IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 18-1544

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

COMMONWEALTH OF PUERTO RICO;
PUERTO RICO POLICE DEPARTMENT,

Defendants-Appellees

IRIS GUARDIOLA-CALDERON,

Movant-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES' RESPONSE TO ORDER TO SHOW CAUSE REGARDING APPLICABILITY OF PROMESA'S AUTOMATIC STAY PROVISIONS

The United States files this response to the Court's September 24, 2018, order requesting the parties' views on whether the appeal should be stayed under the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), 48 U.S.C. 2101 *et seq.*, in light of Puerto Rico's May 3, 2017, filing

under Title III of that Act for adjustment of its debts. As explained below, the Court should stay the appeal under Section 2161(a) of PROMESA, which incorporates the automatic stay provisions of the bankruptcy code, 11 U.S.C. 362 and 922. Under those provisions, Puerto Rico's filing for adjustment of its debts operates as a stay of new judicial proceedings against Puerto Rico, including the proceeding at issue in this appeal.

BACKGROUND

In 2012, the United States filed a complaint alleging that the Puerto Rico Police Department (PRPD) engaged in a pattern or practice of unconstitutional activity in violation of 34 U.S.C. 12601 (formerly codified at 42 U.S.C. 14141). See Doc. 1. The next year, the United States and the Commonwealth of Puerto Rico entered into a settlement agreement providing for reforms of the PRPD and jointly moved the court for an order approving the agreement and conditionally dismissing the case. Docs. 57, 60. The district court granted the motion, conditionally dismissed the case, and retained jurisdiction to enforce the settlement agreement. Docs. 59, 61.

The settlement agreement states that only the United States and Puerto Rico may enforce the agreement. Specifically, the agreement provides that "[t]his Agreement is enforceable only by the Parties. No person or entity is intended to be a third-party beneficiary of the provisions of this Agreement for purposes of any

civil, criminal, or administrative action, and accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under this agreement or otherwise." Doc. 57-1, at 96-97. The agreement further states that it "is not intended to impair or *expand* the right of any person or entity to seek relief against the Commonwealth of Puerto Rico, or any officer or employee thereof." Doc. 57-1, at 97 (emphasis added).

The district court, with the assistance of a technical compliance adviser, has enforced the settlement agreement for years. And, consistent with the agreement, the district court and this Court have repeatedly rejected attempts by non-parties to bring unrelated claims in this litigation. In 2013, for example, Jorge Diaz-Castro, a self-described "concerned lobbyist" for the PRPD, moved to intervene in the case. See Doc. 66, at 2. He contended that the agreement affected his ability to lobby for a referendum related to salary increases and retirement benefits for police officers. See Doc. 66. The district court summarily denied the motion. Doc. 67. Diaz-Castro appealed, and the United States moved for summary affirmance or dismissal because the case clearly presented no substantial question under this Court's Rule 27.0(c). See Doc. 105. This Court agreed and summarily affirmed without merits briefing, concluding that Diaz-Castro lacked standing to intervene and that his claims did not bear a sufficient relationship to the settlement agreement. Doc. 105, at 2-3.

In 2017, Clementina Vega-Rosario also sought to participate in the litigation. Doc. 648. Vega-Rosario contended that she was improperly removed from her position as the director of PRPD's Reform Unit in violation of the settlement agreement. Doc. 648, at 4-11. The district court denied Vega-Rosario's request because she was "not a party to the action, and the Agreement does not contemplate third parties to seek any form of relief." Doc. 649, at 1. The court further stated that any holding to the contrary would open up the floodgates to intervention by anyone who has any civil rights concerns with any police officer in Puerto Rico. Doc. 649, at 1-2. The court thus held that it could not—"by virtue of the enforcement of the agreement in this case—allow an independent civil rights claim" into the post-judgment proceedings. Doc. 649, at 1-2.

This appeal is the result of yet another non-party seeking to participate in this litigation. On April 24, 2018, Iris Guardiola-Calderon filed a motion to intervene. Doc. 818. There, she contended that PRPD officers violated her First and Fourth Amendment rights during a protest and that intervention was the sole potential vehicle to remedy the harms she suffered. Doc. 818. Specifically, Guardiola-Calderon alleges that a PRPD officer fired a tear gas gun in her direction that caused pain, nausea, and burning. Doc. 818, at 4. She admits that she could not remedy the harm through a standalone action because the automatic stay provisions of the bankruptcy code, incorporated in PROMESA, would stay any

such case. Doc. 818, at 5. Guardiola-Calderon attached to her motion a complaint in intervention where she sought declaratory and injunctive relief for violations of 42 U.S.C. 1983. See Doc. 818-2. Specifically, she sought an injunction that would prevent PRPD from using chemical agents and would require additional investigation of complaints regarding excessive force. Doc. 818-2, at 13.

The Commonwealth of Puerto Rico moved to strike the motion to intervene. Doc. 821. The Commonwealth contended that the intervention motion was an attempt to circumvent the automatic PROMESA stay and that it violated the portions of the agreement that bar non-party enforcement. Doc. 821, at 2-3.

The next day, before the United States responded to either motion, the district court summarily granted the motion to strike and denied the motion to intervene. Docs. 823-824. Guardiola-Calderon appealed, Doc. 852, and this Court requested the parties' views on whether the appeal should be stayed under PROMESA.

ARGUMENT

The text of the bankruptcy stay provisions, 11 U.S.C. 362 and 922, and this Court's practice under PROMESA require that this appeal be stayed pending resolution of Puerto Rico's petition for adjustment of debts.

The automatic stay provisions of the bankruptcy code, incorporated in PROMESA, broadly stay "the commencement or continuation, including the

issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor." 11 U.S.C. 362(a)(1); see also 11 U.S.C. 922(a)(1). Under the plain text of these provisions, Guardiola-Calderon's intervention complaint asserting a Section 1983 claim for declaratory and injunctive relief against Puerto Rico must be stayed because it constitutes the commencement of a judicial action against the debtor. See, *e.g.*, *In re City of San Bernardino*, 558 B.R. 321, 328-330 (C.D. Cal. 2016) (applying the stay provisions to a Section 1983 lawsuit and explaining that the suit would be stayed even if it sought only injunctive relief); see also *Matter of Mahurkar Double Lumen Hemodialysis Catheter Patent Litig.*, 140 B.R. 969, 976 (N.D. Ill. 1992) (noting that Section 362(a) is broadly drafted and therefore stays all claims regardless of the type of relief sought).

The code enumerates several exceptions from the stay provisions, but none applies here. See 11 U.S.C. 362(b). Indeed, the code identifies 28 categories of proceedings that are exempt from the automatic stay, such as criminal actions against the debtor, 11 U.S.C. 362(b)(1), and civil actions involving certain family law matters, 11 U.S.C. 362(b)(2). But no category exempts private civil rights actions or claims, regardless of the type of relief sought.

The only exception that could arguably apply to Guardiola-Calderon's motion to intervene in this case is the one that exempts "the commencement or

continuation of an action or proceeding by a governmental unit * * * to enforce such governmental unit's or organization's police and regulatory power." 11 U.S.C. 362(b)(4). This exception permits the district court to continue enforcing the settlement agreement between the United States and Puerto Rico because such enforcement is a continuation of the United States' action under 34 U.S.C. 12601. See *EEOC* v. *Rath Packing Co.*, 787 F.2d 318, 325 (8th Cir.) (holding that Section 362(b)(4) exception to the automatic stay applies to the United States' civil rights enforcement actions), cert. denied, 479 U.S. 910 (1986). But it does not permit consideration of a motion to intervene by a non-governmental third party because the relief sought in such a motion is not the continuation of the *United States'* enforcement action but instead the commencement of a *new* action against Puerto Rico through the filing of a complaint in intervention.

The legal basis for and the relief sought in Guardiola-Calderon's complaint in intervention illustrate this point. She invokes a different statute than the one at issue in the existing case and could have filed her case in federal court as a standalone lawsuit. In other words, while the United States' enforcement action alleges a pattern or practice of constitutional violations under 34 U.S.C. 12601 and has been resolved through a settlement agreement, Guardiola-Calderon's complaint alleges individual constitutional claims under 42 U.S.C. 1983 and primarily seeks declaratory and injunctive relief as to her particular circumstances. See Doc. 818-

2, at 11-14. Although the facts alleged in the complaint in intervention may be relevant to the enforcement of the settlement agreement, Guardiola-Calderon's legal claims and relief sought are distinct. Her motion to intervene is thus not a continuation of the United States' enforcement proceedings and therefore not exempt from the automatic stay provisions.[1]

This Court's practice in other private civil rights appeals following Puerto Rico's PROMESA Title III petition also supports staying this appeal. Consistent with the statutory text, this Court has summarily stayed such appeals. See Order of Court, *Pabon-Ortega* v. *Llompart-Zeno*, No. 16-1599 (1st Cir. Jan. 24, 2018) (staying appeal of case raising First Amendment claims under Section 1983 and seeking monetary and non-monetary relief); Order of Court, *Cano-Rodriguez* v. *De Jesus-Cardona*, No. 16-1532 (1st Cir. Nov. 27, 2017) (staying appeal of a case raising First Amendment political discrimination claims under Section 1983 and seeking monetary and non-monetary relief). For the reasons set forth above, it should do so again here.

---

[1] Even if Guardiola-Calderon's motion to intervene could be characterized as an attempt to enforce the existing settlement agreement, it would be stayed under 11 U.S.C. 362(a)(2), which automatically stays the enforcement of judgments obtained before the debtor filed for bankruptcy, because the district court approved that agreement before Puerto Rico filed its PROMESA Title III petition.

CONCLUSION

This Court should stay this appeal.

Respectfully submitted,

JOHN M. GORE
Acting Assistant Attorney General

s/ Vikram Swaruup
TOVAH R. CALDERON
VIKRAM SWARUUP
Attorneys
Department of Justice
Civil Rights Division
Appellate Section
Ben Franklin Station
P.O. Box 14403
Washington, D.C. 20044-4403
(202) 514-9115

CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2018, I electronically filed the foregoing UNITED STATES' RESPONSE TO ORDER TO SHOW CAUSE REGARDING APPLICABILITY OF PROMESA'S AUTOMATIC STAY PROVISIONS with the United States Court of Appeals for the First Circuit by using the CM/ECF system. All participants in this case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

s/ Vikram Swaruup
VIKRAM SWARUUP
Attorney