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## The Jones Act: Legislative Enforcement of Puerto Rico's Dependence on the Mainland United States

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# The Jones Act: Legislative Enforcement of Puerto Rico's Dependence on the Mainland United States

Updated: Nov 3, 2022

In September of 2022, Hurricane Fiona struck Puerto Rico. There was widespread flooding and power outages that left thousands of Puerto Ricans without power.[1] Some areas received more than two feet of rain, which caused mudslides and destroyed homes.[2] These effects were exacerbated because Puerto Rico was still recovering from the effects that Hurricane Maria caused just five years earlier.[3] About a week after the storm, Peerless Oil and Chemicals, a petroleum distributor, requested that one of its carriers determine if there was a ship near Puerto Rico that could transport oil to the island.[4] Oil was needed to power generators and various facilities in Puerto Rico.[5]

On September 25, 2022, a ship with 300,000 barrels of diesel fuel from Texas was scheduled to arrive on the southern coast of Puerto Rico.[6] However, the ship was unable to dock because it was illegal for Puerto Rico to unload the ships' cargo since, like 99% of the world's 54,000 ships, the ship did not meet the requirements mandated by the Jones Act.[7] The Jones Act, also referred to as the Merchant Marine Act of [8] 1920, requires that, "waterborne cargo between U.S. points must be carried by ships that are primarily built, owned and crewed by Americans." [9] It must specifically be, "at least 75 percent U.S.-owned and -crewed," and "assembled entirely in the United States with hulls and superstructures whose major components are domestically made." [10] In 2022, only ninety-three vessels met these requirements.[11] The Act was passed as a way to "ensure adequate domestic shipbuilding capacity and a ready supply of merchant mariners to be available in times of war or other national emergencies." [12]

Consequently, on September 26, 2022, Pedro Pierluisi, Puerto Rico's governor, called on Alejandro Mayorkas, the Secretary of the Department of Homeland Security, to issue a Jones Act waiver, which would allow Puerto Rico to unload the ships' cargo.[13] During Hurricane Maria, the Trump administration issued a waiver. [14] However, since then, Congress created an additional requirement." [15] On January 1, 2021, Congress changed the law so that the Secretary of Defense could, "waive compliance with those laws to the extent the Secretary considers necessary in the interest of national defense to address an immediate adverse effect on military operations." [16] Despite this heightened requirement, The Department of Homeland Security issued Puerto Rico a Jones Act Waiver on September 28, 2022. While advantageous, a temporary waiver is insufficient

because, as in this instance, adherence to the Jones Act delayed the distribution of direly needed oil in Puerto Rico.[17]

Puerto Rico should be granted a permanent exception to the Jones Act because in addition to expediting emergency responses when Puerto Rico is in crisis, it would also benefit its economy. The Jones Act persistently contributes to the desperate financial crisis in Puerto Rico. Puerto Rico is unduly dependent on waterborne transportation and the Jones Act further isolates the island by restricting the types of vessels that can transport its goods.[18] This has resulted in “import costs at least twice as high as in neighboring islands.”[19] More so, an analysis conducted by John Dunham and Associates, a law firm, found that:

The Jones Act raises the price of shipping cargo to Puerto Rico by \$568.9 million and that prices are \$1.1 billion higher than would be the case without the Jones Act. This, in turn, is estimated to mean 13,250 fewer jobs. Were they to exist, such jobs would mean \$337.3 million more in wages and over \$1.5 billion in increased economic activity. Tax revenue would be \$106.4 million higher without the Jones Act.[20]

With that said, Puerto Rico, and similarly situated neighbors like Alaska, Hawaii, Puerto Rico, and Guam should be granted a permanent exception from the Jones Act. This exemption is merely a single example of how the mainland United States ought to rectify its exploitation of Puerto Rico and combat the continual migration from the island.[21]

[1] Oliva Olander, *DHS Waives Jones Act for Puerto Rico to Supply Fuel After Hurricane* (Sept. 28, 2022, 8:44 PM), POLITICO, <https://www.politico.com/news/2022/09/28/waiver-puerto-rico-energy-diesel-concerns-00059372>.

[2] Lin-Manuel Miranda and Luis A. Miranda Jr., *Lin-Manuel and Luis Miranda: How to get Puerto Rico help now*, (Sept. 20, 2022, 2:35 PM), THE WASHINGTON POST, <https://www.washingtonpost.com/opinions/2022/09/20/lin-manuel-luis-miranda-puerto-rico-hurricane-help/>.

[3] *Id.*  
[4] *The Jones Act Strands Hurricane Aid in Puerto Rico*, (Sept. 27, 2022, 7:23 PM), WALL STREET JOURNAL, <https://www.wsj.com/articles/the-jones-act-strands-hurricane-aid-ship-puerto-rico-pedro-pierluisi-alejandro-mayorkas-11664316612>.

[5] Lin-Manuel Miranda and Luis A. Miranda Jr., *supra* note 1.

[6] David Begnaud, Emily Mae Czachor (Sept. 26, 2022, 3:21 PM), *Puerto Rico Governor Calls on U.S. to Allow Ship Carrying Vital Diesel Fuel to Dock at Hurricane-Ravaged Island*, CBS NEWS, <https://www.cbsnews.com/news/puerto-rico-us-fuel-shipment-jones-act-waiver/>.

[7] Colin Grabow, *The Jones Act's Harm in Real-Time*, CATO INSTITUTE, (Sept. 26, 2022, 12:53 PM), <https://www.cato.org/blog/jones-acts-harm-real-time>.

[9] *The Jones Act Strands Hurricane Aid in Puerto Rico*, *supra* note 5.

[10] *Puerto Rico's Membership in the U.S. Should Come with Free Shipping*, THE WASHINGTON POST, (Sept. 26, 2022 at 1:23 PM), <https://www.washingtonpost.com/opinions/2022/09/26/puerto-rico-hurricane-fiona-jones-act/>.

[11] *Id.*

[12] Colin Grabow, Inu Manak, Daniel J. Ikenson, *The Jones Act: A Burden America Can No Longer Bear*, CATO INSTITUTE, (June 28, 2019), <https://www.cato.org/publications/policy-analysis/jones-act-burden-america-can-no-longer-bear#introduction>.

[13] Gobernador Pierluisi, (@GovPierluisi), Twitter, (Sept. 26, 2022, 10:30 AM), <https://twitter.com/GovPierluisi/status/1574406023972265987>.

[14] *The Jones Act Strands Hurricane Aid in Puerto Rico*, *supra* note 4.

[15] *Id.*

[16] Waiver of navigation and vessel-inspection laws, 46 U.S.C.A. § 501 (2021).

[17] *See* David Begnaud, Emily Mae Czachor (Sept. 26, 2022, 3:21 PM), *Puerto Rico Governor Calls on U.S. to Allow Ship Carrying Vital Diesel Fuel to Dock at Hurricane-Ravaged Island*, CBS NEWS, <https://www.cbsnews.com/news/puerto-rico-us-fuel-shipment-jones-act-waiver/>; *See also* Colin Grabow, Inu Manak, Daniel J. Ikenson, *supra* note 12.

[18] Colin Grabow, Inu Manak, Daniel J. Ikenson, *supra* note 12.

[19] Anne O. Krueger, Ranjit Teja, Andrew Wolfe, *Puerto Rico-A Way Forward*, (June 29, 2015), <http://www.gdb-pur.com/documents/PuertoRicoAWayForward.pdf>.

[20] Colin Grabow, *New Reports Detail the Jones Act's Cost to Puerto Rico*, CATO INSTITUTE, (Feb. 25, 2019, 9:31AM), <https://www.cato.org/blog/new-reports-detail-jones-acts-cost-puerto-rico>.

[21] Lin-Manuel Miranda and Luis A. Miranda Jr., *supra* note 1.