

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

**JOVITA JIMÉNEZ MARCIAL;
ILEANA INSERNI CINTRÓN;
CARLOS M. LIMARDO ORTIZ;
GISELLE M. RUIZ SOLER;
MARGARITA R. MEDINA
SOTOMAYOR; JOSÉ J. VARGAS
SANTIAGO; & BEATRIZ A. TORRES
TORRES**

PLAINTIFFS

VS.

**ALEJANDRO GARCIA PADILLA,
Individually and as Governor of the
Commonwealth Puerto Rico;
IDALIA COLON RONDON, Secretary,
Department of the Family in her
official capacity; JOHN DOE AND
JANE DOE**

DEFENDANTS

CIVIL CASE NO.

VIOLATION OF DUE PROCESS
PROPRIETARY RIGHTS;
INJUNCTIVE RELIEF AND
DAMAGES

PLAINTIFFS DEMAND TRIAL BY
JURY

VERIFIED COMPLAINT

COMES NOW, plaintiffs, through the undersigned attorneys and most respectfully state and pray as follows:

I. NATURE OF THE ACTION

In this action, the Plaintiffs seek declaratory and injunctive relief, compensatory and punitive damages, and any other relief this Honorable Court deems just and proper under the circumstances, arising under the Fifth and Fourteenth Amendments of the United States Constitution.

The present action is filed by the Plaintiffs as a result of the breach by defendants of their Rights to Due Process and their acquired proprietary rights under the Fifth and Fourteenth Amendments of the United States Constitution, as well as under Article 2, Section 7, of the Constitution of Puerto Rico. The plaintiffs, furthermore, bring forth this action seeking redress and compensation for compensatory and punitive damages caused by defendants' immediate termination of their employment as Administrative Law Judges ("ALJ") of the Department of the Family of Puerto Rico. Plaintiffs hereby demand a trial by jury.

II. JURISDICTION OF THE COURT

This Court has subject matter jurisdiction over the captioned matter pursuant to **28 U.S.C. §§1331 and 1343 and 42 U.S.C. §1983**; and the Constitution of the United States, particularly under the Fifth and Fourteenth Amendments. Pursuant to **28 U.S.C. §1367** this Court also has supplemental jurisdiction over all causes of action arising under the Laws and the Constitution of Puerto Rico, insofar as they stem from the same nucleus of operative facts as their federal counterparts and because the amount in controversy exceeds, exclusive of interests and costs, the sum of Seventy Five Thousand Dollars (\$75,000.00).

III. THE PARTIES TO THE COMPLAINT

A. Plaintiffs

1. Plaintiff, **ILEANA INSERNI CINTRÓN** is a citizen of the United States and resident of Puerto Rico, who was appointed by ex-Governor of

Puerto Rico, Hon. Luis G. Fortuño Buset, and subsequently sworn in as an ALJ on December 27, 2012. Mrs. Inserni was terminated and removed from her ALJ position by co-defendant, Idalia Colón Rondón, Secretary of the Department of the Family, on July 11, 2014.

2. Plaintiff, **JOVITA JIMÉNEZ MARCIAL** is a citizen of the United States and resident of Puerto Rico, who was appointed by ex-Governor of Puerto Rico, Hon. Luis G. Fortuño Buset, and subsequently sworn in as an ALJ on the 30th of November, 2012. Mrs. Jimenez was terminated and removed from her ALJ position by co-defendant, Idalia Colón Rondón, Secretary of the Department of the Family, on July 11, 2014.

3. Plaintiff, **CARLOS M. LIMARDO ORTIZ** is a citizen of the United States and resident of Puerto Rico, who was appointed by ex-Governor of Puerto Rico, Hon. Luis G. Fortuño Buset, and subsequently sworn in as an ALJ on the 30th of November, 2012. Mr. Limardo was terminated and removed from his ALJ position by co-defendant, Idalia Colón Rondón, Secretary of the Department of the Family, on July 11, 2014.

4. Plaintiff, **GISELLE M. RUIZ SOLER** is a citizen of the United States and resident of Puerto Rico who was appointed by ex-Governor of Puerto Rico, Hon. Luis G. Fortuño Buset and subsequently sworn in as an ALJ on December 26, 2012. Mrs. Ruiz was terminated and removed from her ALJ position by co-defendant, Idalia Colón Rondón, Secretary of the Department of the Family, on July 11, 2014.

5. Plaintiff, **MARGARITA R. MEDINA SOTOMAYOR** is a citizen of the United States and resident of Puerto Rico, who was appointed by ex-Governor of Puerto Rico, Hon. Luis G. Fortuño Burset and subsequently sworn in as an ALJ on December 20, 2012. Mrs. Medina was terminated and removed from her ALJ position by co-defendant, Idalia Colón Rondón, Secretary of the Department of the Family, on July 11, 2014.

6. Plaintiff, **JOSÉ J. VARGAS SANTIAGO** is a citizen of the United States and resident of Puerto Rico, who was appointed by ex-Governor of Puerto Rico, Hon. Luis G. Fortuño Burset and sworn in as an ALJ on December 21st, 2012. Mr. Vargas was terminated and removed from his ALJ position by co-defendant, Idalia Colón Rondón, Secretary of the Department of the Family, on July 11, 2014.

7. Plaintiff, **BEATRIZ A. TORRES TORRES** is a citizen of the United States and resident of Puerto Rico, who was appointed by ex-Governor of Puerto Rico, Hon. Luis G. Fortuño Burset and sworn in as an ALJ on the 20th of December, 2012. Mrs. Torres was terminated and removed from her ALJ position by co-defendant, Idalia Colón Rondón, Secretary of the Department of the Family, on July 11, 2014.

8. All plaintiffs are and have been identified at all relevant times as members of the New Progressive Party. Their political affiliation was known to all defendants.

9. All co-plaintiffs to this complaint are affected by the illegal, wrongful, and unconstitutional conduct displayed by the defendants.

B. Defendants

10. Defendant **Alejandro Garcia Padilla (“AGP”)**, was sworn in as Governor of Puerto Rico on the 4th of January, 2013, and has acted under color of law and pursuant to his authority as Governor. Moreover, he has also been at all pertinent times the President of the Popular Democratic Party (“PDP”). He is being sued herein in his personal and official capacity.

11. Defendant **Idalia Colón Rondón (“Colón”)** is the Secretary of the Department of the Family of Puerto Rico and is made a party to this action in her official capacity.

12. John and Jane Doe are fictitious people who are unnamed, however, once known, they may be responsible or may respond for the damages caused in the present case to all plaintiffs.

IV. FACTS COMMON TO ALL CAUSES OF ACTION

13. On or about September 14, 2012 the Puerto Rico Legislature enacted Law 248-2012, which was denominated as the “Expedited Administrative Procedures for Child Welfare Law”, (“Law 248”).

14. Law 248 was enacted in order to create a new administrative procedure and quasi-judicial system for the Department of the Family to provide for, and resolve the backlog of cases in the areas of the adoption of children, emergency custody determinations, the deprivation of parental authority, and the like.

15. The reasoning behind Law 248 being the acceleration of the procedures related to cases involving the children of the island, especially all of

those which require the addressing of delicate issues in a focused and expedited manner. In order to ensure that all such cases were dealt in a manner that provided resolve to the children in a system that would not take years for cases to be closed.

16. The intended purpose associated with the creation of the Law 248 was to comply with the federally enacted laws relating to this subject, namely, the Child Abuse Prevention and Treatment Act (C.P.A.T.A.) (which was renamed as the Keeping Children and Families Safe Act) and the Safe Families Act (A.S.F.A.) that govern the Families and Children Administration or “ADFAN”, for its Spanish acronym.

17. As per the provisions of Law 248, ten (10) new ALJ positions were created in order to comply with the State’s legal duty and mandate to protect and watch over the well-being of the children of Puerto Rico, in addition to addressing the excessive workload of cases from the already burdened the State Courts of Puerto Rico.

18. **Pursuant to Law 248, ALJ’s were to be appointed to serve for a fixed term of seven (7) years, and could not be removed from their respective positions, absent cause.**

19. Each ALJ was to be assigned to one of the regions of the Department of the Family, but could be periodically moved to other regions, depending on the specific needs of the agency. The ALJ was to enjoy the same immunity as the Justices of the Puerto Rico State Court in all matters relating the processes and matters before them. The ALJ’s jurisdiction was to be

concurrent with that of the State Courts of Puerto Rico, giving the interested parties the choice to file their cases before the State Court system, or before the adjudicative system of the Department of the Family.

20. Among the duties assigned to the ALJ's were the following, to wit: they would preside over hearings; make determinations of fact and conclusions of law; receive oral testimony; receive documentary evidence; render legal opinions; administer oaths; direct over and allow parties to make use of discovery proceedings; preside and order the parties to participate in transactional hearings; compel the appearance of witnesses and the parties to the administrative hearings; issue orders; order genetic exams to determine paternity, only if parties consent to these exams; grant adoption private settlement agreements and accords; preside over hearing relating the placement of minors with their adoptive parents; submit to the Puerto Rico Demographic Registry certified copy of the corresponding Resolution in order for it to make the pertinent corrections; adjudicate the legal custody in child abuse cases on the Department of the Family's behalf; and other related issues and controversies.

21. The basic minimum annual salary of the ALJ's was Seventy Two Thousand Dollars (\$72,000.00), with the exception of the Coordinator and Sub-coordinator ALJ's, whose minimum annual salary was set at Seventy Six Thousand Dollars (\$76,000.00). Once appointed, the ALJ would also have the right to enjoy the same benefits as public employees, in terms of vacation and sick leave, Christmas Bonus, and the rest of the fringe benefits enjoyed by all

public servants. The salary of plaintiffs was subject to all associated agency/governmental deductions.

22. All of plaintiffs' jobs as ALJ's were created and funded by the U.S. Federal Government, per the provisions of Title IV-B of the Social Security Act, relating to child welfare services.

23. On or around November 28, 2012, the plaintiffs were appointed by ex-Governor of Puerto Rico, Luis G. Fortuño Burset, to serve as ALJ's for a seven (7) year term. Subsequent to their respective appointments, all Plaintiffs were sworn in as ALJ's on or around, December 20th, 2012. Thus, their respective terms as ALJ's was set to expire on or around December 19th, 2019.

24. Upon being appointed as ALJ's, all captioned Plaintiffs performed their respective duties in a diligent manner and with the highest regard for the position they held. The plaintiffs were fully capable and qualified to perform their duties as quasi-judicial officers, and none of them, at any time, incurred in negligence or reprehensible conduct.

25. On July, 9 2014, defendant AGP signed into law, Law 85-2014 (hereafter "Law 85"), which derogated Law 248, expressly eliminating the ten (10) ALJ positions.

26. A mere two (2) days after Law 85 was signed by AGP, on July 11, 2014, all the plaintiffs were served with a letter signed by co-defendant Colón, whereby she wrongfully and illegally terminated the same, based on the enactment of Law 85. Termination realized due to the defendants' understanding that pursuant to the enactment of Law 85, the ALJ' positions

had been vanquished. Moreover, all Plaintiffs were instructed to undertake the necessary steps to immediately conclude their duties in their position.

27. Contrary to the entitlement of the Plaintiffs to serve for a fixed term of seven (7) years, on July 11th, 2014, Colón violated their due process rights by terminating the Plaintiffs. In doing so, she dispossessed them of their salary and all of the benefits due to them.

28. None of the captioned Plaintiffs has ever been reprimanded, sanctioned, or disciplined, nor has any action or claim been presented against any single one of them in either their personal or official capacity as ALJ's.

29. It is of importance to note, that since assuming their duties as ALJ's, neither AGP or Colón, nor any other governmental officer met with the Plaintiffs to either discuss their job performance, and/or prepare a written evaluation of the work they had realized as ALJ's. Neither were the Plaintiffs' granted a hearing, audience, or platform were they could defend their stance as ALJ's or voice their objection and/or contest the action that was being undertaken by the defendants.

FIRST CAUSE OF ACTION
(VIOLATION OF PLAINTIFF'S DUE PROCESS RIGHTS)

30. Plaintiffs hereby reiterate and reaffirm the statements and allegations made in the preceding paragraphs number 1 to 29.

31. When the plaintiffs were terminated by the defendants, they were serving a seven (7) year term as ALJ's, which commenced on, or around, December 20th, 2012 and was set to expire on December 19th, 2019. Considering that all plaintiffs were appointed to serve as quasi-judicial officers

for a fixed term, all Plaintiffs had acquired a proprietary right in their employment, from which they could only be terminated, absent cause, with the right to request a pre-termination hearing to contest the allegations levied against them which warranted the sought termination.

32. Plaintiffs acquired proprietary rights could not be infringed upon by AGP, Colon, or the Legislature. Moreover, any act to repeal a statute in order to allegedly “save money” based on the current detrimental state of the economy, is nonsensical and absurd when one considers that the program under which the ALJ’s were appointed to serve is federally funded. Even so, such argument may not be utilized to terminate the Plaintiffs when they are vested with a proprietary right which exists throughout the duration of the appointed term.

33. Since their appointment as ALJ’s and up their termination on July 11, 2014 the plaintiffs had performed their duties with the highest regard for the position they held. The Plaintiffs did not incur in negligence or reprehensible conduct and were fully capable and qualified to perform their duties as ALJ’s. The Plaintiffs were never reprimanded, sanctioned, disciplined, nor was any action or claim presented against them in neither their personal or official capacity.

34. The conduct and acts of all the defendants in terminating the Plaintiffs jobs at the Department of the Family and depriving the latter of their salaries and benefits is a violation of their due process rights under the Fifth

and Fourteenth Amendments of the United States Constitution, is wrongful and illegal.

35. The defendants acted under color of state law to deprive the plaintiffs of their proprietary rights by taking away their salary, benefits and other employment perks without the Due Process of law.

36. As a result of the wrongful dismissal, the Plaintiffs have suffered and continue to suffer harm, and are entitled to compensatory damages.

37. Plaintiffs are also entitled to injunctive relief, in the form of an Immediate Temporary Restraining Order or a preliminary or permanent injunction, against the defendants, ordering them to immediately reinstate Plaintiffs to their position as ALJ's, with all the corresponding privileges and benefits, including the payment of back pay to cover all salaries and benefits from the termination date to the date in which they are reinstated, and ordering Defendants to refrain from further engaging in adverse employment actions.

38. Plaintiffs hereby request that defendants be required to jointly or severally compensate for damages suffered in relation to the violation of their Fifth and Fourteenth Amendment rights. Plaintiffs' value their damages at \$1,000,000.00 for each one of the plaintiffs. All such damages are also actionable under Article II, Section 4 of the Constitution of the Commonwealth of Puerto Rico and Article 1802 of the Puerto Rico Civil Code. PR Laws Ann., Title 31, Section 5141.

39. Plaintiffs also request that the defendants be required to pay attorney's fees pursuant to 42 U.S.C. §1988.

SECOND CAUSE OF ACTION
(Fault or Negligence as per 31 L.P.R.A. Sec. 5141-5142)

40. Plaintiffs hereby reiterate and reaffirm the statements and allegations made in the preceding paragraphs number 1 to 39.

41. Defendants actively participated in concert amongst themselves in a chain of events which culminated with the termination of employment of plaintiffs without cause and with full knowledge that such actions would result in inflicting grave personal injury upon the plaintiffs.

42. Defendants' negligent acts and omissions have caused the Plaintiffs emotional damages valued at no less than \$1,000,000.00 for each plaintiff, actionable under Article 1802 of the Puerto Rico Civil Code. PR Laws Ann., Title 31, Section 5141.

Plaintiffs reserve the right to amend the captioned verified complaint if any substantial issues come to light during these proceedings.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request the following relief, jointly and severally against all Defendants:

1. That this Court determine and issue a declaratory judgment proclaiming that the actions by all defendants were in violation of the Constitution and laws of the United States of America and Puerto Rico;

2. That this Court Grants Equitable relief in the form of an Immediate Temporary Restraining Order or a preliminary or permanent injunction with or

without hearing, against the defendants, ordering them to immediately reinstate Plaintiffs to their position as ALJ, with all corresponding privileges and benefits, including the payment of back pay to cover all salaries and benefits from the termination date to the date in which they are reinstated, and ordering Defendants to refrain from further engaging in adverse employment actions.

3. That this Court declares compensatory and punitive damages in excess of \$1,000,000.00, per each of the plaintiffs, as per the harm, suffering and emotional damages occasioned to each of the plaintiffs, due to the serious nature of the violations alleged herein;

4. The imposition of attorneys fees, costs and litigation expenses incurred in connection to this action pursuant to, 42 U.S.C. § 1988, as well as other applicable statutes, as set forth above;

5. That the Court retain jurisdiction over this action in order to ensure compliance with any order or decree issued by this Tribunal; and, that it issue any such other and further relief as it may deem just and proper under the circumstances.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, on this, the 27th day of August, 2014.

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VERIFIED STATEMENT

Appear, Ileana Inserni Colón, Jovita Jimenez Marcial, Carlos Limardo Ortíz, Giselle M. Ruiz Soler, Beatriz A. Torres Torres, Margarita R. Medina Sotomayor, and José J. Vargas Santiago. All of legal age, attorneys by trade, who appear herein to verify and attest to the validity and truthfulness of the allegations set forth in the instant Complaint for Declaratory and Injunctive Relief, which has been drafted according to their instructions. All proclaiming that they have read the enclosed papers and can declare that the averments depict the true facts and events as they have transpired in the case.

In light of our attestation as to the averments which comprise the attached pleadings, we hereby authorize and agree to the filing of the aforementioned Verified Complaint to seek redress of our proprietary rights under federal law and state law.

On this, the 27th day of August, 2014, in San Juan, Puerto Rico.

s/Ileana Inserni Colón
s/Jovita Jimenez Marcial
s/Carlos Limardo Ortíz
s/Giselle Ruiz Soler
s/Beatriz Torres Torres
s/Margarita R. Medina Sotomayor
s/José J. Vargas Santiago