

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 LEAGUE OF UNITED LATIN
AMERICAN CITIZENS AS *AMICUS CURIAE* IN
SUPPORT OF RESPONDENT**

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INTERESTS OF AMICUS CURIAE¹

League of United Latin American Citizens (“LULAC”) is a nonprofit organization dedicated to advancing the political influence and civil rights of Hispanic Americans. LULAC involves and serves all Hispanic nationality groups and has approximately 132,000 members throughout the United States, including many in the U.S. Territory of Puerto Rico. LULAC has an interest in this case because of its impact on residents of Puerto Rico, as well as other U.S. territories. Denying full federal benefits to residents of Puerto Rico and other U.S. Territories and the discriminatory rationale undergirding the basis for any such denial directly harm both members of LULAC and the communities it serves.

¹ Pursuant to Sup. Ct. R. 37.6, *amicus curiae* affirms that no counsel for a party has written this brief in whole or in part, and that no person or entity, other than *amicus curiae*, its members, or its counsel, has made a monetary contribution to the preparation or submission of this brief. Pursuant to Sup. Ct. R. 37.3, petitioner and respondent have provided blanket consent to the filing of amicus briefs in this case.

SUMMARY OF THE ARGUMENT

The cases cited by petitioner in support of their position, *Califano v. Torres* and *Harris v. Rosario*, discuss the degree of scrutiny due to differential treatment of citizens of Puerto Rico. However, the petitioner does not meaningfully engage with the racism and xenophobia undergirding the cases it cites. From the moment Puerto Rico was acquired by the United States, Congress and the President relied upon racism and xenophobia to deny the people of Puerto Rico equal rights. These racist and xenophobic beliefs were codified by statute and through the Insular Cases, the laws that now form the basis for permitting Congress to discriminate against Puerto Rico. Accordingly, the Insular Cases must be decisively overturned and soundly rejected.

ARGUMENT

I. The Unequal Application of Rights and Benefits to U.S. Citizens in Puerto Rico Is Premised on Racism and Xenophobia

Petitioner asks this Court to reverse the First Circuit's holding that, in refusing to extend SSI benefits to the people of Puerto Rico, Congress has violated the U.S. Constitution. Pet'r Br. at 9. In support of its position, Petitioner cites the cases *Califano v. Torres* and *Harris v. Rosario*, which according to the petitioner "establish that Puerto Rico's unique tax status provides a rational basis for

excluding it from programs such as SSI.” Petitioner, however, avoids meaningfully engaging with the historical basis for its contention that Puerto Rico should be treated differently. As further elaborated below, that historical basis is premised on racism and xenophobia. This case presents this Court the opportunity to decisively reject this longstanding injustice, and the First Circuit’s decision must be affirmed.

Each branch of government has historically authorized, sanctioned, and condoned the unequal treatment of the people of Puerto Rico through actions premised on racism and xenophobia. In the wake of Puerto Rico’s acquisition by the United States from Spain in 1898, Congress immediately began debating the degree to which the people of Puerto Rico were entitled to the full rights of U.S. citizenship. Juan R. Torruella, *The Insular Cases: The Establishment of a Regime of Political Apartheid*, 29 U. PA. J. INT’L L. 283, 287 (2007). Such justifications were cemented in a series of Supreme Court decisions called the “Insular Cases,” which held that constitutional rights only sometimes apply to the people of Puerto Rico.

In particular, Congress passed the Foraker Act of 1900, which established a colonial government for Puerto Rico but did not provide for U.S. citizenship, shortly after the United States acquired Puerto Rico. *Id.* at 299. Specifically, the Foraker Act granted the U.S. government plenary powers over Puerto Rico, which allowed the President to appoint the governor of Puerto Rico, the governor’s cabinet, and the justices

of the Supreme Court of Puerto Rico. Juan R. Torruella, Why Puerto Rico Does Not Need Further Experimentation With its Future: A Reply to the Notion of “Territorial Federalism,” 131, HARV. L. REV. 67, 70 (2018) [hereinafter Torruella, *Territorial Federalism*].

The legislative history of the Foraker Act lays plain the determining attitude behind the Act; on the Senate floor, senators expressed doubts in extending U.S. citizenship to “the alien races, and civilized, semi-civilized, barbarous, and savage peoples of these islands.” José A. Cabranes, Citizenship and the American Empire: Notes on the Legislative History of the United States Citizenship of Puerto Ricans, 127 U. PA. L. REV. 391, 432–33 (1978) (quoting 33 Cong. Rec. 3622 (1900) (remarks of Sen. Depew)). Racism and xenophobia similarly guided Congress’s beliefs that the people of Puerto Rico were incapable of self-governance and that Puerto Rico was better suited as a colonial possession of the United States rather than a State to be admitted to the Union. *Id.* at 432.

In *Downes v. Bidwell*, one of the Insular Cases, this Court adopted Congress’s view of Puerto Rico as a territory without a path to statehood, stating Puerto Rico should be thought of as “appurtenant and belonging to the United States, but not a part of the United States.” 182 U.S. 244, 287 (1901). The Court’s reasoning was derived from the fear that children born in Puerto Rico, “whether savages or civilized,” might be “entitled to all the rights, privileges and immunities of citizens” by birth. *Id.* at 279. A

concurring opinion of this Court stated that if territories inhabited by people of “uncivilized” and “alien races” were allowed to be incorporated into the Union in this way, it could “inflict grave detriment to the United States” and result in the “bestowal of citizenship on those absolutely unfit to receive it[.]” *Id.* at 306, 313, 319 (White, J., concurring).

Racism and xenophobia against the people of Puerto Rico by the U.S. government continued to manifest itself when the lower legislative House of Delegates, the only branch popularly elected by the people of Puerto Rico, refused to authorize an appropriations bill. Torruella, *Territorial Federalism*, *supra* at 72. In response, President Taft stated “that Puerto Ricans had forgotten the generosity of the United States toward them, ‘something to be expected of the people with such little education.’” *Id.* (quoting William Howard Taft, President, Message to Congress (May 10, 1909), in 3 THE COLLECTED WORKS OF WILLIAM HOWARD TAFT 96 (David Burton ed., 2002)). He further asserted the United States had “gone too far” in granting political rights to the people of Puerto Rico and the people of Puerto Rico had shown “too much irresponsibility in the enjoyment of this right.” *Id.*

In 1917, the Jones Act was signed into law by President Wilson and superseded the Foraker Act in granting U.S. citizenship to the people of Puerto Rico, along with limited additional sovereignty. *Id.* at 73. However, all significant government figures were still

to be appointed by the U.S. president, perpetuating Puerto Rico's colonial status. *Id.*

Following the passage of the Jones Act, this Court, in *Balzac v. Porto Rico*, questioned the ability of the people of Puerto Rico to adopt aspects of the U.S. government:

The jury system postulates a conscious duty of participation in the machinery of justice which it is hard for people not brought up in fundamentally popular government at once to acquire. . . . Congress has thought that a people like the Filipinos or the Porto Ricans [sic], trained to a complete judicial system which knows no juries, living in compact and ancient communities, with definitely formed customs and political conceptions, should be permitted themselves to determine how far they wish to adopt this institution of Anglo-Saxon origin.

258 U.S. 298, 310 (1922). The Court then went on to explicitly hold the people of Puerto Rico are not entitled to the full extension of constitutional rights. *See id.* at 311. As such, this Court relegated the people of Puerto Rico to second-class citizenship. Such a position has no basis in the U.S. Constitution and reflects instead the use of racism and xenophobia to deny people fundamental rights.

The historical actions described above make clear the unequal application of rights and benefits to U.S. citizens in Puerto Rico is premised on racism and xenophobia. This case presents this Court the opportunity to decisively reject this longstanding injustice.

CONCLUSION

Amicus curiae respectfully requests this Honorable Court to affirm the decision of the United States Court of Appeals for the First Circuit.

Respectfully Submitted,

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