

# The ADA Project

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LEGISLATION CLINIC

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## Case Spotlight: Definition of Disability

Case Name: [Mercado v. Puerto Rico](#)  
Citation: *Mercado v. Puerto Rico*, 814 F.3d 581 (1st Cir. 2016).  
Date of Decision: Feb. 29, 2016  
Court: United States Court of Appeals, First Circuit  
Judge(s): Hon. Kermit Lipez, Hon. Michael Hawkins, & Hon. David Barron  
(author)  
Alleged Disability: Mental Impairment  
Prong(s) at Issue: Regarded As

### Background:

On August 14, 2013, Esther Mercado filed a complaint alleging that the Commonwealth of Puerto Rico violated Title II of the Americans with Disabilities Act (“ADA”) by denying her public services. *Mercado*, 814 F.3d at 582. Furthermore, Mercado alleged that Puerto Rico discriminated against her because she was “regarded as” having a physical or mental impairment within the meaning of the ADA. *Id.*

The question for the court was whether the disability discrimination claim under the ADA fell under 28 U.S.C. § 1658, which provides a four-year statute of limitations for civil actions arising under federal laws enacted after December 1, 1990, or a one-year statute of limitations for claims arising under Puerto Rico laws. *Mercado*, 814 F.3d at 582. In *Jones v. R.R. Donnelley & Sons Co.*, 541 U.S. 369, 382 (2004), the Supreme Court held that a new amendment to a federal law would trigger § 1658 only if the changes had a “substantive effect” on the existing law – by the “creation of new rights of action and corresponding liabilities” – and the claim in question was made possible by those changes. The Defendant in *Mercado* argued, and the District Court agreed, that the one-year limitation should apply because the underlying claim could have proceeded under the original ADA (enacted on July 26, 1990). In so holding, the District Court interpreted the ADAAA as merely clarifying the correct way to construe the “regarded as” prong, but essentially leaving the ADA’s definition of disability “intact.” *Mercado v. Puerto Rico*, 86 F. Supp. 3d 46, 49 (D.P.R. 2015).

### Holding:

The First Circuit Court applied the four-year statute of limitations because the changes made to the ADA by the ADA Amendments Act (“ADAAA”) had a substantive effect on

the definition of disability under the “regarded as” prong, and Mercado’s claim was made possible by those changes.

### **Analysis Regarding “Regarded As” (Prong 3):**

The Circuit Court held that the ADAAA had a “substantive effect” on Mercado’s ability to bring a disability discrimination case. The original ADA included a definition of disability that covered an individual who was “regarded as having a [physical or mental] impairment.” 42 U.S.C. § 12102(1)(C). In 1999, the Supreme Court, in *Sutton v. United Air Lines, Inc.*, 527 U.S. 471, 489 (1999), narrowly interpreted the “regarded as” prong to require a plaintiff to “plead and prove that she was regarded as having an impairment . . . that substantially limited one or more major life activities.” *Mercado*, 814 F.3d at 587. However, with the passage of the ADAAA in 2008, Congress explicitly rejected the *Sutton* interpretation and included a broader definition of the “regarded as” prong. The ADAAA added a paragraph explaining that a plaintiff bringing a “regarded as” claim need not establish that such impairment limited or was perceived to limit a major life activity. 42 U.S.C. § 12102(3)(A). The First Circuit found that this change to the ADA, made by the ADAAA, had a substantive effect, creating a new, “broader right to be free from ‘regarded as’ discrimination.” *Mercado*, 814 F.3d at 589. The court also held that Mercado’s claims “necessarily depend” on and are made possible by the “expanded liability” created by the ADAAA. *Id.* Thus, in a reversal of the District Court’s holding, the First Circuit ruled that Mercado’s claim is subject to the four-year statute of limitations, and can move forward.