No. 20-303

In the Supreme Court of the United States

UNITED STATES OF AMERICA, PETITIONER

v.

JOSE LUIS VAELLO-MADERO

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

REPLY BRIEF FOR THE UNITED STATES

BRIAN H. FLETCHER
Acting Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

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Respondent argues that Congress violated the equal-protection component of the Fifth Amendment's Due Process Clause by deciding not to extend the Supplemental Security Income (SSI) program to Puerto Rico. He contends that the court of appeals was right to hold that Congress's decision lacks a rational basis; that differential treatment of Puerto Rico in any event warrants strict scrutiny rather than rational-basis review; and that this Court should overrule its contrary decisions in *Califano* v. *Torres*, 435 U.S. 1 (1978) (per curiam), and *Harris* v. *Rosario*, 446 U.S. 651 (1980) (per curiam). Those contentions lack merit. And although respondent advances a strong policy case for increasing federal aid to needy residents of Puerto Rico, cf. Gov't Br. 39-40, the Constitution vests Congress, not the courts, with responsibility for making appropriate changes.

A. Congress's Decision Not To Extend The SSI Program To Puerto Rico Is Supported By A Rational Basis

A law survives rational-basis review so long as "there are 'plausible reasons' for Congress' action." *FCC* v. *Beach Communications, Inc.*, 508 U.S. 307, 313-314 (1993) (citation omitted). This Court's decisions have already identified a straightforward and plausible reason for Congress's decision not to extend the SSI program to Puerto Rico: The Commonwealth is generally exempt from application of the federal taxes that fund that program. Gov't Br. 15-22. As this Court held in both *Torres* and *Rosario*, Puerto Rico's tax status provides an adequate basis for congressional decisions not to extend federal benefits programs to the island. See *Rosario*, 446 U.S. at 652; *Torres*, 435 U.S. at 5 n.7. Respondent challenges the rationality of Congress's judgment on a variety of grounds, but his arguments are unpersuasive.

1. Respondent first argues (Resp. Br. 34-38) that Puerto Rico's tax status cannot provide a rational basis for Congress's decision not to extend the SSI program to Puerto Rico, because recipients of SSI usually earn too little money to pay federal income tax. As an initial matter, that line of reasoning wrongly focuses on federal income taxes and ignores other federal taxes, such as excise taxes. As we have explained (Gov't Br. 16) and as respondent does not deny, Puerto Rico's tax status frees its residents from a broad range of federal taxes, including taxes that apply regardless of income level.

Even as to income taxes, moreover, the fact that residents of Puerto Rico in general pay no federal income tax means that the revenue that would otherwise be captured by federal taxes and paid into the federal Treasury is instead available to Puerto Rico through the

levying of its own taxes. The availability of that source of revenue benefits all residents of the Commonwealth, including respondent, by providing the means for furnishing governmental services and benefits at the territorial level. Given that source of revenue, Congress could rationally conclude that Puerto Rico should administer and primarily fund aid for aged, blind, and disabled residents in the Territory. As this Court has explained, Congress does not act irrationally by not covering a person under a federal benefits program on the ground that a different unit of government should, in Congress's judgment, bear primary responsibility for meeting the person's needs. See *Schweiker* v. *Wilson*, 450 U.S. 221, 238 (1981); *Richardson* v. *Belcher*, 404 U.S. 78, 83-84 (1971).

Respondent asks (Resp. Br. 36) why Puerto Rico should have to bear the burden of caring for its aged, blind, and disabled residents, when Congress, through the SSI program, assumed that burden itself for the States and the District of Columbia. But again, Puerto Rico's tax status provides a rational answer to that question. Residents of the 50 States and the District of Columbia pay the full range of federal taxes, while residents of Puerto Rico do not. Puerto Rico can replace inapplicable federal taxes with local taxes in a way that the 50 States and the District of Columbia cannot, and it can then decide how to spend the resulting revenue, including by determining how much money to allocate to social-welfare programs.

This system of local taxation for local spending promotes local autonomy in Puerto Rico. Respondent argues (Resp. Br. 38) that extending SSI to Puerto Rico would not undermine its autonomy, but that rejoinder

improperly focuses on one side of the tradeoff (unavailability of some federal benefits in Puerto Rico) while ignoring the other side (inapplicability of most federal taxes in Puerto Rico). Congress could rationally choose a system in which the Commonwealth's own legislature decides what taxes to impose and what programs to fund over a system in which those decisions are instead made by Congress. Economic and other conditions in Puerto Rico differ from those in the States. It is not irrational to conclude that Puerto Rico's elected legislators can best judge how to promote the Commonwealth's general welfare, including by deciding what resources should be devoted to aid for aged, blind, and disabled residents.

Underscoring the rationality of Congress's choice, when Congress has extended federal taxes to Puerto Rico, it generally has extended corresponding benefits as well. For example, Congress has extended Federal Insurance Contribution Act taxes (also known as FICA taxes or payroll taxes) and unemployment taxes to residents of Puerto Rico. See Gov't Br. 19-20. It also has extended the federal programs funded by those taxes to residents of Puerto Rico: Social Security, Medicare, and unemployment benefits. See *id.* at 20. Social Security and Medicare, for example, are federal insurance programs in which participants accrue entitlement to benefits upon retirement, whether they reside in Puerto Rico or in one of the 50 States after retirement. See *ibid.* The Constitution permits Congress to conclude that residents of Puerto Rico should participate in specific programs (such as Social Security, Medicare, and unemployment benefits) that they help fund, but not in other programs (such as SSI) that they do not help fund.

To be sure, Congress could rationally make a different choice. Indeed, respondent and his amici forcefully argue that the SSI program should be extended to Puerto Rico, and the President has made clear that the Administration supports such an extension as a matter of policy. Gov't Br. 40. But under the rational-basis standard, courts do not "judge the wisdom, fairness, or logic of legislative choices." *Beach*, 508 U.S. at 313. Instead, a court's "inquiry is at an end" as soon as it identifies a rational basis for what Congress has done. *Id.* at 314 (citation omitted). The tax-status rationale identified in *Torres* and *Rosario* satisfies that deferential standard.

2. Respondent asserts (Resp. Br. 35-37) that this tax-status basis for Congress's decision not to extend SSI to Puerto Rico contravenes this Court's decisions in *Hooper* v. *Bernalillo County Assessor*, 472 U.S. 612 (1985), *Zobel* v. *Williams*, 457 U.S. 55 (1982), and *Shapiro* v. *Thompson*, 394 U.S. 618 (1969). That is incorrect.

In each of the cases respondent cites, this Court held that a State violated the Constitution by basing eligibility for public benefits or tax exemptions on when a person had moved to the State or how long he had lived there. See *Hooper*, 472 U.S. at 618-623; *Zobel*, 457 U.S. at 58-65; *Shapiro*, 394 U.S. at 621-622. The Court's decisions rested, in part, on the understanding that the challenged laws impaired the fundamental right to travel by treating newcomers differently than established residents. See *Hooper*, 472 U.S. at 618 n.6; *Zobel*, 457 U.S. at 60 n.6; *Shapiro*, 394 U.S. at 621-622. Given that fundamental right, the Court rejected the argument that established residents' "past tax contributions" could justify favoring them over newcomers.

Shapiro, 394 U.S. at 632; see *Hooper*, 472 U.S. at 623; *Zobel*, 457 U.S. at 63.

This case—unlike *Hooper*, *Zobel*, and *Shapiro*—involves neither the fundamental right to travel nor any discrimination between longstanding residents and newcomers or between those who paid taxes in the past and those who did not. It instead involves a congressional judgment that, when a Territory retains most of its tax revenues, the Territory should also bear the burden of funding additional public benefits using those revenues.

3. Respondent also argues (Resp. Br. 32-33) that the tax-status rationale is inadequate because it is inconsistent with the SSI program's overall goal of helping needy people. That, too, is incorrect. This Court has explained that most laws "might predominantly serve one general objective * * * while containing subsidiary provisions that seek to achieve other desirable (perhaps even contrary) ends as well." *Fitzgerald* v. *Racing Association*, 539 U.S. 103, 108 (2003). That does not make such laws irrational. Here, although SSI as a whole serves one purpose (helping needy individuals), the provisions that limit the program to the 50 States and the District of Columbia serve other rational purposes (such as reflecting the distinct status of the Territories, aligning federal benefits with tax status, and promoting local autonomy in Puerto Rico).

4. Respondent next suggests (Resp. Br. 43) that Congress acted irrationally by extending SSI to the Northern Mariana Islands, but not to Puerto Rico. The Northern Mariana Islands, previously a United Nations trust territory, negotiated a covenant with the United States in which the United States agreed (among other things) to extend SSI there and in which the Islands

agreed (among other things) to enter a political union with the United States. Gov't Br. 27. By contrast, the Puerto Rico Federal Relations Act of 1950, Pub. L. No. 81-600, 64 Stat. 319—the statute "in the nature of a compact" that approved Puerto Rico's status as a self-governing commonwealth, *id.* § 1, 64 Stat. 319—does not contain a comparable commitment. The covenant with the Northern Mariana Islands amply supports Congress's decision to extend SSI to that one Territory but not to others, including Puerto Rico. Respondent appears to question (Resp. Br. 40 n.9) the antecedent decision to negotiate such a covenant with the Northern Mariana Islands but not with Puerto Rico, but the Constitution commits decisions about the negotiation of international agreements to the Executive, not the courts. See, *e.g.*, *Zivotofsky* v. *Kerry*, 576 U.S. 1, 13-14 (2015).

Respondent's argument also overlooks the reality that each Territory is unique. Each Territory has its own history, its own political relationship with the United States, its own tax status, and its own economic conditions. The relationship between Puerto Rico and the United States, for example, "has no parallel in our history." *Puerto Rico* v. *Sanchez Valle*, 136 S. Ct. 1863, 1876 (2016) (citation omitted). In light of those differences, Congress has extended a different set of federal benefits to each Territory. For example, the Temporary Assistance for Needy Families or TANF program is available in Puerto Rico but not the Northern Mariana Islands, while the SSI program is available in the Northern Mariana Islands but not Puerto Rico. See Gov't Br. 26. The Constitution permits that arrangement, for it vests Congress with the authority to address each Territory's distinctive circumstances. See *Sanchez Valle*, 136 S. Ct. at 1876.

5. Finally, respondent observes (Resp. Br. 44) that Congress has generally required a person to reside in "the United States" to be eligible for SSI benefits, 42 U.S.C. 1382c(a)(1)(B)(i), and has defined the "United States" for these purposes to include the 50 States and the District of Columbia but not Puerto Rico, 42 U.S.C. 1382c(e). Respondent argues (Resp. Br. 44) that this definitional provision suggests a purpose of expressing animus toward the people of Puerto Rico. In fact, however, the provision serves the simple purpose of improving the readability of the text, for it enables Congress to use the succinct phrase "United States," rather than the cumbersome phrase "50 States and the District of Columbia," in the rest of the statute. Congress has used similar shorthand in other laws—for example, when exempting Puerto Rico from federal taxes. See, *e.g.*, 26 U.S.C. 7701(a)(9). The Constitution does not require Congress to "write less economically and more repetitiously." *Ali* v. *Federal Bureau of Prisons*, 552 U.S. 214, 221 (2008).

B. Congress's Decision Not To Extend The SSI Program To Puerto Rico Does Not Trigger Heightened Scrutiny

Respondent separately argues (Resp. Br. 21-32) that a law that treats Puerto Rico differently than the States should trigger strict scrutiny rather than rational-basis review. That argument is wrong. As this Court correctly held in *Rosario*, Congress "may treat Puerto Rico differently from States so long as there is a rational basis for its actions." 446 U.S. at 651-652. And in upholding the statute in *Rosario* under rational-basis review, the Court relied on its prior decision in *Torres* applying rational-basis review to Congress's decision not to extend the SSI program to Puerto Rico. *Id.* at 652.

1. Respondent fails to reconcile his contrary view with the Territory Clause and with the many provisions of the Constitution that treat Territories differently than States. See Gov't Br. 28-30. And he errs in asserting (Resp. Br. 28) that the Territory Clause does not matter here because Congress has enacted the challenged law under the Spending Clause rather than the Territory Clause. Although the SSI program, where it applies, rests on Congress's power to spend money and to decide in what manner to do so, the provisions declining to extend the program to Puerto Rico are at the same time "Rules and Regulations respecting the Territory * * * belonging to the United States." U.S. Const. Art. IV, § 3. "[T]he Territory Clause permits exclusions or limitations directed at a territory." *Quiban* v. *Veterans Administration*, 928 F.2d 1154, 1160 (D.C. Cir. 1991) (R.B. Ginsburg, J.), cert. denied, 513 U.S. 918 (1994).

In any event, the point is not that laws enacted under the Territory Clause are exempt from equal-protection principles. The point is that the very existence of the Territory Clause proves that the Framers regarded the distinction between States and Territories as legitimate rather than invidious or presumptively invalid. So does the existence of the many other provisions of the Constitution that distinguish States from Territories. See Gov't Br. 29-30. The Court has relied on similar logic before. For example, it has subjected laws treating Indians differently than non-Indians to rational-basis review, not strict scrutiny, because the Indian Commerce Clause "singles Indians out as a proper subject for separate legislation." *Morton* v. *Mancari*, 417 U.S. 535, 552 (1974).

2. Respondent also fails to reconcile his argument for strict scrutiny with the text of the Equal Protection Clause of the Fourteenth Amendment, which (as this Court has often explained) focuses on equal treatment of persons rather than equal treatment of places. See Gov't Br. 30-33. Congress has afforded equal treatment of persons here. Persons who reside in the 50 States and the District of Columbia are eligible for SSI benefits regardless of personal traits such as race and ethnicity; persons who reside in Puerto Rico are not, again regardless of personal traits such as race and ethnicity.

Respondent argues that "[t]he exclusion at issue does not target a place per se, but rather a class of individuals because of where they live." Resp. Br. 30 (emphasis omitted). But any geographic distinction could be reframed as a distinction between people in one place and people in other places. If that were enough to avoid rational-basis review, there would be nothing left of the principle that "territorial uniformity is not a constitutional prerequisite." *McGowan* v. *Maryland*, 366 U.S. 420, 427 (1961). And the settled principle that the Constitution does not require territorial uniformity is especially compelling with respect to the Territories of the United States, which the Constitution itself treats as distinct bodies subject to Congress's plenary authority under the Territory Clause.

3. Respondent next argues (Resp. Br. 21-24) that laws treating Puerto Rico differently than the States warrant strict scrutiny because residents of Puerto Rico form a politically powerless minority. But under this Court's decisions explaining when heightened equal-protection scrutiny is warranted, "[t]he 'political powerlessness' of a group * * * is neither necessary, as

the gender cases demonstrate, nor sufficient, as the examples of minors illustrates." *Cleburne* v. *Cleburne Living Center, Inc.*, 473 U.S. 432, 472 n.24 (1985) (Marshall, J., concurring in the judgment in part and dissenting in part) (citation omitted). Then-Judge Scalia thus wrote that "political powerlessness alone is not enough for 'suspect class' status" and that residents of the District of Columbia do not form a suspect class even though they lack congressional representation. *United States* v. *Cohen*, 733 F.2d 128, 135 (D.C. Cir. 1984) (en banc) (Scalia, J.). And then-Judge Ginsburg wrote that applying strict scrutiny because "residents of territories lack equal access to channels of political power" would be "inconsistent with Congress's 'large powers'" in this field. *Quiban*, 928 F.2d at 1160 (brackets and citation omitted).

Under this Court's precedents, the critical question is not whether a class possesses political power, but whether a classification is "valid as a general matter." *Cleburne*, 473 U.S. at 446. As we have argued (Gov't Br. 34-36) and as respondent does not deny, Congress as a rule has legitimate reasons to treat Territories differently than States. Such distinctions thus bear little resemblance to suspect classifications like race and sex, which "tend to be irrelevant to any proper legislative goal." *Plyler* v. *Doe*, 457 U.S. 202, 216 n.14 (1982).

Respondent seeks (Resp. Br. 23-24) to bolster his claims about Puerto Rico's lack of political power by pointing to the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), 48 U.S.C. 2101 *et seq.*, but that statute in fact undermines respondent's argument for applying strict scrutiny. Congress adopted PROMESA in response to a "fiscal cri-

sis" in Puerto Rico. See *Financial Oversight & Management Board* v. *Aurelius Investment, LLC*, 140 S. Ct. 1649, 1655 (2020). The Commonwealth and its instrumentalities had incurred more than $70 billion in outstanding debt, more than the whole annual output of the island's economy. Gov't Br. at 2, *Aurelius*, *supra* (No. 18-1334). Their credit ratings had been downgraded, leaving them unable to borrow money on the bond markets. *Ibid.* The resulting fiscal problems threatened "the Commonwealth's very ability to persist." *Wal-Mart P.R., Inc.* v. *Zaragoza-Gomez*, 174 F. Supp. 3d 585, 592 (D.P.R.), aff'd 834 F.3d 110 (1st Cir. 2016). Congress addressed those problems in PROMESA by authorizing Puerto Rico to seek federal bankruptcy protection and by creating an oversight board to restructure the Commonwealth's debts. See *Aurelius*, 140 S. Ct. at 1655-1656.

Far from supporting respondent's case, PROMESA illustrates the broader point that Congress often passes laws that treat Territories differently than the States. It also shows that Congress often has legitimate reasons for enacting such laws—such as addressing a fiscal crisis that posed an existential threat to a Territory's economy and government. And it confirms the wisdom of applying rational-basis review to such laws. Congress would have been deprived of the flexibility needed to address Puerto Rico's fiscal problems if any provision treating Puerto Rico differently than a State had to survive strict scrutiny.

4. Respondent separately argues (Resp. Br. 24-27) that laws treating Puerto Rico differently than the States deserve strict scrutiny because most residents of Puerto Rico are Hispanic. But this Court has explained

that the guarantee of equal protection focuses on intentional discrimination, not on disproportionate effects. See *Washington* v. *Davis*, 426 U.S. 229, 239-248 (1976). A law's disproportionate effect can provide some evidence of discriminatory intent, but "impact alone is not determinative." *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U.S. 252, 266 (1977). Under those principles, "exclusions or limitations directed at a territory" do not trigger strict scrutiny simply because they "coincid[e] with race or national origin." *Quiban*, 928 F.2d at 1160. And respondent has not shown that Congress's decision in 1972 not to extend the SSI program to Puerto Rico was the product of intentional discrimination on the basis of race or national origin.

5. Finally, respondent analogizes (Resp. Br. 22) classification based on territorial residency to "classifications based on alienage." But that analogy harms rather than helps his argument. This Court held in *Mathews* v. *Diaz*, 426 U.S. 67 (1976), that, although *state* laws that distinguish citizens from noncitizens may warrant strict scrutiny, *federal* laws that do so do not. *Id.* at 85-86. Such federal laws instead trigger only rational-basis review because the Constitution grants Congress broad authority over noncitizens and because "a host of constitutional and statutory provisions rest on the premise that a legitimate distinction between citizens and aliens may justify attributes and benefits for one class not accorded to the other." *Id.* at 78. The same reasoning applies to this case: The Constitution grants Congress broad authority over Territories, and

numerous constitutional and statutory provisions treat Territories differently than States.*

C. Respondent Fails To Provide A Special Justification For Overruling *Torres* And *Rosario*

Respondent argues (Resp. Br. 44-49) that this Court should overrule its holdings in *Rosario* that Congress may treat Puerto Rico differently than the States if it has a rational basis to do so, and in *Torres* and *Rosario* that Congress had rational grounds for excluding Puerto Rico from programs such as SSI or for treating Puerto Rico differently under such programs. As discussed above, respondent has not furnished any basis for concluding that those cases were wrongly decided. But even putting aside the decisions' merits, this Court always "demand[s] a 'special justification,' over and above the belief 'that the precedent was wrongly decided,'" before overruling one of its prior decisions. *Allen* v. *Cooper*, 140 S. Ct. 994, 1003 (2020). Respondent has not identified such a special justification here.

Respondent contends (Resp. Br. 46) that *Torres* and *Rosario* are "unclear." But there is nothing unclear about the legal principles established by those decisions: "Congress * * * may treat Puerto Rico differently from States so long as there is a rational basis for its actions," *Rosario*, 446 U.S. at 651-652, and Puerto Rico's "unique tax status" provides a rational basis for "the exclusion of persons in Puerto Rico from the SSI program," *Torres*, 435 U.S. at 5 n.7.

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* Further undercutting respondent's analogy, this Court has noted the observation by commentators that "many of the Court's decisions concerning alienage classifications" are "better explained in pre-emption than in equal protection terms." *Toll* v. *Moreno*, 458 U.S. 1, 11 n.16 (1982).

Respondent next asserts (Resp. Br. 47) that the "necessity of judicial oversight" is more apparent today than it was when this Court decided *Torres* and *Rosario*. That argument, too, is flawed. The level of scrutiny that applies to limitations directed at Territories should turn on the text and structure of the Constitution, not on a court's assessment of whether additional "oversight" of a coordinate Branch of the Government is "necessary." The relevant text and structure have not changed since *Torres* and *Rosario*: Then, as now, the Constitution vests Congress, not the federal courts, with primary responsibility for defining the Nation's relationship with its Territories.

Respondent also attempts (Resp. Br. 2-4, 46) to challenge *Torres* and *Rosario* by referring to a series of decisions from the early 20th century known as the Insular Cases. See *Downes* v. *Bidwell*, 182 U.S. 244 (1901); *Armstrong* v. *United States*, 182 U.S. 243 (1901); *Dooley* v. *United States*, 182 U.S. 222 (1901); *De Lima* v. *Bidwell*, 182 U.S. 1 (1901). In the Insular Cases, however, this Court held that the applicability of certain constitutional provisions to a Territory depends on whether Congress has "incorporated" the Territory into the United States. See *Torres* v. *Puerto Rico*, 442 U.S. 465, 469 (1979). In this case, by contrast, no one disputes the applicability of the Constitution's guarantee of equal protection to Puerto Rico; this Court has held, and we agree, that the guarantee does apply there. See *ibid.*; Gov't Br. 12.

Last, respondent dismisses (Resp. Br. 48) the extensive reliance generated by *Torres*, *Rosario*, and the principles on which they rest. He asserts (*ibid.*) that "legislature[s]" lack a legitimate reliance interest in maintaining past practices, but this Court has explained

that *stare decisis* has "added force" when, as here, "the legislature * * * ha[s] acted in reliance on a previous decision" and "overruling the decision would * * * require an extensive legislative response." *Hilton* v. *South Carolina Public Railways Commission*, 502 U.S. 197, 202 (1991). Respondent also asserts (Resp. Br. 48 n.11) that overruling *Torres* and *Rosario* would not have significant "disruptive effects," but he fails to explain how this Court could rule in his favor without calling into question the many other federal programs that accord a different level of benefits in Puerto Rico than in the States, the many federal taxes that apply in the States but not in Puerto Rico, and the many other federal laws that treat States and Territories differently. See Gov't Br. 16-17, 26, 35-36.

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The judgment of the court of appeals should be reversed.

Respectfully submitted.

BRIAN H. FLETCHER
Acting Solicitor General

SEPTEMBER 2021