

In the  
Supreme Court of the United States

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UNITED STATES OF AMERICA,

*Petitioner,*

v.

JOSÉ LUIS VAELLO-MADERO,

*Respondent.*

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On Writ of Certiorari to the  
United States Court of Appeals for the First Circuit

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BRIEF OF AMICI CURIAE  
PLAINTIFF *RUIZ-AVILES* v. SSA, AND  
PLAINTIFF AND PLAINTIFF CLASS  
*RIVERA-FUENTES, ET AL.* v. SAUL,  
IN SUPPORT OF RESPONDENT

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**QUESTION PRESENTED**

Whether Congress violated the equal-protection component of Due Process Clause of the Fifth Amendment by establishing Supplemental Security Income—a program that provides benefits to the 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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## INTEREST OF THE AMICI CURIAE<sup>1</sup>

This *Amici* brief may be the only opportunity for over 300,000 of the poorest blind, aged and disabled United States citizens to be heard. Their highest interest is best served by the promptest possible confirmation of the decision in *United States v. Vaello-Madero*, 956 F.3d 12 (1st Cir. 2020).

Appearing *Amici* are Arnold Jay Ruiz-Avilés, Plaintiff in *Ruiz-Avilés v. Saul*, Case Number 20-cv-01240, and Emanuel Rivera-Fuentes, Plaintiff on his behalf and on behalf of Plaintiff Class in *Rivera-Fuentes v. Saul*, Case Number 3:20-cv-01444, both stayed before the U.S. District Court for the District of Puerto Rico pending this Court's decision in the instant matter. In both cases, *Amici* attempted to avail themselves of existing Supplemental Security Income (SSI) administrative proceedings in view of the decisions in *U.S. v. Vaello-Madero*, 356 F. Supp. 3d 208 (D.P.R. 2019) and *United States v. Vaello-Madero*, 956 F.3d 12, (1st Cir. 2020), in the absence of an administrative stay. The U.S. Social Security Administration (SSA) systematically denied *Amici*'s attempts solely on the basis of their residence in Puerto Rico.

*Amici*'s cases are ripe to be evaluated and for them to start receiving SSI benefits.

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<sup>1</sup> The parties were notified of the intention to file this brief as per Rule 37.2 (a) and all parties have consented. No counsel for any party authored this brief in whole or in part and no person or entity other than the amici curiae or its counsel made a monetary contribution toward its preparation or submission.

Every passing minute constitutes an unnecessary delay for people who are eligible and in urgent need of the most immediate participation in the SSI program operated by SSA. Even minimal periods of time without receiving SSI, only causes further health risks, significant economic hardship and constitutional harm to *Amici*. See *Tandon v Newsom*, 593 U.S. \_\_\_\_ (2021), p.3.



## INTRODUCTION

The decision in *United States v. Vaello-Madero*, 956 F.3d 12, (1st Cir. 2020) was correctly decided and warrants confirmation without reservation. *Amici* appear in support of Respondent.

### **A. The Plight of U.S. Citizen and Amicus Arnold Jay Ruiz-Avilés**

On May 5, 2020, Arnold Dean Ruiz and Sandra Avilés, on behalf of their son Arnold Jay Ruiz-Avilés (“Ruiz-Avilés”), wrote a *pro se* letter in Spanish that was initially filed in the *Vaello-Madero* docket in the U.S. District Court for the District of Puerto Rico. On June 16, 2020, it was assigned its own case number. On August 28, 2020, an Amended Complaint was filed in *Ruiz-Avilés v. Saul, et al.*, Case Number 20-cv-01240, in the U.S. District Court for the District of Puerto Rico. Amicus Ruiz-Avilés is a U.S. citizen born on February 28, 1981. Since birth, Ruiz-Avilés suffers severe impairments from Neuronal Ceroid Lipofuscinosis (NCL), Retinitis Pigmentosa (RP), is clinically blind and suffers from mental retardation, among other conditions, all of which prevent him from

engaging in any gainful activity. Ruiz-Avilés is and has always been eligible for SSI, but for his residency in Puerto Rico. Ruiz-Avilés received SSI benefits twice between 1984 and 1985 when his family lived in New York. He has always been in the care of his parents. Similar to Respondent, SSA deems him ineligible for SSI after the family moved to Puerto Rico. Ruiz-Avilés has never been, and will never be, a taxpayer regardless of his residency.

**B. The Plight of Amicus Emanuel Rivera-Fuentes and over 300,000 SSI-Eligible U.S. Citizens Deprived of Benefits**

On August 26, 2020, Abraham Rivera, on behalf of his son, amicus Emanuel Rivera-Fuentes, and as representative of the Plaintiff Class, filed *Rivera-Fuentes v. Saul*, Case Number 3:20-cv-01444 in the U.S. District Court for the District of Puerto Rico. Emanuel Rivera-Fuentes (“Rivera-Fuentes”) is a U.S. citizen born on February 19, 1986 in Bayamón, Puerto Rico. Since birth, Rivera-Fuentes suffers severe impairments from cerebral palsy, paralytic syndrome, hypothyroidism, hypothalamic dysfunction, among other conditions, that confine him to live in his bed, and thus he cannot engage in any substantial gainful activity. He is and has always been eligible for SSI assistance, except for his residency in Puerto Rico. He has always been in the care of his parents, one of whom is also severely disabled. His sister, who was also born with severe disabilities that qualified her for SSI, except for her residency in Puerto Rico, died without ever receiving this much-needed assistance. Rivera-Fuentes has always lived in Puerto Rico. Rivera-Fuentes has never been, and will never be, a taxpayer, regardless of his residency.

Appearing *Amici* consist of the named individuals and a Plaintiff Class of 305,00 to 354,000 SSI-eligible citizens who have been deprived of their right to apply, be evaluated and receive assistance from, the SSI program of the SSA since its inception in 1972. As statutorily defined, *Amici* are among the neediest and poorest in the Nation. Their immediate concern is to cover healthcare and basic needs – yesterday and every day. *Amici* are ordinary U.S. citizens unable to take care of themselves and to lead independent, productive lives, as per SSI’s statutory definition. Based on the very criteria for SSI eligibility, *Amici* are totally incapable of generating their own income, and therefore do not pay income taxes.

As asserted by *Amici* in their respective cases, after *U.S. v. Vaello-Madero*, 356 F. Supp. 3d 208 (D.P.R. 2019) and *United States v. Vaello-Madero*, 956 F.3d 12 (1st Cir. 2020) were decided, *Amici* attempted to avail themselves of the SSI administrative process. That is, after the exclusion of Puerto Rico residents was declared unconstitutional by the U.S. District Court for the District of Puerto Rico and the U.S. Court of Appeals for the First Circuit, *Amici* attempted to apply for SSI following the existing administrative steps, which are available to similarly situated individuals, including citizens and certain statutory categories of aliens. Despite the absence of an SSA administrative stay, *Amici*’s attempts to apply for SSI were systematically denied solely on the basis of their residence in Puerto Rico, without any evaluation of their personal applications.

SSA’s systematic denial of *Amici*’s attempts to access the system demonstrates that the administrative process to apply for SSI benefits is inoperative

for U.S. citizens residing in Puerto Rico. SSA's systematic denial, without any evaluation whatsoever, demeans the most vulnerable U.S. citizens by using their residence in Puerto Rico as a discriminatory pretext. SSA's systematic denial by blocking access to the application and evaluation process constitutes a violation of *Amici's* constitutional procedural and substantive due process rights protected under the Fifth Amendment of the U.S. Constitution. This systematic denial is arbitrary and capricious discrimination that causes oppression, humiliation and harassment to the Nation's most vulnerable citizens. Furthermore, the systematic discriminatory exclusion of people who are at once disabled, blind or aged, and "the poorest of the poor," does not advance the essential mission of the SSI program, and nor does it further the achievement of the stated goal of a uniform national program.

The Court of Appeals decided that the exclusion of otherwise eligible Puerto Rico residents from SSI coverage is not rationally related to a legitimate government interest, and is thus invalid because it violates individual citizens' Equal Protection guarantees of the Due Process Clause of the U.S. Constitution. The class action presented in *Rivera-Fuentes v. Saul*, Case Number 3:20-cv-01444 in the U.S. District Court for the District of Puerto Rico is the best vehicle for direct application of the *Vaello-Madero* decision to the thousands of SSI-eligible citizens residing in Puerto Rico.

*Amici* urgently need access to the SSI administrative process in order to apply for assistance and be evaluated solely on the basis of such evidence required from all other similarly situated persons. Every moment

of delay serves as an obstacle to *Amici*'s ability to receive urgent healthcare assistance.

*Amici* have a substantial interest in the question presented here.



## ARGUMENT

### **I. PETITIONER'S PLEADINGS IN THE COMPLAINT ARE INSUFFICIENT TO ALLOW THE TERRITORIAL CLAUSE ARGUMENT TO PROGRESS.**

On August 25, 2017, the United States commenced a civil action to collect \$28,081.00 from Vaello-Madero, a U.S. citizen whose disability and poverty level was evaluated and met the SSA standards to qualify him for SSI.

*Amici* respectfully submit that the pleadings in the Complaint against Vaello-Madero lack specificity and do not support this Court's consideration of the Petitioner's Territorial Clause arguments. First, the Complaint lacks a description of the plaintiff and its capacity to sue pursuant to Fed. R. Civ. P. 17. SSA is an independent agency of the U.S. executive government. 42 U.S.C. § 901, Public Law 103-296, known as the Social Security Independence and Program Improvements Act of 1994. As such, SSA is the real party in interest.

Further, the Complaint does not affirmatively plead the Petitioner's intent to pursue the claim based on the powers granted to Congress under the Territorial Clause, Article IV, which is a specific federal government power for use vis-à-vis a territory,

not an individual citizen. The Commonwealth of Puerto Rico is not a named defendant. Therefore, the Complaint is insufficient to put the individual defendant on notice of the scope of his defense. From a plain reading of the Complaint, a simple citizen could not have reasonably anticipated to be in the position of arguing against the Territorial Clause in Article IV of the U.S. Constitution to survive a collection action. It is hard to imagine a more disproportionate use of governmental power than this against a vulnerable person.

On the merits, Petitioner discusses a wide gamut of federal statutes that in fact impact industries, commercial enterprises or classes of people not similarly situated to Respondent. Petitioner's Brief even delves into speculation as to whether the Territory may move toward statehood or independence. With all due respect, from the simple pleadings in the Complaint, an individual alone cannot expect to represent all the classes or sub-classes impacted by the myriad of other statutes cited by Petitioner regarding other programs, nor the path of Puerto Rico's political status, which is subject to a popular democratic election. Petitioner also asks the Court to speculate as to matters of purely local internal administration, and how certain assistance benefits could be different if the local government governed differently. Pet.Br.14-15, 22-24, *inter alia*. The latter argument is also somewhat moot in light of PROMESA's hold on local government. 48 U.S.C. § 2102, Public Law 114-187 of 2016, known as the Puerto Rico Oversight, Management and Economic Stability Act. <https://www.govinfo.gov/content/pkg/PLAW-114publ187/pdf/PLAW-114publ187.pdf> The court should decline Peti-



tioner's invitation to enter into these irrelevant areas.

Moreover, even after some significant procedural events, Petitioner, as plaintiff, never attempted to amend the Complaint pursuant to Fed. R. Civ. P. 15 to add a pleading to the effect of its intended use of said territorial powers nor to add the Commonwealth of Puerto Rico as a defendant. If Petitioner had pleaded the Territorial Clause, Fed. R. Civ. P. 19 would have required that the Commonwealth of Puerto Rico, as a party with a compelling interest, be joined in the action. Procedurally speaking, not having pleaded or amended the Complaint accordingly, Petitioner's Territorial Clause arguments cannot be allowed to progress as if a cross-claim by an absent plaintiff (SSA) for a non-existent counterclaim against an absent defendant (Commonwealth of Puerto Rico).

*Amici* respectfully submit that Petitioner has confused the forest for the trees and the Court should not entertain this matter beyond the scope of an action to collect, wrongly, from a disabled and poor U.S. citizen protected by the Equal Protection component of the Due Process Clause of the Fifth Amendment.

## **II. LAWS ARE MADE FOR PEOPLE.**

“Legislators represent people, not trees or acres.”  
— *Reynolds v. Sims*, 377 U.S. 533, 562 (1964)

Petitioner mentions the needy blind, aged and disabled people of Puerto Rico only once in its entire Brief. Pet.Br.24. Whereas SSI was enacted for people, Petitioner's disproportionate emphasis on territorial powers evidences a distorted view of equal protection

principles by making Respondent invisible as an individual.

The analysis of the Court of Appeals is rooted in the basic premise that Equal Protection is a constitutional guarantee that similar people will be treated in a like manner in like circumstances. The point is equal application of individual rights on a national scale. In its essence, Equal Protection is a core constitutional principle whose purpose is to address basic human concerns. Petitioner's arguments, instead, rely on dehumanizing explanations of the nature of the U.S. relationship to the territories. While the Territorial Clause may consolidate the U.S. Government's power over a territory, the Fifth Amendment protects the constitutional rights of the people residing in it.

As per the record, Respondent and other *Amici* submitted and discussed the March 2014 the U.S. General Accountability Office Report to Congressional Requesters entitled *Information on How Statehood Would Potentially Affect Selected Federal Programs and Revenue Sources* (hereinafter "*GAO 2014 Report*"). The *2014 GAO Report* acknowledged 305,000 to 354,000 needy U.S. citizens residing in Puerto Rico (that is, within the national borders of the United States) would have qualified for SSI. <http://www.gao.gov/products/GAO-14-31>. Despite official acknowledgment of the thousands of U.S. citizens in this report, Petitioner uses the Territorial Clause as its Trojan horse, which might work constitutionally if Puerto Rico were an unpopulated rock in the Caribbean, or a defendant in the case, which it is neither. The U.S. citizens who reside in Puerto Rico are not abstract

beings. They are humans protected by the same constitutional guarantees as all other U.S. citizens.

“Equal protection analysis in the Fifth Amendment area is the same as that under the Fourteenth Amendment.” *Vaello-Madero*, 956 F.2d 12, 18 (Citations omitted). In an attempt to assert that the SSI exclusion at issue operates within Equal Protection parameters, Petitioner argues that *Missouri v. Lewis*, 101 U.S. 22 (1880) sets the stage for acceptable routine inequality under the Fourteenth Amendment. Pet.Br.32-33. The cases cited by Petitioner are hardly legion and all pre-date *Reynolds v Sims*, 377 U.S. 533.

In *Reynolds v. Sims*, this Court stated that “A predominant consideration in determining whether [a legislative scheme] constitutes an invidious discrimination violative of rights asserted under the Equal Protection Clause is that the rights allegedly impaired are individual and personal in nature.” 377 U.S. 533, 561. To Petitioner’s acerbic “reduced contribution/reduced share” and “some taxes/some benefits” arguments in relation to territories, Pet.Br.17-18, 21, *Amici* respond “individual benefits/individual rights” in relation to individual citizens. As SSI is a direct assistance program for individuals, the rights in question are likewise individual in nature. Indeed, SSI is, by its own design, a “case-by-case” and “individualized” program. Pet.Br.21. SSI does not evaluate states or territories; it evaluates individuals.

In the present context, this Court is asked to decide specifically a controversy pertaining to the relationship between an individual U.S. citizen who resides in Puerto Rico and SSA, an independent agency of the U.S. executive branch. Given that SSI

is a uniform national program created for the neediest people in the nation, not as a budget allocation for states or territories, the question presented by Petitioner is a convoluted premise that confuses people with acres, and purports to treat fully protected U.S. citizens as territorial subjects without individual rights.

Following this Court's reasoning in *Reynolds v. Sims*, "the judicial focus must be concentrated upon ascertaining whether there has been any discrimination against certain [ . . . ] citizens which constitutes an impermissible impairment of their constitutionally protected right . . ." In the Court's view, ". . . such a case "touches a sensitive and important area of human rights," and "involves one of the basic civil rights of man," presenting questions of alleged "invidious discriminations . . . against groups or types of individuals in violation of the constitutional guaranty of just and equal laws." *Reynolds v. Sims*, 377 U.S. 533, 561. (citations omitted).

Similar to weighting the votes of citizens differently, *Amici's* SSI eligibility is weighted differently on the basis of their race, ethnic origin, ancestry or national origin. By definition, this implies that their disability, blindness, age and poverty is weighted differently. Such different treatment "by any method or means, merely because of where they happen to reside, hardly seems justifiable. One must be ever aware that the Constitution forbids "sophisticated, as well as simple-minded, modes of discrimination." *Reynolds v. Sims*, at 563. (citations omitted). *Amici* propose that Petitioner's invocation of the powers of the Territorial Clause is misused as a pretext for discrimination, at once brutish and sophisticated. In

fact, Petitioner unabashedly relies on historic discrimination as a matter of “routine.” Pet.Br.25.

In *Reynolds v. Sims*, the Court further reasoned “To the extent that a *citizen’s right to vote is debased, he is that much less a citizen. The fact that an individual lives here or there is not a legitimate reason for overweighting or diluting the efficacy of his vote* [right]. The complexions of societies and civilizations change, often with amazing rapidity. A nation once primarily rural in character becomes predominantly urban. [footnote omitted] Representation schemes once fair and equitable become archaic and outdated. But the basic principle of representative government remains, and must remain, unchanged—*the weight of a citizen’s vote* [right] *cannot be made to depend on where he lives. Population is, of necessity, the starting point for consideration and the controlling criterion for judgment in legislative apportionment controversies.*” *Reynolds v. Sims* at 567.

The Court continued, “A citizen, a qualified voter, *is no more nor no less so because he lives in the city or on the farm. This is the clear and strong command of our Constitution’s Equal Protection Clause.* This is an essential part of the concept of a government of laws, and not men. This is at the heart of Lincoln’s vision of ‘government of the people, by the people, [and] for the people.’ *The Equal Protection Clause demands no less than substantially equal state legislative representation* [right] *for all citizens, of all places as well as of all races.*” *Reynolds v. Sims* at 568. Equal Protection extends to ethnicity, ancestry or national origin. *Hernandez v. Texas*, 347 U.S. 475 (1954).

As in *Reynolds v. Sims*, to the extent that a citizen's equal right to be free of discrimination when applying to be evaluated for SSI, a uniform national program, is denied, he is shown to be a less worthy citizen. The fact that an individual U.S. citizen lives in Puerto Rico and not on the mainland (or is not a qualifying alien such as an Iraqi or Afghan noncitizen granted special immigrant status under emergency conditions, for that matter) is not a legitimate reason for diluting the efficacy of the citizen's equal protection guarantee.

This Court further reasoned that laws that once seemed "fair and equitable" can become "archaic and outdated." *Reynolds v. Sims*, 567. "But the basic principle of representative government remains, and must remain, unchanged-*the weight of a citizen's constitutional right cannot be made to depend on where he lives. Laws are made for the people, not for the location where the citizens happen to reside. Equal Protection of U.S. citizens on U.S. soil does not have geography limitations-not under the Fourteenth Amendment, not under the Fifth Amendment.*" *Id.*

As of 1964, *Reynolds v. Sims* made clear that laws are made for people. Therefore, in 1972, Congress must have taken into account the race, ethnicity, national origin and ancestry of the population in Puerto Rico before enacting SSI.

The parties and other appearing *amici* have already argued extensively about the historic background and legislative development of the SSI program. Respondent Vaello-Madero, an individual citizen, prevailed in the courts below on the basis of his constitutional rights as an individual. Petitioner has petitioned this Court as if the individual, Mr. Vaello-

Madero, had standing to represent Puerto Rico. The case before the court is exclusively about individual rights, not about Puerto Rico and its status as a territory.

*Amici* argue that deciding this case on the basis of the monolithic application of the Territorial Clause, disregarding individual rights of U.S. citizens, would be misplaced. Assuming Petitioner’s argument could procedurally come this far, the First Circuit correctly declined to apply *Califano v. Gautier Torres*, 435 U.S. 1 (1978) and *Harris v. Rosario*, 446 U.S. 651 (1980), which harbor the racist rationale used in the deplorable *Insular Cases*.

### III. RESPONDENT PREVAILS UNDER ANY LEVEL OF SCRUTINY.

#### A. Petitioner Fails Strict Scrutiny.

*Amici* support Respondent’s argument that the case should be analyzed under strict scrutiny. The exclusion of disabled, blind and aged poor U.S. citizens residing in Puerto Rico from SSI is outright invidious discrimination based on race, ethnicity, national origin or ancestry. Petitioner’s argument regarding “geography” is but a weak attempt to diffuse the law’s purpose, which is at best, insidiously coded pretext. The exclusion of Puerto Rico residents from SSI is similar to the exclusion of farm laborers and domestics from SSA’s old age insurance in 1935, which in reality excluded African-Americans from access to the benefits until the SSA amendments in the 1950s. Richard Rodems, H. Luke Shaefer, *Left Out: Policy Diffusion and the Exclusion of Black Workers from Unemployment Insurance*, SOCIAL SCIENCE HISTORY, Volume 40, Issue 3, Cambridge University Press, July

25, 2016, p.385-404. <https://doi.org/10.1017/ssh.2016.11>; Juan F. Perea, *The Echoes of Slavery: Recognizing the Racist Origins of the Agricultural and Domestic Worker Exclusion from the National Labor Relations Act*, 72 OHIO ST. L.J. 95, 109-113, 2011. <https://lawcommons.luc.edu/cgi/viewcontent.cgi?article=1150&context=facpubs>.

### **1. Race and Disability Are Overlapping Identities.**

“Race and disability are not completely separate sources of disadvantage that parallel each other. Race and disability are *overlapping identities* that are both related to systemic inequality.” Nannette Goodman, et al., *Financial Inequality: Disability, Race and Poverty in America*, National Disability Institute, p.5 (2017) <https://www.nationaldisabilityinstitute.org/wp-content/uploads/2019/02/disability-race-poverty-in-america.pdf>. Therefore, a statute that discriminates against a disabled population will also generate inequality based on race. Here, the exclusion of disabled people residing in Puerto Rico from the SSI program has a correlative discriminatory impact on their race, ancestry and ethnic origin. The inseparability of the impact on race and disability supports Respondent’s argument that the SSI exclusion is based on a suspect classification subject to strict scrutiny.

### **2. Geography Is the Interface Between People and Spaces.**

Petitioner construes “geography” as a strictly spatial concept. Pet.Br.10, 30. Space refers to the geometric, physical location. A place, by contrast, is made up and made by people. Yi-Fu Tuan, SPACE AND



PLACE: HUMANISTIC PERSPECTIVE (1979), [https://www.natcom.org/sites/default/files/publications/Tuan\\_1979\\_space-place.pdf](https://www.natcom.org/sites/default/files/publications/Tuan_1979_space-place.pdf). Petitioner’s proposed use of “geography” omits the existence of a human dimension, and thus the fact that certain statutes or policies directly impact and shape the daily lives of people. When viewed from the geographic perspective, Petitioner’s geographic distinction argument sounds like fiction—it suggests that people in Puerto Rico have a spatial existence separate from the space itself.

“Geography is the study of the spaces and places people create on the ground and in their minds.” Erin H. Foubert, Alexander B. Murphy, *HUMAN GEOGRAPHY: PEOPLE, PLACE, AND CULTURE*, Wiley & Sons, 12th Edition (2020), p.2 (“Foubert and Murphy”). A popular definition of geography is “the study of places and the relationships between people and their environments.” National Geographic Encyclopedia online, <https://www.nationalgeographic.org/encyclopedia/geography/>. A dictionary definition of geography is “the study of the systems and processes involved in the world’s weather, mountains, seas, lakes, etc. and of the ways in which countries and people organize life within an area.” Cambridge Dictionary online, <https://dictionary.cambridge.org/dictionary/english/geography>.

Geography is divided into two main branches: “Human Geography” and “Physical Geography.” Physical Geography “studies the spatial and material characteristics of the physical environment.” Foubert and Murphy, *supra*, p.4. Due to the fact that SSI was enacted for individuals and Puerto Rico was populated at that time, analysis of “geography” on the basis of “Physical Geography” does not apply in this case.

On the other hand, “Human Geography” has been recognized since the 18th Century and it concerns people directly. Royal Geographic Society online, <https://www.rgs.org/geography/what-is-geography/> “The study of human geography focuses on how we organize ourselves and our activities in space; how we are connected to one another and the environment; how we make places and how those places in turn shape our lives; and how we think about and organize ourselves locally and globally.” Erin H. Fouberg, Alexander B. Murphy, *Human Geography: People, Place, and Culture*, Wiley & Sons, 12th Edition (2020), p.2. “Human geography” is defined as “the study of the interrelationships between people, place, and environment, and how these vary spatially and temporally across and between locations.” Dartmouth Library, [https://researchguides.dartmouth.edu/human\\_geography](https://researchguides.dartmouth.edu/human_geography). In essence, geography is the interface between people and spaces, not space alone.

Further, a sub-category of this area of study is known as “Political Geography”. Fouberg and Murphy, p.2. Puerto Rico, located within U.S. borders and belonging to the U.S., is within the political space of the United States. Therefore, national geography structurally includes Puerto Rico, as inseparable from the Nation. So are the people in it for purposes of national programs, such as SSI. Accordingly, SSI-eligible U.S. citizens who reside in Puerto Rico are on U.S. soil and “in the same place and under like circumstances” as all other SSI-eligible persons nationwide. *See* Pet.Br.33.

In other words, Congress cannot rationally legislate on purely spatial terms, unless the territory is literally uninhabited. That is, a national law whose

purpose is to assist individual U.S. citizens cannot rationally subtract people and their constitutional rights from the equation when the territory is indeed populated. Thus, Petitioner's "geography" argument cannot rationally support that legislating over a territory does not inherently take into account the characteristics of the population in it, including its ancestry, racial and ethnic makeup. Indeed, Puerto Rico was well-populated in 1972 at the time SSI was enacted and Congress must have taken such characteristics into account, thus leading to the logical conclusion that the SSI exclusion was based on the race, ethnicity, national origin or ancestry of the population.

Therefore, "geography" is not a rational basis for isolating a "discrete and insular minority." *United States v. Carolene Prods. Co.*, 304 U.S. 144, 152 n. 4 (1938). Narrowly construing geography as physical geography, Petitioner relies on a *de jure* pointillist policy that essentially consists of the segregation of a distinct class of aged, poor, blind and disabled U.S. citizens residing in Puerto Rico based on race, ethnicity, national origin and ancestry. This is unconstitutional. *Brown v Board of Education*, 347 U.S. 483 (1954). See also Richard Rothstein, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA*, Livewright Publishing Corp (2017).

In sum, Petitioner does not meet the burden required under strict scrutiny review.

### **B. Petitioner Fails an Intermediate or Heightened Scrutiny.**

If this Court does not find the exclusion of SSI-eligible U.S. citizens based on their residence in

Puerto Rico racially suspect by itself, *Amici* propose that the bundling of multiple *prima facie* non-suspect classifications (disability and blindness) and arguably quasi-suspect classifications (age and extreme poverty), which overlap with race, ethnicity and ancestry, in a single classification creates a suspect classification. In the alternative, the bundling of many facially non-suspect classifications can add up to a quasi-suspect classification subject to heightened, if not intermediate scrutiny. *Amici* propose the use of “enhanced scrutiny where vulnerable populations are denied important rights.” Nina A. Kohn, *Rethinking the Constitutionality of Age Discrimination: A Challenge to a Decades-Old Consensus*, UC DAVIS L.R., 213, 262 (2010). [https://lawreview.law.ucdavis.edu/issues/44/1/articles/44-1\\_Kohn.pdf](https://lawreview.law.ucdavis.edu/issues/44/1/articles/44-1_Kohn.pdf). The people impacted by the SSI-exclusion are, by definition, as vulnerable as it gets.

The present controversy deserves a closer examination than plain rational basis review. The burden should shift back to the government to demonstrate the exclusion is substantially related to the asserted government interest, thus requiring Petitioner to articulate a more significant difference between the similarly situated poor, blind, disabled and aged U.S. citizens that explains the burdening of the poor, blind, disabled and aged U.S. citizens residing in Puerto Rico. Petitioner fails to demonstrate that the SSI exclusion serves an actual, not hypothetical, important government objective or promotes the program’s stated national objectives.

*Amici* respectfully submit Petitioner’s arguments only dig a deeper unconstitutional hole. Similarly disabled, similarly blind, similarly aged and similarly poor U.S. citizens in the 50 states equally receive the

same protections of the entire body of federal laws. SSI is, in essence, a national social protection for those people who are, at once, at the very bottom of all these categories. The discriminatory exclusion of disabled, blind, aged, and poor U.S. citizens from SSI merely on the basis of their residence in Puerto Rico is unjustifiable and not substantially related to any legitimate government purpose.

In fact, providing SSI for residents of Puerto Rico is consistent with the overall body of federal laws that protect aged, disabled and blind poor people. The work of Congress does not consist of depriving U.S. citizens of constitutional rights, but on creating statutes that recognize and make those rights effective and operative. Nationwide, federal legislation and judicial decisions increasingly protect the aged, blind and the disabled. The continued expansion of the American with Disabilities Act (ADA), recent Covid-19 measures, and continued expansion of the Affordable Care Act, all of which include protections to citizens who are residents of Puerto Rico, clearly demonstrate the Nation's commitment to inclusive healthcare law and policies. Continuing to apply the exclusion defeats the purpose of SSI and the overall framework of federal laws to protect the aged, blind, disabled and needy.

### **1. The SSI Exclusion Discriminates Against the Blind and Disabled.**

ADA is a civil rights law that prohibits discrimination based on disability. 42 U.S.C. § 12101. ADA defines disability as a physical impairment that substantially limits a major life activity, such as seeing. 42 U.S.C. § 12102(1) and (2). Therefore, visual impair-

ments, including total blindness, are disabilities under ADA. In essence, ADA protects the constitutional rights of disabled individuals; not the rights or obligations of a State or a territory. Individuals residing in Puerto Rico are protected by ADA. 42 U.S.C. § 12103(2). *Amici's* right to participate in the SSI program is also consistent with federal laws and national policies to protect the blind and disabled.

Even if “disability” is a facially non-suspect classification, Petitioner’s argument suggests that, as a body of law, federal laws discriminatorily create suspicious sub-classifications of disabilities by extending certain legal protections to disabled or blind U.S. citizens residing in Puerto Rico, but not SSI if they are too disabled or too blind to need SSI assistance, the degree or characteristics of which Petitioner has not articulated. There is no rational basis to create distinctions in the degree of blindness or disability to exclude U.S. citizens from the protection of laws specifically designed to protect and assist blind and disabled citizens.

In view of the above, Petitioner’s arguments to continue the application of unconstitutional discrimination are inconsistent with federal laws regarding the individual rights of blind and disabled citizens. Why would the SSI program, which is specifically designed for the blind and the disabled, exclude *any* blind and disabled U.S. citizens? The exclusion applied by SSA to U.S. citizens residing in Puerto Rico defeats the purpose of SSI and runs counter to the body of federal laws and national policies.

## 2. The SSI Exclusion Discriminates Against the Poor.

“Poverty, standing alone, is not a suspect classification.” *Harris v. McRae*, 448 U.S. 297, 323 (1980). However, poverty as a suspect or quasi-suspect class is still an open question. Henry Rose, *The Poor as a Suspect Class under the Equal Protection Clause: An Open Constitutional Question*, 34 NOVA LAW REVIEW 407 (2010). <https://lawecommons.luc.edu/cgi/viewcontent.cgi?article=1064&context=facpubs>.

Petitioner stipulated that the people impacted by the SSI exclusion are indeed poor, disabled, blind and aged, yet Petitioner does not offer a rational explanation for hypothesizing on what basis Congress would have rationally concluded that AABD, a program it was eliminating for lack of effectiveness, would remain a workable solution for Puerto Rico, which was then, and still is, poorer than Mississippi.

Disability causes poverty and poverty causes disability, which is correlative with race. *Financial Inequality: Disability, Race and Poverty in America*, *supra*, p.5, p.21.

Accordingly, Petitioner cannot rationally unbundle racial classifications from poverty. In light of the foregoing, if Congress knowingly left the poor disabled and aged people in Puerto Rico to their own devices, then the SSI exclusion was, again, indeed based on race. A suspect classification and an arguably quasi-suspect classification meet at this intersection. In the alternative, the SSI exclusion created a sub-classification on the basis of poverty, the degree or characteristics of which Petitioner has not articulated, which deserves heightened scrutiny by the Court.

Petitioner’s suggestion that it is “routine” to exclude certain U.S. citizens living in poverty from national programs is not rational and defeats SSI’s very purpose.

### 3. The SSI Exclusion Discriminates Against the Aged.

The Age Discrimination in Employment Act (ADEA) is a civil rights law to protect the rights of aged individuals. 43 U.S.C. § 1331. The Elder Abuse Prevention and Prosecution Act is a federal law that protects aged individuals. 34 U.S.C. § 21701. Aged individuals in Puerto Rico are protected by these federal laws. 43 U.S.C. 1331 § 630 (i) and 34 U.S.C. § 21701(2)(3), respectively. *Amici’s* right to participate in the SSI program is also consistent with federal laws and national policies to protect the aged.

“Chronological age [...] is [...] immutable in that an individual has no ability to control it. It is this latter characteristic of immutability — the inability to control an immutable trait — that is generally used to justify greater scrutiny for immutable characteristics. This is, in part, because groups disadvantaged on the basis of immutable traits have historically been seen as more vulnerable than those disadvantaged based on traits they have the capacity to control.” Kohn at 237. In her article, *supra.*, Professor Kohn suggests this Court’s precedent justifies finding age a quasi-suspect classification.

Even if “age” is a facially non-suspect classification, Petitioner’s argument favoring continued exclusion of eligible Puerto Rico residents from SSI does not make sense in the context of federal laws protecting the aged. Petitioner’s arguments imply a coded layer of discrimination in the design of federal laws, meaning



federal laws discriminatorily create suspiciously distinct categories of the aged by extending certain legal protections to U.S. citizens residing in Puerto Rico, but stop at SSI if they are too aged to need SSI assistance. Petitioner has not expressed a rational basis to create distinctions in the degree or characteristics of age to distinguish a similarly situated aged citizen in Puerto Rico from any other aged SSI-eligible citizens, as a basis for exclusion from the protection of a national laws specifically designed to protect and assist aged citizens.

In view of the above, Petitioner's arguments instead create further suspect categories that are inconsistent with federal laws and national policies regarding the individual rights of aged citizens. Why would the SSI program, which is specifically designed for the aged, exclude *any* aged U.S. citizens, regardless of where they live? The exclusion applied by Petitioner to aged U.S. citizens residing in Puerto Rico defeats the stated purpose of SSI.

In sum, Petitioner does not meet the burden required under any level of intermediate or heightened scrutiny.

#### 4. The Exclusion of Residents of Puerto Rico Defeats the Purpose of SSI.

“I believe with Abraham Lincoln, that ‘The legitimate object of Government is to do for a community of people whatever they need to have done but cannot do at all or cannot do so well for themselves in their separate and individual capacities.’”

Franklin D. Roosevelt, Fireside Chat 6 (1934)<sup>2</sup>

SSI is a national program established to assist aged, blind, disabled citizens who are also “the poorest of the poor.” *Amici* are these very people who cannot fulfill their basic needs for themselves. The government’s stated objective is to assist them. Thus, the discriminatory exclusion applied by Petitioner to U.S. citizens residing in Puerto Rico defeats SSI’s purpose and contradicts national principles.

#### C. Respondent Prevails Even Applying Rational Basis Review.

The Court of Appeals reviewed *de novo* and used the rational basis as the standard of review. Although the Court of Appeals decision yielded the same result as the district court, the standard of review shifted the burden to the Respondent. *Amici* believe Respondent has also met the burden required by a challenger of the statute under rational basis review. *Amici* refer to the arguments advanced by Respondent.

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<sup>2</sup> Franklin Delano Roosevelt, *Presidential Statements, History*, Social Security Administration Website, <https://www.ssa.gov/history/fdrstmts.html#fireside1>

#### IV. PETITIONER'S ECONOMIC AND TAX ARGUMENTS FAIL.

*Amici* are a very specific class of U.S. citizens: literally the poorest of the poor. Like similarly situated people who receive SSI benefits in the 50 states, Washington D.C. and the Northern Mariana Islands, *Amici* are unable to work to produce taxable income and pay taxes. The fact that non-SSI-eligible Puerto Rico residents may not pay some federal taxes, by Congressional design, is not rationally related to the exclusion of SSI-eligible people from access to SSI.

Petitioner's speculative federal tax argument in fact creates yet another unconstitutional suspicious category. There is no rational basis to distinguish some disabled, blind or aged non-taxpayers from other disabled, blind or aged non-taxpayers. Petitioner purports to validate discrimination if certain categories of disabled, blind or aged people, who by statutory criteria cannot work to pay taxes, in fact do not pay taxes. It is irrelevant, specifically for SSI's purposes, that *Amici* happen to, in addition, reside in a territory in which, by Congressional design, certain federal taxes are not paid by non-SSI-eligible Puerto Rico residents. Certainly, Puerto Rico's territorial tax scheme was not created by Congress for the benefit of *Amici*.

For purposes of the constitutional right at issue here, there is no rational connection between *Amici's* complete inability to generate taxable income and Puerto Rico's territorial status. The territorial status itself is not the cause of their disability nor the reason why they do not pay taxes. SSI was not created for the benefit of states or territories. It was created for people with disabilities who do not pay

taxes anyway. Thus, *Amici's* SSI eligibility does not rationally depend on Petitioner's hypothetical advantage of non-SSI-eligible taxpayers not paying certain federal taxes in Puerto Rico, which in any case, is poorer than the poorest state, making Petitioner's hypothetical tax argument not rational and contrary to SSI's mission to assist individuals.

Petitioner proffers Congress is owed substantial deference when legislating, especially when in relation to territories. Pet.Br.13-15, 28-36. With all due respect, *Amici* submit that the contours of the congressional powers do not allow for the elimination of constitutional rights of U.S. citizens simply because they happen to live in territories. It is the job of Congress to design the budget and mechanics of an operational framework to make sure individuals' constitutional rights are indeed effective. That is, Congress has the power to create national economic policies and work with the budget in a way that guarantees the constitutional rights of all U.S. citizens equally.

For example, the U.S. leads or has access to the World's most advanced scientific and economic thinking of the 21st century. Serious studies show that making even small changes in national healthcare policies can radically reduce healthcare costs and actually liberate trillions of dollars back into the economy. Jaana Remes et al., *Prioritizing Health: A Prescription for Prosperity*, McKinsey Global Institute (July 2020). According to the findings of the McKinsey report, prioritizing the health of all citizens translates into general economic prosperity. <https://www.mckinsey.com/industries/healthcare-systems-and-services/our-insights/prioritizing-health-a-prescription-for-prosperity>. As trillions of dollars could be liberated

for the benefit of the national economy, the U.S. could be very well prepared to protect all citizens— disabled and not disabled, aged and not aged, poor and not poor, and still free up budget resources for many other purposes. It is widely known that citizens' poor health is directly linked to economic losses nationwide, thus it makes no sense that Petitioner would argue in favor of preserving an antiquated law that discriminates with the only result of making sure a “discrete and insular minority” of U.S. citizens remain without assistance to handle the demands of poor health, and sustain the correlative economic burden, as a matter of “routine”. Pet.Br.25.

In sum, there is no economic justification to fail to protect all the poor, aged, blind and disabled U.S. citizens equally under the law, regardless of their residence. In view of the above, Petitioner's congressional budget argument fails because Congress has the power to make the budget fit while guaranteeing constitutional rights. Therefore, which other federal tax statutes apply or not to the territory of Puerto Rico is not rationally related to the exclusion of SSI-eligible individuals residing in Puerto Rico from a national program.

*Amici* propose that the SSI exclusion of U.S. citizens residing in Puerto Rico does not deserve deferential treatment under rational basis review. Puerto Rico, as a territory, had equality with states under the Aid to the Aged Blind and Disabled program (AABD) under Title XVI of the Social Security Act of 1935, 42 U.S.C. §§ 1381 note-§ 1385 note. Then, Congress ditched the AABD economic model and replaced it with direct personal assistance to eligible U.S. citizens and certain aliens. It cannot be assumed

from the record that the legislator had any knowledge or experience at that time that would support a rational conclusion that creating inequality under SSI, by keeping a clunky, defunct AABD economic model, would work in Puerto Rico, which was then and has since remained poorer than the poorest state in the nation. *GAO 2014 Report*, p.10.

Petitioner's argument, relying on a hypothetical use of the AABD model Congress explicitly discarded, essentially proposes it is valid to hold certain disabled, aged and poor U.S. citizens in economic quarantine and passively observe their health deteriorate over time. This hardly sounds rational.

In view of the above, the Court of Appeals correctly concluded the SSI-exclusion does not have a sufficiently close nexus with underlying policy objectives. *Vaello-Madero*, 956 F.3d 12, 27.



## CONCLUSION

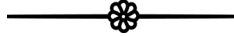
For the reasons stated above, Petitioner's territorial powers should not be allowed to progress against an individual citizen and strict scrutiny, or a heightened scrutiny, should be used to analyze this violation of the Equal Protection component of the Fifth Amendment for invidious discrimination based on race, ethnicity, national origin or ancestry. Should this court proceed to apply rational basis review, *Amici* submit this Court should rule against Petitioner.

A law is unconstitutionally engineered when undoing the discrimination written into the small print, footnotes and silences require long-winded and unsupported, after-the-fact speculations, as here. Given *Reynolds v Sims*, basic principles of geography and the correlation between disability, race and poverty, Congress must have taken into account the composition of the population of Puerto Rico at the time of enacting SSI, thus unconstitutionally debasing the Equal Protection rights of U.S. citizens residing in Puerto Rico.

If the SSI exclusion was not rational then, it is even less rational to uphold it now. Excluding residents of Puerto Rico as a matter of "routine" furthers no national economic, social or health purpose. In fact, the exclusion accomplishes the exact opposite of the stated mission of the program: it makes sure sick people get sicker and poor people get poorer, and reinforces racial and ethnic origin stereotyping and discrimination of a certain class of U.S. citizens in a

negative loop. This Court has the power to stop it, here and now.

*Amici* are not trees or acres, but U.S. citizens on the map of U.S. borders—leaves of grass in the green fields of the Greater United States.



**PRAYER FOR RELIEF**

The judgment of the Court of Appeals for the First Circuit should be affirmed.

Respectfully submitted.

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