

Congress of the United States
House of Representatives
Washington, DC 20515

July 12, 2022

The Honorable Joseph R. Biden, Jr.
President of the United States
The White House
1600 Pennsylvania Ave.
Washington, DC 20500

The Honorable Kamala D. Harris
Vice President of the United States
The White House
1600 Pennsylvania Ave.
Washington, DC 20500

Dear Mr. President and Madame Vice President:

We, the undersigned Members of Congress, write to urge you to condemn the *Insular Cases* and the colonial framework they established. Fueled by the same racial impulses as *Plessy v. Ferguson*, which justified “separate but equal” racial segregation, and *Korematsu v. United States*, which endorsed the mass internment of Japanese Americans during World War II, the *Insular Cases* represent a shameful legacy that simply cannot be squared with the core values of racial justice and equity that we share with your administration.

Last June, you addressed continued discrimination against citizens in U.S. territories by declaring that “there can be no second-class citizens in the United States of America.” This was an important and long overdue recognition, and we can’t agree more. But in the months since, the Biden-Harris Department of Justice has – despite the calls of our colleagues – expressly relied on the *Insular Cases* to argue that people born in U.S. territories have *no right to U.S. citizenship at all*, that citizenship in U.S. territories is a mere privilege for Congress to extend or retract at whim. That is simply unacceptable as a matter of law and policy. As Justice Sotomayor recently emphasized, the *Insular Cases* “were premised on beliefs both odious and wrong,” with Justice Gorsuch declaring that “[t]hey deserve no place in our law.” **We call on you to similarly reject the *Insular Cases* and the racist colonial framework they invented.**

When you nominated the Hon. Merrick Garland to serve as your Attorney General, you highlighted the “need to restore the honor, the integrity, the independence of the DOJ.” You explained to him that “[y]our loyalty is not to me, ... it’s to the law, the Constitution, the people of this nation.” We respect the importance of an independent DOJ. But this principle cannot serve as an excuse for you to avoid weighing in on critical questions of

law and policy that face our country. Whether the *Insular Cases* are “odious and wrong” and whether they deserve a “place in our law” are just such questions.

In the coming weeks, the Biden-Harris Justice Department must take a position on the *Insular Cases* when it files its response to petitioners in *Fitisemanu v. United States*. This case expressly asks the Supreme Court to answer “whether the *Insular Cases* should be overruled.” Leading civil rights organizations, scholars from across the ideological spectrum, a bi-partisan group of elected officials and former judges from U.S. territories, and others are calling on the Supreme Court to turn the page on the *Insular Cases* and the colonial framework they represent. Which side of history will your Administration fall on?

We are not asking that you break from the Justice Department’s “longstanding practice of defending the constitutionality of federal statutes, regardless of policy preferences.” To again quote Justice Gorsuch, we are simply asking that you and the Justice Department “say what everyone knows to be true” – that “the *Insular Cases* were incorrectly decided.” It is not enough for the Justice Department to simply concede that “some of the reasoning and rhetoric [of the *Insular Cases*] is obviously anathema,” while continuing to hide behind the argument that “we don’t think that the Court needs to address the *Insular Cases*.”

You and your Justice Department should admit the error of the *Insular Cases*, much as the Obama-Biden Justice Department did in 2011 by acknowledging the error in the Supreme Court’s infamous decision in *Korematsu*. And the Justice Department should go a step further to call on the Supreme Court to grant review of *Fitisemanu* and the question of whether the *Insular Cases* should be overruled, whatever position the Justice Department takes on the merits.

“Our fellow Americans in the U.S. territories deserve no less.”

Sincerely,



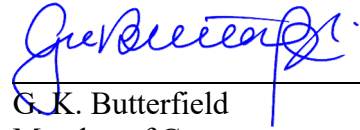
Stacey E. Plaskett
Member of Congress



Raúl M. Grijalva
Member of Congress



Gregorio Kilili Camacho
Sablan
Member of Congress



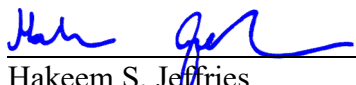
G.K. Butterfield
Member of Congress



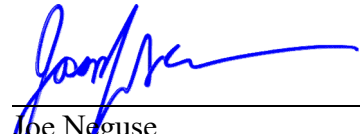
Yvette D. Clarke
Member of Congress



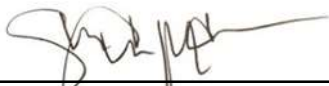
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Jared Huffman
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Darren Soto
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Gwen S. Moore
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Bonnie Watson Coleman
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The Honorable Merrick B. Garland, Attorney General of the United States
Elizabeth B. Prelogar, Solicitor General of the United States
Vanita Gupta, Associate Attorney General
Kristen Clarke, Assistant Attorney General for Civil Rights