No. 20-303

IN THE

Supreme Court of the United States

UNITED STATES OF AMERICA,
Petitioner,
v.
JOSE LUIS VAELLO-MADERO,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

BRIEF OF *AMICI CURIAE* PLAINTIFFS IN *PEÑA MARTÍNEZ v. U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES* IN SUPPORT OF RESPONDENT

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INTERESTS OF *AMICI CURIAE*[1]

The nine individuals who submit this brief as *amici curiae* are Sixta Gladys Peña Martínez, Nélida Santiago Álvarez, María Luisa Aguilar Galíndez, Gamaly Vélez Santiago, Victor Ramón Ilarraza Acevedo, Maritza Rosado Concepción, Ramón Luis Rivera Rivera, Yomara Valderrama Santiago, and Rosa Maria Ilarraza Rosado. Each is a U.S. citizen who resides in Puerto Rico. Each has minimal or no income. Each has negligible assets. And each is disabled or elderly (or both).

Amici have a substantial interest in the question presented here because they prevailed on a materially identical question in *Peña Martínez v. U.S. Department of Health & Human Servs.*, --- F. Supp. 3d ----, 2020 WL 4437859 (D.P.R. Aug. 3, 2020), now pending on appeal to the First Circuit. In *Peña Martínez*, as in the decision below, the district court held that Congress violated the equal-protection guarantee of the Due Process Clause of the Fifth Amendment by providing federal Supplemental Security Income ("SSI") benefits to needy aged, blind, and disabled individuals who reside in the 50 States, the District of Columbia, and the Northern Mariana Islands, while excluding

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[1] Pursuant to Supreme Court Rule 37.6, counsel for *amici* state that no counsel for any party authored this brief in whole or in part, and no person or entity other than *amici* or their counsel made a monetary contribution intended to fund the preparation or submission of this brief. Counsel of record for all parties were timely notified of *amici*'s intention to file this brief more than ten days prior to its filing and all parties have consented to the filing of this brief.

equally needy aged, blind, and disabled U.S. citizens who reside in Puerto Rico. Unlike the decision below, however, *Peña Martínez* also invalidated materially identical facial discrimination against Puerto Rico residents as to Supplemental Nutrition Assistance Program ("SNAP") benefits and Medicare Part D Low Income Subsidies ("LIS") benefits, and made factual findings and conclusions of law based on a full evidentiary record rather than at summary judgment.

Because the decision in *Peña Martínez* accords with and relies significantly upon the decision below, and because they believe the decision below is correct, *amici* have a substantial interest in denial of the petition. Alternatively, *amici* have a substantial interest in persuading the Court to hold the petition until the Government's appeal in their case is resolved in the First Circuit so that the Court may consider the anticipated Government petition in their case together with the petition here. Because their case involves additional federal programs rather than a single federal program in an individual case, and arises on a developed factual record, *amici* respectfully submit that considering their case together with the petition would assist and inform the Court's consideration of the question presented.

INTRODUCTION AND SUMMARY OF ARGUMENT

The decision below was correctly decided and does not warrant this Court's review. The First Circuit carefully examined the two precedents chiefly relied on by the Government, *Califano v. Torres*, 435 U.S. 1 (1978), and *Harris v. Rosario*, 446 U.S. 651 (1980), and explained why those decisions are not binding

here and why no contemporary rational basis supports the categorical exclusion of otherwise eligible residents of Puerto Rico from SSI benefits. None of the Government's arguments shows why the decision below warrants review.

First, the Government's tax rationale is baseless. As the First Circuit correctly found, the residents of Puerto Rico *do* make substantial contributions to the federal treasury and do so in amounts higher than the contributions of residents of other States and Territories whose residents are eligible for SSI benefits. Moreover, SSI beneficiaries are by definition too poor to pay federal income taxes, and it is thus irrational to use relative tax contribution as a basis to exclude such persons from programs aimed at assisting them.

Second, the Government's cost in providing SSI benefits to Puerto Rico residents cannot by itself justify the categorical exclusion of such residents from SSI. This Court's cases make clear that a cost-saving rationale is not a sufficient rational basis for selecting one group rather than another similarly situated group to bear such fiscal burdens.

Third, the Government cannot support its speculative theory that extending SSI benefits to U.S. citizens residing in Puerto Rico would disrupt the economy of Puerto Rico. The Government abandoned that theory below. In any event, the contention that cash transfers discourage people from working lacks any empirical basis. Moreover, SSI benefits are explicitly designed for individuals who cannot support themselves through work, so it is irrational to exclude those individuals from SSI

benefits on the ground that such benefits will provide disincentives to paid labor.

Because no rational basis justifies the facial exclusion of U.S. citizens who reside in Puerto Rico from receipt of SSI benefits solely on the basis of their geographical residence, the decision below was correct and the Court should deny the petition.

Alternatively, the Court should hold the petition in this case until the First Circuit resolves the Government's appeal in *Peña Martínez*, so that the Government's anticipated petition in that case may be considered together with the petition here. *Peña Martínez* differs from *Vaello-Madero* in several respects that would make it helpful for the Court to consider *Peña Martínez* together with *Vaello-Madero* in deciding whether to review the question presented. Like the court of appeals' decision below, *Peña Martínez* ruled that Puerto Rico residency is not a rational basis on which to exclude identically needy U.S. citizens from federal benefits accorded other U.S. citizens in the States and other Territories. Unlike the case below, however, *Peña Martínez* involves two additional federal programs (SNAP and LIS) in addition to the SSI program. It also has a complete factual record, including expert testimony, that enabled the district court there to make comprehensive factual findings in support of its rejection of the supposed tax, cost-saving, and economic-disruption rationales that the Government relies on in the petition here. No urgency warrants granting the petition here rather than awaiting the anticipated petition in *Peña Martínez* and considering the two petitions together, and neither party would be prejudiced by so doing.

ARGUMENT

I. THE COURT SHOULD DENY THE PETITION

A. *Vaello-Madero* Was Correctly Decided

The First Circuit in *Vaello-Madero* correctly held that "[t]he categorical exclusion of otherwise eligible Puerto Rico residents from SSI is not rationally related to a legitimate government interest" and therefore violates the Fifth Amendment's guarantee of equal protection of the laws. App. 37a. That decision does not warrant this Court's review.

The Government's primary argument is that *Califano v. Torres*, 435 U.S. 1 (1978), and *Harris v. Rosario*, 446 U.S. 651 (1980), foreclose any equal-protection challenge to the exclusion of U.S. citizens who reside in Puerto Rico from SSI benefits. Pet. 12–14. But as the First Circuit explained, those decisions do not squarely address the question in this case. *Califano* involved a challenge to the exclusion of Puerto Rico residents from SSI, but it was decided solely "on issues related to the right to travel," so "there was no equal protection question before the Court in *Califano*." App. 12a–13a (citation omitted).

Harris involved an equal-protection claim, but it concerned block grants provided to Puerto Rico under the Aid to Families with Dependent Children ("AFDC") Program, rather than SSI. App. 13a–14a. Citing the Territory Clause, U.S. Const., Art. IV, § 3, cl. 2, *Harris* held that Congress "may treat Puerto Rico differently from States" with respect to AFDC block grants. 446 U.S. at 651–52. That ruling does not address whether Congress may, consistent with the equal-protection guarantee of the Fifth

Amendment, establish a federal benefits program like SSI that treats *individuals* who reside in Puerto Rico differently from similarly situated individuals who reside in the 50 States, the District of Columbia, and the Northern Mariana Islands. App. 14a. *Califano* and *Harris* therefore do not answer the question presented.

Nor do the three rationales cited in *Califano* and *Harris* justify the exclusion of Puerto Rico residents from SSI benefits in this case, even under the deferential standard of rational-basis review. *First*, the Government errs in contending (Pet. 12, 16–17) that, because residents of Puerto Rico are generally exempt from certain federal taxes such as federal taxes on income from sources in Puerto Rico, Congress has a "legitimate interest in avoiding a one-sided fiscal relationship under which Puerto Rico shares the financial benefits but not the financial burdens of statehood." As the First Circuit correctly observed, the residents of Puerto Rico *do* "make substantial contributions to the federal treasury" and "have consistently made them in higher amounts than taxpayers in at least six states, as well as the territory of the Northern Mariana Islands." App. 21a. Moreover, residents of the Northern Mariana Islands are eligible for SSI benefits, even though they, too, are generally exempt from federal income taxes, *see* 26 U.S.C. § 931, and even though they pay fewer federal income taxes than do residents of Puerto Rico (for example, residents of Puerto Rico pay federal taxes on income earned from sources outside their Territory, whereas residents of the Northern Mariana Islands do not). App. 34a & n.28. The income-tax rationale thus cannot justify granting SSI benefits to residents of States and

Territories who contribute less to the federal fisc than do residents of Puerto Rico.

More fundamentally, as the decision below correctly determined, it is irrational to exclude a class of impoverished people from means-tested payment of benefits like SSI when "the very population those benefits target do not, as a general matter, pay federal income tax." App. 28a. The Government has not identified "any instance" where a court accepted "the exclusion of a class of people from welfare payments (which are untied to income tax receipts) because they do not pay federal income tax." App. 26a (citation omitted). To the contrary, this Court has repeatedly held that the guarantee of equal protection prohibits apportioning governmental benefits "according to the past tax contributions of its citizens," as such reasoning "would logically permit the State to bar new residents from schools, parks, and libraries or deprive them of police and fire protection." *Saenz v. Roe*, 526 U.S. 489, 507 (1999) (citation omitted); *see Zobel v. Williams*, 457 U.S. 55, 63–64 (1982); *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 266 (1974); *Vlandis v. Kline*, 412 U.S. 441, 450 n.6 (1973).

Second, the Government errs in arguing (Pet. 13, 17) that Congress's legitimate interest in "limiting government expenditures" supplies a rational basis for excluding residents of Puerto Rico from SSI benefits. As the First Circuit correctly ruled, "cost *alone* does not support differentiating individuals" in this context. App. 31a. It is well settled that "the State's legitimate interest in saving money provides no justification for its decision to discriminate among

equally eligible citizens." *Saenz*, 526 U.S. at 507. While "protecting the fiscal integrity of government programs, and of the Government as a whole, 'is a legitimate concern of the State,'" that "does not mean that Congress can pursue the objective of saving money by discriminating against individuals or groups." *Lyng v. Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am., UAW*, 485 U.S. 360, 373 (1988) (citation omitted); *see Memorial Hospital*, 415 U.S. at 263 ("[A] State may not protect the public fisc by drawing an invidious distinction between classes of its citizens, so appellees must do more than show that denying free medical care to new residents saves money.") (citation omitted); *Shapiro v. Thompson*, 394 U.S. 618, 633 (1969) ("[A State] may legitimately attempt to limit its expenditures, whether for public assistance, public education, or any other program. But a State may not accomplish such a purpose by invidious distinctions between classes of its citizens."), *overruled in part on other grounds by Edelman v. Jordan*, 415 U.S. 651 (1974); *Graham v. Richardson*, 403 U.S. 365, 374–75 (1971) (same).

Excluding from a benefits program any arbitrarily chosen group of individuals (red-haired or left-handed persons, Leos or Scorpios) would save money, but drawing such arbitrary distinctions as a basis for cost saving is incompatible with the Fifth Amendment's guarantee of equal protection of the laws. For example, in *U.S. Department of Agriculture v. Moreno*, 413 U.S. 528 (1973), this Court struck down under rational-basis review the statutory exclusion of unrelated persons living in the same household from the federal food stamp program (which later became SNAP); only households of

related persons were eligible for those federal benefits. The Government contended that the exclusion was rational because it saved money, but the Court rejected this purported rationale, concluding that the classification "excludes from participation in the food stamp program . . . *only* those persons who are so desperately in need of aid that they cannot even afford to alter their living arrangements so as to retain their eligibility." *Id.* at 538 (emphasis added). Such an exclusion was "wholly without any rational basis" and therefore unconstitutional under the Fifth Amendment. *Id.*

Quoting *Carmichael v. Southern Coal & Coke Co.*, 301 U.S. 495, 511 (1937), the Government argues that "'[a]dministrative convenience and expense . . . are *alone* a sufficient justification' for a classification under rational-basis review." Pet. 17, 22. But the Government's ellipsis misleadingly alters the meaning of this statement. *Carmichael* actually states: "Administrative convenience and expense *in the collection or measurement of the tax* are alone a sufficient justification *for the difference between the treatment of small incomes or small taxpayers and that meted out to others*." 301 U.S. at 511 (emphasis added) (citations omitted). As the full quotation shows, the rationale upheld in *Carmichael* applies only to "the collection or measurement of [a] tax," not to the exclusion of individuals from welfare benefits. *Id.*; *see also New York Rapid Transit Corp. v. City of New York*, 303 U.S. 573, 580 (1938) (applying *Carmichael* to uphold a tax system).

In the benefits context, the *Saenz-Lyng-Moreno* line of cases is far more apposite, and establishes that the Government's interest in saving money

cannot justify excluding from SSI benefits U.S. citizens residing in Puerto Rico who would otherwise qualify. Having chosen to spend federal dollars on SSI benefits for needy aged, blind, and disabled U.S. citizens, the Government acts arbitrarily and irrationally in saving the cost of those benefits for needy aged, blind, and disabled U.S. citizens just because they reside in Puerto Rico.

The Government maintains that "the distinction between Territories and States is constitutionally grounded and routine." Pet. 17. But Congress drew no such distinction. Needy residents of the District of Columbia and the Northern Mariana Islands are eligible for SSI benefits even though those jurisdictions are not States. This preferential treatment of some Territories over others undercuts any State/Territory distinction here and underscores the arbitrariness and irrationality of saving costs by excluding residents of Puerto Rico.

Third, the Government errs in arguing (Pet. 13–14) that Congress reasonably excluded residents of Puerto Rico from SSI benefits to avoid disrupting Puerto Rico's economy by discouraging people from working. The government abandoned that argument below, App. 16a–19a, and offers no support in the record to support it here. Moreover, SSI benefits are designed for financially needy individuals "who because of age, disability, or blindness are not able to support themselves through work." *Califano v. Jobst*, 434 U.S. 47, 57 n.17 (1977) (quoting H.R. Rep. No. 92-231 at 147 (1971)). The Government thus cannot directly advance any interest in protecting labor incentives by excluding this population from SSI benefits.

For all these reasons, the First Circuit decision is correct and does not warrant review.

B. Summary Reversal Is Unwarranted

The Government further errs (Pet. 20) in urging summary reversal. "A summary reversal . . . is a rare and exceptional disposition, 'usually reserved by this Court for situations in which the law is well settled and stable, the facts are not in dispute, and the decision below is clearly in error.'" *Mireles v. Waco*, 502 U.S. 9, 15 (1991) (Scalia, J., dissenting) (quoting R. Stern, E. Gressman, & S. Shapiro, SUPREME COURT PRACTICE 281 (6th ed. 1986), in turn quoting *Schweiker v. Hansen*, 450 U.S. 785, 791 (1981) (Marshall, J., dissenting)) (ellipsis in *Mireles*); *see also Kisela v. Hughes*, 138 S. Ct. 1148, 1162 (2018) (Sotomayor, J., dissenting) (same); *Pavan v. Smith*, 137 S. Ct. 2075, 2079 (2017) (Gorsuch, J., dissenting) (same).

Here, as explained above, the decision below was correct, not "clearly in error." Moreover, the law on this issue is not "settled" or "stable." The Government invokes *Califano* and *Harris*, but as explained above, the First Circuit carefully examined those decisions and correctly explained that they do not control the question of whether the exclusion of Puerto Rico residents from SSI complies with equal protection. App. 8a–19a. Nor are *Califano* and *Harris* even instructive on the question presented, for they are predicated on 40-year-old facts that cannot foreclose constitutional challenges based on current facts. App. 19a; *see Shelby County v. Holder*, 570 U.S. 529, 556 (2013) ("It would have been irrational for Congress to distinguish between States in such a fundamental way based on 40-year-old

data, when today's statistics tell an entirely different story. And it would have been irrational to base coverage on the use of voting tests 40 years ago, when such tests have been illegal since that time."); *United States v. Carolene Prods. Co.*, 304 U.S. 144, 153 (1938) ("[T]he constitutionality of a statute predicated upon the existence of a particular state of facts may be challenged by showing to the court that those facts have ceased to exist.") (citation omitted). Summary reversal is therefore unwarranted.

II. ALTERNATIVELY, THE COURT SHOULD HOLD THE PETITION AND CONSIDER IT TOGETHER WITH *PEÑA MARTÍNEZ*

At a minimum, the Court should not grant review without awaiting the Government's anticipated petition in *Peña Martínez* after its appeal to the First Circuit is resolved. That is because *Peña Martínez* resolves the materially identical equal-protection question, but applies to a broader array of government programs (SNAP and LIS as well as SSI), and arises on a fully developed factual record that enabled the district court to make detailed factual findings as well as conclusions of law. Thus, consideration of *Peña Martínez* together with the petition here will assist the Court in deciding whether to grant review, and the interests of judicial economy will be best served by considering the two petitions together.

In *Peña Martínez*, the U.S. District Court for the District of Puerto Rico (Young, J., sitting by designation from the District of Massachusetts), issued a 70-page opinion and order decided on a full evidentiary record, after discovery and a case-stated hearing in lieu of a bench trial. *Peña Martínez v.*

U.S. Dep't of Health & Human Servs., --- F. Supp. 3d ----, 2020 WL 4437859 (D.P.R. Aug. 3, 2020). Setting forth extensive findings of fact and conclusions of law, the district court ruled that "the exclusion of otherwise eligible residents of Puerto Rico from these three welfare programs cannot survive rational basis review." *Id.* at *7.

The district court in *Peña Martínez* carefully considered and rejected the Government's income-tax and cost-saving rationales for excluding Puerto Rico residents from SSI, SNAP, and LIS solely on the basis of geographical residence. It rejected each on grounds substantially similar to those in the decision below. *Id.* at *9, *11, *13, *18.

In addition, the district court in *Peña Martínez* reached and rejected the economic-disruption rationale that the Government abandoned before the First Circuit below, but now presses in the petition. The district court ruled that, "[i]n the context of SSI, this theory cannot be called rational." *Id.* at *10; *see id.* at *11 (deeming the labor-incentive rationale inapplicable to most needy elderly, blind, and disabled persons eligible for SSI); *id.* at *13–17 (finding this theory irrational with respect to SNAP); *id.* at *18–19 (same for LIS); *see also id.* at *10 n.15 (noting scholarship in the record from "two of the 2019 Nobel Prize laureates for Economics who assert that '[t]here is no evidence that cash transfers make people work less.'" (quoting Abhijit V. Banerjee & Esther Duflo, GOOD ECONOMICS FOR HARD TIMES 289 (2019))).

As a remedy, the district court in *Peña Martínez* "declare[d] that it is unconstitutional to deny the Plaintiffs, as well as all otherwise eligible

individuals, Supplemental Security Income (SSI), Supplemental Nutrition Assistance Program (SNAP), and Medicare Part D Low-Income Subsidy (LIS) benefits solely due to their residency in Puerto Rico," and "enjoin[ed] the Government from enforcing the unconstitutional provisions and implementing regulations of the SSI, SNAP, and LIS programs, insofar as they exclude residents of Puerto Rico, against the Plaintiffs and all similarly situated applicants residing in the Commonwealth of Puerto Rico." *Id.* at *23–24.

The Government appealed to the First Circuit. *Peña Martínez v. U.S. Dep't of Health & Human Servs.*, No. 20-1946 (1st Cir.). On October 22, 2020, a panel of the First Circuit (Howard, C.J., Torruella, J., and Kayatta, J.) denied the Government's request for a stay pending appeal of the injunction as to the nine named plaintiffs "because the government has not established that it has a sufficient chance of prevailing on the merits in this appeal as to those plaintiffs," but granted the stay as to non-parties. Order of Court, No. 20-1946 (1st Cir. Oct. 22, 2020). The late Judge Torruella dissented without opinion from that Order.

A. The Decision In *Peña Martínez* Would Help Inform Consideration Of The Petition

Two key differences between *Vaello-Madero* and *Peña Martínez* support holding the petition here if it is not denied so that the two cases may be considered together in deciding whether the question presented warrants the Court's review.

First, while *Vaello-Madero* involves just one federal program (SSI), *Peña Martínez* involves three

(SSI, SNAP, and LIS). Certain of the Government's arguments for excluding residents of Puerto Rico from SSI do not apply to the other two programs. For example, the Government argues that it is permissible to extend SSI to one Territory (the Northern Mariana Islands) but not to Puerto Rico because the United States "committed to extend SSI to the Islands in the covenant establishing the Islands as a commonwealth, but had made no comparable negotiated commitment with respect to other Territories." Pet. 19. That logic does not extend to the exclusion of Puerto Rico residents from SNAP, which the Government provides to two overseas Territories (Guam and the U.S. Virgin Islands), *see* 7 U.S.C. § 2012(r), despite the absence of negotiated commitments to receive SNAP. Waiting for the anticipated petition in *Peña Martínez* will thus enable the Court to consider review as to all three programs rather than make a decision limited to the question of SSI benefits.

Second, while *Vaello-Madero* was resolved at summary judgment, *Peña Martínez* rests on a full evidentiary record. The district court opinion and order in *Peña Martínez* issued after discovery and a case-stated hearing in lieu of a bench trial, enabling the district court to make factual findings based on evidence including expert testimony about the tax, cost, and economic-disruption factors that the Government relies on in the petition. 2020 WL 4437859, at *2–7, *9–19. Especially because the Government here urges summary acceptance of the "40-year-old data" underlying *Califano* and *Harris*, *cf. Shelby County*, 570 U.S. at 556, the contemporary evidentiary record compiled in *Peña Martínez* would

offer important assistance to the Court unavailable from the record below.

Moreover, the factual record in *Peña Martínez* includes evidence bearing on the economic-disruption rationale that the Government advances in the petition but abandoned below (*see* App. 16a–19a), depriving the Court of any record on that issue in *Vaello-Madero*. In contrast, the Government fully briefed and argued the economic-disruption rationale in *Peña Martínez*, and the district court carefully considered and rejected it, 2020 WL 4437859, at *2, *13–17, *18–19. Considering *Peña Martínez* alongside the petition would therefore respect this Court's role as a "court of review, not of first view, *Christian Legal Soc. Chapter of Univ. of Cal., Hastings College of Law v. Martinez*, 561 U.S. 661, 697 n.28 (2010) (quoting *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005)).[2]

B. There Is No Urgent Need To Consider The Petition Here Before *Peña Martínez*

The petition does not identify any emergency requiring urgent decision before it may be considered alongside *Peña Martínez*. Because *Vaello-Madero* is an individual Government recoupment case, the only

[2] *Amici* also note that *Vaello-Madero* arises in unusual procedural circumstances not present in *Peña Martínez*. In *Vaello-Madero*, the Government sued to recoup SSI benefits allegedly paid incorrectly to respondent. The district court denied the Government's own motion to voluntarily dismiss its claims for lack of jurisdiction. Pet. 6 & n.*. Holding *Vaello-Madero* for consideration together with *Peña Martínez* would ensure that this unusual procedural posture does not affect the certiorari determination.

immediate consequence of the decision below is that the Government has lost its claim against respondent for restitution of $28,081. Pet. 6. Neither party here sought or obtained injunctive relief, and neither party has contended that an immediate ruling is necessary to protect its rights. The Government has not, for example, moved to stay the judgment in *Vaello-Madero* pending its petition for certiorari.

The Government does argue that extending SSI to Puerto Rico could result in over 300,000 Puerto Rico residents obtaining SSI benefits each month, at a cost of approximately $23 billion over the next ten years. Pet. 22. But the district court in *Vaello-Madero* did not enjoin the Government to extend SSI benefits to residents of Puerto Rico, and the Government has averred in *amici*'s case that it will continue to exclude residents of Puerto Rico from SSI benefits until a court "orders it to stop," *Peña Martínez*, 2020 WL 4437859, at *23 (citing Tr. Case-Stated Hr'g, D. Ct. Dkt. 94, at 11–14). The district court in *Peña Martínez* did enjoin the Government to extend SSI (as well as SNAP and LIS) benefits to residents of Puerto Rico, *id.* at *24, but the First Circuit stayed that injunction pending appeal (except as to the nine named Plaintiffs in *Peña Martínez*), *see* Order of Court, No. 20-1946 (1st Cir. Oct. 22, 2020).

The Government itself notes (Pet. 22–23) that the issue in *Vaello-Madero* is percolating in lower courts, which further counsels in favor of holding the petition here. *Vaello-Madero* is currently the only appellate decision addressing the question presented. But the First Circuit will soon decide the Government's appeal in *Peña Martínez*, *see* No. 20-

1946 (1st Cir.),[3] and the Ninth Circuit is considering the Government's appeal from a recent ruling that the exclusion of residents of Guam from SSI benefits based solely on residence violates the Fifth Amendment's equal-protection guarantee. *See Schaller v. SSA*, No. 20-16589 (9th Cir.). Before granting the petition here, the Court should await these additional appellate decisions.

[3] The Government cites *Consejo de Salud de Puerto Rico, Inc. v. United States* as another case raising similar issues, but that case is stayed pending this Court's resolution of *Vaello-Madero*. *See* Dkt. 208, 212, No. 18-cv-1045 (GAG) (D.P.R. Sept. 8–9, 2020).

CONCLUSION

The Court should deny the petition or, at a minimum, hold the petition pending the anticipated petition in *Peña Martínez*.

Respectfully submitted,

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