

No. 20-303

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IN THE

**Supreme Court of the United States**

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UNITED STATES OF AMERICA,

*Petitioner,*

v.

JOSE LUIS VAELLO-MADERO,

*Respondent.*

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

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**BRIEF OF THE HON. JENNIFFER A. GONZALEZ  
COLON, RESIDENT COMMISSIONER FOR  
PUERTO RICO, AS *AMICUS CURIAE* IN  
SUPPORT OF RESPONDENT**

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## INTEREST OF *AMICUS CURIAE*<sup>1</sup>

The Hon. Jenniffer A. González Colón is the Resident Commissioner for Puerto Rico and, as such, a Member of the United States Congress.

As Resident Commissioner, the appearing party has an interest in the improvement of the condition of the most vulnerable of her constituents: the elderly poor and the disabled. As a non-voting Member of Congress and the representative of the residents of Puerto Rico before the Federal Government, the appearing can provide additional perspective on the economic injustices created by the democratic deficit that results from Puerto Rico's territorial condition, and which perpetuate the discriminatory treatment of American citizens in Puerto Rico in social programs.

## SUMMARY OF THE ARGUMENT

SUPPLEMENTAL SECURITY INCOME (SSI) is a national program established in 1972 to substitute federal subsidies granted to the States to provide financial aid to needy individuals. Under the SSI program, the federal government provides direct economic assistance to low-income individuals 65 and older and individuals with disabilities. Unlike Social

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<sup>1</sup> No counsel for any party authored this brief in whole or in part, and no person or entity, other than the *amicus curiae* or counsel, made a monetary contribution to the preparation or submission of this brief. The parties consented to the filing of this brief.

Security, which is financed by dedicated payroll taxes, SSI is funded from general revenues.

Since SSI began in 1974, it has transformed from a program that mainly supplemented Social Security income for elderly adults to a broader anti-poverty program that aids the disabled of all ages, becoming increasingly important for children and adults with disabilities. SSI benefits furnish about three-fourths of the federal poverty level for a single person. Thus, while SSI alone is not enough to lift people out of poverty, it reduces the number of people in extreme poverty and greatly lessens the burden on family members. In 2013, SSI payments lowered the number of recipients living under the federal poverty level from 63% to 42%. The program currently pays a maximum benefit of \$794 per month if one is single or \$1,191 per month for a couple.<sup>2</sup> The average beneficiary receives \$586 per month and the average beneficiary under 18 receives approximately \$693 per month.

SSI is available to American citizens who live in a State, the District of Columbia, and in the territory of the Northern Mariana Islands (CNMI). The U.S. Virgin Islands (USVI), Guam, Puerto Rico and American Samoa are excluded from the program.

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<sup>2</sup> Social Security Administration (SSA), Office of Disability and Income Security Programs, *Understanding Supplemental Security Income, 2021 Edition*, April 2021, Publication No. 17-008, p. 5, <https://www.ssa.gov/pubs/EN-17-008.pdf>.

Instead of SSI, Puerto Rico, Guam, and the USVI receive supplemental assistance through the AID TO THE AGED, BLIND, AND DISABLED PROGRAM (AABD) program, a capped grant from the U.S. Department of Health & Human Services (HSS) which applied to the States prior to the establishment of SSI. Puerto Rico has to match 25% of the funds it receives from the AABD, a requirement that does not apply to SSI. Puerto Rico receives \$26 million dollars under AABD, which makes the average payment to each beneficiary of \$82 a month.

According to the U.S. Government Accountability Office (GAO), if Puerto Rico had been a State in 2011, SSI payments for that year would have been \$1,500 to \$1,800 million, the number of U.S. citizens receiving this supplemental assistance would have increased almost tenfold— from 37,500 to 354,000— and the average assistance payments would have increased to \$422 a month.<sup>3</sup>

In 2020, SSA’s Office of the Chief Actuary (OCACT) estimated that if SSI were extended to Puerto Rico, American Samoa, Guam, and the USVI at the beginning of FY2021, then federal SSI payments for FY2021 through FY2030 would have been approximately \$23.4 billion, with \$22.7 billion attributable to Puerto Rico and \$0.7 billion

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<sup>3</sup> GAO, *Puerto Rico: Information on How Statehood Would Potentially Affect Selected Federal Programs and Revenue Sources*, GAO-14-31, March 31, 2014, pp. 83-84, <http://www.gao.gov/products/GAO-14-31>, (hereinafter “GAO Puerto Rican Statehood 2014”).

attributable to the other territories combined.<sup>4</sup> Thus, the implementation of SSI in Puerto Rico would represent an increase of over 50 times the aid that residents of Puerto Rico currently receive for supplemental assistance under the AABD.

## ARGUMENT

- I. **SSI is a means-tested federal entitlement program intended to provide a guaranteed minimum income to adults who have difficulty covering their basic living expenses.**

The SSI— Title XVI of the Social Security Act— is a means-tested federal entitlement program that provides monthly cash benefits to the aged, blind, and disabled.<sup>5</sup>

SSI began as a relatively small program providing benefits to a largely elderly population. Since then, SSI has grown to become the largest federal means-tested cash assistance program in the

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<sup>4</sup> Memorandum from Michael Stephens, ASA, Supervisory Actuary, OCACT, to Steve Goss, ASA, MAAA, Chief Actuary, OCACT, June 11, 2020, [https://www.ssa.gov/oact/solvency/SSIEligExt\\_20200611.pdf](https://www.ssa.gov/oact/solvency/SSIEligExt_20200611.pdf).

<sup>5</sup> 42 U.S.C. §§1381-1383f.

United States, with a caseload dominated by children and working-age adults with disabilities.<sup>6</sup>

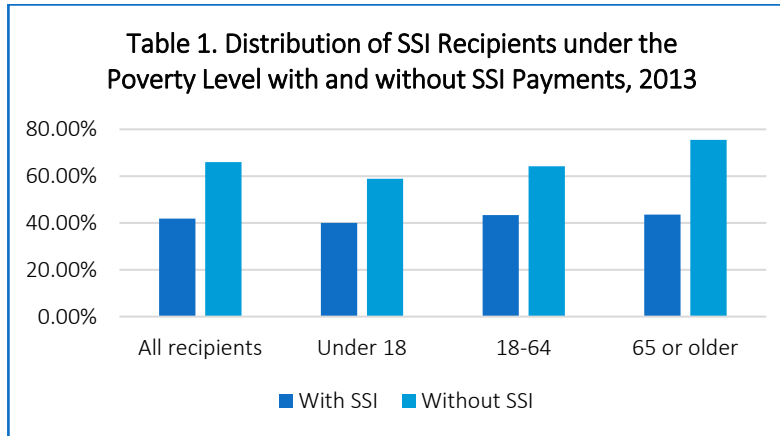
The program is intended to provide a guaranteed minimum income to adults who have difficulty covering their basic living expenses due to age or disability and who have little or no Social Security or other income. It is also designed to supplement the support and maintenance of needy children with severe disabilities. SSI benefits furnish about three-fourths of the federal poverty level for a single person and slightly over 80% of the federal poverty level for a couple.<sup>7</sup> Even with SSI, in 2013, about 42% of all SSI recipients and 34% of SSI recipients under 18 still lived under the federal poverty level; while 66% of all recipients and 59% of those under 18 would have fallen under the federal poverty level if they had not received SSI. (Table 1).<sup>8</sup>

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<sup>6</sup> Daly, M. & Burkhauser, R.V. (2003), *The Supplemental Security Income Program*. In R.A. Moffitt (Ed.), *MEANS-TESTED TRANSFER PROGRAMS IN THE UNITED STATES* (p. 79). Chicago, IL: The University of Chicago Press. *See also* Katherine Giefer, *A Profile of SSI Recipients: 2017*, Current Population Reports, P70BR-171, U.S. Census Bureau, Washington, DC, 2021, <https://www.census.gov/content/dam/Census/library/publications/2021/demo/p70br-171.pdf>.

<sup>7</sup> Based on the poverty guidelines established by HHS. HHS, Office of Assistant Secretary for Planning and Evaluation, "Poverty Research." <http://aspe.hhs.gov/poverty/index.cfm>.

<sup>8</sup> Michelle Stegman Bailey and Jeffrey Hemmeter, *Characteristics of Noninstitutionalized DI and SSI Program Participants, 2013 Update*. SSA, Office of Research, Evaluation,



SSI is commonly known as a program of *last resort* because claimants must first apply for all other benefits for which they may be eligible; the program does not have work or contribution requirements, but cash assistance is awarded only to those whose income and resources are within prescribed limits. Although SSI is administered by the SSA, it is not part of OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE (OASDI), commonly known as Social Security. The SSI program operates in the 50 States, the District of Columbia, and the unincorporated territory of the CNMI.

### A. Eligibility Requirements

To be eligible for SSI, individuals must be aged, blind, or disabled as defined in federal law. *Aged*

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Note No. 2015-02 (released September 2015), Table 13, <https://www.ssa.gov/policy/docs/rsnotes/rsn2015-02.html>.

refers to individuals who are 65 or older. Individuals are considered blind if they are of any age and have central visual acuity of 20/200 or less in the better eye with the use of a correcting lens or have a visual field limitation of 20 degrees or less in the better eye. Individuals are considered disabled if they meet the same definition of disability that applies under the Social Security Disability Insurance program.

- **Disabled Adults.** Individuals 18 or older must be unable to engage in any substantial gainful activity (SGA) due to any medically determinable physical or mental impairment that is expected to last for at least 12 months or to result in death. SSA uses a monetary threshold to determine whether a person's work activity constitutes SGA. The SGA earnings threshold for 2021 is \$1,310 per month.<sup>9</sup> Adults generally qualify as disabled if their impairment is of such severity that they are unable to do any kind of substantial work that exists in the national economy, taking into account their age, education, and work experience.
- **Disabled Children.** Individuals under 18 must have a medically

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<sup>9</sup> The monthly SGA amount for statutorily blind individuals for 2021 is \$2190. SSA, OCACT, "Substantial Gainful Activity," <https://www.ssa.gov/oact/cola/sga.html>.

determinable physical or mental impairment that results in marked and severe functional limitations and is expected to last for at least 12 months or to result in death. Children typically qualify as disabled if they have a severe impairment that limits their ability to engage in age-appropriate childhood activities. In addition, the child's earnings must not exceed the SGA threshold at the time of application.

To be financially eligible for SSI, individuals must have income and resources within prescribed limits. *Income* is defined as anything one receives in cash or in-kind that can be used to meet one's needs for food and shelter. *Resources* are cash or other liquid assets or any real or personal property that an individual owns and could convert to cash to be used for his or her support and maintenance. In addition to the person's own income and resources, the income and resources of certain ineligible family members (such as a spouse or parent) may be deemed available to meet the needs of the person, and as such, may be included in his or her countable income and resources.

The limit for *countable income*—gross income minus all applicable exclusions—is equal to the federal benefit rate (FBR), which is the maximum monthly SSI benefit payable to qualified individuals and couples. In 2021, the FBR is \$794 per month for an individual living independently and \$1,191 per month for a couple living independently if both

members are SSI eligible.<sup>10</sup> The FBR is adjusted annually for inflation by the same cost-of-living adjustment applied to Social Security benefits. Countable income is subtracted from the applicable FBR in determining SSI eligibility and the amount of the payment. Certain income is disregarded for eligibility and payment purposes, including the first \$20 per month of any income (earned or unearned) as well as the first \$65 per month of earned income plus one-half of any earnings above \$65.<sup>11</sup> The disregarded income is not indexed to inflation and has not been increased since SSI went into effect.

The limit for *countable resources*—gross resources minus all applicable exclusions—is \$2,000 for an individual and \$3,000 for a couple. As with income, certain resources are excluded in determining SSI eligibility, such as the person’s primary residence, household goods and personal effects, one vehicle, and property essential to self-support. The resource limits are not adjusted for inflation and have remained at their current levels since 1989.

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<sup>10</sup> SSA, OCACT, “SSI Federal Payment Amounts,” <https://www.ssa.gov/oact/cola/SSIamts.html>.

<sup>11</sup> *Unearned income* refers to income not derived from current work, such as Social Security, veterans’ benefits, interest income, and cash from friends or relatives. *Earned income* includes wages, net earnings from self-employment, payments for services performed in a sheltered workshop, and certain royalties and honoraria. Certain types of in-kind (non-cash) support are also excluded, such as federal housing and food assistance.

In addition to meeting the categorical and financial requirements for SSI, a person must (1) be a U.S. citizen or a noncitizen who meets a qualified alien category; (2) reside in one of the 50 States, the District of Columbia, or the territory of the CNMI and, (3) not be absent from the country for a full calendar month or for 30 consecutive days or more. In other words, if an SSI recipient were to travel from Florida to the USVI and remain there for 30 consecutive days or longer, the individual would become ineligible for SSI. If the individual returned to Florida, he would become eligible for SSI again after being physically present in the State for 30 consecutive days, subject to certain conditions.

The territory of the CNMI is the only U.S. territory with the SSI program. The covenant by which the Northern Mariana Islands ceded itself to the United States (approved by P.L. 94-241) extended SSI to the territory, effective January 1978.<sup>12</sup>

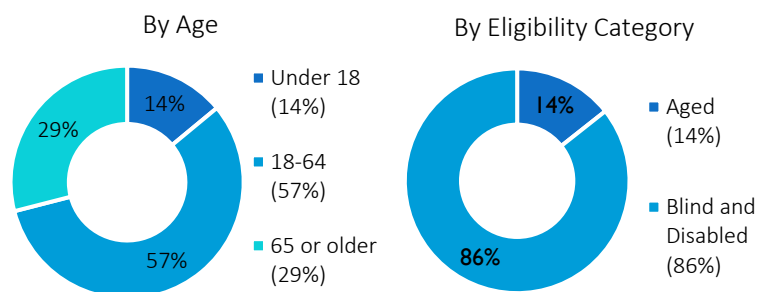
## **B. Participation**

In July 2021, SSA issued federally administered payments to approximately 7.9 million SSI recipients, including 1.1 million children under 18 (or 14%), 4.5 million adults 18-64 (or 57%),

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<sup>12</sup> Section 502(a) of P.L. 94-241 (48 U.S.C. §1801 note) states, “[t]he following laws of the United States in existence on the effective date of this Section and subsequent amendments to such laws will apply to the Northern Mariana Islands ... Title XVI of the Social Security Act as it applies to the several States.”

and 2.3 million seniors 65 or older (or 29%).<sup>13</sup> The vast majority of SSI recipients — 86% — are eligible due to a severe disability (including blindness).



The average monthly SSI payment was \$585.86 for all recipients, \$693.01 for children, \$616.63 for working-age adults, and \$ 476.04 for seniors.<sup>14</sup>

### C. Funding and Expenditures

Federal SSI benefits and administrative costs are financed from the general fund of the U.S. Treasury. Congress appropriates funds for mandatory benefit payments and discretionary administrative

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<sup>13</sup> SSA, Office of Research, Evaluation, and Statistics (ORES), “Monthly Statistical Snapshot, July 2021,” August 2021, Table 3, [https://www.ssa.gov/policy/docs/quickfacts/stat\\_snapshot/2021-07.html](https://www.ssa.gov/policy/docs/quickfacts/stat_snapshot/2021-07.html).

<sup>14</sup> SSA, ORES, “SSI Monthly Statistics, July 2021”, Table 7, [https://www.ssa.gov/policy/docs/statcomps/ssi\\_monthly/2021-07/table07.html](https://www.ssa.gov/policy/docs/statcomps/ssi_monthly/2021-07/table07.html). For more data on SSI recipients, see SSA, *SSI Annual Statistical Report, 2019*, [https://www.ssa.gov/policy/docs/statcomps/ssi\\_asr/2019/ssi\\_asr19.pdf](https://www.ssa.gov/policy/docs/statcomps/ssi_asr/2019/ssi_asr19.pdf) (Annual Statistical Report, 2019).

costs into SSA's accounts each year as part of the Departments of Labor, Health and Human Services, and Education, and Related Agencies (LHHS) appropriations act. For FY2022, SSA estimates it will pay \$62.7 billion in Federal benefits to approximately 8 million SSI recipients.<sup>15</sup>

#### **D. SSI and Children with Disabilities**

As Robert Finch, President Nixon's Secretary of Health, Education and Welfare, testified before Congress to explain the Administration's rationale for providing SSI benefits to children: "Disabled children living in low-income households are among the most disadvantaged of all Americans and are deserving of special assistance in order to help them become self-supporting members of our society."<sup>16</sup>

SSI is the only source of federal income support targeted to families caring for children with disabilities, and it reaches only the lowest-income families and most severely impaired children. As of December 2019, SSI served 1.2 million low-income children with disabilities, or approximately 14% of

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<sup>15</sup> SSA, "Justification of Estimates for Appropriations Committees, Fiscal Year 2022", Figure 1 i.7, <https://www.ssa.gov/budget/FY22Files/2022SSI.pdf>. Excludes federally administered state supplementary payments and reimbursements from States.

<sup>16</sup> Testimony of Robert Finch, Secretary of the Department of Health, Education and Welfare, "Social Security and Welfare Proposals" H.R. Rep. No. 231, 92nd Cong., 2d Sess., U.S.C.C.A. News 4989, 5133 (1972).

SSI recipients. Disabilities include mental conditions, autism, intellectual disability, schizophrenia, and bipolar disorder; physical conditions include cerebral palsy, muscular dystrophy, Down Syndrome, blindness, and cancer. (Table 2).<sup>17</sup>







Families caring for children with disabilities are more likely than other families with the same level of income to face material hardships, such as struggling to put food on the table, being forced out of their homes, having their electricity shut off, or going without the medical care they need.<sup>18</sup> The modest income SSI provides does not solve all of these problems, but it does reduce the struggles of these vulnerable families. A stable source of income to pay for housing, for example, may prevent a child from having to leave his or her community and school, an upheaval that can be especially challenging for a child with special needs. Conversely, financial insecurity can pose additional challenges for children with disabilities. For example, children with special needs often require special diets, which raises their food

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<sup>17</sup> Annual Statistical Report, 2019, Table 20, [https://www.ssa.gov/policy/docs/statcomps/ssi\\_asr/2019/sect04.pdf](https://www.ssa.gov/policy/docs/statcomps/ssi_asr/2019/sect04.pdf).

<sup>18</sup> Parish, Susan, *et al.*, *Material Hardship in U.S. Families Raising Children with Disabilities*, EXCEPTIONAL CHILDREN, Vol. 75:1, 71-92 (2008); and MATERIAL HARDSHIP IN U.S. FAMILIES RAISING CHILDREN WITH DISABILITIES: RESEARCH SUMMARY AND POLICY IMPLICATIONS, University of North Carolina, March 2009.

costs and makes them more vulnerable than other children to the harmful effects of food insecurity.<sup>19</sup>

Table 2. Supplemental Security Income serves 1.2 Million Low-Income Children with Disabilities, including:	
	217,339 children with developmental disorders
	104,289 children with intellectual disabilities
	210,021 children with autism
	9,015 children with cancer
	62,994 children with congenital abnormalities like Down Syndrome
	82,957 children with disorders of the nervous system like cerebral palsy, or sensory disabilities like blindness

SSI helps families make ends meet while paying for the highly individualized support their children may require, many of which are not offered by schools or covered by insurance— things like specialized therapies, medically prescribed diets, diapers for older children, home modifications for

<sup>19</sup> Nat'l Comm'n on Hunger, *Freedom from Hunger: An Achievable Goal for the United States of America*, 2015, [https://www.aei.org/wp-content/uploads/2016/01/Hunger Commission Final Report.pdf](https://www.aei.org/wp-content/uploads/2016/01/Hunger_Commission_Final_Report.pdf).

accessibility, adaptive equipment, tutors, specialized childcare, and transportation to doctors and specialists.<sup>20</sup>

Since SSI is available only to those who are disabled (or elderly) and have very low incomes and assets, more disabled children become eligible for SSI when poverty rates rise. According to an analysis by the Center on Budget and Policy Priorities, SSI benefits especially reduce deep poverty, lifting nearly 200,000 children with disabilities above 50% of the poverty level.<sup>21</sup>

**II. The U.S. territories whose eligible residents are excluded from SSI continue to operate the categorical grant programs for the aged, blind, and disabled, which SSI replaced in the 50 States and the District of Columbia in 1974.**

Congress has not extended the SSI program to four of the five U.S. territories— Puerto Rico, the USVI, Guam, and American Samoa. Instead, Puerto Rico, the USVI and Guam continue to operate the grant programs for the aged, blind, and disabled, which SSI replaced in the States and the District of

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<sup>20</sup> Consortium for Citizens with Disabilities, *Preserve Supplemental Security Income for Children with Disabilities: Speaker Ryan's Poverty Plan Proposes Harmful Elimination of Benefits*, June 7, 2016, <http://www.c-c-d.org/fichiers/Preserve-SSI-for-Children-and-Families-06-07-16.pdf>.

<sup>21</sup> Romig, K., *SSI: A Lifeline for Children with Disabilities*, May 11, 2017.

Columbia in 1974. The Social Security Act offers federal funds to Puerto Rico, Guam, and the USVI to help pay for cash assistance to needy aged, blind, or disabled adults under

- the separate programs of Old-Age Assistance (OAA; Title I), Aid to the Blind (AB; Title X), and Aid to the Permanently and Totally Disabled (APTD; Title XIV); or
- the single program of Aid to the Aged, Blind, or Disabled (AABD; Title XVI).<sup>22</sup>

The OAA, AB, APTD, and AABD grant programs—known collectively as the adult assistance programs—are a joint venture between the federal government and the territories, whereby the federal government reimburses the territories for a portion of approved expenditures made to or on behalf of eligible adult recipients. Unlike SSI, the adult assistance programs do not provide benefits to disabled children, although blind children may qualify for benefits if the territory permits. To qualify for federal funds (known as grants-in-aid), a territory must have an approved “state plan”, which describes the nature and scope of its program(s).<sup>23</sup> Within certain federal requirements, the territories have broad discretion to determine the

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<sup>22</sup> 42 U.S.C. §§301-306, 1201-1206, 1351-1355, and 1381 note-1385 note, respectively. *See also* §1101(a)(1) of the Social Security Act (42 U.S.C. §1301[a][1]) and 45 C.F.R. §§201.0, 201.1(g).

<sup>23</sup> 45 C.F.R. §201.2.

features of their assistance programs, such as eligibility requirements, need standards (i.e., income or resource limits), benefit levels, and program administration. The HHS, Administration for Children and Families (ACF), Office of Family Assistance (OFA) oversees the assistance programs at the federal level.

The OAA and AB programs were established in 1935 through the original Social Security Act to furnish participating States with grants in an effort to improve assistance for the elderly and the blind.<sup>24</sup> The APTD program was established in 1950 to extend eligibility to needy adults who are permanently and totally disabled due to an impairment other than blindness. In 1962, States were given the option of consolidating their adult assistance programs for the aged, blind, and disabled into a single AABD program under Title XVI of the Social Security Act.

Section 303(a) of the SOCIAL SECURITY AMENDMENTS OF 1972 (P.L. 92-603) repealed Titles I, X, and XIV of the Social Security Act, and Section 301 of P.L. 92-603 amended Title XVI of the Social Security Act to establish the SSI program effective January 1, 1974. However, Section 303(b) of P.L. 92-603 provided that the repeals and amendments made to the aforementioned titles of the Social Security Act

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<sup>24</sup> For more information, see Herman F. Grundmann, *Adult Assistance Programs under the Social Security Act*, Social Security Bulletin, vol. 48, no. 10 (October 1985), <https://www.ssa.gov/policy/docs/ssb/v48n10/>.

do not apply to Puerto Rico, Guam, and the USVI. Consequently, SSI was not extended to the territories.<sup>25</sup>

Because Congress established SSI by amending Title XVI of the Social Security Act for all jurisdictions except the territories, Title XVI authorizing AABD continues to operate alongside Title XVI authorizing SSI. In other words, the Social Security Act contains two Title XVIs: the one authorizing AABD is set forth in Sections 1601-1605 of the Social Security Act.<sup>26</sup>

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<sup>25</sup> Guam and the USVI continue to operate OAA, AB, and APTD under Titles I, X, and XIV of the Social Security Act, while Puerto Rico continues to operate AABD under Title XVI of the Social Security Act as it existed prior to reenactment by P.L. 92-603. HHS, *Federal Financial Participation in State Assistance Expenditures; Federal Matching Shares for Medicaid, the Children's Health Insurance Program, and Aid to Needy Aged, Blind, or Disabled Persons for October 1, 2015 Through September 30, 2016*, 79 F.R. 71426, December 2, 2014, <https://www.gpo.gov/fdsys/pkg/FR-2014-12-02/pdf/2014-28398.pdf>.

<sup>26</sup> 42 U.S.C. §§1381 note-1385 note. Unless otherwise stated, Title XVI hereinafter refers to the title of the Social Security Act authorizing AABD.

Table 3. Overview of Cash Assistance Programs for the Aged, Blind, and Disabled under the Social Security Act <sup>27</sup>				
Program	Authorizing Legislation	Title	U.S.C. Citation	Availability
Grants to States for Old-Age Assistance for the Aged (OAA)	Social Security Act of 1935 (P.L. 74-271)	Title I	42 U.S.C. §§301-306	Guam and USVI
Grants to States for Aid to the Blind (AB)	Social Security Act of 1935 (P.L. 74-271)	Title X	42 U.S.C. §§1201-1206	Guam and USVI
Grants to States for Aid to the Permanently and Totally Disabled (APTD)	Social Security Act Amendments of 1950 (P.L. 81-734)	Title XIV	42 U.S.C. §§1351-1355	Guam and USVI
Grants to States for Aid to the Aged, Blind, or Disabled (AABD)	Public Welfare Amendments of 1962 (P.L. 87-543)	Title XVI	42 U.S.C. §§1381 note – 1385 note	Puerto Rico

<sup>27</sup> Congressional Research Service (CRS), based on information in U.S. Congress, House Committee on Ways and Means, *Compilation of the Social Security Laws*, committee print, 113th Cong., 1st sess., H.Prt. 113-3 (Washington: GPO, 2013), vol. I, part 1, [https://www.ssa.gov/OP\\_Home/ssact/ssact.htm](https://www.ssa.gov/OP_Home/ssact/ssact.htm).

Supplemental Security Income for the Aged, Blind, and Disabled (SSI)	Social Security Amendments of 1972 (P.L. 92-603)	Title XVI	42 U.S.C. §§1381 – 1383f	50 States, District of Columbia, and the territory of the CNMI
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### A. Funding and Expenditures

Titles I, X, XIV, and XVI of the Social Security Act provide federal funds to the territories through a system of categorical grants, which are designed to reimburse the territories for a share of the costs of providing cash assistance to the aged, blind, and disabled. Under this system, federal funds are allocated in proportion to a territory's approved expenditures for the quarter, subject to certain restrictions. The rate at which a territory is reimbursed by the federal government for approved expenditures is known as the Federal Financial Participation (FFP) rate.

With respect to benefit payments, the Social Security Act provides two formulas under which territories may be reimbursed. Under the original formula, the FFP rate is 50%, up to \$37.50 per

recipient per month.<sup>28</sup> Under the alternative formula, the FFP rate is 75%, provided the territory has an approved state Medicaid plan and elects the option.<sup>29</sup> All three territories elect the FFP rate of 75% under the alternative formula. With respect to administrative costs, the Social Security Act sets the FFP rate at 50%.<sup>30</sup> In effect, the federal government finances up to 75% of all benefit payments and 50% of all administrative costs, while the territories finance at least 25% of all benefit payments and 50% of all administrative costs.

Congress appropriates funds to ACF's Payments to States for Child Support Enforcement and Family Support Programs account through the LHHS appropriations act to cover federal costs for OAA, AB, APTD, and AABD. ACF's Office of Grants Management awards funds to territorial assistance agencies based on quarterly estimates of expenditures. Federal funding for the adult assistance programs is mandatory and subject to dollar limits (i.e., capped). Section 1108(a) of the Social Security Act sets a ceiling on the cumulative

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<sup>28</sup> §§3(a)(2), 1003(a)(2), 1403(a)(2), and 1603(a)(2) of the Social Security Act; 42 U.S.C. §§303(a)(2), 1203(a)(2), 1353(a)(2), and 1383 note.

<sup>29</sup> §1118 of the Social Security Act; 42 U.S.C. §1318.

<sup>30</sup> §§3(a)(3), 1003(a)(3), 1403(a)(3), and 1603(a)(3) of the Social Security Act; 42 U.S.C. §§303(a)(3), 1203(a)(3), 1353(a)(3), and 1383 note.

amount of federal funding that each territory can receive for a fiscal year for the following programs:<sup>31</sup>

- adult assistance under Titles I, X, XIV, and XVI of the Social Security Act;
- Temporary Assistance for Needy Families (TANF) under Title IV-A of the Social Security Act;
- foster care, permanency assistance, and other activities authorized under Title IV-E of the Social Security Act (hereinafter Title IV-E activities);<sup>32</sup> and
- additional matching grants under Section 1108(b) of the Social Security Act (hereinafter Section 1108(b) matching grants).<sup>33</sup>

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<sup>31</sup> 42 U.S.C. §1308(a). Certain payments under Title IV of the Social Security Act are excluded from the funding cap.

<sup>32</sup> In addition to support for foster care and permanency assistance (i.e., adoption assistance and kinship guardianship assistance), Title IV-E activities includes funds for services and supports to assist youth in making a successful transition to adulthood as well as incentive payments for increases in completed adoptions and legal guardianships.

<sup>33</sup> 42 U.S.C. §1308(b). Under §1108(b) of the Social Security Act, the territories may also receive additional matching grants if certain requirements are met. The additional matching grants would be available to help finance additional expenditures for TANF and Title IV-E activities. In order for Puerto Rico to receive §1108(b) matching grants, it must spend from its own

Section 1108(c)(4) of the Social Security Act specifies that the mandatory ceiling amount—the cumulative limit on federal payments to a territory for the aforementioned programs for a fiscal year—is \$107,255,000 for Puerto Rico, \$4,686,000 for Guam, and \$3,554,000 for the USVI.<sup>34</sup> These cumulative funding limits, known as Section 1108 caps, are not indexed to inflation and have remained at their current levels since FY1997.

The funding for each territory’s system of adult assistance for a fiscal year is determined, in part, by its TANF block grant. The territories each receive a basic TANF block grant (i.e., the State Family Assistance Grant) based on the federal share of their expenditures in TANF’s predecessor programs during the early-to-middle 1990s.<sup>35</sup> The amount of the basic TANF grant is fixed in law and has not been increased since TANF went into effect.<sup>36</sup> The amount of federal funding available for adult assistance, Title IV-E activities, and Section 1108(b) matching grants is

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funds at least 100% of its share of expenditures for FY1995 under TANF’s predecessor programs.

<sup>34</sup> 42 U.S.C. § 1308(c)(4).

<sup>35</sup> For more information, see CRS Report RL32748, *The Temporary Assistance for Needy Families (TANF) Block Grant: A Primer on TANF Financing and Federal Requirements*.

<sup>36</sup> The CONSOLIDATED APPROPRIATIONS ACT, 2017 (P.L. 115-31) reduced the basic TANF block grant by 0.33% starting in FY2017.

effectively equal to the amount of the Section 1108 cap minus the amount of the basic TANF grant. For Puerto Rico, the Section 1108 cap is \$107,255,000 and the full amount of the basic TANF grant is \$71,326,345, leaving \$35,928,655 in combined federal funding available for adult assistance, Title IV-E activities, and Section 1108(b) matching grants. (Table 4).

Table 4. Section 1108 Cap, Basic TANF Block Grant Amount, and Available Funding for Adult Assistance and Other Specified Programs, by Territory (FY2017 and Thereafter)			
Territory	Section 1108 Cap	Basic TANF Block Grant	Available Funding
Puerto Rico	\$107,255,000	\$71,326,345	\$35,928,655
Guam	\$4,686,000	\$3,454,042	\$1,231,958
USVI	\$3,554,000	\$2,837,170	\$716,830

### B. AABD in Puerto Rico

Puerto Rico's AABD program is administered by the Administration for Socioeconomic Development of the Family of the P.R. Department of the Family, (ADSEF). Puerto Rico operates all of its cash assistance programs, including AABD, under its TANF program.<sup>37</sup> Specifically, assistance for the

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<sup>37</sup> ADSEF, *Memorial Explicativo del Presupuesto Recomendado, 2016-2017*, June 30, 2016, pp. 215-217, <http://www2.pr.gov/ogp/Bvirtual/memExpPres/PDF/Agencias/A>

aged, blind, and disabled is provided under categories A, B, and D of the TANF program, respectively (Table 5).

To be categorically eligible for AABD, an individual must be aged, blind, or disabled as defined under the Social Security Act and Puerto Rican law and regulations.<sup>38</sup> *Aged* refers to individuals who are 65 or older.<sup>39</sup> Individuals are considered blind if they are of any age and have central visual acuity of 20/200 or less in the better eye with the use of a correcting lens or have a visual field limitation of 20 degrees or less in the better eye.<sup>40</sup> Individuals are considered disabled if they are 18 or older and have a physical or mental impairment that will likely not

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DSEF-17.pdf (hereinafter “ADSEF 2016 Budget Document”). *See also Normas de Certificación para la Determinación de Elegibilidad a Solicitantes y Participantes del Programa de Ayuda Temporal para Familias Necesitadas (TANF) de la Administración de Desarrollo Socioeconómico de la Familia del Departamento de la Familia* dated December 29, 2008, (D.E. 7653), available at <http://app.estado.gobierno.pr/ReglamentosOnLine/Reglamentos/7653.pdf> (hereinafter “ADSEF Regulation no. 7653”)

<sup>38</sup> §1601 of the Social Security Act; 42 U.S.C. §1381 note. *See also* 45 C.F.R. §233.10(b)(2) and ADSEF Regulation no. 7653.

<sup>39</sup> 8 L.P.R.A. §13.

<sup>40</sup> 8 L.P.R.A. §15.

improve and which prevents them from performing their previous job or any other paid work.<sup>41</sup>

In Puerto Rico, the countable income limit is equal to the maximum basic AABD benefit, which is \$64 per month.<sup>42</sup> ADSEF counts both earned income (e.g., wages and net earnings from self-employment) and unearned income (e.g., Social Security, veterans' benefits, lottery winnings). As with SSI, certain income is not counted for AABD eligibility and payment purposes. For the aged or disabled, ADSEF disregards the first \$20 per month of earned income plus one-half of the next \$60 per month.<sup>43</sup> For the blind, ADSEF disregards the first \$85 per month of earned income plus one-half of the remainder above \$85. ADSEF also excludes certain types of in-kind support, such as housing and food assistance. In addition to the basic AABD benefit, the program provides a secondary benefit equal to 50% of actual shelter costs, up to a maximum of \$100 per month.<sup>44</sup>

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<sup>41</sup> 8 L.P.R.A. §15a.

<sup>42</sup> *See* GAO Puerto Rican Statehood 2014, p. 83.

<sup>43</sup> §1602(a)(14)(B) and (C) of the Social Security Act; 42 U.S.C. §1382 note. *See also* 45 C.F.R. §233.20(a)(8) and ADSEF Regulation no. 7653.

<sup>44</sup> ADSEF Regulation no. 7653.

Table 5. Puerto Rico's TANF Program <sup>45</sup>			
Category	Needy Population	Source of Funding	Federal Designation
Category A – Assistance for the Aged	Individuals 65 or older	Federal and Territory	AABD
Category B – Assistance for the Blind	Individuals who are blind	Federal and Territory	AABD
Category C – Temporary Assistance for Families with Children	Families with children under 18	Federal	TANF
Category D – Assistance for the Disabled	Individuals who are 18 or older and are permanently and totally disabled	Federal and Territory	AABD
Category G – General Assistance	Adults who are temporary and totally disabled and children under 18 who are permanently disabled	Territory	Territorial program

<sup>45</sup> CRS, relying on ADSEF Regulation no. 7653 and ADSEF 2016 Budget Document, pp. 215-217.

Category T – Assistance for Children with Guardians	Children under 18 who meet the requirements of Category C, except they are living with a qualified relative	Territory	Territorial program
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The countable resource limit is \$2,000.<sup>46</sup> Resources include cash, bank accounts, bonds, stocks, life insurance, and farms or other property. ADSEF excludes certain resources such as a person's primary residence, household goods and personal effects, the total value of motor vehicles, and certain trusts.

In addition to the categorical and financial requirements for AABD, a person must (1) be a U.S. citizen or a noncitizen who meets a qualified alien category and certain other conditions, (2) reside in the area of the local assistance office to which the claimant applied, and (3) live outside of an institution, except for those approved by ADSEF.

### C. Participation

In January 2021, AABD provided cash benefits to 34,224 individuals, including 17,505 aged recipients (51%), 203 blind recipients (1%), and 16,516 disabled recipients (48%).<sup>47</sup> The average total

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<sup>46</sup> 45 C.F.R. §233.20(a)(3) and ADSEF Regulation no. 7653.

<sup>47</sup> CRS calculations of unpublished data provided to CRS by an official of the Financial Oversight & Management Board for Puerto Rico on February 4, 2021.

AABD benefit that month was \$82 for all recipients, \$80 for aged recipients, \$132 for blind recipients, and \$83 for disabled recipients.<sup>48</sup> According to a 2017 analysis of Puerto Rico’s “TANF program,” very few adult assistance recipients (less than 3%) receive a total AABD benefit greater than \$100 per month.<sup>49</sup>

#### **D. Funding and Expenditures**

According to ACF, actual federal expenditures on Puerto Rico’s AABD program in FY2020 were \$24.2 million, with \$21.7 million for benefit payments and \$2.5 million for administrative costs (Table 4).<sup>50</sup> Based on this data, Puerto Rico’s expenditures on AABD are estimated to have been \$9.8 million, with \$8.3 million for benefit payments and \$1.5 million for administrative costs. Combined expenditures for FY2016 are estimated to have been \$36.2 million, with \$33.2 million for benefit payments and \$3 million for administrative costs.

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<sup>48</sup> *Id.*

<sup>49</sup> Hector R. Cordero-Guzman, *The Characteristics of Participants in the TANF Program [Category-C and Aid to the Aged, Blind and Disabled (AABD)] in Puerto Rico in April 2016*, February 17, 2017, Table 21, <http://apps.estadisticas.pr/iepr/LinkClick.aspx?fileticket=HnBriTiN68c%3D&tabid=93&mid=501&forcedownload=true>.

<sup>50</sup> Unpublished data provided to CRS by ACF on February 23, 2021.

Table 6. Expenditures on Puerto Rico's AABD Program, by Type and Source, FY2020 <sup>51</sup>			
Type	Actual Federal Expenditures	Estimated Territorial Expenditures	Estimated Combined Expenditures
Benefit Payments	\$21,747,488	\$7,249,163	\$28,996,651
Administrative Expenses	\$2,486,775	\$2,486,775	\$24,973,550
Total	\$24,234,263	\$9,735,938	\$33,970,201

**III. The AABD program available in Puerto Rico provides significantly less assistance to eligible residents than the SSI program would provide to those same residents if the moved to a State, the District of Columbia, or the territory of the CNMI.**

Table 7 provides a comparison of the SSI program in the 50 states, the District of Columbia, and the territory of the CNMI with Puerto Rico's AABD program in FY2020.

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<sup>51</sup> CRS, based on unpublished federal expenditure data provided to CRS by ACF on February 23, 2021. Estimated expenditures based on FFP rates of 75% for benefit payments and 50% for administrative costs.

Table 7. Comparison of the SSI Program and Puerto Rico's AABD Program, FY2020 <sup>52</sup>		
Category	Supplemental Security Income (SSI)	Aid to the Aged, Blind, or Disabled (AABD)
Type of Program	Federal cash assistance for blind or disabled individuals of any age and the aged (some states provide supplements)	Federal-territory cash assistance program for blind individuals of any age, disabled adults, and the aged
Administration	<i>Federal SSI Benefits:</i> Social Security Administration	<i>State level:</i> Puerto Rico's Department of the Family, ADSEF
	<i>State supplements:</i> SSA or the state	<i>Federal level:</i> HHS, ACF, OFA
Categorical Requirements		
Aged	65 years or older	Same
Blind	Individuals of any age with central visual acuity of 20/200 or less in the better eye with the use of a	Same

<sup>52</sup> CRS, based on information from the following sources: unpublished data provided to CRS by ACF on February 23, 2021; SSA, "SSI Monthly Statistics, October 2020," November 2020, Tables 1 and 7, [https://www.ssa.gov/policy/docs/statcomps/ssi\\_monthly/2020-10/index.html](https://www.ssa.gov/policy/docs/statcomps/ssi_monthly/2020-10/index.html); SSA, Agency Financial Report, FY2020, November 10, 2020, p. 55, <https://www.ssa.gov/finance/>; SSA, "Understanding Supplemental Security Income SSI Home Page—2020 Edition," <https://www.ssa.gov/ssi/text-understanding-ssi.html>; and ADSEF Regulation no. 7653.

	correcting lens or have a visual field limitation of 20 degrees or less in the better eye	
Disabled	<p><i>Adults:</i> Individuals 18 or older must be unable to engage in any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment that is expected to last for at least 12 months or to result in death</p> <p><i>Children:</i> Individuals under 18 must have a medically determinable physical or mental impairment that results in marked and severe functional limitations and is expected to last for at least 12 months or to result in death</p>	<p>Individuals 18 or older must have a physical or mental impairment that will likely not improve and which prevents them from performing their previous job or any other paid work</p> <p>No benefits for children under 18</p>
<b>Financial Requirements</b>		
Income Limit	Countable income (gross income minus all applicable exclusions) must be less than the maximum monthly benefit: \$783 for an	Countable income must be less than the maximum basic monthly benefit: \$64

	individual or \$1,175 for a couple	
Income Disregards	The first \$20 of any income and the first \$65 of earned income and one-half of the remainder above \$65	<i>Aged or Disabled:</i> the first \$20 of earned income plus one-half of the next \$60 of earned income  <i>Blind:</i> the first \$85 of earned income plus one-half of the remainder above \$85
Resource Limit	Countable resources must not exceed \$2,000 for an individual or \$3,000 for a couple	Countable resources must not exceed \$2,000
<b>Number of Beneficiaries</b>		
	8.1 million	29,068
<b>Average Monthly Benefit Amount</b>		
	\$574 (federal SSI benefit plus state supplementary payment for selected states)	\$78 (basic monthly benefit plus secondary benefit for shelter costs)
<b>Financing</b>		
System	Direct payments to recipients	Categorical matching grants to territory
	SSI benefits and related administrative	<i>Benefit payments:</i> 75% federal, 25% territory

	costs are 100% federally funded	
	State supplements and related administrative costs are 100% state funded	<i>Administrative costs:</i> 50% federal, 50% territory
Source of Federal Funds	General fund of the U.S. Treasury	General fund of the U.S. Treasury
	Federal funding for benefits is mandatory and open-ended	Federal funding for benefits is mandatory and capped
Total Federal Spending	\$59.6 billion	\$24.2 million

According to the GAO, if Puerto Rico had been a state in 2011, SSI payments for that year would have been \$1,500 to \$1,800 million, the number of U.S. citizens receiving this supplemental assistance would have increased almost tenfold— from 37,500 to 354,000— and the average assistance payments would increase to \$422 per month.<sup>53</sup>

In 2020, the SSA estimated that if SSI were extended to Puerto Rico, American Samoa, Guam, and the USVI at the beginning of FY2021, then federal SSI payments for FY2021 through FY2030 would have been approximately \$23.4 billion, with

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<sup>53</sup> GAO Puerto Rican Statehood 2014.

\$22.7 billion attributable to Puerto Rico and \$0.7 billion attributable to the other territories combined.<sup>54</sup> Thus, the implementation of SSI in Puerto Rico would represent an increase of over 50 times the aid that residents of Puerto Rico currently receive for supplemental assistance under the AABD.

## CONCLUSION

Of all the disparities that Americans living in Puerto Rico face, none is as shocking to the conscience as the disparity in the assistance available to the most vulnerable of our citizens. An American citizen living under the poverty level in the 50 States, the District of Columbia, or the territory of the CNMI is no more needy, vulnerable, or deserving of assistance than an American citizen living under the poverty level in the Island.

SSI is a means-tested entitlement program, which—unlike traditional Social Security—, does not require that a beneficiary make payments into the program to be entitled to its benefits. An American in the 50 States, in the District of Columbia, or in the territory of the CNMI receiving SSI is as likely to pay federal taxes as an American living in Puerto Rico. There is no justifiable reason for this statutory discrimination.

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<sup>54</sup> Memorandum from Michael Stephens, ASA, Supervisory Actuary, OCACT, to Steve Goss, ASA, MAAA, Chief Actuary, OCACT, June 11, 2020, [https://www.ssa.gov/oact/solvency/SSIEligExt\\_20200611.pdf](https://www.ssa.gov/oact/solvency/SSIEligExt_20200611.pdf).

For these reasons, this Court should clarify that strict scrutiny is the proper test for reviewing the exclusion of eligible residents of Puerto Rico from the federal SSI program, hold that the exclusion of eligible residents of Puerto Rico from the federal SSI program does not satisfy strict scrutiny, and affirm the judgment below.

Respectfully submitted.

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