

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF PUERTO RICO

3 ALEXIS COLÓN-MORALES,

4 Plaintiff,

5 v.

6 ANDRES JUSINO-HENRY,  
7 COMMONWEALTH OF PUERTO RICO,  
8 and PUERTO RICO ADMINISTRATION OF  
9 CORRECTIONS,

10 Defendants.

Civil No. 09-1790 (JAF)

11  
12 **ORDER**

13 Plaintiff sues pro se under 42 U.S.C. § 1983 alleging that Defendants, acting under color  
14 of state law, violated his federal rights. (Docket No. 3.) Defendants Commonwealth of Puerto  
15 Rico (“Commonwealth”) and its Administration of Corrections (“AOC”) now move for  
16 dismissal under Federal Rule of Civil Procedure 12(b)(6), arguing that Plaintiff has failed to  
17 state a claim under § 1983 and that they are entitled to sovereign immunity under the Eleventh  
18 Amendment of the U.S. Constitution. (Docket No. 13.) Because we dismiss Plaintiff’s claims  
19 against the movants on the latter ground, we need not address the former.<sup>1</sup>

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<sup>1</sup> We note for the sake of clarity that the movants’ argument that Plaintiff’s failure to plead the date of the alleged violation entitles all defendants to dismissal (see Docket No. 13 at 6) lacks merit. Statute of limitations is an affirmative defense; we grant a Rule 12(b)(6) dismissal on those grounds only where it is clear on the face of a plaintiff’s complaint that a defendant is entitled to same. See, e.g., Santana-Castro v. Toledo-Dávila, 579 F.3d 109, 113-14 (1st Cir. 2009).

1 Under the Eleventh Amendment, “an unconsenting State is immune from federal-court  
2 suits brought by its own citizens as well as by citizens of another State.” Edelman v. Jordan,  
3 415 U.S. 651, 663 (1974). A public institution also may benefit from sovereign immunity if it  
4 “is to be treated as an arm [or alter ego] of the State.” Ainsworth Aristocrat Int’l Pty. Ltd. v.  
5 Tourism Co., 818 F.2d 1034, 1036 (1st Cir. 1987) (quoting Mt. Healthy City Sch. Dist. Bd. of  
6 Educ. v. Doyle, 429 U.S. 274, 280 (1977)). “Puerto Rico, despite the lack of formal statehood,  
7 enjoys the shelter of the Eleventh Amendment in all respects.” Ramirez v. P.R. Fire Serv., 715  
8 F.2d 694, 697 (1st Cir. 1983).

9 Because the Commonwealth has not consented to litigation in this case and because AOC  
10 is an administrative organ of the Commonwealth, see, e.g., Rodriguez-Narvaez v. Pereira, 552  
11 F. Supp. 2d 211, 217 (D.P.R. 2007), both are entitled to sovereign immunity. We, therefore,  
12 cannot hear Plaintiff’s claims against them.

13 Given the foregoing, we hereby **GRANT** the Commonwealth and AOC’s motion to  
14 dismiss (Docket No. 13), and **DISMISS** Plaintiff’s claims against them (Docket No. 3).

15 Lastly, since Defendant Andrés Jusino-Henry has not been properly served, there being  
16 no excuse for such failure, the case as to Defendant Jusino-Henry is dismissed without prejudice  
17 for failure to prosecute diligently.

18 **IT IS SO ORDERED.**

19 San Juan, Puerto Rico, this 15<sup>th</sup> day of April, 2010.

20 s/ José Antonio Fusté  
21 JOSE ANTONIO FUSTE  
22 Chief U.S. District Judge