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**Testimony on The President's FY22 Budget Priority for the Territories: Medicaid,  
SSI, and SNAP Parity**

**July 28, 2021**

Chair Raúl M. Grijalva and Distinguished Committee Members:

I write to address President Joe Biden's FY22 budget priorities which call for parity for citizens living in U.S. territories in critical safety net programs like Medicaid, Supplemental Security Income (SSI), and the Supplemental Nutrition Assistance Program (SNAP).

I am President and Founder of Equally American, which works to advance equality and civil rights for the 3.5 million citizens living in U.S. territories – 98% of whom are racial or ethnic minorities. We work to build the kind of broad awareness and consensus at both a national and local level needed to end the second-class treatment of U.S. citizens in the Territories. Our hope is that the moment may finally be upon us where it may be possible to end federal benefits discrimination against citizens in the territories once and for all. But absent action by Congress, this moment will be missed.

**Ending the Second-Class Treatment of U.S. Citizens in the Territories**

An historic opportunity for change is before us. Earlier this year, the Supreme Court granted review of a decision by the First Circuit in *United States v. Vaello Madero* that held excluding Puerto Ricans from SSI eligibility violated the U.S. Constitution.<sup>1</sup> Progress in the courts has helped generate pressure for the Biden-Harris Administration and Congress to act,<sup>2</sup> with upcoming reconciliation bills presenting a critical opportunity to provide a long-overdue legislative fix for this ongoing discrimination.

At the same time the Supreme Court is considering the constitutionality of territorial inequality, there are unprecedented opportunities with the Biden-Harris Administration and Congress. On June 7<sup>th</sup>, President Biden called for an end to this

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<sup>1</sup> Matt Ford, [The Supreme Court Case That Lays Bare Puerto Ricans' "Second-Class Citizenship"](#), The New Republic (March 2, 2021).

<sup>2</sup> U.S. House of Representatives, [Letter to DOJ on Extending Social Safety Net Program Access in Territories](#), Committee on Natural Resources (March 10, 2021).

discrimination and second-class treatment of U.S. citizens.<sup>3</sup> But even as he made the call for equality, DOJ continues to defend this discrimination in court.<sup>4</sup> And while this hearing is a strong demonstration of Congress's commitment to live up to President Biden's promise, it is critical that Congress provide not just partial or temporary parity, but bring an end to this discrimination once and for all. It should be considered a failure if Congress only acts in a piecemeal fashion, for example, by tackling the pending "Medicaid Cliff" without extending SSI benefits. As recent polling [shows](#), more than 60% of Americans support extending SSI benefits to otherwise eligible persons in the Territories, with only 20% opposing such action. This makes sense – no one should lose their federal benefits simply because of where they choose to live.

### **America Has a Colonies Problem and it is Because of the *Insular Cases***

Underlying the ongoing discrimination and inequality facing U.S. citizens in the territories is the shameful legacy of the *Insular Cases*, a series of controversial decisions grounded in overt racism, which for over a century have relegated those residents in the territories to second-class status. By recognizing those who lived in the territories as subordinate and less than equal, the *Insular Cases* provided cover for Congress to begin denying equal participation to residents of the territories in a range of important federal benefits programs.

While other racist Supreme Court decisions like *Plessy* and *Korematsu* have been overruled, the *Insular Cases* doctrine of "separate and unequal" remain not just on the books but continue to cause real harm. As Guam Attorney General Leevin Camacho recently said about the *Insular Cases*, "the harm is not hypothetical."<sup>5</sup> As this hearing today demonstrates, the *Insular Cases* and the colonial framework they established should be viewed as kitchen table issues, not simply abstract matters of principle.

Even though the Territories have higher military service rates than any state,<sup>6</sup> and contribute billions of dollars in federal taxes every year, they are systematically denied equal participation in federal programs like Medicaid, SSI, and SNAP that most Americans take for granted.<sup>7</sup> These bedrock federal programs are meant to provide a

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<sup>3</sup> Joseph R. Biden, Jr., [Statement by President Joseph R. Biden, Jr. on Puerto Rico](#), The White House (June 7, 2021).

<sup>4</sup> Equally American, [DOJ Files Supreme Court Brief Defending Statute President Biden Says is "Inconsistent With My Administration's Policies And Values,"](#) (June 7, 2020).

<sup>5</sup> Office of the Attorney General of Guam, [Twitter](#) (May 5, 2021).

<sup>6</sup> See, e.g., Josh Hicks, [Guam: A High Concentration of Veterans, But Rock-Bottom VA Funding](#), Washington Post (October 29, 2014).

<sup>7</sup> Neil Weare, Rosa Hayes, and Mary Charlotte Carroll, [The Constitution, COVID-19, and Growing Health Disparities in U.S. Territories](#), ACS Expert Forum (April 28, 2020); Hammond, Andrew, [Territorial Exceptionalism and the American Welfare State](#) (July 13, 2020). Michigan Law Review, Forthcoming,

safety net for the most vulnerable citizens among us. But under federal law, otherwise eligible low-income, aged, blind, or disabled Americans living in most Territories are entirely *precluded* from receiving SSI benefits solely based on where they happen to live. So, for example, if someone receiving SSI benefits moves from Alaska or Arizona to Guam or Puerto Rico, their benefits will end even as their very real needs continue. This discriminatory treatment unjustly disqualifies some of America's most vulnerable citizens from accessing the basic benefits they need and deserve.

Decisions made in Washington, DC continue to have a life and death impact on residents in the Territories. Deprived of any voting power in the federal government, it is perhaps not surprising that residents of U.S. territories are shortchanged in a range of federal benefits programs. The effects are sweeping – Medicaid disparities leave citizens in the Territories without the funding to ensure a basic level of healthcare sustainability other American communities enjoy, contributing to structural deficits.<sup>8</sup>

Until America recognizes that it has a colonies problem and the *Insular Cases* are overruled, the discrimination against residents in the Territories is unlikely to end. But Congress need not and should not wait for the Supreme Court to say whether this kind of discrimination is unconstitutional before it takes action. The time to act is now.

### **The President and Congress Made a Promise and it is Time to Deliver**

The discrimination and second-class status of millions of residents in U.S. territories is a civil rights and racial justice issue whose time has come. The undemocratic and unequal status quo in U.S. territories has reached its breaking point. Today there is a once-in-a-generation opportunity to achieve greater equality and racial justice for citizens in the Territories as the Supreme Court, the Biden-Harris Administration, and Congress take up these issues. Never before has there been a better opportunity to finally resolve these issues once and for all. If action is not taken now, this moment will be lost and discrimination will likely continue with no end in sight.

We appreciate the lengths to which Chairman Grijalva and this committee have gone to fulfill President Biden's promise of equality. But we also recognize that the ultimate decisions on these issues will not rest with this committee. We call on President Biden and leaders in both the House and Senate to ensure that citizens in the territories do not continue to be left behind – the time to end second-class citizenship in the territories is now. No excuses.

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<sup>8</sup> Selena Simmons-Duffin, [America's 'Shame': Medicaid Funding Slashed In U.S. Territories](#), NPR.org (November 20, 2019).