No. 23-1626

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

SANDRA RODRÍGUEZ-COTTO; RAFELLI GONZÁLEZ-COTTO,

Plaintiffs – Appellees,

v.

JENNIFFER A. GONZÁLEZ-COLÓN, Governor of Puerto Rico; LOURDES LYNNETTE GÓMEZ TORRES, Secretary of Department of Justice; ARTURO GARFFER, Secretary of Puerto Rico Department of Public Safety; JOSEPH GONZÁLEZ FALCÓN, Commissioner of the Puerto Rico Police Bureau,

Defendants – Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

Case No. 3:20-cv-01235-PAD

BRIEF OF AMICI CURIAE HON. FRANK J. BAILEY (RET.), HON. EUGENE R. WEDOFF (RET.), HON. BRUCE A. MARKELL (RET.), AND LAW PROFESSOR DAVID R. KUNEY, IN SUPPORT OF APPELLEES AND AFFIRMANCE

BRADLEY D. JONES (Bar: 1215742)
SHELBY KOSTOLNI (Bar: 1215741)
Stinson LLP
1775 Pennsylvania Ave., N.W.,
Suite 800
Washington, D.C. 20006
Phone: (202) 572-9903
Fax: (202) 572-9980
Emails: Brad.Jones@Stinson.com
Shelby.Kostolni@stinson.com

Counsel for *Amici Curiae*

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1, *amici* state that they are not publicly held corporations, nor do they have a parent corporation or stock that is owned by a public corporation. No publicly held corporation has a direct financial interest in the outcome of this litigation due to the participation of *amici*.

TABLE OF CONTENTS

CORPORATE DISCLOSURE STATEMENT i

TABLE OF CONTENTS ii

TABLE OF CASES, STATUTES, AND OTHER AUTHORITIES iii

INTEREST OF *AMICI CURIAE* 1

PRELIMINARY STATEMENT....................1

QUESTIONS PRESENTED 3

STATUTORY FRAMEWORK....................5

1. The Automatic Stay and Confirmed Plan Protect a Debtor's Assets to Enable Distributions to Creditors But Do Not Permit a Debtor to Ignore General Non-Bankruptcy Law.................... 6

2. Municipal Reorganizations and PROMESA Both Apply Corporate Bankruptcy Principles....................10

ARGUMENT 12

I. Bankruptcy Provides a Breathing Spell to Reorganize But Does Not Excuse Compliance With Non-Bankruptcy Law 12

II. PROMESA Does Not Prevent this Court from Reaching the Merits of the Injunction Issued by the District Court.................... 15

1. The Prospective Financial Penalties Available Under the Challenged Criminal Statute are not "Commonwealth Revenue" or Property of the Estate 16

2. No Form of Monetary Relief Exists That Could Be Substituted for the Requested Equitable Relief under Federal or Puerto Rico Law....................19

3. The Discharge in Section 1.135 of Puerto Rico's Title III Plan Does Not Discharge a Citizen's Right to Seek an Injunction against an Unconstitutional Criminal Statute 21

4. The Confirmation Order's Inclusion of Public Employees/Officials Does Not Bar Injunctive Relief against Office Holders Acting in their Official Capacities....................25

CONCLUSION 27

CERTIFICATE OF COMPLIANCE 28

CERTIFICATE OF SERVICE....................29

TABLE OF CASES, STATUTES, AND OTHER AUTHORITIES

Cases **Page(s)**

Atiles-Gabriel v. Puerto Rico,
256 F. Supp. 3d 122 (D.P.R. 2017) 14, 15, 20

Borras-Borrero v. Corporacion del Fondo del Seguro del Estado,
958 F.3d 26 (1st Cir. 2020)...15, 16

City of Chicago v. Fulton,
592 U.S. 154 (2021)...4, 7

In re City of Stockton, Cal.,
499 B.R. 802 (Bankr. E.D. Cal. 2013)..18

Cotto v. Campbell,
126 F.4th 761 (1st Cir. 2025)...25

Czyzewski v. Jevic Holding Corp.,
580 U.S. 451 (2017)...6

In re Fed.-Mogul Glob. Inc.,
684 F.3d 355 (3d Cir. 2012) 22, 25

In re Fin. Oversight & Mgmt. Bd. for P.R.,
636 B.R. 1 (D.P.R. 2022)...5

In re Fin. Oversight & Mgmt. Bd. for P.R.,
No. 17-bk-03283-LTS, 2022 WL 17413011 (D.P.R. Feb. 7, 2022) 4

In re Fin. Oversight & Mgmt. Bd. for Puerto Rico,
52 F.4th 465 (1st Cir. 2022)...12

Fin. Oversight & Mgmt. Bd. for Puerto Rico v. Aurelius Inv., LLC,
590 U.S. 448 (2020)...11

Fin. Oversight & Mgmt. Bd. for Puerto Rico v. Centro de Periodismo Investigativo, Inc.,
598 U.S. 339 (2023)...11

In re G-I Holdings, Inc.,
514 B.R. 720 (Bankr. D.N.J. 2014) 4, 23, 24

Guadalupe-Baez v. Pesquera,
269 F. Supp. 3d 1 (D.P.R. 2017) 15

In re Gull Air, Inc.,
890 F.2d 1255 (1st Cir. 1989)....................8

I.N.S. v. St. Cyr,
533 U.S. 289 (2001)....................26

In re Irving Tanning Co.,
496 B.R. 644 (B.A.P. 1st Cir. 2013) 10, 21, 25

In re LAN Tamers, Inc.,
329 F.3d 204 (1st Cir. 2003)....................17

Midlantic Nat'l Bank v. New Jersey Dep't of Envtl. Protection,
474 U.S. 494 (1986)....................6, 7, 8

Moody v. Amoco Oil Co.,
734 F.2d 1200 (7th Cir. 1984) 18

In re New Seabury Co. Ltd. P'ship,
450 F.3d 24 (1st Cir. 2006)....................7

NM Enters., Inc. v. Harrington (In re Flying Star Cafes, Inc.),
568 B.R. 129 (Bankr. D.N.M. 2017) 23

Paulsen v. Cnty. of Nassau,
925 F.2d 65 (2d Cir. 1991) 20

Raleigh v. Ill. Dep't of Revenue,
530 U.S. 15 (2000)....................4

Rederford v. U.S. Airways, Inc.,
589 F.3d 30 (1st Cir. 2009)....................4, 19, 22

Rodríguez-Cotto v. Pierluisi-Urrutia,
No. 23-1626 (1st Cir. Oct. 3, 2024)....................3

Salgado & Assocs. Inc. v. Cestero-Lopategui,
34 F.4th 49 (1st Cir. 2022)....................15, 16

In re Ultra Petroleum Corp.,
51 F.4th 138 (5th Cir. 2022) 12

Vazquez–Carmona v. Dep't of Educ. of Puerto Rico,
255 F. Supp. 3d 298 (D.P.R. 2017) 20

Will v. Mich. Dep't of State Police,
491 U.S. 58 (1989)..5, 26

Ex parte Young,
209 U.S. 123 (1908) 5, 25

Statutes

11 U.S.C. § 101(5) 4, 5, 6, 19, 23

11 U.S.C. § 101(10) 6

11 U.S.C. § 362 ....3, 4, 5, 7, 9, 13, 16

11 U.S.C. § 541 ....6, 16

11 U.S.C. § 901(a) 10

11 U.S.C. § 922 ....4, 13

11 U.S.C. § 944(a) 4

11 U.S.C. § 1123 ....5, 7, 8, 21, 22

11 U.S.C. § 1129 7

11 U.S.C. § 1141 9

28 U.S.C. § 959(b) 9

42 U.S.C. § 1983 26

48 U.S.C. § 2101 *et seq.*...11

48 U.S.C. § 2106 ....13, 14

48 U.S.C. § 2161 ....4, 13, 19, 21

48 U.S.C. § 2174(b)(1)..21

48 U.S.C. § 2194 .... 13, 14

Other Authorities

11A Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure § 2944 (3d ed.) 20

David Skeel, REFLECTIONS ON TWO YEARS OF P.R.O.M.E.S.A. 87 Rev. Jur. U.P.R. 862 (2018) 11, 12

Fed. R. App. P. 29 .... 1, 29

Fed. R. App. P. 32 29

H.R. Rep. No. 595, 95th Cong., 1st Sess. (1977). 9, 10, 11, 18

P.R. Const. Art. II § 4 17

PROPERTY, Black's Law Dictionary (12th ed. 2024) 18

INTEREST OF *AMICI CURIAE*

Amici curiae are the Honorable Frank J. Bailey (ret.) (Bankruptcy Judge, District of Massachusetts), the Honorable Eugene Wedoff (ret.) (Bankruptcy Judge, Northern District of Illinois), the Honorable Bruce A. Markell (Professor of Law, Northwestern Pritzker School of Law, and Bankruptcy Judge, District of Nevada (ret.)), and David R. Kuney, Adjunct Professor of Law, Georgetown University Law Center.[1]

Amici curiae are bankruptcy experts and professors who have devoted their careers to teaching, studying and writing about bankruptcy law, complex litigation, federal courts, and constitutional law. They are nationally recognized scholars who have participated as amici in prior cases involving foundational issues of bankruptcy law. Amici have a strong interest in the correct interpretation of the Constitution and the Bankruptcy Code and in their sound and effective implementation.

PRELIMINARY STATEMENT

A bankruptcy plan cannot serve as a backdoor constitution—changing the relationship of the citizens to their government or the protections provided under the

[1] Pursuant to Rule 29(a), *amici* represent that counsel for the Appellees and counsel for the Appellants have consented to the filing of this brief.

The undersigned counsel further represents that no party or party's counsel has authored this brief in whole or in part; that no party or party's counsel contributed money that was intended to fund the preparation or submission of this brief; and that no party other than the amicus curiae and counsel identified herein contributed money that was intended to fund preparation or submission of this brief.

Bill of Rights. Both the Appellants and Appellees have previously stated that neither the automatic stay provisions nor the discharge provisions of the Commonwealth of Puerto Rico's Title III Plan of Adjustment (hereinafter, the "Plan") prevent the Court from reaching the merits of this appeal.[2] The *amici*, as subject matter experts on bankruptcy, agree and aim to provide answers to the Court's questions contained in its October 2024 briefing order.

Bankruptcy prevents creditors from taking collection actions to compel payment from a debtor or to control a debtor's property. Bankruptcy also allows the Court to approve plans that adjust debtor-creditor relationships to facilitate the orderly payment of claims. But filing bankruptcy does not allow a debtor, whether in bankruptcy or through a bankruptcy plan, to avoid complying with the general laws that would normally apply to a given company, industry, or government entity.

As a result, despite filing bankruptcy, a corporate debtor must still follow the applicable labor, environmental, and regulatory laws that exist outside of bankruptcy. For the same reasons, a government entity that files bankruptcy must still follow the Constitution.

[2] *See* Page 3 of the Motion in Compliance With Court Order filed by the Defendants-Appellants on May 15, 2024 (Document 00118145229); Pages 11–19 of the Brief for Defendants-Appellants filed by the Defendants-Appellants on July 10, 2025 (Document 00118311290); and Page 20 of the Appellees' Response to Order to Show Cause filed by the Plaintiffs-Appellees on May 15, 2024 (Document 00118145215).

The Puerto Rico Oversight, Management, and Economic Stability Act of 2016 (hereinafter, "PROMESA"), Chapter 9 municipal bankruptcies, and Chapter 11 corporate bankruptcies share common foundations and principles. None of these statutory systems allow a bankruptcy proceeding to change the laws that apply to a debtor that are unrelated to the adjustment of debtor-creditor relationships. The intended purpose of bankruptcy plans is to facilitate financial restructurings. Contorting bankruptcy law to prevent a District Court from enjoining unconstitutional free speech restrictions is contrary to the intended application of these insolvency statutes.

PROMESA, the Plan, and applicable bankruptcy principles do not provide a jurisdictional barrier to this Court deciding the appeal. The constitutional issues should be decided on their merits.

QUESTIONS PRESENTED

In its October 3, 2024 briefing order, this Court asked the parties to address four bankruptcy-related issues pertaining to jurisdiction. *See* Order of Court, *Rodríguez-Cotto v. Pierluisi-Urrutia*, No. 23-1626 (1st Cir. Oct. 3, 2024) (hereinafter, the "Briefing Order"):

> (1). Whether any portion of the complaint was filed in violation of the automatic stay in 11 U.S.C. § 362(a)(3), which stays "any act . . . to exercise control over property of the [Title III debtor]," including (1) whether the fines in Article 5.14(a) are Commonwealth revenue under Puerto Rico law and, hence, property of the Title III debtor, (2) whether the declaratory and injunctive reliefs are an exercise of control of the

property of the Title III debtor, and (3) whether the definitions of "claim" in 11 U.S.C. § 101(5) and in Plan § 1.135 apply to a § 362(a)(3) analysis. 48 U.S.C. § 2161(c)(5) (stating "property of the estate" under Title 11 means "property of the debtor"); *see also City of Chicago v. Fulton*, 592 U.S. 154, 158 (2021) (reading "stay," "act," and "exercise control" in § 362(a)(3) to mean "362(a)(3) prohibits affirmative acts that would disturb the status quo of [a debtor's] property"); *In re Fin. Oversight & Mgmt. Bd. for P.R.*, No. 17-bk-03283-LTS, 2022 WL 17413011, at *4 n.6 (D.P.R. Feb. 7, 2022) (determining the § 362(a)(1) provision for prepetition proceedings "is wholly inapplicable" to post-petition claims that involve an attempt to control the debtor's property that is subject to § 362(a)(3)).

Answer: No. Appellees' Complaint was not an act to exercise control over property. The Government does not have a property interest in its criminal enforcement power and does not have a legal or equitable interest in collecting prospective fines that it lacks the constitutional power to issue. *Infra* pp. 16-19.

(2). Whether any form of monetary relief exists that could be substituted for the requested equitable relief under federal or Puerto Rico law by which the automatic stay in 11 U.S.C. § 922(a)(1) would apply. *See Raleigh v. Ill. Dep't of Revenue*, 530 U.S. 15, 20 (2000) (stating that "[t]he 'basic federal rule' in bankruptcy is that state law governs the substance of claims") (quoting *Butner v. United States*, 440 U.S. 48, 54 (1979)); *see also Rederford v. U.S. Airways, Inc.*, 589 F.3d 30, 37 (1st Cir. 2009) (determining an alternative monetary remedy of front pay exists for reinstatement under federal law).

Answer: No, because Appellees' injunction seeks to abate the ongoing enforcement of an unconstitutional statute, rather than remediation of past harms. *Infra* pp. 19-21.

(3). Whether the definition of "Claim" in Plan § 1.135 does not require requests for equitable relief to have an alternative monetary remedy or to give rise to a right to payment for discharge purposes. *See* 11 U.S.C. § 944(a) (stating "provisions of a confirmed plan bind the debtor and any creditor"); *see also In re G-I Holdings, Inc.*, 514 B.R. 720, 757-58, 758-60 (Bankr. D.N.J. 2014) (determining injunctive relief was barred

by the confirmed plan that defined "claim" to include the definition in § 101(5) and "any rights to any equitable remedy").

Answer: No. The Plan's discharge does not apply. The definition of "claims" should be interpreted to be consistent with the Bankruptcy Code, the Plan itself limits the discharge to the scope permitted under Title III, and preventing enforcement of constitutional limits would exceed the grant of statutory power provided to the Title III Court under 11 U.S.C. § 1123(a)(5). *Infra* pp. 21-25.

(4). Whether Confirmation Order ¶56(b) applies to plaintiffs' requests for equitable relief due to that provision's express inclusion of "employees" and "officials," if the fines contemplated by Article 5.14(a) amount to Commonwealth property for the § 362(a)(3) analysis and/or if the Plan's definition of "claim" includes the requests for equitable relief at issue in this appeal. *In re Fin. Oversight & Mgmt. Bd. for P.R.*, 636 B.R. 1, 38–39 (D.P.R. 2022) (Confirmation Order ⁋56(b)); *id.* at 89–90 (Plan § 1.135 defining "Claim").

Answer: No, the inclusion of officials sued in their Official Capacities is not inconsistent with the Confirmation Order or the Commonwealth's Plan. Under *Ex Parte Young* and *Will v. Mich. Dep't of State Police*, official capacity claims that only seek prospective injunctive relief are not claims against a State. Instead, these claims are suits against the government official's office. As a result, any discharge provided under the Commonwealth's Title III Plan does not prevent actions seeking to enjoin the unconstitutional use of government office. Such claims are not treated as an action against the Commonwealth under applicable constitutional law principles. *Infra* pp. 25-27.

STATUTORY FRAMEWORK

Bankruptcy exists to provide for the organized payment of debts through a judicially overseen proceeding. Without bankruptcy, the first creditors to monetize

their claims against a financially distressed entity will maximize their recovery while slower, similarly situated creditors may receive nothing.

This so-called "race to the assets" is often destructive. Most debtors are more economically and socially valuable if permitted to sustain their operations rather than having their assets forcibly liquidated in distressed sales. As a result, bankruptcy generally seeks to combine all of a debtor's assets and all creditor efforts to obtain payment or recover assets into a single proceeding. *See, e.g.*, 11 U.S.C. § 541(a). The Bankruptcy Code accomplishes this by broadly defining all rights to payment—whether legal or equitable; contingent or liquidated—as "claims." 11 U.S.C. § 101(5). Entities with "claims" against the debtor are "creditors." 11 U.S.C. § 101(10). In bankruptcy, creditor claims are paid in a judicially supervised manner in accordance with the bankruptcy priority scheme. *See Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 457 (2017) (describing the Bankruptcy Code's "basic system of priority").

1. The Automatic Stay and Confirmed Plan Protect a Debtor's Assets to Enable Distributions to Creditors But Do Not Permit a Debtor to Ignore General Non-Bankruptcy Law.

The automatic stay is the main mechanism to centralize proceedings and prevent competing creditor claims from destroying the debtor's prospects for rehabilitation or orderly liquidation. As a result, the automatic stay is one of the most critical debtor protections offered by the Bankruptcy Code. *Midlantic Nat'l Bank v.*

New Jersey Dep't of Envtl. Protection, 474 U.S. 494, 503 (1986). The stay is an injunction that arises immediately upon the filing of a bankruptcy petition. 11 U.S.C. § 362(a). This injunction prevents the commencement or continuation of judicial or administrative actions against the debtor, collection of prepetition judgments, acts to gain possession or control of the debtor's property, the creation or perfection of liens against the debtor's assets, and a creditor's ability to recover claims or set off debts owed by a debtor. 11 U.S.C. § 362(a)(1)–(8).

The essential purpose of the automatic stay is to grant a fresh start to debtors, allowing them breathing room in their pursuit of repayment and/or reorganization. *City of Chicago v. Fulton*, 592 U.S. 154, 163 (2021) (citation omitted).

The Bankruptcy Code has different chapters to address different types of debtors and the permissible methods for those debtors to make distributions to creditors. Chapter 11 is the chapter most commonly used for complex corporate restructurings. Chapter 11 culminates in a chapter 11 plan. 11 U.S.C. § 1129. The confirmation of a plan adjusts the debtor-creditor relationship, essentially providing a new contract between the debtor and its creditors. *In re New Seabury Co. Ltd. P'ship*, 450 F.3d 24, 33 (1st Cir. 2006). A plan may result in a confirmation order, following circulation of an approved disclosure statement, and a vote of all eligible creditors. 11 U.S.C. §§ 1123–1129. Once confirmed, the plan dictates how the debtor will distribute money or property to creditors.

To protect the debtor's ability to make those distributions, most bankruptcy plans include injunction provisions that prevent creditors from seeking payment or distributions other than as provided in the plan. The Bankruptcy Code empowers bankruptcy courts to approve plans that, "[n]otwithstanding any otherwise applicable nonbankruptcy law," provide adequate means for the plan's implementation, including allowing the debtor to use, abandon, or sell its property, designate classes of claims or interests for treatment under the plan, and provide for the manner in which those classes will be paid under the plan. 11 U.S.C. § 1123(a)(1)–(5).

Neither the automatic stay nor injunctions provided under a bankruptcy plan are designed to give debtors rights beyond what Congress provided in specific provisions of the Bankruptcy Code. "The Bankruptcy Code does not create or enhance property rights of a debtor." *In re Gull Air, Inc.*, 890 F.2d 1255, 1261-62 (1st Cir. 1989) (collecting cases). Debtors must continue to comply with applicable non-bankruptcy law, except as Congress has otherwise provided through specific provisions of the Bankruptcy Code. *Midlantic Nat'l Bank,* 474 U.S. at 502 ("Congress has repeatedly expressed its legislative determination that the trustee is not to have *carte blanche* to ignore nonbankruptcy law."). Otherwise, financially distressed businesses could use bankruptcy, not for its intended purpose to resolve

or adjust debts, but to gain an advantage over competition by ignoring general legal requirements or regulations.

To ensure that debtors comply with the law while in bankruptcy, Congress included a specific exception to the automatic stay to enable government units to continue to enforce their police and regulatory powers. 11 U.S.C. § 362(b)(4). As a result, even though it may be convenient for the estate or to aid in the running of its operations, a debtor in bankruptcy cannot commit fraud, ignore environmental restrictions, avoid consumer protection or safety laws, or sidestep other police and regulatory laws in an effort to reorganize. *See* H.R. Rep. No. 95-595, at 343 (1977) (providing those examples in explaining the police and regulatory power exception to the automatic stay).

Moreover, in addition to permitting police and regulatory enforcement, Congress also imposed an independent statutory duty on bankruptcy trustees and debtors-in-possession to manage and operate property they control "according to the requirements of the valid laws of the State in which such property is situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof." 28 U.S.C. § 959(b).

These same principles apply to bankruptcy plans. Most plans incorporate an injunction consistent with Bankruptcy Code Section 1141(c), which prohibits collection actions that are inconsistent with the distribution of property once a

bankruptcy plan is confirmed. However, the plan process is not "a debtor's license to rewrite the law to its liking." *In re Irving Tanning Co.*, 496 B.R. 644, 663–66 (B.A.P. 1st Cir. 2013). To be confirmable "a plan must comply with those applicable nonbankruptcy laws that are not preempted by the Bankruptcy Code." *Id.* at 660. Those laws "remain[] binding, even in the crafting of a plan." *Id.*

2. <u>Municipal Reorganizations and PROMESA Both Apply Corporate Bankruptcy Principles</u>.

Adjustment of municipal debt has been a permanent part of American bankruptcy law since the Great Depression. H.R. Rep. No. 95-595, at 262. However, around the same time as the reforms of the 1978 Bankruptcy Code, Congress overhauled municipal bankruptcies to substantially align municipal and corporate reorganization practice.

The current version of Chapter 9 of the Bankruptcy Code, addressing municipal bankruptcies, incorporates many of the core concepts for Chapter 11 business debtors. *See* 11 U.S.C. § 901(a).[3] Congress's underlying assumption has been that the Bankruptcy Code chapters for corporate reorganizations and municipal restructurings are substantially identical. H.R. Rep. No. 95-595, at 263. ("The general policy underlying the municipal debt adjustments chapter is the same as that

[3] This section also makes certain general provisions of Chapter 3 and Chapter 5 of the Bankruptcy Code, which are applicable under all bankruptcy chapters, applicable in Chapter 9 cases.

underlying the reorganization chapter".). However, the legislative history notes two major differences between corporate and municipal bankruptcies: First, "the law must be sensitive to the issue of the sovereignty of the States," and second, municipal debtors are not profit making enterprises with stockholders. H.R. Rep. No. 95-595, at 263. Critically, neither of these sensitivities affect a municipality's obligation to follow the Constitution.

In 2016, Congress passed PROMESA, 48 U.S.C. § 2101 *et seq.* The purpose of PROMESA was to deal with Puerto Rico's fiscal emergency caused by soaring public debt that had more than exceeded the annual output of the island's economy. *Fin. Oversight & Mgmt. Bd. for Puerto Rico v. Centro de Periodismo Investigativo, Inc.*, 598 U.S. 339, 342 (2023).

At the time of PROMESA's enactment, the Bankruptcy Code included Chapter 9, allowing for bankruptcy filings by municipalities, but did not allow for bankruptcy filings by United State territories. PROMESA established Title III proceedings, which are a statutory system that "allows Puerto Rico and its entities to file for federal bankruptcy protection." *Fin. Oversight & Mgmt. Bd. for Puerto Rico v. Aurelius Inv., LLC*, 590 U.S. 448, 454 (2020).

Title III proceedings heavily borrow from the municipal bankruptcy provisions in Chapter 9 of the Bankruptcy Code. David Skeel, REFLECTIONS ON TWO YEARS OF P.R.O.M.E.S.A., 87 Rev. Jur. U.P.R. 862, 873 (2018) (stating the drafters

"eyes were on Chapter 9 when they constructed Title III"). Unsurprisingly, many of the PROMESA concepts were borrowed from Chapter 9: For instance, both apply to government entities, provide only for voluntary filings, impose an automatic stay, require the debtor to negotiate a plan of adjustment with creditors, and seek to effectuate a bankruptcy plan that can be approved either voluntarily or involuntarily. *Id.* at 873–74.

In interpreting PROMESA, the First Circuit has regularly looked to existing case law in Chapter 9 and Chapter 11 practice. *See In re Fin. Oversight & Mgmt. Bd. for Puerto Rico*, 52 F.4th 465, 481 n.18 (1st Cir. 2022) (noting that it is commonplace to lean heavily on bankruptcy cases when presented with "bankruptcy infused PROMESA matters"). This is consistent with how courts have regularly looked to pre-existing bankruptcy doctrine in interpreting the Bankruptcy Code. *See In re Ultra Petroleum Corp.*, 51 F.4th 138, 153 (5th Cir. 2022).

ARGUMENT

I. Bankruptcy Provides a Breathing Spell to Reorganize But Does Not Excuse Compliance With Non-Bankruptcy Law.

"Chapter 9 permits a restructuring, but once the municipality emerges from bankruptcy it cannot be violating the law." Skeel, REFLECTIONS ON TWO YEARS OF P.R.O.M.E.S.A., 87 Rev. Jur. U.P.R. at 870. Longstanding bankruptcy principles support requiring the Commonwealth to comply with constitutional limitations while gaining the benefits of bankruptcy protection.

Just like a corporate debtor is obligated to follow non-bankruptcy law despite filing a bankruptcy case, PROMESA requires the Commonwealth to follow federal law despite initiating Title III proceedings. PROMESA was enacted to assist the Commonwealth in reorganizing its financial affairs, not to allow the Title III process or the Title III Court to alter the political powers of the Commonwealth or the constitutional relationships between Puerto Rico and its citizens.

Congress crafted PROMESA against the backdrop of bankruptcy case law, including the requirements that debtors must follow non-bankruptcy law.[4] The stay applicable in Title III proceedings includes an equivalent to the police and regulatory power exception applicable in general bankruptcy matters, which is one of the primary mechanisms under the Bankruptcy Code to require debtors to follow non-bankruptcy laws. 48 U.S.C. § 2194(c)(2); *cf.* 11 U.S.C. § 362(b)(4). Section 2106 of PROMESA also provides a blanket exception to the stay for federal laws, providing that nothing in that statute "shall be construed as impairing or in any manner relieving a territorial government, or any territorial instrumentality thereof, from compliance with Federal laws or requirements". The federal Constitution applies to Puerto Rico.

---

[4] Title III incorporates by reference many sections of the Bankruptcy Code, including 11 U.S.C. § 362 and 11 U.S.C. § 922, which provide for an automatic stay upon the filing of a bankruptcy restructuring petition. 48 U.S.C. § 2161(a).

Congress did not intend the stay it created to exempt Puerto Rico from constitutional limitations. Under 48 U.S.C. § 2194(m)(5)(B), Congress found that the stay imposed in Title III proceedings "is limited in nature and narrowly tailored to achieve the purposes of this chapter". The purpose of PROMESA was to allow for an orderly adjustment of the Government of Puerto Rico's liabilities through a debt restructuring that enabled a voluntary, negotiated resolution with creditors. 48 U.S.C. § 2194(n)(1)–(5). Applying PROMESA outside the context of a financial restructuring to change constitutional protections afforded to the Commonwealth's citizens is not consistent with a limited, narrowly tailored stay.

Prior courts have recognized this reality. In *Atiles-Gabriel v. Puerto Rico*, 256 F. Supp. 3d 122, 125 (D.P.R. 2017), the court held that a petition for writ of *habeas corpus* seeks to secure a person's liberty and not a monetary payment. It therefore was not subject to the bankruptcy stay imposed by PROMESA. *Id.* The court recognized that if the bankruptcy automatic stay "is read to apply to habeas proceedings during the pendency of the Title III case, the stay would effectively suspend the writ of habeas corpus." *Id.* at 126. This would be inconsistent with PROMESA's requirement that the Commonwealth operate in "compliance with Federal laws." *Id.* at 128 (quoting 48 U.S.C. § 2106).

The *Atiles-Gabriel* Court further recognized the importance of appropriately limiting the scope of PROMESA's stay. The Court concluded that "an overbroad

application of the automatic stay would risk transgressing PROMESA's statutory framework and the boundaries of the Constitution." *Atiles-Gabriel*, 256 F. Supp. 3d at 128; *accord Guadalupe-Baez v. Pesquera*, 269 F. Supp. 3d 1, 3 (D.P.R. 2017). Regardless of Puerto Rico's financial issues and debtor-creditor relations, "the Commonwealth of Puerto Rico continues to function as a government", and the citizens of Puerto Rico "continue to enjoy their constitutional rights as United States citizens." *Atiles-Gabriel*, 256 F. Supp. 3d at 128.

II. PROMESA Does Not Prevent this Court from Reaching the Merits of the Injunction Issued by the District Court.

Applying these principles leads to the conclusion that the automatic stay and the Plan provisions do not apply to this appeal. In *Borras-Borrero v. Corporacion del Fondo del Seguro del Estado*, 958 F.3d 26, 34 (1st Cir. 2020), this Court questioned, but did not decide,[5] whether a First Amendment Section 1983 claim could be insulated from review because of the bankruptcy stay imposed under PROMESA. This Court later determined a Section 1983 action seeking monetary damages was subject to the PROMESA stay. *Salgado & Assocs. Inc. v. Cestero-Lopategui*, 34 F.4th 49, 54 (1st Cir. 2022). The Briefing Order issued by this Court in this appeal raises similar questions.

[5] The Court declined to reach the issue because neither party argued the PROMESA stay prevented the Court from addressing the claim on the merits and the First Amendment claim failed on other grounds. *Id.* at 34–35.

However, unlike *Borras-Borrero* and *Cestero-Lopategui*, this appeal arises under an injunction where the Plaintiffs-Appellees were not asserting a right to a monetary recovery. Instead, the injunction at issue enforces First Amendment requirements arising under federal constitutional law, which apply regardless of the Commonwealth's bankruptcy. None of the questions raised in this Court's Briefing Order present a barrier under PROMESA or the Bankruptcy Code to deciding the appeal on the merits.

1. <u>The Prospective Financial Penalties Available Under the Challenged Criminal Statute are not "Commonwealth Revenue" or Property of the Estate</u>.

The Commonwealth has no existing interest in speculative fines that could be generated through future enforcement of an unconstitutional statute. Enjoining an unconstitutional law is not an act to obtain possession or to exercise control over "property" of the Commonwealth. The provision of the automatic stay that prevents creditors from taking actions to gain possession or control of a debtor's property, 11 U.S.C. § 362(a)(3), is not applicable to this case.

The Bankruptcy Code defines property to include "all legal or equitable interests of the debtor in property as of the commencement of the case" as well as "[a]ny interest in property that the estate acquires after the commencement of the case." 11 U.S.C. § 541(a)(1), (7). The general right to enforce various criminal laws is not considered "property" within the meaning of the Bankruptcy Code or Title III.

Determining whether a debtor has a legal or equitable interest in something requires looking to applicable non-bankruptcy law[6] to determine the nature and extent of the debtor's interests. *LAN Tamers, Inc.*, 329 F.3d at 213-14 (quoting *Butner v. United States*, 440 U.S. 48, 55 (1979)). The Government does not have a "legal or equitable interest" in violating the Constitution's free speech guarantees. Applicable Puerto Rican Law does not provide such an interest to the Commonwealth—in fact it mandates the opposite. P.R. Const. Art. II § 4 ("No law shall be made abridging the freedom of speech or of the press[.]").

The District Court properly issued a First Amendment injunction finding that the power the Commonwealth sought to enforce in criminalizing journalism was invalid. The District Court's First Amendment injunction, thus, does not remove an interest that ever existed or a power that could legitimately have exercised. Because the Commonwealth does not have a legal or equitable interest in levying unconstitutional fines, the potential to issue fines under Article 5.14(a)—if the law were permitted to go into effect—is not "property" within the meaning of the Bankruptcy Code.

This is consistent with general property law principles. The District Court's First Amendment injunction does not seek to recover a pot of money or identifiable

[6] For most debtors this law is applicable state law, unless there is some applicable federal interest that requires a different result. *See In re LAN Tamers, Inc.*, 329 F.3d 204, 214 (1st Cir. 2003).

funds the Commonwealth already had a right to collect. What the First Amendment injunction accomplished was to impose appropriate constitutional limitations. While there might be some indirect or tangential effect on the Commonwealth's finances if unconstitutional fines were permitted to be levied, this does not make the potential fines "property." *See In re City of Stockton, Cal.*, 499 B.R. 802, 807 (Bankr. E.D. Cal. 2013) (holding that challenge to local tax measure does not implicate the automatic stay for a municipality if the litigation did not lead to a monetary award). A government's ability to issue fines or enforce criminal law is not something that can be bought, sold, assigned, or hypothecated, which are traditional rights associated with property interests.[7]

Moreover, bankruptcy protections, including the automatic stay, cannot be used to expand a debtor's property rights beyond those that existed upon filing. *Moody v. Amoco Oil Co.*, 734 F.2d 1200, 1213 (7th Cir. 1984) ("[W]hatever rights a debtor has in property at the commencement of the case continue in bankruptcy—no more, no less."); *see also* H.R. Rep. No. 95-595, at 367 (stating that bankruptcy "is not intended to expand the debtor's rights against others more than they exist at the commencement of the case"). A government's constitutional limitations cannot be avoided by the happenstance of filing bankruptcy. For the same reason the

[7] *See* PROPERTY, Black's Law Dictionary (12th ed. 2024) ("It is common to describe property as a 'bundle of rights.' These rights include the right to possess and use, the right to exclude, and the right to transfer.").

automatic stay will not allow a corporate debtor to ignore the various labor, health, environmental, etc. laws applicable in a given industry, *see supra*, pp. 9-10, a bankruptcy proceeding does not allow a government to ignore the Constitution.

2. No Form of Monetary Relief Exists That Could Be Substituted for the Requested Equitable Relief under Federal or Puerto Rico Law.

An action seeking a non-monetary injunction is not a claim within the meaning of the Bankruptcy Code. Under Section 101(5),[8] a claim is broadly defined as a right to payment, no matter the form. If a monetary payment is an alternative for an equitable remedy, the automatic stay may apply. *Rederford v. U.S. Airways, Inc.*, 589 F.3d 30, 35–36 (1st Cir. 2009). But however broad, where no monetary relief is sought and an injunction is obtained merely to enforce a federally protected right, secure a constitutional liberty, or prevent future harm, the bankruptcy stay does not apply.

Moreover, not every injunction is subject to the automatic stay in bankruptcy as it depends on the relief sought. "[I]f the equitable remedy involves the abatement of ongoing conduct that is causing harm, rather than the remediation of past harms, the remedy is not a 'repackaged claim for damages' and does not threaten the finality of the proceedings." *Rederford*, 589 F.3d at 37 (citing *In re Torwico Elec., Inc.*, 8

[8] Incorporated in Title III proceedings pursuant to 48 U.S.C. § 2161.

F.3d 146, 150 (3d Cir. 1993) (finding an order to abate ongoing pollution not to be a claim within the code)).

Under applicable non-bankruptcy law, constitutional injuries are not adequately addressed by monetary compensation, which is why these claims are addressed by injunctions. *See* 11A Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure § 2944 (3d ed.). The injunction issued here is no different. The District Court Injunction prohibits the enforcement of a law that involves the abatement of ongoing harm—not repackaging a claim for damages. No monetary payment could be available because the deprivation of fundamental rights cannot be restored or valued in financial terms. *See Paulsen v. Cnty. of Nassau*, 925 F.2d 65, 68 (2d Cir. 1991). As a result, the injunction issued cannot implicate the automatic stay.

For these reasons, in similar contexts, multiple courts have found that the PROMESA automatic stay does not implicate actions to enforce federally protected rights or liberties where no monetary relief is sought. *See Vazquez–Carmona v. Dep't of Educ. of Puerto Rico*, 255 F. Supp. 3d 298, 299 (D.P.R. 2017) (finding PROMESA stay did not apply to review of agency action that sought no monetary relief and only sought injunctive and declaratory relief to enforce a federally protected right); *Atiles-Gabriel*, 256 F. Supp. 3d at 125 (PROMESA stay did not apply where relief sought concerns a person's liberty and did not seek a right to

payment or an equitable remedy for which a monetary payment would be an alternative remedy.).

3. The Discharge in Section 1.135 of Puerto Rico's Title III Plan Does Not Discharge a Citizen's Right to Seek an Injunction against an Unconstitutional Criminal Statute.

A bankruptcy plan cannot give a debtor rights that it does not have under the law, nor will a bankruptcy plan allow the debtor to rewrite the law beyond what Congress could have intended. *Irving Tanning Co.*, 496 B.R. at 663.

To enable the implementation of bankruptcy plans, Congress provided in 11 U.S.C. § 1123(a)(5)[9] that plans must have adequate means for implementation and that the plan should do all of those things "[n]otwithstanding any otherwise applicable nonbankruptcy law".[10] Paragraph 92 of the Title III Confirmation Order relies on Section 1123(a)(5) to enforce the Plan notwithstanding applicable nonbankruptcy law.

But while the Title III Court can use Section 1123(a)(5) to preempt contrary federal and state collection laws, the statutory authority provided by this section is focused principally on adjustments to the debtor-creditor relationships. *Irving Tanning Co.*, 496 B.R. at 660. The Section 1123(a)(5) power "is not unlimited" and

---

[9] Incorporated in Title III proceedings pursuant to 48 U.S.C. § 2161.

[10] Under 48 U.S.C. § 2174(b)(1) the Plan of Adjustment is required to comply with the provisions of Title 11, made applicable to Title III proceedings by Section 2161.

cannot be used "to disregard large swaths of state and federal regulatory schemes." *In re Fed.-Mogul Glob. Inc.*, 684 F.3d 355, 381 (3d Cir. 2012). Applying the Title III Plan or Confirmation Order to insulate unconstitutional laws from challenge or judicial review would exceed the authority Congress provided in Section 1123(a)(5).

The Commonwealth's Plan provided a broad definition for the term "Claim":

> 1.135 **<u>Claim</u>**: Any right to payment or performance, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured, known or unknown or asserted or unasserted; or any right to an equitable remedy for breach or enforcement of performance, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured, and all debts, suits, damages, rights, remedies, losses, liabilities, obligations, judgments, actions, Causes of Action, demands, or claims of every kind or nature whatsoever, in law, at equity, or otherwise.

See Plan at § 1.135.

This definition, like the Bankruptcy Code's definition of "claim," focuses primarily on whether a party has a "right to payment" or an equitable remedy for breach of performance. A party seeking a monetary recovery from the Commonwealth would be within this definition. Similarly, some equitable remedies, such as claims for breach of performance obligations under a contract, would allow for a monetary payment as an alternative for the equitable remedy. *Rederford*, 589 F.3d at 37. Those collection actions would be "claims" within this definition of the

Plan—just as they would be claims under the Bankruptcy Code. A fair reading of this definition would not suggest that a citizen would be prevented from seeking to vindicate constitutional rights that are outside the scope of the issues addressed by the bankruptcy or the Plan.

In interpreting bankruptcy plans, Courts generally interpret provisions so that plans remain consistent with the Bankruptcy Code. *NM Enters., Inc. v. Harrington (In re Flying Star Cafes, Inc.)*, 568 B.R. 129, 137 (Bankr. D.N.M. 2017) (citations omitted). The Plan cannot extend the Title III Court's jurisdiction beyond the bounds defined by the Bankruptcy Code, which is limited to "claims" as a right to payment in whatever form. In fact, the Plan avoids doing so, providing that the release, injunction, and discharge provisions remain consistent with the scope of Title III. *See* Plan § 92.2(e) ("Notwithstanding anything contained herein or in the Confirmation Order to the contrary, no provision shall. . . (ii) expand the scope of any discharge, release, or injunction to which the Debtors or the Reorganized Debtors are entitled to under Title III.").

Nothing in *G-I Holdings, Inc.* requires a different result. In that case, the plan's definition of "claim" included "any rights to any equitable remedy" (a more expansive definition than used in this Plan) as well as "any Environmental Claim, whether or not it constitutes a 'claim' under section 101(5) of the Bankruptcy Code". 514 B.R. at 757. While the Court found that the plaintiff's claim for asbestos

environmental clean-up was discharged under the plan, the Court determined that the claim at issue "essentially seeks monetary compensation from the Debtors", which was distinct from seeking to "stop or ameliorate ongoing pollution or hazards." *Id.* at 759–60. As a result, regardless of the language or definitions used in the plan, the plaintiff's action was subject to treatment in bankruptcy applying the normal definitions of "claim" under the Bankruptcy Code. *Id.* at 758–60. The Plaintiff was also indisputably a creditor in the case, having filed a claim and plan objection. *Id.* at 725–26.

It is not surprising that a cause of action for asbestos clean-up would be within the scope of a plan filed to address the debtor's asbestos-related liabilities. Nor would it be surprising for claims that were essentially seeking monetary recovery to be subject to the plan. But none of this provides support for the idea that a Title III Plan focused on addressing Puerto Rico's bond liabilities would apply to civil rights issues that do not seek monetary relief and merely seek to enjoin ongoing efforts to enforce unconstitutional laws.

Such a result would be surprising, and likely exceed the limits on the Title III Court's power. The Title III Court had authority to approve Plan provisions to ensure that there are adequate means for implementing the Plan. But a bankruptcy plan cannot change the relationship of the citizens to their government or the protections provided under the Bill of Rights. The authority provided to bankruptcy courts in the

plan process does not permit rewriting the law or disregarding federal constitutional limits. *Irving Tanning Co.*, 496 B.R. at 663; *Fed.-Mogul Glob*, 684 F.3d at 381. No matter how broadly the term "claim" is defined in a government entity's bankruptcy plan, the Constitution still applies.

4. The Confirmation Order's Inclusion of Public Employees/Officials Does Not Bar Injunctive Relief against Office Holders Acting in their Official Capacities.

Plaintiffs-Appellees properly included government officials sued in their official capacities. That inclusion is not inconsistent with the Confirmation Order's release of employees and officials from suits over "claims," as defined in the Plan. The litigation below did not seek monetary relief, but sought an injunction against the government actors engaging in official acts to enforce an unconstitutional law. That is the proper way to bring such claims and does not implicate bankruptcy law.

In *Ex parte Young*, the Supreme Court held that sovereign immunity does not prohibit federal lawsuits seeking to prohibit a state official from enforcing state law in a way that violates federal law. 209 U.S. 123 (1908). *Ex Parte Young* permits federal courts to provide prospective injunctions preventing officials from engaging in future violations of federal law, but does not allow for monetary damages or retrospective reparations. *Id.* at 165; *Cotto v. Campbell*, 126 F.4th 761, 767 (1st Cir. 2025). Constitutional litigation brought against government officials in their official-capacity seeks injunctive relief preventing the holder of that office from taking an

unconstitutional action. *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989). But such litigation does not seek direct relief against the Government, which is why they may be brought under 42 U.S.C. § 1983. *Id.* at 71 n.10 (noting that "official-capacity actions for prospective relief are not treated as actions against the State").

For official-capacity claims, there is nothing for the Commonwealth's bankruptcy Plan to discharge or release. Here, the litigation at issue does not include a monetary claim, seeks only prospective relief, and Defendants are persons sued in their official capacity only. The litigation implicates injunctive relief against the office, not any individual personally or the Commonwealth itself. As a result, any discharge provided to the Commonwealth of "claims" in bankruptcy does not extend to actions to prevent the unconstitutional use of government office, which is not treated as an action against a State under applicable constitutional law principles and does not implicate a right to payment under bankruptcy law.

Moreover, the Court should avoid an interpretation of the Plan or release language that would put the Plan or Confirmation Order in tension with fundamental constitutional principles. It is doubtful that Congress intended Title III proceedings to bar efforts to enjoin unconstitutional criminal laws, and "when a particular interpretation of a statute invokes the outer limits of Congress' power" a Court should "expect a clear indication that Congress intended that result." *I.N.S. v. St. Cyr*, 533 U.S. 289, 299–300 (2001) (citation omitted).

An interpretation of the Plan that would release official capacity claims against offices of the Commonwealth could effectively bar the ability of citizens to challenge unconstitutional laws or policies and prevent them from going into effect. Bankruptcy law is not intended or designed for such purposes.

CONCLUSION

For these reasons, the Court of Appeals should find that the Title III Plan does not prevent this Court from exercising jurisdiction and proceeding to decide the constitutional questions presented on their merits.

August 12, 2025

Respectfully Submitted,

/s/ Bradley D. Jones

BRADLEY D. JONES (Bar: 1215742)
SHELBY KOSTOLNI (Bar: 1215741)
Stinson LLP
1775 Pennsylvania Ave., NW
Suite 800
Washington, D.C. 20006
Phone: (202) 572-9903
Fax: (202) 572.9980
Emails: Brad.Jones@Stinson.com
Shelby.Kostolni@stinson.com

Counsel for Amici Curiae

CERTIFICATE OF COMPLIANCE

Amici curiae certify that this brief complies with the applicable type-volume limits. According to the word processor used to prepare this brief, Microsoft Word 2010, this brief contains 6,476 words, excluding those parts exempted by Fed. R. App. P. 32(f). The brief therefore complies with the volume limitations in Fed. R. App. P. 29(a)(5). This brief also complies with the typeface requirements of Fed. R. App. P. 32(a)(5) because it has been prepared in a proportionally spaced typeface, using 14-point font.

Dated: August 12, 2025

/s/ Bradley D. Jones

BRADLEY D. JONES (Bar: 1215742)
Stinson LLP
1775 Pennsylvania Ave., NW
Suite 800
Washington, D.C. 20006
Phone: (202) 572-9903
Fax: (202) 572.9980
Email: Brad.Jones@Stinson.com

Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of August, 2025, I electronically filed the foregoing document electronically with the Clerk of the Court for the United States Court of Appeals for the First Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

Dated: August 12, 2025

/s/ Bradley D. Jones
BRADLEY D. JONES (Bar: 1215742)
Stinson LLP
1775 Pennsylvania Ave., NW
Suite 800
Washington, D.C. 20006
Phone: (202) 572-9903
Fax: (202) 572.9980
Email: Brad.Jones@Stinson.com

Counsel for Amici Curiae

CORE/3533305.0002/230534496.3