

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF PUERTO RICO

3 LUIS A. GARCÍA-DELGADO,

4
5 Plaintiff,

6 v.

7 COMMONWEALTH OF PUERTO RICO,
8 et al.,

9 Defendants.
10
11

Civil No. 09-1171 (JAF)

12 **OPINION AND ORDER**

13 Plaintiff, Luis A. García-Delgado, brings this case against
14 Defendants, the Commonwealth of Puerto Rico ("Commonwealth"), the
15 Junta de Libertad Bajo Palabra ("Parole Board"), Parole Board
16 Chairwoman María E. Meléndez-Rivera, the Puerto Rico Administration
17 of Corrections ("AOC"), and Secretary of Corrections Miguel A.
18 Pereira-Castillo, under 42 U.S.C. § 1983, alleging unconstitutional
19 delay in Plaintiff's parole proceedings. (Docket Nos. 2, 12.)
20 Plaintiff seeks a resolution of his petition for parole. (Id.)
21 Defendants move to dismiss per Federal Rule of Civil Procedure
22 12(b)(6). (Docket No. 11.) The motion is unopposed.

23 **I.**

24 **Factual and Procedural Synopsis**

25 We draw the following facts from Plaintiff's complaint. (Docket
26 Nos. 2, 12.) As we must, we assume Plaintiff's factual allegations to

1 be true and make all reasonable inferences in his favor. Gagliardi v.
2 Sullivan, 513 F.3d 301, 305 (1st Cir. 2008).

3 Plaintiff is an inmate in the penal custody of the Commonwealth
4 confined at the Southern Regional Institution in Ponce. On August 14,
5 2008, Plaintiff appeared before the Parole Board for consideration of
6 his early release. As of the date he filed this action, he had not
7 received word from the Parole Board. Plaintiff has not filed an
8 official complaint through the existing grievance procedures at
9 prison.

10 On February 20, 2008, Plaintiff filed the instant case in
11 federal court, claiming violation of his right to a prompt answer
12 from the Parole Board. (Id.) Defendants moved to dismiss on May 7,
13 2009. (Docket No. 11.) Plaintiff has not opposed the motion.

14 II.

15 Standard under Rule 12(b)(6)

16 A defendant may move to dismiss an action against him, based
17 solely on the complaint, for the plaintiff's "failure to state a
18 claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6).
19 In assessing this motion, we "accept[] all well-pleaded facts as
20 true, and we draw all reasonable inferences in favor of the
21 [plaintiff]." Wash. Legal Found. v. Mass. Bar Found., 993 F.2d 962,
22 971 (1st Cir. 1993). However, mere legal conclusions "are not

1 entitled to the assumption of truth.” Ashcroft v. Iqbal, 556 U.S.
2 _____, 129 S. Ct. 1937, 1950 (2009).

3 The complaint must demonstrate “a plausible entitlement to
4 relief” by alleging facts that directly or inferentially support each
5 material element of some legal claim. Gagliardi v. Sullivan, 513 F.3d
6 301, 305 (1st Cir. 2008) (quoting Bell Atl. Corp. v. Twombly, 550
7 U.S. 544, 559 (2007)). “Specific facts are not necessary; the
8 statement need only give the defendant fair notice of what the . . .
9 claim is and the grounds upon which it rests.” Erickson v. Pardus,
10 551 U.S. 89, 93 (2007) (quoting Twombly, 550 U.S. at 559) (internal
11 quotation marks omitted).

12 III.

13 Analysis

14 Because Plaintiff is pro se, we construe his pleadings more
15 favorably than we would pleadings drafted by an attorney. See
16 Erickson v. Pardus, 551 U.S. 89, 94 (2007). However, Plaintiff’s pro
17 se status does not insulate him from the strictures of procedural and
18 substantive law. See Ahmed v. Rosenblatt, 118 F.3d 886, 890 (1st Cir.
19 1997).

20 Defendants argue that dismissal is proper because of sovereign
21 immunity and Plaintiff’s failure to exhaust his administrative
22 remedies as required by the Prison Litigation Reform Act (“PLRA”), 42
23 U.S.C. § 1997e(a). (Docket No. 11.) We treat each argument in turn.

1 **A. Eleventh Amendment**

2 Under the Eleventh Amendment, "an unconsenting State is immune
3 from federal-court suits brought by its own citizens as well as by
4 citizens of another State." Edelman v. Jordan, 415 U.S. 651, 663
5 (1974). The applicability of sovereign immunity is a jurisdictional
6 question. Seminole Tribe of Fla. v. Florida, 517 U.S. 44, 54 (1996).
7 "For Eleventh Amendment purposes, the Commonwealth is treated as if
8 it were a state; consequently, the Eleventh Amendment bars any suit
9 brought against it." Gotay-Sánchez v. Pereira, 343 F. Supp. 2d 65,
10 71-72 (D.P.R. 2004) (citing Metcalf & Eddy, Inc. v. P.R. Aqueduct &
11 Sewer Auth., 991 F.2d 935 (1st Cir. 1993)). Eleventh Amendment
12 immunity extends to state agencies that function as "arms of the
13 Commonwealth." Rivera v. Medina, 963 F. Supp. 78, 82 (D.P.R. 1997),
14 vacated on other grounds sub nom. Barreto-Rivera v. Medina-Vargas,
15 168 F.3d 42 (1st Cir. 1999).

16 However, federal courts may grant prospective injunctive relief
17 to prevent a continuing violation of federal law. Ex Parte Young, 209
18 U.S. 123 (1908). A plaintiff may avoid the Eleventh Amendment bar by
19 suing responsible persons acting in their official state capacities.
20 Id. at 154.

21 As the Commonwealth has not consented to litigation in this
22 case, we have no power to hear Plaintiff's case against it. See
23 Gotay-Sánchez, 343 F. Supp. 2d at 71-72. As the Parole Board and AOC

1 are administrative organs of the Commonwealth, we dismiss Plaintiff's
2 claims against them. See Rivera v. Medina, 963 F. Supp. at 82.
3 However, Plaintiff may sue Meléndez-Rivera and Pereira-Castillo in
4 their official capacities as Chairwoman of the Parole Board and
5 Secretary of Corrections, respectively, for a timely answer from the
6 Parole Board. See Ex Parte Young, 209 U.S. at 154.

7 **B. Exhaustion of Administrative Remedies**

8 Defendants contend that we must dismiss this case because
9 Plaintiff affirmatively stated in his complaint that he did not
10 exhaust his administrative remedies by seeking relief through prison
11 grievance procedures. (Docket No. 11.)

12 Under the PLRA, “[n]o action shall be brought with respect to
13 prison conditions under . . . Federal law, by a prisoner confined in
14 any jail, prison, or other correctional facility until such
15 administrative remedies as are available are exhausted.” 42 U.S.C.
16 § 1997e(a). Although mandatory, exhaustion is an affirmative defense
17 for the defendant to raise and prove, not a jurisdictional bar.
18 Jones v. Bock, 549 U.S. 199, 215-16 (2007).

19 In the instant case, Plaintiff demands a response from the
20 Parole Board. (Docket Nos. 2, 12.) The exhaustion requirement under
21 the PLRA expressly pertains to suits against “prison conditions,” 42
22 U.S.C. § 1997e(a), not to challenges to state parole procedures. See
23 Wilkinson v. Dotson, 544 U.S. 74, 84 (2005) (citing cases relating to

1 prison conditions as a separate category of suits challenging
2 administrative procedures under § 1983, distinct from suits regarding
3 state parole procedures). Accordingly, Defendants may not rely on
4 this affirmative defense.

5 **C. Order to Show Cause**

6 Although we retain jurisdiction over Plaintiff's suit for
7 injunctive relief against Meléndez-Rivera and Pereira-Castillo in
8 their official roles, we note that almost a year has elapsed since
9 the cause of action arose. (See Docket Nos. 2, 12.) Therefore, we
10 order the parties to submit evidence as to whether the Parole Board
11 has, in fact, communicated its final decision to Plaintiff, thereby
12 rendering this case moot.

13 **IV.**

14 **Conclusion**

15 Accordingly, we hereby **GRANT IN PART** and **DENY IN PART**
16 Defendants' motion to dismiss (Docket No. 11). We **DISMISS** Plaintiff's
17 claims against the Commonwealth, Parole Board, and Administration of
18 Corrections (Docket No. 2). We **ORDER** Plaintiff and Defendants to **SHOW**
19 **CAUSE, on or before August 10, 2009**, as to why this case is not moot.

20 **IT IS SO ORDERED.**

21 San Juan, Puerto Rico, this 17th day of July, 2009.

22 S/José Antonio Fusté
23 JOSE ANTONIO FUSTE
24 Chief U.S. District Judge