

1980

## Harris v. Rosario

David C. Indiano

Harry O. Cook

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## RECENT DECISION

### *Harris v. Rosario*

by David C. Indiano\*  
Harry O. Cook†

#### I. INTRODUCTION

The Federal Court for the District of Puerto Rico and the Supreme Court of the United States have addressed fundamental issues concerning the status of U.S. citizens who reside in Puerto Rico in the cases discussed below. Their handling of the disputes could not be more different. The issues raised concern various sections of the Constitution which, arguably, conflict as applied to Puerto Rico. Underlying these issues is a significant political question—the status of Puerto Rico.

The following comment explores two such district court decisions and the Supreme Court decisions which reversed them. Because of the unique nature of the legal ties between the United States and Puerto Rico, a discussion of the historical and legal setting of Puerto Rico is crucial to a clear understanding of the controversies presented below.

#### *The Controversies Involved*

Ultimately the case raises the serious issue of the relationship of Puerto Rico, and the United States citizens who reside there, to the Constitution.<sup>1</sup>

Despite this claim by dissenting Justice Marshall, the Supreme Court's two paragraph *per curiam* decision, *Harris v. Rosario*, held that Congress may provide less federal financial assistance<sup>2</sup> to Puerto Rico than to the fifty states. The Court's decision reversed the holding of the

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\* J.D. Candidate, Case Western Reserve University, 1981.

† J.D. Candidate, Georgetown University, 1981.

<sup>1</sup> *Harris v. Rosario*, 446 U.S. 651, 656 (1980) (Marshall, J., dissenting).

<sup>2</sup> *Id.* at 651. The program involved was the Aid to Families with Dependent Children (AFDC), 42 U.S.C. §§ 601-611 (1976). It provides federal financial assistance to states and territories to aid families with needy dependent children. Under this program Puerto Rico receives less assistance than do the states. *Id.* 42 U.S.C. §§ 1308(a)(1), 1396(b) (1975).

District Court of Puerto Rico and is based primarily on Congressional power under the Territorial Clause of the Constitution.<sup>3</sup> The Court's ruling, however, is complicated by the caveat that such discriminatory treatment must be rationally based.<sup>4</sup> As authority for this proposition, the Court cites *Califano v. Torres*.<sup>5</sup>

An objective reading of *Califano v. Torres* leads one to the conclusion that the decision was based on the Constitutional right to travel. The federal involvement concerned the Supplemental Security Income (SSI) program.<sup>6</sup> In *Califano v. Torres* the plaintiffs brought an action against the Department of Health, Education, and Welfare, claiming that the exclusion of Puerto Rico in the amended definitional section of the SSI Act<sup>7</sup> was unconstitutional in that it interfered with the right to travel of residents of the fifty states and the District of Columbia. As in *Harris v. Rosario*, the Supreme Court reversed a finding for the plaintiffs in a decision by the District Court of Puerto Rico, *Gautier Torres v. Mathews*.<sup>8</sup>

Footnote seven in *Califano v. Torres* was used as grounds for reversal in *Harris v. Rosario*. The footnote proposed three reasons to support its position that, "so long as its judgments are rational, and not invidious, the legislature's efforts to tackle the problems of the poor and the needy are not subject to a constitutional straightjacket."<sup>9</sup> The reasons were advanced to explain the exclusion of persons in Puerto Rico from the SSI program. The Court observed that (1) Puerto Rican residents do not contribute tax dollars to the U.S. Treasury; (2) the cost to the federal government would be high; and (3) extension of the program to Puerto Rico might seriously disrupt the Puerto Rican economy.<sup>10</sup>

*Califano v. Torres*' footnote number four mentioned that the original complaint had also alleged Fifth Amendment Due Process violations. The Supreme Court, however, acknowledged that this was not a basis for the lower court's decision. Perhaps this claim, and the issues presented by *Harris v. Rosario* and *Califano v. Torres*, can be more fully understood by briefly examining part of Puerto Rico's historical and legal background.

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<sup>3</sup> 446 U.S. at 651-52; U.S. CONST., art. IV, § 3, cl. 2, empowers Congress to "make all useful Rules and Regulations respecting the Territory . . . belonging to the United States."

<sup>4</sup> 446 U.S. at 651-52.

<sup>5</sup> 435 U.S. 1 (1978).

<sup>6</sup> 42 U.S.C. §§ 1381-1397 (1976).

<sup>7</sup> *Id.* § 1382(f).

<sup>8</sup> 426 F. Supp. 1106 (D.P.R. 1977).

<sup>9</sup> *Jefferson v. Hackney*, 406 U.S. 535, 546 (1972), *quoted in Califano v. Torres*, 435 U.S. 1, 5 (1978).

<sup>10</sup> 435 U.S. at 5 n.7.

## II. HISTORICAL AND LEGAL SETTING

The island of Puerto Rico became part of the United States under the terms of the Treaty of Paris,<sup>11</sup> which put an end to the Spanish-American War in 1898. Article IX of the Treaty gave the Congress the power to determine the political status of the island. From 1898 until 1900, Puerto Rico was under military rule. The Foraker Act,<sup>12</sup> passed in 1900, was the cornerstone of home rule for the island. This Act established a civilian form of government headed by presidential appointees. Under its terms, a legislative assembly was created;<sup>13</sup> a federal district court was established in San Juan;<sup>14</sup> the island territory was exempted from the federal internal revenue laws;<sup>15</sup> and Puerto Rican citizenship was recognized, thereby entitling the island to United States protection.<sup>16</sup> Additionally, Section 39 of the Act called for the election of a Resident Commissioner to represent Puerto Rico in the U.S. Congress.<sup>17</sup>

The early decades of the 20th Century were characterized by the development of Puerto Rico's political, social and economic institutions. American citizenship was granted to Puerto Ricans under the terms of the Organic Act of 1917, popularly known as the Jones Act.<sup>18</sup> This Act incorporated the major provisions of the Foraker Act, thus preserving the territorial status of Puerto Rico. By the end of the second decade of the 20th Century, Puerto Ricans were American citizens governed by an upper echelon of presidential appointees and a popularly elected local legislature. The next phase of home rule came in 1947 with the passage of the Elective Governor Act,<sup>19</sup> which allowed all qualified Puerto Rican voters to elect their own governor.

The peak of the movement towards self government came in 1951 with the passage of the Puerto Rican Federal Relations Act,<sup>20</sup> popularly known as Law 600. Under the terms of this Act, the citizens of Puerto Rico were permitted to draft their own state constitution which established the framework of the island's local government. The major issue

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<sup>11</sup> Treaty of Paris, Dec. 10, 1898, United States-Spain, 30 Stat. 1754, T.S. No. 343.

<sup>12</sup> Ch. 191, 31 Stat. 77 (1900) (current version at 48 U.S.C. §§ 731-821 (1976)).

<sup>13</sup> *Id.* § 27.

<sup>14</sup> *Id.* § 34.

<sup>15</sup> *Id.* § 14.

<sup>16</sup> *Id.* § 7.

<sup>17</sup> *Id.* § 39. The Resident Commissioner has similar powers and privileges as the Territorial Delegate elected by the other American territories. As such, he may attend the sessions of the House and the Senate but has no vote on the floor. See Transill, *The Resident Commissioner to the United States from Puerto Rico: An Historical Perspective*, 47 REV. JUR. U.P.R. 68 (1978).

<sup>18</sup> Ch. 145, 39 Stat. 951 (1917) (current version at 48 U.S.C. §§ 731-821 (1976)).

<sup>19</sup> Ch. 490, 6 Stat. 770 (1947) (repealed 1950).

<sup>20</sup> 48 U.S.C. §§ 731 b-e, 737, 752, 754, 821 (1976).

concerning Law 600 is whether it actually changed Puerto Rico's legal status vis-a-vis the United States.

As a result of Law 600, the "Estado Libre Asociado" or Commonwealth status was bestowed on Puerto Rico. Supposedly, this created a new and unique relationship between the United States and the island.<sup>21</sup> The Act granted Puerto Rico a degree of self-government never before experienced by Puerto Ricans. But it does not necessarily follow that the fundamental relationship between Puerto Rico and the United States changed in a meaningful way. Indeed, a review of the Congressional Record and the relevant jurisprudence would suggest that this law is nothing more than a cosmetic facelift as far as Puerto Rico's status is concerned.

A review of Law 600 demonstrates that Puerto Rico's Constitution drafters were subject to the same Congressional limitations imposed on the states of the Union when they drafted their constitutions. Specifically, the constitution had to provide for a republican form of government; the constitution had to be approved by the President and by the Congress before becoming effective; and the document had to be in harmony with the U.S. Constitution and the provisions of Law 600.<sup>22</sup>

Other American Territories have been given the same right to draft their own Constitution, yet it has not been claimed that they have established a special relationship with the United States. Congress authorized the people of Guam and the Virgin Islands to draft their own constitutions within the existing territorial-federal relationship on October 21, 1976.<sup>23</sup> The reality is that the people of Guam, Puerto Rico and the Virgin Islands enjoy the same rights and benefits and are subject to the same limitations. Each enjoys the same degree of self government, and each has a U.S. Congressional delegate.

The Congressional Record provides further support for the contention that Law 600 did not change the status of Puerto Rico. During the 1950 House debate on S. 3336, which proposed a constitutional convention in Puerto Rico, the then Resident Commissioner of Puerto Rico, Antonio Fernós Isern, stated that federal power over Puerto Rico would continue undisturbed.<sup>24</sup> According to the Resident Commissioner, the major purpose of S. 3336 was to give a constitutional basis to the local

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<sup>21</sup> Chief Justice Earl Warren called Commonwealth status "perhaps the most notable of American political experiments in our lifetime." See Cabranes, *Puerto Rico: Out of the Colonial Closet*, 33 FOREIGN POL'Y 66, 78 (1978).

<sup>22</sup> 48 U.S.C. §§ 731 b-e, 737, 752, 774, 821 (1976). Law 600 reenacted the major sections of the Jones Act and thus to that extent did nothing to change the basic relationship between the two countries.

<sup>23</sup> Act of Oct. 21, 1976, Publ. L. No. 94-585, 90 Stat. 2899 (1976) (repealing 48 U.S.C. § 1391 (1917)).

<sup>24</sup> 96 CONG. REC. 9586 (1950) (remarks of Comm'r Fernós Isern).

government rather than a Congressional one.<sup>25</sup>

Fernós Isern's remarks on the House floor served to reaffirm his earlier statement of March 14, 1950 where he expressly stated that S. 3336 incorporated the provisions of the Jones Act.<sup>26</sup> Although acknowledging the Congressional power to act under the Territorial Clause of the Constitution, Fernós Isern believed that Puerto Rico's stage of development allowed for Puerto Rican organization of a local government.<sup>27</sup>

Fernós Isern's remarks come into clearer focus when one reads the response of the late Governor Luis Muñoz Marín to a query as to whether Puerto Ricans, after ratification of the constitution, would then proceed to completely amend it as they pleased. Muñoz Marín responded:

You know of course, that if the people of Puerto Rico should go crazy, Congress can always get around and legislate again. But I am confident that the Puerto Ricans will not do that, and invite Congressional legislation that would take back something that was given to the people of Puerto Rico as good United States citizens.<sup>28</sup>

Muñoz Marín and Fernós Isern felt that S. 3336 would give Puerto Rico the right to establish and organize a local government suited to meet local needs. Both politicians, however, expressly recognized that such local government must exist within the federal framework and that Congress would continue to wield ultimate power.

The passage of Law 600 afforded Puerto Ricans no new rights other than the right to draft a constitution. Puerto Rican citizens are excluded from voting representation in Congress, voting for President, and from equal participation in federal programs and grants.<sup>29</sup> In effect, this 1951 Act established nothing more than a local basis for laws which are always subject to the power of Congress through the Territorial Clause. Muñoz Marín and Fernós Isern recognized this fact<sup>30</sup> but chose to gloss over it under the guise of "Estado Libre Asociado" or Commonwealth.

Although Puerto Rico experienced an economic and social boom from the end of World War II until the early 1970's, the existence of a direct link between Commonwealth status and the unprecedented period of

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<sup>25</sup> *Id.*

<sup>26</sup> 96 CONG. REC. 1898 app. (1950).

<sup>27</sup> *Id.* at 1899.

<sup>28</sup> Helfeld, *Congressional Intent and Attitude Toward Public Law 600 and the Constitution of the Commonwealth of Puerto Rico*, 21 REV. JUR. U.P.R. 255, 265 (1952).

<sup>29</sup> Despite the fact that Puerto Ricans, and the residents of the other American territories for that matter, are excluded from voting for the President and full Congressional representation, they are all subject to the selective service laws. For a discussion of the Puerto Rican participation in the United States Armed Services, See Dávila Colón, *The Blood Tax: The Puerto Rican Contribution to the United States War Effort*, 40 REV. C. ABO. P.R. 603 (1979).

<sup>30</sup> *Supra* notes 26 and 28.

growth has never been conclusively established. In fact, Federal Judge José A. Cabranes, a prolific writer on the Commonwealth status, feels the opposite is true. As Cabranes observed, "Puerto Rico's economic expansion made possible the islanders' toleration of a political relationship with the United States that was not fundamentally different from the overtly colonial status that preceded it."<sup>31</sup>

The retirement of Luis Muñoz Marín from public life in 1964,<sup>32</sup> and the resulting weakening of the once dominant Popular Democratic Party (PDP), coupled with the end of the economic boom period in the early 1970's, has led to a growing dissatisfaction with the current state of affairs. Puerto Ricans are now actively asserting their rights in forums as diverse as the halls of Congress, the federal courts, and the United Nations.<sup>33</sup> This increased activism will ultimately lead to a showdown in the coming decade as Puerto Ricans choose between statehood, independence or a presently undefined form of autonomy. It is against this activism, and the legal and political history of Puerto Rico, that *Califano v. Torres* and *Harris v. Rosario* were decided.

### III. THE DISTRICT AND SUPREME COURTS: USE OF PRECEDENT

#### A. *The District Court Decisions*

Further exploration of *Califano v. Torres* and *Harris v. Rosario* is most effectively accomplished by first examining the overturned district court decisions. At the outset, one must be aware of the tensions involved here. The issue of extending federal funds to Puerto Rico is fraught with political overtones. These two Puerto Rican district court decisions reveal sensitivity to the underlying issue of whether Puerto Rican citizens should be treated as equals of other U.S. citizens under the Constitution.

#### 1. *Gautier Torres v. Mathews*

Prior to reaching what the district court defined as the real issue in

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<sup>31</sup> Cabranes, *supra* note 21, at 81.

<sup>32</sup> Muñoz Marín tapped his Secretary of State, Roberto Sánchez Vilella, as his successor. Four years later, however, Muñoz Marín gave his support to Senator Luis Negrón López. At a bitter and deeply divided party convention during the summer of 1968, López was nominated as the Popular Democratic Party (PDP) standard bearer. Sánchez Vilella left the PDP to run for reelection on the People's Party ticket. The division of the Commonwealth forces led to the election of the first pro-statehood governor, Luis A. Ferré. Since then, the PDP has consistently lost support. For a review of the events surrounding Muñoz Marín's retirement from public office see, I. VELÁZQUEZ, MUÑOZ MARÍN Y SÁNCHEZ VILELLA (1974).

<sup>33</sup> For a study of the issue of Puerto Rico's status as treated by the United Nations, see generally, Axtmayer, *Non-Self-Governing Territories and the Constitutive Process of the United Nations: A General Analysis and the Cost Study of Puerto Rico*, 45 REV. JUR. U.P.R. 211 (1976).

*Gautier Torres v. Mathews*,<sup>34</sup> the court engaged in a discussion of the so-called *Insular Cases*.<sup>35</sup> These cases arose from the United States acquisition of various non-contiguous territories after the Spanish-American War. Essentially, the issue presented by the *Insular Cases* was whether the U.S. Constitution "followed the flag."<sup>36</sup> *Balzac v. Porto Rico*,<sup>37</sup> the final *Insular Case*, created the doctrine of incorporated versus unincorporated territories. In the latter type of territories, those about which Congress had not expressed an intention of eventual statehood, only "certain fundamental personal rights declared in the Constitution" were recognized within their geographical confines.<sup>38</sup>

Most would agree that *Balzac v. Porto Rico* created an artificial distinction between these two alleged kinds of territories. Many argue that the *Balzac* court exercised blatant judicial legislation. The district court in *Gautier Torres v. Mathews* is highly critical of this distinction.<sup>39</sup> A recent decision of the U.S. Supreme Court, however, *Examining Board v. Flores de Otero*,<sup>40</sup> seems to indicate that this doctrine is still very much alive. In *Gautier Torres v. Mathews* the court admits that, "[U]nfortunately, there are recent indications that the (Supreme) Court has not yet seen fit to lay the cadaver of the *Insular Cases* to rest. [*Examining Board v. Flores de Otero*] . . . may very well have given new warmth to this otherwise moribund corpse."<sup>41</sup>

Despite lengthy comments, the court states that the decision is not concerned with the "alleged" power of Congress to establish disparate treatment towards the U.S. citizens who reside in Puerto Rico, but rather "whether a constitutional right of a citizen of the United States [had] been improperly penalized while he is within one of [the] States."<sup>42</sup> The court begins its discussion of this issue by recognizing the fundamental

<sup>34</sup> 426 F. Supp. 1106.

<sup>35</sup> *De Lima v. Bidwell*, 182 U.S. 1 (1901); *Dooley v. United States*, 182 U.S. 222 (1901); *Downes v. Bidwell*, 182 U.S. 224 (1901); *Dorr v. United States*, 195 U.S. 138 (1904); *Balzac v. Porto Rico*, 258 U.S. 298 (1922).

<sup>36</sup> 426 F. Supp. at 1108.

<sup>37</sup> 258 U.S. 298, 304-05 (1922).

<sup>38</sup> *Id.* at 312-13.

<sup>39</sup> 426 F. Supp. at 1109-10. The court refers to the *Plessy v. Ferguson*, 163 U.S. 517 (1896), through *Brown v. Board of Educ.*, 347 U.S. 483 (1954), development and the cases which deal with the application of the Constitution to civilians who accompany the armed forces overseas in time of peace. See *Reid v. Covert*, 354 U.S. 1 (1956); *Kinsella v. Singleton*, 361 U.S. 234 (1960); *Gaisham v. Hagan*, 361 U.S. 278 (1960); *McElroy v. Guogliardo*, 361 U.S. 281 (1960). These cases suggest that there may be grounds for reversal of the *Insular Cases*.

<sup>40</sup> 426 U.S. 572 (1976).

<sup>41</sup> 426 F. Supp. at 1109-10.

<sup>42</sup> *Id.* at 1110.

nature of the right to travel of all U.S. citizens.<sup>43</sup> The court then makes a quantum leap by asserting that it can "perceive of no reason why the standards which restrictive legislation must meet are not applicable with equal vigor to any impingement upon travel *from*, as distinguished from travel *to* a State."<sup>44</sup> Having concluded that a violation of a fundamental right of the plaintiff is involved, the court searches for a compelling governmental interest to justify the infringement. Finding none, the district court holds that the infringement is unjustified.<sup>45</sup> Specifically, the court rejects the government's contentions, which later are adopted by the Supreme Court in *Harris v. Rosario*.<sup>46</sup>

It is important to note that *Gautier Torres v. Mathews* did not decide whether it was constitutional to deny the above benefits to residents of Puerto Rico. Its holding was limited to U.S. citizens who previously were eligible for these benefits and thereafter travelled to the Island.

Dissenting Senior Circuit Judge McEntee commented on some of the flaws in the preceding rationale. In his view, the right to travel was not at issue.<sup>47</sup> He would have defined the issue as whether Congress was required to extend any particular benefits to Puerto Rico. Noting that historically this has never been the case, he would have rejected the plaintiff's contention.

## 2. *Santiago Rosario v. Califano*

In a lengthy Opinion and Order, the Federal District Court of Puerto Rico decided *Santiago Rosario v. Califano*<sup>48</sup> on Equal Protection grounds. The federal assistance involved in this case was the Aid to Families with Dependent Children Program<sup>49</sup> [hereinafter AFDC]. Enacted in 1935, AFDC was extended to Puerto Rico in 1950. A ceiling restriction and the establishment of a different formula to allocate the federal funds was needed to implement the program in Puerto Rico.<sup>50</sup>

The district court stated that there is no fundamental right to receive more welfare aid, but that this was not at issue in the case.<sup>51</sup> It did find an Equal Protection issue:

[O]nce Congress has decided to grant the United States citizens certain rights then the exclusion of some of those citizens from enjoying those

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<sup>43</sup> *Id.* at 1110-11.

<sup>44</sup> *Id.* at 1111.

<sup>45</sup> *Id.* at 1113.

<sup>46</sup> 446 U.S. at 651-52.

<sup>47</sup> 426 F. Supp. at 1113.

<sup>48</sup> No. 77-301 (D.P.R. Oct. 1, 1979).

<sup>49</sup> 42 U.S.C. §§ 601-611.

<sup>50</sup> *Santiago Rosario v. Califano*, No. 77-303, at 25.

<sup>51</sup> *Id.* at 13.

rights must be treated with suspicion not because the statutory right is fundamental but because it is fundamental that United States citizens be accorded the equal protection of the laws unless a compelling state interest otherwise so dictates. Thus, it is the guarantee of equal protection that is in itself the fundamental right involved.<sup>52</sup>

Herein lies the crucial difference between the District Court's treatment of the merits of this case and the subsequent Supreme Court resolution of the case. The District Court viewed the issue as one which concerns an unjustifiable difference in treatment of certain U.S. citizens, whereas the Supreme Court primarily focused on the plenary power of Congress under the Territorial Clause. It is truly an example of courts "passing in the night."

The "class," as seen by the District Court, is composed of U.S. citizens who are residents of Puerto Rico. The government-defendant contended that the exclusion was not intended to apply to residents of Puerto Rico as a class. The exclusion also included U.S. citizens residing in the Virgin Islands, Guam and American Samoa and was therefore "geographically" based.<sup>53</sup> The District Court rejected this distinction and stated that,

[although] the exclusion applied is designed in terms of geographical exclusion, the effect of the exclusion is on the American citizens who are residents of Puerto Rico.<sup>54</sup>

The District Court specifically rejected points one and two of the *Califano v. Torres* case<sup>55</sup> as sufficient to establish a compelling state interest.<sup>56</sup> Finding no compelling state interest, the district court held that the class involved did not survive the constitutional "strict scrutiny test."<sup>57</sup> Although Puerto Ricans do not pay federal income taxes, it should be noted that Puerto Ricans do pay social security taxes.<sup>58</sup> Both *Santiago Rosario v. Califano* and *Gautier Torres v. Califano* address programs administered under the Social Security Act.<sup>59</sup> Thus, the Supreme Court's argument in *Califano v. Torres*<sup>60</sup> that Puerto Rican residents do not contribute tax dollars to the U.S. Treasury must be seriously questioned.

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<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 18.

<sup>54</sup> *Id.*

<sup>55</sup> 435 U.S. at 5 n.7.

<sup>56</sup> *Santiago Rosario v. Califano*, No. 77-303, at 19-20.

<sup>57</sup> *Id.* at 14.

<sup>58</sup> *Id.* at 20.

<sup>59</sup> *Id.* at 1; *Gautier Torres v. Mathews*, 436 F. Supp. at 1107.

<sup>60</sup> 435 U.S. at 5 n.7.

## B. The Supreme Court Decisions

### 1. *Califano v. Torres*.

As suggested earlier, this case rested on the constitutional right to travel. The Supreme Court was unwilling to concur with the district court's expansive reading of this right. The Supreme Court contended that this would effectively give one who travels to Puerto Rico "superior benefits to those enjoyed by other residents of Puerto Rico if the newcomer enjoyed those benefits in the State from which he came."<sup>61</sup>

### 2. *Harris v. Santiago Rosario*

The briefs of the parties which were submitted to the Supreme Court in this case shed some light on the tensions involved. The appellee's brief predictably emphasized the Equal Protection claim upon which the district court had decided in their favor.<sup>62</sup> It systematically rejected various reasons proposed by the government which allegedly justify the unequal treatment.<sup>63</sup> The appellee's brief also rejected the appellant's contention that *Califano v. Torres* was decisive since it did not foreclose the Equal Protection question.<sup>64</sup> As authority, appellee cited a First Circuit Court opinion which supported this interpretation of *Califano v. Torres*.<sup>65</sup> The appellee also attempted to diminish the impact of the Territorial Clause by pointing to cases which question any expansive reading of this clause, and by trying to focus the issue on treatment of U.S. citizens residing in Puerto Rico, rather than upon Puerto Rico as a political entity.<sup>66</sup>

The appellant's brief treated the issues more summarily. Appellant contended that there is no Equal Protection issue because there was no suspect class, only a "classification based solely on geography and on the unique legal and historical relationship between the United States and its territories."<sup>67</sup> Cases supporting a more expansive reading of the Territorial Clause were cited.<sup>68</sup>

Few of the people involved with this legal proceeding anticipated a *per curiam* resolution of such a fundamentally important issue. The Supreme Court grounded its opinion squarely and succinctly on the Territorial Clause and the three footnoted "rational bases" for differential treatment as established in the *Califano v. Torres* case. Assuming, *arguendo*,

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<sup>61</sup> *Id.* at 4.

<sup>62</sup> Brief for Appellee at 6, 10, *Harris v. Rosario*, 446 U.S. 651 (1980).

<sup>63</sup> *Id.* at 21-31.

<sup>64</sup> *Id.* at 8-10.

<sup>65</sup> *See*, *Molina-Crespo v. Califano*, 583 F.2d 572, 574 (1st Cir. 1978).

<sup>66</sup> *Supra*, note 62 at 15.

<sup>67</sup> Brief for appellant at 10-11, *Harris v. Rosario*, 446 U.S. 651 (1980).

<sup>68</sup> *Id.* at 11.

that the three rational bases test in footnote seven of *Califano v. Torres* may be considered dicta, the Supreme Court may be willing to rest solely on the Territorial Clause in its current treatment of U.S. citizens in Puerto Rico.

#### IV. CONCLUSION

The district court and the Supreme Court appear very result-oriented in the resolution of these cases. In *Gautier Torres v. Califano*, the right to travel was hyperextended to achieve the goal of equal treatment. The district court was clearly more interested in discrediting the *Insular Cases*, which had supplied some precedent for such unequal treatment. Similarly, the Supreme Court in *Harris v. Rosario* misused precedent. *Califano v. Torres* is not solid authority for the broad proposition which the Court sets forth in *Harris v. Rosario*.

The Supreme Court's far-reaching application of the Territorial Clause to Puerto Rico is mildly disturbing. Under the Territorial Clause, it would appear that Congress is granted a "blank check" over the territories and the U.S. citizens who reside there. It would seem that this clause, to the extent that it allows for differential treatment of citizens, is squarely at odds with the civil rights cases of the past decades which recognize no difference in degrees of citizenship. The Court's attempt to gloss over this fact by finding a rational basis for unequal treatment fails to settle the serious issue of the relationship between the territories, their residents, and the Constitution. Given the train of events in Puerto Rico, it may well be that the Court will face the issue again in the near future.

This leaves the essentially political question of Puerto Rico's status. The entire concept of a "Commonwealth" being something other than a territory is one whose day seems to be coming to an end.<sup>69</sup> Clearly, the Supreme Court's *Harris v. Rosario* decision has dashed the hopes of those who support the Commonwealth status in Puerto Rico that the Supreme Court will be the instrument by which Puerto Rico's "unique" status will translate into some legal entity other than a territory.

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<sup>69</sup> Politically, the impact of this case has been beneficial to the Statehood Party in Puerto Rico. During his July 4th, 1980 address, Governor Romero Barceló said that Puerto Rico, "remain[s], under commonwealth, exactly what we always said under the Jones Act: a territory, and [Puerto Ricans are] second-class American citizen[s]." *San Juan Star (P.R.)*, July 5, 1980, at 1, col. 1.

