

The Virgin Islands Consortium

Fate of Equal Rights for U.S. Territories Case Uncertain Following First Supreme Court Hearing on SSI Benefits

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Former Congresswoman Madeleine Bordallo, along with other current and former residents of U.S. territories, at the Supreme Court as part of Equally American's "I am José" campaign. By. EQUALLY AMERICAN

In a release issued Wednesday, Equally American, which advocates for equal rights for citizens in U.S. territories, said the U.S. Supreme Court was asked on Tuesday to consider what four words emblazoned on the front of the Court – "Equal Justice Under Law" – mean for the 3.5 million citizens living in U.S. territories.

At issue was whether the denial of Supplemental Security Income benefits to José L. Vaello Madero based solely on his place of residence in Puerto Rico violated the Constitution's guarantee of equal protection. Two lower courts ruled favorably for Mr. Vaello Madero, but it was unclear after oral argument whether the Supreme Court would affirm or reverse those decisions.

"The argument was much farther ranging than I expected," said Neil Weare, president and founder of Equally American. "We weren't given a lot in the way of answers on what most of the Justices were thinking. It was clear that many of them were still thinking through – sometimes out loud – what they wanted to do in the case."

According to the release, the strongest voice in favor of Mr. Vaello Madero was Justice Sonia Sotomayor, whose parents are from Puerto Rico. She explained to her colleagues that, "Puerto Ricans are citizens, and the Constitution applies to them. Their needy people are being treated different than the needy people in the 50 states, the District of Columbia, and the Northern Mariana Islands." She emphasized again later, "needy is needy, whether in Puerto Rico or in the mainland."

"Justice Sotomayor explained in simple and plain terms why where one lives – standing alone – cannot be a basis to deny a U.S. citizen equal enjoyment of a uniform federal benefit like SSI," Mr. Weare said.

According to the [Wall Street Journal](#), Justice Neil Gorsuch took a broader view and questioned the continued validity of the so-called Insular Cases, century-old precedents in which the Supreme Court justified differential treatment of Puerto Rico and other Spanish-speaking territories wrested from Madrid in the Spanish-American War.

"Why shouldn't we just admit the Insular Cases were incorrectly decided?" he asked. "Why shouldn't we just say what everyone knows to be true?"

Justice Brett Kavanaugh credited Mr. Ferre with "compelling policy arguments" but said the Constitution treats territories differently than states.

Justices Amy Coney Barrett and Samuel Alito questioned whether Mr. Ferre could validly seek equal benefits for Puerto Ricans if they weren't also subject to the same burdens, including tax burdens, as residents of the 50 states.

Justice Alito also said Congress with some regularity passed laws that had the effect of treating some states better than others. "So," he asked, "what is the difference between that and this?", according to WSJ.

The Insular Cases were also a significant focus of the argument. After Deputy Solicitor General Curtis Gannon disclaimed any reliance by the government on the Insular Cases, Justice Neil Gorsuch responded, "why shouldn't we just admit the Insular Cases were incorrectly decided?" When Mr. Gannon declined to answer directly, Gorsuch pressed further: "from the government's point of view, if the Insular Cases are wrong ... why shouldn't we just say what everyone knows to be true?" In response, while Mr. Gannon stated that "some of the reasoning and rhetoric [of the Insular Cases] is obviously anathema, has been for decades, if not from the outset," he declined the opportunity presented by Justice Gorsuch to call on the Court to overrule the Insular Cases.

Mr. Weare remarked, "We've been calling on the Supreme Court to overrule the Insular Cases for years, so I was pleased to hear Justice Gorsuch call out the Insular Cases so directly. It was disappointing though that even after Justice Gorsuch opened the door for the government to walk through, they refused to take that step. In effect, the Biden-Harris Justice Department is continuing to defend the Insular Cases, which is hard to square with the values they profess to adhere to."

With the Supreme Court still closed to the public due to Covid-19, Equally American brought together supporters from several U.S. territories as part of its "[I am José](#)" [campaign](#) to listen to the arguments outside the court while holding signs demanding action by the Court and Congress. Among those attending were former Guam Congresswoman Madeleine Bordallo and staff from current Guam Congressman Michael F.Q. San Nicolas, among many others.

"The big takeaway today should be that we need to continue pushing decision-makers in DC to address these historic injustices, which are grounded in systemic racism," Mr. Weare explained. "Now that the case for equality has been made to the Supreme Court, we need to shift our focus to Congress, where the extension of SSI benefits to citizens in the territories has been included by House Democrats in the draft budget reconciliation bill. Getting that across the finish line will be hard work over the next few weeks, but we can't lose focus."

A [new poll](#) released Wednesday shows that U.S. voters support expanding SSI benefits to citizens in the territories by a 45 point margin, with 69 percent supporting and only 24 percent opposing.

People from the territories whose lives have been impacted by the denial of SSI benefits are encouraged to continue sharing their stories with Equally American at <https://www.equalrightsnow.org/ssisurvey>. So far nearly 200 people have taken the survey.

A decision in the case is not expected until later next year. More information on U.S. v. Vaello Madero, including links to the transcript and audio of the oral argument, is available at https://www.equalrightsnow.org/vaello_madero. More about the "I am José" campaign is available at <https://www.equalrightsnow.org/iamjose>.