

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

YADIRA CARRASQUILLO-GONZÁLEZ

Plaintiff,

v.

RICARDO ROSSELLÓ-NEVÁRES, Governor of the Commonwealth of Puerto Rico, in his official and personal capacity as the Commander-in-Chief of the Puerto Rico Police Bureau (PRPB); BEATRIZ ISABEL AREIZAGA (aka Beatriz Rosselló); Conjugal Partnership ROSSELLÓ-AREIZAGA; HÉCTOR M. PESQUERA in his personal and official capacity as the Secretary of the Public Safety Department of the Commonwealth of Puerto Rico; MARISOL QUINTERO; Conjugal Partnership PESQUERA-QUINTERO; HENRY ESCALERA in his personal and official capacity as the Commissioner of the PRPB; CARMEN L. ARROYO-CASIANO; Conjugal Partnership ESCALERA-ARROYO; REINALDO BERMÚDEZ, in his personal and official capacity as the Auxiliary Commissioner of the PRPB; LUIS COLON, in his personal and official capacity as Incident Commander of the PRPB, Incident Commander #1; Lieutenant Colonel JUAN CÁCERES-MÉNDEZ, in his personal and official capacity as the Chief Commander of San Juan of the PRPB and Incident Commander #2; Inspector LUIS HERNÁNDEZ, in his personal and official capacity as the Director of Tactical Operations Unit (Riot Squad) and/or SWAT Team at the PRPB; Officer LUIS E. ORTIZ-ORTIZ, in his personal and official capacity as the commander assigned to the PRPB's SWAT Team; Officer IGNACIO LOUBRIEL-CAMARENO, in his personal and official capacity as a police officer assigned to the PRPB's SWAT Team; Officer MOIRA

Civil No. 19-1414 (JAG)

Civil Rights Violation,
Declaratory and Injunctive
Relief, Compensatory and
Punitive Damages
42 USC §§1983; 1988

Plaintiff Demands Trial by Jury

MALPICA-RIVERA, in her personal and official capacity as a police officer assigned to the PRPB's SWAT Team; Officers JOHN DOE (3) (4) (5) (6), in their personal and official capacity as police officers and/or officers or supervisors assigned to the PRPB's SWAT Team or Tactical Operations; the Conjugal Partnerships comprised by each Defendant and their respective spouses A through M; and the Commonwealth of Puerto Rico through the Department of Justice represented by Secretary of Justice Wanda Vázquez-Garced.

Defendants.

FIRST AMENDED COMPLAINT

TO THE HONORABLE COURT:

Comes now Plaintiff Yadira Carrasquillo-Gonzalez, veteran of the United States Armed Forces, resident of San Juan, through the undersigned attorneys, and very respectfully states, alleges and prays as follows:

PRELIMINARY STATEMENT

(Suit for injunctive relief for violation of constitutional rights)

1. This action for injunctive relief is based on the violation of Plaintiff's federal rights under the First, Fourth, and Fourteenth Amendments to the United States Constitution. This action concerns the Puerto Rico Police Bureau's (a/k/a Puerto Rico Police Department) use of excessive force against Plaintiff and other demonstrators in violation of their First Amendment right to freedom of speech and expression, as well as their Fourth Amendment right to be free from unreasonable searches and seizures.

2. For decades, the Puerto Rico Police Bureau (PRPB) has routinely deployed Tactical Operations Units (colloquially known as the "*Fuerza de Choque*" or "Riot Squad") and other units

that use tear gas, pepper spray, rubber bullets, painful pressure point techniques, batons, and other forms of intimidation to control organizations, groups, and other individuals while they exercise their constitutional rights pursuant to the First Amendment to the United States Constitution.

3. Plaintiff seeks Declaratory Judgment and injunctive relief, pursuant to Section 1983 of the Civil Rights Act of 1964 (“Section 1983”).

4. Officers under the direction of, or with the knowledge and acquiescence of Defendants, Commissioner of the PRPB HENRY ESCALERA, Secretary of the Security Department HECTOR PESQUERA, and PRPB, in the instant case employed unnecessary and excessive force against Plaintiff, and other protestors that were engaged in entirely lawful demonstrations. PRPB’s unreasonable force was used in this case against Plaintiff and other demonstrators engaged in lawful speech involving matters of public interest, such as the social disruption created by the *Puerto Rico Oversight, Management and Economic Stability Act* (PROMESA) and the Fiscal Control Board it created.

5. Defendants HECTOR PESQUERA and HENRY ESCALERA, under the authority of the Governor of Puerto Rico RICARDO ROSSELLÓ, are responsible for implementing and overseeing the PRPB’s policies and practices for engaging demonstrators. To the extent that these practices are pursuant to informal policy of the PRPB, Defendants PESQUERA and ESCALERA are likewise responsible for their adoption and/or implementation. To the extent the practices are widespread practices, Defendants ROSSELLÓ, PESQUERA and ESCALERA have not only ignored the practices, but also, upon information and belief, encouraged them as the Commander-in-Chief of the PRPB, Secretary of the Security Department and the Commissioner of the PRPB, respectively.

6. Plaintiff seeks Declaratory Judgment as to the federal rights herein alleged, and

preliminary and permanent injunctive relief requiring that Defendants ROSSELLÓ, PESQUERA and ESCALERA implement and comply with the Police Reform Agreement signed on June 17, 2013 by the Commonwealth of Puerto Rico and the United States Department of Justice. In order to comply, the PRPB should meet U.S. constitutional standards of use of force; train PRPB officers to follow the “Demonstration and Use of Force Policy” and the “Crowd Control Policies” created for effective constitutional policing; and provide adequate supervision and enforcement to be sure that these policies are followed; finally, to take efficient disciplinary actions against those officers that violate federal rights, pursuant to the United States Constitution.

7. Likewise, Plaintiff seeks a declaratory judgment that the actions taken by the PRPB and its officers and supervisors are unconstitutional and in violation of the First, Fourth, and Fourteenth Amendments to the United States Constitution, and a preliminary and permanent injunction prohibiting Defendants from continuing to incur in this conduct, in violation of protestors’ federally guaranteed rights.

I. NATURE OF THE ACTION AND JURISDICTION

1.1 This is a civil action brought under the First, Fourth and Fourteenth Amendments to the U.S. Constitution, under 42 U.S.C. § 1983 and 1988 for declaratory and equitable relief, monetary damages and attorney’s fees, for unlawful, abusive and retaliatory actions taken against Plaintiff by PRPB, its officers and supervisors.

1.2 This action is also brought under Article II, Sections 1, 3, 4 and 10 of the Constitution of the Commonwealth of Puerto Rico, and Articles 1802 and 1803 of the Puerto Rico Civil Code.

1.3 Specifically, as set forth in greater detail below, Plaintiff has suffered enormous physical and mental harm and distress as a direct consequence of Defendants’ abusive and

unlawful behavior.

1.4 This Honorable Court has jurisdiction over the federal constitutional and statutory claims set forth in this complaint pursuant to 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1343 (a) (3) (civil rights).

1.5 This Honorable Court is also authorized to order declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202 and Rules 57 and 65 of the Federal Rules of Civil Procedure.

1.6 This Honorable Court may exercise supplemental jurisdiction over Plaintiff's Commonwealth of Puerto Rico statutory and constitutional claims pursuant to 28 U.S.C. § 1367 (a) because they arise from the same operative facts as Plaintiff's federal claims.

1.7 Venue properly lies before this Court under 28 U.S.C. § 1391(b). Plaintiff and Defendants are residents of the Commonwealth of Puerto Rico and the acts and/or omissions giving rise to Plaintiff's claims occurred in this district.

1.8 Plaintiff demands trial by jury as to all counts and requests for relief set forth in the instant complaint.

II. THE PARTIES

A. Plaintiff

2.1 Plaintiff, Yadira Carrasquillo-González, is a 45-year old single parent, citizen of the United States, veteran of the United States Armed Forces and the Iraq War, and resident of San Juan, Puerto Rico.

B. Defendants

2.2 Defendant RICARDO ROSSELLÓ-NEVÁRES is the Governor of the Commonwealth of Puerto Rico and the Commander-in-Chief of the PRPB. During all times

relevant to this complaint, Defendant acted under color of law and with disregard for Plaintiff's federal rights, and is responsible for the actions and policies that led to the events described in this complaint. Defendant is being sued in his official and individual capacity. Defendant BEATRIZ ISABEL AREIZAGA is the spouse of Defendant Rosselló-Nevárez. Defendant ROSSELLÓ-AREIZAGA is the Conjugal Partnership comprised by them.

2.3 Defendant HECTOR M. PESQUERA is the Secretary of the Public Safety Department (PSD) of the Commonwealth of Puerto Rico. During all times relevant to this complaint, Defendant Pesquera acted under color of law, and was responsible for the actions and policies that led to the events described in this complaint. Defendant P e s is being sued in his official and individual capacity, for the conduct, misconduct, lack of training and supervision, negligence and damages herein asserted and claimed. Defendant MARISOL QUINTERO is the spouse of Defendant Pesquera. Defendant PESQUERA-QUINTERO is the Conjugal Partnership comprised by them.

2.4 Defendant HENRY ESCALERA, current Commissioner of the PRPB, was the Interim Commissioner of the Puerto Rico Police Bureau (PRPB) who at all times relevant to this complaint, acted under color of law and is responsible for the actions and policies that led to the events described in this complaint. Defendant is being sued in his official and individual capacity, for the conduct, misconduct, lack of training and supervision, negligence and damages herein asserted and claimed. ESCALERA accepted direct participation in the chain of events not specified in the "Operational Plan" of the PRPB that led to what has been described as an ambush of protesters, including Plaintiff, in violation of Plaintiff's constitutional rights under the First and Fourth Amendments to the U.S. Constitution. Defendant CARMEN L. ARROYO CASIANO is the spouse of Defendant Escalera. Defendant ESCALERA-ARROYO is the Conjugal Partnership

comprised by them.

2.5 Defendant REINALDO BERMÚDEZ, Auxiliary Commissioner of the PRPB, who at all times relevant to this complaint, acted under color of law and is responsible for the actions and policies that led to the events described in this complaint. Defendant is being sued in his official and individual capacity, for the conduct, misconduct, lack of training and supervision, negligence and damages herein asserted and claimed. Upon information and belief, BERMUDEZ had participation in the chain of events not specified in the “Operational Plan” of the PRPB that led to the described ambush of protesters, including Plaintiff, in violation of Plaintiff’s constitutional rights under the First and Fourth Amendments to the U.S. Constitution.

2.6 Defendant LUIS COLÓN, was by May 1, 2018, one of the Incident Commanders of the PRPB. Defendant acted under color of law, and is being sued in his individual and official capacity for the conduct, misconduct, lack of training and supervision, negligence and damages herein asserted and claimed. (Incident Commander # 1)

2.7 Defendant Lieutenant Colonel JUAN A. CACERES-MENDEZ (Incident Commander # 2) was by May 1, 2018, the Commander of the San Juan Area of the PRPB. Defendant acted under color of law, and is being sued in his individual and official capacity for the conduct, misconduct, lack of training and supervision, negligence and damages herein asserted and claimed.

2.8 Defendant Inspector LUIS HERNÁNDEZ, upon information and belief, was the Director of Tactical Operations and/or SWAT (Incident Commander #3). Defendant acted under color of law to violate Plaintiff’s federal rights; as such he held a supervisory position, and was responsible for the actions and policies that led to the events described in this complaint. He is being sued in his individual and official capacity for the

unlawful actions taken against Plaintiff under his command by unknown officers who belong to the SWAT Team and/or Tactical Operation Units during the events of May 1, 2018.

2.9 As Secretary of the Public Safety Department of the Commonwealth of Puerto Rico (PSD), HÉCTOR PESQUERA, and Governor RICARDO ROSSELLÓ, are the ultimate authority in the elaboration and execution of PRPB's policies. As such, they execute the laws and regulations of the Commonwealth of Puerto Rico pertaining to law enforcement, and are responsible for the discipline, training and supervision of all the employees and officers of the PRPB. They are also responsible for, making and executing, by themselves, or through the department's officers and employees, policy decisions regarding training, supervision, discipline and law enforcement practices to be employed by the PRPB.

2.10 As Commissioner of the Puerto Rico Police Bureau (PRPB), defendant ESCALERA is, jointly with PESQUERA, the ultimate authority in the elaboration and execution of PRPB's policies. As such, he executes the laws and regulations of the Commonwealth of Puerto Rico pertaining to law enforcement, and is responsible for the discipline, training and supervision of all the employees and officers of the PRPB. He is also responsible for, making and executing policy decisions regarding training, supervision, discipline and law enforcement practices to be employed by the PRPB.

2.11 As Auxiliary Commissioner of the Puerto Rico Police Bureau (PRPB), defendant BERMUDEZ is, jointly with PESQUERA and ESCALERA, the ultimate authority in the elaboration and execution of PRPB's policies. As such, he executes the laws and regulations of the Commonwealth of Puerto Rico pertaining to law enforcement, and is responsible for the discipline, training and supervision of all the employees and officers of the PRPB. He is also responsible for, making and executing policy decisions regarding training, supervision, discipline

and law enforcement practices to be employed by the PRPB.

2.12 As Incident Commander Defendant LUIS COLON (or Incident Commander #1) executes the laws and regulations of the Commonwealth of Puerto Rico pertaining to law enforcement, and is responsible for the discipline, training and supervision of all the employees and officers under his command. Defendant acted under color of law and is also responsible for, making and executing, by himself, or through the department's officers and employees, policy decisions regarding training, supervision, discipline and law enforcement practices to be employed by the Bureau.

2.13 As Incident Commander Defendant CACERES (or Incident Commander #2) executes the laws and regulations of the Commonwealth of Puerto Rico pertaining to law enforcement, and is responsible for the discipline, training and supervision of all the employees and officers under his command. Defendant acted under color of law and is also responsible for, making and executing, by himself, or through the department's officers and employees, policy decisions regarding training, supervision, discipline and law enforcement practices to be employed by the Bureau.

2.14 Officers John Doe (1) (2) (3) (4) (5) and (6), are citizens of the United States, sued in their personal and official capacity as police agents and/or supervisors assigned to the PRPB's SWAT Team or Tactical Operations Unit in the San Juan area. These defendants unreasonably and abusively ordered to use and/or used chemical substances, throwing tear gases and other substances at close range against Plaintiff, affecting her ability to breathe, to see and move and, provoking physical and emotional damages to Plaintiff. At the time of the filing of the present Amended Complaint, some of these previously unknown defendants have been identified as MOIRA MALPICA RIVERA, IGNACIO LOUBRIEL CAMARENO and their supervisor

LUIS E. ORTIZ ORTIZ, all of them part of PRPB's SWAT Team.

2.15 All Defendants acted with gross disregard for human life, and caused Plaintiff grave physical injuries, as well as severe mental and emotional suffering. Acting under color of law, all Defendants violated Plaintiff's federally protected constitutional rights under the First, Fourth, and Fourteenth Amendments to the Constitution of the United States, the Civil Rights Act of 1871, 42 USC §1983; and the Constitution and Laws of the Commonwealth of Puerto Rico.

2.16 Upon information, and/or belief, UNKNOWN officers John Doe 3, 4, 5 and 6, are employees, agents and/or supervisory personnel of the PRPB, that were at all times relevant to this complaint, acting in the course and scope of their employment. Upon information and belief, each UNKNOWN officer John Doe 3, 4, 5 and 6, and all Defendants participated in and/or directed the constitutionally unlawful violations alleged herein, or knew of the violations and failed to act or prevent them.

2.17 The true identities of these defendants are unknown to Plaintiff. In due course, Plaintiff will amend the Complaint to include defendants' names, once Plaintiff ascertains their identities, and will serve process.

2.18 At all times relevant to this complaint, Defendants all acted under color of law, violating Plaintiff's constitutional rights by covering up the identity of the unknown agents and police officers listed in this Complaint, and failing to comply with the disciplinary process against police officers for illegal acts against civilians. No Use of Force Report has been produced regarding the use of force incident with the plaintiff Yadira Carrasquillo González.

2.19 All the above named, and unknown Defendants, are sued in their official and individual capacity, and on behalf of their respective Conjugal Partnerships comprised by them

and their respective spouses A through M, some of them herein identified. All defendants are jointly and severally liable to Plaintiff for all claims and relief sought in this complaint, as they caused damages to Plaintiff while acting under color of law.

2.20 The Commonwealth of Puerto Rico, through the Department of Justice represented by Secretary of Justice WANDA VAZQUEZ-GARCED, is liable to Plaintiff for the negligent and unlawful behavior of its officials and employees all acting under color of law.

III. FACTS

3.1 On May 1, 2018, Yadira Carrasquillo-Gonzalez, (“Plaintiff”) exercised her First Amendment right to the Constitution by participating in Puerto Rico’s National March “*Paro Nacional*” held on such date.

3.2 She arrived at the Department of Labor building at 9:30 and marched with a group of other fellow protesters on to the Golden Mile area.

3.3 There was an intimidating amount of police presence at the march. She was in the area of the Grandstand (A/K/A stage) where hundreds of other people took part of the event.

3.4 At approximately 11:30 am, Plaintiff saw that a group of police officers started throwing tear gas from the Ponce de Leon Avenue area.

3.5 As a natural consequence, Plaintiff started running away from the tear gas because the chemical leads to severe burning and shortness of breath. A person does not have to be inside the cloud to be affected by the tear gas.

3.6 While Plaintiff was running, she observed that other police officers were lining up along Munoz Rivera Avenue, on motorcycles and by foot. She saw a wall of police officers preventing access to Ponce de Leon Avenue and another wall on Munoz Rivera Avenue preventing

people from accessing Roosevelt Avenue. These officers would not allow people to flee from the tear gas.

3.7 Where Plaintiff was standing at the time, no disputes were evident.

3.8 In fact, Plaintiff noticed that there were also press and legal observers present where she was.

3.9 Plaintiff felt desperate and as she attempted to leave the protest, started yelling at the police. Plaintiff stood facing more than 50 police officers and started yelling at them to stop the abuse and to recognize that their behavior was damaging for the people and Puerto Rico.

3.10 Suddenly, Plaintiff noticed that, to her left, a group of police officers dressed in green and highly armed came towards her from behind the wall of police officers dressed in blue that were throwing the tear gas.

3.11 Plaintiff asked the officers to stop throwing tear gas. She identified herself as a veteran of the United States Armed Forces, and told the policemen that they should be on the side of the protesters.

3.12 One of the officers dressed in green, identified as defendant Ignacio Loubriel Camareno, grabbed and pushed her. Subsequently, another officer dressed in green, identified as defendant Luis E. Ortiz Ortiz, the Supervisor or Commander of the SWAT Squad, fired pepper spray or other chemical substance on to her face at a very close prolonged and dangerous range.

3.13 Plaintiff could not breathe and felt extreme burning. Plaintiff was also unable to see. Another member of the SWAT Squad that was present during the incident and failed to intervene in order to protect plaintiff's constitutional rights has been identified as defendant Moira Malpica Rivera.

3.14 Disoriented, Plaintiff started walking and felt someone assist her by throwing a liquid substance over her. This same person helped her towards the Walgreens on Munoz Rivera Avenue.

3.15 Plaintiff was approached by an ACLU observer to ask if she was okay.

3.16 Plaintiff went to Multi-Medic health center right next to the Walgreens. There, Plaintiff was offered medical assistance and the use of a shower. The personnel helped Plaintiff clean off the pepper spray from her face and body.

3.17 Plaintiff remained at the health center for about one hour.

3.18 Plaintiff continued feeling the effects of the pepper spray all throughout the day.

3.19 At the moment of the brutal attack, pictures of which ran the World in Bloomberg, the police officers dressed with the green uniforms, named Defendants officers John Doe 1, 2, 3, 4, 5 and 6 in this instant case (some of them already identified herein) ignored Yadira's plea, and continued the abusive behavior against Plaintiff, who was by that time mostly blind and with difficulties to breath due to the tear gases and chemicals used against her by the PRPB.

3.20 All the police officers and Defendants participating in the operation, including police officers 4 through 6, and other unknown police officers, witnessed and observed the illegal actions and behavior perpetrated against Plaintiff. Instead of protecting Plaintiff's constitutional rights, the police officers participating in the operation supported, condoned, and/or endorsed the unlawful and criminal behavior perpetrated against Plaintiff.

3.21 Among other things, all PRPB officers present, including Defendants, failed to prevent and/or intervene with the officers that were incurring in unlawful behavior. Upon information and/or belief, in order to cover up for the officers involved in the incident of Police

abuse from liability, Defendants filed false reports and made false statements to fraudulently justify the unlawful use of excessive force.

3.22 In order to cover up for the officers involved in the incident of Police abuse from liability, Defendants did not file proper reports regarding use of force, weapons and equipment used during the May 1, 2018 events. Defendants did not specify which ammunition was assigned and used during that day, who gave authorization to use those weapons, if proper warning was given to the people exercising their First Amendment rights that such weapons and equipment were to be used at that moment.

3.23 Plaintiff filed an administrative complaint within the PRPB (NIA-2018-01-03-176) denouncing the incident of police abuse narrated herein. However, the PRPB, through the Defendants, failed to conduct a proper investigation.

3.24 Plaintiff also requested all relevant information through letters dated January 25, 2019 and March 22, 2019. The answer received was the dismissal of the complaint, which was received on March 28, 2019, signed by HENRY ESCALERA, defendant.

3.25 As a consequence of Defendants' aggressions, Plaintiff suffered grave physical injuries and a mental breakdown that required medical attention. The aggressions against Plaintiff, renewed the post-traumatic stress disorder (PTSD) that Plaintiff suffer from her active duty in the Armed Forces.

3.26 Since June 17, 2013, more than four (4) years prior to the event narrated in this complaint, the United States Department of Justice (US-DOJ) and the government of Puerto Rico entered into a judicial Settlement Agreement in the U.S. District Court for the District of Puerto Rico, known as "Agreement for the Sustainable Reform of the Puerto Rico Police Department" (The Agreement). The Agreement put an end to a civil suit initiated by the

US-DOJ on December 2012, to remedy a pattern and practice of police misconduct by PRPD and compel the PRPD to adopt a far-reaching reform in order to promote constitutional policing, enhance public and officers' safety, and increase community confidence. The Agreement mandates that the PRPD shall ensure that supervisors must provide close and effective supervision to each officer under their command; to provide direction and guidance necessary to improve and develop constitutional police practices; and to identify, correct and prevent police misconduct. PRPD shall develop policies that set out clear requirements for supervisors, consistent with generally accepted policing practices.

3.27 Under the terms of the Agreement, PRPB supervisory personnel are compelled to put into practice thorough close supervision of actions by police officers under their command, including among other things: close review and reporting in the event of use of force; review and reporting of searches, seizures, stops and detentions; the filing of administrative complaints in the event of unlawful use of force; the facilitation and coordination of trainings on police constitutional practices to the officers under their command, and to establish clear operational plans for these type of events.

3.28 Although the Reform provides the tools and administrative framework for supervision of police practices, defendants RICARDO ROSSELLO, HECTOR PESQUERA, HENRY ESCALERA, REINALDO BERMUDEZ, LUIS COLON, JUAN CACERES, LUIS HERNANDEZ, among other Defendants (herein after the "Supervisory Defendants"), with willful blindness and callous disregard for Plaintiff's constitutional rights, failed to exercise their duties and directly allowed, permitted, ignored and/or participated in, the incidents of police abuse narrated in this Complaint, and in the resulting unlawful conduct that followed.

3.29 Specifically, Supervisory Defendants, upon information and belief, with deliberate indifference, allowed the officers under their command to execute a police operational plan, never published, and that ultimately led to what was later regarded as an ambush of rally participants and violation of Plaintiff's constitutional rights. Upon information and belief, PRPB's officers at the May Day event had not received training in "Crowd Control Policies", and if they did, willfully acted contrary to their own protocols.

3.30 Supervisory Defendants were immediately notified of the incident narrated in this complaint. Moreover, they were advised that, upon information and belief, an ambush was set in place to create chaos and justify the police action that resulted in the violation of Plaintiff's constitutional rights, pursuant to the U.S. Constitution. Although it clearly constituted unlawful police misconduct, Supervisory Defendants failed to adopt effective measures to prevent the violation of Plaintiff's constitutional rights, following the reckless police action taken.

3.31 Upon information and belief, HECTOR PESQUERA and HENRY ESCALERA were personally located at the Command Centers near the "Golden Mile", a location from which they could direct the complete movement of the PRPB officers under their command, giving them unrestricted permission to use force, including the wrongly-called "non-lethal force" against protestors, which resulted in the violation of Plaintiff's constitutional rights under the U.S. Constitution.

3.32 From the Command Center Defendant HECTOR PESQUERA, pursuant to Governor ROSSELLO's instructions, gave unlawful orders to his subordinates, HENRY ESCALERA, and the other supervisors, including the Commander of the Tactical Unit and/or SWAT LUIS HERNANDEZ, and LUIS E. ORTIZ ORTIZ, together with the Field Incident Commanders LUIS COLON and JUAN CACERES, to organize what is

believed to have been an ambush, provoking the violation of Plaintiff's constitutional and statutory rights. The above mentioned actions were not comprehended in the Operational Plan drafted by the PRPB for this event.

3.33 Defendant HECTOR PESQUERA has consistently denied that the PRPB violates human rights in Puerto Rico. This non-recognition of the problem goes to the very root of the systemic malady within the PRPB that was documented by the United States Department of Justice, and which led to a Reform Agreement. According to the last *TCA Assessment Report*, filed on November 7, 2018 (TCA Report), it is evident that the police scheme was to ambush protesters. The Police plan resulted "in a bottleneck type restriction of movement for several hundred protesters."

"[t]he videos depict action that reflects the Police had no intention to allow the protesters to arrive to the Banco Popular area. It defies common sense why they allow them to pass by the first blockade made at the Liberty building. From the strategic viewpoint of avoiding confrontation with the crowd, this action fails to make sense. While at the Liberty building blockade, the Police had better control of the situation and the protesters had ample space where, if dispersal orders were given, they could easily disband encountering less hazardous situations than they had at the second location where the limited dispersal opportunities and the use of chemical agents created a hectic and dangerous situation for hundreds of protesters of which, the majority was arguably not violent and did not represent an immediate danger." *Id.*, p. 5.

Plaintiff was among the non-violent protesters or persons present that day.

3.34 Supervisory Defendants failed to properly conduct an investigation of any wrongdoing by police officers under their command, and they failed to take immediate corrective measures, as required by the Agreement, and PRPB internal regulations.

3.35 Supervisory Defendants knew, or should have known, about the incidents of police abuse and the abusive behavior of the officers under their command. Yet, Supervisory Defendants

allowed, condoned and encouraged field officers to unlawfully use excessive force against Plaintiff, and other protesters. Supervisory Defendants are required to closely monitor the actions of police officers under their command; including events involving use of force, arrests, detentions, searches and seizures.

3.36 The violence suffered by Plaintiff was a direct result of Supervisory Defendants failure to screen, train, supervise and discipline the Defendants under their command. Upon information and/or belief none of the officers involved in these events have been disciplined by PRPB. To the contrary, they were protected by the high command of the Department.

3.37 Upon information and belief “nobody in the PRPB had been trained on the General Order, Chapter 600, Section 625 (Crowd Management and Control”) when the May 1, 2018 events occurred.” TCA Assessment Report, Nov. 7, 2018, p. 18.

3.38 According to the TCA Report, Section 625 of the General Order, Part IIIC.2.d states that: “No supervisor shall interrupt a constitutional activity or demonstration before the demonstrators act illegally or demonstrate aggressive conduct.” The evidence studied for the TCA Report shows that “the blockade of the Ponce de Leon Avenue was in place before any illegal or aggressive conduct was demonstrated.” “The PRPB did not inform when they exactly decided to create the blockage of the Ponce de Leon Avenue, but it was previous to the event and it was not documented in any of the reports provided to the Monitor’s Office.” It was not included in the Operational Plan for the event, which apparently included a police raid from the Ponce de Leon Avenue in the Golden Mile, to several residences in Santa Rita, Río Piedras, where police forces including SWAT, Tactical Operations, Motorcycle Division and Special Arrests Units converged and conducted several arrests. In the course of this raid, plaintiff Yadira Carrasquillo González was assaulted by SWAT officers.

3.39 Upon information and belief, it was Governor ROSSELLO who admittedly made the decision of removing the line of policemen at the Liberty Cable building, allowing the protesters to go through. Commissioner ESCALERA subsequently recognized that it was him who made the decision. A decision that, according to the TCA Report, constitutes “non-sense”.

3.40 All the injuries, damages, mental anguish and suffering experienced by Plaintiff were caused by Defendants’ deliberate indifference and reckless disregard for Plaintiff’s wellbeing and federal rights, including negligence, failure to act properly and failure to train, supervise and control police officers’ procedures and operations. Defendants all acted under color of law in violation of plaintiff’s civil, legal and constitutional rights and are therefore jointly and severally liable for said damages, injuries and constitutional violations.

3.41 At all times relevant to this action, defendants’ policies and policy decisions resulted in the total inadequate selection and training of police officers. The supervision and supervisory policies of police officers failed to detect or punish incidents of unwarranted physical violence against citizens. They further failed to properly train and teach police officers to exert the high degree of self-control that is required of them when intervening with citizens who exercise their rights under the First Amendment to the United States Constitution.

3.42 Supervisory Defendants have ignored the deficiencies in the selection, training and supervision needs of police officers, and the dangers posed by such inefficiencies to the safety and wellbeing of law abiding citizens.

3.43 Additionally, Supervisory Defendants acted with full knowledge that they were violating Plaintiff’s rights, protected by the U.S. Constitution and laws of the United States and the Commonwealth of Puerto Rico, and did so willfully and maliciously as part of a

covert operational plan not published by the PRPB. Alternatively, the defendants acted with fault and/or negligence.

3.44 The facts set-out in this complaint, constitute violations of Plaintiff's life, liberty, speech, and privacy rights, protected by the First, Fourth and Fourteenth Amendments to the United States Constitution and the Civil Rights Act of 1871, 42 USC §1983.

3.45 The facts set-out in this complaint constitute violations of Plaintiff's rights under the Constitution of the Commonwealth of Puerto Rico, Article II, Sections 1, 4, 7 and 10, and the Civil Code of Puerto Rico of 1930, Article 1802 et seq., 31 LPRA §5141 et seq.

3.46 As a result of the incident narrated herein, Plaintiff suffered physical injuries. She also suffered emotional damages that required medical attention.

3.47 As a direct result of the incidents narrated herein, Plaintiff suffers from anxiety, depression, and emotional distress that required, and continues to require, psychological and psychiatric treatment. The aggressions against Plaintiff, renewed the post traumatic stress disorder (PTSD) that Plaintiff suffer from her active duty in the U.S. Armed Forces.

3.48 The incidents described above are just a small sampling of the unconstitutional police abuse to which U.S. citizens in Puerto Rico, including Plaintiff and other protesters, have been subjected. Indeed, the PRPB's longstanding use of excessive force led to the United States Department of Justice ("DOJ") initiating an investigation in July 2008 into the practices of the PRPB. The result was a report ("DOJ Report"), issued on Sept., 5, 2011, which not only condemned the practices of the PRPB, but also found that the PRPB has regularly deprived citizens of Puerto Rico of their constitutional rights, and that the PRPB's policies and practices will continue to lead to constitutional violations, if not addressed.

3.49 The PRPB and its Superintendents (Commissioners) have been depriving citizens in Puerto Rico of their constitutional rights since long before the DOJ first began its investigation. The DOJ Report recounts that “for years individuals engaged in protests and other public demonstrations have been harmed and injured in the hands of PRPD officers.” Id at 25.

3.50 Based on information and belief, the secret operational plan of the PRPB had its genesis in May 2017. On or around May 5, 2017, Agent Luis Lassalle Vargas, badge #35868, of the Cyber Crimes Investigative Unit/ Unidad Investigativa de Crímenes Cibernéticos (UICC) of the Puerto Rico Department of Justice, and at the request of prosecutors assigned to investigate the case of Francisco A. Santiago Cintrón, requested that the First Instance Court issue a search warrant for Facebook.com accounts associated with the following users:

- a. <https://www.facebook.com/dialogoupr>
- b. <https://www.facebook.com/PulsoEstudiantilUPR>
- c. <https://www.facebook.com/centrodecomunicacionesestudiantil>

The search warrant produced not only the videos related to the case of Francisco Santiago Cintrón, but also an immeasurable amount of information about thousands of citizens with Facebook pages. The PR DOJ was able to obtain the following:

Diálogo UPR

The names and identification numbers of 1,658 individuals.

Pulso Estudiantil UPR

The names and identification numbers of 2,804 individuals.

Centro de Comunicación Estudiantil

The names and identification numbers of 972 individuals.

Based on information and belief, the secret operational plan of the PRPB for May 1, 2018 included the illegal detention of individuals identified through the above mentioned subpoena without the previous obtention of an arrest warrant and/or a search warrant, using the public manifestation as a pre-textual justification.

It was in the middle of this raid that plaintiff Yadira Carrasquillo González was assaulted by several police officers attached to a SWAT Squad.

Defendants PESQUERA, ESCALERA, BERMUDEZ, COLON, CACERES AND HERNANDEZ without taking any action to change the practices of the “Riot Squad” and/or SWAT Team, continue to routinely deploy this or other tactical units, like SWAT, to use excessive force against demonstrators and other individuals like Plaintiff. By doing so, Supervisory Defendants have knowingly endorsed and encouraged these units to continue to employ the practices complained of in this action, including the use of violent and excessive force without justification.

3.51 None of the last five Superintendents have taken any significant steps to address the repeated findings of excessive use of force. There has not been use of force training for officers who are already in the field, for example. Indeed, the PRPB does not even have a comprehensive or effective use-of-force policy, as it does not address use of force against protesters or large crowds during mass rallies. *Id.* at 33. Nor has the PRPB implemented effective reporting and review requirements to ensure that officers use lawful and appropriate force during interaction with civilians. *Id.* at 36. On the contrary, Superintendents have encouraged the now well-settled and widespread use of excessive force against protesters, which constitutes clear evidence of the ongoing systemic malady in the PRPB.

3.52 As a result of Supervisory Defendants’ continued support of the PRPB’s use of excessive force against protesters, Plaintiff’s First Amendment rights under the U.S. Constitution have been curtailed. Moreover, the use of excessive force against Plaintiff and other demonstrators has also resulted in Fourth Amendment violations. In particular, Plaintiff, like other demonstrators who participated in the mass rally, have the right to be free from unreasonable use of force. It is

patently clear that only injunctive relief will prevent this longstanding and ongoing deprivation of Plaintiff's constitutional rights. If this Court were to take a look to the May 1, 2017 events, it is clear that this story is repeated year after year.

IV. First Cause of Action Under 42 U.S.C. §1983: Violation of Plaintiff's First Amendment Rights – Defendants Brutal Aggression Against Plaintiff

4.1 The allegations contained in all preceding paragraphs are re-alleged as if fully incorporated herein.

4.2 The First Amendment to the United States Constitution guarantees the right to freedom of speech, freedom of expression, and the right to assemble and petition the Government for a redress of grievances. The Fourteenth Amendment incorporates the First Amendment against the states and the Commonwealth of Puerto Rico.

4.3 It is the well-settled, widespread, and ongoing pattern and practice of the PRPB, to use excessive force against protesters or people present during mass rallies while they engage in free speech and expression at demonstrations and protests.

4.4 Moreover, given the lack of legitimate reasons to use tear gases, pepper spray and other chemical substances at extremely close range and in a prolonged manner against Plaintiff, and other bystanders, present at the May 1, 2018 rally, upon information and belief, it was precisely the First Amendment protected activities taking place and an unpublished operational plan that were the motivating factor in the PRPB's decision to unleash unnecessary, abusive, and indiscriminate force against Plaintiff.

4.5 The unlawful police aggression suffered by Plaintiff in response to his mere presence at the May 1, 2018 mass rally, where she was making her claims as a single mother and veteran of the United States Armed Forces and the Iraq War, constitutes a violation of Plaintiff's First Amendment Rights under the Constitution of the United States. As all persons are entitled

to, and have a right to, conduct lawful business and other activities at public forums, such as streets and sidewalks.

4.6 Defendants ROSSELLO, PESQUERA, ESCALERA, and BERMUDEZ are responsible together with the rest of defendants, officers and supervisors, for overseeing the policies and practices of the PRPB that day. By encouraging the use of unreasonable force against Plaintiff and other protesters, they have deprived Plaintiff of her right to freedom of speech and expression, under the First Amendment of the United States Constitution.

V. Second Cause of Action Under 42 U.S.C. §1983: Violation of Plaintiff's Fourth Amendment Rights – The Unlawful Attacks Against Plaintiff with Tear Gases, and Chemicals Substances

5.1 The allegations contained in all preceding paragraphs are re-alleged as if fully incorporated herein.

5.2 The Fourth Amendment to the United States Constitution protects people from unreasonable searches and seizures, and from other unlawful police misconduct.

5.3 The PRPB routinely uses techniques such as painful pressure points, batons, pepper spray, tear gases, other chemical substances, and rubber bullets or similar ammunition, on protesters and other people present at mass rallies or demonstrations, including Plaintiff in the instant case, who was participating in First Amendment protected activities. These actions, physical aggressions and corralling of protesters during alleged attempts to disperse crowds, form the basis of Plaintiff's reasonable belief that people there were not entitled to leave the areas in which they had been engaged in First Amendment protected activities. Moreover, these tactics are unnecessary and objectively unreasonable under the circumstances, as Plaintiff and other demonstrators attempting to disperse did not pose a threat to the police or the public; and in some cases, were not allowed to leave.

5.4 The physical aggression, threats and assault against Plaintiff, using tear gases and chemical substances at close range and an extremely prolonged manner is in violation to the guidelines for the use these kind of weapons; the reluctance to reveal information regarding the identity of these PRPB aggressors, and the dismissal of the administrative complaint Plaintiff filed with PRPB, constitute a violation of her physical and emotional integrity and her dignity, protected under the Fourth Amendment of the Constitution of the United States and the Settlement Agreement reached between the U.S. Department of Justice and the Commonwealth of Puerto Rico on June 17, 2013 for a sustainable Reform of the PRPB.

VI. Third Cause of Action: Supervisory Liability

6.1 The allegations contained in all preceding paragraphs are re-alleged as if fully incorporated herein.

6.2 Supervisory Defendants knew or should have known of the aggressive behavior and propensity for violence of the police officers under their command and failed to properly supervise them and take remedial action.

6.3 Supervisory Defendants failed to properly provide and facilitate training on constitutionally acceptable police practices to the officers under their command.

6.4 As Plaintiff will show, Supervisory Defendants condoned, encouraged and allowed the indiscriminate and unlawful use of force against Plaintiff and other protesters in violation to the First and Fourth Amendments to the United States Constitution, as part of an effort to suppress freedom of expression and conduct several arrests in Santa Rita as part of an unpublished operational plan.

6.5 This conduct by supervisory defendants constitutes a reckless or callous indifference to plaintiff's constitutional rights, for which they are liable. All defendants are severally and

jointly liable for their actions.

VII. Fourth Cause of Action: Failure to take Remedial Action

7.1 The allegations contained in all preceding paragraphs are re-alleged as if fully incorporated herein.

7.2 The facts set forth in this complaint constitute violations of plaintiff's First, Fourth, and Fourteenth Amendment to the United States Constitution and the Civil Rights Act of 1871, 42 USC §1983.

7.3 Supervisory Defendants were reckless and callously indifferent to the constitutional rights of Plaintiff because they failed to take remedial action against John Doe Agents 1 thru 6. Some of them identified as Ignacio Loubriel Camareno and Luis Ortiz Ortiz. The supervisory defendants knew the propensity for violence of these Officers and failed to send them to psychological evaluations, failed to order them to retraining, failed to remove them from preventive and control operations in order to prevent the civil rights violations they perpetrated on Plaintiff; and failed to suspend or dismiss them from the Puerto Rico Police Bureau. All defendants are severally and jointly liable for their actions.

VIII. Fifth Cause of Action: Failure to Properly Train and Retrain

8.1 The allegations contained in all preceding paragraphs are re-alleged as if fully incorporated herein.

8.2 The facts set forth in this complaint constitute violations of plaintiff's First, Fourth, and Fourteenth Amendments to the United States Constitution and the Civil Rights Act of 1871, 42 USC §1983.

8.3 The Supervisory Defendants were reckless or callous in the lack of training and retraining of police officers, defendants John Doe 1 thru 6, including but not limited to Ignacio

Loubriel Camareno and Luis Ortiz Ortiz; recklessness that brought about the violations of Plaintiff's civil rights complaint of in this action. All Defendants are severally and jointly liable for their actions.

IX. Sixth Cause of Action: Punitive and Compensatory Damages

9.1 The allegations contained in all preceding paragraphs are re-alleged as if fully incorporated herein.

9.2 The conduct displayed by all Defendants, and the willful, wanton and intentional disregard for the Plaintiff's life, dignity, physical integrity and constitutional right, and the impunity showed by the Supervisory Defendants, GOVERNOR ROSSELLO, PESQUERA, ESCALERA, BERMUDEZ, COLON, CACERES, HERNANDEZ, and the officers and/or supervisors named John Doe 1 thru 6, among which are Luis Ortiz Ortiz (SWAT Commander) and Ignacio Loubriel Camareno, mandate the imposition of punitive damages against all defendants in order to deter the conduct and procedures which caused severe injuries and damages to Plaintiff.

9.3 The negligence displayed by defendants renders them jointly and severally liable for compensatory and punitive damages to Plaintiff as determine by the Jury.

X. Seventh Course of Action: Supplemental Jurisdiction – Violations under The Laws and Constitution of the Commonwealth of Puerto Rico

10.1 The allegations contained in all preceding paragraphs are re-alleged as if fully incorporated herein.

10.2 The facts set forth in this complaint constitute violations of Plaintiff's rights by Defendants under the Constitution of Puerto Rico, Article II, Sections 1, 4, 7 and 10 and the Civil Code of Puerto Rico of 1930, Article 1802, et seq., 31 LPRA §5141, et seq. Supplemental jurisdiction over all claims arising under the Constitution and Laws of the Commonwealth of Puerto Rico arise from the same nucleus of operative facts. 28 U.S.C. §1367.

10.3 The facts alleged in this complaint state a claim under the Constitution of the Commonwealth of Puerto Rico, Article 1802 of Puerto Rico Civil Code, et seq., 31 LPRA §5141 for which defendants, including the Commonwealth of Puerto Rico, are liable.

10.4 Under the Puerto Rico statute that allows claims against the state, the Commonwealth of Puerto Rico is liable to Plaintiff for the unlawful and negligent conduct of its employees acting in their official capacity. Puerto Rico Civil Code, Art. 1802 and 1803 et als. Id.

10.5 Under Article 1802 and 1803 of the Puerto Rico Civil Code, Defendants are liable to Plaintiff, as a direct result of their unlawful and negligent actions.

XI. Eighth Cause of Action: Attorney's Fees and Pre-Post judgment Interest

11.1 The allegations contained in all preceding paragraphs are re-alleged as if fully incorporated herein.

11.2 All Defendants are jointly liable to Plaintiff for all sums herein requested as well as for all prejudgment and post judgment interest, costs and attorneys' fees as prescribed by law under 42 USC §1988.

11.3 Attorneys fees and interest are also due under the Commonwealth of Puerto Rico Law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Honorable Court declare that Defendants' conduct was unlawful and in violation of the constitutional provisions and statutes herein pleaded, and that it grant Plaintiff the following remedies:

A. Issue a Declaratory Judgment declaring that Defendants' actions and/or omissions violate the First, Fourth and Fourteenth Amendments to the Constitution of the United States, the Bill of Rights of the Commonwealth of Puerto Rico Constitution, and Puerto Rico torts law; and runs afoul of the PRPB Reform Agreement between the United States Department of Justice

and the Commonwealth of Puerto Rico.

B. Issue Preliminary and Permanent Injunctive Relief prohibiting Defendants and PRPB officers from incurring in this repeated illegal and unconstitutional conduct;

C. Issue Preliminary and Permanent Injunctive Relief requiring Defendants to develop and apply policies and procedures that will ensure the protection of Plaintiff's rights, as alleged herein, and prevent similar future events as those narrated in this complaint, and as agreed to in the PRPB Reform Agreement between the United States and the Commonwealth of Puerto Rico.

D. Issue an advisory order that the Commonwealth of Puerto Rico negotiate an amendment to the Police Reform Agreement with the United States Justice Department to incorporate the establishment of a permanent independent civilian oversight mechanism, that would allow independent citizens' participation in overseeing police practices, as has been included in many police reform agreements in the United States after the signing of Puerto Rico's Police Reform Agreement.

E. Award compensatory and general damages against all Defendants sued in their individual capacities and the conjugal partnerships comprised by each defendant and their respective spouses A through M, for Plaintiff, in an amount to be determined according to evidence presented to the Jury, as a remedy for the physical, mental and emotional distress and discomfort that Plaintiff suffered, as provided by the laws and statutes of the United States and the Commonwealth of Puerto Rico;

F. Award exemplary and punitive damages against all Defendants sued in their individual capacities in an amount to be determined at trial by the Jury, in light of Defendants' willful, wanton, callous and malicious acts, and reckless disregard and deliberate indifference

for Plaintiff's civil rights;

- G. Award Plaintiff costs, expenses, and attorneys' fees pursuant to 42 USC Sec 1988;
- H. Pre-judgment interests; and
- I. Any other relief this Court deems equitable and just.

PLAINTIFF DEMANDS A JURY TRIAL ON ALL ISSUES SO TRIABLE.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 7th day of April of 2021.

CERTIFICATE OF SERVICE: I hereby certify that copy of this motion has been electronically filed on this date with the Clerk of the Court using the CM/ECF system.

*S/***FERMÍN L. ARRAIZA NAVAS**
FERMÍN L. ARRAIZA NAVAS
USDC-PR 215705
farraiza@aclu.org

*S/***STEVEN P. LAUSELL RECURT**
STEVEN P. LAUSELL RECURT
USDC-PR 226402
slausell@gmail.com

WILLIAM RAMIREZ-HERNÁNDEZ
wramirez@aclu.org
American Civil Liberties Union of Puerto Rico
Union Plaza, Suite 1105
416 Ave. Ponce de León
San Juan, Puerto Rico, 00918
Tel: 787-753-8493
Fax: 787-753-4268

PO Box 194876
San Juan, Puerto Rico, 00919
Tel: 787-751-1600