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

JULIO F. DEL TORO-PACHECO,

Plaintiff

v.

MIGUEL A. PEREIRA, ET AL

Defendants

CIVIL 08-1133 (FAB) (JA)

OPINION AND ORDER

I. INTRODUCTION

This matter is before the court on a motion to dismiss filed by defendants Roberto Izquierdo-Ocasio (“Izquierdo-Ocasio”) and Miguel A. Pereira (“Pereira”) on April 2, 2008. (Docket No. 7.) The plaintiff Julio F. del Toro-Pacheco (“del Toro”) filed a motion in opposition on April 16, 2008. (Docket No. 9.)

Del Toro is a former correctional officer with the Puerto Rico Department of Correction and Rehabilitation (“ACR”). He alleges he was terminated due to his political affiliation in violation of the constitutions and laws of the United States and Puerto Rico. Defendants move to dismiss on the following grounds: first, the claims are time-barred; second, plaintiff failed to state claims upon which relief can be granted pursuant to Rule 12(b)(6); and finally, on the ground that they are protected from liability by the Eleventh Amendment’s sovereign immunity as well as the doctrine of qualified immunity. For the following reasons, defendants’ motion to dismiss is GRANTED IN PART AND DENIED IN PART.

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4 II. RULE 12(b)(6) LEGAL STANDARD

5 Under Rule 12(b)(6), a litigant is permitted to move to dismiss an action if
6 the complaint fails “to state a claim upon which relief can be granted. . . .” Fed. R.
7 Civ. P. 12(b)(6). However, a complaint need only set out a short and plain
8 generalized statement of the claim from which the defendant will be able to frame
9 a responsive pleading. Fed. R. Civ. P. 8(a)(2); Garita Hotel Ltd. P’ship v. Ponce Fed.
10 Bank, F.S.B., 958 F.2d 15, 17 (1st Cir. 1992) (quoting 5A Charles Alan Wright &
11 Arthur R. Miller, Federal Practice and Procedure § 1357 (2d ed. 1990)); Cruz v.
12 Puerto Rico, 558 F. Supp. 2d 165, 180 (D.P.R. 2007). Moreover, the court must treat
13 all allegations in the complaint as true and draw all reasonable inferences therefrom
14 in favor of the plaintiff. Perry v. New England Bus. Serv., Inc., 347 F.3d 343, 344
15 (1st Cir. 2003); Rumford Pharmacy, Inc. v. City of East Providence, 970 F.2d 996,
16 997 (1st Cir.1992). Even so, for a plaintiff to survive such a motion, his factual
17 allegations, assuming they are true, must raise a right to relief above a speculative
18 level. Clark v. Boscher, 514 F.3d 107, 112 (1st Cr. 2008) (quoting Bell Atlantic
19 Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 1959 (2007)). A vague and
20 conclusory allegation under 42 U.S.C. § 1983 must be dismissed. United Hous.
21 Found., Inc. v. Forman, 421 U.S. 837, 860 & n.27 (1975); see Torres Ocasio v.
22 Meléndez, 283 F. Supp. 2d 505, 513 (D.P.R. 2003).
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4 III. FACTUAL ALLEGATIONS5 Following the standard invoked, the facts in the complaint are assumed true.
6 Plaintiff receives the benefit of all reasonable inferences. However, conclusory
7 allegations will be disregarded.
89 Plaintiff was employed as a correctional officer with the Puerto Rico
10 Department of Correction and Rehabilitation ("ACR") before the November, 2004
11 elections. His position was not one of trust and confidence and he could not be
12 removed because of his political beliefs. Plaintiff is an active member of the New
13 Progressive Party ("NPP") and publicly expressed his support for the NPP in the
14 November, 2004 elections. The NPP's rival party, the Popular Democratic Party
15 ("PDP"), won the governorship that November. (Docket No. 1, at 7, 10-11.)
1617 Defendant Pereira was appointed by the Governor as Secretary of the
18 Correction and Rehabilitation Administration ("ACR"). Defendant Izquierdo-Ocasio
19 was plaintiff's immediate supervisor and was the director of the Special Arrest Unit
20 at ACR. Plaintiff's political beliefs were at all times known to defendants. When
21 defendants took office they initiated a purge of employees that were politically
22 identified with the NPP. (Id. at 4, 6- 7.)
2324 On March 27, 2006, the wife of one of plaintiff's co-workers was the victim of
25 an alleged sexual assault. Authorities suspected plaintiff and a criminal
26 investigation ensued. (Id. at 7-8.)
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4 On June 20, 2006, plaintiff received a letter asking him to appear before ACR's
5 Internal Affairs on June 18, 2006. Since the date had already passed, plaintiff called
6 the Office of Internal Affairs. He was told that since he did not show up for the
7 hearing, the Internal Affairs investigation of him would continue without his
8 testimony. (Id.)
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10 On December 14, 2006, plaintiff received a letter signed by Pereira which
11 informed him of ACR's intention to dismiss him. The reason given was the
12 accusation against plaintiff regarding the alleged sexual assault of March 27, 2006.
13 The letter advised plaintiff of his right to request an administrative hearing, which
14 he then requested. (Id. at 8.)
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16 On December 18, 2006, plaintiff received a letter in which he was called to
17 appear before an official on January 10, 2007. The letter stated that if plaintiff did
18 not appear at the hearing the intended disciplinary action would be confirmed. (Id.)
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20 On January 10, 2007, plaintiff attended the hearing with counsel José F.
21 Avilés Lamberty. Counsel Avilés asked that the hearing be postponed at least 30
22 days due to the on-going criminal investigation. Plaintiff feared his testimony
23 would be used against him in the criminal investigation. Apparently no other
24 hearing was scheduled. (Id. at 8-9.)
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26 Before dismissing plaintiff, Izquierdo-Ocasio began a systematical persecution
27 and harassment of plaintiff. He told plaintiff that he was going to be dismissed, that
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4 the letter of dismissal was already signed by Pereira, and that the only way he could
5 keep his job was if he switched to the PPD. (Id. at 9.)

6 Izquierdo-Ocasio harassed plaintiff on a daily basis, creating a hostile work
7 environment with the purpose of forcing plaintiff to resign. Izquierdo-Ocasio said
8 to plaintiff, “we have the perfect excuse to dismiss you” He continued, “I can
9 hold your letter of dismissal which is already signed if you publicly affiliate yourself
10 to the Popular Democratic Party.” Finally, he concluded with, “Pereira knows that
11 you filed a claim against us and that you are a member of the NPP. I am the only
12 one that can save you, not even Roselló can.” (Id. at 9-10.)

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15 On February 22, 2007, plaintiff received a letter dismissing him from his
16 position with ACR because of the sexual assault charges, which plaintiff asserts the
17 defendants knew were false. Indeed, he was cleared of all charges the following
18 month, in March, 2007. Defendants used the charges as pretext for plaintiff’s
19 dismissal, the real reason being his affiliation with the NPP. (Id. at 7, 9.)

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21 After discharging plaintiff, the defendants appointed, retained, or contracted
22 new employees identified with the PPD to perform the duties and responsibilities
23 that were previously performed by plaintiff. At no time was political affiliation a
24 requirement for the position held by plaintiff. (Id. at 10.)

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26 Plaintiff filed a complaint on January 30, 2008, under 42 U.S.C. §§ 1983 and
27 1988, claiming defendants violated his First, Fifth, and Fourteenth Amendment
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4 rights. He claims he was fired for political reasons in violation of the First
5 Amendment and that defendants did not afford him due process in violation of the
6 Fifth and Fourteenth Amendments. In addition, he asks the court assert
7 supplemental jurisdiction for claims arising out of the constitution and laws of
8 Puerto Rico. (Id. at 1, 3-5.)

10 IV. ANALYSIS

11 Defendants argue plaintiff's complaint should be dismissed for the following
12 reasons: (1) it is time-barred; (2) plaintiff failed to state a claim under section
13 1983, and (3) they are protected from liability due to the Eleventh Amendment's
14 sovereign immunity and doctrine of qualified immunity. Their arguments are
15 addressed in turn.

17 A. STATUTE OF LIMITATIONS

18 Before discussing whether plaintiff properly alleged a claim, the court must
19 dispose of a threshold issue. Is the complaint timely? Plaintiff says yes, defendants
20 no. Both sides agree on the length of the period but disagree on its inception. First
21 the length.

22 Plaintiff brings his action under 42 U.S.C. § 1983. "Because it has no internal
23 statute of limitations, section 1983 claims 'borrow[] the appropriate state law
24 governing limitations unless contrary to federal law.'" Marrero-Gutiérrez v. Molina,
25 491 F.3d 1, 5 (1st Cir. 2007) (quoting Poy v. Boutselis, 352 F.3d 479, 483 (1st Cir.
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4 2003)). Thus, Puerto Rico law governs the length of the statute of limitations
5 period. Guzmán-Rivera v. Rivera-Cruz, 29 F.3d 3, 4-5 (1st Cir. 1994). It is one
6 year. Centro Médico del Turabo, Inc. v. Feliciano de Melecio, 406 F.3d 1, 6 (1st Cir.
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8 2005); see P.R. Laws Ann. tit. 31, § 5298(2)(1990).

9 Federal law governs when the one-year period begins. Marrero-Gutiérrez v.
10 Molina, 491 F.3d at 5; Guzmán-Rivera v. Rivera-Cruz, 29 F.3d at 5. That period,
11 called the accrual period, will ordinarily begin "when the plaintiff knows, or has
12 reason to know, of the injury on which the action is based." Id. "A claimant is
13 deemed to "know" or "learn" of a discriminatory act at the time of the act itself and
14 not at the point that the harmful consequences are felt." Id. at 5-6 (citing Chardón
15 v. Fernández, 454 U.S. 6, 8 (1981)).
16

17 Defendants argue that the first discriminatory act occurred on or before
18 December 14, 2006. On that date plaintiff received a letter signed by Pereira
19 informing him of the intention to dismiss him. If that letter, received outside the
20 accrual period, constituted the first discriminatory act, the action would be time-
21 barred, the action would be time-
22 barred.

23 Plaintiff argues that the first discriminatory act occurred during February
24 2007. On February 22, 2007, plaintiff received a letter signed by Pereira which
25 formally dismissed plaintiff from his position with ACR.
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4 In the context of a section 1983 political discrimination claim, the accrual
5 period begins when the adverse employment action actually occurs. Examples
6 include demotion, Gutiérrez v. Molina, 447 F. Supp. 2d 168, 173 (D.P.R. 2006)
7 (accrual period began when plaintiff received letter announcing his demotion), and
8 refusal to hire. Ruiz -Sulsona v. U.P.R., 334 F.3d 157, 159-160 (1st Cir. 2003)
9 (discrete acts like termination, failure to promote, denial of transfer, and refusal to
10 hire initiate accrual period) (quoting AMTRAK v. Morgan, 536 U.S. 101, 114
11 (2002)).
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14 Here, plaintiff alleges a wrongful termination. He was terminated on February
15 22, 2007. Because the accrual period is one year, he had until February 22, 2008
16 to bring an action. He filed his complaint on January 30, 2008, within the
17 actionable one-year period. Thus, his complaint is timely.

18 **B. FAILURE TO STATE A CLAIM UNDER SECTION 1983**

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20 Plaintiff brings a claim under section 1983, which creates a private cause of
21 action for persons who have had their civil rights violated by state actors. 42 U.S.C.
22 § 1983. “There is no heightened pleading standard in civil rights cases.” Rosario
23 Rivera v. Aqueduct & Sewer Auth. of P.R., 472 F. Supp. 2d 165, 168 (D.P.R. 2007)
24 (citing Educadores Puertorriquños en Acción v. Hernández, 367 F.3d 61, 66-67 (1st
25 Cir. 2004). Even so, while not held to a higher pleading standard, plaintiff “must
26 plead enough for a necessary inference to be reasonably drawn.” Marrero-Gutiérrez
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4 v. Molina, 491 F.3d at 9 (quoting Torres-Viera v. Laboy-Alvarado, 311 F.3d 105, 108
5 (1st Cir. 2002) (citing Leatherman v. Tarrant County Narcotics Intelligence &
6 Coordination Unit, 507 U.S. 164, 167-68 (1993)).

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8 “To state a claim under section 1983, the plaintiff must satisfy two
9 requirements. First, he must identify ‘an act or omission undertaken under color
10 of state law.’” Calderón-Garnier v. Sánchez-Ramos, 439 F. Supp. 2d 229, 236
11 (D.P.R. 2006), aff’d, 506 F.3d 22 (1st Cir. 2007) (quoting Aponte-Torres v. U. P.R.,
12 445 F.3d 50, 55 (1st Cir.2006)). This prong is easily satisfied. “Puerto Rico is
13 considered a state for section 1983 purposes” and the complaint alleges actions
14 attributed to Puerto Rican officials. Calderón-Garnier v. Sánchez-Ramos, 439 F.
15 Supp. 2d at 236 (citing Redondo-Borges v. U.S. Dep’t of Hous. & Urban Dev., 421
16 F.3d 1, 7 (1st Cir. 2005). “Second, the plaintiff must allege he was deprived of a
17 federally secured right.” Calderón-Garnier v. Sánchez-Ramos, 439 F. Supp. 2d at
18 236 (citing Aponte-Torres v. U. P.R., 445 F.3d at 55). As detailed below, the plaintiff
19 satisfies this requirement by alleging he was fired without due process because of his
20 political affiliations.
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23 1. Fourteenth Amendment Due Process

24 Though the fact is not made explicit in the complaint, the court infers plaintiff
25 was a career employee at ACR. Moreover, defendants do not dispute the point. (See
26 Docket No. 7, at 8-10.) Under Puerto Rico law, a career employee has a property
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4 interest in his continued employment. Kauffman v. P. R. Tel. Co., 841 F.2d 1169,
5 1173 (1st Cir. 1988); Soto González v. Rey Hernández, 310 F. Supp. 2d 418, 425
6 (D.P.R. 2004). As such, plaintiff had a property interest in his continued
7 employment and his termination required procedural due process. See Cleveland
8 Bd. of Educ. v. Loudermill, 470 U.S. 532, 538-540 (1985).
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10 Defendants argue the due process claim should be dismissed because plaintiff
11 received ample process. (Docket No. 7, at 8-12.) “[T]o establish a procedural due
12 process claim under section 1983, a plaintiff ‘must allege first that [he] has a
13 property interest as defined by state law and, second, that the defendants, acting
14 under color of state law, deprived [him] of that property interest without
15 constitutionally adequate process.’” Marrero-Gutiérrez v. Molina, 491 F.3d at 8
16 (quoting PFZ Props., Inc. v. Rodríguez, 928 F.2d 28, 30 (1st Cir. 1991)).
17

18 As defendants point out, due process requires “that a deprivation of life,
19 liberty, or property ‘be preceded by notice and opportunity for hearing appropriate
20 to the nature of the case.’” Cleveland Bd. of Educ. v. Loudermill, 470 U.S. at 542
21 (quoting Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 313 (1950)).
22 “The tenured public employee is entitled to oral or written notice of the charges
23 against him, an explanation of the employer’s evidence, and an opportunity to
24 present his side of the story.” Cleveland Bd. of Educ. v. Loudermill, 470 U.S. at 546.
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4 Defendants cite various incidents as evidence plaintiff received sufficient
5 process. (Docket No. 7, at 1.) They contend plaintiff was notified of the reasons for
6 his termination and was given a pre-termination hearing at which he had the
7 opportunity to be accompanied by his attorney. (Id.)
8

9 Plaintiff's complaint is confusing. He first alleges that he was not afforded a
10 hearing. (Docket No. 1, at 4.) Further on he admits he did attend a hearing,
11 accompanied by his attorney, but contends it was insufficient. Apparently he did not
12 testify at the hearing because he feared he might incriminate himself. (Id. at 8.)
13 His attorney thus asked for an extension of 30 days. (Id. at 8-9.) In his brief in
14 opposition to the motion to dismiss, plaintiff clarifies the language in his complaint
15 by stating the key words: "Plaintiff was never given [an] opportunity to present his
16 side of the story." (Docket No. 9, at 11.)
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18 The court, drawing reasonable inferences in favor of the plaintiff, concludes
19 that plaintiff, because of fears of incriminating himself, never had an opportunity
20 to be heard. Thus, plaintiff has stated a procedural due process claim. Accordingly,
21 the claim will survive defendants' motion to dismiss.
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23 2. First Amendment Political Discrimination

24 Defendants claim that plaintiff's political discrimination claim should be
25 dismissed because plaintiff has failed to state a prima facie case. The First
26 Amendment protects non-policymaking public employees from adverse employment
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4 actions based on their political opinions. See Rutan v. Republican Party of Ill., 497
5 U.S. 62, 75-76 (1990); Padilla-García v. Guillermo Rodríguez, 212 F.3d 69, 74 (1st
6 Cir. 2000). To establish a prima facie case, a plaintiff must show that party
7 affiliation was a substantial or motivating factor behind a challenged employment
8 action. See Padilla-García v. Guillermo Rodríguez, 212 F.3d at 74; Angulo-Álvarez
9 v. Aponte de la Torre, 170 F.3d 246, 249 (1st Cir.1999).

11 Plaintiff alleges that defendant Pereira directly or using subordinates harassed
12 plaintiff. To quote his complaint, Pereira played a role in his being told “that
13 because of his loyalty to the New Progressive Party he was going to be dismissed
14 from his position and that under no circumstance the Correctional Administration
15 was going to keep employees who were not politically loyal to the Popular
16 Democratic Party.” (Docket No. 1, at 12.) The facts alleged show that party
17 affiliation was a substantial factor behind plaintiff’s termination. Thus, the political
18 discrimination claim against Pereira survives this motion to dismiss.
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21 Plaintiff alleges that defendant Izquierdo-Ocasio told him the only way plaintiff
22 could keep his job was if he switched to the Popular Democratic Party. (Docket No.
23 1, at 13.) Plaintiff also alleges that Izqueirdo-Ocasio told plaintiff, “We have the
24 perfect excuse to dismiss you . . . I can hold your letter of dismissal which is already
25 signed if you publicly affiliate yourself to the Popular Democratic Party.” (Id.) The
26 facts alleged clearly illustrate that party affiliation was a substantial or motivating
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4 factor behind his termination. Thus, the political discrimination claim against
5 Izquierdo-Ocasio survives this motion to dismiss.

6 3. Fifth Amendment Due Process

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8 Defendants point out the Fifth Amendment applies only to the federal
9 government, not states or individuals. (Docket No. 7, at 17.) Plaintiff concedes the
10 point in response. (Docket No. 9, at 25.) Indeed, the Fifth Amendment to the
11 United States Constitution applies to actions taken by the federal government, not
12 the states. Gutiérrez v. Molina, 447 F. Supp. 2d at 176. Plaintiff does not allege any
13 claims against the federal government. Accordingly, the court will dismiss plaintiff's
14 Fifth Amendment claim.
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16 4. Fourteenth Amendment Equal Protection

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18 Defendants argue the equal protection claim is encompassed in plaintiff's First
19 Amendment claim. (Docket No. 7, at 17-18.) Again, plaintiff concedes the point.
20 (Docket No. 9, at 25.) "Plaintiff [Toro-Pacheco's equal protection claim parallels the
21 facts of his political discrimination claim[;]" analyzing both would be redundant.
22 Gutierrez v. Molina, 447 F. Supp. 2d at 176. Thus, the court will proceed with the
23 political discrimination claim and dismiss Plaintiff's Equal Protection claim.
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25 C. ELEVENTH AMENDMENT IMMUNITY

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27 Defendants argue the Eleventh Amendment bars claims against them in their
28 official capacity. (Docket No. 7 at 18-20.) They contend that Puerto Rico's Eleventh

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4 Amendment immunity extends to them as state officials. (Id.) Defendants are
5 correct that Puerto Rico enjoys Eleventh Amendment immunity. See De León López
6 v. Corporación Insular de Seguros, 931 F.2d 116, 121 (1st Cir.1991); Torres Ocasio
7 v. Meléndez,, 283 F. Supp. 2d at 511. However, they overstate the extension of that
8 immunity to themselves.
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10 In suits against state officials, the case law under the Eleventh Amendment
11 draws a key distinction depending on the remedy sought. When suing a state official
12 in his official capacity, a plaintiff's only remedy is prospective declaratory and
13 injunctive relief. Redondo-Borges v. U.S. Dep't of Hous. & Urban Dev., 421 F.3d at
14 7; García-Rubiera v. Flores-Galarza, 516 F. Supp. 2d 180, 190 (D.P.R. 2007). The
15 Eleventh Amendment bars section 1983 actions for damages against a state official
16 in his official capacity. Martínez-Rivera v. Sánchez-Ramos, 570 F. Supp. 2d 247, 251
17 n.1 (D.P.R. 2008) (citing Will v. Mich. Dep't of State Police, 491 U.S. 58 (1989)).
18 The rationale behind the rule begins with the premise that a monetary judgment
19 against a state official for actions undertaken in his official capacity will deprive the
20 state treasury of funds. Allowing a federal hand to dip into state coffers would
21 undermine the state's sovereign immunity. See Edelman v Jordan, 415 U.S. 651,
22 663 (1974); Metcalf & Eddy, Inc. v. Puerto Rico Aqueduct and Sewer Authority, 991
23 F.2d 935, 938-939 (1st Cir. 1993).
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4 A plaintiff suing a state official in his personal or individual capacity can
5 recover both damages and injunctive relief. Redondo-Borges v. U.S. Dep't of Hous.
6 & Urban Dev., 421 F.3d at 7; Martínez-Rivera v. Sánchez-Ramos, 570 F. Supp. 2d at
7 254. Thus the key question is, what remedy does the plaintiff seek? Generally, if
8 a plaintiff seeks damages he must sue the official in the official's personal or
9 individual capacity. See Martínez-Rivera v. Sánchez-Ramos, 570 F. Supp. 2d at 253-
10 254. However, in so doing the plaintiff will be limited to collecting against the
11 personal assets of the official. See Kentucky v. Graham, 473 U.S. 159, 167-68
12 (1985); Pérez v. Rodríguez Bou, 575 F.2d 21, 24 (1st Cir. 1978); Sánchez v.
13 Pereira-Castillo, 573 F. Supp. 2d 474, 483 (D.P.R. 2008).
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16 Here, plaintiff is suing defendants in both their official capacity and in their
17 personal capacity as individuals. (Docket No. 1, at 6, 12.) He is seeking prospective
18 injunctive relief in the form of reinstatement and compensatory damages. (Id. at 2.)
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20 Defendants argue that as state officials, they are, for Eleventh Amendment
21 purposes, government instrumentalities entitled to the same protections afforded
22 Puerto Rico. The "government instrumentalities" argument is usually reserved for
23 state entities, not officials. See, e.g., Fresenius Med. Care Cardiovascular Resources,
24 Inc. v. P.R. & the Caribbean Cardiovascular Ctr. Corp., 322 F.3d 56, 61-62 (1st Cir.
25 2003); Torres-Santiago v. Alcaraz-Emmanuelli, 553 F. Supp. 2d 75, 81-82 (D.P.R.
26 2008). It is an interesting idea. Unfortunately the "state official as instrumentality"
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4 argument is given cursory treatment in defendants' brief. As such, the court will
5 not explore the idea beyond the paragraph thus devoted.

6 The party asserting Eleventh Amendment immunity has the burden of proving
7 it. Fresenius Med. Care Cardiovascular Resources, Inc. v. P.R. & Caribbean
8 Cardiovascular Ctr. Corp., 322 F.3d at 70; Wojcik v. Mass. State Lottery Comm'n, 300
9 F.3d 92, 99 (1st Cir. 2002). Defendants have failed to meet that burden.

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11 Moreover, "to establish personal liability in a section 1983 action, it is enough
12 to show that the official, acting under color of state law, caused the deprivation of
13 a federal right." Martínez-Rivera v. Sánchez-Ramos, 570 F. Supp. 2d at 254 (quoting
14 Kentucky v. Graham, 473 U.S. at 166). Plaintiff clearly alleges as much. Thus,
15 insofar as the claims are against defendants in their personal capacity, a claim for
16 damages is permissible, albeit only against defendants' personal assets. Insofar as
17 the claims are against defendants in their official capacity, the remedy is limited to
18 injunctive relief. Either way, plaintiff can proceed against defendants.
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21 D. QUALIFIED IMMUNITY

22 Defendants argue that plaintiff's section 1983 claims are barred by the
23 doctrine of qualified immunity. The doctrine of qualified immunity provides a safe
24 harbor for public officials performing discretionary functions acting under the color
25 of state law who would otherwise be liable under section 1983 for infringing the
26 constitutional rights of private parties. See Anderson v. Creighton, 483 U.S. 635,
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4 638 (1987); Rosario Rivera v. Aqueduct & Sewer Auth. of P.R., 472 F. Supp. 2d at
5 171-72.

6 Claims of qualified immunity are assessed under a three-part test. Riverdale
7 Mills Corp. v. Pimpare, 392 F.3d 55, 59-60 (1st Cir.2004). First, the court
8 determines whether the facts alleged, taken in the light most favorable to the
9 plaintiff, amount to a violation of a constitutional right. Id. at 61. Second, the court
10 determines whether the constitutional right was clearly established at the time of
11 the alleged violation. Id. at 65. “For a right to have been clearly established, [as
12 required to overcome qualified immunity defense to section 1983 claim,] ‘[t]he
13 contours of the right must be sufficiently clear that a reasonable official would
14 understand that what he is doing violates that right.’” Robinson v. City & County
15 of Denver, 39 F. Supp. 2d 1257, 1266 (D. Colo. 1999) (quoting Anderson v.
16 Creighton, 483 U.S. at 640). Finally, the court determines whether a reasonable
17 official, similarly situated, would understand that his or her conduct violated that
18 clearly established right. Riverdale Mills Corp. v. Pimpare, 392 F.3d at 61.

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22 Plaintiff raised sufficient allegations to defeat the qualified immunity defense
23 at this stage of the pleadings. First, he alleged facts that, taken in the light most
24 favorable to him, amount to a violation of his First and Fourteenth Amendment
25 rights. Second, his claims come under clearly established rights, specifically the
26 rights under section 1983 to recover for constitutional freedoms from political
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4 discrimination and the right to Procedural Due Process. Finally, a reasonable
5 official, similarly situated, would clearly understand his conduct violated plaintiff's
6 civil rights. Defendants are not entitled to qualified immunity.

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8 E. CLAIMS UNDER PUERTO RICAN LAW

9 Defendants move to dismiss plaintiff's claim derived from Puerto Rico Law
10 100. (Docket No. 7, at 22-23.) Plaintiff does not object. (Docket No. 9, at 25.)
11 Accordingly, that claim is dismissed. The court will retain jurisdiction over the
12 other Puerto Rico law claims.

13
14 V. CONCLUSION

15 For the reasons set forth above, the defendants' motion to dismiss is
16 GRANTED IN PART AND DENIED IN PART. The Equal Protection, Fifth
17 Amendment, and Puerto Rico Law 100 causes of action are dismissed with prejudice.
18 The motion to dismiss is otherwise denied.

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20 At San Juan, Puerto Rico, this 21st day of November, 2008.

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23 S/ JUSTO ARENAS
24 Chief United States Magistrate Judge
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