

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

LUIS RIGAU

Plaintiff,

v.

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

Defendants.

CIVIL NO. 25-1630 (PAD-HRV)

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

**OMNIBUS REPLY TO DEFENDANTS' OPPOSITIONS TO PLAINTIFF'S
MOTION FOR PRELIMINARY INJUNCTION**

TO THE HONORABLE COURT:

Plaintiff Luis Rigau (“Rigau”), through the undersigned counsel, respectfully submits the instant Reply to the Responses in Opposition to Plaintiff’s Motion for Preliminary Injunction (Dkt. 4), filed by Defendants Puerto Rico Industrial Commission (“PRIC”) and Maria T. Quintana’s (“Quintana”) (collectively, “the Government Employer”) (Dkt. 24) and Defendant Federación Central de Trabajadores, UFCW Local 481 (“the Union”) (Dkt. 25), as follows:

I. Introduction

Both oppositions share a common fiction: that Rigau is bound by an undefined “contractual” obligation he voluntarily entered to subsidize the Union’s speech. Gov’t Opp’n at 11, 16, 17 (Dkt. 24); Union Opp’n at 2, 11, 13, 16, 17, 24 (Dkt. 25). Yet neither defendant has produced—or can even cite to—a single document showing that Rigau

ever gave the clear and compelling waiver of his First Amendment rights the law requires, let alone a document showing Rigau agreed to any time restriction on his ability to request the cessation of Union deductions.

Instead, the Union points to the Collective Bargaining Agreement (“CBA”) between the Government Employer and the Union as a basis for past and present payroll deductions in favor of the Union. Union Opp’n at 11, 16, 17. But any reliance on the CBA is misplaced because what that CBA does is mandate Union membership and dues deductions as a condition of employment at PRIC—terms deemed unconstitutional even before the U.S. Supreme Court’s ruling in *Janus v. AFSCME, Council 31*, 585 U.S. 878 (2018). *See* Exh. 1.¹ The CBA likewise lacks a window period for bargaining unit employees to withdraw their membership in the Union or request the cessation of payroll deductions. Without such a restriction, resignation of union membership and revocation of union dues deductions are at will.

Both oppositions are an exercise in finger-pointing at each other and procedural fiction designed to conceal a straightforward constitutional violation. The Government Employer claims impotence by saying it is merely following orders from the Union and lacks the authority to stop deductions—a shocking abdication of constitutional responsibility. Gov’t Opp’n at 3. The Union, for its part, offers 29 pages festooned with misdirection and outright fabrication, and cannot escape the central fact: it has no valid authorization to order the Government Employer to seize Rigau’s

¹ The relevant sections of the CBA dealing with forced Union membership and deductions are attached as Exhibit 1.

wages. Together these oppositions solidify that this Court should grant Rigau’s preliminary injunction request.

II. Argument

A. Rigau is likely to succeed on the merits.

1. *The “contractual obligation” defense fails because no valid contract involving Rigau exists.*

The Government Employer’s and the Union’s primary defense—that Rigau is bound by “contractual obligations”—is as hollow as it is brazen. Gov’t Opp’n at 11, 16, 17; Union Opp’n at 2, 11, 13, 16, 17, 24. They are effectively asking this Court to enforce a mystery agreement that neither of them can produce, identify, or even describe with basic specificity.

The facts here belie their “contractual obligations” theory. Neither the Government Employer nor the Union has produced a dues deduction authorization form Rigau signed. The Union does not even claim to possess one. The Government Employer does not allege to have one either. Instead, they vaguely gesture toward the CBA and speculate that Rigau must have agreed to something at some point. The Union’s opposition is particularly telling: it claims Rigau “affirmatively authorized the deduction of union dues from his wages as a condition of membership” but provides no citation, no exhibit, no document, and no date for the supposed authorization—not even a signed union membership card. Union Opp’n at 10. The Union then insists this phantom authorization “creat[ed] a contractual obligation.” Union Opp’n at 13. But the Union’s own statements undermine its theory: it admits Rigau “was, *until 2018*, a member of [the Union] covered by a collective bargaining

agreement.” Union Opp’n at 10 (emphasis added). If, by the Union’s own logic, Rigau ceased being one of its members in 2018, then any alleged “contractual obligation” tied to membership necessarily expired with it. Even the Union does not claim Rigau entered into a new agreement sometime after 2018. But Rigau is still enduring unauthorized deductions to this day. The Government Employer and the Union cannot hold Rigau to the terms of a contract they cannot produce to enforce a membership the Union admits has not existed for more than seven years.

Speculating that Rigau entered a contract for the deduction of dues is also insufficient as a matter of law. *Janus* does not permit unions or employers to infer consent from silence, inaction, or the mere fact of employment. The U.S. Supreme Court expressly rejected such schemes, holding that public employees cannot be compelled to subsidize union speech absent clear and compelling evidence that they affirmatively consented and freely waived their First Amendment rights:

Neither an agency fee nor any other payment to the union may be deducted from a nonmember’s wages, nor may any other attempt be made to collect such a payment, unless the employee affirmatively consents to pay. By agreeing to pay, nonmembers are waiving their First Amendment rights, and such a waiver cannot be presumed. Rather, to be effective, the waiver must be freely given and shown by “clear and compelling” evidence. Unless employees clearly and affirmatively consent before any money is taken from them, this standard cannot be met.

Janus, 585 U.S. at 930 (internal citations omitted).

The Government Employer cites *Belgau v. Inslee*, 975 F.3d 940 (9th Cir. 2020), and *Barlow v. SEIU Local 668*, 90 F.4th 607 (3d Cir. 2024), for the proposition that employees can be bound by maintenance-of-membership agreements with revocation

windows. Gov't Opp'n. at 9-10. The Union makes the same argument, also citing out-of-circuit cases for the same proposition. Union Opp'n. at 13-15. But those cases are inapposite. The employees in *Belgau* and *Barlow* had signed authorization forms that included specific revocation windows and clear language about dues obligations. *Belgau*, 975 F.3d at 945 (noting the employees signed an authorization that limited revocation to a specific window); *Barlow*, 90 F.4th at 612 (emphasizing that the employees signed union membership applications authorizing the deductions).

Here, there is no such document. The Union has not produced a signed authorization, and the CBA itself contains no window period or revocation procedure. Unlike the defendants in *Belgau* and *Barlow*, who were able to point to the four corners of a signed contract, here the Government Employer and the Union are asking the Court to enforce a "contractual obligation" based on nothing more than bare conjecture and their own self-serving representations in the face of the Union's admission that Rigau has not been a union member for more than seven years.

2. Neither the Government Employer nor the Union can define the "window period" because it does not exist.

Like with the "contractual obligation," the Government Employer and the Union maintain that Rigau did not "effectively revoke[] his [dues] authorization within the prescribed framework," but they do not identify when this window occurs. Union Opp'n. at 16; *see also* Gov't Opp'n at 9-10. They cannot even say if the window period takes place annually, monthly, or on the anniversary of some unknown date. The Union is conspicuously silent on this critical point. It asserts that Rigau's resignation letters "did not conform to the required timing or method for revocation"

but it does not—because it cannot—specify what the “required timing” is. Union Opp’n at 16. The Union cites no clause, identifies no passage, and offers no description of where this supposed window might be found because no such provision exists. This is not an oversight—it is a purposeful misrepresentation. And it directly violates this Court’s standing orders, which require strict candor in written submissions and prohibit reliance on facts not grounded in the record. *See* Code of Pretrial Conduct, General Standing Order 07-186, at 3 (JAF).

But there is more. The Union’s opposition inadvertently reveals the fancifulness of its position when it says Rigau’s resignation letters “*may* have been outside the annual window or not on the proper form.” Union Opp’n. at 16 (emphasis added). But speculation is not evidence. The Union clearly has no evidentiary basis for its claims—it is just inventing speculative procedural hurdles on the fly to justify being allowed to continue its ongoing constitutional violations.

3. State law cannot be used as a shield to evade constitutional mandates.

The Government Employer argues that “state law is what normally governs” contractual obligations, citing *Cohen v. Cowles Media Co.*, 501 U.S. 663, 671 (1991). Gov’t Opp’n at 9. The Union makes the same argument. Union Opp’n. at 14. Defendants’ reliance on *Cohen* is misplaced when there is no evidence of any “contractual obligations” that would limit Rigau’s revocation of his union dues deductions.

Even if there were “contractual obligations,” the First Amendment trumps state contract law when the “contract” itself violates constitutional rights.

For at least a quarter-century, this Court has made clear that even though a person has no ‘right’ to a valuable governmental benefit and even though the government may deny him the benefit for any number of reasons, there are some reasons upon which the government may not rely. It may not deny a benefit to a person on a basis that infringes his constitutionally protected interests—especially, his interest in freedom of speech.

Perry v. Sindermann, 408 U.S. 593, 597 (1972).

B. The Government Employer’s Eleventh Amendment Argument is a red herring that distracts from the constitutional violation.

The Government Employer devotes a substantial effort arguing that PRIC enjoys Eleventh Amendment immunity. Gov’t Opp’n. at 5-7. This is irrelevant for two reasons. First, Rigau seeks prospective injunctive relief against Quintana in her official capacity—relief that is expressly permitted under *Ex parte Young*, 209 U.S. 123 (1908). The Government Employer concedes as much. “Plaintiff could obtain limited, prospective injunctive relief under *Ex parte Young*.” Gov’t Opp’n. at 7. The First Circuit has consistently applied *Ex parte Young* to permit suits against state officials in their official capacities to compel them to comply with federal law. *See Vaquería Tres Monjitas, Inc. v. Irizarry*, 587 F.3d 464, 478 (1st Cir. 2009). Second, Rigau does not seek damages from PRIC or retrospective relief. He only seeks an order directing Quintana to stop deducting dues from his paycheck going forward, which the *Ex parte Young* doctrine permits.

C. Quintana has the power to end the unconstitutional deductions.

The Government Employer argues that Quintana “does not have the authority to disaffiliate employees from the Union” and therefore lacks the requisite “connection” to the alleged constitutional violation under *Ex parte Young*. Gov’t

Opp'n. at 11. But the Government Employer's alleged constitutional violation is the unauthorized deduction of union dues from Rigau's wages, not his affiliation with the Union. PRIC, the agency Quintana leads, administers Rigau's payroll, including all deductions made therefrom. Quintana, as President of PRIC, has direct authority over employee wages and payroll deductions. *See P.R. Laws Ann.* tit. 11, § 8. As agency head, she is the official who ultimately can stop the unconstitutional policy of seizing Rigau's wages without his valid consent.

The *Ex parte Young* doctrine requires only that the state official have "some connection with the enforcement" of the challenged policy. *Ex parte Young*, 209 U.S. at 157. *See also Shell Oil Co. v. Noel*, 608 F.2d 208, 211 (1st Cir. 1979). Quintana plainly satisfies this standard because she is the official ultimately responsible for personnel matters, including implementing and continuing Union deductions for whatever reason.

II. Rigau has established irreparable harm.

The Government Employer claims Rigau has not suffered irreparable harm because he could simply "complete the disaffiliation process with the Union . . ." Gov't Opp'n. at 13. The Union trivializes the harm as merely monetary and, therefore, not irreparable. Union Opp'n. at 19-20. Both arguments are factually and legally wrong.

A. The loss of First Amendment freedoms constitutes irreparable harm *per se*.

The actions here are similar to the unconstitutional actions the State of Illinois took against Mr. Janus. "Under Illinois law, . . . [when] the union certifies to the employer the amount of the fee, that amount is automatically deducted from the

nonmember’s wages. No form of employee consent is required. This procedure violates the First Amendment and *cannot continue.*” *Janus*, 585 U.S. at 930 (citations omitted; emphasis added). When First Amendment violations are involved the U.S. Supreme Court has been unequivocal: “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976). See also *Sindicato Puertorriqueño de Trabajadores v. Fortuño*, 699 F.3d 1, 10 (1st Cir. 2012) (irreparable injury is presumed when the movants are likely to prevail on the merits.) Every paycheck that issues with an unconstitutional deduction represents a fresh, distinct violation of Rigau’s right to be free from compelled speech. The harm is not speculative or remote—it is ongoing. Rigau is subsidizing speech he opposes with each ongoing deduction. This is the paradigmatic irreparable injury.

Contrary to what the Union suggests, the harm is not merely the loss of money—it is, as the *Janus* Court explained, the compelled subsidy of speech:

When speech is compelled, however, additional damage is done. In that situation, individuals are coerced into betraying their convictions. Forcing free and independent individuals to endorse ideas they find objectionable is always demeaning . . . [c]ompelling a person to subsidize the speech of other private speakers raises similar First Amendment concerns.

Janus, 585 U.S. at 893 (internal citations omitted).

The Government Employer and the Union are not just taking Rigau’s wages—they are conscripting his labor for the Union’s speech he abhors. This is a First Amendment violation that no amount of back pay can ever truly cure.

B. The “delay” argument fails because First Amendment injuries are always irreparable.

Both the Government Employer and the Union argue Rigau’s purported “delay” in filing suit undermines his claim of irreparable harm. Gov’t Opp’n. at 13-14; Union Opp. at 21. The facts and the law contradict this argument.

1. *Rigau did not delay—he pursued administrative remedies.*

Rigau first objected to the deductions on July 20, 2018, by submitting a Union disaffiliation form. *See* Compl. Ex. 1 (Dkt. 1-1). The Government Employer initially honored his request and stopped deductions. *See* Compl. ¶ 23 (Dkt. 1). But on November 2, 2022, the Government Employer announced that it would “mandatorily resume” deductions, without seeking any consent, and that disaffiliation could occur “only . . . through the Union’s internal procedure.” *See* Compl. Ex. 2 (Dkt. 1-2). Less than two weeks later Rigau objected again in writing on November 15, 2022, and then, when deductions continued, again on January 13, 2023. *See* Compl. Exhs. 3, 4 (Dkts. 1-3, 1-4). He objected again on March 26, 2025 (Compl. ¶ 30). Rigau did not sleep on his rights. The Government Employer and the Union simply refused to respect them, transforming their own administrative stonewalling into a weaponized—and meritless—defense of “delay.”

III. The balance of equities and public interest favor Rigau.

A. There is no public interest in enforcing unconstitutional policies.

The Government Employer argues that an injunction would “disrupt” labor relations and constitute an “unfair labor practice.” Gov’t Opp’n at 15, 17. The Union

makes similar arguments about “labor stability” and the need to fund union operations. Union Opp’n. at 22-23. *Janus* forecloses these arguments:

We recognize that the loss of payments from nonmembers may cause unions to experience unpleasant[ness] . . . [but] [t]hose unconstitutional exactions cannot be allowed to continue indefinitely . . . [s]tates can keep their labor-relations systems exactly as they are—only they cannot force nonmembers to subsidize public sector unions.

Janus, 585 U.S. at 929 & n.27.

Janus also held that “labor peace” cannot justify compelled subsidies of union speech. *Janus*, 585 U.S. at 896. It further held that “the First Amendment does not permit the government to compel a person to pay for another party’s speech just because the government thinks that speech furthers the interests of the person who does not want to pay.” *Id.* at 891.

IV. Conclusion

For the foregoing reasons, Rigau respectfully requests that the Court grant his Motion for Preliminary Injunction and enjoin the Government Employer and the Union from deducting or collecting any dues or other payments to the Union from Rigau’s wages absent affirmative consent as required by *Janus*.

WHEREFORE, it is respectfully requested that the Court issue a Preliminary Injunction, enjoining the Government Employer and the Union, and its agents, from seizing dues or any other payment to the Union from Rigau’s wages in violation of Rigau’s First Amendment right not to subsidize a labor organization.

CERTIFICATE OF SERVICE

I hereby certify that on this date 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 18th day of February 2026.

s/ ÁNGEL J. VALENCIA

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