

November 4, 2021

The Honorable Joseph R. Biden
President
The White House
1600 Pennsylvania Ave NW
Washington, D.C. 20052

Dear President Biden:

On behalf of Hispanic Federation and the 60 undersigned organizations, who represent civil and human rights, senior and disability rights, labor, philanthropic, and community-based organizations, we ask that your administration immediately cease defending the federal government's discrimination against US citizens who live in Puerto Rico and other US territories in federal public benefits programs intended to support the lowest income Americans. As a candidate for President, you said "Our president should be able to [meet a simple test](#): understanding that Puerto Ricans are American citizens, and that they are entitled to — and deserve — the same support from the United States government as every citizen."

Contrary to that statement, your administration is currently fighting three federal court decisions that would provide equal access to critical federal benefits currently denied to some of the most marginalized US citizens living in the territories.¹ The most immediate of the three, [United States v. Vaello Madero](#), is scheduled for oral arguments at the Supreme Court on Nov. 9th. Last year, the First U.S. Circuit Court of Appeals, [upheld](#) the [determination](#) by a District Court judge in Puerto Rico that "disparately classify[ing] United States citizens residing in Puerto Rico" runs "counter to the very essence and fundamental guarantees of the Constitution itself." The federal appellate court agreed further that it is "irrational and arbitrary" to exclude otherwise eligible individuals from the Supplemental Security Income (SSI) program — a federal benefits program to help low-income aged, blind, and disabled people with basic needs such as housing and food — solely because they reside in the territory. Inexplicably, your administration is continuing to appeal those decisions and is now readying to argue in favor of the constitutionality of second-class citizen treatment of Puerto Ricans.

Puerto Rico's [unequal access](#) to SSI is particularly harmful given the island's high disability rate. Nearly [15.1 percent](#) of Puerto Rican residents (1 in 6) are disabled, according to the Census Bureau, compared with [8.6 percent](#) of the general US population. According to the [Congressional Research Office](#), in 2016, the monthly federal SSI benefit rate across the 50 states was \$733 per individual, but in Puerto Rico, the monthly benefit for aged, blind, or disabled US citizens was a mere \$64.

¹ [United States v. Vaello Madero](#), [Pena Martinez v. Alex M. Azar II](#), [HHS](#), and [Katrina Schaller v. U.S. Social Administration and Andrew M. Saul](#).



The issue goes beyond SSI benefits. In a similar case in 2020, [*Peña Martinez v. United States Health and Human Services*](#), the U.S. District Court of Puerto Rico also ruled that it was a violation of the Due Process Clause of the Fifth Amendment to deny Americans in Puerto Rico federal benefits, [stating](#) that “no rational basis supports the categorical exclusion of otherwise eligible residents of Puerto Rico from the SSI, SNAP, and LIS,” (Low-Income Subsidy for the Medicare Prescription Drug Benefit program that helps low-income people with the high cost of medical prescriptions). We wholeheartedly agree.

We commend you for the many steps you have taken to reverse actions by the previous administration that have harmed Puerto Rico, including your removal of numerous barriers to accessing federal disaster funds appropriated by Congress in 2017. However, other commitments have not been met even though opportunities have presented themselves. Such an opportunity is before you now. It requires your Administration to do nothing but accept multiple lower court rulings that have all reached the same conclusion: denying federal benefits like SSI, SNAP, and help with prescription drugs to some of the most vulnerable US citizens simply because they live in Puerto Rico and other U.S. territories is discriminatory and unconstitutional.

As a candidate, [you criticized](#) the Trump administration for appealing the *Vaello Madero* federal court ruling and [said](#) you would “ensure [that] residents of Puerto Rico have access to these benefits.” Yet, your administration is doing exactly what the Trump administration did by challenging federal district and appellate court rulings that held the exclusion of otherwise eligible Puerto Ricans from SSI solely due to their status as Puerto Rican residents was discriminatory and violated the Due Process Clause of the Fifth Amendment.

By appealing decisions issued by the lower courts that reject discrimination, the Biden administration is inviting the Supreme Court to join in perpetuating injustice against classes that should be constitutionally protected, an invitation we fear the current Court majority would be all too willing to accept.

Nearly 30 amicus briefs were [filed in opposition](#) to the Trump and Biden administrations’ position reflecting a broad range of interests from [disability](#), [civil](#), [human](#), and [senior](#) rights groups, members of Congress, a coalition of [18 attorneys general](#) from across the US, [labor groups](#) representing millions of workers across the country and in Puerto Rico on behalf of both their members who currently live in Puerto Rico and their members within the 50 states who cannot return to the island without forfeiting SSI benefits, [public benefits scholars](#), the [American Bar Association](#), [sixteen states and territories](#) including Guam and the District of Columbia, numerous legislative bodies and elected officials in Puerto Rico, and plaintiffs in [other cases](#) whose outcomes will [hinge on](#) the resolution of *Vaello Madero*. Numerous briefs highlight the racist roots of discrimination against residents of U.S. territories and point out that by excluding territories from certain nationwide aid programs like SSI, Congress withholds assistance from areas in which it is arguably most needed. *Not a single friend of the court brief has been filed in support of the government’s position.*

The outcome of the *Vaello Madero* case will have a far-reaching impact on other cases currently being held in abeyance in which Courts have similarly held that it is discriminatory to deny benefits to otherwise qualified citizens simply because of where they reside while other cases are being



stayed pending a determination.² By fighting *Vaello Madero*, your administration is fighting all of them. As [plaintiffs in a case](#) currently on hold pending this decision have said, “Every passing minute constitutes an unnecessary delay for people who are eligible and in urgent need of the most immediate participation in the SSI program operated by SSA. Even minimal periods of time without receiving SSI, only causes further health risks, significant economic hardship, and constitutional harm.”

The lasting consequences of a negative decision in this one case on the lives of Puerto Rican families and children will be to continue to inhibit their ability to lift themselves out of poverty and to prevent them from receiving access to the same medical care and support as other low-income citizens. A negative decision will ensure that they will continue to be penalized by the federal government because of where they were born or choose to live within the US.

It is not a fluke that Puerto Rico has both the highest poverty rates for adults and children across the US and has long been denied equitable access to a whole range of federal programs designed to support and lift vulnerable Americans out of poverty.

It has [been estimated](#) that: “correcting disparities in SSI and SNAP would put approximately \$2.8 billion each year directly in the pockets of the most vulnerable citizens living in Puerto Rico. Correcting Medicaid and Medicare disparities would bring billions more to Puerto Rico, where federal health care expenditures per capita are about one-third of what is spent on the 50 states. It would also allow the Puerto Rican government to redirect its limited resources to pay for essential services cut back under the [austerity measures](#) imposed by the Financial Management and Oversight Board.”

This is not just about the plaintiffs, (or in Mr. Madero’s case, the defendant), Puerto Ricans have waited 120 years to overturn the [racist Insular cases](#) decided by largely the same court that decided separate was equal in *Plessy v Ferguson*. These cases represent that chance. This is your Administration’s *Brown v Board of Education* moment, *which you could meet by simply refraining from challenging the lower court decisions*.

It also gives you the unique opportunity as President to firmly reject discrimination as the law of the land for all the US citizens who live in Puerto Rico -- 93 percent of whom are [non-white](#). You also gave your word to Puerto Ricans and their families in the diaspora who voted for you. It is your presidential and constitutional duty to protect the fundamental rights of all US citizens -- including those who live in Puerto Rico and the US territories.

Your [explanation](#) that “the Department of Justice has a longstanding practice of defending the constitutionality of federal statutes, regardless of policy preferences” is inconsistent with previous DOJ decisions -- including when you were Vice President under President Obama. In fact, at that time, as Vice President, you enthusiastically supported the Obama administration’s [decision to drop its defense](#) of the Defense of Marriage Act, which unconstitutionally prohibited federal

² Ibid.

Other cases with similar facts and claims have been stayed pending the Supreme Court’s final resolution of *United States v. Vaello-Madero* include [Rivera-Fuentes v. Andrew Saul and Commissioner of the Social Security Administration](#) and [Ruiz-Aviles v. Social Security Administration](#).



recognition of same-sex marriages. Numerous [members](#) of Congress have also asked you to drop the appeals of these cases.

The *Vaello Madero* District Court [noted](#) that “United States citizens residing in Puerto Rico are the very essence of a politically powerless group, with no Presidential nor Congressional vote” Puerto Ricans know this only too well. When Candidate Biden said Puerto Ricans deserve “a government that treats every American equally,” they had every reason to believe his actions would reflect that commitment.

The Biden Administration must recognize and support the role of the US judiciary to protect the Constitutional rights of politically powerless groups when Congress has failed to act. Arguing that your administration is [obligated to defend](#) the denial of these constitutional rights to Puerto Ricans would be antithetical to the values you have exhibited in so many other respects as a candidate and as President.

In the end, this is not a complicated legal argument -- this is a simple issue of fundamental constitutional and human rights.

Therefore, we respectfully urge your Administration to immediately withdraw the government’s appeals in the case of *Vaello Madero* from the Supreme Court and in the *Peña Martinez* case from the First Circuit U.S. Court of Appeals. The time is long past to abandon the discriminatory approaches of yesterday and write a new chapter in the ongoing U.S. path to treat all Americans equally.

We are pleased that after many years of advocating that Congress is contemplating treating Puerto Rico equitably in SSI in the draft Build Back Better proposal being negotiated in Congress. However, that proposal wouldn’t take effect for two years, continuing to deny potentially life-saving benefits to disabled, elderly, and blind Puerto Ricans. The proposal also does not address the plight of Mr. Vaello Madero who is being asked to *pay back* money he received based on his disability after moving from New York to Puerto Rico. Your administration should also address this injustice.

Should you have any questions or require more information, please contact Laura M. Esquivel, Vice President, Federal Policy and Advocacy at lesquivel@hispanicfederation.org. Thank you for your attention to these concerns. Hispanic Federation is committed to remaining on the front lines to ensure that the rights of Latino communities across the nation are upheld.

Sincerely,

List of signatories

National Organizations

ASPIRA

Autistic Self Advocacy Network

Center for Law and Social Policy (CLASP)

Coalition for Food Security Puerto Rico

Coalition on Human Needs

Esperanza United



Food Research & Action Center (FRAC)
Green Latinos
Hispanic Federation
Hispanic National Bar Association (HNBA)
Hispanics in Philanthropy (HIP)
Inter University Program on Latino Research
Justice in Aging
Labor Council for Latin American Advancement (LCLAA)
LatinoJustice PRLDEF
League of United Latin American Citizens (LULAC)
MALDEF (Mexican American Legal Defense and Educational Fund)
MAZON: A Jewish Response to Hunger
National Association of Councils on Developmental Disabilities
National Association of Hispanic Federal Executives (NAHFE)
National Employment Law Project (NELP)
National Hispanic Caucus of State Legislators (NHCSL)
National Hispanic Media Coalition (NHMC)
National Hispanic Medical Association (NHMA)
National Latinx Psychological Association
National LGBTQ Task Force
National Low Income Housing Coalition (NLIHC)
National Organization of Social Security Claimants' Representatives (NOSSCR)
Partnership for America's Children
RESULTS
Service Employees International Union (SEIU)³
SER Jobs for Progress National Inc.
US Hispanic Leadership Institute (USHLI)

Puerto Rico, State, and Local Organizations

Acción Valerosa, Inc.
ALIANZA DE LÍDERES COMUNITARIOS DE PR INC.
APRODEC Inc.
Asociación Mayaguezana de Personas con Impedimentos, Inc.
Ayuda Legal Puerto Rico
Camuy Health Services, Inc.
Centro de Servicios Primarios de Salud de Patillas, Inc.
Coalición de Coaliciones Pro Personas sin Hogar de PR, Inc.
Connecting Paths PR, Inc.
Conservación ConCiencia
Guerreras de luz LLC
Lcdo. David Torres
Maryland Latinos Unidos (MLU)
MCCOY (Marion County Commission on Youth, Inc.)

³ SEIU is a member of the Official Committee of Unsecured Creditors in Puerto Rico's bankruptcy proceedings, but signs onto this letter solely on its own behalf and not in their capacity as Committee members, nor in any way on behalf of the Committee.



Mujeres de Islas
Mumas Renaciendo Corp.
Museo de Arte Contemporáneo de Puerto Rico
One Stop Career Center of PR Inc.
Parceleras Afrocaribeñas por la Transformación Barrial Inc.
PathStone Corporation
Programa de Educación Comunal de Entrega y Servicio, Inc. PECES
Proyecto PATRIA
Puerto Rico Para Todos
Salud Integral en la Montaña, Inc.
The Children's Agenda
Unidos por Utuado
Voices for Utah Children
Waves Ahead Corp