

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF PUERTO RICO

3 JUAN M. RIVERA-ORTIZ,

4 Plaintiff,

5 v.

6 COMMONWEALTH OF PUERTO RICO,  
7 et al.,

8 Defendants.  
9  
10

Civil No. 09-2073 (JAF)

11 **OPINION AND ORDER**

12 Plaintiff, Juan M. Rivera-Ortiz, brings this case against Defendants, the Commonwealth  
13 of Puerto Rico (“Commonwealth”), the Junta de Libertad Bajo Palabra (“Parole Board”),  
14 Gloria E. Ortiz-Martínez, Edwin Zayas-Figueroa, and María E. Meléndez-Rivera, under 42  
15 U.S.C. § 1983, alleging delay in Plaintiff’s parole proceedings. (Docket Nos. 2; 19.) The  
16 Commonwealth and the Parole Board (“Movants”) move to dismiss per Federal Rule of Civil  
17 Procedure 12(b)(1) and 12(b)(6) (Docket No. 16); Plaintiff opposes (Docket Nos. 20; 21; 22).

18 **I.**

19 **Factual and Procedural Synopsis**

20 We draw the following facts from Plaintiff’s complaint (Docket Nos. 2, 19). For the  
21 purpose of addressing a motion to dismiss, we take his factual allegations as true and make all  
22 reasonable inferences in his favor. See Gagliardi v. Sullivan, 513 F.3d 301, 305 (1st Cir. 2008).

1 Plaintiff is an inmate in the penal custody of the Commonwealth confined at the Ponce  
2 Correctional Complex. On January 30, 2009, Plaintiff appeared before the Parole Board for  
3 consideration of his early release. As of the date he filed this action, he had not received word  
4 from the Parole Board. Plaintiff has not filed an official complaint through the existing  
5 grievance procedures at prison because of a shortage of legal staff, but has communicated the  
6 substance of his complaint to the warden.

7 On October 16, 2009, Plaintiff filed the instant case in federal district court, claiming  
8 violation of his right to release following a hearing before the Parole Board and demanding  
9 damages pursuant to a judgment previously rendered by this court in favor of Efraín Montero-  
10 Torres and other prison inmates in Civil Case No. 75-0828. (Docket Nos. 2; 19.) Plaintiff sues  
11 Ortíz-Martínez, Zayas-Figueroa, and Meléndez-Rivera in both their official and individual  
12 capacities. (*Id.*) Movants moved to dismiss on January 19, 2010 (Docket No. 16), and Plaintiff  
13 opposed on March 4 (Docket No. 21).

## 14 II.

### 15 Standard for Dismissal

#### 16 A. Rule 12(b)(1)

17 Under Federal Rule of Civil Procedure 12(b)(1), a movant may challenge the court's  
18 subject-matter jurisdiction by raising a "sufficiency challenge." Valentín v. Hosp. Bella Vista,  
19 254 F.3d 358, 363 (1st Cir. 2001). Under this approach, the court takes the plaintiff's  
20 "jurisdictionally-significant facts as true" and "assess[es] whether the plaintiff has propounded

1 an adequate basis for subject-matter jurisdiction.” Id. The party asserting jurisdiction bears the  
2 burden of showing its existence. See Skwira v. United States, 344 F.3d 64, 71 (1st Cir. 2003).

3 A federal district court has an independent obligation to review its subject-matter  
4 jurisdiction over all cases “even in the absence of a challenge from any party.” Arbaugh v. Y  
5 & H Corp., 546 U.S. 500, 514 (2006); see Fed. R. Civ. P. 12(h)(3). We may order sua-sponte  
6 dismissal if it is evident that we lack the power to decide a case. See Arbaugh, 546 U.S. at 514.

7 **B. Rule 12(b)(6)**

8 A defendant may also move to dismiss an action against him, based solely on the  
9 complaint, for the plaintiff’s “failure to state a claim upon which relief can be granted.” Fed.  
10 R. Civ. P. 12(b)(6). In assessing this motion, we “accept[] all well-pleaded facts as true, and  
11 we draw all reasonable inferences in favor of the [plaintiff].” Wash. Legal Found. v. Mass. Bar  
12 Found., 993 F.2d 962, 971 (1st Cir. 1993). However, mere legal conclusions “are not entitled  
13 to the assumption of truth.” Ashcroft v. Iqbal, 556 U.S. \_\_\_, 129 S. Ct. 1937, 1950 (2009).

14 The complaint must demonstrate “a plausible entitlement to relief” by alleging facts that  
15 directly or inferentially support each material element of some legal claim. Gagliardi v.  
16 Sullivan, 513 F.3d 301, 305 (1st Cir. 2008) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544,  
17 559 (2007)). “Specific facts are not necessary; the statement need only give the defendant fair  
18 notice of what the . . . claim is and the grounds upon which it rests.” Erickson v. Pardus, 551  
19 U.S. 89, 93 (2007) (quoting Twombly, 550 U.S. at 559) (internal quotation marks omitted).

1 Sua-sponte dismissal under Rule 12(b)(6) may be appropriate in limited circumstances.  
2 Chute v. Walker, 281 F.3d 314, 319 (1st Cir. 2002). Before ordering dismissal, a federal court  
3 usually affords the target an opportunity to address the challenge. Id. No prior notice is  
4 necessary, however, “[i]f it is crystal clear that the plaintiff cannot prevail and that amending  
5 the complaint would be futile.” Id. (quoting González-González v. United States, 257 F.3d 31,  
6 37 (1st Cir. 2001)).

### 7 III.

#### 8 Analysis

9 Because Plaintiff is pro se, we construe his pleadings more favorably than we would  
10 pleadings drafted by an attorney. See Erickson, 551 U.S. at 94. However, Plaintiff’s pro-se  
11 status does not insulate him from the strictures of procedural and substantive law. See Ahmed  
12 v. Rosenblatt, 118 F.3d 886, 890 (1st Cir. 1997). We discuss in turn Movants’ arguments for  
13 dismissal and additional grounds that we find favoring dismissal of the case against the  
14 remaining Defendants.

#### 15 A. Eleventh Amendment

16 Movants contend that they are entitled to sovereign immunity under the Eleventh  
17 Amendment. (Docket No. 16.) Under the Eleventh Amendment, “an unconsenting State is  
18 immune from federal-court suits brought by its own citizens as well as by citizens of another  
19 State.” Edelman v. Jordan, 415 U.S. 651, 663 (1974). A public institution may also benefit  
20 from sovereign immunity if it “is to be treated as an arm [or alter ego] of the State partaking of

1 the State’s Eleventh Amendment immunity.” Ainsworth Aristocrat Int’l Pty., Ltd. v. Tourism  
2 Co., 818 F.2d 1034, 1036 (1st Cir. 1987) (quoting Mt. Healthy City Sch. Dist. Bd. of Educ. v.  
3 Doyle, 429 U.S. 274, 280 (1977)). The applicability of sovereign immunity is a jurisdictional  
4 question. Seminole Tribe of Fla. v. Florida, 517 U.S. 44, 54 (1996).

5 “Puerto Rico, despite the lack of formal statehood, enjoys the shelter of the Eleventh  
6 Amendment in all respects.” Ramirez v. P.R. Fire Serv., 715 F.2d 694, 697 (1st Cir. 1983).  
7 However, the Commonwealth can waive its sovereign immunity by clearly declaring its intent  
8 to submit itself to federal judicial power; participating in a federal program that is expressly  
9 conditioned upon a waiver of immunity, or affirmatively engaging in litigation. Díaz-Fonseca  
10 v. Puerto Rico, 451 F.3d 13, 33 (1st Cir. 2006). Furthermore, even without a state’s consent,  
11 federal courts may grant prospective injunctive relief to prevent a continuing violation of federal  
12 law. Ex Parte Young, 209 U.S. 123 (1908). A plaintiff may avoid the Eleventh Amendment  
13 bar by suing responsible persons acting in their official state capacities. Id. at 154.

14 Although the Commonwealth has waived its immunity for certain actions in tort, this  
15 waiver extends only to suits brought in the Commonwealth’s own forums. 32 L.P.R.A. § 3077  
16 (2004). The statute does not make the Commonwealth amenable to lawsuits in federal district  
17 court. Díaz-Fonseca, 451 F.3d at 33. Furthermore, the Commonwealth has not consented to  
18 litigation in this case, and the complaint does not implicate any federal programs that  
19 incorporate waiver of state sovereign immunity (see Docket Nos. 2; 19). As for the Parole

1 Board, we have held that it is an arm of the Commonwealth for the purposes of the Eleventh  
2 Amendment. Maya-Gambino v. Puerto Rico, No. 09-1117, 2010 U.S. Dist. LEXIS 28484, at  
3 \*5-10 (D.P.R. Mar. 25, 2010). Accordingly, we lack the competence to hear Plaintiff’s case  
4 against Movants. As we find that Movants are entitled to sovereign immunity, we need not  
5 consider their other arguments for dismissal.<sup>1</sup>

6 We next consider the application of sovereign immunity to the individual Defendants in  
7 this case. Defendants Ortiz-Martínez, Zayas-Figueroa, and Meléndez-Rivera have not moved  
8 to dismiss the claims against them. (See Docket No. 16.) Given the case law on point,  
9 however, it is abundantly clear that they may not be held liable in damages in their official  
10 capacities. See Ex Parte Young, 209 U.S. at 154. We, therefore, dismiss, sua sponte, Plaintiff’s  
11 claims for damages against the individual Defendants in their official capacities.

12 **B. Failure to State a Claim**

13 We observe that Plaintiff’s claims in equity and at law suffer from additional defects  
14 (Docket Nos. 2; 19). First, Plaintiff seeks an order from this court to enjoin Defendants to  
15 release him from prison. (Id.) “[A] § 1983 action will not lie when a state prisoner challenges  
16 ‘the fact or duration of his confinement,’ . . . and seeks either ‘immediate release from prison,’  
17 or the ‘shortening’ of his term of confinement.” Wilkinson v. Dotson, 544 U.S. 74, 79 (2005)

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<sup>1</sup> We note that the Commonwealth has, once again, erroneously argued that we should dismiss the case on jurisdictional grounds for Plaintiff’s failure to exhaust his administrative remedies. (See Docket No. 16.) Although mandatory, exhaustion is an affirmative defense for the defendant to raise and prove, not a jurisdictional bar. Jones v. Bock, 549 U.S. 199, 215-16 (2007).

1 (quoting Preiser v. Rodríguez, 411 U.S. 475, 482, 489 (1973)). We, therefore, find that Plaintiff  
2 has failed to plead a legally-cognizable claim for release based on the Parole Board's delay; we  
3 dismiss Plaintiff's equitable claim against Defendants.

4 Second, Plaintiff demands retrospective damages for the Parole Board's delay in  
5 notifying him of its decision concerning his request for early release. (Docket Nos. 2; 19.)  
6 Plaintiff premises this cause of action upon a prior decision rendered by this court regarding  
7 another prison inmate, Montero-Torres v. Hernández-Colón, Civil No. 75-0828. (Id.)  
8 However, claims under § 1983 must be premised upon rights created by federal statute or the  
9 U.S. Constitution, not decisional law. See Golden State Transit Corp. v. City of Los Angeles,  
10 493 U.S. 103, 105-06 (1989). We, therefore, dismiss Plaintiff's action against Defendants  
11 insofar as his complaint invokes Montero-Torres as the basis for his cause of action.

12 Notwithstanding the foregoing, Plaintiff has apparently stated a claim for deprivation of  
13 due process through Defendants' failure to notify him of the Parole Board's decision. (See  
14 Docket Nos. 2; 19.) While Plaintiff may not recover compensation from individual Defendants  
15 in their official capacities, see supra, there is no absolute bar against suing Defendants in their  
16 individual capacities for retrospective damages under § 1983. Defendants Ortiz-Martínez,  
17 Zayas-Figueroa, and Meléndez-Rivera have thus far neither answered the complaint nor  
18 interposed defenses by motion. We, therefore, allow Plaintiff to prosecute his claims against  
19 these three Defendants for compensation for depriving him of due process (Docket Nos. 2; 19).

1 **IV.**

2 **Conclusion**

3 Accordingly, we hereby **GRANT** Movants' motion to dismiss (Docket No. 16). We  
4 **DISMISS** Plaintiff's claims against the Commonwealth and the Parole Board (Docket Nos. 2;  
5 19) and **DISMISS** Plaintiff's claims against Defendants Ortiz-Martínez, Zayas-Figueroa, and  
6 Meléndez-Rivera for compensation in their official capacities, release from penal custody, and  
7 compensation in their individual capacities on the basis of Montero-Torres v. Hernández-Colón,  
8 Civil No. 75-0828 (id.). We **RETAIN** Plaintiff's § 1983 claims under the Due Process Clause  
9 to recover damages from Ortiz-Martínez, Zayas-Figueroa, and Meléndez-Rivera in their  
10 individual capacities. We **NOTE** Plaintiff's informative motions (Docket Nos. 18; 23; 24).

11 The parties are ordered to move this case to conclusion expeditiously.

12 **IT IS SO ORDERED.**

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

14 S/José Antonio Fusté  
15 JOSE ANTONIO FUSTE  
16 Chief U.S. District Judge