remove a barrier to other sellers who may wish to enter the market. But in any case in which competitors are able to increase the price level or to curtail production by agreement, it could be argued that the agreement has the effect of making the market more attractive to potential new entrants. If that potential justifies horizontal agreements among competitors imposing one kind of voluntary restraint or another on their competitive freedom, it would seem to follow that the more successful an agreement is in raising the price level, the safer it is from antitrust attack. Nothing could be more inconsistent with our cases.

Nor can the informing function of the agreement, the increased price visibility, justify its restraint on the individual wholesaler's freedom to select his own prices and terms of sale. For, again, it is obvious that any industrywide agreement on prices will result in a more accurate understanding of the terms offered by all parties to the agreement. As the *Sugar Institute* case demonstrates, however, there is a plain distinction between the lawful right to publish prices and terms of sale, on the one hand, [650] and an agreement among competitors limiting action with respect to the published prices, on the other.

[5] Thus, under the reasoning of our cases, an agreement among competing wholesalers to refuse to sell unless the retailer makes payment in cash either in advance or upon delivery is "plainly anticompetitive." Since it is merely one form of price fixing, and since price-fixing agreements have been adjudged to lack any "redeeming virtue," it is conclusively presumed illegal without further examination under the rule of reason.

Accordingly, the judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

446 U.S. 651, 64 L.Ed.2d 587

Patricia R. HARRIS, Secretary of Health and Human Services

v.

Awilda Santiago ROSARIO et al.

No. 79-1294.

May 27, 1980.

Rehearing Denied Aug. 11, 1980.

See 448 U.S. 912, 101 S.Ct. 27.

Secretary of Health and Human Services appealed from a judgment of the United States District Court for the District of Puerto Rico holding unconstitutional the lower level of aid to families with dependent children reimbursement provided to Puerto Rico. The Supreme Court held that the lower level of AFDC reimbursement provided to Puerto Rico did not violate the Fifth Amendment's equal protection guarantee.

Reversed.

Mr. Justice Brennan and Mr. Justice Blackmun would have noted probable jurisdiction.

Mr. Justice Marshall filed a dissenting opinion.

1. Territories ⇐18

Congress may treat Puerto Rico differently from States so long as there is rational basis for its actions. U.S.C.A.Const. art. 4, § 3, cl. 2; Amend. 5.

2. Constitutional Law ⇐278.7(1)
Social Security and Public Welfare ⇐194.12

Lower level of aid to families with dependent children reimbursement provided to Puerto Rico did not violate Fifth Amendment's equal protection guarantee. Social Security Act, §§ 1108, 1905(b), 42 U.S.C.A. §§ 1308, 1396d(b); U.S.C.A.Const. Amend. 5.

PER CURIAM.

The Aid to Families with Dependent Children program (AFDC), 49 Stat. 627, as

amended, 42 U.S.C. § 601 *et seq.*, provides federal financial assistance to States and Territories to aid families with needy dependent children. Puerto Rico receives less assistance than do the States, 42 U.S.C. §§ 1308(a)(1), 1396d(b) (1976 ed. and Supp. II). Appellees, AFDC recipients residing in Puerto Rico, filed this class action against the Secretary of Health, Education, and Welfare (now the Secretary of Health and Human Services) in March 1977 in the United States District Court for the District of Puerto Rico; they challenged the constitutionality of 42 U.S.C. §§ 1308 and 1396d(b), claiming successfully that the lower level of AFDC reimbursement provided to Puerto Rico violates the Fifth Amendment's equal protection guarantee.

[1, 2] We disagree. Congress, which is empowered under the Territory Clause of the Constitution, U.S.Const., Art. IV, § 3, cl. 2, to "make all needful Rules and Regulations respecting the Territory . . . belonging to the United States," may treat Puerto Rico differently from States so long as there is a rational basis for its actions. In *Califano v. Torres*, 435 U.S. 1, 98 S.Ct. 906, 55 L.Ed.2d 65 (1978) (*per curiam*), we concluded that a similar statutory classification was rationally grounded on three 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), Juris. Statement 12–14,* and we see no reason to depart from our conclusion in *Torres* that they suffice to form a rational basis for the challenged statutory classification.

We reverse.

So ordered.

Mr. Justice BRENNAN and Mr. Justice BLACKMUN, not now being persuaded that the Court's summary disposition in *Califano v. Torres*, 435 U.S. 1, 98 S.Ct. 906, 55 L.Ed.2d 65 (1978), so clearly controls this case, would note probable jurisdiction and set the case for oral argument.

Mr. Justice MARSHALL, dissenting.

The Court today rushes to resolve important legal issues without full briefing or oral argument. The sole authority cited for the majority's result is another summary decision by this Court. The need for such haste is unclear. The dangers of such decisionmaking are clear, however, as the Court's analysis is, in my view, ill-conceived in at least two respects.

The first question that merits plenary attention is whether Congress, acting pursuant to the Territory Clause of the Constitution, U.S.Const., Art. IV, § 3, cl. 2, "may treat Puerto Rico differently from States so long as there is a rational basis for its actions." *Ante*, at 1930. No authority is cited for this proposition. Our prior decisions do not support such a broad statement.

It is important to remember at the outset that Puerto Ricans are United States citizens, see 8 U.S.C. § 1402, and that different treatment to Puerto Rico under AFDC may well affect the benefits paid to these citizens.[1] While some early opinions of this

* For example, the Secretary estimates that the additional cost of treating Puerto Rico as a State for AFDC purposes alone would be approximately $30 million per year, and, if the decision below were to apply equally to various other reimbursement programs under the Social Security Act, the total annual cost could exceed $240 million. Juris. Statement 12, n. 13.

1. The District Court certified the plaintiff class as "all United States citizens residing in the Commonwealth of Puerto Rico, which [*sic*] are recipients of public assistance under the Aid to the Families with Dependent Children category and that have been, are and will be discriminated [against] solely on the basis of their residence." App. to Juris. Statement 2a.

It is unclear whether the Court's Territory Clause analysis is intended to apply only where the discrimination is against the Government of Puerto Rico and not against persons residing there. Such a distinction would lack substance in any event. The discrimination against Puerto Rico under the AFDC program must also operate as a discrimination against United States citizens residing in Puerto Rico who would benefit one way or another, from such increased federal aid to Puerto Rico.

Court suggested that various protections of the Constitution do not apply to Puerto Rico, see, *e. g. Downes v. Bidwell*, 182 U.S. 244, 21 S.Ct. 770, 45 L.Ed. 1088 (1901); *Balzac v. Porto Rico*, 258 U.S. 298, 42 S.Ct. 343, 66 L.Ed. 627 (1922), the present validity of those decisions is questionable. See *Torres v. Puerto Rico*, 442 U.S. 465, 475–476, 99 S.Ct. 2425, 2431–2432, 61 L.Ed.2d 1 (1979) (BRENNAN, J., concurring in judgment). We have already held that Puerto Rico is subject to the Due Process Clause of either the Fifth or Fourteenth Amendment, *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 668–669, n. 5, 94 S.Ct. 2080, 2084, n. 5, 40 L.Ed.2d 452 (1974), and the equal protection guarantee of either the Fifth or the Fourteenth Amendment, *Examining Board v. Flores de Otero*, 426 U.S. 572, 599–601, 96 S.Ct. 2264, 2279–2280, 49 L.Ed.2d 65 (1976). The Fourth Amendment is also fully applicable to Puerto Rico, either directly or by operation of the Fourteenth Amendment, *Torres v. Puerto Rico, supra*, at 471, 99 S.Ct. at 2429. At least four Members of this Court are of the view that
1654 all provisions of the Bill of Rights apply to Puerto Rico. 442 U.S., at 475–476, 99 S.Ct., at 2431–2432 (BRENNAN, J., joined by STEWART, MARSHALL, and BLACKMUN, JJ., concurring in judgment).

Despite these precedents, the Court suggests today, without benefit of briefing or argument, that Congress needs only a rational basis to support less beneficial treatment for Puerto Rico, and the citizens residing there, than is provided to the States and citizens residing in the States. Heightened scrutiny under the equal protection component of the Fifth Amendment, the Court concludes, is simply unavailable to protect Puerto Rico or the citizens who reside there from discriminatory legislation, as long as Congress acts pursuant to the Territory Clause. Such a proposition surely warrants the full attention of this Court before it is made part of our constitutional jurisprudence.

Califano v. Torres, 435 U.S. 1, 98 S.Ct. 906, 55 L.Ed.2d 65 (1978) (*per curiam*), the only authority upon which the majority relies, does not stand for the proposition the Court espouses today. In that decision, also reached through summary procedures and over the objections of two Members of the Court, see *id.*, at 5, 98 S.Ct., at 908 (statement of BRENNAN, J.; statement of MARSHALL, J.), the Court held that the right to travel was not violated by a provision of the Social Security Act pursuant to which persons residing in the United States lost their supplemental security income benefits upon moving to Puerto Rico. While the plaintiffs in that case had also challenged the provision on equal protection grounds, the District Court relied entirely on the right to travel,[2] and therefore no equal protection question was before this 1655
Court.[3] The Court merely referred to the equal protection claim briefly in a footnote, *id.*, at 3, n. 4, 98 S.Ct., at 907, n. 4. Observing that Puerto Rico's relationship with the United States was unique, the Court simply noted that the District Court had "apparently acknowledged that Congress has the power to treat Puerto Rico differently, and that every federal program does not have to

2. The District Court concluded that "[w]e are not here concerned with the alleged power of Congress to establish disparate treatment towards the United States citizens who reside in Puerto Rico. Rather, the focus of our attention should be directed to determining whether a constitutional right of a citizen of the United States has been improperly penalized while he is within one of these States. We see this as the more relevant framing of the issues because although Plaintiff lost his benefits while physically in Puerto Rico, the statutory prohibitions that permitted this result came into play from the very moment when they exerted their force upon Plaintiff. From this standpoint, Plaintiff is in the same position now as if he would have remained in Connecticut and brought a declaratory judgment suit there. . . ." *Torres v. Mathews*, 426 F.Supp. 1106, 1110 (1977) (emphasis deleted).

3. The question presented in *Califano v. Torres* was whether the sections of the Social Security Act excluding residents of Puerto Rico from the Supplemental Security Income program "deny due process to individuals who upon moving to Puerto Rico lose the benefits to which they were entitled while residing in the United States." Juris. Statement, O.T.1977, No. 77–88, p. 2. See also *id.*, at 9–11.

be extended to it." *Ibid.*[4] That Puerto Rico has an unparalleled relationship with the United States does not lead ineluctably to the legal principle asserted here. At most, reading, more into that single footnote of dictum than it deserves, *Califano v. Torres* may suggest that under the equal protection component of the Due Process Clause of the Fifth Amendment, Puerto Rico may be treated differently from the States if there is a rational basis for the discrimination when Congress enacts a law providing for governmental payments of monetary benefits. See *id.*, at 5, 98 S.Ct. at 908. That is a more limited view than is asserted in this case, but even that position should be reached only after oral argument and full briefing. *Ibid.* (statement of MARSHALL, J.).

I also object to the Court's reliance on the effect greater benefits could have on the Puerto Rican economy. *Ante*, at 1930. See also *Califano v. Torres, supra*, at 5, n. 7, 98 S.Ct. at 908, n. 7. This rationale has troubling overtones. It suggests that programs designed to help the poor should be less fully applied in those areas where the need
1656 may be the greatest, simply because otherwise the relative poverty of recipients compared to other persons in the same geographic area will somehow be upset. Similarly, reliance on the fear of disrupting the Puerto Rican economy implies that Congress intended to preserve or even strengthen the comparative economic position of the States vis-à-vis Puerto Rico. Under this theory, those geographic units of the country which have the strongest economies presumably would get the most financial aid from the Federal Government since those units would be the least likely to be "disrupted." Such an approach to a financial assistance program is not so clearly rational as the Court suggests, and there is no citation by the Court to any suggestion in the legislative history that Congress had these economic concerns in mind when it passed the portion of the AFDC program presently being challenged. Nor does appellant refer to any evidence in the record supporting the notion that such a speculative fear of economic disruption is warranted.[5] In my view it is by no means clear that the discrimination at issue here could survive scrutiny under even a deferential equal protection standard.

Ultimately this case raises the serious issue of the relationship of Puerto Rico, and the United States citizens who reside there, to the Constitution. An issue of this magnitude deserves far more careful attention than it has received in *Califano v. Torres* and in the present case. I would note probable jurisdiction and set the case for oral argument. Accordingly, I dissent from the Court's summary disposition.

4. The accuracy of this assessment of the District Court's opinion is open to question. See n. 2, *supra*.

5. Appellant's suggestion that increased federal reimbursements might not go to the class members at all but instead be used to provide other services or to lower taxes, see Juris. Statement 10, demonstrates the speculative nature of this fear of economic disruption.

446 U.S. 657, 64 L.Ed.2d 593

Cecil D. ANDRUS, Secretary of Interior, Petitioner,

v.

SHELL OIL COMPANY et al.

No. 78-1815.

Argued Jan. 15, 1980.

Decided June 2, 1980.

Owners of shale oil placer mining claims filed petition for review of order of the Secretary of the Interior cancelling said