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

TROPICAL CHILL CORP., et al. Plaintiffs v. HON. PEDRO R. PIERLUISI URRUTIA, et al. Defendants	CIVIL NO. 21-1411 (RAM/MEL)

RESPONSE IN OPPOSITION TO OBJECTION TO
REPORT AND RECOMMENDATION

TO THE HONORABLE COURT:

COMES NOW the Department of Justice of the Commonwealth of Puerto Rico, on behalf of Defendants, without waiving any right or defense arising from Title III of PROMESA and the Commonwealth's Petition under said Title or under this case, and without submitting to the Court's jurisdiction, represented by the undersigned counsel and respectfully states and prays as follows:

1. On November 2, 2021, this Honorable Court referred Plaintiffs' Motion for Preliminary Injunction to Magistrate Judge Marcos E. López for an evidentiary hearing and a Report and Recommendation (Docket No. 56).

2. On December 6, 2021, the Preliminary Injunction hearing began, lasting six (6) days (Docket Nos. 76, 77, 80, 82, 84 & 85).

3. On January 17, 2022, Magistrate Judge Marcos E. López entered the Report and Recommendation ("R&R") on Plaintiffs' Motion for Preliminary Injunction (Docket No. 103).

4. On February 11, 2022, Plaintiffs filed their Objection to the Report and Recommendation (Docket No. 114).

5. On February 28, 2022, the court granted until March 18, 2022, for Defendants to file their Response to Plaintiff's Objections to the R&R (Docket No. 120).

I. INTRODUCTION

This case is about meeting a worldwide health emergency under prevalent constitutional standards, not under doctrinal wishful thinking. It's about considering the consensus in the medical and scientific community, not wayward theories lacking in substantial scientific support. This is what Defendants evidenced during the Preliminary Injunction hearing held on December 6, 7, 8, 9, 13, and 14, 2021, supported by the testimony of their three expert witnesses, to wit, Dr. Iris Cardona, Dr. Melissa Marzán and Dr. Rafael Irizarry; and Exhibits B-I (Docket Nos. 82, 84, 85). The court heard the testimonies of these expert witnesses, as that of the Plaintiffs and their expert witnesses; considered the parties' arguments, the pertinent authorities, and the evidence produced at the evidentiary hearing;[1] and, after weighing and assigning credibility to the evidence on the record, the Magistrate

[1] See, Docket No. 103 at p. 2.

Judge recommended that Plaintiffs' Motion for Preliminary Injunction be denied (Docket No. 103).

Through their Objections to the Report and Recommendation, Plaintiffs suggest that this court should disregard the testimony of Defendants' expert witnesses because it was not supported by their evidence of choice and are trying to construe their objections as a second opportunity to present the arguments already considered by the court. Because the Defendants have "a legitimated interest in protecting public health [,] [r]esponding to the pandemic in order to curb the spread of the virus is considered a compelling state interest." Rodríguez-Vélez v. Pierluisi-Urrutia, 2021 WL 5072017 (D.P.R. Nov. 1, 2021). This is what the record shows.

II. STANDARD OF REVIEW

A district court may refer pending motions to a magistrate judge for a report and recommendation. *See* 28 U.S.C. § 636(b)(1)(B); Fed.R.Civ.P. 72(b); Loc. Cv. R. 72(a). Any party may object to the magistrate judge's report of proposed findings and recommendations within fourteen (14) days after being served a copy of it. Loc. Cv. R. 72(d). A district judge shall make a de novo determination of those portions to which objection is made and may accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate judge. Id. "The district court need not consider frivolous, conclusive, or general objections." Vega-Feliciano v. Doctor's Center Hospital, Inc., 100 F.3d 113, 116 (D.P.R. 2015)(quoting Rivera–García v. United States, 2008 WL 3287236, *1 (D.P.R. Aug. 7, 2008)).

Moreover, to the extent the objections amount to no more than general or conclusory objections to the report and recommendation, without specifying to which issues in the report the party is objecting, or where the objections are repetitive of the arguments already made to the magistrate judge, a *de novo* review is unwarranted. Id. "Instead, the report and recommendation is reviewed by the district judge for clear error." Id.; see also, Camardo v. Gen. Motors Hourly–Rate Employees Pension Plan, 806 F.Supp. 380, 382 (W.D.N.Y.1992) ("It is improper for an objecting party to ... submit[ ] papers to a district court which are nothing more than a rehashing of the same arguments and positions taken in the original papers submitted to the Magistrate Judge. Clearly, parties are not to be afforded a 'second bite at the apple' when they file objections to a R & R.")).

In conducting its review, the court is free to "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate-judge." 28 U.S.C. § 636(a)(b)(1); Vega-Feliciano, 100 F.3d at 116. Hence, the court may accept those parts of the report and recommendation to which the party does not object. Id. (citing Hernández–Mejías v. General Elec., 428 F.Supp.2d 4, 6 (D.P.R.2005)).

"[I]f the magistrate system is to be effective, and if profligate wasting of judicial resources is to be avoided, the district court should be spared the chore of traversing ground already plowed by the magistrate except in those areas where counsel, consistent with the latter's Fed.R.Civ.P. 11 obligations, can in good conscience complain to the district judge that an objection to a particular finding or recommendation is "well grounded in fact and is

warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law...". Sackall v. Heckler, 104 F.R.D. 401, 402-403 (D.R.I. 1984).

III. ARGUMENTS

A. Plaintiffs' claims should be dismissed as moot in light of the recent repeal of the executive orders and the challenged mandates.

On March 8, 2022, Governor Pierluisi enacted Executive Order ("EO") 2022-019, which repealed EO's 2021-075, 082, 087 and EO's 2022-003, 006, 009, 010, 011 & 015 (attached hereto as Exhibit A). In a nutshell, the mask mandates were substantially repealed except in certain health facilities. Id. Also, the limitation of capacity in private establishments such as restaurants, lodging facilities and massive public gatherings were repealed as well as the vaccination mandates and the requisite to verify the vaccination status of clients and visitor in private establishments. Id. In essence, the new EO 2022-019 repealed the mandatory vaccination for all citizens and delegated on the Secretary of the Department of Health the management of the COVID-19 pandemic through administrative orders. The new EO eliminated all the requirements that Plaintiffs claimed violated their constitutional rights. In this way, the issues that gave rise to the complaint are no longer live and therefore, are moot.

Mootness is a ground which should ordinarily be decided in advance of any determination on the merits. See, Arizonans for Official English v. Arizona, 520 U.S. 43, 67 (1997). Courts must follow the doctrine of constitutional avoidance, under which federal courts are not to reach constitutional issues where alternative grounds for resolution are

available. See, Mills v. Rogers, 457 U.S. 291, 305 (1982); Ashwander v. Tenn. Valley Auth., 297 U.S. 288, 346–48 (1936) (Brandeis, J., concurring); ACLU v. US Conference of Catholic Bishops, 705 F.3d. 44, 52 (1st Cir. 2013).

"The doctrine of mootness enforces the mandate 'that an actual controversy must be extant at all stages of the review, not merely at the time the complaint is filed.'" Mangual v. Rotger–Sabat, 317 F.3d 45, 60 (1st Cir. 2003) (quoting Steffel v. Thompson, 415 U.S. 452, 460 n. 10 (1974)). The burden of establishing mootness rests with the party invoking the doctrine, Conservation Law Found. v. Evans, 360 F.3d 21, 24 (1st Cir.2004), in this instance Defendants. ACLU, 705 F.3d at 52.

"Simply stated, a case is moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." D.H.L. Assocs., Inc. v. O'Gorman, 199 F.3d 50, 54 (1st Cir. 1999) (quoting Powell v. McCormack, 395 U.S. 486, 496 (1969)) (internal quotation marks omitted). "Another way of putting this is that a case is moot when the court cannot give any 'effectual relief' to the potentially prevailing party." Horizon Bank & Trust Co. v. Massachusetts, 391 F.3d 48, 53 (1st Cir. 2004) (citing Church of Scientology of Cal. v. United States, 506 U.S. 9, 12 (1992)). "[I]f events have transpired to render a court opinion merely advisory, Article III considerations require dismissal of the case." Mangual, 317 F.3d at 60; Libertarian Party of N.H. v. Gardner, 638 F.3d 6, 12 (1st Cir. 2011), *cert. denied*, —— U.S. ——, 132 S. Ct. 402 (2011). ACLU, 705 F.3d at 52. The threshold question is whether the facts alleged, under all the circumstances, show that there is a substantial controversy

between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment. In Re Financial Oversight and Management Board, 16 F.4th 954, 960 (1st Cir. 2021). Under any of these formulations, Plaintiffs' challenges to the Rolling EOs are moot, since the EOs and the testing and vaccine mandates established therein were recently repealed by Defendant Governor Pierluisi in favor of less stringent measures.

Ordinarily a legal challenge to a government regulatory scheme becomes moot upon its expiration or repeal, *see, e.g.,* New Eng. Reg'l Council of Carpenters v. Kinton, 284 F.3d 9, 18 (1st Cir. 2002); ACLU, 705 F.3d at 53. Once the regulatory scheme is repealed, there is literally no controversy left for the court to decide—the case is no longer "live." Powell, 395 U.S. at 496.[2]

With very limited exceptions (none of which are present in this case), "issuance of a declaratory judgment deeming past conduct illegal is also not permissible as it would be merely advisory." ACLU, 705 F.3d at 53. (citing Maine v. U.S. Dep't of Labor, 770 F.2d 236, 239 (1st Cir. 1985); O'Connor v. Washburn Univ., 416 F.3d 1216, 1221 (10th Cir. 2005); James Luterbach Constr. Co., Inc. v. Adamkus, 781 F.2d 599, 602 (7th Cir. 1986)). The Supreme Court has admonished that "federal courts are not in the business of pronouncing that past actions which have no demonstrable continuing effect were right or wrong." ACLU, 705 F.3d at 53 (citing Spencer v. Kemna, 523 U.S. 1, 18 (1998); see also United States v. Reid, 369 F.3d 619,

[2] An additional ground for mootness is that a court cannot provide meaningful relief to the allegedly aggrieved party. This is clearest in cases where the only relief requested is an injunction. ACLU, 705 F.3d at 53.

624 (1st Cir. 2004)).

For declaratory relief to withstand a mootness challenge, the facts alleged must "show that there is a substantial controversy … *of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.*" (Emphasis in original) ACLU, 705 F.3d at 53-54 (citing Preiser v. Newkirk, 422 U.S. 395, 402 (1975)).

At this point the controversy in the case of caption is neither immediate nor real, given the repeal of the EOs under which plaintiffs based their claims by way of EO 2022-019 and the vaccination and testing mandates. "The case has therefore lost its character as a present, live controversy of the kind that must exist if we are to avoid advisory opinions on abstract propositions of law." ACLU, 705 F.3d at 54 (citing Hall v. Beals, 396 U.S. 45, 48 (1969)). As such, the claim for declaratory relief is moot. ACLU, 705 F.3d at 54 (citing Diffenderfer v. Cent. Baptist Church of Miami, Fla., Inc., 404 U.S. 412, 415 (1972)).

1. None of the exceptions to the mootness doctrine are applicable here.

    a. Voluntary cessation exception.

The voluntary cessation exception is not applicable in this case and does not shield Plaintiffs' claims from the application of the mootness doctrine. This exception arises "in situations where the defendant voluntary ceases the challenged practice, thereby mooting plaintiff's case." ACLU, 705 F.3d at 54. This exception is not applicable when the voluntary cessation of the challenged activity occurs for reasons unrelated to the litigation. ACLU, 705 F.3d at 55. In addition, this exception "can be triggered only when there is a reasonable

expectation that the challenged conduct will be repeated following dismissal of the case", ACLU, 705 F.3d at 56.

The various WHEREAS sections included in the EO 2022-0019 made specific reference to the improvement in the health metrics on which the challenged restrictions were originally based, and how these changes fully justified modifications in the original restrictions, specifically setting aside the testing and vaccination mandates. These statements clearly demonstrate that this exception is not applicable and cannot constitute an obstacle to the application of the mootness doctrine to this case and to its subsequent dismissal.

b. Capable of repetition yet evading review exception.

The second exception to the mootness doctrine, called the "capable of repetition yet evading review" standard, can be invoked by a plaintiff showing that "...(1) the challenged action was in its duration too short to be fully litigated prior to cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subject to the same action again." In Re Financial Oversight and Management Board, 16 F.4th at 962.

As to the first requisite, the restrictions originally challenged in this case were enacted on August 2021, and on November 15, 2021, those restrictions were repealed and consolidated under a new order, EO-2021-0075.[3] The original Complaint was filed on August 27, 2021 (Docket No. 1), shortly after the enactment of the mandates. The operative Amended Complaint was filed on October 7, 2021 (Docket No. 35). The restrictions were

[3] See, Docket No. 103, at p. 3.

effective for several months, rendering inapplicable the "too short duration" standard. While Plaintiffs admittedly challenged the restrictions from the start, the normal course of litigation held back the Court's ruling, and the changed circumstances led to the modification of the restrictions by Defendants.

As to the second requisite, Defendants already described the changed circumstances clearly spelled out in EO-2022-0019 which make it unlikely that the restrictions would be enacted again. Any future version of the virus will be different from prior versions, either weaker or stronger. Therefore, to fight any new version will require different measures and different mandates, if any.

Given the fact that none of the exceptions are applicable, the mootness doctrine renders Plaintiffs' claims moot and fully justify dismissal. The challenged restrictions were effective only until March 11, 2022. Plaintiffs want the Court to rule on the constitutional validity of restrictions which are no longer in place, and which are unlikely to be enacted in their current form. Any future variant of the virus will have its own features and peculiarities, and any measures to counteract it will be adjusted accordingly. Therefore, any argument to the effect that these restrictions are somewhat likely to be enacted again falls in the realm of sheer speculation and should be rejected by this Court. See, ACLU, 705 F.3d at 57 ("The capable-of-repetition doctrine applies only in exceptional situations").

B. The Report and Recommendation is supported by the evidence in the record.

Plaintiffs' main objections to the R&R are that either the Defendants did not present studies to support the testimony of their expert witnesses, or that the Magistrate Judge did not consider their "collection of scientific studies"[4] that were in the record at the time the Report and Recommendation was issued. They contend that the Honorable Court should disregard the testimony of Defendants' expert witnesses because it was not supported by their evidence of choice, the "collection of scientific studies".[5]

As the record shows, during the evidentiary hearing held on December 6, 7, 8, 9, 13, and 14, 2021, Defendants offered as evidence the testimony of three (3) expert witnesses: Dr. Iris Cardona Gerena, Dr. Melissa Marzán and Dr. Rafael Irizarry; and Exhibits B-I (Docket Nos. 82, 84 and 85). As testified and evidenced on the record, Dr. Iris Cardona Gerena was admitted as an expert in public health, immunizations, infectious diseases, vaccine preventable diseases, and pediatrics;[6] Dr. Melissa Marzán Rodríguez was admitted as an expert in epidemiology and public health;[7] and Dr. Rafael Irizarry was admitted as an expert in biostatistics.[8]

The record also shows that Defendants' expert witnesses supported their testimonies on the documentary evidence admitted by the Court as Exhibits D-I. Exhibit D contains the

[4] See, Docket No. 114 at p. 3.
[5] Id. at pages 3, 7, 12, 15, 17, 18, 19, 20, 22, 24, 25, 27, and 64.
[6] See, Docket No. 103 at p. 34.
[7] Id.
[8] Id.

data as of December 9, 2021, of COVID-19 cases, hospitalizations, and deaths per 100,000 residents by vaccination status for the July to November 2021 period. This data comes from the Puerto Rico Department of Health's website. Exhibit F contains the data of positivity rate and hospitalizations. Exhibit G contains the data of positivity rate and deaths (7-day average). Exhibit H contains data of detected cases: 7-day moving average in log scale for March 2020 to December 2021. As for Exhibit I, it contains data of vaccines per day (7-day moving average).

Specifically, as to the testimony of Defendants' expert witnesses and Defendants' exhibits regarding EO 75 vaccination check requirements, the R&R held that:

(1) "Dr. Cardona confirmed that for the first four days of infection by the Covid-19 virus, persons who are unvaccinated and vaccinated both have the same viral load. However, she clarified that after the first four days, the viral load decreases faster in vaccinated individuals, which means that the unvaccinated can transmit the virus for a longer period of time."[9]

(2) Dr. Melissa Marzán confirmed "that viral load is the most important factor in transmitting the COVID-19 virus, but the viral load in vaccinated people decreases more quickly than those who are not vaccinated."[10]

[9] Id.
[10] Id.

The Magistrate Judge then described the data Defendants introduced as evidence on the record, which was compiled by Dr. Marzán and "showed that unvaccinated persons were 2.49 times more likely to contract COVID-19 than an unvaccinated person in August 2021-at the height of the Delta variant spike. Exhibit D, at 1. The same data showed that an unvaccinated person was 5.72 times more likely to be hospitalized from COVID-19 in August 2021, and 7.02 times more likely to die from COVID-19. Exhibit D, at 2-3."[11]

In addition, the court described the evidence presented by Defendants with the testimony of Dr. Rafael Irizarry, "who testified that the risk for unvaccinated people to contract COVID-19 is more than 10 times higher compared to a person who was vaccinated. Dr. Irizarry concluded that unvaccinated people are much more likely to be infected and hospitalized because of COVID-19."[12] Furthermore, in their Memorandum in Opposition to Motion for Preliminary Injunction, Defendants provided the Court with the CDC's position that vaccinated people appear to spread the virus for a shorter time and, as a result, the greater risk of transmission is among unvaccinated people who are much more likely to get infected and transmit the virus.[13]

The Magistrate Judge also found that, based on the evidence, restrictions on unvaccinated persons' access to the locations covered under EO75 were not arbitrary.[14]

[11] Id.
[12] Id., at pgs. 34-35.
[13] See, Docket No. 20 at p. 24, https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html (last visited on September 16, 2021).
[14] See, Docket No. 103 at p. 35.

Moreover, the court, in considering Plaintiffs' expert witnesses' testimony, concluded that Dr. Carrascal's testimony "conflicted in part" with that of Dr. Bostom.[15] This conflict throws Plaintiffs' theory into serious disarray, since these were their medical experts.[16] In considering one of the studies that plaintiffs entered as an exhibit, the Magistrate Judge expressed: "Both Doctors Carrascal and Bostom referred to a study comparing how vaccinated and unvaccinated persons transmitted the COVID-19 virus in prison. Exhibit 52. Nevertheless, the utility of the study for society as a whole is questionable because, as Dr. Carrascal explained, it examined 'a contained place that is closed and the people are very together, like in a prison."[17] The fact that the Report and Recommendation made reference to one of the studies among the "collection of scientific studies" the plaintiffs entered into evidence during the evidentiary hearing shows that indeed the court considered them. However, in so doing, the court was not obligated to make its factual determinations and legal conclusions based on them. The Magistrate Judge, exercising his duties, weighed the evidence and made the factual determinations and legal conclusions that he understood the evidence supported. This is evidenced throughout the entire Report and Recommendation. The fact that Plaintiffs do not agree with the factual determinations and legal conclusions because they were not based in their evidence of choice (the scientific studies) do not render the Report and Recommendation unsupported by the evidence.

[15] Id. at p. 33.
[16] Their other experts were in Psychiatry and Health Economics.
[17] Id. at pgs. 33-34.

C. Farr's Law.

Plaintiffs' insistence on the relevance and scientific validity of Farr's Law, which the Magistrate Judge found unpersuasive, is the foundation for their argument that the Delta wave variant was not more deadly than the one that preceded it, and that, therefore, stronger vaccination mandates were not justified.[18]

Farr's Law is a set of mathematical formulas and laws developed by William Farr in England in the nineteenth century, which pretend to establish the relationship and natural history of epidemics. Farr's thesis is claims that in an epidemic, viruses grow more contagious and less lethal over time.[19]

Plaintiffs proceeded to attack the Magistrate Judge's conclusions by stating that "it goes on to minimize Farr's law by crediting Dr. Cardona's testimony that 'viruses… can mutate to become both more infectious and more severe, [such as] the H1N1 swine flu in 2009."[20] But her statement was based on a very specific example (the H1N1 swine flu), which Plaintiffs did not rebut in their Objection, thereby undermining the strength of Farr's general proposition on viruses and their behavior over time. What plaintiffs obviated was that the Magistrate Judge's emphasis on Defendants' experts' testimonies that if Farr's law applies to COVID-19, it has yet to eliminate the correlation between positive cases and adverse health outcomes. Moreover, per the R&R, Dr. Cardona agreed that there is evidence that viruses

[18] See, Docket No. 114 at p. 25
[19] See, https://medical-dictionary.thefreedictionary.com/Farr+laws (last visited on March 17, 2022).
[20] Id.

do decline over time, but that mutations in viruses do not guarantee this trajectory. Like the residents of Orwell's mythical Animal Farm, all viruses may be equal, but some are more equal than others.[21]

Plaintiffs seek to minimize Dr. Cardona's conclusions, as well as those of Drs. Marzán and Irizarry as "just an opinion,"[22] as if the role of the expert witness were not precisely to render opinions on their field of expertise. On that account, Federal Rules of Evidence ("FRE") 702 and 703 provide that:

> [A] witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if: (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert has reliably applied the principles and methods to the facts of the case. Moreover, FRE 703 provides "An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted. But if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.

Neither FRE 702 nor FRE 703 require that expert witness testimonies be supported by a specific type of evidence, like scientific studies, as Plaintiffs purport to advance. The rules

[21] The Report and Recommendation, and assuming that Farr's law applied to the COVID-19 virus, points out the testimony of Dr. Irizarry, who used graphs containing Puerto Rico's public data on the number of hospitalizations and deaths. The court cited Dr. Irizarry's testimony, referencing Defendants' Exhibits F and G, as well as quotes and their location on the record.

[22] Id. at page 26.

are clear in the requirements, which were considered by the Magistrate Judge in the evidentiary hearing when admitting the witnesses as experts in their fields, without any objection by Plaintiffs, listening to their testimonies, and asking questions himself regarding their testimony in court. The Report and Recommendation clearly shows that the Magistrate Judge found compliance by Defendants' expert witness testimonies with the requirements of these rules. Therefore, Plaintiffs' contentions as to the sufficiency of their testimony for not applying any of their scientific studies must be disregarded by the Honorable Court as lacking in any merit.

Plaintiffs argue that to conclude that a particular variant is more lethal than others "a scientific expert would need to consider not only the number of total COVID-19 cases….but also the number of cases per age group, the percentage of individuals with comorbidities infected, the number of people admitted to the hospital with COVID-19 as between the vaccinated and the unvaccinated and those 'with COVID' versus those 'for COVID' among others. None of these factors were taken into taken (sic) by the Defendants' experts."[23] Ironically, the same criticism of failing to account for more specific non-quantitative variables has been levelled *against the validity of Farr's Law*.:

> The theory states that epidemics tend to rise and fall in a roughly symmetrical pattern that looks like a bell curve. But such a mathematical model, which assumes that the rise and fall will be roughly symmetrical, fails to reflect the reality of how diseases spread within communities. It was most famously—and wrongly—used to predict the end of the HIV

[23] Id., at p. 27.

> pandemic in 1995. It projected that the HIV pandemic would see around 200,000 cases. As of 2018, there were 37.9 million people living with HIV.[24]

Lastly, Plaintiffs argued that the validity of Farr's law, in its application to this case, was confirmed by the Omicron variant and its impact on the pandemic in Puerto Rico, in an attempt to undermine the conclusions of the R&R. The fact is that the evidentiary hearing in the instant case took place on December 6, 7, 8, 9, 13, and 14.[25] The Omicron variant was first detected in Puerto Rico on or around December 13, 2021.[26] It is also a fact that the Omicron variant spiked the number of hospitalizations and deaths among those who got infected with the virus.[27] On December 13, 2021, Puerto Rico had 269 confirmed cases of COVID-19; on December 16, 2021, there were 2,036 confirmed cases; on December 20, 2021, there were 3,870 confirmed cases; on December 27, 2021, there were 5,609 confirmed cases, the highest amount of daily confirmed cases with the Omicron variant.[28] As to hospitalizations, on December 13, 2021, Puerto Rico had 1 adult hospitalized for COVID-19, 1 adult in ICU for COVID-19, and 1 patient in PICU; on January 16, 2022, there were 12 adults

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[24] https://caravanmagazine.in/health/surge-in-covid-cases-proves-centre-wrong-pandemic-response-marked-by-theatrics-not-science. (last visited on March 14, 2022). See also, Brownlee, John. "Historical Note On Farr's Theory Of The Epidemic." *The British Medical Journal*, vol. 2, no. 2850, BMJ, 1915, pp. 250–52, http://www.jstor.org/stable/25314501. ("Dr. Farr will not find a single historical fact to back his conclusion that in nine or ten months the disease may quietly die out- may run through its natural curve").

[25] See Docket No. 103, at p. 5.

[26] https://www.elnuevodia.com/noticias/locales/notas/salud-confirma-el-primer-caso-de-omicron-en-puerto-rico/

[27] https://www.elnuevodia.com/noticias/locales/notas/puerto-rico-alcanza-por-primera-vez-las-718-hospitalizaciones-por-covid-19/; https://www.elnuevodia.com/noticias/locales/notas/sin-freno-las-hospitalizaciones-por-covid-19/; https://www.elnuevodia.com/noticias/locales/notas/puerto-rico-registra-98200-casos-positivos-a-covid-19-en-diez-dias/.

[28] https://www.salud.gov.pr/estadisticas_v2#casos (last visited on March 14, 2022).

hospitalized for COVID-19, 25 adults in ICU, 5 children hospitalized for COVID-19, and 3 patients in PICU.[29] As to deaths, on December 13, 2021, there was 1 death for COVID-19; on December 30, 2021, there were 7 deaths for COVID-19; on January 5, 2022, there were 19 deaths for COVID-19; on January 15, 2022, there were 32 deaths for COVID-19; on January 21, 2022, there were 32 deaths for COVID-19; on January 23, 2022, there were 28 deaths for COVID-19; on January 29, 2022, there were 17 deaths; on February 4, 2022, there were 15 deaths for COVID-19; on February 10, 2022, there were 13 deaths for COVID-19; and on February 22, 2022, there were 8 deaths for COVID-19.[30] In sum, to date there have been 4,150 deaths for COVID-19 in Puerto Rico[31] a figure no responsible public health official can lightly disregard. This data from the Puerto Rico Health Department shows the impact of the Omicron variant in Puerto Rico, regardless of how much Plaintiffs minimize it.

In order to try to chastise Dr. Cardona's testimony, Plaintiffs quote part of her testimony where she stated that she was "not a specialist on the subject" of hospital occupancy, so she could not "form an opinion about a statement from the president of the Puerto Rico Hospital Association that: 'The normal average was between 77% and 82% occupancy' ("I can't answer that').[32] Plaintiffs appear to suggest that Dr. Cardona stated that she could not form an opinion on recent expressions by Governor Pierluisi ("fifty-eight percent occupancy rate in hospitals is not high…. the optimal capacity, the optimal utilization

[29] https://www.salud.gov.pr/estadisticas_v2#sistemas_salud (last visited on March 14, 2022).
[30] https://www.salud.gov.pr/estadisticas_v2#defunciones
[31] Id.
[32] See, Docket No. 114 at p. 29.

rate for hospitals is precisely around 75 percent. There have been times when it has been higher, but 75 *is optimal.*")(Exhibit(a)).[33]

But the fact is that Dr. Cardona could not have testified about the Governor's statement in the press conference since it was made after her testimony in the evidentiary hearing. As Plaintiffs' motion states, the conference was held on January 13, 2022. In addition, Defendants were not expert witnesses testifying at the evidentiary hearing, so the Magistrate Judge did not have the opportunity to hear their testimony under oath, and to make the questions he deemed appropriate as to the alleged contradiction that Plaintiffs point out. Therefore, this Honorable Court must give to all statements regarding hospital occupancy the same weight, which is the one the Magistrate Judge gave to the testimony of Dr. Cardona and Dr. Marzán in its R&R.

There is another problem with Plaintiffs' Exhibit (a) and its certified translation, which warrants that it be stricken from the record. Federal Rule of Evidence 106 provides: "If a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part — or any other writing or recorded statement — that in fairness ought to be considered at the same time." Plaintiffs merely cited selected bits and pieces of the press conference, which did not reflect the entire recorded statement from the Governor and Dr. Mellado, including the answers posed to questions. The entirety

[33] Id.

of the recorded statement is necessary to put the statement in the correct context. Therefore, the Court should strike Plaintiffs Exhibit (a) pursuant to FRE 106.

Plaintiffs continue to quote Dr. Cardona in a small piece of an interview conducted in "Jugando Pelota Dura," a television show that aired on January 10, 2022, regarding hospital occupancy by said date.[34] Plaintiffs, again, quote a small part of the interview and not its totality and, in consequence, offer as Exhibit (b) the transcript of this interview. This Exhibit (b) suffers of the same ailment as Exhibit (a), as it is incomplete. Pursuant to FRE 106, Plaintiffs must provide a transcript of the entire segment where the panelists were being interviewed regarding the status of COVID-19 in Puerto Rico for the evidence to be complete, and Exhibit (b) be in compliance with FRE 106. Otherwise, this Court should strike Plaintiffs' Exhibit (b) from the record.

It is very convenient that, *after* the evidentiary hearing, Plaintiffs bring statements by Dr. Cardona taking into consideration the status of hospitalizations by January 2022, which did not exist on December 9, 2021, when she testified. As to hospitalizations and deaths due to COVID-19, Dr. Irizarry testified at the evidentiary hearing, "and both graphs clearly demonstrate, that for the last two COVID-19 outbreak 'waves' in Puerto Rico, there continues to be a remarkably strong correlation between the number of cases and the number of hospitalizations and deaths. Exhibits F, G. Dr. Irizarry showed that a rise in positive COVID-19 cases 'predicts hospitalizations that are going to happen in one or two weeks in the

[34] Id. at p. 31.

future.' Hearing, Dec. 14, at 9:26 AM; Exhibit F. Likewise, Dr. Irizarry explained that an increase in the positivity rate in Puerto Rico precedes an increase in deaths by 'between two and three weeks.' Hearing, Dec. 14, at 9:29 AM; Exhibit G."[35]

The Magistrate Judge pointed out Dr. Irizarry's opinion "that using this predictive information, when case numbers begin to grow the Puerto Rico government has been able to implement restrictions which have limited the total number of hospitalizations and deaths."[36] The Report and Recommendation added that Dr. Cardona conveyed that, by interrupting transmission of the virus, public health officials were able to avoid greater number of hospitalizations and death that pose a threat of overwhelming the Puerto Rico health system.[37] The fact that the Puerto Rico health system was not overwhelmed is the proximate result of the government's restrictions based on the predictive information provided by the scientific coalition, and as described by Dr. Irizarry, Dr. Cardona and Dr. Marzán in their testimonies at the evidentiary hearing.

In short, the validity of Farr's Law has been for a long time and in very different context, subject to debate in the scientific community, and this debate is unlikely to come to an end any time soon. Based on the evidence on the record, the Magistrate Judge did not err in concluding that Farr's Law does not constitute an adequate legal or constitutional

[35] See, Docket No. 103 at pgs. 36-37.
[36] Id. at p. 37.
[37] Id.

justification for granting the remedies Plaintiffs prayed for. There is no reason for that conclusion to be modified in any way by this court.

D. Plaintiffs' objections as to facts related to each.

1. Tropical Chill.

Mr. Jaime Vega, owner of Tropical Chill, objects that the Report and Recommendation did not quote his testimony in a more abundant matter. He first objects that the R&R "did not mention Mr. Vega's testimony that 'I am a strong believer in vaccines …".[38] This is misleading because, even though the remainder of the quote was not included in the R&R, it did make a point to observe that "Jaime Vega, who testified at the preliminary injunction hearing on December 6, 2021, is a strong believer in the efficacy of vaccinations and his entire family is vaccinated against COVID-19."[39] Mr. Vega continued to make a list of sections of his testimony that were not cited *ad verbatim* in the R&R. But from a reading of the R&R, it can be concluded that the Magistrate Judge took the entire testimony into consideration when it included testimony of the losses of his store, his objection to check vaccination status of the store visitors, and Mr. Vega's reasons to choose to remain at fifty percent (50%) of occupation in his stores rather than check vaccination status.[40]

[38] See, Docket No. 114 at p. 33.
[39] See, Docket No. 103 at p. 7.
[40] See, Docket No. 103 at pp. 6-8.

2. Jasmín Vega González

Ms. Vega, just as Mr. Vega did, objects that the Report and Recommendation did not include several quotes of her testimony she understands are essential. Ms. Vega goes further to question the credibility that the Magistrate Judge adjudicates as part of his duties in the evidentiary hearing, "The magistrate judge, however, did not believe Ms. Vega."[41] Co-plaintiff goes further to contend that the Magistrate Judge missed the point "that requiring *either* proof of vaccination or negative COVID test violates her religious beliefs."[42] This contention is frivolous, since the R&R clearly states that "she is opposed, on account of her faith, to all mandates requiring her to check for proof of vaccination or to ask for a negative COVID-19 test result. Her 'personal and religious interpretation is that we are reaching the last days and these requirements, she explained, are part of the 'mark of the Beast' described in Chapter 13 of the Book of Revelation of the Bible. Hearing, Dec. 7, at 2:27 PM." The Magistrate Judge could not have been any clearer as to Ms. Vega's claim regarding her religious beliefs. Through his questions, he pointedly sought to understand the basis of her religious objections. Her testimony clearly conveys her struggle for a convincing explanation.

Ms. Vega went on and on regarding how the Report and Recommendation keeps missing the point regarding her testimony and her religious belief that the vaccine is "the mark of the Beast." Lastly, she condemns that the R&R's suggestion that "[s]he can instead only require evidence of a negative COVID-19 test or evidence of a positive COVID-19

[41] See, Docket No. 114 at p. 35.
[42] Id.

infection and proof of recovery in the last three months" with the contention that either choice would be difficult for guests to obtain, and further states that "with some luck, it takes hours to secure free testing in Puerto Rico."[43] The fact is that, as the R&R correctly states, when asked if she complied with EO-75, "she refused to answer, invoking the Fifth Amendment."[44]

3. René Matos Ruiz

Mr. Matos, just as the previous plaintiffs, objects that the Report and Recommendation does not include parts of his testimony that should have been considered by the Magistrate Judge. He characterizes this omission as the magistrate judge having brushed off the fact that he spent hours trying to obtain free COVID-19 testing by "saying that Plaintiffs may secure free testing by investing a few hours each week."[45] The fact that the Plaintiffs are bothered by this doesn't rise to the level of a constitutional injury. Mr. Matos focused mainly on the time he spent waiting to obtain COVID-19 free testing.

Mr. Matos opposed COVID-19 vaccination "based on [his] religious beliefs and convictions, and also [his] knowledge and the searches that [he] conducted of the ingredients and compounds in the product."[46] Nonetheless, Mr. Matos admitted that he did not belong to any organized religion, nor does he have any religious preference, and that

[43] Id. at p. 36.
[44] See, Docket No. 103 at p. 10.
[45] See, Docket No. 114 at p. 36.
[46] See, Docket No. 103, at pgs. 12-13.

vaccination does not go against any religious "dogma" that he holds.[47] He also admitted that he currently possesses a health certificate and that he's working. And that the day after Regulation 138-A was issued, he obtained a new health certificate despite not having proof of COVID-19 vaccination.[48] Simply put, his testimony did not persuade the court that he suffered a constitutional violation as a direct consequence of the previous EO.

4. Eliza Llenza

Ms. Llenza, just as the previous plaintiffs, objects that Report and Recommendation did not include parts of her testimony that she finds relevant. This does not purport that the Report and Recommendation contains the appreciation of the testimony that the Magistrate Judge heard on the preliminary Injunction hearing is incorrect.

E. Mr. Matos' and Ms. Llenza's claims are not ripe for adjudication.

Plaintiffs' specific objections as to the portions of the Magistrate Judge's Report and Recommendation regarding Regulation No. 138-A refer to, first, that Mr. Matos' harm to his property interest in his health certificate is ripe for adjudication because he "expect[s]" to be subject to Regulation 138-A in August 2022. But as the record showed, Mr. Matos' allegations and testimony were based on events that have not occurred. Second, that there is no rational basis in requiring testing for people who work in industries like Mr. Matos and for the fields in which Ms. Llenza has training, and that there is no rational and reasonable need for persons to have a health certificate to avoid spreading illness to others.

[47] Id., at p. 13, n. 4.
[48] Id., at p. 13.

The doctrine of ripeness has roots in both the Article III case or controversy requirement and in prudential considerations. See, Reddy v. Foster, 845 F.3d 493, 500 (1st Cir. 2017). Ripeness concerns "when" a claim may be brought. R.I. Ass'n of Realtors, Inc. v. Whitehouse, 199 F.3d 26, 33 (1st Cir. 1999). It "seeks to prevent the adjudication of claims relating to contingent future events that may not occur as anticipated, or indeed may not occur at all." Id. The ripeness doctrine seeks "to prevent the courts, through avoidance of premature adjudication from entangling themselves in abstract disagreement over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effect felt in concrete way by the challenging parties." Abbott Labs. v. Gardner, 387 U.S. 136, 148-149 (1967).

As discussed in the R&R, to determine whether a claim is ripe, the court must evaluate two factors: fitness and hardship.[49] N.H. Lottery Comm'n v. Rosen, 986 F.3d 38, 52 (1st Cir. 2021). Thus, "a claim is ripe only if the party bringing suit can show both that the issues raised are fit for judicial decision at the time the suit is filed and that the party bringing suit will suffer hardship if 'court consideration' is withheld." Labor Relations Div. of Constr. Indus. of Mass., Inc. v. Healey, 844 F.3d 318, 326 (1st Cir. 2016) (citation omitted). "The burden to prove ripeness is on the party seeking jurisdiction." Id. (citation omitted).

The inquiry into fitness is both a constitutional and a prudential one. The constitutional inquiry, grounded in the prohibition against advisory opinions is one of timing.

[49] See, Docket No. 103, at p.18.

Reg'l Rail Reorganization Act Cases, 419 U.S. 102, 140 (1974). "[I]ts basic rationale is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements." Abbott Labs., 387 U.S. 136, 148 (1967). The prudential concern is whether resolution of the dispute should be postponed in the name of "judicial restraint from unnecessary decision of constitutional issues" Reg'l Rail Reorganization, 419 U.S. 102, 138 (1974). The hardship prong is entirely prudential and evaluates if plaintiff is suffering any present injury from a future contemplated event. McInnis-Misenor v. Maine Medical Center, 319 F. 3d 63, 70 (1st Cir. 2003).

Here, the R&R found that Mr. Matos' claim regarding his health certificate is not ripe for adjudication. Defendants agree. The Magistrate Judge reached this conclusion after having heard the direct testimony of Mr. Matos, who testified that he had a valid health certificate that he secured a day after the enactment of Regulation 138-A, August 16, 2021, and that "he fears that his certificate may not be renewed in August 2022".[50] Thus, co-plaintiff Matos' claim is contingent on a future event that may not occur as he is anticipating, or indeed may not occur at all. As of today, it is not ripe. R.I. Ass'n of Realtors, Inc., 199 F.3d 33. Furthermore, there is no evidence in the record to prove when he will need to renew the health certificate he already has. Even his employer has not required the renewed certificate. No expiration date was proffered nor any kind of demand from his employer that the

[50] See, Docket No. 103 at p. 18.

document be renewed periodically. Mr. Matos' allegations and testimony are all based on assumptions.

Any argument in support of objections regarding the ripeness of Mr. Matos' claim has no legal basis. Co-plaintiff Matos claims he "expects" to be subject to Regulation 138-A in August 2022.[51] But no legal basis was raised in support. Finally, his argument that "obtaining a health certificate Puerto Rico is being implemented through a regulation…" so this "suggests that it may last longer than any executive order, and likely permanently",[52] is not legally sound. But the essential discussion here is "when" Mr. Matos must bring his claim and not the suggestion that the Regulation 138-A application is temporary or permanently.

As to Ms. Llenza, the Magistrate Judge found that since, contrary to Mr. Matos, she currently does not have a health certificate, she cannot claim to have a property right over something she does not have. Any asserted property interest by her is also unripe.[53]

F. Ms. Vega failed to establish a RFRA claim.

Plaintiffs claim that the Magistrate Judge applied the wrong standard to Ms. Vega's RFRA claim, since it imposes a burden on the government to prove that their means are narrowly tailored to achieve its compelled interest, but also that it is using "the least restrictive means" of furthering that compelling governmental interest.[54] They continue to

[51] See, Docket No. 114 p. 39.
[52] Id.
[53] See, Docket No. 103 at p. 19, n. 7.
[54] See Docket No. 114 at p. 39.

argue that to meet the least restrictive means test, the government had to explore at least some alternatives.

During the preliminary injunction hearing, Ms. Vega testified as to her religious beliefs and her objection to vaccinations. The Magistrate Judge found that this was established by the evidence offered. Nonetheless, Ms. Vega failed to establish that her reason for objecting COVID-19 testing is also based on those beliefs.[55]

The Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. §2000bb-1(a) *et seq.*, provides that "Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b)." (Emphasis added). Subsection (b) provides as exceptions that "Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person: (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." (Emphasis added). RFRA is clear in its provision: a person's exercise of religion shall not be burdened substantially, unless said burden is in furtherance of a compelling government interest, and it is the least restrictive means of furthering that compelling governmental interest.

In her testimony, Ms. Vega failed to establish that EO-75 substantially burdened her exercise of religion, as EO-75 contained alternatives to vaccinations, which she demonstrated

[55] See, Docket No. 103 at p. 46.

the Court that she opposed for valid religious beliefs. Now, this was not the case as to her objection to request the negative results for COVID-19 tests, which was the EO-75 alternative available to those who opposed vaccination based on religious beliefs. The R&R pointed out the evidence offered by Ms. Vega as to the COVID-19 testing alternative. Ms. Vega testified that her objection was "based on introducing an unknown object into her body."[56] When asked by the court if she had consulted a physician what the "wooden stick" contained, she admitted that she had not.

Being that Ms. Vega could not establish that the alternative to request proof of vaccination provided by EO-75, requesting a negative COVID-19 test result to her clients, did not substantially burden her exercise of religion, her RFRA claim fails. Furthermore, to the extent that she could not establish that EO-75 did not follow a compelling government interest, and that the alternatives contained therein substantially burdened her religious beliefs, it is to be concluded that Ms. Vega failed to provide evidence to show a substantial likelihood of success on that claim.

G. There is no constitutional right of economic liberties.

Plaintiffs readily conceded that "stopping the spread of the pandemic" … "may be a legitimate and compelling interest,"[57] the same conclusion reached by all courts that have examined these issues. The existence of such interest has consequences as to the applicable level of scrutiny, which Plaintiffs seek to avoid by championing notions of economic liberty

[56] Id. at p. 47.
[57] See, Docket No. 114 at p. 3.

for which there is no support in applicable case law. Plaintiffs argued that "the rolling EOs severely restrict the economic liberties of all Plaintiffs,"[58], and that even under rational basis review, which they acknowledged *in a footnote* to be the applicable standard of review,[59] Defendant's actions were so arbitrary that they failed to meet "even the laxest application of rational basis review."[60]

Entirely missing from Plaintiffs' argument is a very important element of rational basis review - the concept of deference to governmental rulemaking in those cases in which there is a compelling state interest in whose promotion the state has restricted no fundamental constitutional right. The Report and Recommendation spoke at length on this issue, setting forth legal rules Plaintiffs did not bother to argue against or rebut in their Opposition:

> "…it is of paramount importance that courts refrain from policymaking, principally because the Constitution "entrusts the safety and the health of the people to the politically accountable officials of the States." S. Bay United Pentecostal Church, 140 S. Ct. 1613 (2020) (Roberts, C. J., concurring). Furthermore, courts "should respect the judgment of those with special expertise and responsibility in this area." Cuomo, 141 S. Ct. at 68. Therefore, "[i]t is no part of the function of a court or a jury to determine which one of two modes was likely to be the most effective for the protection of the public against disease." Jacobson, 197 U.S. at 30. Courts must not therefore subject public health mandates "to second-guessing by an 'unelected federal judiciary,' which lacks the background, competence, and expertise to assess public health and is not accountable to the people."[61]

[58] Id. at p. 54.
[59] Id. at p. 20.
[60] Id. at p. 55.
[61] See, Docket No. 103 at pgs. 29-30.

Plaintiffs alleged that EO-75 violates the economic liberty protected by the Fourteenth Amendment, but their pleadings contain no specific definition nor legal standards associated with that elusive concept, nor any reference to legal authorities in support thereof.

The Supreme Court of the United States has never acknowledged economic liberty as a substantial component of the individual liberties afforded protection against governmental intrusion under the Fourteenth Amendment to the United States Constitution. The liberties protected by substantive due process do not include economic liberties. Savage v. Mills, 478 F.Supp.3d 16 (D. Me. 2020). Such protection exists, but its origin is statutory, not constitutional, and it is limited to private restraints. See Mass. Food Association v. Mass. Alcoholic Beverages Control Commission, 197 F.3d. 560 (1st Cir. 1999)("The Sherman Act is a charter of economic liberty, but only against private restraints").[62]

The notion of an economic liberty interest finds no explicit support in the text of the Constitution, but its advocates rely on a broad interpretation, allegedly grounded on historical precedents, of the Privileges or Immunities, Due Process and Equal Protection Clauses of the Fourteenth Amendment, and the way they wish these clauses were construed.

[62] The notion of a higher level of constitutional protection for economic liberty has been debated in scholarly circles, but so far, no broad recognition of such right, which would be subject to strict judicial scrutiny and "less onerous means" analysis any legislation or regulatory scheme over commerce and economic activity in general, has been forthcoming from the Court. See, George Thomas, Economic Liberty and the Courts, National Affairs (Summer 2010); Randy E. Barnett, Does the Constitution Protect Economic Liberty?, 35 Harvard Journal of Law and Public Policy 1 (March 2012).

See, Randy E. Barnett, Does the Constitution Protect Economic Liberty?, 35 Harvard Journal of Law and Public Policy 1 (March 2012). In this mindset, Jacobson v. Commonwealth of Massachusetts, *197* U.S. 11 (1905) and the rational basis scrutiny it validated for public health vaccine requirements has become a doctrinal target for derision. Advocates of "Economic Liberty" support stricter limitations on governmental regulatory powers to carry out public policy objectives, even in areas as sensitive as public health threats like the ones the world is currently facing. See, Barnett, *Ibid*.

"If a precedent of the Supreme Court has direct application in a case yet appears to rest on reasons rejected in some other line of decisions, the court of Appeals should follow the case which directly controls, leaving the Supreme Court the prerogative of overruling its own decisions," Rodriguez de Quijas v. Shearson/American Express, 490 U.S. 477, 484 (1989); U.S. v. McIvery, 806 F.3d. 645, 653 (1st Cir. 2015). "Under the doctrine of stare decisis, all lower federal courts must follow the commands of the Supreme Court, and only the Supreme Court may reverse its prior precedent", U.S. v. Moore-Bush, 963 F.3d. 29, 31 (1st Cir. 2020)(emphasis added). As recently as last year the Court of Appeals for the Seventh Circuit, when ruling upon the substantive due process challenge of a vaccination regime enacted to fight the current COVID-19 epidemic, validated the continuing applicability and binding nature of Jacobson and its sanctioning of vaccination requirements. See, Klassen v. Trustees of Indiana University, 2021 WL 3281209 (7th Cir. Aug. 2, 2021). This is the standard

by which Plaintiffs' substantive due process claims must be evaluated, notwithstanding doctrinal calls for alternative interpretations in the name of economic liberty.

But even if a constitutional right of economic liberty existed, co-plaintiff Vega, owner of Hillside Cabin, lacks standing for said claim. Standing "is a threshold issue and determines whether a federal court has "the power to hear the case, and whether the putative plaintiff is entitled to have the court decide the merits of the case." Libertad v. Welch, 53 F.3d 428, 436 (1st Cir. 1995) (internal citation omitted); Williams v. Puerto Rico, 910 F. Supp. 2d 386, 390 (D.P.R. 2012). Also, "[i]f a plaintiff lacks standing to bring a matter to federal court, a district court lacks jurisdiction to decide the merits of the case and must dismiss the complaint". Id. Plaintiff must show and has the burden to establish "(1) a concrete and particularized injury in fact, (2) a causal connection that permits tracing the claimed injury to defendants' actions, and (3) a likelihood that prevailing in the action will afford some redress for the injury." Weaver's Cove Energy, LLC v. R.I. Coastal Res. Mgmt. Council, 589 F.3d 458, 467 (1st Cir. 2009); See Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992).

It has been determined that "[t]he "foremost" standing requirement is injury in fact". Trichell v. Midland Credit Mgmt., Inc., 964 F.3d 990, 996–97 (11th Cir. 2020) citing Steel Co. v. Citizens for a Better Env't, 523 U.S. 83 at 103, 118 (1998). "An injury in fact consists of "an invasion of a legally protected interest" that is both "concrete and particularized" and "actual or imminent, not conjectural or hypothetical." Id., citing Lujan v. Defenders of Wildlife, 504 U.S. at 560. "Each subsidiary element of injury—a legally protected interest,

concreteness, particularization, and imminence—must be satisfied". Id. The injury requirement included that such injury must be to product of a wrong which directly results in the violation of a legal right. Alabama Power Co. v. Ickes, 302 U.S. 464, 479 (1938).

Also, the injury needs to be one of property or one founded in a statute which confers a privilege. Tennessee Electric Power Co. v. TVA, 306 U.S. 118, 137–138 (1939). "To allege the invasion of a legally protected interest, a plaintiff must show that the plaintiff has a right to relief if the court accepts the plaintiff's interpretation of the constitutional or statutory laws on which the complaint relies." CHKRS, LLC v. City of Dublin, 984 F.3d 483, 488 (6th Cir. 2021) referring to See Steel Co. v. Citizens for a Better Env't, 523 U.S. 89–90 (citing Bell v. Hood, 327 U.S. 678, 682–83, 685, 66 (1946)).

In conclusion, standing concerns whether the plaintiff is the appropriate party to bring suit. Davis v. Fed. Election Com'n, 554 U.S. 724, 734 (2008). "To qualify for standing, a claimant must present an injury that is concrete, particularized, and actual or imminent; fairly traceable to the defendant's challenged behavior; and likely to be redressed by a favorable ruling." Id. at 733.

The Report and Recommendation clearly details what co-plaintiff Ms. Vega was able to establish with her testimony at the preliminary injunction hearing and what she did not. Ms. Vega was able to establish that: (1) she is the owner of Hillside Cabin, an Airbnb in Mayagüez; (2) that it is still operating at twenty nights per month; (3) that she has operated it for less than a year; and (4) that for several months before the mandates, Hillside Cabin

was completely booked.[63] Ms. Vega was *not* able to establish: (1) Hillside Cabin's "normal" capacity; (2) whether a decrease in her occupancy-if any-could be attributed to normal seasonality, initial novelty of her business, or other factors besides the mandates; and (3) that she was complying with EO-75 (when asked whether she was asking her guests for proof of vaccination she invoked her Fifth Amendment right to remain silent).[64]

Ms. Vega failed to establish that EO-75 is inflicting any actual, concrete, and particularized harm to her business; therefore, she has no injury in fact. Moreover, as the Report and Recommendation concludes, she produced no evidence of likelihood of standing to bring her economic liberty and property rights claim since she did not produce any evidence of actual, concrete, and particularized harm, and a causal connection between the mandate and her harm. As such, Ms. Vega has no standing to bring forth any economic liberty and/or property rights claim.

H. EO-75 and Regulation 138-A do not violate plaintiffs' substantive due process rights.

Plaintiffs argue that the Report and Recommendation lacks empirical, statistical, or scientific evidence, "as if such information weren't relevant to evaluating the justifications for government actions that burden constitutional rights."[65] Plaintiffs insist that the R&R "brushes off the studies, data, and statistics furnished" by them.[66] The fact that the R&R does

[63] See, Docket No. 103 at p. 17.
[64] Id.
[65] See, Docket No. 114 at p. 45.
[66] Id. at p. 46.

not mention certain evidence does not mean that it wasn't considered by the Magistrate Judge, who listened to all the evidence during the preliminary injunction hearing and who stated in said document that he had considered "arguments of the parties, the pertinent authorities, and the evidence produced at the evidentiary hearing."[67] Plaintiffs expectation that the Report and Recommendation should adhere exclusively to all the studies they introduced in the record is misplaced.

Plaintiffs argue that the Jacobson standard should not be applied in the instant case because (1) "it predates modern jurisprudence,"[68] and (2) it has been thoughtfully criticized by legal scholars across the ideological spectrum for lacking in limiting principles characteristics of legal standards."[69] What is yet to be argued by Plaintiffs is a case in which the Supreme Court of the United States overturns Jacobson. That is because such a case doesn't exist. Therefore, Jacobson is good law, and there is no reason why this Honorable Court should not apply it here.

Plaintiffs have failed to direct this Court to a single precedent from any federal court in support of the proposition that a vaccine requirement or a weekly negative qualified COVID-19 test violates the substantive due process right to bodily integrity or autonomy. The Supreme Court and other federal courts, as well as state courts, have long validated vaccines mandates, even when not including a single exception to inoculation. See, Jacobson

[67] See, Docket No. 103 at p. 2.
[68] Id.
[69] Id., n. 19.

v. Massachusetts, 197 U.S. 11, 27 (1905)(upholding a Massachusetts law that required compulsory vaccinations for adults); Zucht v. King, 260 U.S. 174 (1922)(holding that a city can impose compulsory vaccination, even if there is no immediate threat of an epidemic like there was in Jacobson); Klaassen v. Trustees of Indiana, No. 21-2326, 7 F.4th 592 (7th Cir. Aug. 2, 2021)(holding that State university's requirement that students either be vaccinated against COVID-19 or, if they claimed religious or medical exemption, wear masks and be tested twice a week did not violate Due Process Clause); Workman v. Mingo County Board of Education, 419 Fed.Appx. 348 (4th Cir. 2011) (holding that a West Virginia law requiring all school children to be vaccinated, with no exemption for religious reasons, is constitutional); McCarthy v. Boozman, 212 F. Supp. 2d 945, 948 (W.D. Ark. 2002) (upholding the Arkansas compulsory vaccination law); Wright v. DeWitt School District, 385 S.W.2d 644, 646 (Ark. 1965) (holding that it is within the state's police power "to require that school children be vaccinated and that such requirement does not violate the constitutional rights of anyone, on religious grounds or otherwise."); Amadeo et al. v. Pierluisi-Urritia et al., Civil No. SJ2021CV04779 (P.R. Court of First Inst. 2021) (upholding a vaccine mandate for students and school employees in Puerto Rico).[70] Since federal and state case law have consistently refused to strike down vaccine mandates by states or territories throughout the United States, Plaintiffs cannot prevail in their challenge to the Executive Order on substantive due rocess grounds.

[70] See, Docket No. 49-1.

EO-75 provides individuals (employees and guests) covered and subject to its requisite's alternatives to "opt out" of the mandatory vaccination requirement. Therefore, the challenged orders requiring mandatory vaccination or a weekly negative COVID-19 qualified tests to employees and guests of the facilities within their scope are a valid constitutional exercise of the Commonwealth's police powers. See Chemerinsky & Goodwin, 110 Nw. U.L. Rev. at 595 (stating that "the government's interest in protecting [citizens] and preventing the spread of communicable disease justifies mandatory vaccinations for all [citizens] in the United States.").

The fact that Plaintiffs understand that the Report and Recommendation did not consider the multiple scientific studies that have been in the record since the preliminary injunction hearing took place, does not undo all the jurisprudence cited above that upholds vaccine mandates.

Rational basis review is the test that courts normally apply to Fourteenth Amendment challenges, so long as they do not involve suspect classifications based on race or some other ground, or a claim of fundamental right. Roman Catholic Diocese of Brooklyn v. Cuomo, 141 S.Ct. 63, 70 (Gorsuch, J., concurring). It is less stringent than strict scrutiny. Under rational basis review, the challenged Executive Orders and the Health Department Regulation do not violate any of Plaintiffs' substantive due process rights.

As a general matter, the Executive Orders' vaccine mandate is rationally related to the Commonwealth's legitimate governmental interest. See Jacobson, 196 U.S. at 36 (holding

that vaccine mandate was a valid exercise of the State's police power). It would be difficult to contend with a straight face that a vaccine mandate or a weekly test requirement does not bear a rational relation to protecting people's health and preventing the spread of COVID-19. The Plaintiffs do not point to a single court holding otherwise. See Chemerinsky & Goodwin, 110 Nw. U.L. Rev. at 610 (concluding that vaccine mandates generally pass the rational basis test). Some may disagree with the Governor's Executive Orders, but federal courts do not sit in a policy-checking capacity to second guess the wisdom of state governments' acts. F.C.C. v. Beach Commun., Inc., 508 U.S. 307, 313 (1993) (clarifying that federal courts do not have "a license [...] to judge the wisdom, fairness, or logic of legislative choices."). So, the Executive Orders itself bears a rational relation to Puerto Rico's public health interest.

Were the Court to examine the EOs under a strict scrutiny—which Defendants vehemently deny—they would easily pass said test since they are narrowly tailored to serve a compelling state interest: the health and lives of all employees and citizens who visit and sponsor public facilities of all kinds during this crisis period.

I. Supplemental claims.

Lastly, Plaintiffs claim that the Report and Recommendation "fails to address the true scope of the pendent claims under which EO-75 is being challenged."[71] The fact of the matter is that the Magistrate Judge indeed addressed Plaintiffs' supplemental claims, but it appears

[71] See, Docket No. 114, at page 55.

not to Plaintiffs' satisfaction, being that once again they complain that the explanation offered in the Report and Recommendation "fails to even mention Plaintiffs' arguments regarding the statutory landscape in Puerto Rico regarding health safety police powers."[72]

Plaintiffs mistakenly expect the Magistrate Judge to further analyze the intent of a legislation even when its plain language is clear. The Report and Recommendation correctly asserts that "[i]f the language is clear, then the job of the court is complete."[73] The letter of the Puerto Rico Public Safety Department Act, P.R. Laws Ann. tit. 25 § 3650, reveals that the legislature authorized the Governor to issue EO-75 after the declaration of a state of emergency, and that the legislature indeed intended to grant the Governor the power to issue, amend, and rescind both "regulations" and "orders" during a state of emergency. 25 L.P.R.A. §3650(b). As a matter of fact, this EO was recently repealed, as Defendants explain earlier in this document.

Furthermore, as to criminal penalties, P.R. Laws Ann. tit. 25 § 3654(d) clearly establishes the criminal penalties that the legislature provided for "when a person acts to endanger his life or the lives of other persons while a state of emergency has been declared by the Governor of Puerto Rico through an Executive Order."[74] Being that the Governor and the Secretary of Health acted within the powers granted upon them, Plaintiffs' supplemental claims fail.

[72] Id., at p. 56.
[73] See, Docket No. 103 at p. 49.
[74] Id. at pgs. 50-51.

IV. CONCLUSION

By the enactment of EO 2022-019 on March 11, 2022, by which the EOs Plaintiffs based their Motion for Preliminary Injunction and complaint were repealed, the instant case became moot. On that basis, and on the arguments included herein in response to Plaintiffs' objections to the R&R, mainly, that the R&R is duly supported by the evidence on the record, Defendants request this Honorable Court to adopt the Magistrate Judge's Report and Recommendation and consequently, deny Plaintiffs' Motion for Preliminary Injunction and Dismiss with Prejudice the instant case. On an end note, while "we don't close highways or set speed limits at 10 miles per hour to minimize accidental deaths,"[75] we do make people wear seatbelts.

WHEREFORE, it is respectfully requested from this Honorable Court to: (i) note Defendants' Response in Opposition to Plaintiff's Objection to the Report and Recommendation; (ii) adopt *in toto* the Magistrate Judge's Report and Recommendation; (iii) deny Plaintiffs' Motion for Preliminary Injunction; and (iv) Dismiss with Prejudice the instant case on mootness grounds.

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed a digital copy of this document with the Clerk of the Court, who will automatically notify of such filing to all parties officially registered in the CM/ECF System.

[75] See, Docket No. 114 at p. 68.

In San Juan, Puerto Rico, this 18th day of March, 2022.

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Secretary of Justice

SUSANA PEÑAGARÍCANO-BROWN
Secretary in Charge of Litigation

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GOBIERNO DE PUERTO RICO
LA FORTALEZA
SAN JUAN, PUERTO RICO

Boletín Administrativo Núm. OE-2022-019

ORDEN EJECUTIVA DEL GOBERNADOR DE PUERTO RICO, HON. PEDRO R. PIERLUISI, A LOS FINES DE MODIFICAR LAS MEDIDAS IMPLEMENTADAS CONTRA EL COVID-19, Y PARA DEROGAR LOS BOLETINES ADMINISTRATIVOS NÚMS. OE-2021-075, OE-2021-082, OE-2021-087, OE-2022-003, OE-2022-006, OE-2022-009, OE-2022-010, OE-2022-011 Y OE-2022-015

POR CUANTO: Desde el 12 de marzo de 2020 —tras registrarse en nuestra Isla los primeros casos de la enfermedad denominada COVID-19, a causa del nuevo coronavirus SARS-CoV-2— nos encontramos en un estado de emergencia. A partir de esa fecha hemos implementado con éxito un sinnúmero de estrategias para controlar la pandemia. Entre estas se encuentran el mandato de uso obligatorio de mascarillas, el distanciamiento físico y el requerimiento a ciertos sectores importantes de la sociedad de estar vacunados contra el referido virus o el presentar un resultado negativo a una prueba de detección de COVID-19, sujeto a ciertas excepciones y alternativas disponibles.

POR CUANTO: Los datos más recientes del Departamento de Salud de Puerto Rico son sumamente alentadores, pues indican que el promedio diario de casos confirmados está en 78 casos positivos de COVID-19, y de casos probables está en 113. Por su parte, en relación con las hospitalizaciones por COVID-19, éstas han disminuido a un total de 65 personas, divididas en 57 adultos y 8 pediátricos. En el caso de los adultos esto representa un 1% de ocupación de las camas disponibles. Por su parte, respecto a las unidades de cuidado intensivo, hoy el porcentaje de las camas ocupadas por pacientes con COVID-19 es de un 3%. En los casos pediátricos, las camas ocupadas son un 1%.

De otro lado, la tasa de positividad, es decir, el porcentaje de personas que resultan positivas al virus de todas aquellas que se hacen la prueba, ha bajado a un 4.28%. Por último, el promedio diario de defunciones está en 1.

POR CUANTO: El Artículo 5.10 de la Ley Núm. 20-2017, según enmendada, conocida como la "Ley del Departamento de Seguridad Pública de Puerto Rico", me faculta como Gobernador a, luego de decretar un estado de emergencia o desastre, darle vigencia a aquellas medidas

que resulten necesarias durante el periodo que se extienda la emergencia para el manejo de ésta con el fin de proteger la seguridad, salud y propiedad de todos los residentes de Puerto Rico.

POR CUANTO: El inciso (b) del Artículo 5.10 de la Ley Núm. 20-2017 establece que como Gobernador de Puerto Rico puedo dictar, enmendar y revocar aquellos reglamentos y emitir, enmendar y rescindir aquellas órdenes que estime convenientes para regir durante el estado de emergencia o desastre. Los reglamentos dictados u órdenes emitidas durante un estado de emergencia tendrán fuerza de ley mientras dure dicho estado de emergencia.

POR CUANTO: El Gobierno de Puerto Rico tiene la responsabilidad de continuar con los esfuerzos necesarios para prevenir y detener la propagación del COVID-19 y para salvaguardar la salud, la vida y la seguridad de todos los residentes de Puerto Rico.

POR CUANTO: El poder de dirigir un pueblo conlleva la gran responsabilidad de asegurar que su población esté saludable y segura. A su vez, el poder de razón de Estado —según delegado en el Poder Ejecutivo por la Ley Núm. 20-2017— faculta al gobierno a tomar las medidas necesarias para proteger la salud y seguridad de su población. Es decir, es el poder inherente del Estado el que permite crear y promover regulación con el fin de proteger la salud, la seguridad y el bienestar general. Para lograr estos beneficios en pro de la comunidad, el Estado tiene el poder de restringir ciertos intereses personales, los cuales no son absolutos.

POR CUANTO: Dado que han disminuido los contagios de COVID-19 durante las pasadas semanas, es posible flexibilizar ciertas medidas, tales como eliminar el mandato de mascarillas en la mayoría de las áreas, la limitación de aforo, los mandatos de vacunación, el requerimiento de cernimientos en los operadores privados, así como las normas o medidas que debían seguir los pasajeros que llegaran a Puerto Rico para controlar la pandemia. Asimismo, se le delega y ordena al Secretario del Departamento de Salud a emitir las recomendaciones y protocolos que correspondan en las distintas instancias.

POR CUANTO: Las medidas llevadas a cabo en esta Orden Ejecutiva son consistentes con las tomadas desde el principio de esta administración. En todas se hizo un justo balance entre la salud y seguridad de toda la población y los efectos adversos en la economía.

POR CUANTO: Debe recalcarse que cada ciudadano tiene la responsabilidad individual de ser juicioso y crítico ante cualquier actividad personal, comercial o profesional a la que asista o esté involucrado. Así pues, cada uno de los ciudadanos tiene la responsabilidad de continuar tomando las medidas cautelares y, además, ser juicioso y determinar no participar en cualquier actividad que entienda pueda poner en riesgo su salud o la de los demás.

POR TANTO: Yo, PEDRO R. PIERLUISI, Gobernador de Puerto Rico, en virtud de los poderes inherentes a mi cargo y la autoridad que me ha sido conferida por la Constitución y las leyes del Gobierno de Puerto Rico, por la presente, decreto y ordeno lo siguiente:

SECCIÓN 1ª: **CUARENTENA Y AISLAMIENTO.** Se le ordena al Secretario del Departamento de Salud a emitir las normas referentes a la cuarentena (para personas sospechosas de estar expuesta al COVID-19) y el aislamiento (para personas infectadas con COVID-19).

SECCIÓN 2ª: **MEDIDAS CAUTELARES INDIVIDUALES.** Como norma general, quedan eliminados los mandatos de utilización de mascarillas en áreas interiores y exteriores, sujeto a las siguientes excepciones:

1. Se recomienda cubrirse el área de la boca y la nariz con una mascarilla o bufanda de tela u otro material, conforme las directrices del Departamento de Salud, cuando en áreas interiores no haya constancia de que las personas presentes en el lugar, que sean fuera de su unidad familiar, estén vacunadas.
2. Se deberá continuar cubriéndo el área de la boca y la nariz con una mascarilla o bufanda de tela u otro material, conforme las directrices del Departamento de Salud, en las siguientes circunstancias:
    a. Toda persona que trabaje o visite a facilidades de salud, tales como los hospitales, salas de emergencias, consultorios médicos, centros de salud, clínicas, laboratorios clínicos y farmacias.
    b. Toda persona que trabaje o visite a hogares de cuidado prolongado para adultos mayores.
3. El Departamento de Salud deberá emitir las normas en cuanto a la utilización de mascarillas en los centros de cuido de niños (incluido los Head Start y Early Head Start), las escuelas públicas o privadas y las universidades.

4. El Departamento de Salud podrá exigir la utilización de mascarillas en otros escenarios en los que determine adecuado para evitar futuros contagios.

5. Cada operador privado o gubernamental, a su discreción, podrá implementar las medidas de salubridad que entienda que correspondan a su tipo de operación, incluido el requerir la utilización de mascarillas.

6. Cada persona podrá, a su discreción, continuar utilizando las mascarillas. Por ende, ninguna persona o entidad privada podrá impedir que persona alguna continúe con la utilización de su mascarilla.

7. Se entiende por "mascarilla" cualquier producto de tela u otro material que cubre la boca, la nariz y la barbilla, provisto de un arnés de cabeza que puede rodear la cabeza o sujetarse a las orejas. Lo anterior, según las recomendaciones y especificaciones del Departamento de Salud y los Centros para el Control y la Prevención de Enfermedades ("CDC", por sus siglas en inglés).

Se recomienda continuar con las otras medidas cautelares, tales como mantener un espacio mínimo de seis (6) pies entre sí y las demás personas fuera de su unidad familiar, evitar cualquier aglomeración, y el lavado de manos con agua y jabón regularmente, o con desinfectantes de manos aprobados por entidades oficiales de salud.

SECCIÓN 3ª: **ACTIVIDADES MULTITUDINARIAS.** Se permiten todas las actividades multitudinarias. Ahora bien, en aras de lograr salvaguardar la salud de toda la población en Puerto Rico y minimizar los contagios, ordeno que a partir de la vigencia de esta Orden Ejecutiva toda actividad multitudinaria de más de 1,000 personas llevada a cabo en teatros, anfiteatros, estadios, coliseos, centros de convenciones y de actividades, y lugares análogos en los que se celebre cualquier actividad —sea en el exterior o en el interior— deberá cumplir con el protocolo que promulgue el Secretario del Departamento de Salud, a esos fines.

Todo lo antes mencionado no aplicará a eventos religiosos o los públicos en los que se brinden servicios gubernamentales.

SECCIÓN 4ª: **ELIMINACIÓN DE REDUCCIÓN DE AFORO.** Quedan eliminados los mandatos sobre reducción de aforo en las entidades privadas y públicas. Ahora bien, cada operador privado o gubernamental, a su discreción, podrá implementar las medidas de salubridad que

entienda que correspondan a su tipo de operación, incluido el reducir el aforo según lo entienda pertinente.

SECCIÓN 5ª: **ELIMINACIÓN DE LOS MANDATOS DE VACUNACIÓN.** Se dejan sin efecto los mandatos de vacunación contra el COVID-19. Sin embargo, se le delega al Secretario del Departamento de Salud a emitir por vía administrativa las recomendaciones sobre la vacunación para toda la población. Además, se le ordena realizar los esfuerzos necesarios para continuar promoviendo la vacunación y la dosis de refuerzo en todos los sectores aplicables.

No obstante lo anterior, el Secretario del Departamento de Salud continuará haciendo las determinaciones relacionadas a los certificados de salud y la vacunación para los estudiantes.

SECCIÓN 6ª: **ELIMINACIÓN DE LOS REQUERIMIENTOS A VISITANTES.** Quedan eliminados los mandatos de requerimiento de cernimiento sobre estatus de vacunación o pruebas para detectar el COVID-19 a los visitantes en los restaurantes (incluyendo los "*fast foods*", "*food courts*" y cafeterías), barras, chinchorros, cafetines, "*sport bars*", cines, centros comunales o de actividades (en el que se realizan actividades familiares), y cualquier otro local que sirva bebida o comida preparada, así como a los hoteles, paradores, hospederías, salones de belleza, barberías, salones de estética, *spa*, gimnasios y casinos.

Ahora bien, cada operador privado, a su discreción, podrá implementar las medidas de salubridad que entienda que corresponda a su tipo de operación, incluido el realizar cernimiento de sus visitantes.

SECCIÓN 7ª: **ELIMINACIÓN DE LAS NORMAS A LOS VIAJEROS.** Dado el estado actual de la pandemia, se deroga el Boletín Administrativo Núm. OE-2022-009, el cual establecía las normas o medidas que debían seguir los pasajeros que llegaran a Puerto Rico para controlar la pandemia.

En cambio, la vigilancia genómica y los centros de pruebas voluntarias en los aeropuertos se mantendrán disponibles por el tiempo que el Secretario del Departamento de Salud estime necesario.

SECCIÓN 8ª: **GUÍAS.** Las disposiciones establecidas en esta Orden Ejecutiva podrán ser definidas, interpretadas, reforzadas o modificadas detalladamente mediante guías emitidas por el Departamento de Salud, en consulta con la Secretaría de la Gobernación o el Asesor Legal del Gobernador.

SECCIÓN 9ª: **NO CREACIÓN DE DERECHOS EXIGIBLES.** Esta Orden Ejecutiva no tiene como propósito crear derechos sustantivos o procesales a favor de terceros, exigibles ante foros judiciales, administrativos o de cualquier otra índole, contra el Gobierno de Puerto Rico o sus agencias, sus oficiales, empleados o cualquiera otra persona.

SECCIÓN 10ª: **DEFINICIÓN DEL TÉRMINO AGENCIA.** Para fines de esta Orden Ejecutiva, el término "agencia" se refiere a toda agencia, instrumentalidad, oficina o dependencia de la Rama Ejecutiva del Gobierno de Puerto Rico, incluyendo corporaciones públicas, independientemente de su nombre.

SECCIÓN 11ª: **SEPARABILIDAD.** Las disposiciones de esta Orden Ejecutiva son independientes y separadas unas de otras. Si un tribunal con jurisdicción y competencia declarase inconstitucional, nula o inválida cualquier parte, sección, disposición u oración de esta Orden Ejecutiva, la determinación a tales efectos no afectará la validez de las disposiciones restantes, las cuales permanecerán en pleno vigor.

SECCIÓN 12ª: **DEROGACIÓN.** Esta Orden Ejecutiva deja sin efecto las partes de todas aquellas órdenes ejecutivas que en todo o en parte sean incompatibles con ésta hasta donde existiera tal incompatibilidad. En particular, se deja sin efectos los boletines administrativos núms. OE-2021-075, OE-2021-082, OE-2021-087, OE-2022-003, OE-2022-006, OE-2022-009, OE-2022-010, OE-2022-011 y OE-2022-015.

SECCIÓN 13ª: **PUBLICACIÓN.** Esta Orden Ejecutiva debe ser presentada inmediatamente en el Departamento de Estado y se ordena su más amplia publicación.

SECCIÓN 14ª: **VIGENCIA.** Esta Orden Ejecutiva entrará en vigor el 10 de marzo de 2022 y se mantendrá vigente hasta que sea enmendada o revocada por una orden ejecutiva posterior o por operación de ley.

EN TESTIMONIO DE LO CUAL, expido la presente Orden Ejecutiva bajo mi firma y hago estampar el gran sello del Gobierno de Puerto Rico, en La Fortaleza, en San Juan, Puerto Rico, hoy 7 de marzo de 2022.

PEDRO R. PIERLUISI
GOBERNADOR

Promulgada de conformidad con la ley, hoy 7 de marzo de 2022.

OMAR J. MARRERO DÍAZ
SECRETARIO DE ESTADO