

No. 20-303

IN THE UNITED STATES SUPREME COURT

UNITED STATES,

Petitioner

v.

JOSE LUIS VAELLO-MADERO,

Respondent

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

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

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ISSUE IN ARGUMENT ON THE MERITS

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

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II. STATEMENT OF IDENTITY AND INTEREST OF AMICUS CURIAE

1. This case involves an action by the United States of America against Jose L. Vaello Madero, which is considered by Petitioner, for purposes of this complaint, as resident of Puerto Rico. After 123 years Petitioner continues to treat Puerto Rico's American citizens as if still residents of a non-incorporated US Territory. In opposition, Amicus Brief Supports that Puerto Rico is an Incorporated Territory of the United States, as established in *Consejo de Salud de Playa de Ponce v Rullan* 586 FS 2nd 22 (2008), and as supported henceforth by other authorities.

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

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

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

Subscribing Attorney appearance will particularly be in support of Puerto Rico's legal status

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

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

III. STATEMENT ON AUTHORSHIP OF THE *AMICUS BRIEF*

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

Brief. Petitioner and Respondent didn't opposed.

IV. SUPPLEMENTARY ARGUMENT ON THE MERITS TO THE ORIGINAL AMICUS BRIEF FILED NOVEMBER 6, 2020, IN RESPONSE TO PETITIONERS BRIEF ON THE MERITS

INTRODUCTION

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

For these purposes the American citizens of Puerto Rico have been ignored as being part of the American Family with the implication of still

being considered as if they are an alien race, racist policy and approach. (See: *Downes v. Bidwell*, 182 U.S. 244).

2) ISSUE OF ARGUMENT ON THE MERITS

The undersigned attorney filed a timely Amicus Brief on November, 6 2020, requesting that it be considered on its merits (Brief pg. 29). A Brief On The Merits has been requested by the Clerk's Office. It is proposed that the Original Brief, and the Supplementary Brief On The Merits, will assist the Court to dispose of the case in a constitutional approach that will move the rights of the American citizens of Puerto Rico to get out of their state of servitude in a labyrinth to which they have been subjected to discriminatory denial of equal treatment for more than 123 years.

3) RULE 37- BRIEF ON THE MERITS

The Amicus Brief filed by herein subscribing attorney brings to the attention of the Court relevant matters not already brought to its attention by the parties, (which) can be helpful to the Court. Petitioners of and Respondent's attorneys authorized filing all Amicus Curiae Briefs. No monetary contribution was made for to the Amicus Brief appearing attorney. Request is made to this Honorable Court to adopt all arguments in its original Amicus Brief as part of this Brief On The Merits, as it opposes the arguments exposed in the Petitioner's Brief On The Merits, most repetitive of the Petition's Brief.

**A) SUPPLEMENTARY ARGUMENTS UNDER
RULE 37 IN RESPONSE ON THE MERITS
TO PETITIONER'S BRIEF**

A) Article IV, Section 3, Paragraph 2 of the Constitution of the United States states that " 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;... Are there any limits to this congressional power?

Does this clause supersede Amendment XIV or Article IV, Section 2, Paragraph 1 ?

Does the denial of the SSI to an American citizen who moves from a State to Puerto Rico constitute a violation of Amendment XIV, Section 1 "nor deny to any person within its jurisdiction the equal protection of the laws" ? Amendment XIV was successfully used by the U.S. Department of Justice in U.S. v. P. R. Police Department (922 FS2nd 185).

Does the denial of the SSI to an American citizen who moves from a State to Puerto Rico constitutes a violation of Article IV, Section 2, Paragraph 1 "The citizens of each State shall be entitled to all Privileges and Immunities of Citizens of the several States? Public Law 80-362 had a seventh paragraph inserted which reads: "...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." That 7th. paragraph was inserted into Public Law 80-362 by Senators Taft and Butler specifically to protect American citizens born outside of Puerto Rico but who traveled or moved to Puerto Rico. (1948)

- The Comity Clause prevents a state from treating citizens of the states in a discriminatory manner.
- In 1948 Public Law 80-362, providing for the election of a governor in P.R., was signed by president Truman. Sen Bulter (R-Nebraska and Sen. Taft (R-Ohio) inserted a seventh paragraph into the Law:

...." 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. "

Why did Senators Butler and Taft add this paragraph to the Law that provided for the election of a governor in P.R. (for the first time since 1898)? Because they adhered to the theory of incorporation which dictates that only portions of the Constitution of the U.S. apply in P.R. They wanted to ensure that the Comity Clause applied in P.R. because they wanted to protect visitors to P.R. from discrimination from P.R.'s "state" government.

It is ironic that the son of Supreme Court Justice Taft, who decided *Balzac* (288 US 298, 314) by adding this paragraph to PL 80-362, to protect residents of the states, while in transit through P.R., from discrimination, may have unwittingly "incorporated" Puerto Rico de jure. Notice that the law reads "citizens of the United States". There were more than two million

citizens of the United States living in Puerto Rico in 1948 and the Law does not read "only the citizens of the United States living in the forty eight states, Alaska and Hawaii". It does not read either "the citizens of the United States except those who are residents of Puerto Rico, or were born in P.R.

This is crucial, because the moment a person born in P.R. moves to any state that person is treated exactly like someone born in a state. PL 80-362 was a crucial step in the direction of incorporation, and this Hon. Court should take judicial notice to end the status quo provoking discriminatory treatment to Puerto Rico.

B) The United States Department of Justice argued in *Harris v. Rosario*, in *Califano v. Torres*, and now in *U.S. v. Vaello*, "that residents of Puerto Rico do not pay federal income taxes on income generated inside Puerto Rico. That gives Puerto Rico a tax advantage which deprives the U.S. Treasury of

income. That differential can be used by Puerto Rico to make up for the denial of parity in federal aid programs”. Puerto Rico's per capita income is less than one half of the poorest state. Even if Puerto Rico became a state less than half of the population would pay federal income taxes on local sources of income. Who is benefiting from this federal income tax exemption?

1. Corporations based in the 50 States which have saved billions of dollars in federal taxes by operating in Puerto Rico.

2. Millionaires who are moving to Puerto Rico to avoid paying federal taxes.

The U.S. Dept. of Justice pretends that Congress deprive the poor in Puerto Rico from parity in federal aid programs to offset the losses in revenue from the exemption given to billionaire corporations and to millionaire individuals. In other words, it is the poor in Puerto Rico who are bearing the penalty for these exemptions!

C) Amendment XVI, ratified in 1913, states in part "The Congress shall have power to lay and collect taxes on incomes..." Residents of the then territories of Alaska and Hawaii paid federal income taxes for nearly 50 years before these two territories became states. Congress can, beginning immediately, impose the federal income tax on income from inside Puerto Rico if it so desires. Therefore, the non payment of federal tax on income from inside Puerto Rico is not a valid excuse for Congress to deny the SSI to residents of Puerto Rico who otherwise qualify, as Petitioner argues under the veil of the case of *Harris v Rosario*.

V. CONCLUSION

In essence, no other US Territory has been more assimilated than Puerto Rico to be like a state. The degree of incorporation of Puerto Rico to be like a state can be considered by implication as strong as to exclude any other view than that it is an incorporated territory of the United States. (*Balzac v. People of Puerto Rico*, 258 U.S. 298, 314(1922)).

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

“For Whom The Bells Toll”. Honorable President Joseph Biden have stated the SSSI should be applicable to the American citizens of Puerto Rico. Ironically, his subordinate the US Secretary is litigating to the contrary before this Honorable Court.

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

WHEREFORE, the appearing amicus curiae, Gregorio Igartua, very respectfully requests this Honorable Court to take notice of the above-stated, and in considering this case on its merits, affirm the judgment of the Appeals’ Court.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico this 22th day of
October, 2021.

Gregorio Igartua

ad. honorem

- G.W.U.- L.L.M.

INTERNATIONAL LAW

- G.U.L.C. MASTER TAX LAW

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this same date three copies of this Brief was mailed to counsel of record of Petitioner and of Respondent. The brief does not exceeds 2410 words.

In San Juan, Puerto Rico this 22 th day of October, 2021.