

# Equal Protection Does Not Mean Equal SSI Benefits for Puerto Rico Residents, Says Supreme Court

April 28, 2022

On April 21, 2022, the U.S. Supreme Court decided *United States v. Vaello-Madero*, a case asking whether the equal protection guarantee in the U.S. Constitution’s Fifth Amendment requires Congress to provide the same federal benefits (specifically, [Supplemental Security Income](#) [SSI] benefits for the aged, blind, and disabled) to Puerto Rico residents as to residents of the 50 states. In a ruling that reaffirmed Congress’s constitutional authority to treat territorial residents differently as long as it has a rational basis for doing so, the Supreme Court determined that the Fifth Amendment does *not* require Congress to extend SSI benefits to Puerto Rico residents. The Supreme Court’s decision reversed the determinations of both lower courts. This Sidebar discusses the legal arguments advanced before the Supreme Court before analyzing considerations for Congress.

## Background

### Facts of the Case

While living in New York, José Luis Vaello-Madero became eligible for, and began receiving, SSI disability benefits. He later moved to Puerto Rico, where he continued to receive SSI payments. By law, a person [must be a resident](#) of the United States to be eligible for SSI benefits. For purposes of the relevant statute, Congress [defined](#) “United States” to mean the 50 states and the District of Columbia. Congress [extended](#) SSI eligibility to residents of the Northern Mariana Islands in 1976 but has not done so for Puerto Rico or other U.S. territories. Accordingly, the Social Security Administration [sued](#) Vaello-Madero to recover the payments he received while living in Puerto Rico. In response, Vaello-Madero argued that excluding Puerto Rico residents from SSI eligibility was unconstitutional—specifically, that it violated his constitutional right to equal protection under the law.

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## Constitutional Provisions

Under the [Territory](#) Clause in Article IV of the U.S. Constitution, Congress is empowered to “make all needful Rules and Regulations respecting the Territory . . . belonging to the United States,” a phrase interpreted to give Congress [broad authority](#) over nonstate entities such as Puerto Rico. Like all of its legislative powers, however, Congress’s territorial authority is bound by the other provisions of the Constitution, including the Fifth Amendment.

The Constitution’s Fifth Amendment does not contain the words “equal protection,” but the Supreme Court has [held](#) that the Fifth Amendment’s [Due Process Clause](#) imposes on the federal government the equal protection obligations that states have under the Fourteenth Amendment’s [Equal Protection Clause](#). Equal protection, the Court has said, “is essentially a direction that all persons similarly situated [should be treated alike](#),” unless the government is entitled to treat them differently. Statutes that create certain classifications—differentiating between people based on characteristics like [race](#) or [sex](#)—or that burden fundamental rights must meet higher levels of scrutiny to survive constitutional challenges. Statutory classifications that do not receive heightened scrutiny are generally valid if they have a “[rational basis](#),” meaning that a court will generally uphold the challenged legislation if it is reasonably related to a legitimate government purpose.

## Case Law

Two previous Supreme Court cases applied the rational-basis standard of review to evaluate challenges to legislation that treated Puerto Rico differently from the 50 states. [Califano v. Torres](#) (1978) involved a claim that the SSI program unconstitutionally burdened the fundamental right to travel because it disadvantaged people who moved from the mainland to Puerto Rico. The *Torres* court [footnoted](#) in its summary reversal that at least three rationales were offered to justify Puerto Rico’s exclusion from the SSI program, implying that they were “rational and not invidious”:

1. Puerto Rico’s “unique tax status”;
2. the “extremely great” cost of including Puerto Rico in the SSI program; and
3. the risk that the SSI program “might seriously disrupt” Puerto Rico’s economy.

Although *Torres* appeared to subject the SSI program’s validity to rational-basis review, it did not squarely address an equal protection challenge.

Unlike *Torres*, [Harris v. Rosario](#) (1980) involved a Fifth Amendment equal protection challenge similar to that raised in *Vaello-Madero*. In *Rosario*, recipients of a different federal benefit program argued that lower reimbursement levels in Puerto Rico relative to the 50 states violated the Fifth Amendment’s equal protection guarantee. Applying the rational-basis standard, the *Rosario* court [recited](#) the same three rationales identified in *Torres*, accepting them as sufficient to justify different treatment for Puerto Rico residents for that program.

## Case History

The U.S. District Court for the District of Puerto Rico first heard *Vaello-Madero*’s equal protection challenge to the SSI program. In 2019, that court found that excluding Puerto Rico residents failed the rational-basis test, [holding](#) that classifying a group of the country’s “medically neediest” citizens as “second tier” because they live in Puerto Rico “is by no means rational.” The United States appealed that decision to the U.S. Court of Appeals for the First Circuit.

The First Circuit [agreed](#) that the rational-basis test should apply. However, because the *Torres* court did not base its decision on equal protection grounds, and the *Rosario* court did not consider the SSI program,

those decisions, in the First Circuit's view, **did not control** the outcome of Vaello-Madero's case. The First Circuit **explained** that both *Torres* and *Rosario* were summary dispositions, decided without the benefit of briefing or oral argument in the Supreme Court, and thus had less precedential value. Thus, rather than treating those cases as determinative, the First Circuit performed its own assessment of the rational basis for the U.S. government's exclusion of Puerto Rico residents from the SSI program.

The government's proffered rationales before the First Circuit aligned with the first two noted in *Torres* (the United States **declined** to rely on *Torres*'s third rationale). First, regarding Puerto Rico's unique tax status, the First Circuit **pointed out** that the Court's analysis in *Torres* seemed to erroneously believe that Puerto Rico did not contribute to the federal treasury when in fact, as an entity, it does so in amounts higher than several other states. Although many *individual* Puerto Rico residents do not pay federal income taxes, the SSI program's income limitations **mean** that most qualified recipients in the 50 states also do not pay federal income taxes. Second, regarding the cost to include Puerto Rico in the SSI program, the First Circuit **posited** that cost-savings alone cannot justify exclusion of one group over another similarly situated group; Congress must still have a separate rational basis for choosing which group to exclude. Ultimately, the First Circuit **concluded** it could find "no set of facts ... establishing a rational basis for the exclusion of Puerto Rico residents from SSI coverage."

## The U.S. Supreme Court Decision in *Vaello-Madero*

### Majority Opinion

The U.S. Supreme Court **reversed** the First Circuit's decision in an 8-1 opinion written by Justice Brett Kavanaugh. *Torres* and *Rosario*, **wrote** the Court, "dictate the result here." The rational-basis test applies, and Puerto Rico's tax status, in the Court's view, supplies a rational basis for disparate treatment. To decide otherwise, the Court **cautioned**, could mean that all federal benefits must be extended to Puerto Rico, which in turn could mean that federal *taxes* should also be applied to Puerto Rico on the same basis as the 50 states. The Court addressed no other rationale for Puerto Rico's exclusion from the SSI program. The Court **specified**, however, that its decision "should not be read to imply that Congress may exclude residents of individual States from benefits programs."

### Concurrences

Justice Clarence Thomas wrote a separate concurrence declaring that he is **no longer convinced** that the Fifth Amendment supports an equal protection doctrine coextensive with the Fourteenth Amendment's protections. Based on his review of the Court's Fifth Amendment jurisprudence, he contended that there was "limited support" for an equal protection guarantee. Though cautioning that his "conclusions remain tentative," Justice Thomas **advanced** a theory that the Fourteenth Amendment's **Citizenship Clause** may be an alternative source for a prohibition on racial discrimination by the federal government, "at least with respect to civil rights."

Justice Neil Gorsuch also wrote a separate concurrence calling for the Court to overrule a line of cases known as the *Insular Cases*. The *Insular Cases* developed a **judicial distinction** between "incorporated" territories, where the U.S. Constitution applies in full, and "unincorporated" territories, where only "fundamental" provisions apply. That distinction, Justice Gorsuch **opined**, may have had support "in academic work of the period, ugly racial stereotypes, and the theories of social Darwinists," but not in the Constitution's language "or its original understanding." Because both parties in *Vaello-Madero* **acceded** that the Fifth Amendment's equal protection guarantee was "fundamental" and applied in Puerto Rico, overruling the *Insular Cases* was unnecessary to resolve Vaello-Madero's case. However, Justice Gorsuch

[urged](#) the Court to recognize “that the Insular Cases rest on a rotten foundation” and overrule them in an appropriate future case.

## Dissent

Justice Sonia Sotomayor dissented. In her [view](#), “there is no rational basis for Congress to treat needy citizens living anywhere in the United States so differently from others.” Justice Sotomayor [reiterated](#) several of the First Circuit’s observations: that *Torres* and *Rosario* were summary dispositions; that those cases misstated Puerto Rico’s contributions to the federal treasury; and that SSI recipients generally do not pay federal taxes, making it untenable to rely on Puerto Rico residents’ nonpayment of individual federal taxes as a rationale for exclusion from the SSI program. Justice Sotomayor [would have found](#) the Puerto Rico residents’ exclusion from the SSI program “irrational and antithetical to the very nature of the SSI program and the equal protection of citizens guaranteed by the Constitution.”

## Considerations for Congress

The Supreme Court’s *Vaello-Madero* decision clarifies that *Torres* and *Rosario* are binding precedent, and that congressional actions treating Puerto Rico or other territories differently from the 50 states are generally subject to [deferential](#) rational-basis review. Under *Vaello-Madero*, Puerto Rico’s unique tax status sufficiently justifies Congress’s decision to provide different levels of federal benefits to Puerto Rico residents. Because the Court’s acceptance of Puerto Rico’s tax status as a rational basis for exclusion from the SSI program did not rely on the SSI program’s specific features or operations, it appears that this tax-status rationale could justify differential treatment for a range of other federal benefit programs. To the extent Congress agrees with this outcome, Congress could consider express references to this rationale in future federal benefits legislation.

Congress could decide to alter the specific exclusion *Vaello-Madero* highlighted in the SSI program. Puerto Rico’s Resident Commissioner, for example, introduced [H.R. 537](#), the Supplemental Security Income Equality Act, in the 117th Congress. This bill would amend the Social Security Act to include Puerto Rico, the U.S. Virgin Islands, Guam, and American Samoa as part of the “United States” when determining SSI eligibility. The bill would also eliminate [certain limits](#) on other federal programs’ funding to the territories.

To the extent there is legislative interest, Congress could also address differential treatment between U.S. territories and the 50 states in other contexts. For example, in the 117th Congress, [H.R. 1825](#) and [S. 3778](#), both titled Territories Medicare Prescription Drug Assistance Equity Act of 2022, would make beneficiaries who reside in Puerto Rico and other U.S. territories eligible for certain Medicare subsidies for which they are currently ineligible.

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