

Reframing Environmental Justice at the Margins of U.S. Empire

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I. INTRODUCTION

For the CHamoru people of Guam, the ongoing U.S. military buildup in their homelands—the construction of a military base and massive live-fire training range complex, alongside the influx of thousands of military personnel—is emblematic of longstanding United States militarism and colonization.¹ Construction now underway includes five live-fire ranges placed perilously close to the island’s primary source of drinking water and posi-

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¹ See Anumita Kaur, *Marine Base, Live-Fire Training Range Halfway Complete; 43 Historic Sites Discovered*, PACIFIC DAILY NEWS (July 13, 2020), https://www.guampdn.com/news/local/marine-base-live-fire-training-range-halfway-complete-43-historic-sites-discovered/article_c918ac37-54bd-5781-bdf1-065714776949.html, archived at <https://perma.cc/73BX-PKTR>; Jon Letman, *Proposed US Military Buildup on Guam Angers Locals Who Liken It to Colonization*, THE GUARDIAN (Aug. 1, 2016, 9:43 AM), <https://www.theguardian.com/us-news/2016/aug/01/guam-us-military-marines-deployment>, archived at perma.cc/2E89-MKQ6; Julian Aguon, *On Loving the Maps Our Hands Cannot Hold: Self-Determination of Colonized and Indigenous Peoples in International Law*, 16 UCLA ASIAN PAC. AM. L.J. 47, 67 (2010) [hereinafter Aguon, *On Loving the Maps*].

tioned over several culturally significant sites, including burials.² The destruction of native limestone forest proceeds apace, and a neighboring wildlife refuge is slated to become a surface danger zone, resulting in restricted access for fishers and gatherers of traditional medicines.³ Guam's residents, many CHamoru, vigorously oppose the military's plans in the streets, courtrooms, and international arenas⁴ and view the United States' actions "as the latest course in a long and steady diet of dispossession."⁵

Thousands of miles away on the island of Vieques, Puerto Rico, residents fight for the removal of toxic waste and pollutants from the U.S. Navy's decades-long live-fire bombing of their island home.⁶ For over sixty years, the Navy used Vieques as a site for air-to-ground bombing, ship-to-shore gun fire, and the testing of chemical and biological weapons.⁷ The Navy left behind unexploded ordnance and toxic materials such as depleted

² Julian Aguon, *No Country for Eight-Spot Butterflies*, BOSTON REV. (June 7, 2021), <https://bostonreview.net/articles/no-country-for-eight-spot-butterflies/>, archived at <https://perma.cc/T9UE-TP39> [hereinafter Aguon, *No Country*]; Anumita Kaur, 'A Giant Red Flag': More Question the Government's Transparency in Handling Base Burials, PAC. DAILY NEWS (May 12, 2021), https://www.guampdn.com/news/local/a-giant-red-flag-more-question-the-governments-transparency-in-handling-base-burials/article_551b96a7-5bf9-5221-b04b-5c674e5f27b8.html, archived at <https://perma.cc/K5FE-RWB2>; Anumita Kaur, *Buildup Projects in Full Swing: Prutehi Litekyan Appeals to United Nations*, PAC. DAILY NEWS (Aug. 7, 2020) https://www.guampdn.com/news/local/buildup-projects-in-full-swing-prutehi-litekyan-appeals-to-united-nations/article_86576193-3cd4-5b70-b5a6-31cb8b78fe82.html, archived at <https://perma.cc/R4G2-4JSU> [hereinafter Kaur, *Buildup Projects*].

³ *Our View: Department of Defense Must Respect Island Fishing Traditions*, PAC. DAILY NEWS (July 14, 2021), https://www.guampdn.com/opinion/our-view-department-of-defense-must-respect-island-fishing-traditions/article_df6e58a1-fa68-5a0a-bc91-297a4e2ee061.html, archived at <https://perma.cc/7BRP-4GZR>; Aguon, *No Country*, *supra* note 2.

⁴ Tyler Matanane, *Protesters Stand Against Military over Lack of Public Hearing for Training Range*, KUAM NEWS (Feb. 15, 2021), <https://www.kuam.com/story/43346941/protesters-stand-against-military-over-lack-of-public-hearing-for-training-range>, archived at <https://perma.cc/PC3V-LE4Q>; Phil Leon Guerrero, *UN Reps: No CHamoru Consent for Buildup*, THE GUAM DAILY POST (Apr. 1, 2021), https://www.postguam.com/news/local/un-reps-no-chamoru-consent-for-buildup/article_b6d1d702-91dd-11eb-a32a-f74643c45f99.html, archived at <https://perma.cc/ZZE6-PQG3>.

⁵ Aguon, *No Country*, *supra* note 2. "CHamoru" and "Chamorro" are used to describe the Indigenous people of the Mariana Islands (Guam and the Commonwealth of the Northern Marianas). I use "CHamoru" to defer to the preference of many CHamoru rights activists and to align with the recommendation of the Commission on the CHamoru Language and the Teaching of the History and Culture of the Indigenous People of Guam. See Daily Post Staff, *Commission: CHamoru, not Chamorro; Guam's female governor is maga'haga*, THE GUAM DAILY POST (Nov. 30, 2018), https://www.postguam.com/news/local/commission-chamoru-not-chamorro-guam-s-female-governor-is-maga/article_045523dc-f3b9-11e8-9b53-5ba21e8bb30a.html, archived at <https://perma.cc/4RWY-E78M>.

⁶ See Valeria Pelet, *Puerto Rico's Invisible Health Crisis*, THE ATLANTIC (Sept. 3, 2016), <https://www.theatlantic.com/politics/archive/2016/09/vieques-invisible-health-crisis/498428/>, archived at <https://perma.cc/9NZS-K4NR>; Ramón Cruz, *No More Disposable Citizens*, SIERRA (Feb. 25, 2021), <https://www.sierraclub.org/sierra/2021-2-march-april/editor/no-more-disposable-citizens>, archived at <https://perma.cc/EH3M-P494>.

⁷ *Atlantic Fleet Weapons Training Area Vieques, PR*, U.S. ENV'T. PROT. AGENCY: SUPERFUND, <https://cumulis.epa.gov/superepad/SiteProfiles/index.cfm?fuseaction=second.Healthenv&id=0204694>, archived at <https://perma.cc/MH47-TE6A> (last visited Apr. 2, 2022); Katherine T. McCaffrey, *Fish, Wildlife, and Bombs: The Struggle to Clean Up Vieques*, 42 NACLA REP. ON THE AM. 35, 35 (2009) [hereinafter McCaffrey, *Fish*].

uranium, napalm, Agent Orange, mercury, and lead,⁸ but has denied any causal link between those toxins and the people's high rates of sickness.⁹ The Navy is tasked with cleaning up unexploded ordnance from the land and water—now expected to continue through 2032¹⁰—but Viequeses fear the risky cleanup procedures are worsening their already imperiled health and environment.¹¹ In the wake of the catastrophic federal disaster response to Hurricane Maria,¹² residents renew their calls for safety, access, and accountability, while decrying Vieques' status as a “colony within a colony.”¹³

These controversies, often invisible to the larger U.S. populace, are partly about the imposition of disproportionate environmental burdens on the residents of the U.S. territories. Environmental destruction is well-documented and ongoing.¹⁴ But these controversies are also about something much more. For the peoples of the U.S. territories, these are hard-fought efforts to restore cultural practices, promote economic self-sufficiency and traditional livelihoods, and exercise a measure of political self-determination over their land, water, and people.

Although it escapes singular definition,¹⁵ “environmental justice” generally refers to the equal distribution of environmental burdens, risks, and benefits based on race.¹⁶ The established environmental justice framework

⁸ U.S. GOV'T ACCOUNTABILITY OFF., GAO-21-268, DEFENSE CLEANUP: EFFORTS AT FORMER MILITARY SITES ON VIEQUES AND CULEBRA, PUERTO RICO, ARE EXPECTED TO CONTINUE THROUGH 2032 15 (2021) [hereinafter GAO, DEFENSE CLEANUP]; U.S. Env't. Prot. Agency, *supra* note 7; ARNAB MONDAL, *Failing Healthcare on the Island of Vieques*, MEDILL REPORTS: CHICAGO (July 17, 2020), <https://news.medill.northwestern.edu/chicago/failing-healthcare-on-the-island-of-vieques/>, archived at <https://perma.cc/L2JU-RLPW>; Pelet, *supra* note 6.

⁹ MONDAL, *supra* note 8; Pelet, *supra* note 6.

¹⁰ GAO, DEFENSE CLEANUP, *supra* note 8, at 1618.

¹¹ See Pelet, *supra* note 6.

¹² See Ankur Banerjee, *U.S. Hurricane Response Slower in Puerto Rico Than in Florida, Texas: Study*, REUTERS (Feb. 5, 2019), <https://www.reuters.com/article/us-health-disasters-puerto-rico/u-s-hurricane-response-slower-in-puerto-rico-than-in-florida-texas-study-idUSKCN1PU1YU>, archived at <https://perma.cc/N586-3G7Q>.

¹³ After Hurricane Maria in 2017, the island's only hospital closed. Jeff Stein & Dennis M. Rivera Pichardo, *'The Colony Within the Colony': Puerto Rico Fumes as FEMA Deliberates over Remote Hospital*, WASH. POST (May 6, 2019), <https://www.washingtonpost.com/nation/2019/05/06/colony-within-colony-puerto-rico-fumes-fema-deliberates-over-remote-hospital/>, archived at <https://perma.cc/YWC4-WBLG>. To access most health care, patients must travel to the main island using an unpredictable ferry service. Cristina Corujo, *Maritime Transportation Issues Cause Outrage in Puerto Rico*, ABC NEWS (Apr. 2, 2021), <https://abcnews.go.com/US/maritime-transportation-issues-outrage-puerto-rico/story?id=76768791>, archived at <https://perma.cc/QSS2-MBEL>; see also Jack Healy, *For Ravaged Vieques, Solitude, Once an Allure, Is Now a Curse*, N.Y. TIMES (Oct. 1, 2017), <https://www.nytimes.com/2017/10/01/us/vieques-puerto-rico-hurricane.html>, archived at <https://perma.cc/59D4-YJ9B> (describing the aftermath of Hurricane Maria on Vieques).

¹⁴ See *infra* notes 95–113 and accompanying text.

¹⁵ See, e.g., GORDON WALKER, ENVIRONMENTAL JUSTICE: CONCEPTS, EVIDENCE AND POLITICS 1–2, 7–8 (2012) (describing the varied definitions of “environmental justice”); see also *infra* notes 121–32 and accompanying text.

¹⁶ Clifford J. Villa, *Remaking Environmental Justice*, 66 LOY. L. REV. 469, 476–77 (2020) (exploring the multiple and competing definitions of environmental justice but contending that “[a]ny conception of *environmental justice* will likely include concerns for the unequal distribution of environmental burdens based upon race”).

centers on the disproportionate siting of hazardous facilities and exposure to environmental toxins and seeks to remediate the injustice by relocating polluting facilities and terminating harm-producing conduct.¹⁷ It embraces equal, transparent, and inclusive representation in the administration of environmental laws, regulations, and policies,¹⁸ grassroots community empowerment,¹⁹ and the recognition that environmental struggles are intertwined with structural poverty and racism.²⁰ Environmental justice—as a movement, policy principle, and field of research—is one of the most important and powerful developments in modern environmentalism.²¹

At the same time, the established environmental justice framework often assumes for communities of color that health and equal distribution of environmental burdens are the only, or the main, concerns.²² In doing so, the framework often fails to comprehend complex issues of Indigenous²³ peoples' spiritual and cultural connections to the land and natural environment and the persistent linkage between U.S. colonialism and environmental injustice.²⁴ A Native community, for example, may describe the nearby siting of a power plant not as unequal treatment but rather as denial of sovereignty over land, resources, and traditional lifeways.²⁵ Similarly, residents of the U.S. territories may view the dumping of toxic byproducts in their communities not as racial discrimination but a symptom of their island's lasting colonial relationship with the United States.²⁶

In 2001, legal scholar Eric Yamamoto introduced a “racializing environmental justice” framework that built on concepts of “differential racialization” and “differential empowerment” to examine the ways in which racial and Native groups “acquire differing identities, status, and power, and

¹⁷ Eric K. Yamamoto & Jen-L Wong Lyman, *Racializing Environmental Justice*, 72 *COLO. L. REV.* 311, 320 (2001).

¹⁸ See *Environmental Justice*, U.S. ENV'T. PROT. AGENCY: ENV'T JUST. (Mar. 23, 2022), <https://www.epa.gov/environmentaljustice>, archived at <https://perma.cc/PW78-N3K3> (defining environmental justice as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies”).

¹⁹ See Patrice L. Simms, *Leveraging Supplemental Environmental Projects: Toward an Integrated Strategy for Empowering Environmental Justice Communities*, 47 *ENV'T L. REP. NEWS & ANALYSIS* 10511, 10516 (2017).

²⁰ See WALKER, *supra* note 15, at 1–2, 7.

²¹ See *id.* at 1.

²² Yamamoto & Lyman, *supra* note 17, at 311.

²³ The terms “Native” and “Indigenous” will be used interchangeably throughout this Article.

²⁴ See Melody Kapilialoha MacKenzie, Susan K. Serrano & Koalani Laura Kaulukukui, *Environmental Justice for Indigenous Hawaiians: Reclaiming Land and Resources*, 21 *NAT. RES. & ENV'T* 37, 37 (2007).

²⁵ See Rebecca Tsosie, *Indigenous Peoples and Environmental Justice: The Impact of Climate Change*, 78 *U. COLO. L. REV.* 1625, 1630–33 (2007).

²⁶ See Hilda Lloréns, *In Puerto Rico, Environmental Injustice and Racism Inflammate Protests over Coal Ash*, *THE CONVERSATION* (Dec. 8, 2016, 9:08 PM), <https://theconversation.com/in-puerto-rico-environmental-injustice-and-racism-inflammate-protests-over-coal-ash-69763>, archived at <https://perma.cc/C5E4-GVMA>.

how those differences affect their respective connections to ‘the environment.’”²⁷ The approach recognized that, for some racialized communities and Native peoples, environmental justice is “about cultural and economic self-determination [rather than equal treatment] and belief systems that connect their history, spirituality, and livelihood to the natural environment.”²⁸ The approach sought not to supplant the established environmental justice framework but to grow and deepen the existing analysis to reframe how we perceive “the ‘environmental’ problem, the rights claims, and the possible ‘justice’ remedies.”²⁹

Since then, environmental justice has grown in prominence and complexity.³⁰ As part of President Biden’s sweeping approach to the environment, he pledged to “deliver environmental justice in communities all across America.”³¹ His selections to head the Interior Department (Native American Deb Haaland) and Environmental Protection Agency (Black American Michael Regan) and for senior positions at the Council on Environmental Quality and the Energy Department³² signaled his commitment to put “environmental justice front and center.”³³ Environmental justice scholars and advocates now tackle a growing list of diverse controversies from food supply

²⁷ Yamamoto & Lyman, *supra* note 17, at 342 (quoting Michael Omi, *Out of the Melting Pot and into the Fire: Race Relations Policy, in THE STATE OF ASIAN PACIFIC AMERICA: POLICY ISSUES TO THE YEAR 2020* 199, 207 (1993); Jeff Chang, *Race, Class, Conflict and Empowerment: On Ice Cube’s “Black Korea,”* 19 *AMERASIA J.* 87, 103 (1993)) (“By acknowledging . . . [those] distinctions, the method also frees those communities and their advocates to identify, and [meaningfully] coalesce around, the similarities of treatment by public and private entities with political and economic power.”).

²⁸ Yamamoto & Lyman, *supra* note 17, at 311.

²⁹ *Id.* at 358.

³⁰ See, e.g., Kristoffer Tigue, *Will 2021 Be the Year for Environmental Justice Legislation? States Are Already Leading the Way*, *INSIDE CLIMATE NEWS* (Jan. 15, 2021), <https://insideclimatenews.org/news/15012021/environmental-justice-in-2021-legislation/>, archived at <https://perma.cc/RX6V-S3Y7>; Rick Mullin & Cheryl Hogue, *The Rise of Environmental Justice*, *CHEM. & ENG’G NEWS* (Aug. 24, 2020), <https://pubs.acs.org/doi/10.1021/cen-09832-cover>, archived at <https://perma.cc/4EK3-HMFS>.

³¹ Exec. Order No. 14,008, 86 Fed. Reg. 7,619 (Feb. 1, 2021) (directing agencies to develop programs to combat “the disproportionately high and adverse human health, environmental, climate-related and other cumulative impacts on disadvantaged communities”); see also *The Biden Plan to Secure Environmental Justice and Equitable Economic Opportunity*, *JOEBIDEN.COM*, <https://joebiden.com/environmental-justice-plan/>, archived at <https://perma.cc/8X8X-K9DH> (last visited Apr. 2, 2022).

³² See Richard Moore, *Environmental Justice: From Our Ancestors to Our Children*, *THE HILL* (June 5, 2021, 2:00 PM), <https://thehill.com/opinion/energy-environment/556932-environmental-justice-from-our-ancestors-to-our-children/>, archived at <https://perma.cc/47GS-SYQN> (discussing Biden’s appointment of Latina American Cecilia Martinez as senior director for environmental justice at the White House Council on Environmental Quality and Black American Shalanda Baker as senior adviser at the Department of Energy).

³³ Juliet Eilperin, Dino Grandoni & Brady Dennis, *With Historic Picks, Biden Puts Environmental Justice Front and Center*, *WASH. POST* (Dec. 17, 2020), <https://www.washingtonpost.com/climate-environment/2020/12/17/deb-haaland-interior-secretary-biden/>, archived at <https://perma.cc/6YWH-YE3K>; see also Kristen Holmes & Liz Stark, *Biden Administration Ramps up Investment in Environmental Justice*, *CNN* (July 7, 2021, 1:45 PM), <https://www.cnn.com/2021/07/07/politics/epa-air-quality-biden-environmental-justice/index.html>, archived at <https://perma.cc/5W68-YP23>.

and access to emergency and disaster response.³⁴ Environmental justice legal scholarship has begun to scrutinize the complexities and intersections of race, gender, immigrant status, indigeneity, and colonial status and how those groups experience and respond to unique environmental injustices.³⁵ These are important developments.

Yet, conceptual and practical challenges remain.³⁶ Practically, both environmental and civil rights legal frameworks can limit environmental justice claims, and often diverge in methods, implementation, and available remedies.³⁷ Conceptually, the one-size-fits-all approach still often carries the day: environmental justice claims and remedies often fail to capture “what [is] really at stake for differing communities”—and how those communities derive meaning from and connect to “the environment.”³⁸ In doing so, the existing environmental justice framework can sideline sovereignty- and self-determination-based Native American claims and can disregard the ways in which race, indigeneity, and political status intersect to produce different manifestations of environmental injustice.³⁹ It also tends to obscure U.S. territorial peoples’ unique historical and political statuses, cultural practices, and distinct decolonization claims, and, in so doing, often fails to acknowledge their unique needs for repair. Indeed, much of the legal scholarship has yet to rigorously scrutinize the enduring links between U.S. colonialism, po-

³⁴ See Carmen G. Gonzalez, *Environmental Justice, Human Rights, and the Global South*, 13 SANTA CLARA J. INT’L L. 151, 155 (2015).

³⁵ See Sumudu A. Atapattu, Carmen G. Gonzalez & Sara L. Seck, *Intersections of Environmental Justice and Sustainable Development*, in THE CAMBRIDGE HANDBOOK OF ENV’T JUST. AND SUSTAINABLE DEV. 10 (Sumudu A. Atapattu, Carmen G. Gonzalez & Sara L. Seck eds., 2021).

³⁶ Rebecca Hersher, *Hope and Skepticism as Biden Promises to Address Environmental Racism*, NPR (Jan. 29, 2021, 5:07 AM), <https://www.npr.org/2021/01/29/956012329/hope-and-skepticism-as-biden-promises-to-address-environmental-racism>, archived at <https://perma.cc/QL37-SHBW> (reporting that “academics, former federal officials and activists warn that the administration will need to rebuild the government’s relationship” with vulnerable communities because trust has been broken); Eric K. Yamamoto & Susan K. Serrano, *Forward to the Republication of Racializing Environmental Justice*, 92 U. COLO. L. REV. 1383, 1387 (2021).

³⁷ See Eileen Gauna, *Environmental Law, Civil Rights and Sustainability: Three Frameworks for Environmental Justice*, 19 J. ENV’T. & SUSTAINABILITY L. 34, 36, 41–42 (2012); Brigham Daniels, Michalyn Steele & Lisa Grow Sun, *Just Environmentalism*, 37 YALE L. & POL’Y REV. 1, 42 (2018); see also *infra* notes 134–38 and accompanying text.

³⁸ Yamamoto & Serrano, *supra* note 36, at 1384.

³⁹ See, e.g., Mary Kathryn Nagle, *Environmental Justice and Tribal Sovereignty: Lessons from Standing Rock*, 127 YALE L.J. 667, 669 (2018) (criticizing the traditional environmental law framework as failing to promote the restoration of tribal sovereignty, exemplified by the Standing Rock case); Michael S. Houdyshell, *Environmental Injustice: The Need for a New Vision of Indian Environmental Justice*, 10 GREAT PLAINS NAT. RES. J. 1, 3 (2006) (employing case studies of the Endangered Species Act and the Great Sioux Nation’s fight for the return of *Paha Sapa* to explore how federal environmental laws perpetuate environmental injustice for Native peoples by disregarding Native notions of environmental justice and undermining tribal sovereignty).

litical power, and environmental justice in U.S. territories and has not fully explored remedies tailored to those unique colonial contexts.⁴⁰

Drawing from my earlier writing on the U.S. territories, particularly on Puerto Rico and Guam,⁴¹ this Article employs and refines the racializing environmental justice framework to account for the unique experiences of the peoples of the U.S. territories that are deeply linked to U.S. colonialism and militarism in their homelands.⁴² As I have written, to “acquire” the now-territories for land and resources, the United States demonized the people.⁴³ That branding of the people as inferior, unworthy, and incapable of self-government served to justify their systematic exclusion from political participation and decision-making.⁴⁴ And that subjugation was inscribed in law: in the infamous *Insular Cases*, the Supreme Court reaffirmed Congress’ plenary power over the so-called “unincorporated” territories, thereby sanctioning the territories’ exclusion from equal treatment under the U.S. Constitution.⁴⁵

The peoples of the U.S. territories have virtually no national political power: they cannot vote for U.S. President or Vice President⁴⁶ and they do not have a voting representative in Congress.⁴⁷ The Supreme Court has held

⁴⁰ *But see* Insular Area Climate Change Act, H.R. 2780, 117th Cong. § 101(c) (2021) (proposing mechanisms to provide increased access to climate change-related federal programs, energy management, conservation programs, and technologies to foster mitigation and adaptation in the U.S. territories and other insular areas).

⁴¹ *See, e.g.,* Susan K. Serrano, *A Reparative Justice Approach to Assessing Ancestral Classifications Aimed at Colonization’s Harms*, 27 WM. & MARY BILL OF RTS. J. 501 (2018) [hereinafter Serrano, *Reparative Justice*]; Susan K. Serrano, *Elevating the Perspectives of Territorial Peoples: Why the Insular Cases Should be Taught in Law School*, 21 J. GENDER, RACE & JUST. 395 (2018) [hereinafter Serrano, *Elevating the Perspectives*]; Susan K. Serrano, *Dual Consciousness About Law and Justice: Puerto Ricans’ Battle for U.S. Citizenship in Hawai’i*, 29 CENTRO J. 164 (2017) [hereinafter Serrano, *Dual Consciousness*]; Susan K. Serrano, *Collective Memory and the Persistence of Injustice: From Hawai’i’s Plantations to Congress—Puerto Ricans’ Claims to Membership in the Polity*, 20 S. CAL. REV. L. & SOC. JUST. 353 (2011) [hereinafter Serrano, *Collective Memory*].

⁴² *See* José M. Atilés-Osoria, *Environmental Colonialism, Criminalization and Resistance: Puerto Rican Mobilizations for Environmental Justice in the 21st Century*, 6 REVISTA CRÍTICA DE CIÊNCIAS SOCIAIS 3, 4 (2014) (contending that “the struggles for the decolonization of [Puerto Rico] and the movements for environmental justice cannot be understood independently but have to be studied within a common historical framework”).

⁴³ *See* Juan R. Torruella, *Ruling America’s Colonies: The Insular Cases*, 32 YALE L. & POL’Y REV. 57, 60–61 (2013); Serrano, *Collective Memory*, *supra* note 41, at 377–79.

⁴⁴ *See* Serrano, *Collective Memory*, *supra* note 41, at 377–79.

⁴⁵ *See* Efrén Rivera Ramos, *The Legal Construction of American Colonialism: The Insular Cases*, 65 REVISTA JURÍDICA [REV. JUR.] U. P.R. 225, 303 (1996).

⁴⁶ *See* *Igartúa-de la Rosa v. United States*, 417 F.3d 145, 145–47 (1st Cir. 2005) (en banc); *Att’y Gen. of Guam v. United States*, 738 F.2d 1017, 1018 (9th Cir. 1984).

⁴⁷ The U.S. territories have no senators and only one non-voting representative in the House of Representatives. Puerto Rico’s representative in the U.S. House is a “resident commissioner,” and the representatives from American Samoa, Guam, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands are “delegates.” *See* JASON A. SMITH, CONSTITUTION, JEFFERSON’S MANUAL AND RULES OF THE HOUSE OF REPRESENTATIVES, H.R. DOC. NO. 116–177, at 399–400 (2021). The resident commissioner and delegates can vote in committee but may not vote on the House floor. *See* Jane A. Hudiburg, CONG. RSCH. SERV., R40170, PARLIAMENTARY RIGHTS OF THE DELEGATES AND RESIDENT COMMISSIONER FROM

that Congress may provide fewer benefits to residents of the territories as long as there is a rational basis to do so.⁴⁸ Several federal programs—including those targeting health and environmental resiliency—are limited or completely denied to the U.S. territories.⁴⁹ Many condemn this perpetual colonial arrangement that allows nearly unchecked U.S. power over the territories with no corresponding political rights for the peoples.⁵⁰

The racializing environmental justice inquiry reframes the environmental injustices of the military buildup in Guam and the lasting impacts of Navy live-fire training in Vieques: it calls on us to inquire into the peoples' spiritual and economic connections to the environment, historical and contemporary conditions, and the interplay of cultural resurrection and political sovereignty. It asks about the particular ways in which U.S. colonization of and militarization in the territories decimated land, communities, and traditional Indigenous cultural practices. And it illuminates how modern-day environmental justice struggles are also struggles to repair the longstanding damage of U.S. colonization and subjugation, including land dispossession, cultural destruction, and the loss of self-determination.

The central aim of this inquiry is “to theoretically and practically reframe our understanding of environmental justice to better account for [U.S. territorial peoples’] experiences, needs, and goals . . . and to generate more resonant remedial options.”⁵¹ In this way, the racializing environmental justice framework recasts the remedial imperative. “Repair” involves not just the clean-up of toxic chemicals and the preservation of cultural artifacts⁵² but reparative justice for the peoples of the territories. Among other things, this

PUERTO RICO 1 (2021). They may also vote in the Committee of the Whole “subject to immediate reconsideration in the House when their recorded votes have been ‘decisive.’” *Id.* at 2.

⁴⁸ See *U.S. v. Vaello Madero*, 142 S. Ct. 1539, 1544 (2022) (holding that the denial of Supplemental Security Income benefits to Puerto Rico residents does not violate the equal protection component of the Fifth Amendment); *Harris v. Rosario*, 446 U.S. 651, 651–52 (1980).

⁴⁹ See Stacey Plaskett, *The Second-Class Treatment of U.S. Territories Is Un-American*, THE ATLANTIC (Mar. 11, 2021), <https://www.theatlantic.com/ideas/archive/2021/03/give-voting-rights-us-territories/618246/>, archived at <https://perma.cc/3VPM-DTHT> (explaining that “[f]ederal programs, including Medicaid, the Supplemental Nutrition Assistance Program, the child tax credit, and the Earned Income Tax Credit, are either capped or denied altogether”); Press Release, Nat. Res. Comm., Chair Grijalva Introduces Insular Area Climate Change Act (Apr. 22, 2021), <https://naturalresources.house.gov/media/press-releases/chair-grijalva-introduces-insular-area-climate-act-with-vice-chair-sablan-democratic-lawmakers-seeks-broad-financial-and-technical-support>, archived at <https://perma.cc/2YB5-ZK3J> [hereinafter Chair Grijalva Introduces Insular Area Climate Change Act] (noting that the U.S. territories have “unequal access to federal programs that build climate resiliency”).

⁵⁰ See, e.g., Juan Torruella, *The Insular Cases: The Establishment of a Regime of Political Apartheid*, 77 REV. JUR. U. P.R. 1, 3–4, 10 (2008); Plaskett, *supra* note 49; Michael Lujan Bevacqua & Manuel Lujan Cruz, *The Banality of American Empire: The Curious Case of Guam, USA*, 11 J. TRANSNAT'L AM. STUD. 127, 135 (2020).

⁵¹ Yamamoto & Lyman, *supra* note 17, at 351–52.

⁵² See Anumita Kaur, *Preservation Office Assembles Team for “Deep Dive” into Buildup Agreement*, PAC. DAILY NEWS (Jan. 25, 2021), https://www.guampdn.com/news/local/preservation-office-assembles-team-for-deep-dive-into-buildup-agreement/article_e0027485-2b3a-5749-9610-0d18a42c64ce.html, archived at <https://perma.cc/QG7X-WHX8>.

may entail the restoration of political power, the resurrection of Native cultural practices, return of lands, and the reanimation of spiritual and economic interconnections between the land, water, and people.

Accordingly, Part II outlines the historical and present-day second-class status of the U.S. territories that deprives the peoples of meaningful self-determination and political participation. Part III describes the established environmental justice framework that often fails to probe groups' complex racialized histories, colonial realities, and spiritual and cultural connections to the natural environment. Part IV explores the "racializing environmental justice" framework. In doing so, the Part refines the inquiry to illuminate how the legacies of U.S. colonization and the resulting paradoxical political status of the U.S. territories often stymies environmental justice in the territories. Part V employs the framework to examine two ongoing environmental controversies in Guam and Vieques, Puerto Rico. Viewed through the racializing environmental justice lens, these disputes can be understood not only as classic environmental injustices, but as community struggles over political power, economic resiliency, and Indigenous rights to sacred sites and practices—a more "expansive, group-resonant type of environmental justice."⁵³

II. U.S. TERRITORIES: THE HISTORICAL AND PRESENT-DAY SETTING

Modern-day limits on territorial peoples' self-determination have deep roots in the United States' embrace of "empire" following the Spanish-American War.⁵⁴ In 1898, the United States invaded and "acquired" Puerto Rico, Guam, and the Philippines, and racialized the peoples to justify that colonial expansion.⁵⁵ The Territorial Clause of the U.S. Constitution⁵⁶ gave the United States authority to exercise near complete power over these late-nineteenth century conquests. The Clause today governs five unincorporated territories of the United States—Puerto Rico, Guam, the U.S. Virgin Islands, American Samoa, and the Northern Mariana Islands—with a collective population of around three-and-a-half million people.⁵⁷ This makes the United

⁵³ Yamamoto & Lyman, *supra* note 17, at 355.

⁵⁴ Serrano, *Elevating the Perspectives*, *supra* note 41, at 402.

⁵⁵ See Juan F. Perea, *Fulfilling Manifest Destiny: Conquest, Race, and the Insular Cases, in FOREIGN IN A DOMESTIC SENSE: PUERTO RICO, AMERICAN EXPANSION, AND THE CONSTITUTION 141* (Christina Duffy Burnett & Burke Marshall eds., 2001) (contending that racialization played a key role in the United States' colonial expansion, and law justified its racial conquest); Sylvia R. Lazos Vargas, *History, Legal Scholarship, and LatCrit Theory: The Case of Racial Transformations Circa the Spanish American War, 1896–1900*, 78 DENVER U. L. REV. 921, 929 (2001) (noting that the 1898 Treaty of Paris "redefined the democratic polity and de jure U.S. citizenship in racial and cultural terms").

⁵⁶ U.S. CONST. art. IV, § 3, cl. 2.

⁵⁷ Pedro A. Malavet, *The Inconvenience of a "Constitution [That] Follows the Flag . . . But Doesn't Quite Catch Up with It": From Downes v. Bidwell to Boumediene v. Bush*, 80 MISS. L.J. 181, 197 (2010) (citing ARNOLD H. LEIBOWITZ, DEFINING STATUS: A COMPREHENSIVE ANALYSIS OF UNITED STATES TERRITORIAL RELATIONS 3 (1980)).

States “the largest overseas territorial power in the world.”⁵⁸ This Part briefly outlines this period of U.S. colonization, situates the *Insular Cases* in the larger U.S. colonial project, and identifies later domestic and international developments that changed little about the islands’ self-determination.

A. *Conquest, Colonization, and the Insular Cases*

The Spanish-American War and the resulting takeover of Puerto Rico, Guam, and the Philippines triggered a change in the settled model of territorial development.⁵⁹ Rather than directing the territories toward eventual statehood, the Treaty of Paris, which concluded the war, left the determination of the “civil rights and political status of the native inhabitants” to Congress.⁶⁰ This meant that, upon the treaty’s signing, the peoples of the territories did not “enter into and form a part of the American family,”⁶¹ and were promised no civil or political rights under U.S. rule. The United States thus expanded its global empire “without the necessity of fully accepting the people of color that inhabited the newly acquired territories.”⁶²

The United States justified its conquest and subordination of territorial peoples by branding them as inferior and unworthy.⁶³ Many in the U.S. government viewed territorial peoples as “alien,”⁶⁴ “ignorant,”⁶⁵ and “above all . . . untrained in the arts of representative government.”⁶⁶ Decision-makers warned against incorporating the “semi-civilized, barbarous, and savage peoples of [the] islands into [the U.S.] body politic.”⁶⁷ A report by the Committee on the Pacific Islands and Puerto Rico warned against the inclusion of “people of wholly different character . . . and incapable of exercising the rights and privileges guaranteed by the Constitution.”⁶⁸ If a territory was inhabited by such people, it argued, Congress should “withhold from

⁵⁸ LEIBOWITZ, *supra* note 57, at 3.

⁵⁹ Malavet, *supra* note 57, at 204–05.

⁶⁰ Treaty of Paris, Spain-U.S., art. IX, Dec. 10, 1898, 30 Stat. 1759. “According to the Treaty, while Spanish subjects residing in Puerto Rico retained their property rights and could choose to retain Spanish citizenship, the ‘civil rights and political status of the native inhabitants . . . [were to] be determined by the Congress.’” Serrano, *Collective Memory*, *supra* note 41, at 372–73 (quoting Treaty of Paris, *supra*).

⁶¹ *Downes v. Bidwell*, 182 U.S. 244, 339 (1901) (White, J., concurring); see also José A. Cabranes, *Citizenship and the American Empire*, 127 U. PA. L. REV. 391, 411 (1978) (observing that this was the first time in which a U.S. treaty acquiring territory did not promise citizenship or eventual statehood).

⁶² Ediberto Román & Theron Simmons, *Membership Denied: Subordination and Subjugation Under United States Expansionism*, 39 SAN DIEGO L. REV. 437, 453 (2002).

⁶³ See *id.* at 452–55 (discussing the United States’ use of race to justify the unequal treatment of native inhabitants of newly acquired territories).

⁶⁴ Cabranes, *supra* note 61, at 432.

⁶⁵ Torruella, *supra* note 50, at 10.

⁶⁶ Rivera Ramos, *supra* note 45, at 237–38. See also Cabranes, *supra* note 61, at 432; Román & Simmons, *supra* note 62, at 455; Torruella, *supra* note 50, at 10.

⁶⁷ Cabranes, *supra* note 61, at 432 (citing 33 CONG. REC. 3622 (1900)).

⁶⁸ Román & Simmons, *supra* note 62, at 455 (quoting S. REP. NO. 56-249, at 8–9 (1900)).

[them] the operation of the Constitution and the laws of the United States, and . . . hold the territory as a mere possession.”⁶⁹

The *Insular Cases*, a series of cases decided by the Supreme Court from 1901 to 1922,⁷⁰ provide the constitutional justification for this colonial relationship. Pursuant to the *Insular Cases*, Congress wields the power to decide which portions of the Constitution apply to the unincorporated territories, limited only by so-called “fundamental” personal rights.⁷¹ Fundamental rights in the territorial context have a distinct yet imprecise meaning: they are only those “which are the basis of all free government.”⁷² Thus, rights commonly viewed as fundamental, such as the right to a jury trial, are not “fundamental” under the *Insular Cases* framework.⁷³ The *Insular Cases* today shape the peoples’ colonial existence in far-reaching ways—from the political to the economic, the social to the cultural.

In *Downes v. Bidwell*, the most important of the *Insular Cases*, the Supreme Court held that the Uniformity Clause⁷⁴ of the U.S. Constitution did not apply to Puerto Rico because it “belongs to . . . but . . . is not a part of the United States[.]”⁷⁵ Although no opinion garnered a majority, Justice

⁶⁹ *Id.* For extensive analyses of Puerto Rico’s political status, see PEDRO MALAVET, *AMERICA’S COLONY: THE POLITICAL AND CULTURAL CONFLICT BETWEEN THE UNITED STATES AND PUERTO RICO* (2004); EFRÉN RIVERA RAMOS, *THE LEGAL CONSTRUCTION OF IDENTITY: THE JUDICIAL AND SOCIAL LEGACY OF AMERICAN COLONIALISM IN PUERTO RICO* (2001); EDIBERTO ROMÁN, *THE OTHER AMERICAN COLONIES: AN INTERNATIONAL AND CONSTITUTIONAL LAW EXAMINATION OF THE UNITED STATES’ NINETEENTH AND TWENTIETH CENTURY ISLAND CONQUESTS* (2006).

⁷⁰ The *Insular Cases* generally fall into two groups: the 1901 cases and the later cases. The 1901 cases include: *De Lima v. Bidwell*, 182 U.S. 1 (1901); *Goetze v. United States*, 182 U.S. 221 (1901); *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*, 182 U.S. 244 (1901); *Huus v. New York*, 182 U.S. 392 (1901); *Dooley v. United States*, 183 U.S. 151 (1901); and *Fourteen Diamond Rings v. United States*, 183 U.S. 176 (1901). The later cases include: *Hawaii v. Mankichi*, 190 U.S. 197 (1903); *González v. Williams*, 192 U.S. 1 (1904); *Kepner v. United States*, 195 U.S. 100 (1904); *Dorr v. United States*, 195 U.S. 138 (1904); *Mendezona v. United States*, 195 U.S. 158 (1904); *Rassmussen v. United States*, 197 U.S. 516 (1905); *Trono v. United States*, 199 U.S. 521 (1905); *Grafton v. United States*, 206 U.S. 333 (1907); *Kent v. Porto Rico*, 207 U.S. 113 (1907); *Kopel v. Bingham*, 211 U.S. 468 (1909); *Dowdell v. United States*, 221 U.S. 325 (1911); *Ochoa v. Hernández*, 230 U.S. 139 (1913); *Ocampo v. United States*, 234 U.S. 91 (1914); and *Balzac v. Porto Rico*, 258 U.S. 298 (1922).

⁷¹ See *Dorr v. United States*, 195 U.S. 138, 146 (1904) (quoting *Downes*, 182 U.S. at 291).

⁷² *Id.* at 147; see also *Balzac v. Porto Rico*, 258 U.S. 298, 312–13 (1922) (holding that peoples of the unincorporated territories are entitled to “guaranties of certain fundamental personal rights declared in the Constitution”); *Boumediene v. Bush*, 553 U.S. 723, 758 (2008).

⁷³ See *Fitisemanu v. United States*, 1 F.4th 862, 878 (10th Cir. 2021). Because the Supreme Court did not define which rights are “the basis of all free government,” appellate courts have interpreted this concept in differing ways. See *Wabol v. Villacrusis*, 958 F.2d 1450, 1462 (9th Cir. 1990) (ruling that the equal right to own land in the Commonwealth of Northern Mariana Islands (CNMI) regardless of race was not “fundamental” and holding that the application of the Equal Protection Clause to land alienation restrictions would be impracticable and anomalous because it would undermine Native culture).

⁷⁴ U.S. Const. art. I, § 8, cl. 1 (requiring that “duties, imposts and excises” are uniform throughout the United States).

⁷⁵ *Downes v. Bidwell*, 182 U.S. 244, 279, 287 (1901).

Brown, who delivered the judgment of the Court, counseled against the “extremely serious” consequences if the offspring of the colonies’ inhabitants, “whether savages or civilized,” would become “entitled to all the rights, privileges and immunities of citizens.”⁷⁶ Justice White’s concurring opinion, which later became the controlling doctrine of territorial incorporation, devised the concept of the “unincorporated” territory. Whether particular provisions of the Constitution apply in a territory depends on “the situation of the territory and its relations to the United States.”⁷⁷ Because Congress did not intend to incorporate Puerto Rico, Justice White determined that it was unincorporated, or that it was, paradoxically, “foreign . . . in a domestic sense.”⁷⁸

Judges, scholars, and advocates have overwhelmingly concluded that the *Insular Cases* legitimize American colonialism.⁷⁹ Judge José Cabranes recognized, for example, that *Downes* “gave judicial approval to the birth of ‘the American Empire.’”⁸⁰ Judge Juan Torruella similarly argued that “the Supreme Court placed its imprimatur on a colonial relationship in which Congress could exercise virtually unchecked power over the unincorporated territories ad infinitum.”⁸¹

Later domestic and international developments led to a limited measure of local governance in the territories, but the United States maintains its strong colonial grip. In 1946, for example, Guam was added to the United Nations’ (UN) list of non-self-governing territories, and it remains on the list today.⁸² The United States, as the administering power, is required to submit periodic reports to the UN Secretary-General regarding the steps it has taken to move Guam toward self-government.⁸³ Guam’s Organic Act, adopted by Congress in 1950, designed a civilian government for the island and gave residents statutory U.S. citizenship.⁸⁴ In the Interior Committee’s report rec-

⁷⁶ *Id.* at 279.

⁷⁷ *Id.* at 293 (White, J., concurring). (“Therefore, the question whether the Foraker Act’s tax on Puerto Rican goods was proper depended on a determination whether Puerto Rico was “incorporated into the United States.”)

⁷⁸ *Id.* at 341.

⁷⁹ See Serrano, *Elevating the Perspectives*, *supra* note 41, at 396.

⁸⁰ Cabranes, *supra* note 61, at 436. See also Lazos Vargas, *supra* note 55, at 929–30 (contending that the Treaty of Paris reflects the United States’ first step toward colonialism and empire because it departed radically from the Treaty of Guadalupe Hidalgo, which guaranteed Mexicans full de jure U.S. citizenship rights). Many scholars trace the beginnings of U.S. imperialism to the late 19th century, but others view the earlier U.S. westward expansion and conquest of Native peoples as an empire-building project. See, e.g., Paul Frymer, *Building an American Empire: Territorial Expansion in the Antebellum Era*, 1 UC IRVINE L. REV. 913, 914–15 (2011).

⁸¹ Juan R. Torruella, *¿Hacia Dónde Vas Puerto Rico?*, 107 YALE L.J. 1503, 1509 (1998) (reviewing JOSÉ TRÍAS MONGE, *PUERTO RICO: THE TRIALS OF THE OLDEST COLONY IN THE WORLD* (1997)).

⁸² See United Nations, *Non-Self-Governing Territories*, <https://www.un.org/dppa/decolonization/en/nsgt>, archived at <https://perma.cc/4X62-ZLS8>.

⁸³ See U.N. Charter, art. 73, para. e.

⁸⁴ Organic Act of Guam, Pub. L. No. 81-630, 64 Stat. 384 (1950), codified at 48 U.S.C. §§ 1421–28e (2012). The citizenship of U.S. territorial residents is guaranteed only by statute,

ommending passage of the Act, Congress acknowledged its international obligations to restore to Guam's native inhabitants a measure of self-determination and assist the peoples in "the progressive development of their free political institutions."⁸⁵ Guam does not have its own constitution and is managed by the U.S. Department of the Interior.⁸⁶

The Jones Act in 1917 conferred statutory U.S. citizenship on Puerto Rico's inhabitants but did not incorporate Puerto Rico into the United States.⁸⁷ In 1952, Puerto Rico adopted its own constitution and became the Commonwealth of Puerto Rico.⁸⁸ The United States then reported to the United Nations that Puerto Rico was no longer a non-self-governing territory and declared that Puerto Rico had reached "the full measure of self-government."⁸⁹ The same year, the United Nations removed Puerto Rico from the list of non-self-governing territories, and the UN General Assembly determined that "the people of the Commonwealth of Puerto Rico have been invested with attributes of political sovereignty which clearly identify the status of self-government attained by the Puerto Rican people as that of an autonomous political entity."⁹⁰ But to many, Puerto Rico's current political status does not resemble "full self-government."⁹¹ The UN Committee on Decolonization has repeatedly reaffirmed Puerto Rico's people's right to self-determination and instructed the United States to discharge its responsibility to effectuate that right.⁹²

rather than via the Fourteenth Amendment's Citizenship Clause. Commentators warn that this statutory citizenship is precarious because it is revocable by Congress. See Lisa Maria Perez, *Citizenship Denied: The Insular Cases and the Fourteenth Amendment*, 94 VA. L. REV. 1029, 1032–33, 1039 (2008).

⁸⁵ S. REP. NO. 81-2109 (1950) (*describing the United States' obligations under the Treaty of Paris and Chapter XI of the UN Charter*).

⁸⁶ 48 U.S.C. § 1421 (transferring the administration of Guam from the Secretary of the Navy to the Secretary of the Interior as of August 1, 1950).

⁸⁷ *Balzac v. Porto Rico*, 258 U.S. 298, 307–09 (1922).

⁸⁸ Public Law 600 allowed Puerto Ricans to draft their own constitution, subject to Congress' approval, and created the "Commonwealth of Puerto Rico." See Act of July 3, 1950, Pub. L. No. 600, 64 Stat. 319, codified at 48 U.S.C. § 731(b) (1994). The "commonwealth" label, while granting Puerto Rico a measure of autonomy, did not alter Puerto Rico's constitutional status as a U.S. territory. See *Puerto Rico v. Sanchez Valle*, 136 S. Ct. 1863, 1874 (2016) (holding that Puerto Rico was not a separate sovereign for double jeopardy purposes notwithstanding its "transformative constitutional moment"); see also Ediberto Román, *Empire Forgotten: The United States's Colonization of Puerto Rico*, 42 VILL. L. REV. 1119, 1156–57 (1997) (contending that commonwealth status allowed the United States simultaneously to quell people's calls for self-government and to appease international accusations of colonialism).

⁸⁹ *Puerto Rico v. Sanchez Valle*, 579 U.S. 59, 87–89 (2016) (Breyer, J., dissenting) (citation omitted).

⁹⁰ G.A. Res. 748(VIII), para. 5, U.N. Doc. A/RES/748(VIII) (Nov. 27, 1953).

⁹¹ See Román, *supra* note 88, at 1209; Dorian A. Shaw, *The Status of Puerto Rico Revisited: Does the Current U.S.-Puerto Rico Relationship Uphold International Law?*, 17 FORDHAM INT'L L.J. 1006, 1011 (1994); Lani E. Medina, *An Unsatisfactory Case of Self-Determination: Resolving Puerto Rico's Political Status*, 33 FORDHAM INT'L L.J. 1048, 1092 (2010).

⁹² See, e.g., Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, Decision of

B. *Lasting Environmental Impacts: Guam and Puerto Rico*

The lasting colonial U.S.-territorial relationship has significant impacts: territorial residents lack meaningful national political representation and full access to vital federal programmatic aid. These stark inequalities are particularly salient in the environmental context because the U.S. territories cannot access the same levels of federal funding and support as the states for environmental resiliency.⁹³ This subsection briefly introduces these environmental justice realities as crucial context for the subsequent “racializing environmental justice” analyses of the military buildup in Guam and the aftermath of the Navy bombing in Vieques, Puerto Rico.

I. *Guam*

In Guam, the largest and southernmost island in the Marianas archipelago, CHamoru scholars and activists closely connect militarism, colonialism, and environmental destruction in Oceania. They contend that the ever-expanding U.S. military presence in Guam and its “combat-oriented” approaches to the environment have dire implications for environmental justice in the region.⁹⁴ As part of its century-long presence, the United States confiscated the most culturally valuable CHamoru homelands,⁹⁵ converted Guam into a strategic military outpost,⁹⁶ and destabilized CHamoru culture and language in an effort to “civilize” CHamorus for U.S. military gain.⁹⁷ This is a dark history of which few in the United States are aware.

And the injustice persists. Later environmental injustices include the U.S. military’s dumping and burying of toxic chemicals after World War II,⁹⁸

the Special Committee of 18 June 2018 concerning Puerto Rico, U.N. Doc. A/AC.109/2019/L.7 (Jun 19, 2019), <https://undocs.org/A/AC.109/2019/L.7>, archived at <https://perma.cc/M97T-QS9Q>.

⁹³ See Chair Grijalva Introduces Insular Area Climate Change Act, *supra* note 49.

⁹⁴ See Tiara R. Na’puti & Sylvia C. Frain, *Decolonize Oceania! Free Guåhan!*, 43 AMERASIA J. 2, 14 (2017) (describing colonialism and military discourse that “has increasingly replaced sustainability with combat-oriented and security approaches to the environment”).

⁹⁵ See Michael P. Perez, *Pacific Identities Beyond US Racial Formations: The Case of Chamorro Ambivalence and Flux*, 8 SOC. IDENTITIES 457, 459 (2002) [hereinafter Perez, *Pacific Identities*] (discussing the U.S. acquisition of Chamorro ancestral land during and after World War II).

⁹⁶ See Tiara R. Na’puti & Michael Lujan Bevacqua, *Militarization and Resistance from Guåhan: Protecting and Defending Pâgat*, 67 AM. QUARTERLY 837, 843 (2015). See also ROBERT F. ROGERS, *DESTINY’S LANDFALL: A HISTORY OF GUAM* 224 (1995); Anthony (T.J.) F. Quan, “*Respeta I Taotao Tano*”: *The Recognition and Establishment of the Self-Determination and Sovereign Rights of the Indigenous Chamorros of Guam Under International, Federal, and Local Law*, 3 ASIAN-PAC. L. & POL’Y J. 3, 70 (2002).

⁹⁷ See Michael P. Perez, *Pacific Identities Beyond US Racial Formations: The Case of Chamorro Ambivalence and Flux*, 8 SOC. IDENTITIES 457, 459 (2002).

⁹⁸ Michael Lujan Bevacqua, *Guam: Protests at the Tip of America’s Spear*, 116 S. ATL. Q. 174, 178 (2017); see also LisaLinda Natividad & Gwyn Kirk, *Fortress Guam: Resistance to US Military Mega-Buildup*, 8 ASIA-PAC. J. 1, 11 (2010) (describing two dumpsites in Guam found to contain toxins such as antimony, arsenic, barium, cadmium, and lead, among others).

the housing of nuclear weapons and mustard gas,⁹⁹ and the use of Agent Orange as a commercial herbicide during the Vietnam and Korean Wars.¹⁰⁰ A congressional panel formed to study the radioactive contamination from U.S. nuclear testing in the region between 1946 and 1958 found that the United States “knowingly and with total disregard” endangered Guam’s people.¹⁰¹ These actions have resulted in ecological damage to land and water, high rates of thyroid illnesses, and destruction of CHamoru land and culture.¹⁰² As detailed below, today’s construction of military buildup projects, which includes a live-fire training range complex and military base, has unearthed and disturbed multiple ancient burial sites and sites containing historical artifacts.¹⁰³ The complex also threatens the main water source, the Guam National Wildlife Refuge, and CHamorus’ access to traditional medicine and fishing waters.

2. *Puerto Rico*

Puerto Rican activists and scholars similarly connect Puerto Rico’s longstanding colonial status with the United States’ persistent environmental exploitation of its territory. They point to federal and local policies that allow massive U.S. industrial expansion, pollution, and control over the island’s economy and land base¹⁰⁴ by way of military bases, big pharma, and

⁹⁹ NAUTILUS INSTITUTE, TOXIC BASES IN THE PACIFIC (Nov. 25, 2005), <https://nautilus.org/apnsnet/toxic-bases-in-the-pacific/>, archived at <https://perma.cc/76AB-QN8R>.

¹⁰⁰ Jon Mitchell, *Poisons in the Pacific: Guam, Okinawa and Agent Orange*, JAPAN TIMES (Aug. 7, 2012), at 2, <https://www.japantimes.co.jp/community/2012/08/07/issues/poisons-in-the-pacific-guam-okinawa-and-agent-orange/>, archived at <https://perma.cc/53M6-Y8TR>.

¹⁰¹ See CHARLES L.S. BRISCOE, BLUE RIBBON PANEL ACTION REPORT ON RADIOACTIVE CONTAMINATION IN GUAM BETWEEN 1946–1958 1 (William M. Castro & Robert N. Celestial eds., 2002).

¹⁰² See Leilani Rania Ganser, *In Guam, the Gravest Threat Isn’t North Korea—It’s the United States*, INST. FOR POL’Y STUD. (Aug 1, 2017), <https://ips-dc.org/in-guam-the-gravest-threat-isnt-north-korea-its-the-united-states/>, archived at <https://perma.cc/JF7M-4HMB>; see also LisaLinda Natividad & Victoria-Lola Leon Guerrero, *The Explosive Growth of U.S. Military Power on Guam Confronts People Power: Experience of an Island People Under Spanish, Japanese and American Colonial Rule*, 3 ASIA-PAC. J. 1, 6 (2010) (reporting that Guam has nineteen Superfund sites and another seventy toxic sites).

¹⁰³ Kaur, *Marine Base*, *supra* note 1; Kaur, *Buildup Projects*, *supra* note 2 (reporting that “seven sites containing artifacts and nine sites containing human remains were disturbed as the first four firing ranges were built as part of the Marines’ live-fire training range complex at Ritidian” and that “the military cleared remnants of the ancient village of Magua’ in Dededo during construction of Camp Blaz”).

¹⁰⁴ See Carmen M. Concepción, *The Origins of Modern Environmental Activism in Puerto Rico in the 1960s*, 19 INT’L J. URB. REGIONAL RESEARCH 115, 113 (1995); Catalina M. de Onís, *Energy Colonialism Powers the Ongoing Unnatural Disaster in Puerto Rico*, 3 FRONT COMM’N. 1, 1 (2018) [hereinafter de Onís, *Energy Colonialism*]. While all of the contributors to Puerto Rico’s financial and environmental crises are too many to mention, some include the Jones Act, also known as the Merchant Marine Act of 1920, Pub. L. No. 66-261, 41 Stat. 988, which mandates that all commercial shipping within the United States is conducted by ships that are built domestically, are at least seventy-five percent American-owned, and are staffed with an American crew; Operation Bootstrap, a policy implemented in the 1940s that sought to industrialize Puerto Rico and provided tax exemptions to U.S. corporations; and the

fossil fuel-dependent power plants.¹⁰⁵ Environmental activists have fought against open pit copper mining, an oil refining “superport,” a nuclear power plant, and the siting of incinerators and hazardous waste facilities in some of Puerto Rico’s most vulnerable communities.¹⁰⁶ A 2016 report found that over half of Puerto Rico’s municipal landfills violate the Environmental Protection Agency’s regulations.¹⁰⁷ Puerto Rico is also home to twenty-three Superfund sites, including one on the island of Vieques, described below.¹⁰⁸ More recently, activists fought the dumping of over two million tons of toxic coal ash—containing high levels of arsenic, heavy metals, and radioactivity¹⁰⁹—in poor, largely Black communities.¹¹⁰ Although toxic coal ash dump-

Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), 48 U.S.C.A. §§ 2101 et seq., which created a federal oversight board that exercises broad budgetary and financial control over Puerto Rico’s fiscal affairs, and has imposed harsh austerity measures that reduced spending on health care, education, and public pensions. See Jhoset A. Burgos-Rodríguez, *Puerto Rican Environmental Rule of Law Under Promesa*, 89 REV. JUR. U. P.R. 851, 858 (2020); Derdlim M. Rodríguez Malavé, *P.R.O.M.E.S.A.: Another Consequence of the Constitutionally Infirm Interpretation of the Territorial Clause*, 54 REV. JUR. U. P.R. 413, 434 (2020).

¹⁰⁵ Hilda Lloréns & Maritza Stanchich, *Water Is Life, but the Colony Is a Necropolis: Environmental Terrains of Struggle in Puerto Rico*, 31 CULT. DYN. 81, 84, 85 (2019) (calling Puerto Rico an “exploitation colony” and describing U.S.-sponsored environmental degradation in Puerto Rico). See also Concepción, *supra* note 104, at 116 (characterizing the exploitation of Puerto Rico’s natural resources by U.S. companies as a “classical pattern of colonial exploitation”); Ingrid Vila, *A Fight Worth Fighting: Waste Incineration in Puerto Rico*, EARTHJUSTICE (Oct. 6, 2015), <https://earthjustice.org/blog/2015-october/a-fight-worth-fighting-waste-incineration-in-puerto-rico>, archived at <https://perma.cc/G2QT-WRZ8> (reporting on community activists’ struggles against the construction of a massive solid-waste incinerator by a U.S. corporation).

¹⁰⁶ See Concepción, *supra* note 104, at 113–15, 122–23 (tracing the emergence and development of the environmental movement in Puerto Rico); Déborah Berman Santana, *Colonialism, Resistance, & the Search for Alternatives: The Environmental Movement in Puerto Rico*, 4 RACE, POVERTY & THE ENV’T. 3, 3–4 (Fall 1993); Sherrie Bayer, *Environmental Struggles in Paradise: Puerto Rican Cases, Caribbean Lessons*, 40 CARIBBEAN STUD. 15, 30–31 (2012) (describing other environmental conflicts) [hereinafter Bayer, *Environmental Struggles*]; Vann R. Newkirk II, *Puerto Rico’s Environmental Catastrophe*, THE ATLANTIC (Oct. 18, 2017), <https://www.theatlantic.com/politics/archive/2017/10/an-unsustainable-island/543207/>, archived at <https://perma.cc/9MR6-44S5>.

¹⁰⁷ Congressional Task Force on Economic Growth in Puerto Rico, 114th Congress (Dec. 20, 2016), at 73–74, <https://www.finance.senate.gov/imo/media/doc/Bipartisan%20Congressional%20Task%20Force%20on%20Economic%20Growth%20in%20Puerto%20Rico%20Releases%20Final%20Report.pdf>, archived at <https://perma.cc/62TP-7PRA>.

¹⁰⁸ Emily Atkin, *Puerto Rico Is Already an Environmental Tragedy. Hurricane Maria Will Make It Even Worse*, NEW REPUB. (Sept. 19, 2017) <https://newrepublic.com/article/144888/puerto-rico-already-environmental-tragedy-hurricane-maria-will-make-even-worse>, archived at <https://perma.cc/G4N5-HFA2> (reporting that Puerto Rico has nearly forty toxic dumps).

¹⁰⁹ Hilda Lloréns, *In Puerto Rico, environmental injustice and racism inflame protests over coal ash*, THE CONVERSATION (Dec. 8, 2016, 9:08 PM), <https://theconversation.com/in-puerto-rico-environmental-injustice-and-racism-inflame-protests-over-coal-ash-69763>, archived at <https://perma.cc/4DB2-UNNN> (arguing that the toxic coal ash crisis is “rooted in colonial and economic policies that have turned Puerto Ricans into migrants, consumers and debtors[.]”). In the early 1990s, U.S. corporation Applied Energy Systems (AES) secured a contract with the Puerto Rican government to build a power plant under the public guise that it would provide “clean, ecological and financially sustainable” energy to the island. See Sarah Dávila-Ruhaak, *Making the Case for the Right to a Healthy Environment for the Protection of*

ing is now banned,¹¹¹ much of the ash remains. Local activists continue their “struggle for decolonization and environmental justice”¹¹² in the face of devastating health and environmental impacts worsened by Hurricane Maria.¹¹³ These unique colonial realities in the U.S. territories permeate nearly every facet of people’s lives, including in the realm of environmental justice.

III. THE ESTABLISHED ENVIRONMENTAL JUSTICE FRAMEWORK

The environmental justice framework—that emerged from the broader environmental movement—has provided a potent tool to describe and combat environmental injustices in vulnerable communities. In the 1970s, the environmental movement centered on resource conservation, wilderness and wildlife preservation, pollution abatement, and industry regulation.¹¹⁴ Congress passed powerful environmental laws to protect public health and welfare and promote “productive harmony” between humans and nature.¹¹⁵ The Clean Air and Clean Water Acts, for example, include citizen suit provisions that allow communities to enforce statutory requirements against polluters, and the National Environmental Policy Act (NEPA) requires agencies to evaluate in their environmental impact analyses the environmental, cultural, and social impacts of proposed projects.¹¹⁶

Vulnerable Communities: A Case of Coal-ash Disaster in Puerto Rico, 9 MICH. J. ENV'T & ADMIN. L. 379, 420 (2020).

¹¹⁰ Lloréns, *supra* note 109; Michelle Chen, *Confronting Puerto Rico’s Coal-Ash Crisis*, THE NATION (Mar. 13, 2019), <https://www.thenation.com/article/archive/puerto-rico-coal-ash/>, archived at <https://perma.cc/DBZ8-7262>; see also Dávila-Ruhaak, *supra* note 109, at 427 (defining coal-ash as “the waste left over from burning of the coal and after it has been combusted”).

¹¹¹ Ban on the Deposit and Disposal of Coal Ash or Coal Combustion Residues in Puerto Rico Act, ch. 510, 2017 P.R. Laws 40 (codified as amended at P.R. LAWS § 8191–8195 (2020)). See also Yessina Funes, *Puerto Rico Ends Toxic Dumping of Coal Ash, But Increases its Commercial Use*, COLORLINES (July 5, 2017, 10:50 AM), <https://www.colorlines.com/articles/puerto-rico-ends-toxic-dumping-coal-ash-increases-its-commercial-use>, archived at <https://perma.cc/8MVB-5RKE> (describing arguments that Law 40 will increase commercial use of coal ash); *Governor Signs Amendment to the Law to Prohibit the Deposit and Disposal of Coal Ashes or Coal Combustion Residues in Puerto Rico*, BNAMERICAS (Jan. 2, 2020), <https://www.bnamericas.com/en/news/governor-signs-amendment-to-the-law-to-prohibit-the-deposit-and-disposal-of-coal-ashes-or-coal-combustion-residues-in-puerto-rico>, archived at <https://perma.cc/K66L-CSCW> (announcing a 2020 amendment to Law 40).

¹¹² See Sara Vazquez Melendez, *From Local to Transnational: Puerto Ricans’ Struggle against Coal Ash Dumping*, INT’L CTR. ON NONVIOLENT CONFLICT (July 25, 2019), https://www.nonviolent-conflict.org/blog_post/from-local-to-transnational-puerto-ricans-struggle-against-coal-ash-dumping/, archived at <https://perma.cc/3ES4-AMYL>.

¹¹³ See Dávila-Ruhaak, *supra* note 109, at 425 (reporting that one in ten residents in the communities near the AES power plant has cancer); see also Victoria Zorovich, *The Perfect Storm: Weathering Puerto Rico’s Fiscal Crisis in the Wake of Hurricane Maria*, 46 HOFSTRA L. REV. 1067, 1078 (2018).

¹¹⁴ ROBERT D. BULLARD, DUMPING IN DIXIE: RACE, CLASS, AND ENVIRONMENTAL QUALITY (2018); RICHARD J. LAZARUS, THE MAKING OF ENVIRONMENTAL LAW 50, 73 (2008).

¹¹⁵ See 42 U.S.C. § 4331(a) (1970).

¹¹⁶ See Stephen Fotis, *Private Enforcement of the Clean Air Act and the Clean Water Act*, 35 AM. U. L. REV. 127, 128 (1985); Uma Outka, *Environmental Injustice and the Problem of the Law*, 57 ME. L. REV. 209, 234 (2005); 50 C.F.R. 1508.8 (2012).

Building on mainstream environmentalism, grassroots activists in the 1980s melded environmental and civil rights laws and approaches to combat “environmental racism.”¹¹⁷ The burgeoning environmental justice movement drew national attention to the unequal distribution of environmental harms in communities of color and offered a “paradigm for community leadership and control.”¹¹⁸ Activists called for a holistic framing of environmental justice, including the right to a safe and healthy environment, community empowerment, and mutual respect for all peoples.¹¹⁹

Although it has varied definitions,¹²⁰ “environmental justice” often refers to the equal distribution of environmental burdens, risks, and benefits based on race.¹²¹ The traditional environmental justice framework centers on the disproportionate siting of hazardous facilities and exposure to environmental toxins within marginalized communities and seeks to remediate the injustice by relocating polluting facilities and terminating harm-producing conduct.¹²² It embraces equal, transparent, and inclusive representation in the administration of environmental laws, regulations, and policies,¹²³ grassroots

¹¹⁷ See Sheila Foster, *Race(ial) Matters: The Quest for Environmental Justice*, 20 *ECOLOG. L.Q.* 721, 722 (1993) (defining the environmental justice movement as a union of the environmental and the civil rights movements); Gerald Torres, *Environmental Justice: The Legal Meaning of a Social Movement*, 15 *J.L. & COM.* 597, 602 (1996) (describing Benjamin F. Chavis’ definition of environmental racism as “racial discrimination in environmental policymaking” and enforcement).

¹¹⁸ Luke W. Cole & Caroline Farrell, *Structural Racism, Structural Pollution and the Need for A New Paradigm*, 20 *WASH. U. J.L. & POL’Y* 265, 265 (2006). The environmental justice movement traces its roots to Robert Bullard’s study of the distribution of toxic waste among communities of color in Houston, Texas. See also LUKE W. COLE & SHEILA R. FOSTER, *FROM THE GROUND UP: ENVIRONMENTAL RACISM AND THE RISE OF THE ENVIRONMENTAL JUSTICE MOVEMENT* (2001) (contending that environmental racism can only be understood by also understanding the structural processes that underlie unequal distribution); see also Richard A. Wegman & Harold G. Bailey, Jr., *The Challenge of Cleaning Up Military Wastes When U.S. Bases Are Closed*, 21 *ECOLOG. L.Q.* 865, 884–85 (1994) (describing the domestic military facilities that disproportionately contaminated poor communities and communities of color).

¹¹⁹ See First National People of Color Environmental Leadership Summit, Principles of Environmental Justice (1991), <https://www.ejnet.org/ej/principles.html>, archived at <https://perma.cc/2MQ8-YZMM> [hereinafter Principles of Environmental Justice]; Tseming Yang, *Melding Civil Rights and Environmentalism: Finding Environmental Justice’s Place in Environmental Regulation*, 26 *HARV. ENV’T L. REV.* 1, 19 (2002) (noting that activists describe environmental justice expansively as a “holistic concept that includes the right to a safe, healthy, productive, and sustainable environment for all”).

¹²⁰ See, e.g., WALKER, *supra* note 15, at 1–2, 7–8 (describing various definitions of “environmental justice” and identifying it as simultaneously a campaign slogan, a field of academic research, a policy principle, an agenda, and a political movement); Robert R. Kuehn, *A Taxonomy of Environmental Justice*, 30 *ENV’T L. REP.* 10681, 10681–82, 10688 (2000) (articulating four-part definition of environmental justice: distributive justice, procedural justice, corrective justice, and social justice).

¹²¹ Villa, *supra* note 16, at 476–80.

¹²² Yamamoto & Lyman, *supra* note 17, at 320.

¹²³ *Environmental Justice*, U.S. ENVIRONMENTAL PROTECTION AGENCY, <https://www.epa.gov/environmentaljustice>, archived at <https://perma.cc/U3S6-8UDU> (last visited May 6, 2021 9:50AM).

community empowerment,¹²⁴ and the recognition that environmental struggles are intertwined with structural poverty and racism.¹²⁵

Federal and state governments have incorporated environmental justice understandings and norms into domestic law and policy.¹²⁶ Amidst the accelerating climate crisis and advancing environmental degradation, President Biden has pledged “to combat climate change . . . and address environmental racism.”¹²⁷ His Justice40 Initiative seeks to steer 40% of the benefits of federal environmental investments to communities subjected to environmental harm.¹²⁸

More broadly, some view environmental justice as one of the most significant developments in environmental law and discourse.¹²⁹ Its language and concepts bring crucial attention to overlooked patterns of inequality.¹³⁰ Community groups employ legal tools—environmental statutes, constitutional provisions, civil rights laws, and common law claims—to tackle a growing list of diverse controversies centered on industrialization, energy use, and access to affordable food, among many others.¹³¹ Environmental justice scholarship has begun to interrogate the intersections of race, gender, age, immigrant status, and disability, as well as “the ongoing dispossession of Indigenous peoples, and the colonial and postcolonial domination of the Global South.”¹³² These are important advancements.

But conceptual and practical challenges remain. Practically, both environmental and civil rights legal frameworks can sharply limit environmental

¹²⁴ See Simms, *supra* note 19, at 10516; Alice Kaswan, *Environmental Justice and Environmental Law*, 24 *FORDHAM ENV'T L. REV.* 149, 158 (2013) (characterizing the environmental justice movement’s emphasis on community grassroots participation and organizing as limiting its ability to influence national policy).

¹²⁵ See WALKER, *supra* note 15, at 1–2.

¹²⁶ Clifford Rechtschaffen, *Advancing Environmental Justice Norms*, 37 *U.C. DAVIS L. REV.* 95, 100–01 (2003); Rebecca Tsosie, *Indigenous Peoples and Epistemic Injustice: Science, Ethics, and Human Rights*, 87 *WASH. L. REV.* 1133, 1151–52 (2012).

¹²⁷ Eilperin et al., *supra* note 33. See Exec. Order No. 14,008, 86 *Fed. Reg.* 7619 (Feb. 1, 2021); *The Biden Plan to Secure Environmental Justice and Equitable Economic Opportunity*, BIDEN HARRIS DEMOCRATS, <https://joebiden.com/environmental-justice-plan/>, archived at <https://perma.cc/G2YA-UY7J>.

¹²⁸ See *The Path to Achieving Justice40*, THE WHITE HOUSE (Jul. 20, 2021), <https://www.whitehouse.gov/omb/briefing-room/2021/07/20/the-path-to-achieving-justice40/>, archived at <https://perma.cc/2WBK-TP72>.

¹²⁹ WALKER, *supra* note 15, at 1.

¹³⁰ Sumudu Atapattu & Carmen G. Gonzalez, *The North-South Divide in International Environmental Law: Framing the Issues*, in *INTERNATIONAL ENVIRONMENTAL LAW AND THE GLOBAL SOUTH* 1, 13 (Shawkat Alam et al. eds., 2015).

¹³¹ See Gonzalez, *supra* note 34, at 155 (noting that environmental justice now encompasses “farmworker exposure to pesticides; inequities in disaster preparedness and emergency response; workplace health and safety; access to healthy and affordable food; and the enhancement of tribal regulatory authority over indigenous lands”); see also Robert D. Bullard, Paul Mohai, Robin Saha & Beverly Wright, *Toxic Wastes and Race at Twenty: Why Race Still Matters after All These Years*, 38 *ENV'T L.* 371, 377 (2008) (listing “public health, worker safety, land use, transportation, housing, resource allocation, and community empowerment” as issues of environmental justice).

¹³² Atapattu et al., *supra* note 35, at 10.

justice claims, and often diverge in methods, implementation, and available remedies.¹³³ The environmental regulatory decision-making process, for example, relies heavily on quantifiable information rather than less quantifiable facets of racism and subordination experienced by groups of color.¹³⁴ NEPA prescribes a process for community consultation before projects are undertaken, but provides no mechanism for Native and other communities to halt environmentally or culturally harmful projects in their homelands.¹³⁵ In the civil rights context, claims brought under the Equal Protection Clause, the Civil Rights Act, and Section 1983 require a near-impossible showing of racially discriminatory intent¹³⁶ based on concepts of race and racial discrimination disconnected from structural racism.¹³⁷ The constricted civil rights approach to environmental justice thus has largely failed to protect racialized communities facing environmental hazards.¹³⁸

Conceptually, the mainstream environmental justice framework's one-size-fits-all approach still often carries the day: "the linguistic lumping together of 'low-income and minority communities' flattens the problem and thus remedial pathways."¹³⁹ Both environmental and civil rights claims can sideline sovereignty- and self-determination-based Native American claims, and disregard the ways in which race, indigeneity, and political status inter-

¹³³ See Gauna, *supra* note 37, at 36, 41–42; Daniels et. al., *supra* note 37, at 42; see also CLIFFORD VILLA, NADIA AHMAD, REBECCA BRATSPIES, ROGER LIN, CLIFFORD RECHTSCHAFFEN, EILEEN GUANA, & CATHERINE O'NEILL, ENVIRONMENTAL JUSTICE: LAW, POLICY AND REGULATION (3d ed. 2020) (identifying additional challenges to meaningfully integrating environmental justice concerns into broader environmental law and regulation).

¹³⁴ Yang, *supra* note 119, at 17–18.

¹³⁵ See Akilah Jenga Kinnison, *Indigenous Consent: Rethinking U.S. Consultation Policies in Light of the U.N. Declaration on the Rights of Indigenous Peoples*, 53 ARIZ. L. REV. 1301, 1322 (2011).

¹³⁶ See *Washington v. Davis*, 426 U.S. 229, 239–40 (1976) (holding that a plaintiff must show invidious discriminatory intent to establish a prima facie equal protection racial discrimination claim); *Alexander v. Sandoval*, 532 U.S. 275, 275 (2001) (ruling that no private right of action exists to enforce disparate impact regulations pursuant to Title VI of the Civil Rights Act of 1964).

¹³⁷ See Neil Gotanda, *A Critique of "Our Constitution is Color-Blind,"* 44 STAN. L. REV. 1, 43–44 (1991).

¹³⁸ See Christopher D. Ahlers, *Race, Ethnicity, and Air Pollution: New Directions in Environmental Justice*, 46 ENV'T. L. 713, 753 (2016) (contending that the Title VI framework "has not resulted in a meaningful limitation on the construction and operation of industrial facilities"); Catherine Millas Kaiman, *Environmental Justice and Community-Based Reparations*, 39 SEATTLE UNIV. L. REV. 1327, 1354–57 (2016) (noting that equal protection claims, Title VI administrative complaints to the EPA, and 42 U.S.C. § 1983 claims against state actors are inadequate legal solutions to address environmental injustices); Sheila Foster, *Vulnerability, Equality, and Environmental Justice: The Potential and Limits of Law*, in THE ROUTLEDGE HANDBOOK OF ENVIRONMENTAL JUSTICE 136, 137–42 (Ryan Holifield, Jayajit Chakraborty & Gordon Walker eds., 2017) (describing the limitations of civil rights laws in the environmental justice context).

¹³⁹ Yamamoto & Serrano, *supra* note 36, at 1387; Atapattu et al., *supra* note 35, at 10 (noting that environmental justice scholarship has not yet fully developed "a rigorous analysis of the complex ways that poverty, race, gender, indigeneity, age, and disability, among other identity characteristics . . . intersect to produce environmental injustice in specific contexts.").

sect to produce different manifestations of environmental injustice.¹⁴⁰ The established framework also tends to obscure U.S. territorial peoples' unique historical and political statuses, cultural practices, and particularized decolonization claims, and in so doing, often fails to acknowledge their unique needs for repair.

The racializing environmental justice framework thus has continuing relevance. As described below, it relies on concepts of differential racialization and disempowerment to grasp the particularities of environmental "injustice" in specific settings.¹⁴¹ By interrogating the distinctions among groups' cultural values, histories, hierarchies of power, needs, and goals, the framework empowers communities and advocates to better define environmental injustices and tailor remedies to meet diverse communities' needs and goals.

IV. THE RACIALIZING ENVIRONMENTAL JUSTICE FRAMEWORK

In light of the mainstream framework's limitations, legal scholar Eric Yamamoto offered a "racializing environmental justice" framework that sought to "better . . . grapple concretely with the 'racism' and 'justice' components of environmental justice."¹⁴² Drawing from Critical Race Theory,¹⁴³ the method aims to interrogate racial categories and meanings, account for significant differences between those described as racial minorities and Indigenous peoples, and acknowledge the "influences of whiteness in the formation and implementation of environmental law and policy."¹⁴⁴ It endeavors not to displace the established environmental justice framework, but to "expand[] and deepen[] the prevailing analysis and strategic calculations of scholars, lawyers, and activists" to reframe "how we view the 'environmental' problem, the rights claims, and the possible 'justice' remedies."¹⁴⁵

The following subsection describes the concepts of differential racialization and disempowerment that are crucial to the framework's particularized inquiry. The remaining subsections explore Native peoples' unique relationships to the land and environment, which are foundational aspects of the racializing environmental justice framework, and then further refines the framework to incorporate the unique colonial experiences of the peoples of the territories.

¹⁴⁰ See, e.g., Nagle, *supra* note 39, at 669; Houdyshell, *supra* note 39, at 3.

¹⁴¹ MacKenzie et al., *supra* note 24, at 37–38.

¹⁴² See Yamamoto & Lyman, *supra* note 17, at 341.

¹⁴³ See Eric K. Yamamoto, *Critical Race Praxis: Race Theory and Political Lawyering Practice in Post-Civil Rights America*, 95 MICH. L. REV. 821, 829–31 (1997).

¹⁴⁴ Yamamoto & Lyman, *supra* note 17, at 341.

¹⁴⁵ *Id.* at 351, 358.

A. *Differential Racialization and Disempowerment*

Racializing environmental justice builds on concepts of “differential racialization”¹⁴⁶ and “differential disempowerment”¹⁴⁷ to examine the ways in which racial and Native communities “acquire differing identities, status, and power, and how those differences affect their respective connections to ‘the environment.’”¹⁴⁸

Crucial to this inquiry is the understanding of race, not as an unalterable, biological characteristic, but an “unstable and ‘decentered’ complex of social meanings constantly being transformed by political struggle.”¹⁴⁹ This notion of race provides the basis for Michael Omi and Howard Winant’s theory of “racial formation.”¹⁵⁰ Racial formation—or racialization—is a sociohistorical process by which race is created, shaped, and transformed by social and political forces.¹⁵¹ As races are continually formed and reformed, they are imbued with social meaning.

The racialization process is key to colonization.¹⁵² Colonizing forces exert control over land and resources, and legitimate that power, in part by disparaging colonized peoples.¹⁵³ Thus, “racism” is not simply intentional prejudice based on skin color. Rather, it involves characterizing the colonized as “‘different,’ less-worthy, or less-human ‘others’ (threatening, uncivilized, inferior) . . . to make political ‘aggression’ [against the entire group] for economic or military reasons appear necessary.”¹⁵⁴

Grounded in the theorizing of Omi and Winant, and set within the context of white supremacy,¹⁵⁵ “differential racialization” recognizes substantial differences in the racialization of groups, contributing to differing group status and power.¹⁵⁶ Class divisions, length of residence in the United States,

¹⁴⁶ Michael Omi, *Out of the Melting Pot and Into the Fire: Race Relations Policy, in THE STATE OF ASIAN PACIFIC AMERICA: POLICY ISSUES TO THE YEAR 2020* 199, 207 (1993); Eric K. Yamamoto, *Rethinking Alliances: Agency, Responsibility and Interracial Justice*, 3 U.C.L.A. ASIAN PAC. AMER. L.J. 33, 62 (1995) [hereinafter Yamamoto, *Rethinking Alliances*].

¹⁴⁷ Jeff Chang, *Race, Class, Conflict and Empowerment: On Ice Cube’s “Black Korea,”* 19 AMERASIA J. 87, 103 (1993) (describing “differential forms of disempowerment”).

¹⁴⁸ Yamamoto & Lyman, *supra* note 17, at 342.

¹⁴⁹ MICHAEL OMI & HOWARD WINANT, *RACIAL FORMATION IN THE UNITED STATES* 110 (3d ed. 2015).

¹⁵⁰ *Id.*

¹⁵¹ *Id.* at 55–56.

¹⁵² Serrano, *Collective Memory*, *supra* note 41, at 368.

¹⁵³ See ALBERT MEMMI, *RACISM* (Steve Martinot trans., Univ. Minn. Press 2000) (1982) [hereinafter MEMMI, *RACISM*].

¹⁵⁴ Serrano, *Reparative Justice*, *supra* note 41, at 519.

¹⁵⁵ See Gabriel J. Chin, Sumi K. Cho, Marina C. Hsieh & Deborah C. Malamud, *Rethinking Racial Divides-Panel on Affirmative Action*, 4 MICH. J. RACE & L. 195, 218 (1998) (outlining “differential racisms under white supremacy”); see also Barbara Flagg, *Was Blind, But Now I See: White Race Consciousness and the Requirement of Discriminatory Intent*, 91 MICH. L. REV. 953, 969 (1993) (describing the pervasiveness of white norms).

¹⁵⁶ Omi, *supra* note 146, at 207 (noting that differential racialization impacts “individual identity, collective consciousness and political organization”); Yamamoto, *Rethinking Alliances*, *supra* note 146, at 36; Chang, *supra* note 147, at 103; see also Marc-Tizoc Gonzá-

urban/rural differences, and gender, for example, contribute to differential racialization among and within groups.¹⁵⁷ “Differential disempowerment” similarly interrogates power differences among racial and Native groups in terms of race, locale, time, and economics.¹⁵⁸ Differential racialization and disempowerment point to significant differences among immigrant communities, Black descendants of enslaved people, and colonized Indigenous peoples.¹⁵⁹ For Native peoples, Yamamoto contends, a differential racialization analysis “focuses on the effects of land dispossession, culture destruction, loss of sovereignty, and, in turn, on claims to self-determination and nationhood (rather than to equality and integration).”¹⁶⁰

For the peoples of the U.S. territories—many of whom are both Indigenous and colonized¹⁶¹—differential racialization and disempowerment inquiries center on the impacts of U.S. conquest and colonization, resulting political powerlessness, and claims to decolonization and repair for historical harms. At the same time, differing status and power among the territories shapes groups’ distinct efforts to repair the harms of U.S. colonization. Puerto Ricans, for example, may seek equality of treatment and increased civil and political rights within the U.S. paradigm. In two recent cases, Puerto Rico residents argued that their summary exclusion from certain federal government benefit programs violates the equal protection guarantee of the Fifth Amendment’s Due Process Clause.¹⁶² For CHamoru in Guam, the preservation of Native culture and the exercise of their self-determination as Indigenous peoples was central to their defense of a political status plebiscite reserved for the “Native Inhabitants” of Guam as part of the United States’ obligation to decolonize Guam.¹⁶³ Territorial groups’ distinct environmental justice claims, described below, are also marked by this complexity.

lez, *Critical Ethnic Legal Histories: Unearthing the Interracial Justice of Filipino American Agricultural Labor Organizing*, 3 U.C. IRVINE L. REV. 991, 1054 (2013) (employing the concept of “differential racialization” to explore the history of Filipina/o American and Mexican American agricultural labor exploitation and organizing in California).

¹⁵⁷ Yamamoto, *Rethinking Alliances*, *supra* note 146, at 61–63; *see also* Yen Le Espiritu, *A Critical Transnational Perspective to Asian America*, in *THE OXFORD HANDBOOK OF PHILOSOPHY AND RACE* 111 (Naomi Zack ed., 2016) (describing “differential inclusion” as the “deliberate and violent peopling of the United States—through conquest, slavery, annexation, and the importation of foreign labor” and explaining “how inclusion for some racialized groups simultaneously means legal subordination, economic exploitation, and cultural degradation”).

¹⁵⁸ Chang, *supra* note 147, at 102–03.

¹⁵⁹ Yamamoto & Lyman, *supra* note 17, at 344.

¹⁶⁰ *Id.*

¹⁶¹ *See* Aguon, *supra* note 1, at 48, 62 (describing himself and the communities of Guam as both colonized and Indigenous peoples under international law regimes).

¹⁶² *See* United States v. Vaello-Madero, 956 F.3d 12, 14–15 (1st Cir. 2020), *cert. granted*, 141 S. Ct. 1462 (2021); Peña Martínez v. U.S. Department of Health & Human Services, 478 F. Supp. 3d 155, 162 (D.P.R. 2020).

¹⁶³ *See* Defendant’s Motion for Summary Judgment at 1, 7–8, 11–12, 17, Davis v. Guam, No. 1:11-cv-00035 (D. Guam Oct. 30, 2015). Relatedly, American Samoans’ recent legal disputes over birthright U.S. citizenship starkly highlight the tensions between the quest for equal rights under the U.S. legal framework, on one hand, and the preservation of Indigenous traditions and ways of life, on the other. *See* Tuaua v. United States, 788 F.3d 300, 310 (D.C. Cir. 2015); Fitisemanu v. United States, 1 F.4th 862, 880 (10th Cir. 2021).

B. Indigenous Peoples

Native peoples' nuanced understandings of environmental justice are key to the racializing environmental justice framework.¹⁶⁴ Native scholars and advocates have long critiqued mainstream environmentalism and the established environmental justice framework for their frequent disregard of Native peoples' spiritual, physical, and social relationships to the environment.¹⁶⁵ As the racializing environmental justice framework illuminates, Native scholars and advocates may not view the siting of a power plant near a Native community as unequal treatment or racial discrimination, but instead would describe it as the denial of control over land, resources, and traditional ways of life. Environmental justice for Native peoples thus may entail the restoration of self-determination wrongly appropriated or destroyed.

Native scholars and advocates expand and refine the racializing environmental justice themes to account for the unique interests and values of Native peoples. Native Hawaiian legal scholar D. Kapua'ala Sproat draws on the racializing environmental justice inquiry to craft a restorative justice framework linking Indigenous environmental justice claims and human rights principles of self-determination.¹⁶⁶ Acknowledging the often stark differences between groups seeking "equality" and those seeking a form of self-determination, she employs the framework to interrogate the legal controversy over the decades-long diversion of water from Nā Wai 'Ehā, the "Four Great Waters" of Central Maui.¹⁶⁷ American Studies scholar Nick Es-

¹⁶⁴ Scholars also underscore environmental law's often paternalistic approach to Native American self-determination and economic growth in light of tribal community needs. *See, e.g.,* Tsosie, *supra* note 25, at 1631. Native American legal scholars thus describe how U.S. environmental policy often creates a tension between science and Indigenous knowledge and spirituality, and between "human interference with the natural world and human stewardship." Rebecca Tsosie, *Tribal Environmental Policy in an Era of Self-Determination: The Role of Ethics, Economics, and Traditional Ecological Knowledge*, 21 VT. L. REV. 225, 268 (1996). This tension becomes apparent when Native communities attempt to engage in economic development of tribal lands to address unemployment and poverty. *Id.* at 239–41 (describing the shutdown of the Navajo Nation's timber enterprise because of environmental concerns about the Mexican Spotted Owl). This also reflects the influences of whiteness in environmental law norms, practices, law, and policy. *See* Yamamoto & Lyman, *supra* note 17, at 348–51; *see also* CAROLYN FINNEY, BLACK FACES, WHITE SPACES: REIMAGINING THE RELATIONSHIP OF AFRICAN AMERICANS TO THE GREAT OUTDOORS 3 (2014) (asserting that the dominant environmental narrative in the United States is largely constructed by whiteness).

¹⁶⁵ *See, e.g.,* Robert A. Williams, Jr., *Large Binocular Telescopes, Red Squirrel Pinatas, and Apache Sacred Mountains: Decolonizing Environmental Law in a Multicultural World*, 96 W. VA. L. REV. 1133, 1164 (1994) (identifying the "decolonizing potential of [] Indian visions of environmental justice"); Tsosie, *supra* note 126 (describing the harms caused by "the uncritical application of Western values, categories, and standards to the very different social experience of Native peoples").

¹⁶⁶ D. Kapua'ala Sproat, *Wai Through Kānāwai: Water for Hawai'i's Streams and Justice for Hawaiian Communities*, 95 MARQ. L. REV. 127, 137 (2011) [hereinafter Sproat, *Wai Through Kānāwai*].

¹⁶⁷ *Id.* at 196–200; *see also* D. Kapua'ala Sproat, *An Indigenous People's Right to Environmental Self-Determination: Native Hawaiians and the Struggle Against Climate Change Devastation*, 35 STAN. ENV'T. L.J. 157, 197 (2016).

tes similarly contends that a July 2020 court ruling halting oil flow through the Dakota Access Pipeline is “part of a broader movement for decolonization that seeks to restore land to Indigenous people and implement a much more comprehensive framework for environmental justice.”¹⁶⁸ A sampling of other recent books and law review articles also reveals similar themes of Indigenous self-determination in the face of constrained notions of environmental injustice.¹⁶⁹ As described below, these themes also resonate for Indigenous peoples of the U.S. territories who similarly frame environmental destruction as an assault on cultural resources, Indigenous ways of life, and the right to self-determination.¹⁷⁰

C. *The Peoples of the U.S. Territories*

Drawing from my earlier writing on the U.S. territories, particularly on Puerto Rico and Guam, this section further refines the racializing environmental justice inquiry to account for the unique experiences of the peoples of the U.S. territories that arise out of the particularized history of U.S. colonialism and militarism in their homelands. Because of the islands’ colonial status, rooted in Congress’ plenary power, the people of the territories

¹⁶⁸ Nick Estes, *The Supreme Court Ruling on Oklahoma Was Welcome, but Indigenous People Deserve More*, NBC NEWS, (Jul. 12, 2020), <https://www.nbcnews.com/think/opinion/supreme-court-ruling-oklahoma-was-welcome-indigenous-people-deserve-more-ncna-1233526>, archived at <https://perma.cc/J4FF-AQBS> (describing a ruling by U.S. District Judge James Boasberg of the District of Columbia); see also Nick Estes, *The Battle for the Black Hills*, HIGH COUNTRY NEWS (Jan. 1, 2021), <https://www.hcn.org/issues/53.1/indigenous-affairs-social-justice-the-battle-for-the-black-hills>, archived at <https://perma.cc/QGZ7-9E4G>.

¹⁶⁹ See, e.g., MacKenzie et al., *supra* note 24, at 43 (employing an Indigenous “environmental justice” approach to characterize three Native Hawaiian land reclamations as “hard-fought efforts to restore to Native Hawaiians a measure of self-determination, cultural restoration, and economic self-sufficiency”); INDIGENOUS ENVIRONMENTAL JUSTICE 9–11 (Karen Jarratt-Snyder & Marianne O. Nielsen eds., 2020) (articulating an Indigenous environmental justice framework by, in part, connecting environmental justice issues to ongoing impacts of colonization, including loss of land, resources, lives and religious freedom); DINA GILIO-WHITAKER, AS LONG AS GRASS GROWS: THE INDIGENOUS FIGHT FOR ENVIRONMENTAL JUSTICE FROM COLONIZATION TO STANDING ROCK (2019) (asserting that Indigenous Peoples’ assertions of sovereignty have led to advances in distinguishing “Indigenized environmental justice” from more traditional environmental justice); Tsosie, *supra* note 25, at 1630–33 (describing differences between civil rights-based environmental justice claims and Native peoples’ claims for environmental justice); Leah Temper, *Blocking Pipelines, Unsettling Environmental Justice: From Rights of Nature to Responsibility to Territory*, 24 INT’L J. JUST. & SUSTAINABILITY 29 (2019) (positing a decolonial approach to environmental justice that focuses on self-governing authority and the unsettling of power, among other considerations, rather than traditional environmental justice theory).

¹⁷⁰ See Chris Gelardi & Sophia Perez, ‘Biba Guåhan!’: How Guam’s Indigenous Activists Are Confronting Military Colonialism, THE NATION (Oct. 21, 2019), <https://www.thenation.com/article/archive/guam-colonialism/>, archived at <https://perma.cc/QAK6-GQTV>; Rachel Ramirez, *The Generational Grief of Colonization*, VOX (Mar. 26, 2021), <https://www.vox.com/22346429/guam-colonization-julian-aguon-properties-perpetual-light>, archived at <https://perma.cc/W4SV-99HM>; Chris Gelardi, *Julian Aguon’s Poetic Riposte to American Empire*, THE NATION (Apr. 12, 2021), <https://www.thenation.com/article/activism/julian-aguon-interview/>, archived at <https://perma.cc/TK9C-ZHLX>.

can do little to exert political pressure on national institutions that wield the power to remedy the damage.¹⁷¹ This effectively insulates the United States government from the transformative political pressures that could force it to repair centuries of colonization in the territories.

While scholars and activists in the territories often connect environmental injustice and the legacy of colonialism,¹⁷² the established environmental justice framework is ill-equipped to expressly interrogate these connections.¹⁷³ As scholars Iokiñe Rodríguez and Mirna Liz Inturias observe, environmental justice theory in the Global North centers primarily on the unequal siting and distribution of toxic health hazards rather than the “colonial and epistemic roots of injustice.”¹⁷⁴ As a result, the literature “rarely mentions the persistence of colonial values (coloniality) as a cause of current injustices and violence, and the need to confront it.”¹⁷⁵ By failing to interrogate *why* U.S. territorial communities are overburdened by the toxic byproducts of U.S. militarism, the established environmental justice framework fails to confront the United States’ continuing colonial governance of its territories, the gross imbalances in political power and lack of self-determination for territorial peoples, and the territories’ unequal access to methods for addressing environmental and health impacts.

U.S. territorial peoples’ environmental justice claims seek not only to repair physical damage to land and water but also to restore a measure of political and economic self-determination over the management of land and resources.¹⁷⁶ Indeed, several scholars, primarily with roots in the U.S. territories, draw close connections between environmental justice advocacy and anti-colonial movements. And movements on the ground in the territories reflect these connections.

Sociology scholar José M. Atilés-Osoria contends that Puerto Rico’s environmental justice movements and broader anti-colonial movements are

¹⁷¹ See *Igartúa-de la Rosa v. United States*, 417 F.3d 145, 168 (1st Cir. 2005) (Torruella, J., dissenting) (contending that “[n]o effective political pressure can be exercised by the subjects of this colonial relationship on the national political institutions with power to solve the problem”); Chair Grijalva Introduces Insular Area Climate Change Act, *supra* note 49.

¹⁷² See, e.g., Atilés-Osoria, *supra* note 42, at 4 (asserting that environmental justice struggles in Puerto Rico are part of a broader struggle for decolonization).

¹⁷³ See Iokiñe Rodríguez & Mirna Liz Inturias, *Conflict Transformation in Indigenous Peoples’ Territories: Doing Environmental Justice with a ‘Decolonial Turn,’* 5 DEV. STUD. RSCH. 90, 90–91 (2018).

¹⁷⁴ *Id.* (asserting that, unlike in the Global North, environmental justice theory in the Global South is deeply influenced by decolonial thought).

¹⁷⁵ *Id.*; see also Gonzalez, *supra* note 34, at 159 (describing the colonial and post-colonial roots of environmental injustice in the Global South); see also Nadia B. Ahmad, “Mask Off”—*The Coloniality Of Environmental Justice*, 25 WIDENER L. REV. 195, 196 (2019) (contending that “the notion of environmental justice is a continuation of the colonial sociolegal apparatus”).

¹⁷⁶ See Principles of Environmental Justice, *supra* note 119 (“affirm[ing] the fundamental right to political, economic, cultural and environmental self-determination of all peoples,” and “oppos[ing] military occupation, repression and exploitation of lands, peoples and cultures, and other life forms.”).

inherently intertwined because a primary manifestation of colonialism is the exploitation of a territory's material, cultural, and environmental resources.¹⁷⁷ Atilés-Osoria and others trace the coalitions of anti-colonial and environmental groups that have formed throughout Puerto Rico's recent history to build community movements against United States-imposed projects and militarization.¹⁷⁸ For example, in the 1990s, community groups mobilized to preserve the Lajas agricultural valley against United States-imposed development,¹⁷⁹ and, as described below, battled to oust the U.S. Navy from Vieques.¹⁸⁰ While these movements were "environmental" because they sought to protect the land from further development and contamination, activists did not simply call for stricter environmental policies, but demanded "the devolution of the lands that belonged to the Puerto Ricans[.]"¹⁸¹

Similarly, scholar Catalina M. de Onís describes how a system of "energy colonialism" exploits Puerto Rico "as a sacrifice zone for empire building and experimentation, corporate greed, and toxic energy projects."¹⁸² She identifies the historical and ongoing colonial exploitation of Puerto Rico that produces its present-day economic, environmental, and energy crises, including the United States' exportation of fossil fuels to Puerto Rico to foster the territory's dependence upon the United States.¹⁸³ Informed by this history and context, de Onís centers self-determination as the means to achieving justice for the people of Puerto Rico and rejects scholarship and energy justice movements that fail to create space for "community member control over their own energy futures."¹⁸⁴

One such "green" energy project that de Onís criticizes was proposed following Hurricane Maria in 2017, which ravaged Puerto Rico's already fragile power grid.¹⁸⁵ Puerto Rico's then-governor collaborated with Tesla CEO Elon Musk to install solar and massive Tesla powerpacks to provide electricity to the island.¹⁸⁶ De Onís and others recognized the plan as bene-

¹⁷⁷ Atilés-Osoria, *supra* note 42, at 48 (describing environmental colonialism in Puerto Rico whereby U.S. environmental exploitation is planned and systematized through the consent and participation of national elites).

¹⁷⁸ See, e.g., *id.* at 12; Miguel Alvelo-Rivera & Kevin Schanning, *From Nationalists to Environmentalists: The Puerto Rican Environmental Movement and Social Movement Spillover Theory*, 10 McNAIR SCHOLARS J. U. WIS.-SUPERIOR 78 (2009) (tracing the close link between the Puerto Rican environmental and pro-independence movements and the coalition of their respective organizations).

¹⁷⁹ Atilés-Osoria, *supra* note 42, at 12.

¹⁸⁰ *Id.*

¹⁸¹ See *id.* at 14.

¹⁸² de Onís, *Energy Colonialism*, *supra* note 104, at 1.

¹⁸³ See *id.* at 1–2.

¹⁸⁴ *Id.*

¹⁸⁵ See *id.* at 3. For an application of the traditional "environmental justice" framework to the military impacts in Vieques, see Katherine T. McCaffrey, *The Struggle for Environmental Justice in Vieques, Puerto Rico*, ENVIRONMENTAL JUSTICE IN LATIN AMERICA: PROBLEMS, PROMISE, AND PRACTICE 263 (David V. Carruthers ed., 2008).

¹⁸⁶ See Fred Lamber, *Puerto Rico Is Currently Considering Tesla's Plan for a Series of Microgrids, Says Govt Official*, ELECTREC (Oct. 23, 2017, 10:12 PM), <https://electrek.co/2017/10/23/puerto-rico-tesla-microgrid/>, archived at <https://perma.cc/GL8Y-SRJ8>.

fitting green capitalism and disaster capitalism, exemplifying “the white savior trope,” and positioning Puerto Rico as “a site for experimentation by the United States.”¹⁸⁷ Rather than acceding to existing power dynamics masquerading as new renewable energy practices, de Onís and others called for a transformational shift to decentralized solar energy projects that can be controlled and maintained by local communities.¹⁸⁸ Thus, according to de Onís, “green” energy is insufficient to create “energy justice” in Puerto Rico; rather, in light of Puerto Rico’s history of colonization, energy justice requires power to change hands.¹⁸⁹

In Guam, scholars Tiara R. Na’puti and Michael Lujan Bevacqua connect CHamoru resistance to militarization and colonization with “overlapping cultural, environmental, and historical concerns.”¹⁹⁰ They employ a CHamoru cultural framework to illuminate how local activists “assert the need for mutual respect and care for” their island environment while challenging the U.S. colonial apparatus.¹⁹¹ In the struggle to oppose the construction of a military firing range in the sacred, ancient village of Pãgat, CHamoru activists positioned their movement within the broader cultural framework of “inafa’ maolek,” which, translated literally, means “to make things good for each other.”¹⁹² The community employed inafa’ maolek as an organizing strategy to articulate deep cultural connections to Pãgat and to galvanize opposition to the military buildup in the area.¹⁹³ The concept also served as a “challenge to the imbalance imposed by the US nation-state—the inequality, lack of representation, and colonial connection.”¹⁹⁴

An environmental justice approach that acknowledges the unique colonization and militarization experiences of the peoples of the U.S. territories also recasts the remedial imperative: “repair” for environmental harms involves not just the clean-up of toxic chemicals and the relocation of cultural

¹⁸⁷ de Onís, *Energy Colonialism*, *supra* note 104, at 3; Ruth “Tata” Santiago, *Dispatch from the Frontlines of Puerto Rico in a Post-María World*, FUTURO MEDIA GRP. (Oct. 9, 2017), <https://www.latinorebels.com/2017/10/09/dispatch-from-the-frontlines-of-puerto-rico-in-a-post-maria-world/>, archived at <https://perma.cc/44TR-PXQB>; See also Catalina M. de Onís, *Fueling and delinking from energy coloniality in Puerto Rico*, 46 J. APPLIED COMM’N RSCH. 535 (2018) (arguing that using Puerto Rico “as a test site for green capitalism” replicates U.S. government and corporate abuse of Puerto Rico for empire building and profit “within a renewable energy frame”).

¹⁸⁸ de Onís, *Energy Colonialism*, *supra* note 104, at 3; Santiago, *supra* note 187.

¹⁸⁹ See de Onís, *Energy Colonialism*, *supra* note 104, at 3.

¹⁹⁰ See Na’puti & Bevacqua, *supra* note 96, at 847.

¹⁹¹ *Id.* at 848.

¹⁹² *Id.* at 847.

¹⁹³ *Id.* at 847–48.

¹⁹⁴ *Id.* at 848; see also Francisco Delgado, *Remade: Sovereign: Decolonizing Guam in the Age of Environmental Anxiety*, MEMORY STUD. 1, 5–6 (2019) (contending that decolonization, grounded in cultural memory, is integral to addressing environmental injustice in Guam, and relies on “the Chamorro people asserting their sovereignty”); Michael Lujan Bevacqua & Isa Ua Ceallaigh Bowman, *I Tano’ i Chamorro/Chamorro Land: Situating Sustainabilities through Spatial Justice and Cultural Perpetuation* in SUSTAINABILITY: APPROACHES TO ENVIRONMENTAL JUSTICE AND SOCIAL POWER 222–23 (Julie Sze ed., 2018) (deconstructing the portrayal of the U.S. military buildup on Guam as “sustainable”).

artifacts, but reparative justice for the peoples of the territories. Such a reparative approach acknowledges that the international human rights principle of self-determination—by which peoples “freely determine their political status and freely pursue their economic, social and cultural development”¹⁹⁵—is key to colonized peoples’ efforts worldwide to repair the damage of historical injustice.¹⁹⁶ In other words, self-determination for groups who have experienced subjugation is essential for repairing the damage according to their notions of reparation.¹⁹⁷

In the context of environmental justice in the U.S. territories, the harms should similarly be repaired according to the colonized peoples’ sense of what is needed. This may involve repairing longstanding imbalances of power and agency, and redressing multiple political, economic, cultural, and social harms linked closely to environmental destruction.¹⁹⁸ For Indigenous inhabitants of the territories, in particular, the preservation of their deep connections to land (and where applicable, the return of land), the reclaiming of knowledge systems, language, self-government, and ways of life are also central to environmental “justice.”¹⁹⁹ As Indigenous legal scholar Rebecca Tsosie notes, reparative justice for Indigenous peoples facing environmental destruction “ought to engage Native normative frameworks of justice because, for Native peoples, reparative justice is a process that is simultaneously emotional and spiritual, political and social.”²⁰⁰ As she observes, however, no single theory of reparative justice “can fit all cultures, all na-

¹⁹⁵ See International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171; International Covenant on Economic, Social, and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3.

¹⁹⁶ See Eric K. Yamamoto, Miyoko Pettit, & Sara Lee, *Unfinished Business: A Joint South Korea and United States Jeju 4.3 Tragedy Task Force to Further Implement Recommendations and Foster Comprehensive and Enduring Social Healing Through Justice*, 15 *ASIAN-PAC. L. & POL’Y J.* 1, 21 (2014). See also Sproat, *Wai Through Kānāwai*, *supra* note 166, at 172 (noting that “a restorative justice approach informed by principles of self-determination” is “particularly apt in light of the ravages of colonization”).

¹⁹⁷ See Rebecca Tsosie, *Indigenous Peoples and the Ethics of Remediation: Redressing the Legacy of Radioactive Contamination for Native Peoples and Native Lands*, 13 *SANTA CLARA J. INT’L L.* 203, 245 (2015) [hereinafter Tsosie, *Ethics of Remediation*]; Carlton Waterhouse, *The Good, the Bad, and the Ugly: Moral Agency and the Role of Victims in Reparations Programs*, 31 *U. PA. J. INT’L L.* 257, 267–70 (2009) (contending that reparative justice efforts should focus on victims’ material needs and well-being, and offer those victims a central role in the design and implementation of schemes to repair harms to their political autonomy).

¹⁹⁸ See, e.g., Pedro A. Malavet, *Reparations Theory and Postcolonial Puerto Rico: Some Preliminary Thoughts*, 13 *BERKELEY LA RAZA L.J.* 387, 391 (2002); Ediberto Román, *Reparations and the Colonial Dilemma: The Insurmountable Hurdles and Yet Transformative Benefits*, 13 *BERKELEY LA RAZA L.J.* 369, 384 (2002).

¹⁹⁹ See Keith L. Camacho, *After 9/11: Militarized Borders and Social Movements in the Mariana Islands*, 64 *AM. Q.* 685, 700 (2012) (noting that “Chamorro proponents of indigenous rights discourses have long contested [American multiculturalism] in favor of Chamorro-centered modes of identity, nationhood, and politics” rooted in connections to land); Tsosie, *Ethics of Remediation*, *supra* note 197, at 236 (noting that the “[r]epatriation of land is central to Indigenous self-determination, and is fundamentally linked to the political and cultural sovereignty of Indigenous peoples”).

²⁰⁰ Tsosie, *Ethics of Remediation*, *supra* note 197, at 253 (interior quotes omitted).

tions, and all peoples.”²⁰¹ Instead, “the theory will differ depending on the particular historical context and cultural framework that applies.”²⁰²

In this way, the racializing environmental justice approach highlights territorial peoples’ differing group identities, goals, and efforts to repair harms appropriate to the particular setting and in ways that account for the histories of U.S. colonization and militarization in their homelands.²⁰³ Indeed, “[o]nly after grasping the particularities of the ‘injustice’—suffered by groups in specific situations—can we begin to fashion individual or collective reparative approaches to *doing environmental justice*.”²⁰⁴

V. TWO CASE STUDIES: GUAM AND VIEQUES, PUERTO RICO

The racializing environmental justice framework reframes the environmental injustices of the military buildup in Guam and the lasting impacts of Navy live-fire training in Vieques: it calls on us to inquire into the peoples’ spiritual, political, and economic connections to the environment, and historical and contemporary conditions. It asks about the particular ways in which U.S. colonization and militarization in the territories decimated land, communities, and traditional Indigenous cultural practices. And it illuminates how modern-day environmental justice struggles represent a reparative justice movement for self-determination, including the return and restoration of political power, land, and resources.

In the U.S. colonial context, differential racialization and disempowerment provide tools for understanding territorial groups’ unique colonial experiences, the impacts of history and context on community identity, and the “particulars of environmental racism” in the territorial setting.²⁰⁵ This Part first employs the racializing environmental justice inquiry to examine CHamoru community groups’ attempts to halt the ongoing military buildup through domestic environmental and international approaches. It then explores community groups’ efforts in Vieques, Puerto Rico to employ domestic and international legal approaches to remedy the effects of the sustained Navy bombing of their island.

A. *The Military Buildup on Guam*

A racializing environmental justice approach reveals that in Guam, environmental justice involves “threats to indigenous lands, resources, [and] environmental and cultural rights.”²⁰⁶ This subsection first briefly sketches

²⁰¹ *Id.*

²⁰² *Id.* at 253–54.

²⁰³ See Yamamoto & Lyman, *supra* note 17, at 346.

²⁰⁴ Yamamoto & Serrano, *supra* note 36, at 1385.

²⁰⁵ Yamamoto & Lyman, *supra* note 17, at 346.

²⁰⁶ See Mandates of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the rights of indigenous peoples; and the Special Rapporteur on the implications for

the history and modern-day context of the military buildup in Guam and then employs the racializing environmental justice framework to examine the CHamoru people's battles for self-determination in the face of an ever-increasing U.S. military presence.

1. *Historical and Present-Day Context*

The legacy of U.S. colonialism and militarism in Guam defines environmental justice efforts there. After the United States conquered Guam in 1898, the U.S. Navy took total control over the island and governed it until 1950, except for a period of brutal Japanese occupation from 1941 to 1945.²⁰⁷ Following World War II, the U.S. military intensified its presence on the island. It seized “some of the best and most valuable real property and water resources that had, for centuries, been in the possession of Chamorros, and den[ie]d them access to those ancestral territories.”²⁰⁸ Many families lost their homes, many CHamoru landowners received little to no compensation for the lost land, and over 11,000 CHamorus—nearly half of the Indigenous population at that time—were displaced.²⁰⁹

Because of Guam's enduring colonial status, the United States continues to reap the benefits of its strategic military presence there. Indeed, the U.S. military still controls major portions of the island, particularly several sites of cultural and environmental significance to the CHamoru people.²¹⁰ It has engaged in widespread contamination of Guam—including exposing the people to fallout from radioactive contamination in the Pacific,²¹¹ maintaining toxic sites, housing nuclear weapons and carcinogens, and conducting major military training exercises—with detrimental impacts on human health, the environment, Indigenous practices and spaces, and the economy.²¹²

Against this backdrop, the United States and Japan signed a bilateral agreement in 2006 to relocate more than 8,600 Marines from Okinawa to Guam. No Guam representatives were part of those negotiations.²¹³ Because of its strategic location close to East Asia, the U.S. has long viewed Guam as “America's unsinkable aircraft carrier”²¹⁴ and “the tip of the spear.”²¹⁵ The

human rights of the environmentally sound management and disposal of hazardous substances and wastes, U.N. Doc. AL USA 7/2021 (Jan. 29, 2021) [hereinafter *Mandates of the Special Rapporteur*].

²⁰⁷ See ROBERT F. ROGERS, *DESTINY'S LANDFALL: A HISTORY OF GUAM* 224 (1995).

²⁰⁸ Submission to Mr. Francisco Calí Tzay, Special Rapporteur on the rights of indigenous peoples, regarding ongoing human rights violations of the indigenous Chamorro people of Guam under U.S. colonization and militarization, <https://unpo.org/downloads/2658.pdf>, archived at <https://perma.cc/PF7W-DQZR> [hereinafter *Submission to Calí Tzay*].

²⁰⁹ *Id.*

²¹⁰ *Id.* at 9.

²¹¹ *Id.* at 10.

²¹² *Id.* at 10–11.

²¹³ *Id.* at 11.

²¹⁴ Anna Fifield, *Some in Guam Push for Independence from U.S. as Marines Prepare for Buildup*, WASH. POST (June 17, 2016), https://www.washingtonpost.com/world/asia_pacific/

U.S. military now owns around 49,000 acres of Guam’s land—about one-third of the island—and the ongoing military buildup is one of the largest peacetime buildups in U.S. history.²¹⁶

2. *Limitations of the Domestic Legal Framework*

For over a decade, CHamorus have fought to stop the buildup both within and outside of the established environmental justice framework.²¹⁷ In 2009, the Department of Defense released its 11,000-page draft Environmental Impact Statement (EIS) assessing, among other things, the massive expansion of military personnel, the acquisition of land, the development of missile defense systems and a military complex, and the dredging of seventy-one acres of coral reef in Apra Harbor to accommodate a nuclear-equipped aircraft carrier.²¹⁸ Given only ninety days to respond,²¹⁹ individuals and groups submitted over 10,000 comments and testimonies²²⁰ and launched widespread community mobilizations to bring international attention to the buildup.²²¹

The dispute illustrates the limitations of legal and regulatory processes—and the established environmental justice framework—to remedy environmental injustices and preserve sites of profound significance to

some-in-guam-push-for-independence-from-us-as-marines-prepare-for-buildup/2016/06/16/e6152bd2-324b-11e6-ab9d-1da2b0f24f93_story.html, archived at <https://perma.cc/P8NT-WE9X>.

²¹⁵ Guam is known as the “the tip of the spear” because of its proximity to North Korea and the South China Sea. See Naputi & Bevacqua, *supra* note 96, at 837.

²¹⁶ See Naputi & Bevacqua, *supra* note 96, at 846; Julian Aguon, *Other Arms: The Power of a Dual Rights Legal Strategy for the Chamoru People of Guam Using the Declaration on the Rights of Indigenous Peoples in U.S. Courts*, 31 U. HAW. L. REV. 113, 141–42 (2008); David Welna, *Guam Locals Unhappy with Housing U.S. Sailors From Coronavirus-Hit Aircraft Carrier*, NPR (April 2, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/04/02/826262256/guam-locals-unhappy-with-housing-u-s-sailors-from-coronavirus-hit-aircraft-carri>, archived at <https://perma.cc/D8F4-VTHB> (reporting that the United States’ three military bases on Guam occupy 49,000 acres of land).

²¹⁷ See Naputi & Bevacqua, *supra* note 96, at 845.

²¹⁸ Joint Guam Program Office, U.S. Dep’t of the Navy, *Draft Environmental Impact Statement / Overseas Environmental Impact Statement, Guam and CNMI Military Relocation* (Nov. 2009) [hereinafter Draft EIS]. The EIS also assesses the construction of facilities in Tinian, the Commonwealth of Northern Marianas. Both Guam and Tinian are located within the Mariana Islands Range Complex, which the Department of Defense uses for readiness training. *Id.* at ES-3.

²¹⁹ See Department of Defense Public Affairs, *Navy Announces Draft EIS for Military Relocations to Guam, U.S. Navy NEPA Projects*, U.S. NAVY NEPA PROJECTS ENVIRONMENTAL PLANNING AND COMPLIANCE (Nov 20, 2009), <https://www.nepa.navy.mil/About-NEPA-Website/Media-Resources/News/NewsArticleView/Article/1807248/navy-announces-draft-eis-for-military-relocationsto-guam/>, archived at <https://perma.cc/KNN7-4Y7U>.

²²⁰ See Naputi & Bevacqua, *supra* note 96, at 846.

²²¹ See Guahan Coalition for Peace and Justice, *Stop the Military Buildup!* (2010), <https://famokaiyanwc.files.wordpress.com/2010/05/newsletter-2-1.pdf>, archived at <https://perma.cc/S4PY-V4SR> (listing member groups and community actions); WE ARE GUAHAN, <https://www.weareguahan.com/about-weareguahan/>, archived at <https://perma.cc/V8QD-GLPA> (describing over 4000 hours of work researching and informing Guam’s residents about the buildup); Gelardi & Perez, *supra* note 170.

the CHamoru people. For example, the environmental justice section of the Navy's final 2010 EIS²²² did not distinguish between those described as racial minorities and Indigenous peoples²²³ and, indeed, "rendered [all of] Guam's people invisible."²²⁴ The Navy determined that its proposals for a deep-draft wharf in Apra Harbor to berth an aircraft carrier did not have "disproportionate impacts" on "racial minorities" because most or all of Guam is a minority population.²²⁵ In particular, it found that minority and low-income populations and children were present in the adjacent village of Piti, but "[b]ecause all of Guam [is] a minority population, minorities would not be disproportionately affected by the impacts of construction on fish and coral reefs" there.²²⁶ By treating Guam's population as a monolithic "minority" and finding no disproportionate impact, the Navy's framing disregarded the nature of the injustice for both the CHamoru people and the broader population of Guam. It ignored the differential disempowerment of the CHamoru people, including how the specific harms of colonization and militarization continue to impact CHamoru cultural ocean resources and ways of life in Piti and the rest of Guam.

In 2011, CHamoru advocacy organization We Are Guåhan, the National Trust for Historic Preservation, and the Guam Preservation Trust filed suit against the Department of Defense on the grounds that the Navy's plans to build a complex of five firing ranges in Pãgat Village, an area sacred to the CHamoru people and listed in the National Register of Historic Places, violated the National Environmental Policy Act, the National Historic Preservation Act, and the Coastal Zone Management Act.²²⁷ As scholars Tiara R.

²²² See Joint Guam Program Office, U.S. Dep't of the Navy, *Final Environmental Impact Statement, Guam and CNMI Military Relocation*, U.S. DEP'T OF THE NAVY GUAM AND CNMI MILITARY RELOCATION (2012 ROADMAP ADJUSTMENTS) SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT (2010), http://guambuildupeis.us/final_documents.html, archived at <https://perma.cc/LX3W-S8ZJ> [hereinafter Final EIS]. In 2015, the Navy submitted a supplemental EIS, which, among other things, identified the ancient village, Litekyan/Ritidian, as a proposed new site for the firing range. See Joint Guam Program Office, U.S. Dep't of the Navy, *Supplemental Environmental Impact Statement, Guam and Commonwealth of Northern Mariana Islands Military Relocation 5-321*, U.S. DEP'T OF THE NAVY GUAM AND CNMI MILITARY RELOCATION (2012 ROADMAP ADJUSTMENTS) SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT (July 2015), <http://guammarines.s3.amazonaws.com/static/seis.html>, archived at <https://perma.cc/HSQ5-ADQY> [hereinafter Supplemental EIS].

²²³ See Final EIS, *supra* note 222, at Vol. 4, Ch. 19, 19-2 (concluding that the majority of Guam's population meets the criteria of "an Asian Pacific minority group").

²²⁴ E-mail from Julian Agoun, human rights attorney, to Susan Serrano (Aug. 30, 2021, 3:03pm HST) (on file with author).

²²⁵ Final EIS, *supra* note 222 at Vol. 4, Ch. 19, 19-1–19-5 (finding that because a majority of the Guam population are racial or ethnic minorities and the comparison population group is outside of Guam, "it would be impossible for there to be a disproportionate effect from an identified adverse impact based solely on the impact affecting a minority population").

²²⁶ See *id.* at Vol. 4, Ch. 19, 19-5 (also finding that because all people of Piti and Guam would be affected by the impacts of Navy shore leave on crime and social order, the aircraft carrier berthing there similarly would not adversely affect minority or low-income populations).

²²⁷ *Guam Pres. Tr. v. Gregory*, No. CV 10-00677, 2011 WL 13248292, at *1–*2 (D. Haw. June 30, 2011).

Na'puti and Michael Lujan Bevacqua observe, the lawsuit underscored the colonial paradox of arguing simultaneously that the site was part of, yet not part of, the United States.²²⁸ CHamoru groups sought to challenge the United States' militarism "by articulating Pãgat's distinctness and the island's separateness from the U.S.,"²²⁹ but were required to adopt the "endangered historic place" language of domestic U.S. law to show how the space was "significant" and "part of the U.S. nation-state."²³⁰ After the Navy decided to prepare a supplemental EIS to reevaluate live-fire training range complex alternatives, the suit was dismissed as moot.²³¹

As illuminated by the racializing environmental justice framework, domestic labels like "endangered historic place" insufficiently describe places of profound cultural significance for CHamoru scholars and community members. The EIS's finding of "no disproportionate impact" incompletely assesses the negative impacts for the CHamoru people of dredging and destroying seventy-one acres of pristine and endangered coral reef in their community. And the environmental litigation largely failed to acknowledge what was really at stake: CHamoru cultural connections to land and resources, self-determination, and their political and cultural survival as Indigenous (and colonized) peoples in their homelands.

3. *A More Encompassing International Approach: Petition to UN Special Rapporteurs*

In the international realm, CHamoru human rights activists frame the buildup controversy as one of environmental justice and self-determination.²³² In line with the racializing environmental justice framework, their recent petition to UN Special Rapporteurs acknowledges CHamoru cultural values, histories, and needs and goals within the context of U.S. militarization. In August 2020, Blue Ocean Law and the Unrepresented Nations and Peoples Organization submitted a petition to the Special Rapporteur on the Rights of Indigenous Peoples on behalf of the Indigenous Chamorro people of Guam and Prutehi Litekyan: Save Ritidian.²³³ The petition recounted the

²²⁸ Na'puti & Bevacqua, *supra* note 96, at 850.

²²⁹ *Id.*

²³⁰ *Id.* (noting that National Trust for Historic Preservation named Pãgat Village one of the eleven "Most Endangered Historic Places in America for 2010").

²³¹ Order Granting in Part and Denying in Part Defendants' Motion to Dismiss Complaint, Guam Pres. Tr. v. Gregory, No. 10-00677 at 11 (D. Haw. Jan. 30, 2012). *See also* Gelardi & Perez, *supra* note 170 (reporting that grassroots activism pushed the Navy to modify its buildup plan in 2012). In 2012, the Department of Defense reduced the number of troops to be relocated to 5,000. *See* Supplemental EIS, at E-1. *See also* Tinian Women Ass'n v. United States Dep't of the Navy, 976 F.3d 832, 840 (9th Cir. 2020) (affirming the district court's dismissal of claim that the Navy should have considered alternate stationing and training locations for Marines relocating from Okinawa to Guam).

²³² Submission to Calí Tzay, *supra* note 208, at 9, 16–17.

²³³ *Id.* at 4, 20 (describing Prutehi Litekyan as "a community-based organization dedicated to defending sacred sites and protecting Guam's natural and cultural resources").

impacts of the military buildup on the CHamoru people and alleged that the Navy's actions were violations of international human rights, including the right of permanent sovereignty over natural resources and the right to free, prior, and informed consent.²³⁴ The UN Declaration on the Rights of Indigenous Peoples requires states to obtain Indigenous peoples' free and informed consent prior to the "approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources."²³⁵

The petition placed the massive buildup within the historical and modern context of U.S. land seizures, longstanding environmental contamination, and the denial of CHamoru rights to self-determination.²³⁶ And it explicitly linked the military buildup to severe impacts on "Chamorro culture, sovereignty [and] wellbeing" in light of the CHamoru people's profound connection to the natural environment.²³⁷ In failing to consult with the CHamoru people before clearing culturally relevant sites and removing artifacts during construction,²³⁸ the military wholly disregarded "the importance of practices of ancestral veneration to the Chamorro people, for whom the skulls of relatives are considered sacred and serve as a conduit between the spirits of the deceased and the living on important spiritual concerns."²³⁹

The petition also challenged the military's proposed live-fire range at Ritidian Point, a protected wildlife refuge and one of the most culturally significant sites on Guam.²⁴⁰ It contended that building a firing range there would impact seventy ancestral and historical sites in the area, interfere with cultural fishing practices, block access to medicinal plants and herbs, and cause severe damage to ecologically endangered flora and fauna.²⁴¹ It also highlighted the disconnect between the military's view of "the Ritidian sites as 'recreational,'" and the CHamoru belief that the areas are "more aptly termed 'sacred' or 'ancestral' given their rich cultural features and the fact that they also contain Chamorro graves and burial sites."²⁴² The petition contended that the United States contravened its international law duties emanating from the law of self-determination through its appropriation of Guam's land and failure to consult with the CHamoru people before developing the buildup blueprint.

²³⁴ See Kaur, *Buildup Projects*, *supra* note 2.

²³⁵ G.A. Res. 61/295 (Sept. 13, 2007); see also Julian Aguon & Julie Hunter, *Second Wave Due Diligence: The Case for Incorporating Free, Prior, and Informed Consent into the Deep Sea Mining Regulatory Regime*, 38 STAN. ENV'T. L.J. 3, 34 (2018) (contending that "with respect to extractive industries or large-scale development projects, the [free, prior and informed consent] norm is unquestionably a state requirement, in part because of the high degree of adverse impact affected indigenous communities are likely to experience").

²³⁶ Submission to Calí Tzay, *supra* note 208, at 3.

²³⁷ *Id.* at 15.

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ *Id.* at 15–16.

²⁴¹ *Id.* at 16–17.

²⁴² *Id.* at 16.

In the first formal, international recognition of CHamoru concerns over the military buildup, three United Nations Special Rapporteurs sent a letter to the Biden administration framing their acute human rights concerns in the particularized language of environmental injustice for Indigenous peoples.²⁴³ The letter cited the United States’ “failure to protect the indigenous Chamorro people from the loss of their traditional lands, territories, and resources; serious adverse environmental impacts [of the buildup]; the loss of cultural artifacts and human remains; as well as the denial of the right to free, prior and informed consent and self-determination.”²⁴⁴ It asked President Biden to respond with additional information, including the measures his administration has taken “to ensure that the Chamorro can engage in their cultural and religious practices and protect their cultural heritage in view of the growing militarization,” the “steps taken to respect, protect and fulfil the rights of indigenous peoples to life, health, food, safe drinking water, their right to a safe, clean, healthy and sustainable environment in Guam,” and “planned measures . . . to support and promote the Chamorro peoples’ right to self-determination.”²⁴⁵ The Biden administration responded in October 2021, but advocates questioned its lukewarm commitment to CHamoru self-determination and its failure to recognize the CHamoru people’s unique rights, needs, and relationships to their homeland.²⁴⁶

Although the Rapporteurs’ letter lacks formal enforcement power, the move is significant because it generates international political pressure on the United States and may lead to the development of “a mechanism for better respecting the rights that have already been violated.”²⁴⁷ CHamoru human rights attorney Julian Aguon expressed hope that the letter will “open the door” to conversations between CHamoru activists and the Biden administration, including Department of the Interior Secretary Deb Haaland to “re-calibrate the relationship at a policy level.”²⁴⁸ Indeed, the letter is a historic first step toward broadening and deepening understanding of the complex interplay between CHamoru self-determination and environmental justice: it expressly traces environmental and cultural destruction to the historical and

²⁴³ See Mandates of the Special Rapporteur, *supra* note 206, at 1; see also Anumita Kaur, *U.N. Human Rights Council: No ‘free, prior and informed’ consent for buildup*, PAC. DAILY NEWS (Mar. 31, 2021).

²⁴⁴ Mandates of the Special Rapporteur, *supra* note 206, at 1.

²⁴⁵ *Id.* at 5–6.

²⁴⁶ See Kaur, *supra* note 243; U.N. Human Rights Off. of the High Commissioner, *Summary: JAL USA 7/2021: Communication report and search*, OHCHR.ORG; Unrepresented Nations & Peoples Organization, UNPO Response to the United States Reply to Special Rapporteurs’ Communication (Feb. 18, 2022), <https://unpo.org/article/22192>, archived at <https://perma.cc/UT4G-HVBF>; Phill Leon Guerrero, *UN Committee Urged to Organize Visiting Mission to Guam*, THE GUAM DAILY POST (May 6, 2022), https://www.postguam.com/news/local/un-committee-urged-to-organize-visiting-mission-to-guam/article_3509cf00-dbff-11ec-9c0e-ef348f189728.html, archived at <https://perma.cc/Z8S8-B5RB> (reporting on Guam’s calls for further UN involvement).

²⁴⁷ Kaur, *supra* note 243 (quoting human rights attorney Julian Aguon, whose firm filed the petition).

²⁴⁸ *Id.*

ongoing colonialism and militarism in Guam and the United States' failure to fulfill its international obligations to decolonize Guam.²⁴⁹

The petition and letter also underscore the CHamoru people's differential disempowerment. They powerfully connect CHamoru rights to life, health, food, and culture: they examine the painful loss of cultural sites and practices, communal land, and Indigenous lifeways as a result of the U.S. military's continued occupation of the island.²⁵⁰ In doing so, they more accurately define the injustice in this setting and renew calls for restoration of self-determination and the protection of ancestral lands—a group-resonant type of environmental justice.

B. *The Aftermath of the Navy Bombing of Vieques, Puerto Rico*

The racializing environmental justice approach similarly reveals that for many Viequenses, the Vieques controversy is about their historical, cultural, and economic connections to the environment. The framework reveals how the peoples' deeply-rooted sense of land use and control run headlong into mainstream concepts of “conservation,” formalistic legal processes, and so-called free-market “solutions.”²⁵¹ As scholar Katherine McCaffrey contends, the controversy is ultimately about “broader questions of political authority, control over natural resources, definitions of common property rights—in sum, the rights and privileges of citizenship that are at the heart of state power and national identity.”²⁵² This section first briefly traces the history of Vieques and then employs the racializing environmental justice framework to examine community groups' attempts to repair and restore their lands, waters, and health after decades of Navy bombing.

1. *Historical and Present-Day Context*

Environmental devastation in Vieques, “la isla nena,”²⁵³ is deeply intertwined with the colonial history of Puerto Rico.²⁵⁴ In the early 1900s, U.S.

²⁴⁹ See Submission to Calí Tzay, *supra* note 208, at 3.

²⁵⁰ *Id.* at 4.

²⁵¹ Martha Bayne & Isabel Sophia Dieppa, *Puerto Rico's Vieques Island Ousted the U.S. Navy. Now the Fight's Against Airbnb*, THE WORLD (July 16, 2019) (reporting that Viequenses now battle against “an invasion of ‘foreign’ capital” and a rampant proliferation of vacation homes and Airbnbs); see also Katherine T. McCaffrey, *The Battle for Vieques' Future*, 19 CENTRO J. 125, 130 (2006) (describing how the residents' understandings of land use on Vieques conflict with “both market-based efforts to privatize the beach, and conceptions of the environment that are promoted by the [Vieques National Wildlife Refuge]”) [hereinafter McCaffrey, *The Battle*]. See generally NAOMI KLEIN, THE SHOCK DOCTRINE: THE RISE OF DISASTER CAPITALISM 11 (2007) (describing how crises are exploited economically to further a free-market, corporate agenda).

²⁵² McCaffrey, *The Battle*, *supra* note 251, at 127.

²⁵³ Vieques is a fifty-one square mile island that lies six miles east of the main island of Puerto Rico.

²⁵⁴ For extensive descriptions and analysis of the Navy's bombing of Vieques and Culebra, the colonial and political underpinnings, and the grassroots movements against the bombing,

sugar companies dramatically increased sugar cane production in Puerto Rico, and in many areas, the people experienced widespread poverty, landlessness, and social inequality.²⁵⁵ In that context—alongside the perceived strategic importance of securing bases near the Panama Canal Zone—the United States expropriated the western half of Vieques for the U.S. Navy in 1941.²⁵⁶ Thousands of people were forcibly removed from their homes with no resettlement plan or title to land, thereby destroying Vieques’ agricultural economy.²⁵⁷ Many were moved to inhospitable brush lands in the center of the island, but never received title to those lands, as they had been promised, after World War II.²⁵⁸ After appropriating another enormous swath of land on the eastern side of the island, the Navy owned 78% of the island, leaving Viequenses wedged “between an ammunition depot and maneuver area.”²⁵⁹

From 1941 to 2003, the U.S. Navy occupied and conducted military exercises on Vieques—bombing, artillery exercises, and chemical and biological weapons testing—that overwhelmed the island’s land, sea, and air.²⁶⁰ According to the Environmental Protection Agency, the U.S. Navy potentially left behind highly toxic chemicals including mercury, napalm, depleted uranium, and lead.²⁶¹ Unexploded ordnance and remnants of exploded ord-

see generally KATHERINE T. McCAFFREY, *MILITARY POWER AND POPULAR PROTEST: THE U.S. NAVY IN VIEQUES, PUERTO RICO* (2002) [hereinafter McCAFFREY, *MILITARY POWER*]; Déborah Berman Santana, *Resisting Toxic Militarism: Vieques Versus the U.S. Navy*, 29 SOC. JUST. 37 (2002) [hereinafter Berman Santana, *Resisting Toxic Militarism*]; Sherrie L. Bayer, “Peace Is More Than the End of Bombing”: *The Second Stage of the Vieques Struggle*, 146 LATIN AM. PERSP. 102 (2006) [hereinafter Bayer, *Peace*].

²⁵⁵ McCAFFREY, *MILITARY POWER*, *supra* note 254, at 29–30.

²⁵⁶ *Id.* at 28–31; Katherine T. McCaffrey & Sherrie L. Bayer, “Ni Una Bomba Mas”: *Reframing the Vieques Struggle*, in *BEYOND SUN AND SAND: CARIBBEAN ENVIRONMENTALISMS* 11–12 (Sherrie L. Bayer & Barbara Deutsch Lynch eds., 2006).

²⁵⁷ McCAFFREY, *MILITARY POWER*, *supra* note 254, at 26.

²⁵⁸ Berman Santana, *Resisting Toxic Militarism*, *supra* note 254, at 39–40. The large sugar corporations that had controlled most of Vieques were well compensated for the property, but the people who owned very small plots or held no title to land “were given scant hours’ notice, offered \$25 to \$100 for their belongings, and warned they would be bulldozed along with their homes if they didn’t move fast enough.” *Id.* at 39.

²⁵⁹ *Id.* at 35. *See also* GAO, *DEFENSE CLEANUP*, *supra* note 8, at 6. The eastern portion became the Vieques Naval Training Range, which occupied over 14,500 acres with four distinct areas, including the 900-acre “Live Impact Area” where military ships and planes pummeled the land with bombs. Berman Santana, *Resisting Toxic Militarism*, *supra* note 254, at 41. The western portion became the Naval Ammunitions Support Detachment, which spanned about 8,200 acres and stored weapons and explosives. *Id.* at 40.

²⁶⁰ U.S. Environmental Protection Agency, *Atlantic Fleet Weapons Training Area Vieques, PR, Health & Environment*, EPA.GOV (last visited Apr. 2, 2022), <https://cumulis.epa.gov/supercpad/SiteProfiles/index.cfm?fuseaction=second.Healthenv&id=0204694>, archived at <https://perma.cc/A5YB-WL2Y>.

²⁶¹ *Id.* (also listing copper, magnesium, lithium, perchlorate, TNT, PCBs, solvents, and pesticides). *See also* Arturo Massol-Deyá, Dustin Pérez, Enrie Pérez, Manuel Berrios, & Elba Díaz, *Trace Elements Analysis in Forage Samples from a US Navy Bombing Range (Vieques, Puerto Rico)*, 2 INT’L J. ENV’T. RSCH. & PUB. HEALTH 263, 264 (2005) (finding levels of lead above safety guidelines in vegetation samples from the former Atlantic Fleet Weapons Training Facility on Vieques).

nance have been identified throughout Vieques, both on land and in the surrounding waters.²⁶²

In 1970, the U.S. military's increased bombing practice on the neighboring island of Culebra "sparked a well-organized, militant, and ultimately successful protest conceived as anticolonial struggle," which led to the military's ouster from Culebra in 1971.²⁶³ After leaving Culebra, and in the midst of intensifying Cold War threats, the Navy increased its bombing practice on Vieques. Because the bombing severely damaged coral reefs and marine life and interfered with fishing practices, fishermen became leading players in the struggle to halt the bombing.²⁶⁴ While the movement focused in part on anti-imperialism,²⁶⁵ activists' framing of the struggle in the early 1990s began to shift and broaden to issues of health and the environment.²⁶⁶ During that period, activists formed the Committee for the Rescue and Development of Vieques, which advocated "the four D's: Demilitarization, Decontamination, Devolution (of land), and (community-based, sustainable) Development."²⁶⁷ Viequesenses, environmental organizations, and the Puerto Rican government also launched decades of litigation to halt the Navy bombing.²⁶⁸

In April 1999, two F-18s dropped 500-pound bombs one and a half miles off their mark and killed David Sanes, a civilian security guard who worked for the Navy. This galvanized a "relentless civil disobedience campaign" of local Viequesenses, joined by human rights and peace activists, environmentalists, progressive church groups, celebrities, and national and international supporters, who set up encampments on the target range and joined the protests, marches, and pickets to halt the bombing.²⁶⁹ A crucial

²⁶² See GAO, DEFENSE CLEANUP, *supra* note 8, at 1.

²⁶³ Bayer, *Peace*, *supra* note 254, at 104 (noting that the U.S. military used Culebra for bombing practice and weapons testing since 1903).

²⁶⁴ *Id.*

²⁶⁵ See Manuel Rodríguez Orellana, *Vieques: The Past, Present, and Future of the Puerto Rico-U.S. Colonial Relationship*, 13 BERKELEY LA RAZA L.J. 425, 431 (2002) (noting that the "[t]he necessity for the immediate and permanent cessation of all military activity and for the devolution of lands held by the Navy in Vieques . . . was correctly understood internationally as symbolizing the Puerto Rican people's cause for self-determination.").

²⁶⁶ See Sherrie L. Bayer, *Environmental Justice and the Cleanup of Vieques*, 18 CENTRO J. 91, 92 (2006) (observing that environmental justice strategies played a part in the reframing of the struggle to halt the Navy bombing and are central to current devolution, decontamination, health care, and sustainable development efforts) [hereinafter Bayer, *Environmental Justice*].

²⁶⁷ Berman Santana, *Resisting Toxic Militarism*, *supra* note 254, at 43.

²⁶⁸ See, e.g., Weinberger v. Romero-Barcelo, 456 U.S. 305, 320 (1982); United States v. Zenon, 711 F.2d 476, 479 (1st Cir. 1983); Vieques Conservation & Historical Trust v. Bush, 140 F. Supp. 2d 127, 135 (D.P.R. 2001); Water Keeper Alliance v. United States, 271 F.3d 21, 35 (1st Cir. 2001).

²⁶⁹ Bayer, *Peace*, *supra* note 254, at 106. See also Kathleen Margareta Ryder, *Vieques' Struggle for Freedom: Environmental Litigation, Civil Disobedience, and Political Marketing Proves Successful*, 12 PENN. ST. ENV'T. L. REV. 419, 443–44 (2004) (contending that broad-based protest movements, rather than litigation, were crucial in halting the Navy bombing of Vieques).

factor in the movement's expansion was its universal framing as a struggle for peace.²⁷⁰

Though the Navy stopped bombing exercises in May 2003, approximately three-quarters of the island remains under federal government control.²⁷¹ Following land transfers on the western end,²⁷² the U.S. military transferred 14,573 acres on the eastern side—nearly one half of the island²⁷³—to the U.S. Fish and Wildlife Service, which it administers as the Vieques National Wildlife Refuge.²⁷⁴ One area within the refuge, the 900-acre Live Impact Area, is designated a “wilderness area” with no public access.²⁷⁵

In 2005, at the urging of Puerto Rico's governor, the Environmental Protection Agency placed much of Vieques and its surrounding waters on the National Priorities List, a list reserved for the most hazardous sites warranting long-term remediation as part of the Superfund clean-up process.²⁷⁶ The Governmental Accountability Office recently reported that, while the Navy has progressed in its cleanup of Vieques and Culebra, the work will continue through 2032 at a cost of nearly \$800 million.²⁷⁷ As of March 2020, the Navy has collected and disposed of over eight million items of material potentially presenting an explosive hazard and over 100,000 munitions.²⁷⁸

²⁷⁰ See Katherine T. McCaffrey, *Social Struggle Against the U.S. Navy in Vieques, Puerto Rico: Two Movements in History*, 146 *LAT. AM. PERS.* 83, 95 (2006).

²⁷¹ For a detailed description of the social and political events and maneuvers that led to the end of the bombing, see McCaffrey & Bayer, *supra* note 256.

²⁷² GAO, *DEFENSE CLEANUP*, *supra* note 8, at 6 (reporting that in May 2001, the military transferred about 4,200 acres on the western end to the Municipality of Vieques, 3,000 acres to the U.S. Fish and Wildlife Service, and 800 acres to the Puerto Rico Conservation Trust).

²⁷³ See Naval Facilities Engineering Systems Command, Former Atlantic Fleet Weapons Training Area – Vieques, <https://www.navfac.navy.mil/business-lines/environmental/products-and-services/environmental-restoration/atlantic/vieques/site-descriptions/>, archived at <https://perma.cc/2NAK-MLJJ> (describing the Navy's 2003 transfer of all 14,573 acres of the former Vieques Naval Training Range to the Department of the Interior pursuant to Public Law 107-107).

²⁷⁴ See National Defense Authorization Act for Fiscal Year 2002, Pub. L. No. 107-107, 115 Stat. 1012 (2001) (directing the Secretary of the Interior to administer the former “live impact area” as a wilderness area under the Wilderness Act and deny public access to the area); see also National Defense Authorization Act for Fiscal Year 2001, Pub. L. No. 106-398, 114 Stat. 1654 (2000) (transferring Vieques land from the Department of the Navy to the Department of the Interior for use as a wildlife refuge).

²⁷⁵ GAO, *DEFENSE CLEANUP*, *supra* note 8, at 6.

²⁷⁶ See National Priorities List for Uncontrolled Hazardous Waste Sites, 70 Fed. Reg. 7182, 7185–86 (Feb. 11, 2005); see also Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601–9675 (2006); Defense Environmental Restoration Program, Defense Environmental Restoration Program 10 U.S.C. §§ 2700–2711 (2019) (requiring the Secretary of Defense to carry out environmental restoration at its facilities subject to CERCLA).

²⁷⁷ GAO, *DEFENSE CLEANUP*, *supra* note 8, at 22.

²⁷⁸ *Id.* at 17 (reporting that major decontamination work remains at an 11,500-acre underwater site “where munitions from . . . air-to-ground bombing may have been inadvertently fired into the water”); see also Bayer, *Environmental Justice*, *supra* note 266, at 99 (describing constant shift of unexploded ordnance because of changing climate, hurricanes, and tidal action, among other geological features); ENV'T PROT. AGENCY, OFF. OF LAND AND EMERGENCY

In many ways, the Vieques struggle represents a classic environmental *injustice*: the decades-long bombardment of and release of toxins into a largely poor community of color, causing widespread environmental destruction and dire threats to human health. But in the struggle to halt the bombing and throughout the cleanup stage, the people of Vieques have framed the issue more broadly—as one not only about threats to human and environmental health, but of human rights, continuing colonialism, and cultural destruction.²⁷⁹ Framed in this fashion, they continue their multifaceted fight for environmental justice: for safe and meaningful clean-up, the return of lands, remedies for severe health problems and environmental contamination linked to the military’s exercises,²⁸⁰ and the slowing of rampant real estate speculation.²⁸¹

At the same time, existing legal battles fail to fully comprehend the political, economic, and cultural dimensions of the Vieques struggle. Indeed, the controversy cannot be wholly understood without confronting the disparate power relationship between the United States and Puerto Rico—rooted in U.S. colonialism and militarism²⁸²—that impedes environmental resiliency and sharply limits available “justice” remedies.²⁸³ As scholar Sherrie Bayer contends, the long-term, highly complex decontamination process—like the struggles to stop the bombing—“should be seen within [this] larger context of colonialism” because “[t]he bombing and now its residue are part of Puerto Rico’s history as a military colony.”²⁸⁴

MGMT., EVALUATION OF REMEDY RESILIENCE AT SUPERFUND NPL AND SAA SITES 8 (2018) (reporting that Hurricane Maria caused inundation of Superfund sites in Puerto Rico).

²⁷⁹ Bayer, *Environmental Justice*, *supra* note 266, at 95; Bayer, *Peace*, *supra* note 254, at 103.

²⁸⁰ See McCaffrey, *Fish*, *supra* note 7, at 38 (describing the disputes over the Agency for Toxic Substances and Disease Registry’s findings of no toxic contamination on Vieques).

²⁸¹ Bayer, *Peace*, *supra* note 254, at 103, 107 (noting that the linking of the Vieques struggle to “the larger context of Puerto Rico’s colonialism” strengthened civil society and self-determination on the island); McCaffrey, *Fish*, *supra* note 7, at 39 (arguing that the people’s struggle for “accountability and environmental remediation” forms the foundation of self-determination).

²⁸² Carmen Lugo-Lugo, *An Island in Raw Skin: Vieques and the Transnational Activist Challenge to Puerto Rico’s Colonial Invisibility*, 8 *LATINO(A) RESEARCH REV.* 209 (2011-2012) (contending that while Vieques is “Navy free,” it still suffers from the impacts of its “colonial condition,” such as environmental degradation, ongoing human rights violations, and a severely depressed economy); María Alejandra Torres, *Vieques, Puerto Rico: U.S. Ecological Militarism and Climate Change*, 23 *HUM. RTS. BRIEF* 19, 20 (2020) (describing the lack of community consultation in the cleanup process and questionable detonation practices as part of the U.S. Navy’s “ecological militarism” on Vieques).

²⁸³ See *The Insular Cases: Millions of Americans Denied Equal Protection Under the Law*, NAT. RES. DEMS. (May 25, 2021), <https://hrdems.medium.com/the-insular-cases-c52a8294b370>, archived at <https://perma.cc/LVU5-5VWM>; Phil McKenna, *Devastated Puerto Rico Tests Fairness of Response to Climate Disasters*, *INSIDE CLIMATE NEWS* (Sept. 22, 2017); Liz Moyer & Mary Williams Walsh, *How Puerto Rico Debt is Grappling with a Debt Crisis*, *N.Y. TIMES* (July 1, 2016) (“Unlike sovereign nations . . . [Puerto Rico] can’t seek emergency assistance from the International Monetary Fund.”).

²⁸⁴ Bayer, *Environmental Justice*, *supra* note 266, at 103.

2. *Limitations of the Domestic Legal Framework*

The community's attempts to fit their claims into the constricted domestic legal framework illustrate the practical limitations of domestic law to remedy multifaceted environmental injustices and repair damage to community health. Indeed, some Viequenses expressed concern that legal action would not sufficiently repair the communal or societal harms of the bombing.²⁸⁵ They feared that individual compensation would not provide the much-needed medical infrastructure to aid ill residents, and that a civil judgment or settlement would foreclose broader strategies.²⁸⁶ In a series of cases, courts concluded that the Viequenses' claims were barred under the discretionary function exception to the Federal Torts Claims Act (FTCA).

In *Sanchez v. United States*,²⁸⁷ 7,125 Vieques residents filed a class action under the FTCA.²⁸⁸ They argued that the Navy's negligent emission, storage, and disposal of hazardous and toxic waste caused adverse health outcomes including increased infant mortality, cancer, hypertension, cirrhosis of the liver, and diabetes.²⁸⁹ They asserted that the United States negligently or intentionally exposed Vieques residents to contamination, hazardous waste, and environmental damage by releasing explosives, ordnances, and contaminants into the environment during its weapons testing programs.²⁹⁰ Unlike in previous lawsuits,²⁹¹ they also argued that the Navy breached its duty to warn them of the health dangers posed by its hazardous activities, and instead knowingly invited residents into the contaminated areas for fishing and cattle herding.²⁹² The First Circuit Court of Appeals af-

²⁸⁵ Víctor M. Torres-Vélez, *The Hidden Wounds of Vieques: A Political Ecology of Disease and Collective Actions in a Militarized Landscape* 157 (2007) (Ph.D. dissertation, Michigan State University) (describing a public meeting called by John Arthur Eaves, Jr. of the Mississippi-based law firm that represented around 600 Vieques families).

²⁸⁶ *Id.* at 154; see also Ryan Morgan, "We're Out Here Talking About Life and Death": Reparations for Human Rights Violations in Vieques, Puerto Rico 9–10, 31, 32 (Feb. 2016) (M.A. thesis, Columbia University) (on file with Columbia Academic Commons, Columbia University Libraries).

²⁸⁷ *Sánchez ex rel. D.R.-S. v. United States*, 671 F.3d 86 (1st Cir. 2012).

²⁸⁸ See *Sanchez v. United States*, 707 F.Supp.2d 216 (D.P.R. 2010), *aff'd sub nom. Sánchez ex rel. D.R.-S. v. United States*, 671 F.3d 86 (1st Cir. 2012).

²⁸⁹ *Sánchez*, 671 F.3d at 90.

²⁹⁰ *Sanchez*, 707 F.Supp.2d at 221. Among other injuries, the Navy's actions caused an increased cancer rate among Vieques residents, which is 30% higher than on the main island of Puerto Rico. *Id.*

²⁹¹ See, e.g., *Rivera Acevedo v. United States*, No. 04–1232, 2005 WL 5610230 *1, *6 (D.P.R. Apr. 25, 2005), *aff'd sub nom. Abreu v. United States*, 468 F.3d 20 (1st Cir. 2006) (holding that the Navy's military exercises and disposal of waste in Vieques from 1941 to 2003 involved discretionary decision-making because it "required balancing competing concerns of secrecy and safety, national security and public health," and therefore dismissing the Viequenses' claims).

²⁹² The United States argued the discretionary function exception applied because its challenged conduct was a discretionary matter of national security, not a mandatory duty, and its challenged conduct was based in public policy because it was a matter of balancing "competing concerns of secrecy and safety, national security and public health." *Sanchez*, 707 F.Supp.2d at 230. The residents countered that the Navy's duties were not discretionary be-

firmed the district court's holding that the residents' claims were barred because the Navy's challenged conduct constituted an exercise of its discretion.²⁹³

In dissent, Judge Juan Torruella rebuked the majority for disregarding longstanding U.S. militarism in Puerto Rico and the structural disempowerment of the Puerto Rican people. By creating an "unwarranted exception"²⁹⁴ to the FTCA for military activity, he argued, the court slammed shut the courthouse doors on a people lacking the political means to remedy harsh environmental injustices. He first recounted the "turbulent history" of the Navy bombardment that impacted "the daily lives of the civilian residents of Vieques and Culebra."²⁹⁵ Pointing to caselaw sanctioning lesser civil and political rights for Puerto Ricans, he excoriated the majority for "depriving U.S. citizens who live in Vieques of the only effective remaining forum in which to seek redress for their alleged wrongs" because they are unable to "access . . . the political forum available to most other citizens of the United States."²⁹⁶ Because Puerto Rico's residents have no meaningful access to Congress, he contended, the majority's call for political solutions underscored the "intolerable and undemocratic situation" at the heart of the Vieques controversy. By broadly construing the discretionary function exception to the FTCA, and instead pointing the plaintiffs to an unrealistic political remedy for their injuries in light of their inability to vote,²⁹⁷ the court discounted their unique colonial experiences, the impacts of history and U.S. plenary power on community health and well-being, and the "particulars of environmental racism" in this territorial setting.

3. *A More Encompassing International Approach: Inter-American Commission on Human Rights*

The following year, the National Lawyers Guild and four other legal and human rights groups filed a Petition before the Inter-American Commis-

cause its conduct violated mandatory directives under the Resource Conservation and Recovery Act, the Comprehensive Environmental Resources, Compensation, and Liabilities Act, the Navy's own environmental program manual, and the Clean Water Act. *Id.* at 221–22.

²⁹³ *Sánchez*, 671 F.3d at 103.

²⁹⁴ *Id.* at 106 (Torruella, J., dissenting).

²⁹⁵ *Id.* at 104.

²⁹⁶ *Id.* at 120. Judge Torruella would have found the court had subject matter jurisdiction over the residents' claims, reasoning the discretionary-function exception to the FTCA did not apply because the residents' claims were violations of mandatory federal law and no reasonable policy analysis could justify the Navy's failure to warn the residents of the dangers of exposure to hazardous waste resulting from activities. *Id.* at 113–18.

²⁹⁷ *See* Vieques Recovery and Redevelopment Act of 2021, S.405, 117th Cong. (2021–2022). The bill recognizes that in 2012 Vieques residents "were denied the ability to address their needs in Court due to sovereign immunity," but that the First Circuit referred the issue to Congress "to address the humanitarian crisis." *Id.* at § 2. The bill thus "attempts to satisfy that request such that Americans living on Vieques have a remedy for the suffering they have endured." *Id.* Similar bills were introduced in 2019 and 2020. *See* Vieques Recovery and Redevelopment Act of 2019, H.R. 4605, 116th Cong. (2019–2020); Vieques Recovery and Redevelopment Act of 2020, S. 4398, 116th Cong. (2019–2021).

sion on Human Rights, contending that the U.S. Navy's military exercises caused serious and chronic illnesses as well as pollution of the land, air, and sea in violation of the United States' obligations under the American Declaration of the Rights and Duties of Man.²⁹⁸ The rights invoked included rights to life, health and a healthy environment, access to information, judicial remedies, residence and freedom of movement, and work and fair remuneration.²⁹⁹ The petitioners applied insights from the environmental justice movement to demonstrate how as "non-white, low income, Spanish-speaking inhabitants of a United States colony, the residents of Vieques are subjected to multiple modes of subordination" and bear a correlating "disproportionate share of adverse environmental burdens[.]"³⁰⁰ Although the claim's outcome is unclear, it acknowledges Viequeses' differential racialization and disempowerment: it expressly connects the environmental injustice to Puerto Rico's territorial status and how its status "exacerbates the burden imposed by intersection of multiple oppressions of race, ethnicity, culture, class and gender."³⁰¹ Accordingly, it more accurately portrays the injustice: that Viequeses lack the political power to "access remediation for the damage to their environment, their health and their livelihoods."³⁰²

4. *Tensions Between "Conservation" and Self-determination*

The racializing environmental justice framework also reveals the tensions between concepts of "conservation" and the peoples' expressed desires to exercise control over their land and resources. Traditional notions of conservation view humans as separate from and incompatible with "the environment;" land and resources therefore must be safeguarded against human occupation and intrusion.³⁰³ The Vieques National Wildlife Refuge—simultaneously an "environmental refuge" and a "toxic disaster"—occupies approximately 17,771 acres of Vieques land³⁰⁴ and seeks to "protect and

²⁹⁸ See Petition Alleging Violations of the Human Rights of Various Residents of Vieques, Puerto Rico by the United States of America, Inter-Am. Comm'n H.R. 13 (Sept. 23, 2013).

²⁹⁹ *Id.* at 17.

³⁰⁰ *Id.*

³⁰¹ *Id.* at 16.

³⁰² *Id.* at 16–17.

³⁰³ See, e.g., Sarah Krakoff, *Public Lands, Conservation, and the Possibility of Justice*, 53 HARV. C.R.-C.L. L. REV. 213, 231–32 (2018) (describing early conservationists' approach to "uninhabited wilderness," which operated to expel Native Peoples from national park lands); Daniels et al., *supra* note 37, at 26–27 (noting that John Muir's notion of "unspoiled wilderness required elimination of human presence to create an illusion of the pristine"); MARK DAVID SPENCE, *DISPOSSESSING THE WILDERNESS: INDIAN REMOVAL AND THE MAKING OF THE NATIONAL PARKS* 5 (1999) (describing the "American wilderness ideal" that views nature as "uninhabited" and disregards Native Peoples' connection to and shaping of their environments).

³⁰⁴ U.S. Fish and Wildlife Service, *Vieques National Wildlife Refuge*, <https://www.fws.gov/refuge/vieques>, archived at <https://perma.cc/WBM3-SN7F> (describing the refuge as "one of the most ecologically diverse wildlife refuges in the Caribbean and [] the largest National Wildlife Refuge in the Caribbean").

preserve the natural resources of the lands in perpetuity.”³⁰⁵ Because public access is limited and the land is not slated for human use and development, the Navy need not fully decontaminate it or remove all munitions.³⁰⁶

The environmental justice section of the Wildlife Refuge’s Comprehensive Conservation Plan and Environmental Impact Statement overlooked the people’s cultural connections to the land. The plan proposed a management program seeking a “realistic and achievable level of both habitat management and public use” that prioritizes resource needs “and, where appropriate and compatible with the refuge purposes, the needs of the community.”³⁰⁷ The EIS determined that none of the management alternatives would place any disproportionate environmental, economic, social, or health impacts on minority or low-income populations, and that alternatives that offered “public use and environmental education” would instead “provide a benefit to citizens living in the vicinity of the refuge.”³⁰⁸ But this narrow view of impacts ignores the residents’ attempts to restore cultural practices and promote economic self-sufficiency and traditional livelihoods on Vieques.

Indeed, according to scholar Katherine McCaffrey, Vieques activists find the refuge deeply alienating.³⁰⁹ For many, it “estranges islanders from the majority of the land” because they have limited or no access to it, while it relieves the military of its responsibility for environmental remediation.³¹⁰ In the context of many residents’ deeply-felt distrust of the U.S. government, the Fish and Wildlife Service, which manages the land, is viewed not as a community-supported “protect[or]” of the environment, but as an “extension of restrictions and absolute control over the land established by the

³⁰⁵ To authorize appropriations for fiscal year 2001 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes., Pub. L. No. 106–398, 114 Stat. 1654 (2000) (declaring that Vieques lands transferred to the Department of the Interior pursuant to a cooperative agreement between the Commonwealth of Puerto Rico, the Puerto Rico Conservation Trust, and the Secretary of the Interior “shall be managed to protect and preserve the natural resources of the lands in perpetuity”) (quoting Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, Pub. L. No. 106–398, § 1508(d)(4), 114 Stat. 1654 (2000)).

³⁰⁶ DAVID BEARDEN, CONG. RSCH. SERV., RL32533, VIEQUES AND CULEBRA ISLANDS: AN ANALYSIS OF CLEANUP STATUS AND COSTS 2 (2005) (concluding that “the Navy may be permitted to remove fewer munitions and clean up related contamination to a less stringent degree than would otherwise be required for less restrictive land uses, such as tourism or residential development”).

³⁰⁷ U.S. DEP’T. OF THE INTERIOR FISH AND WILDLIFE SERV. SE. REGION, VIEQUES NAT’L WILDLIFE REFUGE COMPREHENSIVE CONSERVATION PLAN AND ENV’T IMPACT STATEMENT 66 (2007).

³⁰⁸ *Id.* at 160.

³⁰⁹ McCaffrey, *The Battle*, *supra* note 251, at 137 (noting that activists’ plans for the land “clash with a U.S. conservationist ethic”).

³¹⁰ *Id.* at 126.

navy,”³¹¹ an obstacle to meaningful cleanup, and “the gatekeeper blocking access to the land for which they have fought for decades.”³¹²

In this way, the refuge also thwarts the exercise of customary practices and hinders community approaches to development. Historically, Viequenses gathered fruit and wood for making charcoal, fished off shore and in lagoons, and collected blue land crabs and sea snails.³¹³ Many of those practices that endured through the Navy occupation are now prohibited or sharply restricted by the Fish and Wildlife Service.³¹⁴ Likewise, the refuge is considered a barrier to “recreational, farming, and other civilian uses for future generations”³¹⁵ and an obstacle to “local visions of socioeconomic development,” such as job creation, housing, natural and historical resource conservation, and agriculture, that depend on access to the land and resources.³¹⁶ The racializing environmental justice framework thus illustrates that environmental injustice concerns encompass not just the health and ecological impacts of the siting of toxic waste producing facilities, but also militarism’s impacts on traditional and customary practices and community-based strategies for land use and development.

5. A “Tsunami of Gentrification”

The racializing environmental justice framework also points to the impacts of gentrification in magnifying environmental injustice. Vieques residents face a post-Maria “tsunami of gentrification”³¹⁷—an explosion of North American investors and vacation home buyers snapping up properties, pricing out local families, and worsening the local population’s already perilous economic footing.³¹⁸ Real estate speculation and exclusive property development began soon after the Navy halted its bombing, but Viequenses,

³¹¹ McCaffrey, *Fish*, *supra* note 7, at 36; Ana Guzman, Joel T. Heinen, & Jay P. Sah, *Evaluating the Conservation Attitudes, Awareness and Knowledge of Residents towards Vieques National Wildlife Refuge*, Puerto Rico, 18 CONSERVATION & SOC. 13, 19 (2020) (observing that, based on survey results, Viequenses who were “older, have longer residencies, have participated in anti-naval protests, and/or were native Viequenses” were more likely to have negative attitudes toward the Vieques National Wildlife Refuge).

³¹² McCaffrey, *The Battle*, *supra* note 251, at 137.

³¹³ *See id.* at 129, 137.

³¹⁴ *Id.*

³¹⁵ Bayer, *Peace*, *supra* note 254, at 108.

³¹⁶ McCaffrey, *The Battle*, *supra* note 251, at 131, 136 (noting that residents were concerned more about access to land than to ownership of capital); *see* Déborah Berman Santana, *La Lucha Continúa: Challenges for a Post-Navy Vieques*, 18 CENTRO J. 109, 117 (2006) (noting that Vieques activists and San Juan-based professionals collaborated over several years to create a report articulating strategies for sustainable land use planning and development that was promoted by the Commissioner for Vieques and Culebra and the Mayor of Vieques). [hereinafter Berman Santana, *La Lucha*].

³¹⁷ Bayne & Dieppa, *supra* note 251 (quoting Vieques activist Myrna Veda Pagan Gómez).

³¹⁸ Bayer, *Environmental Struggles*, *supra* note 106, at 30–31; Berman Santana, *La Lucha*, *supra* note 316, at 118 (explaining how white, American, English-speaking “expatriates” describe Vieques as a “Fantasy Island” to attract private developers and investors).

whose median household income is \$16,261, now face “a vicious fight for access to the island.”³¹⁹ The federal government’s withholding and delay of federal disaster recovery funds following Hurricane Maria, alongside Puerto Rico’s ongoing economic crisis, exacerbated those harms.³²⁰

Viequesens thus battle to hold onto ancestral homes, launch ecotourism efforts, and implement sustainable development plans,³²¹ but tax incentives for outsiders with more money and leverage deepen the islands’ inequality, displace local residents, and as some assert, “encourage[] modern-day colonization.”³²² As one resident declared: “We have all the negative impacts of colonialism, all the negative impacts of disaster capitalism in the wake of Maria, but there is an ongoing 50-year disaster of militarism in Vieques that creates a different situation. . . . It makes [Vieques] supra [sic] vulnerable to the forces of speculation, gentrification, displacement and population substitution.”³²³ The differential disempowerment of Vieques residents vis-à-vis western property speculators reflects the colonial legacies of the U.S./Puerto Rico relationship³²⁴ and contributes to environmental injustice in this setting.

6. *Collective Community Action*

The persistent environmental problems, complex rights claims, and need for justice remedies in Vieques³²⁵ illustrate the need for particularized

³¹⁹ Bayne & Dieppa, *supra* note 251 (reporting that close to 500 homes on Vieques, many owned by nonresidents, are currently listed as Airbnbs); Berman Santana, *La Lucha*, *supra* note 316, at 119 (describing the development of luxury housing that is pricing out Viequesens).

³²⁰ See Ericka Conant, *AOC brings back crucial reminder that Hurricane Maria relief hasn't reached Puerto Rico*, AL DÍA (Jun. 2, 2021), <https://aldianews.com/articles/politics/aoc-brings-back-crucial-reminder-hurricane-maria-relief-hasnt-reached-puerto-rico>, archived at <https://perma.cc/Q4ZT-NUR5> (reporting that only 41% of FEMA’s obligated funds to Puerto Rico have been disbursed); Yxta Maya Murray, “FEMA Has Been A Nightmare:” *Epistemic Injustice in Puerto Rico*, 55 WILLAMETTE L. REV. 321, 333 (2019) (noting Puerto Rico’s ongoing struggle with poverty and debt); Charley E. Willison, Phillip M. Singer, Melissa S. Creary, & Scott L. Greer, *Quantifying inequities in US federal response to hurricane disaster in Texas and Florida compared with Puerto Rico*, BMJ GLOB. HEALTH, Jan. 2019, at 1–3 (quantifying the impact of Hurricane Maria on economic outcomes of Puerto Ricans).

³²¹ See Berman Santana, *La Lucha*, *supra* note 316, at 119 (describing community members’ opposition to plans by New York-based company SunBay to erect a luxury tourism complex on over 500 acres of land, and the potential of a Community Land Trust, similar to one established on the main island by the Puerto Rico legislature to control land price inflation).

³²² Mariah Espada, *Influencers, Developers, Crypto Currency Tycoons: How Puerto Ricans Are Fighting Back Against the Outsiders Using the Island as a Tax Haven*, TIME (Apr. 16, 2021), <https://time.com/5955629/puerto-rico-tax-haven-opposition/>, archived at <https://perma.cc/WS3X-S6AG>.

³²³ Bayne & Dieppa, *supra* note 251 (quoting Vieques resident Robert Rabin).

³²⁴ See Amelia Cheatham & Diana Roy, *Puerto Rico: A U.S. Territory in Crisis*, COUNCIL ON FOREIGN RELS. (Feb. 3, 2022), <https://www.cfr.org/background/puerto-rico-us-territory-crisis>, archived at <https://perma.cc/GB24-JYLP>.

³²⁵ See Vieques Recovery and Redevelopment Act of 2019, H.R. 4605, 116th Cong. (2019) (articulating a framework for monetary compensation for Vieques residents for exposure to heavy metals and chemicals during and after weapons testing); Federico de Jesús & Laura Rodríguez, *An Urgent Rescue Plan for Puerto Rico*, CENTER FOR AM. PROG. (Apr. 28,

approaches to racialized environmental justice. McCaffrey and others suggest that because of Puerto Rico's ongoing colonial status, collective community action is critical to ensure sustainable development and real peace for Vieques.³²⁶ In addition to opposing open detonation of unexploded ordnance and open air burning of toxic waste,³²⁷ and forcing the EPA to set up an air-monitoring station,³²⁸ community leaders urge strategies that seek not only to preserve natural resources, but to empower the people through small-scale economic development and ecotourism.³²⁹ In the face of steep barriers to securing health services, reliable transportation, employment, and education, as well as remedies for poverty and other legacies of colonialism and militarism, the community strives to realize "an alternate vision of security based on a culture of peace, cooperation, and community control."³³⁰

For many individuals and community groups, environmental justice means complete demilitarization; decontamination not only of military sectors, but also the civilian ones; meaningful community participation on the advisory board tasked with advising the cleanup planning process;³³¹ access to quality health care;³³² devolution of land to Viequesens to enable future generations to stay there; and a sustainable development plan to bolster the local economy while preserving natural resources.³³³ Activists report that

2021), <https://www.americanprogress.org/issues/green/reports/2021/04/28/498841/urgent-rescue-plan-puerto-rico/>, archived at <https://perma.cc/R943-F9PA> (describing the need for federal funding and action to remedy the impacts of natural disasters and economic crises in Puerto Rico).

³²⁶ McCaffrey, *The Battle*, *supra* note 251, at 127 (noting that "collective action [is] the primary vehicle for asserting alternatives to top-down development schemes"); Bayer, *Environmental Justice*, *supra* note 266, at 102; Berman Santana, *La Lucha*, *supra* note 316, at 110.

³²⁷ See Laura Olah & Myrna Veda Pagán, *Military Munitions Disposal is Polluting Puerto Rico, Despite Safer Alternatives* (Apr. 22, 2019), <https://cswab.org/wp-content/uploads/2019/04/Vieques-Call-to-Action-42-Groups-to-EPA-Reg-2-US-Congress-April-2019.pdf>, archived at <https://perma.cc/PBL8-YG2Z> (reporting that the Navy "has open air burned or detonated more than 100,000 high explosive UXO ordnance, including bombs, projectiles, rockets, grenades and submunitions," which creates severe environmental and public health threats).

³²⁸ See Katherine T. McCaffrey, *Environmental Remediation and its Discontents: The Contested Cleanup of Vieques, Puerto Rico*, 25 J. POL. ECOLOGY 80, 94 (2018) [hereinafter McCaffrey, *Environmental Remediation*].

³²⁹ See *Plan Maestro para el Desarrollo Sustentable de Vieques* (Dec. 27, 2004), <http://www.estudiostecnicos.com/projects/viequesculebra/pdf/primer-informe-vieques.pdf>, archived at <https://perma.cc/P7TP-5MTL>.

³³⁰ Berman Santana, *Resisting Toxic Militarism*, *supra* note 254, at 45. For an extensive description of many of the community's strategies for demilitarization, decontamination, devolution, and development, see Berman Santana, *La Lucha*, *supra* note 316.

³³¹ See *Former Atlantic Fleet Weapons Training Area - Vieques, Community Outreach*, NAVAL FACILITIES ENG'G SYS. COMMAND, https://www.navfac.navy.mil/products_and_services/ev/products_and_services/env_restoration/installation_map/navfac_atlantic/vieques/outreach.html, archived at <https://perma.cc/S7Z4-TK5A> (describing the Restoration Advisory Board); but see McCaffrey, *Environmental Remediation*, *supra* note 328, at 87, 90 (identifying the limitations of the Advisory Board).

³³² JUSTICE FOR VIEQUES NOW, <http://www.justiceforviequesnow.org/>, archived at <https://perma.cc/6BSK-Q62C> (outlining community needs and demands).

³³³ Bayne & Dieppa, *supra* note 251.

none of those goals has been met.³³⁴ Nonetheless, advocates employ an expansive conception of environmental justice as they testify about harms of gentrification and the Navy's superficial cleanup before the UN Special Committee on Decolonization,³³⁵ and supporters locally and nationally attempt to repair the lasting environmental and health harms.³³⁶ As one resident lamented, "Vieques was rescued for the Viequenses, so that the people of Vieques could keep living and populate here. . . . The idea is to rescue it for our grandchildren, great-grandchildren and great-great-grandchildren so that they have an inheritance. Not so that we could disappear from history."³³⁷

VI. CONCLUSION

The racializing environmental justice framework acknowledges that racial and Native groups are differently situated according to their "socio-economic needs, political power, cultural values, and group goals."³³⁸ This Article refined the racializing environmental justice inquiry to illuminate the enduring links between environmental injustice and the U.S. territories' paradoxical political status, deeply rooted in histories of colonialism and militarism. Viewed through the racializing environmental justice lens, these controversies are about much more than "the environment;" they are also efforts to restore cultural practices, promote economic self-sufficiency and traditional livelihoods, and exercise a measure of political self-determination.

The inquiries into the military buildup in Guam and the aftermath of the Vieques bombing highlighted the complexity of crafting environmental justice claims and remedies that fully consider the needs and goals of the peoples of the U.S. territories in specific settings. The inquiries also illuminated the inadequacy of domestic legal frameworks and concepts to acknowledge the United States' continuing colonial governance of its territories and the gross imbalances in political power that impede attempts to repair environmental harms. Without examining the differential disempowerment and the political, cultural, economic, and spiritual impacts on the peoples of the ter-

³³⁴ See Dena Takruri, *Puerto Rico's Vieques Still Reels from Decades of US Navy Bombing*, (Jul. 1, 2019) <https://www.aljazeera.com/features/2019/7/1/puerto-ricos-vieques-still-reels-from-decades-of-us-navy-bombing>, archived at <https://perma.cc/Y44Q-6856> (quoting Myrna Pagan).

³³⁵ See Press Release, General Assembly, Special Committee on Decolonization, Speakers Voice Concern about Environmental, Fiscal Challenges of Puerto Rico as Special Decolonization Committee Approves Annual Self-determination Text, U.N. Press Release GA/COL/3337 (Jun. 24, 2019), <https://www.un.org/press/en/2019/gacol3337.doc.htm>, archived at <https://perma.cc/VKL2-ZF8F> (connecting Puerto Rico's colonial status with ongoing corporate pollution of the environment, lack of self-determination, economic instability, and impacts to Puerto Ricans' culture, identity, and livelihood).

³³⁶ See, e.g., Vieques Recovery and Redevelopment Act, S. 405, 177th Cong. (2021).

³³⁷ Bayne & Dieppa, *supra* note 251 (quoting Zaida Torres Rodríguez).

³³⁸ Yamamoto & Lyman, *supra* note 17, at 359.

ritories, remedies fell far short of meaningfully repairing the communities' persisting wounds.

If the controversies had been conceived differently—in language, framing, and scope—would the outcomes have changed? What might be possible steps—politically and legally—moving forward? The racializing environmental justice framework does not point to definitive answers, but it suggests that without a deeper U.S. commitment to self-determination, the territories' inability to craft self-determining and meaningful solutions to environmental injustices will likely persist. Nonetheless, the framework helps us to think expansively—to rethink environmental injustice in light of differential group power, access to resources, and distinct group relationships to the environment. This expansive view goes beyond rectifying the discriminatory siting of toxic facilities. It embraces the complexity of group experience in defining environmental problems and fashioning meaningful remedies.