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.	)	
	)	

UNITED STATES OF AMERICA'S BRIEF IN RESPONSE TO
COMMONWEALTH OF PUERTO RICO'S AMICUS BRIEF

INTRODUCTION AND BACKGROUND

This brief responds to the amicus curiae brief of the Commonwealth of Puerto Rico ("Amicus") in support of Defendant's motion for summary judgment.[1] Clear and binding precedent holds that Congress may place restrictions on the eligibility of persons residing in United States territories to receive economic and social welfare benefits as long as it possesses a rational basis to enact such restrictions. *Harris v. Rosario*, 446 U.S. 651 (1980) (per curiam). Furthermore, the Supreme Court has upheld an 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 under rational basis review. *Califano v. Torres*, 435 U.S. 1 (1978) (per curiam).

The arguments raised in Amicus' brief seek a ruling from this Court that would repudiate this binding precedent. In that regard, the amicus brief largely reiterates arguments presented by Defendant in his merits briefs, *see* Def. Mot. for Summ. J., ECF No. 57; Def. Opp. to Pl. MSJ, ECF No. 68, to which the United States has already responded and will not repeat at length here. *See* Pl. Cross-Mot. for Summ. J., ECF No. 59-1 ("Pl. MSJ"); Reply Br. Supp. Pl. MSJ, ECF No. 77 ("Pl. Reply"). This brief responds to the two central arguments raised in Amicus' brief: (1) that

[1] An additional amicus curiae brief submitted by the Honorable Jenniffer A. González Colón, Resident Commissioner of Puerto Rico, describes the nature of the SSI program, including its eligibility requirements, funding and expenditures, applicability to United States territories, and legislative history. Br. of *Amicus Curiae* Hon. Jenniffer A. González Colón, Resident Commissioner, Puerto Rico, ECF No. 78, at 1-14, 20-29. The brief also describes adult assistance programs administered in Puerto Rico. *Id*. at 14-19. The United States respectfully notes that although the brief contains a wealth of empirical information on these subjects, "equal protection is not a license for courts to judge the wisdom, fairness, or logic of legislative choices," and "[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) (citations omitted).

contrary to binding precedent, heightened scrutiny applies to the Court's review of Defendant's equal protection challenge, and (2) that Congress's limitation of benefits eligibility does not satisfy rational basis review. As demonstrated below, Amicus cannot overcome the binding precedent demonstrating that rational basis review governs here, and that the limitation at issue here satisfies such review. For these reasons, Amicus' arguments lack persuasive force.

ARGUMENT

I. The Rational Basis Standard Governs Review of Defendant's Third Affirmative Defense.

The rational basis standard governs review of an equal protection challenge to the constitutionality of Congress's treatment of Puerto Rico under the SSI program, as the Supreme Court has held. *Califano*, 435 U.S. at 4-5. More broadly, 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.

Consistent with this binding precedent, rational basis review 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,[2] and because Defendant's third affirmative defense challenges economic legislation that neither infringes a fundamental right nor burdens a suspect class. *See* Pl. MSJ at 5-7. The Supreme Court and the First Circuit (as well as other circuits) have firmly established that, under the Territory Clause, Congress can legislate for Puerto Rico differently from states in the area of economic benefits "so long as there is a rational basis for its actions." *Harris*, 446 U.S. at 651-52; *see also Trailer Marine Transport Corp. v. Rivera Vazquez*, 977 F.2d

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

1, 7 (1st Cir. 1992) ("[U]nder governing Supreme Court precedent, Congress may, and sometimes has, enacted laws that make different provision for Puerto Rico than for the states, limited only by a rational basis requirement.") (citations omitted).

Rational basis review is a necessary consequence of Congress's plenary authority under the Territory Clause, which extends over "the people of the Territories and all the departments of the territorial governments," *First Nat'l Bank v. Cty. of Yankton*, 101 U.S. 129, 133 (1879), and allows Congress to legislate for the territories "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); *accord United States v. Maldonado-Burgos*, 844 F.3d 339, 345 (1st Cir. 2016), *reh'g denied & en banc*, 869 F.3d 1 (1st Cir. 2017) (explaining that Congress has "constitutional authority to legislate for Puerto Rico differently than for the states") (citing *Jusino Mercado v. Puerto Rico*, 214 F.3d 34, 40-44 (1st Cir. 2000)); *Besinga v. United States*, 14 F.3d 1356, 1360 (9th Cir. 1994) (stating 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"); *Quiban v. Veterans Admin.*, 928 F.2d 1154, 1160 (D.C. Cir. 1991) (stating 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").

Though Amicus argues for the application of heightened scrutiny, *see* Commonwealth of Puerto Rico's Amicus Br., ECF No. 76, at 2-3 ("Amicus Br."), its brief fails to come to terms with this precedent clearly showing that rational basis review governs here. Moreover, Amicus misplaces its reliance on case law supporting the proposition that equal protection challenges to statutes that make facial distinctions on the basis of race or ethnic origin may be subject to

heightened review. *See id.*[3] As the United States has explained, *see* Pl. Reply at 5, the statute at issue here differentiates on the basis of residence, rather than along lines of race or national origin. If a resident of Puerto Rico were to move to one of the fifty States or the District of Columbia, he or she would be eligible to receive SSI benefits provided that he or she satisfied all other eligibility requirements. Furthermore, Amicus identifies no authority concluding that for equal protection purposes, a classification based on residency triggers heightened scrutiny. *See also Arlington Cty Bd. v. Richards*, 434 U.S. 5, 7 (1977) (per curiam) (Constitution "does not presume distinctions between residents and nonresidents of a local neighborhood to be invidious" and only subjects such distinctions to rational basis review); *Whiting v. Town of Westerly*, 942 F.2d 18, 23 (1st Cir. 1991) ("The utilization of different, but otherwise constitutionally adequate, procedures for residents and nonresidents does not, by itself, trigger heightened scrutiny under the Equal Protection Clause."); *Ward v. Bd. of Exam'rs of Eng'rs*, 409 F. Supp. 1258, 1259 (D.P.R. 1976) (explaining that "we cannot say that residency is a suspect classification" for equal protection purposes warranting heightened review), *aff'd*, 429 U.S. 801 (1977).

Amicus is also mistaken in suggesting that the relevant Supreme Court 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 "based" on the *Insular Cases*. Amicus Br. at 10. That line of cases was cited only once in a footnote in *Califano*, and only 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. Notably, it was not cited for the proposition that Puerto Rico was an incorporated or unincorporated territory. And *Harris*, the decision that made clear that

[3] Additionally, *Bruns v. Mayhew*, 750 F.3d 61 (1st Cir. 2014), dealing with alienage-based classifications, is irrelevant here because Defendant is not challenging the SSI program as it applies to aliens, but only to United States citizens.

rational basis review applied to an equal protection challenge to social and economic benefits legislation pertaining to Puerto Rico because of Congress's plenary Territory Clause authority, does not rely on or cite that line of cases. Thus, Amicus' discussion of the *Insular Cases*, Amicus Br. at 3-11, is immaterial because 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 power under the Territory Clause.

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

As explained in *Harris* and *Califano*, 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.

Amicus inappropriately 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. Amicus Br. at 11-15. In any event, however, Amicus' arguments are not convincing. Initially, 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. And because federal income tax represents the most significant single source of federal revenues, *see*

Pl. Reply at 11, it was rational for Congress to draw the line for eligibility for SSI benefits in the way that it did. *See 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").

Amicus also incorrectly suggests that Puerto Rico's "unique tax status" does not provide a rational basis for excluding residents of Puerto Rico from the SSI program because, according to Amicus, the SSI program "clearly aims at individuals who do not pay Federal income taxes because their income is too low." Amicus Br. at 12. In fact, an individual's taxpayer status is irrelevant to whether he or she qualifies for SSI benefits. The SSI program provides benefits to certain aged, blind, or disabled individuals who meet certain specified income and resource requirements. *See* 42 U.S.C. § 1381a. The program excludes certain income and certain resources from the calculation as to whether an individual is eligible to receive benefits. *See, e.g.*, 20 C.F.R. § 416.1112. However, the calculation does not consider either the recipient's ability to pay federal income tax nor whether he or she actually pays federal income tax. Thus, it is irrelevant whether or not SSI recipients pay federal income tax, and the fact that some SSI recipients pay no federal income tax has no bearing on whether Congress acted rationally in determining that the program should be limited to residents of the fifty States and the District of Columbia.[4]

[4] Furthermore, Amicus has presented no evidence to support its contention that "beneficiaries of SSI do not pay federal taxes." Amicus Br. at 12. To the contrary, SSI recipients may have any number of income and resource streams – including work – and would incur federal tax liability on those streams. For 2019, for example, if an individual has only earnings income, then he or she could earn up to $1,627 per month and still be eligible for an SSI benefit, *see* Social Security Administration, Income Exclusions for SSI Program, https://www.ssa.gov/oact/cola/incomexcluded.html, which may well be enough income to trigger a federal income tax payment.

Additionally, "the cost of including Puerto Rico" in the SSI program "would be extremely great." *Califano*, 435 U.S. at 5 n.7. A recent government report estimated that if eligibility for SSI benefits were 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. This additional cost constitutes a reasoned justification for limiting benefits eligibility to residents of the fifty States and the District of Columbia. Amicus' point in citing government data about estimated tax payments by corporations and various other tax entities is unclear, Amicus Br. at 13-14, but in any event, it falls within the purview of Congress rather than the courts to determine whether extending benefits eligibility to Puerto Rico residents would or would not "be too costly." *Id*. at 14; *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"); *Ferguson v. Skrupa*, 372 U.S. 726, 729 (1963) ("Under the system of government created by our Constitution, it is up to legislatures, not courts, to decide on the wisdom and utility of legislation.").[5]

CONCLUSION

For the foregoing reasons, the arguments presented by Amicus lack persuasive force. The United States of America therefore respectfully requests that the Court enter summary judgment in its favor.

[5] Amicus also fails to demonstrate that it was wholly irrational for Congress to conclude that an additional influx of federal SSI payments might disrupt Puerto Rico's economy. *Califano*, 435 U.S. at 5 n.7.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 21st 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
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