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

SANDRA RODRÍGUEZ-COTTO; RAFELLI GONZÁLEZ-COTTO *Plaintiffs,* v. **WANDA VÁZQUEZ-GARCED**, Governor of Puerto Rico; **INÉS DEL CARMEN CARRAU-MARTÍNEZ**, Interim Secretary of Justice of Puerto Rico; **PEDRO JANER**, Secretary of the Department of Public Safety of Puerto Rico; **HENRY ESCALERA**, Commissioner of the Puerto Rico Police Bureau, all in their official capacities *Defendants*.	**Civil No.** 20-01235 (PAD) **RE:** Preliminary and Permanent Injunction

SURREPLY TO PLAINTIFFS' "REPLY MEMORANDUM IN SUPPORT OF PLAINTIFFS' RENEWED MOTION FOR PRELIMINARY INJUNCTION"

TO THE HONORABLE COURT:

COME NOW, co-defendants **Wanda Vázquez-Garced**, Governor of Puerto Rico; **Inés del Carmen Carrau-Martínez**, Interim Secretary of Justice of Puerto Rico; **Pedro Janer**, Secretary of the Department of Public Safety of Puerto Rico; and, **Henry Escalera**, Commissioner of the Puerto Rico Police Department, all in their official capacities, without waiving any right or defense arising from Title III of *Puerto Rico Oversight, Management and Economic Stability Act* ("PROMESA"), 48 U.S.C. §§2101 *et seq*., and the Commonwealth's Petition under said Title or under this case and without submitting to the Court's jurisdiction, and through the undersigned attorney, very respectfully **STATE** and **PRAY** as follows:

I. INTRODUCTION

On August 28, 2020, Plaintiffs filed a *Reply Memorandum in Support of Plaintiffs' Renewed Motion for Preliminary Injunction* (Docket No. 70) in which they continue to rehash arguments that have been briefed *ad nauseum* in the instant case. However, as this Court can attest, Plaintiffs have finally come to the realization that they cannot rely on unknown and mysterious sources in order to pass the standing threshold to challenge the constitutionality of a valid statute. *See* Docket No. 70 (stating that parties agree in that "standing to challenge Section 6.14(a) of the Puerto Rico Department of Public Safety Act depends on the existence of a credible threat of prosecution"). That admission by Plaintiffs should dissipate any doubts that this Court had regarding the standing inquiry, since they have clearly abandoned the "chill of sources" theory. *See* Docket No. 33 at 2 ("if the sources (willing speakers, plaintiffs being willing listeners), have been frozen, that would be more than merely subjective fear"). Thus, with Plaintiff's relinquishment of the chill of their alleged sources, this case is back to square one: Plaintiffs' inability to establish that there is a credible threat of prosecution against them pursuant to Article 6.14(a) of the *Puerto Rico Public Safety Act*, Act No. 20-2017, as amended by Act No. 66-2020, in order to establish Article III standing.

This Court has been very unambiguous regarding Plaintiffs' standing inquiry by stating the following: "the court explained that it has reservations as to whether plaintiffs have standing to maintain this action, as at this point, the court does not see more than a hypothetical harm." Docket No. 28 at 1. In that sense, Plaintiffs' multiple briefs have been devoid of new factual settings or case law that buttresses their standing argument based in a credible threat of prosecution. In fact, Plaintiffs continue to rely on cases that this Court has distinguished and suggested that are inapposite to the instant one. *See* Docket No. 33 at 2 ("the

stipulations in this case do not reflect similar factual settings [to those in the cases cited by Plaintiffs]."). Therefore, since Plaintiffs have not been able to either find applicable case law or identify a factual setting to satisfy the standing threshold—even if low—this Court must deny the request for preliminary injunction as well as dismiss the instant case.

While Defendants contend that Plaintiffs' arguments in their *Reply* brief have been rebutted multiple times and they have failed to bring new substantive arguments to support that they have standing, there are certain matters that must be addressed. First, Defendants will address the fact that Plaintiffs have failed to establish in their briefs any real or credible threat of prosecution under Article 6.14(a) to surpass the standing barrier, even if lower for First Amendment constitutional challenges. Second, Defendants will argue that Plaintiffs cannot continue to base their claims on the prosecution of an individual (a pastor) that is not before this Court and that was prosecuted under a defunct version of Article 6.14(a). Third, Defendants will clarify some of the holdings in the cases cited by Plaintiffs and will unambiguously distinguish other cases in which they heavily rely to support their conclusions. Finally, Defendants will establish that, even if Plaintiffs had standing—which they do not—they would not be able to succeed on the merits of a facial challenge of Article 6.14(a).

Therefore, based on the ensuing grounds, Defendants respectfully reiterate that this Court must **DENY** Plaintiffs' preliminary injunction request and **DISMISS** the instant case for lack of jurisdiction since they do not have Article III standing.

II. DISCUSSION

A. Plaintiffs 'claims are devoid of a credible threat of prosecution under Article 6.14(a) of Act No. 20-2017 that would confer them Article III standing.

Since the beginning of this case, Plaintiffs have attempted to argue that there is a real and credible threat of prosecution against them but have been uncapable of establishing any factual setting that would even remotely support that conclusion. In *Mangual v. Rotger-Sabat*, 317 F.3d 45 (1st Cir. 2003), insistently cited by Plaintiffs, the United States Court of Appeals for the First Circuit ("First Circuit") took into consideration multiple elements surrounding the plaintiff in that case to determine that there was a real threat, as well as a credible fear of prosecution against him. Specifically, the First Circuit weighted that: (1) a journalist that was reporting on the same topics that Mr. Mangual was prosecuted under the challenged statute; (2) Mr. Mangual had been threatened by a police officer that would investigate him; (3) the Department of Justice received a complaint against Mr. Mangual due to his publications on police corruption; and, (4) Mr. Mangual had stated that he would continue to report on police corruption regardless of the prosecution of another journalist. *See Mangual*, 317 F.3d at 52-54. In that sense, in order to determine if there was a real or credible threat of prosecution the First Circuit considered various factual occurrences that, if seen as a whole, were sufficient to reasonably infer that Mr. Mangual could be charged and prosecuted under the statute that he was challenging.

However, there is not a single factual occurrence in the instant case that could be reasonably construed as to support a real or credible threat of prosecution against Plaintiffs pursuant to Article 6.14(a). In fact, opposite to the factual setting in *Mangual*, here Plaintiffs have constantly relied on unconnected events that have nothing to do with their practice of journalism in order to support the alleged threat of prosecution that they supposedly face.

Specifically, Plaintiffs have essentially argued that they have a real threat of being prosecuted pursuant to Article 6.14(a) because: (1) in 1999 a journalist was prosecuted in Puerto Rico pursuant to an unrelated defunct defamation statute for reporting on police corruption (Docket No. 47 at 10, ¶42); and, (2) an individual (a pastor) who is not a journalist was prosecuted pursuant to a **defunct version** of Article 6.14(a) of Act No. 20-2017 (Docket No. 70 at 8). This Court can attest that none of the factual settings in which Plaintiffs rely support the conclusion that a real or credible threat of prosecution exists.

First, an event that happened over 20 years ago pursuant to an unrelated defamation statute has no relevance whatsoever to the instant case and cannot be reasonably construed as to support a credible or real threat of prosecution against Plaintiffs. The Plaintiffs cannot simply travel 20 years back in time to obtain a real or credible threat of prosecution based on an unrelated occurrence that happened pursuant a defunct defamation statute and transfer it to the present in order to obtain standing. Second, Plaintiffs cannot continue to rely on the prosecution of a pastor pursuant to a prior version of Article 6.14(a), which is no longer valid, in order to manufacture standing in the instant case. *See Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 416 (2013) ("[Plaintiffs] cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending."). Therefore, Plaintiffs' subjective and irrational fear of prosecution, which has no reasonable factual basis, is insufficient to surpass the Article III barrier, even if lowered in First Amendment claims. *See Mangual*, 317 F.3d at 57 ("A plaintiff's subjective and irrational fear of prosecution is not enough to confer standing under Article III for either type of injury."); *see also Clapper*, 568 U.S. at 416 ("[Plaintiffs] cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly

impending."); *Laird v. Tatum*, 408 U.S. 1, 13–14, (1972) ("[A]llegations of a subjective 'chill' are not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm.").

Also, Plaintiffs argue that they satisfy all three standing requirements identified in *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159 (2014) ("*SBA List*"): (1) an intention to engage in a course of conduct arguably affected with a constitutional interest, but (2) proscribed by a statute, and (3) there exists a credible threat of prosecution thereunder.[1] *See* Docket No. 70 at 5. However, this argument has already been addressed by the Court when it stated that "[t]here must be a credible threat of prosecution, which existed in [*Susan B.*] *Anthony List v. Driehaus*, 573 U.S. 149 (2014), where a complaint was filed against plaintiff [...]. But the stipulations in this case do not reflect similar factual settings." Docket No. 33 at 3. The Court's conclusion is still current as the factual settings have not changed since it made that expression. Thus, Defendants argue that, even if the requirements in *SBA List* were applicable to the instant case, Plaintiffs will never be able to satisfy them under the current factual settings.

The challenged provision essentially proscribes giving a warning or false alarm, knowing that the information is false, in relation to the imminent occurrence of a catastrophe in Puerto Rico during a state of emergency or when as a result of its conduct it puts the life, health, bodily integrity or safety of one or more persons at imminent risk, or it endangers public or private property.[2] Plainly, among the essential elements to the crime, the statute requires

[1] The factual setting in *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159 (2014), like *Mangual*, is clearly distinguishable from the instant case and was thoroughly discussed on Defendants' *Surreply to Reply Memorandum in Support of Plaintiffs' Motion for Preliminary Injunction* (Docket No. 19 at 11-14), which is adopted by reference.

[2] The challenged provision proscribes the following conduct:

that a person gives a warning or false alarm during a declared state of emergency **knowing** that the information is false. Plaintiffs, nevertheless, have stipulated that they have no intention of engaging in the statute's proscribed conduct since they: (1) "do not intend to transmit false statements in their journalistic or op-ed articles" (Docket No. 55-1 at 5, ¶24); (2) make "every effort to confirm the accuracy of her reporting and commentary, in accordance with standard journalistic practices" (Docket No. 55-1 at 6, ¶30); and, (3) "consistently [follow] standard journalistic practices to factcheck [their] news stories" (Docket No. 55-1 at 7). Therefore, factual stipulations in the instant case clearly establish that Plaintiffs do not meet the first, second or third prong in the *SBA List* standing test, since (1) the statute's plain language does not proscribe any reporting on emergency conditions or any conduct that Plaintiffs' have engaged in; and, (2) they do not have an intention to engage in the course of conduct proscribed in the challenged provision, thus (3) absent a credible threat of prosecution. *See Mangual*, 317 F.3d at 56 ("[a] plaintiff's subjective and irrational fear of prosecution is not enough to confer standing under Article III").

Plaintiffs further posit in their *Reply* that "Section 6.14(a) prohibits knowingly false statements about the same topics on which Plaintiffs routinely report—namely, emergency conditions in Puerto Rico." Docket No. 70 at 5. That statement is inaccurate and misleading

> [Giving] a warning or false alarm, knowing that the information is false, in relation to the imminent occurrence of a catastrophe in Puerto Rico, or disseminates, publishes, transmits, transfers or circulates through any means of communication, including the media, social networks, or any other means of dissemination, publication or distribution of information, a notice or a false alarm, knowing that the information is false, when as a result of its conduct it puts the life, health, bodily integrity or safety of one or more persons at imminent risk, or endangers public or private property.

Article 6.14(a) of Act No. 20-2017, as amended by Act No. 66-2020 (*see* Docket No. 45-1 at 2 for the certified English translation).

because the challenged provision does not prohibit or even interferes with reporting in emergency conditions or even false statements. The challenged provision only precludes giving a warning or false alarm during a state of emergency, **knowing that the information is false (among other elements)**, which is a conduct that Plaintiffs will never engage in based on the factual stipulations of this case. *See* Docket No. 55-1 at 5, ¶24 (plaintiffs "do not intend to transmit false statements in their journalistic or op-ed articles."). Further, this conclusion is supported by Plaintiffs' own theory that an "actual malice" requirement makes the challenged provision constitutional. Docket No. 16 at 3. In that sense, by requiring an element of knowledge that the false alarm or warning is indeed false, the statute complies with the actual malice requirement that Plaintiffs argued for in their initial briefs but have abandoned since the amendment of Article 6.14(a) was enacted. *See* Docket No. 16 at 3 ("If an actual malice requirement is essential for criminal defamation laws, despite the limited First Amendment protection for defamation, the requirement must also be essential to criminal restrictions on fully protected speech about matters of public concern."). Consequently, it cannot be reasonably argued that from the plain language of Article 6.14(a), Plaintiffs' publication of journalistic articles regarding emergency conditions, even if containing false information, triggers the applicability of the same. *See* Docket No. 55-1 at 5, ¶24 (plaintiffs "do not intend to transmit false statements in their journalistic or op-ed articles.").

B. Plaintiffs cannot continue to base their case on the prosecution of a third party under a defunct version of Article 6.14(a).

The lack of factual settings supporting a reasonable belief that Plaintiffs face a credible threat of prosecution has made them solely rely on the prosecution of an individual (a pastor) not before this Court under a defunct version of Article 6.14(a). As this Court has knowledge, Article 6.14(a) was substantially amended by Act No. 66-2020. *See* Docket No. 55-1 at 5 (the

parties stipulated that "[o]n July 13, 2020, Act No. 66-2020 was enacted, substantially amending Section(a) and repealing Section (f) of Act No. 20-2017."). In that sense, the prosecution of an individual under a different law is immaterial and irrelevant to Plaintiffs' case, since they cannot credibly fear to be prosecuted—in the same way as that individual—because the criminal law that was enforced then is no longer valid. Further, Plaintiffs cannot reasonably rely on the prosecution of an individual that was not a journalist and that did not engage in the same activities as them in order to establish their own standing. *See*, i.e., *Mangual*, 317 F.3d 45 (where the Court heavily weighted the prosecution of **another journalist** as part of the analysis to determine if the plaintiff faced a credible threat of prosecution). Thus, this Court must disregard any attempt by Plaintiffs to establish standing with the mere allegation of an indictment against a third-party individual pursuant a defunct version of the challenged provision. *See Younger v. Harris*, 401 U.S. 37 (1971) (holding that plaintiffs cannot obtain standing to challenge the constitutionality of a statute by merely relying on the prosecution of a third-party).

C. Plaintiffs mislead the Court by providing inaccurate interpretations of diverse cases to support their arguments.

In their *Reply* brief, Plaintiffs cite numerous cases to support their conclusions, but the interpretations provided by them must be clarified by Defendants. First, Plaintiffs attempted to establish that since the challenge provision does not contain the words "with intent" is devoid of a specific intent requirement. Docket No. 70 at 10. In support of their conclusion, Plaintiffs cited *Boos v. Barry*, 485 U.S. 312, 330 (1988), to address that the Court cannot adopt a narrow construction of a state statute unless such a construction is reasonable and readily apparent. Docket No. 70 at 10-11. Plaintiffs conclusion is erred and the cited case does not support their claim. The mere fact that the challenged provision does not contain the word

intent does not mean that a specific intention is not required to incur in the proscribed conduct. For instance, the present statute requires the specific intent of **knowingly** disseminate false alarms during declared states of emergency. There, the specific intent is to knowingly incur in the conduct that is prohibited.

As to *Boos v. Barry*, Plaintiffs cited the case out of context. The parenthetical quotation provided in Plaintiffs' *Reply* brief corresponds to the Supreme Court's explanation of the arguments set forth by the petitioners in that case. Specifically, the quotation in context reads:

> Petitioners protest that the Court of Appeals was without authority to narrow the statute. According to petitioners, § 22–1115 must be considered to be state legislation, which brings it within the sweep of prior decisions indicating that federal courts are without power to adopt a narrowing construction of a state statute unless such a construction is reasonable and readily apparent.

Boos, 485 U.S. at 330.

As this Court can corroborate, *Boos v. Barry* does hold that federal courts can adopt a narrow construction of a state statute, if such a construction is reasonable and readily apparent. In fact, said case reiterated that "[i]t is well settled that federal courts have the power to adopt narrowing constructions of federal legislation" and that said courts "have the duty to avoid constitutional difficulties by doing so if such a construction is fairly possible." *Id*. at 330–31 (1988). Also, in *Boos v. Barry*, the Supreme Court saw "no barrier to the Court of Appeals' adoption of a narrowing construction" and held that "[s]o narrowed, the [challenged statute] withstands First Amendment overbreadth scrutiny." *Id* at 331. *Boos v. Barry* is inapposite and misquoted by Plaintiffs since the controversy addressed was if a federal court could narrow constructions of federal legislation not of state legislation. Moreover, Defendants have never requested that the challenged provision be narrowly interpreted, but simply that it is constitutional on its face.

On the other hand, Plaintiffs heavily rely on *United States v. Alvarez*, 567 U.S. 709 (2012), to support their argument that the challenged provision is unconstitutional because it proscribes the dissemination of false statements. However, the factual settings of that case were very different and the scope of the opinion recognized that some false speech can be proscribed. First, *Álvarez* is not a case that was filed as a facial challenge to a statute but an as applied challenge of the law. That distinction is extremely important since the factual setting of that case did not require a standing inquiry because Mr. Álvarez was actually prosecuted under the challenged statute, which is not the factual situation in the instant case.

Second, *Álvarez* challenged the constitutionality of the Stolen Valor Act—which was a federal statute that precluded false claims to have been awarded a government medal. In said case, the Court ruled that false statements **generally** are not a new category of unprotected speech exempt from the normal prohibition on content-based restriction, the factual setting of said case is very different from the one at bar. *Alvarez*, 567 U.S. at 722. However, the Supreme Court recognized that where false claims are made to effect a fraud or secure moneys or other valuable considerations, say offers of employment, it is well established that the Government may restrict speech without affronting the First Amendment. *Id*. at 723.

In the instant case, *arguendo*, if the challenged provision was to be considered a content based restriction, it is clear that—different from the Stolen Valor Act—it is narrowly tailored as it only proscribes: (1) the dissemination of a false alarm; (2) during a declared state of emergency; (3) in relation to the imminent occurrence of a catastrophe in Puerto Rico (4) with knowledge that the information provided is false; or (1) dissemination through any means of communication; (2) of a false alarm; (3) with knowledge that the information is false; and (4) that as a result of the conduct the life, health, bodily integrity or safety of one or more persons

is put at imminent risk, or it endangers public or private property. Further, the statute advances a compelling government interest which is to protect its citizens' life and wellbeing from impending dangers that would be prompted from the intentional dissemination of a false alarm during a declared state of emergency, such as a hurricane or a pandemic. Certainly, the challenged provision is very distinguishable from the Stolen Valor Act which was a statute that was not narrowly tailored by Congress. Also, the challenged provision in the instant case easily falls within the exemption to the general rule that false speech is constitutionally protected, as it furthers the valuable consideration of avoiding chaos due to an intentional false alarm during an already dangerous situation that triggered a declaration of a state of emergency. Thus, it is forceful to conclude that *Álvarez* does not support Plaintiffs' conclusions and that the comparison between the Stolen Valor Act and the challenged provision is not appropriate.

D. Plaintiffs cannot sustain a constitutional facial challenge to Article 6.14(a) on hypothetical scenarios and possibilities that are certainly not impending.

The Supreme Court has established that on facial challenges to the constitutionality of a law, courts must be careful not to go beyond statute's facial requirements and speculate about hypothetical or imaginary cases. *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 450 (2008); *United States v. Raines*, 362 U.S. 17, 22 (1960) ("The delicate power of pronouncing a [legislative act] unconstitutional is not to be exercised with reference to hypothetical cases thus imagined"). Precisely, the Supreme Court has stated that facial challenges to constitutionality of law are disfavored for several reasons, including that such challenges often rest on speculation, and that they also run contrary to fundamental principle of judicial restraint, under which courts should neither anticipate question of constitutional law in advance of necessity of deciding it nor formulate rule of constitutional law broader than is required by precise facts to which it is to be applied. *Washington State*, 552 U.S. at 450-51.

Here, Plaintiffs have filed a case that reflects the worries that the Supreme Court had regarding facial challenges.

First, Plaintiffs have been unable to establish a concrete factual situation in which **they** could be prosecuted for publishing journalistic articles pursuant to the challenged provision. Instead, Plaintiffs have fully relied on multiple **hypothetical scenarios** that they allege could happen if the challenged provision is enforced. For example, Plaintiffs assert that the challenged provision could be enforced to criminalize "predictions of an impending alien invasion or divine retribution, regardless of whether they are even plausibly likely to cause a public panic" (Docket No. 70 at 3 & 13) or that it "will **presumptively** chill all sorts of protected expression" (Docket No. 70 at 8). These arguments are a prime example of what the Supreme Court warned courts that should not be entertained while analyzing a facial challenge of a statute on First Amendment grounds. Therefore, Plaintiffs' inability to rely on their own factual situation and need to set forth hypothetical and rather outlandish circumstances that are certainly not impending goes to show that they are unlikely to succeed on the merits of their facial challenge to Article 6.14(a). *See Washington State Grange*, 552 U.S. at 449-50 ("In determining whether a law is facially invalid, we must be careful not to go beyond the statute's facial requirements and speculate about "hypothetical" or "imaginary" cases.").

Second, Plaintiffs are attempting to use this case to substitute the wisdom of the Commonwealth's Legislative Assembly in adopting a statutory language. Specifically, Plaintiffs argue that "the Federal Communications Commission's broadcast hoaxes rule, 47 C.F.R. § 73.1217, is a less restrictive alternative to Section 6.14(a)" because it requiress "the government to demonstrate simultaneously: that the offending speech concerned an impending crime or catastrophe; that it was certainly foreseeable to the defendant that the speech would cause

immediate and significant public harm; and that public harm actually resulted." Docket No. 70 at 3. Additionally, Plaintiffs request that Defendants explain "why the broadcast hoaxes rule would not suffice to protect its asserted interest in public safety." *Id*. First of all, Plaintiffs cannot use this case to advance the language that they would prefer in the statute or as a platform to discuss the type of statute that would please them the most. If Plaintiffs had suggestions to the Commonwealth's Legislative Assembly regarding the language that the challenged provision could have mirrored, they should have participated in the legislative process or lobby members of the House and Senate to advance their position.

In that sense, Defendants respectfully decline Plaintiffs' improper invitation to engage in a political discussion as to why the Commonwealth's Legislative Assembly decided to approve certain language in a statute over another. Simply, that discussion has no place in a federal court and is immaterial to the case at bar since the language that **was adopted** is the only relevant issue. The decision of what language should be adopted in a Commonwealth statute is an exclusive power of the Legislative Assembly that was delegated by the People of Puerto Rico in their Constitution. Thus, Defendants contend that the Court should reject and disregard Plaintiffs' uncalled invitation to second guess the Commonwealth lawmakers' decision of adopting a certain language for a statute since that would unequivocally require entertaining an impermissible political question. *See Rucho v. Common Cause*, 139 S. Ct. 2484, 2494 (2019) (holding that although it is the province and duty of the judicial department to say what the law is, sometimes the law is that the judicial department has no business entertaining the claim of unlawfulness, because the question is entrusted to one of the political branches or involves no judicially enforceable rights; in such case, the claim is said to present a "political

question" and to be nonjusticiable, that is, outside the courts' competence and therefore beyond the courts' jurisdiction).

Plaintiffs have exhausted all their possible arguments and theories to manufacture standing and maintain a facial challenge to Article 6.14(a), but have failed to succeed. Plaintiffs have not been able to establish factual situations in which they would face a credible threat of prosecution under the challenged provision for reporting on emergency situations. Moreover, Plaintiffs have simply relied on hypothetical situations to support a baseless claim that the challenged provision has "blanket restriction" on all warnings and false alarms. *See Washington State Grange*, 552 U.S. at 449-50 ("In determining whether a law is facially invalid, [the courts] must be careful not to go beyond the statute's facial requirements and speculate about "hypothetical" or "imaginary" cases."). Simply put, Plaintiffs have been unable to demonstrate that, under the real factual settings of the instant case—not on hypothetical factual settings—the challenged provision is unconstitutional from its face. That is, because (1) the challenge provision's plain language in no way precludes reporting on emergency conditions; and, (2) the plain language of the challenged provision cannot be reasonably construed as to criminalize the publishing of journalistic reports regarding any matter occurred during a declared state of emergency. Therefore, it is evident that Plaintiffs will never be able to demonstrate that the challenged provision's application is unconstitutional, judged in relation to its plainly legitimate sweep (precluding the dissemination of false warnings or false alarms during declared states of emergencies if it is known that the information is false, as well as it wreaks havoc among the population). *See Washington State Grange*, 552 U.S. at 449-50 (holding that in First Amendment context, law may be overturned as impermissibly overbroad, where substantial number of its applications are unconstitutional, judged in relation to statute's

plainly legitimate sweep; **however, a court generally does not apply strong medicine of overbreadth analysis where parties fail to describe instances of arguable overbreadth of the contested law**); *see also Kovacs v. Cooper*, 336 U.S. 77, 85–86 (1949) (stating that even the fundamental rights of the Bill of Rights are not absolute and validating the remark delivered by Mr. Justice Holmes in *Schenck v. United States*, 249 U.S. 47, 52 (1919), expressing that: "The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. It does not even protect a man from an injunction against uttering words that may have all the effect of force.").

III. CONCLUSION

In the present motion, Defendants were able to establish that: (1) Plaintiffs failed to demonstrate that they have a real or credible threat of being prosecuted under Article 6.14(a), which deprives them from standing to sustain the instant suit; (2) Plaintiffs cannot continue to base their claims on the prosecution of an individual (a pastor) that is not before this Court and that was prosecuted under a defunct version of Article 6.14(a); (3) the holdings in the cases cited by Plaintiffs were misleading and other cases in which they heavily rely to support their conclusions are clearly distinguishable; and (4) even if Plaintiffs had standing—which they do not—they are not be able to succeed in the merits of a constitutional facial challenge of Article 6.14(a). Further, now that Plaintiffs have relinquished their theory of an alleged chill of unknown journalistic sources in order to obtain standing, the Court should bear no doubts in that none of the factual settings of this case are sufficient to confer them Article III standing. Therefore, Defendants respectfully request that Plaintiffs' request for a preliminary injunction be **DENY** and the instant case be **DISMISSED** for failure to establish Article III standing.

WHEREFORE, the Defendants pray that this Honorable Court take notice of the present motion and consequently **DENY** Plaintiffs' request for preliminary injunction and **DISMISS** the instant case for failure to establish Article III standing.

I HEREBY CERTIFY that the undersigned attorney electronically filed the foregoing with the Clerk of the Court, which will send notification of such filing to the parties subscribing to the CM/ECF System.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 9th day of September 2020.

INÉS DEL CARMEN CARRAU-MARTÍNEZ
Interim Secretary of Justice

WANDYMAR BURGOS-VARGAS
Deputy Secretary in Charge of Litigation

SUSANA I. PEÑAGARÍCANO-BROWN
Director of Legal Affairs
Federal Litigation and Bankruptcy Division

DEPARTMENT OF JUSTICE OF PUERTO RICO
Federal Litigation Division
PO Box 9020192
San Juan, PR 00902-0192

/s/ Juan C. Ramírez-Ortiz
JUAN C. RAMÍREZ-ORTIZ
USDC-PR No. 306507
Tel. (787)721-2900, ext. 1421
juramirez@justicia.pr.gov

/s/Joel Torres Ortiz
JOEL TORRES ORTIZ
USDC-PR No. 302311
Tel. (787) 721-2900, ext. 1421 & 1412
joeltorres@justicia.pr.gov