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

BRIEF FOR THE UNITED STATES

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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, but not extending it to Puerto Rico.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-37a) is reported at 956 F.3d 12. The opinion and order of the district court (Pet. App. 38a-49a) is reported at 356 F. Supp. 3d 208. An additional opinion and order of the district court (Pet. App. 50a-60a) is reported at 313 F. Supp. 3d 370.

JURISDICTION

The judgment of the court of appeals was entered on April 10, 2020. The petition for a writ of certiorari was granted on March 1, 2021. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Relevant statutory provisions are reprinted in an appendix to this brief. App., *infra*, 1a-4a.

STATEMENT

A. Legal Background

1. "Puerto Rico occupies a relationship to the United States that has no parallel in our history." *Examining Board of Engineers, Architects & Surveyors* v. *Flores de Otero*, 426 U.S. 572, 596 (1976). The island became a territory of the United States in 1898, as a result of the Spanish-American War. *Puerto Rico* v. *Sanchez Valle*, 136 S. Ct. 1863, 1868 (2016). The treaty that ended the conflict and ceded the island to the United States provided that Congress would determine the "political status" of the island's inhabitants. Treaty of Paris, Dec. 10, 1898, U.S.-Spain, Art. IX, 30 Stat. 1759 (proclaimed Apr. 11, 1899). "In the ensuing hundred-plus years, the United States and Puerto Rico have forged a unique political relationship, built on the island's evolution into a constitutional democracy exercising local self-rule." *Sanchez Valle*, 136 S. Ct. at 1868. That relationship, founded on mutual respect, has benefited both the people of Puerto Rico and the United States. *Id.* at 1874.

In 1900, Congress established a civilian government for Puerto Rico and granted it significant autonomy over internal affairs. See Foraker Act, ch. 191, 31 Stat. 77; *Sanchez Valle*, 136 S. Ct. at 1868. In 1917, Congress granted the island's inhabitants U.S. citizenship. See Organic Act of Puerto Rico, ch. 145, § 5, 39 Stat. 953. Then, in 1952, Congress approved a constitution framed and ratified by the Puerto Rican people. Act of July 3, 1952, ch. 567, 66 Stat. 327. Before ratification, Congress removed a provision recognizing various social welfare rights, including "entitlements to food, housing, medical care, and employment," and prohibited any future amendment that would restore that provision. *Sanchez Valle*, 136 S. Ct. at 1869.

2. This case concerns Puerto Rico residents' eligibility for Supplemental Security Income (SSI), a program administered by the Social Security Administration that provides monthly cash payments to aged, blind, and disabled individuals who lack the financial means to support themselves. See Social Security Amendments of 1972, Pub. L. No. 92-603, Tit. III, § 301, 86 Stat. 1465-1478. To qualify for SSI benefits, a person must be blind, disabled, or at least 65 years old; must have income and assets that fall below specified limits; and must satisfy certain other criteria. 42 U.S.C. 1382, 1382c, 1383. Nearly eight million individuals receive SSI payments each month, and the average monthly federal benefit is around $585. See Social Security Administration, *SSI Monthly Statistics, April 2021*, Tbl. 2 (released May 2021).

When Congress created SSI in 1972, it made the program available in the 50 States and the District of Columbia, but not in Puerto Rico or other Territories. Congress provided, subject to exceptions not at issue here, that a person must be "a resident of the United States" to qualify for SSI, 42 U.S.C. 1382c(a)(1)(B)(i), and that a person who stays "outside the United States" for the entirety of a month may not receive SSI benefits for that month, 42 U.S.C. 1382(f)(1). Congress defined the term "'United States'" for purposes of those provisions to mean "the 50 States and the District of Columbia." 42 U.S.C. 1382c(e).

In 1976, Congress extended SSI to the Northern Mariana Islands, fulfilling a commitment made by the United States in the covenant to establish the Islands as a Commonwealth. See 48 U.S.C. 1801; Act of Mar. 24, 1976 (Covenant), Pub. L. No. 94-241, 90 Stat. 263 (48 U.S.C. 1801 note). But Congress has not similarly extended SSI to Puerto Rico or other Territories.

Congress instead provides federal assistance to needy aged, blind, and disabled individuals in Puerto Rico through a different program: Aid to the Aged, Blind, and Disabled (AABD). Pet. App. 32a. AABD originally operated in the States and District of Columbia, as well as Puerto Rico. *Id.* at 32a. In 1972, Congress replaced AABD with SSI in the States and District of Columbia while leaving it in place in Puerto Rico. *Ibid.* AABD provides more local control, but less federal funding, than SSI. Under SSI, the federal government sets eligibility criteria, determines the amount of the federal benefits, and pays the full amount of those benefits and the associated administrative costs. 42 U.S.C. 1381, 1381a. Under AABD, by contrast, the government of Puerto Rico sets its own income and asset limits and determines its own benefit amounts, while the federal government covers 75% of the benefits and 50% of the administrative costs, subject to a statutory cap on total expenditures. 42 U.S.C. 1381 note, 1382 note, 1383 note, 1384 note, 1385 note. The income limits and benefit levels that the government of Puerto Rico has set for AABD are lower than those that the federal government has set for SSI. Pet. App. 32a-33a & n.27. AABD thus covers fewer people and provides a lower level of benefits than SSI would if it were available in Puerto Rico. *Id.* at 32a-33a.

3. In *Califano* v. *Torres*, 435 U.S. 1 (1978) (per curiam), this Court, on direct appeal, summarily reversed a district court's decision holding that Congress's decision not to extend the SSI program to Puerto Rico violated the Constitution. *Id.* at 2-3, 5. In particular, the Court rejected the contention that the statutory scheme "unconstitutionally burdened the right of interstate travel" of individuals who "mov[ed] to Puerto Rico" from the mainland United States and "lost the benefits

to which they were entitled while residing in the United States." *Id.* at 2-4. The Court explained that it "ha[d] never held that the constitutional right to travel embraces any such doctrine." *Id.* at 4. The Court instead concluded that, "[s]o long as its judgments are rational, and not invidious, the legislature's efforts to tackle the problems of the poor and the needy are not subject to a constitutional straitjacket." *Id.* at 5 (citations omitted). The Court observed that "[a]t least three reasons have been advanced to explain the exclusion of persons in Puerto Rico from the SSI program": (1) "because of the unique tax status of Puerto Rico, its residents do not contribute to the public treasury"; (2) "the cost of including Puerto Rico would be extremely great"; and (3) "inclusion in the SSI program might seriously disrupt the Puerto Rican economy." *Id.* at 5 n.7.

The Court in *Torres* noted that the complaint in one of the cases before it had also relied on the equal-protection component of the Due Process Clause of the Fifth Amendment in challenging Congress's decision not to extend the SSI program to Puerto Rico. 435 U.S. at 3 n.4. The Court observed that the district court in that case "apparently acknowledged that Congress has the power to treat Puerto Rico differently, and that every federal program does not have to be extended to it." *Ibid.*

Two years later, in *Harris* v. *Rosario*, 446 U.S. 651 (1980) (per curiam), this Court summarily reversed a district court's decision holding that another federal benefits program, Aid to Families with Dependent Children, denied equal protection by providing a lower level of reimbursement for Puerto Rico than for the States and the District of Columbia. The Court explained that, under the Territory Clause of the Constitution, U.S. Const. Art. IV, § 3, Cl. 2, Congress "may treat Puerto

Rico differently from States so long as there is a rational basis for its actions." *Rosario*, 446 U.S. at 652. The Court noted that, in *Torres*, it had "concluded that a similar statutory classification 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." *Id.* at 652. The Court observed that the "same considerations" supported the different treatment of Puerto Rico under the Aid to Families with Dependent Children program, and it "s[aw] no reason to depart from [its] conclusion in *Torres* that they suffice[d] to form a rational basis for the challenged statutory classification." *Ibid.*

B. Factual Background And Proceedings Below

1. Respondent Jose Luis Vaello Madero is a United States citizen who suffers from "severe health problems." Pet. App. 3a. Respondent lived in New York from 1985 to 2013, and he started receiving SSI payments there in 2012. *Ibid.*

Respondent moved from New York to Puerto Rico in July 2013 and, as a result, lost his eligibility to receive SSI benefits. Pet. App. 3a-4a. But respondent failed to notify the Social Security Administration of his move, and the agency continued to make SSI payments to him through his bank account in New York for several more years. *Id.* at 3a-4a, 39a. The agency eventually became aware of respondent's change of residence in 2016, and it informed him that it was discontinuing his SSI benefits with retroactive effect. *Id.* at 3a-4a.

2. Congress has directed the Social Security Administration to seek "proper adjustment or recovery" when it "finds that more * * * than the correct amount of

benefits has been paid." 42 U.S.C. 1383(b)(1)(A). The agency may waive recoupment when the beneficiary "is without fault" and recoupment would "defeat the purpose of [the statute] or would be against equity and good conscience," 42 U.S.C. 404(b)(1), but respondent has not applied for such a waiver here. The government sued respondent in August 2017 in the United States District Court for the District of Puerto Rico, seeking restitution of $28,081 in SSI benefits that it had incorrectly paid him from August 2013 to August 2016. Pet. App. 4a, 40a. Respondent filed an answer in which he challenged the constitutionality of Congress's exclusion of Puerto Rico from SSI. *Id.* at 5a.

The district court granted respondent's motion for summary judgment, denied the government's cross-motion for summary judgment, and held that Congress's decision not to extend the SSI program to Puerto Rico violates the equal-protection component of the Due Process Clause of the Fifth Amendment. Pet. App. 38a-49a. The court suggested that Congress may have excluded Puerto Rico in order to harm citizens "of Hispanic origin," but found it unnecessary to consider that theory further because it believed that the exclusion of Puerto Rico failed "rational basis scrutiny." *Id.* at 45a-46a. The court concluded that "the principal purpose of the statute is to impose inequality," and it rejected the government's contentions that the statute reflected valid distinctions between Puerto Rico and the States. *Id.* at 46a (brackets and citation omitted). In a footnote, the court dismissed this Court's precedents in *Torres* and *Rosario*, explaining that it could not "simply bind itself" to those decisions and "ignore important subsequent developments in the constitutional landscape." *Id.* at 47a n.7.

3. The court of appeals affirmed. Pet. App. 1a-37a.

The court of appeals first rejected the government's contention that this Court's decisions in *Torres* and *Rosario* controlled the outcome of this case. Pet. App. 8a-19a. The court stated that neither *Torres* nor *Rosario* considered whether the SSI program's exclusion of residents of Puerto Rico denied equal protection, because *Torres* involved the right to travel rather than equal protection, and *Rosario* involved Aid to Families with Dependent Children rather than SSI. Pet. App. 14a. The court further emphasized that *Torres* and *Rosario* were "[s]ummary dispositions." *Id.* at 15a.

The court of appeals also found unpersuasive the government's argument that, even apart from *Torres* and *Rosario*, Congress had rational grounds for excluding Puerto Rico from the SSI program. Pet. App. 19a-37a. The court rejected the government's argument that the exclusion of Puerto Rico from the program could be justified by Puerto Rico's "unique tax status" —in particular, by the fact "that residents of Puerto Rico do not, as a general matter, pay federal income taxes." *Id.* at 20a (citations omitted). The court found income taxes to be irrelevant to the SSI program because "any individual eligible for SSI benefits almost by definition earns too little to be paying federal income taxes." *Id.* at 27a. The court also rejected the government's argument that "the cost of including Puerto Rico residents in the SSI program is a rational basis for their exclusion," concluding that "cost *alone* does not support differentiating individuals." *Id.* at 29a, 31a. Finally, the court stated that the government had not relied on *Torres*'s and *Rosario*'s economic-disruption rationale for Congress's decision not to extend the SSI program to Puerto Rico, and the court in any event rejected that rationale as "dubious." *Id.* at 18a.

The court of appeals also relied upon the United States' agreement, as part of the Northern Mariana Islands' covenant to enter into a political union with the United States, to make SSI available in that Territory. Pet. App. 34a. The court concluded that Congress's decision to extend SSI to the Northern Mariana Islands "undercuts" the rationales for Puerto Rico's exclusion from the program. *Ibid.*

SUMMARY OF ARGUMENT

1. The court of appeals held that Congress's decision not to extend the SSI program to Puerto Rico lacks a rational basis and therefore is unconstitutional. The court's decision is incorrect.

This Court's decisions in *Califano* v. *Torres*, 435 U.S. 1 (1978) (per curiam), and *Harris* v. *Rosario*, 446 U.S. 651 (1980) (per curiam), establish that Puerto Rico's unique tax status provides a rational basis for excluding it from programs such as SSI. Residents of Puerto Rico are generally exempt from most federal taxes, including the income tax, excise taxes, and estate and gift taxes. Congress could rationally conclude that a jurisdiction that makes a reduced contribution to the general federal treasury should receive a reduced share of the benefits funded by the general treasury. And that consideration carries additional force since including Puerto Rico in the program would cost the federal government around two billion dollars each year.

The exemptions from federal taxes also enable Puerto Rico to levy higher territorial taxes and use the revenues from those taxes to support its own expenditures to promote the general welfare of its residents. For example, Puerto Rico could decide whether to spend its tax revenues to furnish additional aid to needy

aged, blind, or disabled residents. Congress could rationally conclude that the Commonwealth's legislature is best positioned to assess local conditions in Puerto Rico and address the circumstances of its neediest aged, blind, and disabled residents. That arrangement, under which Puerto Rico exercises a significant measure of fiscal autonomy, is consistent with Puerto Rico's "distinctive, indeed exceptional, status as a self-governing Commonwealth." *Puerto Rico* v. *Sanchez Valle*, 136 S. Ct. 1863, 1874 (2016).

2. Respondent argues that Congress's decision not to extend the SSI program to Puerto Rico is subject to and fails heightened scrutiny. That, too, is incorrect.

This Court correctly recognized in *Rosario* that Congress may treat a Territory differently than the States if it has a rational basis to do so. Article IV vests Congress with plenary power to govern the Territories, and numerous clauses of the Constitution treat Territories differently than States. Further, the Court has long held that the Due Process and Equal Protection Clauses do not require geographic equality and that a legislature may treat one geographic area differently than another if its actions are supported by a rational basis.

In addition, under this Court's precedents, a classification is suspect and thus subject to heightened scrutiny only when it is so rarely relevant to legitimate governmental interests that its use can be presumed to reflect prejudice. The differential treatment of Puerto Rico and other Territories does not raise those concerns. Congress, consistent with the constitutional design and pursuant to its plenary power under the Territory Clause, has long treated Territories differently than the States in numerous ways. In addressing the myriad aspects of territorial governance, Congress

must make policy judgments, both overarching and interstitial, that could not properly be subject to judicial second-guessing under heightened scrutiny.

3. For the reasons just discussed, *Torres* and *Rosario* correctly held that Congress did not violate the Constitution by treating Puerto Rico differently than the States for purposes of the SSI program and Aid to Families with Dependent Children. But beyond their merits as an original matter, those decisions warrant respect under the doctrine of *stare decisis*. *Torres* and *Rosario* recognized and approved Congress's longstanding practice in treating Territories differently in various ways, and they have generated significant reliance in the four decades since they were decided. Congress has relied on the principles underlying those decisions in maintaining or enacting numerous laws that treat Puerto Rico differently than the States, and the lower courts have relied on those decisions in upholding those laws.

On the other side of the ledger, respondent has offered no special justification for overruling those decisions. Respondent's circumstances forcefully illustrate the case for enhancing aid to needy individuals in Puerto Rico, and the President has announced that, as a matter of policy, the Administration supports extending SSI benefits to Puerto Rico residents. But the proper mechanism to effectuate such a change in social welfare policy is action by Congress—not a ruling by this Court overruling its precedents and invalidating an Act of Congress under rational-basis review.

ARGUMENT

The Due Process Clause of the Fifth Amendment provides that no person shall be "deprived of life, liberty, or property, without due process of law." U.S.

Const. Amend. V. The Clause prohibits the federal government from denying a person the equal protection of the laws. See *Bolling* v. *Sharpe*, 347 U.S. 497, 499 (1954). The guarantees of due process and equal protection apply fully in Puerto Rico. See *Examining Board of Engineers, Architects & Surveyors* v. *Flores de Otero*, 426 U.S. 572, 599-601 (1976).

This Court's decisions in *Califano* v. *Torres*, 435 U.S. 1 (1978) (per curiam), and *Harris* v. *Rosario*, 446 U.S. 651 (1980) (per curiam), establish that Congress's decision not to extend the SSI program to Puerto Rico complies with the equal-protection component of the Due Process Clause. In *Torres*, the Court summarily reversed a district court's decision holding that the unavailability of SSI benefits in Puerto Rico violated the right to travel of persons who moved from the continent (where they would be eligible for benefits) to the island (where they would not). 435 U.S. at 4-5. The Court explained that Congress's decision not to extend the SSI program to Puerto Rico rested on a rational basis given, among other things, "the unique tax status of Puerto Rico." *Id.* at 5 n.7. In *Rosario*, the Court summarily reversed a district court's decision holding that Puerto Rico's differential treatment under the Aid to Families with Dependent Children program denied residents of Puerto Rico the equal protection of the laws. 446 U.S. at 651-652. The Court explained that Congress "may treat Puerto Rico differently from States so long as there is a rational basis for its actions." *Ibid.* It observed that it had held in *Torres* that "a similar statutory classification was rationally grounded," and it concluded that the differential treatment of Puerto Rico under Aid to Families with Dependent Children was rational for the same reasons. *Id.* at 652. Taken together,

Torres and *Rosario* resolve this case. *Rosario* establishes that respondent's challenge triggers rational-basis review, and *Torres* and *Rosario* together establish that Congress's decision not to extend the SSI program to Puerto Rico satisfies that standard.

The court of appeals recognized that the statute at issue here is subject to rational-basis review, but held that the statute fails that test. See Pet. App. 8a-37a. Respondent, for his part, argues (Br. in Opp. 18) that the statute should instead be subject to heightened scrutiny. Each argument is mistaken, and neither can justify overruling this Court's decisions in *Torres* and *Rosario*.

A. The Court Of Appeals Erred In Holding That Congress's Decision Not To Extend The SSI Program To Puerto Rico Lacks A Rational Basis

The court of appeals recognized that it was "beyond question" that "precedent require[d] [it] to apply rational basis review to the claim before [it]." Pet. App. 9a. The court held, however, that Congress's decision not to extend the SSI program to Puerto Rico failed that test. *Id.* at 19a-37a. That was error. Both *Torres* and *Rosario* make clear that Congress had rational grounds for declining to extend the SSI program to residents of Puerto Rico.

1. A court owes Congress substantial deference when it assesses a law under the rational-basis test

A law satisfies the rational-basis test "if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." *FCC* v. *Beach Communications, Inc.*, 508 U.S. 307, 313 (1993). Under that test, the challenged classification begins with "a strong presumption of validity," and its challengers

bear the burden of negating "'every conceivable basis which might support it.'" *Id.* at 314-315 (citation omitted). It does not matter whether the articulated reason "actually motivated" Congress; as long as there are "'plausible reasons'" for the legislation, the "'inquiry is at an end.'" *Id.* at 313-315 (citation omitted). Nor does it matter whether Congress has produced a legislative record in support of the classification; a classification may instead rest on "rational speculation unsupported by evidence or empirical data." *Id.* at 315.

Under the rational-basis test, the legislature enjoys especially broad latitude in the area of "social welfare." *Dandridge* v. *Williams*, 397 U.S. 471, 485 (1970). Benefits programs raise "intractable economic, social, and even philosophical problems." *Id.* at 487. The power to resolve those problems belongs to Congress and state and territorial legislatures, not to federal courts. As the Court has recognized, "the Constitution does not empower this Court to second-guess [legislative bodies] charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients." *Ibid.*; see, *e.g.*, *Jefferson* v. *Hackney*, 406 U.S. 535, 546-547 (1972); *Richardson* v. *Belcher*, 404 U.S. 78, 81 (1971); *Flemming* v. *Nestor*, 363 U.S. 603, 611 (1960).

This Court should likewise accord Congress latitude when reviewing laws concerning the Territories. In deciding which federal laws and programs to extend to a Territory, Congress may consider factors such as what kind of relationship the Territory has with the United States, how much fiscal and other governmental autonomy it exercises, how close its economic and political ties to the United States should be, what its economic and social conditions are, and whether the Territory may move toward statehood or independence over time.

Courts have neither the constitutional authority nor the institutional competence to review Congress's weighing of those intensely political considerations.

2. Puerto Rico's unique tax status and resulting fiscal autonomy provide a rational basis for the decision not to extend the SSI program to its residents

In *Torres* and *Rosario*, this Court found that Puerto Rico's tax status justified its exclusion from the SSI program. See *Rosario*, 446 U.S. at 652; *Torres*, 435 U.S. at 5 n.7. Members of Congress, too, have cited Puerto Rico's tax status in explaining why they have voted to treat it differently in federal benefits programs. See, *e.g.*, S. Rep. No. 1310, 95th Cong., 2d Sess. 5 (1978); 118 Cong. Rec. 33,991 (1972) (statement of Sen. Long); 96 Cong. Rec. 8891 (1950) (statement of Sen. George); H.R. Rep. No. 1300, 81st Cong., 1st Sess. 55 (1949) (1949 House Report); 79 Cong. Rec. 6902 (1935) (statement of Rep. Santiago Iglesias inserting into the Congressional Record correspondence of Rep. Doughton). That rationale satisfies the rational-basis test.

a. As this Court observed in *Torres*, Congress has long accorded Puerto Rico a "unique tax status." *Torres*, 435 U.S. at 5 n.7. Under federal law, "internal revenue laws" do not extend to Puerto Rico, except when Congress provides otherwise. 48 U.S.C. 734. Congress sometimes does provide otherwise, but even when doing so it often treats Puerto Rico differently than the States and other Territories. See U.S. Government Accountability Office, GAO-14-315, *Puerto Rico: Information on How Statehood Would Potentially Affect Selected Federal Programs and Revenue Sources* 100-109 (Mar. 2014) (GAO Report); Staff of the Joint Committee on Taxation, 109th Cong., 2d Sess., JCX-24-06, *An Overview of the Special Tax Rules Related to*

Puerto Rico and an Analysis of the Tax and Economic Policy Implications of Recent Legislative Options 2-3 (Joint Comm. 2006) (Joint Committee Report).

The upshot of those laws is that residents of Puerto Rico are exempt from a broad range of federal taxes. For example:

- *Individual income tax.* Residents of Puerto Rico generally owe no federal income tax on income from sources in Puerto Rico. 26 U.S.C. 933. That exemption saves residents of the island an estimated $2 billion a year. GAO Report 101.
- *Corporate income tax.* The Internal Revenue Code treats corporations incorporated in Puerto Rico as foreign rather than domestic entities. 26 U.S.C. 7701(a)(4)-(5) and (9)-(10). As a result, such corporations usually owe federal income tax only on income connected with the mainland United States, not on income connected with Puerto Rico or other parts of the world. 26 U.S.C. 881-882.
- *Estate and gift tax.* Certain residents of Puerto Rico owe no federal estate or gift taxes on property in Puerto Rico. See 26 U.S.C. 2209.
- *Excise taxes.* Congress has declined to extend most federal excise taxes to Puerto Rico. See Joint Committee Report 19. For example, Puerto Rico generally is not subject to federal excise taxes on motor fuel, 26 U.S.C. 4081-4084; firearms, 26 U.S.C. 4181-4182; telephone lines, 26 U.S.C. 4251-4254; aviation, 26 U.S.C. 4261-4263; health insurance, 26 U.S.C. 4375-4377, wagering, 26 U.S.C. 4401-4424; alcohol, 26 U.S.C. 5001-5690; or tobacco, 26 U.S.C. 5701-5763.

In practical terms, Puerto Rico's tax status means that much of the revenue that would have flowed into the federal treasury can flow into the territorial treasury instead. That is so because Puerto Rico can replace the inapplicable federal taxes with its own territorial taxes. For example, Puerto Rico has taken advantage of its exemption from federal income tax by imposing a territorial individual income tax of up to 33% for the highest bracket—well above the typical rate in the States. Puerto Rico Internal Revenue Code § 1021.01(a). Puerto Rico has likewise taken advantage of its exemption from the federal corporate tax by imposing a territorial corporate tax of up to 37.5%—again, well above the typical rate in the States. *Id.* § 1022.01(b), 1022.02(b)(2).

In addition, Congress has made some federal taxes applicable in Puerto Rico but has channeled the proceeds to the territorial rather than the federal treasury. For example, federal excise taxes apply to some articles made in Puerto Rico, but the federal treasury must cover over the proceeds to the territorial treasury. 26 U.S.C. 7652(a), 48 U.S.C. 734. Federal customs duties likewise apply in Puerto Rico, but the federal treasury again must cover over the proceeds to the territorial treasury. 48 U.S.C. 739-740. Puerto Rico receives hundreds of millions of dollars in covered-over revenues each year. See Steven Maguire, Congressional Research Service, R41028, *The Rum Excise Tax Cover-Over: Legislative History and Current Issues* (Sept. 20, 2012).

b. Puerto Rico's tax status provides a rational basis for Congress's decision not to extend the SSI program to the island's inhabitants. Congress could rationally conclude that a jurisdiction that makes a reduced con-

tribution to the federal treasury should receive a reduced share of the benefits funded by that treasury. Congress has a legitimate interest in maintaining a balanced fiscal relationship with the Territories. The Constitution does not require Congress to grant the Territories the full fiscal benefits that it has chosen to accord the States even though they do not bear the full fiscal burdens.

Indeed, this Court has recognized that the government has a legitimate interest in "saving money" and "protecting the fiscal integrity of government programs." *Lyng* v. *Automobile Workers*, 485 U.S. 360, 373 (1988). The Court has often relied on that interest in upholding classifications under rational-basis review. See, *e.g.*, *Armour* v. *City of Indianapolis*, 566 U.S. 673, 682 (2012) ("administrative costs"); *Ohio Bureau of Employment Services* v. *Hodory*, 431 U.S. 471, 493 (1977) ("protection of the fiscal integrity of the fund"); *Lehnhausen* v. *Lake Shore Auto Parts Co.*, 410 U.S. 356, 365 (1973) ("fiscal reasons"); *Madden* v. *Kentucky*, 309 U.S. 83, 90 (1940) ("difficulties and expenses").

In *Torres*, this Court noted that the cost of including Puerto Rico in the SSI program would be "extremely great—an estimated $300 million per year." 435 U.S. at 5 n.7. According to an estimate made by actuaries at the Social Security Administration, that cost now would be between $1.8 billion and $2.5 billion per year over the next ten years, and approximately $23 billion over the next decade as a whole. See Memorandum from Michael Stephens, Supervisory Actuary, Office of the Chief Actuary, Social Security Administration, to Steve Goss, Chief Actuary, Office of the Chief Actuary, Social Security Administration, *Estimated Change in Federal SSI Program Cost for Potential Extension of SSI Eli-*

gibility to Residents of Certain U.S. Territories – INFORMATION 2 (June 11, 2020). Those figures underscore the rationality of Congress's decision not to extend the SSI program to Puerto Rico while according the island preferential tax treatment.

That consideration carries additional weight because Congress has separately addressed these issues through the AABD program and has facilitated a stream of revenue for the Commonwealth by exempting its residents from most federal taxes. Congress could rationally conclude that, since much of the tax revenue that would normally go to the federal treasury goes to the territorial treasury instead, the territorial treasury should correspondingly shoulder some of the burden of funding various benefits programs in Puerto Rico. This Court has held that classifications in federal benefits programs may properly rest on a judgment that "States should * * * have the primary responsibility" for a given class of people and that Congress "legitimately may assume that the States would, or should," meet the needs of those individuals. *Schweiker* v. *Wilson*, 450 U.S. 221, 237-238 (1981). Congress likewise could rationally conclude that, given Puerto Rico's special tax status under federal law, the Commonwealth, with federal assistance through the AABD program, should bear primary responsibility for providing benefits to needy aged, blind, and disabled residents.

c. Puerto Rico's tax status provides a rational basis for its exclusion from the SSI program even though, as the court of appeals observed, residents of Puerto Rico make *some* contributions to the federal treasury. Pet. App. 20a-23a. In particular, employees, employers, and self-employed individuals in Puerto Rico are subject to Federal Insurance Contribution Act taxes (also known

as FICA taxes or payroll taxes), as well as unemployment taxes. See Pet. App. 22a-23a; 26 U.S.C. 3121(e), 3306(j). Those taxes fund specific programs. FICA taxes go to trust funds dedicated to Social Security and Medicare, and employees and self-employed individuals who pay those taxes generally receive personal entitlements to benefits under those programs. See 42 U.S.C. 401, 402(a), 426(a), 1395i. Unemployment taxes, in turn, fund unemployment benefits. See 42 U.S.C. 503. Each of those programs *is* available in Puerto Rico. See 42 U.S.C. 410(h)-(i), 1301(a)(1); House Committee on Ways and Means, 115th Cong., 2d Sess., *Green Book: Background Material and Data on the Programs within the Jurisdiction of the Committee on Ways and Means* App. A (2018). Congress could rationally conclude that residents of Puerto Rico should participate in specific programs that they help fund (such as Social Security, Medicare, and unemployment benefits), but not in programs that they generally do not help fund (such as SSI).

Some Puerto Rico residents do pay some federal income taxes. See Pet. App. 22a-23a. For instance, federal employees in Puerto Rico owe federal income tax on their federal salaries, and other residents of Puerto Rico owe federal income tax on income earned outside Puerto Rico. 26 U.S.C. 933. But one source estimates that, in 2010, the federal government collected only about $20 million as a result of such payments—compared to the more than $2 billion it would have collected if Puerto Rico had been a State. GAO Report 101.[1]

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[1] The court of appeals stated that residents of Puerto Rico pay more than $4 billion a year to the federal treasury, but that figure includes the employment taxes discussed above. See Pet. App. 21a.

Those limited federal income-tax payments do not render irrational the denial of SSI benefits in Puerto Rico. The rational-basis test allows "rough accommodations"; it does not demand "mathematical nicety." *Dandridge*, 397 U.S. at 485 (citations omitted). Congress may rely on the general rule that federal taxes do not apply in Puerto Rico, even though some residents of Puerto Rico do pay some federal taxes in some circumstances. Further, just as some residents of Puerto Rico pay *some* taxes to the federal treasury, so too residents of Puerto Rico receive *some* benefits funded by the federal treasury. For example, residents of Puerto Rico receive benefits under Medicaid, the Children's Health Insurance Program, Temporary Assistance for Needy Families, the Head Start Program, the National School Lunch Program, the Federal Direct Student Loan Program, the Section 8 Housing Assistance Payments Program, the Public Housing Operating Fund, and the Public Housing Capital Fund, among others—although even under those programs, Congress does not always treat Puerto Rico identically to the States. See GAO Report 15-21. Congress could rationally conclude, however, that because residents of Puerto Rico do not pay the full range of taxes paid by residents of the States, they should not receive the full range of benefits available in the States.

d. Congress's decision not to extend SSI benefits to Puerto Rico is not undermined by the fact that, as the court of appeals noted, individuals who receive SSI benefits "almost by definition earn too little to be paying federal income taxes." Pet. App. 27a. The rational-basis test allows a legislature to rely on general categories; the legislature need not make "case-by-case," "individualized" judgments. *Califano* v. *Jobst*, 434 U.S. 47, 52 (1977). In determining spending policy for Puerto

Rico, therefore, Congress may rationally choose to concentrate on the tax status of the Commonwealth and its population as a whole. Congress need not consider the tax status of particular individuals such as respondent.

In addition, residents of Puerto Rico benefit from the Commonwealth's tax status even if they earn too little money to owe federal income tax if that tax applied in Puerto Rico. Puerto Rico's tax status frees those individuals from the burden of other federal taxes that apply regardless of income level, such as excise taxes on motor fuel and telephone lines. See p. 16, *supra*. Those individuals also benefit from living in a jurisdiction that retains its own tax revenues, because the territorial government can use that money to fund various governmental services. See pp. 17, 19, *supra*. Even from the perspective of individuals such as respondent, then, Puerto Rico's distinctive status under federal tax law provides a rational basis for its exclusion from the SSI program.

3. The interest in advancing self-government and longstanding practice reinforce the rationality of Congress's decision not to extend the SSI program to Puerto Rico

Two additional considerations confirm that Congress acted rationally in deciding not to extend the SSI program to Puerto Rico while instead contributing to the provision of benefits under AABD, which vests more control in the Commonwealth to determine social welfare policy.

First, Congress could rationally conclude that these arrangements promote Puerto Rico's ability to govern itself. Puerto Rico's status as a Commonwealth affords it a great degree of autonomy and self-determination. In particular, the Commonwealth functions as a largely

autonomous fiscal unit: it imposes its own taxes in lieu of inapplicable federal taxes, receives the covered-over proceeds of some federal taxes that do apply there, and decides for itself how to spend the revenue it receives. As relevant here, Puerto Rico could use the money to increase benefit levels in the AABD program, the cooperative territorial-federal benefits program that applies in Puerto Rico instead of SSI. See p. 19, *supra*. AABD provides more local control than SSI: the federal government sets both the standard of need and the amount of federal benefits under SSI, but the government of Puerto Rico sets the standard of need and the amount of benefits under AABD. Puerto Rico also could decide to use the money to fund a territorial supplement outside the AABD program. Or it could spend the money on something else. Leaving those choices to the Commonwealth is a rational means of respecting and advancing "local self-rule" and "self-governance" on the island. *Puerto Rico* v. *Sanchez Valle*, 136 S. Ct. 1863, 1868 (2016).

Congress could also rationally conclude that Puerto Rico should have this autonomy because the territorial government is best positioned to tailor its laws and programs to reflect "local conditions." *San Antonio Independent School District* v. *Rodriguez*, 411 U.S. 1, 41 (1973) (citation omitted). Economic and other conditions in Puerto Rico differ from those in the States, and Congress could properly conclude that those differences counsel caution in extending taxing and spending policies applicable in the States to Puerto Rico. By the same token, Congress could properly conclude that Puerto Rico should instead make its own taxing and spending decisions in certain areas, in keeping with its "distinctive, indeed exceptional, status as a self-governing Commonwealth." *Sanchez Valle*, 136 S. Ct. at 1874.

In that way, the Commonwealth's legislature can make its own judgments about how best to promote the general welfare in light of local conditions, including deciding for itself how much money is called for to aid needy aged, blind, and disabled people in the Commonwealth. See p. 19, *supra*; 122 Cong. Rec. 6244 (1976) (statement of Sen. Long) (observing that such local control permits the adoption of "locally developed plans" that are "tailored" to Puerto Rico's distinct circumstances).[2]

To be sure, the increased local control comes at a price. The federal government pays 100% of the federal benefits and related administrative costs under SSI, but only 75% of the benefits and 50% of the administrative costs under AABD. See p. 4, *supra*. In addition, because aid to Puerto Rico under AABD is subject to a statutory cap, total federal expenditures under AABD are lower than they would be under SSI. See p. 4, *supra*. But the Constitution leaves Congress with broad discretion to use different programs to address similar

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[2] In *Torres* and *Rosario*, this Court stated without further elaboration that including Puerto Rico 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. Although the court of appeals found that the government had not relied on an economic-disruption rationale below, Pet. App. 16a, 18a, the government briefly argued in the petition for a writ of certiorari (at 13-14) that extending SSI benefits to Puerto Rico might discourage people from working. That proposition, however, has been disputed as an empirical matter. See Department of Health, Education, and Welfare, *Report of the Undersecretary's Advisory Group on Puerto Rico, Guam and the Virgin Islands* 22 (1976). Following the change in Administration, the United States has concluded that economic conditions in Puerto Rico are more appropriately considered as a further justification for Congress's decision to respect Puerto Rico's fiscal autonomy and to leave it to the Commonwealth's legislature to determine the appropriate level of benefits for its aged, blind, and disabled residents.

issues among different categories. For example, Congress may create different retirement programs for different classes of railroad employees. See *United States Railroad Retirement Board* v. *Fritz*, 449 U.S. 166, 174-179 (1980). Or it may use different disability systems for different parts of the Civil Service. See *Vance* v. *Bradley*, 440 U.S. 93, 103-112 (1979). Under the Due Process Clause, the task of weighing the advantages of increased local control against the disadvantages of reduced federal funding belongs to Congress, not the federal courts.

Second, this Court has explained that congressional practice carries significant weight in constitutional interpretation. See *Financial Oversight & Management Board for Puerto Rico* v. *Aurelius Investment, LLC*, 140 S. Ct. 1649, 1659 (2020). While "[d]iscriminations of an unusual character" can raise serious equal-protection concerns, *United States* v. *Windsor*, 570 U.S. 744, 768 (2013) (citations omitted), "routine" classifications usually present no constitutional problems, *Mathews* v. *Diaz*, 426 U.S. 67, 85 (1976).

The congressional practice of treating Territories differently in federal benefits programs is as old as federal benefits programs themselves. When Congress established Social Security in 1935, it extended the program to the States, the District of Columbia, and the then-Territories of Alaska and Hawaii, but not to Puerto Rico or the other Territories. See Social Security Act, ch. 531, § 1101(a), 49 Stat. 647. "This was done because Puerto Rico ha[d] its own tax law and d[id] not pay any taxes into the Treasury of the United States." Letter from R.L. Doughton, Chairman, House Committee on Ways and Means, to William Green, President, American Federation of Labor (Apr. 19, 1935), *in* 79 Cong. Rec. at 6902 (1935) (statement of Rep. Santiago

Iglesias). Congress later extended Social Security benefits (and corresponding Social Security taxes) to Puerto Rico in 1950. See Social Security Act Amendments of 1950, Pub. L. No. 81-734, §§ 104(a), 107, 64 Stat. 498, 517.

Differential treatment of Territories in federal benefits programs remains commonplace today. Federal unemployment compensation, for example, is available in Puerto Rico and the U.S. Virgin Islands, but not American Samoa, Guam, or the Northern Mariana Islands. See 42 U.S.C. 502, 1301(a)(1); *Green Book* App. Tbl. A-2. The Supplemental Nutrition Assistance Program is available in Guam and the U.S. Virgin Islands, but not American Samoa, the Northern Mariana Islands, or Puerto Rico. 7 U.S.C. 2012(r); *Green Book* App. Tbl. A-2. Temporary Assistance for Needy Families is available in Guam, Puerto Rico, and the U.S. Virgin Islands, but not the Northern Mariana Islands (with American Samoa eligible but not participating). 42 U.S.C. 602, 1301(a)(1); *Green Book* App. Tbl. A-2. Many other benefits programs extend to Puerto Rico, but apply differently than in the States. See, *e.g.*, 42 U.S.C. 801(a)(2) (Coronavirus Relief Fund); 42 U.S.C. 1308(f)-(g), 1396d(b) (Medicaid); 42 U.S.C. 1395w-114(a) (Medicare); 42 U.S.C. 1760(f) (School Lunch Program). And because most provisions of the Internal Revenue Code do not extend to Puerto Rico, refundable tax credits provided by the Code, which could be thought of as a form of benefits, generally do not extend there either. See, *e.g.*, 26 U.S.C. 32 (earned income tax credit); 26 U.S.C. 36B (tax credits under the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119). The prevalence of such classifications confirms that Congress did not lack a rational basis in declining to extend the SSI program to Puerto Rico in light of its

tax status and instead providing benefits under AABD, which provides the Commonwealth with more local control.

4. Congress also had rational grounds to treat Puerto Rico differently than the Northern Mariana Islands

In holding that Congress violated the Constitution in declining to extend SSI benefits to Puerto Rico, the court of appeals found it significant that Congress included the Northern Mariana Islands in the SSI program. Pet. App. 34a-37a. But Congress had rational grounds for differentiating between the two Territories. The Northern Mariana Islands, previously part of the United Nations Trust Territory of the Pacific Islands, became a commonwealth pursuant to a negotiated covenant with the United States. See pp. 3-4, *supra*. In the covenant, the United States committed, among other things, to extend "Title XVI of the Social Security Act" (which establishes the SSI program) to the Islands. Covenant, 90 Stat. 268 (§ 502(a)(1)). The United States has never made a similar negotiated commitment to extend the SSI program to Puerto Rico. That difference provides a rational basis for extending the SSI program to the Northern Mariana Islands but not Puerto Rico.

In all events, under the rational-basis test, Congress need not solve a social or economic problem in one fell swoop. Congress "may take one step at a time"; it may "select one phase of one field and apply a remedy there, neglecting the others." *Williamson* v. *Lee Optical of Oklahoma, Inc.*, 348 U.S. 483, 489 (1955). Congress's decision to extend the SSI program to the Northern Mariana Islands thus does not require it to extend the program to other Territories.

The nature of the United States' relationship with the Territories reinforces the foregoing arguments. Although this Court has often emphasized the constitutional equality of the States, see, *e.g.*, *Sanchez Valle*, 136 S. Ct. at 1822 n.4; *Coyle* v. *Smith*, 221 U.S. 559, 556 (1911), it has never adopted an equal-footing doctrine for the Territories. It has instead recognized that Congress may "develop innovative approaches" to address each Territory's distinctive needs. *Sanchez Valle*, 136 S. Ct. at 1876. It also has observed that Puerto Rico's relationship to the United States is "unique" and "'has no parallel in our history.'" *Id.* at 1868, 1876 (citation omitted). Against that backdrop, it is not irrational for Congress to extend different federal benefits to different Territories.

B. Respondent Errs In Arguing That The Differential Treatment Of Territories Warrants Heightened Scrutiny

Respondent also argues (Br. in Opp. 12-24) that Congress's decision not to extend the SSI program to Puerto Rico is subject to and fails heightened scrutiny. That argument is mistaken. 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.

1. The constitutional text establishes that Congress may treat a Territory differently than the States if it has a rational basis to do so

The Constitution's text makes plain that Congress enjoys broad latitude to treat Territories differently than the States. Most obviously, the Territory Clause of Article IV empowers Congress to "make all needful Rules and Regulations respecting the Territory or

other Property belonging to the United States." Art. IV, § 3, Cl. 2. This Court has described the territory power as "absolute and undisputed" and "full and complete." *Aurelius*, 140 S. Ct. at 1666 (citations omitted). The very existence of the Territory Clause establishes that Congress may enact different laws for the Territories than for the States. As the D.C. Circuit observed in an opinion by then-Judge Ruth Bader Ginsburg, subjecting limitations directed at a Territory to heightened scrutiny "would be inconsistent with Congress's large powers" in this field. *Quiban* v. *Veterans Administration*, 928 F.2d 1154, 1160 (1991) (brackets, citation, and internal quotation marks omitted), cert. denied, 513 U.S. 918 (1994).

That conclusion draws additional force from the Admission Clause, which provides that "[n]ew States may be admitted *by the Congress* into this Union." U.S. Const. Art. IV, § 3, Cl. 1 (emphasis added). The Admission Clause commits to Congress the responsibility to decide when to admit a Territory into the Union and thereby provide it with the benefits associated with statehood. Interpreting the equal-protection guarantee to require Congress to accord Territories the same treatment as States would upset that textual allocation of responsibility.

In addition, multiple provisions of the Constitution distinguish Territories from States. For example, States but not Territories elect Representatives, Senators, and presidential electors. See U.S. Const. Art. I, § 2, Cl. 1; Art. II, § 1, Cl. 3; Amend. XVII, Cl. 1. Congress exercises plenary power in the Territories, but only enumerated powers in the States. See Art. I, § 8; Art. IV, § 3, Cl. 2. The Appointments Clause does not limit the manner of appointing territorial officers. See

Aurelius, 140 S. Ct. at 1658-1659. Article III judges enjoy life tenure, but Congress may limit the tenure of Article IV judges. See *American Insurance Co.* v. *356 Bales of Cotton*, 26 U.S. (1 Pet.) 511, 546 (1828). And States qualify as separate sovereigns for purposes of the Double Jeopardy Clause, but Territories do not. See *Sanchez Valle*, 136 S. Ct. at 1873. The Due Process Clause does not condemn a distinction that other constitutional provisions treat as legitimate.

2. Congress's power to treat Territories differently than the States draws additional support from its broader authority to draw rational geographic distinctions

Congress's power to treat Territories differently than States draws reinforcement from a separate constitutional principle: the equal-protection component of the Due Process Clause allows Congress to treat one geographic area differently than another if Congress has a rational basis to do so.

a. The Equal Protection Clause provides that no State may "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. Amend. XIV, § 1. That text suggests that the Equal Protection Clause—and, by extension, the equal-protection component of the Due Process Clause—concerns unequal treatment of classes of persons, not unequal treatment of regions. The text provides no foothold for applying heightened scrutiny to purely geographic distinctions.

When the Framers wanted to limit Congress's power to draw geographic distinctions, they knew how to say so. For example, the Taxing Clause requires "Duties, Imposts and Excises" to "be uniform throughout the United States." U.S. Const. Art. I, § 8, Cl. 1. The Naturalization and Bankruptcy Clauses empower Congress

to "establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States." Art. I, § 8, Cl. 4. The Port Preference Clause provides that "[n]o Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another." Art. I, § 9, Cl. 6. And the Presidential Vote Clause empowers Congress to fix "the Day on which [the electors] shall give their Votes; which Day shall be the same throughout the United States." Art. II, § 1, Cl. 4. The Equal Protection and Due Process Clauses, by contrast, primarily concern *personal* distinctions, such as those based on race, national origin, and sex.

b. This Court's precedents under the Due Process Clause reflect that understanding. In *Secretary of Agriculture* v. *Central Roig Refining Co.*, 338 U.S. 604 (1950), for example, the Court rejected a due-process challenge to the Sugar Act of 1948, 7 U.S.C. 1101 *et seq.*, which imposed different sugar quotas in Puerto Rico than in the mainland United States. 338 U.S. at 619. The Court explained that Congress may legislate "with due regard for the varying and fluctuating interests of different regions." *Id.* at 616. It noted that "Congress might well have thought" that different market conditions in Puerto Rico justified different quotas, and it refused to "sit in judgment on the validity or the significance of those views." *Id.* at 618-619.

Likewise, in *Swain* v. *Pressley*, 430 U.S. 372 (1977), this Court applied the rational-basis test to a law that treated the District of Columbia differently than the rest of the United States. *Id.* at 379 n.12. As the D.C. Circuit later explained in an opinion by then-Judge Scalia, *Swain* represented "a considered rejection of [the] assertion that provisions uniquely applicable to the District demand a higher degree of scrutiny."

United States v. *Cohen*, 733 F.2d 128, 136 (1984) (en banc). *Swain* is highly pertinent here because the "analogy" between the District and a Territory "is an apt one." *District of Columbia* v. *John R. Thompson Co.*, 346 U.S. 100, 105 (1953); see, *e.g.*, *Aurelius*, 140 S. Ct. at 1658-1661, 1663-1665 (relying on the analogy between the District of Columbia and Puerto Rico).

Similarly, in *Currin* v. *Wallace*, 306 U.S. 1 (1939), the Court upheld the Tobacco Inspection Act, 7 U.S.C. 511 *et seq.*, which permitted different tobacco regulations in different regions of the country. 306 U.S. at 13-14. The Court rejected the contention that "mere lack of uniformity" violated the Due Process Clause, explaining that Congress may "choose the * * * places to which its regulation shall apply" and that such choices generally raise questions "of wisdom and not of power." *Id.* at 14.

So too, in *Hodel* v. *Indiana*, 452 U.S. 314 (1981), the Court upheld the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*, which imposed different mining regulations in different regions of the country. 452 U.S. at 330-333. The Court stated that an equal-protection challenge to a federal law "cannot rest solely on a statute's lack of uniform geographic impact." *Id.* at 332.

c. This Court's precedents on the Equal Protection Clause of the Fourteenth Amendment point in the same direction. In *Missouri* v. *Lewis*, 101 U.S. 22 (1880), little more than a decade after the Amendment's ratification, the Court rejected an equal-protection challenge to Missouri's creation of different court systems for different parts of the State. *Id.* at 29-33. The Court observed that the Equal Protection Clause "has respect to persons and classes of persons," not to areas. *Id.* at 31. It explained that the Clause "means that no person or

class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes *in the same place* and under like circumstances." *Ibid.* (emphasis added). And it stated that, "[i]f every person residing or being in [a] portion of the State should be accorded the equal protection of the laws prevailing there, he could not justly complain of a violation." *Ibid.*

In the years since *Lewis*, this Court has clarified that geographic classifications are subject to rational-basis review under the Equal Protection Clause. See, *e.g.*, *Rodriguez*, 411 U.S. at 44. But the Court has otherwise adhered to the general rule that, in the absence of irrationality, "territorial uniformity is not a constitutional requisite," *McGowan* v. *Maryland*, 366 U.S. 420, 427 (1961); that "[a] State, of course, has a wide discretion in deciding whether laws shall operate statewide or shall operate only in certain counties," *Griffin* v. *County School Board*, 377 U.S. 218, 231 (1964); and that the Clause "does not prohibit legislation merely because it is special, or limited in its application to a particular geographical or political subdivision," *Kadrmas* v. *Dickinson Public Schools*, 487 U.S. 450, 462 (1988) (citation omitted). The cases applying that principle are legion. See, *e.g.*, *Papasan* v. *Allain*, 478 U.S. 265, 283-285 (1986); *North* v. *Russell*, 427 U.S. 328, 338-339 (1976); *Salsburg* v. *Maryland*, 346 U.S. 545, 551 (1954); *Ohio ex rel. Bryant* v. *Akron Metropolitan Park District*, 281 U.S. 74, 81 (1930); *Fort Smith Light & Traction Co.* v. *Board of Improvement of Paving District No. 16*, 274 U.S. 387, 391 (1927); *Reinman* v. *City of Little Rock*, 237 U.S. 171, 177 (1915); *Gardner* v. *Michigan*, 199 U.S. 325, 333-334 (1905); *Chappell Chemical & Fertilizer Co.* v. *Sulphur Mines Co. (No. 3)*, 172 U.S. 474, 475 (1899); *Hayes* v. *Missouri*, 120 U.S. 68, 72 (1887).

3. Equal-protection doctrine confirms that Congress may treat a Territory differently than the States if it has a rational basis to do so

This Court's equal-protection doctrine likewise shows that Congress may treat a Territory differently than the States when it is rational to do so. The Court's modern equal-protection jurisprudence reflects a "general rule" that "legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest." *City of Cleburne* v. *Cleburne Living Center, Inc.*, 473 U.S. 432, 440 (1985). The Court has applied heightened scrutiny only when (1) the classification proceeds along suspect lines or (2) the classification affects the equal exercise of a fundamental right. *Ibid.* The latter ground for heightened scrutiny is not at issue here, as this Court has held that a person's interest in receiving social welfare benefits is not a fundamental right that triggers heightened scrutiny. See *Wilson*, 450 U.S. at 230-234.

In deciding whether a classification is "suspect," this Court has focused on whether the classification "is valid as a general matter." *Cleburne*, 473 U.S. at 446. "Classifications treated as suspect tend to be irrelevant to any proper legislative goal" and thus are presumed to "reflect deep-seated prejudice." *Plyler* v. *Doe*, 457 U.S. 202, 216 n.14 (1982). For example, because race is "so seldom relevant to the achievement of any legitimate state interest," the Court has presumed that racial classifications reflect "prejudice and antipathy"—a presumption that the government may overcome only by satisfying strict scrutiny. *Cleburne*, 473 U.S. at 440. Similarly, because sex "generally provides no sensible

ground for differential treatment," the Court has presumed that sex-based classifications "reflect outmoded notions of the relative capabilities of men and women"—a presumption that the government may overcome only by satisfying intermediate scrutiny. *Id.* at 440-441. Age classifications, by contrast, warrant only rational-basis review, because age is often "relevant to interests the State has authority to implement." *Id.* at 441.

Residence in a Territory is not a suspect classification under those principles. "History suggests a great diversity of relationship between a central government and dependent territory. The present day shows a great variety in actual operation." Memorandum from Felix Frankfurter to the Secretary of War, *Re: The Political Status of Porto Rico, in Civil Government for Porto Rico: Hearings on S. 4604 before the Senate Committee on Pacific Islands and Porto Rico*, 63d Cong., 2d Sess. 22 (1914).

Puerto Rico illustrates those points well. "Puerto Rico boasts 'a relationship to the United States that has no parallel in our history.'" *Sanchez Valle*, 136 S. Ct. at 1876 (citation omitted). The island enjoys a unique degree of autonomy. See *id.* at 1876-1877. It has a "unique * * * legal history." *Posadas de Puerto Rico Associates* v. *Tourism Co.*, 478 U.S. 328, 339 n.6 (1986). It has a unique system of law, based on Spanish civil law rather than English common law. See *Puerto Rico* v. *Russell & Co.*, 288 U.S. 476, 480 (1933). And, as noted, it also has a "unique tax status." *Torres*, 435 U.S. at 5 n.7.

Given those differences, Congress has often treated Territories differently than States and one Territory differently than another. In fact, a whole Title of the U.S. Code, Title 48, is devoted to laws applicable only to the Territories. See 48 U.S.C. 1-2241. A whole chapter of that Title, Chapter 4, is devoted to laws applicable

only to Puerto Rico. See 48 U.S.C. 731-916. Laws outside Title 48, too, routinely apply differently in the Territories than in other parts of the United States. See, *e.g.*, *King* v. *Burwell*, 576 U.S. 473, 495 n.4 (2015) (Patient Protection and Affordable Care Act); *Puerto Rico* v. *Franklin California Tax-Free Trust*, 136 S. Ct. 1938, 1942 (2016) (Bankruptcy Code); *Ngiraingas* v. *Sanchez*, 495 U.S. 182, 187 (1990) (civil-rights laws); *Torres*, 435 U.S. at 5 n.7 (Internal Revenue Code). No sound basis exists to subject all of these laws to exacting judicial review.

C. The Doctrine Of *Stare Decisis* Supports Retaining *Torres* And *Rosario*

As discussed above, this Court held in *Rosario* that Congress may treat Puerto Rico differently than the States if it has a rational basis to do so, and held in *Torres* and *Rosario* that Congress had rational grounds for excluding Puerto Rico from programs such as SSI. For the reasons explained in this brief, those holdings were correct given the text of the Territory Clause, the broader constitutional context, long historical practice, and the Court's equal-protection doctrine. But beyond those decisions' merits as an original matter, they deserve respect under the doctrine of *stare decisis*.

Under the doctrine of *stare decisis*, this Court should begin with a strong presumption in favor of following precedent. See, *e.g.*, *Gamble* v. *United States*, 139 S. Ct. 1960, 1969 (2019). A party that seeks to overcome that presumption bears the burden of providing a special justification—a compelling reason to overrule the decision, over and above garden-variety disagreement with its outcome. See, *e.g.*, *Allen* v. *Cooper*, 140 S. Ct. 994, 1003 (2020).

Under this Court's precedent on precedent, those principles apply to summary reversals. Although the Court has often noted that unexplained summary *affirmances* carry diminished precedential value, see, *e.g.*, *Comptroller of the Treasury* v. *Wynne*, 575 U.S. 542, 559-560 (2015), it has treated reasoned summary *reversals* as binding precedents, see, *e.g.*, *Gonzales* v. *Thomas*, 547 U.S. 183, 185 (2006) (per curiam). It also has consulted the usual *stare decisis* factors in deciding whether to overrule earlier summary reversals. See, *e.g.*, *Hohn* v. *United States*, 524 U.S. 236, 251-253 (1998). That makes sense. A summary reversal, unlike a summary affirmance, is usually accompanied by an opinion, and "[w]hen an opinion issues for the Court, it is not only the result but also those portions of the opinion necessary to that result by which [the Court is] bound." *Seminole Tribe of Florida* v. *Florida*, 517 U.S. 44, 67 (1996). Further, the Court usually reserves summary reversal for cases where "the law is settled and stable" and "the decision below is clearly in error." *Schweiker* v. *Hansen*, 450 U.S. 785, 791 (1981) (per curiam) (Marshall, J., dissenting). Those circumstances count in favor of according *stare decisis* effect to *Torres* and *Rosario*.

Indeed, *Torres* and *Rosario* have an especially strong claim to *stare decisis* effect. They were decided against the backdrop of and reflect Congress's longstanding practice of enacting different laws for Puerto Rico and other Territories as compared to laws applicable in the States. And the precedents have generated significant reliance in the four decades since they were decided. Congress, for example, has relied on those precedents and the principles they reflect in maintaining and refining the United States' distinct relationship

with the Territories, including with respect to what federal benefits they should receive and what federal taxes they should pay in return.

The federal courts, too, have relied on *Torres* and *Rosario*. The D.C. Circuit, in an opinion by then-Judge Ginsburg, described *Rosario* as "pathmarking" as to both "the appropriate standard of review" (*i.e.*, rational basis) and "the merits" (*i.e.*, the sufficiency of rationales such as tax status). *Quiban*, 928 F.2d at 1161. Many courts of appeals have relied on *Torres* and *Rosario* in upholding differential treatment of the Territories. See, *e.g.*, *United States* v. *Montijo-Maysonet*, 974 F.3d 34, 45 (1st Cir. 2020), petition for cert. pending, No. 20-8072 (filed May 15, 2021); *Romeu* v. *Cohen*, 265 F.3d 118, 124 (2d Cir. 2001); *United States* v. *Pollard*, 326 F.3d 397, 409 n.12 (3d Cir.), cert. denied, 540 U.S. 932 (2003); *Segovia* v. *United States*, 880 F.3d 384, 390-391 (7th Cir.), cert. denied, 139 S. Ct. 320 (2018); *Friend* v. *Reno*, 172 F.3d 638, 645-646 (9th Cir. 1999), cert. denied, 528 U.S. 1163 (2000); *Corporation of the Presiding Bishop of the Church of Jesus Christ of the Latter-Day Saints* v. *Hodel*, 830 F.2d 374, 385 & n.71 (D.C. Cir. 1987), cert. denied, 486 U.S. 1015 (1988); *Talon* v. *Brown*, 999 F.2d 514, 516-517 (Fed. Cir.), cert. denied, 510 U.S. 1028 (1993).

Overruling *Torres* and *Rosario* also could call into question laws that treat Territories more favorably than the States—for instance, the laws exempting Puerto Rico from most federal taxes. This Court has generally applied the equal-protection guarantee in a symmetrical way, using the same standard of scrutiny regardless of whether the challenged law is designed to benefit or burden a particular group. For instance, the Court has applied heightened scrutiny to classifications based on gender, whether the classifications favor men

or women. See *Sessions* v. *Morales-Santana*, 137 S. Ct. 1678, 1689-1690 (2017). Overruling *Torres* and *Rosario* thus could jeopardize the many laws that provide benefits to Territories that are not available in the States.

On the other side of the ledger, respondent has offered no special justification for overruling *Torres* and *Rosario*. Neither case was "gravely wrong the day it was decided," *Trump* v. *Hawaii*, 138 S. Ct. 2392, 2423 (2018); to the contrary, the decisions comport with the Constitution's text and structure, longstanding congressional practice, and the Court's broader equal-protection doctrine. Nor have the decisions' foundations eroded because of later legal or factual developments; instead, later cases have reaffirmed the breadth of Congress's authority over Territories, see *Aurelius*, 140 S. Ct. at 1658-1659, and the deference owed to legislatures under rational-basis review, see *Armour*, 566 U.S. at 680-681. Nor have the precedents proved unworkable. The rational-basis standard they set out is straightforward to apply and properly leaves to Congress—rather than to the courts under heightened scrutiny—the superintendence of the many aspects of the federal government's relationship with the Commonwealth of Puerto Rico. This case thus features none of the traditional justifications for overruling precedent, much less one significant enough to outweigh the considerable reliance interests on the other side of the scale.

* * * * *

Respondent's circumstances forcefully illustrate the case for enhancing aid to needy individuals in Puerto Rico, either by extending the SSI program or by increasing benefits through increased federal and Commonwealth contributions under the AABD program.

Respondent observes (Br. in Opp. 1) that he is "indigent" and "disabled," and he argues that it is "unjust" to cut off his SSI benefits simply because he has moved to Puerto Rico "to be closer to family." He also notes (*ibid.*) that Congress's decision not to extend the SSI program to Puerto Rico harms "some of the nation's poorest disabled Americans." The President has announced that, as a matter of policy, the Administration supports extending SSI benefits to Puerto Rico residents. Press Release, U.S. President Joseph R. Biden, Jr., Statement by President Joseph R. Biden, Jr. on Puerto Rico (June 7, 2021).

Under the Constitution, however, the proper mechanism for effectuating that change is action by Congress —not a suit asking this Court to overrule its prior cases and declare a duly enacted statute unconstitutional under rational-basis review. It is to Congress that the Constitution has entrusted the power to govern Territories and to spend money for the general welfare. Congress may not, of course, deny anyone the equal protection of the laws, but that guarantee does not authorize courts to "judge the wisdom, fairness, or logic of legislative choices," *Beach*, 508 U.S. at 313, or to decide whether "a more just and humane system could * * * be devised," *Dandridge*, 397 U.S. at 487. Congress is fully empowered to extend SSI to Puerto Rico in light of the concerns respondent identifies, but its decision not to do so does not violate the Constitution under this Court's precedents.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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APPENDIX

1. 42 U.S.C. 1381a provides:

Basic entitlement to benefits

Every aged, blind, or disabled individual who is determined under part A of this subchapter to be eligible on the basis of his income and resources shall, in accordance with and subject to the provisions of this subchapter, be paid benefits by the Commissioner of Social Security.

2. 42 U.S.C. 1382(f)(1) provides:

Eligibility for benefits

(f) Individuals outside United States; determination of status

(1) Notwithstanding any other provision of this subchapter, no individual (other than a child described in section 1382c(a)(1)(B)(ii) of this title) shall be considered an eligible individual for purposes of this subchapter 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 subchapter 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.

3. 42 U.S.C. 1382c provides in pertinent part:

Definitions

(a)(1) For purposes of this subchapter, the term "aged, blind, or disabled individual" means an individual who—

(A) is 65 years of age or older, is blind (as determined under paragraph (2)), or is disabled (as determined under paragraph (3)), and

(B)(i) is a resident of the United States, and is either (I) a citizen or (II) an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law (including any alien who is lawfully present in the United States as a result of the application of the provisions of section 1182(d)(5) of title 8), or

(ii) is a child who is a citizen of the United States, and who is living with a parent of the child who is a member of the Armed Forces of the United States assigned to permanent duty ashore outside the United States.

* * * * *

(e) For purposes of this subchapter, the term "United States", when used in a geographical sense, means the 50 States and the District of Columbia.

* * * * *

4. 48 U.S.C. 1801 provides:

Approval of Covenant to Establish a Commonwealth of the Northern Mariana Islands

The Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, the text of which is as follows, is hereby approved.

5. 48 U.S.C. 1801 note provides in pertinent part:

* * * * *

"SECTION 502. (a) The following laws of the United States in existence on the effective date of this Section and subsequent amendments to such laws will apply to the Northern Mariana Islands, except as otherwise provided in this Covenant:

"(1) those laws which provide federal services and financial assistance programs and the federal banking laws as they apply to Guam; Section 228 of Title II and Title XVI of the Social Security Act as it applies to the several States; the Public Health Service Act as it applies to the Virgin Islands; and the Micronesian Claims Act as it applies to the Trust Territory of the Pacific Islands;

"(2) those laws not described in paragraph (1) which are applicable to Guam and which are of general application to the several States as they are applicable to the several States; and

"(3) those laws not described in paragraph (1) or (2) which are applicable to the Trust Territory of the Pacific Islands, but not their subsequent amendments

unless specifically made applicable to the Northern Mariana Islands, as they apply to the Trust Territory of the Pacific Islands until termination of the Trusteeship Agreement, and will thereafter be inapplicable.

"(b) The laws of the United States regarding coastal shipments and the conditions of employment, including the wages and hours of employees, will apply to the activities of the United States Government and its contractors in the Northern Mariana Islands.

* * * * *