

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF PUERTO RICO  
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NICOMEDES RODRIGUEZ SANCHEZ,  
et al.,

Plaintiffs,

v.

COMMONWEALTH OF PUERTO RICO,  
et al.,

Defendants.

Civil No. 12-1640 (JAF)

5  
6 **OPINION AND ORDER**

7 We must decide if this complaint alleges sufficient facts that, if true, the allegations  
8 would constitute a Fourth Amendment violation based on the use of excessive force to  
9 restrain an individual.

10 **I.**

11 **Background**

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14 On August 9, 2011, Puerto Rico Police Department Officers Gerardo Maldonado-  
15 Rivera and Frederick Sebastián-Muñíz, along with an unidentified third officer, responded to  
16 a criminal complaint filed by Maracelys Meléndez-Maisonet, regarding Nicomedes  
17 Rodríguez-Sánchez. Rodríguez-Sánchez, who was seventy-five years old at the time, claims  
18 that the officers arrested him in an extremely rough manner: After restraining Rodríguez-  
19 Sánchez with handcuffs, he says the officers picked him up in the air and bashed his head  
20 against a patrol car before they threw him into the backseat, where Rodríguez-Sánchez lost  
21 consciousness. (Docket No. 1 at 2-3.) While being transported to jail, Sebastián- Muñíz

1 warned Rodríguez-Sánchez not to mention his rough treatment. According to Rodríguez-  
2 Sánchez, he was held for two to three hours before he was given a citation and released.

3 Rodríguez-Sánchez filed a complaint against the Commonwealth of Puerto Rico,  
4 Sebastián-Muñíz, Rivera-Maldonado, and an unknown police officer, claiming excessive  
5 force, illegal arrest and assault and battery, and intentional infliction of emotional  
6 distress. (Docket No. 1.) The Commonwealth of Puerto Rico moved to dismiss. (Docket  
7 No. X.)

## 8 II.

### 9 Legal Standard

10 A plaintiff's complaint will survive a motion to dismiss if it alleges sufficient facts to  
11 establish a plausible claim for relief. See Fed.R.Civ.P. 12(b)(6); Ashcroft v. Iqbal, 556 U.S.  
12 662, 678 (2009) (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). In assessing  
13 a claim's plausibility, the court must construe the complaint in the plaintiff's favor, accept all  
14 non-conclusory allegations as true, and draw any reasonable inferences in favor of  
15 plaintiff. San Geronimo Caribe Project, Inc. v. Acevedo-Vila, 687 F.3d 465, 471 (1st Cir.  
16 2012) (citation omitted).

## 19 III.

### 20 Discussion

#### 21 A. Complaint Against the Commonwealth of Puerto Rico

22 Defendants claim they are protected by the Eleventh Amendment because it bars suits  
23 against the Commonwealth of Puerto Rico, its agencies, and government officials acting in  
24 their official capacities. However, the complaint does not state whether the Defendants are  
25 being sued in their individual or official capacities. (Docket No. 4.) The First Circuit has  
26 adopted a course-of-the-proceedings test to determine whether a plaintiff has brought an  
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1 individual or official capacity suit against a government official. See Powell v.  
2 Alexander, 391 F.3d 1, 22 (1st Cir.2004). The test attempts to strike a fair balance between a  
3 defendant's right to have notice of liability and a plaintiff's need for flexibility in developing  
4 a case. Id. at 22. The court should evaluate “the substance of the pleadings and the course of  
5 proceedings in order to determine whether the suit is for individual or personal  
6 liability.” Id. (quoting Pride v. Does, 997 F.2d 712, 715 (10th Cir. 1993)). Since Rodríguez-  
7 Sánchez is proceeding pro se, we liberally construe his complaint to have been brought  
8 against Defendants in both their individual and official capacities.

9       The text of the Eleventh Amendment immunizes states from federal lawsuits by  
10 citizens of foreign states. U.S. Const. Amend. XI. The Supreme Court has held that  
11 principles of sovereign dignity, inherent in the Constitution itself, extend states' immunity  
12 beyond the textual boundaries of the Eleventh Amendment to include immunity from suits  
13 by a state's own citizens. Alden v. Maine, 527 U.S. 706, 727–29 (1999). For the purposes  
14 of Eleventh Amendment analysis, the Commonwealth of Puerto Rico is treated as if it were a  
15 state. Díaz-Fonseca v. Puerto Rico, 451 F.3d 13, 33 (1st Cir. 2006). Consistent with  
16 Supreme Court precedent, the First Circuit has held that suits against officials in their official  
17 capacities are barred by the Eleventh Amendment. Fred v. Aponte Roque, 916 F.2d 37, 39  
18 (1st Cir.1990) (citing Will v. Mich. Dep't of Corr.,491 U.S. 58, 68–71 (1989)). As such, all  
19 claims for damages against Defendants in their official capacities are dismissed. All claims  
20 for damages against Defendants in their individual capacities may proceed.

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22 **B. Complaint Against Individual Officers**  
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24       Defendants' claim of qualified immunity gives rise to two questions: Whether the  
25 officers violated Rodríguez-Sánchez's constitutional rights and, if so, whether those rights  
26 were clearly established at the time. See Pearson v. Callahan, 555 U.S. 223, 236 (2009).

