1993

Exile on Main Street: Inmate Transfers from Puerto Rico to the Continental United States Violate Due Process

Justin P. Brooks

EXILE ON MAIN STREET...INMATE TRANSFERS FROM PUERTO RICO TO THE CONTINENTAL UNITED STATES VIOLATE DUE PROCESS

Justin Brooks[1]

Its with sorrow that I have to acquaint you that I this day receiv'd my Tryal and has receiv'd the hard sentance of Seven Years Transportation beyond the seas . . . If I was for any time in prison I would try and content myself but to be sent from my Native Country perhaps never to see it again distresses me beyond comprehension and will Terminate with my life . . . [T]o part with my dear Wife & Child, Parents and Friends, to be no more, cut off in the Bloom of my Youth without doing the least wrong to any person on earth--O my hard fate, may God have mercy on me . . . Your affect. Husband until Death.[2]

I. Introduction.

The transfer of prisoners from one country to another has a long and inglorious history. Such transfers involve prisoners being separated from their

---

[1] Assistant Professor, The Thomas M. Cooley Law School. Professor Brooks is the former Assistant Director of the Street Law Corrections Clinic at Georgetown University Law Center and was a visiting professor at Interamericana Law School for the summer session 1992. As a visiting professor at Interamericana he taught "Advanced Constitutional Law: Prisoners' Rights," inspected correctional facilities, and held a conference sponsored by Servicio Legales addressing the rights of prisoners in Puerto Rico. Professor Brooks wishes to thank: Professor Rick Roe for making it possible for him to conduct his research in Puerto Rico; Dean Carlos Ramos Gonzalez for opening closed doors, and committing his time and energy to improving the lives of Puerto Rican prisoners; Anne Judith Kragness and Justin Kerber for outstanding research assistance; Jeff Chinn and Stuart Grossman for their insightful editorial assistance; Leonard Torres, Juan-Carlos Consuegra, Jose Roque, Fermin Arraiza, and the students of Interamericana Law school for a challenging and rewarding summer.

[2] Letter from Thomas Holden, an inmate transferred from England to Australia, written to his wife in 1812, in Robert Hughes, *The Fatal Shore* 129 (1987).

families , their culture, and their countries.[3] To date, the most momentous series of prisoner transfers occurred between 1787 and 1853 when the British government populated Australia as a prison colony.[4] During that period more than 160,000 inmates were transferred from English prisons across the Atlantic, Indian, and Pacific oceans to colonize Australia.[5] The cruelty of these transfers finally resulted in the abolition of the transport system in 1853.[6] The practice, however, is still alive today between Puerto Rico and the continental United States.

The United States government has an ongoing agreement with the Puerto Rican Department of Corrections (DOC) which allows the DOC to transfer Puerto Rican inmates, sentenced under Puerto Rican law, to the continental United States.[7] Instead of transferring all federal inmates to federal facilities within the continental United States, the DOC has discretion to keep federal inmates within Puerto Rico and choose inmates sentenced under Puerto Rican law for transfer.[8] This discretion has led to punitive transfers of inmates who are seen as troublemakers. "These "troublemakers" are often pulled out of their bunks in the middle of the night and transferred without any due process protections.[9]

Transferring inmates from Puerto Rico to the continental United States creates significant hardships for these inmates and their families. Furthermore, such transfers violate the Due Process Clause of the Fourteenth Amendment.[10] In addressing the constitutionality of transferring inmates from Puerto Rico to the continental United States under present law, this article will

---

[3] *See generally* Michael A. Millemann & Steven J. Millemann, *The Prisoner's Right to Stay Where He Is: State and Federal Transfer Run Afoul of Due Process,* 3 Cap. U. L. Rev. 223 (1974).

[4] Hughes, *supra,* note 2, at 1, 572.

[5] *Id.* at 2.

[6] *Id.* at 572. The transfer of inmates from England to Australia was known as "transport" and criminal defendants could be sentenced to transport under the Transportation Act of 1784. *Id.* at 62.

[7] Americas Watch Report, *Prison Conditions in Puerto Rico* 6 (1991).

[8] *Id.*

[9] *Id.* Small American towns have actually grown to rely upon these transfers of inmates. Appleton, Minnesota has an agreement with the Puerto Rican Department of Corrections which has had such an impact on the town's economy that the president of the Chamber of Commerce, Dianne Johnson, is quoted as saying "it doesn't take much to turn around a town like this," in reaction to the recent transfer of 200 Puerto Rican inmates to the town's new 516 bed $28.5 million correctional facility. "Everybody's excited," said Linda Holzheimer, a cook at Meyers Cafe on Main Street. Judy Boe, manager of the town's Super 8 Motel said "we had our doubts there for a while...people were getting impatient and pessimistic... now some of the people's dreams have come true." *Pokeytown Welcomes Imported Convicts,* The Orlando Sentinel, Apr. 4, 1993, at A-21.

[10] No State shall . . . deprive any person of life, liberty, or property, without due process of law. U.S. Const. amend. XIV, § 1.

distinguish these transfers from interstate transfers. By distinguishing inmate transfers from Puerto Rico to the continental United States from interstate transfers this article will show that even under recent Supreme Court decisions such transfers are unconstitutional. This in no way implies that interstate transfers do not also have devastating effects on inmates and their families. Interstate transfers similarly reflect short-sighted correctional policies by policy makers and the courts.

II. Due Process Rights of Inmates

a. Historically.

Since 1941, with the decision of *Ex Parte Hull,*[11] the Supreme Court has consistently held that prisoners do not relinquish all their constitutional rights to legal remedies. In *Hull,* the Court struck down a Michigan correctional regulation which required that inmates submit their habeas corpus petitions to prison authorities for approval before the petitions could be filed in court.[12] The Court held that the regulation violated the principle that "the state and its officers may not abridge or impair" inmates' right to apply to a federal court for a writ of habeas corpus.[13] The Court further held that federal courts alone have the authority to evaluate habeas corpus petitions and that the Michigan regulation was a violation of inmates' rights.[14] However, the Court failed to identify the Constitutional source of the inmates' rights.

Following *Hull,* throughout the 1950's and 1960's, the Supreme Court attempted to make prisoners' access to the courts more adequate, effective, and meaningful without basing this access in Due Process. Indigent prisoners were allowed to file appeals and habeas corpus petitions without paying docket fees,[15] states had to provide trial transcripts to indigent inmates,[16] and attorneys had to be appointed for indigent inmates at trial and for certain appellate processes.[17]

---

[11] 312 U.S. 546 (1941).

[12] The regulation provided that "All legal documents, briefs, petitions, motions, habeas corpus proceedings and appeals will first have to be submitted to the institutional welfare office and if favorably acted upon be then referred to Perry A. Maynard, legal investigator to the Parole Board, Lansing, Michigan. Documents submitted to Perry A. Maynard, if in his opinion are properly drawn, will be directed to the court designated or will be referred back to the inmate." *Id.* at 548-49.

[13] The Court denied inmate Cleio Hull's motion for leave to file a petition for writ of habeas corpus because the motion itself was insufficient. *Id.* at 551.

[14] *Id.* at 546.

[15] *Burns* v. *Ohio,* 360 U.S. 252, 257 (1959).

[16] *Griffin* v. *Illinois,* 351 U.S. 12, 20 (1956).

[17] *Gideon* v. *Wainwright,* 372 U.S. 335 (1963); *Douglas* v. *California,* 372 U.S. 353, 358 (1963).

In 1969, the Supreme Court struck down a Tennessee regulation prohibiting inmates from assisting each other in preparing writs in *Johnson* v. *Avery.*[18] The state argued that the ban on "jailhouse lawyers" was necessary to promote the goals of institutional safety and discipline.[19] Justice Fortas disagreed and, writing for the majority, held that the regulation effectively foreclosed illiterate or poorly educated prisoners from filing habeas corpus petitions.[20] The Court held that the state must either allow the jailhouse lawyers to function, or provide an alternative resource for the inmates to assert their rights.[21]

It was not until the 1974 case of *Procunier* v. *Martinez*[22] that the constitutional source of prisoners' access to the court was clearly identified as the Due Process Clause. In *Procunier,* the Supreme Court struck down a California Department of Corrections regulation which limited prisoners' outside legal assistance to members of the bar and licensed private investigators.[23] The Court held that the regulation unjustifiably restricted inmates' right

---

[18] 393 U.S. 483 (1969). The regulation provided: "No inmate will advise, assist or otherwise contract to aid another, either with or without a fee, to prepare Writs or other legal matters. It is not intended that an innocent man be punished. When a man believes he is unlawfully held or illegally convicted, he should prepare a brief or state his complaint in letter form and address it to his lawyer or a judge. A formal Writ is not necessary to receive a hearing. False charges or untrue complaints may be punished. Inmates are forbidden to set themselves up as practitioners for the purpose of promoting a business of writing Writs." *Id.* at 484.

[19] Tennessee argued that the regulation was justified as a part of the State's disciplinary administration of the prisons because writ writers are sometimes a menace to prison discipline and their petitions are often so unskilled as to be a burden on the courts which receive them. *Id.* at 486. The Court admitted that prison discipline and administration are state functions subject to federal authority only where paramount federal constitutional or statutory rights supervene. However, the Court had made it clear in previous cases that in instances where state regulations applicable to inmates conflict with such rights, the regulations may be invalid. *Ex parte Hull,* 312 U.S. 546 (1941); *Lee* v. *Washington,* 390 U.S. 333 (1968)(the practice of racially segregating prisoners held unconstitutional). The Court found that the Tennessee regulation prohibiting inmates from helping each other write writs deprived inmates of the constitutionally and statutorily protected availability of the writ of habeas corpus. 393 U.S. at 489.

[20] *Id.* at 487. The majority wrote that "for all practical purposes, if such prisoners cannot have the assistance of a 'jailhouse lawyer,' their possible valid constitutional claims will never be heard in any court." *Id.* The Court noted that normally it is the practice in federal courts to appoint counsel in post-conviction proceedings only after a court has decided that issues in a petition for post-conviction relief call for an evidentiary hearing. *Id.*

[21] *Id.* at 489-90. The Court noted, without commenting on the merits of these programs, that other jurisdictions provided alternatives to the assistance provided by inmates such as public defenders to consult with prisoners about their habeas corpus petitions, senior law students to interview and advise inmates, and volunteer attorneys. Tennessee, however, provided none of these services. *Id.* at 489.

[22] 416 U.S. 396 (1974).

[23] The regulation provided: "Investigators for an attorney-of-record will be confined to not more than two. Such investigators must be licensed by the State or must be members of the State Bar. Designation must be made in writing by the Attorney." *Id.* at 419.

of access to the court under the Due Process Clause of the Constitution, because it imposed a "substantial burden on the right of access to the courts."[24] The Court recognized that prison administrators do not have to adopt every policy and practice that may facilitate prisoner access to the courts, but must balance the right of access against penal administrative interests.[25]

Also, in 1974, the Supreme Court expanded due process protections of inmates to disciplinary proceedings in *Wolff* v. *McDonnell*,[26] invalidating a Nebraska policy which allowed correctional officials to take away inmates' good-time credits[27] without any substantial due process protections.[28] The Court found that inmates were not entitled to the same procedural protections as are parolees at parole revocation hearings,[29] and that there is no constitutional right to good time credit.[30] However, the Court held that if the Department of Corrections granted good-time credit, they could not just revoke it without due process protections.[31] Justice White wrote that if the state creates a right to good-time, then the "prisoner's interest has real substance and is sufficiently embraced within the Fourteenth Amendment

---

[24] *Id.* at 419. The Court found that the prison regulation effectively prohibited attorneys from using law students or other paraprofessionals for attorney-client interviews and other tasks. This substantially burdened inmates' constitutional right of access to the courts because it would deter some lawyers from representing prisoners. *Id.* at 420.

[25] *Id.* The Court applied this balancing test to the California regulation and found that the absolute ban on the use of law students and other paraprofessionals severely restricted inmates' right of access to court without any substantial penal justification. *Id.* at 421. The Court wrote that:

> [T]he constitutional guarantee of due process of law has as a corollary the requirement that prisoners be afforded access to the courts in order to challenge unlawful convictions and to seek redress for violations of their constitutional rights. This means that inmates must have a reasonable opportunity to seek and receive the assistance of attorneys. *Id.* at 419.

[26] 418 U.S. 539 (1974).

[27] Good time credit is time subtracted from an inmate's sentence for, "good behavior and faithful performance of duties while confined" in prison, or "for especially meritorious behavior or exceptional performance of his duties" while in the facility. 418 U.S. at 546, n.6.

[28] The Department of Corrections argued that the procedures for disciplining prisoners are a matter of policy raising no constitutional issues. The constitutionally deficient process afforded to inmates reflected this philosophy. *Id.* at 545-53.

[29] The Supreme Court has ruled that revocation of parole implicates a significant liberty interest under the Fourteenth Amendment, and therefore, parolees are entitled to certain due process protections including: (a) written notice of violation; (b) disclosure of evidence; (c) the opportunity to be heard and present evidence; (d) the right to confront and cross-examine adverse witnesses; (e) a neutral and detached hearing body; and (f) a written statement including evidence relied upon if parole is revoked. *Morrissey* v. *Brewer*, 408 U.S. 471, 489 (1972).

[30] 418 U.S. at 557.

[31] *Id.*

'liberty' to entitle him to those minimum procedures appropriate under the circumstances and required by the Due Process Clause."[32]

The Court also extended the right to use jailhouse lawyers not only in habeas corpus actions, but in civil rights complaints.[33] Citing *Johnson* v. *Avery* for the proposition that the Due Process Clause requires policies consistent with affording inmates the opportunity to present allegations of violations of constitutional rights, Justice White wrote, "it is futile to argue that the Civil Rights Act of 1871 has less importance in our constitutional scheme than does the Great Writ."[34]

In the 1977 case of *Bounds* v. *Smith*,[35] the Supreme Court extended inmates' due process rights beyond mandating unimpeded motions and writs, and required that inmates have access to legal resources. The Court, relying upon *Younger* v. *Gilmore*,[36] held that:

> [T]he fundamental constitutional right of access to the courts *requires* prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law.[37]

The Court reasoned that if attorneys need access to legal resources in order to provide competent legal advice, then inmates must be afforded the same opportunity in order to make their access to court truly meaningful.[38] The Court held that this could be accomplished by providing inmates with either law libraries or assistance of legal counsel.[39]

In 1985, the due process rights of inmates in connection with the establishment of an evidentiary review standard for disciplinary hearings was ad-

---

[32] *Id.* The Supreme Court found that inmates were entitled to written notice, a written statement as to the evidence relied upon, the reasons for the disciplinary action taken, and the opportunity to call witnesses and present evidence when not unduly hazardous to institutional safety. *Id.* at 564-66. The Court did not grant inmates the right to cross-examine adverse witnesses, a decision vehemently opposed by the dissent. *Id.* at 584-90 (Marshall., J. dissenting).

[33] 418 U.S. at 579.

[34] *Id.*

[35] 430 U.S. 817 (1977).

[36] 404 U.S. 15 (1971) (States are constitutionally mandated to protect the rights of prisoners to access to the courts by providing them with law libraries or alternative sources of legal knowledge).

[37] *Id.* at 828 (emphasis added).

[38] *Id.* at 825-28. The Court discussed the fact that it is often more important that a prisoner complaint is not frivolous and meets all procedural requirements since its sufficiency is scrutinized before allowing the inmate to proceed *in forma pauperis*. Also, without a library, an inmate will not be able to rebut the State's arguments. *Id.* at 826.

[39] 430 U.S. at 828.

dressed by the Supreme Court in the case of *Walpole* v. *Hill*[40]. The Court reasoned that there had to be "some" standard in order to prevent arbitrary deprivations of rights.[41]

The critical question, which is answered affirmatively by the Supreme Court in all of these cases, is whether or not the asserted right of the inmates implicates the Due Process Clause. In terms of transferring inmates, the Court has not been as generous. However, the transfer cases still indicate that an inmate transfer from Puerto Rico to the continental United States implicates the Due Process Clause.

b. Due Process Rights Implicated by Inmate Transfers

In 1976, the Supreme Court addressed the due process rights of inmates in intrastate transfers in the case of *Meachum* v. *Fano*.[42] This case was brought by six inmates in Massachusetts who were transferred intrastate to a facility with much less favorable living conditions as a result of allegations that they had been involved in criminal activities within the prison.[43] Before being transferred, the inmates were given hearings, but they were neither allowed to hear nor were they given transcripts, of all the testimony used against them.[44] The inmates brought an action under 42 U.S.C. § 1983 alleging that they had been deprived of their liberty without due process of law in contravention of the Fourteenth Amendment because they had been ordered transferred to a less favorable institution without an adequate fact-finding hearing.[45]

---

[40] 472 U.S. 445 (1985).

[41] *Id.* Clearly the "some evidence" standard is far below the standards set in non-correctional tribunals. In this case, the standard was satisfied by eyewitness testimony from a correctional officer that he saw the defendant inmate flee the area where an inmate had just been assaulted. *Id.* at 456-57.

[42] 427 U.S. 215 (1976).

[43] *Id.* at 217. Based on reports from informants, it was alleged that the six inmates were involved in nine serious fires inside the Massachusetts Correctional Institution at Norfolk. Ultimately, five of the six inmates were ordered transferred from Norfolk, a medium-security facility, to Walpole, a maximum-security facility, while the remaining inmate was ordered transferred to Bridgewater, another medium-security facility. *Id.* at 220-21.

[44] The inmates, after being placed in segregation, were brought before the Norfolk Prison Classification Board for individual classification hearings to determine whether they should be transferred. Notice was given, and each of the six was represented by counsel. Outside of the inmates' presence, the Board heard testimony from the Norfolk prison superintendent who repeated the information gathered from informants. Each inmate was told that this information supported the charges that had been brought. None of the inmates was given a transcript or summary of this testimony. Each inmate was then allowed to present evidence on his own behalf. During the final stage of the hearing, a social worker testified about their general prison conduct and prior rules infractions in their presence. *Id.* at 216-18. The Court did not reach the issue whether these hearings were adequate. *Id.* at 223.

[45] 427 U.S. at 222.

The Court held that there must be a "grievous loss visited upon a person by the State ... to invoke the procedural protections of the Due Process Clause."[46] The Court further found that in an intrastate transfer, there is no "grievous loss" visited upon an inmate, and that a valid conviction diminishes an inmate's liberty interest under the Fourteenth Amendment to such an extent that the Due Process Clause is not implicated by an intrastate transfer.[47]

In addressing whether Massachusetts state law created a liberty interest similar to the right to good-time credit created in *Wolf*, the Court held that there was no such liberty interest created.[48] Therefore, no due process rights existed entitling a hearing before being transferred.[49] The three dissenting judges objected strongly to the majority limiting the source of liberty so that it is "no greater than the State chooses to allow."[50]

Similarly, in the companion case of *Montayne* v. *Haymes*,[51] the Court decided that an inmate transferred several hundred miles within New York from the Attica Correctional facility to the Clinton Correctional facility had neither a liberty interest under the Due Process Clause nor a similar liberty interest under New York state law.[52] The Court held that if the conditions or

---

[46] *Id.* at 224.

[47] *Id.* at 224. The Court stated that a valid criminal conviction extinguishes a defendant's liberty interest. The State may confine him in *any* of its prisons and subject him to the rules of its prison system so long as the other conditions of confinement are constitutional. *Id.* The Court was also concerned with prison security and rejected the argument that *any* substantial deprivation an inmate suffered at the hands of prison officials would trigger the protections of the Due Process Clause because such a standard would open to judicial review a "wide spectrum" of actions that have traditionally been left to prison administrators rather than the federal courts. *Id.* at 225 (emphasis added).

[48] *Id.* at 224.

[49] *Id.* at 226. The Court explained that the state may create liberty interests by statute that do not have their origins in the Constitution. *Id.* Once a State has given prisoners a liberty interest, due process protections are necessary "to insure that the state-created right is not arbitrarily abridged." *Wolff* v. *McDonnell*, 418 U.S. 539, 557 (1974)(State-created right to good-time credits, which could be withdrawn only for serious misconduct, constituted a liberty interest protected by the Due Process Clause). *See also, Morrissey* v. *Brewster*, 408 U.S. 471 (1972)(State-created right to parole constituted a liberty interest protected by the Due Process Clause, therefore parole could not be revoked without a hearing); *Gagnon* v. *Scarpelli*, 411 U.S. 778 (1973)(State-created right to probation created a liberty interest protected by the Due Process Clause and therefore probation may not be withdrawn without a hearing). Unlike the situations in *Wolff, Morrissey, and Gagnon*, Massachusetts law had not given prisoners the right to stay in the prisons they had originally been assigned to, therefore they were not entitled to any procedural protections before being transferred. 427 U.S. at 225-27.

[50] *Id.* at 233.

[51] 427 U.S. 236 (1976).

[52] *Id.* at 242-43. As in *Meachum*, the Court found that a validly convicted prisoner has no Fourteenth Amendment liberty interest implicated when he is transferred from one prison facility to another within the state whether with or without a hearing, absent some justifiable expectation rooted in state law that he will not be transferred except upon the occurrence of misconduct or other specified events. *Id.* at 242.

degree of confinement imposed on the inmate is within the sentence originally imposed, and if the conditions are not otherwise violative of the Constitution, the Due Process Clause will have no bearing on the transfer.[53]

In 1980, the Supreme Court once again addressed the intrastate involuntary transfer of a Nebraskan inmate in *Vitek* v. *Jones*.[54] However, the issue in *Vitek* was whether transferring an inmate from a prison to a mental hospital implicates the Due Process Clause.[55] The Court held that this transfer did implicate a liberty interest because the transfer stigmatized the inmate, and was such a major change in his conditions of confinement that it constituted a grievous loss.[56] The Court also found that there was a liberty interest contrary to such a transfer grounded in Nebraskan law,[57] and, therefore, that due process protections must be afforded.[58]

In 1983, the Court addressed changing conditions of confinement without sufficient due process in the case of *Hewitt* v. *Helms*.[59] In that case, an inmate

---

[53] *Id.*

[54] 445 U.S. 480 (1980).

[55] *Id.* at 484.

[56] *Id.* at 488. The Court reasoned that an ordinary citizen would be entitled to Fourteenth Amendment due process protection before being placed involuntarily in a mental institution, and that a convicted criminal's liberty interest was not extinguished to such an extent that he should be denied this basic due process. *Id.* at 492-93. The Court also concluded that the inmate's interest in not being capriciously classified as mentally ill and in avoiding forced treatment outweigh the prison administration's interest in separating and treating mentally ill residents. *Id.* at 495.

[57] *Id.* at 487-88. R.R.S.Neb. 1943, § 83-180 provides that if a physician finds a prisoner "suffers from a mental disease or defect" that "cannot be given proper treatment" in prison, the Director of Correctional Services may transfer him to a mental hospital. The Court found that this gave a prisoner a reasonable expectation that he would not be transferred to a mental hospital without a finding that he was suffering from a mental disease for which there was no adequate treatment available in the correctional facility. 445 U.S. at 489-90. When a State gives a prisoner a right or expectation that adverse action will not be taken against him except upon the occurrence of specified behavior, the "determination of whether such behavior has occurred becomes critical, and the minimum requirements of procedural due process appropriate for the circumstances must be observed." 418 U.S. at 558.

[58] In order to afford sufficient protection of the liberty interest involved in a transfer from prison to a mental institution, the Court held that Nebraska Department of Corrections must provide: (1) written notice; (2) a hearing at which evidence relied on for transfer is presented and during which the inmate is given an opportunity to be heard and to present evidence; (3) an opportunity for the inmate to present witnesses and cross-examine state witnesses, unless there is good cause not to allow cross-examination; (4) an independent decision maker; (5) a written statement of decision, evidence relied upon, and reason for the transfer; (6) availability of legal counsel in preparing a defense; and (7) effective and timely notice of all of these rights. The Court went beyond former cases where prisoners faced transfer hearings by requiring that counsel be provided to indigent inmates. The Court ruled that this was necessary because inmates facing involuntary transfer to mental hospitals probably had a greater need for assistance in understanding their legal rights. *Id.* at 495-97.

[59] 459 U.S. 460 (1983).

was placed in solitary confinement as a result of charges that he had been involved in a prison riot.[60] Once again, the Court declared that the movement of an inmate to a more restrictive and less desirable confinement does not, in itself, implicate the protections of the Due Process Clause.[61] Furthermore, although the Court decided that Pennsylvania law created a liberty interest because of the mandatory language in its regulations controlling the process of segregating inmates,[62] the Court still found the process constitutionally adequate.[63]

Also in 1983, the Supreme Court decided *Olim* v. *Wakinekona.*[64] Wakinekona was an inmate serving a life without parole sentence in Hawaii as a result of a murder conviction in a Hawaiian state court. In August 1976, he was transferred 2500 miles across the Pacific Ocean from the Hawaii State Prison to Folsom State Prison in California, as a result of a classification hearing which stemmed from an investigation into discipline problems within

---

[60] *Id.* at 463-65. Hewitt was placed in "administrative segregation" pending an investigation into his involvement in the riot. He remained in administrative segregation for over seven weeks before an evidentiary hearing was held, and was then sentenced to six months in "disciplinary custody." *Id.* at 462-65.

[61] *Id.* at 466-67. The Court employed the test used in *Matthews* v. *Eldridge,* 424 U.S. 319, 335 (1976) and weighed (1) the private interests at stake; (2) the government interests involved; and (3) the value of the procedural requirements in determining what process is due under the Fourteenth Amendment. The Court determined that Hewitt's private interest was "not one of great consequence" because he was "merely being transferred from one extremely restricted environment to an even more confined situation." 459 U.S. at 473. Also, the Court found that the government had a strong interest in protecting prison officials and other inmates from dangerous prisoners, and that the choice to detain Hewitt in solitary confinement wouldn't have been helped by a detailed adversarial proceeding because the decision that an inmate is a threat to institutional security is an "intuitive" one rather than one that would benefit from a trial-type procedure. *Id.* at 474.

[62] Title 37 Pa.Code 95.104(b)(1) (1978) provides: "An inmate who has allegedly committed a Class I Misconduct may be placed in Close or Maximum Administrative Custody upon approval of the officer in charge of the institution, not routinely but based upon his assessment of the situation and the need for control pending application of procedures under § 95.103 of this title." Title 37 Pa. Code. § 95.104(b)(3) (1978) provides: "An inmate may be temporarily confined to Close or Maximum Administrative custody in an investigative status upon approval of the officer in charge of the institution where it has been determined that there is a threat of serious disturbance, or a serious threat to the individual or others. The inmate *shall* be notified in writing as soon as possible that he is under investigation and that he *will* receive a hearing if any disciplinary action is being considered after the investigation is completed. An investigation *shall* begin immediately to determine whether or not a behavior violation has occurred. If no behavior violation has occurred, the inmate *must* be released as soon as the reason for the security concern has abated but in all cases within ten days."

[63] Justice Rehnquist, writing for the majority, found that an "informal, non-adversary evidentiary review" with notice and an opportunity for inmates to present their views was sufficient. 459 U.S. at 476. *Cf., Wolff* v. *McDonnell,* 418 U.S. 539 (1974) and *Vitek* v. *Jones,* 445 U.S. 480 (1980).

[64] 461 U.S. 238 (1983).

the Hawaii State Prison.[65] Wakinekona was singled out as a troublemaker by a committee, was given notice of the classification hearing, and retained counsel to represent him at the hearing.[66] The hearing, however, was conducted by the same committee members who had handled the initial investigation into the breakdown of discipline and had singled out Wakinekona. Wakinekona filed suit under 42 U.S.C. § 1983 alleging a due process violation due to the committee's bias against him.[67]

Justice Blackmun, writing for the Court, found that there was not a liberty interest implicated by the interstate transfer because imprisonment in another State is "within the normal limits or range of custody which the conviction has authorized the State to impose...even though the transfer involved long distances and an ocean crossing."[68] Furthermore, the Court found that "the difference between such a transfer and an intrastate or interstate transfer of shorter distances is a matter of degree, not of kind."[69] Therefore, since a liberty interest was not infringed upon, Wakinekona was not entitled to any protection under the Due Process Clause itself.[70]

In addressing whether Hawaiian law created a liberty interest, the Court determined that Hawaiian law placed no substantive limitations on the transfer of inmates. Therefore, the state could transfer inmates for any reason or no reason at all.[71]

III. Inmate Transfers from Puerto Rico to the Continental United States

While it might seem that *Olim* sounds the death knell for the argument that long-distance transfers of inmates across oceans implicate the Due Process

---

[65] *Id.* at 240-41.

[66] *Id.* at 241.

[67] Paragraph 3 of Rule IV of the Supplementary Rules and Regulations of the Corrections Division of Hawaii requires a hearing prior to a prison transfer involving a "grievous loss to the inmate." The Administrator, under ¶ 2 of the Rule, is required to establish "an impartial Program Committee" made up of three members who "were not actively involved in the process by which the inmate was brought before the Committee," to conduct this hearing. *Id.* at 241-42.

[68] 461 U.S. at 247.

[69] *Id.* at 247-48. The Court noted that some of the hardships Wakinekona would arguably face were similar to those faced in other interstate transfers: separation from home, family and friends; placement in new and potentially hostile facilities; problems with contacting counsel; and disruption of educational and rehabilitative programs. *Id.* at 248, n.9.

[70] *Id.* at 248.

[71] *Id.* at 249-51. The Court stated that the inmate had to show "that particularized standards or criteria guide the State's decision makers," and here there were no such standards or criteria. *Id.* at 249.

Clause, the Due Process Clause is, in fact, implicated when an inmate is transferred from Puerto Rico to the continental United States because: 1) Puerto Rico is not a state, and the Supreme Court clearly excludes the issue of transferring inmates from Puerto Rico to the continental United States from the holding in *Olim;* 2) a liberty interest is implicated since Puerto Rico's historical status vis á vis the United States is so ambiguous that there is an expectation on the part of inmates that they will not be transferred contrary to the situation in *Olim*; 3) there is a liberty interest founded in Puerto Rican law contrary to transfer; and 4) the practice of transferring inmates from Puerto Rico to the continental United States implicates the Due Process Clause because it involves qualitatively different conditions of confinement.

a. ***Olim***

In *Olim,* the Supreme Court specifically refers to interstate transfers throughout the decision.[72] The *Olim* decision is, therefore, not binding on a ruling regarding the application of the Due Process Clause to a transfer from Puerto Rico to the continental United States, because Puerto Rico is not a state. In fact, the Court specifically states in *Olim* that:

> [A] conviction, whether in Hawaii, Alaska, or one of the 48 contiguous states, empowers the State to confine the inmate in any penal institution in any State unless there is state law to the contrary or the reason for confining the inmate in a particular institution is itself constitutionally impermissible.[73]

Puerto Rico was not excluded from the *Olim* decision by an inadvertent use of the term "interstate transfer". The Court excluded Puerto Rico by explicitly stating that the ruling was applicable regarding transfers between Hawaii, Alaska, and the contiguous 48 states.[74] To understand the qualitative distinctions between inter-state transfers and transfers between Puerto Rico and the continental United States, it is important to consider the relationship between Puerto Rico and the United States.

---

72 461 U.S. at 245-48.
73 *Id.* at 248, n.9.
74 *Id.* at 248.

b. Puerto Rico's Ambiguous Historical Status

> *There are no small countries. The greatness of countries is not measured by their geography, just as the worth of a man is not measured by his height.*
>
> *--Victor Hugo*[75]

In *Meachum,* the Court rejected the notion that an inmate has a justifiable expectation of being incarcerated in a particular state facility.[76] In *Olim,* the Court rejected the notion that an inmate has a justifiable expectation of being incarcerated in any particular state.[77] Both decisions are based on the fact that states make agreements to transfer inmates, similar to those between agencies in Puerto Rico and the United States, based on institutional factors which make the transfers desirable.[78] It is clear from these decisions that the relationship between the transferring governmental entities has a direct bearing upon whether an inmate has a justifiable expectation not to be transferred.[79] The relationship between Puerto Rico and the United States government is not the same as relationships between the 50 states or the relationship between the 50 states and the federal government. In fact, the historical relationship between Puerto Rico and the United States creates an expectation that Puerto Rican inmates will not be transferred to the continental United States. This expectation constitutes a liberty interest which implicates the Due Process Clause.[80]

After Christopher Columbus "discovered"[81] Puerto Rico in 1493, it was a colony of Spain for 405 years until it was ceded to the United States in 1898 as part of the settlement agreement to end the Spanish-American war.[82] At that

---

[75] Ed Vega, *Going For The Real Gold,* Newsday, Dec. 6, 1991, at 58. Mr. Vega, a Puerto Rican novelist who lives in Spanish Harlem, used this quote in describing why Puerto Rico should become an independent country.

[76] 427 U.S. at 228.

[77] 461 U.S. at 245.

[78] 427 U.S. at 225; 461 U.S. at 246.

[79] In *Meachum,* the Court validates Massachusetts' intrastate transfers based on statutes which establish the relationship between the correctional facilities of Massachusetts. 427 U.S. at 227. Similarly, in *Olim,* the Court validates interstate transfers based on the statutory relationships between state correctional authorities. 461 U.S. at 246.

[80] 445 U.S. at 488.

[81] At the time of Christopher Columbus's "discovery," Puerto Rico was inhabited by a native population. The island was settled by Spanish colonists led by Juan Ponce de Leon in 1508. *See* Roland I. Perusse, *The United States and Puerto Rico: The Struggle for Equality* 3 (1990).

[82] *Id.* at 10.

time, a U.S. military government took control of the island, and Puerto Rico began a century fraught with political ambiguity.

The Organic Act of 1900, also known as The Foraker Act, declared that inhabitants of Puerto Rico could choose to become citizens of Puerto Rico, but did not give the people of the island significant control over their own political destiny.[83] Under the Act, the people of Puerto Rico had no control over their foreign relations, could only claim fundamental liberties under the U.S. Bill of Rights, and did not have a vote in Congress.[84]

In 1901, the Supreme Court decided a series of cases known collectively as the Insular Cases which dealt with the status of the territories acquired by the United States after the Spanish- American War, including Puerto Rico.[85] The Insular Cases concerned import duties on Puerto Rican goods shipped to the United States, and were joined, argued, and decided together for procedural reasons.[86]

The most important of these cases was *Downes* v. *Bidwell,*[87] in which the Court ruled on the constitutionality of the Organic Act of 1900.[88] The concurring opinion by Justice White, joined by Justices Shira and McKenna, spelled out the "incorporation theory" which prevailed as the general rule of the Insular Cases.[89] Justice White wrote that Puerto Rico would be an unincorporated territory until Congress decided it was time for it to be incorporated for eventual statehood.[90] In none of the Insular Cases did the Court explicitly state whether Puerto Rico was a state, territory, or independent republic. The court used the political question doctrine to avoid the issue.[91] *Downes* did, however, establish precedent that the Due Process Clause of the United States Constitution applies in Puerto Rico.[92] This precedent was

---

[83] *Id.* at 16.

[84] *Id.* at 17.

[85] Juan R. Torruella, *The Supreme Court and Puerto Rico: The Doctrine of Separate and Unequal* 3 (1985).

[86] The Insular Cases included *DeLima* v. *Bidwell,* 182 U.S. 1 (1901); *Goetze v. United States (Crossman* v. *United States),* 182 U.S. 221 (1901); *Dooley* v. *United States,* 182 U.S. 222 (1901); *Armstrong* v. *United States,* 182 U.S. 243 (1901); *Downes* v. *Bidwell,* 192 U.S. 245 (1901); and *Huus* v. *New York & P.R. Steamship Co.,* 192 U.S. 392 (1901). *Id.* at 3.

[87] 192 U.S. 244 (1901).

[88] Torruella, *supra,* note 85 at 48.

[89] *Id.* at 53.

[90] *Id.* at 55.

[91] *Id.*

[92] The Court wrote: "Whatever may be finally decided by the American people as to the status of these islands and their inhabitants-whether they shall be introduced into the sisterhood of states or be permitted to form independent governments-it does not follow that in the meantime, awaiting that decision, the people are in the matter of personal rights unprotected by the provisions of our Constitution, and subject to the merely arbitrary control by Congress. Even if regarded as aliens, they are entitled to be protected in life, liberty, and property." 192 U.S. at 283.

reestablished in the 1976 case of *Examining Board of Engineers, Architects and Surveyors et. al.* v. *Flores de Otero.*[93]

Greater self-governance came to Puerto Rico in 1917 when the Jones Act was signed into law granting international citizenship to Puerto Ricans, authorizing a bill of rights, and establishing an elective legislature which was not controlled by the appointed U.S. military governors.[94] The Jones Act granted U.S. citizenship to all Puerto Ricans who did not specifically reject it, and it contained a Bill of Rights.[95] The Jones Act also provided for a bicameral elected legislature, but the governing of Puerto Rico was still controlled by the United States since the Governor, Supreme Court, and Attorney General were all still appointed by the President with the advice and consent of the United States Senate.[96] While it may seem that the Jones Act, in granting political and civil rights to Puerto Rico, actually incorporated the territory for eventual statehood, this was not the case. Puerto Rico remained as far from statehood as ever.

In 1922, the Supreme Court of the United States was called upon to interpret the Jones Act in deciding whether or not the Sixth Amendment of the U.S. Constitution applied in Puerto Rico in the case of *Balzac* v. *People of Porto Rico.*[97] The Court, with Chief Justice Taft writing the opinion, held that the only clear right was to travel to and reside in the U.S. mainland, and that Puerto Ricans could not insist upon a jury trial unless the Puerto Rican legislature explicitly granted that right.[98] Specifically, Taft wrote: "It is locality that is determinative of the application of the constitution in such matters as judicial procedure, and not the status of the people who live in it."[99]

In 1950, Public Law 600 was passed by the United States Congress, giving Puerto Rico the right to draft its own constitution.[100] Shortly thereafter, in

---

[93] 426 U.S. 572 (1976).

[94] Torruella, *supra,* note 85 at 20-21. The Governor did have a veto which could be overturned by a two-thirds vote of both houses. However, although it never happened, the Governor would have the power to then submit the bill to the President. If the President concurred with the Governor, the veto was final. *Id.* at 21.

[95] *Id.* at 92.

[96] *Id.*

[97] 258 U.S. 298 (1922). Balzac was a newspaper editor charged with the misdemeanor of libel against the Governor. Balzac requested a jury trial under the Sixth Amendment, but his request was denied. When the case reached the Supreme Court, the main issue was the effect of the citizenship grant contained in the Jones Act. *Id.*

[98] 258 U.S. at 303.

[99] *Id.* at 309. Taft wrote that a similar provision conferring political and civil rights on the people of the Alaska territory did establish incorporation into the Union for eventual statehood. However, he distinguishes Puerto Rico from Alaska on the grounds of Puerto Rico's different political legacy, its non-jury trial system, and the fact that it was already settled and populated. Therefore, Puerto Rico had still not been incorporated for statehood. *Id.*

[100] Torruella, *supra,* note 85, at 127-28.

1952, the Commonwealth of Puerto Rico was formed when the Commonwealth Constitution was ratified.[101] The Puerto Rican Constitution did not, however, resolve the underlying question of Puerto Rico's exact status.[102] The term "commonwealth" was and is ambiguous. However, it has become clear that "commonwealth" is not another word for "state."[103]

From 1964-1966, a Status Commission comprised of appointees from both Puerto Rico and the United States (including Governor Muñoz Marín and future governor Luis Ferre) investigated options for Puerto Rico's status and concluded that three forms of political status were sought by various groups within Puerto Rico.[104] The three forms were Commonwealth, Statehood, and Independence.[105] A controversial plebiscite held in 1967, with both Statehood and Independence leaders calling for a boycott, resulted in 60.41% of the vote in favor of Commonwealth status.[106]

In 1972, Governor Rafael Hernández Colón created an Ad Hoc Committee for the Development of the Free Associated State of Puerto Rico.[107] This committee created a draft bill to Congress proposing, among other things, to officially change the name "Commonwealth of Puerto Rico" to "Free Associated State," giving Puerto Rico full federal benefits, Puerto Rican representation in the Senate, Puerto Rican control over taxes, tariffs, alien quotas, labor issue, ecology, etc., and the right to decide which federal laws and regulations would be applicable on the island.[108] Even after the draft bill was significantly watered down, it died in the Interior Committee with the close of Congress in 1976.[109]

In 1977, President Ford attempted to clarify the status of Puerto Rico with the Statehood Act of 1977.[110] This Act also died in Congress.[111] Subsequently,

---

101 *Id.*

102 Perusse, *supra,* note 81, at 35.

103 Although Black's Dictionary states that "any of the individual States of the United States and the body of people constituting a state or politically organized community" can be referred to as a "commonwealth," the word denotes a political entity which is self-governing but also belonging to a larger political body. Although there are states such as Pennsylvania, Massachusetts, Virginia, and Kentucky which use the title "Commonwealth of_____," commonwealth does not mean state. Black's Law Dictionary 252 (5th ed.1979).

104 Perusse, *supra,* note 81 at 40-41.

105 *Id.* at 41.

106 *Id.* at 42-43. One basis of the boycott was the wording of the plebiscite which gave a detailed description of the positive aspects of commonwealth status but simply stated that a vote for independence would authorize the Puerto Rican government to claim independence and a vote for statehood would authorize a petition for statehood. *Id.* at 43.

107 *Id.* at 47.

108 *Id.* at 48.

109 *Id.* at 49.

110 *Id.* at 51.

111 *Id.* at 52.

throughout President Carter's administration, there were no major moves to clarify status, and on July 25, 1978, on the 80th anniversary of the U.S. invasion of the island, Carter proclaimed that his administration would respect a decision by the people of Puerto Rico.[112] That decision did not come about throughout the 1980's, and the status issue was merely used by the Reagan administration to foster votes from Puerto Rico's delegation to the Republican convention.[113]

The latest chapter of Puerto Rico's political destiny took place on November 24, 1993, when the island held a non-binding plebiscite to determine which form of status was favored (statehood, enhanced commonwealth or independence).[114] 48.4 percent of voters favored commonwealth status, 46.2 percent favored statehood, and 4.4 percent supported independence.[115] In 1994, the status of Puerto Rico is still unclear, and the islanders are still without sufficient control to elect the leaders who direct the island's policies and political destiny, including the leaders that have the power to send them to war.

Puerto Rico is neither a state nor an independent country. Puerto Rico does, however, have an autonomous governmental system and a culture distinct from that of the continental United States. Inmates from Puerto Rico have a justifiable expectation not to be transferred from Puerto Rico to the United States because the process of transferring them into the U.S. prison system subjects them to control by a system run by a government which the inmate has never had the opportunity to elect. Puerto Rican inmates who are arrested and incarcerated on the island have a legitimate expectation that the government they have had the opportunity to participate in will maintain control over their incarceration, and that they will stay on the island. Puerto Rican inmates have not had the opportunity to vote for the President whose policies run throughout the correctional system, and who appoints federal judges which monitor conditions and policies of the correctional systems. Furthermore, with no congressional power, Puerto Rican inmates are subjected to systems created without their representation.

While it is true that all Puerto Ricans are subject to the laws of the United States, there is a degree of autonomy in the governance of the island. The ambiguous relationship between the United States and Puerto Rico creates an expectation that Puerto Rican inmates will not be treated the same as state inmates.

---

[112] *Id.* at 53-54.

[113] *Id.* at 55.

[114] *See Choosing Status Quo; Puerto Rico Avoida Radical Change But Now May Be Ignored By Congress, N.Y. Times, Nov. 14, 1993, at A1.*

[115] *Id.*

c. Puerto Rican Law

In addition to having a liberty interest under the Due Process Clause, Puerto Rican inmates have a liberty interest which is created by Puerto Rican law. Puerto Rican law places "substantive limitation on official discretion" in the decision to transfer inmates.[116] In fact, Puerto Rican law specifically requires hearings for inter-prison and intra-prison transfers related to disciplinary actions. These hearings have not been held when inmates are transferred to the continental United States.

In the 1987 case of *Maldonado Santiago* v. *Velázquez Garcia,*[117] the First Circuit ruled that the Puerto Rican correctional regulations create a liberty interest as a result of mandatory language in the regulations controlling disciplinary transfers of inmates.[118] The court relied on *Olim* and *Hewitt,* and found that Puerto Rican Disciplinary Rule 22 in this case was very similar to the regulation which created due process interests in *Hewitt.* Therefore, the Due Process Clause prohibits state prison officers from arbitrarily withholding such a state-created right.[119]

The court held that, in the prison context, a state regulation creates a protected due process liberty interest when it "use[s] language of an unmistakably mandatory character, requiring that certain procedures 'shall,' 'will,' or 'must' be employed, and that administrative segregation will not occur absent specified substantive predicates."[120] Disciplinary Rule 22 was found to clearly satisfy this criteria.[121] Even in emergency situations, Rule 22 requires at least a post-transfer hearing within seven working days after a transfer.[122] The court ruled in favor of Ms. Maldonado in *Maldonado Santiago* v. *Velázquez García*

---

[116] 461 U.S. at 249.

[117] 821 F.2d 822 (1st Cir. 1987). This case revolved around a female inmate who was transferred to another Puerto Rican correctional facility without a hearing due to her alleged involvement in "agitating" inmates involved in a fight and shouting profanities at correctional officers. *Id.* at 823.

[118] *Id.* at 827. Puerto Rican Prison Rules require that inter-prison transfers and intra-prison transfers in Puerto Rico be *preceded* by administrative hearings. Disciplinary rule 22, at issue in this case, is an exception to this general rule and "enumerates seven types of emergency situations during which the prison superintendent may temporarily isolate or transfer a prisoner without a prior hearing," but requires that a post-transfer hearing shall be provided to an inmate within seven working days of such emergency transfer. *Id.* at 824-825 (emphasis added).

[119] *Id.* at 827, 829.

[120] *Id.* at 827.

[121] *Id.* at 827. The regulation requires that a temporary isolation or transfer *"will never* last for more than the time required" to resolve the emergency and that "[a]n Administrative hearing *will* be held . . within seven working days immediately thereafter. . . ." *Id.* (emphasis added).

[122] *Id.* at 825.

because her hearing was held two days late under the requirements of the Rule.[123]

Whether an inmate is being transferred for disciplinary or non-disciplinary reasons, the mandatory language in Puerto Rican law requiring Due Process protections for transfers indicates that a liberty interest is implicated by any type of transfer. If a transfer from one prison to another within Puerto Rico implicates a liberty interest, clearly a transfer to the continental United States, with all of the heightened hardships of such a transfer, also implicates a liberty interest. The Department of Corrections should not be allowed to avoid providing a transfer hearing, by simply claiming that the transfer is for not-disciplinary reasons, without allowing the inmate to be transferred the opportunity to prove otherwise.

d. Qualitatively Different Conditions of Confinement

The Supreme Court ruled in *Olim* that an interstate transfer is no different then an intrastate transfer because the conditions of confinement are not changed.[124] Transferring inmates from Puerto Rico to the continental United States does significantly change the conditions of confinement for the transferred inmate and, therefore, implicates the Due Process Clause. In the prisons in the continental United States, the officers, administrators, teachers, and inmates speak English. In the legal process, the attorneys and judges speak English. However, because they speak Spanish, Puerto Rican inmates are excluded from the due process protections mandated by all of the prisoner's rights cases discussed in the first portion of this article. Puerto Rican inmates cannot obtain the services of Spanish speaking jailhouse lawyers,[125] they cannot obtain the services of attorneys versed in Puerto Rican law,[126] nor do

---

[123] *Id.* at 825.

[124] 461 U.S. at 247.

[125] This is in contravention to the principle announced in *Johnson* v. *Avery,* that prisoners' access to the courts for the purpose of presenting their complaints may not be "denied or obstructed." 393 U.S. at 485. Inmates transferred from Puerto Rico to the United States are effectively obstructed from gaining access to the courts because their attorneys remain in Puerto Rico, they are unfamiliar with United States law, they are unable to communicate with appointed attorneys in the United States, and they have no access to law libraries with Spanish texts.

[126] This is in conflict with *Procunier* v. *Martinez,* which states that "The constitutional guarantee of due process of law has as a corollary the requirement that prisoners be afforded access to the courts in order to challenge unlawful convictions and to seek redress for violations of their constitutional rights. This means that inmates must have a reasonable opportunity to seek and receive the assistance of attorneys." 416 U.S. at 419. Attorneys in the United States, who neither speak Spanish nor are familiar with Puerto Rican law, cannot provide Puerto Rican inmates with access to the courts to challenge their convictions and vindicate their constitutional rights.

they have access to law books in Spanish.[127] Within Puerto Rico, inmates have a constitutional right of access to these resources. When shipped to the continental United States these inmates have neither access to sufficient services nor access to courts.[128]

The qualitative differences which exist when inmates serve their sentences in foreign environments is reflected by treaties the United States has entered into with Latin-American countries. Even when crimes have been committed in the United States, inmates are allowed to serve their sentences in their own culture in compliance with treaties between the United States and Mexico,[129] Bolivia,[130] Panama,[131] and Peru.[132]

IV. Conclusion

It has been one hundred and forty years since England abolished its practice of transferring inmates across the seas to Australia. Transferring inmates creates significant hardships for inmates and their families, whether inmates are transferred from England to Australia, or Albany, N.Y. to New York City. Inmate transfers from Puerto Rico to the continental United States not only create hardships, they implicate a liberty interest under the Due Process Clause of the United States Constitution.

In the face of the constitutional analysis and case law presented by this article, it is time for the United States and the Puerto Rican Department of Corrections to abolish their practice of transferring inmates from Puerto Rico to the continental United States. These transfers should be challenged in the federal courts because although the residents of Puerto Rico do not have complete political control over their own governance, they do have the right to the protections of the Fourteenth Amendment.

---

127 *Bounds* v. *Smith,* held that "fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law." 430 U.S. at 828. Puerto Rican inmates in the United States have no access to adequate law libraries if they do not speak English. Furthermore, most prison libraries do not have material available on Puerto Rican law.

128 For a general discussion on the legal hardships facing inmates with language barriers, *See* Gregory Gelfand, *International Penal Transfer Treaties: The Case for an Unrestricted Multilateral Treaty,* 64 B. U. L. Rev. 563 (1984).

129 Treaty on the Execution of Penal Sentences, Nov. 25, 1976, U.S.-Mex., 28 U.S.T. 7399.

130 Treaty on the Execution of Penal Sentences, Feb. 10, 1978, U.S.-Bol., 30 U.S.T. 796.

131 Treaty on the Execution of Penal Sentences, Jan. 11. 1979, U.S.-Pan., 32 U.S.T. 1565.

132 Treaty on the Execution of Penal Sentences, July 6, 1979, U.S.-Peru, 32 U.S.T. 1471.