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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

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SANDRA RODRIGUEZ-COTTO, ET AL,	)	
	)	
Plaintiffs,	)	Case No. 3:20-CV-01235-PAD
	)	
-vs-	)	
	)	
PEDRO PIERLUISI-URRUTIA, ET AL,	)	
	)	
Defendants.	)	
	)	

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TRANSCRIPT OF MOTION HEARING  
HELD BEFORE THE HONORABLE PEDRO A. DELGADO-HERNANDEZ  
UNITED STATES COURTHOUSE, HATO REY, PUERTO RICO  
WEDNESDAY, JUNE 14, 2023

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A P P E A R A N C E S

FOR THE PLAINTIFFS:

Brian Hauss, Esq.  
 Fermin Luis Arraiza-Navas, Esq.

FOR THE DEFENDANTS:

Joel Torres-Ortiz, Esq.  
 Juan C. Ramirez-Ortiz, Esq.

1 (Proceedings commenced at 1:46 p.m.)

2 -oOo-

3 THE COURT: Next case.

4 THE COURTROOM DEPUTY CLERK: Civil Case Number  
5 20-1235, Rodriguez-Cotto, et al, versus Pierluisi-Urrutia, et  
6 al, for motion hearing. On behalf of the plaintiffs are  
7 Attorneys Brian Hauss and Fermin Arraiza, and on behalf of the  
8 defendants are Attorneys Joel Torres and Juan Carlos Ramirez.

9 All counsel are present in the courtroom, Your Honor.

10 THE COURT: Thank you.

11 Would counsel identify themselves?

12 MR. HAUSS: Good afternoon, Your Honor. Brian Hauss  
13 for plaintiffs.

14 THE COURT: Good afternoon, sir.

15 MR. ARRAIZA-NAVAS: Good afternoon, Your Honor.  
16 Fermin Arraiza-Navas for plaintiffs.

17 THE COURT: Good afternoon, sir.

18 MR. TORRES-ORTIZ: Attorney Joel Torres-Ortiz, on  
19 behalf of the defendants, from the Puerto Rico Department of  
20 Justice.

21 THE COURT: Good afternoon, sir.

22 MR. RAMIREZ-ORTIZ: Good afternoon. Attorney Juan  
23 Carlos Ramirez for the Department of Justice. Your Honor, I  
24 would also like the Court to recognize that (name), which is a  
25 student at the University of Puerto Rico, is accompanying us.

1 THE COURT: All right. Good afternoon to you all.  
2 Okay. This is a motion hearing to deal with the  
3 motion for reconsideration that the defendants filed in  
4 response to the Court's Opinion and Order.

5 So take it from there.

6 MR. TORRES-ORTIZ: Thank you, Your Honor.

7 Your Honor, may I begin?

8 Thank you.

9 We appreciate the opportunity to elaborate on the  
10 reasons why we respectfully request that this Honorable Court  
11 reevaluate its Opinion and Order issued on March 31st of 2023.  
12 As discussed in our reconsideration motion --

13 THE COURT: Let me interrupt you. Could you speak  
14 closer to the microphone?

15 MR. TORRES-ORTIZ: Of course. Yes.

16 All right. As discussed in our reconsideration  
17 motion, defendants requested the Court to reconsider its ruling  
18 for three key reasons:

19 Firstly, the plaintiffs lack Article 3 standing, as their  
20 fear of prosecution is based on hypotheticals rather than  
21 concrete harm;

22 Secondly, the defendants argue evaluation of due process,  
23 as they were denied the opportunity to conduct discovery,  
24 hindering their ability to present a robust defense;

25 Thirdly, the Court failed to consider binding precedent

1 from the First Circuit, which allows criminal sanctions for  
2 false statements regarding public officials.

3 The defendants respectfully challenge the notion that  
4 the plaintiffs' intended speech falls under the proscription of  
5 Article 5.14(a). Defendants firmly believe that the  
6 plaintiffs' alleged injury is based on imaginary or speculative  
7 fears rather than concrete harm. To this day, more than three  
8 years after Article 5.14(a) was amended, no journalist has ever  
9 been prosecuted under said law, especially after enduring the  
10 COVID-19 emergency that lasted more than three years.

11 The Court can recall that this case began as a  
12 preliminary injunction because plaintiffs claim that, without  
13 immediate intervention of the Court, their First Amendment  
14 Rights will be violated. However, even under these  
15 circumstances, plaintiff never demonstrated a realistic and  
16 direct possibility of suffering an injury resulting from the  
17 statute's operation or enforcement to establish standing.

18 As a matter of fact, the challenged statute strictly  
19 applies to disseminating knowingly false information, not any  
20 type of information, as plaintiffs would like this Court to  
21 believe. The defendants have argued that the plaintiffs'  
22 intended speech does not, and will not, fall within the scope  
23 of the statute because they have asserted that they will not  
24 knowingly publish false information; thus, eliminating any  
25 credible threat of prosecution.

1           As a result, plaintiffs have held -- have failed to  
2 show a genuine risk of direct harm from the implementation of  
3 the statute. And without this showing, plaintiffs continue to  
4 lack standing.

5           The Court noted, in *Susan B. Anthony*, the Supreme  
6 Court reversed because plaintiffs do not have to confess that  
7 they will violate the law. But defendants do not pretend for  
8 plaintiffs to make such confessions.

9           Defendants have asserted that plaintiffs have not met  
10 the test for standing, recognizing *Susan B. Anthony*, as the  
11 statute does not prohibit reporting on emergency conditions,  
12 and plaintiffs have no intention of engaging in the prohibited  
13 conduct.

14           Plaintiffs cannot manufacture standing by inflicting  
15 harm on themselves based on hypothetical future harm that is  
16 not certainly impending. Plaintiffs do not proffer any  
17 evidence -- plaintiffs did not proffer any evidence that the  
18 government will act in bad faith that would make them believe  
19 that there is a credible threat.

20           If the plaintiffs' intended speech is not knowingly  
21 false, and they do not plan to engage in the prohibited  
22 conduct, there is and will never be a credible threat of  
23 prosecution. The defendants respectfully request the Court to  
24 reconsider its decision regarding plaintiffs' standing.

25           As to the second point, Your Honor, we believe there

1 is a due process violation. The Court's Opinion and Order  
2 stated that the government failed to provide evidence of a  
3 direct casual link between Article 5.14 provisions and the harm  
4 it seeks to address, and that it lacked evidence to support the  
5 assertion that a criminal prohibition against false warnings  
6 and alarms about an imminent catastrophe in Puerto Rico is  
7 necessary to serve its interest.

8 Unfortunately, the Commonwealth, denied the  
9 opportunity to present such evidence and establish a  
10 connection.

11 THE COURT: How so?

12 MR. TORRES-ORTIZ: Yes.

13 THE COURT: How so?

14 MR. TORRES-ORTIZ: Well, Your Honor, we never  
15 conducted discovery in this case.

16 THE COURT: Why not?

17 MR. TORRES-ORTIZ: We were never given the  
18 opportunity to conduct discovery. As motions reflected on  
19 Docket 78 and on Docket 88, we stated that we wanted to first  
20 address -- or requested the Court to first address standing.

21 THE COURT: No, no, no. We are dealing with  
22 discovery.

23 MR. TORRES-ORTIZ: Yes, Your Honor.

24 THE COURT: What is it that you wanted to discover?

25 MR. TORRES-ORTIZ: Well, Your Honor, we don't

1 renounce to any type of discovery --

2 THE COURT: That's not the question. That's not the  
3 question, Mr. Torres.

4 What is it that you would have liked to discover in  
5 discovery?

6 MR. TORRES-ORTIZ: Well, first, Your Honor, that's  
7 why I was mentioning the standing issue.

8 THE COURT: Uh-huh.

9 MR. TORRES-ORTIZ: We will conduct discovery as to  
10 the plaintiffs' alleged standing, the credible threat of  
11 prosecution that they have alleged. And, secondly, as the  
12 Court pointed out in the Opinion and Order, the direct link  
13 from the Articles 5.14 and the purpose that intends to address.

14 THE COURT: Well, I assume you are familiar with  
15 *United States versus Alvarez*. And I assume you're familiar  
16 now, and you were familiar then. And by "you," I mean not only  
17 you specifically, but your colleagues as well.

18 MR. TORRES-ORTIZ: Yes.

19 THE COURT: So you knew at that time, at the time  
20 this case started, what the Supreme Court had said with respect  
21 to how to deal with a full statement statute, such as the one  
22 that the Court handled in *Alvarez*. From that Opinion, you  
23 could see what the test was in order to gauge the  
24 constitutionally of the statute.

25 And based on that, you knew what you had to do in

1 order to defend the constitutionally of 5.14. You didn't do  
2 it.

3 During the process, you did refer in your papers to  
4 the statute's Statement of Purpose. You also refer to an  
5 incident involving a pastor. You did refer to that. That was  
6 part of the record here.

7 MR. TORRES-ORTIZ: Yes, Your Honor.

8 THE COURT: In fact, those elements have been, for  
9 those items, had been submitted by the plaintiffs themselves.  
10 So you knew what you had to do in order to defend the statute  
11 based on what the Supreme Court had said. And that's why I'm  
12 having problems understanding why you say that you were denied  
13 discovery.

14 Let me pursue this line of inquiry further for you to  
15 respond.

16 MR. TORRES-ORTIZ: Your Honor --

17 THE COURT: And I'm not asking questions or making  
18 comments just for the sake of making them. I would like the  
19 benefit of your response.

20 MR. TORRES-ORTIZ: Yes.

21 THE COURT: At 86, the Court said, Docket 86:

22 "Having reviewed the record, the Court is persuaded  
23 that the preliminary injunction phase should be consolidated  
24 with the request for permanent injunctive relief. By July 19,  
25 2022, the parties shall inform the Court if special measures

1 should be considered for the consolidation. By the same date,  
2 they may supplement their briefs on issues awaiting  
3 resolution."

4 I did not get in response a motion saying:

5 Number 1. We object to consolidation;

6 Number 2. We do not object to consolidation provided the  
7 Court deals with standing first; or provided the Court allows  
8 us to conduct discovery as to these items; or the Court allows  
9 us to supplement what we filed with evidence.

10 That -- I did not see that from, from your, from your  
11 side.

12 MR. TORRES-ORTIZ: Well, Your Honor --

13 THE COURT: So there was no, from what I stand here  
14 today, denial of due process. Process was provided for --

15 I do not want to personalize this. You understand?

16 MR. TORRES-ORTIZ: I understand completely, Your  
17 Honor.

18 THE COURT: Okay. -- for you to have come back with  
19 those pieces of information to inform my judgment as to how  
20 best to deal with this particular matter. So take it from  
21 there.

22 MR. TORRES-ORTIZ: Yeah, Your Honor.

23 Well, in our view, we were not given the opportunity  
24 because we, in fact, at Docket 88, requested to adjudicate the  
25 standing issue that has been fully briefed. That was our, that

1 was part of our prayer for relief in that motion.

2 THE COURT: Uh-huh.

3 MR. TORRES-ORTIZ: And our understanding was that --  
4 first, Your Honor, the Court noted that position. So we're not  
5 -- it was -- we're not sure --

6 THE COURT: I noted what you said.

7 MR. TORRES-ORTIZ: Yes, yes, Your Honor. -- if it  
8 was granted or denied.

9 THE COURT: I noted. So I was aware, but I did not  
10 grant or deny.

11 MR. TORRES-ORTIZ: Yes.

12 THE COURT: I noted.

13 MR. TORRES-ORTIZ: Yeah, Your Honor.

14 THE COURT: Uh-huh.

15 MR. TORRES-ORTIZ: And this has prejudiced the  
16 defendants' rights to file also dispositive motions.

17 THE COURT: Why? Why is that?

18 MR. TORRES-ORTIZ: Your Honor --

19 THE COURT: Listen, you could have said in response  
20 to my order asking for conditions:

21 We want to pursue dispositive motions on our side.

22 You didn't do it.

23 MR. TORRES-ORTIZ: Before the order at Docket 86, at  
24 Docket 78 --

25 THE COURT: No. That was before my order.

1 MR. TORRES-ORTIZ: Yes, Your Honor.

2 But it's important to mention that defendants clarify  
3 that if the Court were to address the merits of the preliminary  
4 injunction and make factual determinations that were not  
5 stipulated, defendants reserve the right to request discovery.

6 THE COURT: But you know what, after that, sometime  
7 after that, came the order at 86.

8 MR. TORRES-ORTIZ: That's correct, Your Honor.

9 THE COURT: Okay. Wait. Wait. One at a time.

10 At 86, I said: Let me know -- I'm paraphrasing: Let  
11 me know if special measures should be considered for the  
12 consolidation.

13 MR. TORRES-ORTIZ: Yeah. And in our view,  
14 "special measures" is not the same as requesting discovery.

15 THE COURT: No?

16 MR. TORRES-ORTIZ: No, it's not.

17 THE COURT: Well --

18 MR. TORRES-ORTIZ: Discovery is not a special  
19 measure.

20 THE COURT: No. What is it? Because I also said:

21 "By the same date, they may supplement their briefs  
22 on issues awaiting resolution."

23 See, what I received in response was silence. You  
24 could have asked for discovery. At this point, at this  
25 juncture, you could have asked for the opportunity to

1 supplement with dispositive motions. At the end of the day,  
2 you did not do it. You did not do it.

3 MR. TORRES-ORTIZ: Well, the fact is, Your Honor,  
4 that, at that time, we requested the Court to address the  
5 standing issue as part of the preliminary injunction. And that  
6 was fully briefed.

7 THE COURT: I said "noted," yes.

8 MR. TORRES-ORTIZ: And that was noted.

9 THE COURT: And, remember, in this, at this juncture,  
10 the preliminary injunction phase could be consolidated with the  
11 request for permanent injunction.

12 MR. TORRES-ORTIZ: Yes, Your Honor. In our --

13 THE COURT: Merged.

14 MR. TORRES-ORTIZ: Well, that does not necessarily  
15 mean that the Court was going to address our merits of the  
16 case.

17 THE COURT: Why not?

18 MR. TORRES-ORTIZ: Our understanding is that the  
19 issue of standing was going to be addressed before the merits.

20 THE COURT: Well, listen, I understand your position.  
21 Well, in the Opinion and Order, it was. That was the first  
22 part of the Opinion and Order, basically, dealing with  
23 standing. And at the end of the day, I noted your motion.

24 And you did not say: Your Honor, we insist on the  
25 Court avoiding the merits, which come as part of the request

1 for permanent injunctive relief.

2 MR. TORRES-ORTIZ: Yes, Your Honor.

3 THE COURT: I mean, that's how you were reading my  
4 orders. You could have said that. You didn't do it.

5 MR. TORRES-ORTIZ: Your Honor, the Court did address  
6 the standing issue.

7 THE COURT: Uh-huh.

8 MR. TORRES-ORTIZ: But we did not have the  
9 opportunity to conduct discovery.

10 THE COURT: On what? On standing?

11 MR. TORRES-ORTIZ: On standing and the merits.

12 THE COURT: On the merits.

13 MR. TORRES-ORTIZ: That's our position.

14 THE COURT: Okay. Let, let me probe that. You did  
15 not say that at that time. But discovery with respect to  
16 standing, what would you have tried to discover? We'll go  
17 step-by-step.

18 MR. TORRES-ORTIZ: Well, we do not waive any type of  
19 discovery. It's all discovery.

20 THE COURT: That's not what I'm asking, Mr. Torres.  
21 Let's start with discovery. I asked you what discovery you  
22 would have conducted, and you said "standing and the merits."

23 So I'm asking: What would you have tried to discover  
24 as for standing?

25 MR. TORRES-ORTIZ: Well, Your Honor, as was

1 previously stated, the plaintiffs', supposedly, credible threat  
2 of prosecution.

3 THE COURT: Uh-huh.

4 MR. TORRES-ORTIZ: And, in fact, Your Honor, as part  
5 of the joint stipulations, we included information that it was  
6 not part of the Opinion and Order.

7 THE COURT: Of what? I'm sorry?

8 MR. TORRES-ORTIZ: Of the Opinion and Order.

9 THE COURT: What was not part?

10 MR. TORRES-ORTIZ: Well, specifically, plaintiffs  
11 have reported on emergency situations from the beginning of the  
12 complaint until this day, and not once have they been  
13 prosecuted on this law. And we will probe to that. We will  
14 conduct more discovery on that.

15 THE COURT: On what?

16 MR. TORRES-ORTIZ: And, and, and, but I don't want to  
17 limit our request because we didn't waive any type of  
18 discovery.

19 THE COURT: Let's forget about that for a moment.

20 No, no, no. Wait. Wait.

21 Discovery. What would you have tried to obtain  
22 through discovery with respect to standing?

23 MR. TORRES-ORTIZ: As just mentioned, the credible  
24 threat of prosecution.

25 THE COURT: Uh-huh, yes.

1 MR. TORRES-ORTIZ: All, all of the elements, Your  
2 Honor, that plaintiffs need to prove in this case, we will  
3 conduct discovery on all of those aspects.

4 THE COURT: Well, I hear you.

5 MR. RAMIREZ-ORTIZ: Your Honor?

6 THE COURT: Go ahead, Mr. Ramirez.

7 MR. RAMIREZ-ORTIZ: We have to start with the Opinion  
8 and Order in order to develop this discovery argument.

9 THE COURT: Start with what?

10 MR. RAMIREZ-ORTIZ: With the Opinion and Order. The  
11 Opinion and Order has a section that's titled "Factual  
12 Context." So the Court took as facts some statements made, an  
13 unsworn statement by plaintiffs. Those unsworn statements were  
14 not stipulated, of course, so --

15 THE COURT: Yes.

16 MR. RAMIREZ-ORTIZ: The Court took them as true. Our  
17 position is we have the right to rebut those statements with  
18 discovery, be it a deposition, interrogatory, whatever  
19 mechanism we could use.

20 Now, as to the Court's qualification that we did not  
21 request discovery as a special measure, we don't believe  
22 discovery is a special measure. By consolidating the case, a  
23 preliminary injunction and a permanent injunction, the Court  
24 made this case an ordinary case. And I will explain myself.

25 The preliminary injunction could not be granted. Two

1 years after filing a preliminary injunction, the irreparable  
2 harm, was no way they could prove that, because if there was  
3 irreparable harm two years after filing the complaint and the  
4 request for preliminary injunction, it would have already  
5 happened. That's number one.

6 Also, by the -- so in that part of my argument, I  
7 would suggest that the Court, by consolidating the cases, was  
8 looking at that, permanent injunction. Permanent injunction is  
9 an ordinary case. An ordinary case requires discovery,  
10 requires an answer to the complaint, a 12(b)(6) motion, if  
11 that's what we intend to do.

12 THE COURT: But you did not say, You need to take  
13 this into account, Judge, when I asked for conditions. You  
14 didn't do it. I mean, that's a fact.

15 MR. RAMIREZ-ORTIZ: Okay. So in the, in the joint  
16 motion, complying with the Court's order as to the  
17 consolidation, we stated that -- we requested the Court to  
18 adjudicate the standing issue. And I'll explain.

19 The reason we did that is because the Court,  
20 throughout all the docket, had stated that it had doubts about  
21 the standing, and that it was -- and that it had reviewed the  
22 same cases that it used in the Opinion and Order; that's *SBA*  
23 *List*, *Babbitt*, and it thought that the plaintiffs did not  
24 comply with the standing issue. So we relied on the Court's  
25 expressions.

1           And due to procedural economy, we did not engage in a  
2           discovery, because if there was no standing, there was no  
3           jurisdiction. We needed the standing issue be resolved first.

4           THE COURT: Well, I said, with respect to the motion,  
5           one of the motions that was filed after my announcement of  
6           intent to consolidate, I said "noted." So I was aware of what  
7           you were asking for.

8           MR. RAMIREZ-ORTIZ: But we requested --

9           THE COURT: But I did not say "grant." Once you saw  
10          "noting," you should have said: Court, you said "noting;" are  
11          you going to deny or grant this?

12          It is a fact that you did not do it.

13          Now, I understand your point with respect to  
14          standing. And I said, during the initial stages of this  
15          procedure, I had reviewed the cases, and I said what I -- my  
16          interpretation of what those cases meant.

17          Those comments were not definitive responses to the  
18          standing question. That should be clear. And, in fact, in the  
19          Opinion and Order, I recognize what I had said earlier, and I  
20          said: Upon further review, I'm assuming the position that I'm  
21          assuming in this Opinion and Order with respect to those  
22          issues.

23          Now, I understand your point as to standing and all  
24          that, but let's move with respect to the other aspect. You  
25          mention as to discovery, which is merits.

1           What would you have tried to discover?

2           MR. RAMIREZ-ORTIZ: Your Honor, just to clarify.

3           THE COURT: Uh-huh.

4           MR. RAMIREZ-ORTIZ: I agree with the Court that the  
5 statements made regarding standing were definitive. But, for  
6 example, in Docket 33, the Court was very firm in telling the  
7 -- and I'm going to read it, just for the Court's benefit:

8           "There must be a credible --"

9           This is the Court speaking:

10           "There must be a credible threat of prosecution which  
11 existed in *Anthony List versus Driehaus*, where a complaint was  
12 filed against plaintiff; in *Babbitt*, where the challenged  
13 statute created an unfair labor practice mixed with regulation  
14 of expression that covered unions" -- and plaintiff was a union  
15 in that case.

16           Again, in *Babbitt*, the Court stated:

17           "The challenge statute created an unfair labor  
18 practice mixed with regulation of expression that covered  
19 unions," and the Court, parentheses, stated "(plaintiff was a  
20 union)."

21           And the Court also said:

22           "In *Mangual versus Rotger-Sabat*, one of the officers  
23 who were being investigated by the journalist sent a letter to  
24 the Secretary of Justice complaining about the journalist. But  
25 the stipulations in this case do not reflect similar factual

1 settings."

2 That's the Court speaking.

3 THE COURT: Yes.

4 MR. RAMIREZ-ORTIZ: We never reached other  
5 stipulations, different stipulations, than the one the Court's  
6 examining at this juncture. So we were under the impression  
7 the Court was pretty clear about the standing issue. That's  
8 why we relied on those statements.

9 THE COURT: Well, you did well to rely. But the  
10 problem is, as I say at footnote 10 of the Opinion and Order:

11 "In the process of studying authorities to issue a  
12 ruling, however, the Court revisited relevant case law and is  
13 persuaded that plaintiffs have standing to maintain this  
14 action."

15 So I, at all times, give the attorneys and the  
16 parties the benefit of knowing how I see things going forward.  
17 But I did not say: Because I disagree with plaintiff, I'm  
18 going to deny them standing.

19 That's not what I said.

20 MR. RAMIREZ-ORTIZ: That's correct. The Court never  
21 ruled on it.

22 THE COURT: No.

23 MR. RAMIREZ-ORTIZ: I agree.

24 THE COURT: At that point, no, of course not. If  
25 that had been my intent, I would have simply dismissed the case

1 for lack of standing.

2 MR. RAMIREZ-ORTIZ: That's correct.

3 THE COURT: But that's not what I did.

4 MR. RAMIREZ-ORTIZ: That's correct. But it did show  
5 that the Court had doubts regarding standing, either way --

6 THE COURT: Well, I was studying --

7 MR. RAMIREZ-ORTIZ: -- for or against. It did show  
8 that, because the Court changed its position.

9 THE COURT: I was studying the issue. I was  
10 reviewing the issue thoroughly.

11 MR. RAMIREZ-ORTIZ: And I agree with the Court, but  
12 the thing is that those were the same cases.

13 THE COURT: Among others.

14 MR. RAMIREZ-ORTIZ: Among others, yeah, that the  
15 Court used to rule that plaintiffs had standing. But, but my  
16 argument regarding the due process would be that, in a joint  
17 motion that the parties filed, they're requesting an  
18 argumentative hearing. It was never given.

19 The Court clearly had doubts regarding the standing  
20 issue. That's why it changed its position. So perhaps that  
21 argumentative hearing would have clarified the Court's doubts,  
22 and we never had that opportunity.

23 THE COURT: As to what?

24 Listen, you heard -- I mean, you saw what I wrote. I  
25 said "noting." If you were interested -- and I put all cards

1 on the table, all cards on the table. If you had been  
2 interested in a ruling with respect to that motion -- I believe  
3 you said "88" -- instead of and you so noting, I would have  
4 expected you to say: Court, we want a grant or denial, not a  
5 "noting."

6 MR. RAMIREZ-ORTIZ: I agree.

7 THE COURT: But that did not happen. So we are  
8 looking back at what -- something that did not occur.

9 Now, discovery with respect to merits. I understand  
10 your position with respect to discovery on standing. Now tell  
11 me, discovery about merits.

12 Anyone?

13 MR. TORRES-ORTIZ: Yeah.

14 Well, Your Honor, before I address the discovery on  
15 the merits, when the Court noted our order at Docket 88 --

16 THE COURT: Your motion.

17 MR. TORRES-ORTIZ: Our motion, correct.

18 The Court has obligation to give clear and  
19 unambiguous opportunity either to further brief or as to any  
20 other special measure. And when the Court noted that order,  
21 even though --

22 THE COURT: That motion.

23 MR. TORRES-ORTIZ: That motion. Sorry, Your Honor.

24 It just, it didn't give us a clear and unambiguous  
25 notion as to what the Court was going to do, if it was going to

1 resolve the case as to the merits also. Because, in that  
2 motion, we did, in fact, requested the Court to address the  
3 standing issue first. Our position is that it was not as the  
4 First Circuit has stated, that it was clear and unambiguous.

5 THE COURT: No. Listen, I said "noting." If you  
6 thought you needed something else, you should have alerted the  
7 Court, especially after, at 91, I said:

8 "After providing notice of the Court's intention to  
9 consolidate the preliminary injunction phase with the request  
10 for preliminary injunctive relief, and considering the parties'  
11 responses, the preliminary injunction phase is hereby  
12 consolidated with the request for preliminary injunctive  
13 relief."

14 That's the order. That's the order.

15 MR. TORRES-ORTIZ: And our expectation was it was  
16 going to address first the standing issue.

17 THE COURT: But why? Why should I have done that?

18 MR. TORRES-ORTIZ: It was part of our prayer of  
19 relief to the Court.

20 THE COURT: I said "noting," "noting." Listen, I  
21 said "noting." You did not see "granting." You did not see  
22 "granting."

23 MR. RAMIREZ-ORTIZ: But we also did not see "denied."

24 THE COURT: Of course.

25 MR. RAMIREZ-ORTIZ: But the Court, what we requested,

1 a relief, the Court did not give.

2 THE COURT: What relief? To deal with standing  
3 first? I mean, with standing before, in a separate order  
4 dealing with standing rather than dealing with other issues.

5 MR. RAMIREZ-ORTIZ: Yeah, because --

6 THE COURT: Why didn't you do it? Why didn't you ask  
7 me to do that?

8 MR. RAMIREZ-ORTIZ: Well, we requested it in a joint  
9 motion.

10 THE COURT: I said "noting."

11 MR. RAMIREZ-ORTIZ: I'm sorry, in a motion.

12 THE COURT: We are going in circles. You know, we  
13 are going in circles. I said "noting." I saw nothing more in  
14 the way of asking for clarification or to do something else or  
15 to include any conditions, such as discovery, here. That did  
16 not happen.

17 Now let me go -- I understand your point. Let me go  
18 back to discovery with respect to the merits. What would you  
19 have discovered?

20 MR. TORRES-ORTIZ: Well, Your Honor, the Court stated  
21 that defendants did not provide evidence of a direct casual  
22 link between the prohibitions of Article 5.14 and the harm it  
23 aims to address.

24 THE COURT: Uh-huh.

25 MR. TORRES-ORTIZ: But, again, we were not given the

1 opportunity to present evidence as to that.

2 THE COURT: No, no, no. That's not the question I  
3 asked, Mr. Torres.

4 But, in fact, the Opinion and Order, in the Opinion  
5 and Order, I referred to the Statement of Purpose of the  
6 statute, and I cited the Statement of Purpose, which was part  
7 of the record. And I said:

8 "According to the provision's Statement of Purpose,  
9 it was enacted to address," quote, "'the need to prohibit  
10 people from using social media or mass media to disseminate  
11 false information, with the intention of creating confusion,  
12 panic or collective public hysteria, while a state of  
13 emergency, disaster or curfew is enforced,'" end quote.

14 Assuming this was an actual problem in need of  
15 solving what the Statement of Purpose reflects is not what the  
16 statute says. That's not what the statute says.

17 I also refer to part of your argument where you were  
18 referring to what the plaintiffs had submitted in connection  
19 with statements by a pastor, or something to that effect. It  
20 had been placed right there by the plaintiffs. And I  
21 considered that as well, including your argument.

22 Now let me go back to the question: What,  
23 specifically, would you have tried to discover? Because you  
24 told me "discovery." Okay. What is it that you would have  
25 tried to discover on the merits?

1 MR. TORRES-ORTIZ: Yes, Your Honor.

2 I cannot anticipate what the discovery will be until  
3 the discovery is conducted. But to mention again, the  
4 opportunity that we want is to give -- to provide evidence as  
5 to the direct casual link, as mentioned in the Opinion and  
6 Order, besides the incident with the pastor and besides the  
7 incident of the Statement of Purpose from the law.

8 THE COURT: So make a proffer.

9 MR. TORRES-ORTIZ: A proffer of evidence?

10 THE COURT: Yes.

11 MR. TORRES-ORTIZ: First, I believe the Court needs  
12 to reconsider its judgment before --

13 THE COURT: No. I want to hear a proffer because you  
14 are asking for reconsideration based in part on your  
15 understanding that the Court violated due process by depriving  
16 you of the opportunity to present evidence.

17 Right?

18 MR. TORRES-ORTIZ: Your Honor --

19 THE COURT: First, earlier you said by depriving you  
20 of the opportunity to conduct discovery. We went to -- we went  
21 through that already.

22 Discovery with respect to standing, you explained to  
23 me your position. I asked, How about discovery concerning the  
24 merits, and you told me what you said. Okay.

25 MR. RAMIREZ-ORTIZ: Well, Your Honor, I will also

1 like to clarify that. The Court took as true some statements  
2 made by plaintiffs, and those --

3 THE COURT: As to what? Discovery? Standing?

4 MR. RAMIREZ-ORTIZ: Excuse me?

5 THE COURT: Statements with respect to standing?

6 MR. RAMIREZ-ORTIZ: Statements that supported the  
7 preliminary injunction.

8 THE COURT: As to what? Standing?

9 MR. RAMIREZ-ORTIZ: Well --

10 THE COURT: Well, tell me.

11 MR. RAMIREZ-ORTIZ: As to, as to, as to the merits of  
12 the case, because most of these statements go to the merits.  
13 The Court took as true that she was chilled by the statute, so  
14 the effect of the statute was chilled. So if it chills speech,  
15 it's unconstitutional.

16 So some of the statements that the Court took as true  
17 could have been rebutted by deposition or --

18 THE COURT: Tell me. Tell me which statements.

19 MR. RAMIREZ-ORTIZ: Okay. For example, it states  
20 that -- yeah. First of all, the sources, the chilling of the  
21 sources, that, that -- we briefed regarding that. We would  
22 have liked to discover those sources and depose those sources.

23 THE COURT: The sources are over, are not necessary.  
24 Why? Because I did not rely on sources to recognize standing  
25 to plaintiffs in this particular action.

1 MR. RAMIREZ-ORTIZ: For example, the Court took as  
2 true that Ms. Rodriguez-Cotto, just to give an example,  
3 asserted that a fear of prosecution has chilled her own  
4 reporting and commentary, and her sources have refrained from  
5 sharing information with her due to the same fear. That was a  
6 fact. The Court took that as a fact. It's under "Factual  
7 Context" of the Opinion and Order.

8 THE COURT: All right. Go to the analysis. You are  
9 talking about standing, right?

10 MR. RAMIREZ-ORTIZ: Yeah. Standing is jurisdiction,  
11 so jurisdiction --

12 THE COURT: Okay. So you are talking about standing.  
13 It seems to me that the --

14 MR. RAMIREZ-ORTIZ: The thing is, if the Court  
15 consolidated the case and the case became ordinary, because the  
16 preliminary injunction could not be granted because plaintiffs  
17 did not prosecute the case for two years, civil procedure rules  
18 --

19 THE COURT: You already mentioned those. And I said,  
20 going back to the docket: Give me what conditions you need.

21 You say: Oh, we filed 88, and we were expecting the  
22 Court to go along.

23 I said "noting." But when you said that, why didn't  
24 you bring to my attention, at that point in time, We want this  
25 first; we want this first, and we want you, Court, to tell us

1 "granted" or "denied?"

2 I wouldn't have been upset by that. On the contrary,  
3 I mean, that's how this works. We all, we all use language,  
4 words. Sometimes what one person thinks is not necessarily  
5 what the other person has in mind what should be the remedy.  
6 Well, ask for clarification.

7 And I did not see that. In fact, no such motion was  
8 filed. I'm not faulting you, gentlemen. That's not what I am  
9 doing.

10 MR. RAMIREZ-ORTIZ: Very respectfully, it looks like  
11 the Court is putting the burden on us. We requested that the  
12 Court adjudicate our motion, and we requested standing issue be  
13 adjudicated first.

14 THE COURT: And I said "noting."

15 MR. RAMIREZ-ORTIZ: Yeah, but --

16 THE COURT: I said "noting." It's very clear what  
17 the docket says. I said "noting." And for some reason, you  
18 decided not to press the point. I understand. But the truth  
19 is, the point was not pressed before.

20 Now, what else would you have tried to discover,  
21 apart from standing-related issues?

22 MR. TORRES-ORTIZ: Again, Your Honor, the Opinion and  
23 Order, in, in several instances, mention that the government  
24 did not provide evidence.

25 THE COURT: Uh-huh.

1 MR. TORRES-ORTIZ: On the top of my head, I can  
2 mention the direct link that I previous stated. But  
3 definitely, if given an opportunity, we will conduct all the  
4 discovery that the Court mentioned that we did not provide.

5 THE COURT: So you do not know, standing here today?

6 MR. TORRES-ORTIZ: We don't know the result of that  
7 discovery. We need to conduct that discovery.

8 THE COURT: You do not know, standing here today.  
9 Make a proffer. Beyond standing, beyond discovery, a proffer.  
10 What evidence would you say you have -- you would have  
11 submitted, other than the one you referred to very clearly in  
12 your briefs?

13 See, your briefs were very well written, very well  
14 developed, and gave me a clear sense of what the government  
15 wanted, a very clear sense. I'm not saying you were misleading  
16 me on anything. That's not what I am saying.

17 But in those briefs, you did refer to, well, you did  
18 refer to the statement of motives. You did refer to clippings  
19 that the plaintiffs had put on the record. And you asked me to  
20 look at those clippings, use those clippings in your favor,  
21 which is fine. That's good advocacy.

22 But at the end of the day, I did not read those  
23 clippings the way you wanted me to read them. So make a  
24 proffer.

25 MR. TORRES-ORTIZ: We do not know what other evidence

1 we might be able to submit, Your Honor.

2 THE COURT: Okay. I understand.

3 MR. TORRES-ORTIZ: And what we're requesting today is  
4 the opportunity to conduct that discovery.

5 THE COURT: Well, I hear you.

6 Okay. Now, the third point you referred was  
7 precedent. Right?

8 MR. TORRES-ORTIZ: Yes, Your Honor.

9 THE COURT: In your introduction, you mentioned  
10 standing. You mentioned due process. You mentioned precedent.

11 Okay. We've talked about standing. We've talked  
12 about due process. We haven't talked about precedent. Tell me  
13 about that.

14 MR. TORRES-ORTIZ: Thank you, Your Honor.

15 In the Court's Opinion and Order, it was determined  
16 that Article 5.14 cannot be enforced in a manner consistent  
17 with the First Amendment. However, Article 5.14 does not  
18 impede protected speech, but prohibits dissemination of  
19 knowingly false information during emergencies.

20 THE COURT: Tell me about precedent. Which precedent  
21 did I ignore?

22 MR. TORRES-ORTIZ: Two cases, Your Honor.

23 THE COURT: Go ahead.

24 MR. TORRES-ORTIZ: *Garrison*, from the Supreme Court.

25 THE COURT: Which one? *Garrison*?

1 MR. TORRES-ORTIZ: *Garrison*.

2 THE COURT: Okay. That's a defamation case.

3 MR. TORRES-ORTIZ: That is correct, Your Honor. It  
4 has the same element.

5 THE COURT: No, no, no. That's a defamation case.  
6 What's the second case?

7 MR. TORRES-ORTIZ: *Frese*.

8 THE COURT: From the First Circuit.

9 MR. TORRES-ORTIZ: From the First Circuit.

10 THE COURT: That's also a criminal defamation case.

11 MR. TORRES-ORTIZ: Yes, Your Honor.

12 THE COURT: And this is why I bring the point:

13 Because, in *Alvarez*, Justice Kennedy and Justice Breyer place  
14 falsehood statutes, place defamation -- I'm sorry, defamation  
15 statutes, alongside fraud statutes, perjury statutes, statutes  
16 forbidding lying to government officials, statutes prohibiting  
17 false claim of terrorists attacks, statutes prohibiting  
18 trademark infringement, all in a special category by  
19 themselves, where the Court had allowed falsehoods to be  
20 prohibited, and more important, prosecuted.

21 So defamation stands by itself together with those  
22 special categories of statutes. And I do not believe, for that  
23 reason, reacting to what you just said, that opinions dealing  
24 with criminal defamation are dispositive here.

25 By the way, I read those opinions.

1 MR. TORRES-ORTIZ: Yeah, Your Honor.

2 Those cases, the criminal defamation cases, have a  
3 knowingly false information requirement. And our law, Article  
4 5.14, has that same requisite. As a result, if those criminal  
5 defamation statutes are constitutional, so is Article 5.14.

6 THE COURT: I understand your point. But after -- I  
7 may have agreed with you before *Alvarez*. But after *Alvarez*,  
8 and having reviewed the way the plurality and Justice Breyer  
9 classified and handled those special statutes, I cannot agree  
10 with you.

11 Again, the justices placed defamation statutes  
12 alongside fraud statutes, perjury statutes, statutes forbidding  
13 lying to a government official, statutes prohibiting false  
14 claim of terrorists attacks, statutes prohibiting trademark  
15 infringement, and others, and a special category in themselves.

16 MR. RAMIREZ-ORTIZ: Yeah.

17 THE COURT: That's what they did.

18 MR. RAMIREZ-ORTIZ: We agree. *Alvarez* held that  
19 false speech can be protected, but also, *Alvarez* held that --  
20 and I will quote here:

21 "Some false speech may be prohibited even if  
22 analogous true speech could not be."

23 Those are page 721 to '22 in *Alvarez*.

24 "This opinion does not imply," meaning *Alvarez*, "that  
25 any of these targeted prohibitions are somehow vulnerable. But

1 it also rejects the notion that false speech --"

2 THE COURT: I do not understand what you said, Mr.  
3 Ramirez, you need to slow down.

4 MR. RAMIREZ-ORTIZ: I'm sorry.

5 In *Alvarez*, the Court stated:

6 "This opinion does not imply that any of these  
7 targeted prohibitions are somehow vulnerable. But it also  
8 rejects the notion that false speech should be in a general  
9 category that is presumptively unprotected."

10 We agree with that. False speech may be protected,  
11 but not all false speech is protected. *Alvarez* did not throw a  
12 blanket stating that all false speech is protected under the  
13 First Amendment. Now --

14 THE COURT: No, of course not.

15 MR. RAMIREZ-ORTIZ: Yeah.

16 I agree with the Court that *Garrison* and *Frese* are  
17 cases in the context of criminal defamation. However, what we  
18 think is applicable to our case is that those statutes had a  
19 requirement that the Court took into consideration to determine  
20 that they were, they were constitutional, and that was that  
21 false information, knowingly false -- I mean, if, if the person  
22 that disseminates the information, the false information, knows  
23 the information is false, that criteria is not protected.

24 Now, the context is defamation, but we think it  
25 applies also to false-alarm statutes. That element is the same

1 in both statutes. Now, if, if it's, if that element saves the  
2 statute in *Frese* and *Garrison*, I think it saves it here too.  
3 And that's our whole position.

4 Of course, the case is defamation, but it's a matter  
5 of interpretation of the, of the holding of those cases.  
6 That's why we brought those cases. And the Court did not  
7 consider them in the Opinion and Order, at least did not  
8 discuss them.

9 So that's our position here.

10 THE COURT: I understand.

11 MR. RAMIREZ-ORTIZ: And also, the plaintiffs use the  
12 case of *Mangual*.

13 THE COURT: Of what?

14 MR. RAMIREZ-ORTIZ: *Mangual versus Rotger-Sabat*.

15 THE COURT: Yes. I'm familiar with that case.

16 MR. RAMIREZ-ORTIZ: That's a criminal defamation  
17 case.

18 THE COURT: It's a criminal defamation case.

19 MR. RAMIREZ-ORTIZ: And they also used it to support  
20 their arguments on the merits.

21 So because -- there are things that are similar in  
22 this statute and those statutes. So I don't think the Court  
23 should rule out, take into consideration those cases. I think  
24 those cases are very much on point in terms of the elements of  
25 the, of the crime that are before the -- that are contained in

1 the statute. I'm sorry.

2 So that's, that's our position. The mere fact that  
3 they're criminal defamation statutes, not necessarily means  
4 they don't apply in this case.

5 THE COURT: Well, all I'm saying is that, after  
6 *Alvarez*, you need to consider falsehood statutes under a new  
7 lens for analysis. That's what the -- that's what Justice  
8 Kennedy indicated. That's what Justice Breyer indicated.

9 And, by the way, you also referred the Court to  
10 statutes that prohibit falsely impersonating a government  
11 officer. That statute, as well, falls under the new category  
12 the Supreme Court handed in, handed off in *Alvarez*.

13 And I understand your point, but my response is what  
14 I said. In fact, it is interesting that Justice Kennedy  
15 dismissing, in *Alvarez*, various quotations from prior Supreme  
16 Court opinions seeming to indicate that false statements do not  
17 deserve constitutional protection, arguing that they were not  
18 properly understood as creating a First Amendment exception for  
19 false statements, and found no historical foundation in the  
20 Supreme Court's free-speech tradition of excluding false  
21 statement from the protection of the First Amendment.

22 So I understand your point. Your point is, Judge,  
23 you, my words, ignored precedent because defamation is relevant  
24 to this analysis, and you simply did not use it the way you  
25 should have done it. That's my interpretation and my words of

1 what you are saying.

2 MR. RAMIREZ-ORTIZ: Yeah. Because those cases were  
3 also ruled under the First Amendment, so they're relevant  
4 because they're First Amendment cases.

5 THE COURT: But, again, there is a new lens, a new  
6 way to view those cases, and it comes from Alvarez, from  
7 Justice Kennedy and from Justice Breyer. And defamation has to  
8 be put in place with, alongside with the other statutes I  
9 referred to earlier.

10 But I understand your position. Let me -- unless you  
11 have anything else to add, I would like to hear the other side.  
12 And, of course, I will give you the opportunity to reply.

13 MR. RAMIREZ-ORTIZ: Yeah. In terms of the merits of  
14 the case, we --

15 Do you have anything to add?

16 MR. TORRES-ORTIZ: No.

17 MR. RAMIREZ-ORTIZ: Basically what's stated in the  
18 motion for reconsideration, the cases that we brought, and  
19 obviously, we believe they apply. And so it's up to the Court  
20 to decide that. So, at this point, we don't have anything else  
21 to add.

22 THE COURT: All right. Thank you.

23 Mr. Hauss, Mr. Arraiza, I'll leave it to you, whoever  
24 wants to address the Court.

25 MR. HAUSS: I will, Your Honor.

1 THE COURT: All right. Go ahead.

2 And, by the way, if I ask questions or make comments,  
3 it is not to give counsel a hard time. It is to give them the  
4 benefit of knowing how I'm viewing things at that point in  
5 time. That's the purpose of asking questions or of  
6 interjecting comments. So don't feel bad.

7 MR. TORRES-ORTIZ: I understand.

8 THE COURT: Mr. Hauss, go ahead.

9 MR. HAUSS: Thank you, Your Honor. And may it please  
10 the Court?

11 The government's motion for reconsideration is  
12 largely a rehash of arguments that were fully aired in prior  
13 briefing and rightly rejected in the Court's permanent  
14 injunction order. The only new issue that the government  
15 raises here, that the consolidation of preliminary and  
16 permanent injunction proceedings violated its due process  
17 rights, is baseless.

18 The Court gave the government ample notice of its  
19 intention to consolidate the proceedings and afforded the  
20 parties an opportunity to request special measures and  
21 supplemental briefs. Having declined those opportunities, the  
22 government cannot complain that it was unfairly prejudiced or  
23 surprised just because the Court ruled in plaintiffs' favor.  
24 Because the government has not identified either  
25 newly-discovered evidence or a manifest error of law that would

1 materially affect the outcome of this case, the Court should  
2 deny its motion for reconsideration.

3 I'll start by just briefly addressing the  
4 government's arguments with respect to standing. And here, the  
5 government simply reiterates the arguments that it raised in  
6 the two rounds of preliminary injunction briefing previously,  
7 which is, essentially, that plaintiffs can't have standing to  
8 challenge a law prohibiting knowingly false statements because  
9 plaintiffs do not allege an intention to lie.

10 But as the Court would rightly recognize in its  
11 order, cases like *Susan B. Anthony List versus Driehaus*;  
12 *Babbitt*; *281 Care Committee*; *Speech First*; and even the First  
13 Circuit's decision in *Frese*, in which the government relies  
14 here, all recognize that plaintiffs have standing to challenge  
15 statutes that prohibit disseminating knowingly false  
16 information, even if they don't allege an intention to do so.  
17 And that's for the very simple reason that they can be afraid  
18 that someone will accuse them of lying, even if they're telling  
19 the truth.

20 As the Court recognized, the plaintiffs reasonably  
21 fear prosecution under the statute because it was recently  
22 enacted. The government has not made any disclaim of the  
23 intention of enforcing it and is defending its  
24 constitutionality. And, in fact, during the preliminary  
25 injunction proceedings, when the Court asked whether the

1 government would simply agree not to prosecute plaintiffs  
2 during the pendency of this action, the government refused to  
3 do so.

4 So given all of those considerations, I think the  
5 Court was absolutely correct in concluding that plaintiffs have  
6 established enough to establish standing here.

7 I would just note briefly, with respect to discovery  
8 regarding standing, that the government has absolutely no basis  
9 to request discovery onto standing. And that's because, even  
10 under the government's theory of the case, which is wrong, the  
11 government understood that standing would be resolved in the  
12 consolidated order.

13 The government did not request additional discovery  
14 into standing, even though it asked the Court to finally  
15 resolve that issue. So the government has waived any interest  
16 in seeking discovery into plaintiffs' standing now.

17 And I would note, especially here, that the  
18 government's representations here today indicate that they  
19 would use this discovery to bully, try to bully plaintiffs into  
20 dropping their claims. The government noted that it would seek  
21 discovery into plaintiffs' sources, even though plaintiffs  
22 expressly disavowed any reliance on chill with respect to their  
23 sources in order to protect source confidentiality.

24 So the fact that the government is coming back here  
25 today and saying that it needs discovery so it can go and ask

1 plaintiffs about their sources shows exactly how it would abuse  
2 these processes, despite the fact that it was ready to submit  
3 standing to a consolidated order.

4 Turn briefly to the merits. Contrary to the  
5 government's arguments, Article 5.14(a)'s mens rea requirement  
6 does nothing to save the statute.

7 As the Court rightly noted in the colloquy here  
8 earlier, the government's reliance on *Frese* is misplaced  
9 because *Frese*, like *Garrison*, was a criminal defamation case.  
10 And the important thing about defamation is the Supreme Court  
11 has long recognized that it's a longstanding exception to the  
12 First Amendment.

13 So in defamation cases, ordinary First Amendment  
14 protections don't apply. But even in defamation cases, the  
15 Court requires actual malice.

16 As the Court noted, in *Alvarez*, the Supreme Court  
17 said that the fact that the Court requires actual malice in  
18 defamation cases does not mean that a mere knowing mens rea  
19 requirement is enough to save a statute that targets false  
20 speech that's nondefamatory. And that's because other types of  
21 false speech are not subject to the longstanding exception for  
22 defamation.

23 So *Frese* has no applicability to the case at issue  
24 here. And on that point, I would direct the Court to the  
25 Eighth Circuit's decision in *281 Care Committee* where the

1 government tried to make a similar argument.

2 It tried to say that the presence of an actual malice  
3 requirement in Minnesota's political false statement law saved  
4 the statute, tried to analogize the defamation statutes, and  
5 the Eighth Circuit eventually said, after *Alvarez*, you can't  
6 rely on defamation statutes to justify a law that targets  
7 presumptively protected speech, especially speech on matters of  
8 public concern.

9 Second, the Court correctly concluded that Article  
10 5.14(a) is subject to strict scrutiny because it is a  
11 content-based restriction on speech about matters of public  
12 concern. So whatever standard may apply to other types of  
13 regulations on false speech, such as the false speech in  
14 *Alvarez*, which did not necessarily go to a matter of public  
15 concern, when you're dealing with speech on topics of immense  
16 public importance, in particular, speech where it's not  
17 necessarily easy to verify whether the speech is true or false,  
18 Courts like the Eighth Circuit in *281 Care Committee* and the  
19 Sixth Circuit in *SBA List versus Driehaus* have recognized that  
20 strict scrutiny, rather than intermediate scrutiny, applies.

21 The Court need not reach this issue, however, because  
22 it also correctly determined that Article 5.14(a) fails even  
23 intermediate scrutiny. And that's because the statute is  
24 obviously overinclusive, underinclusive, and there are obvious  
25 less restrictive alternatives available.

1           The statute is overinclusive because, for example, it  
2 criminalizes false alarms about an alien invasion or a Biblical  
3 apocalypse, even if those statements are not likely to cause  
4 the source of public panic that the government claims to fear  
5 here. The statute is also underinclusive, as the Court noted  
6 in its order, because it does not apply to false assurances,  
7 even when those false assurances might lead to significant  
8 public harm or panic -- public harm or danger to safety.

9           And, finally, as the Court noted, there are obvious  
10 alternatives that the federal government uses to restrict false  
11 speech false alarms that are specifically likely to cause mass  
12 panic. And there the statutes are 18 U.S.C. 1038 and the FCC's  
13 broadcast hoaxes rule.

14           To this day, the government has not explained why  
15 those alternatives are insufficient to protect the interest it  
16 cares about here. And that's especially important, because as  
17 plaintiffs repeatedly pointed out in their preliminary  
18 injunction briefings, the government bears the burden of  
19 justifying the statute. At all times, once plaintiffs had  
20 shown that the statute restricted constitutionally-protected  
21 speech -- and I think it's important to note here that the  
22 statute triggers First Amendment scrutiny, regardless of  
23 whether plaintiffs alleged chill. And that's simply because  
24 when a statute restricts speech, the government bears the  
25 burden of justifying it.

1           So even if the Court does not rely on plaintiffs'  
2 statements of chill, that would not in any way effect the  
3 merits analysis. The government would still bear the burden of  
4 justifying the statute. The government made attempts to  
5 justify the statute in its preliminary injunction briefing and  
6 in its motion for reconsideration, and those attempts simply  
7 fail.

8           Now, I understand that the government here is arguing  
9 that its due process rights were violated because the Court's  
10 order regarding consolidation. The government misunderstood  
11 and felt that the Court would resolve standing and not reach  
12 the merits. I think the government may simply be suffering  
13 from a case of buyer's remorse here.

14           In any event, the Court was not obligated to  
15 acquiesce to the government's preferred disposition of the  
16 case. All the Court was obligated to do, and this was laid  
17 out, for example, in this Court's decision in *Vamos*, this  
18 district's decision in *Vamos*, was to provide the government  
19 notice regarding the consolidation and to provide the parties  
20 an opportunity to be heard. The Court's order of July 5th  
21 could not have been clearer that the Court was contemplating  
22 consolidation of the preliminary and permanent injunction  
23 proceedings.

24           In Federal Rule of Civil Procedure 65(a)(2), which  
25 authorizes consolidation, specifically references a trial on

1 the merits. So the Court did everything it was supposed to do  
2 in notifying the government that a potentially final  
3 disposition on the merits was in the "authing," and, in fact,  
4 the government took the Court up on this invitation.

5 In its motion for compliance, it asked the Court to  
6 dismiss the case and deny the permanent injunction, and in  
7 part, because of the lack of irreparable harm. So as the Third  
8 Circuit held in *Fenstermacher*, for example, when a party avails  
9 itself of consolidation by requesting final relief, it cannot  
10 then come back and complain simply because the case was decided  
11 adversely.

12 Now, with respect to the government's claim that it  
13 did not understand that discovery would be denied, I'm just  
14 going to quote here from the government's motion in compliance  
15 with the Court's order:

16 "Defendants reaffirm their position as stated in the  
17 Joint Motion in Compliance with Court Order filed on September  
18 25th, 2020; that is, that this Court can rule on plaintiffs'  
19 renewed motion for preliminary injunction without the need for  
20 discovery or an evidentiary hearing. As of today, even under  
21 the possibility of consolidation, defendants' posture remains  
22 the same."

23 Similarly, in paragraph 5 of the motion, the  
24 government said:

25 "So, with regards to the first part of the Order - if

1 special measures should be considered for consolidation of the  
2 preliminary and permanent injunction phases - defendants  
3 respectfully submit that, in light of the current record, no  
4 special measures need be considered if this Court, in its  
5 discretion, moves for consolidation."

6 And in the next paragraph:

7 "As to the second part of the Order - allowing the  
8 parties to file supplemental briefs on issues awaiting  
9 resolution - defendants proffer that at this juncture,  
10 additional briefing is unnecessary."

11 And, in fact, in that motion, the government goes on  
12 to argue that the plaintiffs should not be allowed to file  
13 supplemental briefs regarding consolidation. So the government  
14 expressly disclaimed any interest in special procedures, any  
15 need for discovery or an evidentiary hearing or any need for  
16 supplemental briefs.

17 Having expressly disclaimed those opportunities, the  
18 government cannot come back now and try to undo everything the  
19 Court did. Allowing the government to do that would  
20 fundamentally undermine the purposes for which consolidation  
21 exists, which is to promote judicial efficiency. So for those  
22 reasons, plaintiffs maintain that the government should be held  
23 to the decision it made back in July of 2022, and the case  
24 should remain consolidated.

25 I would just note that as a matter of discretion,

1 even if the government were allowed to conduct discovery, as  
2 its representations here today reflect, it has nothing --  
3 plaintiffs have no evidence for which the government could  
4 reasonably seek it. As I've already discussed, the government  
5 has waived discovery with respect to plaintiffs' standing. And  
6 even on the merits, plaintiffs have no evidence in their  
7 possession that would plausibly justify the law. That evidence  
8 rests solely on the government's possession.

9 The plaintiffs repeatedly pointed out in the  
10 preliminary injunction briefing that the government needed to  
11 submit evidence to justify the statute, and the government  
12 failed to do so. Even today, the government cannot explain  
13 what evidence exists that could possibly justify the statute.

14 And, frankly, considering the Court's decision  
15 regarding narrow tailoring, it's basically impossible to  
16 imagine what evidence might exist that would show that these  
17 uniquely expansive measures restricting speech on matters of  
18 public concern are necessary to vindicate a compelling  
19 governmental, or even an important governmental, interest.

20 If the Court has no further questions, the plaintiffs  
21 will rest on their submissions.

22 THE COURT: Thank you.

23 Mr. Torres?

24 Mr. Ramirez?

25 MR. TORRES-ORTIZ: Article 5.14 is valid under

1 intermediate scrutiny. Facial challenges to legislative acts  
2 are difficult to succeed in, requiring the challenger to  
3 demonstrate that the act would be invalid under all  
4 circumstances.

5 Statutes barring false speech to protect government  
6 process and maintain the reputation of government service are  
7 permissible restrictions on free speech. As a result,  
8 intermediate scrutiny is the appropriate standard to determine  
9 the constitutionality of a statute that includes an expressive  
10 element.

11 Intermediate scrutiny requires the government  
12 regulation to be within its constitutional power, further  
13 important government interests, but unrelated to suppressing  
14 free expression, and be no greater than necessary to further  
15 that interest. The government has the power to prohibit the  
16 designation of false representations, reserve the substantial  
17 government interests of protecting government processes and  
18 maintaining the reputation of government service. These  
19 interests are unrelated to suppressing free expression, as they  
20 focus on the acts of disseminating a false alarm, regardless of  
21 its contents.

22 The Court stated that defendants did not provide  
23 evidence of direct casual link between the prohibitions of  
24 Article 5.14 and the harm that it aims to address. But, again,  
25 Your Honor, I know that we are repeating, but we were not given

1 the opportunity to present that evidence in this case. Given a  
2 chance to conduct discovery, defendants will be in a better  
3 position to do so.

4 Defendants must be granted the fundamental right to  
5 conduct discovery, and plaintiffs should not fear the  
6 application of due process to the defendants. If their  
7 allegations are indeed accurate and truthful, the process of  
8 discovery will only serve to strengthen their case, not weaken  
9 it. In any event, the allowance of discovery will enable this  
10 Court to obtain a comprehensive understanding of all of the  
11 allegations that have been raised in this case.

12 MR. RAMIREZ-ORTIZ: Not to be repetitive, Your Honor,  
13 I just want to clarify some points as to the standing issue.

14 Brother Counsel stated that *Frese* recognized --  
15 *Frese*, which is a First Circuit case, recognized standing. And  
16 of course it did, because the plaintiff in that case had been  
17 prosecuted two times prior. Pursuant to the statute, he was  
18 challenging. So, of course, there was going to be a credible  
19 threat of prosecution. He had already been prosecuted two  
20 times.

21 That's not the case here. That's not the case in *SBA*  
22 *Anthony List*. That's not the case in *Mangual versus*  
23 *Rotger-Sabat*. All of those cases have credible threats of  
24 prosecution.

25 As to the chill of the person, or the journalist, in

1 this case, which is the other part of the examination in  
2 pre-enforcement challenge for standing, we provided the Court  
3 with a joint stipulation with a number of articles that these  
4 journalists published after the law was enacted. So stating  
5 that there was a chill is pretty inaccurate because she  
6 continued publishing regarding the COVID-19 situation and  
7 multiple topics that are the same topics that she states that  
8 she's afraid, or chilled, to publish.

9 I think that the Court did not take into -- maybe it  
10 took into consideration, but did not adopt as a fact, that  
11 those articles were published. And that was a joint  
12 stipulation, and I think that would have been a very important  
13 fact to address the standing matter as to the chill part of the  
14 examination.

15 As to the matters of public concern, I don't think  
16 the statute prohibits matters of public concern. It just  
17 prohibits or proscribes a false alarm. I don't think there's  
18 -- that's any matter of public concern. Knowing, stating that  
19 there is a false alarm, knowing that that information is false,  
20 I don't think that's a matter of public concern.

21 I mean, the, the, the government wanted to protect  
22 its citizens by not allowing people to disseminate false alarm,  
23 knowing they were false, and create a chaos. This happened  
24 during COVID-19 pandemic, where somebody stated that the  
25 supermarkets were going to run out of, of food, and et cetera,

1 and it created a chaos. So there is a very, very compelling  
2 interest of the government or -- to, to prohibit those kinds of  
3 statements.

4 THE COURT: Well, it was part of the stipulation.

5 MR. RAMIREZ-ORTIZ: I'm sorry?

6 THE COURT: It was part of the stipulation.

7 MR. RAMIREZ-ORTIZ: What? What was part of the  
8 stipulation?

9 THE COURT: In late March 2020, the Commonwealth  
10 charged Pastor Jose Luis Rivera for Article 5.14 of Law 20, in  
11 effect at that time, for allegedly creating a false alarm over  
12 the WhatsApp messaging platform. On May 7, 2020, charges were  
13 dismissed.

14 MR. RAMIREZ-ORTIZ: Yeah. That's part of the  
15 stipulation. That's not a denial of fact. That happened under  
16 a defunct statute. It's not the same statute before the Court.  
17 It was prosecuted under another statute.

18 THE COURT: But, you know --

19 MR. RAMIREZ-ORTIZ: And the Court, to take a statute  
20 that was repealed and, you know, rely on a prosecution that it  
21 was under another statute, well, it's a little bit of  
22 stretching, I think, because the elements of the crime changed  
23 drastically from one statute to another.

24 THE COURT: Well, I referred to the statement of  
25 motives, I will not repeat what I said earlier, and also make

1 note of the fact that your briefings, your briefs, make  
2 reference to that same incident, commenting on the clippings  
3 that the plaintiffs had submitted. And I analyzed those. I  
4 reviewed those. I reviewed the portions to which you referred  
5 me. I reached different conclusions.

6 MR. RAMIREZ-ORTIZ: Yeah.

7 My, my, my question, respectful to the Court, would  
8 be why weren't they adopted as a factual background?

9 THE COURT: Why what? I'm sorry?

10 MR. RAMIREZ-ORTIZ: Why was that joint stipulation  
11 adopted -- why was it not adopted in the factual background in  
12 the Opinion and Order? I think it was very relevant to the  
13 standing.

14 THE COURT: To what? Which part? I'm confused.

15 MR. RAMIREZ-ORTIZ: All the, all the reports that  
16 these journalists, plaintiffs, published after the statute had  
17 been enacted.

18 THE COURT: You know, having heard you say that a  
19 couple of times this afternoon, it would not change my view.  
20 Assume I have incorporated those -- in fact, I had reviewed  
21 them before. Assume, take it as a fact, that in deciding what  
22 to do with respect to standing this afternoon, I've considered  
23 those.

24 MR. RAMIREZ-ORTIZ: But the Court adopted as a fact  
25 that --

1 THE COURT: I'm considering those.

2 MR. RAMIREZ-ORTIZ: Yeah, but the Court adopted --

3 THE COURT: Yes.

4 MR. RAMIREZ-ORTIZ: -- as a fact that the plaintiff  
5 was, was chilled so --

6 THE COURT: Was what? Chilled?

7 MR. RAMIREZ-ORTIZ: Yeah, chilled. And if she was,  
8 or they, were chilled, because there are two plaintiffs --

9 THE COURT: I think you are missing the point, Mr.  
10 Ramirez, but I understand the argument.

11 MR. RAMIREZ-ORTIZ: Okay.

12 THE COURT: Anything else?

13 MR. RAMIREZ-ORTIZ: No, Your Honor. I think I  
14 clarified the points that I wanted to.

15 THE COURT: Okay. Mr. Hauss?

16 MR. HAUSS: Unless the Court has questions.

17 THE COURT: No. I don't have special questions.

18 All right. Having carefully reviewed all filings, as  
19 well as counsels' arguments this afternoon, the motion for  
20 reconsideration is denied.

21 The government did not even proffer, make a proffer  
22 of the evidence it would have sought to discover or present  
23 with respect to the merits.

24 As to standing, the Court is not relying on  
25 plaintiffs' sources as a source of standing and is conscious of

1 what Mr. Ramirez said some minutes ago, of the articles they  
2 wrote. That does not change my view with respect to standing.  
3 They have standing.

4 On the merits, they are entitled to prevail. This  
5 particular statute, as written, does not, in my view, comply  
6 with the First Amendment. And I do not believe that due  
7 process was infringed. Notice was provided. And, again, there  
8 was no proffer of evidence the government would have presented  
9 on the merits.

10 With this, is there anything else we need to cover  
11 before we adjourn?

12 MR. HAUSS: Nothing from plaintiffs, Your Honor.

13 MR. TORRES-ORTIZ: Nothing, Your Honor.

14 THE COURT: Okay. Well, thank you all for having  
15 been available to participate in this hearing this afternoon.  
16 Stay safe.

17 The Court adjourns until the next scheduled hearing.  
18 Good day.

19 (Proceedings concluded at 3:05 p.m.)

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1 UNITED STATES DISTRICT COURT )  
2 DISTRICT OF PUERTO RICO ) ss.

3  
4 **REPORTER'S CERTIFICATE**

5  
6 I, CINDY LEE BROWN, RPR, Federal Official Court  
7 Reporter for the United States District Court for the District  
8 of Puerto Rico, appointed pursuant to the provisions of Title  
9 28, United States Code, Section 753, do hereby certify that the  
10 foregoing is a true and correct computer-aided transcript of  
11 proceedings had in the within-entitled and numbered cause on  
12 the date herein set forth; and I do further certify that the  
13 foregoing transcript has been prepared by me or under my  
14 direction.

15  
16 Dated this 17th day of October, 2023.

17  
18  
19 /s/ Cindy Lee Brown

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