

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

**PLAINTIFF'S RESPONSE IN OPPOSITION TO GOVERNMENT
EMPLOYER'S MOTION TO DISMISS**

TO THE HONORABLE COURT:

Plaintiff Luis Rigau ("Rigau"), through the undersigned counsel, respectfully submits this Response in Opposition to the Motion to Dismiss filed by Defendants Maria T. Quintana ("Quintana"), in her official capacity as President of the Puerto Rico Industrial Commission ("PRIC"), and the Puerto Rico Industrial Commission (collectively, "the Government Employer") (Dkt. 53).

I. INTRODUCTION

The Government Employer's Motion to Dismiss asks the Court to believe the unbelievable: that a government agency which actively deducts \$30 every month from an employee's wages and remits those funds directly to a labor union bears no

responsibility whatsoever for that seizure. This proposition would be remarkable in any context. And it is indefensible under the First Amendment.

The Government Employer has operated as a collection agency for the Union, extracting money from Rigau's paycheck twice a month—every month—despite at least four written objections, the absence of any signed dues authorization form, and the U.S. Supreme Court's command that “[n]either an agency fee nor any other payment to the union may be deducted from a nonmember's wages . . . unless the employee affirmatively consents to pay.” *Janus v. AFSCME, Council 31*, 585 U.S. 878, 930 (2018). Every dollar taken from Rigau's wages since his first written objection is a dollar taken without his consent, and every dollar forcibly taken is a fresh constitutional wound.

The Government Employer's defense reduces to a single, unbelievable claim: it simply “acts ministerially,” blindly following Defendant Federación Central de Trabajadores, UFCW Local 481's (“the Union”) marching orders, and lacking any authority or responsibility over the funds it physically extracts from its own employees' pay. Government Employer's Motion to Dismiss (“Mot.”) at 23. But this Court does not need to look further than the Government Employer's own exhibit—a May 23, 2022 letter from the Union's President to the then-PRIC President to see the Government Employer's defense collapse under the weight of its own evidence. *See* Dkt. 53-1. That letter reveals the Government Employer is not a passive bystander, but a willing enforcer and enabler of the Union's unconstitutional demands.

The Union’s president in that letter did not merely request cooperation. He threatened “sanctions” from “a court with jurisdiction and pertinent administrative agencies” if the Government Employer dared to honor employee disaffiliation and dues cessation requests. *See* Dkt. 53-1. The Union’s president further demanded that the Government Employer “reverse any disaffiliation implemented.” *Id.* These threats resulted in the Government Employer’s utter capitulation, kowtowing to the Union’s wishes. Within months, PRIC’s then-President sent a letter to bargaining unit employees on November 2, 2022, announcing the blanket reinstatement of compulsory deductions for every bargaining-unit employee—including Rigau, who had successfully resigned from the Union more than four years earlier. Compl. ¶ 24 (Dkt. 1). Quintana has continued this unconstitutional policy unabatedly.

The Government Employer did not merely process a ministerial instruction. It chose, under threat from the Union, to strip a constitutional right from Rigau—reversing a decision it had already implemented. And it did so without securing Rigau’s consent. That is not ministerial passivity. That is active enforcement of a constitutional violation, and it creates precisely the required “connection with the enforcement.” *See Ex parte Young*, 209 U.S. 123, 157 (1908).

But the Government Employer claims its hands are tied because the collective bargaining agreement (“CBA”) with the Union compels this result. That argument reduces to a simple proposition: contractual obligations trump constitutional rights. But that is no defense. It is a confession. The U.S. Supreme Court places the constitutional obligation squarely on the Public Employer—the

government entity that reaches into Rigau’s paycheck to extract his money. *See Janus*, 585 U.S. at 930. The Government Employer cannot outsource that constitutional duty to the Union any more than a prison guard can delegate to inmates the decision of whether to use excessive force. A CBA provision that purports to authorize ongoing First Amendment violations is unenforceable, and a government employer that hides behind such provision to justify seizing an employee’s wages without consent has not absolved itself of liability—it has established it. The Government Employer is the state actor. It performs the seizure—and bears the constitutional responsibility.

II. ARGUMENT

A. The *Ex Parte Young* Exception Applies Because Quintana Has a Direct Enforcement Connection to the Ongoing Constitutional Violation.

The Government Employer devotes significant effort to the unremarkable proposition that the Eleventh Amendment bars suits against PRIC as a state instrumentality. Mot. at 6–9. Rigau does not dispute that PRIC itself is entitled to sovereign immunity. But this is a red herring. Rigau is suing Quintana in her official capacity for prospective injunctive relief—exactly the remedy *Ex parte Young* was designed to provide. The Government Employer concedes as much: “Plaintiff could obtain limited, prospective injunctive relief under *Ex parte Young* . . .” Mot. at 9-10. The only question is whether Quintana has “some connection with the enforcement” of the challenged constitutional violation. *Ex parte Young*, 209 U.S. at 157. And the answer is an undeniable yes.

Consider the Employer’s own fatal admission, laid bare in its own writing: “once the Union notifies [] PRIC that [Rigau] is no longer with the Union, it will stop the deductions from his wages.” Mot. at 4. This sentence alone demolishes the Government Employer’s “no enforcement connection” defense. The Government Employer “will stop the deductions” upon receiving the Union’s notification because it is precisely the one currently making the deductions. The Government Employer, in other words, admits it holds its finger on the switch. It acknowledges it has the power to cease the unconstitutional seizure but chooses not to exercise that power.

The Government Employer cannot declare that it “will stop” deductions when told to do so while simultaneously claiming it has no “connection” to those deductions. This is not ministerial passivity—it is a deliberate choice to continue extracting money from Rigau’s wages in defiance of the Constitution. A government agency that admits it can turn off the deductions but refuses to do so has all the enforcement connection *Ex parte Young* requires. See *Shell Oil Co. v. Noel*, 608 F.2d 208, 211 (1st Cir. 1979) (requiring only “some connection” with enforcement). See also *Cotto v. Campbell*, 126 F.4th 761, 772-73 (1st Cir. 2025) (same). The Government Employer’s attempt to reframe this reality as something else only deepens its predicament.

But it does just that—the Government Employer tries to trivialize this matter as a mere “membership dispute[]”, saying it cannot “determine union membership.” Mot. at 1, 17. This is a straw man argument, as Rigau is not asking the Government Employer to determine membership. He only asks that it stop

seizing his hard-earned money. The Government Employer conflates two distinct acts—determining union membership and authorizing payroll deductions—to obscure the one constitutional duty it indisputably possesses: the duty not to deduct union dues without authorization. The Government Employer does not need the Union’s permission to comply with the First Amendment—it only needs to flip the switch it admits it controls. And the record shows it has flipped that switch before—at the Union’s command.

The Government Employer’s own Exhibit 1—the May 23, 2022 letter—depicts a government agency that did not merely receive a passive notification (Dkt. 53-1). Rather, it was threatened—and it complied. The Union’s President instructed PRIC’s then-President to (1) “desist from any ongoing disaffiliation process,” (2) “reverse any disaffiliation implemented,” and (3) “refer” all future disaffiliation petitions directly to the Union. *See* Dkt. 53-1 at 1–2. The proof of the enforcement connection is not confined to what the Government Employer admits in its motion—it is memorialized in what PRIC’s President did. On November 2, 2022, just months after receiving the Union’s threatening letter, the then-PRIC President sent his own letter to every bargaining unit employee announcing the blanket reinstatement of compulsory union dues deductions. *See* Dkt. 1-2. This was not a passive ministerial act. It was an affirmative policy decision—announced directly by the government agency head—reversing the practice of honoring employees’ dues cessation demands. This reversal proves beyond dispute that PRIC’s President exercises direct control over whether deductions occur. An agency whose leader announces to

employees that their dues deductions are being reinstated cannot credibly claim it has “no connection” to those deductions. That announcement and the resulting reinstatement of dues constitute the enforcement connection—captured in writing—and signed by PRIC’s then-President. Quintana now continues that exact policy. If announcing and implementing a blanket reinstatement of dues deductions is not an “enforcement connection,” then *Ex parte Young* has no meaning.

First Circuit precedent confirms liability here. The Court only needs to ask whether the defendant has “some connection with the enforcement of the act.” *Ex parte Young*, 209 U.S. at 157; *Shell Oil*, 608 F.2d at 211. Quintana easily satisfies this standard. She administers PRIC’s payroll, she oversees the deduction process, and she has continued the blanket deduction policy at the Union’s behest. Her enforcement connection is demonstrated not by speculation but by forty consecutive months of extracting money from Rigau’s wages over his repeated objections.

B. The Court of First Instance Decision does not Justify—and Cannot Excuse—the Blanket Reinstatement of Compulsory Union Deductions.

1. The Government Employer grossly overread a narrow procedural ruling to manufacture a license for a constitutional violation.

The Government Employer asks this Court to believe that a Puerto Rico Court of First Instance decision about *administrative procedure* somehow authorized—indeed *compelled*—the government to strip First Amendment rights from an entire bargaining unit and reinstate compulsory union dues deductions for employees who had exercised their *Janus* rights years earlier. Mot. at 2, 3, 18. This argument is as misleading as it is dangerous.

The decision the Government Employer relies upon, *Servidores Públicos Unidos de Puerto Rico v. Estado Libre Asociado de Puerto Rico*, Civil No. SJ2018CV05288 (TPI, San Juan, August 30, 2021), held one thing only: that Joint Regulatory Memoranda MEC2018-01 and MEC2018-02—the administrative vehicles the Puerto Rico government used to implement *Janus*—were “legislative rules” that should have been promulgated through the procedures Puerto Rico’s Uniform Administrative Procedure Act (“LPAU”) required and were therefore *procedurally* null. *Id.* at 16–17. The Court of First Instance did not hold that public employees lack the right to withdraw their memberships from unions. It did not hold that the *substance* of “Directive 6”—permitting employees to revoke dues authorizations at any time—was unconstitutional or contrary to law. What it found was that the government chose the wrong *method* to implement what it had every right to implement.

The distinction is critical, and the Court of First Instance itself took pains to draw it. In a passage that the Government Employer opportunely ignores, the court stated:

It is important not to confuse the authority that the State has to promulgate the Memoranda to adapt its public labor policy to the *Janus* decision, with the procedure that, according to its own laws, it must comply with to promulgate them validly and with the force of law that their implementation requires. **What is not being questioned before us is the State’s authority to do so, but rather the procedure or method it chose**, which contravenes the rule of law of the LPAU.

Id. at 16 (translation ours, emphasis added).

In other words, the government *can* implement *Janus*—it simply must follow its own administrative procedures when doing so. The Court of First Instance invalidated a *form*, not a *right*. Yet the Government Employer seized upon this narrow procedural ruling to do something the Court of First Instance never sanctioned and would never have sanctioned: reinstate compulsory union dues deductions for every employee in the bargaining unit—including Rigau, who had resigned from the Union and its dues more than four years earlier, and whose resignation had been honored by the PRIC without interruption from July 2018 until November 2022. If the Memoranda were procedurally defective, the remedy was to re-promulgate them through proper channels—not to pretend that *Janus* never happened.

2. The Government Employer used its own forms, honored them for four years, then claimed they were invalid.

The factual timeline exposes the illogicality of the Government Employer’s reliance on the Court of First Instance ruling. On July 20, 2018, Rigau submitted a disaffiliation form to the Government Employer using the very forms that it itself had distributed pursuant to Joint Special Memoranda MEC2018-01 and MEC2018-02. Compl. ¶ 23. These were not forms created by the Union or privately designed documents. They were official government forms, made available to bargaining unit employees, specifically to allow them to exercise their newly recognized constitutional rights under *Janus*.

The Government Employer accepted Rigau’s disaffiliation form and stopped deducting union dues from his wages. Compl. ¶ 23. It continued to honor that

decision for more than four years—from July 2018 through November 2022. During that entire period, Rigau’s disaffiliation was regarded as valid, effective, and binding. It did not question the form or challenge the submission. It did not claim confusion or ambiguity. It simply stopped taking Rigau’s money and giving it to the Union. The justification was the Court of First Instance’s August 2021 ruling that had declared the administrative *process* for creating the disaffiliation forms to be procedurally defective under Puerto Rico’s administrative law.

The Government Employer’s position is untenable. It cannot claim that the disaffiliation forms it created, distributed, accepted, and honored for over four years were suddenly invalid the moment it became inconvenient to honor them. The Government Employer’s own conduct—accepting Rigau’s form in 2018 and ceasing deductions accordingly—constitutes an implicit admission that the form was valid and that Rigau had effectively exercised his constitutional right. To then claim, in 2022, that a procedural deficiency in the form’s *creation* retroactively voids Rigau’s union resignation and request for the cessation of dues deductions is not a good faith legal argument.

Furthermore, the Court of First Instance expressly noted in footnote 3 that "*none of the parties presented arguments that challenged the constitutionality of the statutory provision*"—no party challenged the constitutionality of the underlying statutory provisions—and that “a law is and must be presumed constitutional until a court rules otherwise.” *Servidores Públicos Unidos*, at 15 n.3 (translation ours). The court was not asked to, and did not, rule on the constitutional question at the

heart of this case: whether the government may compel a public employee to subsidize a union after that employee has withdrawn consent. That question was already answered by the Supreme Court of the United States in *Janus*, and it was answered in Rigau’s favor.

3. The Puerto Rico Court of Appeals—a higher authority—already validated the same memoranda that created Rigau’s disaffiliation form.

What the Government Employer fails to mention—and what this Court should find dispositive of their reliance on the Court of First Instance—is that a *higher* Puerto Rico court already addressed the substantive validity of Joint Special Memoranda MEC2018-01 and MEC2018-02, and held these memoranda were *valid* exercises of governmental authority. In *Asociación Puertorriqueña de Profesores Universitarios v. Estado Libre Asociado*, 2019 PR App. LEXIS 406; Case No. KLAN201801269 (P.R. Ct. App., Feb. 28, 2019), the Puerto Rico Court of Appeals reviewed the same memoranda that created the disaffiliation forms Rigau used, reversed a lower court injunction against them, and held, in sweeping and unequivocal terms, that the government acted properly in implementing *Janus*.¹

The Court of Appeals first confirmed that *Janus v. AFSCME* applies with full force to Puerto Rico. *Id.* at 21–22. Far from finding the memoranda to be *ultra vires* or procedurally defective, the Court of Appeals held that they represented “the fulfillment of duties and functions . . . to guarantee the constitutional rights of public employees.” *Id.* at 19. The Court of Appeals further declared that no union

¹ A certified English translation of the referenced Puerto Rico Court of Appeals decision is attached as Exhibit 1. Any pinpoint citations to said decision will be made referencing the page numbers in the attached translated version.

can compel public employees to remain affiliated or pay dues without their “express, affirmative and contemporary consent,” *id.* at 24, and that neither union financial stability nor contractual obligations can override the fundamental right of freedom of speech and association, *id.* at 21–23. The Court of Appeals could not have been more categorical: “no association whatsoever can compel its public employees to remain affiliated and pay fees or dues, if they no longer wish to remain affiliated. It is unsustainable.” *Id.* at 22. This is binding appellate authority in Puerto Rico, and it directly contradicts every premise underlying the Government Employer’s reliance on the Court of First Instance decision.

The Government Employer clings to a 2021 trial court decision that invalidated the memoranda on narrow *procedural* grounds while ignoring a 2019 appellate court decision—from a *higher* court—that upheld the *substance* of those same memoranda. The Court of First Instance itself recognized that its decision stood on different ground. In footnote 4, it explicitly distinguished its holding from the Court of Appeals decision in *Profesores Universitarios*, acknowledging that the appellate court had resolved the substantive question differently. *Servidores Públicos Unidos*, at 17 n.4.

Under basic principles of judicial hierarchy, a trial court’s procedural ruling cannot override an appellate court’s substantive validation of the same government action. The 2019 Court of Appeals decision validated the memoranda that created Rigau’s disaffiliation form. That validation is binding. The Government Employer cannot invoke a subsequent lower court’s procedural critique to undo what a higher

court already approved—particularly when the Government Employer itself honored Rigau’s disaffiliation for four years.

4. A procedural deficiency in an internal government memorandum does not license years of constitutional violations.

Even accepting the Government Employer’s premise at face value—that the Court of First Instance ruling somehow created ambiguity about the validity of employee disaffiliations—the response to such ambiguity cannot be to reinstate compulsory deductions for an entire bargaining unit and maintain them for over forty months and counting. The First Amendment does not yield to bureaucratic confusion.

Consider the logical progression that the Government Employer would have this Court accept. The U.S. Supreme Court held in June 2018 that compulsory union subsidization in public sector employment violates the First Amendment. Rigau exercised his constitutional right by submitting a disaffiliation form to the Government Employer in July 2018 using forms the government itself created and distributed. The Government Employer honored that resignation and ceased deductions for over four years. A Puerto Rico appellate court validated the Puerto Rico government’s implementation of *Janus* in February 2019. Then, a Puerto Rico trial court found in August 2021 that the *administrative procedure* for creating the forms was defective under state administrative law. The Government Employer, therefore, contends it was justified in *reinstating* compulsory deductions in November 2022 and maintaining them through the present—extracting over \$1,100

from Rigau’s wages over his repeated objections—under the pretext that the government memorandum did not follow the proper rulemaking process.

This chain of reasoning is indefensible. It would mean that a government employer can acknowledge an employee’s constitutional right, honor it for four years, and then revoke it retroactively based on a state-law technicality about administrative procedures—all while a higher court has expressly validated the substantive action taken. If this argument were accepted, it would create a roadmap for government employers to circumvent *Janus* indefinitely: implement the decision through a vehicle that might later be deemed procedurally defective under state law, wait for a court to invalidate the procedure, and then claim that the procedural defect retroactively extinguished the underlying constitutional right. The First Amendment cannot be so easily nullified.

The Puerto Rico Court of Appeals’ words bear repeating: “The vindication of constitutional guarantees of public servants, pursuant to the decision of *Janus v. AFSCME*, constitutes a public interest of the highest rank.” *Profesores Universitarios*, KLAN201801269, at 19. The Government Employer’s attempt to subordinate that interest to an administrative technicality about rulemaking procedures is not a legal argument—it is an evasion of constitutional responsibility. This Court should see it for what it is and reject it accordingly.

C. No Good-Faith Defense Is Available for Post-*Janus* Unauthorized Deductions.

The Government Employer invokes the good-faith defense recognized in cases like *Doughty v. State Employees’ Ass’n of N.H.*, 981 F.3d 128 (1st Cir. 2020). Mot. at

13. The good-faith defense applies to pre-*Janus* deductions made in reliance on then-valid state statutes—a narrow shield designed to protect parties who could not have known the constitutional landscape would change. *See Doughty*, 981 F.3d at 134. It has no application here.

The unconstitutional deductions here did not begin before *Janus*. They began on December 2, 2022—more than four years after *Janus*. Compl. ¶ 28. *Janus* was settled law by that date. It is the law of the land. No reasonable government employer could claim ignorance of *Janus*'s requirements in late 2022, particularly one that had initially honored Rigau's disaffiliation and dues deduction cessation request in 2018—proving it understood those requirements perfectly well.

The absurdity of the Government Employer's good-faith claim becomes stark when one examines the timeline. The Government Employer honored Rigau's resignation in 2018, stopping deductions. Compl. ¶ 23. It maintained that decision for about four years. Then, in 2022, it reversed course—not because of any good-faith belief that *Janus* permitted the reversal, but because the Union threatened “sanctions.” *See* Dkt. 53-1. The Government Employer did not act in good faith—it acted in fear. And even setting aside the Union's threats, the absence of any dues deduction authorization form defeats any claim of good faith.

Good faith cannot be claimed when the constitutional violation is ongoing and obvious. The Government Employer does not even need to receive objections from Rigau to know that it is violating the First Amendment. *Janus* established a clear rule: “Neither an agency fee nor any other payment to the union may be deducted

from a nonmember's wages . . . unless the employee affirmatively consents to pay.” *Janus*, 585 U.S. at 930. The Government Employer possesses no signed dues deduction authorization form. It has no evidence of affirmative consent and no “clear and compelling evidence” that Rigau agreed to the deductions. The absence of consent is a fact the Government Employer knew from the moment it reinstated deductions in December 2022. A public sector employer that deducts union dues without possessing proof of consent is not acting in good faith. It is acting in willful disregard of clearly established law.

D. The Window Period Cases Are Inapplicable Because No Authorization Exists to Restrict.

The Government Employer cites *Belgau v. Inslee*, 975 F.3d 940 (9th Cir. 2020), *Barlow v. SEIU Local 668*, 90 F.4th 607 (3d Cir. 2024), and *Biddiscombe v. SEIU Local 668*, 566 F. Supp. 3d 269 (M.D. Pa. 2021), for the proposition that employees may be bound by dues deduction agreements with revocation windows. Mot. at 14–15.² But these out-of-circuit cases are inapposite because there is no dues deduction authorization form here—let alone anything containing an escape period.

² This is not the first time the Government Employer has claimed the existence of a purported revocation window binding Rigau. It made the same argument in its response in opposition to Rigau’s motion for a preliminary injunction. See Dkt. 24 at 9-10. It produced no signed dues deduction authorization form then. It produces none now. Repeating an allegation without evidentiary support—particularly after failing to produce such evidence when previously confronted with the issue—raises serious questions about the factual basis for the representation. See Fed. R. Civ. P. 11(b)(3) (requiring that “factual contentions have evidentiary support”). It also violates the Court’s standing orders requiring strict candor in written submissions and forbidding reliance on facts not grounded in the record. See Code of Pretrial Conduct, General Standing Order 07-186, at 3 (JAF). If no dues deduction authorization form exists—and the Government Employer’s repeated failure to produce one strongly suggests none does—then trotting out window period cases is not advocacy. It is willful misdirection.

In *Belgau*, the employees signed an authorization that limited revocation to a specific window. *See Belgau*, 975 F.3d at 945. In *Barlow*, the employees signed union membership applications authorizing the deductions. *See Barlow*, 90 F.4th at 612. In *Biddiscombe*, the court found that *Janus* did not invalidate the employee's agreement to authorize ongoing deductions until an annual window period. *See Biddiscombe*, 566 F. Supp. 3d at 273, 281. Each of these cases turned on the existence of a concrete, signed document.

Here, that foundation does not exist. The Government Employer has never produced a signed dues authorization form from Rigau with or without a window period—because none exists. The Union has never claimed to possess one. The Employer has never alleged having one. Even the CBA contains no window period restriction. There is no document, no date, no signature, no window period—nothing. The entire edifice of the window period defense rests on a fantasy.

The Government Employer is asking this Court to enforce a “contractual obligation” without a contract—to hold Rigau to the terms of a document that no party can produce, identify, or even describe. This is not a case about a revocation window—it is a case about the complete absence of authorization. Rigau cannot be held to a mystery contract that neither the Employer nor the Union can produce. As the U.S. Supreme Court made clear: “Unless employees clearly and affirmatively consent before any money is taken from them, this standard cannot be met.” *See Janus*, 585 U.S. at 930.

E. The Union Cannot Constitutionally Design a Resignation Process That Makes Constitutional Rights Unexercisable.

The Government Employer’s most troubling argument is its insistence that the Union—and only the Union—may determine when an employee has effectively resigned, and that the Government Employer must continue deductions until it receives the Union’s blessing. Mot. at 4, 12, 17.

Following the logic the Government Employer would require this Court to accept that an employee who wishes to exercise his First Amendment right to stop subsidizing a union must (1) submit his resignation to the Union, (2) have the Union “certify” that resignation to the Government Employer, and (3) wait for the Government Employer to process the Union’s certification. But if the Union refuses to certify—as it has consistently done here—the employee’s constitutional right is held hostage indefinitely. The Union, the very entity the employee seeks to leave, holds the only key to the exit door. The fox guards the henhouse.

The May 23, 2022 letter makes this trap explicit. *See* Dkt. 53-1. The Union’s President did not merely instruct the Government Employer to follow some procedure. He instructed the Employer to “refer” all disaffiliation requests to the Union—meaning the Union, and only the Union, would decide whether to honor them. Dkt. 53-1 at 2. The result is a system in which the party with every financial incentive to deny resignations has been granted exclusive, unilateral, unreviewable authority to process them. This is not a neutral administrative procedure. It is an escape-proof trap designed to make the exercise of First Amendment rights impossible.

No court has held that the First Amendment permits a union to design a resignation process that makes resignation functionally impossible. To the contrary, *Janus* established that the right to refrain from subsidizing union speech is a fundamental First Amendment right. *See Janus*, 585 U.S. at 892. A right that can be exercised only with the permission of the party that benefits from its non-exercise is no right at all. The Government Employer cannot outsource its constitutional obligations to a labor union and then claim that the Union’s refusal to cooperate absolves the Government Employer of responsibility.

The Government Employer argues that stopping deductions without the Union’s certification would “violate the CBA and Commonwealth labor law.” Mot. at 18. But the U.S. Constitution is the supreme law of the land. A collective bargaining agreement cannot override the First Amendment any more than a municipal ordinance can override the Bill of Rights. *See Perry v. Sindermann*, 408 U.S. 593, 597 (1972) (the government “may not deny a benefit to a person on a basis that infringes his constitutionally protected interests—especially, his interest in freedom of speech”). The Government Employer’s argument amounts to claiming that a contract requires them to violate the U.S. Constitution.

The U.S. Supreme Court in *Janus* specifically addressed this type of “labor peace” and “contractual obligation” reasoning—and rejected it. The Court held that “[t]he First Amendment does not permit the government to compel a person to pay for another party’s speech just because the government thinks that the speech furthers the interests of the person who does not want to pay.” *See Janus*, 585 U.S.

at 897. Nor can “labor peace” justify compelled subsidies. *Id.* at 896. The Government Employer’s insistence that CBA obligations trump constitutional rights inverts the entire hierarchy of American law. No contract—whether between private parties, between an employer and a union, or between any two entities on Earth—can authorize the government to violate the First Amendment. The Supremacy Clause ensures that federal constitutional rights prevail over contrary state-law contractual obligations. U.S. Const. art. VI, cl. 2.

The practical reality of the Government Employer’s position is equally disturbing. Rigau has been trapped in a loop for more than seven years. He resigned from the Union and demanded an end to dues deductions in July 2018, which the Government Employer honored. The Union then demanded reversal, and the complicit Government Employer obeyed. Rigau objected multiple times in writing to no avail. This is nothing less than a coordinated refusal to honor Rigau’s constitutional rights, with each defendant pointing at the other while Rigau’s wages disappear into the Union’s coffers.

III. CONCLUSION

The Government Employer’s Motion to Dismiss fails at every turn. The *Ex parte Young* exception applies because Quintana has an undeniable enforcement connection to the ongoing deductions. The “ministerial actor” defense is undermined by the Employer’s own exhibit (Dkt. 53-1), which reveals an agency that actively reversed employees’ union disaffiliations and dues cessations under union threats. The reliance on a Puerto Rico trial court’s narrow procedural ruling cannot justify—

much less excuse—months of constitutional violations, particularly when a higher Puerto Rico court already validated the very memoranda that created the disaffiliation forms the Government Employer itself honored for over four years. Cherry-picking a lower court’s administrative process finding while ignoring binding appellate precedent is not a defense—it is an admission that no legitimate defense exists. The good faith defense is unavailable because Rigau’s deductions began years after *Janus* and continued in the face of continued written objections. The window period theory is inapplicable because no dues deduction authorization form exists—much less one containing a window period for revoking. And the Union cannot constitutionally design a resignation process that makes union resignation impossible while the complicit Government Employer hides behind that process to avoid its own constitutional obligations.

At bottom, this case presents a simple question of whether the Government Employer can seize money every month from Rigau’s paycheck, hand it to a private organization he has repeatedly asked to disassociate himself from, and then disclaim all responsibility by pointing to the private organization. The answer, under *Janus* and the First Amendment, is no. The Employer holds the pen that signs Rigau’s paycheck. It holds the mechanism that makes the deduction. And it holds the power to stop. Its refusal to exercise that power is the constitutional violation.

The Government Employer’s own conduct tells this Court everything it needs to know. It honored Rigau’s resignation in July 2018, proving it has the authority to

stop deductions. It reversed that decision in November 2022 under seeming duress from the Union, proving it exercises independent judgment—not ministerial passivity. It ignored Rigau’s repeated written objections, proving it acts with deliberate indifference to constitutional rights. And it capitulated to the Union’s threats.

If this Motion to Dismiss is granted, the message to public sector employees is clear: your First Amendment rights exist on paper but cannot be exercised in practice, because the government entity that takes your money claims it cannot stop, and the union that receives your money will never consent to stopping. That is not what *Janus* requires, and this Court should not allow it to stand.

WHEREFORE, Rigau respectfully requests that this Honorable Court deny the Government Employer’s Motion to Dismiss in its entirety.

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 30th day of March, 2026.

s/ ÁNGEL J. VALENCIA

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