

**No. 20-303**

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IN THE UNITED STATES SUPREME COURT

UNITED STATES,

Petitioner

v.

JOSE LUIS VAELLO-MADERO,

Respondent

ON PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FIRST CIRCUIT

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**ATTORNEY GREGORIO IGARTUA AMICUS  
BRIEF IN SUPPORT OF RESPONDENT AND  
FOR AFFIRMANCE OF THE JUDGMENT  
ENTERED BY THE APPEALS COURT FIRST  
CIRCUIT**

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## **ISSUE**

Whether Congress violated the equal-protection component of the due process clause of the Fifth Amendment by establishing Supplemental Security Income — a program that provides benefits to needy aged, blind and disabled individuals — in the 50 states and the District of Columbia, and in the Northern Mariana Islands pursuant to a negotiated covenant, but not extending it to Puerto Rico.



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PETITION FOR A WRIT OF CERTIORARI TO THE  
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**ATTORNEY GREGORIO IGARTUA AMICUS**  
**BRIEF**

## II. STATEMENT OF IDENTITY AND INTEREST OF AMICUS CURIAE

1. This case involves an action by the United States of America against Jose L. Vaello Madero, which is considered by Petitioner, for purposes of this complaint, as resident of Puerto Rico. After 120 years Petitioner continues to treat Puerto Rico's American citizens as if still residents of a non-incorporated US Territory. In opposition, Amicus Brief Supports that Puerto Rico is an Incorporated Territory of the United States, as established in *Consejo de Salud de Playa de Ponce v Rullan* 586 FS 2<sup>nd</sup> 22 (2008), and as supported henceforth by other authorities.

Petitioner's stance in this civil action constitutes a discriminatory practice that affects the legal rights of Respondent and of the 3.4 American Citizens residents of Puerto Rico, which has serious social, economic, political, and legal consequences for them. Specifically, the U.S. pretends to exclude under the veil of the territorial clause, Mr. Vaello, and all

the American citizens residents of Puerto Rico, of the Supplementary Social Security Income Program. (*U.S. v. Vaello 19-1390, U.S. Court of Appeals 1st Cir, April 2020*) From a reading of Petitioner's Brief as a whole, it is evident that the pleadings and discriminatory assertions are premised on the assumption that Puerto Rico is a non-incorporated territory. Consequently, the incorporation issue is at the heart of the instant case and, thus, must be properly disposed of by this Honorable Court. The American Citizens residents of Puerto Rico have a substantial interest in the resolution of this issue.

2. The undersigned attorney, Gregorio Igartua, an American Citizen resident of Aguadilla, Puerto Rico, respectfully requests permission to appear in the instant case and file a Brief as Amicus Curiae in this Supreme Court.

Subscribing Attorney appearance will particularly be in support of Puerto Rico's legal status as an incorporated territory of the United States,

and in support of the judgment of the Appeals' First Circuit Court Opinion. It is only within that legal context that Respondent, and all others American citizens residents of Puerto Rico similarly situated can be treated as equally and fairly as their counterparts residing in the states and in consideration of what they are, American citizens by birth, not as what they might be hypothetically .

Subscribing Attorney has been litigating in the Federal Courts ad honorem for incorporation and seeking equal rights for the American citizens of Puerto Rico for over thirty years.

### **III. STATEMENT ON AUTHORSHIP OF THE *AMICUS BRIEF***

This brief is authored entirely by the undersigned attorney for Respondent. No person or entity has contributed any money intended to fund preparing or submitting this brief. All attorneys to this case were notified of the intent of filing this Amicus Brief.

## IV. ARGUMENT

### INTRODUCTION

1) Vaello Madero contends he is not required to return the payments he received in Social Security Income (“SSI”) disability benefits upon changing his domicile to Puerto Rico, since excluding a United States citizens residing in the territory from receiving the same runs afoul of the equal protection guarantees of the Due Process Clause. (U.S. Const. Amends. V and XIV).

In turn, the United States posits that limiting SSI eligibility to residents of the fifty states and the District of Columbia is constitutionally permissible.

For these purposes the American citizens of Puerto Rico have been ignored as being part of the American Family with the implication of still being considered as if they are an alien race, racist policy and approach. (See: *Downes v. Bidwell*, 182 U.S. 244).

Should a Federal Court in 2020 dispose of a case affecting American Citizens under such discriminatory premises? Can such discriminatory treatment continue to be applied to all future judicial dispositions concerning the American Citizens residents of Puerto Rico? Can Federal Courts make judicial dispositions with superior applicability than Congressional dispositions under U.S. Constitution Art. IV- Section 2-3?

2) **PETITIONERS VEIL OF SUPPORT –  
HARRIS V ROSARIO**

The cases classifying Puerto Rico as a non-incorporated territory have been used in the past century by the Federal Courts to discriminatorily switch -“on and off” - the U.S. Constitution in controversies arising in relation to Puerto Rico to be like a state, blatantly ignoring congressional policies that have gradually incorporated Puerto Rico.



Petitioner relies heavily in the Brief in the case of *HARRIS V. ROSARIO* (446 US 651, 1980), a judicial opinion wrongly decided under the veil of the Insular Cases doctrine affecting Puerto Rico adversely.

In Harris, the Court held that there was a rational basis for the statutory classification similar to that of this case since:

- 1) Puerto Rico's residents do not contribute to the Federal Treasury. (Incorrect. See IRC 933 and IRS Tax Highlights 2018).
- 2) The cost of treating Puerto Rico as a state for purposes of AFDC assistance would be high. (Incorrect and discriminatory).
- 3) Granting greater AFDC benefits could disrupt the Puerto Rican economy. (Discriminatory-Paraphrasing Justice Thurgood Marshall's dissent,..."those programs designed to help those who need them the most should not be extended to Puerto Rico's poor out of concern that if extended they would disrupt the local economy...")

From a reading of the case above one can conclude that the Petitioner decided to conveniently relied under *Harris*, to propose Puerto Rico as a non- incorporated territory, ignoring the assimilation process of Puerto Rico to be like a state since 1900, moreover to 2019. Petitioner in this case supports discriminatorily the position that ...“clear and binding precedent holds that Congress may place restrictions on the eligibility of persons residing in United States territories to receive economic and social welfare benefits as long as it possesses a rational basis to enact such restrictions. (*Harris v. Rosario*, 446 U.S. 651 (1980). The First Circuit have firmly established that, under the Territory Clause, Congress can legislate for Puerto Rico differently from states in the area of economic benefits “so long as there is a rational basis for its actions.” Moreover, that ...“the cost of including Puerto Rico” in the SSI program “would be extremely great.”

In Petitioner's view this additional cost constitutes a reasoned justification for limiting benefits eligibility to residents of the fifty States and the District of Columbia.

The Harris case was decided on wrong premises. It is incorrect to say (as in Harris) that the American residents of Puerto Rico do not contribute to the Federal Treasury, they do. Today the American citizens residents of Puerto Rico pay more than three billion dollars annually to the U.S. Treasury in taxes from different sources, as required by the Federal Income Tax Law, but with a discriminatory applicability to Puerto Rico by unequal transfer of payments in Federal Funds. (2019 IRS Highlights). An unequal transfer of payments that has led Puerto Rico to bankruptcy including by the discriminatory persistence by the Courts of not recognizing Puerto Rico as an incorporated territory even though it is the most assimilated territory to be like a state than any other territory before becoming a state, including

those under the Northwest Ordinance of 1787. There cannot be any rational basis for Congress to discriminate against a class of citizens, the 3.4 million American citizens who live in Puerto Rico. To treat any American citizen, including Respondent Mr. Vaello differently on a basis other than on individual merit fulfills the dictionary definition of discrimination, especially taking into consideration the fact that the Equal Protection Under the Laws and Due Process clause of the U.S. Constitution applies in Puerto Rico. (U.S. Const. Amends. V and XIV.) (*U.S. v. P.R. Police Dept.* 922 FS 2nd. 185 (2013)).

In 2019 the residents of Puerto Rico contributed more than three billion dollars to the U.S. Treasury, (more than some states) contributed more to the U.S. Treasury in Social Security (FICA) taxes than Employers and Employees in more than 15 states, and contributed more to the U.S. Treasury in Unemployment Insurance taxes than the residents of

15 states. (IRS 2019 Highlights). Hundreds of billions of dollars in income exempted from tax were received by U.S. corporations doing business in Puerto Rico from 1921 to 2006, under IRC 931 and then 936, at the expense of qualifying it as a non-incorporated territory conveniently, without any regard to keep in detente their civil rights (voting rights) of its American Citizens, by holding Puerto Rico as a non-incorporated territory and in violation of US Const. Amendment V and XIV and XV. Therefore, the argument of no taxes paid recognized under Harris by the Court was and is incorrect, it does not exist. Petitioner cannot use Harris to draw a line in federal tax matters to discriminate against Mr. Vaello, or against the American citizens of Puerto Rico.

Yet, not only do Puerto Ricans contribute to the general treasury, but also Puerto Rican patriots have paid the ultimate price for their country -- the United States of America -- since its founding. Puerto Ricans aided the Continental Army during the Revolutionary

War and, since Puerto Rico's cession from Spain, fought in the United States military "in every major United States military engagement from World War I onward, with the soldiers of Puerto Rico's 65th Infantry Regiment distinguishing themselves in combat during the Korean War." (Shannon Collins, Puerto Ricans Represented Throughout U.S. Military History, United States Department of Defense (Oct. 14, 2016), For these purposes, Congress, nor Petitioner, does not makes distinctions for applicability of social funding to Puerto Ricans are American citizens. (See Jones Act, Pub. L. No. 64-368, § 5, 39 Stat. 951, 953 (1917), current version codified at 48 U.S.C. § 733a.) Moreover Puerto Rico is the only territory which has its own constitution, like state do, and more than the minimum population to vote for electors (5) and for US Representatives (5).

The attempt by Petitioner in this case, in the year 2020, to continue to justify a different treatment for Mr. Vaello, Respondent, and for the other American citizens of Puerto Rico violate the US Constitutional

provision of equal rights (Amend. V and Amend XIV). The broad power granted under the Territorial Clause does not allow Congress to eradicate the sacrosanct fundamental constitutional protections afforded to United States citizens residing in the States and in Puerto Rico.

Consider that not a single one of the Congressional Committee members adopting the discriminatory policy can identify a rational basis to support a differential treatment in federal aid programs to Puerto Rico. To treat a class of citizens, that is, the 3.4 million American citizens by birth residing in Puerto Rico, on a basis other than their individual merit fulfills the definition of discrimination. (See, *P. Alston, UN Report on Extreme Poverty Blames Puerto Rico's Political Status, U. N. Human Rights Commission June 7, 2018*). Moreover, neither can the Federal Agencies in the Executive Branch identify a rational basis to support a differential treatment in adopting and/or implementing federal policies for

Puerto Rico. Ironically, consider that even a member of Congress, Congresswoman Nydia Velazquez, filed an Amicus Curiae for then Appellee for this issue.

Petitioner has failed to demonstrate that it was wholly rational for Congress to conclude that an additional influx of federal SSI payments might disrupt Puerto Rico's economy. Even the Supreme Court never explained what it meant -- either in Califano or Harris -- when it reasoned that extending benefits programs might "disrupt" the Puerto Rican economy. The Court must be able to locate some economic theory explaining how extending these benefits would disrupt Puerto Rico's economy to rely on such premise.

Moreover, the statute at issue here differentiates on the basis of residence, and along lines of race or national origin. The Petitioner says ...it was rational for Congress to draw the line for eligibility for SSI benefits in the way that it did. (*See Beach Commc'ns*, 508 U.S. at 316, explaining that it is an "unavoidable



component[] of most economic or social legislation” for “Congress . . . to draw the line somewhere,” and that “[t]his necessity renders the precise coordinates of the resulting legislative judgment virtually unreviewable”). Notwithstanding, there is no rational basis in this case to draw a line that rationally justifies the discriminatory practice, as there is no line drawn for military and national defense policies applicable to the American citizens of Puerto Rico, or to pay the federal taxes from Puerto Rico.

## **V. FINAL COMMENTS**

### **1. IN GENERAL**

As it has been shown, for the Federal Courts to continue considering the Insular Cases, and or *Harris v Rosario*, as the legal basis and precedent for their decisions in the 21<sup>st</sup> Century is legally unfounded and incorrect. The practice of treating Puerto Rico as a non- incorporated territory where some constitutional dispositions do not apply, and as an incorporated territory for others where it

applies must end. The uncertainty of whether the U.S. Constitution applies leads to a capricious, unequal, and discriminatory treatment by each of the three Branches of the Federal Government against the dispositions of the equal protection clause (US Const. Amend. XIV) to its own American Citizens, to Mr. Vaello, Respondent, and to all those residing in Puerto Rico. (3.4 million 4th, 5th and 6th generation American Citizens by birth). (See e.g., *Hon. Judge J. Torruella, Igartua v U.S.*, 229 F3d 80, 85 (1<sup>st</sup> Cir. 2000); *Hon. Judge J. Torruella. The Doctrine of Separate and Unequal 1980*; *GA Gelpí, The Constitutional Evolution of Puerto Rico and other U.S. Territories (1898 – Present, 2017)*; *G. Igartua, Letter Requesting Treatment of Puerto Rico As An Incorporated Territory - Hon. Colin L. Powell, Sec. Dept. of State, Oct. 1, 2003*). Treating Puerto Rico as an unincorporated territory has the effect of provoking a legal, political, economic, and unfair government practice with its negative consequences. (See, *G. Igartua, Muñoz El Americano, Chapter 8, 3rd edition*

2015). (See: also, *G. Igartua, The de facto Incorporated Territory of the US, 2019*). See: *Peña et al v Azar et al, CA # 3:18 01206 WGY; Aurelius Investment, 915 F3d 838*.

The Court need not revoke the Insular cases, rather evaluate the criteria that can be identified in the opinions of the Insular cases, or in the Harris case, denoting elements of incorporation that justify treatment that supports Respondent's claim.

Elements which evidences treatment of incorporation by Congress over the years is superior to judicial qualification by the Courts of non-incorporation status given Art IV- Sec 3 of the U.S. Constitution, which delegates the power to regulate territory to Congress, not to the Courts (Art. IV). Within this context consider under *Downes*; (id) the American citizens residents of Puerto Rico are part of the American Family, and as such residents of an incorporated territory; or under *Harris* that these pay billions in federal taxes.

As can be shown, within this context the territory of Puerto Rico have been incorporated gradually by official acts of Congress.

**- OTHER SUPPORT FOR THE  
INCORPORATION STATUS OF  
PUERTO RICO**  
**a) INTERNATIONAL LAWYERS  
AND ACADEMIC INSTITUTIONS**

Incorporation status of the Territory of P.R. has long been recognized by international lawyers, and/or academic institutions, and as follows:

- The Reinstatement of The Law, Vol.1 -  
The Foreign Relations Laws of the United  
States, 1990, at page 121 states:

.... Gradually, the status of those territories and the rules pertaining to them were changed by statute, so that “for nationality purposes the distinction between incorporated‘ and‘ unincorporated territories are n o longer significant”. Gordon and Rosenfeld, Immigration Law and Procedure § 12.7 (1980 rev.).

These changes included the grant of independence to the Philippines (1946) and the conferral of citizenship on persons born in Puerto Rico (1917, amended in 1934, 1940...)

The Allard K Lowenstein Int'l Humans Rights Clinic of Yale University Law School, submitted in December 21, 2001 a "Brief of Amicus Curiae" in the case of *Ballentine v. U.S.*, District Court of the Virgin Islands, Civil No. 1999130. Although the case involves mainly issues of political questions, in the Brief the lawyers refer to the Insular Cases as "no longer good law" and ones that were based on notions of racial inferiority of the inhabitants of the territories (in this case Puerto Rico) and their inability to adopt to Anglo-Saxon legal traditions.

Also, the United States is signatory to various Treaties, and/or International Agreements, in which one can find support of the incorporation status of Puerto Rico for equal treatment of transfer of funds as to states. Consider the following:

- Treaty Covenant of Civil and Political Rights
- 999 UNTS 171 (Art. 2, 25 and 26)
- Declaration on the Rights of Individuals -  
Article 9
- UN Human Rights Declaration Article 21
- Democratic Charter of the Organization of  
American States -Article 3
- (OAS Doc OEZ/SerP/AG/Res/2001)
- OAS American Declaration of Rights and -  
Duties of Man Article XX
- OAS Treaty (21 UST 607; TIAS 6847)

Pertinent Cases:

--- *Consejo de Salud Playa de Ponce v Rullán* — 593 FS 2<sup>nd</sup> 386 (DCPR 2008). Hon. Judge Gustavo Gelpí holding that Puerto Rico is an incorporated territory of the United States:

“...The court, rather today holds that in the particular case of Puerto Rico, a monumental constitutional evolution based on continued and repeated congressional annexation has taken place. Given the same, the territory

has evolved from an unincorporated to an incorporated one. Congress today, thus, must afford Puerto Rico and the 4,000,000 United States citizens residing therein all constitutional guarantees. **To hold otherwise, would amount to the court blindfolding itself to continue permitting Congress *per omnia saecula saeculorum* to switch on and off the Constitution....”**

---*U.S. v. Puerto Rico Police Dept.* 922 F Supp. 2nd 185, (2013).

In said case the U.S. Dept. of Justice filed Complaint at ensuring that the U.S. Constitution applies in Puerto Rico to all American Citizens, and even to illegal aliens. There the U.S. Department of Justice argued as follows:

**--Pleading # 7:** This action is brought to enforce the First, Fourth, and Fourteenth Amendments to the United States Constitution, and the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141.

The case was settled by mutual agreement and the Government of Puerto Rico was forced to pay a penalty of \$100 million over a 10 year period to ensure that the P.R. Police Department would guarantee the security of the American citizens in Puerto Rico under the First, Fourth and Fourteenth amendments to the U.S. Constitution. ---*U.S. v. Mercado Flores (109 FS 3d , 467 (2015) (GAG, DPR)*.

“... Puerto Rico is no longer a mere unincorporated territory of the United States...”

“...Puerto Rico is a U.S. Territory which is between being incorporated and being a state, it is a commonwealth....”

--- *Wal-Mart v. Puerto Rico - (No. 16-1370, 16 1406) - (2016)*

The First Circuit Court of Appeals declared illegal a Puerto Rico Government tax on Wal-Mart because it:

1. Violated the Dormant Clause of the U.S. Constitution, Art. I.



2. Violated the Equal protection Clause,  
Amendment XIV.

Moreover, every year hundreds of cases originating in Puerto Rico are judicially disposed of by federal courts supporting their decisions on the applicability of the U.S. Constitution to Puerto Rico. Consider, for example, the following FEDERAL JUDICIAL OPINIONS OF CONSTITUTIONAL APPLICABILITY TO PUERTO RICO:

- *U.S. Const. Amendment 1. Balzac v. People of Puerto Rico, 258 U.S. 298, 314 (1922), implies that the First Amendment applies to Puerto Rico.*
- *U.S. Const. Art. 1 Sect. 10. Buscaglia v. Ballester, 162 F 2d 805 (1st Cir. 1947), cert. denied. 336 U.S. 816 (1947).*
- *U.S. Const. Amendment XIV. Examining Board v. Flores de Otero, 426 U.S. 572,599-601 (1976).*
- *U.S. Const. Amendment 4. Torres v. Puerto Rico, 442 U.S. 465 (1979).*
- *U.S. Const. Amendment 8. Feliciano v. Barceló, 497 F. Supp. 14, 33 (D.P.R. 1979)*

- *Art.1 Sect. 8.c. Sea-Land Services. Inc. v. Municipality of San Juan, 505 F. (Supp. 533) (D.P.R. 1980).*
- *U.S. Const. Amendment XI. Ezratty v. Puerto Rico, 648 F 2d 770 , (1981) - The principles of the Eleventh Amendment which protect a state from suit without its consent, are fully applicable to the Commonwealth of Puerto Rico.*
- *U.S. Const. Amendment II. Fernández v. Chardón, 681 F. 2d 42 ( 1 st Cir.1982).*
- *U.S. Const. Amendment XIV Rodríguez v. Popular Democratic Party, 457 U.S. 1. 7-8 (1982).*
- *Art. IV U.S. Const. Sect. 1. Americana of Puerto Rico v. Kaplus, 368 F. 2d 431 (3d Cir. 1966). See also 28 U. S.C. 1738 (1988).*
- *¬ Dormant Clause applies in Puerto Rico, Trailer Marine Transport v. Rivera 977 F2d 1st Cir. (1992) (U.S. Const. Art. 1 Section 8). (See also in comparison: South Dakota v. Wayfair, Inc., U.S. Supreme Court #17-494, 2017, 585 U.S. 2018- Holding States may charge tax on purchases made from out of state sellers – Dormant Clause applies).*

It is the Government's role to protect the fundamental rights of all United States citizens. Fundamental rights are the same in the States as in the Territories, without distinction. Equal Protection and Due Process are fundamental rights afforded to every United States citizen, including those who under the United States flag make Puerto Rico their home. *Examining Bd. of Engineers, Architects, & Surveyors v. Flores de Otero*, 426 U.S. 572 (1976).

The Constitutional right to equal protection, of course, unquestionably applies to Puerto Rico. (See, *In re Conde Vidal*, 818 F.3d 765, 766 (1st Cir. 2016). (*Id. US v P.R. Police Dept.*).

This case, as decided by the Federal District Court, and by the Appeals Court, is important for Mr. Vaello, but also to the 3.4 million American citizens residents of Puerto Rico. Unequal Treatment in fiscal policies to the American citizens of Puerto Rico is largely the main cause of the economic financial crisis of Puerto Rico. There will not be any solution to its financial treatment until the American citizens of

Puerto Rico are treated as what they are, American citizens with equal treatment of fiscal programs and equal social, political and legal policies. (See, *GAO, Statehood would mean billions more for Puerto Rico. Boost US Tax Revenues, 3/19/2015*).

As stated, the unequal treatment is supported by the US Government under the veil of the Insular cases treating Puerto Rico as a non-incorporated territory continuously without any courts' consideration of the gradual incorporation of Puerto Rico by Congress to be like a state. Such racist practice since 1901 is clear evidence of discriminatory conduct allowed to continue for many years, by U.S. officials in the Branches of Government, and by the Courts, and must end. Petitioners' Brief is an invitation to this Court to continue a century old policy which is a racist discriminatory practice. This Supreme Court has the obligation to decline that invitation by Petitioner, and end it, considering there is sufficient legal support for a judicial disposition to end it. Moreover, it is

pertinent for the Court to know the U.S. Mayors Conference in Hawaii adopted a Resolution in July 2019, to unanimously request the President and Congress to declare Puerto Rico an incorporated US Territory, which de facto it is.

## **VI. CONCLUSION**

In essence, no other US Territory has been more assimilated than Puerto Rico to be like a state. The degree of incorporation of Puerto Rico to be like a state can be considered by implication as strong as to exclude any other view than that it is an incorporated territory of the United States.

Allowing a United States citizen in Puerto Rico that is poor and disabled to be denied SSI disability payments creates an impermissible second class citizenship akin to that premised on race, and amounts to Congress switching “on and off” the Constitution discriminatorily.

All United States citizens must trust that their fundamental constitutional rights will be safeguarded everywhere within the Nation, be it in a State, or in the Incorporated U.S. Territory of Puerto Rico.

**WHEREFORE**, the appearing amicus curiae, Gregorio Igartua, very respectfully requests this Honorable Court to take notice of the above-stated and in considering this case on its merits, affirm the judgment of the Appeals' Court. Oral argument to appear before the Court is requested.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico this 6th day of November, 2020.

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**Gregorio Igartua**  
**ad. honorem**  
- G.W.U.- L.L.M.  
INTERNATIONAL LAW  
- G.U.L.C. MASTER TAX LAW