

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

**ORLANDO MÉNDEZ LÓPEZ;  
JOSÉ COTTO MELÉNDEZ;  
JOSÉ A. RAMOS RAMOS;  
CIPRIÁN CENTENO RODRIGUEZ;  
JULIO OLIVARI;  
ANDRÉS SANTIAGO RIVERA;  
ÁNGEL CLASS SANTIAGO;  
DANIEL MALDONADO;  
JAVIER RODRIGUEZ SANTIAGO;  
JUAN A. VELAZQUEZ RIVERA;  
JAVIER MEJÍAS;  
REINALDO SANTOS;  
ENRIQUE LEÓN RODRIGUEZ;  
JAVIER RAMIREZ RIVERA;  
ELISAMUEL ROBLES SÁNCHEZ;  
DAVID RODRIGUEZ;  
FÉLIX PÉREZ ANDÚJAR;  
RIGOBERTO LÓPEZ;  
RENÉ SANTIAGO GARCIA,**

Plaintiffs,

v.

**UNIVERSITY OF PUERTO RICO;  
ZAYIRA JORDÁN, in her official  
capacity as President of the University of  
Puerto Rico; UNIVERSITY OF  
PUERTO RICO WORKERS' UNION,**

Defendants.

CIVIL NO. 25-01682 (SCC)

**RESPONSE IN OPPOSITION TO MOTION TO DISMISS**

**TO THE HONORABLE COURT:**

Plaintiffs Orlando Méndez López, José Cotto Meléndez, José A. Ramos Ramos, Ciprián Centeno Rodriguez, Julio Olivari, Andrés Santiago Rivera, Ángel Class

Santiago, Daniel Maldonado, Javier Rodriguez Santiago, Juan A. Velázquez Rivera, Javier Mejías, Reinaldo Santos, Enrique León Rodriguez, Javier Ramirez Rivera, Elisamuel Robles Sánchez, David Rodriguez, Félix Pérez Andújar, Rigoberto López, and René Santiago Garcia (collectively, “Plaintiffs”), through the undersigned counsel, hereby file the instant Response in Opposition to the Motion to Dismiss (“Motion”) (Dkt. 34) filed by Defendants University of Puerto Rico (“UPR”) and Zayira Jordán (collectively, “the Government Employer”), as follows:

### **INTRODUCTION**

Before addressing the Government Employer’s motion on the merits, Plaintiffs call the Court’s attention to a threshold matter of procedural priority. On May 29, 2026, Plaintiffs filed a Motion for Judgment on the Pleadings (Dkt. 27) seeking judgment in their favor on the First Amended Complaint (“FAC”). That motion has been pending for over three months. The time provided for response under the Local Rules has passed and no Defendant has filed a response. On August 10, 2026, Plaintiffs moved to deem the Motion for Judgment on the Pleadings as unopposed (Dkt. 33). The fully-briefed, unopposed Motion for Judgment on the Pleadings is the appropriate vehicle for resolving the merits of this dispute, which would render the current Motion moot, and Plaintiffs respectfully submit that the Court should rule on it before—or instead of—entertaining the Government Employer’s attempt to sidestep that motion through a procedurally deficient motion to dismiss. Plaintiffs make clear, moreover, that by opposing the Government Employer’s motion to dismiss they are not withdrawing, limiting, or abandoning their Motion for Judgment

on the Pleadings (Dkt. 27) and their Motion to Deem the Motion for Judgment on the Pleadings as Unopposed (Dkt. 33) in any respect. Plaintiffs' Motion for Judgment on the Pleadings is ripe for adjudication, remains unopposed and should be granted so that the current Motion to Dismiss can be dismissed as moot.

After not participating in this litigation for the more than three months, the Government Employer urges this Court to dismiss Plaintiffs' claims as moot in their current Motion. The Motion is supported solely by attorney argument, without a single declaration, payroll record, or disbursement confirmation. It rests on an unproven foundational fact and a misrepresentation: that the Government Employer has paid "everyone in the bargaining unit, regardless of union affiliation." Dkt. 35, Mot. at 3. It has not. The Government Employer's own Answer concedes—by express denial—that at least two plaintiffs, Juan A. Velázquez Rivera ("Velázquez") and Enrique León Rodríguez ("León"), retired from UPR before any payments were made to the seventeen current Plaintiff-employees. Dkt. 25, Answer to FAC, ¶¶ 15, 18. UPR offers no evidence that these retirees received anything, because they did not. However, at the time union members received their payments, these two nonmembers were employees and are entitled to the damages this lawsuit seeks for them.

But the deficiencies do not end there. Even assuming, *arguendo*, that the Government Employer paid the currently-employed Plaintiffs, this case is far from moot. Plaintiffs have live, concrete claims for: (1) the \$3,000 owed to the at least two Plaintiff-retirees who were never paid; (2) declaratory relief establishing the

unconstitutionality of the Government Employer’s conduct; (3) attorneys’ fees and costs under 42 U.S.C. § 1988; and (4) injunctive relief preventing future discriminatory treatment. Dkt. 23, FAC at 14–15. As long as any one of these claims remains live—and all of them do—this Court retains full Article III jurisdiction and may not dismiss the Government Employer from this case.

### STANDARD OF REVIEW

Mootness is a jurisdictional doctrine rooted in Article III’s case-or-controversy requirement. A case becomes moot only when it is “impossible for a court to grant any effectual relief whatever to the prevailing party.” *Chafin v. Chafin*, 568 U.S. 165, 172 (2013) (quoting *Knox v. Service Employees*, 567 U.S. 298, 307 (2012)). The burden of establishing mootness rests entirely on the party asserting it—here, the Government Employer—and it is a “heavy” one. *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000). Moreover, “as long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot.” *Chafin*, 568 U.S. at 172 (quoting *Knox v. Service Employees*, 567 U.S. at 171–72).

Oddly, the Government Employer’s motion identifies no procedural rule under which it seeks dismissal. It does not invoke Federal Rule of Civil Procedure 12(b)(1), 12(b)(6), 12(c), or any other provision. A motion seeking dismissal for mootness should be brought and analyzed under Rule 12(b)(1)—lack of subject matter jurisdiction. This Rule governs factual challenges to the Court’s jurisdiction and permits the Court to look beyond the pleadings. *See Calderón v. Internal Med. Canóvanas Grp. Corp.*,

2025 U.S. Dist. LEXIS 178974, at \* 4–5 (D.P.R. 2025) (citing *Am. C.L. Union of Mass. v. U.S. Conf. of Cath. Bishops*, 705 F.3d 44, 52 (1st Cir. 2013) and *Fernández-Molinary v. Industrias La Famosa, Inc.*, 203 F. Supp. 2d 111, 114–115 (D.P.R. 2002)). It also requires the Court to ensure that Plaintiffs have had a full and fair opportunity to contest those facts. *See Valentin v. Hosp. Bella Vista*, 254 F.3d 358, 364 (1st Cir. 2001). Here, however, the Government Employer has failed to establish any of its claimed “facts” by any affidavit, payroll record, or other evidence. Without any evidence, there are no outside facts to challenge the Court’s jurisdiction, and the Motion must be denied.

### **ARGUMENT**

This Court should deny Movant Defendants’ motion because the Government Employer has not paid all the money it says it has paid, has not provided any actual evidence that it has paid any of the money, and has not demonstrated that it will not resume its discriminatory conduct in the future.

#### **I. The Government Employer Presents No Evidence of Payment— And Bears the Burden of Proving Payment.**

The Government Employer presents no evidence of payment whatsoever. Its Motion attaches no exhibits, no payroll records, no disbursement confirmations, no bank transfers, no signed acknowledgments, and no declarations. It rests entirely on empty attorney assertions that payment was made “administratively by the UPR on its own initiative.” Dkt. 34 ¶ 3. But this is legally insufficient. Mootness, when—as here—asserted as a factual matter, must be established by competent evidence.

Unsworn attorney arguments in a motion do not constitute evidence and does not satisfy that burden.

The Government Employer is asking the Court to accept—on nothing more than counsel’s word—that payment was completed in full to *all* Plaintiffs, even after it admitted that at least two Plaintiffs were no longer employees. On that basis alone, the Court should deny the Motion for failure to provide evidence of mootness. If not, the Court should, under Rule 12(d), convert the Motion to one for summary judgment and allow Plaintiffs the opportunity to obtain discovery confirming or disproving the Government Employer’s mere assertions.

## **II. The Case Is Not Moot: At Least Two Plaintiffs Were Never Paid.**

Even setting aside the Government Employer’s complete evidentiary deficiency, its own on-the-record admissions establish that this case is not moot. Paragraphs 15 and 18 of the FAC allege that Plaintiffs Velázquez and León are employed by UPR and were subjected to the same unlawful withholding of the \$3,000 wage supplement. Dkt. 23, FAC ¶¶ 15, 18. The Government Employer denied those allegations on the grounds that Velázquez and León “retired from the UPR.” Dkt. 25, ¶¶ 15, 18. By denying those allegations on the ground that they “retired,” the Government Employer made three critical admissions: (1) Velázquez and León were members of the bargaining unit who were entitled to the \$3,000; (2) they are no longer current UPR employees—they retired; and (3) the Government Employer’s claimed payment to “everyone in the bargaining unit” (Dkt. 34, Mot. ¶ 8) did not reach them, because

its own Answer treats their retiree status as the dispositive distinguishing fact, establishing their nonpayment. Dkt. 25, ¶¶ 15, 18.

The Government Employer cannot now claim that it has paid “Plaintiffs and all other members of the bargaining unit” (Dkt. 34, Mot. ¶ 1) while simultaneously having denied in its Answer that two named plaintiffs were even current employees eligible for payment.<sup>1</sup> This contradiction is fatal to the Government Employer’s mootness argument. Velázquez and León have a concrete, live claim for the \$3,000 they were withheld—with interest—and no voluntary payment to their former co-workers extinguishes that claim as to them. Because at least two plaintiffs have live, concrete, unpaid monetary claims, this case cannot be moot. *See Chafin*, 568 U.S. at 172 (“As long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot.”).

### **III. Voluntary Cessation Does Not Moot This Case.**

The Government Employer argues that the voluntary cessation doctrine does not apply here because the \$3,000 stipend was “one-time” payment that is “no longer” a live, recurring policy. Dkt. 34, Mot. at ¶ 8. This argument misconceives both the doctrine and the nature of the constitutional violation at issue. The Government Employer’s payment, made only because this lawsuit was filed, is precisely the type

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<sup>1</sup> The Government Employer claims that it paid “all other members of the bargaining unit” in addition to Plaintiffs, suggesting that more individuals received payment aside from Plaintiffs. Dkt. 34, Mot. ¶ 1. The Government Employer again fails to provide any proof of such assertion.

of litigation-induced voluntary cessation that the U.S. Supreme Court has repeatedly held insufficient to moot a case.

“It is well settled that a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice unless it is absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.” *Buckhannon Bd. & Care Home v. W. Va. Dep’t of Health & Human Res.*, 532 U.S. 598, 608–09 (2001) (quoting *Friends of the Earth*, 528 at 167). “The ‘heavy burden of persuading’ the court that the challenged conduct cannot reasonably be expected to start up again lies with the party asserting mootness.” *Friends of the Earth*, 528 U.S. at 189 (quoting *United States v. Concentrated Phosphate Export Assn., Inc.*, 393 U.S. 199, 203 (1968)). To prevail, the party arguing mootness must make it “absolutely clear” that it does not intend to repeat “the allegedly wrongful behavior.” *Friends of the Earth*, 528 U.S. at 190. The Government Employer cannot satisfy this standard for multiple reasons.

First, any payment was indisputably litigation-induced—the chronology speaks for itself. This litigation started on December 19, 2025 (Dkt. 1) and the FAC was filed on March 17, 2026 (Dkt. 23). For months, the Government Employer did nothing. Its Answer, filed on April 21, 2026, stated only that it was “in the process of processing” payment (Dkt. 25 at 7). It was only after Plaintiffs filed their Motion for Judgment on the Pleadings (Dkt. 27) on May 29, 2026—still unopposed—that the Government Employer suddenly moved to dismiss, claiming full payment. Courts consistently hold that litigation-induced cessation carries the lowest degree of assurance against

recurrence. *See United States v. W.T. Grant Co.*, 345 U.S. 629, 632 (1953) (voluntary cessation does not deprive the court of power to act where it has reason to believe that the defendant may “return to his old ways”).

Second, the Government Employer has made no structural or legal change to prevent the recurrence of identical conduct. There is no amended policy, no new regulation—nothing that would prevent the Government Employer from again structuring compensation to favor union members over non-members in any future wage decision. The Government Employer has not even acknowledged that its prior conduct was unconstitutional. To make matters worse, the Government Employer has not even given any assurances that it will never again undertake another unconstitutional compensation action against union non-members. In fact, there is no claim in the Motion of it either doing so or planning to do so. *See FBI v. Fikre*, 601 U.S. 234, 242 (a “government’s sparse declaration falls short of demonstrating that it cannot reasonably be expected to do again in the future what it is alleged to have done in the past.”); *see also Knox*, 567 U.S. at 307. (no mootness concerns when a defendant offered a full refund to plaintiffs because the defendant continued to defend the legality of its actions, providing no assurances that it would refrain from the wrongful conduct in the future). The Government Employer here has not even bothered to give any promise—sparse or not sparse—that it will not revert back to its old unconstitutional ways of treating employees.

Third, the Government Employer’s characterization of the payment as “one-time” undercuts, rather than supports, its mootness argument. Dkt. 34, Mot. at ¶ 8. The

constitutional wrong alleged here is structural: the Government Employer’s practice of conditioning compensation or benefits on union membership. That structural wrong is not remedied by a one-time payment after being caught and sued, any more than a discriminatory hiring policy is remedied by one remedial hire. Every future wage action in which the Government Employer provides additional compensation only to union members would replicate the same constitutional violation. Nothing in the Government Employer’s filing prevents that.

#### **IV. Declaratory Judgment and Injunctive Relief Claims Remain Live.**

Even if the Government Employer had paid each of the Plaintiffs \$3,000 (it has not), the declaratory judgment and injunctive relief requests remain a live dispute, as the Government Employer has utterly failed to meet its heavy burden of demonstrating their unconstitutional actions will not resume, and the injuries it inflicted are clearly capable of repetition.

Here, Defendants argue “[t]here is no discretionary practice left for UPR to resume because the very benefit giving rise to this suit no longer exists as a live, recurring policy.” Dkt. 34, Mot. at ¶ 8. But that is not accurate. Plaintiffs’ suit is to stop the Government Employer’s flagrant discrimination against union non-members in violation of the First and Fourteenth Amendments to the U.S. Constitution. Dkt. 23 at 14. That is why Plaintiffs seek a declaratory judgment and injunction preventing the Government Employer from engaging in *future* discrimination. Awarding some—but not all—of the Plaintiffs \$3,000 does not make it “absolutely clear” that Movant Defendants do not intend to resume discrimination against Plaintiffs in the future in

the same way or a different unconstitutional way. *Friends of the Earth*, 528 U.S. at 190.

Satisfaction of a specific damages claim does not moot a request for declaratory judgment. *See Cordeiro v. GREP Atl., LLC*, 2025 U.S. Dist. LEXIS 52433, \*5 (D. Mass. 2025) (citing *Cooper v. Charter Communs. Entm'ts I, LLC*, 760 F.3d 103, 107–08 (1st Cir. 2014)). The Government Employer has changed nothing structurally. Declaring that conditioning compensation on union membership violates the First Amendment—as the U.S. Supreme Court has made clear it does, *see Janus v. AFSCME, Council 31*, 585 U.S. 878 (2018)—has prospective practical effect: it governs the Government Employer's conduct in all future wage determinations affecting this bargaining unit.

#### **V. Plaintiffs Are Entitled to Attorneys' Fees.**

The Government Employer argues that Plaintiffs cannot recover attorneys' fees under 42 U.S.C. § 1988 because there has been no “judicially sanctioned” change in the parties' legal relationship, citing *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Hum. Res.*, 532 U.S. 598 (2001). Dkt. 34, Mot. at ¶¶ 12–13. This argument fails at multiple levels.

First, the argument is premature. Plaintiffs' unopposed Motion for Judgment on the Pleadings (Dkt. 27) has been pending since May 29, 2026. No Defendant has filed a response as of today. If the Court grants that motion, Plaintiffs will have obtained a judicially sanctioned judgment on the merits. That judgment will make Plaintiffs “prevailing parties” under § 1988 as a matter of law. It is rich for the Government Employer to file a mootness motion seeking to foreclose attorneys' fees while

simultaneously refusing to respond to a Motion for Judgment on the Pleadings that would establish the very prevailing-party status the Government Employer now contests.

Second, the factual premise of the Government Employer's *Buckhannon* argument is flawed. *Buckhannon* rejected the "catalyst theory"—the idea that a plaintiff prevails merely because the lawsuit caused the defendant to change its behavior. *See Buckhannon*, 532 U.S. at 605. Here, there is a pending, unopposed Motion for Judgment on the Pleadings (Dkt. 27). If that motion is granted, Plaintiffs obtain a judgment—precisely the kind of "judicially sanctioned" change that *Buckhannon* requires. *Buckhannon* is thus inapposite.

### CONCLUSION

Based on these arguments and controlling law, Plaintiffs respectfully request that the Court deny the Government Employer's motion to dismiss the claims against it. The controversy here is very much live. Two plaintiffs—Velázquez and León—were never paid and the Government's own Answer acknowledges it. Every plaintiff retains live claims for injunctive and declaratory relief. The Government Employer's alleged payment was litigation-induced, entirely unsubstantiated by evidence, and accompanied by no structural change that would prevent recurrence. And Plaintiffs' pending, unopposed Motion for Judgment on the Pleadings (Dkt. 27)—not the Government Employer's Motion—is the vehicle through which the Court should resolve the merits of this dispute, thereby making this Motion moot.

In the alternative, should the Court be inclined to consider the Government Employer's factual claim of payment and not resolve the pending and unopposed Motion for Judgment on the Pleadings, Plaintiffs request that the Court convert the Motion to a motion for summary judgment pursuant to Federal Rule of Civil Procedure 12(d) and permit Plaintiffs to conduct discovery to test the Government Employer's unsubstantiated payment assertions.

**Respectfully submitted.**

In San Juan, Puerto Rico, this 8th day of September 8, 2026.

s/ Ángel Valencia  
Timothy Kilcullen (pro hac vice)  
Ángel J. Valencia  
USDCPR- 300009  
LIBERTY JUSTICE CENTER  
1629 K Street, N.W.  
Suite 300  
Washington, D.C. 20006  
512-481-4400  
tkilcullen@ljc.org  
avalencia@ljc.org

Milton L. Chappell (pro hac vice)  
District of Columbia Bar No. 936153  
National Right to Work Legal Defense Foundation, Inc.  
8001 Braddock Road, Suite 600  
Springfield, Virginia 22160  
Telephone: (703) 321-8510  
mlc@nrtw.org

*Counsel for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that on September 8, 2026, I electronically filed the foregoing with the Clerk of Court, using the CM/ECF System, which will send notification of such filing to all appearing parties and counsel using the Court's electronic filing system.

**Respectfully submitted.**

In San Juan, Puerto Rico, this 8th day of September, 2026.

s/ Timothy Kilcullen

Timothy Kilcullen (pro hac vice)

USDCPR- 300009

LIBERTY JUSTICE CENTER

1629 K Street, N.W.

Suite 300

Washington, D.C. 20006

512-481-4400

tkilcullen@ljc.org