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IN THE DISTRICT COURT OF GUAM
TERRITORY OF GUAM

KATRINA SCHALLER, by and through her legal guardians KIMBERLY A. FEGURGUR and JOHN A. FEGURGUR, Plaintiff, vs. SOCIAL SECURITY ADMINISTRATION *et al.*, Defendants.	CASE NO. 1:18-CV-00044 **DEFENDANTS' COMBINED MEMORANDUM IN SUPPORT OF THEIR CROSS-MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

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INTRODUCTION

When Congress exercises its discretion to establish eligibility requirements for receipt of government benefits, courts afford that decision a strong presumption of constitutionality. In accordance with this principle, the Supreme Court has expressly held that Congress may place restrictions on the eligibility of persons residing in United States Territories to receive payments under the Supplemental Security Income ("SSI") program administered by the Social Security Administration ("SSA"), and that such restrictions are consistent with equal protection principles. Despite this clear, binding precedent, Plaintiff claims that restrictions on the eligibility of persons residing in Guam, a U.S. Territory, is inconsistent with equal protection principles. That claim fails as a matter of law.

Guam is a U.S. Territory subject to the plenary authority of Congress under the Territory Clause. Binding Supreme Court precedent makes clear that Congress can pass economic and social welfare legislation affecting U.S. Territories so long as it has a rational basis for its actions. *See Harris v. Rosario*, 446 U.S. 651 (1980) (per curiam); *Califano v. Torres*, 435 U.S. 1 (1978) (per curiam). Here, the legislation at issue clearly satisfies rational-basis review, as residents of Guam do not pay federal income tax, which funds the SSI program; because the increased cost to the federal treasury of extending SSI benefits to residents of Guam would be very substantial, especially in light of the fact that Guam residents are exempted from paying federal income tax; and because Congress could have reasonably concluded that extending SSI benefits eligibility to Guam residents could result in appreciable inflationary pressure. And to the extent that Plaintiff's claim is premised on the contention that eligibility for SSI benefits may differ with respect to residents of different U.S. Territories, that claim fails under Ninth Circuit precedent. *Besinga v. United States*, 14 F.3d 1356 (9th Cir. 1994). The Equal Protection Clause

does not obligate Congress to treat Guam as if it were a State. Because the challenged statute withstands constitutional review, the Court should enter summary judgment for Defendants.

STATUTORY BACKGROUND

The Social Security Administration ("SSA") administers two primary programs that provide benefits to aged persons, blind persons, and persons with disabilities. Under Title II of the Social Security Act, 42 U.S.C. § 401 *et seq*., SSA pays benefits to insured workers and their families at retirement or death, or in the event of disability. Under the Supplemental Security Income ("SSI") program, established by Title XVI of the Social Security Act, 42 U.S.C. § 1381 *et seq*., SSA provides benefits to aged, blind, or disabled persons who meet certain income and resource requirements. No individual is eligible for SSI benefits during any month in which he or she "is outside the United States." *Id*. § 1382(f)(1). For purposes of the SSI program, "the term 'United States,' when used in a geographical sense," is defined as "the 50 States and the District of Columbia." *Id*. § 1382c(e). Additionally, by passing a Joint Resolution in 1976, Congress made SSI program benefits available to residents of the Northern Mariana Islands. *See* Pub. L. No. 94-241, § 502(a)(1), 90 Stat. 263, 268 (1976) (codified at 48 U.S.C. § 1801 note, and implemented by 20 C.F.R. § 416.120(c)(10)).

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff is a resident of Guam. Compl. ¶ 9. She alleges that she is permanently disabled by myotonic dystrophy, and that her identical twin sister, who resides in Pennsylvania and is disabled by the same condition, receives disability-related SSI benefits. *See id*. ¶¶ 5-6. Plaintiff asserts upon information and belief that if she were eligible to receive SSI benefits, she would qualify for such benefits. *Id*. ¶ 9. Plaintiff initiated this action on December 6, 2018 by filing a complaint seeking a declaratory judgment that the relevant provisions of the SSI statute that limit benefit eligibility for Guam residents violate the equal protection component of the Fifth

Amendment and the Guam Organic Act; the Complaint also seeks injunctive relief barring enforcement of these provisions. *Id*. ¶¶ 33-42 (Count I), 43-49 (Count II), Prayer for Relief.

ARGUMENT

I. Limiting Eligibility for SSI Benefits to Residents of the Fifty States and the District of Columbia Satisfies Rational-Basis Review.

Plaintiff's equal protection claims have no merit because Supreme Court precedent makes clear that, consistent with equal protection principles, Congress may limit eligibility for SSI benefits to residents of the fifty States and the District of Columbia. *See Harris*, 446 U.S. at 651-52; *Torres*, 435 U.S. 1. Applying *Harris* and *Torres*, the Ninth Circuit has rejected arguments akin to those raised by Plaintiff here. *Besinga*, 14 F.3d 1356. The Court should therefore grant summary judgment to Defendants.

A. The Supreme Court Has Held That Congress May Limit Eligibility for SSI Benefits to Residents of the Fifty States and the District of Columbia.

Rational-basis review "is a paradigm of judicial restraint." *FCC v. Beach Commc'ns, Inc*., 508 U.S. 307, 314 (1993). Under the rational-basis standard, a statutory classification "bear[s] a strong presumption of validity," *id*., and "cannot run afoul of the Equal Protection Clause if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose." *Heller v. Doe*, 509 U.S. 312, 320 (1993). It is axiomatic that "equal protection is not a license for courts to judge the wisdom, fairness, or logic of legislative choices," *Beach Commc'ns*, 508 U.S. at 313, and rational basis review does not "demand . . . that a legislature or governing decisionmaker actually articulate at any time the purpose or rationale supporting its classification." *Nordlinger v. Hahn*, 505 U.S. 1, 15 (1992). "Instead, a classification must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." *Heller*, 509 U.S. at 320 (citation and internal punctuation omitted). Thus, "a legislative choice is not subject

to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data." *Beach Commc'ns*, 508 U.S. at 315. Courts "are compelled under rational-basis review to accept a legislature's generalizations even when there is an imperfect fit between means and ends." *Dent v. Sessions*, 900 F.3d 1075, 1082 (9th Cir. 2018) (quoting *Heller*, 509 U.S. at 321), *cert denied*, 139 S. Ct. 1472 (2019). "Further, because the classification is presumed constitutional, the burden is on the party attacking the legislative arrangement to negative every conceivable basis which might support it." *Allied Concrete & Supply Co. v. Baker*, 904 F.3d 1053, 1060-61 (9th Cir. 2018) (quoting *Armour v. City of Indianapolis*, 566 U.S. 673, 681 (2012)).

Under binding precedent, Plaintiff cannot satisfy this heavy burden. Like Plaintiff here, the plaintiffs in *Torres* became ineligible for SSI benefits when they moved to a U.S. Territory—here, Guam; in *Torres*, Puerto Rico. 435 U.S. at 1, 2-3. The *Torres* plaintiffs alleged that limiting SSI benefit eligibility to, at that time, residents of the fifty U.S. States and the District of Columbia, and concomitantly denying those benefits to individuals who had received SSI benefits when living in one of the fifty States and who had moved to Puerto Rico, violated equal protection and the constitutional right to travel. *See Gautier Torres v. Mathews*, 426 F. Supp. 1106, 1108 (D.P.R. 1977) (explaining that plaintiff Torres "contends that the exclusion from SSI benefits of a citizen of the United States for the sole reason of his change in residence to Puerto Rico, is repugnant to the Fifth Amendment . . . in that it establishes an irrational and arbitrary classification violative of the equal protection component of the due process clause" and "[a]s alternative grounds," that the statute infringed the right to travel). A three-judge court initially determined that this eligibility limitation was unconstitutional, but the Supreme Court reversed. 435 U.S. at 3-4. The Supreme Court specifically addressed and resolved the equal protection

claim raised by the *Torres* plaintiffs, which was the primary claim raised before the three-judge court:

> The complaint had also relied on the equal protection component of the Due Process Clause of the Fifth Amendment in attacking the exclusion of Puerto Rico from the SSI program. Acceptance of that claim would have meant that all otherwise qualified persons in Puerto Rico are entitled to SSI benefits, not just those who received such benefits before moving to Puerto Rico. But the District Court 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.

435 U.S. at 3 n.4. As the Court explained, as long as the provision of the Social Security Act at issue was rational it should be deemed constitutional. *Id*. at 5. And *Torres* held that several rational bases did support the SSI exclusion for residents of Puerto Rico:

> At least three reasons have been advanced to explain the exclusion of persons in Puerto Rico from the SSI program. First, because of the unique tax status of Puerto Rico, its residents do not contribute to the public treasury. Second, the cost of including Puerto Rico would be extremely great—an estimated $300 million per year. Third, inclusion in the SSI program might seriously disrupt the Puerto Rican economy.

Id. at 5 n.7 (citation omitted).

Two years after deciding *Torres*, the Supreme Court applied that case in holding that the Secretary of Health and Human Services had acted consistently with principles of equal protection by providing levels of financial assistance to families with dependent children in Puerto Rico that were lower than assistance provided to families with dependent children in the fifty U.S. States. *Harris*, 446 U.S. at 651-52. *Harris* reiterated the equal-protection holding from *Torres*:

> Congress, which is empowered under the Territory Clause of the Constitution to "make all needful Rules and Regulations respecting the Territory . . . belonging to the United States," may treat Puerto Rico differently from States so long as there is a rational basis for its actions. In [*Torres*] we 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. These same considerations are forwarded here, and we see no reason to

> depart from our conclusion in *Torres* that they suffice to form a rational basis for the challenged statutory classification.

Id. (footnote, internal citations, and punctuation omitted).

The Ninth Circuit has confirmed that *Harris*'s holding is not limited to Puerto Rico, but also applies to equal protection challenges to economic legislation pertaining to other U.S. Territories. *See Besinga*, 14 F.3d at 1360 (stating that in *Harris*, "[t]he Court concluded that Congress 'may treat [Territories] differently from States so long as there is a rational basis'") (quoting *Harris*, 446 U.S. at 651-52). The plaintiff in *Besinga* had contended that the exclusion of veterans from the Philippines (which was a United States Territory at the relevant time) from certain veterans benefits was inconsistent with equal protection principles. 14 F.3d at 1358-59. The Ninth Circuit held that *Torres* and *Harris* "compel[] the conclusion that the broad powers of Congress under the Territory Clause are inconsistent with the application of heightened judicial scrutiny to economic legislation pertaining to the territories," and applied rational basis review to the equal protection claim. *Id*. at 1360 (footnote omitted). The court also found that the three determinative factors used in *Torres* and *Harris* to uphold the benefits programs at issue in those cases were similarly determinative with respect to the benefits program at issue in *Besinga*, and concluded on that basis that the program satisfied rational basis review. *Id*. at 1360-63.

Likewise, here, the tax status of Guam, the high cost of treating Guam as a State for purposes of determining the allocation of federal funds under SSI, and the potential for an extension of SSI benefits to Guam to result in inflationary effects constitute rational bases for Congress's actions. *See Harris*, 446 U.S. at 652; *Torres*, 435 U.S. at 5 n.7. These factors provide, at a minimum, a "reasonably conceivable state of facts that could provide a rational basis" for the statutory provision at issue here. *Beach Commc'ns*, 508 U.S. at 313.

Though Plaintiff challenges the justifications presented in *Torres* for limiting SSI benefits to residents of the fifty States and the District of Columbia, Mem. in Supp. of Pl. Mot. for Summ. J. at 21-24, ECF No. 40 ("Pl. MSJ"), her arguments lack persuasive force. Initially, Plaintiff incorrectly contends that the Court must determine that all three factors are present here in order to conclude that the statute satisfies rational-basis review. *Id*. at 21-22. The Ninth Circuit in *Besinga* plainly stated that "[n]othing in *Torres* or [*Harris*] suggests that a challenged statute must satisfy all, or a majority, of the three *Torres* factors." 14 F.3d at 1363. Plaintiff's sole support for her contrary contention is a district court opinion from another Circuit, which cannot overcome Circuit precedent.[1]

First, the "unique tax status" of Guam justifies the limitation at issue here. *Torres*, 435 U.S. at 5 n.7. Like the Puerto Rico residents at issue in *Torres*, residents of Guam—unlike residents of the fifty States and the District of Columbia—generally do not pay federal income tax. "[T]he [Guam Territorial Income Tax] acts as a U.S. federal income tax for those living in Guam, who would otherwise not have to pay U.S. federal income tax." *Bank of Guam v. United States*, 578 F.3d 1318, 1321 (Fed. Cir. 2009). "[T]he GTIT is collected and disbursed by Guam, instead of by the U.S. Treasury." *Id*. (citation omitted); *see also id*. ("In effect, the GTIT 'mirrors' the [Internal Revenue Code] by substituting certain terms in the IRC for terms pertinent

[1] In any event, that opinion lacks persuasive force. From the premise that *Harris* happened to use the word "and" when listing these three factors, and stated that these three factors "suffice[d] to form a rational basis," it does not follow that all three factors were *necessary* under rational-basis review. *Harris*, 446 U.S. at 652. Not only does this confuse a sufficient condition with a necessary one, it also ignores the fact that an "opinion is not a comprehensive code; it is just an explanation for the Court's disposition. Judicial opinions must not be confused with statutes, and general expressions must be read in light of the subject under consideration." *United States v. Skoien*, 614 F.3d 638, 640 (7th Cir. 2010) (en banc). Furthermore, by its very nature, rational-basis review does not require multiple justifications; rather, a classification "must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." *Beach Commc'ns*, 508 U.S. at 313.

to Guam, such as replacing 'United States' with 'Guam.'"). SSI benefits are paid from the general revenues that are funded by federal income taxes, and thus, Guam residents are exempted from paying the taxes that fund the SSI program. As such, the unique tax status of Guam justifies limiting SSI benefits to residents of the fifty States and the District of Columbia.

Plaintiff appears to concede that Guam's tax status differs from that of residents of the fifty States and the District of Columbia. Her argument instead appears to be that under this rationale, the statute is underinclusive because residents of the Commonwealth of the Northern Mariana Islands ("CNMI") are eligible for SSI benefits, and CNMI residents generally do not pay federal income taxes. "But this type of reasoning runs contrary to the Supreme Court's clear precedent upholding classifications that are 'to some extent both underinclusive and overinclusive' under rational-basis review." *Gallinger v. Becerra*, 898 F.3d 1012, 1018 (9th Cir. 2018) (quoting *Vance v. Bradley*, 440 U.S. 93, 108 (1979)). Particularly in light of the broad deference afforded to Congress when it regulates economic activity under its Territory Clause power, the fact that its classification may be somewhat underinclusive does not mean that it fails to pass muster under rational-basis review.

Plaintiff's contrary position ignores the *sui generis* nature of the relationship between the United States and each Territory, as well as Congress's well-established history of managing its relationship with each Territory independently. Plaintiff cites no authority suggesting that equal protection principles constrain Congress to extend federal benefits legislation to U.S. Territories uniformly, and established case law suggests otherwise. Thus, for example, the D.C. Circuit in *Corporation of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Hodel*, 830 F.2d 374 (D.C. Cir. 1987), affirmed dismissal of an equal protection claim that alone among residents of U.S. Territories, American Samoa residents lacked access to trial in or a direct appeal to an Article I or III court, noting "American Samoa's relatively small size, its

geographical distance from any court of appeals, its desire for autonomy in local affairs, and the fact that it is the only territory without an organic act." *Id*. at 386 (footnote and internal punctuation omitted). The court rejected an offer of proof that "there [were] other unorganized territories, smaller and more remote from the United States, that do have access to a statutory or Article III court," explaining that even if those facts were accepted, "we would still be constrained to uphold the judicial scheme applicable to Samoa as being rationally designed to further a legitimate congressional policy." *Id*. (footnote omitted); *see also, e.g.*, *Tuana v. United States*, 788 F.3d 300 (D.C. Cir. 2015) (holding that the Constitution does not require that American Samoans be granted citizenship); 48 U.S.C. § 734 (ensuring that Puerto Rico, but not other U.S. Territories, is treated like a State for most statutory purposes). And as explained below, *see infra* I.2, multiple additional rational bases exist on which Congress could have conceivably distinguished between the unique situation presented by the CNMI and other Territories such as Guam.

More fundamentally, under rational-basis review, "a statute is not invalid under the Constitution because it might have gone farther than it did." *Katzenbach v. Morgan*, 384 U.S. 641, 657 (1966) (citations omitted). Instead, "reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind." *Williamson v. Lee Optical*, 348 U.S. 483, 489 (1955). Indeed, it was for this reason that the Northern District of Illinois held that in enacting the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"), "the fact that Congress drew a distinction between United States citizens/former state residents now residing in the [Northern Mariana Islands] versus United States citizens/former state residents who now reside in other territories does not mean that it was required to extend absentee voting across the board to all territories." *Segovia v. Bd. of Election Comm'rs for Chicago*, 201 F. Supp. 3d 924, 945 (N.D. Ill. 2016), *vacated on other grounds sub*

nom. Segovia v. United States, 880 F.3d 384 (7th Cir. 2018);[2] *cf. Segovia*, 880 F.3d at 390-91 (rejecting equal protection challenge to state statute distinguishing between Northern Mariana Islands residents and residents of Puerto Rico, Guam, and Virgin Islands), *cert. denied*, 139 S. Ct. 320 (2018). In any event, Congress had extended SSI benefits to CNMI residents prior to *Torres*, *see* Pub. L. 94-241, § 502(a), 90 Stat. 263, 268 (1976), and that fact did not prevent the Supreme Court from concluding that the SSI program was consistent with equal protection principles.[3] Plaintiff misplaces her reliance on *Merrifield v. Lockyer*, 547 F.3d 978 (9th Cir. 2008), in arguing to the contrary; in that case, unlike here, the court specifically found indications in the legislative history that the state licensing scheme at issue "was designed to favor economically certain constituents at the expense of others," and thus "conclude[d] that mere economic protectionism for the sake of economic protectionism is irrational." *Id*. at 991 & n.15. No such findings are present here, and Plaintiff's argument cannot be squared with cases such as *Hodel*, *Tuana*, and *Segovia*.

Second, the cost of including Guam in SSI "would be extremely great," *Torres*, 435 U.S. at 5 n.7. As the Complaint itself notes, the Government Accountability Office ("GAO") issued a 1987 report regarding the potential effect of extending various social and economic welfare programs (including SSI) to several U.S. Territories, including Guam. *See* Compl. ¶ 22 (citing

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[2] The Seventh Circuit in *Segovia* affirmed the portion of the district court's decision rejecting the equal protection challenge to the state statute, but vacated the portion relating to UOCAVA "and remand[ed] the case with instructions to dismiss that portion for want of jurisdiction," specifically, for lack of standing. 880 F.3d at 387. That portion of the decision continues to constitute persuasive authority. *See DHX, Inc. v. Allianz AGF MAT, Ltd.*, 425 F.3d 1169, 1176 (9th Cir. 2005) (explaining that "at minimum, a vacated opinion still carries informational and perhaps even persuasive or precedential value") (citing authority).

[3] *See also* Jurisdictional Statement at 9 n.8, *Califano v. Torres*, 435 U.S. 1 (1978) (No. 77-88), (referencing congressional discussion regarding "the extension of the SSI program to the Northern Mariana Islands").

GAO/HRD-87-60, *Welfare and Taxes: Extending Benefits and Taxes to Puerto Rico, Virgin Islands, Guam, and American Samoa* (1987), https://www.gao.gov/assets/150/145625.pdf). That report estimated that if Guam residents were eligible for SSI benefits, annual federal spending would increase by $7.8 million. *Id*. at 44.[4] As the Supreme Court has explained, because "protecting the fiscal integrity of Government programs, and of the Government as a whole, is a legitimate concern of the State," judicial "review of distinctions that Congress draws in order to make allocations from a finite pool of resources must be deferential, for the discretion about how best to spend money to improve the general welfare is lodged in Congress rather than the courts." *Lyng v. Int'l Union, United Auto Workers of Am.*, 485 U.S. 360, 373 (1988) (citation and internal punctuation omitted).

To the extent that Plaintiff attempts to evade the fiscal implications of extending the SSI program to include Guam residents by suggesting that the Court could order existing funds appropriated for SSI to be distributed differently, *see* Compl. ¶ 42, that attempt fails. The only way to include additional beneficiaries without increasing costs would be to reduce the benefit

[4] The Court may take judicial notice of the fact that $7.8 million in 1987 dollars would be equivalent to over $17 million in 2019 dollars. *See* CPI Inflation Calculator, https://data.bls.gov/cgi-bin/cpicalc.pl. This figure does not take into account that since 1987, Guam's population has increased by approximately 80%. *See* The World Bank, Population Growth (Annual %), https://data.worldbank.org/indicator/SP.POP.GROW?end=2017&start=1987. However, the Guam Legislature estimated in 2013 that 24,000 residents of Guam could be eligible for SSI benefits if Congress were to extend the program to include Guam residents. Guam Res. 42-32, 32nd Sess. (2013), at 2, www.guamlegislature.com/COR_Res_32nd/Adopted/R042-32%20(LS).pdf. Assuming this estimate to be correct, and assuming a monthly benefit rate similar to that of residents of the Northern Mariana Islands—608.57 in December 2017, *see* SSA, Office of Retirement and Disability Policy, Congressional Statistics, December 2017: Northern Mariana Islands, https://www.ssa.gov/policy/docs/factsheets/cong_stats/2017/mp.html—annual spending if Guam residents were eligible for SSI benefits would be approximately $175 million ($608.57 x 12 months x 24,000 residents). By contrast, current annual federal spending on Guam programs for the aged, blind, and disabled is approximately $1.2 million. *See* 42 U.S.C. § 1108(c)(4); William R. Morton, Congressional Research Service, *Cash Assistance for the Aged, Blind, and Disabled in Puerto Rico*, at 8 tbl. 2 (Oct. 26, 2016), https://fas.org/sgp/crs/row/cash-aged-pr.pdf.

amount for individuals eligible under current law. But the Social Security Act specifically sets out the annual SSI benefit amount for eligible individuals, *see* 42 U.S.C. § 1382(b),[5] which is calculated after reductions based on certain types of income, *see id.* § 1382a(b)(2), and which is adjusted periodically for changes in the cost of living, *see id.* § 1382f. A redistribution of, rather than an increase in, the amounts currently appropriated for SSI benefits would conflict with these statutory provisions.

Nor would the relief sought by Plaintiff be limited to rewriting these Social Security Act provisions. Plaintiff's requested relief would require the Court to make adjustments to current appropriation statutes authorizing SSA to administer benefit payments to individuals eligible under the Social Security Act, and not to other individuals who are not eligible. *See id*. § 1381 (authorizing appropriations sufficient to implement Title XVI of the Act); *see also* Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019, Pub. L. No. 115-245 § 4, 132 Stat. 2981, 3114 (2018). Plaintiff's proposed relief therefore implicates serious separation-of-powers concerns. *See Office of Pers. Mgmt. v. Richmond*, 496 U.S. 414, 425 (1990) ("Any exercise of a power granted by the Constitution to one of the other branches of Government is limited by a valid reservation of congressional control over funds in the Treasury."); *id*. at 426 ("Courts of equity can no more disregard statutory and constitutional requirements and provisions than can courts of law.") (citation omitted). As the Ninth Circuit concluded in interpreting *Richmond*, a court cannot "grant[ ] a remedy that draws funds from the Treasury in a manner that is not authorized by Congress." *Flick v. Liberty Mut. Fire Ins. Co*., 205 F.3d 386, 391 (9th Cir. 2000).

[5] Benefits amounts for certain other individuals are set out elsewhere in the Act. *See, e.g.*, 42 U.S.C. §§ 1382(e), 1382h(a)(1).

Additionally, in light of *Torres*'s express holding that conserving the public fisc was a rational justification for limiting eligibility of SSI benefits to residents of the fifty States and the District of Columbia, Plaintiff misplaces her reliance on more generalized statements in other opinions, none of which involve Congress's Territory Clause authority. Pl. MSJ at 23. In any event, those opinions are inapposite. *Plyler v. Doe*, 457 U.S. 202 (1982), explicitly addressed the unique context of public education as opposed to other benefits, and "[i]n subsequent cases, . . . the Supreme Court limited *Plyler* to its facts." *Calloway v. Dist. of Columbia*, 216 F.3d 1, 7 (D.C. Cir. 2000) (citing authority). Moreover, *Plyler* involved the application of intermediate scrutiny, not rational-basis review. *See Plyler*, 457 U.S. at 216-17, 218 n.16. The legislative history underlying the food-stamp program at issue in *U.S. Department of Agriculture v. Moreno*, 413 U.S. 528 (1973), clearly demonstrated a "bare congressional desire to harm a politically unpopular group"—namely, "so[-]called 'hippies' and 'hippie communes.'" *Id*. at 534. Furthermore, Plaintiff fails to inform the Court that her citation is taken from a single-Justice concurrence in *Moreno*, not the opinion of the Court. *See id.* at 543 (Douglas, J., concurring). Similarly, *Diaz v. Brewer*, 656 F.3d 1008 (9th Cir. 2011), "found that the challenged law had no plausible rational basis, leaving animus as the only explanation for the enactment." *Puente Arizona v. Arpaio*, No. CV-14-01356-PHX-DGC, 2016 WL 6873294, at *21 (D. Ariz. Nov. 22, 2016). That is clearly not the situation here, and as explained below, *see infra* part II, to the extent that Plaintiff might ask the Court to infer animus based on a failure to extend benefits to Guam, such a request barred by precedent. *See Besinga*, 14 F.3d at 1360. Finally, though Plaintiff quotes from *Bowen v. Gilliard*, 483 U.S. 587 (1987), she fails to notify the Court that her quotation is from a dissenting opinion. *See id*. at 628-29 (Brennan and Marshall, JJ., dissenting).

Third, Congress could have rationally concluded that extending SSI benefits eligibility to Guam residents could "disrupt [its] economy," *Torres*, 435 U.S. at 5 n.7, by leading to "appreciable inflationary pressure." *Besinga*, 14 F.3d at 1362. Plaintiff's observation that the eligibility of CNMI residents to receive SSI benefits does not appear to have led to inflationary effects, Pl. MSJ at 24, even if correct, misconceives the nature of rational-basis review. "[T]he inquiry is not whether the challenged action *actually* furthered a legitimate interest; it is enough that the governing body *could have rationally decided* that the action would further that interest." *Crawford v. Antonio B. Won Pat Int'l Airport Auth.*, 917 F.3d 1081, 1095 (9th Cir. 2019) (citation and internal punctuation omitted). There is thus no place in rational-basis review for examining "test case[s]," Pl. MSJ at 24, because "[a] legislative choice is not subject to courtroom factfinding," *Heller*, 509 U.S. at 320, and "equal protection is not a license for courts to judge the wisdom, fairness, or logic of legislative choices." *Beach Commc'ns.*, 508 U.S. at 313. Rather, a statute must be "upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification" and "[w]here there are plausible reasons for Congress' action, [the Court's] inquiry is at an end." *Id.* at 313-14 (citations and internal punctuation omitted).

In addition to these rational bases, the Supreme Court has recognized that statutory provisions that require the legislature to engage in the process of "line-drawing" are "unavoidable components of most economic or social legislation." *Id.* at 315-16. The legislature's judgment in deciding the most appropriate manner in which to allocate resources such as SSI benefits requires Congress to "draw the line somewhere." *Id.* at 316. "This necessity renders the precise coordinates of the resulting legislative judgment virtually unreviewable, since the legislature must be allowed leeway to approach a perceived problem incrementally." *Id.* Whether to increase economic benefits to the Territories under these

programs and whether to do so incrementally and on a case-by-case basis is the sort of line drawing that constitutes a "virtually unreviewable" exercise of legislative prerogative. *See id.*; *Armour*, 566 U.S. at 685 ("[E]ven if petitioners have found a superior system, the Constitution does not require the City to draw the perfect line nor even to draw a line superior to some other line it might have drawn. It requires only that the line actually drawn be a rational line."). And in light of the multiple rational bases justifying Congress's decision, Plaintiff misplaces her reliance on *Fowler Packing Company v. Lanier*, 844 F.3d 809 (9th Cir. 2016), in arguing to the contrary; that opinion concluded that a California statute including carve-outs to safe harbor legislation that would otherwise protect employers from minimum-wage liability failed to satisfy rational-basis review because the only reason the carve-outs were included was to procure the support of a labor union. *Id*. at 811-16. In other words, the California legislature evinced an utter lack of any rational basis for adding the carve-outs, beyond currying political favor. By contrast, the Supreme Court's decision in *Torres* makes clear that limiting eligibility to SSI benefits to persons residing in the fifty States and the District of Columbia was based in rationality rather than arbitrariness or invidious discrimination. There thus exists a "reasonably conceivable state of facts that could provide a rational basis" for Congress' decision to limit eligibility for SSI benefits. *Beach Commc'ns*, 508 U.S. at 313.

As explained by binding precedent, limiting SSI eligibility to residents of the fifty States and the District of Columbia withstands constitutional scrutiny. The Court should therefore enter summary judgment for Defendants.

B. The Ninth Circuit Has Specifically Rejected Equal Protection Arguments Akin to Those Advanced by Plaintiff Here.

Furthermore, in light of the Ninth Circuit's analysis in *Besinga*, Plaintiff fails in her attempt to distinguish the Supreme Court's holdings in *Torres* and *Harris* on the grounds that the

CNMI is allegedly similarly situated to Guam. The plaintiff in *Besinga* was a World War II veteran of the Commonwealth Army of the Philippines, and alleged that Congress's exclusion of such veterans from eligibility for certain veterans benefits was inconsistent with equal protection principles. 14 F.3d at 1358-59. The Ninth Circuit held that "[b]ecause the Philippines was a territory of the United States at the relevant time, this dispute implicates Congress's power to regulate territorial affairs under the Territory Clause," and that *Torres* and *Harris* "dictate[] rational basis review" of the equal-protection claim. *Id*. at 1360 (footnote omitted). The court also found that the three determinative factors used in *Torres* and *Harris* to uphold the benefits programs at issue in those cases were similarly determinative with respect to the veterans benefits program at issue in *Besinga*, and concluded on that basis that the program satisfied rational-basis review. *Id*. at 1360-63.

Similar to Plaintiff here, the plaintiff in *Besinga* argued that "the treatment accorded [Philippine] Commonwealth Army members differs not only from that of United States personnel but also from that accorded to other territorial forces, including the Old Philippine Scouts," another Filipino military grouping that has "always been considered a United States Army unit and [whose members] have always received full United States veterans benefits." *Id*. at 1360, 1358 n.6. According to the plaintiff, the eligibility of another territorial military grouping to receive full veterans benefits "only compound[ed] the legislation's utter irrationality." *Id*. at 1360. However, *Besinga* rejected this argument, and the Ninth Circuit's conclusions compel the rejection of Plaintiff's similar argument here. The court began by observing that it is "axiomatic in rational basis inquiry that 'a common characteristic shared by beneficiaries and nonbeneficiaries alike, is not sufficient to invalidate a statute when other characteristics peculiar to only one group rationally explain the statute's different treatment of the two groups.'" *Id*. at 1362 (quoting *Johnson v. Robison*, 415 U.S. 361, 378 (1974)).

"Moreover," the Ninth Circuit noted, "'in the area of social welfare a classification does not offend the Constitution simply because it is not made with mathematical nicety or because in practice it results in some inequality.'" *Id.* (quoting *Dandridge v. Williams*, 397 U.S. 471, 485, (1970)) (internal punctuation omitted).

Applying these principles, the Ninth Circuit concluded that while the Philippine Commonwealth Army and Old Philippine Scouts "arguably shared more characteristics than did Commonwealth Army and United States forces," nevertheless, "their distinct origins, histories, and relative sizes suggest rational bases for the different treatment of these groupings." *Id.* Specifically, the origins and histories of the two groups differed because the Old Philippine Scouts "were organized pursuant to an Act of Congress," "were incorporated into the United States Army as early as 1901," and "were from their inception under the command of United States officers and were paid directly by the War Department." *Id.* By contrast, the Philippine Commonwealth Army was established under the Philippines Constitution, and was not originally under the command of United States forces. *Id.* at 1358. "Given this history," the Ninth Circuit explained, "it is conceivable that Congress viewed the Old Philippine Scouts as more integrally a part of the United States armed forces." *Id.* at 1362 (citations omitted). The relative size of the two groups—roughly 12,000 Old Philippine Scouts as opposed to 120,000 Commonwealth Army members—furnished an additional rational basis justifying the distinction. *Id.* The Ninth Circuit reasoned that the "disparity in the size of these respective classes implicates the second and third *Torres* factors" in that "the extension of benefits to the Old Philippine Scouts not only imposed a relatively small drain on the Treasury but also was unlikely to lead to any appreciable inflationary pressure on the Philippine economy." *Id.* Consequently, "Congress also may have determined that providing direct payments to Old Philippine Scouts veterans would prove more feasible from an administrative standpoint." *Id.*

The Ninth Circuit's analysis in *Besinga* controls here, and the factors present in that case are also dispositive here. The CNMI comprises "a chain of islands located in the Western Pacific Ocean, in the area known as Micronesia." *United States v. Lebron-Caceres*, Crim. No. 15-279 (PAD), 2016 WL 204447, at *14 n.28 (D.P.R. Jan. 15, 2016). "Spain controlled the islands from the sixteenth century until the Spanish-American [W]ar." *Saipan Stevedore Co. v. Dir., Office of Workers' Comp. Programs*, 133 F.3d 717, 720 (9th Cir. 1998). "In 1898, after the war ended, Spain ceded Guam to the United States and sold the rest of the Marianas chain to Germany." *Id*. "Germany's brief control ended with the commencement of World War I when Japan took possession of all islands except Guam." *Id*. "After World War I, Japan continued to govern most of what is now considered Micronesia, including the Northern Mariana Islands, under a mandate from the League of Nations." *Id*.

"Following World War II, the islands were administered by the United States as part of the Trust Territory of the Pacific Islands pursuant to a Trusteeship Agreement with the United Nations Security Council." *Mtoched v. Lynch*, 786 F.3d 1210, 1213 (9th Cir. 2015). "Under the Trusteeship system, the United States was placed in a temporary guardian relationship with the trust territories for the purpose of fostering the well-being and development of the territories into self-governing states." *Saipan*, 133 F.3d at 720 (footnote and internal punctuation omitted).

"In 1969, the United States began negotiations with the inhabitants of the Trust Territory directed to establishment of a framework for transition to constitutional self-government and future political relationships." *Lebron-Caceres*, 2016 WL 204447, at *14 n.28 (citation omitted). During these negotiations, the islands comprising the Trust Territory became divided into four governmental entities: the CNMI, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. *Id*. (citation omitted).

"In the early 1970s, the Northern Marianas ideologically diverged from the rest of Micronesia and sought a closer, more permanent relationship with the United States." *Saipan*, 133 F.3d at 720; *see also Mtoched*, 786 F.3d at 1213 ("Though other portions of the former trust territories decided to become independent nations, [the CNMI] elected to enter into a closer and more lasting relationship with the United States."). "Years of negotiation culminated in 1975 with the signing of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States (hereinafter 'Covenant'), Pub. L. 94-241, 90 Stat. 263 (1976)." *Mtoched*, 786 F.3d at 1213. "After a period of transition, in 1986 the trusteeship terminated, and CNMI was fully launched." *Id*.

Thus, when Congress created the SSI program in 1972, 86 Stat. 1465, 42 U.S.C. § 1381 *et seq*., the CNMI was still a U.N. Trust Territory. The CNMI's status as a former Trust Territory informed its relationship with the United States because at the time that SSI was enacted, "[t]he United States was not a sovereign over, but a trustee for the Trust Territory." *Wabol v. Villacrusis*, 958 F.2d 1450, 1458 (9th Cir. 1990). Consequently, the United States' "administration of the Trust Territory was based upon the President's treaty power conferred in Article II, Section 2, cl. 2 of the Constitution, rather than under the authority conferred upon Congress by the Territorial Clause." *Lebron-Caceres*, 2016 WL 204447, at *14 n.28 (citing *Juda v. United States*, 6 Cl. Ct. 441, 456 (1984)). "The political status of the Trust Territory of the Pacific Islands is unique in international law," *Juda*, 6 Cl. Ct. at 456, and unlike every other Territory, the CNMI entered the United States voluntarily, on terms negotiated and set forth in the Covenant. *See generally Wabol*, 958 F.2d at 1458-59; *Lebron-Caceres*, 2016 WL 204447, at *14 n.28 (explaining that "in approving the Covenant with the Northern Mariana Islands, the federal government was constrained by the Trusteeship Agreement") (citing *United States v. Covington*, 785 F.2d 1052, 1055 (9th Cir. 1985); *Wabol*, 958 F.2d at 1459). Among other things,

the Covenant specified provisions of United States statutory and constitutional law that would, and would not, apply to the CNMI. *See generally* Covenant art. V, Pub. L. No. 94-241, 90 Stat. 263. Among the statutes specifically listed as applying to the CNMI was "Title XVI of the Social Security Act," also known as the SSI program. *Id.* § 502(a)(1).

As in *Besinga*, here, the history of the CNMI provides one possible rationale justifying its distinct treatment for purposes of SSI. Importantly, under rational-basis review, a statute "must be upheld against equal protection challenge if there is any *reasonably conceivable* state of facts that *could* provide a rational basis for the classification." *Beach Commc'ns*, 508 U.S. at 313 (emphasis added). A legislature "need not actually articulate at any time the purpose or rationale supporting its classification." *Heller*, 509 U.S. 320 (citation and internal punctuation omitted). It is conceivable that, in fashioning a floor for eligibility for SSI benefits, Congress distinguished between United States Territories that existed at the time of its enactment and United Nations Trust Territories. The fact that a historical event subsequent to the statute's enactment—specifically, the Covenant between the United States and the CNMI becoming fully effectuated under which the CNMI transitioned from a U.N. Trust Territory to a U.S. Territorial Commonwealth—does not imperil the statutory scheme. As the Ninth Circuit emphasized in *Besinga*, "in the area of social welfare a classification does not offend the Constitution simply because it is not made with mathematical nicety or because in practice it results in some inequality." 14 F.3d at 1362 (citation and internal punctuation omitted). Accordingly, even if the Court were to find that a subsequent historical event rendered the statute an "imperfect fit between means and ends," *Heller*, 509 U.S. at 321, SSI nevertheless survives rational-basis review. *See also Segovia*, 201 F. Supp. 3d at 945; *cf. Segovia*, 880 F.3d at 390-91.

Additionally, the relative populations of Guam and the CNMI provides another rational basis supporting the distinction drawn by the statute. According to 2010 U.S. Census data, the

estimated total population of Guam is 159,358, while the estimated total population of the CNMI is 53,883.[6] As in *Besinga*, here, the "disparity in the size of these respective classes implicates the second and third *Torres* factors." 14 F.3d at 1362. Congress could have anticipated that extending SSI benefits to CNMI residents could be expected to "impose[] a relatively small drain on the Treasury" as compared with a similar extension to Guam residents. *Id*. Moreover, Congress could have rationally concluded that because of the relatively smaller population of the CNMI, an extension of SSI benefits to its residents would be "unlikely to lead to any appreciable inflationary pressure on the [CNMI's] economy." *Id.*

In sum, the relevant question is not, as Plaintiff suggests, whether the CNMI is a Territory. Implicit in that position is the suggestion that when Congress legislates with respect to the Territories, it must treat each Territory identically. As explained above, *see supra* I.A, this proposition flies in the face of Congress's longstanding understanding and practice to the contrary. *See, e.g.*, GAO, *U.S. Insular Areas: Application of the U.S. Constitution* 1 n.1 (1997) (GAO/OGC-98-5) ("Each of these areas [the Territories] has a unique historical and legal relationship with the United States."), https://www.gao.gov/archive/1998/og98005.pdf. Territories' distinct political and historical backgrounds render them inherently *sui generis,* requiring Congress to maintain flexibility in exercising its plenary power with respect to them.

The relevant question is instead whether, acting under its plenary power to provide rules for the Territories, Congress had a rational basis for treating the CNMI differently from other Territories such as Guam. It did: practically, historically, and politically, the United States' relationship with the CNMI remains unique. The CNMI's historical relationship with the United

[6] United States Census, 2010 Census Population and Housing Tables (CPH-Ts): Population, Housing Units, Land Area, and Density for U.S. Island Areas: 2010 (CPH-T-8), https://www.census.gov/ population/www/cen2010/cph-t/cph-t-8.html.

States has led courts to deem arguments that "[NMI's] political status is distinct from that of unincorporated territories such as Puerto Rico" as "credible" and having "merit," *Com. of N. Mariana Islands v. Atalig*, 723 F.2d 682, 691 n.28 (9th Cir. 1984). As such, the CNMI's unique status as a former U.N. Trust Territory—and its relatively smaller size—constitute rational bases for Congress's distinct treatment of the CNMI as compared to Territories such as Guam.

II. Plaintiff's Policy-Based Arguments Lack Merit.

Plaintiff's additional arguments have no merit. Plaintiff's brief discusses at length the fact that federal law treats Guam and the CNMI similarly for many purposes. Pl. MSJ at 10-13, 14. However, it does not follow that the Constitution mandates that Guam and the CNMI *must* be treated identically for *all* purposes under federal law. Congress' legislative authority to establish additional statutory protections beyond a constitutional floor is well established. *See, e.g.*, *In re Young*, 141 F.3d 854, 860 (8th Cir. 1998) ("Congress has often provided statutory protection of individual liberties that exceed the Supreme Court's interpretation of constitutional protection.") (citing examples). In any event, federal law can and does make distinctions between the two Territories. For example, under UOCAVA, former residents of a State now residing in the CNMI may vote in federal elections in that State, but former residents of a State now residing in Guam may not. *See Segovia*, 880 F.3d at 387; 52 U.S.C. § 20310 (defining "State" and "United States" for purposes of UOCAVA to include Guam and exclude the CNMI). Additionally, unlike Guam, "until 2008, the NMI retained nearly exclusive control over immigration to the Territory." *Segovia*, 201 F. Supp. 3d at 949. And the "coastwise laws"—a collection of statutes codified in 46 U.S.C. chapter 551 that govern trade and navigation in U.S. coastal waters and mandate that trade between U.S. ports be conducted by U.S.-built and U.S.-owned vessels—apply to Guam, but not to the CNMI (except for activities of the U.S. government and its contractors). *See* 46 U.S.C. §§ 55101-03, 55114.

Plaintiff also cites to statements from policymakers recommending the extension of SSI benefits to Guam residents for policy reasons, Pl. MSJ at 15-16, and also argues that the ineligibility of Guam residents for SSI benefits appears to be at odds with what she understands to be the legislative purpose. *Id*. at 16-19. However, rational-basis review does not turn on such considerations because "equal protection is not a license for courts to judge the wisdom, fairness, or logic of legislative choices." *Beach Commc'ns*, 508 U.S. at 313. Rather, "[w]here there are plausible reasons for Congress' action," the Court's "inquiry is at an end." *Id*. at 313-14 (citation and internal punctuation omitted). This is particularly true in the context of decisions involving government benefits, as judicial "review of distinctions that Congress draws in order to make allocations from a finite pool of resources must be deferential, for the discretion about how best to spend money to improve the general welfare is lodged in Congress rather than the courts." *Lyng*, 485 U.S. at 373.[7] Such deference is even further necessitated here, where unlike in *Lyng*, the Court is reviewing the legislative exercise of Territory Clause power. The exercise of this deference is plainly at odds with Plaintiff's interpretation of equal-protection principles, the logic of which would require SSI benefits to be extended to anyone who "would benefit greatly from the ability to receive [them]." Pl. MSJ at 19; *cf. id*. at 17.

Furthermore, Plaintiff incorrectly contends that alleging an inconsistency between a *perceived* legislative purpose and a statutory classification is relevant to rational-basis review. Pl. MSJ at 16-19. Legislatures "are not required to convince the courts of the correctness of their legislative judgments. Rather, those challenging the legislative judgment must convince the court that the legislative facts on which the classification is apparently based could not

[7] For this reason, it is irrelevant for purposes of rational-basis review that the classification affects both citizens and non-citizens in Guam alike, or that non-citizen veterans residing in Guam are eligible to receive SSI benefits. Pl. MSJ at 20-21.

reasonably be conceived to be true by the governmental decisionmaker." *Minnesota v. Clover Leaf Creamery Co*., 449 U.S. 456, 464 (1981) (citation and internal punctuation omitted). Plaintiff misplaces her reliance on the case law she musters in support of her contrary contention. *Weinberger v. Wisenfeld*, 420 U.S. 636 (1975), rejected a gender-based distinction granting survivor's benefits to widows but not to widowers because legislative history demonstrated that the classification was "in no way . . . premised upon any special disadvantages of women." *Id*. at 648. Similarly, *Jimenez v. Weinberger*, 417 U.S. 628 (1974), invalidated a classification for disability insurance benefit purposes of different classes of children born out of wedlock because legislative history clearly showed that the classification was fundamentally at odds with the statute's stated purpose. *See id*. at 634-36. As in *Jimenez*, the Court in *Moreno* examined legislative history, which revealed that the statutory classification at issue was intended to "prevent so-called 'hippies' and 'hippie communes' from participating in the food stamp program," thus manifesting that the sole justification for the classification was "a bare congressional desire to harm a politically unpopular group." 413 U.S. at 534. At most, this case law only stands for the proposition "that a court may, where appropriate, reject the government's proffered interest as the motivation behind challenged legislation, but that is only the case where legislative history or the statute itself makes clear that the government is running afoul of the legislation's true purpose." *Assoc. Builders & Contractors v. Cty. of Northampton*, __ F. Supp. 3d __, 2019 WL 1858636, at *13 (E.D. Pa. Apr. 25, 2019). By contrast, Plaintiff "do[es] not point to any circumstances that force the court to doubt the stated purpose of the" classification at issue, and mere "[c]onclusory allegations" "are hardly analogous to clear inconsistencies between statements about a statute's purpose contemporaneous to its passage and the government's position in subsequent litigation, like in *Jimenez*." *Id*.

Finally, Plaintiff seeks a ruling from this Court inferring animus based on Congress's decision not to extend benefits eligibility to Guam residents, contending that "there can be no other explanation for the government's decision." Pl. MSJ at 21. But this approach was plainly rejected by the Ninth Circuit in *Besinga*, based on an earlier D.C. Circuit ruling. In *Quiban v. Veterans Administration*, 928 F.2d 1154 (D.C. Cir. 1991), the D.C. Circuit explained that "whenever Congress fails to extend a federal program to Territories, the failure or exclusion could be described as based on impermissible considerations of race or national origin;" nevertheless, under *Harris*'s "broad holding," "the Territory Clause permits such exclusion so long as there is a rational basis for it." 928 F.2d at 1160 (citation and internal punctuation omitted); *see also id*. (noting that "the Territory Clause permits exclusions or limitations directed at a territory and coinciding with race or national origin, so long as the restriction rests upon a rational base"). The Ninth Circuit in *Besinga* agreed with the D.C. Circuit that *Harris* and *Torres* "compel[] the conclusion that the broad powers of Congress under the Territory Clause are inconsistent with the application of heightened judicial scrutiny to economic legislation pertaining to the territories" because a "contrary rule would subject virtually every failure by Congress to extend federal benefits to residents of the territories to the charge that the decision was based on impermissible considerations of race or national origin." 14 F.3d at 1360 (citation, footnote, and internal punctuation omitted). Thus, contrary to Plaintiff's contention, applying rational-basis review, this Court may not simply reject the government's justifications for the classifications at issue here and infer animus.

CONCLUSION

For the reasons stated above, Defendants respectfully request that the Court enter summary judgment for Defendants and deny Plaintiff's motion for summary judgment.

Dated: June 21, 2019

Respectfully submitted,

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