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10 *Katrina Schaller*

11 **IN THE UNITED STATES DISTRICT COURT**  
12 **TERRITORY OF GUAM**

13 KATRINA SCHALLER, by and through  
14 her legal guardians KIMBERLY A.  
15 FEGURGUR and JOHN A.  
16 FEGURGUR,

17 Plaintiff

18 vs.

19 U.S. SOCIAL SECURITY  
20 ADMINISTRATION,

21 NANCY A. BERRYHILL, in her official  
22 capacity as Deputy Commissioner for  
23 Operations of the Social Security  
24 Administration

25 Defendants

26 CIVIL ACTION  
27 File No. 1:18-cv-44

28 **COMPLAINT**

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## INTRODUCTION

1. Katrina Schaller and Leslie Schaller are adult twins, both suffering from myotonic dystrophy, a debilitating hereditary condition. They maintain very limited economic means. The Supplemental Security Income (“SSI”) program was designed to provide financial assistance to aged, blind, or disabled Americans in just such need. But Katrina lives on Guam; Leslie lives in Pennsylvania. As a result, Leslie receives the support of SSI, and Katrina does not. Eligibility for this federal benefit program that turns on the fortuity of residence violates the Guam Organic Act, 48 U.S.C. § 1421b, and the Equal Protection guarantees of the Fifth and Fourteenth Amendments to the Constitution. Its discriminatory application must be enjoined.

2. SSI provides assistance to more than eight million United States residents each year. Although citizenship sometimes factors into qualification for the program, *residency* can at times trump citizenship in determining eligibility. When Congress first enacted SSI in 1972, the statute limited eligibility for the SSI program to those individuals residing inside the “United States,” defined as the fifty States and the District of Columbia.<sup>1</sup> The statute expressly excluded Puerto Rico, Guam, and the Virgin Islands from the definition of the “United States.”<sup>2</sup> The residents of

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<sup>1</sup> Social Security Amendments of 1972, Pub. L. No. 92-603, § 1614 (a)(1)(B), 86 Stat. 1329, 1471 (defining the term “aged, blind or disabled individual” as a “resident of the United States”); § 1614(e) 86 Stat. 1329, 1473-74 (defining the “United States” as “the 50 states and the District of Columbia”) (*codified at* 42 U.S.C. § 1382c(e)).

<sup>2</sup> 42 U.S.C. 1382c(e) (“For purposes of this subchapter, the term ‘United States’, when used in a geographical sense, means the 50 States and the District of Columbia.”) ; 1972 Amendments §

1 those territories, including American citizens, were deemed categorically “outside”  
2 the United States.<sup>3</sup> This definition clashes with other sections of the U.S. Code, such  
3 as the Old-Age, Survivors, and Disability Insurance Benefits program under Title II  
4 of the Social Security Act, which defines the “United States” as “the States, the  
5 District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, *Guam*,  
6 and American Samoa.”<sup>4</sup>

8         3.         SSI was not the first federal program created to ensure a basic level of  
9 subsistence for low-income disabled Americans. The predecessor program, Old-Age  
10 Assistance, Aid for the Blind, and Aid for Permanently and Totally Disabled, Titles  
11 I, X, and XIV of the Social Security Act, resulted in a variety of state programs with  
12 varying eligibility criteria and inadequate benefit amounts. Congress designed the  
13 SSI program to remediate these deficiencies, “to provide a nationally uniform income  
14 floor for the aged, blind, and disabled,” and to “provide uniform categorical eligibility  
15 conditions throughout all regions of the country; and provide uniform and efficient  
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23         303(b), 86 Stat. 1329, 1484 (“The amendments made...shall not be applicable in the case of Puerto  
24 Rico, Guam, and the Virgin Islands.”).

25         <sup>3</sup> See Soc. Sec. Admin., *A Guide to Supplemental Security Income (SSI) for Groups and*  
26 *Organizations* 18 (2018) (“**For SSI purposes, we consider Puerto Rico to be outside the**  
**United States. People who move to Puerto Rico can’t get SSI.**”) (emphasis in original).

27         <sup>4</sup> Social Security Act, 42 U.S.C. § 410(i) (emphasis added).

1 administration of the program.”<sup>5</sup> But Congress failed to extend such uniformity to  
2 most of the territories of the United States.<sup>6</sup>

3  
4 4. In stark contrast with other territories, when the Commonwealth of the  
5 Northern Mariana Islands (“CNMI”) entered into political union with the United  
6 States in 1976, Congress integrated it specifically by statute into the SSI program.<sup>7</sup>  
7 More than 1,000 residents of the CNMI enjoy SSI benefits.<sup>8</sup>

8 5. Katrina and Leslie Schaller are American citizens residing on American  
9 soil.<sup>9</sup> Katrina and Leslie were born on January 25, 1970 and grew up with their  
10 parents and older sister Kim in Westmoreland County, Pennsylvania. When their  
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13 <sup>5</sup> Sylvester J. Schieber, *First Year Impact of SSI on Economic Status of 1973 Adult Assistance*  
14 *Populations*, 51 Soc. Sec. Bull. 19, 20 (1988); James C. Callison, *Early Experience Under the*  
15 *Supplemental Security Income Program*, 37 Soc. Sec. Bull. 3, 3 (1974) (“Uniform, nationwide  
16 eligibility requirements and a Federal ‘floor’ of income for eligible persons are designed to provide  
17 more equitable treatment of aged, blind, and disabled persons with limited income and  
18 resources...”).

19 <sup>6</sup> *But see* Supplemental Social Security Income for Aged, Blind, and Disabled, 42 U.S.C. § 1381  
20 (stating that the purpose of the SSI program was “establishing a *national* program to provide  
21 supplemental security income to individuals who have attained age 65 or are blind or disabled”)  
22 (emphasis added).

23 <sup>7</sup> Covenant To Establish a Commonwealth of the Northern Mariana Islands, Pub. L. No. 94-241, §  
24 502(a)(1), 90 Stat. 263 (1976). (“The following laws of the United States...will apply to the Northern  
25 Mariana Islands...Section 228 of Title II and Title XVI of the Social Security Act... as it applies to  
26 the several States...”). See H.R.J. Res. 549; Pub. L. No. 94-241 (1976). SSI eligibility is “limited  
27 to residents of the 50 states, the District of Columbia, and the Northern Mariana Islands.” House  
28 Ways and Means Comm., *2016 Green Book: Appendix B: Social Welfare Programs in the*  
*Territories*, <https://greenbook-waysandmeans.house.gov/2016-green-book/appendix-b-social-welfare-programs-in-the-territories>.

<sup>8</sup> Soc. Sec. Admin., *Northern Mariana Islands - Congressional Statistics, 2017 (2018)*,  
[https://www.ssa.gov/policy/docs/factsheets/cong\\_stats/2017/mp.pdf](https://www.ssa.gov/policy/docs/factsheets/cong_stats/2017/mp.pdf) (identifying 1,033 recipients of  
SSI in December 2017).

<sup>9</sup> See 42 U.S.C. § 410(i) (“The term ‘United States’ when used in a geographical sense means the  
States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and  
American Samoa.”); see also 48 U.S.C. § 1421a (“Guam is declared to be an unincorporated territory  
of the United States...”).

1 parents separated, Katrina moved to Washington, Pennsylvania to live with her  
2 mother. But after her mother's death, Katrina moved to Guam to live with her sister  
3 Kim and brother-in-law John Fegurur, who are her legal guardians. (Ex. A).<sup>10</sup> As  
4 twin sisters, Katrina and Leslie are very close; they speak to each other nearly every  
5 day by phone or internet video streaming. But Katrina and Leslie have not seen each  
6 other in person for almost ten years. They both suffer from myotonic dystrophy, a  
7 debilitating, degenerative genetic disorder affecting muscle function and mental  
8 processing. Katrina lacks the functionality to perform many of the activities of daily  
9 living, let alone earn a steady income, and is permanently disabled. Although  
10 myotonic dystrophy inhibits some aspects of Leslie's mobility, she leads a fully  
11 independent life in Greensburg, Pennsylvania, in part due to monthly SSI payments.  
12 Leslie, receives approximately \$755 per month in SSI benefits because she lives in  
13 what the SSI statute defines as the "United States."

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17 6. Yet Katrina is denied eligibility for federal SSI benefits solely because  
18 she lives on Guam, rather than in any of the fifty States, the District of Columbia, or  
19 the nearby territory of the CNMI. When Katrina lived with her mother in  
20 Washington, Pennsylvania, she enjoyed full access to SSI benefits. But when she  
21 moved to Guam to be with family upon her mother's death, Katrina's SSI benefits  
22 were cut off. Leslie would like to travel to Guam in the foreseeable future to be with  
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26 <sup>10</sup> In September 2018, Superior Court of Guam authorized Katrina Schaller's legal guardians to  
27 initiate this suit. The Superior Court's Order approving commencement of this action is attached  
28 as Exhibit A. Accordingly, Plaintiff Katrina Schaller's interests are represented by her legal  
guardians. Katrina Schaller's guardians are also U.S. citizens residing in Guam.

1 her sisters, but she cannot do so for more than thirty days for fear of losing access to  
2 the SSI benefits necessary for her support.<sup>11</sup>

### 3 **JURISDICTION AND VENUE**

4 7. This case presents a federal question, and jurisdiction is proper under  
5 28 U.S.C. § 1331. Pursuant to 5 U.S.C. § 702, sovereign immunity is waived.  
6

7 8. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b)(2)  
8 and (e)(1) as Plaintiff Katrina Schaller is a citizen residing in this district.  
9

### 10 **PARTIES**

11 9. Katrina Schaller is a citizen of the United States and a resident of  
12 Guam. She is permanently disabled by myotonic dystrophy. Upon information and  
13 belief, she would qualify for SSI were it available to her as a Guam resident.

14 10. Defendant Nancy A. Berryhill is the Deputy Commissioner of  
15 Operations and the Acting Commissioner of the Social Security Administration.<sup>12</sup>  
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17 11. Defendant Social Security Administration is the federal agency  
18 responsible for administering and implementing the SSI program.<sup>13</sup>  
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22 <sup>11</sup> See 20 C.F.R. § 416.215 (1996) (“You lose your eligibility for SSI benefits for any month during all  
23 of which you are outside of the United States. If you are outside of the United States for 30 days  
24 or more in a row, you are not considered to be back in the United States until you are back for 30  
25 days in a row. You may again be eligible for SSI benefits in the month in which the 30 days end if  
you continue to meet all other eligibility requirements. By United States, we mean the 50 States,  
the District of Columbia, and the Northern Mariana Islands.”).

26 <sup>12</sup> Soc. Sec. Admin., *Nancy A. Berryhill, Acting Commissioner*, Social Security Administration,  
<https://www.ssa.gov/agency/commissioner.html> (last visited Nov. 13, 2018).

27 <sup>13</sup> See 42 U.S.C. § 410(i).  
28

1                                   **GUAM: THE ORGANIC ACT AND THE BILL OF RIGHTS**

2           12.    After the Second World War, Congress recognized the sacrifice and  
3 loyalty of the people of Guam to the United States.  In considering whether  
4 Guamanians should receive citizenship, Congress announced:  
5

6                   There are no more patriotic, loyal people under the  
7 American flag than the Guamanians.  Guam was the only  
8 important area under United States jurisdiction which was  
9 occupied by the Japanese during World War II.  Throughout  
10 the Japanese occupation Guamanians demonstrated their  
11 great loyalty and devotion to this country.  Many of them  
12 endured cruel torture and performed unsurpassed acts of  
13 heroism to hasten the victorious return of the American  
14 forces.  They are Americans in every sense except that they  
15 lack the fundamental rights under law and the elemental  
16 features of democratic government which other Americans  
17 enjoy.  The people of Guam by their heroic loyalty in war  
18 and their long devotion and adherence to the American way  
19 of life have demonstrated in every respect that they are  
20 qualified for and deserving of United States citizenship and  
21 an increased measure of self-government under law.<sup>14</sup>

22           13.    The Guam Organic Act, passed in 1950, granted American citizenship  
23 to Guam’s residents and declared that Guam was an “unincorporated” territory.<sup>15</sup>  
24 Consistent with the holdings of the *Insular Cases*,<sup>16</sup> residents of unincorporated  
25 territories such as Guam are guaranteed the benefit of “‘fundamental’ constitutional  
26 rights,”<sup>17</sup> which are “natural rights, enforced in the Constitution by prohibitions  
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23   <sup>14</sup> H.R. Rep. No. 1677, at 4 (1950).

24   <sup>15</sup> Guam Organic Act, Pub. L. No. 81-630, § 3, 64 Stat. 384 (1950), *codified at* 48 U.S.C. § 1421a.

25   <sup>16</sup> *See e.g., Downes v. Bidwell*, 182 U.S. 244 (1901); *Dorr v. United States*, 195 U.S. 138, 149 (1904);  
26 *see also Balzac v. Porto Rico*, 258 U.S. 298, 309 (1922) (distinguishing between the incorporation  
of Alaska and the unincorporated territory of Puerto Rico).

27   <sup>17</sup> *Examining Bd. of Eng’rs. v. Flores de Otero*, 426 U.S. 572, 600 n. 30 (1976) (“It is clear...that the  
28 protections afforded by either the Due Process Clause of the Fifth Amendment or the Due Process

1 against interference with” and include the rights “to due process of law and to an  
2 equal protection of the law.”<sup>18</sup>

3  
4 14. Guam and its citizens also benefit directly from protections granted in  
5 the Organic Act, written by Congress to set forth a Bill of Rights for the newly-minted  
6 citizens of the island.<sup>19</sup> In part, the Guam Organic Act provided:

- 7 • No person shall be deprived of life, liberty, or property without due process of  
8 law.<sup>20</sup>
- 9 • No discrimination shall be made in Guam against any person on account of race,  
10 language, or religion, **nor shall the equal protection of the laws be denied.**<sup>21</sup>
- 11 • The following provisions of and amendments to the Constitution of the United  
12 States are hereby extended to Guam to the extent that they have not been  
13 previously extended to that territory and **shall have the same force and effect**  
14 **there as in the United States or in any State of the United States:** article  
15 I, section 9, clauses 2 and 3; article IV, section 1 and section 2, clause 1; **the first**  
16 **to ninth amendments inclusive;** the thirteenth amendment; **the second**  
17 **sentence of section 1 of the fourteenth amendment;** and the fifteenth and  
18 nineteenth amendments. **All laws enacted by Congress with respect to**  
19 **Guam and all laws enacted by the territorial legislature of Guam which**  
20 **are inconsistent with the provisions of this subsection are repealed to**  
21 **the extent of such inconsistency.**<sup>22</sup>

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and Equal Protection Clauses of the Fourteenth Amendment apply to residents of Puerto Rico”).  
Puerto Rico is another unincorporated territory of the United States; *see also Rodriguez v. Popular*  
*Democratic Party*, 457 U.S. 1, 7 (1982) (acknowledging that due process and equal protection were  
fundamental protections owed to the unincorporated territory of Puerto Rico).

<sup>18</sup> *Downes v. Bidwell*, 182 U.S. 244, 282 (1901).

<sup>19</sup> Guam Organic Act, P.L. 81-630, § 5, 64 Stat. 384 (1950), *codified at* 48 U.S.C. § 1421b.

<sup>20</sup> 48 U.S.C. § 1421b (e).

<sup>21</sup> 48 U.S.C. § 1421b (n) (emphasis added).

<sup>22</sup> 48 U.S.C. § 1421b (u) (emphasis added).



1 The Guam Organic Act thus provided its own anti-discrimination provision and  
2 equal protection guarantee, while also incorporating the equal protection and due  
3 process guarantees of the Fifth and Fourteenth Amendments.<sup>23</sup>  
4

### 5 SUPPLEMENTAL SECURITY INCOME IN GUAM

6 15. The federal SSI program provides basic income to “aged, blind, or  
7 disabled individuals,” who reside “in the United States,” a defined term which does  
8 not include Guam, Puerto Rico, or the Virgin Islands.<sup>24</sup> Defendant Social Security  
9 Administration has promulgated a number of regulations in furtherance of this  
10 geographic distinction, defining Guam, Puerto Rico, and the Virgin Islands as  
11 “outside the United States.”<sup>25</sup>  
12

13 16. Congress created the SSI program to replace the prior Federal-State  
14 system of public assistance to the blind, aged, and disabled,<sup>26</sup> which included Old-  
15 Age Assistance, Aid to the Blind, and Aid to the Permanently and Totally Disabled,<sup>27</sup>  
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17  
18 <sup>23</sup> The incorporated language of the Fourteenth Amendment reads: “No State shall make or enforce  
19 any law which shall abridge the privileges or immunities of citizens of the United States; nor shall  
20 any State deprive any person of life, liberty, or property, without due process of law; nor deny to  
21 any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1.

22 <sup>24</sup> Social Security Amendments of 1972, Pub. L. No. 92-603, § 1614 (a)(1)(B), 86 Stat. 1329, 1471-72  
23 (1972) (defining the term “aged, blind or disabled individual” as a “resident of the United States”);  
24 § 1614(e) (defining the “United States” as “the 50 states and the District of Columbia”).

25 <sup>25</sup> See, e.g. 20 C.F.R. § 416.120(c)(10) (1997); 20 C.F.R. § 416.215 (1996); 20 C.F.R. § 416.216(a) (2005);  
26 20 C.F.R. § 416.702 (2000); 20 C.F.R. § 416.1327(a)(1) (1986); 20 C.F.R. § 416.1603(c) (1997); 20  
27 C.F.R. § 416.1902 (1999); 20 C.F.R. § 416.2203 (2003) (each providing an applicable regulatory  
28 definition of “State” or “United States” that included only the 50 states, D.C., and the CNMI).

<sup>26</sup> See Martha Proskauer, Cong. Research Serv., Legislative History of the Supplemental Security  
Income (SSI) Program: 1969-1972, v (1977).

<sup>27</sup> See Social Security Act of 1935, Pub. L. No. 74-271, tit. I (Grants to States for Old-Age Assistance  
for the Aged) (1935), *codified at* Social Security Act of 1935, 42 U.S.C. §§ 301-306; Social Security  
Act of 1935, tit. X (Grants to States for Aid to the Blind) *codified at* Social Security Act  
Amendments of 1950, 42 U.S.C. §§ 1201-1206 (1950); Social Security Act Amendments of 1950,

1 and constituted “essentially [s]tate programs” that operated under federal  
2 guidelines.<sup>28</sup> “Within the bounds of minimal Federal requirements the actual  
3 programs were designed, implemented, and administered at the discretion” of the  
4 local jurisdiction.<sup>29</sup> These programs resulted in low benefit levels, a multiplicity of  
5 different eligibility requirements and payment systems across jurisdictions, and  
6 burdensome requirements including liens against property and requirements that  
7 relatives take responsibility for the applicant that each “discourage[d] needy persons  
8 from seeking aid.”<sup>30</sup> In 1972, Congress amended the Social Security Act, Pub. L. No.  
9 92-603 (“The 1972 Amendments”), to create SSI and end the disparate patchwork of  
10 state programs for the blind, aged, and disabled.  
11

12  
13 17. Guam is left with the outdated and inadequate predecessor federal  
14 programs providing aid to the aged, blind, and permanently disabled (collectively, the  
15 “ABD” programs). Of Guam’s more than 160,000 residents, approximately 20% live  
16 below the federal poverty standards.<sup>31</sup> In 2013, Guam’s legislature estimated that  
17 approximately 24,000 residents could be eligible for SSI if Congress were to extend  
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20 Pub. L. No. 81-734, *codified at* Grants to States for Aid to the Permanently and Totally Disabled,  
21 42 U.S.C. §§ 1351-1355 (1950).

22 <sup>28</sup> 2018 Annual Report of the SSI Program, Social Security Administration,  
23 [https://www.ssa.gov/oact/ssir/SSI18/III\\_ProgramDescription.html](https://www.ssa.gov/oact/ssir/SSI18/III_ProgramDescription.html) (last visited Nov. 13, 2018).

24 <sup>29</sup> Sylvester J. Schieber, *First Year Impact of SSI on Economic Status of 1973 Adult Assistance*  
25 *Populations*, 51 Soc. Sec. Bull. 19, 19 (1988).

26 <sup>30</sup> John Trout and David R. Mattson, *A 10-Year Review of the Supplemental Security Income*  
27 *Program*, 47 Soc. Sec. Bull. 3, 3 (1984).

28 <sup>31</sup> U.S. Census Bureau, 2010 Guam Demographic Profile Data,  
[https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC\\_10\\_DPGU\\_GUDP3&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC_10_DPGU_GUDP3&prodType=table) (last visited Nov. 27, 2018).

1 the program to the island.<sup>32</sup> Yet only about 650 individuals received aid from Guam's  
2 ABD programs in 2016.<sup>33</sup>

3  
4 18. Guam's circumstance plainly contrasts with the CNMI, a neighboring  
5 unincorporated territory of the United States, whose residents were also granted  
6 American citizenship by Congress.<sup>34</sup> It is an artifact of colonialist history that Guam  
7 and the CNMI are distinct geopolitical entities.<sup>35</sup> Guam lies at the southern base of  
8 the the Mariana Islands chain, and the Chamorro people—among other ethnicities—  
9 were split between two jurisdictions following the Spanish-American War.<sup>36</sup>

10  
11 19. For Guam, citizenship came through the Organic Act in 1950. For the  
12 CNMI, Congress provided a path to citizenship in a 1976 covenant that fully ripened  
13 ten years later. Moreover, Congress intentionally provided CNMI residents access to  
14 the benefits it had denied Guam: “Unlike Guam, where provisions for the needy, aged,  
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17 <sup>32</sup> Guam Res. 42-32, 32nd Sess. (2013), [http://www.guamlegislature.com/  
COR\\_Res\\_32nd/Adopted/R042-32%20\(LS\).pdf](http://www.guamlegislature.com/COR_Res_32nd/Adopted/R042-32%20(LS).pdf)

18 <sup>33</sup> Guam Bureau of Econ. Sec. Ann. Rep. 4 (2016), [http://www.dphss.guam.gov/document/bes-annual-  
report-fy2016](http://www.dphss.guam.gov/document/bes-annual-report-fy2016) (giving the number as 659); Guam Bureau of Statistics and Plans, Office of the  
19 Governor, *Guam Statistical Yearbook 327* (2016) [http://bsp.guam.gov/wp-bsp-  
content/uploads/2018/01/GuamStatisticalYearbook\\_2016.pdf](http://bsp.guam.gov/wp-bsp-content/uploads/2018/01/GuamStatisticalYearbook_2016.pdf) (giving number as 658).

20  
21 <sup>34</sup> The population of the CNMI is approximately 52,300, and the citizen population of this territory  
22 includes many individuals of Chamorro cultural background. Dep't of the Interior, Office of  
Insular Affairs, Commonwealth of the Northern Mariana Islands, U.S. Department of Interior,  
Commonwealth of the Northern Mariana Islands, <https://www.doi.gov/oia/islands/cnmi> (last  
23 visited Nov. 27, 2018).

24 <sup>35</sup> S. Rep. No. 94-433, at 17 (1975). (“The separation of the Mariana Islands District (the Northern  
25 Marianas) of the Trust Territory from Guam (the southernmost island of the Marianas Chain) is  
an accident of modern colonial history. Geographically, culturally and ethnically, Guam and the  
Northern Mariana Islands are one entity.”).

26 <sup>36</sup> *Id.*; see also Doug Herman, *A Brief, 500-Year History of Guam*, SMITHSONIAN, (Aug. 15 2017),  
27 [https://www.smithsonianmag.com/smithsonian-institution/brief-500-year-history-guam-  
180964508/](https://www.smithsonianmag.com/smithsonian-institution/brief-500-year-history-guam-180964508/).

1 blind and disabled are less generous than in the States, the Northern Marianas will  
2 receive the full benefit of the Act.”<sup>37</sup>

3  
4 20. But placing the CNMI on a higher pedestal was never the long-term  
5 intention of the federal government. While the CNMI was negotiating its political  
6 status with the United States, the Ford Administration conducted a classified study  
7 (“Guam Study”) assessing the future of Guam and its relationship with the United  
8 States government, as well as Guam’s political relationship to the CNMI.<sup>38</sup> The study  
9 noted that “Guam will not be satisfied with anything less than [what] the Northern  
10 Mariana Islands get.”<sup>39</sup> It further stated that “Guamanians are in need of  
11 reassurance that they will be treated as well as their cousins to the north. This  
12 assurance should be given them as soon as possible before the Saipan negotiations  
13 give the Guamanians further anxiety.”<sup>40</sup> Finally, the Guam Study recommended:

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16 That, in order to forestall Guamanian jealousy of the Northern  
17 Marianas and to avoid unnecessary frustration or confusion which  
18 might affect U.S. negotiations in Saipan, the Governor and key  
19 Legislators in Guam be informed promptly, though informally, that the  
20 United States wants Guam to have a status and arrangements no less  
21 favorable than those which will obtain in the Northern Marianas and  
22 that the Federal Government will be ready to entertain Guamanian

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25 <sup>37</sup> *To Approve “The Covenant to Establish a Commonwealth of the Northern Mariana Islands,” and  
26 for Other Purposes: Hearing Before the Subcomm. on Terr. and Insular Affairs of the H. Comm. on  
27 Interior and Insular Affairs, 94th Cong. 641 (1975) (Section-by-Section Analysis of the Covenant  
28 to Establish a Commonwealth of the Northern Mariana Islands) (referring to Title XVI of the  
Social Security Act).*

<sup>38</sup> National Security Council, *Guam Study* (1974). This secret “Guam Study” was conducted in  
1973-1974 by a federal interagency working group. The study was declassified on June 26, 2003.

<sup>39</sup> *Id.* at 184.

<sup>40</sup> *Id.* at 187-88.

1 views regarding future arrangements as soon as Guam is prepared to  
2 present them.<sup>41</sup>

3 21. The Ford Administration agreed with the Guam Study's  
4 recommendation, having every intention of placing Guam on equal footing as the  
5 CNMI. But despite the Ford Administration's intentions of following the Guam  
6 Study's recommendation, Guam has not been granted equal status to the CNMI  
7 under the SSI statute or its accompanying regulations. Such unequal treatment was  
8 irrational in the 1970s, and it remains irrational today.  
9

10 22. A 1987 Government Accountability Office report, with calculations  
11 based on the CNMI's experience with SSI,<sup>42</sup> estimated that SSI application to the  
12 eligible residents of Guam would result in 1,500 additional recipients and the  
13 maximum available monthly benefit would expand by more than 500%.<sup>43</sup> The GAO  
14 did not conduct this study by chance. Rather, it was released two years after the  
15 Guam legislature petitioned Congress in 1985:  
16

17 [T]he residents of the Commonwealth of the Northern  
18 Marianas are now receiving the full benefits of the  
19 Supplemental Security Income program as a result of their  
20 present political status; and the people of Guam firmly  
21 believe in the right to equal treatment of any resident or  
22 citizen of the United States to the benefits available to

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23 <sup>41</sup> *Id.* at 188.

24 <sup>42</sup> U.S. Gov't Accountability Office, GAO/HRD-87-60, Welfare and Taxes: Extending Benefits and  
25 Taxes to Puerto Rico, Virgin Islands, Guam, and American Samoa 112 (1987) (“[W]e based our  
estimates on actual SSI experience in the Northern Mariana Islands.”).

26 <sup>43</sup> *Id.* at 44 (“Guam’s maximum monthly adult assistance benefit levels of \$60 for one person and  
27 \$120 for two would have been replaced with SSI’s levels of \$314 for one person and \$472 for  
28 couples.”).

1           them from the United States Federal Government without  
2           regard to geographical remoteness or boundaries.<sup>44</sup>

3           23.    The Guamanian ABD programs are not comparable to SSI. Guam’s  
4           Bureau of Economic Security administers the programs, which have different  
5           eligibility requirements from the national uniform standard. The programs’ rules  
6           greatly restrict what an ABD-eligible individual can own, limiting individual aid  
7           recipients to \$2,000 in resources, including personal and real property.<sup>45</sup> Guam  
8           counts the home in which a potential recipient lives, as well as her land, immoveable  
9           fixtures, the cash value of insurance policies, and the value of a car beyond its first  
10          \$1,500 *against* the resource test for public assistance applicants.<sup>46</sup> By contrast, the  
11          federal SSI program penalizes applicants for none of these property interests.<sup>47</sup>

12  
13  
14          24.    Guam’s ABD programs also provide dramatically lower benefit amounts  
15          than the federal SSI program. Within the ABD programs, the government of Guam  
16          distributed an average monthly benefit of \$174.21 for 256 recipients of old-age  
17          assistance, \$162.14 per month for the 354 recipients who were totally disabled, and  
18

19  
20          

---

<sup>44</sup> *Id.* at 47.

21          <sup>45</sup> 26 Guam Admin. R. & Regs. § 1832(h)(1) (1997) (“The resource reserve limit for all Adult programs  
22          is **\$2,000** for each individual recipient.”) (emphasis in original).

23          <sup>46</sup> *Id.* at § 1832(h)(2)(B). Pursuant to 26 Guam Admin. R. & Regs. § 1832(h)(2)(B), real property is  
24          excluded for the aged and disabled when the applicant for aid lives in the home. This exclusion,  
25          and other “Earned Income Disregards” in that subsection, do not apply to aid for the blind. One  
26          of these “Earned Income Disregards” for the aged and disabled is for one (and only one) burial plot  
27          and funeral not to exceed a value of \$1,500 per family member.

28          <sup>47</sup> Soc. Sec. Admin., *A Guide to Supplemental Security Income (SSI) for Groups and Organizations*,  
14-16 (2018), <https://www.ssa.gov/pubs/EN-05-11015.pdf>. While SSI’s resource test is also \$2,000  
for individuals (\$3,000 for couples), it is far more generous than Guam’s test, especially for  
individuals who are blind.

1 \$296 per month for one recipient of aid to the blind.<sup>48</sup> Collectively, the average  
2 monthly payment for the ABD programs was \$167.41 per individual.<sup>49</sup> The federal  
3 SSI program pays a monthly benefit of up to \$771 per eligible individual,<sup>50</sup> with an  
4 average payment of \$526 per month.<sup>51</sup> In 2015, the average payment to an SSI  
5 recipient in the CNMI was \$638.92.<sup>52</sup> Thus, geographic fortune deprives Americans  
6 living at the southern tip of the Mariana Islands from approximately 75% of the  
7 federal benefits received by those living just to the north.  
8

9         25. Unlike SSI, the ABD programs require territories to pay a significant  
10 portion of the benefits to their citizens. Under SSI, the federal government pays 100%  
11 of each beneficiary's support; the federal government pays only 75% of Guam's ABD.<sup>53</sup>  
12 Unlike the CNMI, Guam must turn to its own treasury to pay for the final 25% of  
13 each ABD recipient's entitlement. This system disincentivizes the territorial  
14 government from adding anyone to the ABD rolls, despite the program's stated goals  
15 of aiding the aged, blind, and permanently disabled. Between 2007 and 2016,  
16  
17

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18 <sup>48</sup> *Guam Statistical Yearbook* 327 (2016), [http://bsp.guam.gov/wp-bsp-content/uploads/2018/01/GuamStatiscalYearbook\\_2016.pdf](http://bsp.guam.gov/wp-bsp-content/uploads/2018/01/GuamStatiscalYearbook_2016.pdf) (Using FY2015 numbers).  
19

20 <sup>49</sup> Using FY2015 numbers for the total dollars disbursed in the programs for the blind, aged, and  
21 disabled (\$102,289) divided by the total recipients for those programs (611).

22 <sup>50</sup> Soc. Sec. Admin., *SSI Federal Payment Amounts For 2018*, <https://www.ssa.gov/oact/cola/SSI.html>.

23 <sup>51</sup> Soc. Sec. Admin. Ann. Rep. of the Supplemental Sec. Income Program 2 (2017) (using Jan. 2017  
24 numbers).

25 <sup>52</sup> Soc. Sec. Admin., *Northern Mariana Islands - Congressional Statistics, 2017 (2018)*,  
[https://www.ssa.gov/policy/docs/factsheets/cong\\_stats/2017/mp.pdf](https://www.ssa.gov/policy/docs/factsheets/cong_stats/2017/mp.pdf) (calculating the average based  
26 on \$660,000 in total spending for 1,033 recipients of SSI).

27 <sup>53</sup> Social Security Act, 42 U.S.C. § 1318; *see also* Social Security Act, 42 U.S.C. § 1383 note (describing  
28 the prior requirement that Guam, Puerto Rico, and the Virgin Islands were required to spend 50%  
of each dollar provided to beneficiaries).

1 participation in Guam’s ABD programs averaged 480 individuals, with a maximum  
2 of 611 in 2015.<sup>54</sup> By contrast, 2015 SSI participation in the CNMI—comprising one-  
3 third of Guam’s population—was 1,033 individuals.<sup>55</sup> Nearly 70% more individuals  
4 receive aid in the much smaller CNMI when the federal government shoulders 100%  
5 of SSI costs. Blind, aged, and disabled residents of Guam are left with an inadequate  
6 program, if they receive any aid at all.

7  
8         26. Not only does the federal government limit its *proportion* of spending on  
9 Guam’s ABD aid, it also caps its *total* monetary contribution to Guamanian aid  
10 programs.<sup>56</sup> In 1997, Congress set the ceiling at \$4,686,000, including a block grant  
11 of \$3,465,478 for Temporary Aid for Needy Families.<sup>57</sup> All Guamanian adult  
12 assistance programs—including ABD, foster care, adoption assistance, and § 1108  
13 matching grant programs—were limited to the remaining \$1,220,522.<sup>58</sup> Congress set  
14 this ceiling by statute in nominal terms, without any adjustment for inflation or  
15 growth over time, and the total amount of funds available for adult assistance  
16 programs other than Medicaid has stagnated for two decades.

17  
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20 <sup>54</sup> *Guam Statistical Yearbook* 327 (2016), [http://bsp.guam.gov/wp-bsp-content/uploads/2018/01/GuamStatiscalYearbook\\_2016.pdf](http://bsp.guam.gov/wp-bsp-content/uploads/2018/01/GuamStatiscalYearbook_2016.pdf).

21 <sup>55</sup> Soc. Sec. Admin., Northern Mariana Islands - Congressional Statistics 2015 (Dec. 2015), [https://www.ssa.gov/policy/docs/factsheets/cong\\_stats/2015/mp.pdf](https://www.ssa.gov/policy/docs/factsheets/cong_stats/2015/mp.pdf).

22 <sup>56</sup> Social Security Act, 42 U.S.C. § 1308 (detailing maximum ceiling amounts for each territory).

23 <sup>57</sup> *Id.*

24 <sup>58</sup> *Id.* See also William R. Morton, Congressional Research Service, *Cash Assistance for the Aged, Blind, and Disabled in Puerto Rico*, at 7-8 (Oct. 26, 2016), <https://fas.org/sgp/crs/row/cash-aged-pr.pdf> (“Assuming full funding of the basic TANF block grant, the amount of the [territory’s statutory funding] cap available for adult assistance and other specified programs is equal to the cap *minus* the TANF block grant”) (emphasis in original).



1           27. With different eligibility requirements and no funding cap, many more  
2 individuals would qualify for SSI than Guam’s inadequate ABD program.<sup>59</sup> If  
3 available, Katrina Schaller would qualify for SSI—as her twin sister does in  
4 Pennsylvania—and she would receive significantly more benefits than Guam’s ABD  
5 provides.  
6

7           28. Although Americans on Guam cannot receive SSI, from inception the  
8 program has not limited its benefits to citizens.<sup>60</sup> Subsequent to the 1972  
9 Amendments, Congress separately established SSI eligibility for specific groups of  
10 non-citizens,<sup>61</sup> including non-citizens with a military connection—active duty  
11 military members, veterans, and their dependents and spouses—who are eligible for  
12 SSI if they live in a “state.”<sup>62</sup> As used in this distinct provision of the U.S. Code,  
13  
14  
15  
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17

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18 <sup>59</sup> In 1987, the GAO estimated that 1,500 additional individuals would qualify for and receive much-  
19 needed assistance, and each individual recipient would receive higher benefit levels. U.S. Gov’t  
20 Accountability Office, GAO/HRD-87-60, *Extending Benefits and Taxes to Puerto Rico, Virgin  
21 Islands, Guam, and American Samoa* at 44 (1987). Using the GAO method of extrapolating from  
22 the CNMI’s experience with SSI, a reasonable estimate of potential SSI recipients on Guam would  
23 be the same per capita rate as in the CNMI, 1.975%, or approximately 3,160 total recipients.

24 <sup>60</sup> 1972 Amendments, § 1614(a)(1)(B) (defining an “aged, blind, or disabled individual” as “a resident  
25 of the United States” who is either a citizen or permanent resident).

26 <sup>61</sup> See Social Security Administration, *Supplemental Security Income for Noncitizens*, Pub. No. 05-  
27 11051 (August 2017); see also *Personal Responsibility and Work Opportunity Reconciliation Act of  
28 1996*, Pub. L. 104-193, §§ 401-02, 110 Stat. 2261-62, codified at 8 U.S.C. §§ 1611-12, prohibiting  
SSI eligibility for non-citizens unless they are a “qualified alien” and meet certain exceptions. See  
generally Social Security Administration, *SSI: History of Provisions*, 18-19 (2000).  
<https://www.ssa.gov/history/pdf/ssi.pdf> (providing a legislative history of citizenship and residence  
eligibility criteria in SSI from 1972-2000).

<sup>62</sup> 8 U.S.C. § 1612(a)(2)(C).

1 “state” includes Guam, Puerto Rico, and the U.S. Virgin Islands, in addition to the  
2 fifty U.S. states, the District of Columbia, and the CNMI.<sup>63</sup>

3  
4 29. Guam has a large military presence, including nearly 13,000 individuals  
5 on active duty and their dependents, as well as over 4,000 veterans.<sup>64</sup> Thus, the  
6 government facilitates an illogical system in which non-citizen service members  
7 stationed on Guam and non-citizen veterans who move there—as well as either of  
8 their families—are all eligible for SSI, but Guamanian citizen-veterans who move  
9 home from the mainland United States are categorically ineligible.

### 10 11 **EQUAL PROTECTION IN GUAM**

12 30. The Constitution’s guarantee of “equal protection under law,” enshrined  
13 in the Fifth and Fourteenth Amendments, extends to Guam because (a) the protection  
14 is a “fundamental” right that applies to unincorporated territories;<sup>65</sup> (b) the Guam  
15 Organic Act created an original right to equal protection under law;<sup>66</sup> and (c) the  
16  
17  
18  
19  
20

21  
22 <sup>63</sup> 8 U.S.C. § 1101(a)(36).

23 <sup>64</sup> *Guam Statistical Yearbook* 137 & 270 (2016), [http://bsp.guam.gov/wp-bsp-content/uploads/2018/01/GuamStatistcalYearbook\\_2016.pdf](http://bsp.guam.gov/wp-bsp-content/uploads/2018/01/GuamStatistcalYearbook_2016.pdf)

24 <sup>65</sup> *Downes v. Bidwell*, 182 U.S. 244, 282 (1901); *see also Rodriguez v. Popular Democratic Party*, 457  
25 U.S. 1, 7 (1982) (“It is not disputed that the fundamental protections of the United States  
26 Constitution extend to the inhabitants of [the unincorporated territory of] Puerto Rico. In  
particular, we have held that Puerto Rico is subject to the constitutional guarantees of due process  
and equal protection of the laws.”).

27 <sup>66</sup> 48 U.S.C. § 1421b (n).  
28

1 Guam Organic Act expressly provides that the Fifth and Fourteenth Amendments,  
2 in relevant part, apply to Guam.<sup>67</sup>

3           31. Congressional authority under the Territory Clause is not absolute.<sup>68</sup>  
4 The Constitutional provision of Congress's power under the Territory Clause is  
5 subject to the limitations on the government's power found elsewhere in the  
6 Constitution, such as the Fifth and Fourteenth Amendments. Although the  
7 government has wide latitude to to craft social welfare laws as it sees fit, the Fifth  
8 and Fourteen Amendments demand that such "laws and regulations must still 'be  
9 rationally based and free from invidious discrimination.'"<sup>69</sup>  
10  
11

12           32. Guam and the CNMI rest at opposite ends of the same chain of islands,  
13 whose residents are separated by as few as sixty miles. The two territories' respective  
14 political relationships to the United States government are indistinguishable. Yet  
15 residents of the CNMI qualify for SSI, while their brothers and sisters in Guam do  
16 not. When *Califano v. Torres*, 435 U.S. 1 (1978) was decided, there was a clear line  
17 between territories and States for SSI purposes. Now that the CNMI enjoys State-  
18 like status under the SSI statute, an arbitrary line drawn between two  
19 indistinguishable unincorporated territories is indefensible, as these facts "preclude  
20 the assumption" that the decision to grant SSI benefits to one unincorporated  
21  
22

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23  
24 <sup>67</sup> 48 U.S.C. § 1421b (u); see also *Bunyan v. Camacho*, 770 F.2d 773, 775-76 (9th Cir. 1985) (striking  
25 down a Guam statute that distinguished between classes of bona fide residents as  
26 unconstitutional, as it violated the Fourteenth Amendment).

27 <sup>68</sup> U.S. Const. art. IV, § 3, cl. 2.

28 <sup>69</sup>*Hagans v. Lavine*, 415 U.S. 528, 539 (1974) (quoting *Dandridge v. Williams*, 397 U.S. 471, 487  
(1970)).

1 territory and not its neighbor “rests upon some rational basis within the knowledge  
2 and experience of the legislators.”<sup>70</sup>

3  
4 **COUNT I - VIOLATION OF EQUAL PROTECTION**  
5 **BY EXCLUSION FROM SSI BENEFITS**

6 33. Plaintiff incorporates the allegations in each preceding paragraph.

7 34. SSI provides benefits to low-income individuals who meet eligibility  
8 requirements, including income tests and inability to work.

9 35. U.S. citizens who are otherwise eligible for SSI benefits are categorically  
10 excluded from the SSI program solely because they live on Guam.

11 36. The U.S. Constitution provides all U.S. citizens, including those on  
12 Guam, equal protection of the laws, enforceable against the federal government  
13 through the Fifth and Fourteenth Amendments.

14 37. The SSI statute facially discriminates against citizen residents of Guam  
15 by denying SSI benefits to otherwise eligible citizen residents, including Plaintiff, a  
16 U.S. citizen residing in Guam.

17 38. Instead of SSI, the federal government provides funds for Guam’s  
18 territorial program for the aged, blind, and permanently disabled. Funds are capped  
19 under this program, and benefits are substantially lower than under SSI. Federal  
20 funding of this program does not obviate the facial discrimination citizen residents of  
21 Guam experience, as they are categorically ineligible for a uniform federal program  
22 available to residents of the fifty States, the District of Columbia, and the CNMI.  
23  
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26

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27 <sup>70</sup> *United States v. Carolene Products Co.*, 304 U.S. 144, 152 (1938).  
28

1           39. The federal statute and the implementing regulations, promulgated by  
2 Defendants, unjustly discriminate against Plaintiff. The government cannot  
3 maintain such discriminatory treatment, even on the minimal requirements of  
4 rational basis review.  
5

6           40. Accordingly, Plaintiff is entitled to a declaration that the discriminatory  
7 provisions of the SSI statute and any related implementing regulations are  
8 unconstitutional.  
9

10           41. Plaintiff is additionally entitled to an injunction that both enjoins  
11 Defendants from enforcing the unconstitutional provisions of the SSI statute and its  
12 accompanying regulations, and that compels equal treatment under SSI for citizens  
13 living on Guam to those citizens living in the fifty States, the District of Columbia,  
14 and the CNMI.  
15

16           42. Plaintiff does not seek additional appropriation to Guam of SSI funds,  
17 but instead that the existing funds appropriated for SSI be distributed in a manner  
18 that does not discriminate against citizens living in Guam compared to those living  
19 in the fifty States, the District of Columbia, and the CNMI.  
20

## 21           **COUNT II - VIOLATION OF THE GUAM ORGANIC ACT**

22           43. Plaintiff incorporates the allegations in the preceding paragraphs.  
23

24           44. The Guam Organic Act is a federal statute that provides a bill of rights  
25 for citizens on Guam. This bill of rights, 48 U.S.C. § 1421b, includes the rights to  
26 equal protection under law and due process of law. In addition, the Guam Organic  
27 Act incorporates relevant parts of the Fifth and Fourteenth Amendments.  
28

1           45.    The facial discrimination of citizens based on where they reside violates  
2 the Guam Organic Act’s provisions incorporating federal constitutional protection  
3 and establishing its own analogous statutory protection of equal protection under the  
4 bill of rights, 48 U.S.C. § 1421b(n).

5  
6           46.    The separate eligibility and benefit standards provided for U.S. citizens  
7 in Guam compared to those residing elsewhere in the statutorily-defined “United  
8 States” in the SSI program constitute facial discrimination and violate equal  
9 protection guarantees of the Guam Organic Act. These standards have discriminated  
10 against Plaintiff Katrina Schaller—a bona fide Guam resident who is also a U.S.  
11 citizen.

12  
13           47.    Because the disparate standards applied to Guam residents violates the  
14 Organic Act’s guarantees of Equal Protection, Plaintiff is entitled to a declaration  
15 that the discriminatory provisions of the SSI statute and any related implementing  
16 regulations must fail.

17  
18           48.    Plaintiff is additionally entitled to an injunction that both enjoins  
19 Defendants from enforcing the unlawful provisions of the SSI statute and its  
20 accompanying regulations, and that compels equal treatment under SSI for citizens  
21 living on Guam to those citizens living in the fifty States, the District of Columbia,  
22 and the CNMI.

23  
24           49.    Plaintiff does not seek additional appropriation to Guam of SSI funds,  
25 but instead that the existing funds appropriated for SSI be distributed in a manner  
26  
27  
28

1 that does not discriminate against citizens living in Guam compared to those living  
2 in the fifty States, the District of Columbia, and the CNMI.

3  
4 **PRAYER FOR RELIEF**

5 For the reasons provided above, Plaintiff requests judgment be entered in her  
6 favor that:

- 7 • A declaration finding that the discriminatory provisions of the SSI  
8 statute and any related implementing regulations that discriminate on  
9 the basis of status as a resident of Guam are unconstitutional as  
10 violative of the Constitution's guarantees of Equal Protection;
- 11 • A declaration finding that the discriminatory provisions of the SSI  
12 statute and any implementing regulations that discriminate on the  
13 basis of status as a resident of Guam fail under the Guam Organic Act,  
14 48 U.S.C. § 1421b.
- 15 • An injunction enjoining defendants from enforcing such discriminatory  
16 provisions of the SSI statute and any relevant implementing  
17 regulations;
- 18 • Awards of costs; and
- 19 • Such additional relief as the Court finds proper.  
20  
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28

1 Respectfully submitted,

Dated: December 6, 2018

2 By:

3 /s/ Rodney J. Jacob

4 Rodney J. Jacob \*

5 RJacob@calvofisher.com

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9 \* *Counsel of Record for Plaintiff Guardians of*  
10 *Katrina Schaller*

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# **Exhibit A**

FILED  
SUPERIOR COURT  
OF GUAM

2018 SEP 24 PM 2:25

CLERK OF COURT

BY: \_\_\_\_\_

1 **RODNEY J. JACOB, ESQ.**  
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16 *Attorneys for Petitioners*  
17 *Kimberly A. Fegurgur and John A. Fegurgur*

18 **IN THE SUPERIOR COURT OF GUAM**

19 **IN THE MATTER OF THE GUARDIANSHIP**  
20 **OVER THE PERSON AND ESTATE,**

21 of

22 **KATRINA LYNN SCHALLER,**

23 by

24 **KIMBERLY A. FEGURGUR AND JOHN A.**  
25 **FEGURGUR,**

26 **Guardians.**

SPECIAL PROCEEDINGS CASE NO. .  
SP0074-13

AS  
[PROPOSED] ORDER GRANTING  
PETITION FOR AN ORDER  
APPROVING COMMENCEMENT  
OF LEGAL ACTION FOR  
SUPPLEMENTAL SECURITY  
INCOME (SSI) BENEFITS

27 **RECEIVED**  
28 **CALVO FISHER & JACOB LLP**

Date: 9/25/18

Time: 9:00 (CBmp)

By: VJR

1 **ORDER**

2 On September 18, 2018, Petitioners, Kimberly A. Fegurgur and John A. Fegurgur,  
3 Guardians of the Person and Estate of KATRINA LYNN SCHALLER ("Petitioners") Petition for  
4 an Order Approving Commencement of Legal Action for Supplemental Security Income (SSI)  
5 Benefits.

6 Good cause appearing, the Petition is **GRANTED**.

7 **IT IS FURTHER ORDERED THAT:**

- 8 1. The Court authorizes said Petitioners to take all appropriate actions within their  
9 discretion, including related to the retention of and directing counsel, to bring and  
10 resolve any actions and proceedings to secure and/or compel the payment of SSI  
11 benefits to KATRINA LYNN SCHALLER ("KATRINA"), including but not limited  
12 to, against the United States Social Security Administration and any other appropriate  
13 parties.
- 14 2. Petitioners shall file periodic reports every six (6) months providing the procedural  
15 status of any action (and/or related appeals or proceedings) filed pursuant to  
16 authorization given by this Order. No hearing shall be set in connections with said  
17 reports except by further order of the Court or on the request of the Petitioners.
- 18 3. In the event that Petitioners prevail, Petitioners shall provide a regular accounting of  
19 any benefits awarded for the benefit of KATRINA.

20  
21 SO ORDERED SEP 18 2018

22  
23 **Original Signed By:**  
**Honorable Anita A. Sukola**

24 **HONORABLE ANITA A. SUKOLA**  
25 **Judge, Superior Court of Guam**

26 I do hereby certify that the foregoing  
27 is a full true and correct copy of the  
28 original on file in the office of the  
clerk of the Superior Court of Guam.

SEP 21 2018

ROSALIND OSBALAJADIA  
Deputy Clerk, Superior Court of Guam

# CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

## I. (a) PLAINTIFFS

Katrina Schaller, by and through her Legal Guardians

(b) County of Residence of First Listed Plaintiff Guam  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)  
Calvo Fisher, & Jacob LLP, 259 Martyr Street, Suite 100, Hagatna, Guam 96910, 671 646 9355; Kirkland & Ellis LLP, 655 Fifteenth St. NW, Washington, DC 20005, 202 879 5200

## DEFENDANTS

U.S. Social Security Administration;  
Nancy A. Berryhill, in her official capacity

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input checked="" type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	FEDERAL TAX SUITS
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

## V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
US Const., am. XIV

Brief description of cause:  
Challenge to the constitutionality of the Supplemental Security Income (SSI) program and its implementing rules

## VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint:  
JURY DEMAND:  Yes  No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE 12/06/2018 SIGNATURE OF ATTORNEY OF RECORD

/s/ Rodney J. Jacob

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_