No. 20-303

In the Supreme Court of the United States

UNITED STATES OF AMERICA, PETITIONER

v.

JOSE LUIS VAELLO-MADERO

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

REPLY BRIEF FOR THE UNITED STATES

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Constitution: Page

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Respondent's brief confirms that this Court should grant the petition for a writ of certiorari and review the court of appeals' decision holding that Congress violated the Constitution by establishing the Supplemental Security Income (SSI) program in the 50 States, the District of Columbia, and the Northern Mariana Islands, but declining to extend the program to Puerto Rico. Respondent has no answer to the government's arguments that the decision below warrants further review. For example, he never meaningfully addresses the strong presumption in favor of reviewing decisions that hold federal statutes unconstitutional (Pet. 20-21); the estimates that the decision below, if allowed to stand, would cost the federal government $23 billion over the next ten years (Pet. 22); or the reality that other litigants and courts have already begun to rely on the decision below to challenge or strike down other federal statutes treating territories differently than States

(Pet. 22-23). Respondent also does not contend that this case would be a poor vehicle for reviewing the question presented. Quite the contrary, he concedes (Br. in Opp. 24 n.7) that "[t]his case presents an excellent vehicle to resolve these issues," because it "deals with only one program and one beneficiary" and raises "no material factual disputes or other superfluous issues * * * that unduly complicate the analysis."

Respondent instead focuses on the merits. He argues that the decision below comports with this Court's precedents, but in reality it contradicts the Court's previous decisions in *Califano* v. *Torres*, 435 U.S. 1 (1978) (per curiam), and *Harris* v. *Rosario*, 446 U.S. 651 (1980) (per curiam). He argues that the Court should reconsider those precedents, but he fails to offer any sound reason for doing so. The Court should therefore either summarily reverse the decision below or grant plenary review.

A. *Torres* and *Rosario* Resolve This Case

Respondent fails to overcome two precedents that control this case: *Torres* and *Rosario*. Respondent does not deny that, in *Torres* and *Rosario*, the Court concluded that Congress may "treat Puerto Rico differently from States" for purposes of a welfare program if "there is a rational basis" for the distinction. *Rosario*, 446 U.S. at 651-652; see *Torres*, 435 U.S. at 5. He also does not deny that, in *Torres* and *Rosario*, the Court concluded that Congress's decision not to extend the SSI program "was rationally grounded on three factors: Puerto Rican residents do not contribute to the federal treasury; the cost of treating Puerto Rico as a State under the statute would be high; and greater benefits could disrupt the Puerto Rican economy." *Rosario*, 446 U.S. at 652; see *Torres*, 435 U.S. at 5 n.7. Put simply,

Torres and *Rosario* establish both that the law challenged here triggers rational-basis review and that it satisfies that standard.

Respondent and Puerto Rico isolate *Torres* and distinguish it on the ground that it involved the right to travel rather than equal protection, and then isolate *Rosario* and distinguish it on the ground that it involved the Aid to Families with Dependent Children (AFDC) program rather than the SSI program. See Br. in Opp. 31-32; Puerto Rico Amicus Br. 3-6. That divide-and-conquer approach to this Court's precedents is flawed. In *Torres*, the Court applied the rational-basis standard to a claim that Puerto Rico's exclusion from the SSI program violated the right to travel, and it identified three rational bases for that exclusion. See 435 U.S. at 5 & n.7. Then, in *Rosario*, the Court applied the same rational-basis standard to a claim that Puerto Rico's exclusion from the AFDC program denied equal protection, and it held that the same three rational bases identified in *Torres* supported that exclusion as well. See *Rosario*, 446 U.S. at 651-652. Taken together, the two decisions establish that (1) respondent's equal-protection claim triggers only rational-basis review, and (2) Congress's decision not to extend the SSI program to Puerto Rico satisfies that standard.

B. Respondent Offers No Sound Reason To Reconsider *Torres* And *Rosario*

Respondent and Puerto Rico next urge this Court to reconsider and overrule *Torres* and *Rosario*. See Br. in Opp. 12-24; Puerto Rico Amicus Br. 11-24. The Court should decline that invitation.

1. Respondent and Puerto Rico barely discuss the doctrine of *stare decisis*. Respondent and Puerto Rico instead argue principally that *Torres* and *Rosario* were

wrongly decided. But overruling a precedent requires a justification "over and above the belief 'that the precedent was wrongly decided.'" *Kimble* v. *Marvel Entertainment, LLC*, 576 U.S. 446, 456 (2015) (citation omitted). Here, respondents and Puerto Rico offer no such justification. The precedents at issue are long established, having been in place for approximately four decades. The principles on which those precedents are founded have generated immense reliance, for Congress has enacted numerous laws treating Puerto Rico and other territories differently than the States, in areas ranging from tax and bankruptcy to healthcare and civil rights. See Pet. 11. Later decisions have not undermined those precedents; to the contrary, they have reaffirmed Congress's broad authority to treat territories differently than the States. See, *e.g.*, *Financial Oversight & Management Board* v. *Aurelius Investment, LLC*, 140 S. Ct. 1649, 1658-1659 (2020). And the precedents have not proved unworkable; to the contrary, the rational-basis test they adopt is straightforward to apply.

2. In any event, *Torres* and *Rosario* were correctly decided, and respondent's and Puerto Rico's contrary arguments lack merit.

a. Respondent and Puerto Rico first take aim at this Court's holding that 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; see *Torres*, 435 U.S. at 5. They argue that the Court should review differential treatment of Puerto Rico under strict scrutiny. See Br. in Opp. 12-24; Puerto Rico Amicus Br. 11-24. But their justifications for applying strict scrutiny all lack force.

First, respondent argues that, as a general matter, all federal laws that draw "territorial distinctions" among different parts of the United States should receive strict scrutiny. Br. in Opp. 20; see *id.* at 16-24. But the Court has explained that "the Equal Protection Clause relates to equality between persons as such, rather than between areas." *McGowan* v. *Maryland*, 366 U.S. 420, 427 (1961). "Territorial uniformity is not a constitutional requisite." *Salsburg* v. *Maryland*, 346 U.S. 545, 552 (1954).

Second, respondent and Puerto Rico argue that laws that treat residents of Puerto Rico differently than residents of the States warrant strict scrutiny because the residents of Puerto Rico constitute a discrete and insular minority. See Br. in Opp. 16; Puerto Rico Amicus Br. 24. That, too, is incorrect. The Constitution itself treats the residents of the States differently than the residents of the territories. For example, it grants States but not territories representation in Congress, see U.S. Const. Art. I, §§ 2-3; allows States but not territories to participate in presidential elections, see U.S. Const. Art. II, § 2; subjects only territories to plenary congressional control, see U.S. Const. Art. IV, § 3, Cl. 2; and reserves to States but not territories powers that have not been delegated to the Federal Government, see U.S. Const. Amend. X. It makes little sense to view a distinction that the Constitution itself draws as inherently suspect and presumptively unconstitutional.

Finally, respondent and Puerto Rico argue that the differential treatment of Puerto Rico deserves strict scrutiny because it involves discrimination on the basis of race. See Br. in Opp. 12-16; Puerto Rico Amicus Br. 20-24. That, again, is mistaken. This Court has applied

strict scrutiny to laws that draw "express racial classifications" and laws that, "though race neutral on their face," serve "a racial purpose." *Miller* v. *Johnson*, 515 U.S. 900, 913 (1995). The SSI program draws no express racial classification. A needy aged, blind, or disabled person who lives in a State, the District of Columbia, or the Northern Mariana Islands may receive SSI benefits—regardless of the color of his skin or the identity of his ancestors. Conversely, one who lives in Puerto Rico, the Virgin Islands, Guam, or American Samoa may not receive SSI benefits—again, regardless of the color of his skin or the identity of his ancestors. Respondent himself received SSI benefits while he lived in a State, but stopped receiving them after he moved to Puerto Rico, see Pet. App. 3a-4a—confirming that his eligibility for benefits depended on his location rather than his race. Nor does the SSI program serve a racial purpose. To the contrary, as the Court acknowledged in *Torres* and *Rosario*, the distinctions drawn by the program serve valid and neutral purposes, such as reflecting Puerto Rico's unique tax status, saving money, and accounting for Puerto Rico's distinctive economic conditions. See *Torres*, 435 U.S. at 5 n.7; *Rosario*, 446 U.S. at 652.

Respondent contends that the distinctive treatment of Puerto Rico as a territory reflected racial discrimination at the beginning. See Br. in Opp. 4-6, 14-15. "But the history of discrimination * * * is not on trial in this case." *Personnel Administrator* v. *Feeney*, 442 U.S. 256, 278 (1979). Only Puerto Rico's exclusion from the SSI program is, and statements "remote in time and made in unrelated contexts" are not "probative" of the purposes of that exclusion. *DHS* v. *Regents of the Uni-*

versity of California, 140 S. Ct. 1891, 1916 (2020) (opinion of Roberts, C.J.). Respondent also emphasizes that Puerto Rico has "a predominantly Hispanic/Latino population." Br. in Opp. 14; see *id.* at 6 n.1, 9, 21. The Equal Protection Clause, however, forbids only purposeful discrimination, not "racially disproportionate impact." *Washington* v. *Davis*, 426 U.S. 229, 239 (1976). Any law that treats Puerto Rico differently than the States will necessarily have a disproportionate effect on Puerto Rico's predominantly Hispanic population, but that does not establish that such a law serves a racial purpose or that it violates the Constitution.

b. Respondent and Puerto Rico also challenge this Court's holding in *Torres* and *Rosario* that Puerto Rico's exclusion from federal welfare programs (including the SSI program) rests on rational grounds. See Br. in Opp. 25-33; Puerto Rico Amicus Br. 6-11. But on that point too, *Torres* and *Rosario* were correctly decided.

First, respondent and Puerto Rico challenge this Court's holding that Puerto Rico's "unique tax status" justifies its exclusion from the SSI program. *Torres*, 435 U.S. at 5 n.7; see *Rosario*, 446 U.S. at 652. Neither respondent nor Puerto Rico denies that the people of Puerto Rico enjoy exemptions from various taxes that apply to similarly situated people in the 50 States, but they emphasize that (1) at least some people in Puerto Rico pay some federal taxes and (2) recipients of SSI benefits usually make too little money to owe income taxes. See Br. in Opp. 26-29; Puerto Rico Amicus Br. 7-9. Those responses miss the point. "[T]he United States and Puerto Rico have forged a unique political relationship." *Puerto Rico* v. *Sanchez Valle*, 136 S. Ct. 1863, 1868 (2016). Puerto Rico contributes some money to the federal treasury, but less than it would if it were a State.

See Pet. 12. In return, it receives some money back from the federal treasury, but again, less than it would if it were a State. Congress's decision not to extend the SSI program to Puerto Rico is simply one part of that broader fiscal arrangement. Respondent's and Puerto Rico's observations that at least some people in Puerto Rico pay some federal taxes, and that individual recipients of SSI benefits usually make too little money to owe federal income taxes, in no way undermine the rationality of that arrangement.

Second, respondent challenges this Court's holding that the interest in saving money supports Congress's decision not to extend the SSI program to Puerto Rico. See *Torres*, 435 U.S. at 5 n.7; *Rosario*, 446 U.S. at 652. Respondent acknowledges that "the Government has a legitimate interest in reducing costs," but argues that such an interest does not justify "arbitrary" or "'random'" measures. Br. in Opp. 26 (citation omitted). But the SSI program's line between States and territories is not "arbitrary" or "random." The Constitution itself distinguishes States from territories for a variety of purposes, and Congress has treated States and territories differently in a broad range of settings. See Pet. 11. It is perfectly rational for Congress to draw the same line here in order to save money.

Third, respondent and Puerto Rico dispute this Court's holding that Congress may rationally conclude that "inclusion in the SSI program might seriously disrupt the Puerto Rican economy." *Torres*, 435 U.S. at 5 n.7; see *Rosario*, 446 U.S. at 652. Respondent argues that Congress has mustered inadequate "support" for that economic judgment, Br. in Opp. 30, while Puerto Rico insists that the economic judgment "differs from the current economic facts," Puerto Rico Amicus Br. 9-

10. The Constitution, however, entrusts the responsibility for making such empirical judgments to Congress, not to the courts. The Constitution "gives the federal courts no power to impose upon [Congress] their views of what constitutes wise economic or social policy." *Dandridge* v. *Williams*, 397 U.S. 471, 486 (1970).

c. Finally, respondent and amici attempt to tie *Torres*, *Rosario*, and this case to the Insular Cases. See Br. in Opp. 3, 17-18, 20-24; Puerto Rico Amicus Br. 12-20; Virgin Islands Bar Ass'n Amicus Br. 9-17; Altieri Amicus Br. 10-11. The Insular Cases were a series of cases decided at the beginning of the 20th century in which this Court considered whether the Bill of Rights and other constitutional guarantees apply to territories acquired by the United States. 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). The Court answered that question by adopting "the doctrine of territorial incorporation, under which the Constitution applies in full in incorporated Territories surely destined for statehood but only in part in unincorporated Territories." *Boumediene* v. *Bush*, 553 U.S. 723, 757 (2008).

Contrary to respondent's and amici's arguments, however, neither *Torres* nor *Rosario* suggested that the Fifth Amendment's equal-protection guarantee simply does not apply in unincorporated territories. See *Torres*, 435 U.S. at 1-5; *Rosario*, 446 U.S. at 651-652. In fact, just a few years before *Torres* and *Rosario*, the Court had held that the guarantee of equal protection does apply in Puerto Rico and does forbid the govern-

ment from drawing invidious distinctions among residents there. See *Examining Board* v. *Flores de Otero*, 426 U.S. 572, 599-601 (1976). *Torres* and *Rosario* simply applied ordinary principles of rational-basis review to conclude that the particular statutory classification at issue here complies with the Constitution.

In all events, even if respondent's and amici's criticisms of *Torres* and *Rosario* were sound, the Court should still grant the petition for a writ of certiorari. "[I]t is this Court's prerogative alone to overrule one of its precedents." *State Oil Co.* v. *Khan*, 522 U.S. 3, 20 (1997). The Court accordingly should not allow a court of appeals decision that conflicts with those precedents to remain in place without further review.[*]

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[*] Plaintiffs in *Peña-Martínez* v. *United States Department of Health and Human Services*, appeal pending, No. 20-1946 (1st Cir. docketed Oct. 2, 2020), argue in an amicus brief (at 12-18) that the Court should hold this petition for a writ of certiorari until it receives a petition in *Peña-Martínez*. The First Circuit, however, has just set a briefing schedule on November 24, 2020; it still must receive the briefs, hear oral argument, issue an opinion, and resolve any petitions for rehearing. There is no adequate justification for holding this petition for the duration of those proceedings, when respondents concede (Br. in Opp. 24 n.7) that "[t]his case presents an excellent vehicle to resolve these issues."

* * * * *

For the foregoing reasons and those stated in the petition for a writ of certiorari, the petition should be granted.

Respectfully submitted.

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NOVEMBER 2020