

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

CONSEJO GENERAL DE ESTUDIANTES DEL
RECINTO DE RÍO PIEDRAS DE LA
UNIVERSIDAD DE PUERTO RICO and the
FEDERACIÓN CENTRAL DE TRABAJADORES,
LOCAL 481, UFCW,

PLAINTIFFS,

- AGAINST -

HÉCTOR PESQUERA in his official capacity as
SUPERINTENDENT OF THE PUERTO RICO
POLICE DEPARTMENT,

DEFENDANT.

CIVIL ACTION NO.:

JUDGE:

MAGISTRATE JUDGE:

COMPLAINT

PRELIMINARY STATEMENT

(Suit for injunctive relief for violation of constitutional rights)

1. This action for injunctive relief is based on the Puerto Rico Police Department's pattern and practice of using excessive force against Plaintiffs 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. From time to time Plaintiffs stage public demonstrations to advocate changes that are of interest not just to their members but which are also matters of public concern. Such public demonstrations are time-honored and constitutionally protected methods of advocating for social change.
3. Since at least early 2009, the Puerto Rico Police Department ("PRPD") has routinely deployed Tactical Operations Units (colloquially known as the "Fuerza de Choque" or the "Riot Squad") and other units who used tear gas, pepper spray, rubber bullets, painful pressure point techniques, batons, and other forms of intimidation to prevent the two Plaintiff organizations, groups like them, and other individuals from exercising their constitutional rights.

4. The PRPD's conduct, as alleged in this Complaint, is not isolated. Nor does it represent the unauthorized actions of individual officers. Instead, it is the product of a widespread and well-settled pattern and practice of disrupting political assembly and activities through the use of unreasonable force. It has received widespread attention in the local news media with multiple stories in the written press, television, and other media. Multiple organizations, including the Department of Justice, Amnesty International, the American Civil Liberties Union, the Bar Association of Puerto Rico, and an external committee convened by the PRPD have repeatedly criticized the PRPD's excessive use of force, especially during public demonstrations. José Figueroa Sancha and Emilio Díaz Colón, former Superintendents of the PRPD, had frequent discussions with most if not all of those organizations and others who brought these incidents to their attention and asked them to initiate reform.

5. Plaintiffs seek injunctive relief pursuant to Section 1983 of the Civil Rights Act of 1964 ("Section 1983").

6. There is no valid justification for PRPD's pattern and practice of using force to prevent Plaintiffs from exercising their First Amendment rights to freedom of speech, freedom of expression, and freedom of assembly. Similarly, there is no valid justification for PRPD's repeated use of force in violation of Plaintiffs' Fourth Amendment right to be free from unreasonable searches and seizures.

7. Officers under the direction of or with the knowledge and acquiescence of Defendant the Superintendent of the PRPD, currently Héctor Pesquera, have utilized the PRPD's pattern and practice of forcefully engaging demonstrators even in instances in which demonstrators have engaged in entirely lawful demonstrations and other free speech activity and in instances in which demonstrators have engaged in entirely peaceful civil disobedience. They

are applied when public actions partake of an effort to bring important matters to the attention of the public.

8. Defendant, under the authority of the Governor of Puerto Rico, is responsible for implementing and overseeing the PRPD's policies and practices for engaging demonstrators. To the extent the practices are pursuant to informal policy of the PRPD, Defendant is likewise responsible for their adoption and/or implementation. To the extent the practices are widespread practices, Defendant has not only ignored the practices, he has actually encouraged them.

9. Plaintiffs seek permanent injunctive relief requiring Defendant to create an official policy governing the handling of public demonstrations and in particular the use of force against demonstrators ("Demonstration and Use of Force Policy") that: *One*, meets U.S. constitutional standards; *Two*, trains PRPD officers to follow the Demonstration and Use of Force Policy; and *Three*, provides adequate supervision and enforcement to be sure that the Demonstration and Use of Force Policy is followed.

JURISDICTION

10. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343, as Plaintiffs' claims arise under the First Amendment to the United States Constitution. This Court may grant declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202.

11. Venue is appropriate under 28 U.S.C. § 1391(b)(2) because the events giving rise to this Complaint occurred in this district.

PARTIES

Plaintiffs

12. Plaintiff the Consejo General de Estudiantes del Recinto de Río Piedras de la Universidad de Puerto Rico (the "General Student Council") is a membership organization

whose members include all 15,500-plus students enrolled at the University of Puerto Rico's ("UPR") Río Piedras campus. *See Ley de la Universidad de Puerto Rico (Law of the University of Puerto Rico)*, Art. 10. De los Estudiantes (Students), 18 L.P.R.A. § 609. Led by its President, its leadership consists of student representatives from the Administrative Committee and the University Committee, elected student senators, and members from the executive board of each faculty's student council. *See Reglamento General de Estudiantes de la Universidad de Puerto Rico (General Regulations of the Students of the UPR)*, Art. 3.2.

13. Since it was founded in 1968, the General Student Council has played a central role in developing and shaping public discourse at the UPR. As defined in the University of Puerto Rico's Bylaws, the central function of the General Student Council is to (1) advocate on behalf all its student members, to ensure that their concerns are not ignored and (2) put forth ideas and initiatives that contribute to the well-being of the university, including the student members themselves. *See Ley de la Universidad de Puerto Rico*, Art. 10. De los Estudiantes, 18 L.P.R.A. § 609.

14. Plaintiff the Federación Central de Trabajadores, Local 481, UFCW (the "FCT") was established in 1969 to protect the rights of public and private employees, including workers from the Puerto Rico Department of Housing, the National Parks Company, and several savings and credit unions. The fundamental objective of the FCT is to obtain safer working conditions, better wages, and other protections for its more than 3,000 members.

15. Public demonstrations and other forms of protected speech are essential to the fulfillment of each of the Plaintiffs' missions, and each Plaintiff routinely engages in such speech. The General Student Council necessarily relies on freedom of expression to advocate on behalf of students and engage the UPR administration and other branches of state government on issues that are important to its members; indeed the General Student Council plays a critical role during mass student protests by ratifying student strikes through a vote. Likewise, the FCT relies

on freedom of expression to secure better working conditions and other protections for its members.

Defendant

16. Defendant the Superintendent of the PRPD, currently Héctor Pesquera, is responsible for overseeing the operations of the second largest police force in the United States and is also responsible for adopting and enforcing the PRPD's policies for policing protesters during public demonstrations. He is also responsible for overseeing the practices of the PRPD. Mr. Pesquera is sued only in his official capacity as the Superintendent of the PRPD.

STATEMENT OF FACTS

17. In 2009, the Puerto Rican government proposed and ultimately adopted the Fiscal and Economic Recovery Plan (more popularly known in Puerto Rico as "Law 7"). Among other things, this piece of legislation stripped unions of their collective bargaining rights and reduced the amount of government support for public universities.

18. The considerable opposition to Law 7, especially from union leaders and ultimately also from university students, set off a series of protests across the island that lasted more than two years.

Banco Gubernamental de Fomento para Puerto Rico

19. Plaintiff the FCT was among the groups that opposed the legislation from the start, joining the growing number of protests against the measure in March of 2009.

20. On September 25, 2009 the FCT and other unions organized a peaceful protest at the headquarters of the Banco Gubernamental de Fomento para Puerto Rico ("Banco Gubernamental"). The FCT and other unions gathered to voice their grievances over the Board of Economic and Fiscal Reconstruction's (the "Fiscal Reconstruction Board") decision to

approve the layoffs of 16,970 public workers. The Fiscal Reconstruction Board was convened that day inside the Banco Gubernamental's headquarters to formally approve the measure.

21. More than three hundred protesters, including members of the FCT, held placards, chanted, and picketed in a small public plaza adjoining one of the three buildings that make up the Banco Gubernamental's headquarters. The protesters chanted slogans such as "Workers united will never be defeated" and "Struggle yes, surrender no."

22. Meanwhile, a smaller group of union leaders, including Luisa Acevedo, Andres Lloret, and Francisco Pizarro from the FCT, attempted to meet with the president of the Fiscal Reconstruction Board. These union leaders marched down the public street that leads directly to the entrance of the Banco Gubernamental. But at the submerged entrance of the Banco Gubernamental, hidden from the larger group of protesters, the Riot Squad stood in formation, blocking the doors leading into the lobby. Luisa Acevedo and other union leaders pleaded with an employee of the bank to let them in so they could make a formal request to meet with the president of the Fiscal Reconstruction Board. At that moment, without warning or provocation, and despite the fact that they vastly outnumbered the small group of protesters, the Riot Squad encircled the protesters and began forcefully shoving them with their batons.

23. After refusing the small group of protestors access to the bank, the large numbers of Riot Squad police then prevented the union leaders from even standing on the sidewalk by the bank's entrance to protest the actions being taken inside—using their batons to push and shove the small group of protesters off the public sidewalk and into the street. The incident marked the first time during the Law 7-related protests that union leaders were forcibly removed from a public space without justification, thus preventing protesters from exercising their First Amendment rights. The extent of force used by the PRPD at the Banco Gubernamental incident, and the number of Riot Squad officers deployed against a small group of peaceful protestors, instilled fear in the FCT, bringing their demonstration to an end.

Tuition Increases at the University of Puerto Rico

24. As Law 7 began to take full effect, it became increasingly unpopular, and opposition to it spread beyond labor unions. Notably, in April 2010, after the UPR announced that it planned to impose an \$800 dollar “stabilization fee” to make up for Law 7-related budget cuts, opposition to Law 7 overflowed into the UPR campus.

25. The fee increase, which was in effect a tuition increase, came on the heels of a Board of Trustee’s resolution limiting the university’s tuition waiver policies to students who did not benefit from government funded programs such as Pell Grants. The latter resolution came to be known as Certification 98.

26. Because the fee increase represented a 50% hike in tuition over the previous school year, the students believed it would impact a significant portion of the student body who could no longer afford to go to college. The tuition increase and Certification 98 were both wildly disfavored amongst students, a significant portion of whom immediately rallied against the administration’s measures.

27. On April 13, 2010, as a response to students’ call for action, the General Student Council held a General Assembly of Students at the Río Piedras campus (the “Assembly”). The Assembly approved a motion to create a Negotiating Committee to represent the students before the UPR’s administration and also resolved to enact a 48 hour walk-out if the administration did not heed their concerns. After numerous attempts to negotiate with administration officials, on April 21, 2010 the General Student Council announced the beginning of the 48-hour walk-out.

April 2010 Student Strike

28. The 48-hour walk-out came and went, but UPR administrators and officials still refused to meet with the Negotiating Committee. As a result, on April 23, 2010, the General Student Council announced the beginning of an indefinite strike. Almost three weeks later, the

Assembly rejected a proposal championed to stop the strike by university administrators, voting instead to continue the strike.

29. In the meantime, students at the UPR had set up a temporary camp in the center of campus, taking turns keeping watch over the site where students gathered to chant and hold placards against Law 7 and the proposed tuition increases.

30. This was a location that has traditionally been the site of First Amendment activity.

31. Almost immediately after the second vote extended the strike, and without any provocation, the Riot Squad seized control of the main campus gates, limiting any means of ingress or egress to the UPR campus. Inside the campus, the water and electricity were shut off. Making matters worse, the Riot Squad blocked parents, professors, union members and other supporters (including members of the Plaintiff organizations) from entering the campus, and on some occasions blocked these supporters from passing anything—even food and water—to students whom the police had barricaded inside. The PRPD's actions created a health and safety risk for students who remained inside the campus.

32. The strike lasted sixty-two days. Throughout that period, the Riot Squad used force and chemical irritants against student demonstrators. The officers also attacked bystanders and supporters on multiple occasions. On May 14, 2010, for example, one or more PRPD officers beat one student's father, Luis Torrez, in the face with a nightstick when he attempted to bring food to students to show his support for the strike. Officers then lifted Mr. Torrez and threw him to the ground before handcuffing and arresting him, breaking his glasses in the process. Mr. Torrez sustained a head wound that bled down his face, and he later required and received emergency medical care, including a cranial X-ray. Similarly, the PRPD repeatedly hit, shoved, pepper-sprayed, and struck students who tried to enter the Río Piedras campus. On May 14, 2010, for example, police officers threw one student to the ground, handcuffed him, and

pepper-sprayed him at close range, despite the fact that he was not trying to resist or evade arrest. Incidents such as this were common throughout the student strike. Indeed, several police officers posted on Facebook that they were excited to have an opportunity to beat students and put an end to the student demonstrations.

33. The vast majority of the time there was no legitimate law enforcement purpose to the PRPD's use of force and chemical irritants. On the very few occasions the PRPD could justify the use of *some* force, the PRPD nevertheless used excessive force that was disproportionate to the particular situation.

Hotel Sheraton Incident

34. On May 20, 2010, as the student strike at the UPR approached its fourth week, members of the General Student Council, the FCT, and other labor union leaders and members gathered at the Sheraton Hotel to protest a fundraising event that was part of the New Progressive Party of Puerto Rico's convention and at which Governor Fortuño was a guest. As the demonstrators peacefully formed a picket line and chanted slogans on the other side of the street from the side entrance of the hotel, the Riot Squad arrived at the main entrance of the hotel and remained there until they unexpectedly dispersed.

35. Soon thereafter, and as PRPD officers stood by and watched, a group of students entered the hotel lobby, which was open to the public. The officers did not attempt to prevent the students from entering the hotel lobby or tell the students that they were not allowed to do so. In fact, upon information and belief, the PRPD officers encouraged the students to enter with the intent to recall the Riot Squad in order to trap them inside.

36. Inside the lobby the students again peacefully formed a picket line, held signs, and began to chant. Suddenly, and with absolutely no advance warning, the Riot Squad burst into the lobby and indiscriminately began to beat, push, and pepper-spray students and other

protesters. Outside, standing near each of the hotel's doors, PRPD officers blocked the exits and struck students with their batons as they attempted to exit the lobby.

37. Multiple other violent incidents occurred inside of the hotel. In one of the most severe shows of force, several police officers wrestled Jose "Osito" Perez, a UPR student, to the ground, while at least two officers climbed on top of him, forcing his face to the ground. Mr. Perez was kicked in the groin and was tasered after he had already been incapacitated by the PRPD. On information and belief José Rosa Carrasquillo, the then-second-in-command of the PRPD, was the officer who kicked Mr. Perez in the groin. There was absolutely no legitimate law enforcement reason for using that level of force: the student did not pose a threat and was already on the floor face down when he was tasered. Nor was the violence to which Mr. Perez was subjected an isolated incident: multiple videos depict officers using significant force against other protesters who had already been dispersed from the lobby and who posed no threat or danger to the PRPD.

38. Outside the hotel, other protesters, including many of the FCT's members, were still picketing on the public street. Suddenly, and despite having no legitimate reason for doing so, PRPD officers corralled these protesters and started to forcefully push them away from the hotel. As they did so, the police indiscriminately pepper-sprayed, jabbed, hit, and shoved protesters with their batons even as the demonstrators were trying to peacefully and quickly leave the area. The police also indiscriminately fired tear gas canisters at the protesters.

39. One officer pepper-sprayed and used his baton to hit Luisa Acevedo, a leader of Plaintiff the FCT, simply because she had admonished him for pushing the protesters as they tried to leave peacefully. The blow caused Ms. Acevedo to fall on the street and also cracked her glasses. Only the actions of other union members prevented the police from trampling and pepper-spraying Ms. Acevedo as she lay helplessly on the ground. Later, Ms. Acevedo's throat

swelled and she had trouble breathing and speaking as a result of being pepper-sprayed at such close range. She had to be taken to the hospital as a result.

40. Ms. Acevedo was not the only union leader who was attacked by the police. PRPD officers pepper-sprayed Francisco Pizarro, Vice-president of the FCT, and hit him on the chest and arms as he tried to help Ms. Acevedo regain her footing. Like Ms. Acevedo, Mr. Pizarro had to receive medical help at a nearby hospital. Manuel Perfecto, President of the Unión General de Trabajadores (“UGT”), John Viguera of the AFL-CIO, and José Rodríguez, president of the Solidarity Union Movement, were also beaten and pepper-sprayed. Likewise, José Rodríguez Baez, the president of the Puerto Rican Labor Federation, was injured and taken to the hospital.

41. General Student Council members and the other members of the FCT did not pose a threat to police officers or the public, nor were they resisting arrest. On the contrary, they were merely exercising their First Amendment right to engage in political speech. Nor were the students who entered the hotel lobby trespassing, as police officers and hotel staff allowed them to enter without giving them any notice that they were not allowed to do so. There was no legitimate law enforcement reason to use force against the students who entered the hotel. And in fact, despite the substantial use of force, the PRPD detained only four individuals at the Sheraton Hotel, none of whom were prosecuted. One student, for example, was held for at least nine hours, but was never charged.

First Protest at the Capitol

42. In June 2010, the President of Puerto Rico’s Senate declared Senate legislative sessions off-limits to the press corps and the public. The rest of the Capital Building, however, remained open to the public.

43. Various concerned citizens and groups, including Plaintiffs, planned a demonstration at the Capitol to express their discontent over the press's expulsion and other policy issues.

44. Student organizers resolved to read a proclamation in front of the Puerto Rico Constitution, which is located inside the Capitol. Despite the Capitol being open to the public, the PRPD instructed the Riot Squad not to allow the students in. Indeed, on information and belief, the Riot Squad was positioned just inside the Capitol and was prepared to use extreme force to repel students from entering even before the students actually arrived.

45. Thus, as student journalists attempted to gain access to the Capitol in advance of the students who planned to read the proclamation, they were able to enter only as far as the portico. There the Riot Squad and other PRPD officers used physical force to stop them from going further. Their efforts thwarted, the student press representatives peacefully resisted the police officers' actions by sitting down on the floor.

46. Without warning, and without giving the student journalists an opportunity to leave on their own, Riot Squad forcibly removed them from the building. The student journalists were pepper-sprayed at close range, kicked, pushed, and beaten with batons before they were thrown out onto the Capitol's concrete exterior stairs. Carmen Yulín, a legislator in the House of Representatives who attempted to intervene, was also attacked by a Riot Squad officer, who hit her so hard with his baton that he tore a ligament in her arm.

47. Outside the Capitol, the group of students who planned to read the proclamation also tried to enter, and were likewise forcibly repelled by the Riot Squad. Several students tumbled down the stairs as a result of the Riot Squad using their batons to push, strike, and jab them indiscriminately.

48. As news spread about the protest at the Capitol and the media began to broadcast images of police beating demonstrators (including members of Plaintiffs' organizations) as well as images of bloodied protesters being assisted by paramedics, the size of the protest swelled. Even so, the protesters remained nonviolent. Indeed, multiple videos shot contemporaneously with the protest show an animated but peaceful crowd.

49. After kicking and shoving the protesters off of the Capitol's steps, the Riot Squad created a perimeter around the public plaza that leads to the front steps of the Capitol, blocking off the only clear area for demonstrators to gather, forcing demonstrators to spill over into the side parking lots.

50. The public plaza is a traditional public forum and has been used for years by people seeking to exercise their First Amendment rights.

51. Once in the parking lots, the demonstrators continued their peaceful protest, holding placards and chanting. After approximately two hours of peaceful protest, a police officer approached the crowd and, using a megaphone, asked them to cooperate in moving cars out of one of the parking lots. The police officer did not order the crowd to disperse, nor give them instructions about where to move, or even give them warning about the consequences of not "cooperating."

52. Plaintiffs and other demonstrators remained in place and continued peacefully chanting, at which point police, including the Riot Squad, began to move towards them. After a small number of protesters threw small objects, such as water bottles, police, including the Riot Squad, charged the crowd, striking, pushing, pepper-spraying and jabbing students, union members, and other citizens indiscriminately. One photojournalist, for example, was recording the events when a Riot Squad officer pushed him from behind with his baton, causing him to fall to the ground. Video footage clearly shows that the photojournalist was walking away from the Capitol complex when he was shoved. The footage also shows blood oozing down his arm from

the cut on his elbow. Like the photojournalist, the majority of students, union members, journalists, and other citizens were attempting to disperse and did not pose a threat to the police or the public.

53. At least one PRPD Lieutenant, Juan D. Vargas, was seen brandishing a gun at protesters without justification. On information and belief, Lieutenant Vargas had numerous complaints already filed against him prior to June 30, 2010.

54. At this point, the Riot Squad and other PRPD units split the crowd into three groups and began to herd one group toward the ocean, while chasing another group on horseback into Old San Juan, and forcing a third group of protesters to flee toward el Condado. Meanwhile, helicopters began to shoot tear gas at the terrified protesters who were attempting to escape. Several businesses located in Puerta de Tierra, where the Capitol is located, had to close because of the PRPD's excessive use of tear gas. At a school nearby, students and teachers were also affected by the cloud of tear gas, with several of them requiring medical assistance.

55. The PRPD shot tear gas canisters even at protesters who had already left the Capitol, including those that took refuge on the beach. Many protesters who were still attempting to leave could not do so because the helicopters shot gas canisters in front of them, blocking any escape.

56. Protesters feared for their safety at the hands of the PRPD, leading many to contact friends or relatives who lived within walking distance so that they could take refuge in their homes. Even several hours after they had been forcefully expelled from the Capitol complex, many of them were still afraid to go home. One student, Xiomara Caro, hid at a friend's home in Old San Juan, terrified to be caught by the Riot Squad. She remained there late into the night, unable to leave out of fear that the Riot Squad or other PRPD officers, who were still roaming the streets, would target her for her role as a student leader and beat her or arrest her for no reason.

57. In a televised interview that same evening, while standing outside the Capitol, Defendant the Superintendent of the PRPD, who at the time was José Figueroa Sancha, admitted that he was responsible for the use of force against protesters, stating in no uncertain terms: “I’m here and I am directly responsible . . . I gave all of the instructions personally today.”

58. There was no legitimate law enforcement purpose in using the extreme level of physical force that the PRPD employed on June 30, 2010. Indeed, even in the case of the small group of protesters who threw plastic water bottles and other small objects at PRPD officers, the PRPD’s response was disproportionate and indiscriminate.

December 2010 - February 2011 Student Strike

59. In December 2010, just as the second semester was getting underway at UPR, students continued their campaign against the \$800 fee increase, which was due to come into effect in January 2011. That same month, on December 13, 2010, the Chancellor of the UPR Río Piedras campus issued a ban on all First Amendment activity anywhere on the campus of the University and asked state government for assistance in enforcing the ban.

60. After the UPR administration had the gates to the campus dismantled or welded open, the PRPD took over the campus before students could organize, actually taking over the inside of the campus itself. More than 300 PRPD officers are estimated to have entered the campus, marking the first time in over 31 years that the PRPD had occupied the UPR Río Piedras campus, which has long been a traditional forum for First Amendment activity.

61. Indeed, police were a constant presence on campus throughout the strike: officers patrolled the campus in police cars, SUVs, motorcycles and on foot, and approximately twenty PRPD officers were stationed at each gate to the campus. In addition to sharpshooters, dogs, and the Riot Squad, the PRPD also deployed “el grupo de los cien” to the UPR campus, despite the fact that “el grupo de los cien” is an elite unit of officers that is normally used only to combat the

drug trade in Puerto Rico. The PRPD also set up a mobile police station on campus, and the roughly 200 to 400 PRPD officers who patrolled the campus harassed students on a daily basis.

62. The only places students were allowed to exercise their First Amendment rights were in so-called “free speech” zones outside the campus, which were not only small, but completely surrounded by police. The zones also prevented students from organizing as they had in the past, as students were not permitted to march through the campus, alerting other students to their message and gathering supporters.

63. Throughout the strike, students organized peaceful marches and demonstrations both on and off the campus. The locations of students’ protests included the gates of the UPR Río Piedras campus, on side roads inside the campus, inside and outside the various departments and administrative buildings of the campus, and on streets and sidewalks outside the campus.

64. Despite the fact that the vast majority of these marches and demonstrations were entirely peaceful and lawful, whenever the students tried to protest on the campus, the Riot Squad would forcibly drive them off campus. The Riot Squad officers would pepper-spray students, fire tear gas canisters indiscriminately at students, and jab and strike at students with batons.

65. Starting on January 19, 2011, the students also organized peaceful sit-ins, often at the gates of the UPR Río Piedras campus or on side roads, while other students stood nearby chanting and holding placards.

66. Video footage shows that as students linked arms, sat cross-legged side-by-side, and chanted along with fellow supporters, the Riot Squad would surround them on all sides, forming a wall between them and their supporters. By doing so the Riot Squad blocked onlookers from recording the harsh and violent pressure point compliance techniques that the PRPD used to arrest students engaged in the sit-in. These painful techniques included the PRPD

digging their fingers deep underneath the students' ears and above their jaws, forcibly lifting and dragging them by exerting extreme pressure on these points. Other pressure point techniques focused on causing the students pain by targeting pressure points under the students' jaws, near their necks, or directly on their eyes and eye sockets. These actions occurred numerous times on different occasions during the second strike.

67. Pressure point tactics not only cause excruciating pain, but they also block normal blood flow to the brain and can be potentially fatal if misapplied. Indeed in some cases these pressure point techniques caused students to lose consciousness. And yet the PRPD used these techniques despite the fact that students engaged in sit-ins did nothing more to resist arrest than to link arms and cross their legs. In other words, the PRPD inflicted this violence on students who were only passively resisting arrest. More troubling still, police officers used these cruel, painful techniques on the students even after they had already been securely handcuffed or otherwise restrained by the PRPD.

68. Furthermore, during the second student strike, the PRPD used arrests without cause to intimidate students. On the morning of January 12, 2011, for example, a group of eight to ten students was violently arrested for handing out leaflets about the strike in some of the university's classrooms. In fact, charges were never pressed against any of the students.

69. Nor, upon information and belief, was the arrest of these students the only time that the PRPD used arrests without cause to intimidate Plaintiffs and prevent them from engaging in protected speech. Instead, upon information and belief, the PRPD began to routinely use arrests without cause as a tactic to suppress First Amendment activity.

Second Protest at the Capitol

70. On January 27, 2011, the students at the UPR organized a second demonstration at the Capitol.

71. The peaceful demonstration began with student leaders reading a proposed bill that would eliminate the \$800 student fee increase. After reading the bill the student leaders organized a protest at steps of the Capitol, while a much larger group of students chanted and held placards behind them. Notwithstanding the fact that the protest was peaceful, the students were forcibly removed from the Capitol's back steps, onto Avenida Constitución, directly behind the Capitol complex, where some students began a sit-in on the public street and others continued to chant and hold placards.

72. As soon as the smaller group of students began their sit-in at the Avenida Constitución, police officers began arresting those engaging in the sit-in one by one. But rather than simply arrest the students, none of whom were engaged in violent or threatening behavior, the PRPD used painful pressure point techniques to carry out the arrests.

73. As police officers disbanded one group of students, other students would start a new peaceful sit-in in a different part of the street. Using the same harsh pressure point techniques as they had employed in earlier protests, the PRPD violently targeted the students' most sensitive body parts—their eyes and eye sockets, the area beneath their jaw, and their ears—to move the students and then arrest them. Police officers used these pressure point techniques on dozens of students that day, many of whom were severely injured as a result.

74. In fact, one UPR law student who was arrested using these techniques felt pain for days after she was removed from the civil disobedience line. The use of pressure point techniques that cause long-lasting pain is unnecessary to effectuate the arrest of students who were only peacefully resisting by linking arms and crossing their legs.

75. Police officers also used pepper spray and batons on the students participating in the sit-ins. One student was not only arrested using painful pressure point techniques that cut off his circulation, but he was also choked and dragged several feet with a baton used by a police officer as a neck restraint.

76. As in past protests, the Riot Squad formed a barrier between the students engaging in the sit-in and other protesters and supporters. Upon information and belief, the Riot Squad encircled the students in an attempt to prevent the media and students from recording the violent pressure point compliance techniques and other acts of aggression that officers were using to arrest the students.

77. Police also groped at least one female student while she was being arrested, grabbing the female student by her breasts and genitals. On information and belief, this student was one of several female students to be sexually harassed by the PRPD while being arrested. In addition, police officers used epithets against gay and lesbian students as they hit and arrested them.

78. Other students at the protest were attacked by the PRPD with rubber bullets, pepper spray, and tear gas. These students were not participating in sit-ins but were instead lawfully chanting and holding up placards in support of their cause. There was no legitimate law enforcement purpose for their use.

The PRPD's Excessive Use of Force Has Had Chilling Effects on Freedom of Expression

79. In each and every incident described above the protesters' expression of political opinion and engagement in prior protests was a substantial and motivating factor in the PRPD's use of excessive force.

80. Moreover, in each and every incident described above there was (1) no legitimate law enforcement purpose for the use force in the first instance; and (2) the use of force was excessive and unnecessary.

81. The PRPD's use of unreasonable force during protests has had a chilling effect on the Plaintiffs' exercise of their First Amendment rights. Some members of the FCT no longer

feel safe participating in demonstrations. They fear that the PRPD will again use unnecessary force to squelch their demonstrations.

82. As a result, the FCT has found it increasingly difficult to discharge their missions and express their First Amendment protected views in public. Indeed, the FCT and the other unions have found their memberships dwindling due to the reluctance of individuals to protest and risk retaliation by the PRPD.

83. Similarly, many students at the UPR, all of whom are members of the General Student Council, are terrified of the Riot Squad and the force with which these officers disrupt their attempts to peacefully protest. UPR professors have attended General Student Council protests on multiple occasions, often serving as human shields between students and police, out of fear that the PRPD may otherwise severely injure—or even kill—the students. Despite the support of these professors, First Amendment activity has noticeably diminished on the UPR Río Piedras campus since the PRPD occupied the campus.

84. The PRPD has also made clear to students that they are personally being recorded and tracked by the PRPD. Indeed, PRPD officers often will address students by name, instilling in the students a fear of PRPD retribution. Colonel Sergio Rubin, for example, threatened student leader Waldemiro Velez as he was entering the UPR Rio Piedras Campus, daring him to enter. Students thus fear that the PRPD is using videos that they take to make targeted arrests, and even threaten their families, and are intimidated into abandoning their attempts to engage in protected First Amendment activities. Given these widespread and pervasive fears, all caused by the PRPD's excessive use of force and other questionable practices, the General Student Council has been hampered in its ability to engage in advocacy on behalf of its members.

Longstanding Pattern of Police Abuse

85. The incidents described above are just a small sampling of the unconstitutional police abuse to which U.S. citizens in Puerto Rico, including the Plaintiffs and other protesters, have been subjected. Indeed, the PRPD'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 PRPD. The result was a report (the "DOJ Report"), issued on September 5, 2011, which not only condemned the practices of the PRPD but also found that the PRPD has regularly deprived the citizens of Puerto Rico of their constitutional rights and that the PRPD's policies and practices will continue to lead to constitutional violations if not addressed.

86. Over the course of its three-year investigation, the DOJ found that PRPD officers routinely "engage in a pattern and practice of unreasonable force and other misconduct that *is designed to suppress the exercise of protected First Amendment rights.*" See DOJ Report at 5 (emphasis added). Strikingly, the DOJ recognized that these constitutional violations are not isolated incidents; rather the DOJ's investigation revealed that they are pervasive and plague all levels of the PRPD. *Id.* at 6.

87. The PRPD and its Superintendants have been depriving Puerto Rican citizens 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 at the hands of PRPD officers." *Id.* at 25.

88. In addition, five years ago, in December 2007, an evaluating committee appointed by former Superintendent Toledo Davila (the "Report of the External Evaluating Committee") uncovered numerous complaints against Tactical Operations Units (*e.g.*, the Riot Squad) for abuse of authority, including numerous instances in which those units used violent force against protesters without any justification. See DOJ Report at 26. These complaints are noteworthy not just because of the number of instances of abuse that are actually documented, but also because it

is clear that for each complaint that is filed there are many more incidents that go unreported. Indeed, protesters are often unable to report police abuse because the “PRPD also has a long history of tolerating officers’ clear disregard of Puerto Rican laws requiring officers to visibly display their badge numbers to allow the public to identify officers who may be engaging in misconduct.” *Id.* at 25.

89. Thus, even the PRPD’s own reports illustrate the problems. But Defendant, without taking any action to change the practices of the Riot Squad, nevertheless continues to routinely deploy the Riot Squad and other tactical units to engage demonstrators like Plaintiffs. In doing so Defendant has knowingly endorsed and encouraged the practice of those units to use violent and excessive force without justification.

90. None of the last five Superintendents has taken any significant steps to address the repeated findings of excessive use of force. There is no use of force training for officers who are already in the field, for example. Indeed, the PRPD 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. *Id.* at 33. Nor has the PRPD implemented effective reporting and review requirements to ensure that officers use lawful and appropriate force during interactions with civilians. *Id.* at 36. On the contrary, the Superintendants have encouraged the now well-settled and widespread pattern of using excessive force against protesters.

91. As a result of Defendant’s continued support of the PRPD’s use of excessive force against protesters, Plaintiffs’ ability to exercise their constitutional, First Amendment rights to free speech and free expression have been curtailed. Moreover, the use of excessive force against Plaintiffs and other demonstrators has also resulted in Fourth Amendment violations. In particular, the FCT and General Student Union Plaintiffs, like other demonstrators who participated in sit-ins and demonstrations, have the right to be free from the unreasonable use of

force. It is patently clear that only injunctive relief will prevent this longstanding and on-going deprivation of Plaintiffs' constitutional rights.

CAUSES OF ACTION

I.

FIRST AMENDMENT VIOLATION

92. Plaintiffs incorporate by reference paragraphs 1 to 91 of this Complaint.

93. The First Amendment of 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.

94. It is the well-settled, widespread, and ongoing policy and practice of the PRPD to use excessive force against Plaintiffs when they attempt to exercise their right to engage in free speech and expression at demonstrations and protests.

95. Moreover, especially given the lack of legitimate reason to use pepper spray, tear gas, choke holds, pressure point compliance techniques, and/or batons to strike peaceful protesters, it is clear that the Plaintiffs' First Amendment protected speech and activities were a substantial or motivating factor in the PRPD's decision to use excessive force against Plaintiffs.

96. Defendant the Superintendent of the PRPD, currently Héctor Pesquera, is responsible for overseeing the policies and practices of the PRPD. By encouraging the use of unreasonable force against Plaintiffs and other protesters he has deprived Plaintiffs of their right to freedom of speech and expression under the First Amendment of the United States Constitution.

II.

FOURTH AMENDMENT VIOLATION

97. Plaintiffs incorporate by reference paragraphs 1 to 96 of this Complaint.

98. The PRPD routinely uses techniques such as painful pressure point techniques, batons, pepper spray, and tear gas, on protesters, including Plaintiffs, who participate in First

Amendment activities. These actions, along with the PRPD's routine practice of attacking and corralling protesters attempting to disperse, form the basis of Plaintiffs' reasonable belief that they were not entitled to leave the areas in which they had been engaged in First Amendment activities. Moreover, these tactics are unnecessary and objectively unreasonable under the circumstances, as the Plaintiffs and other demonstrators attempting to disperse do not pose a threat to police or the public.

99. These tactics are equally unnecessary where, as in the case of Plaintiffs, protesters peacefully resist arrest by linking arms and crossing their legs. Given that the Plaintiffs and other demonstrators participating in peaceful sit-ins do not pose a threat to police or the public, these strategies are objectively unreasonable under the circumstances.

100. Defendant is responsible for overseeing the policies and practices of the department. As such, he is responsible for overseeing the policies and practices concerning arrests during mass demonstrations. By encouraging the use of unreasonable force against Plaintiffs and other demonstrators who engaged in peaceful sit-ins he has deprived Plaintiffs of their right to be free from unreasonable searches and seizures under the Fourth Amendment of the United States Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that judgment be entered in their favor and against Defendant as follows:

1. Declaring that the PRPD's current well-settled practice of using excessive force against Plaintiffs at demonstrations is in violation of Plaintiffs' First and Fourth Amendment rights.
2. Granting permanent injunctive relief requiring Defendant to:
 - a. Create an official policy governing the handling of public demonstrations and in particular the use of force against demonstrators ("Demonstration and Use of Force Policy") that meets national, U.S. constitutional standards.
 - b. Effectively implement that policy by training PRPD officers to follow the Demonstration and Use of Force Policy; and
 - c. Provide adequate supervision and enforcement to be sure that the Demonstration and Use of Force Policy is followed;
 - d. Create and fully implement reporting systems adequate to document all uses of force by the PRPD;
 - e. Institute an effective mechanism for civilians to file complaints;
3. Retaining jurisdiction over the case to ensure that the PRPD complies with the Court's Order;
4. Awarding attorneys' fees and costs incurred in the prosecution of this action pursuant to, *inter alia*, 42 U.S.C. § 1988 and other applicable laws;
5. Granting such other and further relief as the Court may deem just and proper.

Dated: June 27, 2012

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**Motion for Admission Pro Hac Vice Pending*

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**Motion for Admission Pro Hac Vice Pending*

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