

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**

**RESPONSE IN OPPOSITION TO MOTION FOR LEAVE TO SUPPLEMENT  
MOTION TO DISMISS**

**TO THE HONORABLE COURT:**

Plaintiff Luis Rigau (“Rigau”), through the undersigned counsel, respectfully states and prays as follows:

**I. Introduction**

Rigau respectfully opposes Defendants Maria T. Quintana’s and the Puerto Rico Industrial Commission’s (together, “the Government Employer”) Motion for Leave to Supplement their Motion to Dismiss (Dkt. 79). The Government Employer’s motion fails on the merits.

The Government Employer has not met its heavy burden under the voluntary cessation doctrine to prove that the wrongful behavior cannot reasonably be expected to recur. *See FBI v. Fikre*, 601 U.S. 234, 241 (2024). Its cessation was litigation-

induced—not voluntary. The Government Employer has never admitted its conduct was unlawful. Most tellingly, this is not the first time it has stopped deducting dues from Rigau’s wages. It honored Rigau’s union disaffiliation in 2018, only to reverse course and reinstate compulsory deductions in 2022. Compl. ¶ 24 (Dkt. 1). This stop-and-restart pattern demonstrates that recurrence is not only possible but has already happened. The Government Employer points to no new statute, regulation, policy change, or structural reform that would prevent another reversal. The voluntary cessation doctrine exists precisely to prevent defendants from mooting cases through temporary, reversible compliance—and that is exactly what the Government Employer seeks to do here.<sup>1</sup> In the alternative, if the Court concludes that some or all claims against the Government Employer should be dismissed, any such dismissal must be without prejudice.

## II. Argument

### A. The Government Employer has not met its burden under the voluntary cessation doctrine.

#### 1. *The voluntary cessation doctrine’s exacting standard.*

The U.S. Supreme Court has held that “a defendant’s voluntary cessation of allegedly unlawful conduct ordinarily does not suffice to moot a case.” *Friends of the Earth, Inc., v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 174 (2000). The animating principle is straightforward: allowing defendants to moot cases

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<sup>1</sup> Even if the Government Employer’s claims against itself were moot, the case remains a live Article III controversy. Rigau seeks compensatory and nominal damages against Defendant Federación Central de Trabajadores, UFCW Local 481 (“the Union”)—the entity that collected and retained the unconstitutionally deducted dues. Those damages independently sustain federal jurisdiction and will proceed regardless of the Government Employer’s status as a defendant here.

unilaterally would enable them to “engage in unlawful conduct, stop when sued to have the case declared moot, then pick up where he left off, repeating this cycle until he achieves all his unlawful ends.” *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013). A defendant claiming mootness through voluntary cessation “bears the formidable burden of showing that it is absolutely clear the alleged wrongful conduct could not reasonably be expected to recur.” *Friends of the Earth*, 528 U.S. at 190 (internal citation omitted). The reason for this “formidable burden” is to prevent a defendant from “disguis[ing] a live case or controversy or manipul[at]ing a federal court’s constitutional authority.” *Fikre*, 601 U.S. at 241. To show mootness, “a defendant must prove no reasonable expectation remains that it will return to its old ways.” *Id.* (quoting *United States v. W.T. Grant Co.*, 345 U.S. 629, 632–33 (1953)). The Government Employer’s showing falls short of this exacting standard.

2. *The Government Employer’s cessation was litigation-induced.*

Since late 2022, the Government Employer deducted union dues from Rigau’s wages without his consent, ignoring his repeated objections. Compl. ¶¶ 26–30 (Dkt. 1). The deductions continued month after month despite Rigau’s objections. The Government Employer did not cease this constitutional violation out of an independent reassessment of its legal obligations or any principled change in policy. Instead, the Government Employer stopped only after being dragged into federal court—only after Rigau sued, moved for a preliminary injunction, and forced it to explain its conduct. Only then, facing the prospect of a preliminary injunction order, did the Government Employer agree to execute a court-supervised Settlement

Agreement on April 7, 2026, and only pursuant to that litigation-driven agreement did it finally stop the unconstitutional deductions.

3. *The Government Employer has not acknowledged its conduct was unlawful.*

“[A] voluntary change in conduct only defeats mootness where a defendant changes her conduct in response to litigation.” *Gray v. Mills*, 2021 U.S. Dist. LEXIS 214535, at \*15 (D. Me. 2021) (internal citation omitted). Here, the Government Employer has made clear through the settlement’s disclaimer language and its continued litigation of the motion to dismiss that it disputes liability and reserves all defenses. The Government Employer stopped the deductions not because it concluded they were unconstitutional, but because continuing them during litigation became tactically inconvenient. This litigation strategy—cease the challenged conduct, seek dismissal for mootness, then resume once the courthouse doors are closed—is exactly what the voluntary cessation doctrine forbids.

The Government Employer’s litigation posture confirms that its refusal to acknowledge wrongdoing is not merely semantic—it is substantive. The Government Employer filed a motion to dismiss under Fed. R. Civ. P. 12(b)(6) arguing that Rigau failed to state a claim, a defense that rests entirely on the assertion that its conduct was lawful (Dkt. 53). The Government Employer has never conceded that its prior deductions were unconstitutional, never conceded that continuing them would violate Rigau’s First Amendment rights, and never conceded that it would be legally barred from resuming them in the future. Its theory of this case is that it did nothing wrong—and if it did nothing wrong before, there is nothing to stop it from doing the same

thing again. The Government Employer retains full authority to resume deductions at any time. These facts do not merely undermine the Government Employer's mootness claim—they obliterate it. A defendant that denies wrongdoing, reserves all defenses, and retains the practical ability to resume the challenged conduct has not carried its burden to show that recurrence is not possible. *See Fikre*, 601 U.S. at 243.

4. *The Government Employer's history of reversals demonstrates risk of recurrence.*

The Government Employer's own documented history removes any doubt about whether recurrence is reasonably likely. This is not the first time it has stopped deducting dues from Rigau's wages, and the prior cessation did not age well. Indeed, the Government Employer previously honored Rigau's disaffiliation in 2018, ceasing dues deductions at that time. Four years later, in 2022, the Government Employer reversed course and reinstated the compulsory deductions under pressure from the Union, once again seizing money from Rigau's wages without his consent. This was not an administrative error or a misunderstanding. It was a deliberate decision to resume conduct it had previously stopped. And this reinstatement occurred despite the fact that *Janus v. AFSCME, Council 31*, 585 U.S. 878 (2018) had been decided in 2018—four years before the Government Employer resumed the deductions. The Government Employer's 2022 reinstatement occurred in the face of binding Supreme Court precedent forbidding exactly that conduct.

This documented pattern of cessation-followed-by-resumption is direct, conclusive proof that the Government Employer's cessations are temporary and reversible. The U.S. Supreme Court's voluntary cessation cases emphasize that past

conduct is the most reliable predictor of future conduct. In evaluating mootness, courts must consider “the bona fides of the expressed intent to comply” and “the effectiveness of the discontinuance.” *W.T. Grant*, 345 U.S. at 633. Here, the Government Employer’s prior conduct is one of demonstrated recurrence. The Government Employer stopped deductions in 2018, restarted them in 2022, and stopped them again in 2026 pursuant to the settlement—for now. The established pattern is one of cyclical compliance and non-compliance, of temporary cessation followed by resumption, of stopping when convenient and restarting when pressured. This is precisely the type of opportunistic conduct the voluntary cessation doctrine is designed to address.

5. *No structural or legal change prevents future violations.*

The U.S. Supreme Court’s voluntary cessation jurisprudence makes clear that cessation is most likely to moot a case when there has been a structural or legal change that makes recurrence impossible or highly unlikely—when the defendant has erected binding barriers that prevent a return to the challenged conduct. Conversely, when the defendant retains the practical and legal ability to resume the challenged conduct through the simple expedient of changing its mind, cessation does not moot the case, and the defendant’s temporary compliance cannot insulate it from judicial review.

In *Already, LLC v. Nike, Inc.*, for instance, the U.S. Supreme Court found mootness only after the defendant executed a broad, unconditional, and irrevocable covenant not to sue that was legally binding and covered all of the plaintiff’s products. *See* 568 U.S. at 92–93. The Court emphasized that the covenant was unconditional

and irrevocable. *Id.* at 92. This binding legal commitment—which structurally foreclosed the challenged conduct as a matter of enforceable contract law—was essential to the mootness finding. Without such a binding constraint, the Court would not have found mootness.

Here, the Government Employer offers no comparable structural change. It points to no new statute that prohibits the challenged deductions, no new regulation constraining its conduct, no memorandum of understanding, internal policy directive, administrative memorandum, or institutional reform that would prevent it from resuming deductions in the future. The legal framework governing the Government Employer’s relationship with the Union—including the collective bargaining agreement—remains unchanged. Nothing has changed except the temporary decision to stop—a decision that, as the Government Employer’s own track record demonstrates, can be reversed as easily as it was made.

B. Any dismissal as to the Government Employer must be without prejudice.

If the Court, notwithstanding the doctrine of voluntary cessation, concludes that any claims against the Government Employer should be dismissed, such dismissal must be without prejudice. *See City of Bedford v. Woods Hole*, 2003 U.S. Dist. LEXIS 9219, at \*1 (D. Mass. 2003) (noting that dismissals with prejudice in moot cases would be inappropriate, as they could improperly preclude later resolution of the issues if they ceased to be moot). The Government Employer’s request for dismissal “with prejudice” (Dkt. 79-1 at 6) is legally improper and should be denied. A “with prejudice” dismissal could create *res judicata* or collateral estoppel

consequences if the Government Employer were to resume unauthorized deductions in the future—a scenario that is not hypothetical given the Government Employer’s documented history of reinstating deductions after a prior period of compliance. Dismissal without prejudice preserves Rigau’s ability to seek relief should the Government Employer resume the challenged conduct, consistent with the voluntary cessation doctrine’s recognition that defendants who cease challenged conduct during litigation may resume it after dismissal.

### III. Conclusion

The Government Employer’s motion for leave to supplement its motion to dismiss should be denied. The Government Employer has failed to meet its heavy burden under the voluntary cessation doctrine. Its cessation was litigation-induced and done without admitting wrongdoing. Most critically, the Government Employer has a documented history of reversing its cessations, and can point to no new authority or structural change preventing another reversal. Accordingly, Rigau respectfully requests that the Court deny the Government Employer’s motion. In the alternative, any dismissal as to the Government Employer should be without prejudice.

**WHEREFORE**, it is respectfully requested that the Court deny the Government Employer’s motion for leave to supplement its motion to dismiss.

**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 counsels using the Court's electronic system.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 18th day of May, 2026.

s/ ÁNGEL J. VALENCIA

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