

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF PUERTO RICO  
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JUAN C. GAUTIER-SOLORZANO, et al.,

Plaintiffs,

v.

SONIA I. VELEZ-COLON, et al.,

Defendants.

Civil No. 10-1777 (JAF)

5  
6 **OPINION AND ORDER**

7 This order resolves several cross-motions pending as of this date. Defendants Néstor  
8 Cortés-Feliciano (“Cortés”), Edwin Bracero-Valentín (“Bracero”), José Morales-Figueroa  
9 (“Morales”), Carlos Avilés-López (“Avilés”), Carlos Rivera-López (“Rivera”), Jesús Ramos, and  
10 Ismael Camacho-Irizarry (“Camacho”) filed a motion to dismiss and a motion for summary  
11 judgment in the civil rights action filed by Plaintiffs Juan C. Gautier-Solorzano (“Gautier”),  
12 Annabelle Lipsett, JCGL, Juan C. Vilaró-Lipsett, Carlos Gautier-Lipsett, and ECGL. (Docket  
13 No. 163.)<sup>1</sup> In response, Plaintiffs filed a motion that we take judicial notice of recent First  
14 Circuit precedent. (Docket No. 193.) Defendants also moved for reconsideration as to dismissal  
15 of all causes of action against codefendant Rivera for lack of participation and absolute  
16 immunity. (Docket No. 203.) Finally, Defendants filed another motion for reconsideration  
17 pertaining to absolute immunity and to dismissal of the federal cause of action for malicious  
18 prosecution. (Docket No. 204.) Defendants specifically declined to request the dismissal of “the  
19 cause of action for alleged excessive use of force.” (Docket No. 196 at 2.)

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<sup>1</sup> On December 13, 2011, the court granted Plaintiffs’ motion to voluntarily dismiss with prejudice Plaintiffs’ claims against Defendant Sonia I. Vélez-Colón. (Docket No. 43.)



1 the motion for summary judgment, as well as a response in opposition to the counterstatement of  
2 facts. (Docket No. 196, 198.) On August 14, 2013, Defendants filed a response to the motion  
3 requesting the court take notice of a recent First Circuit precedent. (Docket No. 201.) On  
4 August 21, 2013, Defendants filed a motion for reconsideration as to the dismissal of all causes  
5 of action against codefendant Carlos Rivera-López for lack of participation and absolute  
6 immunity. (Docket No. 203.) Also on August 21, 2013, Defendants filed a motion for  
7 reconsideration pertaining to absolute immunity and to dismissal of the federal cause of action  
8 for malicious prosecution. (Docket No. 204.) Defendants specifically stated that they have not  
9 requested the dismissal of the cause of action for alleged excessive use of force. (Docket  
10 No. 196 at 2.)

## 11 II.

### 12 Factual History

13 When considering a summary judgment motion, we must view all facts in the light most  
14 favorable to the non-moving party. Therefore, to the extent that any facts are disputed, the facts  
15 set forth below represent Plaintiffs' version of the events at issue. Matsushita Elec. Indus. Co. v.  
16 Zenith Radio Corp., 475 U.S. 574, 587 (1986). However, where Plaintiffs' asserted facts do not  
17 properly comply with Local Rule 56(c) and (e), we deem Defendants' properly-supported  
18 statements as admitted. See Cosme-Rosado v. Serrano-Rodriguez, 360 F.3d 42, 45 (1<sup>st</sup> Cir.  
19 2004) (affirming district court's decision to deem moving party's statements of facts admitted if  
20 opposing party fails to controvert properly). Likewise, a motion to dismiss requires the court to  
21 construe the complaint in the plaintiff's favor, accept all non-conclusory allegations as true, and  
22 draw any reasonable inferences in favor of the plaintiff. Rodríguez-Ramos v. Hernández-  
23 Gregorat, 685 F.3d 34, 39-40 (1<sup>st</sup> Cir. 2012) (citation omitted). Because the parties filed their

1 statements of facts for summary judgment more recently, and because summary judgment  
2 allegations must follow slightly more stringent local rules for citation, we set forth only the  
3 properly-alleged facts asserted in Plaintiffs' motion opposing summary judgment. See Local  
4 Rule 56 (c) and (e) (requiring record citations for any assertions).

5 On August 14, 2009, Gautier was at the Aguadilla Courthouse with his wife, Lipsett, to  
6 stand as the defendant in a criminal trial. (Docket No. 174 at 16.) Gautier's attorneys requested  
7 leave to withdraw from the case, but the trial court judge denied their request and ordered a  
8 recess for the Plaintiff and his attorneys to confer. (Docket No. 174 at 16-17.) This was  
9 sometime between 9:40 A.M. and 10:15 A.M. (Docket No. 174 at 23.)

10 Gautier and his attorneys met in a witness room. Lipsett entered and called the attorneys  
11 inept, incompetent scoundrels ("canallas"). (Docket No. 174 at 17.) Defendant-deputy marshals  
12 Bracero and Cortés arrived at the witness room. (Docket No. 174 at 18.) Bracero pushed Lipsett  
13 to the side as he entered and repeatedly told her to shut up. (Docket No. 174 at 18.)

14 At that point, one of Gautier and Lipsett's sons, JCGL, who was a minor, tried to enter  
15 the witness room. (Docket No. 174 at 18.) Cortés slapped JCGL's hand down from the door  
16 frame and continued to block the door with his arm, pushing JGCL. (Docket No. 174 at 19.) At  
17 that point, Gautier came out of the room to check on his son. Cortés told JCGL "you're a pile of  
18 shit" to which JCGL said "if I'm a pile of shit you are bullies." (Docket No. 174 at 20.) Bracero  
19 and Defendant Camacho arrived. Bracero pushed Gautier against a door. Cortés slapped JCGL  
20 in the face. Then, Defendants Avilés and Ramos arrived. Avilés grabbed JCGL by the neck and  
21 slammed him against the floor. Cortés, Camacho, and Avilés held JCGL down on the floor and  
22 struck him with their knees, joined by Bracero. (Docket No. 174 at 20.) Ramos used an electric  
23 shock device (stun gun) on JCGL's back and shoulder area, and discharged it in JCGL's chest.

1 Meanwhile, Bracero and Morales wrestled with Gautier. Ramos approached and discharged the  
2 stun gun on Gautier, causing him to collapse on the floor. (Docket No. 174 at 22.) Bracero then  
3 kneeled on Gautier's back. (Docket No. 174 at 22-23.) JCGL and Gautier were arrested and  
4 handcuffed. (Docket No. 174 at 23.) Gautier was transferred to the inmate division at the  
5 courthouse. (Docket No. 174 at 23.)

6 After the incident, all of the deputy marshals involved went down to the marshal's office  
7 in the one-room basement of the courthouse and their supervisor told them to draft a report of  
8 what happened. (Docket No. 174 at 25.) Puerto Rico Police Department Agent Rivera was  
9 assigned to investigate the case and interviewed State Court Judge Rodríguez and the attorneys  
10 who represented Gautier in State Court. He also interviewed all of the deputy marshals. (Docket  
11 No. 174 at 2.) Rivera discussed his report, findings, and conclusions with District Attorney  
12 Esparra. (Docket No. 174 at 3.) In the afternoon, DA Esparra interviewed several of the  
13 marshals, including Bracero and Camacho, and took a sworn statement from Morales. (Docket  
14 No. 174 at 5, 26.) Solicitor Muñiz took sworn statements of Camacho, Bracero, and Cortés.  
15 (Docket No. 174 at 5). At approximately 4:00 P.M., DA Esparra decided to file charges against  
16 Gautier and Lipsett. (Docket No. 174 at 26.)

17 Around 6:00 P.M., Rivera advised Gautier of the charges and escorted him to the parking  
18 lot, where Lipsett was. (Docket No. 174 at 4.) Gautier was charged with violations to Articles  
19 290 and 251, and Lipsett was charged with violations of Articles 290 and 247 of the Puerto Rico  
20 Penal Code. (Docket No. 174 at 7; Docket No. 172-4; Docket No. 172-5.) Rivera handcuffed  
21 Gautier, arrested Lipsett, and transported both to the Mayaguez Court. (Docket No. 174 at 8).

22 On August 14, 2009, Gautier was charged with violating Article 251 of the Puerto Rico  
23 Penal Code (use of violence or intimidation against public authority), and Article 290

1 (conspiracy, threats, or attempts against officers of the judicial system). (Docket No. 174 at 27-  
2 28.) At the hearing to determine probable cause, Rivera, as well as Defendants Bracero and  
3 Camacho, testified under oath. (Docket No. 174 at 9.) The State Court judge found no probable  
4 cause for the Article 251 charges against Gautier, and the charges were withdrawn. (Docket  
5 No. 174 at 9.) However, the judge did find probable cause for the Article 290 charge against  
6 Gautier. (Docket No. 174 at 29.) Gautier was released on a \$5,000 bail with travel restrictions  
7 that included surrendering his passport. (Docket No. 174 at 29.)

8 Also on August 14, 2009, Lipsett was charged with violating Article 247 of the Puerto  
9 Rico Penal Code (disturbing the peace). (Docket No. 174 at 26.) Rivera, Bracero, and Camacho  
10 appeared as witnesses to the Article 247 criminal charge.<sup>2</sup> (Docket No. 172-5.) The judge did  
11 not find probable cause for Lipsett's arrest on the Article 247 charge (disorderly conduct), and  
12 that charge was dismissed. (Docket No. 174 at 10, 27.) Lipsett was also charged with violating  
13 Article 290 of the Puerto Rico Penal Code (conspiracy, threats or attempts against officers of the  
14 judicial system), and the judge found probable cause for her arrest for one violation of Article  
15 290. (Docket No. 174 at 27.) Lipsett was released on bail. (Docket No. 174 at 10.)

16 Prosecutor Rivera continued the case. (Docket No. 174 at 10.) The evidence she  
17 evaluated included the marshals' testimony, a video from a surveillance camera, and testimony  
18 from a magistrate who walked through the struggle. (Docket No. 174 at 11-12.) On April 23,  
19 2010, a preliminary hearing took place on the charges against Plaintiff Gautier in the Superior  
20 Court of Puerto Rico. The court determined the existence of cause for all charges and scheduled  
21 the case for trial. (Docket No. 174 at 11.) On May 13, 2010, a preliminary hearing was held on

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<sup>2</sup>The Plaintiffs' statement of facts mentions Camacho and Avilés testifying. However, the exhibit evidence lists Rivera, Bracero, and Camacho as witnesses. Avilés and Cortés are listed along with the notation "did not testify." (Docket No. 174; Docket No. 172-5.)

1 the charges against Plaintiff Lipsett. The court again found cause for trial. (Docket No. 174 at  
2 11.)

3 Prior to the jury trial against Plaintiff Lipsett, the judge determined that charges against  
4 her had already been dismissed. (Docket No. 174 at 13.) In the jury trial for Gautier, Plaintiffs  
5 Gautier, Lipsett, and their son, as well as Defendant marshals and Rivera, testified at trial. The  
6 security video was also presented. Gautier was acquitted by the jury. (Docket No. 174 at 14.)

### 7 III.

#### 8 **Legal Standard for Motion to Dismiss**

9 A plaintiff's complaint will survive a motion to dismiss if it alleges sufficient facts to  
10 establish a plausible claim for relief. See Fed. R. Civ. P. 12(b)(6); Ashcroft v. Iqbal, 556 U.S.  
11 662, 677 (2009) (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). In assessing a  
12 claim's plausibility, the court must construe the complaint in the plaintiff's favor, accept all non-  
13 conclusory allegations as true, and draw any reasonable inferences in favor of the plaintiff.  
14 Rodríguez-Ramos v. Hernández-Gregorat, 685 F.3d 34, 39-40 (1<sup>st</sup> Cir. 2012) (citation omitted).

### 15 IV.

#### 16 **Legal Standard for Motion for Summary Judgment**

17 Defendants are entitled to summary judgment on a claim if they can show that there is no  
18 genuine dispute over the material facts underlying the claim. Celotex Corp. v. Catrett, 477 U.S.  
19 317, 323 (1986). We must decide whether a reasonable jury could find for Plaintiffs in any of  
20 their claims when all reasonable inferences from the evidence are drawn in their favor. See Scott  
21 v. Harris, 550 U.S. 372, 380 (2007).

## V.

**Immunity**

Immunity must be examined first because, if granted, it serves as a complete bar to litigation. The principle grants immunity from suit, rather than merely serving as a defense against liability. Rivera-Torres v. Ortiz Velez, 341 F.3d 86, 93 (1<sup>st</sup> Cir. 2003); Maldonado v. Fontanes, 568 F.3d 263, 268 (1st Cir. 2009). We will examine both absolute immunity and qualified immunity, ultimately denying both in this case.

**A. Absolute Immunity**

“The official seeking absolute immunity bears the burden of showing that such immunity is justified for the function in question.” Burns v. Reed, 500 U.S. 478, 486 (1991) (internal citations omitted). Defendants argue that a trial witness sued under § 1983 enjoys absolute immunity from any claim based on his testimony in trial. Briscoe v. LaHue, 460 U.S. 325. This is true; however, absolute immunity does not extend to “preparatory conduct” prior to the prosecution itself, such as instigating a prosecution, which is what the Plaintiffs allege in this case. See Guzman-Rivera 55 F.3d 26, 29 (1<sup>st</sup> Cir. 1995).

**B. Qualified Immunity**

The doctrine of qualified immunity provides defendant officials with immunity from suit, rather than merely with a defense to liability. Maldonado, 568 F.3d at 268. The doctrine exists because “officers are entitled to rely on existing lower court cases without facing personal liability for their actions.” Cordell Pearson, et al. v. Callahan, 555 U.S. 223, 244-45 (2009).

In Pearson, 555 U.S. 223, the Supreme Court restated the inquiry for qualified immunity. A court must decide, in no particular order: (1) whether the facts alleged or shown by the plaintiff make out a violation of a constitutional right; and (2) if so, whether the right was

1 “clearly established” at the time of the defendant’s alleged violation. Id. at 231-36. The  
2 Supreme Court has emphasized that either step of the analysis can be tackled first. Id. The  
3 second step is focused on two aspects. It looks first upon the clarity of the law at the time of the  
4 alleged violation. Secondly, it focuses on whether a reasonable defendant in this fact-specific  
5 situation would have understood that his actions violated constitutional rights. Maldonado, 568  
6 F.3d at 269. The relevant inquiry is “whether it would be clear to a reasonable officer that his  
7 conduct was unlawful in the situation he confronted.” Id. (internal citations omitted).

8         The Defendants argue that a federal cause of action for malicious prosecution did not  
9 exist at the time the facts took place and, therefore, that defendants are entitled to qualified  
10 immunity in any such claim. (Docket No. 163.) Defendants argue that the case of Moreno  
11 Medina v. Toledo, 458 App’s 4, 7-8 (1<sup>st</sup> Cir. 2012), is the first case to provide a basis for a  
12 federal cause of action for malicious prosecution under the Fourth Amendment, and that it post-  
13 dated Lipsett’s dismissal in September 2010 and Gautier’s acquittal on November 15, 2010.  
14 (Docket No. 163.) This is not exactly correct. A First Circuit case decided in June 2010 stated  
15 that it “remains an unanswered question whether a malicious prosecution claim is cognizable  
16 under the Fourth Amendment and section 1983.” Harrington v. City of Nashua, 610 F.3d 24, 30  
17 (2010). By the time these events transpired, it was an open question in this circuit whether there  
18 was a federal cause of action of malicious prosecution under the Fourth Amendment. See  
19 Harrington, 610 F.3d 24 (2010). Therefore, the defendants’ rationale for qualified immunity does  
20 not withstand scrutiny and is denied.



1 damages from any act done in furtherance of a conspiracy mentioned in section 1985 of Title 42.  
2 28 U.S.C. § 1343(a)(2). That section is entitled, “Conspiracy to interfere with civil rights,” and  
3 includes conspiring to impede, hinder, obstruct, or defeat the due course of justice, with the  
4 intent to deny any citizen the equal protection of the laws. 42 U.S.C. § 1985. Subsection  
5 1343(a)(3) provides federal jurisdiction when someone acting under state authority deprives  
6 another person of any federal rights, privileges, or immunities “providing for equal rights.” 28  
7 U.S.C. § 1343(a)(3). None of the other subsections are relevant.

8 The Plaintiffs allege very few facts in support of their claims of conspiracy. The only  
9 relevant fact alleged is that the deputy marshals were sent to a one-room basement in the  
10 courthouse to draft reports of the occurrence. (Docket No. 174 at 25.) Plaintiffs do not allege  
11 any facts supporting an equal-protection violation. Therefore, we dismiss this claim.

12 **C. 42 U.S.C. § 1983 and Malicious Prosecution**

13 Section 1983 provides relief when a person’s constitutional rights have been violated by  
14 someone acting under state authority. 42 U.S.C. § 1983. In this case, Plaintiffs claim that their  
15 rights under the Fourth and Fourteenth Amendment have been violated. (Docket No. 8.) The  
16 Fourth Amendment protects against “unreasonable searches and seizures.” U.S. Const. amend.  
17 IV. The Fourteenth Amendment protects against the deprivation of “life, liberty, or property,  
18 without due process of law.” U.S. Const. amend. XIV.

19 The thrust of Plaintiffs’ allegations under § 1983 is really that of malicious prosecution  
20 grounded on the Fourth and Fourteenth Amendments. (See Docket No. 8.) The First Circuit  
21 recently recognized Fourth Amendment malicious prosecution claims under § 1983. Hernandez-  
22 Cuevas v. Taylor, 723 F.3d 91 (1<sup>st</sup> Cir. 2013). The Supreme Court’s opinion in Albright v.  
23 Oliver, 510 U.S. 266, however, “closed the door on [Fourteenth Amendment] substantive due

1 process as a vehicle for bringing such claims.” Hernandez-Cuevas, 723 F.3d at 98. Further, at  
2 least a plurality of the Justices in Albright stated that Fourteenth Amendment procedural due  
3 process would rarely be appropriate for such claims. See Id. Therefore, in assessing Plaintiffs’  
4 § 1983 claims, we only examine those that relate to alleged fourth amendment violations.

5 The First Circuit has held that Fourth Amendment protections “do not end when an  
6 arrestee becomes held pursuant to legal process.” See Hernandez-Cuevas, 723 F.3d at 99-100. A  
7 plaintiff may bring a suit under § 1983 if he can prove that: “the defendant (1) caused (2) a  
8 seizure of the plaintiff pursuant to legal process unsupported by probable cause, and (3) criminal  
9 proceedings terminated in plaintiff’s favor.” Hernandez-Cuevas, 723 F.3d at 101 (citing Evans  
10 v. Chalmers, 703 F.3d 636, 647 (4<sup>th</sup> Cir. 2012)). The parties do not dispute that the proceedings  
11 terminated in Plaintiffs’ favor. (Docket No. 189.) But, because of the requirement that the  
12 seizure be unsupported by probable cause, plaintiffs have a difficult case, since a neutral  
13 magistrate determined that probable cause existed for their arrest. However, the First Circuit has  
14 said that,

15 [i]f a plaintiff can overcome this causation problem and  
16 demonstrate that law enforcement officers were responsible for his  
17 continued, unreasonable pretrial detention, the plaintiff has stated a  
18 constitutional injury that may be vindicated through a § 1983  
19 action.

20  
21 Hernandez-Cuevas, 723 F.3d at 100.

22 To hold officers liable for unlawful pretrial detention, Plaintiffs must show that they  
23 (1) ‘lied to or mislead prosecutors’; (2) ‘failed to disclose exculpatory evidence’; or (3) ‘unduly  
24 pressured the prosecutor to seek the indictment.’” Id. (citations omitted). Plaintiffs must show  
25 that law enforcement officers made statements that were deliberately false or that recklessly  
26 disregarded the truth, and must show that those lies were necessary to the magistrate’s finding of

1 probable cause. Hernandez-Cuevas, 723 F.3d at 102. There are no facts in the record which  
2 support the contention that officers did this. Further, the evidence presented in the preliminary  
3 hearing included not only the marshals' testimony, but video from a surveillance camera and  
4 testimony from another magistrate judge. (Docket No. 174 at 11-12.) Even if the marshal's  
5 statements had been false, the magistrate could have found probable cause based upon the other  
6 evidence. Therefore, we dismiss the federal claim of malicious prosecution under § 1983.

### 7 VIII.

#### 8 Supplemental Jurisdiction for Puerto Rico Constitutional Claims

9 Plaintiffs allege violations of parallel and additional rights afforded by the Puerto Rico  
10 Civil Code. (Docket No. 8). Specifically, Plaintiffs allege violations of Article II §§ 7, 8, and  
11 10, as well as Articles 1802 and 1803 of the Puerto Rico Civil Code, 31 L.P.R.A. §§ 5141 and  
12 5142.<sup>3</sup> Article II § 7 protects the right to life, liberty, and property, as well as providing due  
13 process and equal protection. P.R. Const. art. II § 7. Article II § 8 protects against reputational  
14 harm. P.R. Const. art. II § 8. Article II § 8 protects against unreasonable searches and seizures.  
15 P.R. Const. art. II § 10. Section 5141 provides a cause of action when damage is caused by fault  
16 or negligence. 31 L.P.R.A. § 5141. Section 5142 provides a cause of action for damages by  
17 employees and provides for Commonwealth liability. 31 L.P.R.A. § 5142.

18 We have discretion to decline supplemental jurisdiction over the remaining  
19 Commonwealth law claims, since we have dismissed all of the claims over which we have  
20 original jurisdiction. See 28 U.S.C. § 1367(c)(3); see also United Mine Workers v. Gibbs, 383  
21 U.S. 715, 726 (1966) (“[I]f the federal law claims are dismissed before trial ... the state claims  
22 should be dismissed as well.”). In exercising our discretion under § 1367(c), we must consider

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<sup>3</sup> The Plaintiffs cite 32 L.P.R.A. §§ 5141 and 5142, but because these do not exist, we assume that they are referring to Title 31 of the laws of Puerto Rico.

1 the issues of “judicial economy, convenience, fairness, and comity.” Che v. Massachusetts Bay  
2 Transp. Authority, 342 F.3d 31, 37 (1<sup>st</sup> Cir. 2003). Having considered these factors, we decline  
3 to exercise supplemental jurisdiction over Plaintiffs’ Commonwealth law claims, and we dismiss  
4 them without prejudice of litigation in the state forum.

5 **IX.**

6 **Excessive Use of Force**

7 Defendants stated that they “have not requested the dismissal of the cause of action for  
8 alleged excessive use of force.” (Docket No. 192 at 2.) They do not cite what particular law this  
9 cause of action was based upon. Because the federal laws upon which Plaintiff relied were civil  
10 rights laws regarding conspiracy and malicious prosecution, we believe that these claims  
11 regarding excessive use of force are state law claims. Therefore, we dismiss them without  
12 prejudice for the same reasons as the other state law claims.

13 Lastly, we note that, in any event, we would not have been able to reach trial in this case  
14 as scheduled for February 3, 2014, due to conflict with our criminal calendar, with little or no  
15 possibility of reinstatement of the trial setting for the near future. The trial setting is VACATED.  
16 Plaintiffs must seek relief in state court.

17 **X.**

18 **Conclusion**

19 For the foregoing reasons, Defendants’ request for qualified immunity is **DENIED**.  
20 Defendants’ summary judgment motions and motions for reconsideration (Docket Nos. 163, 203,  
21 204) are **GRANTED**. Plaintiffs’ federal law claims are **DISMISSED WITH PREJUDICE**.

1 Plaintiffs' Commonwealth law claims are **DISMISSED WITHOUT PREJUDICE** of local  
2 court litigation.

3 **IT IS SO ORDERED.**

4 San Juan, Puerto Rico, this 10th day of December, 2013.

5 S/José Antonio Fusté  
6 JOSE ANTONIO FUSTE  
7 U. S. DISTRICT JUDGE