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

REPLY BRIEF FOR APPELLANT

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INTRODUCTION AND SUMMARY OF ARGUMENT

The question before this Court is whether a provision in the Social Security Act that limits certain benefits to individuals residing in the fifty States and the District of Columbia violates equal protection principles. Two long-standing cases from the Supreme Court make clear that it does not. *See Califano v. Torres*, 435 U.S. 1 (1978) (per curiam); *Harris v. Rosario*, 446 U.S. 651 (1980) (per curiam). The Supreme Court has recognized that the exclusion of Puerto Rico residents from Supplemental Security Income (SSI) benefits and from the former Aid to Families with Dependent Children program is "rational, and not invidious," and a legitimate exercise of Congress's authority to legislate in the realm of social and economic welfare. *Califano*, 435 U.S. at 5; *see also Harris*, 446 U.S. at 651. The district court's conclusion to the contrary is inconsistent with this Supreme Court precedent and must be reversed.

I. Notwithstanding this precedent, defendant—an SSI beneficiary whose eligibility ceased when he moved to Puerto Rico—focuses the majority of his argument on asserting that rational basis review is not the appropriate lens through which this Court should view the provision of federal law at issue. But these contentions are without merit. This case involves economic and social welfare legislation containing a facially neutral residency classification with no evidence of racially discriminatory purpose. Both the government and the defendant agree that this Court should apply ordinary equal protection principles to the question before it. The application of those

principles thus requires the Court to view the exclusion of residents of Puerto Rico from the SSI benefits program through the lens of rational basis review.

Residency in a territory is not a suspect classification, and defendant has pointed to no "circumstantial [or] direct evidence of [invidious] intent" that suggests race was a motivating factor in the enactment of the statute before this Court. *Village of Arlington Heights v. Metropolitan Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977). Relying on the incorporation doctrine and the *Insular Cases*, defendant urges instead that historical "race-based reasoning," Br. 23, warrants the imposition of strict scrutiny on any statute that treats Puerto Rico differently based on its territorial status. Not only is this argument contrary to the Supreme Court's cases applying rational basis review to residency classifications, but it fundamentally misunderstands the importance of the incorporation doctrine and the *Insular Cases*, which concern whether various constitutional provisions apply in Puerto Rico. As there is no dispute that equal protection principles apply in this case, these legal doctrines have no bearing on the outcome here. *See Examining Bd. of Eng'rs, Architects & Surveyors v. Flores de Otero*, 426 U.S. 572, 600 (1976) (explaining that it is "clear" that equal protection principles apply to Puerto Rico).

II. The statute at issue satisfies rational basis review. As the Supreme Court concluded nearly 40 years ago, in light of the unique tax status of Puerto Rico and the costs associated with extending the benefits program, the exclusion of residents of the

territories from the SSI program is "rational, and not invidious," and must be upheld. *Califano*, 435 U.S. at 5.

ARGUMENT

THE DISTRICT COURT ERRED WHEN IT CONCLUDED THAT EXCLUSION OF PUERTO RICO RESIDENTS FROM SSI VIOLATES EQUAL PROTECTION PRINCIPLES

As explained in the government's opening brief, the Supreme Court established decades ago that Congress's decision to exclude residents of Puerto Rico from SSI benefits was "rational, and not invidious," for several reasons, including the "unique tax status of Puerto Rico," and the cost of expanding the program. *Califano v. Torres*, 435 U.S. 1, 5 & n.7 (1978) (per curiam). Likewise, in *Harris v. Rosario*, 446 U.S. 651 (1980) (per curiam), the Supreme Court rejected an equal protection challenge to a similar statute subjecting Puerto Rico residents to differential treatment under the former Aid to Families with Dependent Children program, *id.* at 651-52 (explaining that the statute's distinction between Puerto Rico and the fifty States was "rationally grounded," and the considerations of cost and tax status "suffice to form a rational basis for the challenged statutory classification"). Read together, these cases establish both that an equal protection challenge to the exclusion of Puerto Rico residents from the SSI benefits program is considered under rational basis review and that the statutory scheme is rational and should be upheld. The district court's conclusion to the contrary is thus inconsistent with Supreme Court precedent and should be reversed.

I. Rational Basis Review, Not Heightened Scrutiny, Applies.

A. Supreme Court Precedent Makes Clear That Rational Basis Review Applies.

The Supreme Court, in both *Califano* and *Harris*, clearly held that rational basis review, rather than heightened scrutiny, applies to congressional classifications regarding social welfare benefits that treat residents of Puerto Rico differently from residents of the fifty States. *See Califano*, 435 U.S. at 4-5; *Harris*, 446 U.S. at 651-52. And as this Court recently reaffirmed in *United States v. Ríos-Rivera*, 913 F.3d 38 (1st Cir. 2019), it would be "inconsistent with Supreme Court precedent" to apply heightened scrutiny to an equal protection claim based on the different treatment of residents of Puerto Rico as compared to those in the fifty States, *id.* at 44 (citing *Califano*, 435 U.S. at 4-5; *Harris*, 446 U.S. at 651). Defendant's arguments to the contrary are therefore foreclosed by precedent.

Defendant asserts (Br. 38-42) that neither *Califano* nor *Harris* is directly applicable because neither resolved an equal protection claim to the SSI program, but this assertion ignores the express reasoning of both decisions. In *Califano*, the Supreme Court made clear that the exclusion of Puerto Rico residents from the SSI benefits program was "rational" based on the cost of extending benefits to the territory and the unique tax status of Puerto Rico, the very same rational bases the government asserts here. 435 U.S. at 5 & n.7; *see also* Opening Br. 14-15. Although *Califano* primarily concerned a right to travel challenge to the SSI program, the Court noted that the three-judge district

court panel had ruled on an equal protection claim that, if accepted, "would have meant that all otherwise qualified persons in Puerto Rico are entitled to SSI benefits." *Califano*, 435 U.S. at 3 n.4. Although not squarely presented on the government's appeal, the Supreme Court was plainly not troubled by the district court's rejection of the plaintiffs' equal protection claim, noting that "Congress has the power to treat Puerto Rico differently, and that every federal program does not have to be extended to it." *Id.* And two years later, in *Harris*, the Supreme Court reiterated its conclusions from *Califano* when presented with an equal protection claim challenging a similar federal benefits statute that excluded residents of Puerto Rico.

B. Residency In A Territory Is Not A Suspect Classification And Does Not Otherwise Warrant Heightened Scrutiny.

Even assuming the absence of binding precedent, defendant provides no basis for his assertion that classifications based on territorial residency are subject to strict scrutiny. "Under well-established principles of equal protection analysis, a challenged statute that does not employ a suspect classification or impinge upon fundamental rights must be upheld if it is rationally related to a legitimate governmental purpose." *Whiting v. Town of Westerly*, 942 F.2d 18, 23 (1st Cir. 1991). The Supreme Court has recognized that where "a statute classifies by race, alienage, or national origin," the law should be "subject[] to strict scrutiny and . . . sustained only if [it is] suitably tailored to serve a compelling state interest." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985). Where, as here, the statute results in differential treatment based on a

facially neutral classification that is not in one of the above categories, rational basis review applies.[1] *See, e.g.*, *Whiting*, 942 F.2d at 23 (applying rational basis review to differential treatment of residents of Rhode Island as compared to non-residents).

Defendant's primary argument on appeal is that strict scrutiny applies to the equal protection claim at issue before this Court based on two grounds: (1) the history of racial discrimination against residents of Puerto Rico; and (2) the fact that Puerto Rico residents are a "discrete and insular minority." Br. 26 (quotation marks omitted); *see also* Br. 20-31. Neither can advance defendant's claim.[2]

1. The Social Security Act Is Facially Neutral And Was Not Racially Motivated.

There is no basis for this Court to conclude the statute challenged here is racially motivated. It is undisputed that the law itself says nothing about race or alienage and nothing in the Social Security statute or its legislative history indicates the exclusion of Puerto Rico residents from SSI benefits was based on considerations of race or alienage that might give rise to heightened scrutiny. Neither the district court nor defendant have identified any "circumstantial [or] direct evidence of [invidious] intent" that

[1] "Legislative classifications based on gender also call for a heightened standard of review." *Cleburne Living Ctr.*, 473 U.S. at 440.

[2] As an initial matter, defendant is incorrect when he states that the district court "conclude[d] that strict or 'heightened scrutiny' applies to classifications based on residency in a U.S. territory." Br. 26 (quoting A7). The district court did not reach any such conclusion, instead reserving judgment on the question of what level of scrutiny applies in light of its holding that the statute here could not withstand even rational basis review. *See* A7.

suggests race was a motivating factor in the enactment of the statute before this Court. *Village of Arlington Heights v. Metropolitan Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977).

Instead, defendant points (Br. 23, 7-9) to cases and statutes from the early 20th century that have no connection to the legislation at issue here, and argues that because historical treatment of the territories was racially motivated, all modern-day distinctions based on residency in a territory are in fact still racially motivated, even if they are facially neutral. But defendant has provided no legal authority for his assertion that a history of racial animus is sufficient to lead to strict scrutiny of every law with a disparate impact, even absent any suggestion that the specific residency classification before this Court derives from an impermissible motivation.

The lack of evidence of discriminatory intent is also fatal to defendant's other theories for why strict scrutiny should apply to the statute excluding Puerto Rico residents from SSI benefits. Contrary to defendant's assertion, the exclusion of residents of Puerto Rico, and other territories, as a geographic matter is a facially neutral classification. *See, e.g.*, *Kwong v. Bloomberg*, 723 F.3d 160, 170 (2d Cir. 2013) ("[W]e agree with the District Court that rational basis review is appropriate because [the statute's] geographic classification is not suspect."). Because the statute is facially neutral, any disparate impact claim cannot succeed absent other indicia of racial purpose. A "law, neutral on its face and serving ends otherwise within the power of government to pursue," is not invalid under equal protection principles "simply because it may affect a greater proportion of one race than of another." *Washington v. Davis*, 426 U.S. 229,

242 (1976); *see also id.* ("Disproportionate impact is not irrelevant, but it is not the sole touchstone of an invidious racial discrimination forbidden by the Constitution."); *Hunt v. Cromartie*, 526 U.S. 541, 546 (1999) ("A facially neutral law . . . warrants strict scrutiny only if it can be provided that the law was motivated by a racial purpose or object, or if it is unexplainable on grounds other than race.") (citation and quotation marks omitted).

Nor is there any evidence that Congress intended geography as a proxy for racial considerations, especially in light of the fact that Congress excluded residents of territories beyond Puerto Rico, and permitted benefits for individuals—such as defendant before his move to Puerto Rico—residing in the fifty States. As explained above, the exclusion of Puerto Rico residents from SSI benefits is "rational, and not invidious," *Califano*, 435 U.S. at 5, and thus, did not constitute a "statute, otherwise neutral on its face . . . [but] applied so as invidiously to discriminate on the basis of race," *Davis*, 426 U.S. at 241 (citing *Yick Wo v. Hopkins*, 118 U.S. 356 (1886)). And adopting defendant's theory would require this Court to conclude that *all* statutes that treat residents of Puerto Rico differently are "applied so as invidiously to discriminate on the basis of race." *Id.* That proposition has never been endorsed by this Court or any other. And defendant has not grappled with the fact that were this Court to adopt it, this theory could also call into question provisions that treat Puerto Rico, or individuals in Puerto Rico, in a favorable manner vis-à-vis the States, such as the exemption from the federal income tax.

2. The Incorporation Doctrine And The *Insular Cases* Are Not Relevant To This Court's Inquiry.

Equally without merit is defendant's contention that the Social Security Act's exclusion of Puerto Rico residents for SSI benefits must be inherently race-based because it relies on the incorporation doctrine, a doctrine derived from a number of early 20th-century Supreme Court opinions known as the *Insular Cases*, which have been criticized for their "race-based reasoning," which "reflect[s] a 'prejudice and antipathy' that was prevalent at the time." Br. 23 (quoting *Cleburne Living Ctr.*, 473 U.S. at 440). Even assuming this argument could be considered in light of binding precedent, it fails on its own terms.

The district court here correctly acknowledged that Congress has "[t]he authority to treat the territory of Puerto Rico itself unlike the States." A4-A5; *see also* Def. Br. 40 (citing *Harris* for the proposition that it may be "constitutional to exclude Puerto Rico itself from receiving the same block grants as States because Puerto Rico is not a State"). This authority does not derive from the application of the incorporation doctrine. When legislating with respect to a territory, the Constitution grants Congress "the entire dominion and sovereignty, national and local, Federal and state." *Simms v. Simms*, 175 U.S. 162, 168 (1899); *see also* U.S. Const. art IV, § 3, cl. 2. Accordingly, Congress may act in a manner "that would exceed its powers, or at least would be very unusual, in the context of national legislation enacted under other powers delegated to it." *Palmore v. United States*, 411 U.S. 389, 398 (1973).

The Supreme Court has recognized that by vesting plenary authority in Congress in this manner, the legislature is free "to develop innovative approaches to territorial governance" tailored to each territory's unique needs. *Puerto Rico v. Sanchez Valle*, 136 S. Ct. 1863, 1876 (2016). This flexibility is rooted in Congress's power under the Territories Clause in Article IV of the Constitution and has never been thought to give rise to any equal protection concerns when Congress legislates differently for a territory than it does for the States or for other territories. *See Palmore*, 411 U.S. at 398; *see also Franklin Cal. Tax-Free Tr. v. Puerto Rico*, 805 F.3d 322, 344-45 (1st Cir. 2015), *aff'd* 136 S. Ct. 1938, 1944-45 (2016) (explaining that the constitutional status of Puerto Rico provided the rational basis for treating the Commonwealth differently than the States for purposes of Chapter 9 of the U.S. Bankruptcy Code).

The incorporation doctrine is not, as defendant contends, the "legal justification for excluding Puerto Rico residents from federal entitlement programs like SSI." Br. 24. Nor is it the basis for the Supreme Court's statement in *Califano* that "Congress has the power to treat Puerto Rico differently." *See* 435 U.S. at 3 n.4. The doctrine concerns only whether various constitutional provisions apply in the territories. It has its origins in the *Insular Cases*, a series of cases from the early 20th century in which the Supreme Court sought to determine whether certain constitutional rights extended to the territories based on whether the territory was destined for statehood from the time of acquisition. *See Examining Bd. of Eng'rs, Architects & Surveyors v. Flores de Otero*, 426 U.S. 572, 600 (1976). The Supreme Court has cited these cases for the proposition that the

Constitution does not extend *ex proprio vigore* (of its own force) to the territories. *See, e.g.*, *Boumediene v. Bush*, 553 U.S. 723, 759 (2008); *see also id.* at 758 (The "real issue in the *Insular Cases* was . . . which [Constitutional] provisions were applicable by way of limitation upon the exercise of executive and legislative power in dealing with new conditions and requirements.") (quoting *Balzac v. Porto Rico*, 258 U.S. 298, 312 (1922)).

Here, there is no dispute, however, that equal protection principles apply to Puerto Rico. *See Flores de Otero*, 426 U.S. at 600 ("It is clear now, however, that the protections accorded by either the Due Process Clause of the Fifth Amendment or the Due Process and Equal Protection Clauses of the Fourteenth Amendment apply to residents of Puerto Rico."). Thus, neither the incorporation doctrine nor the *Insular Cases* are relevant to this Court's analysis.

3. Defendant's Reliance On The Territories Clause Fails To Advance His Claim.

Responding to an argument the government did not make, defendant asserts that the Territories Clause in Article IV, Section 3 of the United States Constitution does not "limit the scope of Puerto Rico residents' right to equal protection" and that ordinary equal protection principles apply. Br. 46 (alteration in font and capitalization). It is undisputed, however, that equal protection principles apply to Puerto Rico. *See supra.* Neither the United States nor the district court has suggested otherwise. The government agrees with defendant's statement that "[n]either the Territories Clause nor

the *Insular Cases* have any direct bearing on the level of scrutiny applicable to congressional action in the territories." Br. 51.

Nonetheless, defendant continues to argue that residency in a territory entitles residents of Puerto Rico to heightened scrutiny when challenging facially neutral classifications contained in economic and social welfare legislation. As explained above, however, residency in a territory is not a suspect classification and cannot justify the imposition of heightened scrutiny on legislation that draws geographic distinctions that exclude residents of Puerto Rico and other territories. *See supra* pp. 6-9. The United States' arguments here do not "create[] parallel constitutional regimes on U.S. soil," Def. Br. 49, but rather the opposite. The government has repeatedly urged this Court to apply basic principles of equal protection to the case at bar: principles that clearly require this Court to conclude that facially neutral geographic classifications do not implicate a suspect class and are subject only to rational basis review.

Defendant's reliance on *United States v. Thompson*, 452 F.2d 1333 (D.C. Cir. 1971), is misplaced. *Thompson* involved a statute that allegedly applied different standards for bail to criminal suspects in the District of Columbia as compared to criminal suspects in the fifty States. The D.C. Circuit found that it was not rational to subject residents of the District to different bail standards than residents of the fifty States. *Id.* at 1339 ("[W]e are hard pressed to see even a rational relationship between the classification created by this statute and any legitimate governmental policy."). To the extent that defendant relies (Br. 44-45) on the court's suggestion that residency in the District was

a "suspect class" and that differential treatment "requires more than a rational basis," however, the D.C. Circuit has subsequently rejected that portion of the *Thompson* decision and it is no longer good law. *Calloway v. District of Columbia*, 216 F.3d 1, 7 (D.C. Cir. 2000) ("Whatever force *Thompson*'s reasoning about the status of D.C. residents once carried, it has not survived *Cohen*.") (citing *United States v. Cohen*, 733 F.2d 128, 136 n.12 (D.C. Cir. 1984) (en banc)). And, in addition, the D.C. Circuit relied, at least in part, on the fact that the statute implicated "fundamental personal liberties," and specifically distinguished it from legislation like that at issue here regarding social or economic benefits. *Thompson*, 452 F.2d at 1340. As the government explained in its opening brief and above, application of ordinary equal protection principles makes clear that rational basis review applies.

C. Defendant's Contention That Heightened Scrutiny Applies Because Territorial Residents Are A "Discrete And Insular Minority" Is Similarly Unavailing.

Defendant is equally unavailing when he asserts that strict scrutiny applies because residents of Puerto Rico are a "politically powerless class that constitutes a 'discrete and insular' minority." Br. 26. Neither this Court nor the Supreme Court has thought that membership in a politically powerless class is alone sufficient to justify heightened scrutiny. *See Cleburne Living Ctr.*, 473 U.S. at 445 ("Any minority can be said to be powerless to assert direct control over the legislature, but if that were a criterion for higher level scrutiny by the courts, much economic and social legislation would now be suspect."); *see also McGowan v. State of Maryland*, 366 U.S. 420, 425 (1961) ("Although

no precise formula has been developed, the Court has held that the Fourteenth Amendment permits the States a wide scope of discretion in enacting laws which affect some groups of citizens differently than others. The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective."). And the Supreme Court has repeatedly demonstrated reluctance to expand its view of what constitutes a suspect classification, *see, e.g.*, *Massachusetts Bd. of Ret. v. Murgia*, 427 U.S. 307, 317 (1976) (rejecting argument that classification based on age is suspect); *see also Cleburne Living Ctr.*, 473 U.S. at 445 (rejecting argument that classification based on intellectual disability is suspect). There is no basis for this Court to do so here, especially where the Supreme Court has upheld the very law at issue here from constitutional challenge. *See Califano*, 435 U.S. at 5; *Harris*, 446 U.S. at 651-52.

Moreover, as the D.C. Circuit has explained, "[b]y definition . . . residents of territories lack equal access to channels of political power." *Quiban v. Veterans Admin.*, 928 F.2d 1154, 1160 (D.C. Cir. 1991) (rejecting equal protection challenge to exclusion of Philippine Army veterans from non-service-connected veterans' benefits). "To require the government, on that account, to meet the most exacting standard of review . . . would be inconsistent with Congress's [power] to 'make all needful Rules and Regulations respective the Territory.'" *Id.* (quoting U.S. Const. art. IV, § 3, cl. 2); *cf. Besinga v. United States*, 14 F.3d 1356, 1360 (9th Cir. 1994) ("We agree with the District of Columbia Circuit that . . . the broad powers of Congress under the Territory Clause

are inconsistent with the application of heightened judicial scrutiny to economic legislation pertaining to the territories.").

II. The Exclusion Of Puerto Rico Residents From SSI Benefits Satisfies Rational Basis Review.

A. As outlined in the government's opening brief, the exclusion of Puerto Rico residents from the SSI program plainly satisfies rational basis review in light of the unique tax status of Puerto Rico and the costs of extending the program to residents of Puerto Rico. The Supreme Court reached the same conclusion when it held that there were multiple plausible reasons sufficient to "explain the exclusion of persons in Puerto Rico from the SSI program." *Califano*, 435 U.S. at 5 & n.7. It is rational for Congress to limit SSI program benefits, which are funded by general tax revenues, to exclude residents of territories that generally do not pay federal income taxes (the primary source of general tax revenue), and to consider the costs to the public fisc of expanding the SSI program beyond the fifty States and the District of Columbia. Because under rational basis review, a classification "will not be set aside if any state of facts reasonably may be conceived to justify it," the district court was wrong to conclude the exclusion of Puerto Rico residents from the SSI program violated equal protection principles. *McGowan*, 366 U.S. at 426.

B. Defendant suggests—as did the district court—that the Supreme Court's decision in *United States v. Windsor*, 570 U.S. 744 (2013), constituted a "subsequent development[] in the constitutional landscape," A8 n. 7, such that the Supreme Court's

decisions in *Califano* and *Harris* are no longer good law. The district court relied on *Windsor* to conclude that the statute at issue here could not survive rational basis review because, in its view, the purpose of the statute is to impose inequality on residents of the territories. But *Windsor* does not represent a fundamental change in equal protection law abrogating *Califano* and *Harris*, and it does not support the conclusion that the SSI benefits program is not rational and therefore unconstitutional.

As an initial matter, *Windsor* does not mark a watershed in equal protection principles and did not silently upend decades of equal protection jurisprudence. Indeed, as noted in the government's opening brief, the Court's decision in *Windsor* relied on *Department of Agriculture v. Moreno*, 413 U.S. 528 (1973), for the principle that "'a bare congressional desire to harm a politically unpopular group cannot' justify disparate treatment of that group." *Windsor*, 570 U.S. at 770 (quoting *Moreno*, 413 U.S. at 534-35). *Moreno* and the principle it represents—that "bare congressional desire to harm" cannot support government action—predate *Califano* and *Harris*. And in *Califano* and *Harris*, the Supreme Court concluded that the exclusion of residents of Puerto Rico from federal benefits legislation was "rational, and not invidious," *Califano*, 435 U.S. at 5, and thus constitutional, notwithstanding that *Moreno* was part of the "constitutional landscape," at the time, A8 n.7.

In addition, nothing in *Windsor*'s merits analysis supports defendant's arguments that the SSI benefits statute cannot survive rational basis review. In *Windsor*, the Supreme Court applied both equal protection and due process principles to strike down

as unconstitutional a federal statute denying recognition to same-sex marriages, even where recognized by the State. *See* 570 U.S. at 774. The Court relied on the fact that the statute was an "unusual deviation from the usual tradition of recognizing and accepting state definitions of marriage," and that the "avowed purpose and practical effect of the law . . . [was] to impose a disadvantage, a separate status, and so a stigma upon all who enter into same-sex marriages made lawful by the unquestioned authority of the States." *Id.* at 770. In addition, the Court noted that the statute's "principal purpose is to impose inequality," *id.* at 772, and "to disparage and to injure those whom the State, by its marriage laws, sought to protect in personhood and dignity," *id.* at 775.

By contrast, the statute at issue here involves a decision by Congress to extend federal monetary benefits to some individuals and not others, based on a geographic residency classification. It is telling that defendant received SSI benefits when he was a resident of New York, and it was only the change in residency that affected his benefits status when he moved to Puerto Rico. As the Supreme Court has explained, "the Constitution does not empower [the] Court to second-guess state officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients." *Dandridge v. Williams*, 397 U.S. 471, 487 (1970). "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." *Jefferson v. Hackney*, 406 U.S. 535, 546 (1972). Here, as explained, the unique tax status of the

Commonwealth, and the cost of extending benefits to the territories, are both rational bases that demonstrate the SSI program is constitutional.

C. Equally without merit are defendant's attacks on the rational bases supporting Congress's decision to limit SSI benefits to the fifty States and the District of Columbia.

Defendant erroneously claims that the Commonwealth's unique tax status cannot be a rational basis for excluding Puerto Rico residents from SSI benefits. Defendant contends that Congress could have drawn a closer connection between a particular State's contributions to the federal Treasury funds—out of which benefits are paid—and the distribution of SSI benefits to residents of that State, or could have tied the receipt of SSI benefits to an individual's payment of taxes. But this line of argument misunderstands what rational basis review entails. "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.'" *Dandridge*, 397 U.S. at 485 (quoting *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 78 (1911)).

The inquiry before this Court is not whether Congress's decision to exclude residents of Puerto Rico from the SSI program was "wise," "that it best fulfills the relevant social and economic objectives," or "that a more just and humane system could not be devised." *Dandridge*, 397 U.S. at 485. In "the area of economics and social welfare, [Congress] does not violate the Equal Protection Clause merely because the classifications made by its law are imperfect." *Hackney*, 406 U.S. at 546; *see also Baker v.*

City of Concord, 916 F.2d 744, 747 (1st Cir. 1990) ("Imperfections in classifications . . . cannot automatically be equated with violations of equal protection."). That Congress could have addressed concerns about the connection to tax contributions in a different manner does not mean the statute violates equal protection principles or is irrational. As long as there are "plausible reasons" for Congress's action, the rational basis "inquiry is at an end." *U.S. R.R. Ret. Bd. v. Fritz*, 449 U.S. 166, 179 (1980); *see also id.* (That "the line might have been drawn differently at some points is a matter for legislative, rather than judicial, consideration.").

Similarly, "protecting the fiscal integrity . . . 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). It is well-settled 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 as a substantive matter, defendant is also wrong to suggest (Br. 36-37) that cost is not a permissible consideration under rational basis review. Defendant contends that cost can never justify a limitation on federal benefits because it could be used to justify a scheme in which Congress chose not to extend benefits to residents of one of the fifty States. Although 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, that does not mean that cost to the public fisc is not itself a rational consideration.

Defendant also erroneously contends (Br. 40) that even though it is rational to treat Puerto Rico itself differently than the States, it is not rational to treat *residents* of Puerto Rico differently than *residents* of the States. But that contention finds no support in law or logic. The question in both *Harris* and *Califano*, like here, was whether a federal benefits program may exclude residents of Puerto Rico without offending equal protection principles, and the Supreme Court answered in the affirmative. The fact that one program distributes funding through a state-operated grant program and the other distributes benefits directly to individuals does not change the analysis. If Congress may treat Puerto Rico differently because it is a Territory rather than a State, then it follows that Congress may also treat residents of such a Territory differently.

D. Finally, the extension of benefits to residents of the Commonwealth of the Northern Mariana Islands (NMI) does not mean the exclusion of residents of other territories is not rational.[3] As explained in the government's opening brief, benefits were extended to NMI residents as part of the covenant defining the terms of the NMI's entry into the United States as a territory. The fact that Congress extended SSI benefits to residents of NMI, perhaps as an incentive for the Commonwealth to become a U.S. territory, does not undermine the rational connection between Puerto Rico's unique tax status and the exclusion of Puerto Rico residents from the SSI program. *See Fritz*, 449 U.S. at 179 (The "task of classifying persons for . . . benefits . . . inevitably requires that

[3] This decision pre-dated both *Califano* and *Harris*, and in neither case did the Supreme Court suggest that it undermined Congress's rationality.

some persons who have an almost equally strong claim to favored treatment be placed on different sides of the line." (quoting *Mathews v. Diaz*, 426 U.S. 67, 83-84 (1976) (ellipses in original)). There is no "equal footing doctrine" for the territories, requiring that each territory be subject to the sovereignty of the United States in exactly the same manner. *Cf. Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 203-04 (1999). Congress has plenary authority "to develop innovative approaches to territorial governance" tailored to each territory's unique needs, *Sanchez Valle*, 136 S. Ct. at 1876, and Puerto Rico has often benefited from Congress's ability to legislate differently for each territory.[4]

Because the classifications in the Social Security Act based on residency in a territory are rational in light of Puerto Rico's unique tax status and the costs involved in extending SSI benefits to the territories, the district court's conclusion that the Social Security Act is unconstitutional must be reversed.

[4] For example, Congress provided Puerto Rico with the ability to convene a constitutional convention to draft the constitution by which the Commonwealth is governed, *see* Pub. L. No. 81-600, 64 Stat. 319 (1950), and established an Article III court in the Puerto Rico, which it has not provided for other U.S. territories, *see* Pub. L. No. 89-571, 80 Stat. 764 (1966).

CONCLUSION

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

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 5,607 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 2013 in Garamond 14-point font, a proportionally spaced typeface.

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CERTIFICATE OF SERVICE

I hereby certify that on September 23, 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:

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