UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

SONIA M. DÁVILA-SURÉN **Plaintiff,** **v.** **PUERTO RICO INDUSTRIAL COMMISSION; MARIA T. QUINTANA**, in her official capacity as President of the Puerto Rico Industrial Commission; **FEDERACIÓN CENTRAL DE TRABAJADORES, UFCW LOCAL 481** **Defendants.**	**CIVIL NO. 26-1512 (MAJ)** **Constitutional Violation Action (42 U.S.C. § 1983), Declaratory Judgment, Injunctive Relief, and Compensatory and Nominal Damages. Jury Trial Demanded.**

SURREPLY TO THE GOVERNMENT EMPLOYER'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS

TO THE HONORABLE COURT:

Plaintiff Sonia M. Dávila-Surén ("Dávila-Surén"), through undersigned counsel, submits this surreply, confined under Local Civil Rule 7(d) to the new arguments in the Reply (Dkt. 23) of Defendants Puerto Rico Industrial Commission ("PRIC") and its President, María T. Quintana ("Quintana") (together, "the Government Employer").

INTRODUCTION

The Reply advances three theories the Motion to Dismiss never raised: that Dávila-Surén's uncontroverted evidence reflects only her "subjective" belief; that Defendant Federación Central de Trabajadores, UFCW Local 481 ("the Union") is

an "independent actor"; and that the challenged policy is lawful because California, Washington, and New York have adopted something like it. Reply at 2–6, 9–11 (Dkt. 23). Each fails, and together they prove the controversy is live. The Government Employer now tells the Court that it ceases deductions "upon the Union's certification of disaffiliation," that it "lacks authority to interfere" with that certification, and that the arrangement is "a reasonable and lawful framework." Reply at 9, 11. A defendant that defends the challenged policy in its reply brief has not shown that the challenged conduct cannot reasonably be expected to recur. It has announced that it will.

ARGUMENT

I. THE REPLY'S "SUBJECTIVE BELIEF" THEORY MISSTATES BOTH THE RECORD AND THE LAW.

Relying on *Laird v. Tatum*, 408 U.S. 1 (1972), and *Katz v. Pershing, LLC*, 672 F.3d 64 (1st Cir. 2012), the Reply contends that Dávila-Surén's standing rests on her "subjective apprehension." Reply at 2–4. It rests instead on her paychecks, every one of which had carried a dues deduction when she sued on August 11, 2026, including two issued after her revocation took effect. Decl. ¶¶ 7, 9–10 (Dkt. 16-1); Dkt. 12-5. *Laird* rejected a "subjective 'chill,'" 408 U.S. at 13–14, while distinguishing government power that is "compulsory in nature," *id.* at 11. A payroll deduction is compulsion in its plainest form. *Katz* found no standing where the plaintiff's data had never been accessed and her fees went to a third party, while reaffirming that "even an 'identifiable trifle'" of economic loss suffices. *See Katz*, 672 F.3d at 76–77, 79–80 (internal citation omitted). Dávila-Surén's loss was taken from

her wages by the Government Employer itself. "If a defendant has caused . . . monetary injury to the plaintiff, the plaintiff has suffered a concrete injury in fact under Article III." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 425 (2021).

Dávila-Surén submitted an Unsworn Statement under penalty of perjury (Dkt 16-1), and the Reply contests none of its facts. The Reply insists that on a factual challenge a plaintiff must offer "evidence rather than conjecture." Reply at 5. She has. The Government Employer has offered none: no declaration from Quintana, no rescission of the policy, and no commitment to honor Dávila-Surén's revocation regardless of what the Union reports. *See* Decl. ¶ 12; *Valentín v. Hosp. Bella Vista*, 254 F.3d 358, 363 (1st Cir. 2001).

II. THE UNION IS NOT AN "INDEPENDENT ACTOR," AND THE THREAT OF RENEWED DEDUCTIONS IS NOT SPECULATIVE.

The Reply invokes *Clapper v. Amnesty International USA*, 568 U.S. 398, 414 (2013), to characterize the risk of renewed deductions as "speculation about the decisions of independent actors." Reply at 6. That concern runs to "independent actors not before the courts." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 562 (1992) (internal quotation marks omitted). The Union is a defendant here, acting jointly with the Government Employer. Compl. ¶¶ 52, 57–58. And its word matters only because the Government Employer's own policy makes it controlling. Dávila-Surén's theory rests not on speculation but on "the predictable effect of Government action on the decisions of third parties." *Dep't of Com. v. New York*, 588 U.S. 752, 768 (2019).

Nor is there any "highly attenuated chain of possibilities." *Clapper*, 568 U.S. at 410. The chain has one link: the Union tells the Government Employer what Dávila-Surén's status is, and the Government Employer acts on it. Quintana confirmed as much on July 23, setting the cessation date because "the notification of the disaffiliation and dues suspension was issued by you [the Union] today." Dkt. 12-6 at 3. That chain has run against her twice. The Reply now attributes the 2022 resumption to a state-court judgment, Reply at 5, but it was the Union that invoked that judgment and urged the Government Employer "to reverse any disaffiliation implemented." Dkt. 1-2 at 3; Compl. ¶¶ 25–27. In June 2026, the Government Employer withdrew its June 11 commitment after the Union's cease-and-desist letter. Mot. at 4, 17–18 (Dkt. 12). The Reply's answer, that the June reversal "arose before the PRIC received the Union's July 23 communication," Reply at 5, confirms that the only difference was the Union's latest letter. That history "is good evidence that the threat of enforcement is not 'chimerical,'" *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 164 (2014) (internal citation omitted), unlike the pre-enforcement challenges in *Reddy v. Foster*, 845 F.3d 493, 502–05 (1st Cir. 2017), and *Blum v. Holder*, 744 F.3d 790, 798–99 (1st Cir. 2014).

III. THE REPLY'S NEW MOOTNESS AUTHORITIES CONFIRM THAT THE CONTROVERSY IS LIVE.

A. A Defendant Cannot Escape the Voluntary-Cessation Doctrine by Announcing a Future Stop Date.

The Reply contends that "[o]n August 1, 2026, there was no case to moot," invoking *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 190 (2000). Reply at 6–7. *Laidlaw* made the observation the Reply quotes to

correct a court of appeals that had "confused mootness with standing" and thereby relieved the defendant of its "formidable burden," *id.* at 189–90, not to invite the maneuver.

The argument also assumes what the record refutes. No deduction-free paycheck had issued when Dávila-Surén sued. Decl. ¶¶ 9–10; Dkt. 12-5. What preceded the suit was a promise, and it came only after she had written to the Union, copying Quintana, that she was being forced "to resort to a legal remedy" and would "take further action to ensure that [her] constitutional right is upheld," Dkt. 1-6 at 21; Dkt. 1-8 at 2, and after the Union had declared on July 9 that she had failed to satisfy procedures it called "essential." Compl. ¶ 38. She never satisfied them. Decl. ¶ 6. Fourteen days later, the Union "authorize[d]" cessation anyway, Dkt. 12-7 at 2, and nothing in the record explains that turnabout except the litigation she had threatened. The Reply's reasoning would convert that sequence into a jurisdictional bar. When Dávila-Surén sued, every paycheck she had received carried a deduction. Decl. ¶¶ 9–10. What existed was a hollow promise resting entirely on the Union's notification (Dkt. 12-6 at 3). The Reply would treat that promise as performance and spare the Government Employer the "formidable burden" the U.S. Supreme Court imposes so that a defendant cannot "suspend its challenged conduct after being sued, win dismissal, and later pick up where it left off." *Fikre*, 601 U.S. at 241. Making the promise nineteen days before the complaint makes that maneuver easier, not permissible, for "[t]he Constitution deals with substance," not strategies. *Id.* (quoting *Cummings v. Missouri*, 71 U.S. (4 Wall.) 277,

325 (1867)). Dávila-Surén does not ask the Court to presume standing from the cessation, *see Laidlaw*, 528 U.S. at 191 (quoting *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 109 (1998)). Her standing rests on proof. She asks only that an unkept promise not substitute for the proof *Laidlaw* and *Fikre* require of the defendant.

B. *Fikre* Forecloses the Government Employer's Position.

The Reply quotes *Fikre*'s statement that "[w]hat matters is not whether a defendant repudiates its past actions, but what repudiation can prove about its future conduct." Reply at 7 (quoting 601 U.S. at 244). It omits the holding. A unanimous Court held the case not moot despite an official's declaration that the plaintiff "will not be placed on the No Fly List in the future based on the currently available information," because it did not address whether the government "might relist him if he does the same or similar things in the future." 601 U.S. at 239–40, 242. And the Court refused to let "a defendant's speculation about a plaintiff's actions make up for a lack of assurance about its own." *Id.* at 243. The Reply speculates that her "membership status" will not change, Reply at 7, but offers no assurance about its own conduct if it does. Its lone assurance, that it "will not deduct union dues from her wages absent her affirmative written authorization," *id.*, describes a rule the Government Employer disregarded on every payday from December 2022 to July 2026, Decl. ¶ 3; Compl. ¶ 45, and is contradicted two pages later by its defense of a framework in which the Union's certification controls. Reply at 9–11. If an official's declaration fell short in *Fikre*, an empty assertion in a brief falls shorter still.

C. *Ramos-Ramos* Supports Dávila-Surén, Not the Government Employer.

The Reply's claim that *Ramos-Ramos v. Jordán-Conde*, 171 F.4th 438 (1st Cir. 2026), "supports dismissal *a fortiori*," Reply at 8, inverts the decision. The First Circuit found the prospective claim moot because "*Janus*, rather than legal gamesmanship, best explains" the defendants' change in conduct, and because the defendants acknowledged that further collection was unlawful and "instituted policies to ensure that UPR employees affirmatively consent to Union membership before asking for any dues payment." *See Ramos-Ramos*, 171 F.4th at 444. It called those admissions "crucial," distinguished a case in which defendants "refused to 'concede[] error,'" and concluded that "[t]here is nothing to be gained from a declaration stating what UPR and the Union already agree is the law." *Id.* (quoting *Road-Con, Inc. v. City of Philadelphia*, 120 F.4th 346, 357 (3d Cir. 2024)).

None of that is present here. No change in law explains the Government Employer's conduct; *Janus* was nearly eight years old when it withdrew its June 11 commitment. It admits no error, adopts no new policy, and even disputes the law in its Reply. It stands where the *Road-Con* defendants stood. Nor is the Union's July 23 letter a "non-litigation reason[]." Reply at 8 (quoting *Ramos-Ramos*, 171 F.4th at 444). The reasons *Ramos-Ramos* credited were the defendants' "admissions and changes in policy to avoid future *Janus* breaches." 171 F.4th at 444. The reason here is the Union's say-so, which is the very policy Dávila-Surén challenges. In stopping the deductions, the Government Employer did not abandon that policy—it

applied it. And a policy that stops deductions on the Union's word will restart them on the Union's word.

IV. THE REPLY'S NEW DEFENSE OF THE POLICY FAILS ON ITS OWN AUTHORITIES AND DEFEATS THE GOVERNMENT EMPLOYER'S MOOTNESS ARGUMENT.

Section II.D of the Reply defends, for the first time, the policy of ceasing deductions only "upon the Union's certification of disaffiliation," relying on *Mendez v. California Teachers Ass'n*, 419 F. Supp. 3d 1182 (N.D. Cal. 2020), *Belgau v. Inslee*, 975 F.3d 940 (9th Cir. 2020), and statutes from California, Washington, and New York. Reply at 9–11. Every one of those authorities presupposes the one thing the Government Employer has never claimed to possess because it does not exist: a signed authorization from the employee.

The Reply quotes *Mendez* for the proposition that *Janus* "does not preclude enforcement of union membership and dues deduction authorization agreements." Reply at 9. The sentence continues: "like plaintiffs' agreements here." *Mendez*, 419 F. Supp. 3d at 1186. The plaintiffs there "each signed an agreement to pay union membership dues through a payroll deduction for at least one year." *Id.* The *Belgau* employees likewise "voluntarily authorized union dues to be deducted from their payrolls." *Belgau*, 975 F.3d at 950. The California provision requires a union certification that it holds "an authorization, signed by the individual" whose wages are docked. Cal. Gov't Code § 1157.12(a). And Puerto Rico's own statute, which the Reply does not mention, provides for deduction of dues employees owe "as members," and "from the salaries of the employees who authorize it in writing." The

labor organization certifies the amount, not the consent. *P.R. Laws Ann.* tit. 3, § 702(a).

Dávila-Surén has sworn, without contradiction, that she never signed a dues deduction authorization. Decl. ¶ 3. She has been a nonmember since 2020, when the Government Employer itself honored her resignation. Compl. ¶¶ 23–24. Under every framework the Reply invokes, there was nothing on which to deduct. Nothing permits a public employer to take dues on a union's word when there is no consent to relay. That is what *Janus* forbids: no payment to a union "may be deducted from a nonmember's wages . . . unless the employee affirmatively consents to pay." *Janus v. AFSCME., Council 31*, 585 U.S. 878, 930 (2018). The Court condemned a scheme in which the union "certifies to the employer the amount of the fee" and that amount "is automatically deducted from the nonmember's wages," with "[n]o form of employee consent . . . required," holding that "[t]his procedure violates the First Amendment and cannot continue." *Id.* The defect is the same when the union certifies membership instead.

The Reply confirms the live controversy. The Government Employer argues that it "lacks authority to interfere" with the Union's determination and that its arrangement is "a reasonable and lawful framework." Reply at 9, 11. Under that framework, Dávila-Surén's deductions resume whenever the Union certifies that she is a member. Like the school district in *Parents Involved in Community Schools v. Seattle School District No. 1*, which "vigorously defend[ed]" its program and "nowhere suggest[ed] that if this litigation is resolved in its favor it will not

resume," 551 U.S. 701, 719 (2007), the Government Employer defends its framework without disclaiming it. Measured by what its position "can prove about its future conduct," *Fikre*, 601 U.S. at 244, it has proven that the conduct will recur on the Union's command.

CONCLUSION

The Government Employer stopped taking Dávila-Surén's dues because the Union permitted it, defends its right to resume whenever the Union permits otherwise, and asks the Court to hold that nothing remains to decide. Article III does not permit a defendant to end a case on those terms. The Government Employer's Motion to Dismiss (Dkt. 12) should be denied.

CERTIFICATE OF SERVICE

I hereby certify that on this date I electronically filed the foregoing with the Clerk of Court, using the CM/ECF System, which will send notification of such filing to all appearing parties and counsel using the Court's electronic filing system.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, November 16, 2026.

s/ Ángel J. Valencia
Ángel J. Valencia
USDCPR-300009
Liberty Justice Center
1629 K Street, N.W.
Suite 300
Washington, D.C. 20006
512-481-4400
avalencia@ljc.org

Counsel for Plaintiff Sonia M. Dávila-Surén