

No. 20-303

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In The  
**Supreme Court of the United States**

—◆—  
UNITED STATES OF AMERICA,

*Petitioner,*

v.

JOSÉ LUIS VAELLO-MADERO,

*Respondent.*

—◆—  
**On Writ Of Certiorari To The  
United States Court Of Appeals  
For The First Circuit**

—◆—  
**BRIEF OF THE INTERAMERICAN  
INSTITUTE FOR CONSTITUTIONAL  
RIGHTS AS AMICUS CURIAE  
SUPPORTING NEITHER PARTY**

—◆—  
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**QUESTION PRESENTED**

Whether Congress violated the equal-protection component of the Due Process Clause of the Fifth Amendment by establishing Supplemental Security Income—a program that provides benefits to needy aged, blind, and disabled individuals—in the 50 States and the District of Columbia, and in the Northern Mariana Islands pursuant to a negotiated covenant, but not extending it to Puerto Rico.

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**INTEREST OF THE AMICUS CURIAE<sup>1</sup>**

The Interamerican Institute for Constitutional Rights respectfully submits this brief as amicus curiae in support of neither party in that we support the appellant in part and the appellee in part and on grounds other than those in the judgment of the Court Appeals for the First Circuit (hereinafter “First

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<sup>1</sup> The parties have consented to the filing of this rule as per Rule 37.2(a). No party has made a monetary contribution intended to fund the preparation or submission of the brief. This brief was authored by the counsel of record.

Circuit”). The goal of the Institute is to promote the ideal that Puerto Ricans throughout the United States be afforded the rights provided to all American citizens under the United States Constitution.

The Institute’s counsel of record was formerly the Hearing Office Chief Administrative Law Judge of the San Juan, Puerto Rico Office of Hearings Operations of the Social Security Administration (hereinafter, “SSA”), and as such he has a particular vantage point on the Title XVI Supplemental Security Income (hereinafter, “SSI”) program before the Court.



## INTRODUCTION

This case is a straightforward SSA overpayment case which presents a misapplication of Social Security policy in that the SSA has erroneously treated Puerto Rico as a foreign country by defining Puerto Rico to be outside of the United States. Hawaii, Alaska, and the Northern Mariana Islands are all outside the continental United States, and all of them like New York have SSI programs that benefit their domiciliaries like José Luis Vaello-Madero and whose benefits are not terminated when they travel to another part of the United States for more than 30 consecutive days.

José Luis Vaello-Madero is poor and disabled. He is a New York domiciliary, who was born in Puerto Rico, and who qualified for SSI benefits because of his disability and his low-income status. He traveled out of New York to take care of his ailing wife. If he had

gone to take care of his ailing wife in Hawaii, Alaska, or even the Northern Mariana Islands, he would have continued to receive his SSI benefits (so long as he remained poor and disabled), and this case would never have made it to the U.S. Supreme Court. Instead, he journeyed to Loiza, Puerto Rico to take care of his ailing wife, where he lives under a blue tarp,<sup>2</sup> having lost his roof to Hurricane Maria.

More specifically, José Luis Vaello-Madero was one of 198,601 SSI recipients in New York State.<sup>3</sup> He had moved to New York in 1985, and was a New York domiciliary when he applied for SSI benefits in 2012. He met the SSI income and assets limits along with the requirement of U.S. citizenship. 42 U.S.C. § 1382; 42 U.S.C. § 1382c(a)(1)(B)(I). In July 2013, he traveled from New York to Loiza, one of the poorest towns in Puerto Rico, which in 2019 had a population of 24,553, and where 48.2% of the population lives in poverty.<sup>4</sup>

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<sup>2</sup> “In the months after the hurricane hit, the Federal Emergency Management Agency (FEMA) distributed 125,981 tarps to the island’s municipalities. At the same time the agency also provided 59,469 blue roofs, which are temporary roofs professionally installed by the U.S. Army Corps of Engineers.” at <https://www.nbcdfw.com/news/national-international/puerto-ricos-reconstruction-is-in-the-hands-of-organizations/2020264/> (last visited May 27, 2021).

<sup>3</sup> [https://www.ssa.gov/policy/docs/statcomps/ssi\\_sc/2015/ny.html](https://www.ssa.gov/policy/docs/statcomps/ssi_sc/2015/ny.html) (last visited April 9, 2021).

<sup>4</sup> <https://www.census.gov/quickfacts/loizamunicipiopoertorico> (last visited May 4, 2021).

In 2017, the town of Loiza suffered greatly from Hurricane Maria, and in the case of José Luis Vaello-Madero, Hurricane Maria took off his roof, forcing him to replace it with a government-provided blue tarp. He had come to Puerto Rico to take care of his ailing wife and lived with her in poverty with the support of his SSI benefits.

This Court addressed the issue of the mischaracterization of Puerto Rico as a foreign country in the Puerto Rico paradigm trilogy of cases: *Isabella Gonzale[z] v. Williams*, 192 U.S. 1 (1904); *Huus v. New York & P[ue]rto Rico S.S. Co.*, 182 U.S. 392 (1901); and *De Lima v. Bidwell*, 182 U.S. 1 (1901).

In *Isabella Gonzale[z] v. Williams*, *supra*, a unanimous Supreme Court overruled the Immigration & Naturalization Service determination that, Isabella Gonzalez (her name was misspelt at Ellis Island and has been corrected above), a resident of Puerto Rico (acquired by the United States in 1898) was an alien, and, therefore, needed to be deported back to Puerto Rico.

The Supreme Court held then, and should reaffirm now, that Puerto Rico is not a foreign country, and that Puerto Rico like Hawaii and Alaska is not outside of but part of the United States. This Court should hold that as long as José Luis Vaello-Madero meets the disability and low-income requirements for SSI benefits, he should continue to be deemed an SSI recipient, have his alleged overpayment waived or annulled and

be paid back benefits from the date SSA terminated his SSI benefits.

What José Luis Vaello-Madero does not represent to this Court is someone who was a domiciliary of Puerto Rico and because of that reason alone was deemed ineligible for SSI benefits. He has no standing to bring that claim having always been eligible for and having been a recipient of SSI benefits because of his New York domicile. The Court should reverse the First Circuit because as José Luis Vaello-Madero had no standing to bring the claim decided by the Court below, the Court lacked subject matter jurisdiction on the question whether the SSI program should or should not be extended to the domiciliaries of Puerto Rico. Since José Luis Vaello-Madero had no standing to bring the case decided by the First Circuit, the First Circuit's reliance on 28 U.S.C. § 1345 is misplaced since without standing there is no subject matter jurisdiction.

For José Luis Vaello-Madero to have standing, he would have had to have been a domiciliary of Puerto Rico, not New York, and would have had to apply for and been denied SSI benefits in Puerto Rico as a result of a domicile in Puerto Rico. Instead, SSA's New York Division of Disability Determinations (hereinafter, "DDS") granted his application for SSI benefits because he was poor, disabled and a New York domiciliary.

In this case, SSA's New York DDS office had already determined that José Luis Vaello-Madero was

eligible for the SSI benefits that give rise to the alleged overpayment in this case, and his demand that the alleged overpayment be either waived or annulled, SSA pay him his back benefits, and his SSI benefits be reinstated. All of those claims are tied to his New York domiciliary status, and the proper claim he represents is the mischaracterization of Puerto Rico as a foreign country resulting in his loss of his New York domiciliary-based SSI benefits and a demand from SSA for an overpayment in the amount of \$28,081 along with a termination of all of his SSI benefits.

Finally, *Califano v. Gautier Torres*, 435 U.S. 1 (1977) is inapposite to his alleged overpayment claim since José Luis Vaello-Madero's right to travel from New York to Puerto Rico was never encumbered by SSA's misapplication of the foreign country rule to Puerto Rico. *Harris v. Rosario*, 446 U.S. 651 (1980), is also inapposite since the issue in *Harris* had to do with lower level of reimbursement provided to Puerto Rico under the Aid to Families with Dependent Children Program, and not SSA's treatment of Puerto Rico as a foreign country and the misapplication of that SSA rule to José Luis Vaello-Madero's SSI benefits.



## ARGUMENT

### I. **The Puerto Rico Paradigm: Puerto Rico is not a foreign country.**

From the time Spain ceded Puerto Rico to the United States, *see* Treaty of Paris, 30 Stat. 1754; Treaty Series 343 (1898).<sup>5</sup> Puerto Ricans have had to confront American officials, who for one reason or another believed that although acquired by the United States in 1898 (and thus representing a single sovereign, *see Commonwealth of Puerto Rico v. Sanchez Valle*, 579 U.S. \_\_\_, 136 S. Ct. 1863; 195 L. Ed. 2d 179 (2016)), Puerto Rico was to be treated as a foreign country or Puerto Ricans were to be treated as foreigners.

In *Isabella Gonzale[z] v. Williams, supra*, at 9-10, Chief Justice Fuller explained that,

By the cession their allegiance became due to the United States, which was in possession and had assumed the government, and they became entitled to its protection. The nationality of the island became American instead of Spanish, and, by the treaty, Peninsulars, not deciding to preserve their allegiance to Spain, were to be held to have ‘renounced it, and to have adopted the nationality of the territory in which they may reside.’

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<sup>5</sup> The United States Senate ratified the Treaty of Paris on February 6, 1899. On March 2, 1899, Congress passed an act to implement its treaty obligations, and the treaty was proclaimed, after exchange of ratifications, on April 11, 1899. *Isabella Gonzale[z] v. Williams, supra*, at 9-10.

Puerto Rico assumed an American nationality by becoming an American territory within the meaning of Article IV, Section 3, Clause 2 of the U.S. Constitution. That made Puerto Rico a part of the United States in a domestic sense and not a foreign country.

The ports of Puerto Rico ceased to be foreign ports. In *Huus v. New York & P[ue]rto Rico S.S. Co.*, 182 U.S. 392 (1901), a unanimous Supreme Court held that Congress had nationalized all Puerto Rican vessels transforming them into United States vessels, admitting them to the benefits of the coasting trade, by placing Puerto Rico “substantially upon the coast of the Unites States, and vessels engaged in trade between that island and the continent, as engaged in the coasting trade.” *Id.* at 396. Hence, New York’s pilotage laws did apply to the Ponce vessel. *Id.* at 397. On the other hand, SSA’s treatment of Puerto Rico as a foreign country seeks to displace Puerto Rico from being part of the “coast of the United States.”

As part of this trilogy of cases, this Court held in *De Lima v. Bidwell*, *supra*, that Puerto Rico was not a foreign country within the meaning of the United States tariff laws. In *De Lima v. Bidwell*, *supra*, the Court made plain that “a country ceases to be foreign the instant it becomes domestic,” which in the case of Puerto Rico goes back to the Treaty of Paris. *Id.* at 197. The Court refused “to acquiesce in this assumption that a territory may be at the same time both foreign and domestic.” *Id.* at 199. Thus, the Court held that “with the ratification of the treaty of peace between the United States and Spain, April 11, 1899, the island of

Puerto Rico ceased to be a foreign country” within the meaning of the federal tariff law known as the Dingley Act. *Id.* at 201.

Given the consistent treatment by this Court of Puerto Rico as part of the domestic territory of the United States, it would be a complete turnaround to accept SSA’s treatment of Puerto Rico as a foreign country.

The First Circuit never discussed the genesis of the policy in question, i.e., stopping the payments of those who received SSI benefits like José Luis Vaello-Madero but moved to a foreign country. The SSA Office of Inspector General [hereinafter, “SSA OIG”] sheds light on that policy as follows:

## 2. EFFORTS TO ENSURE ONLY INDIVIDUALS RESIDING IN THE UNITED STATES CLAIM SSI PAYMENTS

Since early in our existence as an OIG, we have conducted numerous special investigative projects and audits to review U.S. residency issues for SSI recipients. For example, in 1997, we conducted the Southwest Tactical Operations Plan, a U.S.-Mexico border pilot in El Paso, Texas. This project identified 153 SSI recipients who were ineligible because they were not U.S. residents. Also, in May 1997, we issued a report recommending procedural improvements for SSA—including expanded use of private contractors to conduct home visits of suspected nonresidents. . . .

### SSA's Controls to Identify Nonresidents Receiving SSI Payments

Section 1614(a)(1)(B) of the Social Security Act requires that to be eligible for SSI payments an individual must be a resident of the United States. Additionally, section 1611(f) of the Social Security Act states that no individual shall be considered eligible for SSI payments for any month throughout which the individual is outside the United States. This prohibition also applies to recipients in Puerto Rico and the Virgin Islands.

The only exemptions to collecting SSI payments while outside the United States are for:

- certain students temporarily studying abroad and
- blind or disabled children of military families stationed overseas.

Once SSI payments are suspended for being outside the United States, SSI recipients must be back in the United States for 30 consecutive days before SSI payments resume. SSA has the following controls in place to identify SSI recipients outside of the United States: foreign address alert process for concurrent beneficiaries and various special projects or studies. (footnotes omitted)

SSA OIG report, The Adequacy of the Residency Verification Process for the Supplemental Security Income Program (A-06-96-62001), May 1997. Integrity of the SSI Program (A-01-02-22095) at <https://oig.ssa>.

gov/sites/default/files/audit/full/pdf/A-01-02-22095.pdf at 6-7.

The Social Security Administration's policy was that those SSI beneficiaries who were no longer residents of the United States for more than 30 days would lose their SSI benefits and upon return to the United States had to wait 30 days to have their SSI benefits restored.

The problem with SSA's policy is that it seeks to avoid the fact that José Luis Vaello-Madero traveled to Puerto Rico, which is not a foreign country, and his stay there continued to constitute residence within the United States.

In sum, SSA's policy of termination of benefits due to foreign residence should not have applied to José Luis Vaello-Madero as it is inconsistent with the Puerto Rico paradigm that regardless of Puerto Rico's status, it is not a foreign country. That definitional stasis is not altered by the ambiguity found at 42 U.S.C. § 1382c(e), where the statute defines the United States in a geographical sense to mean the 50 States and the District of Columbia, since in a geographical sense neither Hawaii, nor Alaska, nor, subsequently, the Mariana Islands, form part of the continental United States. Such a statement is at odds with reality and with more than one hundred years of consistent jurisprudence sustained by this Court that Puerto Rico is not a foreign country, and any action by the SSA to the contrary in the case of José Luis Vaello-Madero is a misapplication of its foreign country rule.

**II. José Luis Vaello-Madero qualified for SSI benefits in the State of New York and is entitled to continue receiving those benefits as he does not live in a foreign country. His benefits should thus be reinstated; he should be paid back benefits from his termination date; and his alleged overpayment should be waived or annulled.**

José Luis Vaello-Madero, a United States citizen, *see* Program Operation Manual System [hereinafter, “POMS”] GN 00303.120 A.2 at <http://policy.ssa.gov/poms.nsf/lnx/0200303120> <https://secure.ssa.gov/apps10/poms.nsf/lnx/0200303120> (last visited May 27, 2021), who was domiciled in New York since 1985 started to receive SSI payments in New York in 2012 as a qualified SSI recipient, who had a medically determinable physical or mental impairment which “results in his inability to do a substantial gainful activity and has lasted or can be expected to last for a continuous period of not less than 12 months.” *See* <https://www.ssa.gov/ssi/text-understanding-ssi.htm>, SSI Eligibility Requirements (last visited April 7, 2020).

As he was born in Puerto Rico, he was a Spanish-speaker, and SSA policy provides that he receive agency notices in Spanish, *see* POMS NL 00801.025 A.2. at <http://policy.ssa.gov/poms.nsf/lnx/0900801025>, which may not have occurred here. On July 27, 2016, SSA sent José Luis Vaello-Madero a SSA form L8155-U2, *see* <https://secure.ssa.gov/apps10/poms.nsf/lnx/0900803015> (An SSI “recipient must receive an

SSA-L8155 at least 10 days before SSA takes an adverse action.”) (last visited May 27, 2021).

It appears that SSA may have not followed POMS NL 00601.600 at <https://secure.ssa.gov/apps10/poms.nsf/lnx/0900601600> (last visited May 27, 2021) which provides that Spanish-speaking claimants receive “a Spanish-language notice. . .” *Id.* Instead he was sent a Notice of Planned Action in English advising him that his SSI benefits were discontinued retroactively to August 1, 2014 since he had been outside the United States for 30 days or more—SSA’s foreign country rule. *United States of America v. José Luis Vaello-Madero*, 956 F.3d 12, 15 (1st Cir. 2020).

As already noted, José Luis Vaello-Madero arrived in Puerto Rico in July 2013, where he continued to receive his SSI benefits until July 2016, when SSA determined that by staying in Puerto Rico he became ineligible for his SSI benefit. *United States of America v. José Luis Vaello-Madero*, *supra*, 15-16.

José Luis Vaello-Madero became ineligible for his SSI benefits since SSA found him to be “absent from the country for a full calendar month or for 30 consecutive days or more.” *See* SSA, Understanding Supplemental Security Income (SSI) Eligibility Requirements at <https://www.ssa.gov/pubs/EN-05-11011.pdf> at 15 (August 2019); *U.S. v. José Luis Vaello-Madero*, *supra*, at 15-16.

In short, SSA acted contrary to the fact that José Luis Vaello-Madero was not absent from the United States for 30 days or more, since Puerto Rico is a part of the United States and not a foreign country.

### **III. The SSA Administrative Legal Framework for an Overpayment**

The First Circuit decided this case without the development of a complete administrative record, so we do not know whether SSA properly informed the Claimant by way of a Spanish language notice of his rights and responsibilities, nor do we know if the Claimant was aware of his right to request a waiver, or even to have a hearing before an administrative law judge. Given the nature of the claimant's poverty an administrative law judge may have found him entitled to a waiver of the \$28,081 in overpayment sought by SSA as he was "without fault in connection with the overpayment," and any "recovery on account of such overpayment in such case would defeat the purposes of this subchapter, or be against equity and good conscience." What the administrative law judge could not do is overrule the SSA's foreign country rule and thus reinstate José Luis Vaello-Madero's SSI benefits.

José Vaello-Madero's specific claim arises from SSA's misapplication of the foreign country rule to Puerto Rico and SSA's attempt to recover \$28,081 in allegedly overpaid benefits paid to José Luis Vaello-Madero who was then and is now disabled and who

qualified for those SSI benefits. His overpayment case is a result of the SSA regulatory structure which relies on the Social Security Statute and regulations, Social Security Rulings (hereinafter, “SSR”), SSA’s POMS which is the operational reference source used by SSA staff to conduct SSA’s daily business along with SSA’s regulations, interpretations, bulletins, and publications.

As he was disabled and met the SSI income means and limited assets tests, José Luis Vaello-Madero was eligible for SSI benefits within the meaning of 42 U.S.C. § 1382(a)(1). José Luis Vaello-Madero continued to be eligible so long as he was disabled, met the income means and assets tests, and did not fall within the exception set out at 42 U.S.C. § 1382(f)(1),

Title XVI of the Social Security Act, 42 U.S.C. § 1382(f)(1) provides that:

(f)(1) Notwithstanding any other provision of this title, no individual (other than a child described in section 1614(a)(1)(B)(ii)) shall be considered an eligible individual for purposes of this title for any month during all of which such individual is outside the United States (and no person shall be considered the eligible spouse of an individual for purposes of this title with respect to any month during all of which such person is outside the United States). For purposes of the preceding sentence, after an individual has been outside the United States for any period of 30 consecutive days, he shall be treated as remaining outside the United States until he

has been in the United States for a period of 30 consecutive days.

The SSA has told SSI claimants in its official publication that if they stay in Puerto Rico more than 30 consecutive days, SSA will consider them to have left the United States, and thus they will lose their SSI benefits, “What You Need to Know When You Get Supplemental Security Income (SSI)” says that:

**If you leave the United States**

Leaving the United States means leaving the 50 states, the District of Columbia, or the Northern Mariana Islands. Usually, if you leave the United States for 30 days or more, you can no longer get SSI.

If you move to Puerto Rico, you’re considered to be outside the United States for SSI purposes only. People who live in Puerto Rico can’t get SSI.

If you plan to leave the United States, tell us before you leave. We need to know the date you plan to leave and the date you plan to come back. Then, we can tell you if your SSI will be affected.

After you have been outside the United States for 30 or more days in a row, your SSI can’t start again until you have been back in the country for at least 30 straight days.

See <https://www.ssa.gov/pubs/EN-05-11011.pdf> at 15 (August 2019) On the other hand, were José Luis Vaello-Madero to return to New York, he could have his

SSI benefits reinstated. See POMS SI 02301.205 at <https://secure.ssa.gov/apps10/poms.nsf/lnx/0502301205> (suspension and reestablishing eligibility).

Similarly, as noted earlier, the SSA's OIG's Audit Report for September 2002 entitled Controls to Prevent Supplemental Security Income Payments to Recipients Living in Foreign Countries states:

Section 1611(f) of the Social Security Act states that no individual shall be considered eligible for SSI payments for any month throughout which the individual is outside the United States. This prohibition also applies to recipients in Puerto Rico and the Virgin Islands.

<https://oig.ssa.gov/controls-prevent-supplemental-security-income-payments-recipients-living-foreign-countries> at <https://oig.ssa.gov/sites/default/files/audit/full/pdf/A-01-02-12013.pdf> (last visited June 2, 2021)

The Inspector General's report is crystal clear that Puerto Rico (and the Virgin Islands) are treated no different than a foreign country much like Isabella Gonzalez was in 1904. The factual, historical, and legal problem is that Puerto Rico is not a foreign country, but is part of the maritime border of the United States. As a matter of stasis at the definitional level, Puerto Rico is a part of the United States, not outside its jurisdiction, power, or territory. Accordingly, the Court should overrule SSA's misapplication of its foreign country rule and reinstate José Luis Vaello-Madero's SSI benefits. See *Isabella Gonzale[z] v. Williams, supra*,

*Huus v. New York & P[ue]rto Rico, supra., and De Lima v. Bidwell, supra* (where this Court held that Puerto Rico is not a foreign country—the Puerto Rico paradigm).

Under SSA's POMS, José Luis Vaello-Madero should have received an SSA SSI Overpayment Notice stating, "Attached is a letter in English about our decision not to waive your SSI overpayment. This means that you have to pay this money back," See POMS NL 00801.025 A.2. & C.1. & 2. (Spanish Language Notices) at <https://secure.ssa.gov/apps10/poms.nsf/lrx/0900801025> (last visited April 7, 2021) and would have been afforded a right to appeal within 60 days of receipt of the notice" and request a Case Review, an Informal or a Formal Conference." *Id.*

If José Luis Vaello-Madero had made such a request and SSA determined it was correct in its overpayment decision, he would have received a notice stating that and informing him that he had 60 days within which to request a hearing before an Administrative Law Judge. *Id.*

Since this is an overpayment case, José Luis Vaello-Madero was subject to the legal framework set out in SSR 87-16c where SSA adopted the reasoning of Judge Platt in *Posnack v. Secretary of HHS*, 631 F.Supp. 1012 (E.D.N.Y 1986) and adopted by SSA in SSR 87-16c. In that case, Judge Platt relied on SSI-related precedent to explain the nature of an SSI overpayment:

For example, the recovery of overpaid Supplemental Security Income (“SSI”) benefits (Title XVI) is governed by 42 U.S.C. § 1383(b), which provides in part:

The Secretary (A) shall make such provision as he finds appropriate in the case of payment of more than the correct amount of benefits with respect to an individual with a view to avoiding penalizing such individual or his eligible spouse who was *without fault in connection with the overpayment, if adjustment, or recovery on account of such overpayment in such case would defeat the purposes of this subchapter, or be against equity and good conscience. . . .*

(Emphasis added.)

In order to make a more informed decision, the Court shall also draw upon case law which interprets the recovery of SSI overpayments under legislative and regulatory provisions which are not inconsistent with Title II of the Act. *Cf. Harrison. Heckler*, 746 F.2d 480, 482 (9th Cir. 1984 (Title XVI uses the same approach for recovery of overpayments as Title II).

In situations involving the recovery of overpayments, such as those in this case, the burden is on the plaintiff to show that he or she qualifies for a waiver of recovery. *Romero v. Harris*, 675 F.2d 1100, 1103 (10th Cir. 1982); *Sierakowski v. Weinberger*, 504 F.2d 831, 836 (6th Cir. 1974). The plaintiff,

therefore, must present evidence to satisfy at least two of the three requirements of a waiver of recovery: (1) that he or she was without fault in receiving the overpayment and *either* (2) that recovery of the overpayment would defeat the purpose of Title II *or* (3) that recovery of the overpayment would be against equity and good conscience.

Drawing from the SSA and its regulations, in SSR 87-16c, SSA sets out the legal framework for an overpayment and defenses to it:

42 U.S.C. Section 404(b) provides:

In any case in which more than the correct amount of payment has been made, there shall be no adjustment of payments to, or recovery by the United States from, any person who is without fault if such adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience.

The Secretary has promulgated regulations which interpret the meaning of the statutory phrases: “defeat the purpose of” and “against equity and good conscience.” Defeating the purpose of Title II is defined at 20 C.F.R. § 404.508 (1985):

- I. General. “Defeat the purpose of title II,” for purposes of this subpart, means defeat the purpose of benefits under this title, i.e., to deprive a person of income required for ordinary and necessary living expenses. This depends upon

whether the person has an income or financial resources sufficient for more than ordinary and necessary needs, or is dependent upon all of his current benefits for such needs.

\* \* \*

(b) *When adjustment or recovery will defeat the purpose of title II.* Adjustment or recovery will defeat the purposes of title II in (but is not limited to) situations where the person from whom recovery is sought needs substantially all of his current income (including social security monthly benefits) to meet current ordinary and necessary living expenses.

Against equity and good conscience is defined at 20 C.F.R. § 404.509 (1985):

“Against equity and good conscience” means that adjustment or recovery of an incorrect payment (under title II or title XVIII) will be considered inequitable if an individual, because of a notice that such payment would be made or by reason of the incorrect payment, relinquished a valuable right (examples (1) and (4)) or changed his or her position for the worse (examples (2) and (3)). In reaching such a determination, the individual’s financial circumstances are irrelevant.

If José Luis Vaello-Madero had gone through the administrative hearing process, he would have had the burden to show that he qualified for a waiver of the alleged overpayment based on being (1) without fault in his receipt of the SSI benefits; (2) of the overpayment action defeating the purposes of the statute; or (3) that SSA's overpayment action would be against equity and good conscience. *See* SRR 87-16c. José Luis Vaello-Madero never got to this stage of the administrative process; either he was unaware of a potential waiver or he was unaware of his right to contest the overpayment administratively on one of the above grounds. If he had raised any of these issues before an Administrative Law Judge, given his poverty status, he might have obtained a waiver for any of the above reasons.

Needless to say that the legal framework that an Administrative Law Judge would have had to consider had José Luis Vaello-Madero demanded a hearing in order to have a waiver defense adjudicated. But, no Administrative Law Judge would be authorized to correct the misapplication of SSA's foreign-country rule to José Luis Vaello-Madero—only this Court has the authority to do justice in that regard.

As José Luis Vaello-Madero had traveled to Puerto Rico while a New York SSI beneficiary, SSA's Puerto Rico field office became "responsible for such post-entitlement (sic) items as overpayments. . . ." POMS GN 00904.300 at <https://secure.ssa.gov/apps10/poms.nsf/lnx/0200904300> (SSI applications for individuals who move to Puerto Rico or the U.S. Virgin Islands).

Thus, the Puerto Rico DDS was responsible for preparing the administrative file in this matter. *Id.* It is plain that Puerto Rico DDS applied SSA's foreign policy rule in terminating José Luis Vaello-Madero's SSI benefits.

**IV. José Luis Vaello-Madero has no standing to bring the claim that Congress violated the equal-protection component of the Due Process Clause of the Fifth Amendment by establishing Supplemental Security Income, but not extending it to Puerto Rico and the Supreme Court and the First Court of Appeals lack subject matter jurisdiction to hear this claim**

José Luis Vaello-Madero has no standing to raise the claim that the failure of Congress to extend the SSI program to Puerto Rico violates the equal-protection component of the Due Process Clause of the Fifth Amendment. To that extent, we agree with the government that the First Circuit should not have decided that claim, and José Luis Vaello-Madero's lack of standing deprives this court of subject matter jurisdiction over the due process-equal protection claim.

José Luis Vaello-Madero is not a Puerto Rico domiciliary seeking to apply for SSI benefits under Title XIV of the SSA. Accordingly, this is not a case of exclusion, i.e., José Luis Vaello-Madero was not denied the right to apply for or become eligible for SSA's Title XVI program of Supplemental Security Income. For

this reason, he has no standing to bring a claim before this Court on behalf of or as an example of Puerto Ricans who reside in Puerto Rico and who are not statutorily entitled to participate in the SSI program. To that extent the Supreme Court lacks and the First Circuit lacked subject matter jurisdiction over the claim whether individuals in Puerto Rico should be eligible for Title XVI SSI benefits, since José Luis Vaello-Madero was always a participant of the SSI program. *Texas v. Pennsylvania*, 592 U.S. \_\_\_, 141 S.Ct. 1230 (2020); *Arizona Christian School Tuition Org. v. Winn*, 563 U.S. 125 (2011).

Since he has participated in the SSI program since 2012, José Luis Vaello-Madero has not shown an injury that affects him in a personal and individual way due to a statutory exclusion since he was not excluded from applying for or receiving SSI benefits in New York. *Cf. Thole v. U.S. Bank*, 140 S.Ct. 1615 (2020) (plaintiffs had no stake in the lawsuit, win or lose their benefits remain unchanged). Here win or lose, José Luis Vaello-Madero still has a right to have his SSI benefits reinstated; he has never filed an application for SSI benefits in Puerto Rico and thus presents no concrete injury from the alleged statutory exclusion which form the basis for the First Circuit's opinion in this case. *Cf. Carney v. Adams*, 592 U.S. \_\_\_, 141 S.Ct. 493 (2020) (failure to apply for a judicial vacancy failed to show personal, concrete, and imminent injury). *Arizona Christian School Tuition Org. v. Winn*, 563 U.S. 125 (2011) (lack of personal injury); *Elk Grove United*

*School Dist. v. Newdow*, 542 U.S. 1 (2004) (lack of prudential standing).

José Luis Vaello-Madero cannot manufacture standing by contending that he is suffering a present injury of potential ineligibility for a Title XVI claim in Puerto Rico where he never filed his claim for SSI benefits. He has a distinct claim which arises from his New York SSI eligibility and the termination of those benefits by SSA. *Cf. Clapper v. Amnesty Int'l USA*, 568 U.S. 398 (2013) (claimants could not manufacture standing by choosing to make expenditures based on a hypothetical future harm not currently impending).

José Luis Vaello-Madero has no personal stake in the Court's resolution of whether persons who are domiciled in Puerto Rico are eligible for benefits under Title XVI, and thus he has no right to bring a Title XVI Social Security claim raising the issue of the possible eligibility of Puerto Rico claimants, since his claim derives exclusively from his domicile in New York. *Cf. Lance v. Coffman*, 549 U.S. 434 (2007) (citizen had no personal stake in an Election Clause claim).

On the other hand, José Luis Vaello-Madero was a full participant of the SSI program having acquired that status by his successful application for such benefits in New York, and thus is subject to SSA's rules and regulations, including the obligation to repay any amount the SSA found to constitute an overpayment. He has suffered from the misapplication of SSA's rule that SSI beneficiaries may not receive SSI benefits if they reside more than 30 days in a foreign country.

Given the misapplication of the foreign country rule resulting in José Vaello-Madero's alleged overpayment, this Court should hold that he is entitled to reinstatement into the Title XVI program as an SSI recipient, should continue receiving benefits like any other SSI beneficiary who moved to Hawaii, Alaska, or the Northern Mariana Islands, and should have his overpayment waived or annulled, his SSI benefits restored, and should be paid all back benefits due from the date of the termination of his SSI benefits. *See* POMS SI 02301.205 at <https://secure.ssa.gov/apps10/poms.nsf/lrx/0502301205> (suspension and reestablishing eligibility) (last visited May 27, 2021).

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### CONCLUSION

For the reasons stated above, and those offered by plaintiff-appellants, the Court should find that SSA misapplied its foreign country rule in terminating Jose Luis Vaello-Madero's SSI benefits, order that his SSI benefits be restored, that he be paid back benefits from the date of SSA's termination of his SSI benefits, and have the \$28,081 alleged overpayment either waived or annulled.

The Court should also reverse the First Circuit Court of Appeals on the question of extending SSI

benefits to Puerto Rico domiciliaries as José Luis Vaello-Madero lacked standing to bring such a claim.

Respectfully submitted,

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