (ACLU-PR)[8], the CEE grossly mismanaged early and absentee voting in the 2020 territorial elections. Because the 2020 Electoral Code came into effect only a month and a half before the 2020 territorial primary, the CEE was pushed to implement procedural changes in no time and with untrained and inexperienced staff. By the time the primaries came, a considerable number of polling stations were simply unavailable.[9]

Similarly, the CEE showed itself utterly unprepared to oversee the flood of voters who by then were requesting early and absentee voting. This resulted in the painstakingly slow processing of early voting and absentee ballot requests, which then opened the door to fraud, as there was no way of guaranteeing that an individual showing up in person had not already used early or absentee voting.[10] Additionally, during the counting at the Roberto Clemente Stadium of early and absentee ballots from the primaries, the CEE failed to secure the voting materials properly,[11] opening the door, yet again, to ballot manipulation.

The CEE's negligence and colossal mismanagement of the 2020 territorial elections is well documented. A scandal arose involving early voting in Unit 77, where 184 suitcases containing thousands of uncounted and unsupervised ballots were detected.[12] An audit by the Puerto Rico Office of Inspector General (OIG) later found that the CEE had certified 838,559 ballots, while it had 894,958 in physical inventory, reflecting a deficit of 56,399 ballots (note that the 2020 gubernatorial election was decided by less than 20,000 votes).[13] Another irregularity resided in the use of ballot machines that could not read the ballots because of deficient maintenance and calibration.[14] Unsurprisingly, the OIG found that the CEE had failed to train a considerable number of the personnel processing early and absentee ballots.[15]

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[8] The American Civil Liberties Union of Puerto Rico (ACLU-PR) acted as an authorized observer of the counting process of early and absentee votes for both the primary and general elections in 2020.
[9] https://dts.poderjudicial.pr/ts/2020/2020tspr82.pdf
[10] Oscar J. Serrano, CEE anticipa "avalancha" de votos adelantados en las primarias, Noticel, https://www.noticel.com/2020/07/17/cee-anticipa-avalancha-de-votos-adelantados-en-las-primarias/ (July 17, 2020).
[11] This finding was made by the observers working for the American Civil Liberties Union (ACLU) of Puerto Rico.
[12] Adriana De Jesús Salamán, Partidos ya sabían de existencia de maletines encontrados según Presidente CEE, Noticel (Nov. 11, 2020), https://www.noticel.com/ahora/elecciones/top-stories/20201111/partidos-ya-sabian-de-existencia-de-maletines-encontrados-segun-presidente-cee/
[13] Oficina de la Inspectora General, Gobierno de Puerto Rico, Informe de Examen OIG-E-21-002: Comisión Estatal de Elecciones (CEE) (Dec. 30, 2020), https://docs.pr.gov/files/OIG/Informes/2020-2021/Pre-intervencion-Examenes/Examenes/Informe%20de%20Examen%20OIG-E-21-002%20Comisión%20Estatal%20de%20Elecciones%20(CEE).pdf
[14] This finding was made by the observers working for the American Civil Liberties Union (ACLU) of Puerto Rico.
[15] *Ibid.*

So disastrous was the 2020 cycle, that the CEE had no choice but to suspend the June 2020 primary halfway through the event in light of the glaring illegalities surrounding it.[16]

IV. THE 2024 ELECTION CYCLE IS ALREADY PLAGUED BY MULTIPLE IRREGULARITIES

In 2024, the CEE invited the Inter-American Union of Electoral Organizations ("UNIORE" for its Spanish acronym) to act as an observer of the island's 2024 primary event.[17] Some of UNIORE's findings echoed those raised by ACLU-PR back in 2020. During the day of the primary (June 2, 2024), shortages of staff were noticed at the polling stations, the malfunctioning of the electronic voting machines was widespread, and in many polling stations that was hardly any protection of ballot secrecy. After the primary, the UNIORE observed that the vote counting process was extremely slow, especially in those polling stations experiencing power outages and the shutting down of electronic voting machines. The observers also warned that ballots and other voting materials were left unattended and poorly organized, raising concerns about the voting process' purity and transparency.[18]

As stated earlier, an incident showcasing the CEE's integrity crisis occurred only a few weeks ago when a CEE employee intentionally leaked confidential information about a voter—a prominent attorney and media figure in Puerto Rico—via WhatsApp.[19] This breach casts doubt on the Puerto Rican electoral system's ability to protect voters' sensitive information, and potentially discourages others from registering to vote out of fear that their personal data might also be mishandled or leaked to third parties in retaliation for their opposition to the PNP.

The CEE's extensive list of irregularities is unacceptable and casts doubts over the electoral system's overall legitimacy, raising more questions than answers. While this list of wrongdoings is unacceptable in itself, it is worse considering that the CEE had $6,951,336.73 in federal cash as of September 30, 2023, for the purpose of complying with HAVA's provisions. Congress enacted this federal statute in 2002 in response to the voter dilution issues that arose during the disputed 2000 U.S. presidential election. Puerto Rico, for its part, has been receiving HAVA

[16] Syra Ortiz-Blanes and Bianca Padró Ocasio, Caos electoral en Puerto Rico: suspenden elecciones primarias | El Nuevo Herald, https://www.elnuevoherald.com/noticias/estados-unidos/article244838117.html (August 10, 2020).
[17] Gloria Ruiz Kuilan, Observadores de 11 paises estarán presentes durante las primarias locales, El Nuevo Dia, https://www.elnuevodia.com/noticias/politica/notas/observadores-de-11-paises-estaran-presentes-durante-las-primarias-locales/ (May 29, 2024).
[18] UNIORE (Unión Interamericana de Organismos Electorales), Informe de la Misión de Observación de la Unión Interamericana de Organismos Electorales (UNIORE): Elecciones Primarias Puerto Rico, 2 de junio de 2024, https://www.scribd.com/document/766277942/Informe-de-la-Mision-de-Observacion-de-la-Union-Interamericana-de-Organismos-Electorales.
[19] Gloria Ruiz Kuilan, CCE indaga filtración de datos electorales, mientras crecen los señalamientos sobre irregularidades a dos meses de las elecciones, El Nuevo Día, https://www.elnuevodia.com/noticias/politica/notas/cee-indaga-filtracion-de-datos-electorales-mientras-crecen-los-senalamientos-sobre-irregularidades-a-dos-meses-de-las-elecciones/ (Sept. 11, 2024).

funding since 2003.[20] Yet, the last time EAC audited the CEE was back in 2017, prior to the approval of the 2020 Electoral Code. In light of these new findings, EAC must conduct an immediate and thorough audit of the CEE's use of the HAVA funds.

V. CONCLUSION: ACTION BY THE U.S. DEPARTMENT OF JUSTICEJ AND THE U.S. ELECTION ASSISTANCE COMMISSION IS OF THE ESSENCE IN ORDER TO VINDICATE THE FUNDAMENTAL RIGHT TO VOTE OF THE PEOPLE OF PUERTO RICO

While the right to vote in territorial elections is "nowhere expressly mentioned in the Constitution," "once the franchise is granted to the electorate, lines may not be drawn which are inconsistent with equal protection." *Harper v. Virginia State Board of Elections* 383 U.S. 663, 665 (1966) (Justice Douglas). It is precisely against this background that the undersigned request that the U.S. Department of Justice sends federal poll monitors to Puerto Rico, and that the U.S. Election Assistance Commission undertakes an in-depth audit of Puerto Rico's CEE use of the millions of dollars it has received by way of HAVA federal funds.

The DOJ and EAC should pay heed to the warning shot fired by Associate Justice Ángel Colón Pérez of the Puerto Rico Supreme Court in his dissenting opinion in *Valentín v. CEE, et al*, 205 D.P.R. 836, 875-76 (2020):

> "Ballot containers appearing. Ballot containers to be looked for. Ballots counted. Ballots uncounted. Votes adjudicated. Votes unadjudicated. Tallied records. Untallied records. "Winning" candidates certified. "Winning" candidates uncertified. Fraud knocks at the door. Some are willing to let it in. A leaderless Elections Board (CEE) — controlled at all levels by the ruling political party under the new Electoral Code — looks the other way. Silence from most of the Court. An illegitimate government, the outcome?"

Voters in Puerto Rico have faced unprecedented obstacles in the exercise of their fundamental right to vote, and they deserve all the support of the federal government to remedy this untenable situation. We reiterate the need for the U.S. Department of Justice to send federal poll monitors to oversee the upcoming territorial election and for the U.S. Election Assistance Commission to conduct a thorough audit of the CEE's use of HAVA funds. Doing right by Puerto Rico at the present hour must necessarily mean protecting its fragile democracy.

[20] Help America Vote Act of 2002, 42 U.S.C. § 15301 (2002) (2010 revisions) (Update to Puerto Rico's State Plan - initial plan submitted in Aug. 2003; two subsequent plan revisions submitted in 2004 and 2005) (Dec. 10, 2009), https://ww2.ceepur.org/sites/ComisionEE/es-pr/Documentos%20HAVA/Help%20America%20Vote%20Act%20of%202002%20-%20Rev.%202010.pdf. https://ww2.ceepur.org/sites/ComisionEE/es-pr/Documentos%20HAVA/Help%20America%20Vote%20Act%20of%202002%20-%20Rev.%202010.pdf

Please contact Renata Beca-Barragán from my office at Renata.beca-barragan@mail.house.gov and Rachel Román at rachel.roman@mail.house.gov rachel.roman@mail.house.go for any questions you may have regarding this pressing matter.

The time to act is now.

Sincerely,

Nydia M. Velázquez
Member of Congress

Grace Meng
Member of Congress

Delia C. Ramirez
Member of Congress

Raúl M. Grijalva
Member of Congress

Alexandria Ocasio-Cortez
Member of Congress