

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

COMITÉ DIALOGO AMBIENTAL, INC.,
et al.,

Plaintiffs,

v.

FEDERAL EMERGENCY MANAGEMENT
AGENCY, DEPARTMENT OF
HOMELAND SECURITY, DEANNE
CRISWELL, and ALEJANDRO
MAYORKAS,

Defendants.

No. 3:24-cv-01145-JAG

**MOTION OF LATINOJUSTICE PRLDEF AND THE AMERICAN CIVIL LIBERTIES
UNION, AND FOR LEAVE TO FILE BRIEF OF AMICI CURIAE AND EXTEND PAGE
LIMIT UNDER LOCAL RULE 7**

TO THE HONORABLE COURT:

Proposed Amici LatinoJustice PRLDEF and the American Civil Liberties Union (ACLU), move for leave to file the attached brief of Amici Curiae in support of ‘Plaintiff’s Motion for Summary Judgment’ [DK 46] and offer the following reasons in support of our motion:

1. LatinoJustice PRLDEF ("LatinoJustice") is a national civil rights nonprofit organization founded in 1972 as the Puerto Rican Legal Defense and Education Fund. LatinoJustice is dedicated to protecting the civil, constitutional, and human rights of Puerto Ricans and the wider Latino community. For more than 50 years, LatinoJustice has been at the forefront of advocating against injustice throughout the United States. Our commitment extends to addressing systemic inequalities and promoting justice for marginalized communities.

2. LatinoJustice is particularly committed to ensuring a resilient and sustainable future for Puerto Ricans. In the aftermath of Hurricane Maria, LatinoJustice responded robustly to the unprecedented disaster that affected Puerto Ricans both on the Archipelago and in the Diaspora. We have since continued to support relief and recovery efforts, emphasizing the importance of equitable access to disaster relief. LatinoJustice's extensive experience in civil rights advocacy, disaster resilience, and environmental justice positions us as a significant stakeholder in this case. We bring a deep understanding of the legal and socio-economic challenges faced by Puerto Ricans and the broader Latino community, and we are committed to promoting policies that ensure equitable treatment and sustainable development.

3. The ACLU is a non-partisan organization with approximately two million members and supporters dedicated to the principles of liberty and equality enshrined in the Constitution. The ACLU is devoted to protecting the civil and democratic rights of all who live in the United States, including the residents of Puerto Rico and other unincorporated U.S. Territories — including the almost 3.5 million U.S. citizens among them. As the ACLU explained over 80 years ago, it is committed to the “[m]aintenance of civil liberties in the [territories],” which it considers “essential to political or economic reforms of any sort.” ACLU, *Civil Liberties in American Colonies* 7 (1939). Its Racial Justice Program challenges laws, policies and legal precedent that discriminate or otherwise disparately harm residents of the United States territories including Puerto Rico.¹ Its chapter in Puerto Rico is devoted to, among other things, promoting the internationally recognized right to self-determination for its residents. The ACLU’s interests are implicated whenever the federal government imposes its will on the rights of residents of the territories without their consent or meaningful participation, as alleged here.

¹ ACLU, Racial Justice, Anti-Colonialism, <https://www.aclu.org/issues/racial-justice/anti-colonialism> (last visited Aug 21, 2024).

4. LatinoJustice and the ACLU is (“Amici”) have a particular interest in the sustainable future of Puerto Rico, which includes the need for renewable energy sources and energy justice. The ACLU is also committed to ensuring that the desires and needs of local interests are considered whenever the federal government—which exercises near absolute authority over Puerto Rico’s affairs—makes decisions about Puerto Rico’s future including, as implicated here, its energy needs and the sources from which those needs will be fulfilled. As elaborated in our proposed brief, The Federal Emergency Management Agency’s (FEMA’s) Fossil Entrenchment PEA will result in perpetuating dependency, increasing the cost of living, promoting displacement, and jeopardizing the health and life of the residents of Puerto Rico.

5. Plaintiffs’ case challenges FEMA’s inadequate environmental assessment and finding of no significant impact and challenge FEMA’s actions under the National Environmental Policy Act (NEPA). NEPA provides safeguards for the environment and the people of Puerto Rico and FEMA must comply with these federal regulations. Amici seek to ensure that FEMA rebuilds Puerto Rico’s energy grid in a just manner that considers the permanent effects of its decisions including how they affect Puerto Rico’s sustainability goals. For examples of representation of the public interest in climate and environmental justice matters, please see: (1) *Waterkeeper Alliance, et al., v. Department of Defense*, 2001 WL 36012202 (1st Cir. 2001) (Injunction calling for a cease and desist of the Navy’s exercises on the Island of Vieques, Puerto Rico); and, (2) Juan Cartagena, *Testimony of Juan Cartagena President & General Counsel, LatinoJustice PRLDEF Before the U.S. Commission on Civil Rights on the Federal Emergency Management Agency’s Role in Disaster Preparedness and Response to Hurricane María in Puerto Rico* (2021) at <https://www.usccr.gov/files/2021/06-24-Juan-Cartagena-Testimony.pdf>.

6. Under the Federal Rules of Civil Procedure (FRCP) and the Local Rules, no guidance exists to govern district court amicus briefs. And while some district courts have announced local rules, see D.D.C. Local Civil Rule 7(o), most have not. Instead, parties are generally left to consider local practices and guidance that vary by the district and individual district judge, arising out of district courts' inherent authority to permit amicus participation in the exercise of their discretion. See for comparison *Cobell v. Norton*, 246 F. Supp. 2d 59, 62-63 (D.D.C. 2003) ("An amicus brief should [only] be allowed when a party is not represented competently or is not represented at all, when the amicus has an interest in some other case that may be affected by the decision in the present case (though not enough affected to entitle the amicus to intervene and become a party in the present case)), or *Lehman XS Trust, Series 2006-GP2 v. Greenpoint Mortg. Funding*, 2014 WL 265784, at *1 (S.D.N.Y. Jan. 23, 2014) ("Resolution of a motion for leave to file an amicus brief thus lies in the 'firm discretion' of the district court."); and, *Jin v. Ministry of State Sec.*, 557 F. Supp. 2d 131, 136 (D.D.C. 2008) ("District courts have inherent authority to appoint or deny Amici...").

7. Amici identify the following factors, used by other courts, to help to decide whether to permit this amicus curiae brief: (1) whether the motion is timely; (2) whether the motion states movant's interest in matter and includes proposed brief; (3) whether the parties are capable of full and adequate presentation of relevant issues and, if not, whether proposed Amici could remedy this deficiency; (4) whether the proposed brief identifies law or arguments that might otherwise escape court's consideration or would otherwise be of assistance to court; (5) whether consideration of the proposed amicus brief would substantially prejudice the parties; and (6) whether the case involves questions of important public interest. See *Columbus Monument Corp. v. City of Syracuse*, 73 Misc. 3d 967, 156 N.Y.S.3d 820 (N.Y. Sup. Ct. 2021).

8. Here, Amici files the proposed Brief [Ex 1] within the timelines established in the Scheduling Order/Case Management Order [DK 39] for filing a reply to Plaintiffs' Motion for Summary Judgment. The proposed Brief is filed by Amici in their traditional roles representing public interest. Also, Amici has a history of being capable of a full and adequate representation of relevant issues involving climate and environmental justice (CEJ) matters in Puerto Rico. More to the point, the proposed Brief adds the general public's perspective to the Plaintiff's position on behalf of environmental communities, especially in intersectional CEJ matters relating to the international law, federalism, colonialism, and the advancement of United States and Puerto Rico's public policy for a 100% renewable energy economy by 2050.

9. Likewise, Plaintiffs do not oppose the filing of the proposed amicus brief after consultation with Lead Counsel Agusta Wilson on August 27, 2024. After unsuccessfully attempting to reach Defendant's Lead Counsel Krystal Rose Perez, the Amici can still assert that the important subject matter addressed is not an unfair surprise and the timeliness of the filing does not substantially prejudice FEMA or any other party.

10. Ultimately, however, the issue of implementing public policy energy resiliency and sustainability involves questions of important public interest. The allocation of FEMA funds to repair Puerto Rico's outdated fossil fuel infrastructure, rather than investing in renewable energy, undermines the Archipelago's long-term resiliency, economic stability, and environmental health. FEMA's approach is contrary to the public interest and the principles of sustainable development.

11. Therefore, Amici respectfully submit this motion seeking leave to file the attached brief in order to ensure that FEMA considers the voices of the Puerto Rican people and thoroughly consider renewable energy sources. Amici have notified counsel for the parties of their intent to file the instant Motion for Leave.

12. Moreover, Amici request leave to extend the page limit set by Local Rule 7.
13. Under Local Rule 7, replies to motions for summary judgment cannot extend the 10-page limit. However, the Amici are not moving to file a reply, but an Amicus Brief. There is no guidance regarding page limits. As a secondary source, D.D.C. Local Civil Rule 7(o)(4) states that: “[u]nless otherwise ordered by the Court, a brief filed by an amicus [...] may not exceed 25 pages.”
14. Here, the Amici propose the review of a 26-page brief, including the statements of interests, but excluding the very useful index and table of authorities.
15. Therefore, we move this court for leave to file a 26-page amicus brief in this case.

For the foregoing reasons, we respectfully request that this court grant this Motion and permit Amici to file their concurrently submitted Brief of Amici Curiae in Support of Plaintiff’s Motion for Summary Judgment.

Dated: August 27, 2024

Respectfully submitted,

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*Pending Pro Hac Vice Admission
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Certificate of Service

I hereby certify that on August 27, 2024, I filed the foregoing Motion for Leave to File Amicus Brief and accompanying Exhibits via CM/ECF, which will send notification to all parties' counsels of record.

/s/ Roberto Cruz Hernandez
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Attorneys for Amicus Curiae