
CIVIL RIGHTS — U.S. TERRITORIES — FIRST CIRCUIT AFFIRMS THAT UNEQUAL FEDERAL BENEFITS PROGRAM IN PUERTO RICO VIOLATES FIFTH AMENDMENT. — *United States v. Vaello-Madero*, 956 F.3d 12 (1st Cir. 2020).

Over 120 years after American troops first landed in Guánica and Puerto Rico fell under the control of the United States, the constitutional status of Puerto Ricans remains a murky legal and political question.¹ Since it decided the controversial *Insular Cases* at the turn of the twentieth century,² the Supreme Court has upheld a paradoxical — and widely criticized³ — legal framework: although Puerto Ricans possess U.S. citizenship,⁴ Congress may “freely choose[] which portions of the Constitution apply in [Puerto Rico], limited only by vaguely defined ‘fundamental’ rights.”⁵ Congress has relied on this enduring separate-but-unequal status to exclude Puerto Ricans from many of the benefits that mainland U.S. citizens enjoy.⁶ Recently, however, in *United States v. Vaello-Madero*,⁷ the First Circuit affirmed a ruling by the U.S. District Court for the District of Puerto Rico that the exclusion of Puerto Rico from Supplemental Security Income (SSI), a federal benefit program, violates the Fifth Amendment’s Due Process Clause.⁸ The ruling, well-rooted in the Supreme Court’s “rational basis with bite” jurisprudence, serves as a powerful example of the federal judiciary’s ability to intervene on behalf of politically unpopular groups where Congress has failed to act.

José Luis Vaello-Madero was born in Puerto Rico in 1954 and moved to New York in 1985.⁹ In 2012, he began receiving SSI payments after experiencing severe health problems.¹⁰ Established in 1972, SSI provides cash assistance to low-income people who are sixty-five or older, or who have disabilities.¹¹ As enacted, the program extends to residents of the fifty states, the District of Columbia, and the unincorporated

¹ See Juan R. Torruella, Commentary, *Why Puerto Rico Does Not Need Further Experimentation with Its Future: A Reply to the Notion of “Territorial Federalism,”* 131 HARV. L. REV. F. 65, 66 (2018).

² See Efrén Rivera Ramos, *The Legal Construction of American Colonialism: The Insular Cases (1901–1922)*, 65 REVISTA JURÍDICA UNIVERSIDAD DE PUERTO RICO [REV. JUR. U. P.R.] 225, 240–41 (1996); see also *id.* at 228 (arguing that the *Insular Cases* “provided an explicit legal justification of the American colonial project in Puerto Rico”).

³ See, e.g., Susan K. Serrano, *Elevating the Perspectives of U.S. Territorial Peoples: Why the Insular Cases Should Be Taught in Law School*, 21 J. GENDER, RACE & JUST. 395, 396 (2018).

⁴ 8 U.S.C. § 1402; see also Jones Act, ch. 145, § 5, 39 Stat. 951, 953 (1917) (granting, for the first time, U.S. citizenship to people born in Puerto Rico).

⁵ Serrano, *supra* note 3, at 396.

⁶ See *id.* at 396, 411–12.

⁷ 956 F.3d 12 (1st Cir. 2020).

⁸ See *id.* at 18, 32.

⁹ *Id.* at 15.

¹⁰ *Id.*

¹¹ See Memorandum from William R. Morton, Analyst in Income Sec., Cong. Rsch. Serv. 1 (Oct. 26, 2016), <https://fas.org/sgp/crs/row/cash-aged-pr.pdf> [<https://perma.cc/SS35-59HW>].

territory of the Northern Mariana Islands — but not to those living in Puerto Rico.¹² In 2013, Vaello-Madero moved back to Puerto Rico to help care for his wife and continued receiving SSI benefits.¹³ During the summer of 2016, the Social Security Administration informed Vaello-Madero that, as a result of his move, it would terminate his future SSI benefits.¹⁴ From then on, Vaello-Madero would have to apply for Aid to the Aged, Blind, or Disabled (AABD), a program operated in Puerto Rico that is both more exclusive and less generous than SSI.¹⁵ Moreover, the federal government filed suit in the United States District Court for the District of Puerto Rico to recover the \$28,081 it had “over-paid” Vaello-Madero from 2013 to 2016.¹⁶

With no facts in dispute, the district court granted Vaello-Madero’s motion for summary judgment and denied the government’s cross-motion.¹⁷ The government had argued that the Territorial Clause¹⁸ permitted Congress to “pass economic and social welfare legislation for the territories where there is a rational basis for such actions,”¹⁹ relying on the Supreme Court’s interpretation of the clause in *Harris v. Rosario*.²⁰ The court, while acknowledging this authority, countered that the government could not use the Territorial Clause as a “blank check” to violate the constitutional rights of Puerto Ricans.²¹ Reaffirming that the Constitution prohibits “a bare congressional desire to harm a politically unpopular group” from serving as the basis for disparate treatment,²² the court found that Congress’s categorical exclusion of Puerto Rico from SSI would not satisfy rational basis review.²³ The court dismissed the government’s arguments in support of the unequal treatment; it instead determined that the government’s true purpose in denying SSI benefits to Puerto Ricans was “to impose inequality”²⁴ and, further, suggested that this exclusion amounted to a “*de facto* classification based on Hispanic origin” that should be subject to a more stringent “heightened scrutiny standard.”²⁵ Noting that the discrimination would fail under this standard as well, the court agreed with Vaello-Madero that

¹² *Id.*

¹³ See *Vaello-Madero*, 956 F.3d at 15.

¹⁴ See *United States v. Vaello Madero*, 356 F. Supp. 3d 208, 211 (D.P.R. 2019).

¹⁵ See Memorandum from William R. Morton, *supra* note 11, at 11–12 tbl.5.

¹⁶ *Vaello Madero*, 356 F. Supp. 3d at 211.

¹⁷ See *id.*

¹⁸ U.S. CONST. art. IV, § 3, cl. 2 (“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 . . .”).

¹⁹ *Vaello Madero*, 356 F. Supp. 3d at 212.

²⁰ 446 U.S. 651, 651–52 (1980) (per curiam); see *Vaello Madero*, 356 F. Supp. 3d at 215 n.7.

²¹ *Vaello Madero*, 356 F. Supp. 3d at 212.

²² *Id.* at 213 (quoting *United States v. Windsor*, 570 U.S. 744, 770 (2013)).

²³ *Id.* at 214.

²⁴ *Id.* (quoting *Windsor*, 570 U.S. at 772).

²⁵ *Id.*

the exclusion violated the equal protection right embedded in the Fifth Amendment's Due Process Clause.²⁶ In its conclusion, the district court reaffirmed the judiciary's responsibility to invalidate exactly this type of legislation "that creates a citizenship apartheid based on historical and social ethnicity within United States soil" — especially when the other branches of government have not intervened.²⁷

The First Circuit affirmed.²⁸ Judge Torruella, writing for the unanimous panel,²⁹ first distinguished two Supreme Court decisions that the government had relied on to justify Congress's unequal treatment of Puerto Rico in administering welfare programs: *Califano v. Torres*³⁰ and *Harris v. Rosario*.³¹ Rather than suggest that both cases had been superseded, as the district court had done,³² the First Circuit concluded that both cases, as per curiam decisions, were of limited precedential value.³³ Furthermore, both could be distinguished: *Califano* dealt with a challenge to SSI under the constitutional *right to travel*, while *Harris* dealt with a challenge to *block grants* to Puerto Rico, rather than payments to Puerto Ricans.³⁴ Thus, the court concluded it must "consider the present-day circumstances surrounding Puerto Rico's exclusion from SSI" and conduct its own rational basis review of the discrimination.³⁵

The court first considered the government's argument that disparate treatment of Puerto Rico was justified because "residents of Puerto Rico do not, as a general matter, pay federal income taxes."³⁶ This fact, the government asserted, was relevant because "[i]t is rational for Congress to limit the SSI program benefits, funded by general revenues, to exclude populations that generally do not pay federal income taxes."³⁷ The court rejected this argument for two main reasons. First, while most Puerto Ricans are exempt from paying federal income tax, they are not exempt from *all* federal taxes.³⁸ In fact, Puerto Rican taxpayers had consistently contributed more to the federal treasury than did taxpayers in six states

²⁶ See *id.* The court had earlier noted that the Fifth Amendment equal protection analysis is the same as the Fourteenth Amendment analysis. See *id.* at 213.

²⁷ *Id.* at 215.

²⁸ *Vaello-Madero*, 956 F.3d at 32.

²⁹ Chief Judge Howard and Judge Thompson joined the opinion. *Vaello-Madero* was one of Judge Torruella's final opinions; after thirty-six years of service on the First Circuit, he passed away on October 26, 2020. See Sam Roberts, *Juan Torruella, Groundbreaking U.S. Appeals Judge, Dies at 87*, N.Y. TIMES (Oct. 28, 2020), <https://nyti.ms/2TAwHGr> [<https://perma.cc/DL6B-7KR8>].

³⁰ 435 U.S. 1 (1978) (per curiam).

³¹ See *Vaello-Madero*, 956 F.3d at 18–23.

³² See *id.* at 17; *Vaello Madero*, 356 F. Supp. 3d at 215 n.7.

³³ See *Vaello-Madero*, 956 F.3d at 21.

³⁴ *Id.*

³⁵ *Id.* at 23.

³⁶ *Id.* at 24 (quoting Opening Brief for Appellant at 9, *Vaello-Madero*, 956 F.3d 12 (1st Cir. 2020) (No. 19-1390)).

³⁷ *Id.* at 25 (alteration in original) (quoting Opening Brief for Appellant, *supra* note 36, at 15).

³⁸ *Id.* at 24.

and the Northern Mariana Islands, where SSI operates.³⁹ Second, the court found that it was illogical to argue that Puerto Ricans should have to pay federal income tax to be eligible for SSI, since most SSI beneficiaries “almost by definition earn[] too little to be paying federal income taxes.”⁴⁰ Thus, the court held that “the tax status argument” for excluding Puerto Rico from SSI was “irrational and arbitrary.”⁴¹

Next, the court turned to the government’s second proposed rational basis: the cost of expanding SSI to Puerto Rico would be very high, and “protecting the fiscal integrity of Government programs . . . ‘is a legitimate concern of the State.’”⁴² While conceding that cost constraints “may compel certain difficult choices in order to improve the protection afforded to the entire benefitted class,”⁴³ the court concluded that costs could not provide a rational basis *on their own*.⁴⁴ To hold otherwise, the court noted, would be to permit the government to rely on a circular argument: cost constraints are a legitimate legislative interest, and choosing which group to discriminate against in order to save costs requires a rational basis; but if cost can serve as a rational basis, then the initial legislative purpose paradoxically becomes both the motivating and justifying reason for the discrimination.⁴⁵ The court thus held that “the cost of including Puerto Rico’s elderly, disabled, and blind in SSI cannot by itself justify their exclusion.”⁴⁶

Because overturning legislation under rational basis review requires the negation of “every conceivable basis which might support it,”⁴⁷ the court proceeded to examine a few lingering arguments. Having already found that Congress’s stated legislative purpose in enacting SSI could not support the discrimination,⁴⁸ the court concluded that including the Northern Mariana Islands in SSI, but not Puerto Rico, weakened the government’s argument: both territories had needy citizens, and neither contributed federal income taxes.⁴⁹ The government’s suggestion that “[t]here is no ‘equal footing doctrine’” for the territories was similarly unconvincing: while Congress could treat the territories differently from the states, and from one another, this did not sanction discrimination

³⁹ See *id.* Puerto Rican taxpayers paid over \$3.4 billion into the federal treasury in 2018. *Id.*

⁴⁰ *Id.* at 27.

⁴¹ *Id.* at 28.

⁴² *Id.* (quoting *Lyng v. Int’l Union, UAW*, 485 U.S. 360, 373 (1988)).

⁴³ *Id.* (quoting *Lyng*, 485 U.S. at 373).

⁴⁴ See *id.* at 29.

⁴⁵ See *id.*

⁴⁶ *Id.* at 30.

⁴⁷ *Id.* at 18 (quoting *FCC v. Beach Commc’ns, Inc.*, 508 U.S. 307, 315 (1993)).

⁴⁸ See *id.* (noting that “Congress created SSI ‘[f]or the purpose of establishing a *national program* to provide supplemental security income to [eligible individuals]’” (first alteration in original) (emphasis added) (quoting 42 U.S.C. § 1381)).

⁴⁹ See *id.* at 30.

against territorial residents in violation of the Fifth Amendment.⁵⁰ Thus, failing to find a rational basis, the First Circuit held the exclusion of Puerto Rico from SSI unconstitutional.⁵¹

Although it was less explicit in its intentions than the district court, the First Circuit achieved the same result: the protection of a “politically unpopular” group that has long been overlooked by Congress. Despite claiming to adhere to nothing more than standard rational basis review, the First Circuit’s analysis more closely resembled the “rational basis with bite” standard of review endorsed by the Supreme Court in numerous cases involving similar discriminatory laws. Given the socioeconomic crises facing Puerto Rico⁵² and the inequality between citizens on the island and those in the United States, the First Circuit’s decision appropriately asserted a greater role for the federal courts in intervening to improve the lives of the millions of U.S. citizens living in the territories.

For over forty years, the Supreme Court has refused to formally endorse any new suspect classifications that would trigger heightened scrutiny within the equal protection analysis.⁵³ Nevertheless, in a number of cases, the Court has adopted a more searching rational basis inquiry into purported discrimination against “politically unpopular group[s].”⁵⁴ Commonly referred to as “rational basis with bite,”⁵⁵ this standard has two components: First, the court “decide[s] whether the law targets or works principally to the disadvantage of a politically unpopular group.”⁵⁶ Second, the court “evaluate[s] the law under a standard somewhat more rigorous than ordinary rational basis review.”⁵⁷ The Court has used this approach to overturn laws that discriminate against a number of different groups, including LGBT people,⁵⁸ undocumented children,⁵⁹ and households composed of unrelated

⁵⁰ *Id.* at 31.

⁵¹ *See id.* at 32.

⁵² *See, e.g.,* Amelia Cheatham, *Puerto Rico: A U.S. Territory in Crisis*, COUNCIL ON FOREIGN RELS. (Feb. 13, 2020), <https://www.cfr.org/background/puerto-rico-us-territory-crisis> [https://perma.cc/A89Y-7X4Q].

⁵³ *See* Kenji Yoshino, *The New Equal Protection*, 124 HARV. L. REV. 747, 757 (2011).

⁵⁴ *E.g.,* U.S. Dep’t of Agric. v. Moreno, 413 U.S. 528, 534 (1973).

⁵⁵ *See* Gayle Lynn Pettinga, Note, *Rational Basis with Bite: Intermediate Scrutiny by Any Other Name*, 62 IND. L.J. 779, 779 n.9 (1987) (proposing the name “rational basis with bite”).

⁵⁶ Note, *The Benefits of Unequal Protection*, 126 HARV. L. REV. 1348, 1363 (2013).

⁵⁷ *Id.*

⁵⁸ Raphael Holoszyc-Pimentel, Note, *Reconciling Rational-Basis Review: When Does Rational Basis Bite?*, 90 N.Y.U. L. REV. 2070, 2115–17 (2015) (discussing *Romer v. Evans*, 517 U.S. 620 (1996), and *United States v. Windsor*, 570 U.S. 744 (2013)). *But see* Maxwell L. Stearns, Obergefell, Fisher, and the Inversion of Tiers, 19 U. PA. J. CONST. L. 1043, 1043 (2017) (arguing that the Court in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), “declin[ed] to apply rational basis in a non-deferential manner as it had in other cases involving sexual orientation”).

⁵⁹ Holoszyc-Pimentel, *supra* note 58, at 2111–12 (discussing *Plyler v. Doe*, 457 U.S. 202 (1982)).

individuals.⁶⁰ While many of these decisions have been widely celebrated,⁶¹ they have also attracted criticism for lacking doctrinal formality and for applying a heightened standard of review without acknowledging that fact.⁶²

Judge Torruella's opinion in *Vaello-Madero* reflects a quiet application of rational basis with bite review — perhaps the first time such a review has occurred in the territorial context⁶³ — in both its approach and its result. In establishing the framework for its rational basis review, the First Circuit relied heavily on three decisions⁶⁴ that commentators have consistently identified as canonical rational basis with bite cases.⁶⁵ And although the First Circuit did not explicitly describe Puerto Ricans as “politically unpopular” or the equivalent (as the district court had done⁶⁶), the court did point out Puerto Rico's lack of federal political representation in a footnote unnecessary to the rest of the court's reasoning.⁶⁷ Judge Torruella himself wrote multiple academic works on the subject of Puerto Ricans' second-class citizenship (some of which are cited in *Vaello-Madero*)⁶⁸ and, in a recent dissent, suggested that denying Puerto Ricans the right to vote in federal elections involved “prejudice against discrete and insular minorities” and thus required a “more searching judicial inquiry.”⁶⁹ The outcome of *Vaello-Madero* is also unusual for standard rational basis cases, which, as scholars have noted, often entail “minimal scrutiny in theory and virtually none in

⁶⁰ *Id.* at 2109–10 (discussing *U.S. Department of Agriculture v. Moreno*, 413 U.S. 528 (1973)).

⁶¹ See, e.g., Kevin G. Walsh, Comment, *Throwing Stones: Rational Basis Review Triumphs over Homophobia*, 27 SETON HALL L. REV. 1064, 1093 (1997) (celebrating *Romer*).

⁶² See, e.g., *Romer*, 517 U.S. at 640 (Scalia, J., dissenting) (“The Court's entire novel theory rests upon the proposition that there is something *special* — something that cannot be justified by normal ‘rational basis’ analysis — in making a disadvantaged group (or a nonpreferred group) resort to a higher decisionmaking level. That proposition finds no support in law or logic.”).

⁶³ Cf. Holozy-Pimentel, *supra* note 58, at 2106–17 (detailing every Supreme Court case utilizing rational basis with bite review from 1971 to 2014, none of which involved the territories).

⁶⁴ See *Vaello-Madero*, 956 F.3d at 18 (citing *Moreno*, 413 U.S. at 533); *id.* at 23 (citing *Romer*, 517 U.S. at 632; *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 446 (1985)).

⁶⁵ See Note, *supra* note 56, at 1363 (noting the consensus that five cases, including *Moreno*, *Romer*, and *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, are all rational basis with bite cases).

⁶⁶ See *United States v. Vaello Madero*, 356 F. Supp. 3d 208, 214 (D.P.R. 2019) (describing Puerto Ricans as “the very essence of a politically powerless group”). One could argue that the regular use of the term “politically *unpopular*,” as opposed to “politically *powerless*,” suggests that rational basis with bite review is more concerned with animus against a group than with the group's lack of access to political redress. However, these attributes are likely interconnected and mutually reinforcing — for example, Puerto Ricans' federal disenfranchisement is, at least in part, a product of animus against them. See, e.g., Serrano, *supra* note 3, at 411.

⁶⁷ See *Vaello-Madero*, 956 F.3d at 24 n.12.

⁶⁸ See, e.g., Torruella, *supra* note 1; *Vaello-Madero*, 956 F.3d at 24 n.13 (citing Torruella, *supra* note 1, at 91–92).

⁶⁹ *Igartúa v. Trump*, 868 F.3d 24, 26 (1st Cir. 2017) (Torruella, J., dissenting from the denial of rehearing en banc) (quoting *United States v. Carolene Prods. Co.*, 304 U.S. 144, 152 n.4 (1938)).

fact.”⁷⁰ Indeed, in its petition for a writ of certiorari, the government sharply attacked the First Circuit’s analysis for going beyond the deferential rational basis standard commonly applied in “the area of economics and social welfare.”⁷¹

Despite its clear reliance on a more searching review, the First Circuit never explicitly stated its intention to rely on rational basis with bite, and in fact stated that “Puerto Rico residency . . . does not warrant *any form of heightened review*.”⁷² While earlier First Circuit decisions engaged in rational basis with bite review explicitly,⁷³ Judge Torruella’s tacit review in *Vaello-Madero* may reflect an appreciation of the Supreme Court’s increasing hostility toward the standard⁷⁴ and, thus, a strategic attempt to avoid an easy overruling. Nevertheless, the decision to use rational basis with bite is well supported given the sociopolitical realities of life in Puerto Rico. U.S. citizens in Puerto Rico cannot vote in federal elections, and Puerto Rico’s sole delegate to the House of Representatives cannot vote on legislation.⁷⁵ Despite the fact that nearly forty-three percent of the island’s residents live in poverty,⁷⁶ the federal government has historically ignored or even exacerbated many of Puerto Rico’s socioeconomic challenges⁷⁷ — including by denying the island access to SSI.⁷⁸ Together, these facts strongly support the conclusion that Puerto Ricans are “politically unpopular” and that discrimination against them would fit in well among the cases that federal courts have identified as warranting rational basis with bite review.

⁷⁰ Gerald Gunther, *The Supreme Court, 1971 Term — Foreword: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection*, 86 HARV. L. REV. 1, 8 (1972).

⁷¹ Petition for a Writ of Certiorari at 11, *United States v. Vaello-Madero*, No. 20-303 (U.S. Sept. 4, 2020) (quoting *Dandridge v. Williams*, 397 U.S. 471, 485 (1970)).

⁷² *Vaello-Madero*, 956 F.3d at 29 n.26 (emphasis added).

⁷³ See *Massachusetts v. U.S. Dep’t of Health & Hum. Servs.*, 682 F.3d 1, 10–11 (1st Cir. 2012).

⁷⁴ See, e.g., *Trump v. Hawaii*, 138 S. Ct. 2392, 2420–21 (2018) (acknowledging several rational basis with bite cases, but refusing to apply that standard even where the “desire to harm a politically unpopular group,” *id.* at 2420 (quoting *U.S. Dep’t of Agric. v. Moreno*, 413 U.S. 528, 534 (1973)), was arguably much more explicit than in *Vaello-Madero*). In *Trump v. Hawaii*, 138 S. Ct. 2392, Chief Justice Roberts also criticized the dissent, which appeared to utilize rational basis with bite review, for “refusing to apply anything resembling rational basis review.” *Id.* at 2421; see also *id.* at 2441–42 (Sotomayor, J., dissenting).

⁷⁵ See *Igartúa-de la Rosa v. United States*, 417 F.3d 145, 147 (1st Cir. 2005) (en banc); Torruella, *supra* note 1, at 97 n.239.

⁷⁶ See ROSANNA TORRES & JAVIER BALMACEDA, CTR. ON BUDGET & POL’Y PRIORITIES, WHY THE FEDERAL GOVERNMENT SHOULD SUPPORT PUERTO RICO’S NEW EITC 1 (2019), <https://www.cbpp.org/sites/default/files/atoms/files/11-14-19tax.pdf> [<https://perma.cc/SQ8H-7DV6>].

⁷⁷ See Cheatham, *supra* note 52 (“Experts say the island’s economic crisis is rooted in . . . twentieth century legislation that encouraged Puerto Rico’s reliance on debt to fill federal funding gaps.”).

⁷⁸ SSI would provide direct benefits to roughly *ten times* as many Puerto Ricans as receive AABD benefits, and those who qualify for benefits would receive nearly *nine times* the average monthly payment that AABD provides. See U.S. GOV’T ACCOUNTABILITY OFF., GAO-14-31, PUERTO RICO: INFORMATION ON HOW STATEHOOD WOULD POTENTIALLY AFFECT SELECTED FEDERAL PROGRAMS AND REVENUE SOURCES 82–83 (2014).

The First Circuit's decision represents a laudable move to ensure equality for Puerto Ricans and other U.S. citizens in the territories.⁷⁹ That being said, the extension of SSI via the courts, rather than Congress, raises particular issues. By seeking to grant Puerto Ricans equal benefits as those granted to citizens on the mainland, the First Circuit's decision may subtly push Puerto Rico toward seeking a closer relationship with the United States⁸⁰ — a path that remains hotly contested on the island.⁸¹ And while the First Circuit's decision may be celebrated in this case, in the long term it is far from clear that broadening courts' authority to overrule the decisions of popularly elected legislatures is normatively desirable.⁸² This may be of special concern where federal judges, relying on decisions like *Vaello-Madero*, are called to review legislation designed to benefit the territories more directly or to enhance sovereignty there.⁸³

But while Congress may well be the more appropriate forum to resolve political questions of this kind, it has thus far proven unable or unwilling to do so — despite growing public awareness of the island's plight,⁸⁴ especially in the wake of devastating economic and natural disasters.⁸⁵ Given this failure to act, and keeping in mind the political disenfranchisement of Puerto Ricans, the widespread need for aid like SSI on the island, and Congress's incentives to maintain the status quo,⁸⁶ the First Circuit's decision represents a refusal to sit idly by when the option to protect a politically unpopular group exists. It is ironic, in one sense, that the extension of SSI by the court comes after a century of judicial complicity in perpetuating a baldly unequal status quo.⁸⁷ With *Vaello-Madero*, perhaps the courts are finally reckoning with this legacy and ready to chart a different path forward — even if Puerto Rico's political future remains an open question.

⁷⁹ Following *Vaello-Madero*, the U.S. District Court of Guam relied on the First Circuit's decision to strike down SSI discrimination in Guam, *see Schaller v. U.S. Soc. Sec. Admin.*, No. 18-00044, slip op. at 20 (D. Guam June 19, 2020), and the U.S. District Court for the District of Puerto Rico applied the court's holding to strike down discrimination in two other federal benefits programs, *see Peña Martínez v. U.S. Dep't of Health & Hum. Servs.*, No. 18-01206, 2020 WL 4437859, at *2 (D.P.R. Aug. 3, 2020).

⁸⁰ *Cf.* Christina D. Ponsa-Kraus, Essay, *Political Wine in a Judicial Bottle: Justice Sotomayor's Surprising Concurrence in Aurelius*, 130 YALE L.J.F. 101, 101, 103 (2020) (criticizing Justice Sotomayor for unnecessarily “[faking] sides in the debate over Puerto Rican decolonization,” *id.* at 101).

⁸¹ *See id.* at 105 n.15 (outlining the history of divided public opinion among Puerto Ricans between seeking statehood, the continuation of the island's commonwealth status, or independence).

⁸² *Cf.* Samuel Moyn, *The Court Is Not Your Friend*, DISSENT (Winter 2020), <https://www.dissentmagazine.org/article/the-court-is-not-your-friend> [<https://perma.cc/AA2V-H25E>].

⁸³ *Cf., e.g., Davis v. Guam*, 932 F.3d 822, 824–25 (9th Cir. 2019) (overturning, under the Fifteenth Amendment, a Guam statute that authorized a plebiscite to determine the future of the territory's political status and limited participation to “Native Inhabitants of Guam”).

⁸⁴ *See, e.g., Last Week Tonight with John Oliver: Puerto Rico* (HBO television broadcast Apr. 24, 2016) (featuring Lin-Manuel Miranda).

⁸⁵ *See* Cheatham, *supra* note 52.

⁸⁶ The federal government would have needed to spend \$1.5 to \$1.8 billion to operate SSI in Puerto Rico during fiscal year 2011 — compared to the \$24 million it spent on AABD that year. U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 78, at 82.

⁸⁷ *See* Rivera Ramos, *supra* note 2, at 226–27.