UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

SONIA M. DÁVILA-SURÉN **Plaintiff,** **v.** **PUERTO RICO INDUSTRIAL COMMISSION;** **MARIA T. QUINTANA**, in her official capacity as President of the Puerto Rico Industrial Commission; **FEDERACIÓN CENTRAL DE TRABAJADORES**, **UFCW LOCAL 481** **Defendants.**	**CIVIL NO. 26-1512 (MAJ)** **Constitutional Violation Action (42 U.S.C. § 1983), Declaratory Judgment, Injunctive Relief, and Compensatory and Nominal Damages. Jury Trial Demanded.**

RESPONSE IN OPPOSITION TO MOTION TO DISMISS

TO THE HONORABLE COURT:

Plaintiff Sonia M. Dávila-Surén ("Dávila-Surén"), through undersigned counsel, respectfully opposes the Motion to Dismiss under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) filed by the Puerto Rico Industrial Commission ("PRIC") and its President, María T. Quintana ("Quintana"), in her official capacity (together, "the Government Employer") (Dkt. 12), and states as follows.

INTRODUCTION

The motion asks the Court to declare this controversy over. The motion itself proves that it is not. The Government Employer tells the Court that Quintana "did not have a duty to halt the collection of union dues while the agency's administrative

records continued to reflect that [Dávila-Surén] remained a Union member," and that she could stop the deductions "[o]nly upon receiving notice from the Union" Motion ("Mot.") at 18 (Dkt. 12 at 18). Whether an employee remains a member, it adds, is a question on which "authority lies exclusively with the Union." *Id.* at 19. Reduced to its essentials, its position is that it stopped taking dues from Dávila-Surén's wages because the Union permitted it, and that dues will resume whenever the Union says otherwise. That is not a defense to this lawsuit. It is the subject of it.

Count II of the Complaint challenges precisely this arrangement, under which a payroll deduction that the First Amendment permits only with an employee's affirmative consent is switched on and off by the State at a private union's direction. Compl. ¶¶ 58, 62–65. A defendant that defends the challenged policy in the very motion in which it claims mootness cannot make it "absolutely clear" that the policy will not be applied to the plaintiff again. *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000).

The motion's chronology fares no better against its own exhibits. Dávila-Surén revoked her consent in writing on June 9, 2026, effective July 1, and two days later the Government Employer told her it would stop the deductions. Compl. ¶¶ 28–29. On June 22, the Government Employer reversed itself, as it acknowledges, in response to a cease-and-desist demand that the Union addressed to Quintana by name. *See* Mot. at 18; Dkt. 12-9. The Government Employer then deducted dues from Dávila-Surén's July 15 and July 30 paychecks. *See* Unsworn Statement ("Declaration or Decl.") by Sonia Dávila-Surén ¶ 7 (Exh. 1). On July 9, the Union declared that she

had failed to comply with procedures it called essential. Decl. ¶ 6. On July 23, without having obtained any compliance at all, the Union "authorize[d]" cessation in a single sentence. Decl. at 8. What came in between was not compliance. It was Dávila-Surén's warning, copied to Quintana, that the Union was "forcing an employee to resort to a legal remedy that will ultimately end up the same as the case of Luis Rigau." *See* Dkt. 1–6 at 21.[1] The first paycheck without a deduction did not issue until August 15, four days after this suit was filed. *See* Dkt. 12-5; Decl. ¶ 10.

The Government Employer claims to have "stopped the challenged deductions effective August 1, 2026, ten days before Plaintiff filed suit." Mot. at 2. That describes a date on a calendar, not a change in conduct. On August 11, Dávila-Surén held nothing more than a promise. It came from a defendant that had broken the same promise six weeks earlier, that in 2022 had reinstated her deductions at the Union's demand after honoring her withdrawal for two years, and that to this day insists it will deduct dues from her wages whenever the Union tells it she is a member. Standing is measured on the day suit is filed, and on that day every paycheck Dávila-Surén had received carried a deduction. *See Steir v. Girl Scouts of the USA*, 383 F.3d 7, 15 (1st Cir. 2004) ("[s]tanding in the jurisdictional sense is based on the facts as they existed at the time the complaint was filed.") Whether the case has since become moot is a separate question on which the Government Employer bears a burden the U.S. Supreme Court has called "formidable." *Friends of the Earth,* 528 U.S. at 190.

[1] *Rigau v. Quintana*, Civil No. 25-1630 (PAD-HRV) (D.P.R.), is a challenge by an employee against the same three defendants, in which the Government Employer argued mootness after it stopped the plaintiff's dues deductions. *Id.*, Dkt. 79-1.

But the Government Employer does not attempt to carry it, and on this record it could not. The motion should be denied.

STATEMENT OF FACTS

A. The Government Employer Delegates to the Union the Decision Whether Its Employees Pay Union Dues.

Dávila-Surén has worked for PRIC since 2008, in a position within the bargaining unit represented by Defendant Federación Central de Trabajadores, UFCW Local 481 (the "Union"). Compl. ¶16; Decl. ¶ 2. In September 2020, she submitted the government form to withdraw from the Union and stop her dues deductions, and the Government Employer honored that request. Decl. ¶ 3. But two years later, the Government Employer reversed course. By letter of November 2, 2022, PRIC's then-President informed bargaining-unit employees that they "can only" disaffiliate "through the Union's internal procedure" and the Government Employer resumed deducting Union dues from Dávila-Surén's wages in December 2022. Decl. ¶ 3; Dkt. 1-1. Dávila-Surén has never signed a dues-deduction authorization or otherwise consented to those deductions. Decl. ¶ 3.

The Government Employer does not dispute that this remains its policy. To the contrary, their motion embraces it. In its telling, the Government Employer may not stop deducting dues from an employee's wages "while the agency's administrative records continued to reflect that Plaintiff remained a Union member," those records change "[o]nly upon receiving notice from the Union," and the question of membership is one on which "authority lies exclusively with the Union." Mot. at 18–19.

B. Plaintiff Revokes Her Consent, the Government Employer Reverses Itself at the Union's Demand, and the Deductions Continue Until After Suit Is Filed.

On June 9, 2026, Dávila-Surén signed a letter to the Union's President resigning her membership and directing that her dues deductions stop effective July 1, 2026. Decl. ¶ 4. She sent copies to Quintana and to PRIC's Human Resources Director, and both offices stamped the letter received that morning. Dk. 12-3; Decl. ¶ 4. On June 11, the Human Resources Director told her that PRIC's Payroll Division would process the cessation. Decl. ¶ 5. On June 22, the Government Employer withdrew that commitment and informed her that it could not stop the deductions until it received official notification from the Union of a change in her membership status *Id.* The Government Employer concedes that this reversal was the result of a cease-and-desist demand that the Union directed to Quintana. Mot. at 18; Dkt. 12-9.

Dávila-Surén objected the same day. In a message copied to Quintana, she wrote that the Union was "forcing an employee to resort to a legal remedy that will ultimately end up the same as the case of Luis Rigau." Dkt. 1–6 at 21. On June 26, again copying Quintana, she wrote, "I will take further action" Dkt. 1-8 at 2. She declined to travel to the Union's headquarters and offered instead to meet with a Union representative at her workplace. Decl. ¶ 6. She never submitted the written confirmation the Union's disaffiliation regulation demands, and she completed no other step of that regulation. Decl. ¶ 6. On July 9, the Union wrote to her that she had failed to comply. *Id.*

The Government Employer deducted Union dues from Dávila-Surén's paychecks of July 15 and July 30, 2026, after her revocation had taken effect. Decl. ¶

7. On July 23, with nothing changed on Dávila-Surén's side, the Union emailed Quintana authorizing the Government Employer to stop deducting, and Quintana replied that same day that the suspension would take effect August 1 and that the Union "must make the pertinent arrangements with Mrs. Dávila regarding the handling of said dues." Dkt. 12-6 at 3; Dkt. 12-7; Decl. ¶ 8. Dávila-Surén, who was copied, did not regard those emails as reliable until she saw the promise kept, because the Government Employer had made her the same promise in June and broken it eleven days later, and because the Government Employer had reinstated her deductions in 2022 after honoring her withdrawal for two years. Decl. ¶ 8.

Dávila-Surén filed this action on August 11, 2026 (Dkt. 1). On that date, every paycheck she had received still showed a Union-dues deduction, and she first saw a paystub without one on August 15, 2026 (Decl. ¶¶ 9–10; Dkt. 12-5). Although President Quintana directed on July 23 that the Union "must make the pertinent arrangements with Mrs. Dávila regarding the handling of said dues" (Dkt. 12-6 at 3), no dues have been refunded to her, including those deducted from her July paychecks after her revocation took effect. Decl. ¶ 11. No one has told her that the Government Employer has changed its practice of deferring to the Union on whether its employees are members whose wages may be docked for dues, *Id.* ¶ 12.

STANDARD OF REVIEW

To survive a motion under Rule 12(b)(6), a complaint need only contain "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible "when the plaintiff

pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The Court accepts the well-pleaded facts as true and draws all reasonable inferences in the plaintiff's favor, and it evaluates the complaint as a whole rather than parsing it allegation by allegation. *Ocasio-Hernández v. Fortuño-Burset*, 640 F.3d 1, 12–14 (1st Cir. 2011). The plausibility standard "is not akin to a 'probability requirement.'" *Iqbal*, 556 U.S. at 678.

A Rule 12(b)(1) motion may present either a facial or a factual challenge. *Valentín v. Hosp. Bella Vista*, 254 F.3d 358, 363 (1st Cir. 2001). A facial challenge accepts the complaint's jurisdictional allegations as true and asks only whether they suffice. *Id.* A factual challenge controverts those allegations with evidence, and the plaintiff may respond in kind; the Court then weighs the evidence, but where the jurisdictional facts are intertwined with the merits, it must apply a summary-judgment-type standard, or defer the question to trial. *Id.* at 363–64; *Torres-Negrón v. J & N Records, LLC*, 504 F.3d 151, 162–63 (1st Cir. 2007). And when a defendant contends that a case has become moot, the burden of establishing mootness rests on the party invoking it. *ACLU of Mass. v. U.S. Conf. of Cath. Bishops*, 705 F.3d 44, 52 (1st Cir. 2013).

On a Rule 12(b)(6) motion, the Court's review is confined to the complaint, documents attached to or fairly incorporated into it, and matters subject to judicial notice. *Watterson v. Page*, 987 F.2d 1, 3–4 (1st Cir. 1993). The exceptions recognized in *Watterson* are "narrow," and they reach documents whose authenticity is

undisputed, official public records, documents central to the plaintiff's claim, and documents sufficiently referred to in the complaint. *Id.* at 3. If a party presents other matters outside the pleadings and the Court does not exclude them, "the motion must be treated as one for summary judgment under Rule 56," and "[a]ll parties must be given a reasonable opportunity to present all the material that is pertinent to the motion." Fed. R. Civ. P. 12(d).

The Government Employer attaches materials that the Complaint neither references nor relies upon, and they use those materials not to illuminate what the Complaint alleges but to contradict it, offering their own account of the Union's communications, the Government Employer's internal processing, and the timing of payroll events (Dkt. 12-1 through 12-10). To the extent any such document is not attached to the Complaint or expressly referenced in it, the Court should exclude it from the Rule 12(b)(6) analysis. If the Court is inclined to consider those materials on the merits, Rule 12(d) requires conversion and a reasonable opportunity for discovery. Dávila-Surén relies on her own declaration solely in response to the factual jurisdictional challenge, where the Rule plainly permits it. *Valentín*, 254 F.3d at 363.

ARGUMENT

I. DÁVILA-SURÉN HAD STANDING ON THE DAY SHE FILED SUIT, WHICH IS THE ONLY DAY THAT MATTERS FOR STANDING.

A. Standing Is Measured at the Commencement of Suit.

The Government Employer frames its argument as a want of standing, but standing is fixed at the outset. "[T]he standing inquiry remains focused on whether the party invoking jurisdiction had the requisite stake in the outcome when the suit

was filed." *Davis v. FEC*, 554 U.S. 724, 734 (2008). Events that occur afterward are addressed under the doctrine of mootness, and the U.S. Supreme Court has been emphatic that the two doctrines are not interchangeable. A plaintiff must establish standing, but once she has done so, it is the defendant that must show the case has become moot, and a defendant claiming that its own voluntary conduct mooted the case bears a "heavy burden." *Laidlaw*, 528 U.S. at 189–90. The Court in *Laidlaw* expressly rejected the notion that mootness is simply "standing set in a time frame," explaining that the conflation would wrongly relieve a defendant of that burden. *Id.* at 189–91. The Government Employer's standing argument is a mootness argument in disguise, and it should be evaluated as one.

B. On August 11, 2026, Dávila-Surén Was Suffering an Ongoing Injury Traceable to the Government Employer and Redressable by This Court.

When Dávila-Surén filed this action, the Government Employer had taken union dues from every paycheck she had received, including two paychecks issued after her revocation took effect. Decl. ¶¶ 7, 9. The compelled subsidization of a union without the employee's affirmative consent is a concrete First Amendment injury. *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 585 U.S. 878, 930 (2018). That injury was inflicted through the Government Employer's payroll, at the direction of its President, and it was redressable by declaratory and injunctive relief requiring the Government Employer to honor Dávila-Surén's revocation without awaiting the Union's permission. Each element of standing was present on the day of filing. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992).

Dávila-Surén also faced a real and immediate threat of future injury. The only thing standing between her and the next deduction was an email that PRIC's President had sent in response to an email from the Union, made pursuant to a policy under which the Union could revoke its authorization at will. The Government Employer had made, and broken, the same commitment in June. A plaintiff need not bet her paycheck on a defendant's assurance in order to sue; it is enough that the threatened injury is "certainly impending" or that there is a "substantial risk" it will occur. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (citation omitted). That standard is easily met by a defendant that has reversed itself once already and that openly claims the right to do so again.

C. An Announced Future Effective Date Is a Promise, Not a Cessation, and It Cannot Defeat Standing.

The Government Employer's entire jurisdictional theory rests on the assertion that the deductions stopped "effective August 1, 2026, ten days before Plaintiff filed suit." Mot. at 2. But no paycheck reflecting that change had issued when Dávila-Surén filed suit. The Government Employer's July 30 payroll carried a deduction, and the first paycheck without one issued on August 15. Decl. ¶¶ 7, 9–10; Dkt. 12-5. What existed on August 11 was a stated intention to stop at a future date, conveyed in an email exchange between the Government Employer and the Union. An intention is not a cessation, and the Government Employer cites no authority holding that a defendant's announced plan to change its conduct strips a plaintiff of standing to challenge conduct still being visited upon her.

But even if the Court were to treat August 1 as the operative date, the result would be the same. Dávila-Surén's claims are not confined to future deductions. She challenges the policy under which the Government Employer resumes and suspends deductions at the Union's direction, a policy that the Government Employer continues to apply and defend (Compl. ¶¶ 58, 62–65; Mot. at 18–19), and she seeks a declaration that the money seized after her revocation violated the First Amendment. Those claims presented a live, concrete dispute on August 11, and they present one now. *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 127 (2007).

II. THE CASE IS NOT MOOT, BECAUSE THE GOVERNMENT EMPLOYER CANNOT MAKE IT "ABSOLUTELY CLEAR" THAT THE CHALLENGED CONDUCT WILL NOT RECUR.

A. A Defendant Claiming Mootness by Voluntary Cessation Bears a Formidable Burden.

"[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." *Laidlaw*, 528 U.S. at 189 (citation omitted). A case is mooted by such cessation only if "subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur," and "[t]he heavy burden of persua[ding]" the Court of that "lies with the party asserting mootness." *Id.* (quoting *United States v. Concentrated Phosphate Exp. Ass'n*, 393 U.S. 199, 203 (1968)). The burden is "formidable." *Id.* at 190; *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) (same).

The U.S. Supreme Court recently reaffirmed that this burden applies with full force to government defendants. In *FBI v. Fikre*, 601 U.S. 234 (2024), the government removed the plaintiff from the No Fly List and submitted a declaration stating that

he would not be placed back on it based on currently available information. The Court held that this did not moot the case. A defendant's voluntary cessation moots a case only if the defendant "can show that the practice cannot 'reasonably be expected to recur,'" *id.* at 241 (citation omitted), and a declaration that pledges future conduct while declining to repudiate the challenged decision leaves open the possibility that the defendant will resume the conduct if the same circumstances arise again, *id.* at 242–44. The rule exists for a simple reason: otherwise, a defendant could "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*, 568 U.S. at 91.

That rule has particular force in the precise setting of this case. In *Knox v. Service Employees International Union, Local 1000*, 567 U.S. 298 (2012), a union that had collected a special assessment from nonmembers offered a full refund after certiorari was granted and argued that the case was moot. The Court rejected that argument, explaining that "[t]he voluntary cessation of challenged conduct does not ordinarily render a case moot because a dismissal for mootness would permit a resumption of the challenged conduct as soon as the case is dismissed." *Id.* at 307. The Court found the union's maneuver insufficient precisely because the union "continue[d] to defend the legality" of its conduct, so that "it is not clear why the union would necessarily refrain from collecting similar fees in the future." *Id.* The same is true of the Government Employer.

B. The Government Employer Does Not Repudiate the Challenged Policy; It Defends It.

The U.S. Supreme Court has repeatedly declined to find mootness where the defendant continues to defend the lawfulness of the conduct it claims to have abandoned. In *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701, 719 (2007), the school district had stopped using the challenged racial tiebreaker, but because it "vigorously defend[ed] the constitutionality" of its policy and nowhere suggested that it would not resume it, the case was not moot. *Id.* at 719. The Court similarly held that the government's cessation did not moot the case where it "vigorously defend[ed]" the legality of its approach. *West Virginia v. EPA*, 597 U.S. 697, 719–20 (2022). And in *Knox*, as noted, the union's continued defense of its fee was dispositive. 567 U.S. at 307.

This case is stronger than any of them. The Government Employer does not merely defend the policy in the abstract. They tell this Court that Quintana had no duty to stop the deductions while the Government Employer's records reflected Union membership, that those records change only upon notice from the Union, and that membership is a question on which "authority lies exclusively with the Union." Mot. at 18–19. That is a declaration of what the Government Employer will do if the Union again tells it that Dávila-Surén is a member: it will resume the deductions. Like the government in *Fikre*, the Government Employer has not repudiated the challenged conduct. The Government Employer offers only the assertion that, for the moment, the Union has allowed it to stop.

Nor do the PRIC Defendants find support in decisions holding that a government's formal repeal of a challenged law moots a challenge to it. *See, e.g.*, *Lowe v. Gagné-Holmes*, 126 F.4th 747 (1st Cir. 2025). Whatever deference may be owed to the formal rescission of a generally applicable regulation through the ordinary lawmaking process, nothing of the kind occurred here. The policy Dávila-Surén challenges has not been rescinded, amended, or disavowed. The Government Employer simply stopped applying it to one employee, on one date, because the Union said so, and it stands ready to apply it again on the same terms.

C. The Record Shows That the Challenged Conduct Can Reasonably Be Expected to Recur.

The question under *Laidlaw* is not whether recurrence is certain, but whether the defendant has made it "absolutely clear" that recurrence cannot reasonably be expected. 528 U.S. at 189. Here, the record affirmatively points the other way, and it does so on the Government Employer's own evidence.

The Government Employer's history with this very employee demonstrates the point. In 2020, PRIC honored Dávila-Surén's withdrawal and stopped her deductions. In December 2022, after the Union demanded it, the Government Employer resumed them without her consent. Decl. ¶ 3. On June 11, 2026, the Government Employer told Dávila-Surén it would process the cessation of her deductions. On June 22, after the Union addressed a cease-and-desist demand to Quintana, the Government Employer reversed itself. Decl. ¶ 5; Mot. at 18; Dkt. 12-9. On each occasion, the decision whether dues would be taken from Dávila-Surén's wages was made by the Union and carried out by the Government Employer. Twice in less than four years,

the Government Employer has stopped deducting her dues and then started again. The Government Employer offers no reason to believe that a third reversal is out of the question, and its brief tells the Court exactly when one would occur.

The timing and manner of the July 23 cessation confirm that it was a litigation-driven accommodation rather than a change in policy. On July 9, the Union told Dávila-Surén that she had failed to comply with procedures it considered essential. Decl. ¶ 6. She never cured that supposed failure. *Id.* What intervened was not compliance but Dávila-Surén's repeated warnings, copied to Quintana, that she would take legal action and that the matter would "end up the same as the case of Luis Rigau." Dkt. 1-6 at 21. Courts view with particular skepticism a cessation that occurs under the shadow of threatened litigation, because such a cessation reflects the defendant's assessment of its litigation position rather than a genuine change of heart. *See Knox*, 567 U.S. at 307; *Already*, 568 U.S. at 91. And the cessation that resulted was not the product of any rule, regulation, order, or binding agreement. It rests on an email from the Union and a one-paragraph reply. Nothing prevents the Union from sending a different email tomorrow, and nothing in the Government Employer's stated policy would prevent it from acting on it.

That possibility is far from hypothetical. The Government Employer identifies the collective bargaining agreement between it and the Union as the source of the arrangement under which membership determinations are left to the Union. Compl. ¶ 5; Mot. at 18. The Union remains free under that arrangement to report Dávila-Surén as a member again. The Government Employer's account of what happened

after July 23 fares no better. Quintana left it to the Union to decide what to do with the dues taken from Dávila-Surén's July paychecks after her revocation took effect. Nearly three months later, the Union has refunded nothing. Decl. ¶ 11. A defendant whose last assurance about the dues was left to the Union, and went unkept, cannot make it "absolutely clear" that the next one will be kept.

Finally, the Government Employer has offered no evidence at all directed to the governing standard. It submits no declaration from Quintana or anyone else committing the Government Employer to honor Dávila-Surén's revocation irrespective of what the Union reports, and no evidence that the Government Employer has changed its practice of deferring to the Union. Decl. ¶ 12. The government's declaration in *Fikre* was held insufficient even though it was sworn and addressed the plaintiff specifically. 601 U.S. at 242–44. The Government Employer offers far less. Their burden is unmet.

D. Dávila-Surén's Claims for Declaratory Relief and Damages Independently Preclude Dismissal for Mootness.

A case becomes moot "only when it is impossible for a court to grant any effectual relief whatever to the prevailing party." *Knox*, 567 U.S. at 307 (internal citation omitted); *accord Chafin v. Chafin*, 568 U.S. 165, 172 (2013). "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 (internal citation omitted). That standard is not close to being met here. Dávila-Surén seeks a declaration that the Government Employer's practice of deducting union dues from nonconsenting employees until the Union authorizes cessation violates the First Amendment, a dispute that remains

"definite and concrete, touching the legal relations of parties having adverse legal interests," and of "sufficient immediacy and reality" to warrant relief. *MedImmune*, 549 U.S. at 127 (internal citations omitted). The Government Employer continues to assert the right to resume the deductions on the Union's word, and Dávila-Surén continues to deny it. That is a live controversy.

Dávila-Surén also seeks compensatory and nominal damages from the Union for dues taken from her wages without consent, including the July deductions that the Union still holds. Compl. Prayer ¶ C; Decl. ¶ 11. A claim for nominal damages for a completed constitutional violation independently satisfies Article III. *Uzuegbunam v. Preczewski*, 592 U.S. 279, 292 (2021). Those claims arise from deductions that the Government Employer made through its own payroll system, and the Government Employer's conduct is necessarily at issue in adjudicating them. Dávila-Surén does not seek retroactive monetary relief from the Government Employer, and nothing in her claims against it requires the Court to award any. But the live the damages claims underscores that this case is not, in any sense, over.

Those claims also answer any suggestion that the dismissal of the claims against the Government Employer would eliminate the state action on which Dávila-Surén's claims against the Union hinge. It would not. The deductions were taken by the government through its payroll, at the direction of a private union acting jointly with the State, and "[p]rivate persons, jointly engaged with state officials in the challenged action, are acting 'under color' of law for purposes of § 1983 actions." *Dennis v. Sparks*, 449 U.S. 24, 27–28 (1980). The character of that past conduct does

not change because one defendant later contends that prospective relief against it has become unnecessary.

III. THE COMPLAINT STATES A CLAIM AGAINST QUINTANA UNDER EX PARTE YOUNG.

A. The Complaint Alleges an Ongoing Violation of Federal Law and Seeks Prospective Relief.

Under *Ex parte Young*, 209 U.S. 123 (1908), a suit against a state official in her official capacity seeking prospective relief from an ongoing violation of federal law is not barred by the Eleventh Amendment. Official-capacity suits for prospective relief are not suits against the State, and the official is a "person" under § 1983. *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 n.10 (1989). The inquiry is "straightforward": whether the complaint alleges an ongoing violation of federal law and seek relief properly characterized as prospective. *Verizon Md Inc. v. PSC.*, 535 U.S. 635, 645 (2002). The Complaint here does both. It alleges that PRIC, under Quintana's authority, maintains and applies a policy of deducting union dues from employees who have revoked consent until the Union authorizes cessation, and it seeks declaratory and injunctive relief forbidding the application of that policy to Dávila-Surén. Compl. ¶¶ 58, 62–65; Prayer ¶ B. Whether that policy is ultimately held unconstitutional is a merits question that the *Ex parte Young* inquiry "does not include." *Verizon Md.*, 535 U.S. at 646.

B. Quintana Has the Requisite Connection to the Challenged Conduct.

Ex parte Young requires that the official have "some connection with the enforcement of the act" challenged. 209 U.S. at 157. Quintana's connection is direct and personal. PRIC's payroll is administered under her authority. The Union's June

cease-and-desist demand was addressed to her by name, and PRIC's reversal followed "[a]s a result." Mot. at 18; Dkt. 12-9). Dávila-Surén's revocation and her subsequent objections were sent to her. Decl. ¶ 4. And it was Quintana who, on July 23, personally determined that the suspension of Dávila-Surén's deductions would take effect August 1, and that the Union, not the Government Employer, would decide what to do with the dues already taken. Dkt. 12-6 at 3. The Government Employer's own account of the policy confirms her role: on its own telling, it is Quintana who acts upon the Union's notice. Mot. at 18. An official who decides when the challenged deductions start and stop is the paradigmatic *Ex parte Young* defendant. The contention that Quintana lacks authority to stop the deductions without the Union's permission does not defeat that connection—it describes the violation. A state official cannot escape *Ex parte Young* by pointing to a contract with a private party that purports to strip her of the power to comply with the Constitution.

C. The Government Employer's "No Duty" Argument Fails on the Merits.

The Government Employer argues that Quintana "did not have a duty to halt the collection of union dues while the agency's administrative records continued to reflect that [Dávila-Surén] remained a Union member." Mot. at 18. But the First Amendment says otherwise. In *Janus*, the U.S. Supreme Court held:

> 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.

585 U.S. at 930 (internal citations omitted). The obligation *Janus* describes runs to the State as employer, because it is the State that seizes the money. A public employer that deducts dues from an employee's wages must therefore have the employee's clear and affirmative consent, and it may not presume that consent from a union's silence. When Dávila-Surén revoked her consent in writing on June 9, effective July 1, and delivered that revocation to Quintana's office, the Government Employer no longer had any basis to deduct dues from her wages. The Government Employer's view that it may continue deducting until the Union confirms the employee's resignation inverts *Janus*: it presumes the waiver, and it assigns to a private party the authority to decide whether the waiver has been withdrawn.

That inversion is especially stark on this record. Dávila-Surén never signed a dues-deduction authorization at all. The Government Employer simply resumed taking her dues in December 2022 because the Union demanded it. Decl. ¶ 3. The decisions on which the Government Employer has relied in the past, which enforce an employee's voluntary written commitment to pay dues for a fixed period, have no application to an employee who made no such commitment. *Cf. Janus*, 585 U.S. at 930. Whether any contractual obligation existed is, at a minimum, a disputed question of fact that cannot be resolved against Dávila-Surén on a motion to dismiss.

The Government Employer's suggestion that a federal injunction directing Quintana to honor Dávila-Surén's revocation "could constitute an unfair labor practice" under Commonwealth law is equally unavailing. Mot. at 22. The

Constitution is "the supreme Law of the Land," and state law and contracts must yield to it. U.S. Const. art. VI, cl. 2. A Commonwealth labor law or collective bargaining provision that required a public employer to take dues from a nonconsenting employee would be unenforceable to that extent, and compliance with a federal court's order vindicating a federal constitutional right cannot be an unlawful act under local law. Indeed, the premise of *Ex parte Young* itself is that a state official may be enjoined from enforcing state law that conflicts with the federal Constitution. 209 U.S. at 159–60.

D. The Claims Against PRIC Rise and Fall With the Official-Capacity Claims Against Its President.

An official-capacity suit "is, in all respects other than name, to be treated as a suit against the entity." *Kentucky v. Graham*, 473 U.S. 159, 166 (1985). Dávila-Surén seeks only prospective declaratory and injunctive relief from the Government Employer. She seeks damages only from the Union. Compl. Prayer ¶¶ B–C. Whatever the Court concludes about PRIC's status as a separately named defendant, the prospective relief Dávila-Surén seeks is fully available through the official-capacity claims against Quintana, and any ruling on PRIC's Eleventh Amendment immunity would not affect the scope of the relief available or the Court's jurisdiction over the controversy.

CONCLUSION

The Government Employer asks the Court to dismiss a challenge to their policy on the ground that they have, for now, stopped applying it, while defending that policy in the same breath and reserving the right to apply it again whenever the Union so

directs. The law does not permit a defendant to end a case on those terms. Dávila-Surén had standing when she filed suit, the Government Employer has not come close to showing that the challenged conduct cannot reasonably be expected to recur, and the Complaint states a claim against Quintana under *Ex parte Young*. For these reasons, Dávila-Surén respectfully requests that the Court deny the Government Employer's Motion to Dismiss (Dkt. 12) 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, October 26, 2026.

s/ Ángel J. Valencia
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