No. 20-303

# In the Supreme Court of the United States

UNITED STATES OF AMERICA, PETITIONER

*v.*

JOSE LUIS VAELLO-MADERO

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT*

## PETITION FOR A WRIT OF CERTIORARI


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## QUESTION PRESENTED

Whether Congress violated the equal-protection component of the Due Process Clause of the Fifth Amendment by establishing Supplemental Security Income—a program that provides benefits to needy aged, blind, and disabled individuals—in the 50 States and the District of Columbia, and in the Northern Mariana Islands pursuant to a negotiated covenant, but not extending it to Puerto Rico.

**RELATED PROCEEDINGS**

United States District Court (D.P.R.):

*United States* v. *Vaello-Madero*, No. 17-cv-2133 (Feb. 4, 2019)

United States Court of Appeals (1st Cir.):

*United States* v. *Vaello-Madero*, No. 19-1390 (Apr. 10, 2020)

## TABLE OF CONTENTS



## TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

Cases—Continued: Page



Constitution, statutes, and rules:

Constitution, statutes, and rules—Continued: Page

Statutes and rules—Continued: Page



Miscellaneous:

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## PETITION FOR A WRIT OF CERTIORARI

The Acting Solicitor General, on behalf of the United States, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit in this case.

### OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-37a) is reported at 956 F.3d 12. The opinion and order of the district court (App., *infra*, 38a-49a) are reported at 356 F. Supp. 3d 208. An additional opinion and order of the district court (App., *infra*, 50a-60a) are reported at 313 F. Supp. 3d 370.

### JURISDICTION

The judgment of the court of appeals was entered on April 10, 2020. On March 19, 2020, this Court extended the time within which to file any petition for a writ of certiorari due on or after that date to 150 days from the

date of the lower court judgment. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## STATUTORY PROVISIONS INVOLVED

Relevant statutory provisions are reprinted in an appendix to this brief. App., *infra*, 61a-64a.

## STATEMENT

### A. Legal Background

1. In 1972, Congress created the Supplemental Security Income (SSI) program, a benefits program that is administered by the Social Security Administration and that provides monthly cash payments to aged, blind, and disabled individuals who lack the financial means to support themselves. See Social Security Amendments of 1972, Tit. III, § 301, 86 Stat. 1465-1478. To be eligible, a person must be age 65 years or over, blind, or disabled; must have income and assets that fall below specified limits; and must fulfill certain other statutory qualifications. 42 U.S.C. 1382, 1382c, 1383. More than 8 million individuals receive SSI payments each month, and the average monthly federal benefit is around $575. See Social Security Administration, *SSI Monthly Statistics, June 2020*, Tbl. 1 (released July 2020).

When Congress created SSI in 1972, it made the program available in the 50 States and the District of Columbia, but not in Puerto Rico and other Territories. Congress provided, subject to exceptions not at issue here, that a person must be "a resident of the United States" to qualify for SSI, 42 U.S.C. 1382c(a)(1)(B)(i); that a person who stays "outside the United States" for the entirety of a month may not receive SSI benefits for that month, 42 U.S.C. 1382(f)(1); and that the term "'United States'" means "the 50 States and the District

of Columbia" for purposes of those provisions, 42 U.S.C. 1382c(e). Congress later extended SSI to the Northern Mariana Islands, in accordance with the covenant to establish the Islands as a Commonwealth in political union with the United States. 48 U.S.C. 1801 & note. But Congress has not similarly extended SSI to Puerto Rico or other Territories.

Congress instead provides federal assistance to needy aged, blind, and disabled individuals in Puerto Rico through a different program—Aid to the Aged, Blind, and Disabled (AABD). App., *infra*, 32a. AABD originally operated in the 50 States, the District of Columbia, and Puerto Rico, but in 1972, Congress replaced AABD with SSI in the 50 States and the District of Columbia while leaving it in place in Puerto Rico. *Ibid.* AABD provides more local control but less federal funding than SSI. Under SSI, the federal government sets eligibility criteria, determines the amount of the federal benefits, and pays the full amount of those benefits and the associated administrative costs. 42 U.S.C. 1381, 1381a. Under AABD, by contrast, the government of Puerto Rico sets its own income and asset limits and determines its own benefit amounts, while the federal government pays 75% of the benefits and 50% of the administrative costs, subject to a statutory cap on total expenditures. 42 U.S.C. 1381 note, 1382 note, 1383 note, 1384 note, 1385 note. The income limit and benefit level for AABD are lower than for SSI. App., *infra*, 32a-33a & n.27. AABD thus covers fewer people and provides a lower level of benefits than SSI would have done had it been available in Puerto Rico. *Id.* at 32a-33a

2. In *Califano* v. *Torres*, 435 U.S. 1 (1978) (per curiam), this Court summarily reversed a three-judge district court's decision holding that the exclusion of

Puerto Rico from the SSI program violated the Constitution. *Id.* at 2-3, 5. In particular, the Court rejected the contention that the statutory scheme "unconstitutionally burdened the right of interstate travel" because individuals who "mov[ed] to Puerto Rico" would "los[e] the benefits to which they were entitled while residing in the United States." *Id.* at 2-4. The Court explained that it "ha[d] never held that the constitutional right to travel embraces any such doctrine." *Id.* at 4. The Court observed that the challenger "had also relied on the equal protection component of the Due Process Clause," but noted that even the district court had "apparently acknowledged that Congress has the power to treat Puerto Rico differently." *Id.* at 3 n.4. Finally, the Court stated that, "[s]o 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 straitjacket." *Id.* at 5 (citations omitted). The Court explained that "[a]t least three reasons have been advanced to explain the exclusion of persons in Puerto Rico from the SSI program": (1) "because of the unique tax status of Puerto Rico, its residents do not contribute to the public treasury"; (2) "the cost of including Puerto Rico would be extremely great"; and (3) "inclusion in the SSI program might seriously disrupt the Puerto Rican economy." *Id.* at 5 n.7.

Two years later, in *Harris* v. *Rosario*, 446 U.S. 651 (1980) (per curiam), this Court summarily reversed a decision in which a district court had held unconstitutional the lower level of reimbursement for Puerto Rico than for the States and the District of Columbia under another federal benefits program—Aid to Families with Dependent Children. The Court rejected the claim that

the different treatment of Puerto Rico violated "the Fifth Amendment's equal protection guarantee," explaining that, under the Territory Clause of the Constitution, U.S. Const. Art. IV, § 3, Cl. 2, Congress "may treat Puerto Rico differently from States so long as there is a rational basis for its actions." *Rosario*, 446 U.S. at 651-652. The Court noted that, in *Torres*, it had "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." *Id.* at 652. The Court observed that the "same considerations" supported the different treatment of Puerto Rico under the Aid to Families with Dependent Children program, and it "s[aw] no reason to depart from [its] conclusion" in *Torres* "that they suffice to form a rational basis for the challenged statutory classification." *Ibid.*

**B. Factual Background And Proceedings Below**

1. Respondent Jose Luis Vaello Madero is a citizen of the United States who is "afflicted with severe health problems." App., *infra*, 3a. Respondent lived in New York from 1985 to 2013, and he started receiving SSI payments there in 2012. *Ibid.*

Respondent moved from New York to Puerto Rico in July 2013, and, as a result, lost his eligibility to receive SSI benefits. App., *infra*, 3a-4a. But respondent failed to notify the Social Security Administration of his move, and the agency continued to make SSI payments to him through his bank account in New York for several more years. *Id.* at 3a-4a, 39a. The agency eventually became aware of respondent's change of residence in 2016,

whereupon it informed him that it was discontinuing his SSI benefits with retroactive effect. *Id.* at 3a-4a.

2. In August 2017, the government sued respondent in the United States District Court for the District of Puerto Rico, seeking restitution of $28,081 in SSI benefits that it had incorrectly paid him from August 2013 to August 2016. App., *infra*, 4a, 40a. Respondent filed an answer in which he challenged the constitutionality of Congress's exclusion of Puerto Rico from SSI. *Id.* at 5a.

The government moved to dismiss its claims without prejudice under Federal Rule of Civil Procedure 41(a)(2). D. Ct. Doc. 23, at 3-5 (Mar. 14, 2018).[*] The district court denied the motion, explaining that respondent opposed dismissal without prejudice and that such a dismissal would "unfairly harm" respondent by leaving the United States free to recommence the suit in the future. App., *infra*, 54a; see *id.* at 50a-60a. The court also emphasized that allowing this case to move forward would enable the federal courts to "revisit"

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[*] The motion to dismiss explained that the government's complaint cited two statutes as bases for the district court's jurisdiction, but that the reference to one of those statutes, 42 U.S.C. 408(a)(4), had been a mistake. App., *infra*, 51a; D. Ct. Doc. 23, at 3. Respondent acknowledged, and the court held, that the court had jurisdiction over the case under the other statute cited in the complaint, 28 U.S.C. 1345, which confers jurisdiction over "all civil actions, suits or proceedings commenced by the United States." App., *infra*, 52a-53a (citation and emphasis omitted). The motion also argued that, to the extent respondent's answer raised counterclaims, the court lacked the power to hear them because respondent had failed to exhaust administrative remedies. D. Ct. Doc. 23, at 8. But the court read the answer as raising "affirmative defenses" rather than counterclaims, and it held that it could properly "address the merits of the United States' overpayment claim, and the constitutional challenge as an affirmative defense to [respondent's] liability." App., *infra*, 53a.

*Torres* and *Rosario*—cases that the court described as "erroneous," "outdated," "anachronistic," and "ripe for reconsideration." *Id.* at 55a, 57a-59a.

Then, in February 2019, the district court granted petitioner's motion for summary judgment, denied the government's cross-motion for summary judgment, and concluded that the exclusion of Puerto Rico from the SSI program violates the equal-protection component of the Due Process Clause of the Fifth Amendment. App., *infra*, 38a-49a. The court suggested that Congress may have excluded Puerto Rico in order to harm citizens "of Hispanic origin," but found it unnecessary to consider that theory further because it believed that the exclusion of Puerto Rico failed even "rational basis scrutiny." *Id.* at 45a-46a. The court concluded that "the principal purpose of the statute is to impose inequality," and it rejected the government's contentions that the statute reflected valid distinctions between Puerto Rico and the States. *Id.* at 46a (brackets and citation omitted). In a footnote, the court dismissed the government's reliance on this Court's precedents in *Torres* and *Rosario*, explaining that it could not "simply bind itself" to those decisions and "ignore important subsequent developments in the constitutional landscape." *Id.* at 47a n.7.

3. The court of appeals affirmed. App., *infra*, 1a-37a.

The court of appeals first rejected the government's contention that this Court's decisions in *Torres* and *Rosario* controlled the outcome of this case. App., *infra*, 8a-19a. The court stated that neither *Torres* nor *Rosario* considered whether the SSI program's exclusion of residents of Puerto Rico denied equal protection, because *Torres* involved "the right to travel" rather than

equal protection, and *Rosario* involved "block grants under [Aid to Families with Dependent Children]" rather than SSI. *Id.* at 14a (emphasis omitted). The court also emphasized that *Torres* and *Rosario* were "[s]ummary dispositions." *Id.* at 15a. Finally, the court stated that one of the three rationales set out in *Torres* and *Rosario*—that "inclusion in the SSI program might seriously disrupt the Puerto Rican economy," *Torres*, 435 U.S. at 5 n.7—is "dubious," "'has troubling overtones,'" and "should be met with suspicion," at least in light of "the present circumstances of Puerto Rico's economic affairs," App., *infra*, 16a-18a & n.10 (quoting *Rosario*, 446 U.S. at 655 (Marshall, J., dissenting)).

The court of appeals also found unpersuasive the government's argument that, even apart from *Torres* and *Rosario*, Congress's treatment of Puerto Rico for purposes of SSI was rational. App., *infra*, 19a-37a. The court rejected the government's argument that the exclusion of Puerto Rico from the program could be justified by Puerto Rico's "unique tax status"—in particular, by the reality "'that residents of Puerto Rico do not, as a general matter, pay federal income taxes.'" *Id.* at 20a (citations omitted). The court found income taxes to be irrelevant to the SSI program because "any individual eligible for SSI benefits almost by definition earns too little to be paying federal income taxes." *Id.* at 27a. The court also rejected the government's argument that "the cost of including Puerto Rico residents in the SSI program is a rational basis for their exclusion," explaining that "cost *alone* does not support differentiating individuals." *Id.* at 29a, 31a.

The court of appeals separately emphasized that, as part of the Northern Mariana Islands' covenant to enter into a political union with the United States, the United

States agreed to make SSI available in that Territory. App., *infra*, 34a. The court concluded that, "while the inclusion of the Northern Mariana Islands in the SSI program does not standing alone render the discriminatory treatment of [residents of Puerto Rico] per se irrational, the fact that Congress extended SSI benefits to the residents of the Northern Mariana Islands * * * undercuts [the government's] only offered explanations for the exclusion." *Ibid.* (citation omitted).

## REASONS FOR GRANTING THE PETITION

The court of appeals held that the Congress's decision not to extend the Supplemental Security Income program to Puerto Rico violates the equal-protection component of the Due Process Clause of the Fifth Amendment. The court's decision holds unconstitutional a decades-old Act of Congress; conflicts with this Court's decisions in *Califano* v. *Torres*, 435 U.S. 1 (1978) (per curiam), and *Harris* v. *Rosario*, 446 U.S. 651 (1980) (per curiam); threatens to impose billions of dollars in costs on the United States; and could affect numerous other Acts of Congress that treat Puerto Rico differently than the States and the District of Columbia for purposes of federal benefits programs. This Court should either summarily reverse the decision or grant plenary review.

### A. The Court Of Appeals' Decision Is Incorrect

This Court's decisions in *Torres* and *Rosario* resolve this case. *Rosario* establishes the legal standard that governs respondent's equal-protection challenge, and *Torres* and *Rosario* both establish that Congress's decision not to extend the SSI program to Puerto Rico sat-

isfies that standard. The court of appeals' efforts to distinguish those decisions lack merit, as do the district court's arguments for overruling them.

1. This Court has held that the Due Process Clause of the Fifth Amendment prohibits Congress from denying any person the equal protection of the laws. See *Bolling* v. *Sharpe*, 347 U.S. 497, 500 (1954). In *Rosario*, the Court explained that "the Fifth Amendment's equal protection guarantee" allows Congress to "treat Puerto Rico differently from States" for purposes of a welfare program "so long as there is a rational basis" for the distinction. 446 U.S. at 651-652.

*Rosario*'s use of the rational-basis standard accords with settled principles of equal-protection law. Long ago, this Court held that the Equal Protection Clause of the Fourteenth Amendment concerns "persons and classes of persons" rather than places, and that the government thus remains free to establish "one system for one portion of its territory and another system for another portion." *Missouri* v. *Lewis*, 101 U.S. 22, 30-31 (1880). The Court has since reaffirmed time and again that "this guaranty does not require territorial uniformity," *Ocampo* v. *United States*, 234 U.S. 91, 98 (1914); that "[t]erritorial uniformity is not a constitutional requisite," *Salsburg* v. *Maryland*, 346 U.S. 545, 552 (1954); that the guarantee "relates to equality between persons as such, rather than between areas," *McGowan* v. *Maryland*, 366 U.S. 420, 427 (1961); and that the government retains "wide discretion in deciding whether laws shall operate statewide or * * * only in certain counties," *Griffin* v. *County School Board*, 377 U.S. 218, 231 (1964). Some provisions of the Constitution do require geographic uniformity—for instance, "all Duties, Imposts and Excises shall be uniform

throughout the United States," U.S. Const. Art. I, § 8, Cl. 1—but the Equal Protection Clause simply is not among them.

Indeed, the Constitution itself distinguishes between States and Territories for a variety of purposes, including representation in Congress, U.S. Const. Art. I, §§ 2-3; participation in presidential elections, Art. II, § 2; congressional power, Art. IV, § 3, Cl. 2; delegation of legislative power, *Cincinnati Soap Co.* v. *United States*, 301 U.S. 308, 323 (1937); appointments of officers, *Financial Oversight & Management Board* v. *Aurelius Investment, LLC*, 140 S. Ct. 1649, 1658-1659 (2020); judicial tenure, *American Insurance Co.* v. *356 Bales of Cotton*, 26 U.S. (1 Pet.) 511, 546 (1828); and double jeopardy, *Puerto Rico* v. *Sanchez Valle*, 136 S. Ct. 1863, 1873 (2016). Congress, too, has enacted a variety of laws that distinguish Territories from States—including tax laws, see *Torres*, 435 U.S. at 5 n.7; bankruptcy laws, see *Puerto Rico* v. *Franklin California Tax-Free Trust*, 136 S. Ct. 1938, 1942 (2016); civil-rights laws, see *Ngiraingas* v. *Sanchez*, 495 U.S. 182, 187 (1990); and healthcare laws, see *King* v. *Burwell*, 135 S. Ct. 2480, 2494 n.4 (2015). Put simply, a Territory differs from a State, and the Constitution allows Congress to recognize that difference.

2. A legislative classification satisfies the rational-basis standard if it is "rationally related to furthering a legitimate state interest." *Massachusetts Board of Retirement* v. *Murgia*, 427 U.S. 307, 312 (1976) (per curiam). The application of that standard is particularly deferential in "the area of economics and social welfare." *Dandridge* v. *Williams*, 397 U.S. 471, 485 (1970). A classification relating to the "administration of public welfare assistance" does not violate the Constitution

simply because it is "imperfect," "'is not made with mathematical nicety,'" or "'in practice results in some inequality.'" *Ibid.* (citation omitted).

*Torres* and *Rosario* both establish that Congress's decision not to extend the SSI program to Puerto Rico satisfies that test. In *Torres*, the Court identified "[a]t least three reasons" that support "the exclusion of persons in Puerto Rico from the SSI program." 435 U.S. at 5 n.7. And in *Rosario*, it acknowledged that *Torres* had "concluded that [the exclusion of Puerto Rico from SSI] was rationally grounded on three factors," and it held that the "same considerations" justified the different treatment of Puerto Rico under another welfare program, Aid to Families with Dependent Children. 446 U.S. at 652.

First, the Court relied on "the unique tax status of Puerto Rico." *Torres*, 435 U.S. at 5 n.7; see *Rosario*, 446 U.S. at 652 ("Puerto Rican residents do not contribute to the federal treasury."). Individuals who reside in Puerto Rico generally owe no federal income tax on income derived from sources in Puerto Rico, see 26 U.S.C. 933; corporations in Puerto Rico generally owe no federal corporate income tax on income connected with Puerto Rico, see 26 U.S.C. 881, 882, 7701; most federal excise taxes do not apply in Puerto Rico, see 26 U.S.C. 5314, 7652; and residents of Puerto Rico generally owe no federal estate and gift taxes on transfers of property in Puerto Rico, see 26 U.S.C. 2209. Congress has a legitimate interest in avoiding a one-sided fiscal relationship under which Puerto Rico shares the financial benefits but not the financial burdens of statehood, and declining to include Puerto Rico in the SSI program is a rational means of furthering that interest.

Second, this Court observed that "the cost of including Puerto Rico would be extremely great." *Torres*, 435 U.S. at 5 n.7; see *Rosario*, 446 U.S. at 652 ("[T]he cost of treating Puerto Rico as a State under the statute would be high."). When the Court decided *Torres* in 1978, that cost would have been "an estimated $300 million per year." 435 U.S. at 5 n.7. According to an estimate prepared by actuaries at the Social Security Administration, that cost now would be between $1.8 billion and $2.4 billion per year over the next ten years. See Memorandum from Michael Stephens, Supervisory Actuary, Office of the Chief Actuary of the Social Security Administration, to Steve Goss, Chief Actuary, Office of the Chief Actuary of the Social Security Administration, *Estimated Change in Federal SSI Program Cost for Potential Extension of SSI Eligibility to Residents of Certain U.S. Territories – INFORMATION* (Stephens Memo) 2 (June 11, 2020). Congress has a legitimate interest in limiting government expenditures, and excluding Puerto Rico from SSI is a rational means of advancing that interest.

Third, this Court explained that "inclusion in the SSI program might seriously disrupt the Puerto Rican economy." *Torres*, 435 U.S. at 5 n.7; see *Rosario*, 446 U.S. at 652 ("[G]reater benefits could disrupt the Puerto Rican economy."). For example, labor economists have assembled empirical evidence showing that benefit programs can "depress work effort" by "discourag[ing] employment" and "slow[ing] the accumulation of work experience and skill." Gary Burtless & Orlando Sotomayor, *Labor Supply and Public Transfers*, *in* The Economy of Puerto Rico: Restoring Growth 131 (Susan M. Collins et al. eds., 2006). They have also assembled evidence indicating that, in light of wage levels and

other economic conditions in Puerto Rico, benefit payments could be "relatively more attractive to a larger percentage of [the] Puerto Rican workforce," and that "the negative effects" on the "labor supply" could thus be "larger" in Puerto Rico than in the States. *Id.* at 101, 116. Labor economists also have argued that "[t]he rapid expansion of government transfers in the 1970s and early 1980s produced these effects in Puerto Rico." *Id.* at 131. Congress has a legitimate interest in avoiding economic disruption in Puerto Rico, including by maintaining the stability of the labor supply in Puerto Rico, and Congress could rationally conclude that treating Puerto Rico differently than the States for purposes of SSI (and other benefits programs) advances that interest.

3. The court of appeals' contrary rationales lack merit. To begin, the court emphasized that *Torres* and *Rosario* were "[s]ummary dispositions." App., *infra*, 15a. This Court has explained, however, that "the lower courts are bound by summary decisions by this Court." *Hicks* v. *Miranda*, 422 U.S. 332, 344-345 (1975). The court of appeals relied on *Illinois State Board of Elections* v. *Socialist Workers Party*, 440 U.S. 173 (1979), *Mandel* v. *Bradley*, 432 U.S. 173 (1977) (per curiam), and *Edelman* v. *Jordan*, 415 U.S. 651 (1974), for the proposition that the precedential effect of a summary decision is limited to the precise result reached by this Court. App., *infra*, 15a. Each of those cases, however, concerned the precedential effect of an "unexplicated summary affirmance" issued "without opinion." *Mandel*, 432 U.S. at 176 (citation omitted); see *Socialist Workers Party*, 440 U.S. at 182; *Edelman*, 415 U.S. at 671. Those cases are inapposite here, because *Torres* and *Rosario* were summary reversals accompanied by

per curiam opinions, not one-line summary affirmances. And "[w]hen an opinion issues for the Court," lower courts remain bound not just by its "result," but also by its "'explications of the governing rules of law.'" *Seminole Tribe of Florida* v. *Florida*, 517 U.S. 44, 67 (1996) (citation omitted).

Next, the court of appeals emphasized that *Torres* involved the right to travel rather than equal protection. App., *infra*, 14a. That is true, but the Court in *Torres* applied the rational-basis test—the same test that governs the equal-protection challenge at issue here. See *Torres*, 435 U.S. at 5. The court of appeals identified no sound reason to believe that the exclusion of Puerto Rico from SSI satisfies the rational-basis test for purposes of the right to travel, yet fails the same test for purposes of equal protection. To the contrary, the Court in *Torres* noted that the plaintiff in that case had also raised an equal-protection claim, but stated that the district court there "apparently acknowledged that Congress had the power to treat Puerto Rico differently, and that every federal program does not have to be extended to it," because "Puerto Rico has a relationship to the United States 'that has no parallel in our history.'" *Id.* at 3 n.4 (citation omitted).

The court of appeals similarly distinguished *Rosario* on the ground that it involved block grants to state and territorial governments under Aid to Families with Dependent Children rather than direct aid to individual recipients under SSI. App., *infra*, 14a. The court failed to explain, however, why that distinction should make any constitutional difference. In any event, the Court in *Rosario* explicitly described the two programs as

"similar," and explicitly stated that the "same considerations" justify treating Puerto Rico differently under both programs. 446 U.S. at 652.

The court of appeals also criticized the adequacy of each of the justifications set out in *Torres* and *Rosario*, describing portions of this Court's reasoning in those cases as "dubious," "defunct," "'troubling,'" "no longer available," and worthy of "suspicion." App., *infra*, 16a-19a & n.10, 23a (citation omitted). As an initial matter, a lower court has a constitutional obligation to follow the precedents of this Court, "for it is this Court's prerogative alone to overrule one of its precedents." *State Oil Co.* v. *Khan*, 522 U.S. 3, 20 (1997). The court of appeals thus was required to follow *Torres* and *Rosario*, regardless of whether it agreed with this Court's reasoning. In any event, the criticisms of the Court's reasoning lack merit.

The court of appeals stated that the first justification discussed in *Torres* and *Rosario*—Puerto Rico's unique tax status—cannot justify Congress's decision not to include Puerto Rico in the SSI program, because some Puerto Rico residents pay at least some federal taxes and because the particular individuals who benefit from SSI are likely to have low incomes and are thus unlikely to owe income taxes in the first place. App., *infra*, 21a, 27a. Under rational-basis review, however, Congress retains the power to rely on generalizations and to make "rough accommodations." *Dandridge*, 397 U.S. at 485 (citation omitted). A law does not violate that rational-basis test simply because "the classification involved * * * is to some extent both underinclusive and overinclusive." *Vance* v. *Bradley*, 440 U.S. 93, 108 (1979). Here, it is not irrational for Congress to rely on the generalization that most federal taxes do not apply to the

Commonwealth, even though some residents of Puerto Rico do pay certain federal taxes in certain circumstances. Nor is it irrational for Congress to focus on the tax status of the populace of the Commonwealth as a whole, rather than on the tax status of the particular individuals who would receive SSI benefits.

The court of appeals next concluded that the second justification cited in *Torres* and *Rosario*—cost—could not "alone" justify Congress's decision not to extend SSI to Puerto Rico. App., *infra*, 31a (emphasis omitted). But this Court has recognized that the government has a legitimate interest in "protecting the fiscal integrity of Government programs, and of the Government as a whole," *Lyng* v. *International Union, United Automobile, Aerospace, & Agricultural Implement Workers of America*, 485 U.S. 360, 373 (1988), and that "[a]dministrative convenience and expense * * * are *alone* a sufficient justification" for a classification under rational-basis review, *Carmichael* v. *Southern Coal & Coke Co.*, 301 U.S. 495, 511 (1937) (emphasis added). To be sure, a desire to save money might not justify "random" measures, such as the "elimination from coverage of all persons with an odd number of letters in their surnames." App., *infra*, 30a (quoting *Ohio Bureau of Employment Services* v. *Hodory*, 431 U.S. 471, 493 (1977)). But the distinction between Territories and States is constitutionally grounded and routine, not "random." See p. 11, *supra*.

The court of appeals also asserted that the government had "abandon[ed]" *Torres*'s and *Rosario*'s third justification for excluding Puerto Rico from SSI—namely, the interest in avoiding disruption of Puerto Rico's economy. App., *infra*, 18a. Contrary to the court's suggestion, the government explicitly argued in

the district court that it was rational for Congress to conclude that the "influx of federal SSI payments might disrupt Puerto Rico's economy." D. Ct. Doc. 59-1, at 12 n.9 (Oct. 10, 2018). And although the government focused on *Torres*' and *Rosario*'s first two rationales in the court of appeals, it did not abandon the third rationale; to the contrary, it argued that Congress's decision was rational "[f]or the reasons the Supreme Court relied on in [*Torres*] and [*Rosario*], *including* Puerto Rico's unique tax status, and the cost of extending benefits to the territories." Gov't C.A. Br. 10 (emphasis added). In any event, under rational-basis review, the government does not bear the burden of coming forward with rationales for the law; rather, "[t]he burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it." *Madden* v. *Kentucky*, 309 U.S. 83, 88 (1940).

The court of appeals also found that the economic rationale for excluding Puerto Rico from SSI was no longer sound "considering the present circumstances of Puerto Rico's economic affairs." App., *infra*, 17a n.10. Under rational-basis review, however, the question is whether "there is any reasonably conceivable state of facts that could provide a rational basis for the classification"—not whether a court regards the classification as wise in light of current economic conditions. *FCC* v. *Beach Communications, Inc.*, 508 U.S. 307, 313 (1993). The proper forum for debating current economic conditions is Congress, not the Judiciary.

Finally, the court of appeals emphasized that Congress has made SSI available in the Northern Mariana Islands. App., *infra*, 34a-37a. But as the court of appeals acknowledged, Congress had already taken that step before *Torres* and *Rosario*. *Id.* at 34a. In neither

case did this Court suggest that Congress's decision undermined the rationality of its treatment of Puerto Rico.

In any event, nothing in the Constitution precludes Congress from according distinctive treatment to the Northern Mariana Islands. The Constitution instead leaves Congress free to treat one Territory differently than another, and Congress has often done so. See, *e.g.*, *Sanchez Valle*, 136 S. Ct. at 1868 (discussing the United States' "unique political relationship" with Puerto Rico); *Chase Manhattan Bank (National Ass'n)* v. *South Acres Development Co.*, 434 U.S. 236, 239 (1978) (per curiam) (discussing Congress's "unique" treatment of Guam). Here, Congress had a sound reason to treat the Northern Mariana Islands differently than Puerto Rico and other Territories: the United States had committed to extend SSI to the Islands in the covenant establishing the Islands as a commonwealth, but had made no comparable negotiated commitment with respect to other Territories. See p. 3, *supra*.

4. The district court, for its part, stated that *Torres* and *Rosario* are "outdated" and should be "revisit[ed]." App., *infra*, 55a, 58a. That suggestion lacks merit. First, "it is this Court's prerogative alone to overrule one of its precedents." *Khan*, 522 U.S. at 20. The district court should therefore have followed *Torres* and *Rosario*, regardless of whether it considered those precedents "outdated." Second, *Torres* and *Rosario* were in any event correctly decided. As explained above, those cases accord with this Court's jurisprudence concerning equal protection and rational-basis review. Third, under the doctrine of *stare decisis*, there exists no sound basis for revisiting *Torres* and *Rosario*. The decisions are longstanding; they accord with the surrounding body of equal-protection jurisprudence;

they are workable; they have not been undermined by subsequent developments; and Congress has relied on them for the past four decades in designing federal programs and determining their applicability in the Territories.

**B. The Decision Below Warrants This Court's Review**

1. The court of appeals' decision warrants summary reversal. In *Torres*, the Court, applying rational-basis review, summarily reversed a lower court's decision holding that the exclusion of Puerto Rico from the SSI program violated the constitutional right to travel. 435 U.S. at 5. And in *Rosario*, the Court summarily reversed a lower court's decision holding that the exclusion of Puerto Rico from another federal welfare program violated the principle of equal protection. 446 U.S. at 652. For the same reasons that summary reversal was proper there, it is proper here.

More broadly, this Court has often summarily reversed decisions of lower courts that contradict controlling precedents of this Court. See, *e.g.*, *Moore* v. *Texas*, 139 S. Ct. 666 (2019) (per curiam); *Pavan* v. *Smith*, 137 S. Ct. 2075 (2017) (per curiam). Here, this Court's decisions in *Torres* and *Rosario* establish that Congress's decision not to include Puerto Rico in the SSI program comports with the guarantee of equal protection. Yet the court of appeals disregarded those decisions, going so far as to disparage their reasoning as "dubious," "defunct," "'troubling,'" "no longer available," and worthy of "suspicion." App., *infra*, 16a-19a & n.10, 23a (citation omitted).

2. If this Court does not summarily reverse the decision below, it should grant plenary review. The Court's intervention is necessary because the court of appeals has held that an Act of Congress violates the

Constitution. The Court has recognized that judging the constitutionality of an Act of Congress is "the gravest and most delicate duty" of the Federal Judiciary. *Rostker* v. *Goldberg*, 453 U.S. 57, 64 (1981) (citation omitted). The Court has therefore applied "a strong presumption in favor of granting writs of certiorari to review decisions of lower courts holding federal statutes unconstitutional," even in the absence of a circuit conflict. *Maricopa County* v. *Lopez-Valenzuela*, 574 U.S. 1006, 1007 (2014) (statement of Thomas, J., respecting the denial of the application for a stay); see, *e.g.*, *United States* v. *Sineneng-Smith*, 140 S. Ct. 1575, 1578 (2020); *Iancu* v. *Brunetti*, 139 S. Ct. 2294, 2298 (2019); *Matal* v. *Tam*, 137 S. Ct. 1744, 1755 (2017); *Zivotofsky* v. *Kerry*, 576 U.S. 1, 9 (2015); *Department of Transportation* v. *Association of American Railroads*, 575 U.S. 43, 46 (2015); *United States* v. *Alvarez*, 567 U.S. 709, 714 (2012) (plurality opinion); *Holder* v. *Humanitarian Law Project*, 561 U.S. 1, 14 (2010); *United States* v. *Comstock*, 560 U.S. 126, 132-133 (2010).

This Court's review also is necessary because the decision below "conflicts with relevant decisions of this Court." Sup. Ct. R. 10(c). Beyond the conflict with *Torres* and *Rosario*, the decision below also conflicts with this Court's broader jurisprudence on rational-basis review. For example, the court of appeals demanded a close fit between the exclusion of Puerto Rico from SSI and the distinctive treatment of Puerto Rico under federal tax laws, see App., *infra*, 20a-28a, but this Court has explained that a law survives rational-basis review "[e]ven if the classification involved * * * is to some extent both underinclusive and overinclusive," *Bradley*, 440 U.S. at 108. The court of appeals insisted that "cost alone" cannot justify a classification, App., *infra*, 31a

(emphasis omitted), but this Court has described "convenience and expense" as "alone a sufficient justification" under rational-basis review, *Carmichael*, 301 U.S. at 511. And the court of appeals, engaging in its own searching assessment, rejected as "dubious" and "defunct" the avoidance of economic disruption that this Court had found rational in *Torres*. App., *infra*, 18a-19a. But this Court has emphasized that rational-basis review "gives the federal courts no power to impose * * * their views of what constitutes wise economic or social policy," *Dandridge*, 397 U.S. at 486.

The importance of the question presented underscores the need for this Court's review. SSI is a major federal program, and its extension to Puerto Rico would have significant consequences. According to an estimate cited by the court of appeals, the extension of SSI to Puerto Rico could apply to more than 300,000 Puerto Rican residents each month. See App., *infra*, 32a-33a. The Social Security Administration estimates that extending SSI to Puerto Rico would cost approximately *$23 billion over the next ten years*. Stephens Memo 2.

The court of appeals' decision concerns Puerto Rico, but Congress has also excluded other Territories, apart from the Northern Mariana Islands, from the SSI program. One court has already held, in reliance on the court of appeals' decision in this case, that Congress's decision not to include Guam in the SSI program violates the Fifth Amendment. See D. Ct. Doc. 77, at 7-20, *Schaller* v. *U.S. Social Security Administration*, No. 18-cv-44 (D. Guam June 19, 2020). The Social Security Administration estimates that extending the SSI program to other Territories beyond Puerto Rico would cost a further $700 million over the next ten years. Stephens Memo 2.

Finally, the court of appeals' decision concerns the SSI program, but Congress has enacted a wide range of statutes that treat Puerto Rico and other Territories differently than the States for purposes of federal funding. See, *e.g.*, 7 U.S.C. 2012(r) (Supplemental Nutrition Assistance Program); 42 U.S.C. 623(a)-(b) (Child Welfare Services Program); 42 U.S.C. 801(a)(2) (Coronavirus Relief Fund); 42 U.S.C. 1308(a)(1) (Temporary Assistance for Needy Families); 42 U.S.C. 1308(f)-(g), 1396d(b) (Medicaid); 42 U.S.C. 1395w-114(a) (Medicare); 42 U.S.C. 1760(f) (School Lunch Program). And the United States District Court in Puerto Rico has already held, in reliance on the court of appeals' decision here, that Congress has violated the Constitution by treating Puerto Rico differently from the States for purposes of the Supplemental Nutrition Assistance Program and the Medicare Part D Low-Income Subsidy. See *Peña Martínez* v. *Azar*, No. 18-1206, 2020 WL 4437859 (Aug. 3, 2020). Additional challenges to the differential treatment of Puerto Rico remain pending. See, *e.g.*, *Consejo de Salud de Puerto Rico, Inc.* v. *United States*, No. 18-cv-1045 (D.P.R. filed Jan. 29, 2018) (challenging differential treatment of Puerto Rico under Medicaid, Medicare, and the State Children's Health Insurance Program). The spillover consequences of the decision below heighten the need for this Court's review.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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SEPTEMBER 2020

**APPENDIX A**

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

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No. 19-1390

UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

*v.*

JOSÉ LUIS VAELLO-MADERO,
DEFENDANT, APPELLEE

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Filed: Apr. 10, 2020

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Appeal from the United States District Court
for the District of Puerto Rico
[Hon. Gustavo A. Gelpí, U.S. District Judge]

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Before HOWARD, Chief Judge, TORRUELLA and THOMPSON, Circuit Judges.

**TORRUELLA, Circuit Judge.** This appeal raises a fundamental question of constitutional law requiring us to consider the equal protection component of the Fifth Amendment as it applies to the residents of Puerto Rico.[1] Specifically, Appellee claims that the exclusion of Puerto Rico residents from receiving the disability

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[1] "No person shall be . . . deprived of life, liberty, or property, without due process of law. . . . " U.S. Const. amend. V. See Examining Bd. of Eng'rs, Architects, & Surveyors v. Flores de Otero, 426 U.S. 572, 600 (1976).

benefits that are granted to persons residing in the fifty States, the District of Columbia, and the Northern Mariana Islands under the Supplemental Security Income (SSI) provisions of Title XVI of the Social Security Act, 42 U.S.C. §§ 1381-1383(f), contravenes the equal protection guarantees of the Fifth Amendment. Appellee in this case became eligible and commenced receiving SSI disability benefits while residing in New York. Nevertheless, these benefits were discontinued when the Social Security Administration (SSA) became aware that he had moved to Puerto Rico. The SSA proceeded to enforce the provision of this legislation that requires a recipient of SSI benefits to reside within the United States, defined by statute as the geographical territory of the fifty States, the District of Columbia, and the Northern Mariana Islands, and authorizes the termination of these payments if the recipient resides more than thirty consecutive days outside the "United States" as so defined. See id. §§ 1382c(a)(1)(B)(i), 1382c(e); see also Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, Pub. L. No. 94-241, § 502(a)(1), 90 Stat. 263, 268 (1976).

## I. Background

### A. The factual background of this appeal

SSI provides benefits to low income individuals who are older than sixty-five, blind, or disabled. See 42 U.S.C. §§ 1382(a), 1382c. In contrast to other types of federal insurance programs, like Social Security Title II benefits, 42 U.S.C. §§ 401-433, which are paid for by payroll taxes, Congress funds SSI from the general treasury. See 42 U.S.C. § 1381; see also Pub. L. No. 116-94, 133 Stat. 2534, 2603 (2019) (funding SSI for fiscal year

2020). SSI is a means-tested program, so only those individuals who meet the age, disability, or blindness requirements and fall beneath the federally mandated income and asset limits are eligible. 42 U.S.C. § 1382.[2]

Defendant-Appellee José Luis Vaello-Madero was born in 1954. Then, as now, all those born in Puerto Rico are citizens of the United States pursuant to the Jones Act of 1917, 39 Stat. 953, § 5 (1917), and subsequent legislation granting birthright citizenship to Puerto Rico's native-born inhabitants, see 8 U.S.C. § 1402.

In 1985, Appellee moved to New York where he resided until 2013. In the later part of his residence in New York, Appellee was afflicted with severe health problems, conditions which forced him to seek succor under the SSI program. In June 2012, Appellee was found eligible to receive SSI disability benefits and thus commenced receiving SSI payments, the monthly amounts deposited directly by the SSA into his checking account in a New York bank.

In July 2013, Appellee relocated to Loíza, Puerto Rico. According to Appellee, he moved there to help care for his wife, who had previously moved to Puerto Rico due to her own health issues.

Appellee contends that he first became aware of the SSI issues related to his moving to Puerto Rico in June 2016, when he filed for Title II Social Security benefits at the SSA office in Carolina, Puerto Rico. Thereafter, as a result of his disclosure to the SSA authorities that

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[2] For more information about SSI, see Mary Daly & Richard Burkhauser, The Supplemental Security Income Program, in Means-Tested Transfer Programs in the U.S. 79 (Robert Moffitt ed., Univ. of Chicago Press 2003).

he had moved to Puerto Rico, on or about July 27, 2016, the SSA informed Appellee in a "Notice of Planned Action" that it was discontinuing his SSI benefits retroactively to August 1, 2014 because he was, and had been since that date, "outside of the U.S. for 30 days in a row or more." According to this notification, the SSA "consider[ed] the U.S. to be the 50 States of the U.S., the District of Columbia, and the Northern Mariana Islands." As previously alluded to, the SSA was acting pursuant to the statutory provisions that establish that to be eligible to receive SSI benefits the individual must be a "resident of the United States," 42 U.S.C. § 1382c(a)(1)(B)(i), defined therein "when used in a geographic sense, [as meaning,] the 50 States and the District of Columbia," id. § 1382c(e). The Northern Mariana Islands were added within the coverage of SSI in 1976 pursuant to Section 502(a)(1) of Public Law 94-241. 90 Stat. 263, 268 (1976) (codified as 48 U.S.C. § 1801); see also 20 C.F.R. § 416.215.

**B. The United States files suit in U.S. District Court**

Approximately one year after the discontinuation of Appellee's SSI benefits, the United States filed an action against him in the U.S. District Court for the District of Puerto Rico. The United States sought to collect the sum of $28,081, the amount the SSA claimed was owed by Appellee to the United States due to the allegedly improper payment of SSI benefits since his relocation to Puerto Rico. Jurisdiction was claimed pursuant to 28 U.S.C. § 1345, which applies to any civil case "commenced by the United States," and by virtue of a criminal statute, 42 U.S.C. § 408(a)(4), which provides for criminal penalties of up to five years' incarceration for fraudulent social security claims.

In the meantime, an SSA investigator sought and procured from Appellee, who at the time was unrepresented by an attorney, the signing of a Stipulation of Consent Judgment, which was thereafter filed in court by the United States. The court proceeded to appoint pro bono counsel to represent Appellee. Upon entering the case, Appellee's counsel moved to relieve him of the Stipulation, and further proceeded to file an answer to the complaint raising as an affirmative defense that the exclusion of Puerto Rico residents from the SSI program violated the equal protection guarantees of the Fifth Amendment.

Thereafter, the United States moved for voluntary dismissal without prejudice, stating that "out of an abundance of caution" it agreed to withdraw the Stipulation, and conceding that the criminal statute alleged did not confer jurisdiction on the district court in this case, which was civil in nature. The court denied the voluntary dismissal but proceeded to approve the withdrawal of the Stipulation.[3] Considering that there remained no material facts in contention between the parties, and that the outcome of the case depended solely on the determination of a legal question, namely, whether the exclusion of persons residing in Puerto Rico from SSI coverage under the circumstances of this case violated the equal protection guarantees of the Constitution, both parties proceeded to file for summary judgment in support of their respective positions.

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[3] The district court maintained jurisdiction pursuant to 28 U.S.C. § 1345, which applies to any case "commenced by the United States."

**C. The opinion of the district court**

On February 4, 2019, the district court issued its opinion. See United States v. Vaello-Madero, 356 F. Supp. 3d 208 (D.P.R. 2019). After disposing of various preliminary matters (none of which are the subject of this appeal or of relevance to its disposition), the court granted Appellee's Motion for Summary Judgment and denied Appellant's cross motion on the same issues, which in substance dealt with Appellee's allegation of the denial of equal protection in the categorical exclusion of SSI benefits to persons who reside in Puerto Rico. Id. at 211. The district court proceeded to distinguish the two Supreme Court cases on which Appellant plants its flag in an attempt to negate Appellee's equal protection claims, namely Califano v. Gautier Torres, 435 U.S. 1 (1978) (per curiam) and its sequel Harris v. Rosario, 446 U.S. 651 (1980) (per curiam). Id. at 215 n.7. Appellant cited these cases as permitting the differential treatment of persons who resided in Puerto Rico, pursuant to the plenary powers granted to Congress under the Territory Clause,[4] "so long as there [was] a rational basis for [Congress's] actions," Harris, 446 U.S. at 651-52. The district court nevertheless ruled that Congress's decision to "disparately classify United States citizens residing in Puerto Rico" ran "counter to the very essence and fundamental guarantees of the Constitution itself." Vaello-Madero, 356 F. Supp. 3d at 213. More on point, it concluded that Congress's actions in the present case "fail[] to pass rational basis constitutional

[4] "Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States. . . . " U.S. Const., art. IV, § 3, cl. 2.

muster" because "[c]lassifying a group of the Nation's poor and medically neediest United States citizens as 'second tier' simply because they reside in Puerto Rico is by no means rational." Id. at 214. It then expressed the view that the statute in question discriminates on the basis of a suspect classification because "[a]n overwhelming percentage of the United States citizens [who] resid[e] in Puerto Rico are of Hispanic origin." Id. Citing to Boumediene v. Bush, 553 U.S. 723 (2008), and United States v. Windsor, 570 U.S. 744 (2013), the district court concluded that the ratio decidendi of Califano and Harris predated "important subsequent developments in the constitutional landscape," and having suffered erosion by the passage of time and these changed circumstances, required that a new look be taken at these questions. Vaello-Madero, 356 F. Supp. 3d at 215 n.7.

In considering the substance of the opinion appealed from, we must heed the admonition given by the Supreme Court to lower courts as regards the continuing binding force of Supreme Court precedent. The Supreme Court has not been equivocal in its dictates on this subject, stating that the decisions of that Court "remain binding precedent until [the Court] see[s] fit to reconsider them, regardless of whether subsequent cases have raised doubts about their continuing vitality." Hohn v. United States, 524 U.S. 236, 252-53 (1998). It has therefore ruled that "it is [the Supreme] Court's prerogative alone to overrule one of its precedents." State Oil Co. v. Kahn, 522 U.S. 3, 20 (1997); see also Eberhart v. United States, 546 U.S. 12, 19-20 (2005) (commending the Seventh Circuit for following Supreme Court precedent despite the appellate court's "grave doubts"). Although we, of course, cannot and do not

quibble with such forceful and binding mandates, we would be remiss in complying with our own duty were we to blindly accept the applicability of Califano and Harris without engaging in a scrupulous inquiry into their relevance, application, and precedential value. Therefore, while we decline to follow the district court's methodology, our review of the equal protection question at issue—whether the exclusion of Puerto Rico residents from receiving SSI violates the Fifth Amendment—even in a universe where Califano and Harris remain on the books, leads us to the same result. For the reasons explained below, we affirm.

## II. Discussion

### A. Equal protection principles survive Califano and Harris

Our review of the district court's grant of summary judgment is de novo. Rodríguez-Cardi v. MMM Holdings, Inc., 936 F.3d 40, 46 (1st Cir. 2019). We are not tied to the district court's reasoning and "may affirm on any independent ground made manifest by the record." Jones v. Secord, 684 F.3d 1, 5 (1st Cir. 2012).

Discrimination by the federal government violates the Fifth Amendment when it constitutes "a denial of due process of law." Bolling v. Sharpe, 347 U.S. 497, 499 (1954). This is referred to as the equal protection component of the Fifth Amendment. U.S. Dep't of Agric. v. Moreno, 413 U.S. 528, 533 (1973). "Equal protection analysis in the Fifth Amendment area is the same as that under the Fourteenth Amendment." Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 224 (1995) (quoting Buckley v. Valeo, 424 U.S. 1, 93 (1976) (per cu-

riam)); see Bolling, 347 U.S. at 500 ("[I]t would be unthinkable that the same Constitution would impose a lesser duty on the Federal Government.").

It is beyond question at present that precedent requires us to apply rational basis review to the equal protection claim before us. Furthermore, following this path, it is appropriate that "[a] legislative classification . . . be sustained, if the classification itself is rationally related to a legitimate government interest." Moreno, 413 U.S. at 533 (citing Jefferson v. Hackney, 406 U.S. 535, 546 (1972)). "In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect." Dandridge v. Williams, 397 U.S. 471, 485 (1970). Thus, "those attacking the rationality of the legislative classification have the burden 'to negative every conceivable basis which might support it.'" FCC v. Beach Commc'ns, Inc., 508 U.S. 307, 315 (1993) (quoting Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356, 364 (1973)). Equal protection does not "require a legislature to articulate its reasons for enacting a statute," and the "conceived reason[s]" put forth in support of the statute in litigation do not need to be the same as those that "actually motivated the legislature." Id.

Inquiring into the stated reason for enacting this legislation reveals that Congress created SSI "[f]or the purpose of establishing a national program to provide supplemental security income to individuals who have attained age 65 or are blind or disabled." 42 U.S.C. § 1381. "Every aged, blind, or disabled individual who is determined . . . to be eligible on the basis of his income and resources shall . . . be paid benefits by

the Commissioner of Social Security." Id. § 1381a. Here, the classification subject to challenge can be defined as: individuals who meet all the eligibility criteria for SSI except for their residency in Puerto Rico. This classification is clearly irrelevant to the stated purpose of the program, which is to provide cash assistance to the nation's financially needy elderly, disabled, or blind. See Moreno, 413 U.S. at 534. Therefore, if we are to sustain this classification, it "must rationally further some legitimate governmental interest other than those specifically stated in the congressional [statement of purpose.]" Id.

Today, Appellant offers two explanations for the exclusion of Puerto Rico residents: "the unique tax status of Puerto Rico and the costs of extending the program to residents of Puerto Rico." But, as acknowledged above, we do not write on a blank page. We thus commence with an inquest into the lead case cited by Appellant, Califano v. Gautier Torres,[5] 435 U.S. 1, which is a brief per curiam opinion summarily reversing without oral argument the decision of a three-judge district court that held that the denial of SSI benefits to a recipient who acquired them while a resident of Connecticut, but was thereafter denied them by reason of his moving to Puerto Rico, violated his constitutional right to travel. See Gautier Torres v. Mathews, 426 F. Supp. 1106, 1113 (D.P.R. 1977) ("[T]here is a lack of such compelling state interest as to justify penalizing Plaintiff's right to

[5] The Supreme Court opinion refers to the appellee in Califano as "Torres," but Hispanics usually use both the paternal and maternal last names, so the correct appellation used should have been "Gautier Torres," as used by the district court.

travel."). Disagreeing with the majority, Justice Brennan would have voted to affirm the opinion of the district court, and Justice Marshall would have noted probable jurisdiction and set the case for oral argument. Califano, 435 U.S. at 5.

The principal reason for reliance by Appellant on Califano is contained in this part of the Court's opinion:

> [W]e deal here with a constitutional attack upon a law providing for governmental payments of monetary benefits. Such a statute "is entitled to a strong presumption of constitutionality." "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."

435 U.S. at 5 (emphasis supplied) (citation omitted) (quoting Mathews v. De Castro, 429 U.S. 181, 185 (1976) and Jefferson, 406 U.S. at 546). That quote, of course, basically embodies so-called rational basis review, "a paradigm of judicial restraint." Beach Commc'ns, Inc., 508 U.S. at 314. Although the appropriateness of applying this test to the issues and facts presently before us cannot be questioned, the relevance of Califano's ultimate conclusion summarily reversing the district court demands dedicated scrutiny.

Califano is an opinion in which the footnotes are almost as important as its main text. Commencing with footnote four,[6] a major distinction becomes apparent

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[6] Footnote four reads:

between the holding in Califano and the present case. The present case challenges the disparate treatment of the residents of Puerto Rico on equal protection grounds, while Califano was decided on issues related to the right to travel. Although the complaint in Califano alleged an equal protection claim, as is clearly reflected by its opinion, the three-judge district court decided the case strictly on issues related to the fundamental constitutional right to travel, Gautier Torres, 426 F. Supp. at 1108, 1110, 1113, a holding the Supreme Court recognized in footnote four. Califano, 435 U.S. at 3 n.4; see Harris, 446 U.S. at 654-655 (Marshall, J., dissenting) ("[T]he District Court relied entirely on the right to travel, and therefore no equal protection question was before this Court. The Court merely referred to the equal protection claim briefly in a footnote. . . . At most, [this is] reading[] more into that single footnote of dictum [in Califano] than it deserves." (citation omitted) (emphasis supplied)). As acknowledged by the

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> The complaint had also relied on the equal protection component of the Due Process Clause of the Fifth Amendment in attacking the exclusion of Puerto Rico from the SSI program. Acceptance of that claim would have meant that all otherwise qualified persons in Puerto Rico are entitled to SSI benefits, not just those who received such benefits before moving to Puerto Rico. But the District Court apparently acknowledged that Congress has the power to treat Puerto Rico differently, and that every federal program does not have to be extended to it. Puerto Rico has a relationship to the United States "that has no parallel in our history."

Califano, 435 U.S. at 3 n.4 (quoting Flores de Otero, 426 U.S. at 596; then citing Balzac v. Porto Rico, 258 U.S. 298 (1922); Dorr v. United States, 195 U.S. 138 (1904); Downes v. Bidwell, 182 U.S. 244 (1901)).

Court, and vigorously endorsed by Justice Marshall in his dissent in Harris, there was no equal protection question before the Court in Califano. See Harris, 446 U.S. at 654-655 (Marshall, J., dissenting).

This brings us to the second case upon which Appellant relies, Harris v. Rosario, which involved a class action lawsuit regarding the Aid to Families with Dependent Children program (AFDC), 42 U.S.C. §§ 601-619, in which the plaintiffs alleged a violation of equal protection because the U.S. citizens residing in Puerto Rico received less financial assistance under that program than persons who resided in the States. See 446 U.S. at 651-52. The district court found that the statute created a "suspect classification" that did not withstand "strict constitutional scrutiny in absence of a compelling valid state interest." Mot. for Summ. Affirmance at 15a, Harris v. Rosario, 446 U.S. 651 (1980) (No. 79-1294) (attaching Santiago Rosario v. Califano, Civ. No. 77-303 (D.P.R. Oct. 1, 1979)).[7] The Supreme Court summarily reversed the district court's holding that the equal protection component of the Fifth Amendment was violated by this discriminatory treatment, ruling instead that Congress, which is empowered under the Territory Clause of the Constitution "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." Harris, 446 U.S. at 651-52 (quoting U.S. Const. art. IV, § 3, cl. 2). The Court then proceeded to enumerate the following three factors listed in footnote

[7] While the district court's analysis referred to the "U.S. citizens living in Puerto Rico," id. at 1a, the Supreme Court assessed the question in Harris as to Puerto Rico residents, 446 U.S. at 651-52.

seven of Califano, which in the Court's view, "suffice[d] to form a rational basis":

> 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.

Id. at 652 (emphasis added) (citing Califano, 435 U.S. at 5 n.7).[8] With that, the Court validated the differential treatment of Puerto Rico with respect to the block grants received by the territory under the AFDC program.

What should be patently clear is that the Court ruled in Califano on the validity of SSI's treatment of the persons residing in Puerto Rico, as affected by the right to travel, while in Harris it was called to pass upon differential treatment of block grants under the AFDC program in light of the equal protection component of the Fifth Amendment. Contrary to Appellant's contention, the Court has never ruled on the validity of alleged discriminatory treatment of Puerto Rico residents as required by the SSI program under the prism of equal protection.

Of relevance to Appellant's contention that Califano and Harris control this appeal is an axiomatic legal tenet that must be factored into consideration of our ultimate

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[8] We find it persuasive that, as pointed out in Peña Martínez, the Supreme Court's use of the conjunctive "and" when listing the three considerations that "suffice[d] to form a rational basis" suggests "that no one 'consideration' independently sufficed to justify the exclusion of Puerto Rico residents from eligibility for SSI." Peña Martínez v. Azar, 376 F. Supp. 3d 191, 207-08 (D.P.R. 2019) (citing OfficeMax, Inc. v. United States, 428 F.3d 583, 589 (6th Cir. 2005)).

decision: that "[t]he precedential effect of a summary [disposition] can extend no further than 'the precise issues presented and necessarily decided by those actions.'" Ill. State Bd. of Elections v. Socialist Workers Party, 440 U.S. 173, 182 (1979) (quoting Mandel v. Bradley, 432 U.S. 173, 176 (1977)); see Mandel, 432 U.S. at 180 (Brennan, J., concurring) ("[J]udges . . . are on notice that, before deciding a case on the authority of a summary disposition . . . they must (a) examine the jurisdictional statement in the earlier case to be certain that the constitutional questions presented were the same. . . . "). Summary dispositions "are not of the same precedential value as would be an opinion of this Court treating the question on the merits." Edelman v. Jordan, 415 U.S. 651, 671 (1974). We are of the view that Califano was not decided on equal protection grounds, and that Harris did not involve a challenge to SSI direct aid to persons, and thus, neither case forecloses Appellee's present contention that his wholesale exclusion from SSI violates the equal protection guarantee. We do not view Califano and Harris as a carte blanche for all federal direct assistance programs to discriminate against Puerto Rico residents. There still must be a rational justification for the classification. To hold otherwise would "render the rational basis test a nullity and would 'suspend the operation of the Equal Protection Clause in the field of social welfare law'" as it relates to all U.S. residents who dwell in Puerto Rico. Baker v. City of Concord, 916 F.2d 744, 749 (1st Cir. 1990) (quoting Ranschburg v. Toan, 709 F.2d 1207, 1211

(8th Cir. 1983)). We decline to read these cases so broadly.[9]

Additionally, there are several other reasons why Califano and Harris are not precisely on point. Today, Appellant makes no claim that granting "greater [SSI] benefits [to Puerto Rico residents at this time] could disrupt the economy." Harris, 446 U.S. at 652. It may be that Appellant took heed of Justice Marshall's dissent in Harris in which he poignantly stated regarding this third factor:

> 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 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

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[9] Appellant cites United States v. Ríos-Rivera, 913 F.3d 38, 44 (1st Cir. 2019), as evidence that our Court has recently sanctioned Congress's differential treatment of Puerto Rico under Califano and Harris. Reviewing under plain error whether the prosecution of a defendant under the Mann Act, 18 U.S.C. § 2423(a), violated his equal protection rights, this Court in Ríos-Rivera held that the district court did not err by not sua sponte applying heightened scrutiny and rejected the argument that Congress's decision was irrational because it "never explained its justification for treating trafficking within Puerto Rico differently from interstate trafficking." Id. at 44. Nothing about that holding is inconsistent with the result we reach today.

> 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. . . .

Harris, 446 U.S. at 655-56 (Marshall, J., dissenting) (citations omitted).[10] Referring back to the Court's original endorsement of this rationale in Califano, one might

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[10] In an effort to comprehend what was meant by this third factor, we located a post-hoc explanation of the exclusion of Puerto Rico from SSI—a statement in a 1990 congressional briefing on Puerto Rico's status. See Briefing on Puerto Rico Political Status by the General Accounting Office & the Cong. Research Serv.: Hearing Before the Subcomm. of Insular & Int'l Affairs of H. Comm. on Interior & Insular Affairs, 101st Cong. 34 (1990) (statement of Carolyn Merk, Specialist in Social Legislation). The CRS staff member, who had been a House staffer at the time SSI was passed, explained:

> Some of the reasons SSI does not apply in Puerto Rico pertain to income disparity between the mainland United States and Puerto Rico and what could potentially happen to the income distribution of the population there. Similar concerns were raised at the time about extending Federal benefit levels to low-income States such as Alabama or Mississippi. . . . [I]t is certainly true that when you raise someone's income by tenfold there can be serious effects on the labor supply and work incentives and disincentives of the non-SSI members of the family, who may not even earn as much as the SSI benefit. Raising the income from $32 or whatever, tenfold a month, where the amount may be a fair wage on the part of the fulltime workers, or in some cases, of the primary earner's family, has been an issue, and continues to be a primary question.

Id. Any concerns related to "economic disruption" should be met with suspicion considering the present circumstances of Puerto Rico's economic affairs and the legislation that has been enacted by Congress since Harris and Califano were decided. See Puerto

find the Court's citation to the Report of the Undersecretary's Advisory Group on Puerto Rico, Guam and the Virgin Islands perplexing. Califano, 435 U.S. at 5 n.7 (citing Dep't of Health, Educ., & Welfare, Report of the Undersecretary's Advisory Group on Puerto Rico, Guam and the Virgin Islands 6 (1976) [hereinafter 1976 Report]); see Peña Martínez v. Azar, 376 F. Supp. 3d 191, 208 (D.P.R. 2019) (noting that the cited report does not support an economic theory for why Puerto Rico's inclusion in SSI would disrupt the economy and instead highlights the success of the extension of the Food Stamp Program to Puerto Rico). In fact, the 1976 Report expressly rejected concerns about an influx of aid disrupting the economy as a justification for disparate treatment, concluding that "the current fiscal treatment of Puerto Rico . . . is unduly discriminatory and undesirably restricts the ability of these jurisdictions to meet their public assistance needs." 1976 Report, supra at 6-7.

Therefore, considering the dubious nature of this once-accepted rationale, we are relieved that we are not called upon to decipher it and note its abandonment only

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Rico Oversight, Management, and Economic Stability Act, 48 U.S.C. §§ 2101-2241 (2018) (creating an unelected oversight board to govern Puerto Rico's budget and fiscal affairs); Small Business Job Protection Act of 1996, Pub. L. No. 104-188, tit. I(f), § 1601(a), 110 Stat. 1755, 1827 (repealing the 1976 federal income tax credit for business income derived from Puerto Rico). Nevertheless, if we were to indulge this rationale now, it would be worth noting that when determining SSI eligibility, because monthly income disregards and allowable assets are not indexed for inflation, the passage of time has "effectively eroded the value of SSI benefits and narrowed the population of potential recipients relative to 1974 levels." Daly & Burkhauser, supra note 2, at 85.

as an additional factor that weakens the relevance of Califano and Harris for this appeal. In fact, if anything, the former Court's acceptance of this now defunct argument and citation to "a contemporary policy evaluation document"—the 1976 Report—sets us up to consider the present-day circumstances surrounding Puerto Rico's exclusion from SSI and whether the current classification is unrelated to a legitimate government interest. Peña Martínez, 376 F. Supp. 3d at 208; see United States v. Carolene Prods. Co., 304 U.S. 144, 153 (1938) ("[T]he constitutionality of a statute predicated upon the existence of a particular state of facts may be challenged by showing . . . that those facts have ceased to exist." (citing Chastleton Corp. v. Sinclair, 264 U.S. 543 (1924)). This last point notwithstanding, because of the similarity of the issues raised in the present appeal to those in Harris, we apply rational basis analysis to the equal protection challenges made to the SSI program.

**B. The denial of SSI benefits to Appellee does not meet rational basis criteria**

Although "a noncontractual claim to receive funds from the public treasury enjoys no constitutionally protected status, . . . Congress may not invidiously discriminate among such claimants on the basis of a 'bare congressional desire to harm a politically unpopular group,' or on the basis of criteria which bear no rational relation to a legitimate legislative goal." Weinberger v. Salfi, 422 U.S. 749, 772 (1975) (internal citations omitted) (first quoting Moreno, 413 U.S. at 534; then citing Jimenez v. Weinberger, 417 U.S. 628, 636 (1974) and U.S. Dep't of Agric. v. Murry, 413 U.S. 508, 513-14 (1973)). "The State may not rely on a classification whose relationship to an asserted goal is so attenuated

as to render the distinction arbitrary or irrational." Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 446 (1985) (striking down a zoning ordinance that restricted the location of homes for the mentally disabled as arbitrary and irrational). "The search for the link between classification and objective gives substance to the Equal Protection Clause." Romer v. Evans, 517 U.S. 620, 632 (1996). "A critical, if highly deferential, examination is called for, to be conducted case by case with an awareness that statutes such as are at issue here enjoy a 'presumption of rationality that can only be overcome by a clear showing of arbitrariness and irrationality.'" Baker, 916 F.2d at 749 (quoting Kadrmas v. Dickinson Pub. Schs., 487 U.S. 450, 462 (1988)).

With this framework in place, we arrive at the two rational basis arguments which Appellant claims overcome Appellee's equal protection contentions: the tax status of Puerto Rico residents and the costs of extending SSI to them. We take each in turn.

**1.**

At the outset, we must first clarify what is at issue regarding the tax status contention, which as stated in Califano referred to "the unique tax status of Puerto Rico [by which] its residents do not contribute to the public treasury," 435 U.S. at 5 n.7, a statement by the Court which Appellant rewrites in its brief as saying "that residents of Puerto Rico do not, as a general matter, pay federal income taxes." Appellant Br. 9.[11] This is not an insignificant typographical error, for in its

[11] We note that the Court in Harris did not include any qualifier and concluded curtly that "Puerto Rican residents do not contribute to the federal treasury." Harris, 446 U.S. at 652.

muted attempt to alter the Court's accepted rationales in Califano and Harris, Appellant instead highlights a fundamental misconception in its tax argument. In trying to restrict the language that the Court used in Califano and Harris (which indicates by the actual text "do not contribute" to the federal treasury) to the limited coverage Appellant proposes (which only includes income tax contributions), Appellant may have unwittingly pointed to a fatal link in its armor as regards this factor, one which is pierced by Appellee's argument pointing to the substantial contributions made by those who reside in Puerto Rico to the federal treasury.

The residents of Puerto Rico not only make substantial contributions to the federal treasury, but in fact have consistently made them in higher amounts than taxpayers in at least six states, as well as the territory of the Northern Mariana Islands.[12] From 1998 up until 2006, when Puerto Rico was hit by its present economic recession,[13] Puerto Rico consistently contributed more than $4 billion annually in federal taxes and impositions

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[12] It should be noted that the U.S. citizens who reside in Puerto Rico, despite contributing to the national fisc, have no voting representation in the federal government. See Igartúa v. Trump, 868 F.3d 24 (1st Cir. 2017) (en banc); Igartúa-de la Rosa v. United States, 417 F.3d 145 (1st Cir. 2005) (en banc).

[13] A not insubstantial case can be made, correlating Puerto Rico's current recession at least in part with the lack of equitable federal funding of social and health benefits programs available to other Americans. See Juan R. Torruella, Commentary, Why Puerto Rico Does Not Need Further Experimentation with Its Future: A Reply to the Notion of "Territorial Federalism", 131 Harv. L. Rev. F. 65, 91-92 (2018) (explaining how local government has been forced to cover the healthcare funding shortfalls under Medicare and Medicaid to provide even minimal health benefits).

into the national fisc. See Internal Revenue Service, SOI Tax Stats—Gross Collections, by Type of Tax and State—IRS Data Book Table 5, available at https://www.irs.gov/statistics/soi-tax-stats-gross-collections-by-type-of-tax-and-state-irs-data-book-table-5 (last visited April 9, 2020). This is more than taxpayers in several of the states contributed, including Vermont, Wyoming, South Dakota, North Dakota, Montana, and Alaska, as well as the Northern Mariana Islands. Id. Even since 2006 to the present, and notwithstanding monumental economic problems[14] aggravated by catastrophic Hurricane María[15] and serious ongoing earthquakes,[16] Puerto Ricans continue to pay substantial sums into the federal treasury through the IRS: $3,443,334,000 in 2018; $3,393,432,000 in 2017; $3,479,709,000 in 2016; . . . $4,036,334,000 in 1998. Id. Puerto Rico's contributions include the payment of federal income taxes by residents of Puerto Rico on income from sources outside Puerto Rico for which they are liable under the Internal Revenue Code, the regular payment of federal income taxes by all federal employees[17] in Puerto Rico, 26 U.S.C.

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[14] See Torruella, supra note 13, at 89; Laura Sullivan, How Puerto Rico's Debt Created a Perfect Storm Before the Storm, NPR (May 2, 2018, 7:10 AM), https://www.npr.org/2018/05/02/607032585/how-puerto-ricos-debt-created-a-perfect-storm-before-the-storm.

[15] See Puerto Rico; Major Disaster and Related Determinations, 82 Fed. Reg. 46,820 (Oct. 6, 2017).

[16] See Puerto Rico; Emergency and Related Determinations, 85 Fed. Reg. 6,965 (Feb. 6, 2020).

[17] I.R.S., Tax Topic No. 901, Is a Person with Income from Puerto Rico Required to File a U.S. Federal Income Tax Return?, available at https://www.irs.gov/taxtopics/tc901 ("if you're a bona fide resident of Puerto Rico and a U.S. government employee, you must file a U.S.

§ 933, as well as the full Social Security, Medicare, and Unemployment Compensation taxes that are paid in the rest of the United States, see 26 U.S.C. §§ 3101, 3111, 3121(e), 3301, 3306(j).[18] That in 2018 the IRS collected approximately $3,443,334,000 from Puerto Rico taxpayers clearly undermines the contention that Puerto Rico residents do not contribute to the federal treasury. There should be little doubt that, to the extent that there may have been a basis for it when Califano and Harris were decided, the argument that Puerto Rico's residents do not contribute to the federal treasury is no longer available.

Minding that Appellant has narrowed its argument to the non-payment of federal income tax, there is an additional powerful argument that undermines Appellant's position. Appellant claims that "[i]t is rational for Congress to limit the SSI program benefits, funded by general revenues, to exclude populations that generally do not pay federal income taxes." And "residents of Puerto Rico generally do not pay federal income tax[es]." No matter "that Congress could have drawn a connection between a particular State's contribution to the federal

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income tax return"). There are approximately 14,000 federal employees in Puerto Rico (as well as 9,550 retired federal employees), who are (or were) required to pay federal income taxes on local income. Adriana De Jesús Salamán, U.S. Employees in Puerto Rico and Territories Face Huge Pay Gap, Noticel (May 17, 2019, 10:37 AM), https://www.noticel.com/english/us-employees-inpuerto-rico-and-territories-face-huge-pay-gap/1078602168.

[18] Generally, federal employment taxes apply to residents of Puerto Rico on the same basis and for the same sources of income as to the residents of the states. See id.; Sean Lowry, Cong. Research Serv., R44651, Tax Policy and U.S. Territories: Overview and Issues for Congress 8-9 (2016).

treasury," Appellant posits, because the Constitution is not offended "simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality.'" Dandridge, 397 U.S. at 485 (quoting Lindsley v. Nat. Carbonic Gas Co., 220 U.S. 61, 78 (1911)). In response, Appellee argues that "the tax status of Puerto Rico . . . bears no relation to the exclusion of Puerto Rico residents from SSI under the program's own criteria." He points out that SSI eligibility is completely "divorced from individuals' tax payment history" and that "any individual with earnings low enough to qualify for SSI will not be paying federal income tax regardless of where they reside." In addition, SSI is a national program distributed according to a uniform federal schedule, funded by appropriations that are not earmarked by state or territory, and disbursed regardless of an individual's historical residence.

Appellant asks us to turn to Dandridge, where the Supreme Court upheld Maryland's adoption of a "maximum grant regulation" whereby it limited the amount of AFDC aid any one family unit could receive, resulting in a "reduc[tion of] the per capita benefits to the children in the largest families." Id. at 477, 487. The Court accepted the following rationalizations:

> It is enough that a solid foundation for the regulation can be found in the State's legitimate interest in encouraging employment and in avoiding discrimination between welfare families and the families of the working poor. By combining a limit on the recipient's grant with permission to retain money earned, without reduction in the amount of the grant, Maryland provides an incentive to seek gainful employment. And by keying the maximum family AFDC

> grants to the minimum wage a steadily employed head of a household receives, the State maintains some semblance of an equitable balance between families on welfare and those supported by an employed breadwinner.

Id. at 486 (footnote omitted).[19] The Court conceded that there might be some instances where the incentive to seek gainful employment would not function perfectly, "[b]ut the Equal Protection Clause [did] not require that a State . . . choose between attacking every aspect of a problem or not attacking the problem at all," the problem presumably being how to incentivize recipients of AFDC to seek gainful employment. Id. at 486-87 (citing Lindsley, 220 U.S. 61). Putting Dandridge's holding in context, it becomes less clear that it supports Appellant's position—that Congress's decision to exempt Puerto Rico residents from paying income taxes on income derived from sources within Puerto Rico (except when that source is employment by the federal government), see 26 U.S.C. § 933, justifies the categorical exclusion of low income, poorly resourced elderly, disabled, and blind individuals residing in Puerto Rico. Construing the Appellant's argument in the terms of Dandridge, it would seem that the legitimate interest the government is furthering by excluding from SSI a class of individuals whose local income is "generally" exempted from federal income taxes (but who could only be earning less than prescribed by SSI's income limits) is that SSI recipients should be financing

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[19] The Court did not address Maryland's two additional arguments for its maximum grant regulations: to provide incentives for family planning and to allocate available public funds to meet the needs of the largest possible number of families. Id. at 484, 486.

their own benefits. This makes little sense in the context of SSI, a program of last resort. See 42 U.S.C. § 1382(e)(2) (requiring those seeking SSI to apply for every other source of income to which they may be entitled).

We are unaware of, and Appellant fails to point to, any instance where the government has justified the exclusion of a class of people from welfare payments (which are untied to income tax receipts) because they do not pay federal income tax. Cf. Zobel v. Williams, 457 U.S. 55, 63 (1982) ("Appellants' reasoning would . . . permit the State to apportion all benefits and services according to the past tax [or intangible] contributions of its citizens. The Equal Protection Clause prohibits such an apportionment of state services." (emphasis in original) (quoting Shapiro v. Thompson, 394 U.S. 618, 632-33 (1969))).[20] As recognized by the Court in Shapiro, the sort of welfare benefits at issue here are distinguishable from federal insurance programs, like Social Security Disability Insurance, which "may legitimately tie the amount of benefits [awarded] to the individual's contributions." 394 U.S. at 633 n.10.[21] See H.R. Rep. No.

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[20] Explicitly applying rationality review, the Court in Zobel invalidated a government scheme distributing monetary benefits which were based on the length of residency in the state, rejecting as impermissible the state's argument that the scheme was justified by "past contributions" to the state. Id. at 60-61, 63; see also id. at 71 (Brennan, J., concurring) ("[T]he relationship between residence and contribution to the State [is] so vague and insupportable, that it amounts to little more than a restatement of the criterion for the discrimination it purports to justify.").

[21] We cite Shapiro for this limited premise noting that we are acutely aware that the Court views the situation here differently from that in Shapiro, see Califano, 435 U.S. at 4-5, which dealt with

92-231, at 146-47 (1971) ("[C]ontributory social insurance should continue to be relied on as the basic means of replacing earnings that have been lost as a result of old age, disability, or blindness. But some people who because of age, disability, or blindness are not able to support themselves through work may receive relatively small social security benefits . . . [which] therefore, must be complemented by an effective assistance program."). However, because SSI is a means-tested program, by its very terms, only low-income individuals lacking in monetary resources are eligible for the program. For example, as pointed out by Amicus Resident Commissioner of Puerto Rico, to be eligible in fiscal year 2015, an individual could not make more than $733 of countable income a month, or $1100 in the case of a couple.[22] Consequently, any individual eligible for SSI benefits almost by definition earns too little to be paying federal income taxes.[23] Thus, the idea that one needs to earn their eligibility by the payment of federal income tax is antithetical to the entire premise of the program. How can it be rational for Congress to limit SSI benefits "to exclude populations that generally do not pay federal

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classifications that burdened the fundamental right to interstate travel. Shapiro, 394 U.S. at 629-30.

[22] See Amicus Curiae Hon. Jenniffer González Colón Br. 26 (citing William R. Morton, Cong. Research Serv., Cash Assistance for the Aged, Blind, and Disabled in Puerto Rico 11 (2016) [hereinafter CRS Report]). The calculation excludes the first $20 of any income, and the first $65 of earned income plus half of any labor earnings over $65. Id. The resource limit, which has not changed since 1989, is $2,000 for individuals and $3,000 for couples. 42 U.S.C. §§ 1382(a)(3)(A)-(B).

[23] At present, the standard deduction is $12,400 for single tax filers, I.R.C. §§ 63(c)(2)(C), 63(c)(7)(A)(ii), and it is higher for those who are blind and elderly, see id. §§ 63(c)(3), 63(f)(1)(A), 63(f)(2).

income taxes" when the very population those benefits target do not, as a general matter, pay federal income tax?

Appellee's arguments, as we understand them, are not restricted to the notion that the lines as drawn are "imperfect," that there will be some leakage, i.e., people who do not pay (or have not paid) federal income taxes receiving these benefits and others who do pay federal taxes that will be categorically denied,[24] but rather that a "sufficiently close nexus with underlying policy objectives to be used as the test for eligibility" is entirely lacking. Weinberger, 422 U.S. at 772, 784-85 (upholding a nine-month marriage requirement for eligibility to receive a deceased spouse's benefits as rationally related to the government's legitimate interest in combatting fraud). The problem with this categorical exclusion is not that it is drawn without "mathematical nicety," Moreno, 413 U.S. at 538 (citing Dandridge, 397 U.S. at 485), but "wholly without any rational basis," id.[25]

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[24] Nevertheless, the incongruity of Appellant's arguments becomes more patent when one considers that if a resident of Puerto Rico moves, say to New York, he or she becomes eligible to receive SSI benefits upon establishing residence in that state for thirty consecutive days, 42 U.S.C. § 1382, yet Appellee, who presumably was required to pay federal income taxes during his quarter century residency in New York, loses his SSI benefits solely because he moves to Puerto Rico.

[25] While Appellant decries any reliance on Moreno because it predates Califano and Harris, as we have explained, the Court in those latter cases was not tasked with reviewing on equal protection grounds the rationality of excluding otherwise eligible Puerto Rico residents from SSI.

**2.**

Having found the tax status argument irrational and arbitrary, we thus come to Appellant's remaining argument: the claim that the cost of including Puerto Rico residents in the SSI program is a rational basis for their exclusion.

As Appellant posits and we accept, "Congress has wide latitude to create classifications that allocate non-contractual benefits under a social welfare program," Califano v. Goldfarb, 430 U.S. 199, 210 (1977), and "protecting the fiscal integrity of Government programs, and of the Government as a whole, 'is a legitimate concern of the State,'" Lyng v. Int'l Union, United Auto., Aerospace & Agr. Implement Workers of Am., UAW, 485 U.S. 360, 373 (1988) (quoting Ohio Bureau of Emp't. Servs. v. Hodory, 431 U.S. 471, 493 (1977)). In Lyng, the Court upheld an amendment to the Food Stamp Act which barred households from becoming eligible for food stamps if a member of the household was on strike and prevented an increase in food stamps because the striker's income had decreased. Id. The government presented three objectives served by the challenged statute, and the Court focused primarily on Congress's "concern that the food stamp program was being used to provide one-sided support for labor strikes," which had "damaged the program's public integrity." Id. at 371 (first citing then quoting S. Rep. No. 97-139, p. 62 (1981)). The Court noted "Congress' considered efforts" to achieve its stated goal of maintaining neutrality in private labor disputes as evidenced by tailoring the statute to not strip eligibility from those who were previously eligible for food stamps and who refused to accept employment on account of a strike. Id. at 372.

Only after finding the statute rational did the Court address the question of cost-saving for the federal government, qualifying its analysis that "Congress can[not] pursue the objective of saving money by discriminating against individuals or groups." Id. at 373; see also Hodory, 431 U.S. at 493 ("We need not consider whether it would be 'rational' for the State to protect the fund through a random means, such as elimination from coverage of all persons with an odd number of letters in their surnames. Here, the limitation of liability tracks the reasons found rational above, and the need for such limitation unquestionably provides the legitimate state interest required by the equal protection equation.").

We respect that "[f]iscal considerations may compel certain difficult choices in order to improve the protection afforded to the entire benefited class." Lyng, 485 U.S. at 373 (quoting Harris v. McRae, 448 U.S. 297, 355 (1980) (Stevens, J., dissenting)). And that when coupled with a classification rationally drawn to further some constitutionally permissible state interest, cost-savings are certainly allowed to play into the legislature's calculations, and we are not in a position to second-guess those decisions. See Bowen v. Gillard, 483 U.S. 587, 599 (1987) (finding the AFDC amendment served Congress's goal of decreasing federal expenditures and distributing benefits fairly through "identif[ication of] a group that would suffer less than others as a result of a reduction in benefits"). Cf. Shapiro, 394 U.S. at 633 (explaining that while fiscal integrity is a valid state interest, a state "may not accomplish such a

purpose by . . . reduc[ing] expenditures for education by barring indigent children from its schools").[26]

In response to Appellee's argument that if costs alone justify exclusion then "Congress could arbitrarily exclude the residents of any State or municipality to reduce cost," Appellant concedes "there may be other constraints, legal or political, on Congress's ability to enact a statute excluding residents of a particular State from a benefits program [but] that does not mean that cost to the public fisc is not itself a rational consideration." What Appellant plainly fails to grapple with is that cost alone does not support differentiating individuals. If it did, how would Congress be able to decide upon whom to bestow benefits? Presumably along the lines of its legislative priorities which, at a minimum, must be supported by some conceivable rational explanation. The circularity of this logic defeats itself.

The contention that decisions based on fiscal considerations that "improve the protection afforded to the entire benefitted class" and thus should be subject to deference is inapplicable to the situation before us, where an entire segment of the would-be benefitted class is excluded. Lyng, 485 U.S. at 373. See Jefferson, 406 U.S. at 549 (finding that the state did not violate equal protection when it reduced funding for AFDC compared to other categorical assistance programs because it was "not irrational for the [s]tate to believe that the young are more adaptable than the sick and elderly" with better prospects for improving their lot). Even in Jefferson the Court recognized some legitimate state priority

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[26] A reminder that according to the Court, just like Puerto Rico residency, indigency does not warrant any form of heightened review. See McRae, 448 U.S. at 323.

other than minding the public fisc. Id. In fact, this contention begs the question of how Congress, supposedly aiming for fiscal integrity, has chosen to protect the poor elderly, blind, and disabled residents of Puerto Rico, and we turn our attention briefly to the Aid to the Aged, Blind, and Disabled (AABD) program, 42 U.S.C. §§ 1381 note - 1385 note (Provisions applicable to Puerto Rico, Guam, and the Virgin Islands), operating in Puerto Rico.

After Congress enacted the Social Security Act Amendments of 1950, Puerto Rico submitted state plans to participate in programs for Old-Age Assistance, Aid to the Blind, and Aid to the Permanently and Totally Disabled, which were consolidated into AABD in 1963. See CRS Report, supra at 14-15. Passed in its current form in 1972, SSI replaced these adult assistance programs in the states and Washington, D.C.; however, its predecessor AABD continues to operate in Puerto Rico. Id. at 15; see Social Security Amendments of 1972, Pub. L. No. 92-603, § 301, 86 Stat. 1329, 1465 (1972). AABD is financed by a capped categorical matching grant whereby the federal government contributes 75 percent and the territorial government contributes 25 percent; administrative costs are split 50/50. CRS Report, supra at 12. Like SSI, federal funds for AABD flow (or maybe more accurately trickle) from the general fund of the U.S. treasury. Id. During fiscal year 2011, the average AABD monthly payment was $73.85, compared to SSI payments of $438.05 in the fifty states and the District of Columbia and $525.69 in the Northern Mariana Islands. Id. at 21. In fiscal year 2011, 34,401 individuals in Puerto Rico were enrolled in the AABD program. Id. The Government Accountability Office has predicted that, had Puerto Rico been extended SSI at

that time, 305,000 to 354,000 eligible Puerto Rico residents would have received SSI. See U.S. Gov't Accountability Off., GAO-14-31, Puerto Rico: Information on How Statehood Would Potentially Affect Selected Federal Programs and Revenue Sources 82 (2014).[27] While the disparity in the benefits received by the poor elderly, disabled, and blind in Puerto Rico compared to similarly situated individuals residing elsewhere in the United States speaks for itself, it is worth pointing out that the funds supporting AABD are also paid out of by the federal treasury.

Therefore, while we respect the legislature's authority to make even unwise decisions to purportedly protect the fiscal integrity of SSI and the federal government itself, the Fifth Amendment does not permit the arbitrary treatment of individuals who would otherwise qualify for SSI but for their residency in Puerto Rico (those plausibly considered least able to "bear the hardships of an inadequate standard of living"). Jefferson, 406 U.S. at 549. See Carolene Prods. Co., 304 U.S. at 152 n.4 (noting that "prejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry"). Even under rational basis review, the cost of including Puerto Rico's elderly, disabled, and blind in SSI cannot by itself justify their exclusion.

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[27] While the categorical requirements for age, blindness, and disability are almost identical between the two programs, the income limit to qualify for AABD is substantially lower. CRS Report, supra at 11.

**3.**

Finally, while the inclusion of the Northern Mariana Islands in the SSI program does not standing alone render the discriminatory treatment of Appellee per se irrational, see Baker, 916 F.2d at 747, the fact that Congress extended SSI benefits to the residents of the Northern Mariana Islands as part of the Islands' covenant to enter the United States undercuts the Appellant's only offered explanations for the exclusion. Aside from where they live, the otherwise SSI-qualifying residents of Puerto Rico and of the Northern Mariana Islands have the legally-relevant characteristics in common, i.e., they are (1) low-income and low-resourced, (2) elderly, disabled, or blind, and (3) generally exempted from paying federal income tax.[28] These shared traits undermine Appellant's already weakened arguments.

In addition, as to Appellant's contention that the inclusion of Northern Mariana Islands residents in the SSI program "pre-dated both Califano and Harris, and in neither case did the Supreme Court suggest that it undermined Congress's rationality," we refer to our earlier point regarding the limited holding of those cases. In neither case was the inclusion of Northern Mariana Islands residents in the SSI program brought to the Court's attention; it went unmentioned and would have been irrelevant to the district court opinions in Califano (holding that the exclusion from SSI violated the plaintiff's right to travel) and in Harris (finding that the less

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[28] We note that unlike residents of Puerto Rico, who are required to pay federal taxes on all income earned outside of Puerto Rico, the Northern Mariana Islands government retains all taxes paid by its bona fide residents regardless of the income source. See 26 U.S.C. § 931(a); Lowry, supra note 16, at 23.

favorable reimbursement formula and ceiling for AFDC violated the plaintiffs' equal protection rights).

Finally, Appellant declares that "[t]here is no 'equal footing doctrine'" in an effort to negate any comparison of Puerto Rico residents to those living in Northern Mariana Islands. But its citations belie the validity of its arguments given the present situation. For example, Appellant cites Palmore v. United States, 411 U.S. 389, 402-03 (1973), for the proposition that "Congress may legislate differently for the territories than for the states, and differently for one territory than for another." But the reference is inapt: in upholding a defendant's conviction decided by a Congressionally-created non-Article III court in the District of Columbia, the Court in Palmore did not opine on Congress's disparate treatment of territorial residents. Rather, the Supreme Court examined only "the question of whether Palmore was entitled to be tried by a court ordained and established in accordance with" Article III. Palmore, 411 U.S. at 396-97. The Court held that the Constitution did not foreclose Palmore's trial before a non-Article III judge because Article III's requirements apply "where law of national applicability and affairs of national concern are at stake." Id. at 408. To that end, "neither th[e] [Supreme] Court nor Congress has read the Constitution as requiring every federal question arising under federal law, or even every criminal prosecution for violating an Act of Congress, to be tried in an Art. III court," so Congress was permitted to "create[] a wholly separate court system designed primarily to concern itself with local law and to serve as a local court system. . . . " Id. at 407-08. Palmore therefore stands for the proposition that non-Article III territorial courts have historically, and permissibly, "tried

criminal cases arising under the general laws of Congress, as well as those brought under territorial laws." Id. at 403. We think it important to note that the effect of the Court's holding was to render the Palmore defendant's "position . . . similar to that of the citizen of any of the 50 States when charged with violation of a state criminal law: Neither has a federal constitutional right to be tried before judges with tenure and salary guarantees." Id. at 390-91 (emphasis added).

We therefore decline to read Palmore's holding so broadly as to permit Congress to sidestep the Fifth Amendment when it legislates for a territory. Article III did not obstruct Congress's power to create—under its Article I, section 8, clause 17 authority—the local court system that convicted Palmore. By contrast, Appellant points us to no authority suggesting that the Fifth Amendment's equal protection guarantees should likewise stand aside in this case. So, for the reasons explained throughout this opinion, we hold that the Fifth Amendment forbids the arbitrary denial of SSI benefits to residents of Puerto Rico.

The relevance of Appellant's citation to Tuaua v. United States is similarly flawed. 788 F.3d 300, 310 (D.C. Cir. 2015) (declining to forcibly impose birthright citizenship over the opposition of American Samoa's majoritarian will reflected in its democratically-elected government because it would be "impractical and anomalous at a fundamental level"). The D.C. Circuit clarified that its holding was restricted to the controversy before it where the territorial government had intervened in the lawsuit against birthright citizenship. Id. at 310 n.10. The D.C. Circuit "h[e]ld it anomalous to impose citizenship over the objections of the American

Samoan people themselves, as expressed through their democratically elected representatives." Id. at 310. This case presents no such anomaly. Cf. Commonwealth of Puerto Rico Amicus Br. (arguing unequivocally that SSI should be extended to Puerto Rico residents).

## III. Conclusion

The categorical exclusion of otherwise eligible Puerto Rico residents from SSI is not rationally related to a legitimate government interest. In addition to the record established by the parties, we have considered even conceivable theoretical reasons for the differential treatment conceded by the government. Having found no set of facts, nor Appellant having alleged any additional theory, establishing a rational basis for the exclusion of Puerto Rico residents from SSI coverage, such exclusion of the residents of Puerto Rico is declared invalid. For the foregoing reasons, we affirm the district court's grant of Appellee's motion for summary judgment and the denial of the United States' cross motion for summary judgment.

**Affirmed.**

**APPENDIX B**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

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Case No. 17-2133 (GAG)

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

JOSE LUIS VAELLO-MADERO, DEFENDANT

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Filed: Feb. 4, 2019

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**OPINION AND ORDER**

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Article IV of the Constitution confers upon Congress the power to enact all needful rules and regulations for governing territories of the United States. This clause, however, is not *carte blanche* for Congress to switch on and off at its convenience the fundamental constitutional rights to Due Process and Equal Protection enjoyed by a birthright United States citizen who relocates from a State to Puerto Rico. Congress, likewise, cannot demean and brand said United States citizen while in Puerto Rico with a stigma of inferior citizenship to that of his brethren nationwide. To hold otherwise would run afoul of the sacrosanct principle embodied in the Declaration of Independence that "All Men are Created Equal".

Pending before the Court are defendant Jose Luis Vaello-Madero and plaintiff United States' motions for Summary Judgment. (Docket Nos. 57, 59). Vaello

Madero contends he is not required to return the payments he received in Social Security Income ("SSI") disability benefits upon changing his domicile to Puerto Rico since excluding a United States citizen residing in the territory from receiving the same runs afoul of the equal protection guarantees of the Due Process Clause. In turn, the United States posits that limiting SSI eligibility to residents of the fifty states and the District of Columbia is constitutionally permissible. Based on the foregoing analysis, Vaello-Madero's Motion for Summary Judgment is **GRANTED** and the United States' Cross-Motion for Summary Judgment is **DENIED**.

## I. Relevant Factual and Procedural Background

The facts of this case are undisputed and have been jointly proposed by both parties. (Docket No. 51 at pages 2-4).

Vaello-Madero resided in New York between 1985-2013. While there, he received SSI disability benefits, which were deposited into his New York bank account. In July 2013, he moved to Puerto Rico, and continued to receive SSI disability payments in his New York bank account until August 2016. Vaello-Madero was unaware that his relocation would affect his SSI disability entitlement.

Vaello-Madero learned he was ineligible for SSI payments in June 2016. Via two notices that summer, the Social Security Administration ("SSA") stopped its SSI payments, and retroactively reduced said payments to $0 for August 2013 through August 2016. The notices informed Vaello-Madero that the SSA could contact him "about any payments we previously made," but did not

inform him that he would have to return the amount of benefits collected while in Puerto Rico.

On August 25, 2017, the United States commenced the current civil action against Vaello-Madero to collect $28,081.00 in overpaid SSI benefits received following his relocation from United States mainland to territory. Surprisingly, the United States moved for voluntary dismissal of its claims against Vaello-Madero claiming lack of jurisdiction under 42 U.S.C. § 408(a)(4), on the ground that the SSA's administrative requirements had not been met. (Docket No. 23). Vaello-Madero filed an opposition to the voluntary dismissal arguing that the dismissal "raises the prospect that the United States might be trying to abandon its chosen forum in response to what it might perceive as a serious setback." (Docket No. 25 at 12). The Court agreed with Vaello-Madero, finding that since the United States brought suit, the Court had "broad jurisdictional power" to entertain the same. (Docket No. 36 at 3). United States v. Vaello-Madero, 313 F. Supp. 3d 370 (D.P.R. 2018).

In support of his motion for summary judgment, Vaello-Madero argues that the Social Security Act's exclusion of Puerto Rico from the SSI benefits program under section 1382c(e) thereof violates the equal protection guarantees of the Due Process Clause. The United States argues, in turn, that Congress' determinations as to eligibility requirements for government benefits hold a strong presumption of constitutionality. Furthermore, the United States claims that Congress' authority under the Territorial Clause enables it to pass economic and social welfare legislation for the territories where there is a rational basis for such actions.

Oral arguments were held on December 20, 2018 at the Luis A. Ferré Courthouse in Ponce, Puerto Rico. (Docket No. 88). Besides the parties, the Commonwealth, as well as the sole representative in Congress from Puerto Rico, Jenniffer González, as *amici curiae*, participated.

Because the salient facts are not in controversy, and the issue at bar rather is entirely a legal-constitutional one, the Court shall directly proceed to address its merits.

**II. Analysis**

Today's ruling will not delve into the complex constitutional issues of Puerto Rico as a territory of the United States for the past 120 years. Instead, the Court's analysis will focus exclusively on Vaello-Madero's defense regarding the constitutionality of the restitution sought by the government.

A. Social Security Act and Supplemental Disability Benefits

The SSI program was created to aid the Nation's aged, blind, and disabled persons who qualify due to proven economic need. 42 U.S.C. § 1382. Unlike Social Security and Medicare, individuals do not contribute toward the SSI program.[1] In order to be eligible for the SSI program an individual must reside in the "United States," id. at § 1382(f), which, in turn, is defined as the 50 States and the District of Columbia. Id.

[1] United States citizens in Puerto Rico contribute equally to Social Security and Medicare as do United States citizens in the States and District of Columbia.

at § 1382c(e).[2] Since Puerto Rico is not included in the aforesaid definition, a United States citizen such as Vaello-Madero is automatically excluded from the SSI program. The United States justifies this exclusion under Congress' plenary powers under the Territorial Clause. Further, it asserts that the denial of SSI disability payments to United States citizens in Puerto Rico does not violate the Fifth Amendment's equal protection guarantee under a deferential rational basis review standard.

B. The Territorial Clause

The Territorial Clause is not a blank check for the federal government to dictate when and where the Constitution applies to its citizens. "The Constitution grants Congress and the President the power to acquire, dispose of, and govern territory, not the power to decide when and where its terms apply." Boumediene v. Bush, 553 U.S. 723, 765 (2008). "Even when the United States acts outside its borders, its powers are not 'absolute and unlimited' but are subject 'to such restrictions as are expressed in the Constitution.'" Boumediene, 533 U.S. at 765 (citing Murphy v. Ramsey, 114, U.S. 15, 44 (1885)).

Congress indeed possesses a wide latitude of powers to effectively govern its territories. However, "[a]bstaining from questions involving formal sovereignty

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[2] Notwithstanding, the United States acknowledges that Congress made SSI program benefits available to residents of the Commonwealth of the Northern Mariana Islands by virtue of a joint resolution in 1976. See Pub. L. No. 94-241, § 502(a)(1), 90 Stat. 263, 268 (1976) (codified at 48 U.S.C. § 1801 note, and implemented by 20 C.F.R. § 416.120(c)(10)).

and territorial governance is one thing. To hold the political branches have the power to switch the Constitution on or off at will is quite another." Boumediene, 533 at 765. This "would permit a striking anomaly in our tripartite system of government, leading to a regime in which Congress and the President, not [the judicial branch], say what the law is." Boumediene, 533 at 765 (citing Marbury v. Madison 5 U.S. 137, 177 (1803)). The authority to treat the territory of Puerto Rico itself unlike the States does not stretch as far as to permit the abrogation of fundamental constitutional protections to United States citizens as Congress sees fit.

The powers granted under the Constitution are not infinite. "The power the Constitution grants it also restrains. And though Congress has great authority to design laws to fit its own conception of sound national policy, it cannot deny the liberty protected by the Due Process Clause of the Fifth Amendment." United States v. Windsor, 570 U.S. 744, 774 (2013). Thus, the broad power granted under the Territorial Clause does not allow Congress to eradicate the sacrosanct fundamental constitutional protections afforded to United States citizens residing in the States and Puerto Rico.

C. Equal Protection Guarantee of the Fifth Amendment

The Fifth Amendment's Due Process Clause assures that the same equal protection principles of the Fourteenth Amendment generally constrain the federal government, even though the Equal Protection Clause by its terms does not. Bolling v. Sharpe, 347 U.S. 497, 500 (1954). The United States argues that Congress may place restrictions on the eligibility "of persons residing in United States territories to receive payments under

the [SSI] program administered by the [SSA], and that such restrictions are consistent with equal protection principles".

In order for the Court to be persuaded by the United States' argument, it would have to sanction the proposition that Congress can disparately classify United States citizens residing in Puerto Rico, running counter to the very essence and fundamental guarantees of the Constitution itself. "The liberty protected by the Fifth Amendment's Due Process Clause contains within it the prohibition against denying to any person the equal protection of the laws." Windsor, 570 U.S. at 774.

"The Constitution's guarantee of equality 'must at the very least mean that a bare congressional desire to harm a politically unpopular group cannot' justify disparate treatment of that group." Windsor, 570 U.S. at 770 (citing Department of Agriculture v. Moreno, 413 U.S. 528, 534–535 (1973)). An allegation of disparate treatment of United States citizens residing in Puerto Rico requires that the court determine "whether [the] law is motived by an improper animus or purpose." Id. at 770. The Government's justification for excluding United States citizens residing in Puerto Rico from SSI benefits rests on Congress' authority to enact social and economic legislation. When a statute is reviewed under a rational basis lens, the challenger must prove that no plausible set of facts exists that could forge a rational relationship between the challenged rules and the government's legitimate goals. Romer v. Evans, 517 U.S. 620, 631 (1993).

In light of Windsor, the discriminatory statute at bar fails to pass rational basis constitutional muster.

United States citizens residing in Puerto Rico are deprived of receiving SSI benefits based solely on the fact that they live in a United States territory. Classifying a group of the Nation's poor and medically neediest United States citizens as "second tier" simply because they reside in Puerto Rico is by no means rational. An overwhelming percentage of the United States citizens residing in Puerto Rico are of Hispanic origin and are regarded as such despite their birthright United States citizenship.[3] Persons born in Puerto Rico have been United States citizens since 1917. This citizenship, was originally a statutory one.[4] However, in 1940, Congress recognized that those born in January 1941, and thereafter, enjoyed birthright citizenship.[5]

United States citizens residing in Puerto Rico are the very essence of a politically powerless group, with no Presidential nor Congressional vote, and with only a non-voting Resident Commissioner representing their interests in Congress. If a statute discriminates on the basis of a suspect classification, then it is subjected to a heightened scrutiny standard and must be invalidated unless it is "narrowly tailored to achieve a compelling government interest." Parents Involved in Community Schools v. Seattle School Dist. No. 1, 551 U.S. 701, 720 (2007). A *de facto* classification based on Hispanic origin is constitutionally impermissible. See Rice v.

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[3] Likewise, United States citizens in the other two territories that are excluded from the SSI program, Guam and the United States Virgin Islands, are mainly of Chamorro and afro-caribbean descent, respectively.

[4] Jones Act (Puerto Rico), Ch. 154, 39 Stat. 951 (1917).

[5] 8 U.S.C. § 1402.

Cayetano, 528 U.S. 495, 523 (2000) (holding that Congress cannot authorize classifications based on racial ancestry, and that "[r]ace cannot qualify some and disqualify others from full participation in our democracy").[6]

The Court need not explain why the SSI statutory exclusion also fails under a heightened scrutiny standard. It is obvious that the same is not narrowly tailored to achieve a "compelling government interest." Even so, the Court need not delve into a strict versus rational basis scrutiny analysis, as in accordance with Windsor, the denial of SSI disability benefits to United States citizens in Puerto Rico is unconstitutional as "a deprivation of the liberty of the person protected by the Fifth Amendment of the Constitution." Parents Involved in Community Schools 551 U.S. at 774. It is a violation of "basic due process" principles, as it inflicts an "injury and indignity" of a kind that denies "an essential part of the liberty protected by the Fifth Amendment." Id. at 769 and 768.

As in Windsor, 570 U.S. at 772, "[t]he principal purpose [of the statute] is to impose inequality, not for other reasons like governmental efficiency." The United States justifies the exclusion of Puerto Rico and argues that: (1) the cost of including Puerto Rico in the SSI program would be too high and that (2) Puerto Rico does not pay federal income tax which funds the SSI program. (Docket No. 59 at 1). Aside from the fact that the cost is minimal compared to the government's budget for such program, this is not a valid justification

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[6] While Rice v. Cayetano was decided by the Supreme Court on Fifteenth Amendment grounds, racial classifications are equally impermissible in the Equal Protection content, i.e., Brown v. Board of Education, 347 U.S. 483 (1954).

for creating classifications of United States citizens and justifying the same under the lax scrutiny of social and 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.[7]

The reasons for excluding SSI benefits to United States citizens in Puerto Rico are belied by the fact that United States citizens in the Commonwealth of the Northern Mariana Islands receive SSI disability benefits.[8] Additionally, aliens in the States, District of Columbia, and the Commonwealth of the Northern Mariana Islands may qualify for SSI benefits. In fact, in 2017, 6% of all SSI beneficiaries were noncitizens. SSI Annual Statistical Report, 2017, https://www.ssa.gov/policy/docs/statcomps/ssi_asr/2017/sect05.pdf. In 1995, this percentage was as high as 12.1% which represented a total of 785,410 beneficiaries." Id. This number is exponentially higher than that of United States citizens in Puerto Rico who would be eligible for SSI benefits.[9]

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[7] The United States relies on the pre Boumediene and Windsor cases of Califano v. Torres, 435 U.S. 1 (1978) and Harris v. Rosario, 446 U.S. 651 (1980). This Court, however, cannot simply bind itself to the legal *status quo* of 1980, and ignore important subsequent developments in the constitutional landscape. If so, cases like Plessy, Baker v. Nelson and Korematsu would still be good law.

[8] Although the inclusion of United States citizens residing in the Commonwealth of the Northern Mariana Islands came subsequent to the enactment of the SSI program, this fact nonetheless evidences that Congress, in fact, has recognized the importance of extending the program to United States citizens in the territories.

[9] The United States in its supplemental brief (Docket No. 96) notes that unlike United States citizens residing in Puerto Rico, resident aliens are subject to federal income tax. This misses the point. A

It is the Government's role to protect the fundamental rights of all United States citizens. Fundamental rights are the same in the States as in the Territories, without distinction. Equal Protection and Due Process are fundamental rights afforded to every United States citizen, including those who under the United States flag make Puerto Rico their home. Examining Bd. of Engineers, Architects, & Surveyors v. Flores de Otero, 426 U.S. 572 (1976). As such, federal legislation that creates a citizenship apartheid based on historical and social ethnicity within United States soil goes against this very concept. It is in the Court's responsibility to protect these rights if the other branches do not. Allowing a United States citizen in Puerto Rico that is poor and disabled to be denied SSI disability payments creates an impermissible second rate citizenship akin to that premised on race and amounts to Congress switching off the Constitution. All United States citizens must trust that their fundamental constitutional rights will be safeguarded everywhere within the Nation, be in a State or Territory.[10]

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significant percentage of United States citizens in Puerto Rico—contrary to popular belief—must pay federal taxes. However, when it comes to SSI, neither group in reality contributes to the federal treasury due to the fact that its beneficiaries are poor and needy.

[10] To hold otherwise would permit constitutionally absurd and anomalous results in Puerto Rico. For example, a statute analogous to the Defense of Marriage Act, held to be unconstitutional in Windsor, could still apply in Puerto Rico if premised on territorial, socio-economic grounds. Thus, same sex spouses who move to Puerto Rico, would not be entitled here to dependent Social Security, veterans, or other federal benefits and entitlements.

**III. Conclusion**

For the reasons stated above, the Court **GRANTS** Vaello-Madero's Motion for Summary Judgment (Docket No. 57) and **DENIES** the government's Cross-Motion for Summary Judgment (Docket No. 59). Judgment shall be entered accordingly.

**SO ORDERED.**

In San Juan, Puerto Rico this 4th day of February, 2019.

/s/ GUSTAVO A. GELPÍ
GUSTAVO A. GELPI
United States District Judge

**APPENDIX C**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

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Case No. 17-2133 (GAG)

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

JOSE LUIS VAELLO-MADERO, DEFENDANT

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Filed: May 14, 2018

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**OPINION AND ORDER**

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The United States moves for voluntary dismissal of its claims against José Luis Vaello-Madero arising from erroneous and in excess payments under the Supplemental Security Income (SSI) program. (Docket No. 23). For the reasons discussed below, the United States' motion is **DENIED**.

**I. Relevant Factual Background**

The following facts are taken from the record and parties' submissions, and are only considered as true for purposes of this motion:

Vaello-Madero lived in New York between 1985-2013. There, he received SSI disability benefits, which were deposited into his New York bank account. (Docket No. 25 ¶¶ 6-8). In July 2013, he moved to Puerto Rico, and continued receiving SSI disability payments through his New York bank account until August 2016. Id.

¶¶ 9, 13. Throughout this time, he was unaware that his relocation would affect his ability to receive SSI disability benefits. Id. ¶ 12.

Vaello-Madero learned he was ineligible for SSI payments in June 2016. Id. ¶ 11. Through two notices that summer, the Social Security Administration (SSA) stopped its SSI payments and retroactively reduced its payments from August 2013 through August 2016 to $0. (Docket Nos. 32-1 at 2; 25 at 4). Those two notices did not inform Vaello-Madero that he was liable for any overpayments, but stated that the SSA could contact him in the future "about any payments we previously made." (Docket Nos. 32-1 at 2; 25 at 4). More than a year later, the United States commenced an action against Vaello-Madero to collect $28,081.00 in overpaid SSI benefits after he moved to Puerto Rico. Jurisdiction was premised on 28 U.S.C. § 1345 and 42 U.S.C. § 408(a)(4). (Docket No. 1 at 1-2).

The United States and Vaello-Madero, unrepresented by counsel, signed a stipulation for consent judgment less than a week after this case was filed. (Docket No. 3). Nevertheless, represented by Court-appointed pro bono counsel, Vaello-Madero subsequently moved to withdraw the stipulation for consent judgment. (Docket Nos. 5; 19). Vaello-Madero then filed an answer challenging 42 U.S.C. § 408(a)(4), a criminal statute, as a basis for the civil action and attacking the constitutionality of denying SSI benefits to residents of Puerto Rico. (Docket No. 17). In response, the United States moved for voluntary dismissal without prejudice, acknowledging its lack of jurisdiction under 42 U.S.C. § 408(a)(4) and alleging that the Social Security Act's administrative requirements have not been met. (Docket No. 23).

## II. Discussion

The United States moves to dismiss without prejudice its claims against Vaello-Madero under Rule 41(a)(2) of the Federal Rules of Civil Procedure. This rule states that "an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper." FED. R. CIV. P. 41(a)(2). The United States argues that it made a mistake pleading jurisdiction, and the Court lacks jurisdiction over this case because Vaello-Madero did not exhaust administrative remedies under 42 U.S.C. § 405(g). Vaello-Madero counters that 28 U.S.C. § 1345 confers jurisdiction and that dismissal without prejudice would be unfair. The Court agrees with Vaello-Madero.

### A. Subject-Matter Jurisdiction under 28 U.S.C. § 1345

Section 1345 grants the district courts "original jurisdiction of all civil actions, suits or proceedings *commenced by the United States*," unless an act of Congress provides otherwise. 28 U.S.C. § 1345 (emphasis added). It "grants broad jurisdictional power to the district courts over suits when the United States is plaintiff," including actions to determine "the United States' right to obtain restitution of monies wrongfully paid from the public fisc." United States v. Lahey Clinic Hosp., Inc., 399 F.3d 1, 9, 12 (1st Cir. 2005), cert. denied, 546 U.S. 815 (2005). The Social Security Act's administrative review scheme under 42 U.S.C. § 405(g)-(h) does not defeat jurisdiction under section 1345 when the United States appears as plaintiff. The First Circuit has held that "these statutes do not purport to limit the government's ability to bring a claim . . . under a different grant of jurisdiction," like section 1345. Id. at 14.

Hence, "administrative remedies are not exclusive when the United States institutes suit." Id. at 16.

As in Lahey, here the United States sued Vaello-Madero for restitution. Thus, Vaello-Madero was not required to exhaust administrative remedies to bestow the Court with jurisdiction over this case and his affirmative defenses. As stated above, "administrative remedies are not exclusive when the United States institutes suit"; the United States can bring its claim "under a different grant of jurisdiction." Id. at 14, 16. Although not explicitly stated in the complaint, this claim arises "under common law theories of unjust enrichment and payment under mistake of fact," which provides a different grant of jurisdiction for purposes of section 1345. Id. at 3-4. In sum, all that matters here is that the United States brought suit, which "grants broad jurisdictional power" to the Court. Id. at 9. The Court has jurisdiction to address the merits of the United States' overpayment claim, and the constitutional challenge as an affirmative defense to Vaello-Madero's liability.

B. Unfair Treatment under Rule 41(a)(2)

Rule 41(a)(2) of the Federal Rules of Civil Procedure, governing voluntary dismissals, "protect[s] the nonmovant from unfair treatment . . . [which] can take numerous forms." Colon-Cabrera v. Esso Standard Oil Co. (Puerto Rico), 723 F.3d 82, 88 (1st Cir. 2013). Among many factors, the Court may "consider whether 'a party proposes to dismiss the case at a late stage of pretrial proceedings, or seeks to avoid an imminent adverse ruling.'" Id. (citing In re FEMA Trailer Formaldahyde Prods. Liab. Litig., 628 F.3d 157, 162 (5th Cir. 2010)). Moreover, "[a] plaintiff should not be permitted to force a defendant to incur substantial costs in

litigating an action, and then simply dismiss his own case and compel the defendant to litigate a wholly new proceeding." Id.

Dismissing this suit without prejudice would unfairly harm Vaello-Madero. It could burden him with more legal proceedings under the SSA's administrative scheme —potentially returning his case to where it is today, but months, maybe years, from now. Also, the case should not be dismissed considering the possibility that the United States merely "seeks to avoid an imminent adverse ruling" regarding the constitutional issue at stake. Id. (citing In re FEMA, 628 F.3d at 162).

The United States' legal capacity to discriminate against residents of Puerto Rico in healthcare and other federal programs, including SSI, stems from a brief per curiam Supreme Court opinion that recently "celebrated" its fortieth anniversary. See Califano v. Torres, 435 U.S. 1 (1978). This case and its sequel, Harris v. Rosario, permit Congress to discriminate in extending these benefits to Puerto Rico "so long as there is a rational basis for its actions." Harris v. Rosario, 446 U.S. 651 (1980). The rational basis for discrimination identified by the Court in Califano and Harris was that: "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." Harris, 446 U.S. at 652.

The Court does not need to dive deep into "the quagmire of Puerto Rican status litigation" to explain why an adverse ruling for the United States despite these precedents is possible. United States v. Lopez Andino, 831

F.2d 1164, 1172 (1st Cir. 1987) (Torruella, J., concurring). Such an adverse ruling, departing from precedent, would resemble how Plessy v. Ferguson was overturned in Brown v. Board of Education. 163 U.S. 537 (1896); 347 U.S. 483 (1954). Federal courts could find that the proposed "rational" reasons are actually "irrational," or opt to apply a heightened standard of scrutiny. While, of course, only the Supreme Court can leave Califano and Harris without effect, constitutional litigation must commence at the district court level and work its way up.

Recent developments concerning Puerto Rico, for example, increased awareness of its plight in the mainland after Hurricane María as well as national and local consensus against such disparate treatment, could further encourage the courts to revisit Califano and Harris. For starters, the proposition stated in Harris that "Puerto Rican residents do not contribute to the federal treasury" is erroneous. Harris, 446 U.S. at 652. True, "Puerto Rico residents generally are exempt from federal taxes on income from Puerto Rico sources." U.S. Gov't Accountability Off., GAO-14-31, Puerto Rico: Information on How Statehood Would Potentially Affect Selected Federal Programs and Revenue Sources 7 (2014). But as the Government Accountability Office states: "Puerto Rico's residents have access to many federal programs *and are subject to certain federal tax laws*." Id. at 2 (emphasis added). For example, residents of Puerto Rico pay federal payroll taxes to finance Social Security and Medicare, equally to their stateside brethren. See Consejo de Salud Playa de Ponce v. Rullán, 586 F. Supp. 2d 22, 38 (D.P.R. 2008). Regardless, "for some federal programs, Puerto Rico or its residents are subject to different requirements or funding rules

than are the states or their residents." U.S. Gov't Accountability Off., Puerto Rico, supra, at 2. Such is the case with SSI.

Scholar Arnold Leibowitz notes significant shortcomings in the Supreme Court's rational-basis review. For example, although Puerto Rico does not contribute to the federal treasury exactly as a state, "Congress has discriminated against citizens in the territories *regardless* of income tax payments." Arnold H. Leibowitz, Defining Status 30-31 (1989) (emphasis added). For example, in 1916, the Federal Aid Highway Act did not extend a matching-funds benefit to the Territory of Alaska, which paid federal taxes, but did to Hawaii, which also paid, and Puerto Rico, which did not. Id. at 31. Another inconsistency concerns the cost of extending equal welfare benefits to Puerto Rico. According to Leibowitz, this is a consideration "which no State citizen would be subjected to." Leibowitz, Defining Status, supra, at 31. Indeed, when has Congress considered the cost of a statute's application in a single state, enacted the statute, and refused to apply it for the citizens of that particular state? If Puerto Rico had been treated equally for purposes of SSI in 2011, federal spending for the program would have ranged from $1.5 billion to $1.8 billion. U.S. Gov't Accountability Off., Puerto Rico, supra, at 82. These are pennies in the bucket of a $3.8 trillion budget, especially when one considers that it would have improved the quality of life of up to 354,000 individuals. Id.

Hurricane María provides another reason why federal courts could revisit Harris and Califano. The hurricane blew away the mainland's lack of awareness regarding the inequality that United States citizens suffer

just for residing in Puerto Rico. As First Circuit Court of Appeals Judge Juan R. Torruella points out in the Harvard Law Review Forum, "[i]f there is a silver lining to be found within the catastrophic impact of Hurricane María on the Island of Puerto Rico, it is that the barrage of news generated by that unfortunate event has served to inform the rest of the nation that Puerto Rico is a 'part of the United States' and that its residents are 'citizens of the United States.'" Juan R. Torruella, Why Puerto Rico Does Not Need Further Experimentation with Its Future: A Reply to the Notion of "Territorial Federalism," 131 Harv. L. Rev. F. 65, 67 (2018). This newfound awareness could trigger juridical change as other American citizens learn of the limits imposed on their rights due to anachronistic historical and geographical quirks dating to precedents established by the same Supreme Court that decided Plessy.

The belief that the discriminatory duo of Califano and Harris should be revisited transcends local politics—an unusual circumstance. For example, Puerto Rico former Governor Pedro J. Rosselló argues against excluding United States citizens residing in Puerto Rico from equal treatment in federal programs like SSI. "This exclusion results in major curtailment of civil and socioeconomic rights of a discrete group of citizens, based solely and artificially on geographic residence." Pedro J. Rosselló, Foreword to Gustavo A. Gelpí, The Constitutional Evolution of Puerto Rico and Other U.S. Territories (1898-Present) 24 (2017). As a result, this exclusion deprives these citizens from "equal protection under the law for multiple socioeconomic programs, such as Medicaid, Supplemental Security Income Program, Aid to Families with dependent children, among others." Id.

Rosselló's predecessor, former Governor Rafael Hernández Colón, concurs. He criticizes Califano and Harris by stating that "one must understand that the rational criteria utilized by the U.S. Supreme Court—which allowed for discrimination in Califano and Harris—overlooked the racial premises permeating the Insular Cases." Rafael Hernández Colón, The Evolution of Democratic Governance under the Territorial Clause of the U.S. Constitution, 50 Suffolk U. L. Rev. 587, 606 (2017). The controversial Insular Cases, decided in the early 1900s, created the framework of incorporated and unincorporated territories, where the former are destined for statehood and the latter are not necessarily. Whatever pros and cons may have evolved from such framework, the fact remains that they were grounded on outdated premises. As former U.S. Attorney General Richard Thornburgh explains, "the 'alien race' of the inhabitants in the far-flung territories acquired from Spain . . . was pivotal to the reasoning behind the bold imperialist doctrine formulated by the Court." Richard Thornburgh, Puerto Rico's Future 47 (2007). Hence, as Justice Marshall denounced in Harris, "the present validity of those decisions is questionable." Harris, 446 U.S. at 653 (Marshall, J., dissenting).

Yet another former executive agrees that Puerto Rico's unequal treatment is at least part of the equation behind Puerto Rico's current fiscal and economic crisis. Former Governor Aníbal Acevedo Vilá denounces that, "Congress sometimes excludes Puerto Rico from laws that would benefit it, while also denying the same level of funding that the fifty states get to enjoy with regards to their specific financial situations or to fund federally-mandated programs." Aníbal Acevedo Vilá, With Plenary Powers Comes Plenary Responsibility: Puerto

Rico's Economic and Fiscal Crisis and the United States, Rev. Jur. UPR 729, 742 (2016). Hence, three governors with different views regarding Puerto Rico's ultimate political status all coincide as to the injustice sanctioned by Califano and Harris. Their collective experience of twenty-four years indeed carries significant weight.

Califano and Harris, and the ensuing forty years of discrimination upheld under rational-basis review, may be ripe for reconsideration. "Bureaucratic inertia, combined with the powerlessness and distance of the territories" has given this discriminatory treatment a lifespan that approaches Plessy's. Leibowitz, Defining Status, supra, at 31. But the reality is that these cases were decided "without benefit of briefing or argument," as Justice Marshall warned, or worse, without even the benefit of the government of Puerto Rico participating in the case and being heard. Harris, 446 U.S. at 654 (Marshall, J., dissenting). Circumstances surrounding Puerto Rico have changed. There is increased national awareness of its existence and political consensus against its disparate treatment. As a result, federal courts could now conclude that heightened scrutiny is "a proposition [that] surely warrants [their] full attention," potentially leading to an adverse result for the United States. Id.; see also Hernández-Colón, The Evolution, supra, at 606 ("Elemental principles of fairness and equal protection demand that such distinctions drawn by Congress in the application of federal programs to Puerto Rico and other nonstate areas should be subject to strict scrutiny.").

Hence, the Court agrees with Vaello-Madero that the United States' voluntary dismissal "raises the prospect

that the United States might be trying to abandon its chosen forum in response to what it might perceive as a serious setback." (Docket No. 25 at 12). The Court will not allow the United States to avoid judicial review of an unsympathetic topic using jurisdictional pretexts. Therefore, the United States' motion for voluntary dismissal at Docket No. 23 is **DENIED**.

**SO ORDERED.**

In San Juan, Puerto Rico this 14th day of May, 2018.

/s/ GUSTAVO A. GELPÍ
GUSTAVO A. GELPI
United States District Judge

## APPENDIX D

1. 42 U.S.C. 1381a provides:

**Basic entitlement to benefits**

Every aged, blind, or disabled individual who is determined under part A of this subchapter to be eligible on the basis of his income and resources shall, in accordance with and subject to the provisions of this subchapter, be paid benefits by the Commissioner of Social Security.

2. 42 U.S.C. 1382(f)(1) provides:

**Eligibility for benefits**

**(f) Individuals outside United States; determination of status**

(1) Notwithstanding any other provision of this subchapter, no individual (other than a child described in section 1382c(a)(1)(B)(ii) of this title) shall be considered an eligible individual for purposes of this subchapter for any month during all of which such individual is outside the United States (and no person shall be considered the eligible spouse of an individual for purposes of this subchapter with respect to any month during all of which such person is outside the United States). For purposes of the preceding sentence, after an individual has been outside the United States for any period of 30 consecutive days, he shall be treated as remaining outside the United States until he has been in the United States for a period of 30 consecutive days.

3. 42 U.S.C. 1382c provides in pertinent part:

**Definitions**

(a)(1) For purposes of this subchapter, the term "aged, blind, or disabled individual" means an individual who—

(A) is 65 years of age or older, is blind (as determined under paragraph (2)), or is disabled (as determined under paragraph (3)), and

(B)(i) is a resident of the United States, and is either (I) a citizen or (II) an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law (including any alien who is lawfully present in the United States as a result of the application of the provisions of section 1182(d)(5) of title 8), or

(ii) is a child who is a citizen of the United States, and who is living with a parent of the child who is a member of the Armed Forces of the United States assigned to permanent duty ashore outside the United States.

* * * * *

(e) For purposes of this subchapter, the term "United States", when used in a geographical sense, means the 50 States and the District of Columbia.

* * * * *

4. 48 U.S.C. 1801 provides:

**Approval of Covenant to Establish a Commonwealth of the Northern Mariana Islands**

The Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, the text of which is as follows, is hereby approved.

5. 48 U.S.C. 1801 note provides in pertinent part:

* * * * *

"SECTION 502. (a) The following laws of the United States in existence on the effective date of this Section and subsequent amendments to such laws will apply to the Northern Mariana Islands, except as otherwise provided in this Covenant:

"(1) those laws which provide federal services and financial assistance programs and the federal banking laws as they apply to Guam; Section 228 of Title II and Title XVI of the Social Security Act as it applies to the several States; the Public Health Service Act as it applies to the Virgin Islands; and the Micronesian Claims Act as it applies to the Trust Territory of the Pacific Islands;

"(2) those laws not described in paragraph (1) which are applicable to Guam and which are of general application to the several States as they are applicable to the several States; and

"(3) those laws not described in paragraph (1) or (2) which are applicable to the Trust Territory of the Pacific Islands, but not their subsequent amendments

unless specifically made applicable to the Northern Mariana Islands, as they apply to the Trust Territory of the Pacific Islands until termination of the Trusteeship Agreement, and will thereafter be inapplicable.

"(b) The laws of the United States regarding coastal shipments and the conditions of employment, including the wages and hours of employees, will apply to the activities of the United States Government and its contractors in the Northern Mariana Islands.

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