

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 13-2079

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

COMMONWEALTH OF PUERTO RICO;
PUERTO RICO POLICE DEPARTMENT,

Defendants

JORGE DIAZ-CASTRO,

Movant-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES' RESPONSE TO MOVANT-APPELLANT'S
MOTION SEEKING AN INJUNCTION PENDING APPEAL

Movant-appellant Jorge Diaz-Castro, proceeding *pro se*, has appealed the district court's summary denial of his motion to intervene in this case, which the United States brought against defendants-appellees Commonwealth of Puerto Rico and the Puerto Rico Police Department under the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. 14141. Diaz-Castro also has moved this

Court for a preliminary injunction pending resolution of his appeals that would suspend implementation of the settlement agreement between the United States and defendants-appellees that ended the case. Pursuant to Federal Rule of Appellate Procedure 27(a)(3), the United States respectfully requests this Court to deny Diaz-Castro's motion for an injunction pending these appeals as moot.

BACKGROUND

On December 21, 2012, the United States filed a complaint against defendants-appellees in the United States District Court for the District of Puerto Rico. Doc. 1.¹ The complaint alleged that the Puerto Rico Police Department (PRPD) engaged in unconstitutional and unlawful activity resulting from pervasive and longstanding institutional failures, in violation of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. 14141. Doc. 1 at 1, 3. On July 17, 2013, the United States and defendants-appellees filed in the district court a settlement agreement providing for reforms of the PRPD, and jointly moved the court for an order conditionally dismissing the action and approving the agreement. Docs. 57 and 60. On that same date, the district court entered an order granting the motion to dismiss, and a judgment conditionally dismissing the action and retaining jurisdiction to enforce the settlement agreement. Docs. 59 and 61.

¹ This Response uses the abbreviation "Doc. ___ at ___" to refer to an entry on the district court's docket sheet.

On August 5, 2013, appellant Jorge Diaz-Castro, a self-described “concerned lobbyist” for the PRPD, filed in the district court a Motion for Leave to Intervene Under Federal Rule of Civil Procedure 24 (Motion to Intervene). Doc. 66 at 2. The Memorandum of Law in Support of the Motion to Intervene alleged that Diaz-Castro has been lobbying the legislature for the right of PRPD officers to hold a referendum on joining the federal social security system; that the settlement agreement did not mention the referendum situation; and that the referendum constituted a significant legal interest in the subject matter of the case for both himself and PRPD officers, warranting intervention. Doc. 66-1 at 3, 8, 12-13, 15. The district court summarily denied the Motion to Intervene by order dated August 7, 2013. Doc. 67. On August 12, 2013, Diaz-Castro filed a motion for leave to appeal the denial of his motion to intervene *in forma pauperis*, which the district court granted by order dated August 13, 2013. Docs. 68 and 69.

The district court treated Diaz-Castro’s motion for leave to appeal as a notice of appeal and transmitted the record to this Court, which docketed the appeal as No. 13-2079. Docs. 72 and 73 (transmitting record to this Court on August 30, 2013, and showing appeal No. 13-2079 docketed in court of appeals on September 3, 2013, respectively). On October 7, 2013, Diaz-Castro filed a second notice of appeal from the district court’s order denying intervention. Doc. 76. This Court docketed this appeal as No. 13-2306. Doc. 80 (showing appeal No. 13-

2306 docketed in court of appeals on October 21, 2013). On October 24, 2013, Diaz-Castro moved to consolidate these two appeals because they are both from the same order denying his Motion to Intervene. The United States did not oppose the Motion to Consolidate, but did oppose his additional request to hold appeal No. 13-2306 in abeyance pending resolution of unspecified state cases he alleges this Court could conceivably incorporate into that appeal. The Motion to Consolidate remains pending in this Court. Concurrent with the filing of this Response, the United States has filed a Motion to Dismiss Diaz-Castro's appeals.

On December 2, 2013, Diaz-Castro filed in the district court a Motion for Preliminary Declaratory and Injunctive Relief, *Pendente Lite*, which requested the court to suspend implementation of the settlement agreement pending resolution of his appeals and to appoint a Technical Compliance Advisor. Doc. 99 at 2. The district court summarily denied this motion on December 5, 2013. Doc. 100. On December 9, 2013, Diaz-Castro filed in this Court (No. 13-2079) a Motion for Preliminary Injunction, *Pendente Lite*, and/or an Emergency Temporary Restraining Order (Motion for Preliminary Injunction), pursuant to Federal Rule of Appellate Procedure 8(a)(2). The Motion for Preliminary Injunction reiterated his requests to suspend implementation of the settlement agreement pending resolution of his appeals and to appoint a Technical Compliance Advisor.

DISCUSSION

This Court should dismiss as moot Diaz-Castro's Motion for Preliminary Injunction, which requests suspension of the settlement agreement's implementation pending resolution of his appeals. Dismissal of these appeals pursuant to Local Rule 27.0(c) for the reasons discussed in the United States' Motion to Dismiss will render Diaz-Castro's request for an injunction pending appeal moot. See, e.g., *Owens-Corning Fiberglass Corp. v. Moran*, 959 F.2d 634, 637 (7th Cir. 1992) (affirming dismissal of suit and denying "motion for an injunction pending appeal [as] moot").

In any event, as the party seeking injunctive relief pending appeal, Diaz-Castro "bears the burden of showing that the circumstances of the case justify the exercise of the court's discretion." *Respect Maine PAC v. McKee*, 622 F.3d 13, 15 (1st Cir. 2010). In exercising its discretion, this Court is guided by the familiar four-factor test for injunctions:

(1) whether the applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent relief; (3) whether issuance of relief will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

Ibid. "The first two factors are the most critical," and "require a showing of more than mere possibility." *Ibid.*

For the reasons set forth in the United States' Motion to Dismiss, all four factors weigh heavily against an injunction pending appeal. First, Diaz-Castro has not made a "strong showing" that his appeal presents a substantial question, much less that he "is likely to succeed on the merits." See Mot. to Dismiss 8-13.

Second, Diaz-Castro will not suffer irreparable injury absent relief, as the settlement agreement's omission of any discussion of the federal social security referendum does not inflict injury in fact on him, and does not deprive him of any appropriate forum in which to pursue his claims regarding the referendum. See Mot. to Dismiss 5-6, 12-13. On the other side, enjoining the settlement agreement would substantially injure the parties to the agreement, who have spent several months in its negotiation and have an interest in seeing it implemented as soon as possible. See Mot. to Dismiss 11. Finally, the public interest is not served by delaying implementation of institutional reforms of the PRPD designed to prevent future instances of unconstitutional and unlawful conduct by its officers.

CONCLUSION

For the foregoing reasons, this Court should deny as moot the motion for a preliminary injunction pending appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 20, 2013, I electronically filed the foregoing UNITED STATES' RESPONSE TO MOVANT-APPELLANT'S MOTION SEEKING AN INJUNCTION PENDING APPEAL with the United States Court of Appeals for the First Circuit by using the CM/ECF system. All participants in this case other than movant-appellant are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

I further certify that movant-appellant will be served via e-mail and U.S.

Mail postage prepaid at the following address:

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s/ Christopher C. Wang
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