

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

LUIS RIGAU,

Plaintiff,

v.

MARÍA T. QUINTANA, in her official
capacity as Chair of the Puerto Rico
Industrial Commission; PUERTO RICO
INDUSTRIAL COMMISSION;
FEDERACIÓN CENTRAL DE
TRABAJADORES, UFCW LOCAL 481,

Defendants.

Civil No. 25-1630 (PAD-HRV)

RE: Constitutional Violation Action (42
U.S.C. § 1983), Declaratory Judgment,
Injunctive Relief, Compensatory, and
Nominal Damages

REPLY TO PLAINTIFF'S RESPONSE IN OPPOSITION TO MOTION TO DISMISS
TO THE HONORABLE COURT:

COME NOW codefendants María T. Quintana, in her official capacity as Chair of the Puerto Rico Industrial Commission, and the Puerto Rico Industrial Commission, through the undersigned attorneys, and without waiving any right or defense and without submitting to the Court's jurisdiction, very respectfully state, allege and pray as follows:

I. INTRODUCTION

On March 16, 2026, appearing Defendants filed a *Motion to Dismiss Pursuant to Rule 12(B)(6)* (Docket No. 53). On March 30, 2026, Plaintiff filed his *Response*. (Docket No. 61). Appearing Defendants then moved to file a reply to Plaintiff's Response (Docket No. 62)

and the Court granted leave to file a Reply (Docket No. 64). Appearing Defendants now submit this Reply in support of granting the Motion to Dismiss at Docket No. 53.

Plaintiff raised a few mischaracterizations concerning the Defendants' arguments that must be addressed for the proper disposition of this case. First, Plaintiff argues that the PRIC is blindly following the Union's orders and that the PRIC is a willing enforcer of unconstitutional demands. (Docket No. 61 at 2). Second, Plaintiff argues that the PRIC Chair has "some connection" with the enforcement. (Docket No. 61 at 4). Third, Plaintiff argues that the PRIC is relying on a Puerto Rico Court of First Instance's (CFI) decision to violate First Amendment rights (Docket No. 61 at 7), and that there is Commonwealth case law that invalidates the CFI's decision (Docket No. 61 at 11). Ultimately, Plaintiff is wrong and mischaracterizes the PRIC's position on the case.¹ Therefore, submitting this Reply is necessary to clarify the appearing Defendants' position on the record.

II. DISCUSSION

A. The PRIC or PRIC Chair cannot simply "flip a switch" and cease union dues deductions.

Parsing through Plaintiff's arguments, the most erroneous one is that the PRIC or PRIC Chair has the power to cease the union dues deductions but chooses not to exercise that power. (Docket No. 61 at 5). While it is true that the PRIC's payroll office may stop deductions when proper documentation is presented, like for example, an official instruction or directive requiring such action, the Plaintiff has not pleaded in the

¹ Combing through Plaintiff's Response, it is plain that he concedes that the Puerto Rico Industrial Commission is barred from this suit under Eleventh Amendment grounds. (Docket No. 61 at 4). Thus, this Reply will focus on the inapplicability of the *Ex Parte Young* exception as to the PRIC Chair.

Complaint that such document exists. In fact, the only communication involving the PRIC occurred on March 26, 2025, when Plaintiff sent a letter requesting the Union and the PRIC acknowledge Rigau's purported resignation and end dues deductions (Docket No. 1 at 7, ¶ 30). Without an official document or legally operative instruction to process, how could the PRIC's payroll office implement any changes to Plaintiff's deductions in the first place?

Across the United States, many legislatures have adopted laws design to address the practical effects of the *Janus* decision on public-sector unions. These can be called "Janus-response" bills. These laws typically shift the responsibility of maintaining dues authorizations from the employer to the union. Under these schemes, employers must rely on the union's certification that an employee has authorized dues deductions, rather than independently reviewing the employee's signed forms themselves.

For example, California requires public employers to honor employee authorizations for dues deductions transmitted by the union, rather than directly from the employee, and limits public employer involvement in canceling these deductions. See, for example, California, CA GOV'T § 1153 ("Make, cancel, or change a deduction or reduction **at the request of the person or organization authorized to receive the deduction or reduction**. All requests shall be made on forms approved by the Controller"). Washington has a similar provision. Wash Rev. Code 28B.52.043 ("An employee's request to revoke authorization for payroll deductions must be in writing and submitted by the employee to the exclusive bargaining representative in accordance with the terms and conditions of the authorization"). Moreover, New York mandates that

employees present a resignation with the Union before dues deductions cease. N.Y. Civ. Serv. Law § 208.² Numerous additional post-*Janus* statutes remain in force across the country and, after reviewing cases, no federal court has found them repugnant to the U.S. Constitution or incompatible with *Janus*. Accordingly, requiring an employee to first submit a resignation to the union in order to terminate dues deductions is a reasonable and lawful framework, contrary to Plaintiff's assertion (Docket No. 61 at 18).

Accordingly, Plaintiff fails to establish the necessary enforcement connection required under *Ex Parte Young*. The PRIC Chair does not have a duty to stop deductions unless the agency receives notice from the Union that Plaintiff is no longer a member. Determination of membership status is a duty of the Union, not the PRIC or the PRIC Chair, according to the in-force Collective Bargaining Agreement (CBA) (Docket No. 39-1 at 6). Nothing in *Janus* affects a union's purview on affiliate membership status or redirects it to the government employer.

Moreover, the agreed-upon settlement in Docket No. 66 of this case perfectly illustrates the practical reality and legal constraints of the PRIC's administrative framework, which is that it cannot act until the Union sends a notice. Thus, it is clear that the PRIC Chair cannot act unless the Union transmits the notice of non-membership to process the ministerial act of stopping union dues deductions.

² Insofar it is relevant here, this New York state statute provides that "A public employer shall extend to an employee organization certified or recognized pursuant to this article the following rights: . . . (b) . . . The right to such membership dues deduction shall remain in full force and effect until: (i) an individual employee revokes membership in the employee organization in writing in accordance with the terms of the signed authorization." N.Y. Civ. Serv. Law § 208. *See also*, ALAN M. KLINGER & DINA KOLKER, *Public Sector Unions Can Survive Janus*, 34 ABA J. LAB. & EMP. L. 267, 273 (2020).

The “guideposts” construed by federal caselaw point that the PRIC Chair does not have the “connection” requirement under *Ex Parte Young*. The PRIC Chair does not have a particular duty to stop dues deduction at this time, she has not demonstrated a willingness to uphold the policy regarding union dues deductions that was implemented in the past, and she is not compelling Rigau to give up his First Amendment rights. *Free Speech Coalition, Inc. v. Anderson*, 119 F.4th 732, 736 (10th Cir. 2024); *Mi Familia Vota v. Ogg*, 105 F.4th 313, 325 (5th Cir. 2024). Plaintiff’s deductions are a result of the CBA, and the Union’s determination of membership. The proper entity capable of altering membership status to stop deductions is the Union. The PRIC Chair lacks unilateral authority to do so.

B. The Commonwealth Court of First Instance’s decision in *Servidores Públicos Unidos y otros v. Estado Libre Asociado de Puerto Rico y otros*, SJ2018CV05288 compels the PRIC to disregard Plaintiff’s disaffiliation form

Plaintiff spills a lot of ink bringing to this Court’s attention the decision reached by the Puerto Rico Court of Appeals in *Asociación Puertorriqueña de Profesores Universitarios v. Estado Libre Asociado*, 2019 WL 2185047; Case No. KLAN201801269 (P.R. Ct. App., Feb. 28, 2019). Plaintiff’s reasoning is that the “2019 Court of Appeals decision validated the memoranda that created Rigau’s disaffiliation form.” (Docket No. 61 at 12). This is plainly wrong. The issue in the *Asociación* case is a narrow one: whether it was proper for a first instance court to issue a permanent injunction **regarding instruction number six** set forth in Joint Memo No. 2018-01³ to stop its implementation. This decision did not validate the whole of Joint Memo No. 2018-01, nor did it consider Joint Memo No.

³ See, Exhibit 1 of this motion, Joint Special Memo No. 2018-01 issued on July 11, 2018, by the Office of Administration and Transformation of Human Resources for the Government of Puerto Rico (OATHR) and the Puerto Rico Labor and Human Resources Department (LHRD).

2018-02,⁴ which is the companion memo. After this ruling, both joint memos were left intact until the decision issued a year later in *Servidores Públicos Unidos y otros v. Estado Libre Asociado de Puerto Rico y otros*, SJ2018CV05288.⁵

In *Servidores*, the Puerto Rico Court of First Instance granted summary judgment in favor of plaintiff unions,⁶ and issued declaratory relief, holding that Joint Memo No. 2018-01 and Joint Memo No. 2018-02 were **invalid and unenforceable**. The CFI concluded that, although styled as interpretative guidance, the memoranda in fact constituted legislative rules with binding legal effect. This is because it found that they imposed mandatory procedure, required compliance by government agencies, and altered substantive aspects of the statutory labor framework. Because the memoranda were adopted without complying with the procedural requirements of Puerto Rico's Uniform Administrative Procedure Act, the CFI held that they were **null in their entirety**. As a result, the CFI declared both memoranda void and denied the Commonwealth's cross-motion for summary judgment.

Contrary to Plaintiff's arguments (Docket No. 61 at 11-14), the CFI did not invalidate the joint memoranda on a mere technical or procedural defect. The CFI's decision was a merits determination that the Commonwealth employed a rulemaking mechanism to impose binding legal norms without following the statutory requirements,

⁴ See, Exhibit 2 of this motion, Joint Special Memo No. 2018-02 issued on July 18, 2018, by the OATHR and the LHRD.

⁵ See, Exhibit 3 of this motion, Judgment issued by the Puerto Rico Court of First Instance on August 31, 2021 in *Servidores Públicos Unidos de Puerto Rico y otros v. Estado Libre Asociado de Puerto Rico y otros*, SJ2018CV05288.

⁶ Including the Union codefendant in this case.

thereby rendering the memoranda null in their entirety. This decision by the CFI is binding on all Commonwealth agencies and it invalidated the joint memoranda, including the disaffiliation forms attached thereto.

C. The Window Period Cases show that *Janus* rights are not unlimited.

Finally, Plaintiff attempts to reframe this case as a straightforward violation of *Janus*. He asserts that union dues deductions are unconstitutional absent affirmative consent and that no such consent exists here (Docket No. 61 at 16-17). Even accepting that premise, the argument fails at the pleading stage because it does not plausibly allege that the PRIC, as opposed to the Union, is legally responsible for the challenged conduct.

Parsing through the *Opposition*, Plaintiff's theory conflates two distinct issues: (1) whether deductions are constitutionally permissible under *Janus*, and (2) whether the Defendants in this case are the actors responsible for the alleged violation. Only the latter is dispositive under Rule 12(b)(6). To state a claim under 42 U.S.C. § 1983, Plaintiff must plausibly allege that the conduct complained of by the PRIC and its Chair has been committed under color of state law, and that the alleged conduct worked a denial of rights secured by the Constitution or laws of the United States. *Cepero-Rivera v. Fagundo*, 414 F.3d 124 (1st Cir. 2005). The *Opposition* does not do so.

Indeed, the record shows, and Plaintiff's own allegations confirm that union membership status is determined by the Union pursuant to its governing rules and the in-force CBA. Plaintiff does not allege that the PRIC or PRIC Chair independently adjudicates membership, evaluates the validity of union resignations, or determines whether an employee has provided constitutionally sufficient consent. On the contrary,

the theory advanced throughout the Opposition is that the PRIC should disregard the Union's determinations and unilaterally cease deductions.

Moreover, the Window Period Cases were put to this Court's attention to illustrate that *Janus* rights are not unlimited, that federal courts have recognized that *Janus* does not extend a First Amendment right to avoid paying union dues when those dues arise out of a contractual obligation, and that the Complaint in this case did not plead that Plaintiff had followed through with the process outlined by the Union for union resignation (Docket No. 53 at 16).⁷ To be clear, **the Complaint did not allege that Plaintiff was no longer part of the Union and, thus, it was inferred that contractual obligations remained between them.** The PRIC or its Chair does not know about the Union's inner dealings with membership resignation. Plainly, these cases were argued to show that Plaintiff's claims are misdirected. *Janus* does not hold that First Amendment rights override contractual obligations. *Barlow v. Service Employees International Union Local 668*, 90 F.4th 607 (3d Cir. 2024). Consequently, Plaintiff failed to set forth the connection the PRIC or the PRIC Chair has with the enforcement of the alleged unconstitutional dues collection because Plaintiff, by his own admission, is still part of the Union. (Docket No. 66).

III. CONCLUSION

⁷ See also, *Taft v. Witney*, Civil No. 22-6279 (FPG), 2024 WL 1533623, at 4-5 (W.D.N.Y. April 9, 2024) (holding that the public employer did not violate the First Amendment violation because employee did not allege that his request was permissible under the membership agreement); *Fischer v. Governor of New Jersey*, 842 Fed. Appx. 741, 753 (3rd Cir. 2021).

For the reasons set forth above, Plaintiff's claims against the PRIC and its Chair fail as a matter of law. First, the PRIC is entitled to Eleventh Amendment immunity, which bars all claims against it in this Court. Plaintiff effectively concedes as much. Accordingly, dismissal of all claims against the PRIC is mandatory.

Second, Plaintiff has failed to plausibly allege that the PRIC Chair has the requisite enforcement connection under *Ex Parte Young*. The deductions at issue arise from the Union's determination of membership status under the CBA and Commonwealth law, not from any discretionary action by the PRIC or its Chair. The PRIC Chair does not determine union membership, evaluate union resignations, or independently halt deductions absent union certification. As such, Plaintiff fails to establish the necessary connection requirement between the PRIC Chair's conduct and the alleged constitutional violation to invoke *Ex Parte Young*.

Third, even accepting Plaintiff's allegations as true, the Complaint improperly conflates *Janus* with the requirement that a state actor be responsible for the alleged deprivation. Any alleged injury stems from the Union's membership determination, not from PRIC decision-making. Absent well-pleaded facts showing that PRIC or its Chair is the decisionmaker responsible for the challenged deductions, the claims cannot proceed.

Finally, Plaintiff's reliance on Commonwealth case law does not change this result. The CFI's decision invalidating the *Janus*-related memoranda made the forms Plaintiff used legally ineffective and confirms that the PRIC cannot act outside the governing legal framework. Plaintiff cannot convert a limit on agency authority into a basis for federal

liability. In sum, Plaintiff has failed to state a plausible claim for relief against either the PRIC or its Chair.

WHEREFORE, appearing Defendants respectfully request that this Honorable Court grant the Motion to Dismiss filed by the PRIC and its Chair at Docket No. 53 and deny Plaintiff's Opposition to the Motion to Dismiss at Docket No. 61.

I HEREBY CERTIFY that on this same date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the parties subscribing to the CM/ECF system.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, on this 14th day of April 2026.

LOURDES L. GÓMEZ TORRES
Secretary of Justice

s/ Jan Miguel Albino-González
JAN MIGUEL ALBINO-GONZÁLEZ
USDC No. 310104
janm.albino@justicia.pr.gov

TANIA L. FERNÁNDEZ MEDERO
Deputy Secretary of Civil Litigation

JOSUÉ N. TORRES-CRESPO
USDC No. 229805
Director of Legal Affairs
Federal Litigation and
Bankruptcy Division

s/ Diana I. Pérez-Carlo
DIANA I. PÉREZ-CARLO
USDC No. 307313
diana.perez@justicia.pr.gov

**DEPARTMENT OF JUSTICE
OF PUERTO RICO**
Federal Litigation and
Bankruptcy Division
P.O. Box 9020192
San Juan Puerto Rico, 00902-0192
Tel. 787-721-2900; Ext. 1423 / 1413