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Supreme Court Gives Biden Administration Until July 29 to Either Embrace or Oppose 'Racist' Insular Cases

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"U.S. Empire Insular Cases" Image By. EQUALLY AMERICAN

A national coalition consisting of leading civil rights organizations, members of Congress, former Acting Solicitor General of the United States Neal Katyal, individuals harmed by U.S. colonialism, and other advocates joined a virtual press conference on Tuesday to call on the Biden-Harris administration to condemn rather than continue embracing the Supreme Court's racist Insular Cases, a series of controversial decisions that established a colonial framework for the 3.6 million residents of U.S. territories, according to a release from Equally American, which advocates for equality and civil rights in U.S. territories.

The Biden-Harris Administration has until Friday, July 29th to decide whether to join or oppose calls to overrule the Insular Cases, when it must respond to a Supreme Court petition in *Fitisemanu v. United States* - a case about birthright citizenship in U.S. territories which asks, in part, “whether the Insular Cases should be overruled,” Equally American said.

Tuesday’s press conference was co-sponsored by Equally American, LatinoJustice PRLDEF, and American Civil Liberties Union (ACLU). LatinoJustice, ACLU, and other leading civil rights organizations wrote the Biden-Harris Justice Department earlier this year calling on it to condemn the Insular Cases. They also recently filed an amicus brief in *Fitisemanu* calling on the Supreme Court to take up the petition to finally overrule the Insular Cases.

“The Biden-Harris Justice Department has not just cited the Insular Cases, but actually cited the most racist parts of these decisions, to argue that those born in U.S. territories – overwhelmingly people of color – have no constitutional right to citizenship. It is time the Justice Department join rather than oppose the calls of those who seek to turn the page on the Insular Cases and the colonial legacy they created,” said Neil Weare, president and founder of Equally American, co-counsel for plaintiffs in *Fitisemanu*. The *Fitisemanu* petitioners are also represented by Gibson Dunn and American Samoan attorney Charles Ala’ilima.

“The Insular Cases were decided by largely the same Court as *Plessy v. Ferguson* - the case that justified racial segregation in the United States. They are grounded in the same discredited notions of white supremacy, yet unlike *Plessy*, the Insular Cases have yet to be overruled. Although the Insular Cases rest on archaic, offensive, and explicitly racist reasoning, the U.S. government still relies on them to enforce the colonial status quo,” said Lourdes M. Rosado, President and General Counsel of LatinoJustice PRLDEF.

“Last year, President Biden addressed discrimination against residents of U.S. territories in federal benefits programs by declaring ‘there can be no second-class citizens in the United States of America.’ So long as the United States has territories, the people who live there should enjoy the same basic rights and protections as people who live anywhere else in the United States - their race, geography, or status should not justify discrimination,” said David Cole, National Legal Director of ACLU.

According to the release, Neal Katyal, former Acting Solicitor General in the Obama-Biden Justice Department, also joined in the call for the Biden-Harris Justice Department to condemn the Insular Cases. Katyal recently filed an amicus brief in *Fitisemanu* on behalf of descendants of Dred Scott and Isabel Gonzalez.

“The Insular Cases are among the most terrible Supreme Court cases in U.S. history, and I very much hope that the Justice Department does not defend them today. One of my proudest moments as Acting Solicitor General was finally reckoning with the government’s role in *Korematsu* and the internment of Japanese-Americans - now is the time for the Justice Department to reckon with its role in the Insular Cases and the colonial framework they established,” said Katyal, a Partner at Hogan Lovells.

Fitisemanu Petitioners Ask Solicitor General to Join in Call to Overrule Insular Cases

The *Fitisemanu* petitioners, through their lead counsel at Gibson, Dunn & Crutcher LLP, on Tuesday sent a letter to the Solicitor General of the United States “to urge the government to ... join petitioners in asking the Supreme Court to finally and formally overturn the Insular Cases,” noting “[t]here are overwhelming legal, policy, and moral grounds to do so.”

Members of Congress Call On Biden and Harris to Condemn Insular Cases

Congresswoman Stacey Plaskett, who represents the U.S. Virgin Islands as a non-voting Delegate to Congress, and Congressman Raúl Grijalva, Chair of the House Resources Committee, [led a group of 23 members of Congress in a letter sent](#) Tuesday to President Joe Biden and Vice-President Kamala Harris that urges the Biden-Harris administration to “reject the Insular Cases and the racist colonial framework they invented.” They provided the following statements that were read at the press conference:

“The Insular Cases, a series of Plessy-era Supreme Court decisions, established a racist and colonial legal framework that has denied the 3.6 million residents of U.S. territories equal constitutional rights and left them structurally disenfranchised for nearly 125 years,” said Rep. Plaskett. “In 2022, no one should use the racist language from the Insular Cases to deny citizenship rights to people born in U.S. territories. Not federal judges. And certainly not the Biden-Harris Justice Department.”

“I am committed to elevating and supporting the voices of all Americans, including those in the territories that have long been ignored and whose privileges as citizens have been denied to them solely based on where they happen to live,” said Rep. Grijalva. “Equal justice under the law and access to basic rights and protections should not be conditional on where you live or where you were born.”

Insular Cases Continue to Harm People from U.S. Territories, Equally American Says

John Fitisemanu, lead plaintiff in *Fitisemanu v. United States*, was among several individuals from U.S. territories who spoke about the harms that the Insular Cases, and the colonial framework they established, have had on their lives.

“I am a passport-holding, tax-paying American born on U.S. soil, yet the U.S. Justice Department continues to rely on the racist Insular Cases to argue that I have no right to call myself a U.S. citizen or vote in state and federal elections. That hurts - those cases said people in overseas U.S. territories were ‘unfit’ for citizenship and voting because they were ‘savages.’ Haven’t we moved past that?” said John Fitisemanu, born in American Samoa and who now lives in Utah, where he cannot vote in state or federal elections as a non-citizen.

“The Biden Harris Administration has the opportunity to take a stand and help turn the page on the Insular Cases and the discriminatory framework they created,” said David Diamadi, the father of Haley Nicole Diamadi, both of whom live in Guam. “I feel my daughter Haley deserves better. Every disabled adult living in the U.S. Territories deserves better. And by better I simply mean as equals, no more, no less than our fellow citizens in the United States.”

“Not having a vote matters when your community is ravaged like ours was by Hurricane Irma and Maria. Not having a vote matters when your community is denied equality and federal benefits. Not having a vote matters when generations of friends and loved ones are sent to war with some never coming back, and never having the right to vote for their own Commander-in-Chief,” said Lavonne Wise, a plaintiff in *Segovia v. United States*, which sought to expand voting rights in U.S. territories. “It’s long past time to override the insular cases and dismantle the un-American colonial system they established.”

“Last year President Biden addressed ongoing discrimination against Puerto Ricans by declaring ‘there can be no second-class citizens in the United States of America.’ That gave me hope. But at the same time his Administration continues embracing the racist Insular Cases,” said Louis Lajara,

who retired from the U.S. Air Force and served as a Postmaster in his home of Puerto Rico. “Ending second-class citizenship means ending the Insular Cases – President Biden needs to take action now to live up to his promises.”

Next Steps

The call on the Biden-Harris Administration to condemn the Insular Cases is part of a broader campaign to overrule the Insular Cases and dismantle the colonial framework they established, according to the release.

The U.S. Department of Justice has until July 29, 2022, to tell the Supreme Court whether it will join advocates calling for the Insular Cases to be overruled, or whether it will oppose them.

The Supreme Court will decide whether to take up the case, and with it, the call to overrule the Insular Cases, when it considers the *Fitisemanu* petition this fall.