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Evette Ocasio

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**PUERTO RICO'S SECOND-CLASS STATEHOOD: THE IMPACT OF PUERTO RICO'S  
RESTRICTED ACCESS TO FEDERAL PUBLIC BENEFITS PROGRAMS ON PUERTO  
RICO'S ECONOMIC RECOVERY**

EVETTE OCASIO

INTRODUCTION

Often forgotten on the mainland, the Commonwealth of Puerto Rico is the largest United States territory and home to over 3.1 million residents.<sup>1</sup> Although residents of Puerto Rico have enjoyed naturalized U.S. citizenship for over 100 years,<sup>2</sup> the federal government has yet to grant them equal treatment. Puerto Rico's residents cannot vote in federal elections, nor do they have representation in Congress.<sup>3</sup> The federal government also limits, and in some cases entirely precludes, funding allotments to Puerto Rico for many federal public benefits programs that make up the U.S. "social safety net."<sup>4</sup> These programs, such as the Supplemental Nutrition Assistance Program (SNAP), are essential to those with

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<sup>1</sup> U.S. Census Bureau, QuickFacts: Puerto Rico, <https://www.census.gov/quickfacts/fact/table/PR#> (last visited Dec. 12, 2020).

<sup>2</sup> Jones Act, Pub. L. No. 64-368, § 5, 39 Stat. 951, 953 (1917).

<sup>3</sup> Food & Nutrition Serv., U.S. Dep't of Agric., *Implementing Supplemental Nutrition Assistance Program in Puerto Rico: A Feasibility Study* ("FNS Feasibility Study") 7 (June 2010) <https://www.fns.usda.gov/snap/implementing-supplemental-nutrition-assistance-program-puerto-rico-feasibility-study> (last accessed December 12, 2020).

<sup>4</sup> *Martínez v. United States HHS*, 478 F.Supp.3d 155, 165 (P.R. Aug. 3, 2020).

low incomes, the elderly, individuals with disabilities, and families with dependent children.<sup>5</sup>

Puerto Rico has faced over a decade of economic downturn. It has high poverty and unemployment rates and low labor participation rates. Puerto Rico has been marred by public debt, political corruption, mismanagement, natural disasters, and inadequate federal assistance. The U.S. entered the Great Recession in December 2007 and recovered by June 2009.<sup>6</sup> In contrast, Puerto Rico's recession began in 2006 but never fully ended.<sup>7</sup> By 2016, the island's \$72 billion debt crisis led the federal government to establish The Financial Oversight and Management Board for Puerto Rico (Oversight Board), to manage the restructuring of Puerto Rico's debt and fiscal planning.<sup>8</sup>

In September 2017, the island was devastated by Hurricanes Irma and Maria, which wiped out the island's electric grid, washed out roadways and bridges, and damaged buildings and residences.<sup>9</sup> The damage to the power grid

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<sup>5</sup> Steven Carlson, Dorothy Rosenbaum, Brynne Keith-Jennings, & Catlin Nchako, *SNAP Works for America's Children*, Ctr. On Budget & Policy Priorities, 18 (Sept. 29, 2016); Ctr. On Budget & Policy Priorities, *Puerto Rico's Nutrition Assistance Program Helps Seniors* (June 2020).

<sup>6</sup> U.S. Gov't Accountability Off., GAO-14-31, *Puerto Rico: Information on How Statehood Would Potentially Affect Selected Federal Programs and Revenue Sources* ("2014 GAO Report") 8 (Mar. 2014).

<sup>7</sup> Brynne Keith-Jennings & Elizabeth Wolkomir, *How Does Household Food Assistance in Puerto Rico Compare to the Rest of the United States?*, Ctr. On Budget & Policy Priorities, 3 (Nov. 3, 2020), <https://www.cbpp.org/sites/default/files/atoms/files/11-27-17fa.pdf>.

<sup>8</sup> Gillian White, *Puerto Rico's Problems Go Way Beyond Its Debt*, *The Atlantic*, (July 1, 2016), <https://www.theatlantic.com/business/archive/2016/07/puerto-rico-promesa-debt/489797/> (last visited December 12, 2020).

<sup>9</sup> Edwin Melendez & Kathya Severino, *Hurricane Maria: Immediate Impact and Response*, Centro RB2017-02, 4 (Oct 2017).

from Hurricane Maria led to the largest blackout in U.S. history and the second largest in the world.<sup>10</sup> Specifically, Puerto Ricans were left without electricity in the midst of the Caribbean heat, causing already limited food to spoil, water pumps to fail, and medical equipment, such as dialysis machines, to be unusable.<sup>11</sup> Power was finally restored to the whole island after 328 days, but the infrastructure remains vulnerable to this day.<sup>12</sup> Hurricane Maria wiped out 80% of the crop value in Puerto Rico, leading to an estimated \$780 million loss in agriculture yields.<sup>13</sup> The Hurricane's devastation also triggered increased outmigration from Puerto Rico to the mainland U.S., creating lasting effects on the island's ability to recover that are felt today.<sup>14</sup> In 2018 alone, approximately 133,500 Puerto Rican residents left the island, up 36.9% from 2017.<sup>15</sup>

In short, the economic downturn in Puerto Rico has been exacerbated by natural disasters. Many of the island's residents need government assistance. Even as Americans, Puerto Rican residents are excluded from federal programs created

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<sup>10</sup> Eliza Barclay, et al., *Hurricane Maria: 4 Ways the Storm Changed Puerto Rico and the Rest of America*, Vox, (Sept. 20, 2018), <https://www.vox.com/2018/9/20/17871330/hurricane-maria-puerto-rico-damage-death-toll-trump> (last visited December 12, 2020).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Frances Robles and Luis Ferre-Sadurni, *Puerto Rico's Agriculture and Farmers Decimated by Maria*, N.Y. Times, (Sept. 24, 2017), <https://www.nytimes.com/2017/09/24/us/puerto-rico-hurricane-maria-agriculture-.html> (last visited December 12, 2020).

<sup>14</sup> Brian Glassman, *A Third of Movers From Puerto Rico to the Mainland United States Relocated to Florida in 2018*, U.S. Census Bureau, (Sept. 26, 2019), <https://www.census.gov/library/stories/2019/09/puerto-rico-outmigration-increases-poverty-declines.html#:~:text=The%20poverty%20rate%20in%20Puerto,state%20poverty%20rates%20in%202018> (last visited December 12, 2020).

<sup>15</sup> *Id.*

for Americans in need: Supplemental Security Income (SSI), SNAP, and Medicare Part D Low-Income Subsidy (LIS).<sup>16</sup>

On April 10, 2020, the First Circuit held that the categorical exclusion of otherwise eligible Puerto Rican residents from SSI violated the Equal Protection Clause of the Fifth Amendment, finding eligibility based on the differentiation in status not to be rationally related to a legitimate government interest.<sup>17</sup> The ruling in *Vaello-Madero* guided much of the District Court of Puerto Rico's analysis in *Martínez*, which looked not only at Puerto Rico's access to SSI, but also its access to SNAP and Medicare Part DLIS benefits.<sup>18</sup> In *Peña-Martínez*, the Court held it was unconstitutional discrimination to deny eligible residents of Puerto Rico access to SSI, SNAP, and LIS benefits solely due to their residency in Puerto Rico.<sup>19</sup> The District Court declared, "[T]o be blunt, the federal government discriminates against Americans who live in Puerto Rico."<sup>20</sup> While both decisions are major victories for Puerto Rican residents, the U.S. government's appeals in *Vaello-Madero* and *Peña-Martínez* are pending before the U.S. Supreme Court and the First Circuit, respectively.

Although restricted access to federal benefits is not the root cause of economic disparity on the island, it has exacerbated the conditions of poverty and

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<sup>16</sup> *Martínez v. United States HHS*, 478 F.Supp.3d at 162.

<sup>17</sup> *United States v. Vaello-Madero*, 956 F.3d 12, 30 (1st Cir. 2020).

<sup>18</sup> *Martínez v. United States HHS*, 478 F.Supp.3d at 171-73.

<sup>19</sup> *Id.* at 185.

<sup>20</sup> *Id.* at 162.

hindered its economic recovery. If Puerto Rico is granted the same access to federal funding and federal public benefit programs as states in the mainland are, there would be improved disaster planning, a quicker response for disaster relief, and an increase in economic assistance and work training resources that could bring Puerto Rican residents out of poverty. This paper examines the limited access Puerto Rico's residents have to federal benefits such as SNAP, SSI, and Federal Earned Income Tax Credit (EITC) to determine how these limitations have exacerbated the high poverty rate in Puerto Rico and impacted post-Hurricane Maria relief efforts on the island. Part II briefly discusses the poverty statistics in Puerto Rico pre- and post- Hurricane Maria. Next, Part III identifies the differences between federal public benefits programs implemented in Puerto Rico and the contiguous U.S. Finally, Part IV analyzes how implementing SNAP, Federal EITC, or statehood would improve the economic recovery of the island.

### I. POVERTY STATISTICS IN PUERTO RICO

Although it may seem that Hurricane Maria in September 2017 was the triggering event for Puerto Rico's high poverty rates, the island's struggles originated well before. Looking at data from 2007, the FNS Feasibility Study found that 56.2% of Puerto Rican households lived on incomes at or below 130% of the U.S. poverty guideline, compared to the 20.3% of mainland U.S.

households.<sup>21</sup> Puerto Rico's poverty rate in 2018 was 43.1%.<sup>22</sup> In comparison, the U.S. national poverty rate in 2018 was 13.1%, with the poorest state, Mississippi, having the highest rate at 19.7%.<sup>23</sup> Over two-fifths of all Puerto Rican residents lived in poverty in 2018. Data shows 57% of the children in Puerto Rico lived in poverty.<sup>24</sup> These high statistics are nothing new for the island.

To put these rates in better context, in 2016, the median household income in the U.S. was \$57,617.<sup>25</sup> By contrast, the median household income in Puerto Rico was only \$20,078—half that of Mississippi, whose 2016 median household income was \$41,754.<sup>26</sup> When looking at the most recent data from 2019, Puerto Rico's median household income stayed relatively equal at \$20,474, but U.S.'s median household income has risen to \$65,712; even Mississippi's median increased to \$45,792.<sup>27</sup>

This income disparity can be partly attributed to higher unemployment rates and lower labor participation rates in Puerto Rico than in the U.S. The labor force participation rate reflects the percentage of adults either working or looking

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<sup>21</sup> *FNS Feasibility Study*, *supra* note 3, at 8.

<sup>22</sup> Glassman, *supra* note 14.

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

<sup>24</sup> Brynne Keith-Jennings, *Introduction to Puerto Rico's Nutrition Assistance Program*, Ctr. On Budget & Policy Priorities, 3 (Nov. 3, 2020), <https://www.cbpp.org/sites/default/files/atoms/files/11-27-17fa.pdf>.

<sup>25</sup> U.S. Census Bureau, American Community Survey Briefs, *Household Income: 2016* (ACSB/16-02; Sept. 2017), by Gloria Guzman.

<sup>26</sup> *Id.* at 2.

<sup>27</sup> U.S. Census Bureau, American Community Survey Briefs, *Household Income: 2019* (ACSB/20-03; Sept. 2020), by Gloria Guzman.

for work.<sup>28</sup> A declining labor force participation rate thus reflects a declining workforce because people are either unable or unwilling to work in the current conditions.<sup>29</sup> A small labor force means fewer people contributing to the output of goods and services—slowing economic growth for the island.<sup>30</sup> It also means a narrower tax base from which the government can draw revenue to fund government programs, eventually leading to higher tax rates.<sup>31</sup> In 2007, the civil labor participation rate of adults in Puerto Rico was 45.9%, compared to 64.7% in the U.S.<sup>32</sup> For the same year, the unemployment rate was 15% in Puerto Rico, compared to the U.S.'s rate of 6.3%.<sup>33</sup> Furthermore, the U.S. Bureau of Labor Statistics has retained data from Puerto Rico as far back as January 1976.<sup>34</sup> Since January 1976, Puerto Rico's unemployment rate only fell below 10% after March 2018, when it reached 9.9%.<sup>35</sup> Prior to that, the unemployment rate in Puerto Rico had been in the double digits.<sup>36</sup>

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<sup>28</sup> Jason Bram & Harry Wheeler, *Puerto Rico's Shrinking Labor Force Participation*, Federal Reserve Bank of N.Y., (August 10, 2016) <https://libertystreeteconomics.newyorkfed.org/2016/08/puerto-ricos-shrinking-labor-force-participation.html> (last visited Dec. 14, 2020).

<sup>29</sup> Michael Dotsey, Shigeru Fujita, & Leena Rudanko, *Where Is Everybody? The Shrinking Labor Force Participation Rate*, Federal Reserve Bank of Philadelphia (4th Quarter, 2017).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> U.S. Dep't of Labor, U.S. Bureau of Labor Statistics. *Puerto Rico Unemployment Statistics* (2021) (Sept. 26, 2021), <https://data.bls.gov/pdq/SurveyOutputServlet>.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* (The unemployment rate only dropped below 10% previously in the months of July 2000 through November 2000, where it hovered at or between 9.7-9.9%.)

Consistently high unemployment rates reflect a lack of jobs available in the formal labor market, but the low labor participation rates can be attributed to a variety of more concerning factors regarding the island's future. In 2016, researchers noted that the size of the labor force declined more sharply than the size of the adult population on the island.<sup>37</sup> The data showed that labor participation rates were not only substantially lower than in the U.S. across all ages, but that they also started dropping off at an earlier age.<sup>38</sup> These trends can be attributed to three factors: a decline in birthrates, outmigration to the mainland U.S., and an aging population.<sup>39</sup>

These conditions contribute to a perpetual cycle of poverty on the island that only increases with every new emergency. A lack of jobs in the formal labor market, a shrinking workforce, and inadequate financial assistance from the government leaves Puerto Ricans unable to meet their immediate financial needs, let alone raise themselves out of poverty without government assistance. Financial independence is especially difficult when so many Puerto Ricans' homes were damaged or destroyed during the hurricanes of 2017. Even if Puerto Rican residents have enough funds saved to scrape by and survive, the economic conditions, as well as the devastating effects of natural disasters on the island,

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<sup>37</sup> Bram & Wheeler, *supra* note 39.

<sup>38</sup> *Id.*

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

hinder them from being able to comfortably care for their children and raise a family.

The overall economic instability of the island is enough to push families to leave what little they have in Puerto Rico to live in the mainland U.S., where they then would have access to resources from the federal, state, and local governments, as well as from non-profits and community or church groups. Hundreds of thousands of Puerto Ricans have left the island in the past decade<sup>40</sup>, including many families with children and young adults, leaving a greater percentage of the aging population on the island.<sup>41</sup> Because those who remain have less children and continue to age out of participation in the work force, the labor force participation rate will continue to decline. Unless economic conditions on the island improve in a way that incentivizes young individuals to stay in Puerto Rico and allows them to raise families of their own, anyone who is able will continue to leave the island for better livelihoods elsewhere in the U.S. This will leave Puerto Rico with an ever-shrinking population of only the most economically disadvantaged.

## II. PUERTO RICO'S ACCESS TO FEDERAL PUBLIC BENEFITS PROGRAMS

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<sup>40</sup> Matthew Martinez, *Puerto Rico Lost Nearly 12% of Its Population in a Decade*, Population Reference Bureau, (June 25, 2021) <https://www.prb.org/articles/puerto-ricos-population-declined-by-12-percent-between-2010-and-2020-where-did-they-go/> (last visited Sept. 26, 2021).

<sup>41</sup> Centro Center for Puerto Rican Studies, *Enduring Disasters: Puerto Rico, Three Years After Hurricane Maria*, (Sept. 2020).

As the District Court in *Peña-Martínez* stated, “[d]enying needy U.S. citizens equal access to the SSI, SNAP, and LIS safety nets simply because they reside in Puerto Rico is unconstitutional, [and] a breach of ‘our American ideal of fairness.’”<sup>42</sup> Puerto Rico’s residents are given second-class citizenship by the federal government—they only have access to federal benefits and voting representation if they leave the island permanently for the U.S. mainland. Despite their U.S. citizenship, Puerto Rican residents have no voting representation in Congress to voice their opinions about how programs should be administered to their residents.<sup>43</sup> Congress determines Puerto Rico’s eligibility for federal programs on a case-by-case basis and further determines whether the federal programs it grants to Puerto Rico are subject to additional funding or eligibility restrictions.<sup>44</sup>

This unequal access to government assistance inherently exacerbates the conditions of poverty on the island by incentivizing outmigration. The U.S. federal government never provides enough economic assistance to alleviate conditions of poverty on the island. Instead, it leaves assistance a stone’s throw away in Florida. For example, federal Medicaid funding in Puerto Rico is limited by law. Medicaid on the island serves fewer people, covers fewer services, and

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<sup>42</sup> *Martínez*, 478 F.Supp.3d at 163-4.

<sup>43</sup> FNS Feasibility Study, *supra* note 3, at 7.

<sup>44</sup> 2014 GAO Report, *supra* note 6, at 7.

pays lower rates to providers than it does in the U.S.<sup>45</sup> Puerto Rico's residents are also ineligible for Medicare Part D LIS benefits, which subsidizes private insurers' prescription drug plans for elderly and disabled Medicare beneficiaries.<sup>46</sup> In contrast, a Puerto Rican in Florida would receive, among other forms of aid, expanded SSI benefits and LIS benefits. Expanded access to benefit programs creates a powerful incentive to leave the island and could partially explain why in 2018, one-third of outmigration from Puerto Rico to the U.S. was to Florida.<sup>47</sup> This section will further examine the differences between administration of SSI, SNAP, and Federal EITC in the mainland U.S. and comparable programs in Puerto Rico.

First, SSI provides additional cash income to those who are 65 and older, blind, disabled, or with incomes that fall below a certain level—as long as they live within the U.S., District of Columbia, or the Northern Mariana Islands.<sup>48</sup> Puerto Rico residents are ineligible for SSI. Instead, the territory receives capped funding through a substitute program called Aid to the Aged, Blind, or Disabled (AABD).<sup>49</sup> AABD is less funded than SSI and must adjust by requiring higher income and resource thresholds in return for lower monthly benefits.<sup>50</sup> As a result,

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<sup>45</sup> Keith-Jennings & Wolkomir, *supra* note 7, at 4.

<sup>46</sup> *Martínez*, 478 F.Supp.3d at 167.

<sup>47</sup> Glassman, *supra* note 12.

<sup>48</sup> *Martínez*, 478 F.Supp.3d at 162.

<sup>49</sup> *Id.* at 165.

<sup>50</sup> *Id.*

many people who would be eligible for SSI in the U.S. are ineligible for AABD. Those who are eligible for AABD receive considerably less than they would on SSI.<sup>51</sup> For comparison, during the 2011 fiscal year, the average AABD monthly payment was \$73.85, while the average monthly SSI payment was \$438.05.<sup>52</sup> If Puerto Rico had been a state in 2011, 305,000 to 354,000 eligible residents could have received SSI, thus expanding access to at least an additional 270,599 residents.<sup>53</sup> In reality, only 34,401 individuals in Puerto Rico were enrolled in the AABD program in 2011.<sup>54</sup>

Next, SNAP (formerly the Food Stamps Program) helps people buy food if their income and assets fall below specified limits.<sup>55</sup> SNAP operates as an entitlement program, allowing it to both serve *all* eligible people who apply and expand (or contract) its assistance to accommodate changing needs and food insecurities.<sup>56</sup> Puerto Rico was originally eligible for food assistance through the Food Stamps Program until President Reagan's Omnibus Budget Reconciliation Act of 1981 replaced it with a block grant funded program called the Nutrition Assistance Program (NAP).<sup>57</sup> Just as with AABD, the limited funding to NAP has forced the program to set stricter eligibility thresholds and lower benefit levels to

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<sup>51</sup> *Id.*

<sup>52</sup> *Vaello-Madero*, 956 F.3d at 29.

<sup>53</sup> 2014 GAO Report, *supra* note 6, at 82.

<sup>54</sup> *Id.*

<sup>55</sup> *Martínez*, 478 F.Supp.3d at 166.

<sup>56</sup> Keith-Jennings & Wolkomir, *supra* note 7, at 1.

<sup>57</sup> *Id.* at 2.

stay within its budget.<sup>58</sup> It also means that unlike any resident of the mainland U.S., many eligible residents of Puerto Rico are denied benefits because NAP is not an entitlement program that expands to meet increased needs during economic recessions or natural disasters.<sup>59</sup>

In October 2017, Congress authorized roughly \$1.27 billion in additional NAP funding, which Puerto Rico began using in March 2018.<sup>60</sup> The additional funds allowed Puerto Rico to raise income limits and increase benefits, which modestly increased the number of NAP beneficiaries.<sup>61</sup> Prior to the new funding, a family of three would only be entitled to NAP benefits if its monthly net income was below \$599—leaving many families without aid.<sup>62</sup> With the original block grant funding, that family could only receive a maximum monthly benefit of \$315.<sup>63</sup> By raising income levels with the additional funding, a family of three could be eligible for NAP benefits if its monthly net income was below \$1,606, expanding the number of eligible families who receive NAP.<sup>64</sup> That family of three could now receive a maximum monthly benefit of \$511—nearly \$200 more than under the block grant funding.<sup>65</sup>

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<sup>58</sup> *Id.*

<sup>59</sup> Keith-Jennings, *supra* note 26, at 2.

<sup>60</sup> *Id.* at 7.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> Keith-Jennings, *supra* note 26, at 7.

<sup>65</sup> *Id.*

After the additional funding ended in March 2019, NAP recipients' benefits were cut to previous levels, but the island kept the higher eligibility levels.<sup>66</sup> By June 2019, Congress approved another \$600 million in supplemental funds for NAP; with these new levels, a household of three needed a monthly net income below \$1,706 in order to receive a maximum monthly benefit of \$315 and an additional supplement of \$98.<sup>67</sup> In addition, due to COVID-19, Congress approved two additional funding increases totaling roughly \$297 million, which increased NAP participation from 1.3 million residents to 1.5 million and temporarily raised benefits.<sup>68</sup> However, funding was depleted by October 2020, leading to average monthly benefit amounts falling from the supplemental COVID-19 relief levels by about 40 percent.<sup>69</sup>

The importance of NAP and food assistance cannot be overstated. In 2018, NAP helped over half of the island's children — about 327,000 children — afford food.<sup>70</sup> The same year, over 95% of households with children had a monthly income below the federal poverty line (\$20,790 per year for a family of three).<sup>71</sup> This means *only five percent* of families with children in Puerto Rico had a monthly income above the federal poverty line. Over 82% of households with

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<sup>66</sup> *Id.*

<sup>67</sup> Keith Jennings, *supra* note 20 at 4.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> Ctr. on Budget & Pol'y Priorities, *The Nutrition Assistance Program Helps Over Half of Puerto Rico's Children*, (June 2020), <https://www.cbpp.org/sites/default/files/atoms/files/6-11-20fa2.pdf>.

<sup>71</sup> *Id.*

children had a monthly income at or below *half* of the federal poverty line (just \$10,395 for a family of three).<sup>72</sup> In fact, more than half of all Puerto Rican households receiving NAP have monthly incomes far below the federal poverty line.<sup>73</sup> For a population faced with such significant levels of poverty, nutrition assistance plays a critical role in helping families survive and remain on the island.

Finally, the federal Earned Income Tax Credit (EITC) was created in 1975, in part to offset the impact of Social Security payroll taxes on low-wage workers.<sup>74</sup> EITC is a federal tax credit for low- and moderate- income workers that reduces personal income tax liability and allows low-income tax filers to retain more of their incomes.<sup>75</sup> The amount of a recipient's EITC depends on their income, marital status, and number of children.<sup>76</sup> As the recipient earns income, they receive a corresponding tax credit, and if the EITC exceeds the worker's income tax liability, they will receive the balance as a refund.<sup>77</sup> Because a worker's EITC grows as they earn each dollar of income, evidence has shown that the EITC incentivizes work and boosts incomes.<sup>78</sup> As a result, U.S. presidents of

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<sup>72</sup> *Id.*

<sup>73</sup> Keith-Jennings, *supra* note 26, at 7.

<sup>74</sup> Rosanna Torres & Javier Balmaceda, *Why the Federal Government Should Support Puerto Rico's New EITC*, Ctr. on Budget & Pol'y Priorities, 1 (Nov. 14, 2019) <https://www.cbpp.org/sites/default/files/atoms/files/11-14-19tax.pdf>.

<sup>75</sup> Ctr. on Budget & Pol'y Priorities, *The Earned Income Tax Credit*, (Dec. 10, 2019), <https://www.cbpp.org/sites/default/files/atoms/files/policybasics-eitc.pdf>

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

both political parties have overseen expansions of the EITC to many more working families.<sup>79</sup> Since 1996, the EITC has lifted 6.5 million people out of poverty—more than any other U.S. anti-poverty initiative.<sup>80</sup> However, none of those millions of people lived in Puerto Rico.<sup>81</sup> Even though Puerto Rican residents pay federal payroll taxes, they are not eligible for federal EITC.<sup>82</sup>

As a result of the EITC's success, 29 states and the District of Columbia created their own state EITCs to further supplement low-income workers' wages.<sup>83</sup> Puerto Rico recently implemented its own EITC in 2019, providing residents with a maximum credit between \$300 to \$2,000, depending on income, marital status, and the number of dependent children.<sup>84</sup> However, as with all other programs, this funding is modest compared to what residents in the U.S. receive under the federal version. In Puerto Rico, a single parent with two children can receive a maximum EITC benefit of \$1,500, but the same family in the U.S. could receive \$5,828 in federal EITC.<sup>85</sup> Thus, even the federal government's most successful anti-poverty measure, which incentivizes work and boosts labor

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<sup>79</sup> Torres & Balmaceda, *supra* note 74, at 1.

<sup>80</sup> Fin. Oversight and Mgmt. Board of Puerto Rico, *2020 Fiscal Plan for Puerto Rico* (May 3, 2020), <https://www.aafaf.pr.gov/assets/2020-fiscal-plan-may-3-2020.pdf>.

<sup>81</sup> Keith-Jennings & Wolkomir, *supra* note 5, at 4.

<sup>82</sup> Torres & Balmaceda, *supra* note 74, at 2.

<sup>83</sup> *Id.* at 1.

<sup>84</sup> *Id.* at 2.

<sup>85</sup> *Id.*

participation rates, leaves over a million Americans living in poverty, simply because they reside in Puerto Rico.

### III. HOW IMPLEMENTING FEDERAL PUBLIC BENEFITS PROGRAMS WOULD IMPACT PUERTO RICO

In *Martínez*, the plaintiffs and the federal agencies being sued moved for summary judgment on whether the exclusion of the plaintiffs from SSI, SNAP, and Medicare Part D LIS benefits, based on their residency in Puerto Rico, violated the equal protection component of the Fifth Amendment's Due Process Clause.<sup>86</sup> The federal government offered three rationales for opposing Puerto Rico's inclusion in federal public benefits programs: (1) the high cost of extending the programs to Puerto Rico; (2) the disruption the island's economy would suffer from benefits being granted in Puerto Rico; and (3) Puerto Rican residents' exemption from paying federal income tax.<sup>87</sup> For the first proposed rationale, fully implementing many of the federal public benefits programs in Puerto Rico would be expensive, but the Court immediately rejected this argument as an inadequate justification in light of *Vaello-Madero*,<sup>88</sup> which firmly held, "The cost *alone* does not support differentiating individuals."<sup>89</sup> This section

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<sup>86</sup> *Martínez*, 478 F.Supp.3d at 164.

<sup>87</sup> *Id.* at 163.

<sup>88</sup> *Id.* at 173.

<sup>89</sup> *Vaello-Madero*, 956 F.3d 12, 29 (1st Cir. 2020) (emphasis in original).

will examine the various effects that implementing SSI, SNAP, or statehood may have on Puerto Rico, in light of the government's two remaining rationales.

Regarding the implementation of SSI, the federal government argued in *Martinez* that increasing welfare benefits to Puerto Rico—given the island's already high poverty and unemployment rates—would disincentivize employment in the formal labor force and thus create a disruptive effect on the island's economy.<sup>90</sup> However, SSI benefits are only available to low-income individuals who are aged, blind, or disabled—a group that already has low participation rates in the work force.<sup>91</sup> It seems unlikely that eligible SSI recipients alone could produce a noticeable disruption to the island's economy when Puerto Rico has had both a high unemployment rate and low labor participation rate for years. Further, many SSI recipients are unable to work due to age or disability, and those who are looking for work have difficulties entering the formal labor market. The government's contention that Puerto Rican residents should not receive SSI benefits because they do not pay federal income tax fails on the same logic. SSI is a means-tested program only for low-income individuals, meaning that recipients generally do not pay income taxes—even on the mainland—because they earn so little.<sup>92</sup> Instead, the increase in federal fund transfers to the island would provide

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<sup>90</sup> *Martinez*, 478 F.Supp.3d at 173.

<sup>91</sup> *Id.* at 173-74.

<sup>92</sup> *Id.* at 175.

significant financial assistance to the poor and stimulate the local economy, since SSI recipients spend their received funds at local stores.

SNAP, like SSI, is also a means-tested program.<sup>93</sup> The same logic that applied to SNAP—many SNAP beneficiaries earn too little to pay federal income taxes—applies here, further undercutting the government’s resistance to implement SNAP in Puerto Rico.<sup>94</sup> As SNAP is an entitlement program, even low-income individuals who do not pay federal income taxes are not excluded from receiving SNAP benefits.<sup>95</sup> By contrast, the government’s economic disruption theory regarding SNAP seems more rational because a large number of SNAP recipients are made up of the working poor, who could be affected by labor disincentives. However, the increase in supplemental NAP funding after Hurricane Maria, which significantly raised monthly income eligibility levels and benefit amounts, casts doubt on this theory.<sup>96</sup>

The critical flaw in the government’s logic is that the SNAP program has work requirements and employment and training programs seeking to combat labor disincentives, while NAP does not.<sup>97</sup> For example, SNAP’s limitation on adults (aged 18 to 50) without children from receiving more than three months of SNAP benefits in any 36-month period if they are not employed or in a work or

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<sup>93</sup> *Id.* at 177.

<sup>94</sup> *Id.*

<sup>95</sup> *Martínez*, 478 F.Supp.3d at 177-78.

<sup>96</sup> *Id.* at 178.

<sup>97</sup> *Id.*

training program for at least 20 hours a week is considered one of the harshest rules of SNAP.<sup>98</sup> As a result, many recipients' benefits are cut off after three months, irrespective of whether they are searching diligently for a job or willing to participate in a work or training program.<sup>99</sup> In fact, many states have sought to appeal this rule because it is administratively complex, error prone, and undermines states' efforts to design more meaningful work requirements.<sup>100</sup> States can choose to request a waiver from the requirement, which a third of the states have elected to do over the last 20 years.<sup>101</sup> Waivers are granted if states can provide detailed evidence of high unemployment in local areas, either through an insufficient number of jobs in a given geographic area or an unemployment rate of over 10%.<sup>102</sup> Although Puerto Rico's unemployment rate was below 10% as of October 2020<sup>103</sup>, the economic disruption from the global pandemic makes it possible for the island's unemployment rate to rise again; regardless, there is a lack of jobs in many areas of Puerto Rico that will likely make it eligible for a waiver.

Even the Oversight Board's 2020 Fiscal Plan acknowledged that current welfare eligibility programs on the island may disincentivize some residents from

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<sup>98</sup> Ed Bolen & Stacy Dean, *Waivers Add Key State Flexibility to SNAP's Three-Month Time Limit*, 1 Ctr. on Budget & Policy Priorities, <https://www.cbpp.org/research/food-assistance/waivers-add-key-state-flexibility-to-snaps-three-month-time-limit> (last visited Feb. 6, 2018).

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.* at 2.

<sup>102</sup> *Id.* at 3.

<sup>103</sup> U.S. Dep't of Labor, *supra* note 29.

working within the formal economy—not because they are unwilling to work, but because welfare ensures sufficient nutritional support, housing, and healthcare.<sup>104</sup> For example, in the case of public housing, a part time minimum wage job could render a beneficiary ineligible.<sup>105</sup> The Oversight Board concedes that the lack of worker training programs and the island’s poor education system contribute to the low labor participation rate on the island.<sup>106</sup> Additionally, the Board identified many other structural barriers to employment on the island, including transportation, childcare, and mental health-related issues caused by years of traumatic natural disasters and health crises.<sup>107</sup> The Oversight Board recommended that Puerto Rico introduce a work/volunteer requirement to NAP. The Puerto Rican government estimates the change will not have any positive effects until the end of a four-year implementation period and has not made any progress in implementing this requirement.<sup>108</sup>

In summary, the federal government’s argument that implementing SNAP in Puerto Rico would disrupt the local economy by disincentivizing labor fails to take into consideration Puerto Rico’s current economic state: ,its lack of jobs in the formal economy, low labor participation rates, and structural barriers to employment. SNAP can also implement work requirements and provide funding

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<sup>104</sup> 2020 Fiscal Plan, *supra* note 83, at 79.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> 2020 Fiscal Plan, *supra* note 83, at 89.

<sup>108</sup> *Id.* at 83.

for work and training programs that could help combat labor disincentives. Puerto Rico could then request waivers to give it time to generate an employment and training plan with the influx of federal funds. Furthermore, the waivers would only apply until Puerto Rico had enough jobs or a low enough unemployment rate, thus further limiting any labor disincentives.

Implementing SNAP in Puerto Rico would significantly improve natural disaster relief efforts. In a 2019 audit report, after Hurricanes Irma and Maria, the Office of the Inspector General (OIG) for the U.S. Department of Agriculture reviewed the Food and Nutrition Service (FNS)'s supplemental funding to NAP and found several deficiencies that could be improved by a transition to SNAP.<sup>109</sup> If Puerto Rico had used SNAP prior to the hurricanes, the island could have requested and operated a Disaster SNAP (D-SNAP), intended to respond to the expanding need following a natural disaster, which would have provided a full month's benefit allotment to households that may not normally have qualified for SNAP.<sup>110</sup> Without D-SNAP, Puerto Rico must rely on Congress to pass disaster relief legislation that authorizes funding for additional benefits in the wake of a natural disaster.<sup>111</sup> The FNS and Puerto Rico's Administration of Socioeconomic Development of the Family (ADSEF) must complete the grant cooperative

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<sup>109</sup> Off. of Inspector General, U.S. Dep't of Agriculture, Audit Report 27702-0001-22, *Review of FNS' Nutrition Assistance Program Disaster Funding to Puerto Rico as a Result of Hurricanes Irma and Maria* (2019).

<sup>110</sup> *Id.* at 2.

<sup>111</sup> *Id.* at 6.

agreement and the internal control plan.<sup>112</sup> ADSEF must then develop and submit a comprehensive plan for how to spend the additional funding, a communications plan, and a regional impact plan for approval—all while operating in disastrous conditions.<sup>113</sup> The OIG audit report found that because of this process, emergency nutrition assistance funding did not reach Puerto Rico until six months after Hurricane Maria.<sup>114</sup> In comparison, the U.S. Virgin Islands utilized D-SNAP and received aid 47 days after Hurricane Maria.<sup>115</sup> Without authority under D-SNAP, Puerto Rico is unable to effectively plan how to distribute emergency funding prior to a natural disaster because it does not know when it will receive funding, how much funding will be granted, or what requirements will be tied to the funds.<sup>116</sup> Implementing SNAP would grant Puerto Rico permanent statutory authority to operate D-SNAP, eliminate these planning and approval hurdles, and ultimately lead to faster aid in the wake of a natural disaster.

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<sup>112</sup> Off. of Inspector General, U.S. Dep't of Agriculture, Audit Report 27702-0001-22,6 *Review of FNS' Nutrition Assistance Program Disaster Funding to Puerto Rico as a Result of Hurricanes Irma and Maria* (2019).

<sup>113</sup> *Id.*

<sup>114</sup> *Id.* at 7.

<sup>115</sup> *Id.*

<sup>116</sup> Off. of Inspector General, U.S. Dep't of Agriculture, Audit Report 27702-0001-22,5-6 *Review of FNS' Nutrition Assistance Program Disaster Funding to Puerto Rico as a Result of Hurricanes Irma and Maria* (2019). (FNS and ADSEF had developed a comprehensive disaster plan prior to the 2017 Hurricanes, outlining how it would utilize emergency funding like D-SNAP, which provides a small amount of funding over a short timeframe. However, Congress approved a much larger amount of funding meant to be distributed over a 2-year period compared to what is granted under D-SNAP, requiring ADSEF to develop a new comprehensive plan accounting for these factors.)

Quicker relief is not the only benefit to implementing SNAP in Puerto Rico. The OIG audit report also found that there is room to improve disaster nutrition assistance by improving coordination with other federal agencies performing disaster relief efforts on the island, like FEMA.<sup>117</sup> Instead, FNS and ADSEF spent several months developing a comprehensive plan for administering the supplemental NAP funds after Hurricane Irma and Maria, leading to a six- to seven-month delay in setting up temporary application sites on the island for individuals seeking supplemental relief.<sup>118</sup> Had SNAP been timely operating sites around the island, they could have been modified into joint application sites.<sup>119</sup> Joint application sites would have streamlined the application process and prevented individuals from needing to travel to multiple sites throughout the island to apply for aid from each agency individually, especially when structural barriers, such as transportation delays and road closures, made traveling even more challenging.

A transition to SNAP would further strengthen FNS's oversight of Puerto Rico's eligibility system. The OIG audit report found that between March and September 2018, there were \$1.4 million in overpayments of supplemental NAP funds, \$1.5 million in underpayments, and \$1.2 million in payments to deceased

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<sup>117</sup> *Id.* at 11-12.

<sup>118</sup> *Id.* at 11.

<sup>119</sup> *Id.*

recipients.<sup>120</sup> This was partly due to a coding error in the eligibility system that overwrote data when caseworkers entered data in the retroactive claims module of the system, resulting in over or underpayments to some households.<sup>121</sup> Puerto Rico was also not using data from the Social Security Administration (SSA)'s death information to remove deceased participants from its records.<sup>122</sup> Instead, Puerto Rico used information from the Puerto Rico Department of Health Vital Records, which only had information on individuals who died between 2000 and 2015.<sup>123</sup> Under SNAP, FNS requires state agencies to compare their records to SSA's database.<sup>124</sup> Thus, if Puerto Rico had operated SNAP, it would not only have planned for and received aid more quickly, but it also would have received better oversight from the federal government to eliminate administrative errors and increase better coordination with other federal agencies, allowing these agencies to pool resources and share data. All of these measures would create a more efficient system to aid Puerto Rico in its disaster relief efforts and provide enough funding to meet the needs of all of its eligible beneficiaries.

Implementing these two federal programs—SSI and SNAP—would provide meaningful relief to the poor in Puerto Rico, but the most comprehensive

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<sup>120</sup> *Id.* at 15.

<sup>121</sup> Off. of Inspector General, U.S. Dep't of Agriculture, Audit Report 27702-0001-22, 16 *Review of FNS' Nutrition Assistance Program Disaster Funding to Puerto Rico as a Result of Hurricanes Irma and Maria* (2019).

<sup>122</sup> *Id.* at 17.

<sup>123</sup> *Id.* at 17-18

<sup>124</sup> *Id.* at 18.

and long-term approach to economic stability on the island would be U.S. statehood. Statehood would not only incorporate both SSI<sup>125</sup> and SNAP<sup>126</sup>, providing the essential benefits outlined above, but it would also provide access to the federal EITC.<sup>127</sup> As a U.S. state, residents of Puerto Rico would file federal income taxes<sup>128</sup> and thus have access to the federal government's most effective anti-poverty measure: the federal EITC. Combining the federal EITC with Puerto Rico's local EITC would lower the tax liability for the working poor on the island and encourage many to enter the formal labor economy<sup>129</sup>. This would provide a considerable labor incentive that could both help boost the low labor participation rate plaguing the island and counteract the disincentives created by the influx of federal funds from other federal programs. Additionally, elevating Puerto Rico's status to full statehood would help strengthen the island's economy by eliminating the risk from Puerto Rico's uncertain political status and looming public debt.<sup>130</sup> Providing full access to federal funding and oversight would help strengthen confidence in the island's recovery and future, allowing for more commitments from businesses and investors. Most importantly, statehood would create voting

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<sup>125</sup> 2014 GAO Report, *supra* note 6, at 82.

<sup>126</sup> *Id.* at 78.

<sup>127</sup> *Id.* at 29-30.

<sup>128</sup> *Id.* at 32.

<sup>129</sup> Torres & Balmaceda, *supra* note 72, at 2-3.

<sup>130</sup> 2014 GAO Report, *supra* note 6, at 30.

representation in Congress for Puerto Rico<sup>131</sup>, allowing it to generate political capital and ensure its voice is heard.

#### IV. CONCLUSION

Puerto Rico has a long history of complex, interlocking economic obstacles because of its status as a U.S. territory as opposed to a U.S. state. This status has hindered Puerto Rico's relationship with the U.S. federal government. These challenges were further compounded by Hurricane Maria's devastating impact in 2017. Any major solution to Puerto Rico's high rate of poverty will take long-term and strategic planning from all levels of government and will likely include contributions from community organizations, non-profits, and the private sector. Access to key federal public benefits programs can help provide essential support to bring Puerto Rico out of poverty, but the greatest protection tool to ensure long-term recovery is statehood. The remedies proposed in this paper will be costly to implement, but money alone is not reason enough to reject these solutions. The residents of Puerto Rico are Americans, whether they live on the island or make up the Puerto Rican diaspora throughout the mainland U.S. They are vulnerable and amidst a crisis that is outside of their control. It is the responsibility of the U.S. government to find new ways to improve the lives of

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<sup>131</sup> Nicole Acevedo, *What's behind calls for Puerto Rico statehood? Here are 4 things to know*, NBC News, (Mar. 2, 2021), <https://www.nbcnews.com/news/latino/what-s-behind-calls-puerto-rico-statehood-here-are-4-n1259300> (last visited Sept. 25, 2020)

Puerto Rican residents during these crises and, in doing so, to uphold the dignity of all Americans, regardless of their status or wealth.