

# US Supreme Court upholds exclusion of Puerto Rico residents from supplemental income benefit

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On Thursday, the US Supreme Court upheld the exclusion of Puerto Rico's 3.2 million residents from the federal Supplemental Security Income (SSI) safety net program, which provides a monthly cash lifeline to children and people over 65 who are blind or disabled and have very low income.

All but one of the court's nine justices supported the opinion authored by Associate Justice Brett Kavanaugh, one of three Trump appointees and part of the hard-right, five-justice majority. Two of the three Democratic-appointed justices—Elena Kagan and Stephen Breyer—signed onto the ruling. The only dissent came from Justice Sonia Sotomayor, whose parents were born in the Caribbean colony seized by the United States in the 1898 Spanish American War.

The ruling is a vicious assertion of the prerogatives of US imperialism in the service of Wall Street banks and hedge fund speculators who hold tens of billions in Puerto Rican government debt. It reflects the American ruling class' contempt for the impoverished population, whose workers and youth rose up in mass protests three years ago that toppled the Democratic Party-aligned governor.

The Biden administration supported the opinion. Its Justice Department joined the appeal originally lodged by the Trump administration of lower court rulings overturning the exclusion of SSI benefits for residents of the island. Under a 1952 law passed following the brutal suppression of a nationalist revolt, Washington granted residents of the colonial territory citizenship, but without voting representation in Congress or the right to vote in presidential elections.

The 1972 law that established the SSI program limited eligibility to US citizens in the 50 states, the District of Columbia and the Northern Mariana Islands, while excluding citizens residing in Puerto Rico, the US Virgin Islands and Guam.

The case, *United States v. Vaello Madero*, was brought by Jose Luis Vaello-Madero, who was born in Puerto Rico but

lived in New York from 1985 to 2013. In 2012, he suffered a stroke and was found eligible for SSI disability benefits, which were deposited directly into his checking account.

In 2013 he moved back to Puerto Rico and continued to receive the monthly payments. When the Social Security Administration became aware that Vaello-Madero was no longer residing in one of the 50 US states, it cut off his benefits and ordered him to pay back \$28,081.

Vaello-Madero sued, arguing that the exclusions violated the US Constitution's Fifth Amendment guarantee of equal treatment. In the spring of 2020, a panel of the US Court of Appeals for the First Circuit, based in Boston, unanimously ruled for Vaello-Madero, declaring the that 1972 law's exclusion of US citizens who reside in territories violated the Fifth Amendment and did not pass muster as serving a "rational" purpose.

In his ruling, Kavanaugh argued that Congress had "substantial discretion" about how to structure federal tax and benefit programs for the territories. He noted that residents of Puerto Rico are exempt from the federal income tax, though they do pay other federal taxes such as Social Security, Medicare and unemployment taxes. He implied that denying SSI benefits to indigent, blind or disabled seniors on the island was a "fair" tradeoff for not paying income taxes.

Puerto Rico has its own separate aid program for the same categories of people, but its pitiful average monthly payment of \$75 is far less than the already inadequate average SSI payment on the US mainland of \$590.

Biden's deputy solicitor general, Curtis Gannon, offered essentially the same argument as Kavanaugh in his oral argument before the court, saying, "It's always appropriate for Congress to take account of the general balance of benefits and burdens associated with a particular federal program."

The Biden administration, in a transparent attempt to provide political cover for itself, has called on Congress to

amend the 1972 law so as to include Puerto Rico and the other territories. It knows full well, of course, that no such provision will be passed.

In her dissent, Sotomayor wrote: “In my view, there is no rational basis for Congress to treat needy citizens living anywhere in the United States so differently from others. To hold otherwise, as the Court does, is irrational and antithetical to the very nature of the SSI program and the equal protection of citizens guaranteed by the Constitution.”

She noted that the US Government Accountability Office estimates that over 300,000 Puerto Rico residents would have qualified for the SSI benefit—a staggering 10 percent of the island’s population. She also pointed out that those receiving SSI benefits in the 50 states pay few if any taxes at all.

Steve Vladeck, CNN Supreme Court analyst and a professor at the University of Texas School of Law, said the ruling was “a big deal both for what it holds and for what it opens the door to.”

“The core holding,” he noted, “is that Congress is allowed to withhold certain federal benefits from Americans who live in territories like Puerto Rico so long as it has any rational basis for doing so, and that no special justification is required. That makes it far easier for Congress, a body in which the territories are not represented, to treat residents of those territories differently with those who live in the states—not just for Supplemental Security Income, but for all federal benefit programs, like Social Security, Medicare and other entitlements funded at least in part by taxes paid by those living in those territories.”

The legacy of 124 years of colonial-style plundering of Puerto Rico by US imperialism is mass poverty, indebtedness, high unemployment and a shrinking and increasingly elderly population. According to US government figures, median household income on the island is \$21,058, per capita income is \$13,318, and the share of the population that lives in poverty is 43.4 percent.

Fifty-seven percent of children are in poverty and one third of adults report food insecurity.

In September of 2017, Puerto Rico was devastated by Hurricane Maria, which destroyed its already crumbling social infrastructure, including the electrical grid. Virtually the entire island was without electrical power for weeks on end, crops were destroyed, clean water and food were in short supply, untold hundreds of people who depended on oxygen tanks or dialysis died. Damage was estimated in the hundreds of billions of dollars.

Trump called his administration’s response to the catastrophe “amazing” and boasted that only 19 people had died—an obvious cover-up and lie. More realistic estimates put the death toll at more than 5,000.

The mayor of the capital, San Juan, called the impact of the storm, compounded by decades of debt payments to the banks and austerity policies, “something close to a genocide.”

One week after the hurricane struck, Trump took his first public notice of the disaster. He noted that “much of the island was destroyed,” but immediately added that the “billions of dollars... owed to Wall Street and the banks” had to be repaid.

And indeed, even as much of the territory’s infrastructure continued to rot in disrepair—with only a trickle of federal aid coming from Washington—the Financial Oversight and Management Board for Puerto Rico (FOMBPR) established in 2016 under Obama developed its plan to place the full burden of debt repayment to the banks on the working class.

The mass protests that brought down Governor Ricardo Roselló in 2019 filled the ruling class with alarm, above all that the social unrest would spread to the mainland. Teachers had already struck in opposition to both the politicians and the unions in the US, part of a global wave of working class strikes and protests. But lacking a revolutionary and internationalist perspective and leadership, the revolt succeeded only in replacing one stooge of Wall Street and the Puerto Rican bourgeoisie with another.

Now the stage is set for new struggles, with social anger intensified by the pandemic and the “let it rip” response of the ruling elite.

In January of this year, a federal judge imposed the Puerto Rican debt restructuring plan proposed by the Financial Oversight Board over protests led by teachers, government employees, students and retirees. The plan guts workers’ retirement plans, replacing defined benefit pensions with 401K plans. The bankers’ dictatorship, in the form of the Financial Oversight Board, is to remain in control until four years have passed with the government budget in balance, i.e., indefinitely.



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