AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

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Supplementary Material

Chapter 12: The Contemporary Era – Foundations/Scope/Extraterritoriality

**United States v. Vaello Madero, \_\_\_ U.S. \_\_** (2022)

*Jose Luis Vaello Madero moved from New York to Puerto Rico in 2013. Federal law entitled him to Supplementary Security Income benefits while he resided in New York, but not when he lived in Puerto Rico. Federal officials sought to recover the benefits paid to Vaello Madero by mistake after the move, but Vaello Madero resisted. He claimed that denying Supplementary Security Income benefits to persons who lived in Puerto Rico violated the due process clause of the Fifth Amendment. The local district court and the Court of Appeals for the First Circuit agreed with this contention. The United States appealed to the Supreme Court.*

*The Supreme Court by an 8-1 vote reversed the lower federal courts. Justice Brett Kavanaugh’s majority opinion held that the United States could distinguish between residents of Puerto Rico and residents of the mainland United States as long as the distinction had a rational basis. Why does Kavanaugh think this distinction has a rational basis? Why does Justice Sonia Sotomayor disagree? Is her rational basis test stricter than the rational basis test applied by the majority? Justices Clarence Thomas and Neil Gorsuch issued notable concurring opinions. Justice Thomas would overrule the Supreme Court’s decision in* Boiling v. Sharp *(1954) which held that the due process clause of the Fifth Amendment had an equal protection component. Justice Gorsuch would overrule the Insular Cases, which held that Congress was not bound by the Bill of Rights when governing territories. Why does each justice call for an overruling? Should one of both of these decisions be overruled? Do the concurring opinions in* Vaello Madero *mark directions the Roberts Court is likely to take in the near future or are they merely judicial idiosyncrasies?*

Justice [KAVANAUGH](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0364335801&originatingDoc=I76a72100c12f11ec80bec15c770a3f3d&refType=RQ&originationContext=document&transitionType=DocumentItem&ppcid=95cda400dea64a49920f02478c4bba8d&contextData=(sc.Default)&analyticGuid=I76a72100c12f11ec80bec15c770a3f3d) delivered the opinion of the Court.

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The Territory Clause of the Constitution states that Congress may “make all needful Rules and Regulations respecting the Territory ... belonging to the United States.” The text of the Clause affords Congress broad authority to legislate with respect to the U. S. Territories.

Exercising that authority, Congress sometimes legislates differently with respect to the Territories, including Puerto Rico, than it does with respect to the States. That longstanding congressional practice reflects both national and local considerations. In tackling the many facets of territorial governance, Congress must make numerous policy judgments that account not only for the needs of the United States as a whole but also for (among other things) the unique histories, economic conditions, social circumstances, independent policy views, and relative autonomy of the individual Territories.

Of relevance here, Congress must decide how to structure federal taxes and benefits for residents of the Territories. In doing so, Congress has long maintained federal tax and benefits programs for residents of Puerto Rico and the other Territories that differ in some respects from the federal tax and benefits programs for residents of the 50 States.

On the tax side, for example, residents of Puerto Rico are typically exempt from most federal income, gift, estate, and excise taxes. . . . But just as not every federal tax extends to residents of Puerto Rico, so too not every federal benefits program extends to residents of Puerto Rico. One example is the Supplemental Security Income program, which Congress passed and President Nixon signed into law in 1972.. The Supplemental Security Income program provides benefits for, among others, those who are age 65 or older and cannot financially support themselves. . . . [T]he Federal Government provides supplemental income assistance to covered residents of Puerto Rico through a different benefits program—one that is funded in part by the Federal Government and in part by Puerto Rico.

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In *[Califano v.](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1978114191&pubNum=0000708&originatingDoc=I76a72100c12f11ec80bec15c770a3f3d&refType=RP&originationContext=document&transitionType=DocumentItem&ppcid=95cda400dea64a49920f02478c4bba8d&contextData=(sc.Default))**[Torres](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1978114191&pubNum=0000708&originatingDoc=I76a72100c12f11ec80bec15c770a3f3d&refType=RP&originationContext=document&transitionType=DocumentItem&ppcid=95cda400dea64a49920f02478c4bba8d&contextData=(sc.Default))* (1978), the Court addressed whether Congress's decision not to extend Supplemental Security Income to Puerto Rico violated the constitutional right to interstate travel.  Applying the deferential rational-basis test, the Court upheld Congress's decision. The Court explained that Congress had exempted residents of Puerto Rico from federal taxes. And the Court concluded that Congress could likewise treat residents of Puerto Rico differently from residents of the States in the Supplemental Security Income benefits program. A few years later, in [*Harris* *v.* *Rosario*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1980116755&pubNum=0000708&originatingDoc=I76a72100c12f11ec80bec15c770a3f3d&refType=RP&originationContext=document&transitionType=DocumentItem&ppcid=95cda400dea64a49920f02478c4bba8d&contextData=(sc.Default)) (1978), the Court again ruled that Congress's differential treatment of Puerto Rico in a federal benefits program did not violate the Constitution—this time, the equal-protection component of the Fifth Amendment's Due Process Clause.  The Court stated that the Territory Clause permits Congress to “treat Puerto Rico differently from States so long as there is a rational basis for its actions.” . . .

Those two precedents dictate the result here. The deferential rational-basis test applies. And Puerto Rico's *tax* status—in particular, the fact that residents of Puerto Rico are typically exempt from most federal income, gift, estate, and excise taxes—supplies a rational basis for likewise distinguishing residents of Puerto Rico from residents of the States for purposes of the Supplemental Security Income *benefits* program. In devising tax and benefits programs, it is reasonable for Congress to take account of the general balance of benefits to and burdens on the residents of Puerto Rico. . . .

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Justice [THOMAS](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0216654601&originatingDoc=I76a72100c12f11ec80bec15c770a3f3d&refType=RQ&originationContext=document&transitionType=DocumentItem&ppcid=95cda400dea64a49920f02478c4bba8d&contextData=(sc.Default)&analyticGuid=I76a72100c12f11ec80bec15c770a3f3d), concurring.

I join the opinion of the Court. I write separately to address the premise that the Due Process Clause of the Fifth Amendment contains an equal protection component whose substance is “precisely the same” as the Equal Protection Clause of the Fourteenth Amendment. *Weinberger v. Wiesenfeld* (1975). Although I have joined the Court in applying this doctrine, I now doubt whether it comports with the original meaning of the Constitution. Firmer ground for prohibiting the Federal Government from discriminating on the basis of race, at least with respect to civil rights, may well be found in the Fourteenth Amendment's Citizenship Clause.

Until the middle of the 20th century, this Court consistently recognized that the Fifth Amendment “contains no equal protection clause and it provides no guaranty against discriminatory legislation by Congress.” . . .

In *Bolling v. Sharpe* (1954), the Court began in earnest to fold an “equal protection” guarantee into the concept of “due process.” . . . [*Bolling*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1954117300&pubNum=0000780&originatingDoc=I76a72100c12f11ec80bec15c770a3f3d&refType=RP&originationContext=document&transitionType=DocumentItem&ppcid=95cda400dea64a49920f02478c4bba8d&contextData=(sc.Default))’s locating of an equal protection guarantee in the Fifth Amendment's Due Process Clause raises substantial questions. First, [*Bolling*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1954117300&pubNum=0000780&originatingDoc=I76a72100c12f11ec80bec15c770a3f3d&refType=RP&originationContext=document&transitionType=DocumentItem&ppcid=95cda400dea64a49920f02478c4bba8d&contextData=(sc.Default))’s interpretation seemingly relies upon the [*Lochner*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1905100369&originatingDoc=I76a72100c12f11ec80bec15c770a3f3d&refType=RP&originationContext=document&transitionType=DocumentItem&ppcid=95cda400dea64a49920f02478c4bba8d&contextData=(sc.Default))-era theory that “unreasonable discrimination” is “a denial of due process of law.”  By invoking “due process” to hold an allegedly “unreasonable” or “arbitrary” legislative classification unconstitutional, [*Bolling*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1954117300&pubNum=0000780&originatingDoc=I76a72100c12f11ec80bec15c770a3f3d&refType=RP&originationContext=document&transitionType=DocumentItem&ppcid=95cda400dea64a49920f02478c4bba8d&contextData=(sc.Default)) made clear that it was applying this Court's “substantive due process” doctrine. . . . But “[t]he notion that a constitutional provision that guarantees only ‘process’ before a person is deprived of life, liberty, or property could define the substance of those rights strains credulity for even the most casual user of words.”  Rather, “ ‘considerable historical evidence supports the position that “due process of law” was a separation-of-powers concept designed as a safeguard against unlicensed executive action, forbidding only deprivations not authorized by legislation or common law.’ ”  And, to the extent that the Due Process Clause restrains the authority of Congress, it may, at most, prohibit Congress from authorizing the deprivation of a person's life, liberty, or property without providing him the “customary procedures to which freemen were entitled by the old law of England.” . . . Either way, the Fifth Amendment's text and history provide little support for modern substantive due process doctrine.

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. . . . Given the relevant history, “it is hard to see how the ‘liberty’ protected by the [Due Process Clause] could be interpreted to include anything broader than freedom from physical restraint.” And even if “liberty” encompasses more than that, “[i]n the American legal tradition, liberty has long been understood as individual freedom *from* governmental action, not as a right *to*a particular government entitlement.”  Consequently, if “liberty” in the Due Process Clause does not include any rights to public benefits, it is unclear how that provision can constrain the regulation of access to those benefits.

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[*Bolling*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1954117300&pubNum=0000780&originatingDoc=I76a72100c12f11ec80bec15c770a3f3d&refType=RP&originationContext=document&transitionType=DocumentItem&ppcid=95cda400dea64a49920f02478c4bba8d&contextData=(sc.Default)) asserted that because the Constitution prohibits States from racially segregating public schools, “it would be unthinkable that the same Constitution would impose a lesser duty on the Federal Government.”  For one, such moral judgments lie beyond the commission of the federal courts. For another, the assertion is debatable at best. “The Constitution contains many limitations that apply only to the states, or only to the federal government, and this Court is not free to disregard those aspects of the constitutional design.” Likewise, “the enactors of the Fourteenth Amendment might have reasonably believed that [an equal protection] provision was not needed against the federal government” because it “had shown itself to be a much better protector of the rights of minorities than had the states.”

Even if the Due Process Clause has no equal protection component, the Constitution may still prohibit the Federal Government from discriminating on the basis of race, at least with respect to civil rights. While my conclusions remain tentative, I think that the textual source of that obligation may reside in the Fourteenth Amendment's Citizenship Clause. That Clause provides: “All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.” Amdt. 14, § 1, cl. 1. As I sketch out briefly below, considerable historical evidence suggests that the Citizenship Clause “was adopted against a longstanding political and legal tradition that closely associated the status of ‘citizenship’ with the entitlement to legal equality.”

In the years before the Fourteenth Amendment's adoption, jurists and legislators often connected citizenship with equality. Namely, the absence or presence of one entailed the absence or presence of the other. For example, even Chief Justice TANEY in *Dred Scott v. Sandford* (1857), demonstrated this connection when discussing why, erroneously in my view, free blacks were “not intended to be included ... under the word ‘citizens’ in the Constitution,” and therefore could “claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States.” . . . For Taney, . . . States’ longstanding and widespread practice of denying free blacks equal civil rights conclusively showed that blacks were not “citizens” entitled to various constitutional protections, such as the right to sue in federal court.

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Congress enacted the Civil Rights Act of 1866 to both repudiate [*Dred Scott*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1856193196&pubNum=0000780&originatingDoc=I76a72100c12f11ec80bec15c770a3f3d&refType=RP&originationContext=document&transitionType=DocumentItem&ppcid=95cda400dea64a49920f02478c4bba8d&contextData=(sc.Default)) and eradicate the Black Codes. The 1866 Act contained a citizenship clause similar to the Fourteenth Amendment's: “[A]ll persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States.”. The provision immediately succeeding that citizenship guarantee clarified that “such citizens, of every race and color” were entitled to “the same right, in every State and Territory in the United States, to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens, and shall be subject to like punishment, pains, and penalties, and to none other.”

Fleshing out the implications of the citizenship declaration, this clause suggests that the right to be free of racial discrimination with respect to the enjoyment of certain rights is a constituent part of citizenship.

Moreover, as Congress debated the 1866 Act, “the view that the status of citizenship conferred upon its recipients at least some minimal level of equality rights was widely shared among both supporters and opponents.” For instance, Representative Samuel Shellabarger argued that “the right of all citizens to be secured in the enjoyment of whatever privileges their citizenship does confer upon them is in its very nature equal ....” . . . . And after President Johnson's veto, Representative William Lawrence, the 1866 Act's principal House sponsor, maintained that “the very nature of citizenship” guaranteed an “equality of civil rights.”

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In the years following the Fourteenth Amendment's ratification, several Justices also appeared to endorse this understanding of the Citizenship Clause, consistent with Reconstruction-era discourse. In the *Slaughter-House Cases* (1873), Justice BRADLEY's dissent articulated the equal-citizenship principle: “Citizenship of the United States ought to be, and, according to the Constitution, is, a sure and undoubted title to equal rights in any and every State in this Union.” . . . Three years after the [*Slaughter-House Cases*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1872196552&pubNum=0000780&originatingDoc=I76a72100c12f11ec80bec15c770a3f3d&refType=RP&originationContext=document&transitionType=DocumentItem&ppcid=95cda400dea64a49920f02478c4bba8d&contextData=(sc.Default)), Congress enacted the Civil Rights Act of 1875, prohibiting discrimination in public accommodations. During the congressional debates over the 1875 Act, Republicans reiterated the relationship between the status of “citizen” and entitlement to equal civil rights. In a virtually unanimous opinion, this Court held the 1875 Act unconstitutional because discrimination by public accommodations was not state action Congress could regulate under the Fourteenth Amendment. See *Civil Rights Cases* (1883). The lone dissenter, Justice JOHN MARSHALL HARLAN, focused primarily on citizenship and echoed Republicans’ understanding of equal citizenship: “Citizenship in this country necessarily imports at least equality of civil rights among citizens of every race in the same State. It is fundamental in American citizenship that, in respect of such rights, there shall be no discrimination by the State ... against any citizen because of his race.”

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 Justice HARLAN also penned his dissent in *Plessy v. Ferguson* (1896), in which the Court upheld a Louisiana law requiring racial segregation on train cars. In asserting that the law was unconstitutional, Harlan did not rely on the Equal Protection Clause. Instead, he maintained that Louisiana's law was “inconsistent ... with the equality of rights which pertains to citizenship, National and State.” And Harlan's famous declaration underscores the connection between citizenship and equality: “Our Constitution is color-blind, and neither knows nor tolerates classes among *citizens*. In respect of civil rights, all *citizens* are equal before the law.” . . . Beyond its emphasis on equal citizenship, Justice HARLAN's [*Plessy*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1896180043&pubNum=0000780&originatingDoc=I76a72100c12f11ec80bec15c770a3f3d&refType=RP&originationContext=document&transitionType=DocumentItem&ppcid=95cda400dea64a49920f02478c4bba8d&contextData=(sc.Default)) dissent also specifically recognized that the Federal Government could not engage in racial discrimination. The Fourteenth Amendment, Harlan explained, “gave citizenship to all born or naturalized in the United States, and residing here,” “obliterated the race line from our systems of governments, *National and State*,” and “placed our free institutions upon the broad and sure foundation of the equality of all men before the law.” . . .

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Justice HARLAN stated in [*Plessy*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1896180043&pubNum=0000780&originatingDoc=I76a72100c12f11ec80bec15c770a3f3d&refType=RP&originationContext=document&transitionType=DocumentItem&ppcid=95cda400dea64a49920f02478c4bba8d&contextData=(sc.Default)) that the Fourteenth Amendment “added greatly to the dignity and glory of American citizenship.” And the “best part of citizenship,” according to Charles Sumner, is “equality before the law.” The Citizenship Clause's conferral of the “dignity and glory of American citizenship” may well prohibit the Federal Government from denying citizens equality with respect to civil rights. Rather than continue to invoke the Fifth Amendment's Due Process Clause to justify [*Bolling*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1954117300&pubNum=0000780&originatingDoc=I76a72100c12f11ec80bec15c770a3f3d&refType=RP&originationContext=document&transitionType=DocumentItem&ppcid=95cda400dea64a49920f02478c4bba8d&contextData=(sc.Default)), in an appropriate case, we should more carefully consider whether this interpretation of the Citizenship Clause would yield a similar, and more supportable, result.

Justice [GORSUCH](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0183411701&originatingDoc=I76a72100c12f11ec80bec15c770a3f3d&refType=RQ&originationContext=document&transitionType=DocumentItem&ppcid=95cda400dea64a49920f02478c4bba8d&contextData=(sc.Default)&analyticGuid=I76a72100c12f11ec80bec15c770a3f3d), concurring.

A century ago in the Insular Cases, this Court held that the federal government could rule Puerto Rico and other Territories largely without regard to the Constitution. It is past time to acknowledge the gravity of this error and admit what we know to be true: The Insular Cases have no foundation in the Constitution and rest instead on racial stereotypes. They deserve no place in our law.

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The flaws in the Insular Cases are as fundamental as they are shameful. Nothing in the Constitution speaks of “incorporated” and “unincorporated” Territories. Nothing in it extends to the latter only certain supposedly “fundamental” constitutional guarantees. Nothing in it authorizes judges to engage in the sordid business of segregating Territories and the people who live in them on the basis of race, ethnicity, or religion.

The Insular Cases can claim support in academic work of the period, ugly racial stereotypes, and the theories of social Darwinists. But they have no home in our Constitution or its original understanding. In this country, the federal government “deriv[es] its powers directly” from the sovereign people, *McCulloch v. Maryland* (1819), and is empowered to act only in accord with the terms of the written Constitution the people have approved, *Marbury v. Madison* (1803). Empires and duchies in Europe may have subscribed to the “doctrine ... that the people were made for kings, not kings for the people.” “Monarchical and despotic governments” may possess the power to act “unrestrained by written constitutions.”  But our Nation's government “has no existence except by virtue of the Constitution,” and it may not ignore that charter in the Territories any more than it may in the States.

The Insular Cases’ departure from the Constitution's original meaning has never been much of a secret. Even commentators at the time understood that the notion of territorial incorporation was a thoroughly modern invention. The Insular Cases deviated, too, from this Court's prior and longstanding understanding of the Constitution. In 1898, the very same year as the Spanish-American War, a lopsided majority of this Court judged it “beyond question” that the Constitution's jury-trial guarantees reached “the territories of the United States.” . . .

With the passage of time, this Court has come to admit discomfort with the Insular Cases. But instead of confronting their errors directly, this Court has devised a workaround. Employing the specious logic of the Insular Cases, the Court has proceeded to declare “fundamental”—and thus applicable even to “unincorporated” Territories—more and more of the Constitution's guarantees.

That solution is no solution. It leaves the Insular Cases on the books. Lower courts continue to feel constrained to apply their terms. And the fictions of the Insular Cases on which this workaround depends are just that. What provision of the Constitution could any judge rightly declare less than fundamental? On what basis could any judge profess the right to draw distinctions between incorporated and unincorporated Territories, terms nowhere mentioned in the Constitution and which in the past have turned on bigotry? There are no good answers to these bad questions.

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The case before us only defers a long overdue reckoning. Rather than ask the Court to overrule the Insular Cases, both sides in this litigation work from the shared premise that the equal protection guarantee under which Mr. Vaello Madero brings his claim is a “fundamental” feature of the Constitution and thus applies in “unincorporated” Territories like Puerto Rico. Proceeding on the parties’ shared premise, the Court applies the Constitution and holds that the conduct challenged here does not offend its terms. All that may obviate the necessity of overruling the Insular Cases today. But it should not obscure what we know to be true about their errors, and in an appropriate case I hope the Court will soon recognize that the Constitution's application should never turn on a governmental concession or the misguided framework of the Insular Cases. . . .

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Because no party asks us to overrule the Insular Cases to resolve today's dispute, I join the Court's opinion. But the time has come to recognize that the Insular Cases rest on a rotten foundation. And I hope the day comes soon when the Court squarely overrules them.

Justice [SOTOMAYOR](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0145172701&originatingDoc=I76a72100c12f11ec80bec15c770a3f3d&refType=RQ&originationContext=document&transitionType=DocumentItem&ppcid=95cda400dea64a49920f02478c4bba8d&contextData=(sc.Default)&analyticGuid=I76a72100c12f11ec80bec15c770a3f3d), dissenting.

. . . . In my view, there is no rational basis for Congress to treat needy citizens living anywhere in the United States so differently from others. To hold otherwise, as the Court does, is irrational and antithetical to the very nature of the SSI program and the equal protection of citizens guaranteed by the Constitution. I respectfully dissent.

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To provide a uniform, guaranteed minimum income for the neediest adults, Congress established the SSI program in 1972. In creating the SSI program, Congress “displaced the States.”  Rather than dispensing money through block grants to the States, SSI provides monthly cash benefits directly to qualifying low-income individuals who are over 65 years old, blind, or disabled. The Federal Government sets uniform qualifications for eligibility and fully funds the program through mandatory appropriations from the general fund of the United States Treasury. SSI benefits do not vary based on the specific State or Territory that a beneficiary is located in, as long as the beneficiary is otherwise eligible.. . .

When Congress created SSI, it made the program available only to “resident[s] of the United States,” and it defined United States as including “the 50 States and the District of Columbia.” Congress later extended the SSI program to residents of the Commonwealth of the Northern Mariana Islands. Although Puerto Rico is not a State, it has been part of the United States for well over a century, and people born in Puerto Rico are U. S. citizens. In other contexts, Congress has made clear that references to the “United States” include Puerto Rico.. In this context, however, Congress did not extend the SSI program to Puerto Rico and other Territories. . . .

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In general, the Equal Protection Clause guarantees that the Government will treat similarly situated individuals in a similar manner. Equal protection does not foreclose the Government's ability to classify persons or draw lines when creating and applying laws, but it does guarantee that the Government cannot base those classifications upon impermissible criteria or use them arbitrarily to burden a particular group of individuals. Where a law treats differently two different groups of people that are not members of a suspect or quasi-suspect classification, and the classification does not implicate a fundamental right, the law will survive an equal protection challenge if it is “rationally related to a legitimate governmental interest.”

Rational-basis review is a deferential standard, but it is not “toothless.”  Even neutral classifications must “rationally advanc[e] a reasonable and identifiable governmental objective.”  When the relationship between a statutory classification and its goal is “so attenuated as to render the distinction arbitrary or irrational,” that distinction violates equal protection.

Congress’ decision to exclude millions of U. S. citizens who reside in Puerto Rico from the SSI program fails even this deferential test.

The United States contends, and the Court accepts, that Puerto Rico's “tax status” provides a rational basis for excluding citizens who reside in Puerto Rico from the SSI program. As the United States argues, “Congress could rationally conclude that a jurisdiction that makes a reduced contribution to the federal treasury should receive a reduced share of the benefits funded by that treasury.”

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[T]he Court overlooks the fact that SSI establishes a direct relationship between the recipient and the Federal Government. The Federal Government develops uniform eligibility criteria, recipients apply for assistance directly to the Federal Government, and the Federal Government disburses funds directly and uniformly to recipients without regard to where they reside. Indeed, when it created SSI, Congress replaced existing programs that differed between States as well as between States and Territories and that involved States and Territories in administering the programs. Under the current system, the jurisdiction in which an SSI recipient resides has no bearing at all on the purposes or requirements of the SSI program. For this reason alone, it is irrational to tie an individual's entitlement to SSI to that individual's place of residency.

While it is true that residents of Puerto Rico typically are exempt from paying some federal taxes, that distinction does not create a rational basis to distinguish between them and other SSI recipients. By definition, SSI recipients pay few if any taxes at all, as the First Circuit correctly recognized below. . . . In some cases, it might be “reasonable for Congress to take account of the general balance of benefits to and burdens on” citizens when deciding eligibility for benefits.  That is not a rational basis for this classification, however, because SSI is a means-tested program of last resort for the poorest Americans who lack the means even to pay taxes. Residents of Puerto Rico who would be eligible for SSI are like SSI recipients in every material respect: They are needy U. S. citizens living in the United States.

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Equal treatment of citizens should not be left to the vagaries of the political process. Because residents of Puerto Rico do not have voting representation in Congress, they cannot rely on their elected representatives to remedy the punishing disparities suffered by citizen residents of Puerto Rico under Congress’ unequal treatment.

The Constitution permits Congress to “make all needful Rules and Regulations” respecting the Territories. Art. IV, § 3, cl. 2. That constitutional command does not permit Congress to ignore the equally weighty constitutional command that it treat United States citizens equally.