



Receipt of \$4.7 Billion Is Not Always a Benefit

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According to the United States Court of Appeals for the First Circuit (First Circuit) in *United States v. Bravo-Fernández*, evidence that Puerto Rico received \$4.7 billion in federal *assistance* is not enough to prove that the Commonwealth received at least \$10,000 in federal *program benefits* under the federal program bribery statute. At the time of the First Circuit's most recent opinion, the case was making a third trip up the appellate ladder.

The case *began* when Juan Bravo-Fernández (Bravo), a businessman, provided Hector Martinez-Maldonado (Martinez), a member of the Puerto Rican Senate, with a trip to Las Vegas complete with first-class hotel accommodations, expensive meals, and highly priced tickets to a boxing match. A trial jury convicted the pair of violating the federal program bribery statute.

The *statute* prohibits any agent – of a private or governmental recipient of more than \$10,000 in a single year in benefits under a federal program – from soliciting or accepting anything of value, worth more than \$5,000, with the intent to be influenced or rewarded in connection with the entity's affairs. A separate prong of the statute prohibits anyone from bribing an agent under such circumstances.

Trial witnesses *testified* that the Puerto Rican Senate's childcare program received approximately \$20,000 a year in federal funding and that the Commonwealth of Puerto Rico received more than \$4.7 billion in federal funding overall. The government also produced evidence that Martinez, as Chairman of the Senate Public Safety Committee, took action in support of Bravo's business interest.

The defendants argued in their initial appeal that the trial jury had been instructed in a matter which might have permitted it to convict based on an illegal gratuity (an after-the-fact reward) theory rather than a bribe (a quid pro quo exchange) theory. The First Circuit *agreed* and sent the case back to the district court. The defendants argued unsuccessfully before the district court that the Constitution's Double Jeopardy Clause barred a second trial. The First Circuit *agreed* with the district court's rejection of the argument, as *did* the U.S. Supreme Court.

The case then returned to the district court. At which point, the parties stipulated that the Commonwealth had received more than \$4.7 billion in federal *funding*. The defendants, however, made clear that they were not stipulating that the Commonwealth had received more than \$10,000 in *benefits under any specific federal program*, a fact the government was obligated to prove in order to afford the district court jurisdiction to try and convict the defendants.

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The Supreme Court in *Fischer v. United States* had earlier addressed the question of what constitutes a benefit under the program bribery statute. In *Fischer*, the Supreme Court endorsed the dictionary definition of the word “benefit” in the federal program bribery statute, that is, a benefit means “something that guards, aids, promotes well-being . . . [such as] financial help in time of sickness, old age, or unemployment; or a cash payment or service provided for under an annuity, pension plan, or insurance policy.” Fischer had been convicted of paying a kickback to an employee of a company that ran hospitals that received Medicare reimbursements. Fischer argued that the hospitals’ Medicare patients received Medicare benefits, but the hospitals did not. The Court responded that Medicare service providers, like the hospitals, “themselves derive[d] significant advantage by satisfying the participation standards imposed by the Government.” These advantages were also benefits for purposes of the federal program bribery statute.

The Supreme Court cautioned against reading its opinion too broadly. It conceded that “[a]ny receipt of federal funds can, at some level of generality, be characterized as a benefit.” But such an interpretation would go too far, the Court declared. “Doing so would turn almost every act of fraud or bribery into a federal offense, upsetting the proper federal balance,” it warned. Yet, the Court elected to provide only general guidance on where to strike the balance. It observed that “[t]o determine whether an organization . . . receives ‘benefits,’ an examination must be undertaken of the program’s structure, operation, and purpose.” It noted that such an “inquiry should examine the conditions under which the organization receives the federal payments.” In some cases, the Court stated, “[t]he answer could depend . . . on whether the recipient’s own operations are one of the reasons for maintaining the program.”

From all of which, the First Circuit **concluded** that the stipulation that the Commonwealth received \$4.7 billion in federal funds, without reference to any benefit under a specific federal program, failed to satisfy the government’s obligation to prove that an entity had received \$10,000 in benefits under a federal program.

The government objected on several grounds. **First**, it argued that the First Circuit had already decided the jurisdictional question during the first appeal when it stated that “[at trial, a witness] testified that . . . the Commonwealth received over \$4.7 billion in federal funds. Because Martinez and [another senator] are agents of the Commonwealth, the evidence was sufficient to show that they are agents of a ‘government . . . [that] receives, in any one year period, benefits in excess of \$10,000 under a Federal program.’” The government contended that evidence offered in the first trial concerning the childcare program and upon which the original conviction rested should have remained sufficient. Not so, replied the First Circuit. Rather, it said its earlier statement was mere dicta, unnecessary for the resolution of the issues before it at the time and distinct from the issue now before it. (“The issue before us in that case was whether Martinez was an ‘agent’ of the Commonwealth, not whether ‘benefits’ as used in the statute were received.”)

Second, the government contended that the question of whether funds received constituted benefits received only arises when the payments flow indirectly to the beneficiary and in which case there might be some question whether any benefit could reasonably be attributed to the funding. The First Circuit found this contention unpersuasive as well. “The plain language of [the statute] does not distinguish between an organization . . . that receives ‘benefits’ directly and an organization . . . that receives ‘benefits’ as an assignee under a federal program,” the First Circuit pointed out.

Third, the government suggested that the trial jury could reasonably infer that the \$4.7 billion of federal funds received would translate into benefits of at least an amount in excess of \$10,000 under one or more federal programs. The First Circuit disagreed again. It reasoned that “[t]he question remains . . . whether those programs are funded by the \$4.7 billion in federal funds that go directly to the Commonwealth.” It opined that “[p]erhaps the federal benefit programs enjoyed in Puerto Rico are financed through other federal monies, leaving the \$4.7 billion to be spent on infrastructure, salaries, and other expenditures that may or may not constitute ‘benefits.’”

The First Circuit also **rejected** the approach that the U.S. Court of Appeals for the Third Circuit (Third Circuit) in *United States v. Willis* **employed** to resolve an identical issue with respect to federal payments to the Virgin Islands. The Third Circuit “held that federal funds paid to a territorial government were a benefit to that government because they ‘significantly supported the government.’” The Court in *Fischer* was concerned about the intrusion of federal law into an area reserved for the states, or again, as it said, a broad reading “would turn almost every act of fraud or bribery into a federal offense, upsetting the proper federal balance.”

The Third Circuit made no mention of a specific federal program. In contrast, the First Circuit **explained** that the statute’s jurisdictional language specifically speaks of benefits “under a federal program.” Moreover, the First Circuit **added**, the Supreme Court in *Fischer* explicitly emphasized “the government’s burden to put forth evidence about the *federal program*’s structure, operation, and purpose in order to make ascertainable whether an entity received ‘benefits’ under the [statute].” Finally, the First Circuit declared that to “conclude that any receipt of federal funds is enough to satisfy the jurisdictional element would transmute [the statute] into the general bribery statute that the *Fischer* court warned against and ‘upset [] the proper federal balance.’” With that, the First Circuit returned the case to the district court with instructions to enter judgments of acquittal on the federal program bribery charges against Bravo and Martinez.

The case raises several points that Congress may choose to address. First, it may elect to amend the federal program bribery statute to cover illegal gratuities. Second, it may opt to include the elected and appointed officials of the U.S. territories within the coverage of the bribery statute that applies to U.S. mainland officials. Third, it may decide to codify the Supreme Court’s understanding in *Fischer* of what constitutes a “benefit” for purposes of the statute. Fourth, it may prefer an amendment repudiating the Third Circuit’s expansive interpretation of the statute and making clear that proof of a benefit under a specific federal program is a necessary element in all cases. Alternatively, it may favor an amendment that provides two definitions of the term benefit under a federal program: a narrow one for general purposes, but a more expansive one for cases in which the victim is an entity within a U.S. territory whose coverage is unlikely to upset the “proper balance” between federal and state criminal jurisdiction.

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