

No. 20-303

In the
Supreme Court of the United States

UNITED STATES OF AMERICA,
Petitioner,

v.

JOSE LUIS VAELLO-MADERO,
Respondent.

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

**BRIEF OF *AMICUS CURIAE* DIÁLOGO POR
PUERTO RICO IN SUPPORT
OF RESPONDENT**

JESÚS R. RABELL MÉNDEZ
Counsel of Record
RABELL MÉNDEZ C.S.P.
P.O. Box 195580
San Juan, Puerto Rico 00919
(787) 312-0259
jesusrabell@gmail.com

*Counsel for Amicus Curiae
Diálogo Por Puerto Rico
(Dialogue of Puerto Rico)*

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INTEREST OF *AMICUS CURIAE*¹

The *amicus curiae* Diálogo Por Puerto Rico (Dialogue of Puerto Rico) is a not-for-profit unincorporated association composed of persons and citizens of the United States residing in the body politic named the Commonwealth of Puerto Rico dedicated to study, analyze, evaluate and defend the welfare of persons and citizens who inhabit in said Commonwealth.

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¹ The parties have consented. *Amicus* certify that no counsel for a party authored this brief in whole or in part and no one other than *amicus* or counsel, have made a monetary contribution to its preparation.

SUMMARY OF THE ARGUMENT

The inhabitants of Puerto Rico have rights, privileges and immunities not to be deprived and divested of life, liberty, and property under the Constitution of the United States regarding the SSI program. This conclusion can be reached either by following the test laid down by the plurality of the Supreme Court in *McDonald v. Chicago*, 561 U.S. 742 (2010) determining that the right at issue is “fundamental to our scheme of ordered liberty” or that the right is “deeply rooted in this Nation’s history and tradition” *Id.* at 767;² under the test laid out in *Examining Board of Engineers, Architects & Surveyors v. Flores de Otero*, 426 U.S. 572, 599-601 (1976) as explained below under the heading of “The fundamental rights, privileges and immunities of the inhabitants of Puerto Rico”; or by resorting to the leading Insular Cases of *Downes v. Bidwell*, 182 U.S. 244 (1901) and *Balzac v. Porto Rico*, 258 U.S. 298 (1922) as we further explain below under the heading “The Insular Cases of *Downes v. Bidwell* and *Balzac v. Porto Rico*”.

Persons and citizens of the United States are entitled to live under a republican form of government with separation of powers and a bill of rights with due

² The Supreme Court in the recent plurality opinion authored by Justice Alito of *McDonald v. Chicago*, *supra* at 767 has framed the due process analysis as a method of determining whether the right at issue is “fundamental to *our* scheme of ordered liberty” or whether the right is “deeply rooted in this Nation’s history and tradition”. Justice Thomas would hold that this right applies against the States through the Privileges or Immunities Clause of the Fourteenth Amendment. *Id.* at 805.

process and equal protection for all and without being deprived and divested of life, liberty, and property. Although these due process and equal protection rights, privileges and immunities in Puerto Rico are also guaranteed by the Federal Relations Act³ and the Constitution of Puerto Rico⁴ it is not necessary for the

³ 48 USC Section 731 was enacted as part of the Puerto Rican Federal Relations Act. (July 3, 1950, ch. 446, §2, 64 Stat. 319.). Act July 3, 1950, which enacted sections 731b to 731e of this title, was submitted to the qualified voters of Puerto Rico through an island-wide referendum held on June 4, 1951 and approved.

48 U.S. Code § 737. (Privileges and immunities) provide:

The rights, privileges, and immunities of citizens of the United States shall be respected in Puerto Rico to the same extent as though Puerto Rico were a State of the Union and subject to the provisions of paragraph 1 of section 2 of article IV of the Constitution of the United States.

(Mar. 2, 1917, ch. 145, § 2, 39 Stat. 951; Feb. 3, 1921, ch. 34, § 1, 41 Stat. 1096; Mar. 2, 1934, ch. 37, § 1, 48 Stat. 361; Aug. 5, 1947, ch. 490, § 7, 61 Stat. 772; July 3, 1950, ch. 446, § 5(1), 64 Stat. 320.)

Article IV, Section 2, Clause 1 of the United States Constitution provides:

The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

It is not necessary for the Court to reach the issues under the Federal Relations Act or Law 600.

⁴ The Preamble to the Constitution of Puerto Rico provides:

We consider as determining factors in our life our citizenship of the United States of America and our aspiration continually to enrich our democratic heritage in the individual and collective enjoyment of its rights and privileges.

Court to reach those issues as the due process and equal protection rights, privileges and immunities are protected under the United States Constitution. Since 1917 in the Jones Act⁵ and later in the Constitution of Puerto Rico⁶ life, liberty, and property, due process and equal protection have been textually protected. Previous to 1917 and the Jones Act those rights, privileges and immunities had been protected by the

The Constitution of Puerto Rico in Article I (The Commonwealth) provides in pertinent part:

Section 1. The Commonwealth of Puerto Rico is hereby constituted. Its political power emanates from the people and shall be exercised in accordance with their will, within the terms of the compact agreed upon between the people of Puerto Rico and the United States of America.

Section 2. The government of the Commonwealth of Puerto Rico shall be republican in form and its legislative, judicial and executive branches as established by this Constitution shall be equally subordinate to the sovereignty of the people of Puerto Rico.

⁵ The Jones Act of March 2, 1917, 48 U.S.C. § 737, ch. 145, § 2, 39 Stat. 951 provided:

No law shall be enacted in Puerto Rico which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws.

⁶ Article II, Section 7 of the Puerto Rico Constitution provides:

The right to life, liberty and the enjoyment of property is recognized as a fundamental right of man. The death penalty shall not exist. No person shall be deprived of his liberty or property without due process of law. No person in Puerto Rico shall be denied the equal protection of the laws. No laws impairing the obligation of contracts shall be enacted. A minimum amount of property and possessions shall be exempt from attachment as provided by law.

United States Constitution and the Supreme Court of the United States jurisprudence.

This case is being addressed by counsel for the United States centered in part in a constitutional clause dealing with territory or property⁷, not with persons or citizens⁸ living in the body politic named the Commonwealth of Puerto Rico. Puerto Rico is composed of people, territory, and government⁹. The *amicus*

⁷ Article IV, Section 3 of the United States Constitution provides:

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.

See: Brief for the United States at pages 25-30.

⁸ Article IX of the Treaty of Peace Between the United States and Spain of December 10, 1898, establishes that:

“The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress.”

The status of the inhabitants of Puerto Rico is explained in: “The status of the inhabitants of Puerto Rico”, *infra*.

⁹ *Mora v. Mejias*, 115 F. Supp. 610 (D.P.R. 1953) and 206 F.2d 377, 387 (1st Cir. 1953) relying on *Texas v. White*, 74 U.S. (7 Wall.) 700 at 719-721 (1869) (“In the Constitution the term state most frequently expresses the combined idea just noticed, of people, territory, and government.”) and cited with approval in. *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663 at 672-673 (1974) (“Puerto Rico has thus not become a State in the federal Union like, the [50] States, but it would seem to have become a State within a common and accepted meaning of the word. Cf. *State of Texas v. White*, 1868, 7 Wall. 700, 721. It is a political entity created by the act and with the consent of the people of Puerto Rico and joined in union with the United States of America under the terms of the compact.”) See also: Walker, Mac Amhlaigh, and Michelin, “Law, polity and the legacy of statehood: An

curiae brief centers on recent Supreme Court jurisprudence that addresses the issue of the fundamental rights, privileges and immunities of persons and United States citizens residing in the body politic named the Commonwealth of Puerto Rico. In other words, Congress may have power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States under Article IV, Section 3 but in the process of doing so Congress can not affect fundamental rights, privileges and immunities of persons and United States citizens residing in the body politic named the Commonwealth of Puerto Rico, including the fundamental right not to be deprived and divested of life, liberty, or property and equal protection guarantees. These are fundamental due process and equal protection rights, inherent to life, liberty, and property privileges and immunities which cannot be relinquished either by the United States or Puerto Rico.

introduction” at 1149 (International Journal of Constitutional Law, Volume 16, Issue 4, October 2018). (“Let us start, then, on familiar ground, by recalling the framing assumption that has traditionally united rather than divided many schools of legal and political thought. This assumption holds that the standing of the state as the key organizing framework of people, territory, and government both presupposes and supports a mature form of legal order.”) (<https://academic.oup.com/icon/article/16/4/1148/5297610>).

ARGUMENT

I. INTRODUCTION

The amicus curiae brief centers on recent Supreme Court law and jurisprudence and addresses the issue of the fundamental rights, privileges and immunities of persons and United States citizens residing in the body politic named the Commonwealth of Puerto Rico not to be deprived and divested of life, liberty, or property, particularly due process and equal protection and not to be treated under the Territory Clause as property regarding the SSI program. As stated in *Peña Martínez v. Azar*, 376 F. Supp. 3d 191 (D.P.R. 2019) “to cite the Territory Clause and not the Due Process Clause appears odd because the case on its face is not about the reach of Congress’s authority to govern Puerto Rico as a jurisdiction but on its discriminatory treatment of Puerto Rico residents.”

II. THE SUPPLEMENTAL SECURITY INCOME (SSI) PROGRAM

The SSI program provides benefits to low-income individuals who are older than sixty-five, blind, or disabled. See 42 U.S.C. Section 1382(a), 1382c. In contrast to other types of federal insurance programs, like Social Security Title II benefits, 42 U.S.C. Section 401-433, which are paid for by payroll taxes, Congress funds SSI from the general treasury. See 42 U.S.C. Section 1381; see also Pub. L. No. 116-94, 133 Stat. 2534, 2603 (2019) (funding SSI for fiscal year 2020). SSI is a means-tested program, so only those individuals who meet the age, disability, or blindness requirements and fall beneath the federally mandated

income and asset limits are eligible. 42 U.S.C. Section 1382.2.¹⁰

After Congress enacted the Social Security Act Amendments of 1950, Puerto Rico submitted state plans to participate in programs for Old-Age Assistance, Aid to the Blind, and Aid to the Permanently and Totally Disabled, which were consolidated into AABD in 1963. See CRS Report, *supra* at 14-15. Passed in its current form in 1972, SSI replaced these adult assistance programs in the states and Washington, D.C.; however, its predecessor AABD continues to operate in Puerto Rico. *Id.* at 15; see Social Security Amendments of 1972, Pub. L. No. 92-603, § 301, 86 Stat. 1329, 1465 (1972). AABD is financed by a capped categorical matching grant whereby the federal government contributes 75 percent, and the territorial government contributes 25 percent; administrative costs are split 50/50. CRS Report, *supra* at 12. Like SSI, federal funds for AABD flow from the general fund of the U.S. treasury. *Id.*¹¹

III. ARGUMENT

The United States concedes that the guarantees of due process and equal protection apply fully in Puerto Rico. Having the United States conceded that the guarantees of due process and equal protection apply fully in Puerto Rico we can conclude that persons and United States citizens aged, blind, and disabled who lack the financial means to support themselves

¹⁰ The SSA and SSI program descriptions are taken literally from *United States v. Vaello-Madero*, 956 F.3d 12 (1st Cir. 2020).

¹¹ *United States v. Vaello-Madero*, *supra*.

residing in the body politic named the Commonwealth of Puerto Rico can not be, under the present United States Constitutional structure, be deprived and divested of their rights, privileges and immunities to life, liberty, and property, particularly the equal protection of the laws. The aged, blind, and disabled persons or individuals who lack the financial means to support themselves are similarly, if not equally, situated whether they are in the states, Puerto Rico or the other territories, regarding the SSI program. There is no rational basis under due process and equal protection principles for them to be discriminated against because of where they are located, of their right to receive benefits under the SSI program.

In *United States Department of Agriculture v. Moreno*, 413 U.S. 528 (1973), a food stamp program equal protection case, in practical operation equivalent to the SSI program at issue here, deprived persons and citizens of the United States excluded from participation of equal treatment. The Supreme Court framed the excluded class as “only those persons who are so desperately in need of aid that they cannot even afford to alter their living arrangements so as to retain their eligibility.” *Id.* at 538. As in this case, the SSI program exclusions at issue here would force Vaello Madero and persons and citizens of the United States similarly situated to alter their living arrangements to obtain or retain their eligibility to the SSI program. Unequal treatment of similarly situated persons and United States citizens in need violates due process and equal protection.

Further, the right to move to and from Puerto Rico to and from a state or another territory is guaranteed as a fundamental equal protection right, privilege or immunity of state, Commonwealth of Puerto Rico and United States Citizens. The fundamental equal protection rights, privileges, and immunities of citizens of the United States shall be respected in Puerto Rico to the same extent as though Puerto Rico were a State of the Union and subject to the provisions of paragraph 1 of section 2 of article IV of the Constitution of the United States reads the Puerto Rico Federal Relations Act¹². In *Balzac v. Porto Rico*, 258 U.S. 298 at 308 (1922), Chief Justice Taft writing for a unanimous Court held that United States citizens residing in Puerto Rico have a right to move into the continental United States and becoming residents of any State there to enjoy every right of any other citizen of the United States, civil, social and political. The right to move to and from a state and a territory is a two-way street. The Congress of the United States lacks the power to deny to aged, blind, and disabled persons and United States citizens who lack the financial means to support themselves their fundamental due process and equal protection rights, privileges, and immunities as citizens of the United States regarding the SSI program just because they decided to move to Puerto Rico, a state, or other territory. Therefore, depriving aged, blind, and disabled persons, just because they decided to “stay” or reside in Puerto deprives them of the financial means to support themselves of the SSI program benefits deprives them of their fundamental equal protection rights, privileges, and immunities as

¹² 48 U.S. Code § 737. (Privileges and immunities)

citizens of the United States or as the *Balzac v. Porto Rico*, *supra* court phrased it, deprive the inhabitants of Puerto Rico of their rights “to enjoy every right of any other citizen of the United States, civil, social and political.” *Id.* at 308.¹³

The equal protection clause, also called the equality clause, prohibits legislation, discriminating against some and favoring others if they are similarly situated unless there is a rational reason to do so.¹⁴ Undue favor and individual or class privilege, on the one hand, and a hostile discrimination or the oppression of inequality, on the other is not a rational reason to do so. The equal protection embodied in the Fifth and Fourteenth Amendments of the United States Constitution “tends to secure equality of law in the sense that it makes a required minimum of protection for every one’s right of life, liberty and property, which the Congress or the legislature may not withhold. Our whole system of law is predicated on the general, fundamental principle of equality of application of the law. ‘All men are equal before the law,’ ‘This is a government of laws and not of men,’ ‘No man is above the law,’ are all maxims showing the spirit in which legislatures, executives and courts are expected to make, execute and apply laws. But the framers and adopters of this Amendment were

¹³ The text of the Constitution of the United States denies to citizens of Puerto Rico the right to vote for the President of the United States or to vote for members of the House of Representatives or of the Senate, *Igartúa v. United States (Igartúa IV)*, 626 F.3d 592 (1st Cir. 2010) and *Igartúa v. Trump*, 868 F.3d 24 (1st Cir. 2017).

¹⁴ *Truax v. Corrigan*, 257 U.S. 312 (1921) (Chief Justice Taft writing the opinion of the Court).

not content to depend on a mere minimum secured by the due process clause, or upon the spirit of equality which might not be insisted on by local public opinion. They therefore embodied that spirit in a specific guaranty. The guaranty was aimed at undue favor and individual or class privilege, on the one hand, and at hostile discrimination or the oppression of inequality, on the other.”¹⁵

In this case we are not before a case of lawful rational or reasonable classifications permitted by the equality clause of the United States Constitution. We are before a wholesale and total declaration of exclusion of a whole class of persons, the inhabitants of Puerto Rico and the territories of Guam and the Virgin Islands who are aged, blind, and disabled and who lack the financial means to support themselves regarding the SSI program. The Court of Appeals for the First Circuit defined the classification subject to challenge as to Puerto Rico as: “individuals who meet all the eligibility criteria for SSI except for their residency in Puerto Rico.”¹⁶ The Court of Appeals for the First Circuit went on to hold that: “This classification is clearly irrelevant to the stated purpose of the program, which is to provide cash assistance to the nation’s financially needy elderly, disabled, or blind. See *Moreno*, 413 U.S. at 534.”¹⁷ This classification by Congress is indeed in violation of the fundamental equal protection rights, privileges, and immunities of those inhabitants, citizens or not. It is also a denial of

¹⁵ *Truax v. Corrigan*, *supra* at 332.

¹⁶ *United States v. Vaello-Madero*, *supra*.

¹⁷ *United States v. Vaello-Madero*, *supra*.

the equal protection rights of citizens of the states, citizens of the United States, and of the inhabitants of Puerto Rico¹⁸, citizens or not, who are aged, blind, and disabled and who lack the financial means to support themselves, regarding the SSI program just because they decided to move to or inhabit in Puerto Rico.

Suppose a United States citizen living in a state becomes aged, blind, or disabled while living in one of the fifty states and he or she lacks the financial means to support himself or herself in said state, lacking a family therein and his or her family that can take care of him or her is in Puerto Rico or other excluded territory. Suppose a United States citizen living in Puerto Rico or one of the other excluded territories lacks the financial means to support himself or herself, lacks a family who can take care of him or her in one of the 50 states, the District of Columbia or the Northern Mariana Islands. What alternative does said persons desperately in need of aid have with the SSI program legislation as it stands? None. As we have stated before, in *United States Department of Agriculture v. Moreno*, 413 U.S. 528 (1973), a food stamp program equal protection case, in practical operation equal to the SSI treatment of the aged, blind, or disabled inhabitants of Puerto Rico at issue here, excluded from participation “only those persons who are so desperately in need of aid that they cannot even afford to alter their living arrangements so as to retain their eligibility” was held unconstitutional under the equality clause, *Id.* at 538. The Supreme Court therein squarely held that unequal treatment of similarly

¹⁸ And the inhabitants of the territories of Guam and the Virgin Islands, citizens or not.

situated persons in need violates due process and equal protection. As in this case, the SSI program exclusions would force Vaello Madero and persons and citizens of the United States similarly situated to alter their living arrangements to obtain or retain their eligibility.

This wholesale total exclusion from benefits regarding the SSI program to the aged, blind, and disabled persons who lack the financial means to support themselves does not withstand rational analysis. The first inquiry at first glance is whether the discrimination is rational because some pros and cons as to issues of taxation and other economic data regarding the body politics involved. As the United States Court of Appeals for the First Circuit reasoned in this case: “Any individual eligible for SSI benefits almost by definition earns too little to be paying federal income taxes. Thus, the idea that one needs to earn their eligibility by the payment of federal income tax is antithetical to the entire premise of the program. How can it be rational for Congress to limit SSI benefits ‘to exclude populations that generally do not pay federal income taxes’ when the very population those benefits target do not, as a general matter, pay federal income tax?”¹⁹ The Court of Appeals for the First Circuit added: “As to the contention that decisions based on fiscal considerations that improve the protection afforded to the entire benefitted class and thus should be subject to deference is inapplicable to the situation before us, where an entire segment of the would-be benefitted class is excluded. ...[T]he Fifth Amendment does not permit the arbitrary treatment of individuals

¹⁹ *United States v. Vaello-Madero, supra.*

who would otherwise qualify for SSI but for their residency in Puerto Rico (those plausibly considered least able to ‘bear the hardships of an inadequate standard of living’) ... Even under rational basis review, the cost of including Puerto Rico’s elderly, disabled, and blind in SSI cannot by itself justify their exclusion.”²⁰

As was stated in *Harris v. Rosario*²¹ by Justice Marshall dissenting:

In my view it is by no means clear that the discrimination at issue here could survive scrutiny under even a deferential equal protection standard. *Id.* at 656.

Here, as Chief Justice Taft²² wrote

²⁰ *United States v. Vaello-Madero, supra.*

²¹ 446 U.S. 651 (1980).

²² We have quoted from Chief Justice Taft’s opinions as he was a contemporaneous actor and spectator during the formative years of post 1898 Treaty of Paris territorial organic acts and jurisprudence and author of the United States citizenship unanimous Supreme Court opinion in *Balzac v. Porto Rico, supra.* He had been President, governor of the Philippines, promoted Justice White, creator of the non incorporation doctrine in *Downes v. Bidwell*, 182 U.S. 244 (1901) to Chief Justice, and “a chief architect of the United States territorial policies.” Batholomew H. Sparrow, *The Insular Cases and the Emergence of American Empire* (University Press of Kansa 2006 at page 197). “The theory that was to prevail seems first to have been enunciated by Chief Justice Taft, who observed that the Due Process and Equal Protection Clauses are associated and that [i]t may be that they overlap, that a violation of one may involve at times the violation of the other, but the spheres of the protection they offer are not coterminous. . . . [Due process] tends to secure equality of law in the sense that it makes a required minimum of protection for every

contemporaneously to the granting of United States Citizenship to the inhabitants of Puerto Rico, the guaranty of the equality clause “was aimed at undue favor and individual or class privilege, on the one hand, and at hostile discrimination or the oppression of inequality, on the other. It sought an equality of treatment of all persons...”²³ Equal protection of the laws is essentially a direction that all persons similarly situated should be treated alike.

The aged, blind, and disabled persons or individuals who lack the financial means to support themselves are similarly, if not equally, situated whether they are in the states, Puerto Rico or the other territories. Therefore, lacking a rational basis to discriminate because of tax or fiscal reasons, the denial of program benefits to the inhabitants of Puerto Rico, citizens or not, who are aged, blind, and disabled persons or who lack the financial means to support themselves is a deprivation of equal protection rights, privileges and immunities guaranteed by the United States Constitution.

one’s right of life, liberty and property, which the Congress or the legislature may not withhold. Our whole system of law is predicated on the general, fundamental principle of equality of application of the law.” Cong. Rsch. Serv., *Constitution of the United States: Analysis and Interpretation*, “Fifth Amendment > Amdt5.4.5.2.6 Equal Protection as a Substantive Component of Due Process Clause” (https://constitution.congress.gov/browse/essay/amdt5_4_5_2_6/#ALDF_00008467).

²³ *Truax v. Corrigan*, *supra* at 332-333.

IV. THE TERRITORY CLAUSE ARGUMENT

Seeing its tax and fiscal considerations arguments fail regarding SSI program, together with their Northern Marianas argument, more so after trying to explain the alleged differences between the Commonwealth of the Northern Mariana Islands and the Commonwealth of Puerto Rico²⁴, counsel for the United States falls back on territorial clause arguments not applicable to the present case²⁵. In so doing they forget that said arguments are inapplicable and outdated to the present-day Puerto Rico and to the SSI program by the application of the fundamental due process and equal protection rights, privileges and immunities of persons and citizens inhabiting Puerto Rico, rights more recently described as “fundamental to our scheme of ordered liberty” and as “deeply rooted in this Nation’s history and tradition”²⁶.

The Territory Clause cannot be applied to the inhabitants of the body politic named the Commonwealth of Puerto Rico as if they are property. It has been wisely stated “That a [person]²⁷ cannot be made the subject of a contract with the same force and effect as if it were a mere chattel has long been established law. A similar error was basic in the majority opinion in the historic case of *Dred Scott v.*

²⁴ Brief for the United States at pages 27-28.

²⁵ Brief for the United States at pages 25-30.

²⁶ *McDonald v. Chicago*, 561 U.S. at 767 (2010).

²⁷ In the cited case the reference is to “a child”.

Sandford, 60 U.S. 393 (1857).”²⁸ It is interesting to note that Justice White in his concurring opinion in *Downes v. Bidwell*, 182 U.S. 244 (1901) stated the following as to the case of *Dred Scott v. Sandford*, *supra*: “Whatever may be the view entertained of the correctness of the opinion of the court in that case, in so far as it interpreted a particular provision of the Constitution concerning slavery and decided that as so construed it was in force in the territories, this in no way affects the principle which that decision announced, that the applicable provisions of the Constitution were operative [in the territories]. That doctrine was concurred in by the dissenting judges.” *Id.* at 291.

As stated by Justice Joseph Story: “[T]he rights of a class of persons still suffering under a ban of prejudice could never be deemed entirely secure when at any moment it was within the power of an unfriendly Congress to take them away by repealing the act which conferred them.”²⁹ In this case, it is not within the power of Congress to implicitly repeal the equal protection clause protections of the United States Constitution regarding the SSI program, disguised as power under the Territory clause, as to the persons and United States citizens residing in Puerto Rico.

To clarify those arguments advanced by counsel for the United States we turn now our attention.

²⁸ *Commonwealth ex rel. Children’s Aid Society v. Gard*, 362 Pa. 85 (Pa. 1949).

²⁹ Joseph Story, *Commentaries on the Constitution of the United States*, Section 1931 (The Fourteenth Amendment) at page 653 (Little, Brown and Company, Fourth Edition 1873).

**V. LIBERTY AND PROPERTY ARE
ENSHRINED IN DUE PROCESS, EQUAL
PROTECTION AND IN THE RIGHTS,
PRIVILEGES AND IMMUNITIES OF
PERSONS AND CITIZENS**

The liberty and property components enshrined in the equal protection clause is contained in the Fifth and Fourteenth Amendments and in Article IV of the United States Constitution as a fundamental right, privilege, and immunity not to be deprived and divested of life, liberty, or property, due process and equal protection. All Justices since *Downes v. Bidwell*, 182 U.S. 244 (1901) have expressed the importance of guaranteeing life, liberty, and property in the newly acquired territories, *Examining Board of Engineers, Architects & Surveyors v. Flores de Otero*, 426 U.S. 572, 599-601 (1976). As we have stated before, Congress may be given the power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States under Article IV, Section 3 but in the process of doing so Congress can not affect fundamental rights, privileges and immunities of persons and United States citizens residing in the body politic named the Commonwealth of Puerto Rico, including the fundamental right not to be deprived and divested of life, liberty, or property, due process and equal protection of the laws, federal, state or territorial regarding the program in Puerto Rico.

Further, although *Califano v. Torres*, 435 U.S. 1 (1978) summarily dismissed the right to travel argument to benefits regarding the SSI program in

Puerto Rico, the continued viability of said ruling should be considered by this Court as should also be considered the continued viability of the case of *Harris v. Rosario*, 446 U.S. 651 (1980).³⁰

VI. THE INSULAR CASES OF *DOWNES V. BIDWELL* AND *BALZAC V. PORTO RICO*³¹

As we stated before, all Justices since *Downes v. Bidwell*, 182 U.S. 244 (1901) have expressed the importance of guaranteeing life, liberty, and property, due process and equal protection in the newly acquired territories, *Examining Board of Engineers, Architects & Surveyors v. Flores de Otero*, 426 U.S. 572, 599-601 (1976) (“The Court recognized the applicability of these guarantees as long ago as its decisions in *Downes v. Bidwell*, 182 U.S. 244, 283-284 (1901), and *Balzac v. Porto Rico*, 258 U.S. 298, 312-313 (1922).”). See: Justice Brown in the opinion of the Court in *Downes v. Bidwell*, *supra* at 283; Justice White concurring, joined by Justices Shiras, McKenna and Gray, *Id.* at 294-295 and 298 and the dissent written by Chief Justice Fuller, concurred by Justices Harlan, Brewer and Peckham, *Id.* at 373. Chief Justice Taft stated in his unanimous opinion in *Balzac v. Porto Rico*, 258 U.S. 298 (1922) that “The Constitution of the United States is in force in Porto Rico as it is wherever and whenever the sovereign power of that government is exerted” and that “The guaranties of certain fundamental personal rights declared in the Constitution, as for instance that

³⁰ Dealing with the Aid to Families with Dependent Children program (AFDC).

³¹ At present there are no incorporated territories in the United States as they were admitted by the Congress into the Union.

no person could be deprived of life, liberty, or property without due process of law, had from the beginning full application in the Philippines and Porto Rico, and, as this guaranty is one of the most fruitful in causing litigation in our own country, provision was naturally made for similar controversy in Porto Rico.” *Id.* at 312-313.

VII. THE FUNDAMENTAL RIGHTS, PRIVILEGES AND IMMUNITIES OF THE INHABITANTS OF PUERTO RICO

Examining Board of Engineers, Architects & Surveyors v. Flores de Otero, 426 U.S. 572 (1976)³² is the leading case on the application of civil rights guaranteed by the Constitution and laws of the United States in the body politic named the Commonwealth of Puerto Rico through the application of the due process and equal protection clauses of the United States Constitution, to “the inhabitants of Puerto Rico”. The “inhabitants of Puerto Rico” are thus protected, at least under either the Fifth Amendment or the Fourteenth Amendment in their fundamental rights, privileges, or immunities to due process and equal protection. *Id.* at 581-586 and 599-601.

The Court’s decisions respecting the rights of the inhabitants of Puerto Rico have been neither unambiguous nor exactly uniform. The nature of

³² Cited with approval in *Commonwealth v. Valle*, 136 S. Ct. 1863, 1874 (2016) in both the opinion of the Court and the dissenting opinion of Justices Breyer and Sotomayor (*Id.* at 1883) and by Justice Sotomayor in her concurring opinion in *Financial Oversight & Management Board for Puerto Rico v. Aurelius Investment, LLC*, 140 S. Ct. 1649, 1672-1673 (2020).

this country's relationship to Puerto Rico was vigorously debated within the Court as well as within the Congress. ... It is clear now, however, that the protections accorded by either the Due Process Clause of the Fifth Amendment or the Due Process and Equal Protection Clauses of the Fourteenth Amendment apply to residents of Puerto Rico. The Court recognized the applicability of these guarantees as long ago as its decisions in *Downes v. Bidwell*, 182 U.S. 244, 283-284 (1901), and *Balzac v. Porto Rico*, 258 U.S. 298, 312-313 (1922). The principle was reaffirmed and strengthened in *Reid v. Covert*, 354 U.S. 1 (1957), and then again in *Calero-Toledo*, 416 U.S. 663 (1974), where we held that inhabitants of Puerto Rico are protected, under either the Fifth Amendment or the Fourteenth, from the official taking of property without due process of law. *Id.* at 599-601.

Living under a republican form of government and separation of powers with a bill of rights and a guarantee of equal protection of the laws and due process is a right, privilege and/or immunity of the "inhabitants of Puerto Rico"³³, be they citizens or not. A republican form of government and separation of powers with a bill of rights and a guarantee of equal protection is inherent in the American constitutional system and applies to the federal government, to state governments, to territorial governments and to the body politic known as the Commonwealth of Puerto Rico. For the above reason it is surprising to read that

³³ A term used to describe Isabella Gonzales in *Gonzales v. Williams*, *infra*.

counsel for the United States implicit main argument to deny equal protection is that under long-standing precedent Congress has “plenary” authority to fashion territorial entities as it sees fit and without any structural constraints under the Territory Clause. The Supreme Court has held that no such authority is “plenary”. The Supreme Court held just last year that “structural constraints, designed in part to ensure political accountability, apply to all exercises of federal power, including those related to Article IV entities.” *Financial Oversight & Management Board for Puerto Rico v. Aurelius Investment, LLC*, 140 S. Ct. 1649 at 1657 (2020)³⁴. Further, the inhabitants of Puerto Rico have a right not to be deprived and divested of life, liberty, or property, particularly due process and equal protection, *Examining Board of Engineers, Architects & Surveyors v. Flores de Otero, supra*. We repeat, the Territory Clause cannot be applied to the inhabitants of Puerto Rico, persons and United States Citizens, with the same force and effect as if they were a mere chattel.

³⁴ In the most recent Supreme Court case dealing with Puerto Rico, *Financial Oversight & Management Board for Puerto Rico v. Aurelius Investment, LLC*, 140 S. Ct. 1649 (2020) (Aurelius), the Supreme Court held that the Financial Oversight and Management Board for Puerto Rico’s members have primarily local duties, such that their selection is not subject to the constraints of the Appointments Clause. Because of its temporal nature the Court should not consider rulings made regarding PROMESA as binding on any of the issues presented by this case. It is a statute which by its own terms is not permanent as it terminates upon the Commonwealth of Puerto Rico complying with certain conditions, 48 U.S. Code 2149

Justice Marshall dissenting in *Harris v. Rosario*, *supra*, precisely made the distinction between the discrimination against the government of Puerto Rico and the discrimination against the inhabitants of Puerto Rico citizens or not:

It is unclear whether the Court's Territory Clause analysis is intended to apply only where the discrimination is against the Government of Puerto Rico and not against persons residing there. Such a distinction would lack substance in any event. The discrimination against Puerto Rico under the AFDC program must also operate as a discrimination against United States citizens residing in Puerto Rico who would benefit, one way or another, from such increased federal aid to Puerto Rico... Ultimately this case raises the serious issue of the relationship of Puerto Rico, and the United States citizens who reside there, to the Constitution. *Id.* at 651 n.1.

The distinction between the discrimination against the government Puerto Rico and the discrimination against the inhabitants of Puerto Rico as we have before stated was also noted in *Peña Martinez v. Azar*, *supra*.

VIII. THE STATUS OF THE INHABITANTS OF PUERTO RICO

In *Gonzales v. Williams*, 192 U.S. 1 (1904), a case long forgotten, the Supreme Court held that as to "the inhabitants of Puerto Rico" upon proclamation of the Treaty of Paris of 1898 ceding Puerto Rico to the United States their nationality became American and

by the Organic Act of Puerto Rico of April 12, 1900 also known as the Foraker Act creating a civil government for Porto Rico, the “inhabitants of Puerto Rico” were to be deemed citizens of Porto Rico, and they and citizens of the United States residing in Porto Rico were constituted a body politic under the name of The People of Porto Rico entitled to the protection of the government of the United States. Isabella Gonzales, an unmarried woman, was born and resided in Porto Rico, and was an inhabitant thereof on April 11, 1899, the date of the proclamation of the Treaty of Paris; she arrived at the Port of New York from Porto Rico, August 24, 1902, when she was prevented from landing and detained by the Immigration Commissioner at that port as an “alien immigrant,” in order that she might be returned to Porto Rico if it appeared that she was likely to become a public charge. *Id.* at 7. The Supreme Court held:

We think it clear that the act relates to foreigners as respects this country, to persons owing allegiance to a foreign government, and citizens or subjects thereof; and that citizens of Porto Rico, whose permanent allegiance is due to the United States; who live in the peace of the dominion of the United States; the organic law of whose domicile was enacted by the United States, and is enforced through officials sworn to support the Constitution of the United States, are not “aliens,” and upon their arrival by water at the ports of our mainland are not “alien immigrants,” within the intent and meaning of the act of 1891. *Id.* at 13.

By the Organic Act of Porto Rico of March 2, 1917, known as the Jones Act, those citizens of Puerto Rico” became citizens of the United States, *Balzac v. Porto Rico*, 258 U.S. 298 at 307 (1922). The ruling in *Gonzalez v. Williams, supra*, as to United States nationality and *Balzac v. Puerto Rico, supra*, as to United States citizenship have established that the inhabitants of Puerto Rico are not “aliens” or “alien immigrants”. Therefore, the inhabitants of Puerto Rico are not alien or foreign inhabitants in a territorial twilight zone but rather citizens of the United States and Puerto Rico with all rights, privileges, and immunities inherent to said status living in a body politic under the name of the Commonwealth of Puerto Rico.

Further, as the Supreme Court held in *Torres v. Puerto Rico*, 442 U.S. 465 (1979) there are no international borders, functional or otherwise, between Puerto Rico and the United States, and Puerto Rico is within the international borders of the United States.

The “inhabitants of Puerto Rico”, non alien persons and United States citizens residing in Puerto Rico constitute a body politic under the name of The Commonwealth of Porto Rico within the international borders of the United States. At present according to the 2020 Census there are 3,285,874 “inhabitants of Puerto Rico” and every day American citizens are being born in Puerto Rico. Persons born in Puerto Rico are citizens of the United States by birth, 8 U.S. Code

1402.³⁵ Are those inhabitants and citizens of the United States to be deprived and divested of their fundamental rights, privileges and immunities as citizens and persons, including their right to live with due process and equal protection of the laws regarding the SSI program just because they are inhabitants in the body politic named the Commonwealth of Puerto Rico? The answer should be a resounding no.

IX. PUERTO RICO AS A BODY POLITIC — A COMMONWEALTH - WITH THE TYPICAL AMERICAN GOVERNMENTAL STRUCTURE, CONSISTING OF THE THREE INDEPENDENT DEPARTMENTS — LEGISLATIVE, EXECUTIVE, AND JUDICIAL AND A BILL OF RIGHTS GUARANTEEING LIFE, LIBERTY, AND PROPERTY

In *Puerto Rico v. Shell Co.*, 302 U.S. 253 (1937) the Supreme Court held that a body politic or commonwealth consists of “the typical American governmental structure, consisting of the three

³⁵ June 27, 1952, ch. 477, title III, ch. 1, §302, 66 Stat.236.

Persons Born In Puerto Rico On Or After April 11, 1899
 All persons born in Puerto Rico on or after April 11,1899, and prior to January 13,1941, subject to the jurisdiction of the United States, residing on January 13,1941, in Puerto Rico or other territory over which the United States exercises rights of sovereignty and not citizens of the United States under any other Act, are hereby declared to be citizens of the United States as of January 13, 1941. **All persons born in Puerto Rico on or after January 13, 1941, and subject to the jurisdiction of the United States, are citizens of the United States at birth.** (Emphasis added).

independent departments — legislative, executive and judicial.” *Id.* at 261-262. In *Commonwealth v. Valle*, 136 S. Ct. 1863 (2016) the Supreme Court held, as regards the powers of the Commonwealth of Puerto Rico after 1952:

Those constitutional developments were of great significance—and, indeed, made Puerto Rico “sovereign” in one commonly understood sense of that term. As this Court has recognized, Congress in 1952 “relinquished its control over [the Commonwealth’s] local affairs [,] grant[ing] Puerto Rico a measure of autonomy comparable to that possessed by the States.” *Examining Bd. of Engineers, Architects and Surveyors v. Flores de Otero*, 426 U.S. 572, 597, 96 S. Ct. 2264, 49 L.Ed.2d 65 (1976) ; *see id.*, at 594, 96 S. Ct. 2264 (“[T]he purpose of Congress in the 1950 and 1952 legislation was to accord to Puerto Rico the degree of autonomy and independence normally associated with States of the Union”); *Rodriguez v. Popular Democratic Party*, 457 U.S. 1, 8, 102 S. Ct. 2194, 72 L.Ed.2d 628 (1982) (“Puerto Rico, like a state, is an autonomous political entity, sovereign over matters not ruled by the [Federal] Constitution” (internal quotation marks omitted). *Id.* at 1874.

In other words, as explained in *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663 (1974):

Puerto Rico has thus not become a State in the federal Union like, the [50] States, but it would seem to have become a State within a common and accepted meaning of the word. Cf. *State of*

Texas v. White, 1868, 7 Wall. 700, 721. It is a political entity created by the act and with the consent of the people of Puerto Rico and joined in union with the United States of America under the terms of the compact. *Id.* at 672-673.

Notice that according to *Examining Board of Engineers, Architects & Surveyors v. Flores de Otero*, 426 U.S. 572 at 597 (1976) and *Commonwealth v. Valle, supra*: “Congress in 1952 ‘relinquished its control over the organization of the local affairs of the island and granted Puerto Rico a measure of autonomy comparable to that possessed by the States.’” *Id.* at 1874.

CONCLUSION

The United States concedes that the guarantees of due process and equal protection apply fully in Puerto Rico. Having the United States conceded that the guarantees of due process and equal protection apply fully in Puerto Rico we can conclude that persons and United States citizens aged, blind, and disabled who lack the financial means to support themselves residing in the body politic named the Commonwealth of Puerto Rico can not be, under the present United States Constitutional structure be deprived and divested of their rights, privileges and immunities to life, liberty, and property, particularly the equal protection of the laws regarding the program. The aged, blind, and disabled persons or individuals who lack the financial means to support themselves are similarly, if not equally, situated whether they are in the states, Puerto Rico or the other territories, therefore, under due process and equal protection

principles they can not be discriminated against regarding the program because of where they are located. There is no rational basis to deprive them of such rights.

Unequal treatment of the aged, blind, or disabled inhabitants of Puerto Rico who are excluded from participation in the program because they wish or need to alter their living arrangements violates due process and equal protection, *United States Department of Agriculture v. Moreno*, 413 U.S. at 538. As in *Moreno, supra*, the SSI exclusions at issue here would force Vaello Madero and persons and citizens of the United States similarly situated to alter their living arrangements to obtain and retain their eligibility regarding the program. Unequal treatment of similarly situated persons and citizens of the United States in need of benefits under the Supplemental Security Income (SSI) program violates due process and equal protection.

Respectfully submitted,

JESÚS R. RABELL MÉNDEZ

Counsel of Record

RABELL MÉNDEZ C.S.P.

P.O. Box 195580

San Juan, Puerto Rico 00919

(787) 312-0259

jesusrabell@gmail.com

Counsel for Amicus Curiae

Diálogo Por Puerto Rico

(Dialogue of Puerto Rico)