No. 15-108

In the Supreme Court of the United States

COMMONWEALTH OF PUERTO RICO, PETITIONER

v.

LUIS M. SANCHEZ VALLE, ET AL.

ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF PUERTO RICO

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING RESPONDENTS

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QUESTION PRESENTED

Whether Puerto Rico and the United States are separate sovereigns for purposes of the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution.

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INTEREST OF THE UNITED STATES

This case presents the question whether Puerto Rico and the United States are separate sovereigns for purposes of the Double Jeopardy Clause. The Court's decision will affect how the federal government enforces federal criminal laws within Puerto Rico. It also may affect the federal government's defense of federal legislation and policies related to Puerto Rico across a broad range of substantive areas, including congressional representation, federal benefits, federal income taxes, bankruptcy, and defense. Accordingly, the United States has a substantial interest in this case.

STATEMENT

1. In 1898, Puerto Rico became a territory of the United States, when Spain ceded it to the United States at the conclusion of the Spanish-American War. See Treaty of Paris, Dec. 10, 1898, U.S.-Spain, Art. II,

30 Stat. 1755 (proclaimed Apr. 11, 1899). After a brief period of military government, Congress established a civilian government for Puerto Rico, Organic Act of 1900 (Foraker Act), ch. 191, §§ 17-35, 31 Stat. 81-85, consisting of an appointed governor and executive council, §§ 17-26, 31 Stat. 81-82; a legislature composed of the executive council and a popularly elected house of delegates, §§ 27-32, 31 Stat. 82-84; and a judiciary with an appointed supreme court and federal district court, §§ 33-35, 31 Stat. 84-85. Congress applied all federal laws (except internal revenue laws) "not locally inapplicable" to Puerto Rico, § 14, 31 Stat. 80, and gave the legislature broad authority over internal affairs, §§ 15, 32, 31 Stat. 80, 83-84.

In 1917, Congress provided a bill of rights for Puerto Rico and granted the people of Puerto Rico U.S. citizenship. See Organic Act of 1917 (Jones Act), ch. 145, §§ 2-5, 39 Stat. 951-953. It also reorganized Puerto Rico's government by establishing executive departments and authorizing a popularly elected senate to replace the executive council in the legislature. §§ 13, 26, 39 Stat. 955-956, 958-959. In 1947, Congress provided for a popularly elected governor, who would appoint the heads of most executive departments. See Act of Aug. 5, 1947, ch. 490, §§ 1-3, 61 Stat. 770-771.

In 1950, Congress authorized the people of Puerto Rico to "organize a government pursuant to a constitution of their own adoption." Act of July 5, 1950 (Public Law 600), ch. 446, § 1, 64 Stat. 319. Congress provided that the constitution must "provide a republican form of government" and "include a bill of rights" and that it must be approved by Congress to take effect. §§ 2-3, 64 Stat. 319.

Puerto Rico held a referendum, in which the people voted to call a constitutional convention to draft a constitution. See Act of July 3, 1952 (1952 Act), ch. 567, 66 Stat. 327; *Documents on the Constitutional Relationship of Puerto Rico and the United States* 178 (Marcos Ramirez Lavandero ed., 3d ed. 1988) (*Documents*). The constitution was approved by referendum. *Documents* 178-179. Congress made several changes to the constitution, then approved it. See 1952 Act, 66 Stat. 327. The constitutional convention approved the revised constitution, and it became law by proclamation of the governor. Proclamation by the Governor of Puerto Rico (July 25, 1952), *reprinted in Documents* 224; Resolution 34 of Constitutional Convention of Puerto Rico (July 10, 1952), *reprinted in Documents* 222-223. When the constitution became effective, the provisions of federal law through which Congress and the President had directly supervised the government of Puerto Rico were "deemed repealed" but other provisions were left intact. See Public Law 600, §§ 4-5, 64 Stat. 319-320 (provisions left intact renamed Puerto Rican Federal Relations Act).

Since 1952, Puerto Rico has enjoyed "a measure of autonomy comparable to that possessed by the States." *Examining Bd. of Eng'rs, Architects & Surveyors* v. *Flores de Otero*, 426 U.S. 572, 597 (1976). Puerto Rico's transition to local self-government was a significant development in its relationship with the United States, and it has yielded many benefits for Puerto Rico and the United States in a relationship of mutual respect. Congress has evinced no intention to revoke the local autonomy it has vested in the government of Puerto Rico. But as a constitutional mat-

ter, Puerto Rico remains a territory subject to Congress's authority under the Territory Clause. *Harris* v. *Rosario*, 446 U.S. 651, 651-652 (1980) (per curiam). Residents of Puerto Rico have voted several times on whether to seek a change in Puerto Rico's constitutional status but have not sought statehood or independence from the United States. *Report by the President's Task Force on Puerto Rico's Status* 19, 21 (Mar. 2011) (*2011 Task Force Report*); *Report by the President's Task Force on Puerto Rico's Status* 3-4 (Dec. 2007) (*2007 Task Force Report*).

2. Each respondent sold an illegal firearm to an undercover police officer. Pet. App. 307a, 330a. Puerto Rico prosecutors charged both of them with (*inter alia*) sale of a firearm without a license, in violation of P.R. Laws Ann. tit. 25, § 458 (2008). Pet. App. 2a-4a; see J.A. 11-14, 31-33. While the Puerto Rico prosecutions were pending, respondents were both convicted of federal offenses arising out of the same conduct. J.A. 21-22 (Sanchez Valle convicted of violating 18 U.S.C. 922(a)(1)(A), 923(a), 924(a)(1)(D), and 2); J.A. 40-43, 45 (Gomez Vasquez convicted of violating 18 U.S.C. 922(a)(1)(A) and 371).

3. Each respondent moved to dismiss his pending Puerto Rico charges on double jeopardy grounds. Pet. App. 3a, 5a. The trial court dismissed the charges. *Id.* at 307a-329a, 330a-352a. Puerto Rico had argued that it may prosecute respondents after the federal government because it is a separate sovereign for purposes of the Double Jeopardy Clause. *Id.* at 309a-310a, 332a-333a. The trial court rejected that argument, explaining that "the criminal laws of a territory emanate from the same power as the federal laws." *Id*. at 315a-316a, 338a.

4. The court of appeals consolidated the two cases and reversed. Pet. App. 243a-306a. The court concluded that Puerto Rico "is a sovereign" because "it has the power," by virtue of adopting its own constitution, "to create offenses different from those of the federal sovereignty." *Id.* at 263a-264a, 268a, 280a.

5. The Puerto Rico Supreme Court reversed. Pet. App. 1a-70a. It observed that "the determining factor for the doctrine of dual sovereignty to apply[] is the ultimate source of the power under which the indictments were undertaken"; "[i]f it is a power delegated by Congress, the doctrine of dual sovereignty does not apply." *Id.* at 19a-20a. The court explained that "Puerto Rico has never exercised an original or primary sovereignty" because it was a Spanish colony before it became a U.S. territory. *Id.* at 33a. Territorial governments, it reasoned, "exert all of their powers by authority of the United States." *Id.* at 23a (citation omitted). Congress's decision to permit local self-government, it concluded, does not make Puerto Rico a sovereign because "there was never a transfer of sovereignty, only a delegation of powers." *Id.* at 51a-52a.

Chief Justice Matta concurred, stating that she would rule for respondents under the Puerto Rico Constitution. Pet. App. 71a-190a. Justice Rodriguez Rodriguez dissented, arguing that Puerto Rico is a sovereign for federal constitutional purposes. *Id.* at 191a-242a.

SUMMARY OF ARGUMENT

Puerto Rico and the United States are not separate sovereigns for purposes of the Double Jeopardy Clause.

A. The Double Jeopardy Clause provides that a person may not be prosecuted twice for the "same offence." U.S. Const. Amend. V. Two offenses are not the same if they are prosecuted by separate sovereigns. Whether an entity is a sovereign for double jeopardy purposes depends on "the ultimate source" of its authority to prosecute under the Constitution; if two entities derive their prosecutorial power from the same ultimate source, they are not separate sovereigns. *United States* v. *Wheeler*, 435 U.S. 313, 320 (1978).

B. The federal government, the States, and the Indian Tribes are all separate sovereigns for purposes of the Double Jeopardy Clause. The Framers "split the atom of sovereignty," *U.S. Term Limits, Inc.* v. *Thornton*, 514 U.S. 779, 838 (1995) (Kennedy, J., concurring), in the federal Constitution. The United States attained sovereignty by winning the war for independence and adopting the Constitution, which conferred on the national government certain sovereign powers, see U.S. Const. Arts. I-III, while reserving others to the pre-existing sovereign States, U.S. Const. Amend. X. See *Thornton*, 514 U.S. at 838-840 (Kennedy, J, concurring). Consistent with the constitutional design, this Court has recognized that the Double Jeopardy Clause permits prosecutions by both a State and the federal government, or by two different States, because each is a sovereign with independent authority to proscribe conduct. See *Heath* v. *Ala-*

bama, 474 U.S. 82, 88 (1985); *United States* v. *Lanza*, 260 U.S. 377, 382 (1922).

The Indian Tribes also are sovereigns for purposes of the Double Jeopardy Clause. Although the Tribes' incorporation into the United States necessarily divested them of some aspects of sovereignty, they retain inherent sovereign authority to punish tribal offenders. Accordingly, the Constitution permits successive prosecutions in federal or state court and in tribal court. See *Wheeler*, 435 U.S. at 329-330.

C. United States territories are not sovereigns. The Constitution affords no independent political status to territories but instead confirms that they are under the sovereignty of the United States and subject to the plenary authority of Congress. See U.S. Const. Art. IV, § 3, Cl. 2. It has long been settled that "there is no sovereignty in a Territory of the United States but that of the United States itself." *Snow* v. *United States*, 85 U.S. (18 Wall.) 317, 321 (1873). The Court therefore has recognized that territories are not separate sovereigns under the Double Jeopardy Clause. See *Grafton* v. *United States*, 206 U.S. 333, 354-355 (1907). Puerto Rico is a U.S. territory, and it therefore is not a sovereign for double jeopardy purposes. See *Puerto Rico* v. *Shell Co.*, 302 U.S. 253, 264 (1937).

D. The events of 1950-1952 did not transform Puerto Rico into a sovereign. Before 1950, Congress had progressively authorized self-government in Puerto Rico. As a further step, in 1950 Congress permitted the people of Puerto Rico to adopt a constitution, which Congress approved with revisions in 1952.

Those events were of profound significance for the relationship between the United States and Puerto

Rico, but they did not alter Puerto Rico's constitutional status as a U.S. territory. The United States did not cede its sovereignty over Puerto Rico by admitting it as a State or granting it independence. Rather, Congress authorized Puerto Rico to exercise governance over local affairs. That arrangement can be revised by Congress, and federal and Puerto Rico officials understood that Puerto Rico's adoption of a constitution did not change its constitutional status. The ultimate source of sovereign power in Puerto Rico thus remains the United States.

None of petitioner's arguments establish that Puerto Rico is a sovereign for double jeopardy purposes. Congress did not enter into an irrevocable "compact" with Puerto Rico, and as a constitutional matter, Congress cannot irrevocably cede sovereignty to Puerto Rico while it remains a U.S. territory. The designation of Puerto Rico as a "commonwealth" reflects Puerto Rico's significant powers of self-government, but it does not denote a constitutional status. Puerto Rico's autonomy over local affairs does not itself make Puerto Rico a sovereign.

E. This Court has consistently recognized that although Puerto Rico is locally self-governing, it remains a U.S. territory under the Constitution. For example, because Puerto Rico is a territory, it has "no sovereign authority" that could justify a border search under the Fourth Amendment, see *Torres* v. *Puerto Rico*, 442 U.S. 465, 474 (1979), and Congress may treat Puerto Rico differently from the States in allocating federal benefits, see *Harris* v. *Rosario*, 446 U.S. 651, 651-652 (1980) (per curiam). None of this Court's decisions question Puerto Rico's constitutional

status as a territory or establish that it has all of the attributes of a State, including sovereignty.

The Executive Branch has recognized that Puerto Rico remains a U.S. territory subject to Congress's authority. A 1994 Office of Legal Counsel opinion explained that Congress may not create a sovereign territory consistent with the Constitution, and since then, the Department of Justice has repeatedly stated the same view to Congress in connection with proposed legislation about Puerto Rico. Presidential task force reports in 2005, 2007, and 2011 have likewise confirmed that Puerto Rico is not a sovereign and that it could become one only if it were to attain statehood or become an independent nation. Those principles confirm that Puerto Rico is not a separate sovereign for purposes of the Double Jeopardy Clause.

ARGUMENT

PUERTO RICO IS NOT A SOVEREIGN FOR PURPOSES OF THE DOUBLE JEOPARDY CLAUSE

In 1898, Puerto Rico became a territory of the United States. As such, it did not possess separate sovereignty for double jeopardy purposes. In 1950, Congress authorized Puerto Rico to adopt a constitution so that it could exercise local self-governance, and in 1952, Puerto Rico did so. The question in this case is whether those events transformed Puerto Rico into a sovereign for double jeopardy purposes. The answer is no. Puerto Rico exercises significant local autonomy, with great benefit to its people and to the United States. But it remains a territory under the sovereignty of the United States and subject to the plenary authority of Congress. This Court has recognized that U.S. territories, including Puerto Rico, are

not separate sovereigns for double jeopardy purposes, and that holding is controlling in this case.

A. The Dual Sovereignty Doctrine Requires Separate Ultimate Sources Of Authority To Prosecute

1. The Double Jeopardy Clause of the Fifth Amendment provides that a person may not "be subject for the same offence to be twice put in jeopardy of life or limb." U.S. Const. Amend. V. The Fifth Amendment applies directly only to the federal government, but its protections have been incorporated against the States through the Due Process Clause of the Fourteenth Amendment. *Benton* v. *Maryland*, 395 U.S. 784, 794-796 (1969). The parties in this case agree that the Double Jeopardy Clause applies to Puerto Rico.[1]

Whether the Double Jeopardy Clause bars successive prosecutions depends on whether the two prosecutions are for the "same offence." Even if two crimes have the same set of elements, they are nonetheless distinct offenses if they are prosecuted by two different sovereigns. Because "the common-law conception of [a] crime" is "an offense against the sovereignty of

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[1] This Court has concluded that various constitutional provisions apply to Puerto Rico under either the Bill of Rights or as incorporated through the Fourteenth Amendment; it has declined to resolve which. *E.g.*, *Torres* v. *Puerto Rico*, 442 U.S. 465, 471 (1979). But the Double Jeopardy Clause could not apply to Puerto Rico through the Due Process Clause of the Fourteenth Amendment, because the Fourteenth Amendment applies only to "State[s]." U.S. Const. Amend. XIV, § 1. The Double Jeopardy Clause thus must apply to Puerto Rico based on its status as a territory belonging to the United States. The applicability of the Fifth Amendment—a limitation on federal power—makes clear that Puerto Rico is not a separate sovereign from the United States for double jeopardy purposes.

the government," "[w]hen a defendant in a single act violates the peace and dignity of two sovereigns by breaking the laws of each, he has committed two distinct 'offences'" and can be prosecuted for both. *Heath* v. *Alabama*, 474 U.S. 82, 88 (1985) (citation and internal quotation marks omitted). Each sovereign is entitled to "exercis[e] its own sovereignty" to "determin[e] what shall be an offense against its peace and dignity" and prosecute the offender "without interference by the other." *United States* v. *Lanza*, 260 U.S. 377, 382 (1922).

2. In determining whether the dual sovereignty doctrine applies, the "crucial determination" is whether the two prosecuting entities "can be termed separate sovereigns" under the federal Constitution. *Heath*, 474 U.S. at 88. Whether two entities are each sovereign for dual prosecution purposes depends on "whether the two entities draw their authority to punish the offender from distinct sources of power." *Ibid.* If two entities derive their authority to punish from the same ultimate source, the Double Jeopardy Clause bars them from bringing successive prosecutions for the same offense.

Determining whether an entity is a sovereign for double jeopardy purposes depends on a historical and constitutional analysis of the political status of the entity asserting sovereignty. *Heath*, 474 U.S. at 88-90. The ability of a government to enact and enforce its own laws does not make it a sovereign. *Waller* v. *Florida*, 397 U.S. 387, 393 (1970). Rather, the inquiry depends on whether "the *ultimate* source" of the entity's power to prosecute is its own sovereign power or power derived from another entity. *United States* v. *Wheeler*, 435 U.S. 313, 320 (1978) (emphasis added).

B. The Federal Government, States, And Indian Tribes Are Sovereigns For Purposes Of The Double Jeopardy Clause

Within the territory of the United States, the Constitution contemplates three sovereigns—the States, the United States, and the Indian Tribes. The Court has appropriately treated those entities, and only those entities, as domestic sovereigns under the Double Jeopardy Clause.

1. "The Framers split the atom of sovereignty. It was the genius of their idea that our citizens would have two political capacities, one state and one federal, each protected from incursion by the other." *U.S. Term Limits, Inc.* v. *Thornton*, 514 U.S. 779, 838 (1995) (Kennedy, J., concurring). Under our constitutional design, the federal government has certain enumerated powers, see U.S. Const. Arts. I-III, and the powers "not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States," U.S. Const. Amend. X. "[T]he States possess sovereignty concurrent with that of the Federal Government, subject only to limitations imposed by the Supremacy Clause." *Tafflin* v. *Levitt*, 493 U.S. 455, 458 (1990).

Before the formation of the United States, States had their own "separate and independent sources of power and authority," and when they were admitted into the Union, their sovereign power was "preserved to them by the Tenth Amendment." *Heath*, 474 U.S. at 89; see U.S. Const. Amend. X. States "retain all the rights of sovereignty which they before had, and which were not, by that act, *exclusively* delegated to the United States." *Thornton*, 514 U.S. at 801 (quoting *The Federalist No. 32*, at 194 (Alexander Hamil-

ton) (E.H. Scott ed., 1898)); see, *e.g.*, *Gregory* v. *Ashcroft*, 501 U.S. 452, 461 (1991) ("States retain substantial sovereign powers under our constitutional scheme."). And the United States became a sovereign by winning independence from Great Britain and by the people's adoption, through the state ratifying conventions, of the Constitution. See *Thornton*, 514 U.S. at 839-841 (Kennedy, J., concurring); *United States* v. *Curtiss-Wright Exp. Corp.*, 299 U.S. 304, 315-318 (1936); *M'Culloch* v. *Maryland*, 17 U.S. (4 Wheat.) 316, 403-405 (1819).

Consistent with the constitutional design, this Court has recognized that the Double Jeopardy Clause permits dual prosecutions by a State and the federal government because a State and the federal government are "two sovereignties, deriving power from different sources." *Lanza*, 260 U.S. at 382-384. This conclusion follows from "the basic structure of our federal system." *Wheeler*, 435 U.S. at 320; see *New York* v. *United States*, 505 U.S. 144, 162-163 (1992). And "States are no less sovereign with respect to each other than they are with respect to the Federal Government." *Heath*, 474 U.S. at 89; see *Coyle* v. *Oklahoma*, 221 U.S. 559, 567 (1911) (equal-footing doctrine). Accordingly, two States may prosecute a person for an offense over which they both have jurisdiction. *Heath*, 474 U.S. at 89-90.

2. The Indian Tribes also are sovereigns for purposes of the Double Jeopardy Clause. The Tribes possess inherent sovereignty that predates the Constitution. See *United States* v. *Lara*, 541 U.S. 193, 197 (2004); *Wheeler*, 435 U.S. at 322-323. Before the Founding of the United States, the Tribes were "self-governing sovereign political communities." *Wheeler*,

435 U.S. at 322-323. The Constitution recognizes the Tribes' sovereignty. See U.S. Const. Art. I, § 8, Cl. 3 (authorizing Congress to "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes"); see also *id.* Art. VI, Cl. 2 (Treaty Clause); *Worcester* v. *Georgia*, 31 U.S. (6 Pet.) 515, 559 (1832) ("The [C]onstitution, by declaring treaties already made * * * to be the supreme law of the land, has adopted and sanctioned the previous treaties with the Indian nations.").

With the formation of the United States, the Tribes within the United States became "domestic dependent nations." *Lara*, 541 U.S. at 204-205 (quoting *Cherokee Nation* v. *Georgia*, 30 U.S. (5 Pet.) 1, 17 (1831)). The Tribes continue to possess "those aspects of sovereignty not withdrawn by treaty or statute, or by implication as a necessary result of their dependent status," including each Tribe's "sovereign power to punish tribal offenders." *Wheeler*, 435 U.S. at 323. Although Congress has plenary power to legislate with respect to the Tribes, that "does not mean that Congress is the source" of the Tribes' power to prosecute; that power derives from the Tribes' "inherent tribal sovereignty" and is "attributable in no way to any delegation * * * of federal authority." *Id.* at 322, 328. Accordingly, the Constitution permits successive prosecutions in tribal court and in federal or state court. See *Lara*, 541 U.S. at 197; *Wheeler*, 435 U.S. at 329-330.

3. The Court has confirmed that whether an entity is a "sovereign" for double jeopardy purposes does not depend simply on whether it has the authority to prosecute. "The 'dual sovereignty' concept does not apply * * * in every instance where successive cases

are brought by nominally different prosecuting entities." *Wheeler*, 435 U.S. at 318 (citation omitted). Rather, the "dual sovereignty" doctrine requires a constitutionally "distinct source[] of power" to govern. *Heath*, 474 U.S. at 88.

Consistent with that principle, the Court has held that dual prosecution by a State and its municipalities violates double jeopardy. Municipal governments, the Court has explained, are not sovereigns because they derive their power to prosecute from the States. See *Waller*, 397 U.S. at 391-394. "Political subdivisions of States" such as cities and counties "never were and never have been considered as sovereign entities," *id.* at 392 (citation omitted); they are "subordinate governmental instrumentalities created by the State to assist in the carrying out of state governmental functions," *Reynolds* v. *Sims*, 377 U.S. 533, 575 (1964). And critically here, as explained below, the Court has recognized that U.S. territories are not sovereigns for double jeopardy purposes because their power to prosecute ultimately derives from the United States, not from an inherent sovereignty.

C. Puerto Rico, As A U.S. Territory, Is Not A Sovereign For Double Jeopardy Purposes

1. The position of territories in the constitutional framework categorically differs from that of the federal government, the States, or the Indian Tribes.[2]

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[2] The following are United States territories: Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, the U.S. Virgin Islands, and a number of small, mostly uninhabited outlying islands. See U.S. Dep't of State, *Dependencies and Areas of Special Sovereignty* (Nov. 29, 2011), http://www.state.gov/s/inr/rls/10543.htm; U.S. Gen. Accounting Office, *U.S. Insular Areas: Application of the U.S. Constitution* 6-10, 39-40 (Nov. 1997).

The Constitution neither recognizes nor affords independent sovereignty to territories but instead grants plenary authority to the United States: "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." U.S. Const. Art. IV, § 3, Cl. 2 (Territory Clause). As a constitutional matter, "[a]ll territory within the jurisdiction of the United States not included in any State must necessarily be governed by or under the authority of Congress" because territories are "political subdivisions of the outlying dominion of the United States." *National Bank* v. *County of Yankton*, 101 U.S. (11 Otto.) 129, 133 (1880).

The Constitution does not contemplate "sovereign territories." This Court has consistently recognized that "there is no sovereignty in a Territory of the United States but that of the United States itself." *Snow* v. *United States*, 85 U.S. (18 Wall.) 317, 321 (1873); see, *e.g.*, *Domenech* v. *National City Bank of N.Y.*, 294 U.S. 199, 204 (1935) (A U.S. territory has "no independent sovereignty comparable to that of a state."). That is because "the Government of [a territory] owes its existence wholly to the United States." *Grafton* v. *United States*, 206 U.S. 333, 354 (1907); see, *e.g.*, *Benner* v. *Porter*, 50 U.S. (9 How.) 235, 242 (1850) (Territories "are the creations, exclusively, of the legislative department, and subject to its supervision and control."). "In the Territories of the United States, Congress has the entire dominion and sovereignty, national and local, Federal and state, and has full legislative power over all subjects upon which the legislature of a State might legislate within the State." *Simms* v. *Simms*, 175 U.S. 162, 168 (1899); see *Shively*

v. *Bowlby*, 152 U.S. 1, 48 (1894) (citing numerous cases for the "well settled" proposition that the federal government has "the entire dominion and sovereignty * * * over all the territories").

Congress's plenary authority over federal territories includes the authority to permit self-government, whereby local officials administer a territory's internal affairs. *Simms*, 175 U.S. at 168 (Congress has "full legislative power" over the territories and "may, at its discretion, intrust that power to the legislative assembly of a Territory."). But when Congress does so, local officials exercise "power * * * conferred" on them, not any inherent sovereign power of the territory. *Ibid.* And "[t]he extent of the power thus granted" is up to Congress, "at all times subject to such alterations as Congress may see fit to adopt." *Snow*, 85 U.S. at 320.

2. Applying these principles in the double jeopardy context, the Court has held that U.S. territories are not sovereigns separate from the United States. "[S]uccessive prosecutions by federal and territorial courts are impermissible because such courts are creations emanating from the same sovereignty." *Wheeler*, 435 U.S. at 318 (citation and internal quotation marks omitted). That is because the "ultimate source" of a territorial government's power to prosecute is federal power: "[w]hen a territorial government enacts and enforces criminal laws to govern its inhabitants, it is not acting as an independent political community like a State, but as an agency of the federal government." *Id.* at 320-321 (internal quotation marks omitted).

Accordingly, in *Grafton* v. *United States*, *supra*, the Court held that the Philippine Islands (then a U.S.

territory) could not prosecute a defendant for murder after a federal acquittal for the same offense. Consistent with the Territory Clause, the Court recognized that the "authority of the United States over that territory and its inhabitants * * * is paramount." 206 U.S. at 354. The Court explained that territories are not like States, because "[t]he government of a State does not derive its powers from the United States," whereas the government of a territory does. *Ibid.* Because a territorial court and a federal court "exert all their powers under and by authority of the same government—that of the United States," the dual sovereignty doctrine "do[es] not apply." *Id.* at 355.

Since *Grafton*, the Court has consistently reaffirmed that U.S. territories are not sovereigns for double jeopardy purposes. In *Waller*, the Court remarked that "the apt analogy to the relationship between municipal and state governments is to be found in the relationship between the government of a Territory and the Government of the United States." 397 U.S. at 393. The Court explained that the "legal consequence" of the relationship between a territory and the United States "was settled in *Grafton*," where the Court "held that a prosecution in a court of the United States is a bar to a subsequent prosecution in a territorial court, since both are arms of the same sovereign." *Ibid.* Similarly, in *Wheeler*, the Court reaffirmed that a territory is not a sovereign separate from the United States for double jeopardy purposes because "a territorial government is entirely the creation of Congress" and "its judicial tribunals exert all their powers by authority of the United States." 435 U.S. at 321 (citation omitted). And in *Heath*, the

Court noted that the dual sovereignty doctrine is "inapplicable" to territories because territorial prosecutors and federal prosecutors "d[o] not derive their powers to prosecute from independent sources of authority." 474 U.S. at 90.

3. Puerto Rico is a United States territory. It has been since 1898, when Spain ceded it to the United States. See Treaty of Paris, Art. II, 30 Stat. 1755. Although Puerto Rico had significant autonomy before it became part of the United States, it was a Spanish colony, "under Spanish sovereignty." *Ibid.* And Puerto Rico did not become a sovereign when it came under United States jurisdiction, because it did so as a territory, not as a State. See Art. IX, 30 Stat. 1759 ("The civil rights and political status of the native inhabitants of" Puerto Rico "shall be determined by the Congress."). As a territory, Puerto Rico is subject to the "paramount" authority of Congress under the Territory Clause. *Grafton*, 206 U.S. at 354.

4. This Court has recognized that Puerto Rico is not a sovereign for double jeopardy purposes. *Puerto Rico* v. *Shell Co.*, 302 U.S. 253 (1937).[3] *Shell Co.* concerned whether the Sherman Act, 15 U.S.C. 1 *et seq.*, preempted a Puerto Rico antitrust law. 302 U.S. at 255-257. The Court held that it did not, noting that Congress gave Puerto Rico "broad" legislative authority to govern internal affairs and concluding that Puerto Rico's antitrust law did not conflict with federal antitrust law. *Id.* at 260-264.

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[3] In *Shell Co.*, the Court did not expressly address whether the Double Jeopardy Clause applies to Puerto Rico, likely because Congress had applied the double jeopardy protection to Puerto Rico by statute. See 302 U.S. at 264 n.2 (citing Jones Act § 2, 39 Stat. 951).

Despite recognizing that Congress had conferred on Puerto Rico "full power of local self-determination," the Court noted that "legislative duplication gives rise to no danger of a second prosecution and conviction" because territorial and federal antitrust prosecutors represent the same sovereign. *Shell Co.*, 302 U.S. at 261, 264. The "risk of double jeopardy does not exist" because "[b]oth the territorial and federal laws and the courts, whether exercising federal or local jurisdiction, are creations emanating from the same sovereignty." *Id.* at 264 (footnote omitted). Accordingly, "[p]rosecution under one of the laws in the appropriate court, necessarily, will bar a prosecution under the other law in another court." *Ibid.* Because Puerto Rico is a U.S. territory, the situation was "in all essentials, the same" as presented in *Grafton*. *Id.* at 265.

Petitioner contends (Br. 21 n.1, 24) that *Shell Co.* is not controlling because, it asserts, the double jeopardy discussion is dicta. But the Court's double jeopardy analysis formed a critical part of the Court's explanation of why Puerto Rico's antitrust law was not preempted. See 302 U.S. at 265. And *Grafton*'s determination that a U.S. territory is not a sovereign for double jeopardy purposes, on which *Shell Co.* relied, is unquestionably a holding of the Court.

Petitioner also contends (Br. 28) that while Puerto Rico may have exercised delegated federal authority at the time of *Shell Co.*, the double jeopardy analysis changed upon "the adoption of the Puerto Rican Constitution in 1952." As explained below, however, although Puerto Rico attained a significant measure of autonomous self-government when, with Congress's approval, it adopted a constitution in 1952, that event

did not alter Puerto Rico's constitutional status as a U.S. territory.

D. Puerto Rico's Transition To Local Self-Government In 1952 Did Not Make It A Sovereign

1. The events of 1950-1952 marked an important evolution in the relationship between Puerto Rico and the United States. Before 1950, Congress had "progressively recognized the right of self-government of the people of Puerto Rico" and, as a result, "an increasingly large measure of self-government ha[d] been achieved." Public Law 600, Pmbl., 64 Stat. 319. But Puerto Rico's people desired greater internal autonomy, and so Congress invited the drafting of a constitution so that Puerto Rico could become locally self-governing. *Ibid.*; § 1, 64 Stat. 319. The people of Puerto Rico accepted that invitation and drafted a constitution, which was ultimately approved by Congress. 1952 Act, 66 Stat. 327. As a result, Puerto Rico now exercises a high degree of autonomy.

Puerto Rico's transition to self-government did not change its constitutional status as a U.S. territory. The United States did not cede its sovereignty over Puerto Rico, and Puerto Rico did not become a State or an independent nation. *2007 Task Force Report* 5-8; see pp. 22-25, *infra*. Rather, Congress, in an exercise of its authority under the Territory Clause, authorized Puerto Rico to pursue self-government, under which local officials would exercise power under a framework approved by Congress.[4] Although Public

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[4] Petitioner asserts (Pet. 30-31) that Puerto Rico officials cannot be exercising power delegated by Congress because Congress and the President do not participate in the enactment or enforcement of Puerto Rico's criminal law. But Congress, when exercising

Law 600 granted the people of Puerto Rico an unprecedented amount of control over internal affairs, it did not change Puerto Rico's status under the U.S. Constitution.

Puerto Rico's authority to issue its constitution emanated from Congress, and the constitution could not become effective without congressional approval. See Public Law 600, § 3, 64 Stat. 319. Congress did not accept the constitution as drafted. Instead, it deleted Section 20 of Article II of the proposed constitution (which included rights to obtain work; to food, clothing, housing and medical care; and to protection in sickness, old age or disability) and it prevented Puerto Rico from restoring those provisions later. See 1952 Act, 66 Stat. 327 (requiring language specifying that any amendment or revision of the constitution must be consistent with, *inter alia*, Congress's approving resolution); see also Resp. Br. App. 1. Congress's oversight of Puerto Rico's transition to local self-government is consistent with Puerto Rico's status as a territory; it is not consistent with sovereignty.

2. Federal and Puerto Rico officials understood that Puerto Rico's adoption of a constitution would not change its status under the federal Constitution. The

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plenary authority under the Territory Clause, may empower elected territorial governments to exercise significant authority in ways that would not be permitted outside of the territories. See *Palmore* v. *United States*, 411 U.S. 389, 398 (1973) (Congress may legislate for the territories "in a manner * * * that would exceed its powers, or at least would be very unusual, in the context of national legislation enacted under other powers delegated to it."); *National Bank*, 101 U.S. at 133 (In the U.S. territories, "Congress is supreme" and "has all the powers of the people of the United States, except such as have been expressly or by implication reserved in the prohibitions of the Constitution.").

congressional reports accompanying Public Law 600 explained that Congress permitted the people of Puerto Rico "to assume greater responsibilities of local self-government" as part of Congress's "administration of Territories under the sovereignty of the United States," H.R. Rep. No. 2275, 81st Cong., 2d Sess. 4 (1950) (*1950 House Report*), but also that Public Law 600 "is not a statehood bill" or "an independence bill," S. Rep. No. 1779, 81st Cong., 2d Sess. 4 (1950) (*1950 Senate Report*). The reports made clear that authorizing Puerto Rico to adopt a constitution "would not change Puerto Rico's fundamental political, social and economic relationship to the United States" and would not commit the United States to statehood for Puerto Rico or "preclude a future determination by the Congress of Puerto Rico's ultimate political status." *1950 House Report* 3; see *1950 Senate Report* 3-4.

The Secretary of the Interior confirmed that Public Law 600 "would not change Puerto Rico's political, social, and economic relationship to the United States" or "preclude a future determination by Congress of Puerto Rico's ultimate political status." *Puerto Rico Constitution: Hearings Before the House Comm. on Public Lands*, 81st Cong. 163-164 (1950) (*1950 Hearings*); see *1950 House Report* 5 (same). Puerto Rico's Resident Commissioner (its non-voting representative in Congress) agreed that the legislation "would not change the status of the island of Puerto Rico relative to the United States" and "would not alter the powers of sovereignty acquired by the United States over Puerto Rico under the terms of the Treaty of Paris." *1950 Hearings* 63. The Governor of Puerto Rico likewise acknowledged that "Congress can always get

around and legislate again" if it does not approve of Puerto Rico's self-government. *Id.* at 33.

When Congress approved the constitution, the accompanying reports reaffirmed that such approval "w[ould] not change Puerto Rico's fundamental political, social, and economic relationship to the United States," H.R. Rep. No. 1832, 82d Cong., 2d Sess. 7 (1952), and would "in no way impair[]" "the exercise of Federal authority in Puerto Rico," S. Rep. No. 1720, 82d Cong., 2d Sess. 6 (1952) (*1952 Senate Report*). Puerto Rico would not become "a State of the United States" or "an independent republic," but instead simply would "exercise self-government" over "local matters." *1952 Senate Report* 6-7.

3. Petitioner contends (Br. 17, 29, 40-43) that the 1950 and 1952 legislation formed a "compact" between Puerto Rico and the United States that cannot be modified unilaterally by Congress. That argument places unjustified weight on Congress's description of Public Law 600 as "in the nature of a compact." § 1, 64 Stat. 319. That language signifies that the process set out in Public Law 600 would take effect only if the people of Puerto Rico chose local self-government and only if they agreed to adopt a constitution in accordance with the process and conditions set out by Congress. §§ 2-3, 64 Stat. 319. The "compact" was an agreement that Congress would permit self-government if the people of Puerto Rico drafted a constitution and Congress approved it. *1950 Senate Report* 2. Congress did not purport to cede authority over Puerto Rico or be bound by the terms of Public Law 600 for all time. Instead, Congress retained the authority to approve or disapprove the constitution and reaffirmed that it could legislate for Puerto Rico

in the future. Public Law 600, §§ 3-5, 64 Stat. 319-320; see *1950 House Report* 3; *1950 Senate Report* 3-4.

More fundamentally, Congress cannot irrevocably cede sovereignty to Puerto Rico while it remains a U.S. territory. A U.S. territory, by definition, is subject to the authority of Congress, see U.S. Const. Art. IV, § 3, Cl. 2, and one Congress cannot divest a future Congress of its constitutional power to administer that territory. This Court has long recognized that one Congress cannot bind a later Congress, which remains free to repeal or modify an earlier statute. See, *e.g.*, *Reichelderfer* v. *Quinn*, 287 U.S. 315, 318 (1932) (citing cases); see also *Fletcher* v. *Peck*, 10 U.S. (6 Cranch) 87, 135 (1810) ("[O]ne legislature cannot abridge the powers of a succeeding legislature."). That is because the people of the United States have conferred power on Congress through the Constitution, and Congress cannot irrevocably delegate that power consistent with the constitutional plan. See *Clinton* v. *City of New York*, 524 U.S. 417, 452 (1998) (Kennedy, J., concurring).

Petitioner observes (Br. 41-42) that Congress could irrevocably cede authority over Puerto Rico by allowing it to become a State or gain independence. That is true. But Congress cannot cede sovereignty while Puerto Rico remains a U.S. territory. While nothing suggests that Congress intends to revoke its authorization of self-government in Puerto Rico, its power to do so is incompatible with Puerto Rico's characterization of itself as a sovereign.

4. Petitioner points (Br. 29-30) to language in the Puerto Rico Constitution that, in its view, established that the people of Puerto Rico exercised their own sovereignty in adopting the constitution. See, *e.g.*,

P.R. Const. Pmbl., Art. I, §§ 1-2, Art. IV, § 18. But Puerto Rico cannot become a sovereign while remaining a U.S. territory. The constitution's language recognizes that Congress has vested in Puerto Rico the power to govern its internal affairs, which Puerto Rico does in accordance with the will of the people. Pet. App. 51a. Statements that the power of the government is derived from the people are characteristic of any democratic government; they do not answer the question whether the political entity representing the people is sovereign.

Nor does Puerto Rico's designation as a commonwealth change its constitutional status. See Pet. Br. 38. The term "commonwealth" was chosen by the people of Puerto Rico to reflect the "significant powers of self-government Puerto Rico enjoys," and it "appropriately captures Puerto Rico's special relationship with the United States." *2007 Task Force Report* 5. But "commonwealth" is not a form of independent sovereignty recognized under the U.S. Constitution. *Ibid.* (Puerto Rico's designation as a commonwealth "does not * * * describe a *legal* status different from Puerto Rico's constitutional status as a 'territory.'"). As the constitutional convention explained, Puerto Rico's designation as a "commonwealth" means that it is a governmental entity that regulates "its own local affairs" but "is linked to the United States of America * * * in a manner compatible with its Federal structure" and "does not have an independent and separate existence." Resolution 22 (Feb. 4, 1952), *reprinted in Documents* 191-192.

The exercise of local self-governance does not denote a sovereign status under the Constitution. See Pet. Br. 30-34. Congress has permitted home rule in

the District of Columbia, but the District is unequivocally subject to plenary congressional control, under the sovereignty of the United States. See *District of Columbia* v. *John R. Thompson Co.*, 346 U.S. 100, 109 (1953) (D.C. home rule, like "the delegation of [the] power[] of self-government * * * to territories," remains subject to "the power of Congress at any time to revise, alter, or revoke the authority granted."). Some States have authorized municipal home rule, see Resp. Br. 24-25, yet municipalities remain under the sovereignty of the States, *Waller*, 397 U.S. at 391-394. Whether two entities are separate sovereigns does not turn on "the extent of control exercised by one prosecuting authority over the other," *Wheeler*, 435 U.S. at 320, but on whether the entities "can be termed separate sovereigns" based on their political status under the Constitution, *Heath*, 474 U.S. at 88. Puerto Rico's legislative power is the immediate source of the laws that it uses to prosecute crimes, but not the "ultimate source," *Wheeler*, 435 U.S. at 320—the ultimate source is the United States.

E. This Court And The Executive Branch Have Recognized That Puerto Rico Is A Self-Governing U.S. Territory, Not A Sovereign

1. Since 1952, this Court has recognized both that Puerto Rico is locally self-governing and that Puerto Rico remains a territory for constitutional purposes. The Court has observed that Puerto Rico exercises a "degree of autonomy and independence normally associated with States of the Union." *Examining Bd. of Eng'rs, Architects & Surveyors* v. *Flores de Otero*, 426 U.S. 572, 594 (1976); see, *e.g.*, *Puerto Rico* v. *Branstad*, 483 U.S. 219, 230 (1987) (same). At the same time, the Court has recognized that Puerto Rico

remains a territory of the United States and does not have the same constitutional status as a State.

In *Torres* v. *Puerto Rico*, 442 U.S. 465 (1979), the Court considered a Fourth Amendment challenge to a police search of luggage. The Court noted that the Fourth Amendment does not automatically apply to Puerto Rico because it is an "unincorporated territor[y]" that is subject to Congress's authority, rather than a State. *Id.* at 469-471. After deciding to apply Fourth Amendment protections to Puerto Rico, the Court found the search impermissible, in part because "Puerto Rico has no sovereign authority to prohibit entry into its territory" and so the search could not qualify as a border search. *Id.* at 473. Similarly, in *Harris* v. *Rosario*, 446 U.S. 651 (1980) (per curiam), the Court rejected an equal-protection challenge to a federal law providing less favorable federal financial assistance for Puerto Rico than the States, explaining that Congress "may treat Puerto Rico differently from States" by virtue of Congress's power under the Territory Clause. *Id.* at 651-652.

Most relevant here, the Court has recognized that its double jeopardy analysis in *Shell Co.* remains good law after 1952. *Shell Co.* recognized that autonomy over local affairs did not make Puerto Rico a sovereign. Even before Puerto Rico adopted a constitution in 1952, it had significant autonomy. The 1900 and 1917 organic acts provided a "broad and comprehensive" grant of legislative power to Puerto Rico, giving it "full power of local self-determination," yet *Shell Co.* recognized that Puerto Rico remained a territory and therefore was not a separate sovereign for double jeopardy purposes. 302 U.S. at 261, 264. Puerto Rico's transition to self-government in 1952 did not

change its constitutional status as a U.S. territory. Since 1952, the Court has reaffirmed the general proposition that territories are not sovereigns for double jeopardy purposes. See *Heath*, 474 U.S. at 89-90; *Wheeler*, 435 U.S. at 318; *Waller*, 397 U.S. at 393. And the Court has continued to rely on *Shell Co.* for the proposition that territories are not sovereigns under the Double Jeopardy Clause. See *Heath*, 474 U.S. at 88-89; *Wheeler*, 435 U.S. at 318; *Waller*, 397 U.S. at 393 & n.5. This Court therefore has established that territories in general, and Puerto Rico in particular, are not sovereigns for double jeopardy purposes.

2. None of the decisions petitioner cites (Br. 35-39) establish that Puerto Rico is a sovereign under the Constitution. In *Calero-Toledo* v. *Pearson Yacht Leasing Co.*, 416 U.S. 663 (1974), the Court treated Puerto Rico like a State for purposes of a federal judicial statute. *Id.* at 669-676. Similarly, in *Flores de Otero*, the Court treated Puerto Rico like a State for a district-court jurisdictional statute, in part because Congress has "granted Puerto Rico a measure of autonomy comparable to that possessed by the States." 426 U.S. at 594, 596-597. In neither case was the Court called upon to assess Puerto Rico's status under the Constitution. The Court has treated Puerto Rico as a State for statutory purposes in some cases, see, *e.g.*, *Puerto Rico Dep't of Consumer Affairs* v. *Isla Petroleum Corp.*, 485 U.S. 495, 499 (1988), but not others, see *Fornaris* v. *Ridge Tool Co.*, 400 U.S. 41, 42 n.1 (1970) (per curiam), and it has "never held that the Commonwealth of Puerto Rico is entitled to all the benefits conferred upon the States under the Constitution," *Branstad*, 483 U.S. at 229.

In *Rodriguez* v. *Popular Democratic Party*, 457 U.S. 1 (1982), the Court upheld Puerto Rico's mechanism for filling vacancies in its legislature against a constitutional challenge. In so holding, the Court remarked that Puerto Rico, "like a state, is an autonomous political entity, sovereign over matters not ruled by the Constitution." *Id.* at 8 (quoting *Calero-Toledo*, 416 U.S. at 673) (citation and internal quotation marks omitted). But territorial status *is* ruled by the Constitution. *Rodriguez* recognized that because Puerto Rico is self-governing in its internal affairs, its arrangements for its electoral system should be given deference. *Ibid.* That holding does not question that, as a territory, Puerto Rico is not a separate sovereign from the United States.

Finally, the Court's decision in *Lara* does not establish that Puerto Rico is a sovereign. See Pet. Br. 33-34. In deciding that Congress could lift restrictions on Indian Tribes' authority to prosecute non-member Indians, the Court noted that Congress had "made adjustments to the autonomous status of other such dependent entities," and it cited Public Law 600, the Puerto Rico Constitution, and other laws governing territories. *Lara*, 541 U.S. at 203-204. But Congress's adjustment of the relationship with Puerto Rico by permitting self-government did not cede its sovereignty over Puerto Rico, and *Lara* does not state otherwise. Puerto Rico is not like the Tribes because it did not have pre-existing sovereignty when it became part of the United States. Nor did it acquire sovereignty upon its entry (as do States). The Tribes are sui generis, and the Court has so recognized. Territories are different because the Constitution places them under

U.S. sovereignty and subjects them to congressional control.

3. In a series of reports issued over two decades, the Executive Branch has rejected the view that Puerto Rico is, or could become, a sovereign territory. A 1994 Office of Legal Counsel opinion concluded that Congress may not cede sovereignty to a U.S. territory, absent statehood or independence, because all land under the sovereignty of the United States that is not a State is subject to "the authority of Congress," and Congress may not irrevocably delegate its authority over such land. Teresa Wynn Roseborough, Deputy Assistant Att'y Gen., Office of Legal Counsel, *Mutual Consent Provisions in the Guam Commonwealth Legislation* 1-6 (July 28, 1994), *reprinted in Report by the President's Task Force on Puerto Rico's Status* App. F (Dec. 2005) (*2005 Task Force Report*).[5]

The Department of Justice has adhered to that view in subsequent statements to Congress made in conjunction with proposed legislation about Puerto Rico. See *Puerto Rico: Hearing Before the Senate Comm. on Energy and Natural Resources*, 109th Cong., 2d Sess. 14-17 (2006) (statement of C. Kevin Marshall, Deputy Assistant Att'y Gen., Office of Legal

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[5] Five decades ago, an Office of Legal Counsel opinion expressed the view that the United States could enter into an agreement with Puerto Rico alterable only by mutual consent, see *Power of the United States To Conclude with the Commonwealth of Puerto Rico a Compact Which Could Be Modified Only by Mutual Consent* 1, 3-6 (July 23, 1963), and it relied on that opinion in another matter, see Herman Marcuse, *Micronesian Negotiations* 1 (Aug. 13, 1971). Neither opinion took the view that Puerto Rico is a sovereign, and the Office of Legal Counsel has since explained why its 1963 opinion was mistaken, see, *e.g.*, *2005 Task Force Report* App. F 6-10.

Counsel) (*2006 OLC Testimony*); Letter from Robert Raben, Assistant Att'y Gen., Office of Legislative Affairs, Dep't of Justice, to Hon. Frank H. Murkowski, Chairman, Comm. on Energy & Natural Res., U.S. Senate 5-10, 14 (Jan. 18, 2001), *reprinted in 2007 Task Force Report* App. E (*OLA Letter*); Comm. on Resources, 107th Cong., 1st Sess. 17, *Hearing on H.R. 4751, Puerto Rico-United States Bilateral Pact of Non-territorial Permanent Union and Guaranteed Citizenship Act* (Comm. Print 2000) (statement of William M. Treanor, Deputy Assistant Att'y Gen., Office of Legal Counsel) (*2000 OLC Testimony*). On each occasion, the Department explained that the "Constitution recognizes only a limited number of options" for Puerto Rico—it could become "a sovereign nation," become "a State," or "be governed pursuant to the Territories Clause"—and if it remains a territory, it "necessarily remain[s] subject to Congressional power under the Territories Clause." *2000 OLC Testimony* 17-18; see *2006 OLC Testimony* 14-17; *OLA Letter* 5-10, 14.[6]

A Presidential task force has assessed Puerto Rico's current status and evaluated the options for Puerto Rico's future. After considering views from across the government, holding public hearings, and receiving written submissions, the task force concluded on

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[6] In briefs filed two decades ago, the Department of Justice argued that Puerto Rico was a separate sovereign for double jeopardy purposes. Compare, *e.g.*, *United States* v. *Lopez Andino*, 831 F.2d 1164, 1167-1168 (1st Cir. 1987) (agreeing with that position), cert. denied, 108 S. Ct. 2018 (1988), with *United States* v. *Sanchez*, 992 F.2d 1143, 1148-1152 (11th Cir. 1993) (rejecting that position), cert. denied, 510 U.S. 1110 (1994). Those briefs do not reflect the considered view of the Executive Branch.

three different occasions that Puerto Rico remains a territory of the United States and that Congress has not irrevocably ceded sovereignty to it.

The task force's 2005 report explained that "Puerto Rico is, for purposes under the U.S. Constitution, a territory," and therefore is "subject to congressional authority, under the Constitution's Territory Clause." *2005 Task Force Report* 5 (internal quotation marks omitted). Congress could "continue the current system indefinitely, but it also may revise or revoke it at any time," and Congress cannot enter into an arrangement with Puerto Rico that "could not be altered without the 'mutual consent' of Puerto Rico and the [F]ederal Government." *Id.* at 5-6. "The Federal Government may relinquish United States sovereignty by granting independence or ceding the territory to another nation; or it may * * * admit a territory as a State," but "the U.S. Constitution does not allow other options." *Id.* at 6. In 2007 and 2011, the task force took "a fresh look at the issue" and reached the same conclusion. *2011 Task Force Report* 24-26; see *2007 Task Force Report* 5-7.[7]

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[7] Petitioner relies (Br. 37-38) on statements that the United States made to the United Nations when Puerto Rico's constitution became effective. In accordance with Article 73(e) of the U.N. Charter, which directs member states to transmit information to the U.N. about territories that have not yet attained self-government, the United States transmitted information about Puerto Rico from 1946 to 1952. Then, in 1953, it reported that it would no longer transmit such information because Puerto Rico had become self-governing. *Memorandum by the Government of the United States of America Concerning the Cessation of Transmission of Information Under Article 73(e) of the Charter with Regard to the Commonwealth of Puerto Rico*, 28 Dep't of State Bull. 585 (Apr. 20, 1953). The United States did not characterize

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Although Puerto Rico exercises significant local authority, with great benefit to its people and to the United States, Puerto Rico remains a territory under our constitutional system. Puerto Rico does not possess sovereignty independent of the United States, and its prosecutions cannot invoke the dual sovereignty doctrine under the Double Jeopardy Clause.

CONCLUSION

The judgment of the Supreme Court of Puerto Rico should be affirmed.

Respectfully submitted.

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Puerto Rico as a sovereign. Instead, it noted that Puerto Rico had become self-governing while having no "independent and separate existence" from the United States. *Id.* at 587 (quoting Resolution 22 of the Constitutional Convention of Puerto Rico (Feb. 4, 1952)).