

BETWEEN TWO COURTS: DUELING CONSTITUTIONS, OVERCROWDING, AND THE
PRISONER'S RIGHTS MOVEMENT IN PUERTO RICO, 1970-1990

by

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(Under the Direction of Reinaldo Román)

ABSTRACT

This thesis examines the 1979 and 1989 *Morales Feliciano* prisoner-rights case in Puerto Rico. I argue that the cases reveal how prisoners entrapped in Puerto Rico's carceral state used Puerto Rico's colonial status as a legal strategy to force the Commonwealth to provide them with proper living conditions and medical care. Prisoners in *Morales Feliciano* used the US and Puerto Rican constitution interchangeably and relied on the federal court system as part of that strategy. Unlike previous prisoner rights movements on the Island, *Morales Feliciano* was the first to hold the whole prison system in Puerto Rico accountable for its treatment of prisoners. The case was filed at the dawn of mass incarceration as the Island's incarcerated population exploded due to War on Drug policies. The combined increase in population and deteriorating prison infrastructure set the stage for the *Morales Feliciano* case.

INDEX WORDS: Mass incarceration, Puerto Rico, prisoner's rights movement, constitution

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DEDICATION

To my great grandmother, Carmen Maria Santiago Aviles

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INTRODUCTION

In 1979, a prisoner named Carlos Morales Feliciano filed a class action lawsuit in Puerto Rico on the behalf of Puerto Rico's incarcerated population. Among the charges the lawsuit leveled against the Commonwealth, were accusations of the lack of proper medical treatment and overcrowding as well as the violation of the rights to due process, equal protection, free association, and access to the courts. Finally, the prisoners sought to not be subjected to cruel and unusual punishment as guaranteed by the United States constitution.¹ The district court in Puerto Rico ruled in favor of the plaintiffs, ordering the Commonwealth to remedy the stated violations. The original 1979 *Morales Feliciano v. Romero Barceló* suit was followed by a series of litigations and district court orders, which eventually concluded in 2016. In August 1988, the district court ordered the Commonwealth to pay an increased fine for every month it kept each imprisoned person in less than thirty-five-square feet of space.² A year later, in 1989, the Commonwealth appealed the 1988 order in the United States Court of Appeals in what became the 1989 *Morales Feliciano v. The Parole Board of the Commonwealth of Puerto Rico* case, which I discuss below as the 1989 *Morales Feliciano* case.

Since the passing of the Jones-Shafroth Act in 1917, Puerto Ricans have been second-class US citizens entitled to limited rights. The 1952 passing of the Puerto Rican constitution, the charter of the newly established *Estado Libre Asociado de Puerto Rico*, generated a new era in the debate

¹ *Morales Feliciano v. Carlos Romero Barceló*, 497 F. Supp. 14 (D. Puerto Rico. 1979) (Civ. No. 79-4).

² *Morales Feliciano v. The Parole Board of the Commonwealth of Puerto Rico*, 887 F.2d 1 (1st Cir. 1989) (No. 88-1942).

over to what civil rights Puerto Ricans were entitled.³ Two decades after the passage of the Puerto Rican document, imprisoned Puerto Ricans exploited the dueling constitutions to petition local and federal authorities for the recognition and implementation of their civil rights as citizens of the United States and residents of the Commonwealth of Puerto Rico entitled to certain legal protections under each charter. I argue that the *Morales Feliciano* 1979 district court decision and the 1989 circuit court order reveal how people imprisoned in Puerto Rico turned Puerto Rico's colonial status into a legal strategy to remedy the terrible material conditions of their confinement in federal court.

At the heart of my argument is the concept of *double disenfranchisement*. Double disenfranchisement refers to the socio-political status of people imprisoned in Puerto Rico, first as colonial subjects and then as an imprisoned class. As colonial subjects, Puerto Ricans who live on the Island are US citizens who do not enjoy full protection or full political representation under the US constitution, as seen in the lack of a voting representative in congress.⁴ As prisoners under the jurisdiction of the United States, they are further disenfranchised as they are only guaranteed limited constitutional rights, such as the protection from cruel and unusual punishment promised under the Eighth Amendment.⁵ But in Puerto Rico, prisoners are given rights by the Puerto Rican constitution that are not recognized by the US constitution, such as the ability to vote. Under its charter, the Commonwealth is obligated to provide rehabilitative treatment to prisoners.⁶ Unlike

³ Jones Act of 1917, Pub. L. No. 64-368, 39 Stat. 951 (1917); Constitution of the Commonwealth of Puerto Rico (1952). The constitution also defined Puerto Rico as a US unincorporated territory with a Commonwealth political status

⁴ For the historical background on Puerto Rican citizenship, see Sam Erman, *Almost Citizens: Puerto Rico, the US Constitution, and Empire* (Cambridge: Cambridge University Press, 2018); Robert McGreevy, *Borderline Citizens: The United States, Puerto Rico, and the Politics of Colonial Migration* (Ithaca, NY: Cornell University Press, 2018); and Jorge Duany, *Puerto Rico: What Everyone Needs to Know* (Oxford: Oxford University Press, 2017).

⁵ William C. Collins, *Jails and the Constitution: An Overview* (Washington D.C.: National Institute of Corrections, 2007), 8-9.

⁶ Constitution of the Commonwealth of Puerto Rico, Article VI §19; Karl Ross, "Monitor Urges Takeover of Puerto Rican Prisons: Gangs Control Corrections System, Official Says," *The Washington Post*, September 7, 1997, A16.

earlier prisoner rights cases on the Island, the 1979 *Morales Feliciano* suit demanded “Island-wide relief,” rather than remedies for individual institutions.⁷ The plaintiff’s decision to bring a suit against the whole system rather than one institution suggests that the prisoners involved in the case sought to force the Commonwealth to enact systemic change rather than rely on transferring prisoners from one institution to another. Since the case would affect every carceral institution on the Island, prisoners had to rely on a strategy that navigated their limited dual citizenships in a way that would withstand possible local and federal pushback. Their approach would be tested in 1989 in the circuit court decision.⁸

This thesis argues that the double disenfranchisement of people incarcerated in Puerto Rico unintentionally produced a unique space for prisoners to interpret and define their rights, including proper housing and medical care. The 1979 district court order was a response to the Commonwealth’s inability to remedy the overcrowding of its prisons and jails, which was further exacerbated by the federal and local War on Drugs and War on Crime policies in the late 1970s and 1980s.⁹ The overcrowding forced the Commonwealth to reconcile its constitutional responsibility to offer “rehabilitation,” or the idea that prisons should serve to reintegrate for people convicted of crimes back into society, with the government’s lack of resources to accommodate the exploding prisoner population.¹⁰ The conditions exacerbated by the dramatic increase of incarcerated people in the 1970s also forced the Commonwealth to expand its carceral

⁷ *Morales Feliciano v. Carlos Romero Barceló* (D. Puerto Rico 1979). See note 2.

⁸ *Morales Feliciano v. Parole Board of the Commonwealth of Puerto Rico*, 887 F.2d 1 (1st Cir. 1989)

⁹ See Alfredo Montalvo-Barbot, “Crime in Puerto Rico: Drug Trafficking, Money Laundering, and the Poor,” *Crime & Delinquency* 43, no. 4 (1997): 533-547; Patricio G. Martínez Llompert, “In the Custody of Violence: Puerto Rico Under La Mano Dura Contra el Crimen, 1993-1996,” *Revista Jurídica UPR* 84, no. 2 (2015): 447-494; Helsinki Watch, *Prison Conditions in the United States: A Human Rights Watch Report* (New York, NY: Human Rights Watch, November 1991).

¹⁰ René Francisco Poitevin, “Political Surveillance, State Repression, and Class Resistance: The Puerto Rican Experience,” *Social Justice* 27, no. 3 (2000): 95; Constitution of the Commonwealth of Puerto Rico Article II § 10-13, Article VI §19.

institutions at a rapid pace in the 1980s to accommodate the district court's 1979 and subsequent orders.¹¹ At the same time, as more and more Puerto Ricans became entrapped in the Commonwealth's carceral apparatus, imprisoned Puerto Ricans used the 1979 *Morales Feliciano* case to consciously express their own desires and interpretations of US and Puerto Rican law.

Most writings on the carceral state in the US focus on the contiguous states rather than on the periphery of US colonialism, whereas scholars of Puerto Rican history analyze political prisoners of the 1930s and 1950s. A temporal gap exists in the scholarship of the Puerto Rican carceral state through the War on Drugs and Crime era.¹² A study of the 1979 district court and 1989 appellate decision in the *Morales Feliciano* cases is critical in understanding how people imprisoned in Puerto Rico used the federal court system at the dawn of the mass incarceration era in their favor. Without an examination of the *Morales Feliciano* case, we cannot understand the current mass incarceration crisis in Puerto Rico and the government's response to it. Exclusive attention by scholars on political prisoners in Puerto Rico or prisons in the contiguous US ignores how the US carceral state is inherently connected to colonialism. Scholarly consideration of people imprisoned in Puerto Rico and the prisoner's rights movement in the Island during the 1970s and 1980s contributes to the current conversation on prison abolition and decolonization.

The voices of Carlos Morales Feliciano and other people imprisoned in Puerto Rico's carceral state are difficult, but not impossible, to access.¹³ I base the story I tell below off a variety

¹¹ The District Court stipulated that the Commonwealth of Puerto Rico provide prisoners with thirty-five square feet per prisoner. This order was deemed lawful by the First District Court of Appeals. See *Morales Feliciano v. The Parole Board of the Commonwealth of Puerto Rico* (1st Cir. 1989).

¹² There has been research done in this area broadly or has dealt with the repercussions of this era in policing and caging; see Marisol LeBrón's *Policing Life and Death: Race, Violence, and Resistance in Puerto Rico* (Berkeley: University of California Press 2019), and Fernando Picó's *El día menos pensado: Historia de los presidiarios en Puerto Rico, 1793-1993* (Río Piedras, Puerto Rico: Ediciones Huracán, 1994); Jorell Meléndez-Badillo, "A Party of Ex-convicts: Bolívar Ochart, Carceral Logics, and the Socialist Party in Early Twentieth-Century Puerto Rico," *Hispanic American Historical Review* 101, (1 February 2021): 73–99. doi: <https://doi.org/10.1215/00182168-8796473>.

¹³ Due to the COVID-19 pandemic, I am unable to access the archival court documents in the Commonwealth.

of sources, including digitized US newspapers, law review articles, NGO reports such as those by the Comisión de Derechos Civiles, and court orders and opinions.¹⁴ As such, this project leaves room for further exploration and the addition of Puerto Rican sources and voices.

This thesis is divided into four acts. Act one focuses on the two decades leading up to the 1979 *Morales Feliciano* case, from 1960 to 1978. First, I look at the circumstances that led to overcrowding and lack of access to medical care for prisoners in the 1970s and 1980s, such as the deteriorating and aging infrastructure of Puerto Rico's prisons in the 1960s and the Puerto Rican Penal Code of 1974. I then turn to two forms of prisoner strategies in the 1970s to ameliorate prison conditions, radicalism and reform. I define and examine the radical approach of the prisoner's rights leader Carlos "La Sombra" Torres Iriarte, the prisoner-led group *Los Ñeta*, and their organization of the 1974 San Juan District Jail prisoners' strike. I analyze the reform strategy through a prisoner's rights court case known as *Martínez Rodríguez v Jiménez* (1976).

Act two looks at the conditions of prisons outlined in the 1979 *Morales Feliciano v. Romero Barceló*, the district court's opinion and order, and the differences and similarities of the plaintiff's strategy to previous prisoner's rights cases or movements outlined in act one. Here, I argue that the double disenfranchisement of prisoners in Puerto Rico unintentionally created a legal space for prisoners to define what rights they were entitled to. I focus on the goals outlined by prisoners in the case and district judge Juan M. Pérez-Giménez's legal argument and order.

Act three details the subsequent orders and failure of the Commonwealth to ameliorate prison conditions in the 1980s, which culminated in the 1989 appellate court case, *Morales*

¹⁴ See Commonwealth of Puerto Rico Criminal Justice Information System, *Crime in Puerto Rico, Calendar Year 1982* (Washington, DC: National Criminal Justice Reference Service, 1984); Helsinki Watch, *Prison Conditions in the United States: A Human Rights Watch Report* (New York, NY: Human Rights Watch, November 1991).

Feliciano v. The Parole Board of the Commonwealth of Puerto Rico. I look at how the double disenfranchisement of prisoners in Puerto Rico was vital to the federal enforcement of the district court's orders for the Commonwealth to provide prisoners with more space and access to medical care. I specifically look at the language employed by circuit judge Stephen Breyer and the Commonwealth's legal challenge against the district court's order.

Finally, act four briefly summarizes the *Morales Feliciano* cases and orders between 1989 and 2016. I conclude with what the *Morales Feliciano* case was able to accomplish and what it could not, with assessments from various actors in the case like circuit judge Stephen Breyer, plaintiff lawyer Harvey B. Nachman, and associates of *Los Ñetas*. In this conclusion, I disentangle the intentions of prisoners involved in *Morales Feliciano* from the impact of the case to observe the current state of prisons in Puerto Rico.

CHAPTER 1

ACT I: “BARBARIC AND SHOCKING”: OVERCROWDING AND VIOLENCE IN THE PUERTO RICAN PENAL SYSTEM, 1970-1990

“The best administration of justice may be most safely secured by allowing the representation of all classes of the people in courts of justice.”
– Lelia J. Robinson, 1881.¹⁵

To understand the 1979 district court order and subsequent 1989 appellate case, we first must understand what led to the overcrowding of Puerto Rico’s prisons in the 1970s and 1980s and the lineage of the prisoner’s rights movement on the Island. Puerto Rico’s 1952 constitution guaranteed that the state would “regulate its penal institutions in a manner that effectively achieves their purposes and to provide, within the limits of available resources, for adequate treatment of delinquents in order to make possible their moral and social rehabilitation.”¹⁶ What qualified as “adequate treatment” for the “rehabilitation” of the Commonwealth’s prisoners was never explicitly defined in the document, but images taken for *El Mundo* in 1964 reveal that the conditions incarcerated people endured were far from the goals enumerated in the constitution.

Photographed at Corozal prison, located in the central-east region of the Island, the series of images depicted imprisoned men and their makeshift beds. In one of the photographs, three men appear in improvised hammocks to avoid sleeping on the floor (Figure 1).¹⁷ The cell they are in is

¹⁵ Douglas Lamar Jones, “The Legacy of Lelia J. Robinson,” *Massachusetts Legal History: A Journal of the Supreme Judicial Court Historical Society* 6 (2000): 49.

¹⁶ Constitution of the Commonwealth of Puerto Rico, Article VI § 19

¹⁷ Alfredo González, “Hamacas improvisadas por presos de la cárcel de Corozal,” *El Mundo*, (February 3, 1964). See Figure 1.

small; the three hammocks make it difficult to walk without having to bend down or jump over the cloth tied to the walls. The bathroom is open, with no door and therefore no privacy for any of the men. The windows are above eye-level, about six feet from the floor, providing the men little light, air, and views of the outside world. It isn't hard to imagine why the men decided to hang sheets from the walls rather than sleep on the floor, which, along with the surrounding walls, are covered with either mold, dirt, or both, a reflection of the humidity and lack of upkeep by prison officials. In another image, a man lies on the floor on top of cardboard, paper, and cloth (Figure 2).¹⁸ The walls and floor of his cage are also deteriorated.¹⁹ Unlike the other image, the lone man faces the wall, his face hidden from the viewer. In the final picture, a man named by the paper as Angel Torres is pictured with a bed supposedly sent from his home (Figure 3).²⁰ He is shoeless and unlike the other men, he has no possessions pictured beyond the folded bed and mattress. Next to his bed, written on the wall is "Adios es amor."²¹

By 1964, most of Puerto Rico's prisons were well over fifty years old. The Ponce Regional Institution, constructed in 1849, and the Arecibo District Jail, built in approximately 1904, had contributed to the general deterioration of the Island's prisons captured in the *El Mundo* photographs.²² In the 1970s, the Commonwealth's aging prison infrastructure was further strained by the sudden surge in the prison population thanks to a new penal code, passed by the Commonwealth legislature in 1974. Historian Fernando Picó argues that in the 1970s, the Commonwealth's governing elite shifted away from rehabilitation to a tough-on-crime initiative

¹⁸ Alfredo González, "Preso acostado en una cama de cartón, papel y tela en la cárcel de Corozal," *El Mundo*, (February 3, 1964). See Figure 2.

¹⁹ González, "Preso acostado en una cama de cartón, papel y tela en la cárcel de Corozal."

²⁰ Alfredo González, "Recluso muestra la cama que le enviaron a la prisión en Corozal," *El Mundo*, (February 3, 1964). See Figure 3.

²¹ González, "Recluso muestra la cama que le enviaron a la prisión en Corozal."

²² *Morales Feliciano v. Romero Barceló*, 497 F. Supp. 21 (D. Puerto Rico, 1979)

that mimicked policies in the States.²³ The 1974 Penal Code implemented obligatory sentencing and adjusted determinate sentencing, policies that not only increased prisoner populations, but also kept people imprisoned for longer.²⁴ Unlike previous legal interpretations of criminality, which believed people could be morally reformed, the Commonwealth adopted “zero-tolerance strategies – disregarding all structural causes of criminality – against the criminal.”²⁵ This was in part due to a real rise in crime rates on the Island. Beginning in the 1970s, violent crime and property crime dramatically increased, which government officials attributed to drug trafficking.²⁶ From 1970 to 1980, reported incidents of murders increased 15 percent and robberies 129 percent.²⁷ But Puerto Rican lawmakers said little of the systems of repression and economic exploitation that excluded many people in Puerto Rico from legitimate sources of labor and contributed to the expansion of and reliance on public assistance during this period of increased property crimes.²⁸

The tough-on-crime initiatives and economic recession that began in the 1970s also took on a racialized dimension. A 1998 report by the Comisión de Derechos Civiles de Puerto Rico argued that the economic crisis of the 1970s contributed to the “indirect” racialization of crime as police increased surveillance of the Commonwealth’s poor and unemployed, who were largely

²³ Patricio G. Martínez Llompарт, “In the Custody of Violence: Puerto Rico Under La Mano Dura Contra el Crimen, 1993-1996,” *Revista Jurídica UPR* 84, no. 2 (2015): 457.

²⁴ *Morales Feliciano v. Romero Barceló* (1979) See note 32.

²⁵ Martínez Llompарт, “In the Custody of Violence,” 457. For more information about Puerto Rico’s penal codes, see Dora Nevares-Muñiz’s “Recodification of Criminal Law in a Mixed Jurisdiction: The Case of Puerto Rico,” *Electronic Journal of Comparative Law* vol 12, no. 1 (May 2008). <https://www.ejcl.org/121/art121-14.pdf>

²⁶ Alfredo Montalvo-Barbot, “Crime in Puerto Rico: Drug Trafficking, Money Laundering, and the Poor,” *Crime & Delinquency* 43, no. 4 (1997): 535.

²⁷ Montalvo-Barbot, “Crime in Puerto Rico,” 536. See also Puerto Rico Criminal Justice Information System, *Crime in Puerto Rico, Calendar Year 1982* (1984).

²⁸ David Vidal, “Puerto Rico Seeks Way Out,” *New York Times*, October 15, 1975. For more information on the economic crisis of the 1970s and 1980s, see James Dietz’s “Puerto Rico in the 1970s and 1980s: Crisis of the Development Model,” *Journal of Economic Issues* 16, no. 2 (1982): 497-506; For more information on the history of prisons on the Island, see Picó, *El día menos pensado*.

non-white.²⁹ The criminal justice system's association of "criminal" and "blackness" was pervasive on the Island, much like in the States, but the report argued that racial discrimination was concealed in Puerto Rico as seen in the lack of studies of racism in law and arrest records.³⁰ However, the prosecution of "street crimes" over "white collar crime" hints at the racialization of crime on the Island. For example, the report claimed that the overrepresentation of poorer people in arrests and in jail due to cash bail demonstrated how the criminal justice system had indirectly racialized crime in relation to blackness and class.³¹



Figure 1: Three men with their improvised hammocks in Corozal Prison, 1964.

²⁹ Marya Muñoz Vázquez and Idsa E. Alegría Ortega. *Discrimen por razón de raza y los sistemas de seguridad y justicia: informe sobre el discrimen por razón de raza en Puerto Rico*. (San Juan, P.R.: Comisión de Derechos Civiles de Puerto Rico, 1999): 11, 14.

³⁰ Muñoz Vázquez, *Discrimen por Razón de Raza*, 16.

³¹ Muñoz Vázquez, *Discrimen por Razón de Raza*, 13-14. See also Ileana M. Rodríguez-Silva, *Silencing Race: Disentangling Blackness, Colonialism, and National Identities in Puerto Rico*. (New York: Palgrave Macmillan, 2012).

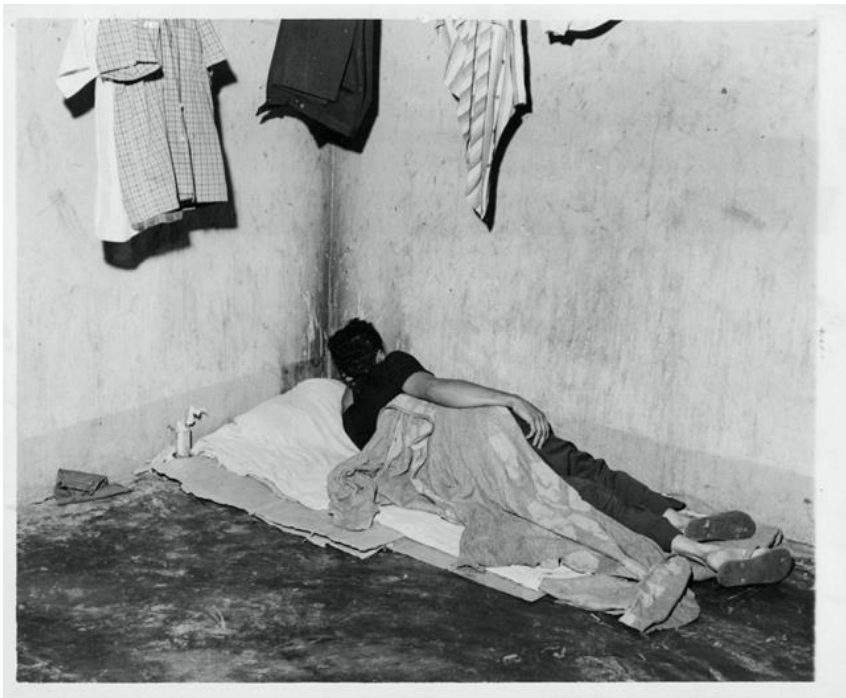


Figure 2: A man lies on a makeshift bed made from cardboard, paper, and sheets.



Figure 3: Angel Torres and his bed from home.

In the same year that the Penal Code of 1974 passed, the already deteriorating conditions of Puerto Rico's prison system led some prisoners to demand remedies from the Commonwealth. The San Juan District Jail, commonly known as *La Princesa*, erupted as prisoners demanded better living conditions for themselves in a strike organized by the imprisoned leader, *La Sombra*.³² Unlike Carlos Morales Feliciano, *La Sombra* (born Carlos Torres Iriarte) did not rely on the court systems to bargain with officials; he instead focused his appeals on those incarcerated with him and throughout the Commonwealth's prison system.³³

Before he came to be known as *La Sombra*, Carlos Torres Iriarte (1945-1981) was a seventeen-year-old who was arrested and sentenced to prison for armed robbery in 1962. He found himself incarcerated with political prisoners from the *nacionalista* movement; those who were targeted, surveilled, and incarcerated by federal and local authorities in the 1940s and 1950s for organizing a movement against US colonialism and for Puerto Rico's liberation.³⁴ The caging of nationalists in the 1930s to 1950s with people like Carlos in the 1960s created an unintended radicalizing space for the birth of the prisoner's rights movement. It was there that Carlos became *La Sombra* and that the movement for prisoner's rights married the movement for independence and a socialist revolution.³⁵ Unlike the political prisoners of the 1950s, *La Sombra* and his fellow inmates, organized under the name *Los Ñeta*, were not arrested for political activities. But the new radical prisoner's rights movement led by *La Sombra* was explicitly political in its beliefs and influence. *La Sombra* argued that all prisoners shared a common oppression that should be met

³² Rene Francisco Poitevin, "Political Surveillance, State Repression, and Class Resistance: The Puerto Rican Experience," *Social Justice* 27, no. 3 (Fall 2000): 96. The San Juan District Jail had served as a district jail for over a century and a half at the time of the strike.

³³ Poitevin, "Political surveillance," 96.

³⁴ Poitevin, "Political surveillance," 96. For more information on *La Sombra* and *Los Ñeta*, see Josué Montijo, *Los Ñeta* (Río Piedras, PR: La Secta de los Perros, 2011).

³⁵ Poitevin, "Political surveillance," 96.

with organized resistance.³⁶ I define *La Sombra* and his leadership of *Los Ñeta* as *radical* because it worked outside the courts and relied on a strategy that focused on the disruption of prison operations.

La Sombra and his organization of his fellow prisoners culminated in a prisoner uprising at *La Princesa*.³⁷ On the night of February 20, 1974, approximately 350 prisoners took the jail and demanded that the Commonwealth remedy the conditions of *La Princesa*.³⁸ The Commonwealth suppressed the uprising and transferred over 100 prisoners involved in the strike to other institutions on the Island and the US, but the uprising was not a total failure.³⁹ Historian Josué Montijo argues that the uprising at *La Princesa* was successful in that prisoners demonstrated their ability to subvert the carceral state and negotiate the terms of their confinement.⁴⁰ The failure of the Commonwealth to ameliorate the conditions protested by *La Sombra* and those at *La Princesa* would come to another head two years later, but this time it would be in court.

Two years after *La Sombra*'s strike, the federal district court investigated *La Princesa* after a class action suit was filed by Roberto Martínez Rodríguez, who represented himself and others incarcerated in the jail.⁴¹ The plaintiffs accused the defendants – Irving Jiménez, serving as the Administrator of Corrections, and Pedro J. Rodríguez Fortier, serving as Warden of the jail at the time of the suit – of violating the rights of those imprisoned and denounced the lack of medical care and of adequate space.⁴² *La Princesa* was notorious on the Island for the violence and death that haunted its walls, deemed by scholar René Francisco Poitevin as the “San Quentin Prison of

³⁶ Josué Montijo, *Los Ñeta* (Río Piedras, PR: La Secta de los Perros, 2011): 72.

³⁷ Montijo, *Los Ñeta*, 72.

³⁸ Montijo, *Los Ñeta*, 73.

³⁹ Montijo, 74-75.

⁴⁰ Montijo, 75.

⁴¹ *Martínez Rodríguez v. Jiménez*, 409 F. Supp 582 (D. Puerto Rico, 1976) (Civ. No. 75-893)

⁴² *Martínez Rodríguez v. Jiménez*, (D. Puerto Rico, 1976)

Puerto Rico.”⁴³ For example, *La Princesa* was so overcrowded that violence and rape were everyday occurrences, in particular against minors, which sometimes led to the death of imprisoned people.⁴⁴ Investigators also found that children as young as fifteen made up approximately 7.5 percent of the incarcerated population, which reached numbers double the jail’s capacity.⁴⁵ According to a defendant witness, Commonwealth-contracted architect Jaime Torres Gaztambide, inmates needed a minimum of ten feet by seven feet of space.⁴⁶ Using Gaztambide’s testimony, the district court argued that prisoners needed seventy-square feet, which meant that *La Princesa*’s maximum capacity was 231 people, a number the jail far surpassed at the time of the investigation.⁴⁷ The overcrowding issue was exacerbated by the lack of beds available for pre-trial detainees and inmates; of the beds provided, most mattresses were in terrible condition or beds had no mattresses at all, and some people had to sleep on the floor.⁴⁸ If an inmate were to get sick on a weekend, they would have to wait until the weekday for medical care, but even then, only one doctor served the entire population, and guards sometimes refused to take inmates to receive medical services.⁴⁹

In 1976, district court Judge Torruella closed *La Princesa* for good, ending its century-and-a-half long state-sponsored torture of imprisoned people.⁵⁰ However, those entrapped in Puerto Rico’s carceral system were simply moved to a new institution – Bayamón Regional Institution, or “the crowning disgrace of the entire penal system in Puerto Rico.”⁵¹ The district court’s failure

⁴³ Poitevin, “Political surveillance,” 96.

⁴⁴ *Martínez Rodríguez v. Jiménez*, (D. Puerto Rico, 1976)

⁴⁵ *Martínez Rodríguez v. Jiménez*, (D. Puerto Rico, 1976)

⁴⁶ *Martínez Rodríguez v. Jiménez*, (D. Puerto Rico, 1976) See Finding 14.

⁴⁷ *Martínez Rodríguez v. Jiménez*, (D. Puerto Rico, 1976) See Finding 14.

⁴⁸ *Martínez Rodríguez v. Jiménez*, (D. Puerto Rico, 1976) See Finding 21.

⁴⁹ *Martínez Rodríguez v. Jiménez*, (D. Puerto Rico, 1976) See Finding 22.

⁵⁰ *Martínez Rodríguez v. Jiménez*, (D. Puerto Rico, 1976) See “Judgement.”

⁵¹ *Morales Feliciano v. Romero Barceló* (D. Puerto Rico, 1979)

to resolve the systemic problems that plagued Puerto Rico's prisons in *Martínez Rodríguez v. Jiménez* set the stage for another class action suit, this time by Morales Feliciano.

CHAPTER 2

ACT II: “DEATH HAUNTS THE PRISONS”: *MORALES FELICIANO V. ROMERO*

BARCELÓ, 1979

It was on the heels of the 1974 *La Princesa* uprising and the 1976 *Martínez Rodríguez* suit that Carlos Morales Feliciano, a prisoner in La Cárcel de Arecibo, wrote a letter addressed to the federal district court and dated November 9, 1978.⁵² What followed was what Judge Juan M. Pérez Giménez called a case that “has grown as rivers grow deeper, wider, and with a crescendo of speed and noise as they approach the oceans.”⁵³ Morales’ letter ignited an investigation that forced the horrors of the Puerto Rican prison system from the shadows into the light.

Unlike the litigation that carries his name, the details of Carlos Morales Feliciano’s life are sparse in the digital archive, although a 1940 census potentially reveals some telling information.⁵⁴ According to this record, Morales was born in 1931 to Francisco Morales Rivera, a cane cutter, and an unnamed mother. Along with his father, Carlos lived with his grandfather, Luis Rivera Rolón, and five siblings between the ages of five to seventeen in Lapa, Salinas, Puerto Rico, a barrio in the southern part of the Island. The census taker described Morales Feliciano and his family as *de color (negro y mixto)*.⁵⁵ Beyond this record, little information exists in the digital

⁵² Carlos E. Ramos González, “El Caso Morales Feliciano y el ataque deliberado de causar sufrimiento,” *Revista Jurídica de la Universidad Interamericana de Puerto Rico* 37, no. 2 (2003): 249.

⁵³ *Morales Feliciano v. Romero Barceló* (D. Puerto Rico, 1979)

⁵⁴ I write “potentially” because I cannot confirm that this census is definitively Morales Feliciano without access to Puerto Rico’s local records, which I cannot do because of flight restrictions due to COVID-19.

⁵⁵ US Census Bureau, Federal Census, 1940. *Ancestry.com*. According the 1940 “Instructions for Enumerators,” race was to be determined by the census taker. See page 7, item 45.

<https://1940censUSarchives.gov/downloads/instructions-to-enumerators.pdf>

archives, although he was supposedly released sometime in the 1990s, before migrating to Florida where he later died.⁵⁶

What information is known for certain about Morales Feliciano are the court cases that bear his name. The various litigations under *Morales Feliciano* named the defendants as the governor at the time of filing, chiefly Carlos Romero Barceló (1979) and Rafael Hernández Colón (1987). All *Morales Feliciano* cases, except the 1989 appellate case, were presided over by district court Judge Juan Manuel Pérez-Giménez, who oversaw the litigation in the US district court for Puerto Rico until 2011, when he recused himself.⁵⁷ The lead lawyer for the plaintiffs was Harvey B. Nachman, and Raúl Juan Escudero from the Department of Justice in Puerto Rico led the defense.⁵⁸

The 1979 class action suit prompted the collection of evidence by the plaintiffs, including 45 witnesses, medical and psychological records, film, and 400 photographs in what would amount to be thousands of pages of evidence.⁵⁹ Lawyers presented the conditions of the Commonwealth's prison system to the district court. As such, the voices of the imprisoned people are hidden in the court order in that they had to relay their experiences to the district court through their lawyers. For example, those imprisoned on the Island communicated their experiences in their testimonies to lawyers and the court-appointed monitors, such as when court witness Dr. Díaz-Royo testified, "... if he [an inmate] was angry he will get angrier. If he was non cognative [sic] or had defective organization, it will be worse at that level if you have something prior to that."⁶⁰ The interactions between prisoners and Dr. Díaz-Royo certainly led to his indictment of prison officials' treatment

⁵⁶ González, "El Caso Morales Feliciano," 249.

⁵⁷ Civil Rights Litigation Clearinghouse, *Case Profile*. University of Michigan Law School, <https://www.clearinghouse.net/detail.php?id=932&search=>

⁵⁸ *Morales Feliciano v. Carlos Romero Barceló* (D. Puerto Rico, 1979)

⁵⁹ *Morales Feliciano v. Romero Barceló* (D. Puerto Rico, 1979) Because I do not have access to these records, I will use the 1979 court decision and newspaper sources to construct the cages that imprisoned people were forced in

⁶⁰ *Morales Feliciano v. Romero Barceló* (D. Puerto Rico, 1979) See Note 14.

of prisoners, especially in terms of how *calabozos* (dungeons or isolation cells) affected the mental health of those in solitary confinement.⁶¹ Incarcerated people both lived and constructed the source material that entered, if mediated, into the court records.

The district court's 1979 opinion and order provide insight into the conditions of Puerto Rico's prisons at the time. For example, the nineteen institutions under the supervision of Puerto Rico's Administration of Correction acted as cemeteries for what is termed by scholars as the "living dead."⁶² The *calabozos* were the graves for those deemed by the state to be mentally ill.⁶³ In Aguadilla, the *calabozos* had no windows, toilets, or sinks. In Ponce, the *calabozos* were approximately three-feet wide and twelve-feet deep where, in these windowless cells, men stood naked, with no drinking water, beds, or visibility.⁶⁴ The stench of the dungeons was that of state-sponsored death and decay. Judge Pérez-Giménez noted in his opinion that "death haunts the prisons."⁶⁵ This statement is most evidenced in the Arecibo prison as an imprisoned person only had to look up at the bars that constituted as the ceiling of their cage.⁶⁶

The digital record available to me concealed the perspectives of the imprisoned people that testified against the state. The court privileged the voices of experts as seen in its decision to use expert testimonies in its opinion, "The court was appalled viewing the motion picture and still photographs. It must be much worse to visit it. The impressions of the witnesses convey, better than can the court," before referring to court witness Dr. Rundle's description of Bayamón prison.⁶⁷ But what of the lived realities of those rendered dead by the state? What is it like to be

⁶¹ *Morales Feliciano v. Romero Barceló* (D. Puerto Rico, 1979) See Finding 7.

⁶² Caleb Smith, "Detention without Subjects: Prisons and the Poetics of Living Death," *Texas Studies in Literature and Language* 50, no. 3 (2008): 245. See also John D. Márquez's article, "Latinos as the 'Living Dead': Raciality, Expendability, and Border Militarization," *Latino Studies* 10, no. 4 (2012): 473-498.

⁶³ *Morales Feliciano v. Romero Barceló* (D. Puerto Rico, 1979) See Finding 4-14.

⁶⁴ *Morales Feliciano v. Romero Barceló* (D. Puerto Rico, 1979) See Finding 22, 24.

⁶⁵ *Morales Feliciano v. Romero Barceló* (D. Puerto Rico, 1979)

⁶⁶ *Morales Feliciano v. Romero Barceló* (D. Puerto Rico, 1979) See Finding 17.

⁶⁷ *Morales Feliciano v. Romero Barceló* (D. Puerto Rico, 1979). Dr. Rundle's first name is not stated.

imprisoned in a cell, with no toilet, or windows, or to only smell rat feces and mold, or to be refused a mattress or proper food? And then to look up, and there above you are cylindrical bars that call to you. They infest your mind with thoughts of escape and you're already dead, you cannot die twice. So, you take one of the few things that belongs to you, your stained and dirty blanket, you make two very tight knots and jump. The cage you were locked in was made for you to die. What of the voices of the dead?

After reviewing scores of evidence brought by the plaintiffs and the defendants, the district court found that the Commonwealth's prison system had failed to adhere to legal code 4 L.P. R.A. 1111 and 1112, which guaranteed its imprisoned population rehabilitative treatment.⁶⁸ The district court further contended that the Commonwealth "blatantly violated" the federal constitution's "interdiction against cruel and unusual punishment."⁶⁹ Judge Pérez Giménez cited overcrowding as "the basic evil" of Puerto Rico's prisons, writing that it contributed to improper sanitation, the spread of disease among the incarcerated population, and deteriorating infrastructure such as in Arecibo, which lacked hot water and had exposed wiring.⁷⁰ He further criticized the Commonwealth's mishandling of its prisoner population, writing, "there is no justification for the cruel and brutalizing conditions and treatment that the penal and pre-trial populations of Puerto Rico's prisons are compelled to endure."⁷¹ He went on to say that "were it not for the fact that all these horrors have been preserved on film and frequently, in the records or lack of records of the several institutions" it would be "incredible to a naïve person who accepted the presumption that legal duties are followed."⁷²

⁶⁸ *Morales Feliciano v. Romero Barceló* 497 F. Supp. 18 (D. Puerto Rico, 1979) See Finding 9.

⁶⁹ *Morales Feliciano v. Romero Barceló* 497 F. Supp. 18 (D. Puerto Rico, 1979) See Finding 9.

⁷⁰ *Morales Feliciano v. Romero Barceló* 497 F. Supp. 18 (D. Puerto Rico, 1979) See Finding 9.

⁷¹ *Morales Feliciano v. Romero Barceló* 497 F. Supp. 18 (D. Puerto Rico, 1979) See Finding 9.

⁷² *Morales Feliciano v. Romero Barceló* (D. Puerto Rico, 1979)

The strategy that prisoners in the *Morales Feliciano* suit relied on was different than that of similar cases in the States and on the Island because the prisoners involved were not political prisoners nor did the suit focus on one institution on the Island. For example, Dan Berger has analyzed mainland Puerto Rican activist groups in the 1970s, which campaigned for the release of five Nationalists convicted in the 1950s for their attack on US authority.⁷³ He argues that this movement “made the prisoners visible as beacons of national independence, tethering the prison to Puerto Rico’s political future.”⁷⁴ During this era, Berger claims that Black and Puerto Rican “prisoner radicalism politicized the prison as a way to make visible a critique of state power through emphasizing its capacities for repression through the police and white supremacy” in the post-Jim Crow era.⁷⁵ This is similar to *La Sombra* and his mobilization of prisoners in Puerto Rico in the mid-1970s. Moreover, unlike the 1976 *Martínez Rodríguez v. Jiménez* suit against the federal prison *La Princesa*, the *Morales Feliciano* case was focused on Island-wide relief for state and federal institutions.⁷⁶

Prisoners in Puerto Rico occupied a precarious position because of their double disenfranchisement. As colonial subjects, explicitly nationalist and racial discourse could be seen as threatening to federal authority and racial discrimination would be difficult to prove in a court of law. Without access to prisoners’ writings, I cannot assume their intent. But the lawsuit highlighted prisoners’ demands that were concerned with remedying their material conditions by arguing that their limited constitutional rights were violated, which in turn recognized that federal courts had the authority to force the Commonwealth to ameliorate prisoners’ complaints.

⁷³ Dan Berger, “‘We Are the Revolutionaries’: Visibility, Protest, and Racial Formation in 1970s Prison Radicalism” (PhD diss., University of Pennsylvania, 2010), 23-24.

⁷⁴ Berger, “‘We Are the Revolutionaries,’” 24.

⁷⁵ Berger, 8.

⁷⁶ *Morales Feliciano v. Romero Barceló* (D. Puerto Rico, 1979) See Note 2.

Consequently, prisoners focused their criticisms on the Commonwealth's inability to fulfill its constitutional obligation to provide prisoners adequate rehabilitative treatment rather than as an indictment against the carceral state in Puerto Rico.⁷⁷

This is most obvious in the requests that prisoners and their lawyers made for emergency relief in 1980 following the original filing in 1979: 1) close the *calabozos* or solitary confinement; 2) to transfer prisoners with mental illnesses to mental hospitals; 3) provide mental health screenings for incoming inmates and pretrial detainees; 4) provide health screenings for all prisoners; 5) reduce inmate population to meet minimum industry standards; 6) provide prisoners with at least seventy square feet of personal living space and five hours outside of their cell every day; 7) provide special diets for those that need it; 8) properly trained staff, facilities, and supplies for health care and sanitation measures; and 9) provide a psychological and psychiatric screening for current prisoners.⁷⁸ The nine requests reflect the prisoners most immediate needs were living space and health care. Unlike efforts in the States to free the Nationalist prisoners, Island-based inmates did not seek freedom but for the Commonwealth to fulfill its role to provide medical care and “rehabilitation and humanitarian treatment” to its prisoners. Likewise, in the district court’s opinion and order for *Morales Feliciano v. Romero Barceló*, Judge Juan M. Pérez Giménez made several comments that reiterated the Commonwealth’s obligation to prisoners, noting that “the statutory obligations imposed upon the executives of the local government are more exacting than the reported decisions on the minimum quality of treatment required by the Eighth Amendment.”⁷⁹ The prisoners’ demands and the district court’s opinion show that prisoners in *Morales Feliciano* relied on a strategy that

⁷⁷ *Morales Feliciano v. Carlos Romero Barceló* (1979)

⁷⁸ *Morales Feliciano v. Carlos Romero Barceló* (1979)

⁷⁹ *Morales Feliciano v. Carlos Romero Barceló* (1979)

needed the validation of both constitutions, facilitated by Puerto Rico's colonial status, to receive proper medical attention and living conditions. In the decade that followed the 1979 order, the Commonwealth's prison system continued to deteriorate. As a result, the prisoners' strategy and the district court's order in *Morales Feliciano* would be tested in the US District Court of Appeals in 1989.

CHAPTER 3

ACT III: “READY TO EXPLODE”: MORALES FELICIANO V. PAROLE BOARD OF THE COMMONWEALTH OF PUERTO RICO, 1989

The district court’s ruling in the 1979 *Morales Feliciano* case did little to alleviate tensions between prisoners and the prison system. Even as the district court implemented reform efforts, the conditions of the prisons had effectively created a state-sanctioned blood sport between prisoners in the 1980s. Overcrowding contributed to the vulnerability of men and women to interpersonal and sexual violence under the Commonwealth’s jurisdiction and contributed to high death rates throughout the Commonwealth’s prisons, such as in 1981 when 44 people were murdered while 257 supposedly escaped across the Island.⁸⁰ Prisoner uprisings also continued into the 1980s, such as in 1981, when 558 people imprisoned in Puerta de Tierra, Guayama, and Vega Alta protested overcrowding and poor health conditions.⁸¹ In an aptly titled *New York Times* article published in 1982, “Puerto Rican Prisons ‘Ready to Explode’ Despite Reform Effort,” the Commonwealth’s prison system gained notoriety as “the worst under the American flag.”⁸²

Governor Carlos Romero Barceló (1977-1985) did little to hold his regime accountable for police corruption and unsafe prison conditions. He commented in 1982, “We are putting more money into the prisons than has ever been allocated in history. We have done a lot. But most of

⁸⁰ Michael Wright, “Ready to Explode,” 4. It is possible that the number of escaped incarcerated people could be inflated by prison officials; Wright adds that “critics say they believe many other inmates are killed and, when their bodies are never recovered, listed as escapees.”

⁸¹ “Around the Nation: Puerto Rico Prison Inmates Strike to Protest Conditions,” in *The New York Times*, (February 10, 1981).

⁸² Wright, “Puerto Rican Prisons ‘Ready to Explode’ Despite Reform Effort,” in *The New York Times*, (November 19, 1982), 2.

what we have done has already been destroyed by the prisoners themselves.”⁸³ Other local authorities placed blame on imprisoned people for the conditions in which they were confined. Puerto Rico’s correctional administrator, Charles Jiménez Nettleship, blamed inadequate staffing of guards and overcrowding for the presence and power of prison gangs.⁸⁴ Harvey Nachman, Morales’s attorney in 1979, cited the government’s indifference for the continued deterioration of prison conditions. Nachman told *The New York Times*, “The lack of rehabilitation has led to more horror and more disintegration of human beings. Without the direct intervention of the court, Commonwealth officials will continue to give prisons their lowest priority.”⁸⁵ Representative José Granados Navedo argued that “Education and health are the top two priorities of the Puerto Rican People. Most people would not sacrifice education or health for prison reform.”⁸⁶ Regardless of who was to blame, it was clear that the ruling in the 1979 *Morales Feliciano v. Romero Barceló* had done little to change the conditions faced by people imprisoned in the Commonwealth’s prison institutions.

By March 1986, the district court had appointed Vincent M. Nathan as the court monitor, or “special master,” to evaluate prison conditions and mediate conversations between the imprisoned population and the local administration.⁸⁷ Later that year in September, both parties agreed that the Commonwealth had to meet the original 1980 order to provide thirty-five square feet for prisoners by the end of that year, and the fifty-five square foot order by the end of 1987. Unsurprisingly, the Commonwealth was unable to build enough additional prisons to hold the exploding prison population that resulted from “Operation Greenback,” a federal and local law

⁸³ “Violence and Death Plague Puerto Rico’s Prisons,” in *The New York Times*, (March 23, 1982).

⁸⁴ “Violence and Death,” (1982).

⁸⁵ “Puerto Rican prisons read to explode,” in the *New York Times*, (1982).

⁸⁶ “Puerto Rican prisons read to explode,” in the *New York Times*, (1982).

⁸⁷ He later wrote a retrospective of the case in, “Have the courts Made a Difference in the Quality of Prison Conditions – What Have We Accomplished to Date,” *Pace Law Review* 24, 2 (Spring 2004).

enforcement effort targeted at drug money laundering operations.⁸⁸ From August 1985 to July 1987, the imprisoned population in Puerto Rico rose from approximately 5,500 to 7000.⁸⁹ Overcrowding became a primary concern for the courts since the original order in 1979 because it could be quantified and assessed, and its amelioration included provisions that required better health care access for inmates and separation of “psychotics” from the main carceral population.⁹⁰

But the Commonwealth could not meet the district court’s order, and continuously asked the court for extensions to which the district court granted some leeway but eventually imposed deadlines and fines that the Commonwealth would appeal. For example, in April 1988, the district court extended the deadline for the fifty-five square foot deadline for one year, to the end of 1988, due to “weather-related construction delays.”⁹¹ That summer, the district court ordered the Ponce District Jail closed, which the Commonwealth opposed since it argued it would not have new facilities opened in time. Finally, in August 1988, the district court increased fines from ten dollars to fifty dollars per inmate over capacity, and an additional ten dollar increase per month starting in September. The district court estimated that in April 1989, there were around 900 inmates in inadequate space conditions.⁹² Puerto Rican officials appealed two of the district court’s orders in the US Court of Appeals: the closing of Ponce Jail and the increased fines.⁹³ The Commonwealth retracted its appeal of the closure of Ponce Jail at the time of the oral argument in 1989 since the jail had been closed in conjunction with the building of several new carceral facilities.⁹⁴

The Commonwealth’s strategy in the 1989 appellate case relied on two assumptions: 1) the government argued that it had “substantially complied” with the district court’s order to

⁸⁸ Poitevin, “Political Surveillance,” 94.

⁸⁹ *Morales Feliciano v. Parole Board of the Commonwealth of Puerto Rico* (1st Cir., 1989)

⁹⁰ *Morales Feliciano v. Romero Barcelo* (1979)

⁹¹ *Morales Feliciano v. Parole Board of the Commonwealth of Puerto Rico* (1st Cir., 1989)

⁹² *Morales Feliciano v. Parole Board of the Commonwealth of Puerto Rico* (1st Cir., 1989)

⁹³ *Morales Feliciano v. Parole Board of the Commonwealth of Puerto Rico* (1st Cir., 1989)

⁹⁴ *Morales Feliciano v. Parole Board of the Commonwealth of Puerto Rico* (1st Cir., 1989)

provide prisoners with a minimum of thirty-five square feet; and 2) it had made “good faith efforts” to comply with the order but that “the court cannot expect it do better.”⁹⁵ On the one hand, the Commonwealth noted that it had increased its spending on prisons but that the growth of the prisoner population was faster than its ability to expand its holdings.⁹⁶ On the other hand, the plaintiffs argued that the district court’s August order was simply an increase in sanctions and not a final judgement or finding of contempt, making the Commonwealth’s appeal invalid.⁹⁷ It is evident through Justice Breyer’s decision that the Court of Appeals believed that the Commonwealth had provided inadequate evidence that it would meet the original order.⁹⁸ He wrote, “‘Good faith’ efforts, however, do not automatically constitute a sufficient legal excuse for failing to carry out the district court’s order,” and he underscored that the Commonwealth “has had considerable time to meet its self-imposed deadlines.”⁹⁹ Justice Breyer’s stern language made clear that the Court of Appeals would not intervene on behalf of the Commonwealth because it failed to provide its prisoners with adequate space and conditions.

The 1989 *Morales Feliciano v. The Parole Board of Puerto Rico* case is significant because the US Appeals Court ruled in favor of the plaintiffs, affirming their right to what the district court had determined to be livable and humane conditions for imprisoned Puerto Ricans. Although Morales may have not intended to act on behalf of the prisoner’s rights movement on the Island, the lawsuit had made visible the suffering all inmates had undergone inside the Commonwealth’s prisons and jails. But the Commonwealth seemed more concerned with the growing fines it owed the district court, like the three million dollars assessed by the district court for overcrowding for

⁹⁵ *Morales Feliciano v. Parole Board of the Commonwealth of Puerto Rico* (1st Cir., 1989)

⁹⁶ *Morales Feliciano v. Parole Board of the Commonwealth of Puerto Rico* (1st Cir., 1989)

⁹⁷ *Morales Feliciano v. Parole Board of the Commonwealth of Puerto Rico* (1st Cir., 1989)

⁹⁸ *Morales Feliciano v. Parole Board of the Commonwealth of Puerto Rico* (1st Cir., 1989)

⁹⁹ *Morales Feliciano v. Parole Board of the Commonwealth of Puerto Rico* (1st Cir., 1989)

just the month of April 1989. The circuit court case also showed how the prisoner's strategy in the 1979 *Morales Feliciano* case was successful in that the federal and local constitutions forced the state to protect prisoners in Puerto Rico.

CHAPTER 4

ACT IV: REFORM AND THE STATE OF PRISONS POST-MORALES FELICIANO, 1990-2020

Following the 1989 circuit court order, the legacy of *Morales Feliciano* is complicated. In 1997, Vincent M. Nathan, the federal court-appointed monitor, released a report on the Commonwealth's prison system. He argued that the Commonwealth's prisons should be put under federal receivership because local authorities had "lost control of prisons" to "gangs."¹⁰⁰ Several years later in 2004, Nathan, asked, "Have the Courts made a difference in the quality of prison conditions?"¹⁰¹ He argued that "the current constitutional floor established for prison and jails conditions by the United States Supreme Court, lower federal courts, and some state courts is a far cry from the slave of the state doctrine the Court of Virginia enunciated in *Ruffin v. Commonwealth*, in 1871."¹⁰² He continued that although the criminal justice system had "not reduced reliance on incarceration as a punitive sanction," judicial intervention had improved conditions for those who caged in the carceral state.¹⁰³ He ended his thoughts on the success of reform by claiming that he believed that "we will overcome the obstacles to continued reform and that prisons one day" will become "lawful, safe, industrious, and hopeful."¹⁰⁴ It's obvious that Nathan believed in prison reform, but he doubted the Commonwealth's officials' political will to

¹⁰⁰ Karl Ross, "Monitor Urges Takeover of Puerto Rican Prisons: Gang Control Corrections System, Official Says," *The Washington Post*, September 7, 1997.

¹⁰¹ Vincent M. Nathan, "Have the Courts Made a Difference in the Quality of Prison Conditions – What Have We Accomplished to Date," *Pace Law Review* 24, no. 2 (2004): 419.

¹⁰² Nathan, "Have the Courts," 421.

¹⁰³ Nathan, 421-423.

¹⁰⁴ Nathan, 426.

govern its own prison system without federal oversight or even the local government officials' political motivation.

In a *Washington Post* article, Trina Rivera de Ríos (described by the author as a spokeswoman for a prison watchdog group), further casted doubt on the Commonwealth's officials' commitment to reform prisons after Nathan's report revealed that politicians had given government money to a "*Ñeta*-sponsored commission" that supposedly acted as a "gang-sponsored death squad."¹⁰⁵ Rivera argued, "They [PR politicians] offered them the moon and the stars in exchange for their political support. We even came across cases in which officials promised to transfer inmates to other facilities, lower their sentences or even get them out on parole in exchange for votes."¹⁰⁶

In 2016, the *Morales Feliciano* case finally came to a close. Governor Alejandro García Padilla filed an executive order to terminate the case, claiming that the Commonwealth had fulfilled its obligations to Puerto Rico's Constitution (Art. II, sec. 1; Art. VI, sec. 19) and it had done so "diligently" by providing prisoners with access to food, health services, security, and recreation.¹⁰⁷ The executive order and subsequent district court decision made frequent references to the horrors of Puerto Rico's prisons in the past, intimating that the condition of its prison system and the treatment of its prisoners were no longer a concern for the administration since the conditions had supposedly been addressed. For example, district judge Paul Barbadoro claimed that "the deplorable prison conditions that gave rise to the court's orders have improved."¹⁰⁸ At the time of the order, the Commonwealth had paid millions of dollars to the district court for the fines it had accrued following the 1979 ruling, but it also had amassed over \$140 million dollars

¹⁰⁵ Ross, "Monitor Urges Takeover of Puerto Rican Prisons."

¹⁰⁶ Ross, "Monitor Urges Takeover of Puerto Rican Prisons."

¹⁰⁷ Boletín Administrativo Núm. (Puerto Rico, 2016) (OE-2016-047): 2.

¹⁰⁸ *Morales Feliciano v. García Padilla* (D. Puerto Rico, 2016) (Civ No. 79-cv-04.)

in contempt fees that it did not pay to the district court.¹⁰⁹ What money the district court did collect from the Commonwealth went to helping the plaintiffs pay for legal fees (\$40 million dollars) and fund healthcare for prisoners, among other items the district court deemed beneficial.¹¹⁰ In May 2015, those imprisoned between 1980 and 2000 reached a private settlement with the state, receiving lower-cost health services and educational opportunities but no individual monetary relief.¹¹¹ Overall, the district court and local officials agreed that judicial oversight (and therefore the continuation of the *Morales Feliciano* suit) was no longer necessary as the Commonwealth had fulfilled its “contractual, and constitutional, obligation to improve prison conditions” at the time of the order in 2016.¹¹²

What did the *Morales Feliciano* do? First, the Commonwealth could not hide its treatment of its imprisoned population from outside viewers. Second, it resulted in improvements to the system such as the creation of the non-profit Correctional Health Services Corporation to monitor and improve healthcare for prisoners.¹¹³ But, private prisons have created (though not new) another issue for the Island’s prisoner’s rights movement and has complicated the legacy of the *Morales Feliciano* case.

The *Morales Feliciano* suit was filed by Morales because he wanted to ameliorate the conditions of his imprisonment. The impact of the case, however, has had larger implications. In September 2017, Hurricane Maria “pounded the concrete walls and rusted iron gates of the Bayamón correctional complex” and other prisons on the Island.¹¹⁴ Joseph Villalobos told a reporter that, “We [prisoners] went without running water for weeks without electricity for

¹⁰⁹ *Morales Feliciano v. García Padilla* (D. Puerto Rico, 2016)

¹¹⁰ *Morales Feliciano v. García Padilla* (D. Puerto Rico, 2016)

¹¹¹ *Morales Feliciano v. García Padilla* (D. Puerto Rico, 2016)

¹¹² *Morales Feliciano v. García Padilla* (D. Puerto Rico, 2016)

¹¹³ *Morales Feliciano v. García Padilla* (D. Puerto Rico, 2016)

¹¹⁴ Oliver Laughland, “This is human trafficking’: After Maria, Puerto Rico to Move 3,200 inmates to Arizona,” *The Guardian*, August 7, 2018.

weeks.”¹¹⁵ Following the hurricane, the federal financial oversight board, *La Junta* (as locals on the Island refer to it), released policies aimed at reducing the Island’s debt that included the shipment of 3,200 prisoners to private facilities in the US.¹¹⁶ William Ramírez, an executive director of the Puerto Rico American Civil Liberties Union responded to the policy by claiming that “this is government sponsored human trafficking.”¹¹⁷ This is not the first time the Commonwealth’s government had shipped off prisoners to the US to private prisons.¹¹⁸ As Puerto Rico’s debt crisis worsens, even as prison populations decrease, local officials have failed to systemically address the conditions outlined by Morales in 1979.¹¹⁹

The colonial relationship between Puerto Rico and the US that helped prisoners in *Morales Feliciano* in 1979 has inspired an alternate space for local officials to ship Puerto Rico’s prisoners to private prisons in the US in the twenty-first century. As Puerto Rico enters its second century of colonization by the US, it is clear that prisons and colonialism are entangled on the Island, exemplified by the continuance of conditions faced by prisoners on the Island that include overcrowding, violence, and the continuing deterioration of the buildings that entrap them.

Figure 4: Prisoners in Bayamón correctional Complex, 2018.¹²⁰



¹¹⁵ Laughland, “This is human trafficking.”

¹¹⁶ Laughland, “This is human trafficking.”

¹¹⁷ Laughland, “This is human trafficking.”

¹¹⁸ In 1993, local officials sent 500 prisoners to a private prison in Minnesota. Inmates rioted after conditions were found to be insufficient to them, and they were eventually sent back by officials to Puerto Rico. In 2012, the Commonwealth tried to send 480 prisoners to Oklahoma. Again, prisoners revolted, and the program was ended three months later. See Oliver Laughland, “‘This is human trafficking’: After Maria, Puerto Rico to Move 3,200 inmates to Arizona,” *The Guardian*, August 7, 2018.

¹¹⁹ World Prison Brief, “Puerto Rico (USA), Institute for Crime and Justice Policy Research.

<https://www.prisonstudies.org/country/puerto-rico-usa>

¹²⁰ Laughland, “This is human trafficking.”

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