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.	)	
	)	

SUPPLEMENTAL BRIEF

Pursuant to the Court's Minute Order dated January 25, 2019 [ECF No. 92], Plaintiff United States of America respectfully submits this supplemental brief.

INTRODUCTION

As explained in the United States' merits briefs and during oral argument, longstanding binding precedent establishes that Congress may enact economic and social welfare legislation – including the specific legislation at issue in this case – that treats residents of Puerto Rico differently from residents of the fifty States as long as Congress 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). And the same precedent establishes that the Supplemental Security Income ("SSI") program's limitation of benefits eligibility to residents of the fifty States and the District of Columbia satisfies rational basis review. *See id*. It would therefore be inconsistent with these holdings, and with 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 or to invalidate this limitation.

Because these issues have already been fully briefed, Plaintiff will not repeat them here.[1] This Supplemental Brief will instead address this Court's question at oral argument concerning whether selected passages in *Windsor* and *Obergefell* undermine the controlling authority of *Harris* and *Califano*, or otherwise encourage an outcome favorable to Defendant's claim. Transcript of Dec. 20, 2018 Hearing at 50:21-65:11. As discussed in further detail below, those opinions do not implicate, let alone expressly reverse, the longstanding precedent that forecloses the present constitutional challenge.

ARGUMENT

Neither *Windsor* Nor *Obergefell* Undermines Binding Precedent Foreclosing Defendant's Constitutional Challenge.

Nothing in *Windsor* or *Obergefell* has weakened or undermined *Califano* or *Harris* in any relevant way. The plaintiff in *Windsor* was a surviving spouse whose marriage to a same-sex partner was valid under state law; however, because the federal Defense of Marriage Act ("DOMA") denied federal recognition to same-sex spouses, the plaintiff did not qualify for the marital exemption from the federal estate tax. 570 U.S. at 753. The Supreme Court held that DOMA's prohibition on the federal recognition of same-sex marriages that were recognized as valid under state law violated equal protection principles. *Id*. at 769-75. The Supreme Court's holding in *Windsor* turned in very significant part on "the extent of the state power and authority over marriage as a matter of history and tradition."

[1] One issue raised during the December 20, 2018 oral argument was whether the eligibility of U.S. resident aliens to receive SSI benefits raised questions about the rationality of the residency classification here. *See, e.g.*, Transcript of Dec. 20, 2018 Hearing at 14:4-16:5. In addition to the arguments presented in the United States' merits briefs and during oral argument, the United States also notes that by contrast to residents of Puerto Rico, U.S. resident aliens are generally subject to federal income tax. *See Lujan v. Comm'r*, 2000 WL 1772503, at *3 (U.S. Tax Ct. 2000) ("In general, all U.S. citizens, wherever resident, and 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 the United States has explained previously, general revenues fund the SSI program, 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* Pl. Closing Merits Br. at 10-11 [ECF No. 77].

Id. at 766; *see also id*. at 768 ("The State's power in defining the martial relation is of central relevance in this case. . . ."). The Supreme Court emphasized that "the Federal Government, through our history, has deferred to state-law policy decisions with respect to domestic relations," and that "[i]n order to respect this principle, the federal courts, as a general rule, do not adjudicate issues of marital status even when there might otherwise be a basis for federal jurisdiction." *Id*. at 767. In addition, *Windsor* explained that "[t]he States' interest in defining and regulating the marital relation, subject to constitutional guarantees, stems from the understanding that marriage is more than a routine classification for purposes of certain statutory benefits" but is instead "a far-reaching legal acknowledgment of the intimate relationship between two people." *Id*. at 769. By contrast, there is no such well-established history of federal deference to state (or territorial) policy decisions with respect to benefits eligibility for federal social and economic welfare payments. And the special nature of the marriage relationship distinguishes *Windsor* from cases involving more "routine classifications[s] for purposes of certain statutory benefits," *id*., such as the residency classification at issue here.

The "transcendent importance of marriage" was also central to the Supreme Court's decision in *Obergefell*. 135 S.Ct. at 2594. In that case, states that defined marriage as a union between one man and one woman prohibited same-sex couples from marrying or from recognizing same-sex marriages acknowledged as valid under the laws of a different state. *Id*. at 2593. Same-sex couples filed suit, alleging that these prohibitions violated principles of substantive due process and equal protection. *Id*. The Supreme Court held that "the right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and that liberty." *Id*. at 2604. The four bases for recognizing the right to marry as a fundamental right were that "the right to personal choice regarding marriage is inherent in the concept of individual autonomy," and that marriage "supports a two-person union unlike any other in its importance to the committed individuals," "safeguards children and

families and thus draws meaning from related rights of childrearing, procreation, and education," and "is a keystone of our social order." *Id*. at 2599, 2600, 2601. As in *Windsor*, the holding in *Obergefell* thus turned on the special nature and status of the marriage relationship. *See, e.g., id*. at 2599 ("[D]ecisions concerning marriage are among the most intimate that an individual can make."); 2601 ("Valid marriage under state law is also a significant status for over a thousand provisions of federal law. The States have contributed to the fundamental character of the marriage right by placing that institution at the center of so many facets of the legal and social order."). By contrast, this case does not involve marriage, nor does it involve a substantive due process claim that turns on the deprivation of an alleged fundamental right. *See also Baker v. City of Concord*, 916 F.2d 744, 755 (1st Cir. 1990) (explaining that "a noncontractual claim to receive funds from the public treasury enjoys no constitutionally protected status," and that "[i]n such a case, the Due Process Clause can be thought to interpose a bar only if the statute manifests a patently arbitrary classification, utterly lacking in rational justification") (citations and internal punctuation omitted).

During oral argument, the Court asked the parties if *Obergefell*'s concluding discussion about whether "[t]here may be an initial inclination in these cases to proceed with caution – to await further legislation, litigation, and debate" was relevant to this case. 135 S.Ct. at 2605; *see* Transcript of Dec. 20 2018 Hearing at 56:18-60:1. This concluding discussion did not concern the nature of the equal protection (and due process) claim at issue, but instead whether equitable considerations cautioned in favor of deferring judicial action until other branches of government had been afforded an opportunity to take relevant action. *See id*. (noting, and rejecting, an "argument that it would be appropriate for the respondents' States to await further public discussion and political measures before licensing same-sex marriages"). Consequently, in this case, whether or not Congress has indicated any inclination to revisit the residency classification at issue here has no bearing on the merits of Defendant's challenge to that classification.

Moreover, even if language in *Windsor* or *Obergefell* were relevant to the constitutional challenge here, that still would not permit a lower court to overturn binding Supreme Court precedent. Neither *Windsor* nor *Obergefell* mentioned *Harris* or *Califano*, let alone expressly overturned or undermined these earlier precedential decisions. And "the Supreme Court has clearly stated that [lower courts] should not conclude that its more recent cases have, by implication, overruled an earlier precedent." *United States v. Jimenez-Banegas*, 790 F.3d 253, 259 (1st Cir. 2015); *see Agostini v. Felton*, 521 U.S. 203, 237 (1997) ("We reaffirm that if a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions.") (citation omitted).

CONCLUSION

For the reasons stated above and in the United States' merits briefs and during oral argument, the United States respectfully requests that the Court enter summary judgment in its favor, and deny Defendant's motion for summary judgment.

Dated: February 1, 2019

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General

ERIC WOMACK
Assistant Branch Director

/s/ Daniel Riess
DANIEL RIESS
Trial Attorney
U.S. Department of Justice
Civil Division
1100 L Street, NW
Washington, D.C. 20005
Telephone: (202) 353-3098
Fax: (202) 616-8460
Email: Daniel.Riess@usdoj.gov
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of February, 2019, 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