No. 19-1390

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

v.

JOSE LUIS VAELLO-MADERO,

Defendant-Appellee.

On Appeal from the United States District Court
for the District of Puerto Rico

OPENING BRIEF FOR APPELLANT

JOSEPH H. HUNT
Assistant Attorney General
ABBY C. WRIGHT
LAURA E. MYRON
Attorneys, Appellate Staff
Civil Division, Room 7228
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530
(202) 514-4819

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases: **Page(s)**

Statutes:

Regulation:

Rule:

STATEMENT REGARDING ORAL ARGUMENT

Despite clear precedent that Congress may treat residents of Puerto Rico differently from residents of the fifty States and the District of Columbia in the provision of federal benefits, the district court concluded that the exclusion of Puerto Rico residents from eligibility for Supplemental Security Income violated the equal protection component of the Fifth Amendment's Due Process Clause. The government believes that this Court may reverse the district court decision without oral argument, but stands ready to present oral argument if the Court believes it would be beneficial.

STATEMENT OF JURISDICTION

The United States filed suit in the United States District Court for the District of Puerto Rico seeking to recover an overpayment of benefits and invoking that court's jurisdiction under 28 U.S.C. § 1345 and 42 U.S.C. § 408(a)(4). JA17.[1] On February 4, 2019, the district court issued its opinion granting summary judgment in favor of defendant Jose Luis Vaello-Madero. *See* A1. On April 3, 2019, the government filed a timely notice of appeal. JA142. This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUE

The issue presented on appeal is whether excluding residents of Puerto Rico from eligibility for Supplemental Security Income (SSI) payments violates the equal protection principles of the U.S. Constitution.

PERTINENT STATUTES AND REGULATIONS

Pertinent statutes are reproduced in the addendum to this brief.

STATEMENT OF THE CASE

A. Statutory Background

The Social Security Administration (SSA) provides benefits to aged persons and persons with disabilities under two primary programs. Title II of the Social Security

[1] Documents included in the addendum to this brief, namely the district court's opinion and order granting summary judgment and order on final judgment, are denoted by the indicator A. *See* Loc. R. 28.0(a). Per this Court's Local Rule 28.0(b), documents in the addendum are not reprinted in the joint appendix. Additional record documents included in the joint appendix are denoted by the indicator JA.

Act, 42 U.S.C. § 401 *et seq.*, provides for benefits to insured workers and their families at retirement or death, or in the event of disability. Under Title XVI of the Social Security Act, the Supplemental Security Income Program provides benefits for aged and blind persons, and persons with disabilities, who meet certain income and resource requirements. *See* 42 U.S.C. § 1382(a). Unlike Title II of the Social Security program and the Medicare program, SSI is not an insurance program; individuals do not contribute directly to the SSI program through payroll taxes. Instead, payments are made based on a separate authorization and drawn from the general funds of the Treasury. *See* 42 U.S.C. § 1381; *see also* Pub. L. No. 115-245, 132 Stat. 2981, 3114-15 (2018) (FY 2019 appropriation for SSI).

Congress has provided that, to be eligible for SSI payments, an individual must be "a resident of the United States" or "a child who is a citizen of the United States . . . 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." 42 U.S.C. § 1382c(a)(1)(B). No individual is eligible for benefits "for any month during all of which such individual is outside the United States." *Id.* § 1382(f). For purposes of the statute, Congress specifically defined "the term 'United States', when used in a geographical sense" as "the 50 States and the District of Columbia." *Id.* § 1382c(e). As a result, residents of Puerto Rico, Guam, American Samoa, and the U.S. Virgin Islands are not eligible for SSI payments. In 1976, pursuant to the covenant to establish the Commonwealth of the Northern Mariana Islands (NMI) as a territory of the United

States, Congress separately extended SSI benefits to residents of those islands. *See* Pub. L. No. 94-241, § 502(a)(1), 90 Stat. 263, 268 (1976) (codified as 48 U.S.C. § 1801).

B. Factual Background

Jose Luis Vaello-Madero began receiving SSI payments in 2012 when he was a resident of New York. *See* JA68-69. In July 2013, Vaello-Madero moved from New York to Puerto Rico, but failed to notify SSA of his change in residency. JA69. In July 2016, when SSA became aware of Vaello-Madero's change in residency, it notified him that he was not eligible for SSI payments as of August 2013 and retroactively amended his payment amounts to $0 for the period between August 2013 and July 2016. *Id.* Vaello-Madero did not file an administrative appeal or seek a hearing with respect to the agency's determination. *Id.* He continues to receive SSA Title II benefits. JA68.

C. Prior Proceedings

On August 25, 2017, the United States filed a complaint against Vaello-Madero in the United States District Court for the District of Puerto Rico seeking to collect the overpayment of $28,081 in SSI benefits paid to Vaello-Madero between August 2013 and August 2016, while he was residing in Puerto Rico. JA17-18. In response to the complaint, Vaello-Madero asserted three affirmative defenses: (1) that 48 U.S.C. § 408(a)(4)—cited by the United States as one of the jurisdictional bases for the suit—requires a specific intent to defraud, which the United States failed to allege; (2) that an action under Section 408(a)(4), which is a criminal statute, can only be instituted after grand jury presentment and indictment; and (3) that the SSI program violates equal

protection principles by excluding Puerto Rico residents from eligibility for benefits. *See* JA32.

The government sought to voluntarily dismiss the case on the ground that Section 408(a)(4) did not provide the court with a jurisdictional basis to decide the case, among other grounds. Relying on this Court's opinion in *United States v. Lahey Clinic Hospital, Inc.*, 399 F.3d 1, 9, 12 (1st Cir. 2005), the district court concluded that it had jurisdiction under 28 U.S.C. § 1345, which grants jurisdiction to district courts over suits brought by the United States, *see* JA53, and that where the United States seeks to obtain restitution, administrative exhaustion requirements do not preclude jurisdiction, *see* JA53-54. The parties then cross-moved for summary judgment.

On February 4, 2019, the district court granted summary judgment for Vaello-Madero, concluding that Congress's decision to "disparately classify United States citizens residing in Puerto Rico" runs "counter to the very essence and fundamental guarantees of the Constitution itself." A5. The court determined that the distinction "fails to pass rational basis constitutional 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." A6. Although it did not apply heightened scrutiny, the court also expressed its view that the law "discriminates on the basis of a suspect classification," in that "[a]n 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." A6-A7.

The district court also rejected the government's asserted justifications for excluding Puerto Rico residents from the SSI program—namely, 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." A7. The court determined that the purported cost would be "minimal compared to the government's budget for such program," and in any event that the expected cost "is never a valid reason for disparate treatment of United States citizen[s'] fundamental rights." A7-A8. The court also noted that, unlike those who reside in Puerto Rico, residents of the Northern Mariana Islands may receive SSI benefits even though they also pay no federal income tax. A8. Finally, the court dismissed in a footnote the relevance of two decisions in which the Supreme Court had previously rejected constitutional challenges to the differential treatment of Puerto Rico residents under SSI and other federal-benefit programs. A8 n.7 (citing *Califano v. Torres*, 435 U.S. 1 (1978) (per curiam), and *Harris v. Rosario*, 446 U.S. 651 (1980) (per curiam)). Those cases, the district court stated, predate "important subsequent developments in the constitutional landscape," *id.*, in particular the Supreme Court's decisions in *Boumediene v. Bush*, 553 U.S. 723 (2008), and *United States v. Windsor*, 570 U.S. 744 (2013).

SUMMARY OF ARGUMENT

The Supreme Court long ago established that residents of Puerto Rico may be excluded from federal benefits legislation, such as the SSI program, without offending the Constitution. *See Califano v. Torres*, 435 U.S. 1 (1978) (per curiam); *Harris v. Rosario*,

446 U.S. 651 (1980) (per curiam). The district court's contrary conclusion cannot stand in light of these cases. Relying on *Boumediene v. Bush*, 553 U.S. 723 (2008), and *United States v. Windsor*, 570 U.S. 744 (2013), the district court attempted to make an end run around settled Supreme Court precedent. But neither *Boumediene* nor *Windsor* provides any basis for departing from the Supreme Court's prior holdings. And, moreover, this Court has recently affirmed that *Califano* and *Harris* remain good law, *see United States v. Ríos-Rivera*, 913 F.3d 38, 44 (1st Cir. 2019), applying the principles of those cases to reject a challenge to the differential treatment of Puerto Rico under federal law.

Even assuming this challenge were not squarely foreclosed by precedent, the exclusion of Puerto Rico residents from the SSI program does not violate equal protection principles because Congress's decision in 1972 to limit the SSI program easily passes rational basis review. The Supreme Court has made clear that rational basis review is the appropriate lens through which to consider challenges to federal benefits legislation. *See Harris*, 446 U.S. at 651-52; *see also Weinberger v. Salfi*, 422 U.S. 749, 772 (1975) (same); *Baker v. City of Concord*, 916 F.2d 744, 755 (1st Cir. 1990) (same). And nothing about this case counsels a different result: there is no evidence the classification at issue here was motivated by racial animus, rather than economic concerns, and the exclusion of individuals from eligibility in a federal benefits program does not infringe any fundamental rights.

The district court erred in concluding that the challenged statute cannot satisfy that review. There is a "reasonably conceivable state of facts that could provide a

rational basis for the classification." *FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307, 313 (1993). First, as was the case when *Califano* was decided, residents of Puerto Rico generally do not pay federal income tax, 26 U.S.C. § 933, and SSI benefits are paid from general revenues funded by federal income tax, *see* 42 U.S.C. § 1381; *see also* Pub. L. No. 115-245, 132 Stat. 2981, 3114-15 (2018). It is not irrational to exclude a group of individuals from the benefits of a program they do not help fund. Second, as was also the case when *Califano* was decided, it was rational for Congress to consider the costs to the public fisc of expanding the SSI program beyond the fifty States and the District of Columbia to the territories as well. *See* 435 U.S. at 5 n.7.

The district court's reasons for its contrary holding cannot withstand scrutiny. It is a "settled . . . proposition" that "Congress has wide latitude to create classifications that allocate noncontractual benefits under a social welfare program," *Califano v. Goldfarb*, 430 U.S. 199, 210 (1977), because "protecting the fiscal integrity of Government programs, and of the Government as a whole, is a legitimate concern of the State," *Lyng v. Automobile Workers*, 485 U.S. 360, 373 (1988) (quotation marks omitted). Moreover, the district court's reliance on the fact that some Puerto Rico residents pay federal income taxes, whereas some SSI program recipients do not, was misguided. *See Baker*, 916 F.2d at 747 ("Imperfections in classifications . . . cannot automatically be equated with violations of equal protection."). That the residents of the Commonwealth of the Northern Mariana Islands are eligible for SSI program

benefits similarly does not render the challenged statute unconstitutional, as each territory's relationship with the United States must be considered on its own terms.

The district court's judgment should be reversed.

STANDARD OF REVIEW

This Court reviews de novo the district court's grant of summary judgment. *Murray v. Kindred Nursing Ctrs. West LLC*, 789 F.3d 20, 25 (1st Cir. 2015).

ARGUMENT

I. The District Court's Conclusion That Exclusion Of Puerto Rico Residents From SSI Benefits Violates Equal Protection Principles Is Contrary To Precedent From Both The Supreme Court And This Court.

The Supreme Court established over forty years ago that Puerto Rico's unique tax status provides a rational basis for the differential treatment of Puerto Rico residents with respect to SSI benefits paid from general tax-income revenues. *See Califano v. Torres*, 435 U.S. 1, 4-5 (1978) (per curiam) (considering whether differential treatment offended the constitutional right to interstate travel). Two years later, that Court likewise rejected an equal protection challenge to the differential treatment of Puerto Rico residents under the Aid to Families with Dependent Children program. *See Harris v. Rosario*, 446 U.S. 651, 651 (1980) (per curiam). And, as recently as this year, this Court has affirmed the continuing vitality of those cases. *See United States v. Ríos-Rivera*, 913 F.3d 38 (1st Cir. 2019). The district court's conclusion that the Social Security Act violates equal protection principles must be reversed.

A. In *Califano*, the Supreme Court summarily reversed a district court ruling that had invalidated, based on the constitutional right to interstate travel, the denial of SSI benefits to citizens who moved to Puerto Rico. *See* 435 U.S. at 5. The Court determined that the law was "rational, and not invidious," for several reasons, including "the unique tax status of Puerto Rico" (*i.e.*, that residents of Puerto Rico do not, as a general matter, pay federal income taxes) and "the cost of including Puerto Rico" in the SSI program. *Id.* at 5 & n.7. The Supreme Court also noted that, in district court, the *Califano* plaintiffs had raised an equal protection claim in addition to their right-to-travel claim, but explained that the district court had "acknowledged that Congress has the power to treat Puerto Rico differently, and that every federal program does not have to be extended to it." *Id.* at 3 n.4.

Likewise in *Harris*, the Court summarily affirmed a district court ruling that had rejected an equal protection challenge to federal benefits provided under the Aid to Families with Dependent Children program. *See* 446 U.S. at 652. The Court held that the statute's distinction between Puerto Rico and the fifty States was "rationally grounded," and that there was "no reason to depart" from its prior view that those considerations "suffice to form a rational basis for the challenged statutory classification." *Id.*

This Court has applied both *Califano* and *Harris* to reject claims that Congress's differential treatment of Puerto Rico violated the Constitution. In January 2019, in *United States v. Ríos-Rivera*, for example, this Court expressly rejected the argument that

"the Mann Act's different treatment of conduct occurring wholly within Puerto Rico from that occurring wholly within one of the fifty states violates the equal protection component of the Fifth Amendment's Due Process Clause." 913 F.3d at 44. This Court "decline[d]" to adopt the defendant's theory there, explaining that accepting the argument would be "inconsistent with Supreme Court precedent," and cited both *Califano* and *Harris*. *Id.* And, in 2015, this Court relied on *Califano* and *Harris* to conclude that the constitutional status of Puerto Rico, standing alone, provided the rational basis for treating the Commonwealth differently than the States for purposes of Chapter 9 of the U.S. Bankruptcy Code. *See Franklin Cal. Tax-Free Tr. v. Puerto Rico*, 805 F.3d 322, 344-45 (1st Cir. 2015), *aff'd*, 136 S. Ct. 1938, 1944 (2016).

Under this precedent, Congress's decision to treat residents of Puerto Rico differently by providing SSI benefits only to residents of the fifty States and the District of Columbia is subject only to rational basis review and reflects a judgment that the Supreme Court specifically blessed as "rational, and not invidious." *See Califano*, 435 U.S. at 5 (quoting *Jefferson v. Hackney*, 406 U.S. 535, 546 (1972)). For the reasons the Supreme Court relied on in *Califano* and *Harris*, including Puerto Rico's unique tax status, and the cost of extending benefits to the territories, discussed in further detail below, *see infra* pp. 14-15, the statute is a constitutional exercise of Congress's judgment. The district court's conclusion is thus contrary to precedent from both the Supreme Court and this Court and must be reversed.

B. In holding that the exclusion of Puerto Rico residents from the SSI program does not survive rational basis review, the district court offered no sound basis for departing from binding Supreme Court precedent. Instead, it suggested in a footnote that "the constitutional landscape," A8 n.7, had been altered in relevant respects by *Boumediene v. Bush*, 553 U.S. 723 (2008), and *United States v. Windsor*, 570 U.S. 744 (2013). But neither *Boumediene* nor *Windsor* provides any reason to disregard *Califano* and *Harris*.

In *Boumediene*, the Supreme Court held that the Suspension Clause of the U.S. Constitution applied to individuals held in detention by the United States at the U.S. Naval Station at Guantanamo Bay, Cuba, in part because the territory was "under the complete and total control of our Government" even though it was "technically not part of the United States." 553 U.S. at 771. Here, the district court reasoned that *Boumediene* stands for the proposition that Congress's authority over Puerto Rico "does not stretch as far as to permit the abrogation of fundamental constitutional protections to United States citizens as Congress sees fit." A5. But as the Supreme Court itself explained in *Boumediene*, the basic principle that fundamental constitutional protections apply to Puerto Rico long pre-dated that case, *see* 553 U.S. at 757-60, and the government is not arguing that the equal protection component of the Fifth Amendment is wholly inapplicable, only that—as the Supreme Court recognized—equal protection principles permit rational distinctions between the treatment of Puerto Rico residents and those who reside in the fifty States and the District of Columbia, *see generally Califano*, 435 U.S. 1; *Harris*, 446 U.S. 651. Indeed, the district court itself

acknowledged that in *Boumediene*, the Supreme Court reiterated that Congress has "[t]he authority to treat the territory of Puerto Rico itself unlike the States." A4-A5 (citing *Boumediene*, 553 U.S. at 765).

Windsor is similarly inapposite. In *Windsor*, the Supreme Court struck down a statute that denied federal recognition to the marriages of same-sex couples even when they were legally married under the laws of the State in which they resided. The district court here relied on the basic principle articulated in *Windsor* that "'a bare congressional desire to harm a politically unpopular group cannot' justify disparate treatment of that group." A6 (quoting *Windsor*, 570 U.S. at 770 (citing *Department of Agric. v. Moreno*, 413 U.S. 528, 534-35 (1973))); *see also Windsor*, 570 U.S. at 771-72. But, just as was the case in *Boumediene*, the principle that disparate treatment cannot be justified where it is based on a "desire to harm" pre-dates the Supreme Court's decisions in both *Califano* and *Harris*, and thus provides no basis to conclude that *Windsor* renders those cases no longer controlling law. *See Moreno*, 413 U.S. at 534-35. And, perhaps more importantly, unlike in *Windsor*, the distinction drawn by Congress in the SSI program does not have a "principal purpose . . . to impose inequality," does not "creat[e] two contradictory [legal] regimes within the same State," does not "diminish[] the stability and predictability of basic personal relations the State has found it proper to acknowledge and protect," and does not "demean[]" Puerto Rico residents, much less with respect to a fundamental liberty interest like the right to marriage. *Windsor*, 570 U.S. at 772.

II. Even Considered Anew, The Exclusion Of Puerto Rico Residents From The SSI Program Does Not Violate Equal Protection.

A. Even were this Court to consider the question presented in this case afresh, limiting the scope of SSI benefits to individuals residing in the fifty States and the District of Columbia does not violate constitutional equal protection principles.

Plaintiff's challenge to the Social Security Act is subject to rational basis review. "In areas of social and economic policy, a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." *FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307, 313 (1993); *see also Harris*, 446 U.S. at 651-52 (explaining that Congress may legislate differently for the territories "so long as there is a rational basis for its actions"); *Califano*, 435 U.S. at 4-5 (explaining that rational basis review applied to the challenge to the SSI program's exclusion of Puerto Rico residents because it was a "constitutional attack upon a law providing for governmental payments of monetary benefits").

Although the district court expressed its view that the law "discriminates on the basis of a suspect classification," because "[a]n 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," A6-A7, the statute distinguishes not on the basis of race, but on the basis of residency. And the district court pointed to no

evidence that the exclusion of Puerto Rico residents from SSI benefits was improperly motivated by racial animus, rather than economic concerns. Nor is there any support for the court's conclusion that exclusion from eligibility for a federal benefits program infringes the fundamental rights of citizens in Puerto Rico. The district court did not elaborate on what fundamental rights it thought infringed by the statute, other than by passing reference to the right to due process and equal protection of law. *See* A8. But as both this Court and the Supreme Court have made clear, "a noncontractual claim to receive funds from the public treasury enjoys no constitutionally protected status." *Weinberger v. Salfi*, 422 U.S. 749, 772 (1975); *see also Baker v. City of Concord*, 916 F.2d 744, 755 (1st Cir. 1990).

The exclusion of Puerto Rico residents from the SSI program plainly satisfies rational basis review. Under rational basis review, as long as there are "plausible reasons" for Congress's action, "[the judicial] inquiry is at an end." *United States Ry. Ret. Bd. v. Fritz*, 449 U.S. 166, 179 (1980). That is because the application of equal protection is "not a license for courts to judge the wisdom, fairness, or logic of legislative choices." *Beach Commc'ns*, 508 U.S. at 313. The SSI program's exclusion of Puerto Rico residents is subject to "a strong presumption of constitutionality," and there are multiple "plausible reasons" sufficient to "explain the exclusions of persons in Puerto Rico from the SSI program." *Califano*, 435 U.S. at 5 & n.7.

First, as was the case when *Califano* was decided, residents of Puerto Rico generally do not pay federal income tax. *See* 26 U.S.C. § 933. SSI benefits are paid from

general revenues funded by federal income tax. By contrast, residents of Puerto Rico generally do pay federal payroll taxes, which fund SSA Title II benefits, and residents of the Commonwealth are eligible for those benefits. *See* 26 U.S.C. § 3101 *et seq.* Indeed, Vaello-Madero is eligible for and has continued to receive Title II benefits even after his relocation to Puerto Rico. *See* JA68. It 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. Second, as was also the case when *Califano* was decided, it was entirely rational for Congress to consider the costs to the public fisc of expanding the SSI program beyond the fifty States and District of Columbia to the territories. *See* 435 U.S. at 5 n.7.

B. The district court erred when it reached a contrary conclusion, and its decision must be reversed.

First, the court erred in rejecting as a rational basis the federal government's interest in protecting the public fisc. The court reasoned that the cost of extending benefits to Puerto Rico residents was "not a valid justification for creating classifications of United States citizens." A8. It is a "settled . . . proposition," however, that "Congress has wide latitude to create classifications that allocate noncontractual benefits under a social welfare program," *Califano v. Goldfarb*, 430 U.S. 199, 210 (1977), and that "protecting the fiscal integrity of Government programs, and of the Government as a whole, is a legitimate concern of the State," *Lyng v. Automobile Workers*, 485 U.S. 360, 373 (1988) (quotation marks omitted). Judicial review "of distinctions that Congress

draws in order to make allocations from a finite pool of resources must be deferential, for the discretion about how best to spend money to improve the general welfare is lodged in Congress rather than the courts." *Id.*

Second, the district court wrongly rejected the unique tax status of Puerto Rico as a rational basis for Congress's distinction between Puerto Rico residents and residents of the fifty States and the District of Columbia. *See* A8 n.9. In so holding, the court relied on the fact that some residents of Puerto Rico pay federal income taxes, whereas some eligible SSI beneficiaries residing within the fifty States and the District of Columbia do not pay any federal income tax because their income is too low. *See id.* But "[i]mperfections in classifications . . . cannot automatically be equated with violations of equal protection." *Baker*, 916 F.2d at 747. Furthermore, Congress's line-drawing does not have to be precise to survive rational basis review. *See, e.g.*, *Beach Commc'ns*, 508 U.S. at 315 ("[A] legislative choice . . . may be based on rational speculation unsupported by evidence or empirical data."); *see also Dandridge v. Williams*, 397 U.S. 471, 485 (1970) ("If the classification has some 'reasonable basis,' it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality.'" (quoting *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 78 (1911))).

Neither the fact that some individuals who are eligible for SSI might not pay federal income taxes nor the fact that some individuals in Puerto Rico pay federal income taxes undermines the argument that Congress's decision to exclude residents of

Puerto Rico was rational. Congress may permissibly treat residents of Puerto Rico categorically given that, as a general matter, they do not contribute to the very revenue source that would support the SSI program. The "task of classifying persons for . . . benefits . . . inevitably requires that some persons who have an almost equally strong claim to favored treatment be placed on different sides of the line." *Fritz*, 449 U.S. at 179 (quoting *Mathews v. Diaz*, 426 U.S. 67, 83-84 (1976) (ellipses in original)). The "fact the line might have been drawn differently at some points is a matter for legislative, rather than judicial, consideration." *Id.* Moreover, residents of the fifty States and the District of Columbia who receive SSI program benefits but do not pay income tax are differently situated from residents of Puerto Rico in that, even where their tax bill is zero based on their income level, their income is not categorically exempt from federal taxation, as is generally the case for residents of Puerto Rico.

The district court's reliance on the inclusion in the SSI program of lawful aliens residing within the fifty States and the District of Columbia is similarly misguided. Resident aliens within the fifty States and the District of Columbia are subject to the federal income tax, whereas citizens in Puerto Rico are not. *See Lujan v. Comm'r*, 2000 WL 1772503, at *3 (U.S. T.C. Dec. 4, 2000) ("In general, . . . all resident alien individuals (citizens of a foreign country), are liable for income taxes imposed by the Internal Revenue Code, whether the income received is from sources within or without the United States.") (citing 26 C.F.R. § 1.1-1(b)). As explained above, general revenues fund the SSI program and because federal income taxes represent the most significant

single source of federal revenues, it was rational for Congress to draw the line for eligibility for SSI benefits in the manner that it did.

Finally, the district court hit wide of the mark in its reliance on Congress's extension of the SSI program to residents of the Northern Mariana Islands. The court mistakenly believed that because Congress provided SSI benefits for NMI residents, it was required to do so for all of other U.S. territories. But Congress made the decision to extend SSI benefits to NMI residents as part of the covenant defining the terms of the NMI's entry into the United States as a territory.

As an initial matter, the inclusion of NMI residents in the SSI program pre-dated both *Califano* and *Harris*, and the Supreme Court did not suggest that this fact undermined Congress's rationality. *See Califano*, 435 U.S. 1; *Harris*, 446 U.S. 651. And, moreover, the relationship of each territory with the United States must be assessed on its own terms; there is no "equal footing doctrine" for the territories. *Cf. Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 203-04 (1999) (explaining the "equal footing doctrine" as "the constitutional principle that all States are admitted to the Union with the same attributes of sovereignty (*i.e.*, on equal footing) as the original 13 States."); *see also Palmore v. United States*, 411 U.S. 389, 402-03 (1973) (explaining that Congress may legislate differently for the territories than for the States, and differently for one territory than for another); *see also, e.g.*, *Tuana v. United States*, 788 F.3d 300, 300 (D.C. Cir. 2015) (holding that the Constitution does not require birthright citizenship for residents of American Samoa). Congress made the decision to extend SSI benefits

to NMI residents as part of the covenant defining the terms of the NMI's entry into the United States as a territory, and that fact does not render its decision to do otherwise with respect to other U.S. territories irrational.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be reversed.

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General

ABBY C. WRIGHT

/s/Laura E. Myron
LAURA E. MYRON
Attorneys, Appellate Staff
Civil Division, Room 7228
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530
(202) 514-4819
Laura.e.myron@usdoj.gov

July 2019

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 4,920 words. This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Microsoft Word 2016 in Garamond 14-point font, a proportionally spaced typeface.

/s/ Laura E. Myron
LAURA E. MYRON

CERTIFICATE OF SERVICE

I hereby certify that on July 2, 2019, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the First Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system to the following:

Hermann Ferré
Juan O. Perla
Robert Groot
Curtis, Mallet-Prevost, Colt & Mosle LLP
101 Park Avenue
New York, New York, 10178
Tel: (212) 696-6000

John W. Ferré-Crossley
PO Box 194773
San Juan, PR 00919
Tel: (787) 957-5576

/s/ Laura E. Myron
LAURA E. MYRON

ADDENDUM

TABLE OF CONTENTS

District Court Materials

Pertinent Statutes

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSE LUIS VAELLO MADERO,

Defendant.

CASE NO. 17-2133 (GAG)

OPINION AND ORDER

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. 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 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

[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.

[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)).

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

[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.

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. 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

[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).

government's budget for such program, this is not a valid justification 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]

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

---

[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 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.

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]

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

[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.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSE LUIS VAELLO-MADERO

Defendant.

CASE NO. 17-2133 (GAG)

JUDGMENT

Pursuant to the Court's Opinion and Order at Docket No. 97, judgment is hereby entered **DISMISSING** the instant action in favor of defendant Jose Luis Vaello-Madero.

SO ORDERED.

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

s/ Gustavo A. Gelpí
GUSTAVO A. GELPI
United States District Judge

42 U.S.C. § 1382 Eligibility for Benefits

§ 1382(a) "Eligible Individual" defined

(1) Each aged, blind, or disabled individual who does not have an eligible spouse and—

(A) whose income, other than income excluded pursuant to section 1382a(b) of this title, is at a rate of not more than $1,752 (or, if greater, the amount determined under section 1382f of this title) for the calendar year 1974 or any calendar year thereafter, and

(B) whose resources, other than resources excluded pursuant to section 1382b(a) of this title, are not more than (i) in case such individual has a spouse with whom he is living, the applicable amount determined under paragraph (3)(A), or (ii) in case such individual has no spouse with whom he is living, the applicable amount determined under paragraph (3)(B),

shall be an eligible individual for purposes of this subchapter.

* * * *

§ 1382(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.

* * * *

42 U.S.C. § 1382c Definitions

§ 1382c(a)

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

(2)

(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.

* * * *

§ 1382c(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.

* * * *