United States Court of Appeals
For the First Circuit

No. 23-1626

SANDRA RODRÍGUEZ-COTTO; RAFELLI GONZÁLEZ-COTTO,

Plaintiffs - Appellees,

v.

JENNIFFER A. GONZÁLEZ-COLÓN, Governor of Puerto Rico; JANET PARRA MERCADO, 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

[Hon. Pedro A. Delgado-Hernandez, U.S. District Judge]

BRIEF FOR PLAINTIFFS-APPELLEES

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INTRODUCTION

"Our constitutional tradition stands against the idea that we need Oceania's Ministry of Truth…. The mere potential for the exercise of that power casts a chill, a chill the First Amendment cannot permit if free speech, thought, and discourse are to remain a foundation of our freedom." *United States v. Alvarez*, 567 U.S. 709, 723 (2012) (plurality opinion). This axiom condemns Article 5.14(a) of the Law of the Puerto Rico Department of Public Safety, which gives the government dangerously broad power to prosecute alleged lies during times of crisis.

Article 5.14(a) makes it a crime, during a declared emergency, to: (1) give a "warning or false alarm, knowing the information is false, in relation to the imminent occurrence of a catastrophe in Puerto Rico," regardless of context and even if the speech is unlikely to cause a panic; or (2) convey, through any means of communication, lies about *any topic* that "result" in an "imminent risk" to life, health, safety, bodily integrity, or property. Law of the Puerto Rico Department of Public Safety, Law No. 66 of 2020, P.R. Laws Ann. tit. 25 § 3654; Plaintiffs-Appellees' Supplemental Addendum ("Suppl. Add.") 4. Offenses are punishable by fines and imprisonment. *Id.*

Plaintiffs-Appellees Sandra Rodríguez-Cotto and Rafelli González-Cotto are investigative journalists who regularly cover emergency conditions in Puerto Rico. They brought this First Amendment lawsuit challenging Article 5.14(a) because its

sweeping criminal restrictions on speech have chilled their reporting, including their coverage of the government's response to the COVID-19 pandemic. After consolidating the preliminary and permanent injunction proceedings, the district court held that Article 5.14(a) facially violates the First Amendment and enjoined Defendants-Appellants from enforcing it. The court reasoned that Article 5.14(a) is far broader than analogous false alarm statutes, and that Defendants-Appellants have not carried their burden of justifying Article 5.14(a)'s extraordinary reach. The court admonished that "[c]ourts must be vigilant to ensure the First Amendment is not weakened during periods of declared emergencies," because "[t]he watchdog function of speech is never more vital than during a large-scale crisis." Defendants-Appellants' Addendum ("Add.") 94. This Court should affirm.

First, the parties agree that Puerto Rico's bankruptcy poses no obstacle to Article III jurisdiction over this action challenging a putatively unconstitutional criminal statute. The bankruptcy laws facilitate the orderly disposition of claims against the debtor and its property; they do not give debtors a free pass to engage in unlawful or unconstitutional conduct during the pendency of bankruptcy proceedings. Nothing in the Puerto Rico Oversight, Management, and Economic Stability Act ("PROMESA"), the Plan of Adjustment, or the Confirmation Order immunizes the Commonwealth's criminal statutes from judicial review under the U.S. Constitution.

Second, the district court rightly concluded that Article 5.14(a) violates the First Amendment. The Supreme Court's decision in *Alvarez* established that restrictions on lies—aside from recognized First Amendment exceptions such as defamation and fraud—raise First Amendment concerns, especially where the restriction applies to speech on public issues. Defendants-Appellants try to distinguish *Alvarez* by arguing that Article 5.14(a) applies broadly to speech "about hurricanes, government actions, even the sighting of unidentified flying objects." Opening Br. 3. Far from saving the statute, however, its extraordinary scope unduly chills public discussion and invites politicized prosecutions. More carefully tailored false-alarm statutes vindicate the same compelling public safety interests without threatening to chill nearly as much protected speech.

Although Defendants-Appellants emphasize that Article 5.14(a) applies only during official states of emergency, they have not shown that everyday First Amendment protections are incompatible with public security during a declared emergency. To the contrary, "[t]he Framers of the First Amendment, fully aware of both the need to defend a new nation and the abuses of the English and Colonial Governments, sought to give this new society strength and security by providing that freedom of speech, press, religion, and assembly should not be abridged." *N.Y. Times Co. v. United States*, 403 U.S. 713, 719 (1971) (Black, J., concurring).

STATEMENT OF THE ISSUES

1. Whether Puerto Rico's bankruptcy deprives Article III courts of jurisdiction over Plaintiffs-Appellees' 42 U.S.C. § 1983 causes of action for prospective declaratory and injunctive relief against a putatively unconstitutional criminal restriction on speech.

2. Whether Article 5.14(a)—which makes it a crime, during a declared emergency, to knowingly: (1) share a false warning of an impending catastrophe; or (2) disseminate any false statement that results in an imminent risk of harm to life, health, or property—violates the First Amendment.

STATEMENT OF THE CASE

Article 5.14(a)

As originally enacted, Article 5.14(a) made it a crime to "raise a false alarm in relation to the imminent occurrence of a catastrophe in Puerto Rico or, if there was a declared state of emergency or disaster, to spread rumors or raise a false alarm regarding non-existing abnormalities." Add. 52–53. A state of emergency was declared in March 2020 in response to the COVID-19 pandemic. Add. 57. Later that month, the Commonwealth charged Pastor José Luis Rivera-Santiago under Article 5.14(a) for allegedly creating a false alarm over the WhatsApp messaging platform.

Id. The charges concerned "sharing information … about a rumored government curfew order related to the COVID-19 pandemic." Add. 67.

On April 5, 2020, Puerto Rico amended Article 5.14(a) "to add paragraph (f), which made it a crime to transmit or allow another person to transmit by any means, through any social network or mass media, false information with the intention of creating confusion, panic or collective public hysteria, regarding any proclamation or executive order decreeing a state of emergency, disaster or curfew." Add. 53. Two days later, the Governor of Puerto Rico issued a curfew order, "mandating a total lockdown of all businesses in Puerto Rico effective from Friday, April 10th until Sunday, April 12th, 2020, with limited exceptions." Appendix ("App.") 18 ¶ 8. The Commonwealth dismissed the charges against Pastor Rivera-Santiago the following month. Add. 57.

Puerto Rico again amended Article 5.14(a) in July 2020, shortly after this case was filed, to eliminate paragraph (f) and amend paragraph (a) to read as follows:

> Any person, natural or legal, who shall perform any of the following acts on purpose, knowingly or recklessly after the Governor of Puerto Rico has decreed by Executive Order an emergency or disaster, shall be punished with a penalty of imprisonment not exceeding six (6) months or a fine not exceeding five thousand dollars ($5,000) or both sentences at the discretion of the court:
>
> (a) Gives a warning or false alarm, knowing that the information is false, in relation to the imminent occurrence of a catastrophe in Puerto Rico, or disseminates, publishes, transmits, transfers or circulates through any means of communication, including the media, social networks, or any other means of dissemination, publication or distribution of information, a notice or a false alarm, knowing that the information is false, when as a result of its

> conduct it puts the life, health, bodily integrity or safety of one or more persons at imminent risk, or endangers public or private property.
>
> In the event that the notice or false alarm results in damage to the public purse, to third parties, or public or private property exceeding ten thousand dollars ($10,000), or where the conduct results in injury or physical harm of another, that person shall have committed a felony with a penalty of imprisonment for a fixed term of three (3) years.

P.R. Laws Ann. tit. 25 § 3654; Suppl. Add. 4.

Plaintiffs-Appellees

Plaintiffs-Appellees are investigative journalists who reside in Puerto Rico. They have published numerous articles and participated on panels discussing emergency conditions on the island. Add. 57.

Sandra Rodríguez-Cotto—an independent journalist with over 30 years of professional experience in Puerto Rico, the United States, and Latin America—hosts a radio program and publishes a blog that features her own reporting and political analysis. Add. 57. The public health emergency caused by Covid-19, and the government's response to that emergency, have featured prominently in her reporting. *Id.* She plans to continue her investigative reporting, which often focuses on emergencies in Puerto Rico. *Id.* But she fears that the government will dispute the accuracy of her reporting even when she is telling the truth, as happened when she called out then-Chief of Staff Ramon Rosario over the implausibility of the official death toll arising from Hurricane Maria. Add. 58; App. 21 ¶ 25. And although Ms. Rodríguez-Cotto makes every effort to confirm the veracity of her reporting, she

is also worried that her reporting might include inadvertent inaccuracies, particularly when it involves fast-developing stories about public emergencies, that could expose her to prosecution. Add. 58. The threat of prosecution under Article 5.14(a) has chilled Ms. Rodríguez-Cotto's own reporting and commentary, as well as her access to sources. *Id.*

Rafelli González-Cotto is an independent journalist with more than a decade of professional experience. Add. 58. His articles about the COVID-19 public health emergency, including the government's emergency and curfew orders, have been published in numerous local news outlets. App. 22 ¶ 31. For instance, he reported that the case fatality rate published by the Health Department was not calculated in accordance with generally accepted practices; half an hour after the article was published, the Health Department removed the information from its website. *Id.* ¶ 33. Although Mr. González-Cotto plans to continue his reporting about emergency conditions in Puerto Rico, he fears that he could be prosecuted under Article 5.14(a) for disputes over accurate reporting or for inadvertent inaccuracies. *Id.* His fear of prosecution has chilled his reporting, as well as his access to sources. *Id.*

District Court Proceedings

On May 20, 2020, Plaintiffs-Appellees filed this Section 1983 lawsuit for declaratory and injunctive relief against Defendants-Appellants in their official capacities. Add. 55; App. 1–16. Shortly thereafter, Plaintiffs-Appellees moved for a

preliminary injunction barring Article 5.14(a)'s enforcement. Add 55. Plaintiffs-Appellees filed an amended complaint, as well as a renewed motion for preliminary injunction, after Article 5.14(a) was amended in July 2020. Add. 56; App. 25–71.

The district court consolidated the preliminary and permanent injunction proceedings pursuant to Federal Rules of Civil Procedure 65(a)(2). Add. 56–57. On March 31, 2023, the court issued its Opinion and Order, holding that Article 5.14(a) facially violates the First Amendment and permanently enjoining Defendants-Appellants from enforcing the statute. Add. 1–45. The court issued an amended order on April 3, 2023, Add. 52–96, reflecting non-substantive changes to the disposition, Add. 51.

After establishing that Plaintiffs-Appellees have standing to bring this action, the court held that Article 5.14(a) is subject to heightened scrutiny because *Alvarez* established that there is no categorical First Amendment exception for knowingly false speech. Add. 74. The court also concluded that Article 5.14(a)'s restriction on false speech is inherently content based. Add. 80. In light of the fractured nature of the Supreme Court's decision in *Alvarez*, the court applied both the strict scrutiny analysis adopted by the *Alvarez* plurality and the intermediate scrutiny advocated by Justice Breyer's concurrence, ultimately concluding that the statute failed under either standard. *See* Add. 79 n.16.

First, the court noted that the government had failed to submit evidence showing that Article 5.14(a)'s broad prohibition on false speech is necessary to vindicate the government's compelling interests in life, health, and property, and that counterspeech is an ineffective alternative. Add. 83–85. Second, the court contrasted Article 5.14(a)'s two clauses with analogous false-alarm statutes—including Model Penal Code § 250.3, the FCC's broadcast hoaxes rule, and the federal false information and hoaxes statute—and observed that Defendants-Appellants have not shown why a similarly narrow statute would be ineffective. Add. 85–89. Third, the court pointed out that, unlike the Stolen Valor Act, Article 5.14(a) is not limited to easily verifiable statements of fact within the speaker's personal knowledge, increasing the risk of politicized enforcement. Add. 93–94 & n.30. For all these reasons, the court held that "Article 5.14(a) cannot be enforced consistently with the First Amendment." Add. 95.

Defendants-Appellants filed a motion for reconsideration, which the district court denied after a hearing. App. 197–231. This appeal followed. App. 232–33.

Appellate Proceedings

On appeal, this Court *sua sponte* ordered the parties to show cause whether PROMESA barred this action. "PROMESA was enacted in 2016 to help the Commonwealth of Puerto Rico combat its rapidly ballooning government debt crisis. To do so, PROMESA creates a voluntary, in-court bankruptcy process for the

Commonwealth and its instrumentalities modeled on the reorganization process for municipalities, codified in Chapter 9 of the Bankruptcy Code." *Colón-Torres v. Negrón-Fernandez*, 997 F.3d 63, 69 (1st Cir. 2021). PROMESA incorporates the bankruptcy automatic stay provisions of 11 U.S.C. §§ 362 and 922, and the bankruptcy discharge provisions of 11 U.S.C. §§ 944 and 524(a)(1) and (2). *See* 48 U.S.C. § 2161(a).

The Commonwealth of Puerto Rico filed a petition on May 3, 2017, under Title III of PROMESA, 48 U.S.C. §§ 2161, *et seq.*, for adjustment of its debts. "[W]hen the Commonwealth filed its Title III petition in May 2017, it became a 'debtor' for purposes of PROMESA, and all actions enforcing a claim against the Commonwealth were automatically stayed." *Colón-Torres*, 997 F.3d at 69. On January 18, 2022, the Title III court confirmed the Commonwealth's Title III plan. *In re Fin. Oversight & Mgmt. Bd. for P.R.*, 636 B.R. 1 (D.P.R. 2022). The plan's effective date was March 15, 2022.

The parties' responses to the Court's show-cause order agreed that PROMESA does not bar this action. On October 3, 2024, the Court directed the parties to address the following questions in their merits briefs:

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

debtor, and [c] whether the definitions of 'claim' in 11 U.S.C. § 101(5) and in Plan § 1.135 apply to a § 362(a)(3) analysis;

(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;

(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; and

(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.

(Citations omitted).[1]

SUMMARY OF ARGUMENT

First, the parties agree that Puerto Rico's bankruptcy does not negate Article III jurisdiction over this Section 1983 pre-enforcement challenge to a putatively unconstitutional criminal statute. The automatic stays referenced in this Court's briefing order, 11 U.S.C. §§ 362(a)(3) and 922, do not bar this action. Section 362(a)(3), which stays actions to obtain or control the debtor's property, is inapplicable because no fines have been collected under Article 5.14(a), and the Commonwealth has no protectable property interest in the power to impose

[1] With respect to issues of bankruptcy jurisdiction not specifically raised by this Court's briefing order, Plaintiffs-Appellees respectfully incorporate by reference their submission in response to the Court's show cause order.

unconstitutional fines. Section 922, which stays actions against the debtor's officials that seek to enforce a "claim" against the debtor, is also inapplicable. Because an unconstitutional statute's chilling effect on protected speech is a well-established form of irreparable harm that cannot be compensated with money damages, causes of action for declaratory and injunctive relief to prevent such chill have no monetary substitute and are therefore not "claims" under the Bankruptcy Code.

The Plan of Adjustment and Confirmation Order also did not discharge Plaintiffs-Appellees' Section 1983 causes of action. Plan of Adjustment § 1.135's catchall definition of claim should not be interpreted to discharge causes of action that do not constitute dischargeable "claims" under the Bankruptcy Code, especially federal constitutional challenges to Commonwealth statutes. Plan § 92.2(e) stipulates that, "notwithstanding" any contrary Plan provision, the Plan should be interpreted to comply with PROMESA—which incorporates the Bankruptcy Code's definition of dischargeable "claims," and which explicitly does not relieve the Commonwealth of its obligations to comply with federal law. Moreover, courts require clear statements before construing Plan provisions to discharge non-dischargeable claims, and Section 1.135's catchall definition of "claim" does not clearly reflect an intent to discharge causes of action for prospective relief under the U.S. Constitution. Finally, Confirmation Order ¶ 56(b), which discharges "claims" against the Commonwealth's officers relating to the Commonwealth's "Assets and

property," is doubly inapplicable here: Plaintiffs-Appellees' causes of action here are not "claims," and they do not relate to the Commonwealth's "property."

Second, the district court rightly concluded that Article 5.14(a) violates the First Amendment. Defendants-Appellants argue that knowingly false speech is not entitled to constitutional protection, citing the Supreme Court's decision in *Garrison v. Louisiana* and this Court's decision in *Frese v. Formella*, which held that laws criminalizing defamation of public officials and public figures do not violate the First Amendment so long as they punish only knowingly or recklessly false libels. The Supreme Court rejected precisely this analogy in *Alvarez*, holding that the actual malice requirement in defamation cases does not imply that all knowingly or recklessly false speech is unprotected by the First Amendment.

Defendants-Appellants are equally mistaken in their contention that Article 5.14(a) is content neutral. In *Alvarez*, even the government did not dispute that laws restricting false speech are content based because they punish certain messages and not others. Nor is that the only reason why Article 5.14(a) is content based. Its first clause punishes speech "in relation to imminent catastrophes," an obvious form of subject matter discrimination. And its second clause authorizes law enforcement officials to punish speech on the basis of audience reactions—in other words, a content-based heckler's veto.

Although the Supreme Court's fractured decision in *Alvarez* left no clear *Marks* rule regarding the appropriate tier of First Amendment scrutiny in cases like this one, lower courts have typically applied strict scrutiny to statutes that restrict false speech on matters of public concern. This Court need not reach that issue, however. Principles common to all three opinions in *Alvarez* suggest on the one hand that the government has the authority to prevent false alarms that pose an imminent threat to public safety, and on the other that it must carefully tailor such restrictions to avoid unduly chilling speech on matter of public concern. Comparing Article 5.14(a) to three analogous false-alarm statutes—Model Penal Code § 250.3; the FCC's broadcast hoaxes rule, 47 C.F.R. § 73.1217; and the federal false information and hoaxes statute, 18 U.S.C. § 1038 (a)(1)—shows that much more narrowly tailored restrictions are fully capable of vindicating the government's compelling public safety interest.

Article 5.14(a)'s first clause bans "warning[s] or false alarm[s] … in relation to the imminent occurrence of a catastrophe in Puerto Rico." Suppl. Add. 4. Unlike analogous false-alarm provisions, this clause applies anytime, anywhere, regardless of whether the speech in context poses an immediate threat to public safety. It applies to topics of frequent public debate, such as predictions of hurricanes and plagues, where counterspeech is an effective remedy and the risk of politicized prosecution for false speech is likely to chill worthwhile discussion. And as Defendants-

Appellants acknowledge, it applies "to even incredible assertions," Opening Br. 29, including warnings of extraterrestrial invasion or supernatural apocalypse that are not reasonably alarming.

Article 5.14(a)'s second clause fares no better. Whereas analogous false-alarm restrictions apply to speech concerning a crime or catastrophe, this clause applies to anyone who "disseminates" speech on *any* topic—including "government actions," "availability of provisions," "individual actions," and even "class schedules in schools and universities," Opening Br. 3, 29—where the speech "result[s]" in an "imminent risk" to another's life, health, safety, or bodily integrity, "or endangers public or private property." Suppl. Add. 4. The uncertainty caused by the clause's open-ended scope is compounded by the vague definition of resulting harm, requiring neither immediate effects nor actual harm to identifiable victims. Moreover, the clause does not require the government to show either that the defendant disregarded a substantial risk that the speech would cause harm, or even that any resulting harm was objectively foreseeable. The clause could even expose journalists and news organizations to prosecution for reporting on speech by third parties, including elected officials, without fact-checking false statements The clause's sweeping breadth threatens to chill a great deal of speech and opens the door to politicized prosecutions, particularly when the speech casts the government in an unflattering light or the speaker is a frequent critic of government officials.

Defendants-Appellants have not offered any evidence or convincing explanation to justify the extraordinary breadth of Article 5.14(a)'s criminal restriction on speech. They assert that the statute is a limited measure because it applies only during declared emergencies; however, such emergencies are not infrequent in Puerto Rico and may last for years, as in the case of COVID-19. And Defendants-Appellants have not shown that narrowly tailored false-alarm provisions are incompatible with emergency conditions. In fact, the FCC refused to expand the broadcast hoaxes rule at the height of the COVID-19 pandemic, reasoning that a free press and public debate best serve the public's interest during an emergency.

Because Defendants-Appellants have not shown that Article 5.14(a)'s sweeping restriction on speech is justified under strict or intermediate scrutiny, this Court should affirm the district court's judgment enjoining the statute's enforcement.

STANDARD OF REVIEW

This Court reviews a district court's order granting a permanent injunction for abuse of discretion. *The Shell Co. (Puerto Rico) Ltd. v. Los Frailes Serv. Station, Inc.*, 605 F.3d 10, 19 (1st Cir. 2010). Factual findings made in support of the district court's order are reviewed for clear error. *Id.* The district court's conclusions of law

are reviewed *de novo*. *Id.* Whether PROMESA bars jurisdiction over this case is a question of pure law that is reviewed *de novo*. *Colón-Torres*, 997 F.3d at 68.

ARGUMENT

I. PROMESA does not bar Plaintiffs-Appellees' claims.

A. This pre-enforcement challenge to a criminal statute does not seek to obtain or control the Commonwealth's property.

The parties agree that 11 U.S.C. § 362(a)(3) does not apply to Plaintiffs-Appellees' Section 1983 causes of action for declaratory and injunctive relief against enforcement of a putatively unconstitutional statute. *See* Opening Br. 11–15. 11 U.S.C. § 362(a)(3) stays "any act . . . to exercise control over property of the estate." Under PROMESA and the municipal bankruptcy code, this provision refers to the "property of the debtor," 48 U.S.C. § 2161(c)(5), because "the concept of 'the estate' has no role" in bankruptcy actions by government entities. *In re Fin. Oversight & Mgmt. Bd. for P.R.*, 939 F.3d 340, 349 (1st Cir. 2019). Section 362(a)(3) "prohibits collection efforts outside the bankruptcy proceeding that would change the status quo" with respect to the debtor's property. *City of Chicago v. Fulton*, 592 U.S. 154, 160 (2021) (holding that a person's mere retention of estate property does not violate Section 362(a)(3)); *see also id.* at 158 ("362(a)(3) prohibits affirmative acts that would disturb the status quo of [debtor] property").[2]

[2] The Court's briefing order directed the parties to address whether the definitions of "claim" contained in 11 U.S.C. § 101(5) and Plan § 1.135 applies to the § 362(a)(3)

First, the Commonwealth has no cognizable property interest in hypothetical fines that might be collected pursuant to an unconstitutional statute such as Article 5.14(a). To be sure, fines imposed pursuant to criminal statutes become Commonwealth property. P.R. Laws Ann. tit. 34 § 970; *see* Mot. to Supplement, Exhibit A. But as Defendants-Appellants point out, no fines have been imposed under Article 5.14(a), and "[p]ossible fines from prosecution of a law, the constitutionality of which is under review, does not fall under even the broadest of definitions of 'property' found in the Bankruptcy Code." Opening Br. 13.

The bankruptcy laws do not license debtors to unlawfully expropriate third parties, including by imposing unconstitutional fines, merely because they might *acquire* property by doing so. *See In re Irving Tanning Co*., 496 B.R. 644, 664 (B.A.P. 1st Cir. 2013) ("[A] grant of power to appropriate the property of third parties—is so bold and remarkable a grant that one cannot imagine Congress having inserted it without a clear and specific indication of such intent."). If the Bankruptcy Code "permitted plan proponents to appropriate or overwrite the property rights of third parties under applicable nonbankruptcy law," it "would run headlong into constraints and quite possibly outright impediments in the takings clause of the Fifth

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analysis. Plaintiffs-Appellees respectfully submit that it does not, because the provision applies to "acts," not "claims." *See Fulton*, 592 U.S. at 158 ("An act is '[s]omething done or performed ... ; a deed.'" (alteration and omission in original) (quoting Black's Law Dictionary 30 (11th ed. 2019))).

Amendment." *Id.* at 665 . Here, applicable nonbankruptcy law includes the First Amendment right to be free from unconstitutional penalties for protected speech, itself a constitutional right that PROMESA cannot preempt. *See In re Fin. Oversight & Mgmt. Bd. for P.R.*, 41 F.4th 29, 42 (1st Cir. 2022) (recognizing that the bankruptcy "laws are not categorically exempt from the requirements of the Fifth Amendment [or] … the First Amendment"). Simply put, PROMESA does not protect any interest in the authority to impose unconstitutional fines.

Second, Plaintiffs-Appellees' requested declaratory and injunctive relief does not exercise control over Commonwealth property. While the automatic stay shields a debtor's property from collection efforts, it does not grant debtors or their officials a license to act unlawfully. "The automatic stay provision 'was intended to prevent interference with a bankruptcy court's orderly disposition of the property of the estate, it was not intended to preclude post-petition suits to enjoin unlawful conduct.'" *Dominic's Rest. of Dayton, Inc. v. Mantia*, 683 F.3d 757, 760 (6th Cir. 2012) (quoting *Larami Ltd. v. Yes! Entm't Corp.*, 244 B.R. 56, 60 (Bankr. D.N.J. 2000)). Were it otherwise, "bankrupt businesses," or governments, "which operated post-petition could violate [others'] rights with impunity." *Id.* (alteration in original) (quoting *Larami*, 244 B.R. at 60). *See also In re Synergy Dev. Corp.,* 140 B.R. 958, 959 (Bankr. S.D.N.Y. 1992) ("Bankruptcy does not grant a debtor greater rights than

those it would receive outside of bankruptcy." (citing *Butner v. United States*, 440 U.S. 48, 55 (1979))).

Thus, "[f]ederal courts around the country have concluded that suits based on allegedly tortious or unlawful post-petition conduct are not subject to the automatic stay provisions of § 362(a)," including Section 362(a)(3). *In re Roman Cath. Archdiocese of New Orleans*, 653 B.R. 524, 535 (Bankr. E.D. La. 2023) (collecting cases), *aff'd sub nom. Matter of Roman Cath. Church of Archdiocese of New Orleans*, No. 23-30565, 2024 WL 3440466, at *6 (5th Cir. July 17, 2024). This case similarly concerns unlawful post-petition conduct—the threatened enforcement of an unconstitutional statute—and does not seek to exert control over any Commonwealth property.

When courts have applied Section 362(a)(3) to stay actions challenging unlawful post-petition conduct, they have noted that the actions in fact sought to exercise substantial control over the debtor's disposition of its existing property. *See, e.g.*, *Lex Claims, LLC v. Fin. Oversight & Mgmt. Bd.,* 853 F.3d 548, 552 (1st Cir. 2017) ("[T]he only … unlawful conduct alleged here is the Commonwealth's allocation of its own revenues to pay certain creditors as opposed to others…. [T]he plaintiffs' attempt to alter that resource-allocation decision through litigation falls comfortably within PROMESA's stay of acts to exercise control over Commonwealth property."). The stay is not implicated where an action to restrain

unlawful conduct only incidentally affects the debtor's property interests—such as by preventing tortious uses of that property, *Dominic's Rest.*, 683 F.3d at 760; requiring the debtor to expend funds to comply with applicable nonbankruptcy law, *Matter of Roman Cath. Church of Archdiocese of New Orleans*, 2024 WL 3440466, at *6; or barring unlawful actions to raise revenue, *In re City of Stockton*, 499 B.R. 802, 807 (Bankr. E.D. Cal. 2013). Likewise, Section 362(a)(3) does not apply to actions for prospective declaratory and injunctive relief against an unconstitutional criminal statute, even if that relief might have some incidental effect on the Commonwealth's coffers.[3]

This limitation on the automatic stay's scope is consistent with PROMESA, which (like the municipal bankruptcy code on which it is modeled) prohibits the

[3] *But see Newberry v. City of San Bernardino (In re City of San Bernardino)*, 558 B.R. 321 (Bankr. C.D. Cal. 2016) (holding that Section 362(a)(3) stayed the plaintiff's action for injunctive relief requiring the city to reform its search-and-seizure practices to comply with the Fourth Amendment). *Newberry* is "unpersuasive" and against the weight of authority. *See In re Roman Catholic Archdiocese of New Orleans*, 653 B.R. at 535–37. It is also inapposite. First, "the court there was concerned that the citywide injunction transforming the city's search-and-seizure practices" would substantially affect the city's finances. *Id.* at 536–537 (citing *Newberry*, 558 B.R. at 329). No such wide-ranging structural relief is at issue here. Second, the "lynchpin" of *Newberry* was that application of the stay would not prevent the plaintiff from obtaining injunctive relief through an adversary proceeding before the bankruptcy court. *Id.* at 536 (citing *Newberry*, 558 B.R. at 328, 333). Whatever merit that point might have had in *Newberry*, 48 U.S.C. § 2165 here bars the Title III court from awarding Plaintiffs-Appellees their requested relief.

Title III court from "interfere[ing] with . . . any of the political or governmental powers of the debtor." *In re Fin. Oversight and Mgmt. Bd. for P. R.*, 927 F.3d 597, 602 (1st Cir. 2019) (citing 48 U.S.C. § 2165, 11 U.S.C. § 904). This provision denies the bankruptcy courts jurisdiction to enjoin violations of constitutional rights. *See In re City of Detroit*, 841 F.3d 684, 696 (6th Cir. 2016). Since PROMESA and the municipal bankruptcy code prohibit bankruptcy courts from awarding injunctive relief against unconstitutional laws and policies, "it would be strange" indeed if the automatic stay simultaneously barred injured parties from seeking relief in traditional judicial forums. *In re City of Stockton*, 499 B.R. at 809.

In fact, imposing the automatic stay under these circumstances would violate one of PROMESA's core promises. The statute expressly provides that "nothing in this chapter shall be construed as impairing or in any manner relieving a territorial government … from compliance with Federal law or requirements." 48 U.S.C. § 2106. Congress thus "recognize[d] the Commonwealth's continued responsibility to operate a government, and contemplates continued '[c]ompliance with Federal laws,'" including the First Amendment. *Atiles-Gabriel v. Puerto Rico*, 256 F. Supp. 3d 122, 128 (D.P.R. 2017); *see also Vázquez-Carmona v. P.R. Dep't of Educ.*, 255 F. Supp. 3d 298, 299 (D.P.R. 2017) (Gelpi, J.) ("PROMESA expressly contemplates that the temporary stay will not apply to suits to enforce federal rights." (citing 48 U.S.C. § 2106)).

Under PROMESA, "the people of Puerto Rico continue to enjoy their constitutional rights as United States citizens." *Atiles-Gabriel*, 256 F. Supp. 3d at 128. Actions for injunctive and declaratory relief to prevent unconstitutional conduct are the irreducible means for Puerto Ricans to protect their rights under federal law, and such actions are therefore excluded by Section 2106 from PROMESA's stay provisions. *See Vázquez-Carmona*, 255 F. Supp. 3d at 299. "Moreover, given [] Puerto Rico's unique status and the unparalleled scope of the Commonwealth's obligations to both creditors and citizens, 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.

B. There is no monetary substitute for declaratory and injunctive relief against a statute that unconstitutionally chills protected speech.

The parties agree that Section 922(a)(1)'s automatic stay does not apply here, because Plaintiffs-Appellees' causes of action for declaratory and injunctive relief against Article 5.14(a) are not "claims" under the Bankruptcy Code. Opening Br. 15–17. 11 U.S.C. § 922(a)(1) "specifically made applicable in municipal bankruptcies and proceedings under Title III of PROMESA … provides for a stay of actions brought against, among others, officials of the debtor (rather than the debtor or its property) where the actions 'seek[ ] to enforce a *claim* against the debtor.'" *Victor J. Salgado & Assocs. Inc. v. Cestero-Lopategui*, 34 F.4th 49, 57 (1st Cir. 2022) (emphasis added) (alteration in original) (quoting 11 U.S.C. § 922(a)(1)). "Under [11

U.S.C.] § 101(5)(B), a right to an equitable remedy … is a 'claim' within the meaning of the Bankruptcy Code, and subject to bankruptcy proceedings, if 'a monetary payment is an alternative for the equitable remedy.'" *Rederford v. U.S. Airways, Inc.*, 589 F.3d 30, 36 (1st Cir. 2009) (quoting *Air Line Pilots Ass'n v. Cont'l Airlines*, 125 F.3d 120, 133 (3d Cir. 1997)).

There is no adequate monetary alternative to Plaintiffs-Appellees' requested declaratory and injunctive relief against a statute that chills their constitutionally protected speech. "As the Supreme Court has explained, '[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Sindicato Puertorriqueno de Trabajadores v. Fortuno*, 699 F.3d 1, 10–11 (1st Cir. 2012) (alteration in original) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). "The rationale behind these decisions [is] that chilled free speech ..., because of [its] intangible nature, could not be compensated for by monetary damages; in other words, plaintiffs could not be made whole." *Scott v. Roberts*, 612 F.3d 1279, 1295 (11th Cir. 2010) (quoting *Ne. Fla. Chapter of the Ass'n of Gen. Contractors of Am. v. City of Jacksonville*, 896 F.2d 1283, 1285 (11th Cir. 1990)).

Furthermore, because free expression on public issues is "of transcendent value to all society, and not merely to those exercising their rights," the Supreme Court has emphasized the public interest in the prompt adjudication of First Amendment challenges to statutes that threaten to chill protected speech.

Dombrowski v. Pfister, 380 U.S. 479, 486 (1965); *see also Sindicato*, 699 F.3d at 15 ("The suppression of political speech harms not only the speaker, but also the public to whom the speech would be directed." (citing *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 339 (2010))); *Time, Inc. v. Hill*, 385 U.S. 374, 389 (1967) ("A broadly defined freedom of the press assures the maintenance of our political system and an open society."). Monetary remedies for individual complainants do not address the systemic harm inflicted by statutes that chill protected expression on public issues.

C. The Plan of Adjustment's definition of "claim" should not be interpreted to discharge causes of action outside PROMESA's scope.

The parties also agree that the Plan of Adjustment's definition of "claim" did not discharge Plaintiffs-Appellees' causes of action for declaratory and injunctive relief. *See* Opening Br. 17–19. Section 1.135 of the Plan provides the following definition:

> Claim: 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.

In re Fin. Oversight & Mgmt. Bd. for P. R., 636 B.R. 1, 89–90 (D.P.R. 2022) . This definition focuses on causes of action that fit comfortably within the Bankruptcy Code's definition of "Claim," including any "right to payment" or "an equitable remedy for breach of performance." *See* 11 U.S.C. § 101(5).

Although the catchall at the end of the definition could be read broadly to encompass *any* request for equitable relief, interpreting the catchall to exceed Section 101(5)'s definition of "Claim" would contradict Plan § 92.2(e). That provision states in relevant part: "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 under Title III." *In re Fin. Oversight & Mgmt. Bd.*, 636 B.R. at 232. *See also* 48 U.S.C. § 2174(b) (requiring PROMESA's Title III Plan to comply with the provisions of Title 11); *id.* § 2106 (stating that PROMESA does not relieve the Commonwealth of its duty to comply with federal law). The "notwithstanding" clause indicates that Title III's limitations supersede any more expansive language in Plan § 1.135. *See In re Irving Tanning Co.*, 496 B.R. at 662 (holding that the use of a "notwithstanding" clause in a bankruptcy plan signals the intent to override conflict provisions).

Furthermore, Section 1.135's catch-all provisions should not be read to discharge causes of action outside Section 101(5)'s scope in the absence of a clear

statement to that effect. "[C]ourts have found that if a plan takes away the rights of a creditor through general, nonspecific language, confirmation does not preclude future action by the creditor under the doctrine of res judicata." *In re Forklift LP Corp.*, 363 B.R. 388, 397 (Bankr. D. Del. 2007). That is because it would be inequitable to punish someone for failing to timely object to a bankruptcy plan's terms is inequitable where it is "difficult or impossible for the creditor to realize that the Plan threatens its statutory rights." *Id.* at 398.

Here, Plan § 1.135 does not explicitly provide that 11 U.S.C. § 101(5) is inapplicable, "nor does it 'state expressly that confirmation of the plan will discharge debts that would otherwise be nondischargeable.'" *Id.* (quoting *Miller v. United States (In re Miller)*, 253 B.R. 455, 460 (Bankr. N.D. Cal. 2000)). Plan § 92.2(e) states the opposite. No reasonable person would have anticipated that Section 1.135's catchall provision could discharge causes of action for prospective declaratory and injunctive relief against unconstitutional criminal statutes. Under these circumstances, "it would be unfair to deprive [Plaintiffs-Appellees] of their statutory rights … under [§ 101(5) of] the Bankruptcy Code, where plan provisions do not explicitly take those rights away." *In re Forklift LP Corp.*, 363 B.R. at 398.

In re G-I Holdings is not to the contrary. There, the plan defined "Claim" to include "any rights to any equitable remedy," and expressly defined "asbestos property damage claim" to encompass "*any Claim or remedy or liability against G-*

I … including but not limited to, the cost of … removing or disposing of asbestos or asbestos-containing products in buildings." 514 B.R. 720, 757 (Bankr. D.N.J. 2014). The plan provided that such "claims 'shall receive Cash in amount equal to 8.6% of such Allowed Claim.'" *Id.* at 758. The bankruptcy court held that the New York City Housing Authority's request for equitable relief constituted an "asbestos property damage claim" under the plan's express terms, and that NYCHA's request for relief other than that provided under the plan was therefore discharged. *Id.* The court further held that NYCHA's requested relief was a dischargeable "claim" under Section 101(5) because NYCHA's requested equitable relief essentially sought "a monetary contribution for [the debtor's] share of the [asbestos] cleanup costs" arising from past contamination by the debtor's products. *Id.*

In re G-I had no occasion to apply the clear statement rule, because the Plan's discharge of NYCHA's claim was consistent with Section 101(5). And even if a clear statement had been required, the plan in that case was considerably more explicit about extinguishing NYCHA's asbestos liability claim than the Title III Plan is about any potential application to Section 1983 claims for injunctive and declaratory relief against unconstitutional criminal statutes. Interpreting murky language in the Title III Plan's definitional section to discharge *all* constitutional causes of action against the Commonwealth or its officials, not just monetary remedies, would itself raise grave constitutional questions about the Title III court's authority to preempt rights

secured by the Constitution. *See In re Fin. Oversight & Mgmt. Bd.*, 41 F.4th at 42; *In re Irving Tanning Co*., 496 B.R. at 664.

D. The Confirmation Order did not discharge Plaintiffs-Appellees' official-capacity causes of action for prospective relief against Article 5.14(a).

Finally, the parties agree that the Confirmation Order did not discharge Plaintiffs-Appellees' Section 1983 causes of action against Defendants-Appellants in their official capacities. Opening Br. 19. Paragraph 56(a) of the Confirmation Order states that the Debtors and Reorganized Debtors' debts are discharged. *In re Fin. Oversight & Mgmt. Bd.*, 636 B.R. at 37–38. Paragraph 56(b) bars entities from "asserting any and all *Claim*s against the Debtors and Reorganized Debtors, and each of their respective employees, officials, Assets, property, rights, remedies, Claims, or Causes of Action of any nature whatsoever, *relating to the Title III Cases, the Debtors or Reorganized Debtors or any of their respective Assets and property*." *Id.* at 38 (emphases added). In other words, the provision bars, among other things, suits against the Debtors' employees and officials for discharged claims against the Debtors.

This provision does not reach Plaintiffs-Appellees' Section 1983 official capacity causes of action, for two independently sufficient reasons. First, Plaintiffs-Appellees' causes of action for declaratory and injunctive relief against Article 5.14(a) are not dischargeable "claims" under 11 U.S.C. § 101(5). As just discussed, Plan § 1.135 should not be interpreted to discharge nondischargeable claims.

Because Confirmation Order ¶ 56(b) applies only to "Claims," it did not discharge this action.

Second, Plaintiffs-Appellees' causes of action against Defendants-Appellants in their official capacities do not relate to the Debtors, Reorganizes Debtors, or their assets or property. It is well-established that "official-capacity actions for prospective relief are not treated as actions against the State." *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 n. 10 (1989) (quoting *Kentucky v. Graham*, 473 U.S. 159, 167 n.14 (1985)). That is because, as a matter of law, public officials do not act on behalf of the government when they enforce unconstitutional laws. *See Ex parte Young*, 209 U.S. 123, 159 (1908).

Plaintiffs-Appellees' official capacity causes of action are also not indirect claims against the Commonwealth or its property. Unlike in *Victor J. Salgado*, Plaintiffs-Appellees do not here seek any monetary relief for which the Commonwealth might indemnify Defendants-Appellants. *See* 34 F.4th at 56. And for the reasons discussed in Section I.A, the Commonwealth does not have any existing property interest in hypothetical fines that might be imposed pursuant to an unconstitutional statute. Accordingly, this Court should not construe the Confirmation Order to preclude jurisdiction over this pre-enforcement First Amendment challenge to Article 5.14(a).

II. Article 5.14(a) violates the First Amendment.

The district court correctly held that Article 5.14(a) violates the First Amendment, and Defendants-Appellants' arguments to the contrary are unpersuasive. First, the Supreme Court established in *Alvarez* that the First Amendment does not broadly authorize the government to prosecute lies. Second, restrictions on false statements are inherently content based because they distinguish between true and false messages, and Article 5.14(a)'s two clauses impose further content-based restrictions. Finally, a comparison between Article 5.14(a) and analogous false-alarm provisions shows that Article 5.14(a) is much broader than necessary to protect public safety.

A. There is no categorical First Amendment exception for knowingly or recklessly false speech.

Defendants-Appellants argue that Article 5.14(a) is not subject to heightened First Amendment scrutiny, because "knowingly or recklessly false speech [is] not protected by the First Amendment." Opening Br. 24. The district court rejected that argument. Add. 74 ("Lies are considered speech not categorically excluded from First Amendment protection." (citing *Alvarez*, 567 U.S. at 719)). Defendants-Appellants here fault the district court for not addressing the Supreme Court's decision in *Garrison v. Louisiana*, 379 U.S. 64, 67 (1964), and this Court's decision in *Frese v. Formella*, 53 F.4th 1, 6 (1st Cir. 2022). Opening Br. 25.

Garrison and *Frese* both addressed challenges to criminal defamation laws. Defamation—false speech injurious to another person's reputation—is one of several longstanding exceptions to the First Amendment. *See United States v. Stevens*, 559 U.S. 460, 468–69 (2010). In order to provide breathing room for public debate, the First Amendment limits liability in defamation cases involving false speech about public officials or public figures to circumstances where the defendant knew the speech was false or recklessly disregarded its veracity, otherwise known as the actual malice requirement. *Garrison*, 374 U.S. at 74–75 (citing *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 271–72 (1964)). *Garrison* and *Frese* held that laws criminalizing defamation of public officials do not violate the First Amendment, so long as they require the government to prove actual malice. *See Frese*, 53 F.4th at 6 (citing *Garrison*, 379 U.S. at 67).

Defendants-Appellants assert that *Garrison* and *Frese* stand for the much broader proposition that the First Amendment does not protect any knowingly or recklessly false speech. But the Supreme Court disposed of this argument in *Alvarez*, reasoning that the actual malice requirement "exists to allow more speech, not less" by "limit[ing] liability *even in defamation cases* where the law permits recovery for tortious wrongs." *Alvarez*, 567 U.S. at 719–720 (plurality opinion) (emphasis added). As the Court explained, applying *Garrison* to categorically deny First Amendment protection to all knowingly or recklessly false speech "inverts the

rationale" for the actual malice requirement and "expands liability in a different, far greater realm of discourse and expression." *Id.* at 719.

Alvarez accordingly "reject[ed] the notion that false speech should be in a general category that is presumptively unprotected." *Id.* at 722 (plurality opinion); *see also id.* at 731–32 (Breyer, J., concurring in the judgment) (asserting that intermediate scrutiny ought to apply to laws regulating false statement not otherwise subject to a First Amendment exception); *281 Care Comm. v. Arneson*, 766 F.3d 774, 783 (8th Cir. 2014) ("Despite the disagreement over the level of scrutiny to apply, however, all six Justices in [the] *Alvarez* [majority] agreed that false statements do *not* represent a category of speech altogether exempt from First Amendment protection.").

Defendants-Appellants try to distinguish *Alvarez* on several grounds—arguing that, unlike Article 5.14(a), the Stolen Valor Act was content based, that it "punished false statements generally," and that it "was far-reaching in its scope." Opening Br. 26–27. These purported distinctions collapse under review, as discussed *infra*, but they go to the appropriate level of First Amendment scrutiny and the narrow tailoring analysis. The key point, for the purpose of deciding whether Article 5.14(a) implicates the First Amendment *at all*, is that *Alvarez* decisively rejected a broad First Amendment exception for knowingly or recklessly false nondefamatory

statements. *See Alvarez*, 567 U.S. at 722–23 (plurality opinion); *accord, e.g.*, *Susan B. Anthony List v. Driehaus*, 814 F.3d 466, 472 (6th Cir. 2016).

Unlike the laws at issue in *Garrison* and *Frese*, Article 5.14(a) is not limited to defamation. And although false statements may be subject to other First Amendment exceptions, such as the exceptions for fraud and speech integral to criminal conduct, *see Alvarez*, 567 U.S. at 721 (plurality opinion) (citing *United States v. Leptowich*, 318 U.S. 702, 704 (1943)), Defendants-Appellants do not contend that Article 5.14(a) fits within any of the established exceptions. Nor can they create a new exception for "lies during declared emergencies" out of whole cloth. "[T]he First Amendment stands against any 'freewheeling authority to declare new categories of speech outside the scope of the First Amendment.'" *Id.* at 722 (plurality opinion) (quoting *Stevens*, 559 U.S. at 473). Because Article 5.14(a) is not addressed to any recognized First Amendment exception, the statute triggers heightened First Amendment scrutiny.

B. Article 5.14(a)'s restrictions on false speech are content discriminatory.

Defendants-Appellants try to distinguish *Alvarez* by arguing that, unlike the Stolen Valor Act, Article 5.14(a) is content neutral. Opening Br. 26, 28–29. Not so. "Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed…. This commonsense meaning of the phrase 'content based' requires a court to consider

whether a regulation of speech 'on its face' draws distinctions based on the message a speaker conveys." *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015) (citations omitted).

Applying *Reed*, the district court correctly held that Article 5.14(a) is content based because it draws distinctions based on whether the speaker conveys a true or false message. Add. 80 (citing Professors Alan K. Chen & Justin Marceau, *High Value Lies, Ugly Truths, and the First Amendment*, 68 Vand. L. Rev. 1435, 1483 (2015)). Likewise, in *Alvarez*, the "government did not dispute" that the Stolen Valor Act was content discriminatory "[b]ecause [it] criminalized specific statements based on their falsity." *United States v. Swisher*, 811 F.3d 299, 307 (9th Cir. 2016) (en banc). The government instead asserted that content discrimination against false speech is permissible because such speech is unprotected. As already discussed, the Court rejected that argument.

Article 5.14(a)'s two clauses are also content based in other ways. The first clause is facially content discriminatory because it criminalizes speech "in relation to the imminent occurrence of a catastrophe in Puerto Rico." Suppl. Add. 4. This is a straightforward subject-matter restriction on false speech about impending disasters. It is no less content discriminatory than the Stolen Valor Act's restriction on false speech about military decorations or a law restricting false statements about candidates in an election. *See Susan B. Anthony List*, 814 F.3d at 473 (holding that

Ohio's political false-statements laws were "content-based restrictions focused on a specific subject matter" because they "only govern[ed] speech about political candidates during an election").

Article 5.14(a)'s second clause is content discriminatory because it punishes speech on the basis of audience reactions. Law 20's Statement of Purpose declares that Article 5.14(a) was enacted to prevent false information from causing "confusion, panic or collective public hysteria ... while a state of emergency, disaster, or curfew is in force." Suppl. Add. 3. In line with this objective, the second clause prohibits the transmission of any knowingly false "notice" during a declared state of emergency that "result[s]" in an "imminent risk" of broadly defined harm to persons or property. Suppl. Add. 4. Whatever the strength of the government's interest, "[l]isteners' reaction to speech is not a content-neutral basis for regulation." *Forsyth Cnty. v. Nationalist Movement*, 505 U.S. 123, 134 (1992). A law or policy that gives enforcement officials "broad discretion to determine, based on listener reaction, that a particular expressive activity is creating a public danger" effectuates a content-based heckler's veto. *Bible Believers v. Wayne Cnty.*, 805 F.3d 228, 247 (6th Cir. 2015) (citing *Ctr. for Bio-Ethical Reform, Inc. v. L.A. Cnty. Sheriff Dep't,* 533 F.3d 780, 787 (9th Cir. 2008)).

C. Article 5.14(a) violates the First Amendment under any standard of scrutiny because it is not narrowly tailored to the government's public safety interests.

i. Applying *Alvarez*

Content-based restrictions on protected speech typically receive strict scrutiny. *Reed*, 576 U.S. at 166. But as the district court recognized, the First Amendment's application to laws restricting false statements is less clear, due to the fractured nature of the Court's decision in *Alvarez*. Add. 74. After disposing of the government's argument that lies are categorically unprotected, Justice Kennedy's plurality opinion "surveyed examples of regulations on false speech that courts have found permissible, such as criminal prohibitions of false statements made to a government officer; laws punishing perjury; prohibitions on the false representation that one is speaking as a government official or on behalf of the government; and fraud." *Id.* (citing *Alvarez*, 567 U.S. at 720, 723).

Justice Kennedy observed that these examples all concern laws targeting falsity along with "some other legally cognizable harm associated with a false statement, such as invasion of privacy or the costs of vexatious litigation," or "lie[s] ... made for the purpose of material gain." *Alvarez*, 567 U.S. at 719, 723. He acknowledged that, in such cases, "falsity of speech bears upon whether it is protected," pointing to the well-established First Amendment exceptions for fraud and speech integral to criminal conduct as examples. *Id.* at 721. Because no First

Amendment exception applied to lies about military honors, the plurality concluded, the Stolen Valor Act triggered (and ultimately failed) strict scrutiny. *See id.* at 724.

Justice Breyer's opinion concurring in part and concurring in the judgment, joined by Justice Kagan, declined to endorse the plurality's "strict categorical analysis." *Id.* at 731. Instead, he would have applied a sliding scale of scrutiny to laws restricting false speech: On the one hand, he agreed with Justice Alito's dissent that laws restricting lies merit strict scrutiny where they present a serious danger of suppressing true speech or valuable ideas, including with respect to "philosophy, religion, history, the social sciences, the arts, and the like." *Id.* at 731–32 (citing *id.* at 751 (Alito, J., dissenting)). On the other, he would have applied intermediate scrutiny to "regulations concern[ing] false statements about easily verifiable facts that do not concern such subject matter." *Id.* at 732.

Justice Breyer observed that a number of laws restricting such low value lies survive intermediate scrutiny because "they limit the scope of their application, sometimes by requiring proof of specific harm to identifiable victims; sometimes by specifying that the lies be made in contexts in which a tangible harm to others is especially likely to occur; and sometimes by limiting the prohibited lies to those that are particularly likely to produce harm." *Id.* at 734. On the other hand, the Stolen Valor Act "risk[ed] significant First Amendment harm" because it "applie[d] in family, social, or other private contexts, where lies will often cause little harm," as

well as "political contexts, where although such lies are more likely to cause harm, the risk of censorious selectivity by prosecutors is also high." *Id.* at 736. Justice Breyer concluded that the harm to First Amendment interests could not be justified because "a more narrowly tailored statute combined with … information-disseminating devices" could vindicate the government's interests. *Id.* at 738.

"When a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds." *Marks v. United States*, 430 U.S. 188, 193 (1977) (citation and internal quotation marks omitted); *accord, e.g.*, *United States v. Manubolu*, 13 F.4th 57, 67 (1st Cir. 2021). But as the district court recognized, the *Marks* analysis is problematic here because the differing methodologies of the majority and concurring opinions—the strict categorical analysis of the plurality opinion versus the more flexible analysis of the concurrence—do not clearly demarcate the narrowest grounds for judgment. Add. 79; *accord Animal Legal Def. Fund v. Kelly*, 9 F.4th 1219, 1232 (10th Cir. 2021).

"In these circumstances the Court has historically deferred to interpretation by the lower courts." *Animal Legal Def. Fund v. Herbert*, 263 F. Supp. 3d 1193, 1210 (D. Utah 2017) (citing Justin Marceau, *Plurality Decisions: Upward-Flowing Precedent and Acoustic Separation*, 45 Conn. L. Rev. 933, 941–42, 974–988

(2013)). "And in the wake of *Alvarez*, lower courts have generally applied strict scrutiny to laws implicating lies," particularly when the laws regulate lies about matters of public concern. *Id.* (citing Chen & Marceau, 68 Vand. L. Rev. at 1482 (collecting cases)); *see also, e.g.*, *Susan B. Anthony List*, 814 F.3d at 473 (applying strict scrutiny to a restriction on false political speech); *281 Care Committee*, 766 F.3d at 783–84 (same).

This Court need not reach that issue, however, because principles common to the three opinions in *Alvarez* are sufficient to resolve this case under any framework. *See Kelly*, 9 F.4th at 1232. First, the plurality and concurrence "agree that restrictions on false statements of fact can be subject to First Amendment scrutiny requiring the government to provide a justification." *Id.* (citing *Alvarez*, 567 U.S. at 729 (plurality opinion); *id.* at 732–34 (Breyer, J., concurring in the judgment)). Second, both the plurality and the concurrence "also agree restrictions on false factual statements that cause legally cognizable harm tend not to offend the Constitution," provided that the harm is "imminently caused by the speech." *Id.* at 1232, 1234 (citing *Alvarez*, 567 U.S. at 719–721 (plurality opinion); *id.* at 734–36, (Breyer, J., concurring in the judgment)). Finally, both the two-Justice concurrence and the three-Justice dissent agreed that restrictions on lies about various "matters of public concern" present "a grave and unacceptable danger of suppressing truthful speech," and also "open[] the

door for the state to use its power for political ends." *Alvarez*, 567 U.S. at 751–52 (Alito, J., dissenting); *see id.* at 731–32 (Breyer, J., concurring in the judgment).[4]

Applying these principles here, it is apparent that genuine false alarms have the potential to cause imminent harm to life, health, and property. It is equally apparent that laws restricting speech on matters of public concern, including speech related to public emergencies, pose acute risks to the freedoms of speech and press. It follows that at least some false alarm statutes should pass First Amendment muster, but that such statutes must be carefully drawn to limit their intrusion on First Amendment interests, particularly our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." *Sullivan*, 376 U.S. at 270.

ii. Other false alarm statutes

To determine whether Article 5.14(a)'s criminal prohibitions on false speech unduly infringe First Amendment rights, the district court compared the statute's two operative clauses to analogous false-alarm restrictions, including Model Penal Code § 250.3, the Federal Communications Commission's broadcast hoaxes rule, 47 C.F.R. § 73.1217, and the federal false information and hoaxes statute, 18 U.S.C. §

[4] While the plurality opinion is silent on the last point, "it seems likely that the four justices in the plurality, who generally took a more speech-protective view than the concurrence or the dissent, would have agreed." Eugene Volokh, *When Are Lies Constitutionally Protected?*, 4 J. Free Speech L. 685, 690 (2024).

1038 (a)(1). Add. 85–89. After concluding that Article 5.14(a) sweeps much more broadly than analogous provisions, the district court held that the statute violates the First Amendment because Defendants-Appellants "did not show why a narrower statute would be insufficient to protect [the Commonwealth's] interests." Add. 89. The comparator provisions reviewed by the district court are set forth below.

The Model Penal Code's false alarm offense states: "A person is guilty of a misdemeanor if he initiates or circulates a report or warning of an impending bombing or other crime or catastrophe, knowing that the report or warning is false or baseless and that it is likely to cause evacuation of a building, place of assembly, or facility of public transport, or to cause public inconvenience or alarm." Model Penal Code § 250.3. (Am. Law Inst. 1980).

The FCC's broadcast hoaxes rule states in relevant part:

> No licensee or permittee of any broadcast station shall broadcast false information concerning a crime or a catastrophe if: (a) The licensee knows this information is false; (b) It is foreseeable that broadcast of the information will cause substantial public harm, and (c) Broadcast of the information does in fact directly cause substantial public harm.
> . . .
> For purposes of this rule, "public harm" must begin immediately, and cause direct and actual damage to property or to the health or safety of the general public, or diversion of law enforcement or other public health and safety authorities from their duties. The public harm will be deemed foreseeable if the licensee could expect with a significant degree of certainty that public harm would occur…. A "catastrophe" is a disaster or imminent disaster involving [a] violent or sudden event affecting the public.

47 C.F.R. § 73.1217. The FCC has stated that the strict limitations on the scope of the broadcast hoaxes rule are essential to address the "substantial First Amendment concerns involved with the federal government policing the content of broadcast news." *Jessica J. Gonzalez*, 35 F.C.C. Rcd. 3032, 3033 (2020) (citing *Alvarez*, 567 U.S. at 716 (plurality opinion)).

The federal false information and hoaxes statute prohibits engaging "in any conduct with intent to convey false or misleading information under circumstances where such information may reasonably be believed and where such information indicates that an activity has taken, is taking, or will take place that would constitute a violation of" certain enumerated federal statutes prohibiting *inter alia* destruction of aircraft and motor vehicles, improper use of biological or chemical weapons, improper use of explosives, improper use of firearms, destruction of shipping vessels, acts of terrorism, sabotage of nuclear facilities, and aircraft piracy. 18 U.S.C. § 1038(a)(1).

iii. Article 5.14(a)'s first clause

Article 5.14(a)'s first clause makes it a crime, during a declared emergency, to "[g]ive[] a warning or false alarm, knowing that the information is false, in relation to the imminent occurrence of a catastrophe in Puerto Rico." Suppl. Add. 4. This bare content-based prohibition does not include "limitations of context, requirements of proof of injury, and the like," which would "narrow the statute to a

subset of lies where specific harm is more likely to occur." *Alvarez*, 567 U.S. at 736 (Breyer, J., concurring in the judgment). Unlike Model Penal Code § 250.3 and the FCC's broadcast hoaxes rule, it does not require that the defendant disregarded a risk that their speech would cause harm, such as evacuation, or that the risk of harm be foreseeable. *See* Model Penal Code § 250.3 cmt. 2 ("This [*mens rea*] requirement excludes from liability the practical joker or other person who circulates a false alarm in circumstances where he is unaware of the potential for serious consequences."). And unlike the broadcast hoaxes rule, it does not require that any harm occur.[5]

The first clause is also broader than the federal false information and hoaxes statute, 18 U.S.C. § 1038 (a)(1), in at least two significant respects. First, the federal statute applies only to knowingly false reports of specified violations of federal law. Such reports typically involve verifiable facts within the speaker's personal knowledge, making counterspeech ineffective (at least without a costly law enforcement investigation) and reducing the chilling effect on true speech. *See Alvarez*, 567 U.S. at 736 (Breyer, J., concurring in the judgment) (prohibiting false speech "about readily verifiable facts within the personal knowledge of the speaker … reduc[es] the risk that valuable speech is chilled").

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[5] Defendants-Appellants contend that Article 5.14(a) is narrower than the Stolen Valor Act because the former punishes only knowingly false statements, while the latter punished "false statements generally." Opening Br. 26–27. But the Justices in *Alvarez* read the Stolen Valor Act to punish only lies. *See Alvarez*, 567 U.S. at 732 (Breyer, J., concurring in the judgment).

By contrast, Article 5.14(a)'s first clause applies to false warnings about "imminent occurrence of a catastrophe"—such as the "imminent arrival of a hurricane," Opening Br. 29, or a new highly infectious disease—where people may make drastically different predictions about the nature and scope of the threat based on publicly available evidence. "In this area more accurate information will normally counteract the lie," making counterspeech an effective alternative. *Alvarez*, 567 U.S. at 738 (Breyer, J., concurring in the judgment). On the other hand, the risk of criminal prosecution for false warnings about public catastrophes is likely to chill public debate, particularly with regard to hot-button issues like the COVID-19 pandemic, where "the 'falsity' deemed by one person actionable" under Article 5.14(a) "will be a statement of conjecture about the future state of affairs." *281 Care Comm.*, 766 F.3d at 795.

Second, unlike the federal hoaxes statute, Article 5.14(a)'s first clause does not require that the warning be made under circumstances where it is likely to be believed. Defendants-Appellants themselves acknowledge that is applies to "even incredible assertions," Opening Br. 29, such as "the sighting of unidentified flying objects," *id.* at 3. These statements are not likely to implicate the Commonwealth's public safety interests in most contexts. *See also Susan B. Anthony List*, 814 F.3d at 475 (holding that Ohio's false statement law was not narrowly tailored to the government's interest in preserving fair elections, because it penalized knowingly

false statements about political candidates even if there was no plausible risk that they would influence the election).

The district court accordingly concluded that the first clause resembles the Stolen Valor Act insofar as it "applies to speech made at any time during the period covered by an executive order, in any place, not just in public, including in whispered conversations within a home," giving it a "broad sweep … at odds with the First Amendment." Add. 86; *see also Alvarez*, 567 U.S. at 722 (plurality opinion); *id.* at 736 (Breyer, J., concurring in the judgment). Defendants-Appellants dispute that the first clause applies to private conversations, arguing that "for a statement to constitute a warning or an alarm … it could not be made in whispered conversations in a home." Opening Br. 27. But "warnings" are by no means limited to public audiences. *See* "warning," Black's Law Dictionary (12th ed. 2024) ("The pointing out of a danger, esp. to one who would not otherwise be aware of it."). And Defendants-Appellants do not contest that the statute could apply to bar stool discussions, offhand social media comments, or fanciful predictions of harm far removed from the government's public safety concerns. *See Alvarez*, 567 U.S. at 737 (Breyer, J., concurring in the judgment).

iv. Article 5.14(a)'s second clause

Article 5.14(a)'s second clause punishes anyone who "disseminates, publishes, transmits, transfers or circulates through any means of communication,

including the media, social networks, or any other means of dissemination, publication or distribution of information, a notice or a false alarm, knowing that the information is false, when as a result of its conduct it puts the life, health, bodily integrity or safety of one or more persons at imminent risk, or endangers public or private property." Suppl. Add. 4.

As the district court recognized, the second clause is hopelessly "open-ended" because it "is silent as to the content of the alarm or notice. In other words, it leaves people wondering, a notice or false alarm of what?" Add. 89. Defendants-Appellants respond that the statute potentially criminalizes speech on *any* topic during a declared emergency—including "statements regarding the imminent arrival of a hurricane," "government actions," "individual actions," "availability of provisions," "class schedules in schools and universities," and "even incredible assertions"—so long as "it results in a risk to public safety." Opening Br. 3, 29. This far-reaching restriction is *much* broader than Model Penal Code § 250.3 and the FCC's broadcast hoaxes rule, which apply only to speech about existing or impending crimes or catastrophes, and the federal false information and hoaxes statute, which applies only to speech about specified violations of federal law.

Because the second clause applies to lies about any topic, the element limiting liability to speech with harmful effects is the only meaningful constraint on prosecutorial discretion. But the harms proscribed by Article 5.14(a)'s second clause

are more expansive and vaguely defined than those in analogous provisions. Model Penal Code § 250.3 focuses on evacuations of building or vehicles, and similar types of "public inconvenience or alarm," in response to a false alarm of an "impending" catastrophe. *See* Model Penal Code § 250.3 cmt. 2 at 356 ("The last two words in the section—'or alarm'—were added after the tentative draft in order to make clear that the offense includes false alarms in situations where evacuation is not possible," such as "an aircraft passenger who circulates a false bomb scare in mid-Atlantic flight."). The FCC's broadcast hoaxes rule requires that the speech "immediately" cause "direct and actual damage to property or to the health or safety of the general public, or diversion of law enforcement or other public health and safety authorities from their duties." 47 C.F.R. § 73.1217.

In comparison, Article 5.14(a)'s second clause merely requires that the speech "result" in an "imminent risk" to "life, health, bodily integrity, or safety of one or more persons, or endangers public or private property." The statute neither specifies what forms this risk might take nor requires that it actually and immediately occur, giving enforcement officials nearly unlimited discretion to decide whether this critical condition has been met. The second clause also does not require the government to show that these risks materialized immediately in response to the

offending speech, further expanding law enforcement officials' discretion to selectively or arbitrarily prosecute alleged lies about any issue.[6]

The statute's open-ended scope is exacerbated by the absence of other elements that would otherwise serve to limit prosecutorial discretion. Again, unlike Model Penal Code § 250.3 and the FCC's broadcast hoaxes rule, the second clause does not require the government to show that the defendant recklessly disregarded a risk to public safety, or that the risk to public safety was an objectively foreseeable consequence of their speech. Without these safeguards, comments on social media or elsewhere about the origins of COVID-19, the efficacy of vaccines, or the results of the 2020 election could expose the speaker to liability based on the unanticipated and even unforeseeable reactions of total strangers. A person who posts on Facebook or WhatsApp about a rumored government curfew order may not foresee that it could cause a panic, but that would not protect them from prosecution under Article 5.14(a) if the government decides they were fabricating and that the post resulted in an "imminent risk" of harm.

And the second clause does not just impose liability on the speaker, but punishes anyone who "publishes," "disseminates," or otherwise conveys false

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[6] The district court observed that the statute applies to any speech that results in a risk of imminent harm—for instance, a social media post encouraging people to swim in dangerous waters—even if the risk materializes substantially after the speech was published. Add. 89 & n.26. Defendants-Appellants do not dispute the court's understanding of the statute.

speech "though any means of communication, including the media." Supp. Add. 4. Such expansive liability is inherently suspect under heightened scrutiny. *See Susan B. Anthony List*, 814 F.3d at 475 (holding that Ohio's law restricting false statements in elections was not narrowly tailored in part because it applied to commercial intermediaries). While the FCC's broadcast hoaxes rule also applies to intermediaries, its scope is significantly narrower that Article 5.14(a)—it applies only to speech concerning a crime or catastrophe that immediately causes substantial actual harm, and only where the "licensee could expect with a significant degree of certainty that public harm would occur." 47 C.F.R. § 73.1217. Without these protections, news organizations could be held liable for conveying the speech of third parties, including elected officials, without a factual disclaimer. *See Jessica J. Gonzalez*, 35 F.C.C. Rcd. at 3034–35 (rejecting a petition to apply the broadcast hoaxes rule to broadcasters who disseminated President Trump's remarks "express[ing] optimism that a combination of hydroxychloroquine and azithromycin, taken together, could be effective in treating patients with COVID-19," because "it was not reasonably foreseeable that a broadcaster's decision to air this statement would result in viewers or listeners ingesting cleaning products").

In sum, unlike the analogous false-alarm statutes analyzed by the district court, Article 5.14(a)'s second clause is not limited to false statements "that are particularly likely to produce harm," does not require "proof of specific harm to

identifiable victims," and is not limited to "contexts in which a tangible harm to others is especially likely to occur." *Alvarez*, 567 U.S. at 734 (Breyer, J., concurring in the judgment); *see also id.* at 735 ("Statutes prohibiting false claims of terrorist attacks, or other lies about the commission of crimes or catastrophes, require proof that substantial public harm be directly foreseeable, or, if not, involve false statements that are very likely to bring about that harm." (citing 47 C.F.R. § 73.1217; 18 U.S.C. § 1038 (a)(1))).

Article 5.14(a)'s second clause thus "ranges very broadly. And that breadth means that it creates a significant risk of First Amendment harm," *id.* at 736 (Breyer, J., concurring in the judgment). The threatened First Amendment harms are even more acute here than they were in *Alvarez*. Whereas the Stolen Valor Act "applie[d] to only a narrow category of false representations about objective facts that can almost always be proved or disproved with near certainty," *id.* at 740 (Alito, J., dissenting), Article 5.14(a) applies to "rapidly evolving scenarios where there may be conflicting information about what constitutes the objective facts of a situation," Add. 94 n.30. And unlike the Stolen Valor Act, Article 5.14(a) encompasses a great deal of speech on matters of public concern and intense political debate, including the nature and effectiveness of the government's response to a catastrophe, where "[a]llowing the state to proscribe false statements … opens the

door for the state to use its power for political ends." *Alvarez*, 567 U.S. at 752 (Alito, J., dissenting).

Given the intense public disputes over various aspects of the COVID-19 pandemic, it is not hard to imagine how prosecutors could abuse Article 5.14(a) to prosecute disfavored viewpoints or speakers, particularly those critical of the government and its officials, under the mantle of combating disinformation. Even when the government's concerns are genuine, the prosecutorial powers conferred by Article 5.14(a) pose a significant threat to public discourse.

v. The evidentiary record

Because Article 5.14(a) restricts protected expression, it is incumbent on Defendants-Appellants to justify the statute's extraordinarily broad sweep. *See Alvarez*, 567 U.S. at 729 (plurality opinion) ("[T]here has been no clear showing of the necessity of the statute, the necessity required by exacting scrutiny."); *id.* at 739 (Breyer, J., concurring in the judgment) ("The Government has provided no convincing explanation as to why a more finely tailored statute would not work.") But Defendants-Appellants "did not present evidence of a direct causal link connecting Article 5.14(a)'s prohibitions to the harm the Article attempts to assuage." Add. 82. Defendants-Appellants have not identified any record evidence that the district court ignored, let alone evidence that could plausibly justify Article 5.14(a)'s significant threat to First Amendment freedoms.

Defendants-Appellants instead emphasize that Article 5.14(a)'s restrictions apply only during declared emergencies, when "vulnerability and uncertainty heighten." Opening Br. 30. As Puerto Rican journalists who report on emergency conditions, Plaintiffs-Appellees are all too familiar with the devastation caused by catastrophes like Hurricane Maria. But there have been numerous emergency declarations in the past decade. States of emergency were declared in 2017 due to Hurricane Maria, in January 2020 due to an earthquake, in March 2020 due to the COVID-19 pandemic, and in May 2024 due to torrential rains. Add. 57; Mot. to Supplement, Exhibit B. The COVID-19 state of emergency lasted for more than three years, ending in May 2023. *See* Mot. to Supplement, Exhibit C. While Plaintiffs-Appellees do not discount the hardships suffered as a result of these catastrophes, the First Amendment cannot be suspended whenever the Governor declares an emergency.

Defendants-Appellants assert that there is an "evident link" between the heightened vulnerability of the populace during a declared emergency and Article 5.14(a)'s exceptionally broad restrictions on speech; however, that connection "is devoid of evidentiary support. And conjecture does not suffice to fill this gap." Add. 83. *See also, e.g.*, *281 Care Comm.*, 766 F.3d at 790 ("In *Alvarez*, the Court took the government to task for relying upon 'common sense' to establish that its stated interest was at risk." (citing *Alvarez*, 567 U.S. at 725–26 (plurality opinion))).

Moreover, if emergency speech restrictions like those contained Article 5.14(a) were truly needed to protect safety during declared emergencies, then one would expect a "widespread and time-tested consensus" of similar measures in jurisdictions throughout the United States. *Burson v. Freeman*, 504 U.S. 191, 206 (1992). Defendants-Appellants have not identified any such consensus.

To the contrary, authorities like the FCC have "conclude[d] that the antidote to [misinformation during emergencies] is—ironically enough—a free press." *Jessica J. Gonzalez*, 35 F.C.C. Rcd. at 3036. The district court likewise affirmed that "the watchdog function of speech is never more vital than during a large-scale crisis," and that "[c]ourts must be vigilant to ensure the First Amendment is not weakened during periods of declared emergencies." Add. 94. Far from a weakness, the free flow of information during a crisis is the bulwark of an open and democratic society. Because Article 5.14(a) threatens to chill core speech on matters of public concern, and because Defendants-Appellants have "provided no convincing explanation as to why a more finely tailored statute would not work," *Alvarez*, 567 U.S. at 739 (Breyer, J., concurring in the judgment), the statute fails any degree of First Amendment scrutiny.

CONCLUSION

For the foregoing reasons, this Court should affirm the district court's order permanently enjoining Defendants-Appellants from enforcing Article 5.14(a).

Dated: August 8, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on August 8, 2025, I electronically filed the foregoing brief and attached supplemental addendum with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

Dated: August 8 , 2025

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SUPPLEMENTAL ADDENDUM

SUPPLEMENTAL ADDENDUM TABLE OF CONTENTS

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

SANDRA RODRÍGUEZ-COTTO; RAFELLI GONZÁLEZ-COTTO,

Plaintiffs,

v.

WANDA VÁZQUEZ-GARCED, Governor of Puerto Rico; INÉS DEL C. CARRAU MARTÍNEZ, Interim Secretary of Department of Justice of Puerto Rico; PEDRO JANER, Secretary of Puerto Rico Department of Public Safety; HENRY ESCALERA, Puerto Rico Police Commissioner, all in their official capacities,

Defendants.

CIVIL NO. 20-cv-01235 (PAD)

Preliminary and Permanent Injunction

MOTION SUBMITTING ENGLISH TRANSLATION OF LAW NO. 66, JULY 13, 2020

TO: THE HONORABLE COURT

COME NOW the Plaintiffs represented by the American Civil Liberties Union, and the undersigned attorneys, and respectfully allege and pray:

1. On this date Plaintiffs are submitting the English translation of Law No. 66 of July 13, 2020.

WHEREFORE, undersigned counsel respectfully requests that the Court take notes of the above-mentioned information.

Respectfully submitted, in San Juan, Puerto Rico, 28th day of July 2020.

I HEREBY CERTIFY that the foregoing motion has been served on all defendants through the CM/ECF filing system which will notify copy of this motion.

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(S.B. 1582)

LAW NO. 66
JULY 13, 2020

To amend subparagraphs (a) (b) (c) (d) and (e) and to delete subparagraph (f) of Article 6.14 of Law 20-2017, as amended, known as the "Puerto Rico Department of Public Safety Act", in order to clarify the scope and parameters of crime and the penalties established for breaching, disregarding, or disobeying an Executive Oder by the Governor of Puerto Rico, having decreed a state of emergency or disaster or implemented a curfew..

STATEMENT OF PURPOSE

Law 20-2017, known as the "Puerto Rico Department of Public Safety Act"[1], was enacted to ensure public safety for everyone in Puerto Rico, protecting the enjoyment of the free exercise of rights. It is imperative that Puerto Ricans have confidence that, in the event of an emergency, the Government and state is available and ready to provide immediate and adequate assistance to save their lives, health, family and property. It is also necessary for the First Executive, the Secretary of Public Security, and all emergency response personnel to have the necessary tools to provide assistance and protection to citizens. In order for this enforcement to be effective, it is equally important that the people are warned of both the powers of public security agencies and the prohibited conduct, once an emergency or disaster is duly declared by Executive Order.

For this purpose, on 5, April 2020, Law 35-2020, was enacted to amend Article 6.14 of Law 20-2017. The amendment added subparagraphs (e) and (f) in order to address two concerns. The first is that, despite the measures enacted to preserve the health, life and safety of all Puerto Ricans, through the Executive Orders issued to contain the exponential spread of COVID-19, some citizens did not abide by the guidelines, endangering their lives and that of other citizens negligently and irresponsibly. The second is the need to prohibit people from using social media or mass media to disseminate false information, with the intention of creating confusion, panic or collective public hysteria in our country while a state of emergency, disaster, or curfew is in force. Such conduct undermines the safety of the people and social order, and endangers the health and lives of citizens.

Similarly, and committed to the spirit of Law 20-2017, we consider it necessary to re-evaluate Article 6.14 in a comprehensive manner to amend it in order to clarify its scope and application, as well as to harmonize its provisions.

[1] "Puerto Rico Department of Public Safety Act", Law No. 20 of April 10, 2017, as amended.

BE IT DECREED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.–Amends subparagraphs (a), (b), (c), (d) and (e), and deletes section (f) of Article 6.14 of Law 20-2017, as amended, known as the "Law of the Department of Public Safety of Puerto Rico", to read as follows:

"Article 6.14.-Violations and Penalties

Any person, natural or legal, who shall perform any of the following acts on purpose, knowingly or recklessly after the Governor of Puerto Rico has decreed by Executive Order an emergency or disaster, shall be punished with a penalty of imprisonment not exceeding six (6) months or a fine not exceeding five thousand dollars ($5,000) or both sentences at the discretion of the court:

(a) Gives a warning or false alarm, knowing that the information is false, in relation to the imminent occurrence of a catastrophe in Puerto Rico, or disseminates, publishes, transmits, transfers or circulates through any means of communication, including the media, social networks, or any other means of dissemination, publication or distribution of information, a notice or a false alarm, knowing that the information is false, when as a result of its conduct it puts the life, health, bodily integrity or safety of one or more persons at imminent risk, or endangers public or private property.

In the event that the notice or false alarm results in damage to the public purse, to third parties, or public or private property exceeding ten thousand dollars ($10,000), or where the conduct results in injury or physical harm of another, that person shall have committed a felony with a penalty of imprisonment for a fixed term of three (3)years.

(b) Does not follow the evacuation orders of the civilian population issued by the Department or its Bureau, as part of the execution of its plan in cases of emergency or disaster.

(c) Obstructs preventive measures ordered by the Governor or evacuation, search, reconstruction or damage assessment and investigation by federal, state, or municipal agencies.

(d) Persists in carrying out any activity that endangers his/her life or that of others, after being alerted or prevented by the authorities.

(e) Violates, ignores, or disobeys a curfew while a state of emergency or disaster is in effect.

For purposes of this Article, a curfew is defined as an order decreed by Executive Order of the Governor of Puerto Rico, addressed to residents or people in Puerto Rico to remain in their homes. The Executive Order shall explicitly establish the schedule during which the people must remain in the home, any additional restrictions of general application, exceptions to the curfew, and the term of effect of the order. "

Section 2.-Separability

If any clause, paragraph, subparagraph, sentence, word, letter, article, layout, section, subsection, title, article; in their collective "a part"; of this Law be annulled or declared unconstitutional, the decision, opinion or judgment given to that effect shall not affect, prejudice or invalidate the rest of this Law. The effect of that judgment shall be limited only to the part which has thus been annulled or declared unconstitutional. If the application to a person or to a circumstance of any part of this Law is invalidated or declared unconstitutional, the decision, opinion or judgment rendered to that effect shall not affect or invalidate the application of the rest of this Law to those persons or circumstances in which it may be validly applied.

Section 3. -This Law will go into effect immediately after its approval.