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**PRESS RELEASE**

**FOR IMMEDIATE RELEASE**

**Judge Swain Lifts Stay on Lawsuits Against Government Officials in Their Personal Capacity Following Arguments by ACLU of Puerto Rico**

*Under the guise of the Puerto Rico debt restructuring process, current and former officials have avoided facing the law in civil rights violation lawsuits.*

San Juan, P.R. – After years of unjust stalling of judicial cases in Puerto Rico, U.S. Federal Judge Laura Taylor Swain clarified that the protections of the Commonwealth of Puerto Rico’s (ELA) Debt Adjustment Plan under the PROMESA Act cannot be used as a legal shield in favor of current and former public officials who face lawsuits in their personal capacity for civil rights violations.

The forceful Opinion and Order issued by Judge Swain responds to prolonged litigation driven by the American Civil Liberties Union of Puerto Rico (ACLU of PR), which advocated for the need to hold individuals accountable for alleged abuses, regardless of the fiscal restructuring process of the Puerto Rico government. The ruling establishes that people can resume their claims for damages, an aspect that the Financial Oversight and Management Board (FOMB) and the ELA attempted to block.

“We enthusiastically welcome Judge Swain's order, which, with this determination, opens the possibility of finding justice for all individuals whose rights have been violated by officials or former officials who, under the mantle of the public debt restructuring process, have walked with impunity in the free community until now,” affirmed Fermín Arraiza Navas, Legal Director of the ACLU of PR.

The ACLU of PR's claim is tied to the action filed by Jonathan Hernández Zorrilla and Yadira Carrasquillo González, who alleged violations of their rights to freedom of expression, protection against unreasonable searches and excessive use of force by the Puerto Rico Police, and the right to due process of law and equal protection of the laws, as a result of incidents that occurred during a demonstration in San Juan on May 1, 2018. In this case, former Governor Ricardo Rosselló and former Secretary of the Department of Public Safety (DSP), Héctor Pesquera, are being sued in their personal capacity.

“This ruling sets a critical precedent on the limits of the PROMESA Act to exempt public officials from the consequences of their actions and provides an indispensable reference so that the fiscal crisis of the government of Puerto Rico does not serve as a pretext to erode individual accountability for civil rights violations,” stressed Annette Martínez Orabona, Executive Director of the ACLU of Puerto Rico.

The litigation was paralyzed in September 2023 by the Title III Adjustment Plan. That same month, the ACLU of PR requested through a letter to the FOMB that it lift the automatic stay and argued that such suspension did not apply to civil rights lawsuits against officials in their personal capacity.

In the face of the Board's silence, on February 15, 2024, the Legal Director of the ACLU of PR, along with attorney Steven Lausell Recurt, representing the plaintiffs, filed a Request for Stay Relief in the Title III case. The lawyers argued that PROMESA should not be interpreted as a "free pass" for government officials sued for violations of fundamental rights in their personal capacity.

The civil rights organization warned that the incorrect interpretation of the law would deny fair judicial redress to the litigants and would send a detrimental message to Police officials regarding their duty to respect civil liberties and the fundamental rights of the people. The lawyers stressed that the financial crisis that PROMESA sought to resolve could not be an additional burden for people to access a judicial remedy in federal court.

### **Board Ordered to Notify Parties of Lawsuit Reactivation**

On March 14, 2024, the government of Puerto Rico filed its Objection to the request for the lawsuits to proceed, presented by the plaintiffs. Represented by the FOMB, the ELA consented to the plaintiffs continuing with their claims for non-monetary relief, but strongly opposed the reactivation of the monetary claims (damages) against the officials, even in their personal capacity.

The ELA based its argument on Act No. 9 of 1975, which empowers the government to provide legal representation and indemnify its employees for adverse judgments issued in their personal capacity for acts performed in the course of their employment. According to the Board and the government, due to the possibility of indemnification, allowing personal lawsuits would become an "indirect attempt to pursue claims against the ELA".

On July 18, 2024, the ACLU of PR refuted the government's arguments, reminding the Court that personal capacity civil liability is a central principle of the federal law that allows citizens to sue government officials for civil rights violations, and that the indemnification clause of Act No. 9 is an internal and optional agreement of the government of Puerto Rico that cannot and must not extinguish the plaintiff's rights against the official.

A year and two months later, in her order of September 30, 2025, Judge Swain underscored that claims for damages against officials in their personal capacities are not prohibited by the ELA's

Adjustment Plan and rejected the government's main objection based on Act No. 9, holding that the existence of a promise of indemnification does not change the nature of the liability.

The judge also specified that the discharge and injunction of the Adjustment Plan only cover the direct liabilities of the Plan debtors (the ELA and its entities), not those of third parties or individual officials.

Judge Swain ordered the Board and the government to notify the parties in all cases where they previously alleged the prohibition or paralization of personal lawsuits, that the Court ruled that the Plan and related orders "do not bar the prosecution of claims against current or former public officials or employees in their personal capacities". Said notification must be made on or before October 15, 2025.

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