

**U.S. Military Policy and Vieques:
The Constitutionality and Consequences of Bombing a Nation**

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History of Colonialism in Puerto Rico and the Origins of Status

“Under the Constitution of the United States, no power is given to the federal government to acquire territory to be governed permanently as colonies.”[\[1\]](#)

Puerto Rico has been a colony for half a millennium, first under control of Spain and then for the past 100 years as a territory of the United States after the Spanish-American War. However U.S. interests in the island nation began in 1823 with the infamous Monroe Doctrine. President Monroe’s distaste for European involvement and continued colonial expansion in the Western Hemisphere, which was seen as threat to national security, was expressed by veiled threats warning Europe not to interfere with U.S. interests in the Caribbean. Puerto Rico’s central location was considered key to aiding in U.S. military operations in the region.

Puerto Rico’s centuries-long struggle for independence under Spanish rule culminated in the Grito de Lares in 1868. Hundreds of farmers, day laborers and former slaves led a rebellion asserting their independence from Spanish rule and demanding that Spain recognize their sovereignty.[\[2\]](#) However without the support of their fellow Puerto Ricans to resist imperialism as well, the protestors were soon squelched by their Spanish rulers. The event still serves as a symbolic representation to many of the eternal desire of Puerto Ricans to be free from colonial rule and to assert their independence.

Along with the Phillipines and Guam, Puerto Rico was given to the United States under the terms of the Treaty of Paris, ending the Spanish-American war and transferring one colonial rule for another. When General Nelson Miles landed on the shores of Guanica promising freedom to the people of Puerto Rico, there was a genuine hope that his words would ring true. However, soon after the island nation would realize that their status would not be resolved. Two years later Congress passed the Organic Act of 1900, also known as the Foraker Act, which established civilian government in Puerto Rico and Puerto Rican citizenship. The Act also made all federal laws applicable to Puerto Rico.[\[3\]](#)

While Puerto Ricans clearly wanted the nature of their newly formed relationship with the United States resolved, the United States for their part was less certain. A theme that carries true to this day[4], it became clear that the federal government neither wanted to grant independence to the island nor grant them the benefits that came with statehood. There wasn't even consensus as to what rights Puerto Ricans should be granted as newly acquired territory of the US. One political leader at the time commented that "our Constitution was made by a civilized and educated people. It provides guaranties of personal security which seem ill-adapted to the conditions...that prevail in many parts of our new possessions. To give...the ignorant and lawless brigands that infest Puerto Rico...the benefits of such immunities...would, of course, be a series obstacle to the maintenance there of an efficient government." [5]

Ever since the United States took possession of Puerto Rico in 1898, the issue of status and the nature of the island's relationship with the U.S. has dominated political and legal debates. Initially, the two seemingly obvious options – statehood or independence[6] – were never seriously considered[7], and eventually the island elected its current status as a commonwealth, though intending it to be temporary. Congress' authority to take possession of Puerto Rico arises under the Territorial Clause of the Constitution[8], although it is unclear if that provision was intended for unending colonial rule over a separate nation.

In the Insular Cases[9], the Supreme Court ruled that Congress has the ability via the Territorial Clause to determine what aspects of the Constitution apply to territories. Justice White's concurrence in *Downes v. Bidwell*[10] stated that other provisions in the Constitution are applicable to a territory under the jurisdiction of the U.S. only if Congress has "incorporated" that territory so that it became "an integral part" of the United States.

The Insular Cases dealt with the question of whether the Constitution follows the flag, meaning whether constitutional rights applied to the citizens of newly acquired territories that were deemed to be a part of the United States but who were not themselves necessarily United States citizens. Through a series of cases where the court tried to determine how the territories fit into the constitutional framework, the court defined the scope of the United States' relationship with Puerto Rico[11]. The court ultimately also found that not all constitutional rights were afforded to certain territories, including Puerto Rico.[12] Former Chief Justice of the Supreme Court of Puerto Rico, Jose Trías Monge said the court's message via the Insular Cases was that "there is nothing wrong when a democracy such as the United States engages in the business of governing other [subjects who have not participated in their democratic election process]" because not all "people are created equal, some races [are] superior to others." [13] However Justice White's concurrence in *Downes v. Bidwell* said that the cases were to determine whether a particular provision of the Constitution was applicable given "an inquiry into the situation of the territory and its relations to the United States." [14] According to Justice White what determined whether the provision applied was the status of the territory, namely if it had been "incorporated" into the U.S.[15] The holding of *Downes*, according to some scholars, suggests that the court rejected "a long-standing *assumption* that territorial status must, eventually, lead to a statehood." [16]

However in 1917, in response to a rise of nationalist sentiment advocating the independence of the island, congress passed the Jones-Shafroth Act granting Puerto Ricans on the island United States citizenship.[17] However, the act did not pass without the resistance of some who still believed that the territories, composed primarily of people of color, were not deserving of citizenship and self-determination.[18] The Act did pass, however, and it established a

bicameral legislature in Puerto Rico whose legislation could still be vetoed by the President. The Act came in the middle of World War I, which led some to speculate it was partially driven by the need for more American troops to be sent to war, which the President could get from the newly established American citizens on the island who were no longer aliens and unreachable by the draft. Despite the pronouncement of citizenship though, the Act didn't resolve the eternal question of status. In fact, the establishment of local self-government with the consent of the people in the island can be unilaterally revoked by the U.S. Congress, and Congress can also withdraw U.S. citizenship for residents of Puerto Rico at any time, for a legitimate federal purpose.^[19] Laws made by the Puerto Rican legislature are not binding upon the federal government, including plebiscites or referendums.^[20] Additionally, like all other territories, Puerto Ricans cannot vote for President of the United States nor do they have any representatives in Congress who speak on their behalf. The only presence at the federal level that they maintain is a non-voting Resident Commissioner who attempts to represent the island's interest in federal legislation that impacts the residents on the island.^[21]

The conundrum of desiring sovereignty while maintaining ties to the United States^[22] led to the creation of the current commonwealth status in 1952, called Estado Libre Asociado de Puerto Rico. This new status was a legal fiction with no constitutionally significant meaning created by Puerto Rico's first elected governor, Luis Muñoz Marín^[23] could be seen as a compromise between independence and statehood. Puerto Ricans were able to maintain American citizenship and ties with the mainland while maintaining elements of sovereignty and preserving their language and culture. This new Commonwealth status didn't ultimately solve the issue of status, and still left some questions regarding the permanent relationship Puerto Rico maintains with the U.S. unresolved. The Commonwealth has said to be sovereign "over matters not ruled by the [federal] Constitution"^[24] yet what matters those are have been left unexplored. Federal laws still govern Puerto Rico and the principles of federalism are applicable as well. Because of the supremacy of federal law on the island, critiques of the Commonwealth status have called Puerto Rico a colony, the oldest one in the world today.^[25]

However, some argue that the U.S. has increasingly regarded Puerto Rico as a state in various respects. In 1966 President Lyndon Johnson transferred the Art. IV federal court in Puerto Rico to an Art. III court, the first time since congress established an Art. III court outside the boundaries of the states besides Washington D.C.^[26] In 1992, then President George H. Bush directed Executive agencies to treat Puerto Rico as a state for administrative purposes.^[27]

The issue of status is fundamental to any analysis of U.S. – Puerto Rico relations because of the role that colonialism continues to play. Puerto Rico's sovereignty over certain areas of governance, or lack thereof, is directly tied to their continued colonial status as subjects of another nation's laws. Several plebiscites have been administered in the island polling citizens on their preferences regarding status, however none of them are binding on Congress. In 1998 Representative Don Young (R – AL) introduced legislation that would allow the people of Puerto Rico to decide on their future status^[28], but after a vote in the House the bill never made it to a vote in the Senate and the bill has not successfully been re-introduced^[29]. In response to Congress' inaction to move the bill to a vote, then pro-statehood Governor Pedro Rosello initiated his own plebiscite on the island offering five options including statehood, independence, or a "none of the above" choice, the latter of which ultimately won^[30]. Like the two plebiscites before it though, the results of this one was non-binding on Congress.^[31] After Congress failed to adequately address Puerto Rico's status, the Executive attempted to under President George

H. W. Bush. In 2005 and 2007, the [President's Task Force on Puerto Rico's Status](#)^[32] issued reports on options to resolve the nature of U.S. – Puerto Rico relations. The report found that the Constitution does not allow for a mechanism “to bind future Congresses to any particular arrangement for Puerto Rico as a Commonwealth” without an amendment to the Constitution of the United States and Puerto Rico “does not meet the criteria for any of the options for full self government.”^[33] Governor Anibal Acevedo-Vila rejected the reports’ findings, arguing for him and his party that an “enhanced” commonwealth status is legitimate options that would allow for both U.S. citizenship and Puerto Rican sovereignty to co-exist.

The status issue also is of concern to the international community. Since 1972 the United Nations’ Decolonization Committee has called for sovereignty of Puerto Rico and the right to self-determination for its citizens, in addition to calling for an end to the military presence on the island. After a brief hiatus after the birth of the Commonwealth status, the issue of self-determination and self-governance of Puerto Rico continues to be presented before the Committee every two years where Puerto Ricans call on the world to pressure Congress to vote on and resolve their indefinite colonial status.^[34]

The Military Occupation of an Island: Vieques and the U.S Navy

U.S. control over Puerto Rico is visible not only in electoral politics, but also militarily. Puerto Rico has played a key role in military operations, both in terms of the number of Puerto Rican soldiers who have fought on behalf of the United States since U.S. citizenship was bestowed^[35], to the numerous naval and air stations located throughout the island, including Vieques.

It may come as no surprise to some to see a strong United States military presence in Puerto Rico and Vieques because when the United States took control of Puerto Rico in 1898 it initially established a military government.^[36] However the United State’s real interest militarily in Vieques arose in 1942, in the middle of World War II. The government needed a training ground for troops to engage in simulated warfare to practice against the German forces.^[37] In 1948, President Roosevelt issued an Executive Order establishing a Navy base in Culebra^[38], a sister island to Vieques off the coast of the main island of Puerto Rico^[39]. In 1975 a separate Executive Order was issued by President Ford ordering the Navy out of Culebra yet never specifying where their new base should be.^[40] The Navy had already established a base in Vieques, but upon being expelled from Culebra decided to increase its efforts in Vieques given their asserted need for a facility where troops could practice and be trained using live ammunition.^[41]

Initially, the Navy “purchased”^[42] the land in Vieques in 1942 after the Puerto Rican legislature approved giving 24,000 acres of the island’s 33,000 acres to the Navy. In reality the Navy expropriated the land, paying as little as \$47 - \$53^[43] an acre to eight landowners and taking over $\frac{3}{4}$ of the island, limiting its use for civilians. Some were simply handed a check for \$30 - \$50 for the cost of their home and land while bulldozers moved in to tear them down.^[44] This expropriation of land displaced over 3,000 Viequenses who were forced to move to the center of the island, while another 3,000 were forced to leave Vieques for the main island of Puerto Rico or the nearby U.S. Virgin Islands.^[45] In addition, the Navy paid no fees to Puerto Rico for use of the base in Vieques, nor pay taxes to the municipality.^[46] The new naval site was divided into two facilities that covered each end of the island, leaving those in between sandwiched. On the west end of Vieques magazines with loaded ammunition were stored, and

on the east end there was a live range for testing bombs and other biochemical warfare, including new bio technology being developed by the U.S. and other countries to whom the U.S. rented their facilities to for testing.[47] At one point in history, the Navy even prepared a plan “for the abolition of the municipality of Vieques”, at which point Governor Muñoz Marin intervened and wrote to President Kennedy, warning him of the political, social and human harm to the island.[48]

For most of its time on the island the Navy had permission to bomb 180 days a year.[49] The Navy admitted to exploding up to 20 bombs and shells a minute at times.[50] In 1998 alone, over 23,000 bombs were dropped in Vieques at the Atlantic Fleet Weapons Training Facility.[51] The Marines also used the site to practice amphibious landings, supported by warplanes and ships.[52]

The Navy’s presence on Vieques was never truly welcome. The fishermen of Vieques, whose livelihood depended on the quality and quantity of fish in the surrounding waters, initiated a wave of protests and resistance against the Navy’s activities as they saw the number of poisoned fish in the waters increase. In 1978 they filed suit in federal district court alleging the bombardment was destroying their livelihood. After the fishermen filed, in 1978 the Governor of Puerto Rico filed suit to enjoin the United States Navy from using portions of lands and water on Vieques for the purposes of carrying out Navy training operations. In 1979 the United States District Court denied the Commonwealth’s request for a comprehensive injunction, which was upheld by the Supreme Court.[53] Later in 1983 the Governor of Puerto Rico, Carlos Romero Barceló and the Acting Secretary of the Navy, James Goodrich, signed a Memorandum of Understanding that covered four broad areas: Community Assistance, Land Use, Ordinance Delivery in the Inner Range and Environmental Matters.[54] However the bombing practices continued, to the detriment of the residents of Vieques. Citizens have also complained of prostitution, violence and high rates of intoxication among officers, resulting in harassment of local residents – all of which residents attribute to the presence and antics of Navy personnel.[55]

The resistance movement gained strength overnight when in April, 1999 a Navy security guard and Viequense, David Sáles Rodríguez, was killed by an errant bomb.[56] Protests erupted across the island and mainland against the Navy. Massive demonstrations were held across major cities in the United States asking the Navy to leave the island and to cease all bombing practices. In 2000, the National Puerto Rican Day Parade, amidst two million participants, dedicated the parade to the island of Vieques. Numerous political figures and civil rights activists[57] were arrested and jailed for exhibiting solidarity with the island and protesting the Navy’s presence.

One month later, in response to a FOIA request by the Military Toxics Project the Navy admitted to having fired DU projectiles on Vieques as well.[58] On May 11, 1999 the then Governor of Puerto Rico, Pedro Rosello, established a special commission on Vieques to study the impact of the Navy, the effects of the Navy’s activities, and the strategies and alternatives available to the Governor to halt Navy activities.[59] President Clinton also established his own panel to examine the Navy’s options in Vieques and elsewhere[60], and in December, 1999 Clinton offered a “package” in which the Navy would be allowed to continue training for five more years in exchange for federal dollars totaling \$40 million to municipality of Vieques.[61] Although Governor Pedro Rosello initially rejected this offer, in 2000 he reached a compromise with the President in what became known as the Rosello-Clinton

agreement.[62] The agreement as offered by the White House called for a vote by the people of Vieques to decide the fate of the Navy, but it also stipulated that Rosello would agree to not sue the Department of Defense and would work with federal agents in removing protestors who were staked out on live-fire zone areas.[63] Finally on June 14, 2001 amid mounting political pressure and a law suit[64], President George W. Bush the Navy officially decided to withdraw from Vieques, superseding the Rosello-Clinton agreement and leaving massive environmental and health hazards and little economic recovery for a town that could no longer use ¾ of its land for civilian use.[65]

The Navy has always maintained the position that their occupation of Vieques is central to their military strategy for training troops, testing out warfare and stabilizing the region. At the naval base, war games can be played out which prepare soldiers for real-life scenarios and the latest in biochemical warfare can be tested with relatively little harm. Military presence in Puerto Rico is also crucial to monitoring activities in the Caribbean and Latin America, including hostile interests in Cuba, Venezuela and in Central America.[66]

Supporters of the base have assured the public that no similar training ground exists for the Navy to adequately prepare soldiers for live combat, and that the loss of the facilities translate to a seriously compromised military strategy and chance of success in actual combat.[67] In addition, they have dismissed the claims of Viequenses regarding the health hazards and quality of life concerns they've asserted for years. "This facility, in the only location in the Atlantic where realistic multidimensional training can be conducted, has been safely operated for 58 years without a single off- range accident... The Vieques range provides acreage large enough to permit the maneuver of Marine forces, and aerial and ship gunfire, without danger to the adjacent civilian population. The Vieques Weapons Range...comprises approximately 900 acres, less than 3 percent of the total land-mass of the island...In nearly 60 years of range operations, not one civilian living or working off the range has ever been killed or placed at risk." [68] However dispute these assertions of military need, it is rarely disputed that the bombs used for practice that have severely disrupted the well-being of Viequenses.[69]

The Consequences of Colonialism: Current Struggles for Redressability in the Face of Federal Inaction

Confronted with their grim reality for six decades, the people of Vieques have had little recourse to seek redress for their grievances. They are not allowed to vote for President, have no influence over the Executive branch's decisions regarding the military, and cannot hold the President accountable politically via the electoral process. Courts have been dismissive of suits challenging military policy and decisions against the federal government under the political question doctrine.[70] However, whereas the traditional solution would be to take up policy issues with elected officials in Congress, Viequenses have no congressional representation to advocate on behalf of their interests. Thus decisions made regarding the future of Vieques are done with relatively little political consequences. The only strategy that has worked to date has been consistent civil disobedience and public shaming of the government. As noted by one author, "Vieques' position as an inhabited bombing range is fundamentally an expression of Puerto Rico's position as a U.S. colony lacking political power, representation, and voice over its own destiny." [71]

The environmental, economic and health effects that 60 years of bombing and biochemical warfare have left on the people of Vieques is unparalleled in our country's history.[72] Vieques

residents have a 27% higher cancer rate than their counterparts in the main island of Puerto Rico[73] from the use of toxic chemicals and biological warfare, many of which have since been banned.[74] Viequeses have elevated risks of asthma (16 percent higher than mainland Puerto Rico); cancer (27 percent); diabetes (28 percent); and heart disease (31 percent).[75] Many often complain that the noise impact alone at all times of day and night is painful enough to bear.[76] “The vibrations crack buildings and cause a rumbling that can be heard as far as 14 miles away on St. Thomas.”[77] Even the Environmental Protection Agency admitted that the Navy’s decades-long military exercises have likely impacted the health and environment of residents of the island.[78] The health and environmental consequences of the Navy’s presence and lack of appropriate and timely clean-up activities led the Puerto Rican legislature earlier this year to call on President Obama to urge the appropriate federal agencies to expedite the clean up and to adequately compensate Viequeses for conditions they’ve suffered.[79]

In accordance with the 2001 Defense Authorization Act, the Navy turned over 8,148 acres of land on the western end of Vieques to the Municipality of Vieques, the Department of the Interior (FWS) and the Puerto Rico Conservation Trust.[80] The Navy transferred 3,100 acres to the Department of the Interior, which is managed by the US Fish & Wildlife Service and by April 30, 2003 stated that it had transferred all real property on the eastern end of the island to DOI.[81] Under the law, Department of Interior is required to develop the land for use as a wildlife refuge, with the former live impact area to be designated a wilderness area and closed to the public. The Department of the Navy is to retain responsibility for the environmental cleanup of this property. The final extent and cost of the cleanup, expected to cost over \$250 million[82], is linked to land use plans being developed by Department of Interior in compliance with the National Wildlife Refuge Act and the Defense Environmental Restoration Program.

The Environmental Protection Agency is the responsible agency for overseeing the cleanup[83] and has instituted enforcement actions on Vieques, a Superfund site[84], to require the Navy to conduct groundwater studies and clean up any contamination it found.[85] In 2002 the EPA initiated work plans for investigations of formerly Navy-owned areas on the eastern end of Vieques per the Resource Conservation and Recovery Act (RCRA), and pursuant to a January 2000 Administrative Order (the Order). In their response to public comments received the agency acknowledged that revisions were also made to the community involvement work plan, including adjustments in the interview process to include small groups interviews, and the comment period was extended from 30 days to 60 to allow for additional input.[86]

Of the land on the western end of the island that’s been turned over to the Department of the Interior via the Fish and Wildlife Service, most of it has been deemed a wildlife refuge and is inaccessible for citizen use. Critics of the land use plan by the FWS complain that “by requiring that the 900-acre impact area be managed by FWS as a “wilderness area”, and the remaining lands be run as a wildlife refuge, Congress undermined environmental cleanup, since the extent of cleanup is normally determined by the intensity of civilian uses planned for the land.”[87] Additionally “the impact area, having been bombed for 60 years, is totally inconsistent with the kind of land defined as wilderness in the Wilderness Act...The restrictions on use in the Wilderness Act were designed for areas ‘where the earth and its community of life are untrammelled by man.’”[88]

The Navy maintains that up to 9,000 of the 14,500-acre site may still contain live munitions and it could take up to 10 years to remove them, likely by detonating them one by one and continuing to cause the same health and noise hazards to residents.[89] Since the Navy pulled

out, “technicians have detonated more than 10.6 tons of explosives and cleared 300 acres of the Navy's 14,500-acre former grounds.

Researchers estimate that 8,750 more acres may contain leftover munitions, some of which date from World War II and some of which are more than 2,000 pounds in size. Cleanup has cost \$53.5 million so far and will likely continue through 2015 and beyond.”[\[90\]](#) The Navy argues that to make the cleanup safer, Puerto Rico should suspend the law against open burning, so that vegetation in certain areas operated by the Navy can be set ablaze, however some local scientists and citizens dispute this as the most appropriate means as it may cause more health concerns for residents.[\[91\]](#)

Agency for Toxic Substances and Disease Registry's Report

In spite of extensive documentation of the health and environmental contamination that have resulted from the Navy's military exercises involving dangerous biochemical warfare, the Agency for Toxic Substances and Disease Registry (ATSDR), a federal agency housed under the Department of Health and Human Services, issued a report in 2003 stating that there was no connection between the two. The report has been heavily disputed and argued, both by citizens and Puerto Rican scientists questioning the validity of the data the report was based on. The Navy has used these studies suggesting that the toxic substances they used do not pose a health risk to Viequenses as the basis for their position that they are not responsible for a full and adequate clean-up and decontamination.[\[92\]](#)

On March 12, 2009 the agency's director defended the report before the congressional Sub-Commission on Investigation of the Science and Technology Committee. Sub-committee member Congressman Steve Rothman (D-NJ), later sent a letter to ATSDR stating that the agency's credibility was seriously faltering and requested that the agency conduct a new investigation with fresh data.[\[93\]](#) In response to the Rothman's request, and due to the culmination of the public pressure on the agency to re-examine its findings, the agency conducted a town hall meeting with director Dr. Howard Frumkin in Vieques on August 12, 2009 where citizens expressed outrage at the agency's blatant disregard for their very real suffering. Later the agency invited Puerto Rican scientists, who had conducted their own studies that disputed the agency's reported findings, to Atlanta on November 5-6, 2009. Since these meetings the agency has issued public statements stating first a re-evaluation of their own report[\[94\]](#), and later revealed a change in position, citing now that there is a substantial belief that the contamination and illnesses afflicting Viequenses are a result from the Navy's on-going use of toxic substances.[\[95\]](#)

The ATSDR is not an agency that adjudicates claims, rather it promulgates rules via rule-making, thus exhaustion of administrative remedies is inapplicable in this case. It is also unclear at this time how ATSDR intends to use the report or to what extent it will set forth policy, both for the agency as well as other departments. If Viequenses wish to challenge a rule that may be forthcoming, it is assumed that the agency would engage in proper notice and comment rulemaking period to do so given the agency's stated intentions to make their on-going reports and processes as inclusive as possible.[\[96\]](#)

Tort Claim and Reparations

In addition to seeking public acknowledgement by a federal agency for the harms committed upon the people of Vieques, a private law firm based out of Mississippi has filed a massive tort

suit for negligence and wrongful conduct under the Federal Tort Claims Act^[97] against the Department of Defense on behalf of 7,000 of the now 10,000 residents of Vieques.^[98] Among the claims is that when the Navy took over ¾ of the island, that land could no longer be used for agricultural or tourism needs, which would have generated much needed revenue for the municipality and citizenry.^[99] Additionally Viequeses lost their homes and property and were never adequately compensated. Now much of the land is unusable by residents, both because bombs are still being detonated in live-fire zones and because the U.S. Fish and Wildlife Service has taken over the majority of the land and turned it into a preserve.

The military acknowledged the restraints imposed on them by environmental laws when Secretary of Defense Donald Rumsfeld twice sought exemptions from Congress for environmental laws that encroached upon military exercises.^[100] In addition to exposing this behavior, the claim also alleges other unlawful conduct, including violations under the Federal Facilities Compliance Act (“FFCA”)^[101] for failing to properly manage a waste disposal site on Vieques^[102] and failing to obtain a permit to operate an open burning/open detonation facility under the Resource Conservation and Recovery Act (“RCRA”).^[103] Additionally, specific conduct prohibited by certain ranking officers is cited as violating statutory code.^[104] The FTCA requires that plaintiffs submit claims in writing to the appropriate federal agency (in the instant case, the Department of the Navy) within two years after their claims accrued, which they did. Plaintiffs initially sought redress through the administrative claims process and exhausted all available administrative remedies.^[105] The Navy’s denial of claim letter neglected to raise the discretionary function exception as a defense, and denied the claims on the merits. Additionally repeated failures to exercise responsible stewardship of their facilities would not have been protected by the discretionary function in any regard.^[106]

This case was originally filed in district court in Washington D.C. and then transferred to federal district court in Puerto Rico for lack of venue. Initially the Department of Justice moved to dismiss under sovereign immunity, however the suit seems to have survived the motion and that defense does not seem to have resurfaced in the pleadings.^[107] Likely mindful of how previous suits have fared under the political question doctrine, the plaintiffs assert that they are not challenging the military’s decision to set up a naval station in Vieques, rather that they have been grossly negligent in their conduct once there.^[108] Although the Navy may not be required to heed the agency’s findings, ATSDR’s shift in position on the connection between the Navy’s exercises and contamination seems to have considerably weakened the Navy’s defense given that the agency’s position up until now has constituted the scientific foundation for their position of non-culpability.

Conclusion

After 60 years of being exposed to bombing, chemical warfare, abrasively loud noises, and expropriation without sufficient political recourse to influence decisions affecting their lives, Viequeses are now fighting for redress via a federal administrative agency and in civil court for damages. It is too early to tell how this David vs. Goliath struggle will end, but as the now well-known phrase that made their cause known goes, we continue to hope for *paz para Vieques*.

- [1] Congressional Record, 55th Congress, first session, February 6, 1899
- [2] Mario Murillo, *Islands of Resistance: Puerto Rico, Vieques and U.S. Policy*, 21 (Seven Stories Press, 2001).
- [3] Library of Congress, <http://www.loc.gov/rr/hispanic/1898/foraker.html>.
- [4] In a recent federal district case, the court sheds light on the disparate treatment directed at Puerto Rico and revives the issue of the constitutionality of Puerto Rico's undecided status. Judge Gustavo Gelpi argues that the presence of Art. III courts on the island, the grant of U.S. citizenship to Puerto Ricans and the listing of Puerto Ricans in the armed forces resemble a relationship of statehood to the U.S. versus continued colonialism. *Consejo de Salud Playa de Ponce v. Rullan*, 586 F.Supp.2d 22 (D.P. R., 2008)
- [5] Simeon E. Baldwin of Yale Law School and former judge and Mayor of New Haven, CT (1899). Almost a century later those same sentiments would be echoed by Chief Anne Bradford, the Navy's former public relations officer. When providing an interview and tour of the Vieques base, she told a journalist "[Viequenses] are not used to doing things on a big scale...they don't understand what the Navy is about. It's like a third world country. They can't understand – it's like expounding on Newton's theory to an eighteen-month-old baby." (Katherine T. McCaffrey, *Military Power and Popular Protest: The U.S. Navy in Vieques, Puerto Rico*, 114 (Rutgers University Press, 1996)).
- [6] Under the Territories Clause of the U.S. Constitution (Art. IV, sec. 3, cl. 2), Congress can "dispose of" Puerto Rico and allow it to become independent of the U.S. or, under the Admissions Clause (Art. IV, Sec. 3, cl. 1) it can be admitted as a state.
- [7] Christina Duffy Burnett & Burke Marshall, *Foreign in a Domestic Sense: Puerto Rico, American Expansion and the Constitution*, 2 (Duke University Press, 2001).
- [8] Art. IV, Sect. 3, cl.2.
- [9] Cases that arose between 1901 – 1922 that concerned the newly acquired territories per the Treaty of Paris.
- [10] *Downes v. Bidell*, 182 U.S. 244 (1901)
- [11] E.g., *De Lima v. Bidell*, 182 U.S. 1 (1901) (Puerto Rico is not a foreign country for purposes of the tariff laws); *Downes v. Bidell*, 182 U.S. 244 (1901) (Puerto Rico was a territory subject to the jurisdiction of the US thus Congress could constitutionally impose a tax on goods shipped from there); *Huus v. New York & Porto Rico S.S. Co.*, 182 U.S. 392 (1901) (ports in Puerto Rico were ports within the United States for purposes of the United States coastwise laws); *Goetze v. United States*, 182 U.S. 221 (1901) (Hawaii and Puerto Rico were not foreign countries for purposes of the tariff laws of the United States).
- [12] E.g., *Balzac v. Porto Rico* (1922) (The Sixth Amendment was not required in territories that had not been "incorporated" into the United States, as distinguished from territories merely belonging to the United States. The court said "[w]e find [nothing] from which we can infer the purpose of Congress to incorporate Porto Rico into the United States with the consequences which would follow."); *González v Williams* (1903) (Challenged a policy that Puerto Ricans were aliens and subject to immigration policies. The Supreme Court determined González was not an alien, however the court declined to declare that she was a U.S. citizen. The question of citizenship remained unresolved and Puerto Ricans came to be known as "noncitizen nationals.")
- [13] José Trias Monge, *Injustice According to Law: The Insular Cases and Other Oddities* (As cited in *Foreign in a Domestic Sense: Puerto Rico, The American Expansion, and the Constitution*, Christina Duffy Burnett and Burke Marshall, 228 (Duke University Press, 2001))
- [14] Duffy Burnett, supra, at 9 (citing *Downes v. Bidwell*, 182 U.S. 247, 293 (White.J., concurring))
- [15] Id. at 9.
- [16] Id. at 12. The author goes on to say that "nothing in the Constitution, after all, actually requires Congress to make a state out of a territory...By using incorporation as the basis of an affirmative constitutional distinction between two categories of territories, Justice White separated those to which Congress had promised a final status from those from which Congress had withheld any promise at all."

[17] Ch. 145, §5, 39 Stat. 951 (1917), codified as 48 U.S.C. § 737 (2000). The Act is also known as the Jones Act of Puerto Rico.

[18] Juan Perea, *Racism and Puerto Rican Citizenship, Foreign in a Domestic Sense: Puerto Rico, American Expansion and the Constitution*, 160-161 (Duke University Press, 2001) (citing *Cong. Rec.*, 62nd Cong., 2d sess. (March 4, 1912): 2798 (remarks of Rep. Slayton). Perea quotes Representative Slayton as arguing that “the people of Porto Rico have not the slightest conception of self-government...Porto Rico is populated by a mixed race. About 30 percent are pure African....but [really] 75 to 80 percent of the population [was] pure African or had an African strain in their blood.”

[19] Puerto Rico Status Field Hearing. Committee on Resources, U.S. House of Representatives, 105th Congress. April 19, 1997.

[20] The island has often used these means to poll residents of Puerto Rico as to their preferences on status, however any ultimate outcome is not binding on Congress thus these plebiscites often serve more as opinion polls.

[21] The current Resident Commissioner is Pedro Pierluisi.

[22] By the early 1950’s thousands of Puerto Ricans had already left the island for the mainland, primarily settling in New York City and surrounding communities, thus maintaining ties to the mainland became increasingly important.

[23] Marín also created the third political party in Puerto Rico, the Popular Democratic Party, or “Commonwealth” Party.

[24] Duffy Burnett, *supra*, at 18 (citing e.g. *Posadas de Puerto Rico Associates v. Tourism Co.*, 478 U.S. 328 (1986); *Alfred L. Snapp & Son v. Puerto Rico*, 458 U.S. 592 (1982); *Rodriguez v. Popular Democratic Party*, 457 U.S. 1 (1982); *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663 (1974).)

[25] Luis Fuentes-Rohwer, *Symposium: Latinos and Latinas at the Epicenter of Contemporary Legal Discourses. Latino Identity, Citizenship and the State: The Land that Democratic Theory Forgot*, 83 Ind. L.J. 1525 (2008). Fuentes-Rohwer engages in a historical and legal analysis and political theory and concludes that the status of Puerto Rico is illegitimate and contradictory to democratic values. He questions the relationship of territorial acquisitions to self-determination and whether a democracy can impose colonial status on another people. He examines how race, mistrust, and plenary power have shaped relations between the United States and Puerto Rico for the past 110 years and ultimately concludes that democratic theory core principles do not even oblige the Puerto Rican people to obey U.S. imposed law. He argues it is imperative for the United States and Puerto Rico to reconfigure their political relationship and that colonial status is unconstitutional.

[26] 80 Stat. 764

[27] Memorandum for the Heads of Executive Departments and Agencies, 57 F.R. 57093 (Nov. 30, 1992).

[28] H.R. 856, 105th Cong. (1998). The bill was called the “Young Bill” and would introduce a plebiscite on the island for only statehood or independence. It was later amended to add ELA as a temporary status that would only last up to ten years. While the bill was designed to give the people of the island a voice over their future, Congress still would not be bound by the results and the U.S. would still be able to maintain its military bases on the island, even if Puerto Rico was granted independence.

[29] Some commentaries have noted that congressional indecision over the status stems from reluctance by conservatives to grant statehood to Puerto Rico, who would likely gain seven congressional seats in the House of Representatives and two Senators, all of whom would likely be Democrats.

[30] The plebiscite in reality was far more complicated than the short synopsis may reveal. The author merely intends to ensure that it is included as part of the history of the status debate. To view actual results from the plebiscite *see* Puerto Rico State Electoral Commission: Official Results for the 1998 Political-Status Plebiscite at <http://eleccionespuertorico.org/cgi-bin/eventos.cgi?evento=1998>.

[31] Murillo, *supra*, at 39. Murillo hypothesizes that the *plebiscito criollo* was Rosello's attempt to show that Puerto Rico was ready for statehood, while the result of "none of the above" seemed to prove the opposite – that there was no consensus. However, Christina Duffy Burnett argues that while Congress viewed the plebiscite as showing Puerto Rican indecision, it is really the Puerto Rican people who were fed up with Congress' indecision, since any result of a plebiscite would still be non-binding on them. (Duffy Burnett, *supra*, at 23).

[32] The Task Force was originally created by President Clinton via E.O. 13, 183 (Dec. 23, 2000).

[33] Report by the President's Task Force on Puerto Rico's Status, December 2005.

[34] For the 2009 report of the Committee see <http://www.un.org/News/Press/docs/2009/gacol3193.doc.htm>.

[35] Murillo, *supra*, at 29. Tens of thousands of Puerto Ricans have died in wars throughout the 20th century.

20,000 Puerto Ricans were sent to the Kuwait War and one in every 42 casualties in the Korean War was Puerto Rican.

In Governor Rosello's letter to President Clinton in 1999, he claims that then nearly 200,000 Puerto Ricans had served in the U.S. Armed Forces (Gov. Pedro Rosello's Letter to President Clinton, April 20, 1999).

Mullenneaux adds that Puerto Ricans volunteer for service more than residents of any other state with the exception of Hawaii. (Lisa Mullenneaux, *¡Ni Una Bomba Más!: Vieques vs. the U.S. Navy*, p. 3 (The Pennington Press, 2000)).

[36] Duffy Barnett, *supra*, at 5.

[37] In 1941 Congress had already approved HR 3325 (P.L. 22) and HR 5412 (P.L. 247) which granted the Navy the ability to seek land for its fleet facilities. (Mullenneaux, *supra*, at 18).

[38] Murillo, *supra*, at 51 (citing Humberto Garcia, Muniz, *U.S. Military Installations in Puerto Rico: Controlling the Caribbean*, in *Colonial Dilemma: Critical Perspectives on Contemporary Puerto Rico* (Boston: South End Press, 1993)). Camp Roosevelt was set up in Culebra in 1902, and later developed into a full naval station.

[39] E.O. 8,684

[40] E.O. 11,886

[41] Before the Navy left Culebra in 1975, an identical bombing accident to the one that eventually killed David Sanes Rodriguez in 1999 occurred in Culebra in 1946, killing nine Navy personnel. (Mullenneaux, *supra*, at 16).

[42] Many Viequenses argue that they never received compensation for their land, homes or property that the Navy took to establish their training site on. In addition, some claim that the Navy gave them only a few days (or in some cases a matter of hours) to vacate their premises before bulldozers and tractors would come to tear them down. Residents assert that abuse by the Navy started with their initial presence on the island by taking land and destroying property without proper placement of residents into other facilities or adequate compensation for taking their land.

[43] Mullenneaux, *supra*, at 23 (citing the Governor's Special Commission on Vieques report which stated that the Navy actually owned 22,605 acres). "In May, 1953 seven claimants were awarded compensation by a U.S. District Court because the land the Navy bought from them was undervalued." (*Id.* at 104).

[44] *Id.* at 23.

[45] *Id.* at 7, 24. The population of Vieques at the time was 10,000 and with the loss of 3,000 residents it was reduced to 7,000.

[46] Katherine T. McCaffrey, *Military Power and Popular Protest: The U.S. Navy in Vieques, Puerto Rico*, 6, 185 (Rutgers University Press, 1996). In other countries the U.S. often pays "permission cost" for access to land, but the Navy maintains that as a territory, Vieques benefits from a military presence as it provides for the "common defense".

[47] McCaffrey, *supra*, at 3. At one point the Navy advertised on their website that other countries could rent space to test "new, emerging, innovative" warfare techniques (i.e. chemical and bio warfare). The Navy previously rented space out of their Vieques facility to NATO and US allies in the Caribbean and South America. (See also Murillo, *supra*, at 55).

[48] Mullenneaux, *supra*, at 8, 25, and 117. (See *Letter by Governor Luis Muñoz Marin to President J. F. Kennedy*, December 28, 1961).

[49] *Id.* at 17.

[50] *Id.* at 3.

[51] Sanchez Compl., ¶ 2.

[52] Andrew O. Selsky, *Clearing Vieques is Delicate, Dangerous Work*, The Associated Press, Feb 4, 2007.

[53] *Barcelo v. Brown*, 478 F. Supp. 646 (D.P.R. 1979), upheld in *Romero-Barcelo v. Brown*, 643 F.2d 835 (1st Cir. P.R. 1981). The later U.S. Supreme Court decision upholding the district court, and establishing a higher standard for granting injunctive relief, was *Weinberger v. Romero-Barcelo*, 456 U.S. 305 (1982). For more on the Supreme Court case, see Andrienne Becker Naumann, *Preliminary Injunctive Relief Under The Federal Water Pollution Control Act: Weinberger V. Romero-Borcelo*, 60 Chi.-Kent L. Rev. 123.

[54] See Mullenneaux, *supra*, at 8.

[55] *Id.* at 28.

[56] According to Mullenneaux, the accident in 1999 was not the first time errant bombs fell on Vieques. A commanding officer at the Roosevelt Roads naval station admitted that “dummy bombs” had been dropped in 1995 and 1998 while live bombs fell in 1993 and 1995 in other parts of the island. (Mullenneaux, *supra*, at 17).

[57] Prominent figures included Robert Kennedy, Jr., Al Sharpton, and Puerto Rican Independence party leader Rubén Berrios, among others.

[58] Committee for the Rescue and Development of Vieques, *Vieques: An Ecology under Siege*. See also *Navy Admits Use of Toxins in Slugs*, San Juan Star, May 28, 1999.

[59] *Id.* at 9.

[60] The panel was often called the Rush Panel, since it was headed by Frank Rush, the then-acting Assistant Secretary of Defense for force management policy.

[61] P.L. 106-246 (H.R. 4425) and P.L. 106-398 (H.R. 4205).

[62] Mullenneaux, *supra*, at 12.

[63] *Id.* at 4.

[64] *Vieques Conservation and Historical Trust v. Bush*, 140 F. Supp. 2d 127, 130 (D.P.R. 2001). (See Kathleen Margareta Ryder, *Vieques Struggle for Freedom: Environmental Litigation, Civil Disobedience, and Political Marketing Proves Successful*, 12 Penn St. Envtl. L. Rev. 419).

[65] *Vieques, Puerto Rico Naval Training Range: Background and Issues for Congress*, Congressional Research Service Report for Congress, December 17, 2001.

[66] Some argue that the Navy’s willingness to close their military base on Vieques is a result of a shifted military strategy out of the region towards other parts of the world, namely the wars in Iraq and Afghanistan.

[67] The Committee for the Rescue and Development of Vieques issued a statement saying that “U.S. forces practiced extensively in Vieques for the Gulf War and for the military interventions in the Balkans.” (See *Vieques: An Ecology under Siege* as originally published in the Puerto Rican newspaper, Claridad). McCaffrey added that rehearsed interventions in Haiti, Iraq and Somalia have been practiced in Vieques. (McCaffrey, *supra*, at 3.)

[68] <http://www.globalsecurity.org/military/facility/vieques.htm>

[69] Then-Navy Secretary Gordon England actually certified on January 10, 2003 that alternative sites and methods in Florida, North Carolina and at sea would replace the bombing range in Vieques.

[70] For an example of a case where a suit against the Navy brought by Vieques fishermen was dismissed for being a non-justiciable political question, see *Barcelo v. Brown*, 478 F. Supp. 646 (D.P.R. 1979). The federal judiciary in Puerto Rico is known to be very pro-statehood and pro-military and has been hesitant to criticize the United States for fear it would jeopardize any discussions on status that could lead to statehood. (See McCaffrey, *supra*, at 168.) This sentiment was also reflected by Roberto Rabin in an interview on Dec. 30, 2009. The one exception is when

federal judge Vargas de Cerezo recused herself from hearing a case involving Independence Party leader Rubén Berríos for having trespassed on the bombing range based on her religious convictions that Vieques “is a silent prayer for peace and renewal before the Holy Sacrament.” (*Id.* at 169).

[71] McCaffrey, *supra*, at 7. For more on Vieques’ struggle as part of a larger, unresolved debate on the status of Puerto Rico and its colonial relationship, *see generally* the UN’s Decolonization Committee report at <http://www.un.org/News/Press/docs/2007/gacol3160.doc.htm>.

[72] According to a report issued by the Governor’s Special Commission on Vieques in 1999 revealed that Viequenses have higher adult and infant mortality rates than other Puerto Ricans, almost 75% of all Viequenses live below the poverty line and unemployment was at almost 14%. (Mullenneaux, *supra*, at 56).

[73] In 2003 Puerto Rico Health Department Secretary, Johnny Rullan, issued a statement claiming Viequenses’ cancer rate was higher than that of Puerto Ricans on the main island. See Sandra Ivelisse Villerael, *Rullan: Studies On Cancer In Vieques Reflect Increase*, Puerto Rican Herald (May 11, 2003) and Shannon Novak, *Vieques Cancer Rate an Issue*, Puerto Rican Herald (May 7, 2004).

[74] Toxins used included napalm, agent orange, depleted uranium (DU), white phosphorous, chemical weapons, arsenic, lead, mercury, cadmium, copper, magnesium, lithium, perchlorate, TNT, PCBs, solvents, pesticides and tons of high explosives and minute particles of a fiber-glass type substance, known as “chaff. (See Sanchez Compl. ¶4). After the death of Sanes Rodriguez, the Navy also admitted to using napalm and DU (Mullenneaux, *supra*, at 3).

[75] Puerto Rico Department of Health. According to a 2001 study by the College of Physicians of Surgeons of Puerto Rico, 33% of Viequenses have unsafe levels of mercury in their bodies, and 56 % have unsafe levels of aluminum. Studies also show toxic levels of arsenic, cadmium and lead. (Sanchez Compl. ¶ 3). Additionally a 2001 study by Puerto Rico's Ponce School of Medicine found 98 percent of local fisherman had heart abnormalities associated with vibroacoustic disease, which is triggered by exposure to loud noises and affects the internal organs. The Navy has historically denied the accuracy of these reports alleging that their own reports have shown no such connections or high risks for the local community (see Statement of Vice Admiral James F. Amerault, Deputy Chief of Naval Operations, Fleet Readiness and Logistics Before the Subcommittee on Readiness and Management Support

of the Senate Armed Services Committee on “Encroachment” Issues Having a Potentially Adverse Impact on Military Readiness on Constraints on Military Training (May 22, 2001)).

[76] On April 18, 2001 Governor Sila Calderon introduced the Noise Prohibition Act of 2001, which was passed five days later on April 23 by the Puerto Rican Legislature, as a way of limiting the Navy’s exercises because of the excessive noise damage it caused. The next day on April 24, Puerto Rico filed a federal lawsuit to halt the Navy’s exercise, arguing that the Navy’s training activities would threaten public health and violate both the new noise-restriction law and the 1972 federal Noise Control Act. Arguments in the case were held in U.S. District Court two days later where the court rejected the request for a temporary restraining order to halt the exercises, although it did criticize the Navy’s actions.

[77] Mullenneaux, *supra*, at 17.

[78] “Various areas of the island may be contaminated by solid and/or hazardous waste resulting from decades of military activity including training exercises, equipment maintenance, supply storage and waste disposal.”

<http://www.epa.gov/Region2/vieques/index.html>.

[79] Resolution de la Camara de Representantes 755, June 25, 2009.

[80] The agreement to transfer the land was signed on April 30, 2001 and entails transfer of land previously owned by the US Navy to the Municipality of Vieques, the Puerto Rico Conservation Trust and the Department of Interior. The transfer of land was required under Title XV of the 2001 Defense Authorization Act, which directed the

secretary of the navy to convey various portions of the Naval Ammunition Support Detachment (NASD) Vieques to the three organizations.

[81] The Department of the Navy announced on April 30, 2003, that it had transferred all real property on the eastern end of the island of Vieques, where the live-fire range was, to the administrative jurisdiction of the Department of Interior as required under the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (P. L. 106-398), as amended by Section 1049 of the National Defense Authorization Act for Fiscal Year 2002 (P. L. 107-107). See <http://www.defense.gov/Releases/Release.aspx?ReleaseID=3798>.

[82] Government Accountability Office letter to Congressman Charles Rangel titled *Defense Infrastructure: Environmental Cleanup of Former Naval Facilities on Vieques* (March 26, 2007). The letter estimates costs for clean-up of Installation Restoration Sites and munitions would be appr. \$235 million until 2012 and beyond.

[83] The federal facility inter-agency agreement (FFA) agreement is between the Navy as the prior owner of the facility; EPA, the federal agency overseeing the cleanup; the Fish and Wildlife Service, which is the current owner of the property; and Puerto Rico Environmental Quality Board, the Puerto Rico regulatory agency under Superfund. A Superfund cite gives the EPA the authority to authorize a clean-up by the responsible agency. The agreement, finalized in March 2008, governs the cleanup process under two federal environmental laws, CERCLA and the Resource Conservation and Recovery Act (RCRA). The agreement as proposed went through notice and comment rulemaking, with a comment period of 45 days. EPA press release titled "Major Agreement for Vieques Cleanup Finalized" (March 25, 2008), <http://yosemite.epa.gov/opa/admpress.nsf/dc57b08b5acd42bc852573c90044a9c4/ff6c1d016158a6b385257417005df74d!OpenDocument> and EPA Community Update, Atlantic Fleet Weapons Training Area Site/Vieques, Federal Facility Agreement, http://www.epa.gov/region02/vieques/ffa/ffa_factsheet_eng.pdf.

[84] The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), commonly known as Superfund, requires that the Navy conduct all necessary investigations and cleanup work to protect human health and the environment from any hazardous substances remaining from past Navy activities on this transferred property. With guidance from the EPA and the Puerto Rico Environmental Quality Board (EQB), the Navy is currently investigating seventeen potentially contaminated sites on the western end of Vieques to determine what cleanup actions are needed.

[85] Sanchez Compl. ¶ 3. The complaint also states that the EPA has listed the Vieques portion of the AFWTA on the Federal Facilities section of the National Priorities List, which allows the EPA to conduct further investigations into sites that may pose an environmental risk. (Sanchez Compl., ¶ 4 (citing 70 Fed. Reg. 7182 (February 11, 2005)).

[86] Response to Public Comments on Documents developed under the January 2000 RCRA Administrative Order - received during the public comment period from August 7, 2002 to November 8, 2002, EPA Facility I.D.# PRD980536221.

[87] John Lindsay-Poland, *Vieques' Victories...and Challenges Ahead*, Fellowship for Reconciliation. http://www.peacecouncil.net/pnl/03/721/721_Vieques.htm.

[88] *Id.*

[89] Report to the Secretary Of Defense of the Special Panel on Military Operations on Vieques, 1999.

[90] <http://www.womensenews.org/story/the-world/070308/vieques-women-claim-navys-toxins-destroy-health>.

[91] Interview with Robert Rabin Siegal, Director of Comité Pro Rescate y Desarrollo de Vieques (December 30, 2009). Additionally in 2004 the EPA issued a report to the Navy on the procedures for implementing closure of the Open Detonation site to avoid health and environmental risks to the local population. (Draft Final of Closure Plan, Open Burn/Open Detonation Site, Former Atlantic Fleet Weapons Training Facility in Vieques, Puerto Rico. Prepared for Department of the Navy, Atlantic Division, Naval Facilities Engineering Command (July 2004)). In August of 2009, Vieques mayor Evelyn Delorme stated that detonation would create greater health problems for residents, citing that "the great majority of emergency room visits here last year were for respiratory problems. Can

they guarantee that contaminants or smoke won't reach the population? Would we have to wait and see if there's a problem?" Mireya Navarro, *New Battle on Vieques, Over Navy's Cleanup of Munitions*, New York Times (August 6, 2009).

[92] Mireya Navarro, *Reversal Haunts Federal Health Agency*, New York Times (November 30, 2009).

[93] Congressman Steve Rothman's letter to ATSDR Director Dr. Howard Frumkin, April 7, 2009. Details of heavy metals found in aquatic and human life are listed in the letter for the agency to incorporate into its reexamination of its report. Congressman Rothman acknowledged that "the U.S. citizens of Vieques have paid a very heavy price, which continues to be exacted to this day in the damage to their health and their island's environment." Additionally Representative Brad Miller, Democrat of North Carolina and the Chairman of the House Science and Technology Subcommittee on Investigations and Oversight said "it seems to have gotten into their (ATSDR) culture to do quick and dirty studies and to be too willing to say there are no public health consequences." Mireya Navarro, *Reversal Haunts Federal Agency*, New York Times (November 29, 2009).

[94] "ATSDR is now taking a fresh look at available information on public health threats, including its own work to date and also data that have been published by several sources since the agency's public health assessments were released in 2003. This multi-part process is designed to ensure that all information that could have a bearing on public health has been thoroughly and rigorously evaluated." <http://www.atsdr.cdc.gov/sites/vieques/>. See also Mireya Navarro, *Reversal Haunts Federal Agency*, New York Times (November 29, 2009).

[95] ATSDR's Fresh Look at Environmental Chemical Exposures on the Island of Vieques - Progress Report, November 13, 2009. http://www.atsdr.cdc.gov/sites/vieques/progress_report.html.

[96] The agency's website states that "ATSDR recognizes and endorses the need for oversight and accountability, including strong local involvement in our activities on Vieques. Both in preparing the final report, and in moving ahead with future work, ATSDR commits to an inclusive, accountable process."

[97] 28 U.S.C. §§ 2671 *et seq.*

[98] *Sanchez, et. al. v. United States*,

[99] See also McCaffrey, *supra*, at 74. The author quotes former Vieques mayor Radamés Tirado's concerns that the "system elimination of opportunities for the development of the island and the destruction of its economy, the Navy hopes to force the entire population of Vieques to migrate involuntarily to other islands (and) the Navy could then gradually acquire all the land that remains at very little cost." (Citing U.S. House 1981: 204).

[100] *Sanchez Compl.* ¶ 6.

[101] 42 U.S.C. § 6961

[102] *Sanchez Compl.* ¶ 3.

[103] 42 U.S.C. § 6901, *et seq.*

[104] *Sanchez Compl.* ¶¶ 4-6.

[105] *Sanchez Compl.* ¶ 8. (Plaintiffs received a final denial letter from the Navy on March 12, 2007.)

[106] Plaintiffs' Opposition to Defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction under Fed. R. Civ. P. 12(B)(1).

[107] Order Denying Motion to Dismiss

[108] Plaintiffs' Opp. to Def.'s Mot. to Dismiss for Lack of Subject Matter Jurisdiction under Fed. R. Civ. P. 12(B)(1). (See also Defendant's Memorandum of Points and Authorities in Support of Motion to Dismiss for Lack of Subject Matter Jurisdiction under Fed. R. Civ. P. 12(B)(1) where the U.S. asserts that military operations are based on public policy).