

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

COMMONWEALTH OF PUERTO RICO

Plaintiff

vs.

UNITED STATES OF AMERICA;
ALBERTO R. GONZALES, in his Official
Capacity as U.S. Attorney General; ROBERT
MUELLER, in his Official Capacity as
Director of the Federal Bureau of
Investigations; HUMBERTO S. GARCÍA, in
his Official Capacity as United States Attorney
for the District of Puerto Rico; LUIS S.
FRATICELLI, in his Official Capacity as
Special Agent in Charge of the Federal Bureau
of Investigations in Puerto Rico;

Defendants

Civil No: 06-1305 (DRD)

ACTION FOR:

DECLARATORY JUDGMENT

and

INJUNCTIVE RELIEF

COMPLAINT

TO THIS HONORABLE COURT:

Comes now Plaintiff, THE COMMONWEALTH OF PUERTO RICO
("Commonwealth"), through the undersigned attorneys, and respectfully STATES and PRAYS
as follows:

I. INTRODUCTION

This is a suit seeking declaratory and injunctive relief to vindicate the Commonwealth's
sovereign authority to enforce its criminal laws, in light of Defendants' unjustified, arbitrary,
illegal and unconstitutional refusal to disclose material information necessary for the completion
of a local criminal investigation into the events allegedly leading to the injury of members of the
press and/or the public, including but not limited to Mr. Valentín Quintana, on February 10,

2006, due to the alleged use of excessive force (including the alleged use of pepper spray) by FBI agents. The Commonwealth has ample power under the principles of federalism embodied in the United States Constitution to enact and enforce criminal laws pursuant to the police power reserved to the sovereign Commonwealth and States. This includes the power to investigate possible criminal behavior within its jurisdiction. Defendants cannot hide federal officers under a cloak of absolute immunity from prosecution under state criminal laws by refusing to comply with the Commonwealth's or the States' requests for information pursuant to criminal investigations.

Defendants' blanket and wholesale failure to comply with the Commonwealth's requests for information in this case, including their denial to provide even the names of the FBI agents and officials involved in the incident being investigated, constitutes an impermissible interference with the Commonwealth's sovereign power that requires this Honorable Court's immediate intervention. Thus, through the present action the Commonwealth seeks a judgment which: (i) declares that Defendants' actions are unjustified, arbitrary, illegal and unconstitutional violations of the Commonwealth's sovereign authority; and (ii) permanently enjoins Defendants from withholding any information relevant to the Commonwealth's investigation, and orders Defendants to comply with the Commonwealth's requests and produce the subpoenaed information, objects and documents.

II. JURISDICTION AND VENUE

This court has jurisdiction under 28 U.S.C. § 1331 (federal question, arising under the Tenth Amendment to the United States Constitution¹ and/or 48 U.S.C §§ 731b-731e).

¹ The Tenth Amendment is not the exclusive textual source of protection for principles of federalism. Printz v. U.S., 521 U.S. 898, 923 n. 13 (1997). The "residuary and inviolable sovereignty" of the states is reflected throughout the Constitution's text. Printz, 521 U.S. at 919. The Tenth Amendment merely confirms that the power of the federal government is subject to limits that may, in given instances, reserve power to the states. New York v. U.S., 505 U.S. 144, 157 (1992).

Declaratory and injunctive relief is proper pursuant to 28 U.S.C. §§ 2201-2202, 5 U.S.C. § 702 and Rule 65 of the Federal Rules of Civil Procedure.²

Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e)(2) because the acts complained of herein occurred within the Commonwealth.

III. PARTIES

Plaintiff (the Commonwealth) is, like a State, an autonomous political entity with sovereign authority to enforce its criminal laws and punish offenders within its territory and jurisdiction.

Defendants – (i) the United States of America; (ii) Alberto R. Gonzales, in his official capacity as the United States Attorney General; (iii) Robert Mueller, in his official capacity as the Director of the Federal Bureau of Investigations; (iv) Humberto S. García, in his official capacity as the United States Attorney for the District of Puerto Rico; and (v) Luis S. Fraticelli, in his official capacity as Special Agent in Charge of the Federal Bureau of Investigations in Puerto Rico – are the custodians of material information that is necessary to conduct a local criminal investigation into the events allegedly leading to the injury of members of the press and/or the public, including but not limited to Mr. Valentín Quintana, on February 10, 2006, due to the alleged use of excessive force (including the alleged use of pepper spray) by FBI agents.

² This suit is not barred by federal sovereign immunity under: (i) 5 U.S.C. § 702 (which waives the immunity of the United States in actions for relief other than money damages, whether the suit is under the Administrative Procedure Act or not, Chamber of Commerce of U.S. v. Reich, 74 F.3d 1322, 1329 (D.C. Cir. 1996); Warin v. Director, Dept. of Treasury, 672 F.2d 590, 591 (6th Cir. 1982) (“5 U.S.C. § 702 waives the sovereign immunity defense in actions for non-monetary relief under [28 U.S.C.] Section 1331.”)); and (ii) the well-established principle that sovereign immunity does not bar suits for specific relief against government officials where the challenged actions of the officials are alleged to be unconstitutional or beyond statutory authority, Clark v. Library of Congress, 750 F.2d 89,

IV. FACTUAL ALLEGATIONS

1. On February 10, 2006, agents of the Federal Bureau of Investigations (“FBI”), under the supervision of Defendants Mueller and Fraticelli, executed several search warrants.
2. One of such warrants was executed at an apartment building located at 444 De Diego Street, Río Piedras, Puerto Rico.
3. A number of journalists, including Mr. Normando Valentín Quintana, filed a formal complaint with the Commonwealth of Puerto Rico’s Department of Justice (“PRDOJ”) alleging that, while covering the events of February 10, 2006, in the vicinity of the building at 444 De Diego Street, Río Piedras, P.R., they were victims of excessive use of force (including the alleged use of pepper spray) by certain FBI agents.
4. Pursuant to its power and duty under the law, 3 P.R. Laws Ann. §§ 291 et seq., the PRDOJ began an investigation into the events allegedly leading to the injury of members of the press and/or the public, including but not limited to Mr. Valentín Quintana, on February 10, 2006.
5. On February 17, 2006, exercising its duty to investigate, the Commonwealth, through its Prosecutor General, Mr. Pedro G. Goyco Amador, properly served Defendants García, United States Attorney for the District of Puerto Rico, and Fraticelli, Special Agent in Charge of the Puerto Rico Field Office of the FBI, a sworn subpoena for the production of certain information, documents and objects pertaining to the PRDOJ’s investigation. See Exhibits A and B.
6. The subpoenas issued by the Commonwealth seek information relevant to the investigation of the complaints filed with the PRDOJ by members of the press covering

103 (D.C. Cir. 1984), see also Dugan v. Rank, 372 U.S. 609, 621-23 (1963); Malone v. Bowdoin, 369 U.S. 643, 646-48 (1962); Larson v. Domestic and Foreign Corp., 337 U.S. 682, 689-91 (1949).

the execution of the FBI search warrants at the apartment building located at 444 De Diego Street.

7. The subpoenas seek basic information such as the identity of the agents allegedly captured by the journalists' cameras on February 10, 2006, making use of pepper spray, during the execution of the FBI search warrants at 444 De Diego Street. See Exhibits A and B.
8. The time granted to Defendants García and Fraticelli to comply with the subpoenas issued by the Commonwealth has expired.
9. On March 1, 2006, the PRDOJ requested Defendant Gonzalez's assistance to obtain the requested information. See, Exhibit C.
10. To date, Defendants have not complied with the subpoenas issued by the Commonwealth.
11. Instead, Defendants filed a premature motion to quash the subpoenas with this Honorable Court. In The Matter Of Application for a Search Warrant –Motion To Quash Subpoena Related To Misc. 06-30 (JAF), Misc. No.: 06-49 (JAF), Docket No. 1.
12. After holding a hearing on the issue, and having the benefit of the Commonwealth's opposition to the motion to quash and motion to dismiss, this Court refused to quash the subpoenas. Id. at Docket No. 3-4.

V. CLAIMS FOR RELIEF

13. The allegations contained in paragraphs 1 through 12 of this Complaint are incorporated by reference as if fully set forth herein.
14. This is a suit to protect the Commonwealth's sovereign authority to enforce its criminal laws within its territory.
15. As Head of the Department of Justice of the Commonwealth of Puerto Rico, the Secretary is endowed, pursuant to Article IV, Sections 5 and 6, of the Constitution of

Puerto Rico and the Organic Act of the Puerto Rico Department of Justice, 3 P.R. Laws Ann. §§ 291 et seq., with a mandate to ensure full compliance with the Laws of the Commonwealth of Puerto Rico.

16. The Secretary, and any person in whom the Secretary delegates such faculties, may conduct any necessary investigation in order to carry out any of the Secretary's duties and responsibilities to enforce the Commonwealth's criminal laws pursuant to 3 P.R. Laws Ann. §§ 291 et seq.
17. Among the faculties available to the PRDOJ in carrying out its responsibilities are the power to interview witnesses, obtain statements, and issue subpoenas for documents and objects that it considers essential or relevant to its investigation. 3 P.R. Laws Ann. § 292(h).
18. The events surrounding the alleged injury of members of the press and/or the public, including but not limited to Mr. Valentín Quintana, on February 10, 2006, due to the alleged use of excessive force (including the alleged use of pepper spray) by FBI agents, triggered one of the Secretary's ministerial duties of utmost import – the investigation of allegedly violent conduct against a Puerto Rican citizen on Puerto Rican soil.
19. Pursuant to constitutional and statutory law, the Secretary, and any person in whom he delegates such faculties, are entitled to investigate and conduct interviews of the individuals who participated in the events allegedly leading to the injury of members of the press and/or the public, including but not limited to Mr. Valentín Quintana, on February 10, 2006; as well as to obtain all documentary evidence and objects relevant to said events.
20. The Commonwealth has the power and the obligation of enacting and enforcing its criminal laws.

21. As a quintessential part of said process, the Commonwealth must be free to investigate those individuals who may be reasonably suspected of wrongdoing.
22. Officers of the federal government are not absolutely immune from the exercise of the Commonwealth's and the States' police power.
23. With the passage of time, Defendants' refusal to produce the information, documents and objects demanded in the February 17, 2006, subpoenas seriously threatens the authority and efficiency of the Secretary's investigatory power regarding allegedly-violent conduct within the confines and jurisdiction of Puerto Rico.
24. To allow Defendants' decision not to comply with the February 17, 2006, subpoenas linger any further undoubtedly undermines the Commonwealth's constitutional authority to properly conduct investigations over purely-local matters.
25. Consequently, the Commonwealth is entitled to a judgment: (i) declaring that Defendants are in violation of the Commonwealth's sovereign authority; (ii) permanently enjoining Defendants from withholding any information relevant to the Commonwealth's investigation; and (iii) ordering Defendants to comply with the Commonwealth's requests and produce the subpoenaed information, objects and documents.

A. First Cause of Action:

The Commonwealth is entitled to the declaratory and injunctive relief requested because the Defendants' actions are not premised upon any federal regulation or statute.

26. The allegations contained in paragraphs 1 through 25 of this Complaint are incorporated by reference as if fully set forth herein.
27. The Commonwealth is entitled to the declaratory and injunctive relief requested because the Defendants actions are not premised upon any federal regulation or statute.

28. The regulations invoked by Defendants to deny the information do not: (a) create an independent privilege authorizing the USDOJ to withhold information; or (b) apply to a law enforcement request by the Commonwealth or a State, such as the one here in question.
29. As even the federal government has acknowledged in past cases, “the regulations simply set forth administrative procedures to be followed when demands for information are received” and “do not ‘create an independent privilege’ authorizing the Department of Justice to withhold information.” Fai Mak v. FBI, 252 F.3d 1089, 1092 (9th Cir. 2001).
30. Moreover, the cited regulations do not even apply to a law enforcement request by the Commonwealth or a State, such as the one here in question. See 28 C.F.R. § 16.21(c) (“Nothing in this subpart is intended to impede the appropriate disclosure, in the absence of a demand, of information by Department law enforcement agencies to federal, state, local and foreign law enforcement, prospective, or regulatory agencies.”).

B. Second Cause of Action:

The Commonwealth is entitled to the declaratory and injunctive relief requested because, even assuming that the cited regulations do purport to establish a valid ground for denying the Commonwealth’s or a State’s request for information pursuant to a criminal investigation, such administrative action would be *ultra vires* and well outside the Congress’s intent and the authority granted to the Executive under the Housekeeping Act.

31. The allegations contained in paragraphs 1 through 30 of this Complaint are incorporated by reference as if fully set forth herein.
32. The Commonwealth is entitled to the declaratory and injunctive relief requested because, even assuming that the cited regulations do purport to establish a valid ground for denying the Commonwealth’s or a State’s request for information pursuant to a criminal investigation, such administrative action would be *ultra vires* and well outside the

Congress's intent and the authority granted to the Executive under the Housekeeping Act, 5 U.S.C. § 301.

33. Section 16.26(b)(5) of Title 28 of the Code of Federal Regulations was approved pursuant to the statutory authority vested, by the Housekeeping Act, upon the Attorney General to prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use and preservation of its records, papers, and property. 5 U.S.C. § 301. This section does not authorize withholding information from the public or limiting the availability of records to the public. Id.
34. The Defendants' interpretation of the Attorney General's regulation, 28 C.F.R. § 16.26(b)(5), which purports to create a privilege through said regulation, is not justified by the text or the intent of the Housekeeping Act.
35. The Housekeeping Act should be interpreted in a restrictive manner so as to avoid an unconstitutional reading which would implicate the Commonwealth's sovereignty.
36. The USDOJ's legal interpretation of the Housekeeping Act is not entitled to any type of deference.
37. This Court should not read a preemptive breadth into the Housekeeping Act which would result in an unconstitutional intervention with the Commonwealth's and the States' sovereignty, absent a clear statement from Congress in the Act itself necessitating such ample preemption.
38. The "clear statement" requirement and the absence of a deferential treatment with respect to the agency's interpretations of law are of particular and forceful application in cases, such as the present one, where a different course of action would unduly interfere with

the sovereign authority of the Commonwealth and the States to wield the most traditional and core functions of their police power.

C. Third Cause of Action:

The Commonwealth is entitled to the declaratory and injunctive relief requested because, even if this Court chose to make a liberal interpretation of the Housekeeping Act, a Congressional authorization of the actions undertaken by Defendants would unconstitutionally limit the Commonwealth's and the States' sovereignty.

39. The allegations contained in paragraphs 1 through 38 of this Complaint are incorporated by reference as if fully set forth herein.
40. The Commonwealth is entitled to the declaratory and injunctive relief requested because, even if this Court chose to make a liberal interpretation of the Housekeeping Act, a Congressional authorization of the actions undertaken by Defendants would unconstitutionally limit the Commonwealth's and the States' sovereignty.
41. The Commonwealth has the power and the obligation of enacting and enforcing its criminal laws.
42. As a quintessential part of said process, the Commonwealth must be free to investigate those individuals who may be reasonably suspected of wrongdoing.
43. Officers of the federal government are not absolutely immune from the exercise of the Commonwealth's and the States' police power.
44. Defendants' actions involve a blanket wholesale denial of the Commonwealth's police power.
45. The only statutory authority cited by the federal defendants to substantiate such action is the Housekeeping Act. To the extent that the Housekeeping Act could have possibly served to grant such an absolute immunity from criminal investigation and prosecution to federal officials, it would constitute an unconstitutional affront to the States' and the

Commonwealth's sovereignty under the principles of federalism contained in the Constitution.

46. The Defendants' actions anchored on 28 C.F.R. §16.26(b)(5) are unconstitutional for they abridge the Secretary's constitutional and statutory right, as Head of the Puerto Rico Department of Justice for the Commonwealth of Puerto Rico, to investigate allegedly violent conduct within the geographical and jurisdictional confines of Puerto Rico.

D. Fourth Cause of Action:

The Commonwealth is entitled to the declaratory and injunctive relief requested because an Administrative Procedure Act claim is unwarranted in this case.

47. The allegations contained in paragraphs 1 through 46 of this Complaint are incorporated by reference as if fully set forth herein.
48. The Commonwealth is entitled to the declaratory and injunctive relief requested because an Administrative Procedure Act claim is unwarranted in this case.
49. Although Defendants have argued that the Commonwealth be directed to the Administrative Procedure Act ("APA"), as the proper procedure to question their decision, under the law of the First Circuit, the Commonwealth is not barred from invoking this Court's equitable powers to protect its sovereign interests through the present suit. See Rhode Island Dept. of Environmental Management v. U.S., 304 F.3d 31, 41-44 (1st Cir. 2002).
50. APA review is unwarranted in this case because it would impose an undue burden on the exercise of sovereign criminal authority that would run afoul of the Tenth Amendment.

E. Fifth Cause of Action:

Even if this Honorable Court entertains the present proceeding as an APA claim, the requested information should be disclosed because Defendants' denial is, by definition, arbitrary and capricious, in abuse of discretion, in excess of statutory authority, and not substantiated by any valid privilege.

51. The allegations contained in paragraphs 1 through 50 of this Complaint are incorporated by reference as if fully set forth herein.
52. Even if this Honorable Court entertains the present proceeding as an APA claim, the requested information should be disclosed because Defendants' denial is, by definition, arbitrary and capricious, in abuse of discretion, in excess of statutory authority, and not substantiated by any valid privilege.
53. Although the Commonwealth does not concede that APA review is applicable, it has duly complied with the USDOJ's Touhy regulations.
54. The subpoena was a proper "demand" under such regulations. See 28 C.F.R. § 16.21(a)(2) ("demand" is a "subpoena, order, or other demand [...] of a court or other authority.").
55. Thus, having complied with said regulations, APA review may be proper in the event this Honorable Court deemed it applicable, which we deny.
56. As has been resolved in this district, once a party complies with the pertinent regulations, it is for this Court to properly examine the agency's reasons for the denial of information. See A.C., Inc. v. Cooperativa de Seguros de Vida, 188 F.R.D. 181, 186 (D.P.R. 1999).
57. Defendants' actions are arbitrary and capricious, and constitute an abuse of discretion, since they constitute an unjustified and unexplained blanket denial to produce any information, even including the names of the FBI agents and officials involved in the incident under investigation.

58. Defendants' actions are in excess of statutory authority since they are only supported on a regulation that does not itself create a privilege.
59. Defendants' actions are not substantiated by any valid privilege. None of the information or items requested by the Commonwealth in the February 17, 2006, subpoenas would elicit production of investigatory records of the federal government. Disclosure of such information and items would not interfere with federal enforcement proceedings nor would disclosure impair federal investigative techniques and procedures as set forth in section 16.26(b)(5) of Title 28 of the Code of Federal Regulations.
60. Defendants are now foreclosed from coming up with additional reasons or justifications which are not part of the administrative record on the basis of which it was decided not to disclose the requested information. Burlington Truck Lines, Inc. v. U.S., 371 U.S. 156, 168-169 (1962).

F. Request for Costs and Attorney Fees

61. The allegations contained in paragraphs 1 through 60 of this Complaint are incorporated by reference as if fully set forth herein.
62. Pursuant to 28 U.S.C. §§ 1920 and 2412 (a)(1), the Commonwealth is entitled to recover its costs of suit. Pursuant to 28 U.S.C. § 2412(b) and (d)(1)(A), the Commonwealth is entitled to recover reasonable attorney fees incurred in connection with this litigation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for: (i) entry of a declaratory judgment recognizing the rights of the Commonwealth of Puerto Rico and the Secretary, as Head of the Department of Justice for the Commonwealth of Puerto Rico, to conduct a full investigation into the events allegedly leading to the injury of members of the press and/or the public, including but not limited to Mr. Valentín Quintana, on February 10, 2006, due to the alleged use of excessive force

(including the alleged use of pepper spray) by FBI agents; (ii) entry of judgment permanently enjoining Defendants from withholding any information relevant to the Commonwealth's investigation, and ordering Defendants to comply with the Commonwealth's requests and produce the subpoenaed information, objects and documents; and (iii) any other applicable remedy at law or equity.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico on the 23rd day of March, 2006.

ROBERTO J. SÁNCHEZ RAMOS
Secretary of Justice

S/ KENNETH PAMIAS VELÁZQUEZ
KENNETH PAMIAS VELÁZQUEZ
Special Aide to the Secretary of Justice
USDC-PR 219603
e-mail: kpamias@justicia.gobierno.pr

S/ JORGE R. ROIG COLÓN
JORGE R. ROIG COLÓN
Assistant Secretary of Justice
USDC-PR 220706
e-mail: jroig@justicia.gobierno.pr

S/ RAFAEL ROBLES DIAZ
RAFAEL ROBLES DIAZ
Director Civil Rights Task Force
USDC-PR No. 130207
e-mail: rarobles@justicia.gobierno.pr

S/ JORGE MARTÍNEZ LUCIANO
JORGE MARTÍNEZ LUCIANO
USDC-PR Bar No. 216312
e-mail: squalus@rocketmail.com

S/ ALFREDO ACEVEDO CRUZ
ALFREDO ACEVEDO CRUZ
USDC-PR Bar No. 220705
e-mail: lcdoacevedo@yahoo.com

S/ MICHAEL CRAIG MCCALL
MICHAEL CRAIG MCCALL
USDC-PR 210412
e-mail: michaelm@caribe.net

CIVIL RIGHTS TASK FORCE
Department of Justice
3rd Floor-Miramar
818 Ponce De León Ave.
San Juan, PR 00907
(787) 977-7717 Fax (787) 977-7729