IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Case No. 3:17-cv-02133-GAG**
	)	
	)	
JOSE LUIS VAELLO-MADERO,	)	
	)	
Defendant.	)	
	)	

REPLY BRIEF IN SUPPORT OF UNITED STATES OF AMERICA'S
CROSS-MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

Longstanding binding precedent establishes that Congress may enact economic and social welfare legislation – including the specific legislation at issue here – and treat residents of Puerto Rico differently from residents of the fifty States as long as it possesses a rational basis for its action. *Califano v. Torres*, 435 U.S. 1 (1978) (per curiam); *Harris v. Rosario*, 446 U.S. 651 (1980) (per curiam). Defendant's equal protection challenge to the Supplemental Security Income ("SSI") program's limitation of benefits eligibility to residents of the fifty States and the District of Columbia is governed by this precedent. It would be inconsistent with these holdings, and the broad discretion afforded to Congress when it establishes eligibility requirements for the receipt of government benefits, or enacts legislation under its plenary Territory Clause authority, to apply heightened scrutiny. The United States therefore respectfully requests that the Court enter summary judgment in its favor.

ARGUMENT

I. Rational Basis Review Governs Review of the Third Affirmative Defense.

The Supreme Court has held that rational basis review applies to an equal protection challenge to the constitutionality of Congress's treatment of Puerto Rico under the SSI program, *Califano*, 435 U.S. at 4-5, and more broadly, that rational basis review applies to an equal protection challenge to Congress's treatment of Puerto Rico for purposes of social and economic welfare legislation. *Harris*, 446 U.S. at 651-52. Rational basis review accordingly applies here because Puerto Rico is a United States territory subject to Congress's plenary authority under the Territory Clause, U.S. Const. art. IV, § 3, cl. 2, and because Defendant's third affirmative defense challenges economic legislation that neither infringes a fundamental right nor burdens a suspect class. *See* Pl. Cross-Mot. for Summ. J., ECF No. 59-1 ("Pl. MSJ") at 5-7; *see also Franklin Cal.*

Tax-Free Tr. v. Puerto Rico, 805 F.3d 322, 346 (1st Cir. 2015) (Torruella, J., concurring) (acknowledging that *Harris* and *Califano* mandated application of rational basis review).

A. Standard Rational Basis Review Governs Here.

As explained in the United States' opening brief, Defendant errs in contending that even if rational basis review supplies the governing standard, case law such as *Romer v. Evans*, 517 U.S. 620 (1996), and *Massachusetts v. HHS*, 682 F.3d 1 (1st Cir. 2012), requires the utilization of rational basis review "with bite." Pl. MSJ at 14. As the First Circuit has stated, the defense of the federal law in *Romer* was based solely on the singling out of a group that is "irrationally hated or irrationally feared," *Cook v. Gates*, 528 F.3d 42, 61 (1st Cir. 2008) (quoting *Milner v. Apfel*, 148 F.3d 812, 817 (7th Cir. 1998)), which is obviously not the situation presented by this case. Defendant similarly misplaces his reliance on *Massachusetts*. In that case, the First Circuit applied an "intensified scrutiny" based on a combination of equal protection and federalism concerns. *See Massachusetts*, 682 F.3d at 8 (explaining the First Circuit's conclusion that "equal protection and federalism concerns . . . combine – not to create some new category of 'heightened scrutiny' for [the Defense of Marriage Act] under a prescribed algorithm, but rather to require a closer than usual review based in part on discrepant impact among married couples and in part on the importance of state interests in regulating marriage"). Because this case does not involve such combined concerns, *Massachusetts* is inapposite. And in any event, neither *Romer* nor *Massachusetts* involved the exercise of congressional authority pursuant to the Territory Clause, under which, as explained by the Supreme Court and the First Circuit, Congress is entitled to substantial deference.

B. Because Defendant Has Not Presented a Valid Disparate Treatment Claim, Heightened Scrutiny Does Not Apply.

As explained previously, even if Defendant were correct that heightened scrutiny would

apply if he had presented a valid disparate treatment claim, he has not done so. Pl. MSJ at 14-16. "Where the claim is invidious discrimination in contravention of the . . . Fifth Amendment[], [the Supreme Court's] decisions make clear that the plaintiff must plead and prove that the defendant acted with discriminatory purpose." *Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009) (citing *Washington v. Davis*, 426 U.S. 229, 240 (1976)). Thus, to present a valid disparate treatment claim on the basis of race or ethnic origin, Defendant would need to show that racial discrimination was a "substantial" or "motivating" factor behind Congress's limitation of SSI to residents of the fifty States and the District of Columbia, such that the decision would not have been made "but for" the discriminatory motive. *Hunter v. Underwood*, 471 U.S. 222, 228, 231-32 (1985); *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977).

Defendant has failed to satisfy this "onerous" burden. *Hayden v. Grayson*, 134 F.3d 449, 453 (1st Cir. 1998). Instead of presenting any evidence to show that Congress "selected or reaffirmed a particular course of action at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group," *Pers. Adm'r v. Feeney*, 442 U.S. 256, 279 (1979), Defendant instead relies exclusively on the discriminatory language of early twentieth-century Supreme Court decisions involving Puerto Rico and the newly-acquired territories in the early twentieth century (*i.e.*, the *Insular Cases*). *See* Def. Opp. to Pl. MSJ, ECF No. 68 ("Def. Opp.") at 3-5. That reliance is unwarranted, because it is Congress that enacted the statute at issue here, and which is therefore the relevant decisionmaker. Purposeful discrimination "involves a *decisionmaker's* undertaking a course of action 'because of,' not merely 'in spite of,' the action's adverse effects upon an identifiable group." *Iqbal*, 556 U.S. at 676-77 (emphasis added). Defendant has not presented evidence that Congress relied on (or even referenced) the discriminatory language espoused in the *Insular Cases* as a motivating factor behind the statute's

enactment.[1] Because Defendant has failed to satisfy his onerous burden of demonstrating a racially-discriminatory purpose motivated that Congress, he has not presented a valid disparate treatment claim that could trigger heightened scrutiny.

C. Courts Have Repeatedly Rejected Arguments to Apply Heightened Scrutiny to Legislation Affecting Residents of U.S. Territories as Inconsistent with Congress's Territory Clause Power, Despite Arguments That Such Legislation Affects a Discrete and Insular Minority.

Defendant also argues that heightened scrutiny is triggered because that the legislation at issue should be deemed to affect a discrete and insular minority. Def. Opp. at 2-3. As the United States has explained, this argument fails for two separate reasons. First, Defendant's assertion – that a law neutral on its face disparately affects a particular group of persons – is merely a recasting of Defendant's disparate-impact argument under a different heading. Pl. MSJ at 16; *see also Quiban v. Veterans Admin.*, 928 F.2d 1154, 1160-61 (D.C. Cir. 1991) (agreeing with district court ruling that "the Territory Clause permits exclusions or limitations directed at a territory and coinciding with race or national origin, so long as the restriction rests upon a rational base," and citing *Davis* for the proposition that "[s]tanding alone, disproportionate racial impact does not trigger . . . strictest scrutiny"). And as explained above, even if Defendant had demonstrated a disparate impact here, such a demonstration would not trigger heightened scrutiny. Second, and in any event, two courts of appeals have specifically rejected this very argument, and the United

[1] Defendant also misplaces his reliance on the Supreme Court case law he cites under this rubric. Def. Opp. at 4-5. In *Davis*, the Supreme Court declared that it has "not held that a law, neutral on its face and serving ends otherwise within the power of government to pursue, is invalid under the Equal Protection Clause simply because it may affect a greater proportion of one race than of another." 426 U.S. at 242. Furthermore, *Arlington Heights* made clear that cases in which "a clear pattern, unexplainable on grounds other than race" "are rare." 429 U.S. at 267. To the extent that a century-old case, *Missouri v. Lewis*, 101 U.S. 22 (1879), could have supported the proposition that a showing of disparate impact would violate equal protection principles, such a proposition has long since been superseded by cases such as *Arlington Heights*.

States is aware of no decision to the contrary. Def. MSJ at 16-17; *see Quiban*, 928 F.2d at 1160-61; *Besinga v. United States*, 14 F.3d 1356, 1360 (9th Cir. 1994).

Defendant's responsive arguments in his closing brief fare no better. Initially, Defendant challenges the description of the statute at issue here as facially neutral with respect to classifications of race or national origin. Def. Opp. at 3. That challenge fails because the statute differentiates on the basis of residence, and not along lines of race or national origin. A facially discriminatory classification based on race or national origin would deny benefits to all Puerto Ricans, regardless of their residence; however, Puerto Ricans who reside in one of the fifty States or the District of Columbia are eligible to receive SSI benefits. And Defendant has failed to identify any authority concluding that for equal protection purposes, classifications based on residency trigger heightened scrutiny. *See Heller v. Doe*, 509 U.S. 312, 319-20 (1993) (explaining that "a classification neither involving fundamental rights nor proceeding along suspect lines . . . cannot run afoul of the Equal Protection Clause if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose").

Additionally, Defendant misplaces his reliance on *Hampton v. Mow Sun Wong*, 426 U.S. 88 (1976), which invalidated a federal regulation that barred non-U.S. citizens from federal employment. Def. Opp. at 2-3. As an initial matter, *Hampton* is inapposite because this case does not involve non-U.S. citizens. In any event, *Hampton* "assume[d] . . . that if the Congress or the President had expressly imposed the citizenship requirement [at issue], it would be justified by the national interest in providing an incentive for aliens to become naturalized. . . ." 426 U.S. at 105. Consequently, "[b]ecause *Hampton* did not deal with a Congressional enactment, it provides no support for [Defendant's] position that rational basis scrutiny does not apply in this case." *Rodriguez ex rel. Rodriguez v. United States*, 169 F.3d 1342, 1349 (11th Cir. 1999).

Finally, that *Quiban* and *Besinga* are "out-of-circuit," Def. Opp. at 13, does not assist Defendant because First Circuit precedent inevitably leads to the same conclusions reached by the D.C. and Ninth Circuits. In upholding the exclusion of Philippine veterans from certain veterans benefits, *Quiban* rejected the argument "that because Filipino veterans are a discrete and insular minority with no, or diminished, access to channels in which political reform can be pursued, strict scrutiny is required" because "[b]y definition, . . . residents of territories lack equal access to channels of political power." 928 F.2d at 1160. The inevitable conclusion of such an argument would be to trigger heightened scrutiny whenever legislation could be deemed to affect residents of U.S. territories, which would be inconsistent with the broad discretion Congress possesses when legislating under the Territory Clause. The Ninth Circuit in *Besinga* agreed with *Quiban*, explaining 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" and therefore, "[a] contrary rule would subject virtually every failure by Congress to extend federal benefits to residents of the territories to the charge that the decision was based on impermissible considerations of race or national origin." 14 F.3d at 1360 (footnote omitted).

Similarly, the First Circuit has explained that the Territory Clause vests especially broad discretion in Congress to legislate with respect to U.S. territories. *See United States v. Rivera Torres*, 826 F.2d 151, 154 (1st Cir. 1987) (explaining that "Congress can, pursuant to the plenary powers conferred by the Territorial Clause, legislate as to Puerto Rico in a manner different from the rest of the United States") (footnote omitted); *accord United States v. Maldonado-Burgos*, 844 F.3d 339, 345 (1st Cir. 2016) (citing *Jusino Mercado v. Puerto Rico*, 214 F.3d 34, 40-44 (1st Cir. 2000)). This First Circuit precedent confirming such broad discretion implicitly proscribes applying heightened scrutiny whenever Congress enacts legislation deemed to affect residents of

U.S. territories. Consequently, the same conclusion reached in *Quiban* and *Besinga* – that applying heightened scrutiny to any legislation affecting territories would be inconsistent with Congress's plenary Territory Clause authority – is inescapable in this Circuit.

D. The Territorial Incorporation Doctrine Is Irrelevant Here.

Defendant's closing merits brief mistakenly urges that case law construing the territorial incorporation doctrine is relevant here. Def. Opp. at 9-14. As the United States has explained previously, that body of case law is immaterial here because even if Puerto Rico were an incorporated territory, rational basis review would still apply because Puerto Rico would still be subject to the Territory Clause and because Defendant would still be asserting an equal protection challenge to economic and social welfare legislation. Pl. MSJ at 17-18.

Defendant's responsive arguments lack persuasive force. Def. Opp. at 9-13. First, Defendant misses the mark in arguing that even when Congress legislates under the Territory Clause, equal protection principles apply. *Id*. at 9. As explained previously, binding precedent already makes it clear that equal protection principles apply to Puerto Rico. Pl. MSJ at 18. But that does not alter the fact that "[i]n 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).

Second, Defendant mistakenly suggests that the holdings in *Harris* and *Califano* that rational basis review governs an equal protection challenge to social and economic benefits legislation pertaining to Puerto Rico were not premised on Congress's plenary Territory Clause power, but instead on the distinction between incorporated and unincorporated territories. Def.

Opp. at 10-11. In fact, the words "incorporated" or "unincorporated" or any variant thereof do not appear in *Harris* or *Califano*, and the more recent of the two opinions made unmistakably clear that its holding was founded on the Territory Clause. *See Harris*, 446 U.S. at 651-52 (explaining that for purposes of economic and social benefits legislation, "Congress, which is *empowered under the Territory Clause* of the Constitution to 'make all needful Rules and Regulations respecting the Territory . . . belonging to the United States,'" may treat Puerto Rico differently from States so long as there is a rational basis for its actions") (emphasis added) (citation omitted).[2]

Third, Defendant mistakenly contends that because the benefits legislation here has a nationwide scope, Congress may not be deemed to have enacted it under its Territory Clause authority unless there is some affirmative "indication" to that effect. Def. Opp. at 12. That is not the manner in which constitutional review of social and economic benefits legislation proceeds. Rather, "[p]roper respect for a coordinate branch of the government requires that [a court may] strike down an Act of Congress only if the lack of constitutional authority to pass [the] act in question is clearly demonstrated." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 538 (2012) (citation omitted). Here, Congress's Territory Clause authority permitted it to limit the receipt of SSI benefits to residents of the fifty states and the District of Columbia. No additional "indication" is necessary. Indeed, the Supreme Court in *Harris* upheld the enactment of national economic

[2] Nor, contrary to Defendant, does the fact that one of these two decisions (*Califano*) included a single "*cf.*" reference to the *Insular Cases* in a footnote mean that *Harris* and *Califano* decisions are premised on that line of cases. Def. Opp. at 10-11. The "*cf.*" citation occurs in a footnote in *Califano* to support the proposition that "Puerto Rico has a relationship to the United States that has no parallel in our history," 435 U.S. at 3 n.4, and not whether Puerto Rico was an incorporated or unincorporated territory. Consequently, even if the *Insular Cases* were to be overturned by the Supreme Court, that would not affect the outcome here. Rational basis review would still apply, because Defendant is asserting an equal protection challenge to social and economic benefits legislation enacted pursuant to Congress's Territory Clause power.

legislation – the food stamp program – under Congress's Territory Clause power as that legislation applied to Puerto Rico, 446 U.S. at 651-52, and declared that the SSI program represented a "similar statutory classification." *Id*. at 652.

Finally, Defendant incorrectly attempts to shift his burden of demonstrating that heightened scrutiny should apply here, repeatedly stating that authority cited by the United States does not "preclude" or "foreclose[]" heightened scrutiny. Def. Opp. at 11, 13, 14. It is the burden of the proponent of an equal protection claim to demonstrate that heightened scrutiny applies. *See, e.g.*, *Brian B. ex rel. Lois B. v. Pa. Dep't of Educ*., 230 F.3d 582, 585 (3d Cir. 2000) (noting argument of plaintiffs advancing equal protection claim in favor of applying heightened scrutiny); *Cook v. Rumsfeld*, 429 F. Supp. 2d 385, 396 (D. Mass. 2006) (same), *aff'd sub. nom. Cook v. Gates*, 528 F.3d 42 (1st Cir. 2008). Defendant thus errs in attempting to shift the burden to the United States to show that heightened scrutiny is "preclude[d]" or "foreclose[d]."

E. Defendant Misplaces His Reliance on Case Law Pertaining to the District Clause of the Constitution.

As explained previously, *see* Pl. MSJ at 18-19, Defendant misplaces his reliance on case law construing Congress's power to enact legislation for the District of Columbia under the District Clause, U.S. Const. art. 1, § 8, cl. 17, to argue that equal protection principles apply when Congress enacts such legislation (and by analogy, when Congress enacts legislation under the Territory Clause). That is not a question at issue here, as explained above. Moreover, the United States has explained that Defendant may not rely on an abrogated case, *United States v. Thompson*, 452 F.2d 1333 (D.C. Cir. 1971), to argue that if legislation affecting District of Columbia residents receives heightened scrutiny, the same should be true of legislation affecting Puerto Rico residents. Pl. MSJ at 18-19. Two subsequent decisions – *United States v. Cohen*, 733 F.2d 128 (D.C. Cir. 1984) (en banc), and *Calloway v. Dist. of Columbia*, 216 F.3d 1 (D.C. Cir. 2000) – make clear that

because District of Columbia residents "do not comprise a suspect class for equal protection purposes," *Calloway*, 216 F.3d at 7, rational basis review governs review of equal protection claims challenging legislation purporting to treat District residents differently from non-District residents. *Id*. at 8; *Cohen*, 733 F.2d at 132-36. Therefore, even if case law involving the District Clause were relevant here, it would only further show that rational basis review governs here.

II. Limiting Eligibility for SSI Benefits to Residents of the Fifty States and the District of Columbia Satisfies Rational Basis Review.

To prevail under rational basis review, Defendant must demonstrate that "no plausible set of facts exists that could forge a rational relationship between the challenged [law] and the government's legitimate goals." *Citizens Awareness Network, Inc. v. United States*, 391 F.3d 338, 355 (1st Cir. 2004). Defendant fails to satisfy this heavy burden. The unique tax status of Puerto Rico and the high cost of treating Puerto Rico as a State for purposes of determining the allocation of federal funds under SSI constitute rational bases for Congress's actions. *See Harris*, 446 U.S. at 652; *Califano*, 435 U.S. at 5 n.7. The United States' opening brief demonstrated that these additional costs to the public fisc provide, at a minimum, a "reasonably conceivable state of facts that could provide a rational basis" for the statutory provision at issue here. *Beach Commc'ns*, 508 U.S. at 313; *see* Pl. MSJ at 9-13.

Defendant improperly attempts to re-litigate the justifications provided by the Supreme Court in *Califano* and *Harris* for limiting economic and social welfare benefits to residents of the fifty States and the District of Columbia. Def. Opp. at 6-8. Even if this Court could accept Defendant's encouragement to disagree with binding case law, his arguments are unconvincing. First, the "unique tax status" of Puerto Rico justifies such limitations. *Califano*, 435 U.S. at 5 n.7; *accord Harris*, 446 U.S. at 652. Residents of Puerto Rico – unlike residents of the fifty States and the District of Columbia – generally do not pay federal income tax, 26 U.S.C. § 933, as was the

case when *Harris* and *Califano* were decided. General revenues fund the SSI program, *see* Def. Opp. at 6-7 & n.2, and because federal income tax represents 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. *See* Table 2.2 – Percentage Composition of Receipts by Source: 1934-2023 (showing that since 1944, individual income tax has represented the most significant source of federal revenue);[3] *Beach Commc'ns*, 508 U.S. at 316 (explaining that it is an "unavoidable component[] of most economic or social legislation" for "Congress . . . to draw the line somewhere," and that "[t]his necessity renders the precise coordinates of the resulting legislative judgment virtually unreviewable").

Furthermore, Congress's decision to extend SSI benefits eligibility to residents of the Northern Mariana Islands ("NMI") does not mean that it was constitutionally required to extend such eligibility to residents of all territories, including Puerto Rico. Def. Opp. at 7. As explained in the United States' opening brief, Defendant's contrary argument ignores the fact that federal law has long distinguished between and among territories in myriad ways, in matters small and large. Pl. MSJ at 11 & n.7. Defendant has failed to identify any authority showing that the Constitution requires Congress to extend federal benefits legislation to U.S. territories in a uniform manner. Under rational basis review, "a statute is not invalid under the Constitution because it might have gone farther than it did." *Katzenbach v. Morgan*, 384 U.S. 641, 657 (1966) (citations omitted). Instead, "reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind." *Williamson v. Lee Optical*, 348 U.S. 483, 489 (1955). Indeed, it was for this reason that the Northern District of Illinois held that in enacting the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"), "the fact that Congress

[3] https://www.whitehouse.gov/omb/historical-tables/

drew a distinction between United States citizens/former state residents now residing in [NMI] versus United States citizens/former state residents who now reside in other territories does not mean that it was required to extend absentee voting across the board to all territories." *Segovia v. Bd. of Election Comm'rs for Chicago*, 201 F. Supp. 3d 924, 945 (N.D. Ill. 2016), *vacated on other grounds sub nom*. *Segovia v. United States*, 880 F.3d 384 (7th Cir. 2018);[4] *cf*. *Segovia*, 880 F.3d at 390-91 (rejecting equal protection challenge to state statute distinguishing between NMI residents and residents of Puerto Rico, Guam, and Virgin Islands), *cert. denied*, No. 17-1463, 2018 WL 1933266 (Oct. 9, 2018). In any event, Congress had extended SSI benefits to NMI prior to *Califano*, *see* Pub. L. 94-241 § 502(a), 90 Stat. 263, 268 (1976), and that fact did not prevent the Supreme Court from concluding that the SSI program was consistent with equal protection principles.[5]

Second, "the cost of including Puerto Rico" in the SSI program "would be extremely great." *Califano*, 435 U.S. at 5 n.7.[6] As the United States explained in its opening brief, a recent Government Accountability Office report has estimated that if eligibility for SSI benefits were

[4] The Seventh Circuit in *Segovia* affirmed the portion of the district court's decision rejecting the equal protection challenge to the state statute, but vacated the portion relating to UOCAVA "and remand[ed] the case with instructions to dismiss that portion for want of jurisdiction," specifically, for lack of standing. 880 F.3d at 387. That portion of the decision continues to constitute persuasive authority. *See Smothers v. Benitez*, 806 F. Supp. 299, 307 n.12 (D.P.R. 1992) ("While a decision which has been vacated as moot has no precedential value, the reasoning remains persuasive.") (internal citations omitted).

[5] *See also* Jurisdictional Statement, *Califano v. Torres*, No. 77-88, 1977 WL 204941 (Jul. 14, 1977), at 9 n.8 (referencing congressional discussion regarding "the extension of the SSI program to the Northern Mariana Islands").

[6] Defendant incorrectly states that the United States has "abandoned" its reliance on a third justification presented in *Califano*, Def. Opp. at 6 n.3; on the contrary, the United States has explained that Defendant has also failed to sustain his burden on this point as well. *See* Pl. MSJ at 12 n.9.

extended to Puerto Rico residents, annual federal spending would increase from approximately $24 million (the funding spent on a similar program in Puerto Rico for low-income individuals) to a range between $1.5 to $1.8 billion. Pl. MSJ at 12. And while Defendant contends that it might be "more logical" to consider costs in terms of budget percentages rather than raw numbers, Def. Opp. at 8, rational basis review does not turn on such considerations. *See Lyng v. United Auto Workers of Am.*, 485 U.S. 360, 373 (1988) (explaining that 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"). For similar reasons, Defendant's observation that Congress could also achieve cost savings through an across-the-board reduction of benefits, Def. Opp. at 8, is irrelevant to the Court's application of means-end scrutiny because "[u]nder the system of government created by our Constitution, it is up to legislatures, not courts, to decide on the wisdom and utility of legislation." *Ferguson v. Skrupa*, 372 U.S. 726, 729 (1963). Showing that an alternative means might be available to achieve a similar goal is not tantamount to demonstrating that Congress acted irrationally in choosing the means that it did select.[7]

Limiting SSI eligibility to residents of the fifty States and the District of Columbia thus withstands constitutional means-end scrutiny. The United States respectfully requests that the Court enter in its favor with respect to Defendant's third affirmative defense.[8]

[7] Defendant misplaces his reliance on cases such as *Windsor v. United States*, 833 F. Supp. 2d 394 (S.D.N.Y. 2012), and *Massachusetts*, Def. Opp. at 8, because at most, those cases suggest that cost savings considerations might not suffice as the sole factor offered to justify legislation. That is not the case here, where at least two grounds justify upholding the statute at issue.

[8] Defendant incorrectly suggests that the United States has not argued that the limitation of SSI benefits eligibility to residents of the fifty States and the District of Columbia would satisfy heightened review. Def. Opp. at 2 n.1. To the contrary, the United States has explained that for

III. Defendant Presents No Basis for This Court to Ignore Binding United States Supreme Court Precedent.

Califano and *Harris* prescribe the outcome of this case. Furthermore, the First Circuit has instructed that the Supreme Court "has admonished the lower federal courts to follow its directly applicable precedent, even if that precedent appears weakened by pronouncements in its subsequent decisions, and to leave to the [Supreme] Court 'the prerogative of overruling its own decisions.'" *Figueroa v. Rivera*, 147 F.3d 77, 81 n.3 (1st Cir. 1998) (quoting *Agostini v. Felton*, 521 U.S. 203, 237 (1997)). In any event, as the United States has explained, Defendant fails to show that subsequent Supreme Court decisions have significantly undermined *Califano* and *Harris* in any relevant way. Def. MSJ at 21. Rather, the pertinent holdings of those cases – that as applied to Puerto Rico residents, review of social and economic welfare benefits legislation (and of the SSI program in particular) is governed by rational basis review remain unchallenged by later Supreme Court decisions.

Furthermore, contrary to Defendant's contention, Def. Op. at 14-15, that *Califano* and *Harris* were *per curiam* opinions resolved by summary disposition does not undermine their status as precedent binding lower courts. The cases cited by Defendant stand for a different proposition: namely, the Supreme Court itself may decide not to afford *per curiam* summary dispositions full weight for *stare decisis* purposes. By contrast, as the First Circuit has stated, district courts and courts of appeals are bound by the reasoning presented in opinions issued by the Supreme Court on summary disposition. *See Massachusetts*, 682 F.3d at 8 ("A Supreme Court summary dismissal prevents lower courts from coming to opposite conclusions on the precise issues presented and necessarily decided by those actions.") (citation and internal punctuation omitted). And indeed,

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the reasons presented in its merits briefing, this limitation would pass muster under any level of constitutional means-end scrutiny. Pl. MSJ at 13 n.10.

the First Circuit recently relied on *Harris* and *Califano* to conclude that the constitutional status of Puerto Rico, standing alone, provided a rational basis for treating Puerto Rico differently from the fifty States for purposes of the U.S. Bankruptcy Code. *See Franklin Cal.*, 805 F.3d at 337, 344-45; *see also id*. at 346 (Torruella, J., concurring).

Finally, Defendant is incorrect in contending that no equal protection claim was presented to and decided by the Supreme Court in *Califano*. Def. Opp. at 15. The basis for this contention is a single-judge dissenting opinion in *Harris* that was incorrect. *See Califano*, 435 U.S. at 3 n.4 (explaining that the complaint in *Califano*, in addition to the constitutional right to travel, "had also relied on the equal protection component of the Due Process Clause of the Fifth Amendment in attacking the exclusion of Puerto Rico from the SSI program"). In any event, *Harris* subsequently decided an equal protection challenge to economic and social welfare benefits legislation that the Supreme Court specifically characterized as "a similar statutory classification" to the SSI program at issue in *Califano*. *Harris*, 446 U.S. at 652. *Harris* explained that as applied to Puerto Rico residents, the benefits legislation did not "violate[] the Fifth Amendment's equal protection guarantee" because "Congress, which is empowered under the Territory Clause of the Constitution, to 'make all needful Rules and Regulations respecting the Territory . . . belonging to the United States,' may treat Puerto Rico differently from States so long as there is a rational basis for its actions." *Id*. at 651-52 (internal citation omitted).

CONCLUSION

For the reasons stated above and in the United States' opening brief, the United States respectfully requests that the Court enter summary judgment in its favor with respect to Defendant's third affirmative defense, and deny Defendant's motion for summary judgment.

Dated: November 7, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of November, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which will automatically send notifications of this filing to all attorneys of record.

/s/ Daniel Riess
Daniel Riess