

TESTIMONY OF CONGRESSMAN MICHAEL F.Q. SAN NICOLAS (GU)
UNITED STATES SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
HEARING TO EXAMINE THE IMPACT OF COVID-19 TO U.S. TERRITORIES
ROOM 366, DIRKSEN SENATE OFFICE BUILDING
JUNE 30, 2020 | 2:30 P.M.

Good afternoon and *Håfa Adai* Chairwoman Murkowski, Ranking Member Manchin, and Members of the Committee. I want to thank you for your leadership and advocacy in our combined efforts to provide equitable access of federal resources to the people of Guam and our U.S. Territories in this global fight against the COVID-19 pandemic.

As you are aware, other than the United States military presence, tourism, specifically from our Asian neighbors, drives the economy of the island of Guam. In the last few years, Guam has received record numbers of tourists visiting our island. One point six (1.6) million tourists visited just last year alone, injecting over \$1.4B into our growing economy and supplying jobs for thirty percent of our workforce. While Guam has made great strides in this market, this pandemic has once again proved the need for a diversified economy to achieve a stable financial state. Our island's economic growth and risks uniquely tie to the economic successes and failures of our neighboring Asian countries due to our geographic proximity.

The global reach of this pandemic has shattered our island's economy along with the rest of the nation. While our rate of infection has not coincided proportionately, the ancillary economic impact has dealt a much more devastating blow by comparison. The significant reduction in commercial flights has brought a halt to our tourism industry. Over fifty percent of our workforce is unemployed and had no safety net due to our island's lack of an unemployment insurance program. For reference, Guam's unemployment rate prior to the pandemic was just above four percent (4%). I am deeply grateful for the bipartisan effort to ensure that the workforce in Guam has not been left to fend for themselves due to the lack of foresight and planning by its local government. The Pandemic Unemployment Assistance program set up in the CARES Act has provided reprieve for the many workers who found themselves out of a job through no fault of their own. I want to thank the Employment Training Administration for working diligently with our Guam Department of Labor team in standing up this much needed program. While various kinks are still being addressed, I am hopeful that our Guam Labor team will be able to streamline the process and set employer requirements to ensure that every displaced worker receives the benefits intended under the CARES Act.

Through various pandemic packages Congress has passed, including the FFCRA and the CARES Act, Guam is expected to receive over \$1.5B in pandemic related support. While Guam in the past has seen support and assistance from our federal government when major natural or man-made disasters have occurred, the efforts of this Congress to include Guam and the territories is remarkable and demonstrates that we are indeed woven into the fabric of this nation.

In spite of the historic relief provided to Guam, I have heard from many of my constituents back home and their pleas for assistance during these times resonates with me every single day. It is difficult not to be saddened by the stories of desperation and actual hunger that our families are going through. Cars filled with families are lining up for miles at two

o'clock in the morning just to ensure that they are able to get bags of food provided through the Emergency Food Assistance Program when distribution begins four hours later, and even then have been turned away at times due to demand exceeding supply. A massive influx of new families that need Supplemental Nutrition Assistance Program (SNAP) during these times has prevented many who have lost their income from receiving these benefits due to ongoing processing delays. Our unemployment rate coupled with administrative delays at the local level in implementing Economic Impact Payments (EIP) for over a month depleted the limited financial resources of families in a community that already had poverty levels over twenty percent before the pandemic. To date, also due to local administrative delay, over 20,000 people, approximately 75% of our unemployed, still await Pandemic Unemployment Assistance. Many families who otherwise would not qualify for federal public assistance programs find themselves desperately needing basic food assistance and seeking it by waiting in lines that rival those we have all seen in history books depicting failed communist regimes. Never in my life did I ever imagine I would bear witness to these kinds of circumstances in America.

Although federal agencies are allotting monies to our local government in accordance with the time frames provided by Congress to ensure immediate relief to Americans living in Guam, the delayed and inconsistent distribution of these funds by the local government have caused direct harm. Calls for transparency in the local process to fully understand and address the cause of impediments and inconsistencies are met with resistance, and my office and the local media are resorting to Freedom of Information Act requests to get basic information with even these actions unsuccessful. For example, our request to review the implementation plan to identify and distribute EIP to eligible recipients was rejected by both the Internal Revenue Service and the Guam Department of Revenue and Taxation, claiming that 26 U.S.C 6105 covered such information as "protected" and therefore not subject to review. Consequently, we are unable to determine why certain eligible EIP recipients are not receiving their full amounts, to include new mothers who had their babies in 2019, couples who were married in 2019, or single parents who filed on their own for the first time in 2019 but find their former spouse receiving what otherwise should have been intended for them and the children now under their sole care. While recent news has captured the alarming circumstances of deceased individuals receiving EIP it is far more tragic that the living, especially the children, are not. With such realities in desperate times, I find it unfathomable that a Member of Congress is unable to review implementation plans of federally funded programs to provide answers to constituents, proffer solutions for constituents, or craft legislation to remedy such challenges, when such federal programs are authorized and appropriated by the Congress.

As a number of my constituents have yet to receive an economic impact payment, and others have questioned the amount received without explanation, we are unable to provide general information because the local government claims procedures and agreements it has with the Internal Revenue Service is unreviewable (Exhibit A). This is a blatant disregard to transparency and accountability that is tantamount to the federal government's relief efforts. Moving forward, we must provide mandates that require local territorial governments to report to Congress its activities in carrying out Congressionally instituted programs, particularly when such programs are not already subject to some form of federal agency oversight and review. Without this much needed transparency, how are we as Representatives of our constituents able to come here and advocate for what our people need if our local territorial

governments refuse to disclose? How is this Congress, with plenary power over the territories, able to fully assess the efficacy of its programs and appropriations?

In assessing our COVID-19 circumstances and evaluating what further action must be taken federally in order to fully meet the needs of our territories we can find one very specific parallel to the pandemic itself; pre-existing conditions exacerbate risk factors. For Guam in particular, the pre-existing conditions of unfunded Earned Income Tax Credit (EITC) mandates, the lack of Supplemental Security Income (SSI) applicability, and the underfunded costs of the migratory impacts in the Compacts of Free Association (COFA) left us vulnerable and stall our efforts to recover.

From inception the EITC costs for Guam have ballooned to roughly thirty percent of total income tax refund liabilities on Guam. The very nature of the EITC is that it is intended to pay a qualified recipient an amount in excess of their total banked income tax withholdings in order to incentivize work. While the EITC as a broad federal program is sustainable with the U.S. Treasury able to fund these costs using various deficit spending tools, applying them to Guam and leaving Guam to fund them is wholly unsustainable because the territory does not have similar access to such tools. As a result, other locally funded programs to include health, education, and public safety are underfunded as these EITC costs are now court-ordered to be paid within six months of the close of income tax return filing deadlines, adversely impacting cash flow. This pre-existing condition has weakened the Guam healthcare in particular, as the Guam Memorial Hospital, Guam's local government hospital, has suffered serious operational deficits and grossly deferred maintenance over the last 12 years when the EITC mandate was applied to Guam. As a result of this pre-existing condition Guam's capacity to meet COVID-19 threats was greatly diminished with less facility readiness, and nurse recruitment and retention already inadequate to meet Guam's needs. The Congress must see to it that the federal government absorbs the cost of EITC by permanently funding it on a reimbursement basis in the territories. Additional thought should be put into a Federal Reserve facility to capitalize EITC costs to territories, and direct payment from the Treasury to the FED at the close of the fiscal year to reconcile it.

When the pandemic struck, and our tourism-based economy contracted we have seen many families go from making ends meet to not being able to provide. While we have discussed these circumstances earlier, we must recognize the pre-existing challenges facing our at-risk community, and how their situations went from bleak to destitute as a result of the pandemic. At its core, SSI is intended to serve as a lifeline for those who qualify, particularly the aged and the disabled, who otherwise would have little means to provide for their basic needs. The lack of SSI on Guam means that thousands of children and families go without what otherwise would be a staple of American decency throughout the country. Prior to the pandemic, this at-risk group was cared for by aging parents and gracious family members many of whom worked multiple jobs to supplement the cost of living and care for their loved ones. This pre-existing condition already strained households, and the economic savaging of the pandemic has caused people to not only lose their jobs but lose the ability to care for their disabled loved ones who would be supported by SSI had they not been statutorily excluded. The Congress must end the discriminatory exclusion of territories from SSI. Recent federal court rulings (Exhibit B) are already indicating that such an outcome is forthcoming. It would be both pragmatic and magnanimous for the

Congress to fully extend SSI to the territories particularly during these COVID-19 times, so that the people most in need even before the pandemic are finally made whole during the pandemic.

As the renegotiations for the Compact of Free Association implementation agreements begin in earnest, we must be mindful of how the pre-existing condition of these agreements have created critical health, education, and public safety vulnerabilities in the territory of Guam. To avail of the freedom to migrate COFA citizens must either be doing so for education, healthcare, or employment. The costs associated with hosting COFA migrants under either of these three pre-requisites have vastly exceeded current funding levels. In 2019, the rate of federally funded compact impact per COFA migrant was \$892, which is far short of the cost to educate (\$9,186), the cost for government healthcare (\$2,995) and the cost of EITC (\$2,800) on a per citizen basis on Guam. These shortfalls create real systemic imbalances and ripe pre-existing conditions for COVID-19 to go untested, untreated, or undiagnosed, as COFA migrants are ineligible for Medicaid coverage and the cash shortfall of underfunded migratory costs over-burden the systems of care. The Congress must strive to provide as much balance as possible to the costs associated with hosting COFA migrants, as failure to do so comes at a cost to the health, education, and public safety institutions provided by host communities. The Congress must also extend the applicability of Medicaid to COFA migrants as a common-sense component of the authorized migratory purpose of seeking healthcare, and further consider extending Medicaid directly into COFA States as a means to ameliorate healthcare migration at the source. Furthermore, it was brought to my attention that the economic contribution of COFA migrants in their host communities should be factored in considering the true cost of the impact, and I fully welcome this consideration, as part of this should also include any EITC liability accrued payable to eligible COFA migrants.

Addressing these pre-existing conditions will certainly improve the outcomes of all COVID-19 relief provided, and permanently strengthen the Guam community to better withstand any future threats. While they represent long standing issues within the territory of Guam these pandemic circumstances have revealed the structural weaknesses caused by their systemic corrosion. To ensure our COVID-19 relief efforts are fully effective, and to ensure that Guam and our territories are properly situated for any future such risks, we must address the EITC, SSI, and COFA inequities now, not later.

Thank you, Chairwoman Murkowski, Ranking Member Manchin, and Members of the Committee, for the opportunity to testify before you today. I stand ready to answer any questions you may have.



Dipåtamenton Kontribusion yan Adu'aña

DEPARTMENT OF

REVENUE AND TAXATION

GOVERNMENT OF GUAM

Gubetnamenton Guåhan

EDDIE BAZA CALVO, Governor Maga'låhi
RAY TENORIO, Lt. Governor Tifente GubetnadotJOHN P. CAMACHO, Director
Direktot
MARIE M. BENITO, Deputy Director
Sigundo Direktot

May 7, 2020

Honorable Michael F.Q. San Nicolas
Member, United States Congress
330 Hernan Cortes Avenue Suite 300
Hagatna, Guam 96910
671-472-6453

Re: Sunshine Reform Act of 1999 request dated 4/20/2020 (received via email dated 4/21/2020)

Buenas yan Saluda Congressman San Nicolas,

The Department of Revenue & Taxation (DRT) is providing you the following response and documents.
As stated in your request;

- 1. Any and all documents related to instructions, directives, and guidance issued to employees of the Guam Department of Revenue and Taxation in processing filer information for eligibility and payments related to the issuance of Economic Impact Payments, pursuant to Sec. 2201 of Public Law 116-136, the federal Coronavirus Aid, Relief, and Economic Security Act.**

As requested, documents related to instructions, directives, and guidance issued to employees are provided. These documents represent data that have led up to the program implementation for the Economic Impact Payment to include published guidance for eligibility, announcement of a non-filer claim (EIP-NF), and our more recent FAQ's on the matter. Please see attached documents.

- 2. Any and all documents related to agreements issued between the Government of Guam and the United States Internal Revenue Service related to the issuance of Economic Impact Payments, pursuant to Sec. 2201 of Public Law 116-136, the federal Coronavirus Aid, Relief, and Economic Security Act.**

Regarding item #2, DRT is unable to provide any data related to the agreement pursuant to "26 U.S. Code § 6105 - Confidentiality of information arising under treaty obligations".

If you have any further questions, please contact me at 635-1815 or email at Dafne.Shimizu@revtax.guam.gov.

Senseramente,

DAFNE MANSAPIT-SHIMIZU
Director

MICHAEL F.Q. SAN NICOLAS
GUAM

1632 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-1188

Congress of the United States
House of Representatives
Washington, DC 20515-990

330 HERNAN CORTEZ AVENUE SUITE 300
HAGATNA, GU 96910
(671) 475-6453

April 20, 2020

Dafne Mansapit-Shimizu
Director
Department of Revenue and Taxation
Government of Guam
1240 Army Drive
Barrigada, GU 96913

Via email: dafne.shimizu@revtax.guam.gov

Dear Director Shimizu,

Pursuant to the authority provided by Chapter 10 of Title 5 of the Guam Code Annotated, I hereby request copies of the following documents:

1. Any and all documents related to instructions, directives, and guidance issued to employees of the Guam Department of Revenue and Taxation in processing filer information for eligibility and payments related to the issuance of Economic Impact Payments, pursuant to Sec. 2201 of Public Law 116-136, the federal Coronavirus Aid, Relief, and Economic Security Act.
2. Any and all documents related to agreements issued between the Government of Guam and the United States Internal Revenue Service related to the issuance of Economic Impact Payments, pursuant to Sec. 2201 of Public Law 116-136, the federal Coronavirus Aid, Relief, and Economic Security Act.

Please make available these copies in electronic form to be sent to me via email at Michael.SanNicolas@mail.house.gov. I appreciate your consideration and your dedicated staff's time in complying with this request for information.

Respectfully,



Michael F.Q. San Nicolas
Member of Congress
Guam

EXHIBIT B

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DISTRICT COURT OF GUAM

KATRINA SCHALLER, by and through her
legal guardians KIMBERLY A. FEGURGUR
and JOHN A. FEGURGUR,

Plaintiff,

vs.

U.S. SOCIAL SECURITY
ADMINISTRATION and

ANDREW M. SAUL, in his official capacity as
Commissioner of Social Security
Administration

Defendants.

CIVIL CASE NO. 18-00044

ORDER

1. Denying Defendants’ Motion to Dismiss for Lack of Jurisdiction;
2. Granting Plaintiff’s Motion for Summary Judgment; and
3. Denying Defendants’ Cross Motion for Summary Judgment.

In this action, Plaintiff, a Guam resident, challenges the Defendants’ refusal to grant her Supplemental Social Security benefits established under Title XVI of the Social Security Act, 42 U.S.C. § 1381 *et seq.*, and asserts that said refusal violates the equal protection clause of the Fifth and Fourteenth Amendments of the U.S. Constitution and the Organic Act of Guam, 48 U.S.C. § 1421b.

Pending before the court are the following motions: (1) Defendants’ Motion to Dismiss for Lack of Jurisdiction, ECF No. 22; (2) Plaintiff’s Motion for Summary Judgment, ECF No. 39; and (3) Defendants’ Cross Motion for Summary Judgment, ECF No. 46. The court heard argument on said motions and thereafter took the matters under advisement. The court ordered further briefing on certain issues after the Court of Appeals for the First Circuit issued its decision in *United States v. Vaello-Madero*, 956 F.3d 12 (1st Cir. 2020). *See* Order, ECF No. 73. Having reviewed relevant case law and the parties’ filings, the court hereby issues this Order DENYING the Defendants’

1 Motion to Dismiss and Cross Motion for Summary Judgment and GRANTING the Plaintiff's
2 Motion for Summary Judgment.

3 **I. BACKGROUND:**

4 A. Jurisdiction and Venue

5 The Complaint, filed on December 6, 2018, asserts that the case presents a federal question,
6 and thus jurisdiction is proper under 28 U.S.C. § 1331. Additionally, because the Plaintiff is a
7 citizen residing in Guam, venue is proper in this district. *See* Compl. at ¶¶7-8.

8 B. Statutory Framework

9 The Social Security Administration (“SSA”) administers two primary programs that
10 provide benefits to aged persons, blind persons, and persons with disabilities who meet certain
11 income and resource requirements. At issue here is the Supplemental Security Income (“SSI”)
12 program, established by Title XVI of the Social Security Act, 42 U.S.C. § 1381 *et seq.* Congress
13 created the SSI program “[f]or the purpose of establishing a *national* program to provide
14 supplemental security income to individuals who have attained age 65 or are blind or disabled.”
15 *Id.* at 1381 (emphasis added). SSI benefits are paid from the general revenues that are funded by
16 federal income taxes. The statute as enacted provided that eligibility for SSI benefits was limited
17 to individuals residing inside the “United States,” which, by definition, meant “the 50 States and
18 the District of Columbia.” 42 U.S.C. § 1382c(e). Residents of the U.S. territories were not included
19 in this definition, however, in 1976 Congress made SSI benefits available to residents of the CNMI
20 by virtue of a joint resolution which approved the CNMI’s political union with the United States.¹

21 C. Factual Background

22 Plaintiff Katrina Schaller and her 50-year old twin sister Leslie were born on January 25,
23 1970, and grew up in Pennsylvania with their parents and older sister Kim. Compl. at ¶5. After
24 their parents separated, Plaintiff moved to live with her mother. *Id.* Plaintiff applied for and
25

26 ¹ *See* Covenant to Establish a Commonwealth of the Northern Mariana Islands, Pub. L. No.
27 94-241, §502(A)(1), 90 Stat. 263, 268 (1976) (codified at 48 U.S.C. § 1801 *et seq.*) (“The
28 following laws of the United States . . . will apply to the [CNMI] . . . Title XVI of the Social
Security Act as it applies to the several states[.]”).

1 received SSI benefits after the SSA determined she was disabled on August 28, 2001. Decl. K.
2 Fegurgur at ¶5 attached as Ex. 1 to Pl.’s Concise Stmt., ECF No. 41.

3 After her mother’s death in October 2007, Plaintiff moved to Guam temporarily to live with
4 her sister Kim and Kim’s husband John Fegurgur, who are Plaintiff’s legal guardians. *Id.* 7 and
5 Compl. at ¶5, ECF No. 1. Before leaving for Guam, the Plaintiff and Kim visited the SSA office
6 in Washington, Pennsylvania to inquire if it was still possible for the Plaintiff to receive SSI
7 coverage in Guam. Decl. K. Fegurgur at ¶7, ECF No. 41. An SSA officer informed them that if
8 and when the Plaintiff leaves the covered geography of the United States for over 30 days, her SSI
9 benefits would be lost. *Id.* The SSA agent confirmed that Guam was not part of the covered
10 geography of the United States for citizens to receive SSI benefits. *Id.* The Plaintiff’s SSI benefits
11 stopped while she was on Guam. *Id.*

12 The Plaintiff and her sister Kim returned to Pennsylvania in 2008, and the Plaintiff’s SSI
13 benefits resumed while they were in Pennsylvania. Decl. K. Fegurgur at ¶8, ECF No. 41. When
14 the Plaintiff permanently moved to Guam in 2008, her SSI benefits were again terminated, and she
15 has not received any such payments since. *Id.* at ¶10.

16 Plaintiff and twin sister Leslie both suffer from “myotonic dystrophy, a debilitating,
17 degenerative genetic disorder affecting muscle function and mental processing.” Compl. at ¶5, ECF
18 No. 1. This disorder inhibits some aspects of Leslie’s mobility, but she otherwise leads a full,
19 independent life in Pennsylvania based in part on the monthly SSI payments (about \$755) she
20 receives because she lives in the “United States.” *Id.* On the other hand, Plaintiff Katrina “lacks
21 the functionality to perform many activities of daily living, let alone earn a steady income, and is
22 permanently disabled.” *Id.* As noted, Plaintiff stopped receiving SSI benefits when she permanently
23 moved to Guam 12 years ago in 2008.

24 On December 6, 2018, this suit was initiated on the Plaintiff’s behalf because her legal
25 guardians believed “SSI benefits could significantly improve her quality of life as soon as Katrina
26 starts receiving them.” Decl. K. Fegurgur at ¶12, ECF No. 41. The Complaint asserts Equal
27 Protection claims under the Fifth and Fourteenth Amendments and the Organic Act of Guam. The
28 Plaintiff essentially claims that the Government violated the equal protection clause by terminating

1 her SSI benefits based solely on her residency on Guam, while similarly situated citizens in the
2 CNMI are afforded those same benefits. *See* Compl. at ¶¶5-6, 15.

3 **II. LEGAL STANDARDS**

4 A. Rule 12(b)(1) - Lack of Jurisdiction

5 Defendants move to dismiss, pursuant to Fed. R. Civ. P. 12(b)(1), asserting that the
6 Complaint fails to allege that Plaintiff presented her claims to the Commissioner of Social Security
7 and received the Commissioner's final decision before bringing suit. Rule 12(b)(1) allows the court
8 to dismiss a claim for lack of jurisdiction. "It is a fundamental principle that federal courts are
9 courts of limited jurisdiction." *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978).
10 Thus, the plaintiff bears the burden of establishing subject matter jurisdiction. Federal subject
11 matter jurisdiction must exist at the time the action is commenced. *Morongo Band of Mission*
12 *Indians v. Cal. State Bd. of Equalization*, 858 F.2d 1376, 1380 (9th Cir. 1988). A court must
13 presume lack of jurisdiction until the plaintiff establishes otherwise. *Kokkonen v. Guardian Life*
14 *Ins. Co. of America*, 511 U.S. 375 (1994); *Scott v. Breeland*, 792 F.2d 925, 927 (9th Cir. 1986) (The
15 party seeking to invoke federal court jurisdiction has the burden of establishing that jurisdiction is
16 proper.).

17 A party bringing a Rule 12(b)(1) challenge to the court's jurisdiction may do so either on
18 the face of the pleadings or by presenting extrinsic evidence for the court's consideration. *See*
19 *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000) ("Rule 12(b)(1) jurisdictional attacks can be
20 either facial or factual"). "In a facial attack, the challenger asserts that the allegations contained in
21 a complaint are insufficient on their face to invoke federal jurisdiction." *Safe Air for Everyone v.*
22 *Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). In evaluating a facial attack to jurisdiction, the court
23 must accept the factual allegations of the complaint as true. *See Lacano Invs., LLC v. Balash*, 765
24 F.3d 1068, 1071 (9th Cir. 2014). However, legal conclusions in the complaint are not accepted as
25 true, even if they are cast as factual allegations. *See id.*

26 B. Rule 12(b)(6) - Failure to State a Claim

27 Defendants' Motion to Dismiss also asserts that the Complaint fails to state a claim on
28 which relief can be granted. A defendant is entitled to dismissal under Rule 12(b)(6) when a

1 complaint fails to state a cognizable legal theory or alleges insufficient facts under a cognizable
2 legal theory. *Somers v. Apple, Inc.*, 729 F.3d 953, 959 (9th Cir. 2013). The Ninth Circuit has
3 explained that the purpose of a Rule 12(b)(6) motion is to test a complaint’s legal sufficiency, not
4 to decide its merits. *See Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). Generally, the
5 plaintiff’s burden at this stage is light since Rule 8(a) requires only that a complaint “shall contain
6 . . . a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R.
7 Civ. P. 8(a). “All allegations of material fact are taken as true and construed in the light most
8 favorable to the nonmoving party.” *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir.
9 2001). The court may dismiss based on lack of cognizable legal theory or on the absence of facts
10 that would support a cognizable theory. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th
11 Cir. 1990). And, while the plaintiff’s burden is light, it is not nonexistent – the complaint must
12 “contain either direct or inferential allegations respecting all the material elements necessary to
13 sustain recovery under some viable legal theory.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 562
14 (2007) (internal quotation marks omitted). “To survive a motion to dismiss, a complaint must
15 contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its
16 face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 570) (internal
17 quotation marks omitted). A claim is facially plausible if “the plaintiff pleads factual content that
18 allows the court to draw the reasonable inference that the defendant is liable for the misconduct
19 alleged.” *Id.* at 678 (citing *Twombly*, 550 U.S. at 556). The court must “draw on its judicial
20 experience and common sense” to determine the plausibility of a claim given the specific context
21 of each case. *Id.* at 679.

22 C. Motions for Summary Judgment

23 The parties have also filed competing summary judgment motions. Summary judgment is
24 appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file,
25 together with the affidavits, if any, show that there is no genuine issue as to any material fact and
26 that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c). Summary
27 judgment is not proper if material factual issues exist for trial. *See, e.g., Celotex Corp. v. Catrett*,
28 477 U.S. 318, 322 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Warren v.*

1 *City of Carlsbad*, 58 F.3d 439, 441 (9th Cir.1995). In evaluating a motion for summary judgment,
2 the district courts of the United States must draw all reasonable inferences in favor of the
3 nonmoving party, and may neither make credibility determinations nor perform any weighing of
4 the evidence. *See, e.g., Lytle v. Household Mfg., Inc.*, 494 U.S. 545, 554-55, (1990); *Reeves v.*
5 *Sanderson Plumbing Products, Inc.*, 530 U.S. 133 (2000).

6 **III. DISCUSSION**

7 A. Defendants’ Motion to Dismiss for Lack of Subject Matter Jurisdiction

8 Defendants move to dismiss, pursuant to Fed. R. Civ. P. 12(b)(1), asserting that the
9 Complaint fails to allege that Plaintiff presented her claims to the Commissioner of Social Security
10 and received the Commissioner’s final decision before bringing suit. As noted in the Defendants’
11 motion, the Social Security Act expressly provides that 42 U.S.C. § 405(g) is the exclusive
12 jurisdictional basis for a claimant seeking judicial review of claims arising under the Act. 42 U.S.C.
13 § 405(g) and (h). The Supreme Court has stated that §405(g) “consists of a nonwaivable
14 requirement that a claim for benefits shall have been presented to the Secretary, and a waivable
15 requirement that the administrative remedies prescribed by the Secretary be pursued fully by the
16 claimant.” *Heckler v. Ringer*, 466 U.S. 602, 617 (1984) (quotation marks and citation excluded).

17 In her Opposition, the Plaintiff rebuts the Defendants’ allegations that she failed to present
18 her claims to the SSA. The Plaintiff notes that she met the presentment requirement twice – first,
19 when she initially applied to the SSA to qualify for benefits in Pennsylvania; second when she
20 notified the SSA that she would be temporarily and then permanently moving to Guam, prompting
21 the SSA to terminate her benefits each time. *See* Decl. K. Fegurgur at ¶5, 7-10, attached as Ex.
22 1 to Pl.’s Concise Stmt., ECF No. 41. With regard to exhausting administrative remedies, the
23 Plaintiff asks the court to waive this requirement because it would have been futile for her to have
24 appealed the SSA’s decision to terminate her SSI benefits when she moved to Guam.

25 The Defendants, in their Reply brief, have conceded this issue. *See* Reply at 2, n.1, ECF
26 No. 45. After having read the Declaration of Kimberly Fegurgur with regard to her meeting with
27 SSA about the Plaintiff’s plan to move to Guam, the Defendants “are no longer challenging the
28 subject matter jurisdiction of this [c]ourt[.]” *Id.* Counsel for the Defendants reaffirmed this

1 position at the hearing on the motions. In light of this concession, the court hereby denies the
2 Motion to Dismiss insofar as it asserts this court lacks subject matter jurisdiction.

3 B. Defendants’ Motion to Dismiss for Failure to State a Claim

4 The Defendants next contend that dismissal is warranted because the Complaint fails to
5 state a claim on which relief can be granted since the Supreme Court of the United States has
6 already stated that Congress may limit eligibility for the SSI programs to residents of the 50 states
7 and the District of Columbia. See *Califano v. Gautier Torres*,² 435 U.S. 1 (1978). In *Gautier*
8 *Torres*, a recipient who qualified for SSI benefits while residing in Connecticut but had his benefits
9 discontinued when he moved to Puerto Rico brought an action in the District Court of Puerto Rico
10 claiming that the exclusion of Puerto Rico from the SSI program was unconstitutional. *Id.* at 2-3.
11 A three-judge court was convened and ultimately found the statute unconstitutional as applied to
12 *Gautier Torres* because it interfered with his right to travel. *Id.* at 3. Two other individuals (Colon
13 and Vega) also brought similar suits, and, based on the earlier decision, the district judge enjoined
14 the SSA from discontinuing said individuals’ SSI benefits on the basis of their change of residency
15 to Puerto Rico. *Id.* The government appealed, and the Supreme Court reversed.

16 The Supreme Court in *Gautier Torres* primarily addressed the right to travel claim but noted
17 in a footnote that the appellee *Torres*’s

18 complaint had also relied on the equal protection component of the Due Process
19 Clause of the Fifth Amendment in attacking the exclusion of Puerto Rico from the
20 SSI program. Acceptance of that claim would have meant that all otherwise
21 qualified persons in Puerto Rico are entitled to SSI benefits, not just those who
22 received such benefits before moving to Puerto Rico. But the District Court
23 apparently acknowledged that Congress has the power to treat Puerto Rico
24 differently, and that every federal program does not have to be extended to it.

25 *Gautier Torres*, 435 U.S. at 3, n.4.

26 The Supreme Court instructed that when faced with a constitutional attack on a law
27 providing for governmental payments of monetary benefits, such “statute is entitled to a strong

28 ² The parties have referred to this case in their briefs as the *Torres* case. “According to Spanish naming conventions, if a person has two surnames, the first (which is the father's last name) is primary and the second (which is the mother's maiden name) is subordinate.” *United States v. Martínez-Benítez*, 914 F.3d 1, 2 n.1 (1st Cir. 2019). The court’s decision will refer to this case using both surnames.

1 presumption of constitutionality. So long as its judgments are rational, and not invidious, the
2 legislature’s efforts to tackle the problems of the poor and the needy are not subject to a
3 constitutional straitjacket.” *Id.* at 5 (quotation marks and citations omitted). The Supreme Court
4 further noted that

5 [a]t least three reasons have been advanced to explain the exclusion of persons in
6 Puerto Rico from the SSI program. First, because of the unique tax status of Puerto
7 Rico, its residents do not contribute to the public treasury. Second, the cost of
including Puerto Rico would be extremely great Third, inclusion in the SSI
program might seriously disrupt the Puerto Rican economy.

8 *Id.* at 5, n.7.

9 Two years later, the Supreme Court decided the case of *Harris v. Rosario*, 446 U.S. 651
10 (1980), which dealt with another federal program – the Aid to Families with Dependent Children
11 (“AFDC”) program, which provides financial assistance to states and Territories to aid families
12 with needy dependent children. *Id.* AFDC recipients residing in Puerto Rico had filed a class
13 action against the Secretary of Health and Human Services challenging the constitutionality of
14 certain provisions of the program, “claiming successfully that the lower level of AFDC
15 reimbursement provided to Puerto Rico violates the Fifth Amendment’s equal protection
16 guarantee.” *Id.* The Supreme Court, relying on *Gautier Torres*, disagreed, stating:

17 Congress, which is empowered under the Territory Clause of the Constitution, U.S.
18 Const., Art. IV, § 3, cl. 2, to “make all needful Rules and Regulations respecting the
19 Territory . . . belonging to the United States,” may treat Puerto Rico differently from
20 States so long as there is a rational basis for its actions. In [*Gautier Torres*], we
21 concluded that a similar statutory classification was rationally grounded on three
22 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. These same considerations are forwarded
here in support of §§ 1308 and 1396d(b) . . . and we see no reason to depart from
our conclusion in [*Gautier Torres*] that they suffice to form a rational basis for the
challenged statutory classification.

23 *Harris*, 446 U.S. at 651-52 (internal citations omitted).

24 Based on these precedents, the Defendants contend that the Complaint fails to state a claim
25 upon which relief can be granted. The Defendants assert that the Plaintiff’s equal protection claims
26 have no merit because the Supreme Court has made it abundantly clear that Congress may limit
27 eligibility for SSI benefits to residents of the 50 states and the District of Columbia.

28 The Plaintiff, on the other hand, argues that reliance on *Gautier Torres* and *Harris* is

1 misplaced. The Plaintiff notes that her Complaint alleges the Government violated her right to
2 Equal Protection when “Congress intentionally provided CNMI residents access to the benefits it
3 had denied Guam.” Compl. at ¶19. The Plaintiff here challenges what she claims is an irrational
4 line-drawing between CNMI and Guam, *not* between Guam and the 50 States. The Plaintiff asserts
5 *Gautier Torres* and *Harris* are not controlling to the facts herein since said cases dealt with
6 disparate treatment between the Territories and the 50 States, whereas the Plaintiff’s claims focus
7 on the differential treatment she experienced as a U.S. citizen on Guam compared to similarly
8 situated citizens in the CNMI.

9 Plaintiff contends that she has appropriately pled Equal Protection claims. To state an Equal
10 Protection claim, a plaintiff must allege that (1) she is a member of an identifiable class, (2) the
11 defendant treated her differently from other similarly situated persons, and (3) the defendant acted
12 with an intent or purpose to discriminate against her based on her membership in the identifiable
13 class. *See Flores v. Morgan Hill Unified Sch. Dist.*, 324 F.3d 1130, 1134 (9th Cir. 2003). Here,
14 the Plaintiff’s Complaint sufficiently pleads that she is a U.S. citizen residing on Guam. Compl.
15 at ¶¶1 and 9. The Complaint also asserts that Plaintiff qualified for and received SSI benefits due
16 to her financial status and hereditary medical disorder, that she continues to suffer from this
17 disorder, but her benefits were terminated when she moved to Guam. *Id.* at ¶¶1, 6 and 9. Finally,
18 the Complaint asserts that the Government has expressly and therefore intentionally excluded Guam
19 but not the CNMI from the definition of the “United States” under the SSI program. *Id.* at ¶¶1-2,
20 6, 9 and 15.

21 The court concurs with the Plaintiff that her Complaint alleges “sufficient factual matter,
22 accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft*, 556 U.S. at 678.
23 And, as noted previously, the purpose of a 12(b)(6) motion to dismiss is to test the sufficiency of
24 the complaint, not to decide its merits. *Navarro*, 250 F.3d at 732. The *Gautier Torres* and *Harris*
25 cases are factually distinguishable from the Plaintiff’s claims, such that this court can not conclude
26 – at least at the motion to dismiss stage – that these cases *require* dismissal. As noted above,
27 *Gautier Torres* was not decided on equal protection grounds. Even Defendants acknowledge that
28 *Gautier Torres* “primarily involved a right-to-travel claim[.]” Defs.’ Resp. to Pl.’s Suppl. Br. at 3,

1 ECF No. 75. Additionally, *Harris* involved an equal protection challenge to the lower level of
2 reimbursement provided to Puerto Rico under the AFDC program, not the SSI program.
3 Accordingly, the court denies the Rule 12(b)(6) motion as the Plaintiff has adequately alleged Equal
4 Protection claims.³

5 C. Plaintiff's Motion for Summary Judgment and Defendants' Cross Motion

6 Plaintiff asserts the exclusion of Guam from the SSI program violates the Equal Protection
7 clause under the Fifth Amendment and the Organic Act of Guam. "Equal protection analysis in the
8 Fifth Amendment area is the same as that under the Fourteenth Amendment." *Buckley v. Valeo*,
9 424 U.S. 1, 93 (1976). "[L]egislation is presumed to be valid and will be sustained if the
10 classification drawn by the statute is rationally related to a legitimate state interest." *City of*
11 *Cleburne, Texas v. Cleburne Living Center*, 473 U.S. 432, 440 (1985). The burden is on the party
12 attacking the legislation "to negate every conceivable basis which might support it." *FCC v. Beach*
13 *Comm'ns, Inc.*, 508 U.S. 307, 315 (1993) (quoting *Lehnhausen v. Lake Shore Auto Parts Co.*, 410
14 U.S. 356, 364 (1988)); *see also Hernandez-Mancilla v. Holder*, 633 F.3d 1182, 1185 (9th Cir.
15 2011). The parties agree that rational basis review applies.

16 The Defendants have proffered various grounds for Guam's exclusion from the SSI
17 program. First, just as in *Gautier Torres and Harris*, the Defendants contend that Guam's "unique
18 tax status" justifies the limitation at issue here. *See* Defs.' Combined Mem. in Supp. of Cross Mot.
19 for Summ. J. and in Opp'n to Pl.'s Mot. for Summ. J. at 7, ECF No. 47. The Defendants assert that
20 SSI benefits are paid from general revenues that are funded by federal income taxes, and because
21 Guam (and Puerto Rico) residents generally do not pay federal income tax, it was logical to limit
22 SSI benefits to residents of the fifty States and the District of Columbia. *Id.* at 7-8.

23 Plaintiff rebuts this basis and asserts that "U.S. citizens residing in CNMI and Guam have
24 the same relationship with federal income tax – neither group pays it." Pl.'s Combined Mem. in
25

26 ³ The remaining arguments raised in the Motion to Dismiss, the Opposition and the Reply
27 addressing the merits of whether there are or are not rational bases to treat the CNMI differently
28 from Guam under the SSI program are better reserved for the summary judgment stage and will be
addressed by the court in the section below.

1 Opp'n to Defs.' Mot. for Summ. J. and Reply in Supp. of Pl.'s Mot. for Summ. J. at 14, ECF
2 No. 51. Because Guam's tax status is not "unique" when compared to the CNMI, the Plaintiff
3 contends that the Defendants' tax status argument has not merit.

4 The court agrees with the Plaintiff. While Guam's tax status might explain why it is treated
5 differently from the fifty States and the District of Columbia, it does not justify the distinction in
6 treatment between Guam and the CNMI with regard to SSI benefits. Guam's tax status is not
7 unique when contrasted with the tax status of the CNMI. The parties do not dispute that neither
8 Guam nor the CNMI pay federal income taxes. Yet, the U.S. citizens in the CNMI residents are
9 eligible for SSI benefits that are withheld from U.S. citizens residing in Guam. This proffered
10 reason to justify Guam's exclusion from the SSI program when the CNMI is included is illogical
11 and irrational.

12 Additionally, because SSI benefits are not dependent on an individual's contributions, it
13 would appear irrational for Congress to limit SSI benefits to exclude populations that do not pay
14 federal income taxes. As the First Circuit reasoned in *United States v. Vaello-Madero* ("*Vaello-*
15 *Madero II*"),

16 We are unaware of . . . any instance where the government has justified the
17 exclusion of a class of people from welfare payments (which are untied to income
18 tax receipts) because they do not pay federal income tax. . . . [T]he sort of welfare
19 benefits at issue here are distinguishable from federal insurance programs, like
20 Social Security Disability Insurance, which may legitimately tie the amount of
21 benefits [awarded] to the individual's contributions. . . . However, because SSI is
22 a means-tested program, by its very terms, only low-income individuals lacking in
23 monetary resources are eligible for the program. . . . Consequently, any individual
24 eligible for SSI benefits almost by definition earns too little to be paying federal
25 income taxes. Thus, the idea that one needs to earn their eligibility by the payment
26 of federal income tax is antithetical to the entire premise of the program. How can
27 it be rational for Congress to limit SSI benefits to exclude populations that generally
28 do not pay federal income taxes when the very population those benefits target do
not, as a general matter, pay federal income tax?

24 *Vaello-Madero II*, 956 F.3d 12, 26-27 (1st Cir. 2020) (internal citations, quotation marks and
25 footnotes omitted).

26 Having found the tax status argument irrational, the court turns to Defendants' next
27 argument: that the cost of including Guam in the SSI program would be extremely great and
28 conserving the public fisc is a rational justification for excluding residents of a particular territory

1 from SSI benefits eligibility. As discussed above, the Supreme Court in *Gautier Torres* recognized
2 that one conceivable rationale for the exclusion of Puerto Rico from SSI benefits eligibility was that
3 “the cost of including Puerto Rico would be extremely great.” 435 U.S. at 5, n.7. The Defendants’
4 maintain that here “it is similarly conceivable that the cost of extending benefits eligibility to Guam
5 residents would be high, [and thus] the exclusion of Guam residents relates rationally to the
6 legitimate governmental interest in preserving public funds.” Defs.’ Reply at 10, ECF No. 57. *See*
7 *also* Defs.’ Concise Stmt. of Material Facts #6, ECF No. 48).

8 The court acknowledges that “protecting the fiscal integrity of Government programs, and
9 of the Government as a whole,” is a legitimate concern for Congress. *Lyng v. Int’l Union, United*
10 *Auto., Aerospace & Agr. Implement Workers of Am., UAW*, 485 U.S. 360, 373 (1988). The Plaintiff
11 argues, and the court also recognizes, that cost-savings alone cannot justify a discriminatory regime
12 by the government. *See, e.g., Plyler v. Doe*, 457 U.S. 202, 227 (1982) (“a concern for the
13 preservation of resources standing alone can hardly justify the classification used in allocating those
14 resources.”). The United States concedes this. *See* Defs.’ Reply at 10, ECF No. 57. Thus, the court
15 must analyze the underlying facts to the Defendants’ claim that including Guam in the SSI program
16 would be extremely great.

17 According to the figures provided by the Defendants, a 1987 Government Accountability
18 Office Report estimated that if Guam residents were eligible for SSI benefits, annual federal
19 spending would increase by \$7.8 million, which is equivalent to \$17 million in 2019 dollars. *See*
20 Defs.’ Concise Stmt. of Material Facts #1-2, ECF No. 48. “Assuming that a monthly SSI benefits
21 rate for Guam residents would be similar to that of residents of the CNMI,⁴ the annual federal
22 spending increase if Guam residents were eligible for SSI benefits would be approximately \$175
23 million ($\$608.57 \times 12 \text{ months} \times 24,000 \text{ residents}^5$).” In 2017, the SSA paid approximately \$54.5

24
25 ⁴ The average monthly SSI benefit payments for CNMI residents was \$608.57. Defs.’
26 Concise Stmt. of Material Facts #5, ECF No. 48

27 ⁵ In 2013, the Guam Legislature estimated that 24,000 residents could be eligible for SSI
28 benefits if the program were extended to include Guam residents. Defs.’ Concise Stmt. of
Material Facts #4, ECF No. 48.

1 billion under the SSI program. See SSA’s SSI Annual Statistical Report, 2017 at 16,
2 https://www.ssa.gov/policy/docs/statcomps/ssi_asr/2017/ssi_asr17.pdf. Thus, based on the
3 Defendants’ range of \$17 million to \$175 million, including eligible Guam residents in the SSI
4 program would increase the overall budget by a mere 0.03% to 0.3%. As Plaintiff notes, such a
5 minimal increase in cost does not qualify as “extremely great” so as to justify the unequal treatment
6 of eligible citizens residing in Guam. As Chief Judge Gustavo A. Gelpi stated in his opinion,

7 Aside from the fact that the cost is minimal compared to the government’s budget
8 for such program, this is not a valid justification for creating classifications of
9 United States citizens and justifying the same under the lax scrutiny of social and
10 economic legislation. While line drawing is necessary for Congress to pass social
11 and economic legislation, it is never a valid reason for disparate treatment of United
12 States citizen’s fundamental rights.

11 *United States v. Vaello Madero* (“*Vaello Madero I*”), 356 F. Supp. 3d 208, 215 (D.P.R. 2019), *aff’d*,
12 956 F.3d 12 (1st Cir. 2020). This court whole heartedly agrees with Chief Judge Gelpi.

13 Having determined that the cost to include Guam in the SSI program is relatively small and
14 not substantial, the court next examines the Defendants’ claim that Congress could have rationally
15 concluded that extending SSI benefits to Guam could disrupt its economy. In *Gautier Torres*, the
16 Supreme Court acknowledged that inclusion of Puerto Rican residents in the SSI program “might
17 seriously disrupt the Puerto Rican economy.” 435 U.S. at 5, n.7. Similarly, the United States
18 asserts that providing eligibility for SSI benefits to Guam residents “could ‘disrupt [Guam’s]
19 economy’ by creating ‘appreciable inflationary pressure.’” Defs.’ Reply at 12-13, ECF No. 57
20 (citations omitted).

21 The Plaintiff refutes this assertion, arguing that the government has not provided any
22 evidence to support this contention. See Pl.’s Combined Mem. in Opp’n to Defs.’ Mot. for Summ.
23 J. and Reply in Supp. of Pl.’s Mot. for Summ. J. at 20, ECF No. 51. Additionally, the Plaintiff
24 claims that even if Congress may have reasonably concluded in the past that including Guam in the
25 SSI program would have disrupted Guam’s economy, “such a conclusion is no longer rational.”
26 *Id.*

27 The *Gautier Torres* and *Harris* cases relied upon by the Defendants were decided in 1978
28 and 1980 respectively. In *Vaello-Madero II*, the court noted that the appellant (the United States)

1 was not claiming that granting SSI benefits to Puerto Rico residents could presently disrupt the
2 island's economy. *Vaello-Madero II*, 956 F.3d at 21. This court thus directed the parties to address
3 whether the passage of time eroded the United States' claim that extending SSI benefits to Guam
4 residents could disrupt Guam's economy. *See* Order re Supp. Briefing, ECF No. 73.

5 In its supplemental brief, the Plaintiff urges this court to consider present day
6 circumstances, arguing that “[e]ven if the [Defendants’] concern for the potential negative impact
7 of an influx of aid on the territory’s economic stability could have been legitimate three decades
8 ago, that concern can no longer provide rational basis” for Guam’s exclusion from the program
9 today. Pl.’s Suppl. Br. at 7, ECF No. 74. The Defendants, on the other hand, assert that “it remains
10 rational to believe that inclusion of Puerto Rico (and Guam) residents in the SSI program could
11 result in economically disruptive effects. This case thus provides no opportunity to consider
12 whether materially changed circumstances could be relevant to an equal protection analysis.” Defs.’
13 Resp. to Pl.’s Suppl. Br. at 5, ECF No. 75. The Defendants further argue that “the Ninth Circuit
14 has made clear that ‘[t]he Supreme Court has been ambivalent on whether changed circumstances
15 can transform a once-rational statute into an irrational law.’” *Id.* (quoting *Burlington N. R.R. Co.*
16 *v. Dep’t of Pub. Serv. Regulation*, 763 F.2d 1106, 1111 (9th Cir. 1985)).

17 Economic statutes are accorded deference under rational basis review. Nevertheless, in
18 *Burlington*,⁶ the Ninth Circuit cited to four cases where the Supreme Court acknowledged that it

20 ⁶ In *Burlington*, a railroad company challenged a Montana statute that required the
21 company to maintain and staff certain freight offices in the state, asserting that said statute was
22 unconstitutional under the due process clause, the equal protection clause and the commerce clause.
23 763 F.2d at 1108-09. The railroad company claimed that station agents were no longer needed in
24 certain towns because “many of the duties historically performed by station agents [were] currently
25 performed in centralized, computerized service centers,” thus resulting in “redundant and
26 economically wasteful” operations. *Id.* at 1109. Applying a rational basis test, the Ninth Circuit
27 found that the railroad company “presented no evidence to establish that the Montana legislature,
28 in 1969, acted irrationally when it fixed a statutorily-defined population criteria for minimum
rail-station service.” *Id.* at 1111. The court further stated that even if it were to “consider the
rationality of the Montana requirement as of 1985 instead of 1969,” the railroad company “failed
to meet its burden” because it had “not presented evidence sufficient to persuade the court that
changes in rail service in the last 16 years have so drastically altered the need for stations that the
bases for the 1969 enactment no longer exist.” *Id.*

1 would be proper for a court to consider more recent information to determine whether significant
2 changes since a statute’s enactment might impact a legislative finding supporting such a statute.

3 *Id.* The Ninth Circuit cited to the following cases:

4 *Leary v. United States*, 395 U.S. 6, 38 n.68 (1969) (a statute is subject to
5 constitutional attack if legislative facts upon which statute was based no longer
6 exist[;] *United States v. Carolene Products, Co.*, 304 U.S. 144, 153 (1938)
7 (constitutionality of a statute may be attacked on the basis that the facts upon which
8 it is premised have ceased to exist); *Nashville C. & St. L. Ry. v. Walters*, 294 U.S.
9 405, 415 (1935) (“[a] statute valid when enacted may become invalid by change in
10 the conditions to which it is applied”); *Chastleton Corp. v. Sinclair*, 264 U.S. 543,
11 547 (1924) (“[a] Court is not at liberty to shut its eyes to an obvious mistake, when
12 the validity of the law depends upon the truth of what is declared”).

13 *Id.* (parallel citations omitted).

14 Based on the Ninth Circuit’s discussion in *Burlington*, the court concurs with the Plaintiff’s
15 contention that the court’s constitutional review of the SSI program may take into account present
16 day circumstances. As noted by the United States Supreme Court 96 years ago in *Chastleton*, as
17 quoted above, no longer should “. . . [a c]ourt[, including this court, be] at liberty to shut its eyes
18 to an obvious mistake, when the validity of the law depends upon the truth of what is declared.”
19 264 U.S. at 547. First, the court examines the Defendants’ assertion that the Supreme Court’s
20 determination that potential economic disruption constitutes a rational basis justifying the exclusion
21 of Puerto Rico residents from SSI eligibility controls this court’s analysis. The Supreme Court
22 originally endorsed this rationale in *Gautier Torres*. 435 U.S. at 5, n.7. This footnote in *Gautier*
23 *Torres* cited to the 1976 Department of Health, Education and Welfare’s Report of the
24 Undersecretary’s Advisory Group on Puerto Rico, Guam and the Virgin Islands (the “1976
25 Report”)⁷ to support an economic theory for why Puerto Rico’s inclusion in the SSI program would
26 disrupt its economy. *Id.* However, as discussed by the First Circuit, “the 1976 Report expressly
27 rejected concerns about an influx of aid disrupting the economy as a justification for disparate
28 treatment, concluding that ‘the current fiscal treatment of Puerto Rico [and the Territories under the
Social Security Act] is unduly discriminatory and undesirably restricts the ability of these

⁷ A copy of the 1976 Report is appended as Exhibit 1 to Congresswoman Nydia M. Velazquez’s Amicus Curiae Brief in Support of Plaintiff’s Opposition to Defendants’ Motion to Dismiss, filed in *Pena Martinez v. Azar*, No. 18-CV-1206 (D. P.R.), ECF No. 43-1.

1 jurisdictions to meet their public assistance needs.” *Vaello-Madero II*, 956 F.3d at 23 (quoting
2 1976 Report at 6-7) (insertions in original). The First Circuit questioned the “dubious nature of this
3 once-accepted rationale,” and stated that “this now defunct argument and citation to . . . the 1976
4 Report” permitted the court “to consider present-day circumstances surrounding Puerto Rico’s
5 exclusion from SSI and whether the current classification is unrelated to a legitimate government
6 interest.” *Id.*

7 The court has had an opportunity to also review the 1976 Report that was cited in the
8 *Gautier Torres* decision. Specifically with regard to Guam and the Virgin Islands, that report
9 recommended that the Department of Health, Education and Welfare “should initiate steps to plan
10 for the extension of the SSI program to Guam and the Virgin Islands.” 1976 Report, Tab C at 17.
11 The Report concluded that [the exclusion[] from SSI . . . benefits [is] viewed as unfairly denying
12 a higher standard of living to low-income elderly citizens in the Territories.” *Id.* at 16.

13 Beside the fact that the 1976 Report does not support the Defendants’ economic theory of
14 excluding Guam residents from the SSI program so as not to disrupt the island’s economy, the
15 rationale for this third factor has also been questioned by Justice Marshall’s dissent in *Harris*, where
16 he stated:

17 This rationale has troubling overtones. It suggests that programs designed to help
18 the poor should be less fully applied in those areas where the need may be the
19 greatest, simply because otherwise the relative poverty of recipients compared to
20 other persons in the same geographic area will somehow be upset. Similarly,
21 reliance on the fear of disrupting the Puerto Rican economy implies that Congress
22 intended to preserve or even strengthen the comparative economic position of the
23 States vis-à-vis Puerto Rico. Under this theory, those geographic units of the
24 country which have the strongest economies presumably would get the most
25 financial aid from the Federal Government since those units would be the least
likely to be “disrupted.” Such an approach to a financial assistance program is not
so clearly rational as the Court suggests, and there is no citation by the Court to any
suggestion in the legislative history that Congress had these economic concerns in
mind when it passed the portion of the AFDC program presently being challenged.
Nor does appellant refer to any evidence in the record supporting the notion that
such a speculative fear of economic disruption is warranted. In my view it is by no
means clear that the discrimination at issue here could survive scrutiny under even
a deferential equal protection standard.

26 *Harris*, 446 U.S. at 655-56 (Marshall, J., dissenting) (footnote omitted).

27 As discussed above, both Justice Marshall and the First Circuit have cast doubt on the
28 Defendants’ claim that Congress could have rationally concluded that extending SSI benefits to

1 Guam could disrupt its economy back in 1972. Even if the court were to accept this contention
2 (which the court does not), the court finds that this third factor is no longer valid because of
3 changed circumstances that have occurred over the last 40 years. Clearly, there is no “. . . evidence
4 in the record supporting the notion that such a speculative fear of economic disruption [on Guam]
5 is warranted.” *Id.*

6 As noted by the Plaintiff, since the 1970s Congress has extended various comparable federal
7 benefit programs to Guam without disrupting the island’s economy. Guam received approximately
8 \$176 million⁸ of annual federal SNAP and Medicaid benefits, and there is no evidence to suggest
9 that the influx of these federal funds have negatively impacted Guam’s economy. To the contrary,
10 these public assistance dollars from the federal government have benefitted Guam’s economy.

11 The payment of SSI benefits to citizens in the CNMI further supports the finding that it is
12 irrational to conclude that Guam’s economy would be disrupted if it were included in the SSI
13 program. The SSI benefits afforded to citizens in the CNMI has not disrupted its economy in the
14 past three decades, and this would tend to indicate that the same would hold true for Guam.
15 Although the Defendants maintain that Congress may have rationally concluded that SSI benefits
16 would have disrupted Guam’s economy in the past, the CNMI’s experience of decades of SSI
17 payments and Guam’s own receipt of federal public assistance funds have shown that an influx of
18 federal funds through the SSI program would not disrupt Guam’s economy at this time. Any
19 conclusions that Congress may have had cannot be rationally supported by the facts known today.
20 Accordingly, the court finds that the third factor proffered by the Defendants does not provide a
21 rational basis for the exclusion of U.S. citizens residing on Guam from the SSI program.

22
23 ⁸ For Fiscal Year (“FY”) 2016, Guam issued \$106 million in SNAP funds as reported in
24 FNS *Supplemental Nutrition Assistance Program State Activity Report Fiscal Year 2016* at 5,
25 (U.S.D.A. Sept. 2017) , a copy of which is available on the U.S. Department of Agriculture’s
26 website <https://fns-prod.azureedge.net/sites/default/files/snap/FY16-State-Activity-Report.pdf> (last
27 visited June 19, 2020). Additionally, in FY 2016, federal Medicaid spending in Guam was \$45.8
28 million, and federal CHIP (Children’s Health Insurance Program) funding totaled \$24.1 million.
See MACPAC Fact Sheet, *Medicaid and CHIP in Guam* at 4 (Mar. 2019) (fact sheet is available
at <https://www.macpac.gov/wp-content/uploads/2016/09/Medicaid-and-CHIP-in-Guam.pdf> (last
visited June 19, 2020)).

1 Finally, in justifying why the CNMI was included in the SSI program, the Defendants assert
2 “[i]t is conceivable . . . that Congress distinguished between U.S. Territories that
3 existed at the time of the [SSI] program’s enactment and a United Nations Trust
4 Territory, because the United States was not a sovereign over the Trust Territory,
only a trustee. . . . [E]xtending SSI benefits eligibility to CNMI residents rationally
relates to the government’s interest in complying with its treaty obligations.

5 Defs.’ Reply at 15, ECF No. 57.

6 The United States cites to the case of *Besinga v. United States*, 14 F.3d 1356 (9th Cir. 1994),
7 to support its claim that historical distinctions justify the difference in treatment between Guam and
8 the CNMI. There, the court was faced with a constitutional challenge to a federal statute that treated
9 two veteran groups from the Philippines differently. In *Besinga*, World War II Filipino veterans
10 who served with the Philippine Commonwealth Army were ineligible for all U.S. veterans benefits
11 afforded to those who served in the Old Philippine Scouts group. *Id.* at 1358-39. Among various
12 factors discussed in upholding the statute under the rational basis test, the Ninth Circuit noted that
13 the Commonwealth Army was formed by an act of the Philippine legislature while the Old
14 Philippine Scouts were organized pursuant to an Act of Congress, and said forces were incorporated
15 into the U.S. Army and were paid directly by the War Department. *Id.* at 1362. “Given this history,
16 it is conceivable that Congress viewed the Old Philippine Scouts as more integrally a part of the
17 United States armed forces.” *Id.*

18 The United States acquired Guam as a territory in 1898 and its residents have enjoyed U.S.
19 citizenship since 1950.⁹ The Northern Mariana Islands (“NMI”), on the other hand, were part of
20 the Trust Territory of the Pacific Islands after World War II and were administered by the United
21 States pursuant to a Trusteeship Agreement with the United Nations Security Council. *Mtoched*
22 *v. Lynch*, 786 F.3d 1210, 1213 (9th Cir. 2015). The NMI

23 elected to enter into a closer and more lasting relationship with the United States.
24 Years of negotiation culminated in 1975 with the signing of the Covenant to
25 Establish a Commonwealth of the Northern Mariana Islands in Political Union with
the United States (hereinafter “Covenant”)[.]. After a period of transition, in 1986
the trusteeship terminated, and CNMI was fully launched.

27 ⁹ The Organic Act of Guam conferred U.S. citizenship to all persons born or living on
28 Guam on or after April 11, 1899.

1 *Id.* (citation omitted).

2 “Although described as a commonwealth, the relationship is territorial in nature[.]” S. Rep.
3 No. 94-433,¹⁰ at 15 (1975). When the Covenant was signed it envisioned that “[t]he Marianas
4 commonwealth relationship will be significantly closer to the Guam territorial relationship than to
5 the Puerto Rican commonwealth arrangement.” *Id.* See also *Saipan Stevedore Co. Inc. v. Dir.,*
6 *Office of Workers’ Comp. Programs*, 133 F.3d 717, 721 (9th Cir. 1998) (“The Covenant codifies
7 the [CNMI]’s determination that its legal rights and obligations more closely parallel those of the
8 residents of Guam, rather than any other United States territory.”). Despite the historical distinction
9 in the islands’ political relationships with the United States, “[g]eographically, culturally and
10 ethnically, Guam and the [NMI] are one entity, . . . [and t]hroughout the 20th century political
11 separation . . . , the Chamorro people of these islands retained their common culture and language,
12 and their close kin ties.” S. Rep. No. 94-433,¹¹ at 17 (1975).

13 Although Guam has been more integrally a part of the United States than the CNMI,¹²
14 Congress extended SSI benefits to the CNMI when the Covenant was negotiated. Unfortunately,
15 Guam does not have the similar ability to negotiate with the United States government with regard
16 to the applicability or inapplicability of federal laws to the island. Citizens living on Guam cannot
17 vote in national elections and do not have voting representation in the final approval of legislation
18 by Congress. Similar to the observations of Chief Judge Gelpi, the court highlights that U.S.
19 citizens residing in Guam “are the very essence of a politically powerless group, with no
20 Presidential nor Congressional vote, and with only a non-voting [delegate] representing their
21

22 ¹⁰ This report, entitled “The Covenant to Establish a Commonwealth of the Northern
23 Mariana Islands,” was prepared by the Committee on Interior and Insular Affairs of the U.S. Senate
24 to accompany House Joint Resolution 549 and recommended approval of the Covenant.

25 ¹¹ This report, entitled “The Covenant to Establish a Commonwealth of the Northern
26 Mariana Islands,” was prepared by the Committee on Interior and Insular Affairs of the U.S. Senate
27 to accompany House Joint Resolution 549 and recommended approval of the Covenant.

28 ¹² As noted above, Guam became a territory in 1898 – approximately 50 years prior to the
United States’ trusteeship over the NMI and 88 years prior to CNMI’s establishment as a
commonwealth.

1 interests in Congress.” *Vaello Madero I*, 356 F. Supp. 3d at 214. United States citizens residing
2 in Guam are deprived of receiving SSI benefits based solely on the fact that they reside in a U.S.
3 territory.

4 Aside from where they live, the otherwise SSI-qualifying residents of [Guam] and
5 of the Northern Mariana Islands have the legally-relevant characteristics in common,
6 *i.e.*, they are (1) low-income and low-resourced, (2) elderly, disabled, or blind, and
7 (3) generally exempted from paying federal income tax. These shared traits
8 undermine [Defendants’] already weakened arguments.

9 *Vaello-Madero II*, 956 F.3d at 30.

10 There is no relevant difference between Guam and the CNMI that would rationally justify
11 the denial of SSI benefits to otherwise eligible U.S. citizens residing in Guam, benefits enjoyed by
12 their Chamorro neighbors just 60 miles north of and a 40-minute flight from Guam. Accordingly,
13 the court holds that the equal protection guarantees of the Fifth Amendment forbid the arbitrary
14 denial of SSI benefits to residents of Guam.

15 **IV. CONCLUSION**

16 Based on the above discussion, the court hereby DENIES the Defendants’ Motion to
17 Dismiss in its entirety, DENIES the Defendants’ Cross Motion for Summary Judgment, and
18 GRANTS the Plaintiff’s Motion for Summary Judgment. Having considered all the grounds
19 proffered by the United States, the court finds that there is no rational basis for excluding Plaintiff
20 from receiving SSI benefits based solely on her residency in Guam. The court finds that the
21 discriminatory provisions of the SSI statute and any related implementing regulations that
22 discriminate on the basis of status as a resident of Guam violate the Constitution and Organic Act’s
23 guarantees of Equal Protection. The court hereby enjoins Defendants from enforcing against the
24 Plaintiff such discriminatory provisions of the SSI statute and any relevant implementing
25 regulations.

26 The Clerk’s Office shall enter judgment accordingly.

27 IT IS SO ORDERED.



28 /s/ Frances M. Tydingco-Gatewood
Chief Judge
Dated: Jun 19, 2020