

**I MINA'TRENTAI SAIS NA LIHESLATURAN GUÅHAN  
RESOLUTIONS**

Resolution No.	Sponsor	Title	Date Intro	Date of Presentation	Date Adopted	Date Referred	Referred to	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	NOTES
56-36 (COR)	Tina Rose Muña Barnes Clynton E. Ridgell Jose "Pedro" Terlaje Joe S. San Agustin James C. Moylan Frank Blas Jr.	RELATIVE TO EXPRESSING THE UTMOST SUPPORT OF HOUSE RESOLUTION 279, ACKNOWLEDGING THAT THE UNITED STATES SUPREME COURT'S DECISIONS IN THE INSULAR CASES AND THE "TERRITORIAL INCORPORATION DOCTRINE" ARE CONTRARY TO THE TEXT AND HISTORY OF THE UNITED STATES CONSTITUTION, REST ON RACIAL VIEWS AND STEREOTYPES FROM THE ERA OF PLESSY V. FERGUSON THAT HAVE LONG BEEN REJECTED, ARE CONTRARY TO OUR NATION'S MOST BASIC CONSTITUTIONAL AND DEMOCRATIC PRINCIPLES, AND SHOULD BE REJECTED AS HAVING NO PLACE IN UNITED STATES CONSTITUTIONAL LAW.	3/31/21 5:06 p.m.			4/1/2021 4:37 p.m.	Author	5/5/21 8:00 a.m.	5/10/21 5:19 p.m.  As amended by the Author.	5/24/21 9:55 a.m.  Supplement Document to the Author's Report on Resolution No. 56-36 (COR) as amended by the author.  5/25/21 11:44 a.m.  Supplement Document to the Author's Report on Resolution No. 56-36 (COR) as amended by the author.



Vice Speaker

**TINA ROSE MUÑA BARNES**

**CHAIRPERSON, COMMITTEE ON RULES**

*I Mina'trentai Sais Na Liheslaturan Guåhan*

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May 25, 2021

# MEMO

**To:** Rennae Meno  
Clerk of the Legislature

**From:** Vice Speaker Tina Rose Muña Barnes  
Chairperson, Committee on Rules

**Re:** Supplemental Testimony to the Author's Report on Resolution No. 56-36 (COR)  
As amended by the Author.

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*Buenas yan Håfa adai,*

Please include this memo and attached documents as a "Supplement to the Author's Report" for the Author's Report on **Resolution No. 56-36 (COR) As amended by the Author.**

Please make the appropriate indication in your records and forward to MIS for posting on our website. I also request that the same be forwarded to all Senators.

If you have any questions or concerns, please feel free to contact Mary Maravilla, Committee on Rules Director, at 472-2461.

*Si Yu'os Ma'åse',*

  
**Vice Speaker Tina Rose Muña Barnes**  
Chairperson, Committee on Rules





Office of the Vice Speaker

**TINA ROSE MUÑA BARNES**

*I Mina'trentai Sais Na Liheslaturan Guåhan*

**36<sup>th</sup> Guam Legislature**

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**CHAIRPERSON**

COMMITTEE ON RULES,  
PUBLIC ACCOUNTABILITY,  
HUMAN RESOURCES,  
GUAM BUILDUP,  
HAGÁTÑA REVITALIZATION  
REGIONAL AFFAIRS,  
PUBLIC LIBRARIES,  
TELECOMMUNICATIONS &  
TECHNOLOGY

May 25, 2021

Ms. Mary S. Maravilla  
Director Committee on Rules  
Ms. Rennae Meno  
Clerk of the Legislature

Subject: Supplement to the Author Report on Resolution 56-36 (COR), As Amended

Dear Director Maravilla and Ms. Meno:

Håfa Adal! Attached to this letter are documents pertaining to Resolution 56-36 that was received by my office. I would like to add the appended documents as a Second Supplemental Report to the Author Report on Resolution 56-36, As Amended by the Author.

Please make the appropriate indication in your records and forward to MIS for posting on our website. I also request that the same be forwarded to all Senators. Thank you for your attention to this matter, and do not hesitate to contact me should you have any questions.

*si Yu'os ma'ase'.*

*Sinseryan Minagåhet,*

**Tina Rose Muña Barnes**  
Vice Speaker, 36<sup>th</sup> Guam Legislature

COMMITTEE ON RULES

RECEIVED:

May 25, 2021

11:30 A.M.


## U.S. House of Representatives

### Committee on Natural Resources

Washington, DC 20515

Vice Speaker Tina Rose Muña Barnes

March 10, 2021

MAY 24 2021  
Time 4:00 (AM) (PM)  
Received By: 

Attorney General Merrick Garland  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Acting Solicitor General Elizabeth Prelogar  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Dear Attorney General Garland and Acting Solicitor General Prelogar:

The Supplemental Security Income (SSI) program is one of our Nation's most successful social safety net programs, recognizing the inherent dignity of millions of the most vulnerable, low-income Americans who are aged, blind, or disabled by providing them with a basic income. Today, more than 8 million U.S. citizens receive SSI benefits of up to \$783 a month, creating a critical lifeline for them and their families to avoid extreme poverty. Yet, should any of these Americans move to certain U.S. territories, their SSI benefits automatically stop, even as the personal financial challenges they face due to age or disability do not.<sup>1</sup> This is not just wrong, it is unconstitutional. Arbitrarily denying our most vulnerable citizens their inherent dignity based on their Zip Code cannot be squared with the principles of equality enshrined in our Constitution. That is why we are asking the U.S. Department of Justice ("DOJ") to stop defending this inequality in court, even as we continue to work with the Biden-Harris Administration towards possible legislative solutions.

Over the last several years, multiple federal courts have stepped in to rule that arbitrarily excluding U.S. citizens who live in the territories from being able to participate in national federal benefits programs is unconstitutional. In *United States v. Vaello Madero*, the U.S. Court of Appeals for the First Circuit unanimously upheld a district court decision that rejected attempts by the United States to collect \$28,081 in SSI benefits that it had paid to Jose Luis Vaello-Madero after he moved from New York to Puerto Rico, holding that the denial of these benefits based solely on his residence in Puerto Rico would violate his constitutional guarantee to equal protection of the laws.<sup>2</sup> In *Schaller v. U.S. Social Security Administration*, a federal district court judge in Guam similarly ruled that it violated the Constitution's guarantee of equal protection to deny SSI benefits to a disabled woman on Guam while providing SSI benefits to her similarly disabled twin in Pennsylvania, and also to residents of the Northern Mariana Islands, a U.S. territory only 60 miles north of Guam.<sup>3</sup> In *Peña Martínez v. U.S. Department of Health & Human Service*, a federal district court judge in Puerto Rico struck down as unconstitutional not just the denial of SSI benefits, but also the exclusion of Puerto Rico

<sup>1</sup> Andrew Hammond, *Americans Outside the Welfare State*, 119 MICH. L. REV. \_\_\_ (forthcoming 2021), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3650434](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3650434).

<sup>2</sup> *United States v. Vaello Madero*, 956 F.3d 12 (1st Cir. 2020), affirming *United States v. Vaello Madero*, 356 F.Supp.3d (D.PR 2019).

<sup>3</sup> *Schaller v. U.S. Social Security Administration*, No. 18-00044 (D.Guam June 19, 2020).

residents from the Supplemental Nutrition Assistance Program (“SNAP”) and Medicare Part D low-income subsidies (“LIS”).<sup>4</sup>

On March 1, 2021, the Supreme Court granted review in *Vaello Madero*, meaning that DOJ will have to decide soon how it will proceed on these issues before the Supreme Court. DOJ’s position has been to seek reversal in each of these cases, arguing that the unanimous view of the six federal judges that have ruled in these cases is wrong. While we recognize it is the role of DOJ to defend federal statutes, the offensive and illogical arguments DOJ has made to justify the second-class treatment of U.S. citizens living in the territories highlight why it would be appropriate for DOJ to stop defending this ongoing discrimination, which harms U.S. citizens in Puerto Rico and other territories every day.

*First*, DOJ has justified denying equality in federal benefits programs because territorial residents are exempt from certain federal taxes. This not only fails to recognize that territorial residents actually do pay *billions* of dollars in federal taxes each year,<sup>5</sup> but that it is illogical to exclude a class of low-income citizens from means-tested programs because they or their neighbors did not pay enough taxes. *Second*, DOJ has justified denying equal treatment in national social safety net programs for territorial residents based on cost alone. This is irrational not just because the marginal cost of extending these programs to citizens in the territories would be a small fraction of the overall costs of these programs, but because cost alone cannot be a way to distinguish between otherwise similarly situated citizens. *Third*, DOJ has absurdly argued that this inequality can be justified because providing territorial residents these benefits would somehow disrupt territorial economies or discourage citizens in these areas from working. This is a cruel justification for denying benefits to citizens whose physical restrictions actually limit their ability to work and whose communities are in a financial crisis in significant part because of harmful federal policies.

These arguments—that any group of low-income or disabled citizens should be denied equal benefits in national programs because of the amount of taxes they pay, the marginal cost they would add to the program, or that in the abstract there could be unintended economic consequences—would be unthinkable for DOJ to make with respect to the citizens of any state. It should be no different for citizens in the territories. Further, none of these arguments explain why residents of different territories can be treated differently for purposes of national benefits programs. For example, residents of the Northern Mariana Islands are eligible to receive SSI and residents of Guam and the Virgin Islands of the U.S. eligible for SNAP, while residents of other territories are arbitrarily denied these benefits.

That is not to say that Congress does not have broad powers with respect to the territories; we do. But Congress does *not* have the power to treat residents of the territories arbitrarily when it is acting as a national legislature to enact national social safety net programs. The power to discriminate against residents of the territories under national welfare laws simply does not follow from the Territories Clause or any constitutional distinction between states and territories.

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<sup>4</sup> *Peña Martínez v. U.S. Department of Health & Human Service*, 478 F. Supp. 3d 155 (D.P.R. 2020).

<sup>5</sup> 2019 IRS Data Book at Table 5, available at <https://www.irs.gov/pub/irs-pdf/p55b.pdf>.

More broadly, this systemic discrimination against the 3.5 million Americans living in the territories—more than 95 percent of whom are racial or ethnic minorities—is rooted in a series of racist, *Plessy*-era Supreme Court decisions known collectively as the *Insular Cases*, which established a controversial legal doctrine of “separate and unequal” status for residents of overseas territories. The *Insular Cases* have been called “central documents in the history of American racism,”<sup>6</sup> with Justices in those cases calling the people of Puerto Rico and other newly acquired territories “half-civilized,” “savage,” “ignorant and lawless,” and “alien races.” While in *Vaello Madero* DOJ has properly disclaimed that the *Insular Cases* limit the application of equal protection in the territories, it nonetheless still continues to embrace their flawed logic that the Constitution applies “only in part” in so-called “unincorporated” territories. Ultimately, the ongoing discrimination against Americans in the territories in federal benefits programs cannot be separated from the harmful legacy of the *Insular Cases*.<sup>7</sup> DOJ’s actions moving forward in *Vaello Madero*, *Peña Martínez*, and *Schaller* will either serve to reject or contribute to that dark legacy.

DOJ should stop defending the challenged discrimination in *Vaello Madero*, *Peña Martínez*, *Schaller*, and other pending cases<sup>8</sup> that deny equal dignity to citizens in the territories by excluding them from SSI and other federal programs that all other Americans fully enjoy as part of our basic social contract. As DOJ has done in the past with respect to other controversial discriminatory statutes,<sup>9</sup> and as it has done recently with respect to a number of positions taken by DOJ during the prior administration,<sup>10</sup> DOJ should inform the Supreme Court and lower courts that its position has changed with respect to federal statutes that continue to arbitrarily deny equal access in critical federal programs to U.S. citizens in Puerto Rico and other territories based solely on where they happen to live.

As you stated during your confirmation hearing, General Garland, “we do not yet have equal justice. Communities of color and other minorities still face discrimination.” You also evoked in your testimony the mission of DOJ’s Civil Rights Division, which is “to uphold the civil and constitutional rights of all Americans, particularly some of the most vulnerable members of our society.” As DOJ celebrates its 150<sup>th</sup> Anniversary this year, standing up for the equal treatment and dignity of U.S. citizens in Puerto Rico and other territories is necessary if DOJ is to remain true to these principles.

Thank you for considering this request, and we would welcome the opportunity to engage with you and others at DOJ further on these issues. Please contact Margarita Varela-Rosa with

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<sup>6</sup> Sanford Levinson, *Why the Canon Should Be Expanded to Include the Insular Cases and the Saga of American Expansionism*, 17 CONST. COMMENT. 241, 245 (2000).

<sup>7</sup> Neil Weare, Rosa Hayes, and Mary Charlotte Carroll, *The Constitution, COVID-19, and Growing Healthcare Disparities in U.S. Territories*, ACS Expert Forum (April 28, 2020), available at <https://www.acslaw.org/expertforum/the-constitution-covid-19-and-growing-healthcare-disparities-in-u-s-territories/>.

<sup>8</sup> See, e.g., *Rivera-Fuentes v. Commissioner of the Social Security Administration*, No. 3:20-cv-01444 (D.PR filed August 26, 2020).

<sup>9</sup> See, e.g., *Statement of the Attorney General on Litigation Involving the Defense of Marriage Act*, February 23, 2011.

<sup>10</sup> Jacqueline Thomsen, *How the Biden Justice Department Is Untangling the Legal Fights It Inherited From Trump*, Law.com (February 26, 2021), available at <https://www.law.com/nationallawjournal/2021/02/26/how-the-biden-justice-department-is-untangling-the-legal-fights-it-inherited-from-trump/?slreturn=20210201115053>.

the Committee's Office of Insular Affairs at Margarita.Varela-Rosa@mail.house.gov or (202) 748-2828 if you have any questions about this request.

Sincerely,



Raúl M. Grijalva  
Chair  
House Committee on Natural Resources



Gregorio Kilili Camacho Sablan  
Vice Chair  
Office of Insular Affairs



Michael San Nicolas  
Member of Congress



Stacey E. Plaskett  
Member of Congress



Jenniffer González-Colón  
Member of Congress



Ritchie Torres  
Member of Congress



Darren Soto  
Member of Congress



Nydia M. Velázquez  
Member of Congress



Alexandria Ocasio-Cortez  
Member of Congress



Rashida Tlaib  
Member of Congress



Juan Vargas  
Member of Congress



Jesús "Chuy" García  
Member of Congress



Ruben Gallego  
Member of Congress

Cc:

Julie Chavez Rodriguez, Director for the White House Office of Intergovernmental Affairs  
Pamela Karlan, Principal Deputy Assistant Attorney General for the Civil Rights Division



DAVID WATKINS  
STAFF DIRECTOR

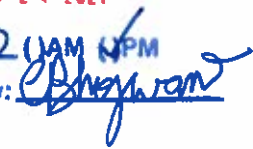
VIVIAN MOEGLEIN  
REPUBLICAN STAFF DIRECTOR

**U.S. House of Representatives**  
**Committee on Natural Resources**  
**Washington, DC 20515**

April 8, 2021

Vice Speaker Tina Rose Muña Barnes

Shalanda Young  
Acting Director  
Office of Management and Budget  
725 17th St NW  
Washington, DC 20503

MAY 24 2021  
Time 4:00 PM  
Received By: 

Dear Acting Director Young:

Currently, close to 3.5 million Americans living in the U.S. Territories of American Samoa, the Northern Mariana Islands, Guam, Puerto Rico, and the U.S. Virgin Islands experience a significant problem of inequity with respect to accessing several federal programs. Earlier this year, President Biden signed Executive Order (EO) 13985: *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* to assess and address barriers to accessing federal programs and services among historically underserved populations.<sup>1</sup> As we continue to work with the Biden-Harris administration on possible legislative solutions to eliminate barriers for Americans residing in U.S. Territories, we respectfully request the Office of Management and Budget (OMB) support expanding access to federal programs in these jurisdictions, and ensure this priority is addressed in the report required by EO 13985 and in the President's FY 2022 budget, as appropriate. Additionally, we request that OMB issue a Circular that provides guidance to federal agencies for guaranteeing equal treatment to residents of U.S. Territories in federal programs, whenever discretion exists for them to do so.

In recent months, President Biden has taken several actions to begin addressing critical issues that threaten our nation, including the coronavirus pandemic, a global climate crisis, and deeply entrenched social and economic disparities. Among these actions was EO 13985, signed January 20<sup>th</sup>, 2021.<sup>2</sup> This order instructs OMB to partner with the heads of federal agencies to study existing gaps in access to federal programs among eligible individuals and identify the best methods for removing these barriers.

Americans residing in U.S. Territories face longstanding barriers that limit or exclude them from equal access to Medicaid, the Supplemental Security Income (SSI) program, the Supplemental Nutrition Access Program (SNAP), the Temporary Assistance for Needy Families

<sup>1</sup> *Executive Order 13985 of January 20, 2021: Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*, Executive Office of the President (January 25, 2021), available at <https://www.federalregister.gov/documents/2021/01/25/2021-01753/advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government>.

<sup>2</sup> *Id.*

(TANF) program, and more. Expanding eligibility in these important federal programs to residents of U.S. Territories aligns with President Biden’s commitment to guaranteeing equal opportunity to all Americans and ending systemic racism.<sup>3</sup> Residents of U.S. Territories—more than 95% of whom are racial or ethnic minorities—experience issues of inequity and systemic racism resulting from antiquated and discriminatory federal policies that relegate these Americans to a second-class status. This inequality is a legacy of the *Insular Cases*, a series of controversial early 1900s Supreme Court decisions that have been criticized as establishing a doctrine of “separate and unequal” status based on expressly racist attitudes and assumptions towards residents of Puerto Rico, Guam, and other overseas territories.<sup>4</sup>

President Biden’s executive order is an impetus to rectify these outdated policies and help bring the legacy of the *Insular Cases* to an end by ensuring federal services and benefits are available to all Americans, wherever they live. As we continue to work with the Biden-Harris administration on possible legislative solutions to expand access to federal programs for Americans residing in U.S. Territories, we encourage OMB to support this priority and ensure it is included in the executive order report.

## 1. Medicaid<sup>5</sup>

Medicaid is a federal and state health insurance program that provides health care coverage to families and individuals with limited income and resources. Federal Medicaid funding is arbitrarily capped for U.S. Territories, so it does not respond to the temporary needs of a pandemic or to changing economic conditions, as in States.<sup>6</sup> In addition, the local matching contribution for federal funding is set by law in the territories rather than being based on per-capita income, as it is for each State. The FY17 Obama-Biden budget proposed fixing these inequities by removing the cap and gradually increasing the Federal matching contribution;<sup>7</sup> this proposal remains sound. Without it or similar action, the territories face a Medicaid “cliff” at the end of FY21, as supplemental funding is exhausted, jeopardizing the health of thousands of low-income Americans residing in these jurisdictions.<sup>8</sup>

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<sup>3</sup> *The Biden Plan To Build Back Better By Advancing Racial Equity Across The American Economy*, JoeBiden.com, available at <https://joebiden.com/racial-economic-equity/>.

<sup>4</sup> Neil Weare, Rosa Hayes, and Mary Charlotte Carroll, *The Constitution, COVID-19, and Growing Healthcare Disparities in U.S. Territories*, ACS Expert Forum (April 28, 2020), available at <https://www.acslaw.org/expertforum/the-constitution-covid-19-and-growing-healthcare-disparities-in-u-s-territories/>.

<sup>5</sup> Two pieces of legislation introduced in the 117<sup>th</sup> Congress seek to extend Medicaid coverage in the territories: [H.R. 265](#), the *Insular Area Medicaid Parity Act*, eliminates Medicaid funding limitations for U.S. territories beginning in FY2021; and [H.R. 1722](#) amends titles XI and XIX of the Social Security Act to stabilize the Medicaid program in Puerto Rico.

<sup>6</sup> Judith Solomon, *Medicaid Funding Cliff Approaching for U.S. Territories*, Center for Budget and Policy Priorities (June 19, 2019), available at <https://www.cbpp.org/blog/medicaid-funding-cliff-approaching-for-us-territories>.

<sup>7</sup> *The Budget for Fiscal Year 2017: Meeting Our Greatest Challenges: Opportunity for All*, The Obama White House (February 9, 2016), p. 30, available at <https://obamawhitehouse.archives.gov/sites/default/files/omb/budget/fy2017/assets/opportunity.pdf>.

<sup>8</sup> *Id.*

## 2. Supplemental Security Income (SSI)<sup>9</sup>

SSI benefits are granted to elderly, blind, and disabled individuals with financial need. However, otherwise eligible residents of American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands are excluded from these benefits, based solely on where they happen to live.

## 3. Supplemental Nutrition Assistance Program (SNAP)

The SNAP program provides benefits to food-insecure Americans during times of high poverty, unemployment, and economic downturns. Currently, these benefits are not available to American Samoa, the Northern Mariana Islands, and Puerto Rico. Instead, each receives a fixed block grant, which arbitrarily limits the amount of nutrition assistance funding received by families in these three territories, again, based solely on where they happen to live.<sup>10</sup>

## 4. Temporary Assistance for Needy Families (TANF)<sup>11</sup>

The TANF program provides financial assistance and other support services to low-income families with children. TANF programs currently operate in three territories: Puerto Rico, Guam, and the U.S. Virgin Islands.<sup>12</sup> American Samoa is eligible, but has opted not to participate in the program.<sup>13</sup> However, because the Northern Mariana Islands had not established an Aid to Families with Dependent Children (AFDC) program when AFDC was replaced by TANF in 1996, the territory is not eligible for TANF under current federal law.<sup>14</sup>

The expansion of these federal programs to residents of U.S. Territories is essential to carrying out the mission of advancing equity among underserved communities ordered by President Biden. We strongly believe that Congress has a responsibility to address the inequitable access to these programs. For this reason, we respectfully request that OMB join us in supporting expanding access to federal programs in these jurisdictions, and ensures this priority is addressed in the report required by EO 13985 and in the President's FY 2022 budget, as appropriate.

In addition, we also request that OMB issue a Circular that provides guidance to federal agencies that they shall provide equal treatment to residents of U.S. Territories in federal programs whenever discretion exists for them to do so. Oftentimes Americans in U.S. Territories are left behind in federal programs or otherwise fall through the cracks simply as a result of

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<sup>9</sup> [H.R. 537](#) seeks to extend the SSI program to Puerto Rico, the U.S. Virgin Islands, Guam, and American Samoa.

<sup>10</sup> Brynne Keith-Jennings, *Introduction to Puerto Rico's Nutrition Assistance Program*, Center for Budget and Policy Priorities (November 3, 2020), available at <https://www.cbpp.org/research/food-assistance/introduction-to-puerto-ricos-nutrition-assistance-program>.

<sup>11</sup> [H.R. 1773](#) seeks to make the Commonwealth of the Northern Mariana Islands eligible to operate TANF programs.

<sup>12</sup> *House Committee on Ways and Means, Chapter 7: Temporary Assistance for Needy Families*, U.S. House of Representatives, available at <https://greenbook-waysandmeans.house.gov/2018-green-book/chapter-7-temporary-assistance-for-needy-families>.

<sup>13</sup> *Id.*

<sup>14</sup> *Aid to Families with Dependent Children (AFDC) and Temporary Assistance for Needy Families (TANF) – Overview*, U.S. Department of Health & Human Services (November 30, 2009), available at <https://aspc.hhs.gov/aid-families-dependent-children-afdc-and-temporary-assistance-needy-families-tanf-overview-0>.

agency oversight, even when equal treatment is permitted by statute. While some of the problems facing residents of U.S. Territories will require congressional action, federal agencies can do a lot on their own to help ensure Americans are not discriminated against in federal programs simply because of where they live.

Thank you for considering this request, and we would welcome the opportunity to engage with you and others further on these issues. Please contact Margarita Varela-Rosa with the Committee's Office of Insular Affairs at [Margarita.Varela-Rosa@mail.house.gov](mailto:Margarita.Varela-Rosa@mail.house.gov) or (202) 748-2828 if you have any questions about this request.

Sincerely,



Raúl M. Grijalva  
Chair  
House Committee on Natural Resources



Gregorio Kilili Camacho Sablan  
Vice Chair  
Office of Insular Affairs



Michael San Nicolas  
Member of Congress



Stacey E. Plaskett  
Member of Congress



Jenniffer González-Colón  
Member of Congress



Aumua Amata Coleman Radewagen  
Member of Congress

Cc:

Julie Chavez Rodriguez, Director for the White House Office of Intergovernmental Affairs

# HOW THE FOR THE PEOPLE ACT ADVANCES JUSTICE AND DEMOCRACY IN THE U.S. TERRITORIES

March 2021

America needs comprehensive, structural reform to protect our nation's ideals and our democratic process. Among its many important provisions, the *For The People Act* takes vital steps to improve justice and democracy in the U.S. Territories, where millions of Americans currently have weak or limited representation in Congress even though most residents are U.S. citizens and follow U.S. laws. It's time to stop treating millions of Americans like second-class citizens just because of where they live. It's anti-democratic. The *For the People Act* seeks to remedy this injustice.

The *For The People Act* is a transformational clean elections reform package that protects our access to the ballot box, reduces the influence of big money in politics, strengthens ethics rules for public servants, and implements anti-corruption measures to protect our democracy. Passing H.R. 1 will empower the American people and restore faith and integrity to our government.

## VOTING RIGHTS IN THE U.S. TERRITORIES

U.S. citizens in the territories are unable to vote in presidential elections and lack voting representation in Congress. Despite being qualified for military service and being treated, in other respects, as full Americans, close to 3.5 million otherwise eligible men and women were barred from participating in the 2020 general election despite its enormous impact on their lives. Blocking territorial residents from fully participating in our democratic processes limits their ability to make Congress take their needs seriously. House Democrats support establishing a Congressional Task Force responsible for recommending changes that would extend full and equal voting rights to residents of U.S. Territories in federal elections.

FILE COPY

### H.R. 1, SUBTITLE D – TERRITORIAL VOTING RIGHTS

The *For The People Act* establishes a twelve-member Congressional Task Force on Voting Rights of United States Citizen Residents of Territories of the United States, to be terminated upon issuing its report to Congress. Task Force members will be appointed by the Speaker of the House, the House minority leader, the Senate majority and minority leaders, and various members of majority and minority leadership across several committees.

The Task Force is required to provide a status update by September 30, 2021, to Congress with any information collected and urgent matters for consideration by Congress. The Task Force must also submit a report to Congress by December 31, 2021, of its findings regarding economic and societal consequences of political disenfranchisement of U.S. citizens in the territories, impediments to expanding voting rights to U.S. citizens in the territories, impediments to full and equal voting representation in the House of Representatives, and any recommended changes that would allow for full and equal voting rights and voting representation for the U.S. Territories.

The Task Force is granted the authority to hold hearings, take testimony, receive appropriate evidence, consult with the governments of each of the five U.S. Territories, and utilize existing resources of Congress in order to carry out its duties.



# ADVANCING EQUITY IN U.S. TERRITORIES

HOUSE NATURAL RESOURCES COMMITTEE CHAIR RAÚL M. GRIJALVA

March 2021

The U.S. House Committee on Natural Resources has jurisdiction over matters related to U.S. Territories. This includes the territories of American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and the Virgin Islands of the United States.

About 3.5 million Americans live in these jurisdictions, and 95 percent of them identify as a member of one or more racial or ethnic minorities. Those born in the territories are U.S. citizens or U.S. nationals, but the federal government has historically treated them as second-class citizens.

Residents of U.S. Territories are unable to participate in federal elections and do not have a federal representative with voting power in Congress. In addition to a lack of political power, residents lack equal access to important federal programs intended to aid vulnerable Americans. In Puerto Rico, these issues are part of a larger conversation about the island's political relationship with the United States. Chair Raúl M. Grijalva and Democrats on the Natural Resources Committee will prioritize addressing these issues in the 117th Congress.

## EXTENDING FULL VOTING RIGHTS

U.S. citizens in the territories are unable to vote in presidential elections and lack voting representation in Congress. Despite being qualified for military service and being treated, in other respects, as full Americans, close to 3.5 million otherwise eligible men and women were barred from participating in the 2020 general election, despite its enormous impact on their livelihoods and futures. Without the capacity to fully participate in our democratic processes, territorial residents will continue to see their needs ignored or minimized. House Democrats support establishing a congressional task force responsible for recommending changes to extend full and equal voting rights to residents of U.S. Territories in federal elections.

## EXPANDING ACCESS TO FEDERAL PROGRAMS

Residents of the U.S. Territories face unequal access to essential federal programs. Puerto Rico, the Virgin Islands of the United States, Guam and American Samoa are excluded from receiving Supplemental Security Income (SSI) benefits, which are granted to elderly, blind, and disabled individuals with financial need. Nutrition assistance through the Supplemental Nutrition Assistance Program (SNAP) is also limited for families in Puerto Rico, American Samoa and the Northern Mariana Islands. Similar funding caps exist for the federal Medicaid program in eligible territories, straining health systems putting thousands of low-income Americans at risk. In the 117th Congress, the Committee will work with other committees with relevant jurisdiction to advance bills expanding access to federal programs and guarantee equity in federal assistance.

FILE COPY

## RESOLVING PUERTO RICO'S POLITICAL STATUS

Puerto Rico's political status has been a focus of intense debate since the United States acquired the territory in 1898. Since then, Puerto Rico has held several plebiscites to consider three significantly different options: statehood, independence, or free association. In the 117th Congress, the Committee will examine legislation to resolve Puerto Rico's political status and will hold hearings on competing bills to fulfill this objective.

May 19, 2021

**VIA EMAIL (Ivan.Robles@mail.house.gov)**

Ivan Robles  
Policy Aide, Office of Insular Affairs  
House Committee on Natural Resources, Majority Staff

**RE: Katrina and Leslie Schaller**

Dear Mr. Robles:

We provide the personal story of three individuals and their families harmed by the discriminatory application of SSI to the Territory of Guam.

1. **The Schaller Twins**

I am one of the lawyers who brought suit in the District Court of Guam to rectify a grave injustice to Katrina Schaller, and her sister and brother in law Kim Fegurgur and Dr. John Fegurgur – who are also Katrina's guardians. Our co-counsel is Kirkland & Ellis LLP. Kirkland also brought suit for Katrina's twin sister Leslie Schaller in the federal court in Pennsylvania.

Katrina and her twin sister, Leslie, were born in, Pennsylvania in 1970. They both have myotonic dystrophy, which is a debilitating and incurable genetic disorder that causes long-term degeneration of muscle function. For most of their life, Katrina and Leslie lived with their Mom in Pennsylvania. There, Katrina and Leslie applied for, and were granted, SSI benefits by the Social Security Administration. When their mother died in October 2007, Katrina had no other living family able to care for her other than her older sister and brother-in-law, Kim and Dr. John Fegurgur, who live in Guam. Leslie lives in Pennsylvania in an assistant living facility.

Dr. Fegurgur was born and raised in Guam. He attended high school in Guam (Father Duenas High School) and University of Guam. Dr. Fegurgur has five brothers and sisters who live on Guam and are part of a larger, deep rooted family here. Dr. Fegurgur is a great doctor. He was the product of many high profile residency programs and could have had his choice of any medical career in the mainland or Hawaii. But, he chose home – and he and Kim have raised three beautiful kids on Guam – 2 are in college and 1 in high school. But that choice to

Ivan Robles  
May 19, 2021  
Page 2

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come home to Guam – would mean many years later that Dr. Fegurur’s family would have to make an anguishing choice because of the discriminatory application of SSI to Guam.

When Kim and Katrina Fegurur told the SSA official in Pennsylvania that Katrina would be relocating to Guam, the official told them that “the SSA would terminate Katrina’s benefits” if she moved “because residents of Guam are not eligible for SSI benefits.”

Katrina’s medical needs required her to live with the Fegururs, and so Katrina came to Guam in late 2008. The SSA terminated her benefits on January 1, 2009. What is even more heartbreaking is the story concerning twin sister Leslie who as noted is in assisted living, for now. Katrina and Leslie Facetime each other every day. They have not seen each other since 2008 – a reunion is what they dream of every day. However, because Guam is not part of the “United States” for purposes of SSI, Leslie will lose her benefits if she travels to Guam for more than 30 days. She is physically incapable of a trip of that short of duration – as she suffers from the same debilitating disease that Katrina suffers from – and it is progressing.

Is this situation unfair? Of course it is. Is it wrong? Without question. Is it discriminatory? Absolutely.

Unlike the CNMI which is just 60 miles away, US citizens who reside in Guam are ineligible for SSI. Guam’s Chief District Judge Tydingco-Gatewood found that the United States’ application of SSI as to Katrina violated the Equal Protection Clause of the U.S. Constitution on grounds that the CNMI and Guam are similarly situated and there is no rational basis to treat residents of Guam differently. In essence, the Court found that a sixty-mile stretch of ocean could not be the basis of eligibility for this essential program intended to provide for those with serious medical and financial needs.

The United States has fought the case every step of the way – on grounds that the Insular Case doctrine permits the gross and unfair discrimination against Katrina. They have appealed and the case is pending in the Ninth Circuit and has been stayed pending the outcome of the Supreme Court’s decision in the Vaello-Madero case. Similarly, the United States opposed Leslie’s case. The case went to appeal after being dismissed. The Third Circuit reversed and the matter remains pending.

Case References:

*Katrina Schaller et al. vs. U.S. Soc. Security et al.*, Case: CV18-00044 (D. Guam);  
*Leslie Schaller v. U.S. Social Security Administration*, Case 2:18-cv-01625-MPK  
(W.D. Penn).



Ivan Robles  
May 19, 2021  
Page 3

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Further information with respect to Katrina and Leslie Schaller is available through the undersigned's office.

2. **Frank ("Sonny") O. Taitano**

Unlike the Schaller Twins, we do not represent Sonny Taitano. He reached out to us when the Schaller case was filed to share his story regarding the discriminatory application of the SSI program to residents of Guam.

Sonny Taitano was born and raised on Guam and lived there for most of his life. His entire family still resides on Guam. Sonny moved to the states in 2003 and in 2005 Sonny had a heart condition that required medical attention. He applied for SSI and was approved for benefits in 2005. Sonny returned to Guam in 2012 and notified SSA of his new address. The Social Security Administration sent a letter stating that he is no longer entitled to SSI benefits since Guam is not covered under this federal program. Not only did the Social Security Administration stop his SSI Benefits, it required him to pay back months of "overpayments" it claimed must be returned ***for payments made to Sonny while residing on Guam***. Sonny moved back to the States to seek medical assistance and re-applied for SSI. Sonny was recently approved for benefits in September 2020, with the stipulation that payments made to him while residing on Guam would be deducted from the on-going benefits payments into the future. Sonny therefore cannot return home to Guam and his extended family without facing the termination of his SSI benefits again. Even crueler than this consequence is the reduction of his SSI payments by the amount of SSI payments made to him during the time in which Sonny lived on Guam in 2012. This "claw back" is another form of harm suffered simply due to Sonny's decision to live on Guam in 2012.

Mr. Taitano's contact information is c/o of Linda Castro at [lindagcastro6@gmail.com](mailto:lindagcastro6@gmail.com) and they have invited you to contact them for further information.

Very truly yours,

**CALVO FISHER & JACOB LLP**



Rodney J. Jacob

RJJ:tlr

DISTRICT COURT OF GUAM

KATRINA SCHALLER, by and through her  
legal guardians KIMBERLY A. FEGURGUR  
and JOHN A. FEGURGUR,

Plaintiff,

vs.

U.S. SOCIAL SECURITY  
ADMINISTRATION and

ANDREW M. SAUL, in his official capacity as  
Commissioner of Social Security  
Administration

Defendants.

CIVIL CASE NO. 18-00044

**ORDER**

1. Denying Defendants' Motion to Dismiss for Lack of Jurisdiction;
2. Granting Plaintiff's Motion for Summary Judgment; and
3. Denying Defendants' Cross Motion for Summary Judgment.

In this action, Plaintiff, a Guam resident, challenges the Defendants' refusal to grant her Supplemental Social Security benefits established under Title XVI of the Social Security Act, 42 U.S.C. § 1381 *et seq.*, and asserts that said refusal violates the equal protection clause of the Fifth and Fourteenth Amendments of the U.S. Constitution and the Organic Act of Guam, 48 U.S.C. § 1421b.

Pending before the court are the following motions: (1) Defendants' Motion to Dismiss for Lack of Jurisdiction, ECF No. 22; (2) Plaintiff's Motion for Summary Judgment, ECF No. 39; and (3) Defendants' Cross Motion for Summary Judgment, ECF No. 46. The court heard argument on said motions and thereafter took the matters under advisement. The court ordered further briefing on certain issues after the Court of Appeals for the First Circuit issued its decision in *United States v. Vaello-Madero*, 956 F.3d 12 (1st Cir. 2020). *See* Order, ECF No. 73. Having reviewed relevant case law and the parties' filings, the court hereby issues this Order DENYING the Defendants'

1 Motion to Dismiss and Cross Motion for Summary Judgment and GRANTING the Plaintiff's  
2 Motion for Summary Judgment.

3 **I. BACKGROUND:**

4 **A. Jurisdiction and Venue**

5 The Complaint, filed on December 6, 2018, asserts that the case presents a federal question,  
6 and thus jurisdiction is proper under 28 U.S.C. § 1331. Additionally, because the Plaintiff is a  
7 citizen residing in Guam, venue is proper in this district. *See* Compl. at ¶¶7-8.

8 **B. Statutory Framework**

9 The Social Security Administration (“SSA”) administers two primary programs that  
10 provide benefits to aged persons, blind persons, and persons with disabilities who meet certain  
11 income and resource requirements. At issue here is the Supplemental Security Income (“SSI”) program,  
12 established by Title XVI of the Social Security Act, 42 U.S.C. § 1381 *et seq.* Congress  
13 created the SSI program “[f]or the purpose of establishing a *national* program to provide  
14 supplemental security income to individuals who have attained age 65 or are blind or disabled.”  
15 *Id.* at 1381 (emphasis added). SSI benefits are paid from the general revenues that are funded by  
16 federal income taxes. The statute as enacted provided that eligibility for SSI benefits was limited  
17 to individuals residing inside the “United States,” which, by definition, meant “the 50 States and  
18 the District of Columbia.” 42 U.S.C. § 1382c(e). Residents of the U.S. territories were not included  
19 in this definition, however, in 1976 Congress made SSI benefits available to residents of the CNMI  
20 by virtue of a joint resolution which approved the CNMI’s political union with the United States.<sup>1</sup>

21 **C. Factual Background**

22 Plaintiff Katrina Schaller and her 50-year old twin sister Leslie were born on January 25,  
23 1970, and grew up in Pennsylvania with their parents and older sister Kim. Compl. at ¶5. After  
24 their parents separated, Plaintiff moved to live with her mother. *Id.* Plaintiff applied for and  
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26 <sup>1</sup> *See* Covenant to Establish a Commonwealth of the Northern Mariana Islands, Pub. L. No.  
27 94-241, §502(A)(1), 90 Stat. 263, 268 (1976) (codified at 48 U.S.C. § 1801 *et seq.*) (“The  
28 following laws of the United States . . . will apply to the [CNMI] . . . Title XVI of the Social Security Act as it applies to the several states[.]”).

1 received SSI benefits after the SSA determined she was disabled on August 28, 2001. Decl. K.  
2 Fegurur at ¶5 attached as Ex. 1 to Pl.'s Concise Stmt., ECF No. 41.

3 After her mother's death in October 2007, Plaintiff moved to Guam temporarily to live with  
4 her sister Kim and Kim's husband John Fegurur, who are Plaintiff's legal guardians. *Id.* 7 and  
5 Compl. at ¶5, ECF No. 1. Before leaving for Guam, the Plaintiff and Kim visited the SSA office  
6 in Washington, Pennsylvania to inquire if it was still possible for the Plaintiff to receive SSI  
7 coverage in Guam. Decl. K. Fegurur at ¶7, ECF No. 41. An SSA officer informed them that if  
8 and when the Plaintiff leaves the covered geography of the United States for over 30 days, her SSI  
9 benefits would be lost. *Id.* The SSA agent confirmed that Guam was not part of the covered  
10 geography of the United States for citizens to receive SSI benefits. *Id.* The Plaintiff's SSI benefits  
11 stopped while she was on Guam. *Id.*

12 The Plaintiff and her sister Kim returned to Pennsylvania in 2008, and the Plaintiff's SSI  
13 benefits resumed while they were in Pennsylvania. Decl. K. Fegurur at ¶8, ECF No. 41. When  
14 the Plaintiff permanently moved to Guam in 2008, her SSI benefits were again terminated, and she  
15 has not received any such payments since. *Id.* at ¶10.

16 Plaintiff and twin sister Leslie both suffer from "myotonic dystrophy, a debilitating,  
17 degenerative genetic disorder affecting muscle function and mental processing." Compl. at ¶5, ECF  
18 No. 1. This disorder inhibits some aspects of Leslie's mobility, but she otherwise leads a full,  
19 independent life in Pennsylvania based in part on the monthly SSI payments (about \$755) she  
20 receives because she lives in the "United States." *Id.* On the other hand, Plaintiff Katrina "lacks  
21 the functionality to perform many activities of daily living, let alone earn a steady income, and is  
22 permanently disabled." *Id.* As noted, Plaintiff stopped receiving SSI benefits when she permanently  
23 moved to Guam 12 years ago in 2008.

24 On December 6, 2018, this suit was initiated on the Plaintiff's behalf because her legal  
25 guardians believed "SSI benefits could significantly improve her quality of life as soon as Katrina  
26 starts receiving them." Decl. K. Fegurur at ¶12, ECF No. 41. The Complaint asserts Equal  
27 Protection claims under the Fifth and Fourteenth Amendments and the Organic Act of Guam. The  
28 Plaintiff essentially claims that the Government violated the equal protection clause by terminating

1 her SSI benefits based solely on her residency on Guam, while similarly situated citizens in the  
2 CNMI are afforded those same benefits. *See* Compl. at ¶¶5-6, 15.

3 **II. LEGAL STANDARDS**

4 **A. Rule 12(b)(1) - Lack of Jurisdiction**

5 Defendants move to dismiss, pursuant to Fed. R. Civ. P. 12(b)(1), asserting that the  
6 Complaint fails to allege that Plaintiff presented her claims to the Commissioner of Social Security  
7 and received the Commissioner's final decision before bringing suit. Rule 12(b)(1) allows the court  
8 to dismiss a claim for lack of jurisdiction. "It is a fundamental principle that federal courts are  
9 courts of limited jurisdiction." *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978).  
10 Thus, the plaintiff bears the burden of establishing subject matter jurisdiction. Federal subject  
11 matter jurisdiction must exist at the time the action is commenced. *Morongo Band of Mission*  
12 *Indians v. Cal. State Bd. of Equalization*, 858 F.2d 1376, 1380 (9th Cir. 1988). A court must  
13 presume lack of jurisdiction until the plaintiff establishes otherwise. *Kokkonen v. Guardian Life*  
14 *Ins. Co. of America*, 511 U.S. 375 (1994); *Scott v. Breeland*, 792 F.2d 925, 927 (9th Cir. 1986) (The  
15 party seeking to invoke federal court jurisdiction has the burden of establishing that jurisdiction is  
16 proper.).

17 A party bringing a Rule 12(b)(1) challenge to the court's jurisdiction may do so either on  
18 the face of the pleadings or by presenting extrinsic evidence for the court's consideration. *See*  
19 *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000) ("Rule 12(b)(1) jurisdictional attacks can be  
20 either facial or factual"). "In a facial attack, the challenger asserts that the allegations contained in  
21 a complaint are insufficient on their face to invoke federal jurisdiction." *Safe Air for Everyone v.*  
22 *Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). In evaluating a facial attack to jurisdiction, the court  
23 must accept the factual allegations of the complaint as true. *See Lacano Invs., LLC v. Balash*, 765  
24 F.3d 1068, 1071 (9th Cir. 2014). However, legal conclusions in the complaint are not accepted as  
25 true, even if they are cast as factual allegations. *See id.*

26 **B. Rule 12(b)(6) - Failure to State a Claim**

27 Defendants' Motion to Dismiss also asserts that the Complaint fails to state a claim on  
28 which relief can be granted. A defendant is entitled to dismissal under Rule 12(b)(6) when a

1 complaint fails to state a cognizable legal theory or alleges insufficient facts under a cognizable  
2 legal theory. *Somers v. Apple, Inc.*, 729 F.3d 953, 959 (9th Cir. 2013). The Ninth Circuit has  
3 explained that the purpose of a Rule 12(b)(6) motion is to test a complaint’s legal sufficiency, not  
4 to decide its merits. *See Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). Generally, the  
5 plaintiff’s burden at this stage is light since Rule 8(a) requires only that a complaint “shall contain  
6 . . . a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R.  
7 Civ. P. 8(a). “All allegations of material fact are taken as true and construed in the light most  
8 favorable to the nonmoving party.” *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir.  
9 2001). The court may dismiss based on lack of cognizable legal theory or on the absence of facts  
10 that would support a cognizable theory. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th  
11 Cir. 1990). And, while the plaintiff’s burden is light, it is not nonexistent – the complaint must  
12 “contain either direct or inferential allegations respecting all the material elements necessary to  
13 sustain recovery under some viable legal theory.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 562  
14 (2007) (internal quotation marks omitted). “To survive a motion to dismiss, a complaint must  
15 contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its  
16 face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 570) (internal  
17 quotation marks omitted). A claim is facially plausible if “the plaintiff pleads factual content that  
18 allows the court to draw the reasonable inference that the defendant is liable for the misconduct  
19 alleged.” *Id.* at 678 (citing *Twombly*, 550 U.S. at 556). The court must “draw on its judicial  
20 experience and common sense” to determine the plausibility of a claim given the specific context  
21 of each case. *Id.* at 679.

### 22 C. Motions for Summary Judgment

23 The parties have also filed competing summary judgment motions. Summary judgment is  
24 appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file,  
25 together with the affidavits, if any, show that there is no genuine issue as to any material fact and  
26 that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c). Summary  
27 judgment is not proper if material factual issues exist for trial. *See, e.g., Celotex Corp. v. Catrett*,  
28 477 U.S. 318, 322 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Warren v.*

1 *City of Carlsbad*, 58 F.3d 439, 441 (9th Cir.1995). In evaluating a motion for summary judgment,  
2 the district courts of the United States must draw all reasonable inferences in favor of the  
3 nonmoving party, and may neither make credibility determinations nor perform any weighing of  
4 the evidence. *See, e.g., Lytle v. Household Mfg., Inc.*, 494 U.S. 545, 554-55, (1990); *Reeves v.*  
5 *Sanderson Plumbing Products, Inc.*, 530 U.S. 133 (2000).

6 **III. DISCUSSION**

7 **A. Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction**

8 Defendants move to dismiss, pursuant to Fed. R. Civ. P. 12(b)(1), asserting that the  
9 Complaint fails to allege that Plaintiff presented her claims to the Commissioner of Social Security  
10 and received the Commissioner's final decision before bringing suit. As noted in the Defendants'  
11 motion, the Social Security Act expressly provides that 42 U.S.C. § 405(g) is the exclusive  
12 jurisdictional basis for a claimant seeking judicial review of claims arising under the Act. 42 U.S.C.  
13 § 405(g) and (h). The Supreme Court has stated that §405(g) "consists of a nonwaivable  
14 requirement that a claim for benefits shall have been presented to the Secretary, and a waivable  
15 requirement that the administrative remedies prescribed by the Secretary be pursued fully by the  
16 claimant." *Heckler v. Ringer*, 466 U.S. 602, 617 (1984) (quotation marks and citation excluded).

17 In her Opposition, the Plaintiff rebuts the Defendants' allegations that she failed to present  
18 her claims to the SSA. The Plaintiff notes that she met the presentment requirement twice – first,  
19 when she initially applied to the SSA to qualify for benefits in Pennsylvania; second when she  
20 notified the SSA that she would be temporarily and then permanently moving to Guam, prompting  
21 the SSA to terminate her benefits each time. *See* Decl. K. Fegurgur at ¶5, 7-10, attached as Ex.  
22 1 to Pl.'s Concise Stmt., ECF No. 41. With regard to exhausting administrative remedies, the  
23 Plaintiff asks the court to waive this requirement because it would have been futile for her to have  
24 appealed the SSA's decision to terminate her SSI benefits when she moved to Guam.

25 The Defendants, in their Reply brief, have conceded this issue. *See* Reply at 2, n.1, ECF  
26 No. 45. After having read the Declaration of Kimberly Fegurgur with regard to her meeting with  
27 SSA about the Plaintiff's plan to move to Guam, the Defendants "are no longer challenging the  
28 subject matter jurisdiction of this [c]ourt[.]" *Id.* Counsel for the Defendants reaffirmed this

1 position at the hearing on the motions. In light of this concession, the court hereby denies the  
2 Motion to Dismiss insofar as it asserts this court lacks subject matter jurisdiction.

3 B. Defendants' Motion to Dismiss for Failure to State a Claim

4 The Defendants next contend that dismissal is warranted because the Complaint fails to  
5 state a claim on which relief can be granted since the Supreme Court of the United States has  
6 already stated that Congress may limit eligibility for the SSI programs to residents of the 50 states  
7 and the District of Columbia. See *Califano v. Gautier Torres*,<sup>2</sup> 435 U.S. 1 (1978). In *Gautier*  
8 *Torres*, a recipient who qualified for SSI benefits while residing in Connecticut but had his benefits  
9 discontinued when he moved to Puerto Rico brought an action in the District Court of Puerto Rico  
10 claiming that the exclusion of Puerto Rico from the SSI program was unconstitutional. *Id.* at 2-3.  
11 A three-judge court was convened and ultimately found the statute unconstitutional as applied to  
12 *Gautier Torres* because it interfered with his right to travel. *Id.* at 3. Two others individuals (Colon  
13 and Vega) also brought similar suits, and, based on the earlier decision, the district judge enjoined  
14 the SSA from discontinuing said individuals' SSI benefits on the basis of their change of residency  
15 to Puerto Rico. *Id.* The government appealed, and the Supreme Court reversed.

16 The Supreme Court in *Gautier Torres* primarily addressed the right to travel claim but noted  
17 in a footnote that the appellee Torres's

18 complaint had also relied on the equal protection component of the Due Process  
19 Clause of the Fifth Amendment in attacking the exclusion of Puerto Rico from the  
20 SSI program. Acceptance of that claim would have meant that all otherwise  
21 qualified persons in Puerto Rico are entitled to SSI benefits, not just those who  
22 received such benefits before moving to Puerto Rico. But the District Court  
23 apparently acknowledged that Congress has the power to treat Puerto Rico  
24 differently, and that every federal program does not have to be extended to it.

25 *Gautier Torres*, 435 U.S. at 3, n.4.

26 The Supreme Court instructed that when faced with a constitutional attack on a law  
27 providing for governmental payments of monetary benefits, such "statute is entitled to a strong

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28 <sup>2</sup> The parties have referred to this case in their briefs as the *Torres* case. "According to Spanish naming conventions, if a person has two surnames, the first (which is the father's last name) is primary and the second (which is the mother's maiden name) is subordinate." *United States v. Martínez-Benítez*, 914 F.3d 1, 2 n.1 (1st Cir. 2019). The court's decision will refer to this case using both surnames.



1 presumption of constitutionality. So long as its judgments are rational, and not invidious, the  
2 legislature's efforts to tackle the problems of the poor and the needy are not subject to a  
3 constitutional straitjacket." *Id.* at 5 (quotation marks and citations omitted). The Supreme Court  
4 further noted that

5 [a]t least three reasons have been advanced to explain the exclusion of persons in  
6 Puerto Rico from the SSI program. First, because of the unique tax status of Puerto  
7 Rico, its residents do not contribute to the public treasury. Second, the cost of  
including Puerto Rico would be extremely great . . . . Third, inclusion in the SSI  
program might seriously disrupt the Puerto Rican economy.

8 *Id.* at 5, n.7.

9 Two years later, the Supreme Court decided the case of *Harris v. Rosario*, 446 U.S. 651  
10 (1980), which dealt with another federal program – the Aid to Families with Dependent Children  
11 (“AFDC”) program, which provides financial assistance to states and Territories to aid families  
12 with needy dependent children. *Id.* AFDC recipients residing in Puerto Rico had filed a class  
13 action against the Secretary of Health and Human Services challenging the constitutionality of  
14 certain provisions of the program, “claiming successfully that the lower level of AFDC  
15 reimbursement provided to Puerto Rico violates the Fifth Amendment’s equal protection  
16 guarantee.” *Id.* The Supreme Court, relying on *Gautier Torres*, disagreed, stating:

17 Congress, which is empowered under the Territory Clause of the Constitution, U.S.  
18 Const., Art. IV, § 3, cl. 2, to “make all needful Rules and Regulations respecting the  
19 Territory . . . belonging to the United States,” may treat Puerto Rico differently from  
20 States so long as there is a rational basis for its actions. In [*Gautier Torres*], we  
21 concluded that a similar statutory classification was rationally grounded on three  
22 factors: Puerto Rican residents do not contribute to the federal treasury; the cost of  
treating Puerto Rico as a State under the statute would be high; and greater benefits  
could disrupt the Puerto Rican economy. These same considerations are forwarded  
here in support of §§ 1308 and 1396d(b) . . . and we see no reason to depart from  
our conclusion in [*Gautier*] *Torres* that they suffice to form a rational basis for the  
challenged statutory classification.

23 *Harris*, 446 U.S. at 651-52 (internal citations omitted).

24 Based on these precedents, the Defendants contend that the Complaint fails to state a claim  
25 upon which relief can be granted. The Defendants assert that the Plaintiff’s equal protection claims  
26 have no merit because the Supreme Court has made it abundantly clear that Congress may limit  
27 eligibility for SSI benefits to residents of the 50 states and the District of Columbia.

28 The Plaintiff, on the other hand, argues that reliance on *Gautier Torres* and *Harris* is

1 misplaced. The Plaintiff notes that her Complaint alleges the Government violated her right to  
2 Equal Protection when “Congress intentionally provided CNMI residents access to the benefits it  
3 had denied Guam.” Compl. at ¶19. The Plaintiff here challenges what she claims is an irrational  
4 line-drawing between CNMI and Guam, *not* between Guam and the 50 States. The Plaintiff asserts  
5 *Gautier Torres* and *Harris* are not controlling to the facts herein since said cases dealt with  
6 disparate treatment between the Territories and the 50 States, whereas the Plaintiff’s claims focus  
7 on the differential treatment she experienced as a U.S. citizen on Guam compared to similarly  
8 situated citizens in the CNMI.

9 Plaintiff contends that she has appropriately pled Equal Protection claims. To state an Equal  
10 Protection claim, a plaintiff must allege that (1) she is a member of an identifiable class, (2) the  
11 defendant treated her differently from other similarly situated persons, and (3) the defendant acted  
12 with an intent or purpose to discriminate against her based on her membership in the identifiable  
13 class. *See Flores v. Morgan Hill Unified Sch. Dist.*, 324 F.3d 1130, 1134 (9th Cir. 2003). Here,  
14 the Plaintiff’s Complaint sufficiently pleads that she is a U.S. citizen residing on Guam. Compl.  
15 at ¶¶1 and 9. The Complaint also asserts that Plaintiff qualified for and received SSI benefits due  
16 to her financial status and hereditary medical disorder, that she continues to suffer from this  
17 disorder, but her benefits were terminated when she moved to Guam. *Id.* at ¶¶1, 6 and 9. Finally,  
18 the Complaint asserts that the Government has expressly and therefore intentionally excluded Guam  
19 but not the CNMI from the definition of the “United States” under the SSI program. *Id.* at ¶¶1-2,  
20 6, 9 and 15.

21 The court concurs with the Plaintiff that her Complaint alleges “sufficient factual matter,  
22 accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft*, 556 U.S. at 678.  
23 And, as noted previously, the purpose of a 12(b)(6) motion to dismiss is to test the sufficiency of  
24 the complaint, not to decide its merits. *Navarro*, 250 F.3d at 732. The *Gautier Torres* and *Harris*  
25 cases are factually distinguishable from the Plaintiff’s claims, such that this court can not conclude  
26 – at least at the motion to dismiss stage – that these cases *require* dismissal. As noted above,  
27 *Gautier Torres* was not decided on equal protection grounds. Even Defendants acknowledge that  
28 *Gautier Torres* “primarily involved a right-to-travel claim[.]” Defs.’ Resp. to Pl.’s Suppl. Br. at 3,

1 ECF No. 75. Additionally, *Harris* involved an equal protection challenge to the lower level of  
2 reimbursement provided to Puerto Rico under the AFDC program, not the SSI program.  
3 Accordingly, the court denies the Rule 12(b)(6) motion as the Plaintiff has adequately alleged Equal  
4 Protection claims.<sup>3</sup>

5 C. Plaintiff's Motion for Summary Judgment and Defendants' Cross Motion

6 Plaintiff asserts the exclusion of Guam from the SSI program violates the Equal Protection  
7 clause under the Fifth Amendment and the Organic Act of Guam. "Equal protection analysis in the  
8 Fifth Amendment area is the same as that under the Fourteenth Amendment." *Buckley v. Valeo*,  
9 424 U.S. 1, 93 (1976). "[L]egislation is presumed to be valid and will be sustained if the  
10 classification drawn by the statute is rationally related to a legitimate state interest." *City of*  
11 *Cleburne, Texas v. Cleburne Living Center*, 473 U.S. 432, 440 (1985). The burden is on the party  
12 attacking the legislation "to negate every conceivable basis which might support it." *FCC v. Beach*  
13 *Commc'ns, Inc.*, 508 U.S. 307, 315 (1993) (quoting *Lehnhausen v. Lake Shore Auto Parts Co.*, 410  
14 U.S. 356, 364 (1988)); *see also Hernandez-Mancilla v. Holder*, 633 F.3d 1182, 1185 (9th Cir.  
15 2011). The parties agree that rational basis review applies.

16 The Defendants have proffered various grounds for Guam's exclusion from the SSI  
17 program. First, just as in *Gautier Torres and Harris*, the Defendants contend that Guam's "unique  
18 tax status" justifies the limitation at issue here. *See* Defs.' Combined Mem. in Supp. of Cross Mot.  
19 for Summ. J. and in Opp'n to Pl.'s Mot. for Summ. J. at 7, ECF No. 47. The Defendants assert that  
20 SSI benefits are paid from general revenues that are funded by federal income taxes, and because  
21 Guam (and Puerto Rico) residents generally do not pay federal income tax, it was logical to limit  
22 SSI benefits to residents of the fifty States and the District of Columbia. *Id.* at 7-8.

23 Plaintiff rebuts this basis and asserts that "U.S. citizens residing in CNMI and Guam have  
24 the same relationship with federal income tax – neither group pays it." Pl.'s Combined Mem. in  
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26 <sup>3</sup> The remaining arguments raised in the Motion to Dismiss, the Opposition and the Reply  
27 addressing the merits of whether there are or are not rational bases to treat the CNMI differently  
28 from Guam under the SSI program are better reserved for the summary judgment stage and will be  
addressed by the court in the section below.

1 Opp'n to Defs.' Mot. for Summ. J. and Reply in Supp. of Pl.'s Mot. for Summ. J. at 14, ECF  
2 No. 51. Because Guam's tax status is not "unique" when compared to the CNMI, the Plaintiff  
3 contends that the Defendants' tax status argument has not merit.

4 The court agrees with the Plaintiff. While Guam's tax status might explain why it is treated  
5 differently from the fifty States and the District of Columbia, it does not justify the distinction in  
6 treatment between Guam and the CNMI with regard to SSI benefits. Guam's tax status is not  
7 unique when contrasted with the tax status of the CNMI. The parties do not dispute that neither  
8 Guam nor the CNMI pay federal income taxes. Yet, the U.S. citizens in the CNMI residents are  
9 eligible for SSI benefits that are withheld from U.S. citizens residing in Guam. This proffered  
10 reason to justify Guam's exclusion from the SSI program when the CNMI is included is illogical  
11 and irrational.

12 Additionally, because SSI benefits are not dependent on an individual's contributions, it  
13 would appear irrational for Congress to limit SSI benefits to exclude populations that do not pay  
14 federal income taxes. As the First Circuit reasoned in *United States v. Vaello-Madero* ("*Vaello-*  
15 *Madero II*"),

16 We are unaware of . . . any instance where the government has justified the  
17 exclusion of a class of people from welfare payments (which are untied to income  
18 tax receipts) because they do not pay federal income tax. . . . [T]he sort of welfare  
19 benefits at issue here are distinguishable from federal insurance programs, like  
20 Social Security Disability Insurance, which may legitimately tie the amount of  
21 benefits [awarded] to the individual's contributions. . . . However, because SSI is  
22 a means-tested program, by its very terms, only low-income individuals lacking in  
23 monetary resources are eligible for the program. . . . Consequently, any individual  
24 eligible for SSI benefits almost by definition earns too little to be paying federal  
25 income taxes. Thus, the idea that one needs to earn their eligibility by the payment  
26 of federal income tax is antithetical to the entire premise of the program. How can  
27 it be rational for Congress to limit SSI benefits to exclude populations that generally  
28 do not pay federal income taxes when the very population those benefits target do  
not, as a general matter, pay federal income tax?

24 *Vaello-Madero II*, 956 F.3d 12, 26-27 (1st Cir. 2020) (internal citations, quotation marks and  
25 footnotes omitted).

26 Having found the tax status argument irrational, the court turns to Defendants' next  
27 argument: that the cost of including Guam in the SSI program would be extremely great and  
28 conserving the public fisc is a rational justification for excluding residents of a particular territory

1 from SSI benefits eligibility. As discussed above, the Supreme Court in *Gautier Torres* recognized  
2 that one conceivable rationale for the exclusion of Puerto Rico from SSI benefits eligibility was that  
3 “the cost of including Puerto Rico would be extremely great.” 435 U.S. at 5, n.7. The Defendants’  
4 maintain that here “it is similarly conceivable that the cost of extending benefits eligibility to Guam  
5 residents would be high, [and thus] the exclusion of Guam residents relates rationally to the  
6 legitimate governmental interest in preserving public funds.” Defs.’ Reply at 10, ECF No. 57. *See*  
7 *also* Defs.’ Concise Stmtnt. of Material Facts #6, ECF No. 48).

8 The court acknowledges that “protecting the fiscal integrity of Government programs, and  
9 of the Government as a whole,” is a legitimate concern for Congress. *Lyng v. Int’l Union, United*  
10 *Auto., Aerospace & Agr. Implement Workers of Am., UAW*, 485 U.S. 360, 373 (1988). The Plaintiff  
11 argues, and the court also recognizes, that cost-savings alone cannot justify a discriminatory regime  
12 by the government. *See, e.g., Plyler v. Doe*, 457 U.S. 202, 227 (1982) (“a concern for the  
13 preservation of resources standing alone can hardly justify the classification used in allocating those  
14 resources.”). The United States concedes this. *See* Defs.’ Reply at 10, ECF No. 57. Thus, the court  
15 must analyze the underlying facts to the Defendants’ claim that including Guam in the SSI program  
16 would be extremely great.

17 According to the figures provided by the Defendants, a 1987 Government Accountability  
18 Office Report estimated that if Guam residents were eligible for SSI benefits, annual federal  
19 spending would increase by \$7.8 million, which is equivalent to \$17 million in 2019 dollars. *See*  
20 Defs.’ Concise Stmtnt. of Material Facts #1-2, ECF No. 48. “Assuming that a monthly SSI benefits  
21 rate for Guam residents would be similar to that of residents of the CNMI,<sup>4</sup> the annual federal  
22 spending increase if Guam residents were eligible for SSI benefits would be approximately \$175  
23 million ( $\$608.57 \times 12 \text{ months} \times 24,000 \text{ residents}^5$ .” In 2017, the SSA paid approximately \$54.5

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25 \_\_\_\_\_  
26 <sup>4</sup> The average monthly SSI benefit payments for CNMI residents was \$608.57. Defs.’  
27 Concise Stmtnt. of Material Facts #5, ECF No. 48

28 <sup>5</sup> In 2013, the Guam Legislature estimated that 24,000 residents could be eligible for SSI  
benefits if the program were extended to include Guam residents. Defs.’ Concise Stmtnt. of  
Material Facts #4, ECF No. 48.

1 billion under the SSI program. See SSA's SSI Annual Statistical Report, 2017 at 16,  
2 [https://www.ssa.gov/policy/docs/statcomps/ssi\\_asr/2017/ssi\\_asr17.pdf](https://www.ssa.gov/policy/docs/statcomps/ssi_asr/2017/ssi_asr17.pdf). Thus, based on the  
3 Defendants' range of \$17 million to \$175 million, including eligible Guam residents in the SSI  
4 program would increase the overall budget by a mere 0.03% to 0.3%. As Plaintiff notes, such a  
5 minimal increase in cost does not qualify as "extremely great" so as to justify the unequal treatment  
6 of eligible citizens residing in Guam. As Chief Judge Gustavo A. Gelpi stated in his opinion,

7       Aside from the fact that the cost is minimal compared to the government's budget  
8 for such program, this is not a valid justification for creating classifications of  
9 United States citizens and justifying the same under the lax scrutiny of social and  
10 economic legislation. While line drawing is necessary for Congress to pass social  
and economic legislation, it is never a valid reason for disparate treatment of United  
States citizen's fundamental rights.

11 *United States v. Vaello Madero* ("Vaello Madero I"), 356 F. Supp. 3d 208, 215 (D.P.R. 2019), *aff'd*,  
12 956 F.3d 12 (1st Cir. 2020). This court whole heartedly agrees with Chief Judge Gelpi.

13       Having determined that the cost to include Guam in the SSI program is relatively small and  
14 not substantial, the court next examines the Defendants' claim that Congress could have rationally  
15 concluded that extending SSI benefits to Guam could disrupt its economy. In *Gautier Torres*, the  
16 Supreme Court acknowledged that inclusion of Puerto Rican residents in the SSI program "might  
17 seriously disrupt the Puerto Rican economy." 435 U.S. at 5, n.7. Similarly, the United States  
18 asserts that providing eligibility for SSI benefits to Guam residents "could 'disrupt [Guam's]  
19 economy' by creating 'appreciable inflationary pressure.'" Defs.' Reply at 12-13, ECF No. 57  
20 (citations omitted).

21       The Plaintiff refutes this assertion, arguing that the government has not provided any  
22 evidence to support this contention. See Pl.'s Combined Mem. in Opp'n to Defs.' Mot. for Summ.  
23 J. and Reply in Supp. of Pl.'s Mot. for Summ. J. at 20, ECF No. 51. Additionally, the Plaintiff  
24 claims that even if Congress may have reasonably concluded in the past that including Guam in the  
25 SSI program would have disrupted Guam's economy, "such a conclusion is no longer rational."  
26 *Id.*

27       The *Gautier Torres* and *Harris* cases relied upon by the Defendants were decided in 1978  
28 and 1980 respectively. In *Vaello-Madero II*, the court noted that the appellant (the United States)

1 was not claiming that granting SSI benefits to Puerto Rico residents could presently disrupt the  
2 island's economy. *Vaello-Madero II*, 956 F.3d at 21. This court thus directed the parties to address  
3 whether the passage of time eroded the United States' claim that extending SSI benefits to Guam  
4 residents could disrupt Guam's economy. *See* Order re Supp. Briefing, ECF No. 73.

5 In its supplemental brief, the Plaintiff urges this court to consider present day  
6 circumstances, arguing that "[e]ven if the [Defendants'] concern for the potential negative impact  
7 of an influx of aid on the territory's economic stability could have been legitimate three decades  
8 ago, that concern can no longer provide rational basis" for Guam's exclusion from the program  
9 today. Pl.'s Suppl. Br. at 7, ECF No. 74. The Defendants, on the other hand, assert that "it remains  
10 rational to believe that inclusion of Puerto Rico (and Guam) residents in the SSI program could  
11 result in economically disruptive effects. This case thus provides no opportunity to consider  
12 whether materially changed circumstances could be relevant to an equal protection analysis." Defs.'  
13 Resp. to Pl.'s Suppl. Br. at 5, ECF No. 75. The Defendants further argue that "the Ninth Circuit  
14 has made clear that '[t]he Supreme Court has been ambivalent on whether changed circumstances  
15 can transform a once-rational statute into an irrational law.'" *Id.* (quoting *Burlington N. R.R. Co.*  
16 *v. Dep't of Pub. Serv. Regulation*, 763 F.2d 1106, 1111 (9th Cir. 1985)).

17 Economic statutes are accorded deference under rational basis review. Nevertheless, in  
18 *Burlington*,<sup>6</sup> the Ninth Circuit cited to four cases where the Supreme Court acknowledged that it

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21 <sup>6</sup> In *Burlington*, a railroad company challenged a Montana statute that required the  
22 company to maintain and staff certain freight offices in the state, asserting that said statute was  
23 unconstitutional under the due process clause, the equal protection clause and the commerce clause.  
24 763 F.2d at 1108-09. The railroad company claimed that station agents were no longer needed in  
25 certain towns because "many of the duties historically performed by station agents [were] currently  
26 performed in centralized, computerized service centers," thus resulting in "redundant and  
27 economically wasteful" operations. *Id.* at 1109. Applying a rational basis test, the Ninth Circuit  
28 found that the railroad company "presented no evidence to establish that the Montana legislature,  
in 1969, acted irrationally when it fixed a statutorily-defined population criteria for minimum  
rail-station service." *Id.* at 1111. The court further stated that even if it were to "consider the  
rationality of the Montana requirement as of 1985 instead of 1969," the railroad company "failed  
to meet its burden" because it had "not presented evidence sufficient to persuade the court that  
changes in rail service in the last 16 years have so drastically altered the need for stations that the  
bases for the 1969 enactment no longer exist." *Id.*

1 would be proper for a court to consider more recent information to determine whether significant  
2 changes since a statute's enactment might impact a legislative finding supporting such a statute.

3 *Id.* The Ninth Circuit cited to the following cases:

4 *Leary v. United States*, 395 U.S. 6, 38 n.68 (1969) (a statute is subject to  
5 constitutional attack if legislative facts upon which statute was based no longer  
6 exist[;] *United States v. Carolene Products, Co.*, 304 U.S. 144, 153 (1938)  
7 (constitutionality of a statute may be attacked on the basis that the facts upon which  
8 it is premised have ceased to exist); *Nashville C. & St. L. Ry. v. Walters*, 294 U.S.  
405, 415 (1935) (“[a] statute valid when enacted may become invalid by change in  
the conditions to which it is applied”); *Chastleton Corp. v. Sinclair*, 264 U.S. 543,  
547 (1924) (“[a] Court is not at liberty to shut its eyes to an obvious mistake, when  
the validity of the law depends upon the truth of what is declared”).

9 *Id.* (parallel citations omitted).

10 Based on the Ninth Circuit's discussion in *Burlington*, the court concurs with the Plaintiff's  
11 contention that the court's constitutional review of the SSI program may take into account present  
12 day circumstances. As noted by the United States Supreme Court 96 years ago in *Chastleton*, as  
13 quoted above, no longer should “. . . [a c]ourt[, including this court, be] at liberty to shut its eyes  
14 to an obvious mistake, when the validity of the law depends upon the truth of what is declared.”  
15 264 U.S. at 547. First, the court examines the Defendants' assertion that the Supreme Court's  
16 determination that potential economic disruption constitutes a rational basis justifying the exclusion  
17 of Puerto Rico residents from SSI eligibility controls this court's analysis. The Supreme Court  
18 originally endorsed this rationale in *Gautier Torres*. 435 U.S. at 5, n.7. This footnote in *Gautier*  
19 *Torres* cited to the 1976 Department of Health, Education and Welfare's Report of the  
20 Undersecretary's Advisory Group on Puerto Rico, Guam and the Virgin Islands (the “1976  
21 Report”)<sup>7</sup> to support an economic theory for why Puerto Rico's inclusion in the SSI program would  
22 disrupt its economy. *Id.* However, as discussed by the First Circuit, “the 1976 Report expressly  
23 rejected concerns about an influx of aid disrupting the economy as a justification for disparate  
24 treatment, concluding that ‘the current fiscal treatment of Puerto Rico [and the Territories under the  
25 Social Security Act] is unduly discriminatory and undesirably restricts the ability of these

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27 <sup>7</sup> A copy of the 1976 Report is appended as Exhibit 1 to Congresswoman Nydia M.  
28 Velazquez's Amicus Curiae Brief in Support of Plaintiff's Opposition to Defendants' Motion to  
Dismiss, filed in *Pena Martinez v. Azar*, No. 18-CV-1206 (D. P.R.), ECF No. 43-1.



1 jurisdictions to meet their public assistance needs.” *Vaello-Madero II*, 956 F.3d at 23 (quoting  
2 1976 Report at 6-7) (insertions in original). The First Circuit questioned the “dubious nature of this  
3 once-accepted rationale,” and stated that “this now defunct argument and citation to . . . the 1976  
4 Report” permitted the court “to consider present-day circumstances surrounding Puerto Rico’s  
5 exclusion from SSI and whether the current classification is unrelated to a legitimate government  
6 interest.” *Id.*

7 The court has had an opportunity to also review the 1976 Report that was cited in the  
8 *Gautier Torres* decision. Specifically with regard to Guam and the Virgin Islands, that report  
9 recommended that the Department of Health, Education and Welfare “should initiate steps to plan  
10 for the extension of the SSI program to Guam and the Virgin Islands.” 1976 Report, Tab C at 17.  
11 The Report concluded that [the exclusion[] from SSI . . . benefits [is] viewed as unfairly denying  
12 a higher standard of living to low-income elderly citizens in the Territories.” *Id.* at 16.

13 Beside the fact that the 1976 Report does not support the Defendants’ economic theory of  
14 excluding Guam residents from the SSI program so as not to disrupt the island’s economy, the  
15 rationale for this third factor has also been questioned by Justice Marshall’s dissent in *Harris*, where  
16 he stated:

17 This rationale has troubling overtones. It suggests that programs designed to help  
18 the poor should be less fully applied in those areas where the need may be the  
19 greatest, simply because otherwise the relative poverty of recipients compared to  
20 other persons in the same geographic area will somehow be upset. Similarly,  
21 reliance on the fear of disrupting the Puerto Rican economy implies that Congress  
22 intended to preserve or even strengthen the comparative economic position of the  
23 States vis-à-vis Puerto Rico. Under this theory, those geographic units of the  
24 country which have the strongest economies presumably would get the most  
25 financial aid from the Federal Government since those units would be the least  
26 likely to be “disrupted.” Such an approach to a financial assistance program is not  
27 so clearly rational as the Court suggests, and there is no citation by the Court to any  
28 suggestion in the legislative history that Congress had these economic concerns in  
29 mind when it passed the portion of the AFDC program presently being challenged.  
30 Nor does appellant refer to any evidence in the record supporting the notion that  
31 such a speculative fear of economic disruption is warranted. In my view it is by no  
32 means clear that the discrimination at issue here could survive scrutiny under even  
33 a deferential equal protection standard.

34 *Harris*, 446 U.S. at 655-56 (Marshall, J., dissenting) (footnote omitted).

35 As discussed above, both Justice Marshall and the First Circuit have cast doubt on the  
36 Defendants’ claim that Congress could have rationally concluded that extending SSI benefits to

1 Guam could disrupt its economy back in 1972. Even if the court were to accept this contention  
2 (which the court does not), the court finds that this third factor is no longer valid because of  
3 changed circumstances that have occurred over the last 40 years. Clearly, there is no “. . . evidence  
4 in the record supporting the notion that such a speculative fear of economic disruption [on Guam]  
5 is warranted.” *Id.*

6 As noted by the Plaintiff, since the 1970s Congress has extended various comparable federal  
7 benefit programs to Guam without disrupting the island’s economy. Guam received approximately  
8 \$176 million<sup>8</sup> of annual federal SNAP and Medicaid benefits, and there is no evidence to suggest  
9 that the influx of these federal funds have negatively impacted Guam’s economy. To the contrary,  
10 these public assistance dollars from the federal government have benefitted Guam’s economy.

11 The payment of SSI benefits to citizens in the CNMI further supports the finding that it is  
12 irrational to conclude that Guam’s economy would be disrupted if it were included in the SSI  
13 program. The SSI benefits afforded to citizens in the CNMI has not disrupted its economy in the  
14 past three decades, and this would tend to indicate that the same would hold true for Guam.  
15 Although the Defendants maintain that Congress may have rationally concluded that SSI benefits  
16 would have disrupted Guam’s economy in the past, the CNMI’s experience of decades of SSI  
17 payments and Guam’s own receipt of federal public assistance funds have shown that an influx of  
18 federal funds through the SSI program would not disrupt Guam’s economy at this time. Any  
19 conclusions that Congress may have had cannot be rationally supported by the facts known today.  
20 Accordingly, the court finds that the third factor proffered by the Defendants does not provide a  
21 rational basis for the exclusion of U.S. citizens residing on Guam from the SSI program.

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23 <sup>8</sup> For Fiscal Year (“FY”) 2016, Guam issued \$106 million in SNAP funds as reported in  
24 FNS *Supplemental Nutrition Assistance Program State Activity Report Fiscal Year 2016* at 5,  
25 (U.S.D.A. Sept. 2017) , a copy of which is available on the U.S. Department of Agriculture’s  
26 website <https://fns-prod.azureedge.net/sites/default/files/snap/FY16-State-Activity-Report.pdf> (last  
27 visited June 19, 2020). Additionally, in FY 2016, federal Medicaid spending in Guam was \$45.8  
28 million, and federal CHIP (Children’s Health Insurance Program) funding totaled \$24.1 million.  
*See* MACPAC Fact Sheet, *Medicaid and CHIP in Guam* at 4 (Mar. 2019) (fact sheet is available  
at <https://www.macpac.gov/wp-content/uploads/2016/09/Medicaid-and-CHIP-in-Guam.pdf> (last  
visited June 19, 2020)).

1 Finally, in justifying why the CNMI was included in the SSI program, the Defendants assert  
2 “[i]t is conceivable . . . that Congress distinguished between U.S. Territories that  
3 existed at the time of the [SSI] program’s enactment and a United Nations Trust  
4 Territory, because the United States was not a sovereign over the Trust Territory,  
5 only a trustee. . . . [E]xtending SSI benefits eligibility to CNMI residents rationally  
6 relates to the government’s interest in complying with its treaty obligations.

7 Defs.’ Reply at 15, ECF No. 57.

8 The United States cites to the case of *Besinga v. United States*, 14 F.3d 1356 (9th Cir. 1994),  
9 to support its claim that historical distinctions justify the difference in treatment between Guam and  
10 the CNMI. There, the court was faced with a constitutional challenge to a federal statute that treated  
11 two veteran groups from the Philippines differently. In *Besinga*, World War II Filipino veterans  
12 who served with the Philippine Commonwealth Army were ineligible for all U.S. veterans benefits  
13 afforded to those who served in the Old Philippine Scouts group. *Id.* at 1358-39. Among various  
14 factors discussed in upholding the statute under the rational basis test, the Ninth Circuit noted that  
15 the Commonwealth Army was formed by an act of the Philippine legislature while the Old  
16 Philippine Scouts were organized pursuant to an Act of Congress, and said forces were incorporated  
17 into the U.S. Army and were paid directly by the War Department. *Id.* at 1362. “Given this history,  
18 it is conceivable that Congress viewed the Old Philippine Scouts as more integrally a part of the  
19 United States armed forces.” *Id.*

20 The United States acquired Guam as a territory in 1898 and its residents have enjoyed U.S.  
21 citizenship since 1950.<sup>9</sup> The Northern Mariana Islands (“NMI”), on the other hand, were part of  
22 the Trust Territory of the Pacific Islands after World War II and were administered by the United  
23 States pursuant to a Trusteeship Agreement with the United Nations Security Council. *Mtoched*  
24 *v. Lynch*, 786 F.3d 1210, 1213 (9th Cir. 2015). The NMI

25 elected to enter into a closer and more lasting relationship with the United States.  
26 Years of negotiation culminated in 1975 with the signing of the Covenant to  
27 Establish a Commonwealth of the Northern Mariana Islands in Political Union with  
28 the United States (hereinafter “Covenant”). After a period of transition, in 1986  
the trusteeship terminated, and CNMI was fully launched.

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<sup>9</sup> The Organic Act of Guam conferred U.S. citizenship to all persons born or living on  
Guam on or after April 11, 1899.

1 *Id.* (citation omitted).

2 “Although described as a commonwealth, the relationship is territorial in nature[.]” S. Rep.  
3 No. 94-433,<sup>10</sup> at 15 (1975). When the Covenant was signed it envisioned that “[t]he Marianas  
4 commonwealth relationship will be significantly closer to the Guam territorial relationship than to  
5 the Puerto Rican commonwealth arrangement.” *Id.* See also *Saipan Stevedore Co. Inc. v. Dir.,*  
6 *Office of Workers’ Comp. Programs*, 133 F.3d 717, 721 (9th Cir. 1998) (“The Covenant codifies  
7 the [CNMI]’s determination that its legal rights and obligations more closely parallel those of the  
8 residents of Guam, rather than any other United States territory.”). Despite the historical distinction  
9 in the islands’ political relationships with the United States, “[g]eographically, culturally and  
10 ethnically, Guam and the [NMI] are one entity, . . . [and t]hroughout the 20th century political  
11 separation . . . , the Chamorro people of these islands retained their common culture and language,  
12 and their close kin ties.” S. Rep. No. 94-433,<sup>11</sup> at 17 (1975).

13 Although Guam has been more integrally a part of the United States than the CNMI,<sup>12</sup>  
14 Congress extended SSI benefits to the CNMI when the Covenant was negotiated. Unfortunately,  
15 Guam does not have the similar ability to negotiate with the United States government with regard  
16 to the applicability or inapplicability of federal laws to the island. Citizens living on Guam cannot  
17 vote in national elections and do not have voting representation in the final approval of legislation  
18 by Congress. Similar to the observations of Chief Judge Gelpi, the court highlights that U.S.  
19 citizens residing in Guam “are the very essence of a politically powerless group, with no  
20 Presidential nor Congressional vote, and with only a non-voting [delegate] representing their  
21

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22 <sup>10</sup> This report, entitled “The Covenant to Establish a Commonwealth of the Northern  
23 Mariana Islands,” was prepared by the Committee on Interior and Insular Affairs of the U.S. Senate  
24 to accompany House Joint Resolution 549 and recommended approval of the Covenant.

25 <sup>11</sup> This report, entitled “The Covenant to Establish a Commonwealth of the Northern  
26 Mariana Islands,” was prepared by the Committee on Interior and Insular Affairs of the U.S. Senate  
27 to accompany House Joint Resolution 549 and recommended approval of the Covenant.

28 <sup>12</sup> As noted above, Guam became a territory in 1898 – approximately 50 years prior to the  
United States’ trusteeship over the NMI and 88 years prior to CNMI’s establishment as a  
commonwealth.

1 interests in Congress.” *Vaello Madero I*, 356 F. Supp. 3d at 214. United States citizens residing  
2 in Guam are deprived of receiving SSI benefits based solely on the fact that they reside in a U.S.  
3 territory.

4 Aside from where they live, the otherwise SSI-qualifying residents of [Guam] and  
5 of the Northern Mariana Islands have the legally-relevant characteristics in common,  
6 *i.e.*, they are (1) low-income and low-resourced, (2) elderly, disabled, or blind, and  
7 (3) generally exempted from paying federal income tax. These shared traits  
8 undermine [Defendants’] already weakened arguments.

9 *Vaello-Madero II*, 956 F.3d at 30.

10 There is no relevant difference between Guam and the CNMI that would rationally justify  
11 the denial of SSI benefits to otherwise eligible U.S. citizens residing in Guam, benefits enjoyed by  
12 their Chamorro neighbors just 60 miles north of and a 40-minute flight from Guam. Accordingly,  
13 the court holds that the equal protection guarantees of the Fifth Amendment forbid the arbitrary  
14 denial of SSI benefits to residents of Guam.

#### 15 **IV. CONCLUSION**

16 Based on the above discussion, the court hereby DENIES the Defendants’ Motion to  
17 Dismiss in its entirety, DENIES the Defendants’ Cross Motion for Summary Judgment, and  
18 GRANTS the Plaintiff’s Motion for Summary Judgment. Having considered all the grounds  
19 proffered by the United States, the court finds that there is no rational basis for excluding Plaintiff  
20 from receiving SSI benefits based solely on her residency in Guam. The court finds that the  
21 discriminatory provisions of the SSI statute and any related implementing regulations that  
22 discriminate on the basis of status as a resident of Guam violate the Constitution and Organic Act’s  
23 guarantees of Equal Protection. The court hereby enjoins Defendants from enforcing against the  
24 Plaintiff such discriminatory provisions of the SSI statute and any relevant implementing  
25 regulations.

26 The Clerk’s Office shall enter judgment accordingly.

27 IT IS SO ORDERED.



28 /s/ Frances M. Tydingco-Gatewood  
Chief Judge  
Dated: Jun 19, 2020



Office of the Vice Speaker

**TINA ROSE MUÑA BARNES**

*I Mina'trentai Sais Na Liheslaturan Guåhan*

**36<sup>th</sup> Guam Legislature**

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## **Testimony on House Res. 279**

Testimony before the House Committee on Natural  
Resources, Office of Insular Affairs

Full Committee Hearing Regarding the  
“Insular Cases Resolution”

United States House of Representatives

Wednesday May 12, 2021

### **Tina Rose Muña Barnes**

Vice Speaker, 36th Guam Legislature  
Chairwoman, Committee on Rules,  
Public Accountability, Human Resources,  
Guam Buildup, *Hagåtña* Revitalization,  
Regional Affairs, Public Libraries,  
Telecommunications & Technology



Office of the Vice Speaker

## TINA ROSE MUÑA BARNES

*I Mina'trentai Sais Na Liheslaturan Guåhan*

### 36<sup>th</sup> Guam Legislature

*Hafa Adai!* My name is Tina Rose Muña Barnes, and I am the Vice Speaker of the 36th Guam Legislature. My Committee held a public hearing last week on Resolution 56-36, a measure I introduced in support of House Resolution 279. My testimony today is, in part, based on the testimony presented before my Committee,

First and foremost, I would like to express my heartfelt thank you and *Un Dangkolo Na Si Yu'os Ma'ase* (thank you) to Chairman Grijalva and Vice Chairman Gregorio Killili Sablan for their leadership in authoring House Resolution 279 along with its many cosponsors and for convening this hearing.

My grandfather is the late Colonel Juan Muna, for whom the Guam National Guard's Headquarters, Fort Juan Muna, bears his name to honor his contributions to the US Armed Forces during World War II. I am also the proud wife of an Air Force Veteran, the mother of an Active-Duty Air Guardsman, mother-in-law of an Air Guard Veteran, and lastly a grand-mother-in-law of a deployed Army Soldier.

As you may recall, when COVID-19 swept our nation, and made its way onto the USS Theodore Roosevelt, the people of Guam responded to protect the lives of thousands of sailors who took an oath to protect both you and me<sup>1</sup>. Yes, there was fear and anxiety within our community as we took extraordinary action to help the TR and eliminate any further spread into our community. We did so because our ancestors taught us the Ancient *CHamoru* spirit of *Inafa'maolek*, where we must step up, when our community is in need – it's literal definition means "to make good."<sup>2</sup> At that time, it was not the people of Guam vs. the US Navy, it was the people of Guam *alongside* our fellow Americans, *for* our fellow Americans.

What makes me proud to call myself an American, is the fact that the country is capable of recognizing its past mistakes, and it can take action to *make amends* to those who were harmed or negatively impacted. Today, House Resolution 279, which calls the *Insular Cases* racist, undemocratic, unconstitutional, unamerican, and having no place in the America we know and love, is the first and important step to make amends and heal the millions of our fellow Americans who have been impacted by the decisions and harmful language used by the U.S. Supreme Court. As my good friend, Senator Paul Strauss, who is DC's Shadow Senator to the U.S. Senate testified last week<sup>3</sup>, House Res. 279 "express(es) the overdue opinion that the racist ideology expressed in the Insular Cases is an idea that belongs on the dustbin of history, along with so many other terrible, racist ideas – be it slavery, racial segregation, Jim Crow laws, fascism, and the types of discrimination on the basis of religion and other ideologies that no longer deserve a place in 21st century, civilized society."

But we can't stop there. This resolution, as the panel of leading legal experts testified at my

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<sup>1</sup> Baldor, Lolita C. "Carrier Theodore Roosevelt, Sidelined in Guam by Coronavirus, Heads Back to Sea This Week." *The Associated Press*, 19 May 2020.

<sup>2</sup> Perez-Iyechad, Lilli. "Inafa'Maolek: Striving for Harmony." *Guampedia*.

<sup>3</sup> Strauss, Paul. "Testimony on Resolution 56-36 (COR)." 36<sup>th</sup> Guam Legislature. Hagatna, Guam. 5 May 2021. Testimony.



Office of the Vice Speaker

## TINA ROSE MUÑA BARNES

*I Mina'trentai Sais Na Liheslaturan Guåhan*

### 36<sup>th</sup> Guam Legislature

hearing stated, it sends a strong message, but is non-binding on the courts. We cannot call ourselves the land of the free, but allow the *Insular Cases* to set the precedence of jurisprudence. I would like to reflect on the testimony of your former colleague, my former Congressman and former President of the University of Guam, Dr. Robert Underwood<sup>4</sup>. We are taking the first step by calling the *Insular Cases* for what it is, but this is where I need your help. As a local lawmaker, I cannot single-handedly change the relationship between the United States and its Unincorporated Territory. Members of this Committee, I humbly urge you to exercise the Plenary Powers granted to you, to make right by the people of Guam.

You *all* have made strides, by temporarily granting Guam parity with our fellow Americans by raising our Medicaid allotments<sup>5</sup> and increasing the federal Medicaid rates, through the FY 2020 appropriations and the Families First Coronavirus Relief Act. But these are temporary and set to expire. While I am also grateful for the numerous relief packages passed by this body, and the continued advocacy of Guam's Delegate, Mr. San Nicolas, the requirement for a local match, in a time where our main economic driver, *tourism*, is at a standstill, I echo our Governor Lourdes Leon Guerrero's sentiments that "this high match requirement has prevented us from availing of much-needed federal funds."<sup>6</sup>

I also had the honor of hearing from Attorney Rodney Jacob, who hails from Chairman Grivalja's District in Arizona and represented Katrina Schaller in the District Court of Guam. Ms. Katrina Schaller of Barrigada, Guam, filed a lawsuit in the District Court of Guam in December of 2018. Katrina and her twin sister Leslie Schaller both live with myotonic dystrophy, which severely inhibits muscle function and other critical aspects of daily life. Leslie is able to live independently in Pennsylvania due to the aid she receives from SSI. Katrina however is ineligible for the same SSI benefits received by her twin simply by virtue of her geographic location.

As Attorney Rodney Jacob, who serves as Katrina Schaller's counsel, eloquently stated: "It is contrary to common sense, human decency, and sound public policy to deny public benefits to all other American citizens with disabilities living on Guam."<sup>7</sup> While Katrina won her case in the U.S. District Court of Guam last June, the U.S. federal government has appealed to the Ninth Circuit, which has paused the case pending the outcome of a similar case from Puerto Rico, which will be heard by the U.S. Supreme Court. As a result of this shocking injustice, and at the request of my good colleague, Senator Mary Camacho Torres<sup>8</sup>, who is the daughter of Guam's first elected Republican Governor, and founder of the Republican Party of Guam, I was honored to amend my resolution to seek parity on this matter. Senator Torres and I may hail from different political parties, but for our People, we can work together. I hope you all share this same desire.

Going back to the testimony of Dr. Underwood, and echoed by our Governor, the Legal

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<sup>4</sup> Underwood, Robert. "Testimony on Resolution 56-36 (COR)." 36<sup>th</sup> Guam Legislature. *Hagåtña*, Guam. 5 May 2021. Testimony.

<sup>5</sup> Medicaid and CHIP Payment and Access Commission. *Medicaid and CHIP in Guam*. Washington, DC, 2021. Print.

<sup>6</sup> Leon Guerrero, Lourdes. Letter to Gretchen Sierra-Zorita. 5 May 2021. BRIEF ON SIGNIFICANT FEDERAL POLICIES AFFECTING GUAM. *Hagåtña*, Guam.

<sup>7</sup> Jacob, Rodney. "Testimony on Resolution 56-36 (COR)." 36<sup>th</sup> Guam Legislature. *Hagåtña*, Guam. 5 May 2021. Testimony.

<sup>8</sup> Torres, Mary Camacho. Letter to Vice Speaker Muña Barnes. 7 May 2021. Suggested Language Relative to SSI Inclusion in Resolution No. 56-36 (COR) *Hagåtña*, Guam.





Office of the Vice Speaker

## TINA ROSE MUÑA BARNES

*I Mina'trentai Sais Na Liheslaturan Guåhan*

### 36<sup>th</sup> Guam Legislature

Scholars, and Community Advocates, I would like to humbly further request this committee, that Congress further exercise its Plenary Powers to begin the process to correct this wrong. Congress could begin the process of creating a binding political status reconciliation process tailored for each Territory. I am a proud daughter of Guam, but I while I prefer a closer relationship with the United States, I believe that we must begin this conversation, will all of you here today, and all those who live on Guam, so that we can figure out our future, and not push this issue under the rug.

I also received testimony from human rights lawyer and law scholar Julian Aguon<sup>9</sup>, whose support for H.Res.279 was far more qualified than the other legal experts. While he denounces the racist and imperialist origins of the Insular Cases, Attorney Aguon argues that they nevertheless provide the basic analytical framework that later federal courts have used to protect the indigenous peoples of the territories, in particular the peoples of the CNMI and American Samoa. He argues that in certain cases, like *Wabot v. Villacrusis* and *Tuaua v. United States*, the Insular Cases were not used as a sword (against the peoples of the territories) but instead as a shield (to protect their lands, cultures, and self-determination). For instance, for all its flaws, the impracticable and anomalous test, which developed out of the doctrinal flexibility created by the Insular Cases, has been used to ward off challenges to things like ancestry-based land alienation restrictions. Without the doctrinal space created by these cases, programs like these would have almost certainly been struck down. In sum, Attorney Aguon argues that in our zeal to condemn these cases, we can't ignore the fact that in more recent times they have been repurposed to benefit the indigenous peoples in the territories. Finally, Attorney Aguon argues that until we are willing to do the much harder work of reconstruction (that is, establishing an alternative doctrinal path to protect the indigenous peoples of the territories), just denouncing the Insular Cases is not nearly enough.

In closing, I would like to reflect on the U.S. Navy Report on Guam. It outlines that the Navy was tasked with being the Administrator of Guam, simply because of our Geographical location, and its importance to the Navy. The Navy outlined its mission in a tone similar to the *Insular Cases*, by stating that "In a little less than 49 years the Naval administration of Guam had guided a people from illiteracy, peonage, and apathy to where in conservative estimate and appraisal, it had been educated to accept and intelligently to discharge the responsibilities (as well as the privileges) of citizenship<sup>10</sup>."

I come before you today, as a leader, a proud American and a daughter of Guam. My family's contribution to this nation, and my decades of service to my People, taking an oath every two years to uphold this same constitution, asking you to give me the right to Manifest my own destiny.

I look at my entire career, as an athlete, an Investigator, a Director, and a Senator for 15+ years -- I have lived a full life, blessed with a great family, great friends, and a great career. For me -- my goal now is to make sure that my children and our future generations are no longer subjected by these injustices. We have fought alongside you in wars, we are proud to be home to the highest enlistment rates into the U.S. Armed Forces. I ask you today, why

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<sup>9</sup> Aguon, Julian. "Testimony on Resolution 56-36 (COR)." 36<sup>th</sup> Guam Legislature. *Hagåtña*, Guam. 10 May 2021. Written Testimony.

<sup>10</sup> United States. Dept. of the Navy. Office of the Chief of Naval Operations. *U.S. Navy Report on Guam 1899-1950*. United States Government Printing Office. Washington, D.C. 1951. Print.



Office of the Vice Speaker

**TINA ROSE MUÑA BARNES**

*I Mina'trentai Sais Na Liheslaturan Guåhan*

**36<sup>th</sup> Guam Legislature**

can't we be equals during peacetime? With the partnership and support of all of you whom I have the honor of testifying before, I will keep fighting to meet my goal.

On behalf of the People of Guam, Thank you, Mr. Chairman.



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**36<sup>th</sup> Guam Legislature**

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## **Oral Remarks on House Res. 279**

Testimony before the House Committee on Natural  
Resources, Office of Insular Affairs

Full Committee Hearing Regarding the  
“Insular Cases Resolution”

United States House of Representatives

Wednesday May 12, 2021

### **Tina Rose Muña Barnes**

Vice Speaker, 36th Guam Legislature  
Chairwoman, Committee on Rules,  
Public Accountability, Human Resources,  
Guam Buildup, *Hagåtña* Revitalization,  
Regional Affairs, Public Libraries,  
Telecommunications & Technology



Office of the Vice Speaker

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### 36<sup>th</sup> Guam Legislature

*Håfa Adai!* My name is Tina Rose Muña Barnes, and I am the Vice Speaker of the 36th Guam Legislature. My Committee recently held a public hearing on Resolution 56-36, a measure I introduced in support of House Resolution 279. My testimony today is, in part, based on the testimony presented before my Committee.

I would like to begin by expressing thank you and *Un Dangkolo Na Si Yu'os Ma'ase* to Chairman Grijalva and Vice Chairman Gregorio Killili Sablan for authoring House Resolution 279.

Today, I will be discussing the injustices of the Insular Cases on the People of Guam and our sister territories. I ask that my full written testimony, as well as the Guam Legislature's Committee Report on Resolution 56-36, be entered into the record.

My grandfather is the late Colonel Juan Muna, for whom the Guam National Guard's Headquarters bears his name to honor his contributions to the US Armed Forces during World War II. I am also the proud wife of an Air Force Veteran, the mother of an Air Guardsman, mother-in-law of an Air Guard Veteran, and a grandmother-in-law of a deployed Army Soldier—a level of patriotism and service shared by many on Guam.

As a daughter of Guam, I am grateful that this conversation is moving forward but frustrated that it has taken so long.

While this resolution sends a strong message, Congress can do more. It always could. Its plenary powers allow Congress to tailor-make a binding political status process unique to each territory.

You *all* have made notable strides by temporarily raising our Medicaid allotments and increasing the federal Medicaid rates through the FY2020 appropriations and the Families First Coronavirus Relief Act. But these are temporary measures set to expire.

While I am also grateful for the numerous relief packages passed by this body and the continued advocacy of Guam's Delegate, Mr. San Nicolas, I echo Governor Lourdes Leon Guerrero's sentiments that "this high match requirement has prevented us from availing of much-needed federal funds."

This unequal treatment of the territories has also prevented American citizens from availing of federal programs they otherwise would have access to if they lived in a state. To challenge this unfair policy, Ms. Katrina Schaller of Guam filed a lawsuit in the District Court of Guam in December of 2018. Katrina and her twin sister Leslie both live with myotonic dystrophy, which severely inhibits muscle function and other critical aspects of daily life. Leslie is able to live independently in Pennsylvania due to the aid she receives from SSI. Katrina, however, is ineligible for the same benefits by virtue of her geographic location.

Attorney Rodney Jacob, who serves as Katrina's counsel, testified, "It is contrary to common sense, human decency, and sound public policy to deny public benefits to all other American citizens with disabilities living on Guam." As a result of this injustice, and at the request of my good colleague, Senator Mary Camacho Torres, I amended my resolution to seek parity on this matter. Senator Torres and I may hail from different political parties, but for the benefit of our People, we can work together. I hope you all share this same desire.



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To be clear, I echo testimony submitted by Attorney Julian Aguon that the rejection of the Insular Cases must be carefully approached and cannot be America's justification for its relationship with the territories. We must also acknowledge our right to self-determination.

In closing, I come before you today, as an island-leader, a proud American, and a daughter of Guam, on behalf of Guam's People and their contribution to this nation. What I ask for is simple and yet it has been the long struggle of this great nation, I ask that every American be equally American wherever we might live and that each of us be given the chance to manifest our own destiny.

On behalf of the People of Guam, thank you, Mr. Chairman.