

No. 23-1626

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT**

SANDRA RODRÍGUEZ-COTTO; RAFELLI GONZÁLEZ-COTTO,

Plaintiffs - Appellees,

v.

JENNIFFER A. GONZÁLEZ-COLÓN, Governor of Puerto Rico; LOURDES
LYNNETTE GOMEZ TORRES, Secretary of Department of Justice; ARTURO
GARFFER, Secretary of Puerto Rico Department of Public Safety; JOSEPH
GONZÁLEZ FALCÓN, Commissioner of the Puerto Rico Police Bureau,

Defendants - Appellants.

On Appeal from the United States District Court for the District of Puerto Rico
Civil No. 20-1235, Hon. Pedro A. Delgado-Hernández, U.S. District Judge

**BRIEF OF AMICI CURIAE ELECTRONIC FRONTIER FOUNDATION,
FOUNDATION FOR INDIVIDUAL RIGHTS AND EXPRESSION, FREE
PRESS, FREEDOM OF THE PRESS FOUNDATION, AND PEN
AMERICAN CENTER, INC. IN SUPPORT OF PLAINTIFFS-APPELLEES**

Clare R. Norins, No. 1194890
FIRST AMENDMENT CLINIC*
University of Georgia School of Law
P.O. Box 388
Athens, Georgia 30603
(706) 542-1419
cnorins@uga.edu

Counsel block continued on next page

*Thank you to co-authors Ben
Privitera, Ellie Wilson-Wade, and
Christina Lee

Counsel for Amici Curiae

CORPORATE DISCLOSURE STATEMENT OF *AMICI CURIAE*

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Local Rule 29(a)(4)(A), *amici curiae*, by and through their undersigned counsel, hereby certify that:

The Electronic Frontier Foundation is a national, nonprofit organization that does not have a parent corporation and no publicly held corporation owns 10% or more of its stock.

The Foundation for Individual Rights and Expression is a nonprofit organization. It has no parent corporations, and no publicly held corporation owns 10% or more of its stock.

Free Press is a national, nonprofit organization that has no parent corporation and no publicly held corporation owns 10% of more of its stock.

Freedom of the Press Foundation is a not-for-profit association and has no parent corporations, subsidiaries, or affiliates. No publicly held corporation owns 10% or more of its stock.

PEN American Center, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

Dated: August 19, 2025

By: /s/ Clare R. Norins
Clare R. Norins
Counsel for Amici Curiae

TABLE OF CONTENTS

CORPORATE DISCLOSURE STATEMENT.....i

TABLE OF CONTENTS.....ii

TABLE OF AUTHORITIESiii

IDENTITY & INTERESTS OF AMICI CURIAE.....1

INTRODUCTION.....3

ARGUMENT.....5

 I. A “FALSE INFORMATION” LAW DURING TIMES OF CRISIS
 INVITES ABUSE.....5

 II. INTERNATIONAL EXAMPLES HIGHLIGHT HOW GOVERNMENTS
 USE “FALSE INFORMATION” LAWS TO CENSOR DISFAVORED
 VIEWS.....7

 III. THE GOVERNMENT HAS UNFETTERED DISCRETION TO
 SELECTIVELY ENFORCE SECTION 5.14(A) AGAINST
 DISFAVORED SPEAKERS.....14

 IV. SECTION 5.14(A) THREATENS THE DEMOCRATIC PROCESS BY
 CHILLING SPEECH AND IMPEDING THE FREE FLOW OF
 INFORMATION TO THE PUBLIC.....18

CONCLUSION.....22

CERTIFICATE OF COMPLIANCE.....23

CERTIFICATE OF SERVICE.....24

TABLE OF AUTHORITIES

Cases

<i>Associated Press v. Budowich</i> , No. 1:25-cv-00532 (D.D.C. Feb. 21, 2025).....	12
<i>Babbitt v. United Farm Workers Nat’l Union</i> , 442 U.S. 289 (1979)	5, 6
<i>Bd. of Educ. v. Pico</i> , 457 U.S. 853 (1982).....	19
<i>City of Lakewood v. Plain Dealer Publ’g Co.</i> , 486 U.S. 750 (1988)	14, 18
<i>Dombrowski v. Pfister</i> , 380 U.S. 479 (1965).....	18
<i>Fitts v. Kolb</i> , 779 F. Supp. 1502 (D.S.C. 1991).....	19
<i>Garrison v. Louisiana</i> , 379 U.S. 64 (1964)	20
<i>Grayned v. City of Rockford</i> , 408 U.S. 104 (1972)	14
<i>Grosjean v. Am. Press Co.</i> , 297 U.S. 233 (1936)	3, 4, 20, 21
<i>Hustler Mag., Inc. v. Falwell</i> , 485 U.S. 46 (1988)	19, 20
<i>Kolender v. Lawson</i> , 461 U.S. 352 (1983).....	16, 17
<i>Mangual v. Rotger-Sabat</i> , 317 F.3d 45 (1st Cir. 2003)	4, 13, 15
<i>Masson v. New Yorker Mag., Inc.</i> , 501 U.S. 496 (1991).....	15
<i>Mills v. Alabama</i> , 384 U.S. 214 (1966)	20
<i>Minneapolis Star & Trib. Co. v. Minn. Comm’r of Revenue</i> , 460 U.S. 575 (1983).....	20, 21
<i>N.H. Right to Life Pol. Action Comm. v. Gardner</i> , 99 F.3d 8 (1st Cir. 1996).....	19
<i>N.Y. Times Co. v. Sullivan</i> , 376 U.S. 254 (1964).....	20
<i>NAACP v. Button</i> , 371 U.S. 415 (1963).....	6

Rodríguez-Cotto v. Pierluisi-Urrutia, 668 F. Supp. 3d 77 (D.P.R. 2023) *passim*

Stanley v. Georgia, 394 U.S. 557 (1969)..... 3, 4, 19

Stromberg v. California, 283 U.S. 359 (1931)21

United States v. Alvarez, 567 U.S. 709 (2012) 7, 15, 16

United States v. Paz-Alvarez, 799 F.3d 12 (1st Cir. 2015).....16

Van Wagner Boston, LLC v. Davey, 770 F.3d 33 (1st Cir. 2014)18

Statutes

Protection from Online Falsehoods and Manipulation Act 2019,
pt. 2, § 7 & pt. 3, § 1510

Section 5.14(a) of Puerto Rico’s Department of Public Safety Act 66-2020.. *passim*

Other Authorities

Adel Sabri, COMM. TO PROTECT JOURNALISTS, (last visited Mar. 19, 2025).....8

Alsu Kurmasheva, RADIOFREEEUROPE RADIOLIBERTY11

Andrea Carson, FIGHTING FAKE NEWS: A STUDY OF ONLINE MISINFORMATION
REGULATION IN THE ASIA PACIFIC at 19 (La Trobe Univ. 2021).....10

Brian Stetler, *The White House bans the AP indefinitely over the use of ‘Gulf of Mexico,’* CNN (Feb. 14, 2025)12

Byron Tau, Seung Min Kim, and Chris Megerian,
The 911 Presidency: Trump flexes emergency powers in his second term,
THE ASSOCIATED PRESS (June 7, 2025).....5

Calvin Yang, *Pomfa Orders National Times Singapore to Correct Misleading Post*, THE STRAITS TIMES (May 27, 2020).....10

Daniel Funke & Daniela Flamini, *A Guide to Anti-Misinformation Actions Around the World*, POYNTER (last updated Aug. 13, 2019).....7

Egypt releases news editor after two years in pretrial detention, AL JAZEERA (July 28, 2020)8

Egypt Sentences Activist for ‘Spreading Fake News’, BBC (Sept. 29, 2018).....9

Egyptian Journalist Jailed on Fake News Charges Dies of Covid-19, THE ASSOCIATED PRESS (July 14, 2020).....8

George Sadek, *Egypt*, in L. LIBR. OF CONGRESS, INITIATIVE TO COUNTER FAKE NEWS IN SELECTED COUNTRIES, 25 (Apr. 2019).....8

George Sadek, *Female Journalists Referred to Criminal Court on Charges of Spreading False Information and Misusing Information Technology*, LIBR. OF CONG. (Mar. 27, 2023).....9

Hamza Hendawi, *Egypt Arrests Author, Publisher Over Book on Economy*, THE ASSOCIATED PRESS (Oct. 23, 2018).....9

Katie Robertson, *White House Bans Wall Street Journal from Press Pool on Trump’s Scotland Trip*, THE NEW YORK TIMES (July 21, 2025).....13

L. Blair Paulik, *The Case for Effective Risk Communication: Lessons from a Global Pandemic*, 16 INTEGRATED ENV’T ASSESSMENT AND MGMT. 552 (Jul. 9, 2020)6

Robert Greenall, *Russian-US journalist jailed for ‘false information’*, BBC (July 22, 2024)11

Samy Magdy, *Egypt Says It Fights Fake News, Critics See New Crackdown*, THE ASSOCIATED PRESS (Sept. 17, 2018)8

Social Media and News Fact Sheet, PEW RES. CTR. (Sept. 17, 2024).....21

THOMSON REUTERS FOUND. & COMM. TO PROTECT JOURNALISTS, UNDERSTANDING THE LAWS RELATING TO FAKE NEWS IN RUSSIA 2 (2022).....11

Regulations

47 C.F.R. § 73.1217 (2024)17

IDENTITY & INTERESTS OF *AMICI CURIAE*

Amici curiae write in support of Plaintiffs-Appellees to urge this Court to uphold the District Court’s permanent injunction of Section 5.14(a) of Puerto Rico’s Department of Public Safety, Law No. 20 as amended on July 29, 2020 (Section 5.14(a)). No party’s counsel authored any part of this brief. No party, their counsel, nor any other person contributed money to fund the preparation or filing of this brief. *Amici* file this brief pursuant to leave of the Court.

The **Electronic Frontier Foundation (EFF)** is a member-supported civil liberties organization that has worked for 35 years to protect free speech, privacy, and innovation in the digital world. With over 30,000 active donors, EFF represents the interests of technology users in court cases and broader policy debates surrounding the application of law to digital speech.

The **Foundation for Individual Rights and Expression (FIRE)** is a nonpartisan nonprofit that defends the rights of all Americans to free speech and free thought—the most essential qualities of liberty. Since 1999, FIRE has successfully defended the rights of individuals through public advocacy, strategic litigation, and participation as *amicus curiae* in cases that implicate expressive rights under the First Amendment. To guarantee the rights of speakers and audiences, FIRE regularly urges courts to reject government efforts to impose vague speech restrictions that would chill speech and, if enforced,

invite unconstitutional viewpoint discrimination. *See* Br. *Amici Curiae* FIRE Supp. Pet'rs, *et al.*, *Tiktok, Inc. v. Garland*, 145 S.Ct. 57 (2025); Br. *Amicus Curiae* FIRE Supp. Pls.-Appellants, *Doe v. Hopkinton Pub. Schs.*, 19 F.4th 493 (1st Cir. 2021).

Free Press is a non-partisan, nonprofit, nationwide media and technology advocacy organization. Since its founding in 2003, Free Press has sought to change the media to transform democracy in furtherance of a just society. It believes that positive social change and meaningful engagement in public life require equitable access to open channels of communication and journalism that holds leaders accountable. Free Press engages in litigation, policy advocacy, and administrative agency proceedings to protect civil rights, free expression, and equitable access to information and ideas. The organization is supported by over one million members who sign petitions, visit lawmakers, participate in protests, and mobilize other activists in their communities.

Freedom of the Press Foundation (FPF) is a nonprofit 501(c)(3) organization founded in 2012 with a mission to protect public interest journalism. FPF works to protect journalists and their sources by building secure communications tools, providing digital security trainings and open-source resources for journalists, and advocating for freedom of speech and of the press. FPF also manages the U.S. Press Freedom Tracker, a database of press freedom

violations in the United States. FPF regularly writes about and participates in legal proceedings to oppose legislation, laws, or court orders that violate the First Amendment and undermine press freedoms.

PEN American Center, Inc. (PEN America) is a nonprofit organization that represents and advocates for the interests of writers, both in the United States and abroad. PEN America is affiliated with more than 100 centers worldwide that comprise the PEN International network. Its membership includes more than 7,400 journalists, novelists, poets, essayists, and other members of the media. PEN America stands at the intersection of journalism, literature, and human rights to protect free expression and individual writers facing threats for their speech. PEN America supports the First Amendment and free expression rights of authors to produce works of national and local import and of readers to receive the authors' unique perspective unfettered by government censorship.

INTRODUCTION

Section 5.14(a) of Puerto Rico's Department of Public Safety Law No. 20 must be struck down as unconstitutional: It not only infringes on speech and press freedoms but also significantly limits the public's First Amendment right to know, undercutting the democratic process. *See Stanley v. Georgia*, 394 U.S. 557, 564 (1969) ("[I]t is now well established that the Constitution protects the right to

receive information and ideas”); *Grosjean v. Am. Press Co.*, 297 U.S. 233, 250 (1936) (“informed public opinion is the most potent of all restraints upon misgovernment”).

Section 5.14(a) is a content-based speech restriction that applies exclusively during times of state-declared emergencies or disasters. The law criminalizes the communication of knowingly “false” information, warnings, or alarms—in some cases without requiring any resulting harm—and in all cases by premising liability on vague terms that make it impossible for speakers to know what speech is off limits. The imprecision baked into Section 5.14(a) gives the Puerto Rican government unfettered discretion to label speech it disagrees with as “false” and to prosecute accordingly. Indeed, Puerto Rico has a documented history of criminally charging reporters with making false statements when their coverage exposes government corruption. *See Mangual v. Rotger-Sabat*, 317 F.3d 45, 52–54, 69 (1st Cir. 2003).

Countries like Egypt, Singapore, and Russia have used similar “false information” laws to suppress the speech of private citizens, political dissidents, and members of the press, all to the detriment of free expression. Puerto Rico is poised to do the same during periods of government-declared emergency or disaster. But untrammelled speech during such times is paramount to keeping people informed about rapidly developing situations and holding the government

accountable for its causal role or response. As the district court correctly observed, “[t]he watchdog function of speech is never more vital than during a large-scale crisis.” *Rodríguez-Cotto v. Pierluisi-Urrutia*, 668 F. Supp. 3d 77, 110 (D.P.R. 2023). *Amici* therefore urge this Court to affirm the permanent injunction of Section 5.14(a).

ARGUMENT

I. A “False Information” Law During Times of Crisis Invites Abuse.

Freedom of speech and freedom of the press are essential bedrocks of democracy. They assume heightened importance during large-scale crises triggering a government-declared state of emergency.¹ Yet it is exclusively during state-declared emergencies that Section 5.14(a) criminalizes the sharing of “false” information. Plainly stated, this law puts both citizens and journalists at risk of prosecution for factually informing their friends, family, and the broader public, and for providing critical commentary, in rapidly changing and stressful circumstances. *See Babbitt v. United Farm Workers Nat’l Union*, 442

¹ Speech and press freedoms are equally paramount when the government declares a state of emergency to justify its increased exertion of control. *See* Byron Tau, Seung Min Kim & Chris Megerian, *The 911 Presidency: Trump flexes emergency powers in his second term*, THE ASSOCIATED PRESS (June 7, 2025), <https://apnews.com/article/trump-emergency-powers-tariffs-immigration-5cbe386d8f2cc4a374a5d005e618d76a> (analysis showing that “30 of Trump’s 150 executive orders have cited some kind of emergency power or authority, a rate that far outpaces his recent predecessors”).

U.S. 289, 301 (1979) (“Although appellees do not plan to propagate untruths, they contend—as we have observed—that erroneous statement is inevitable in free debate.”) (internal quotations omitted); *NAACP v. Button*, 371 U.S. 415, 433 (1963) (noting that “First Amendment freedoms need breathing space to survive”).

During emergency situations, medical, scientific, safety, and public health information unfurls quickly and changes frequently. For instance, governments around the world struggled during the COVID-19 pandemic to discern and disseminate accurate information about the new virus as knowledge rapidly evolved about its causes, consequences, and means of prevention. *See Rodriguez-Cotto*, 668 F. Supp. 3d at 92 n.8.² Critical information develops rapidly in other crises, too, including tropical storms, wildfires, and reporting on armed conflict.

During these exigent or volatile times, there may be contradictory or incomplete facts known about the conditions and causes of a situation, or how governments and private entities are responding. Urgency to share information may supersede the ability to thoroughly fact-check. Section 5.14(a)’s applicability during state-declared emergencies or disasters therefore heightens the risk that the government will charge speakers of messages it dislikes with

² *See also* L. Blair Paulik, *The Case for Effective Risk Communication: Lessons from a Global Pandemic*, 16 INTEGRATED ENV’T ASSESSMENT AND MGMT. 552, 552 (July 9, 2020), <https://pmc.ncbi.nlm.nih.gov/articles/PMC7461320/>.

“knowingly” communicating “false” information, even if the speaker had good reason to believe the information was true at the time of dissemination, or if the information actually is true but the government, for expediency, denounces it as “false.” See *United States v. Alvarez*, 567 U.S. 709, 733 (2012) (Breyer, J., concurring) (“the threat of criminal prosecution for making a false statement can inhibit the speaker from making true statements”). Thus, the potential for government abuse of Section 5.14(a) during state-declared disasters, and the corresponding chill on speakers of all stripes, weigh in favor of enjoining the law, notwithstanding its “knowing” scienter. *Id.* at 736 (“risk of chilling . . . is not completely eliminated by *mens rea* requirements”).

II. International Examples Highlight How Governments Use “False Information” Laws to Censor Disfavored Views.

International examples of laws similar to Section 5.14(a) bolster the concern that it will be used to punish and suppress speech the Puerto Rican government disagrees with or dislikes. At least fifteen countries have enacted laws that criminalize “false” or “misleading” information, or “fake news,” often with devastating consequences for speech and press freedoms.³

For example, to combat allegedly false rumors spreading on social media,

³ See Daniel Funke & Daniela Flamini, *A Guide to Anti-Misinformation Actions Around the World*, POYNTER (last updated Aug. 13, 2019), <https://www.poynter.org/ifcn/anti-%20misinformation-actions/>.

the Egyptian Parliament in 2018 passed two new laws and amended an already-existing penal code provision to prohibit dissemination of “fake news,” false information, or other content deemed to threaten national security.⁴ The Egyptian government subsequently blocked or suspended five hundred websites for distributing “false information.”⁵ As part of this crackdown, the *Masr El-Arabiya* news website was fined for publishing a translation of a *New York Times* report that identified voting improprieties in the Egyptian presidential election and the website’s editor, Adel Sabri, was detained for over two years.⁶ Another Egyptian journalist died from COVID-19 while jailed on charges of broadcasting false news.⁷ And more recently, under the same legal framework, three journalists were charged with spreading false information based on publishing an investigative report that exposed financial misconduct by members of an Egyptian political

⁴See George Sadek, *Egypt*, in L. LIBR. OF CONGRESS, INITIATIVE TO COUNTER FAKE NEWS IN SELECTED COUNTRIES 25, 25–28 (Apr. 2019), <https://tile.loc.gov/storage-services/service/l1/lglrd/2019668145/2019668145.pdf> (detailing Egypt’s 2018 legislative enactments).

⁵ See Samy Magdy, *Egypt Says It Fights Fake News, Critics See New Crackdown*, THE ASSOCIATED PRESS (Sept. 17, 2018), <https://apnews.com/article/5b17cf57b4384f559a3035a167f8e211>.

⁶ See Sadek, *supra* note 4, at 25–26; Adel Sabri, COMM. TO PROTECT JOURNALISTS, <https://cpj.org/data/people/adel-sabri/> (last visited Mar. 19, 2025); *Egypt releases news editor after two years in pretrial detention*, AL JAZEERA (July 28, 2020), <https://www.aljazeera.com/news/2020/7/28/egypt-releases-news-editor-after-two-years-in-pretrial-detention>.

⁷ See *Egyptian Journalist Jailed on Fake News Charges Dies of Covid-19*, THE ASSOCIATED PRESS (July 14, 2020), <https://apnews.com/article/1eebf40fa800c602a9d123522b7c54d>.

party.⁸

Egyptian authorities have also used the country’s “false information” laws to target non-journalist dissidents and scholars. A human rights activist was fined and sentenced to two years in prison after criticizing the government’s poor handling of sexual assault throughout the country, including detailing her own account as a victim.⁹ And a prize-winning economist, along with the publisher of a book challenging the Egyptian president’s economic policies, were both arrested on accusations of spreading “fake news”—charges that carry up to three years in prison.¹⁰ In sum, Egypt’s repeated use of “false information” laws to retaliate against speakers whose messages the government disfavors forecasts the First Amendment danger presented by Puerto Rico’s Section 5.14(a).

Singapore provides another harbinger of censorship to come under Puerto Rico’s Section 5.14(a). In 2019, Singapore passed the Protection from Online Falsehoods and Manipulation Act (POFMA). Under this law, when the

⁸ See George Sadek, *Female Journalists Referred to Criminal Court on Charges of Spreading False Information and Misusing Information Technology*, LIBR. OF CONG. (Mar. 27, 2023), <https://www.loc.gov/item/global-legal-monitor/2023-03-26/egypt-female-journalists-referred-to-criminal-court-on-charges-of-spreading-false-information-and-misusing-information-technology>.

⁹ See *Egypt Sentences Activist for ‘Spreading Fake News’*, BBC (Sept. 29, 2018), <https://www.bbc.com/news/world-middle-east-45691770>.

¹⁰ See Hamza Hendawi, *Egypt Arrests Author, Publisher Over Book on Economy*, THE ASSOCIATED PRESS (Oct. 23, 2018), <https://apnews.com/de0495a5cef14799b12402b2f1802e50>.

government declares information published in Singapore to be “false or misleading” and “against the public interest,” the publisher can be required to either apply a correction notice or delete the material, upon penalty of a fine or imprisonment.¹¹ The government issued 31 POFMA orders implicating Australia-based Alex Tan who operated social media pages like *The Real Singapore* and *National Times Singapore* and was often critical of the Singaporean government, including about its passage of POFMA.¹² Under these POFMA orders, Tan’s Facebook pages were required to notify visitors of his “history of communicating falsehoods,” and Tan himself was barred from receiving financial benefit from the pages.¹³ As a result, Tan’s Facebook followers shrank from nearly 60,000 to only about 3,000, reducing his reach and all but silencing his voice.¹⁴

Turning to Russia, in March 2022—a month after the former Soviet Union

¹¹ See Protection from Online Falsehoods and Manipulation Act 2019, pt. 2, § 7 & pt. 3, § 15, <https://sso.agc.gov.sg/Act/POFMA2019?WholeDoc=1> (last visited Apr. 26, 2025).

¹² See Andrea Carson, FIGHTING FAKE NEWS: A STUDY OF ONLINE MISINFORMATION REGULATION IN THE ASIA PACIFIC 19 (La Trobe Univ. 2021), https://opal.latrobe.edu.au/articles/report/Fighting_Fake_News_A_Study_of_Online_Misinformation_Regulation_in_the_Asia_Pacific/14038340?file=26480915; Calvin Yang, *Pomfa Orders National Times Singapore to Correct Misleading Post*, THE STRAITS TIMES (May 27, 2020), <https://www.straitstimes.com/singapore/pofma-office-orders-national-times-singapore-to-correct-misleading-facebook-post>.

¹³ See Carson, *supra* note 12, at 19.

¹⁴ See *id.*

invaded Ukraine—the government implemented a new law that criminalized the spread of “knowingly false information” about the Russian military.¹⁵ In October 2023, this law was deployed to detain Russian-American journalist Alsu Kurmasheva. And in July 2024, she was sentenced under this law to six and a half years in prison, all for co-editing a book that contained interviews and accounts from Russians who opposed their country’s war on Ukraine.¹⁶ Kurmasheva spent nine months in prison before being released through a prisoner exchange.¹⁷ Her criminal prosecution attests to how even personal opinions or narratives can be prosecuted as “false information” when they do not align with the government’s preferred worldview.

Russia’s crackdown on allegedly “false information” also forced many Russian journalists to flee their country for safety and has compelled news outlets to relocate outside of Russia’s borders.¹⁸ Puerto Rico’s Section 5.14(a) would

¹⁵ See Robert Greenall, *Russian-US journalist jailed for ‘false information’*, BBC (July 22, 2024), <https://www.bbc.com/news/articles/cn08d7j1qj5o>; THOMSON REUTERS FOUND. & COMM. TO PROTECT JOURNALISTS, UNDERSTANDING THE LAWS RELATING TO FAKE NEWS IN RUSSIA 2 (2022), <https://cpj.org/wp-content/uploads/2022/07/Guide-to-Understanding-the-Laws-Relating-to-Fake-News-in-Russia.pdf>.

¹⁶ See Greenall, *supra* note 15; Alsu Kurmasheva, RADIOFREEEUROPE RADIOLIBERTY, <https://about.rferl.org/advocacy/imprisoned-journalists/alsu-kurmasheva/> (last visited Apr. 24, 2025).

¹⁷ See Kurmasheva, *supra* note 16.

¹⁸ See THOMSON REUTERS FOUND. & COMM. TO PROTECT JOURNALISTS, *supra* note 15, at 1.

present the same threat to free press and free speech if it were allowed to take effect.

Finally, closer to home, the United States government has punished journalists for allegedly spreading false information when they declined to adopt the government's preferred nomenclature. Shortly after President Trump renamed the "Gulf of Mexico" to "Gulf of America," his administration began excluding The Associated Press (AP) from the White House press pool and limited-access events where the AP had historically been present because the wire service continued to use "Gulf of Mexico" in its Stylebook.¹⁹ The White House accused the AP of "dishonest reporting" and dissemination of "misinformation,"²⁰ illustrating how what is "true" today may be deemed "false" tomorrow, depending on who in the government holds power.²¹ If Section 5.14(a)

¹⁹ *Associated Press v. Budowich*, No. 1:25-cv-00532 (D.D.C. Feb. 21, 2025), ECF No. 1 (Complaint) at ¶¶ 4–9; Brian Stetler, *The White House bans the AP indefinitely over the use of 'Gulf of Mexico'*, CNN (Feb. 14, 2025), <https://edition.cnn.com/2025/02/14/media/white-house-ap-ban-air-force-one-oval-office-gulf-of-mexico>.

²⁰ *Associated Press*, *supra* note 19, at ¶ 63 (quoting White House Deputy Chief of Staff Taylor Budowich, @Taylor47, X (Feb. 14, 2025), <https://x.com/Taylor47/status/1890453490398326919>).

²¹ In a similar vein, the White House accused the *Wall Street Journal* of publishing "fake" news and punitively excluded it from President Trump's traveling press pool for reporting on Trump's 2003 birthday correspondence to convicted sex offender Jeffrey Epstein. Katie Robertson, *White House Bans Wall Street Journal from Press Pool on Trump's Scotland Trip*, THE NEW YORK TIMES (July 21, 2025), <https://www.nytimes.com/2025/07/21/business/media/trump-scotland-wsj-press-pool.html>.

is allowed to take effect, people making true statements during state-declared emergencies or disasters could find their speech recast as “false” by a retaliatory regime.

Finally, it is not hypothetical to fear that Puerto Rican authorities will exercise their discretion under Section 5.14(a) to accuse government critics of spreading “false information.” Puerto Rico has a history of doing exactly that. *See Mangual*, 317 F.3d at 52–54 (detailing how Puerto Rico officials criminally prosecuted one newspaper reporter for libel, and threatened to prosecute a second reporter, based on news articles exposing corruption within the city narcotics squad). Indeed, the Puerto Rican government accused Plaintiff-Appellee Sandra Rodríguez-Cotto of “exaggerating” when she accurately questioned the implausibly low death numbers the government was reporting in the aftermath of Hurricane Maria. *See Appendix* at pages 21 and 35 (government reports stated that only 64 people had perished, when it was eventually substantiated to be 1,427). Section 5.14(a) would empower the government to arrest and prosecute someone like Rodríguez-Cotto for allegedly raising a false alarm in relation to a tropical storm catastrophe, even if the knowledge of falsity of the information could not ultimately be proven. Puerto Rico’s history of retaliating against critical speakers substantiates the concern that if Section 5.14(a) goes into effect, it will be used—as similar laws have been used around the world—to suppress speech

that inconveniences or embarrasses the government, or otherwise dissents from official state narratives.

III. The Government Has Unfettered Discretion to Selectively Enforce Section 5.14(a) Against Disfavored Speakers.

Section 5.14(a)'s lack of specificity in defining the speech it prohibits means that the Puerto Rican government will have largely unfettered discretion to enforce the statute against disfavored speakers and viewpoints. *See Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972) (“A vague law impermissibly delegates basic policy matters to [government officials] for resolution on an ad hoc and subjective basis. . . .”); *City of Lakewood v. Plain Dealer Publ’g Co.*, 486 U.S. 750, 764–66 (1988) (discussing how speech regulations that vest officials with open-ended enforcement discretion facilitate viewpoint-based discrimination).

To begin, Section 5.14(a)'s first provision prohibits knowingly giving a false warning or alarm “in relation to the imminent occurrence of a catastrophe” during a state-declared emergency or disaster. This restriction requires neither that the falsehood be material nor that it cause any injury. Instead, any false warning or alarm, no matter how inconsequential or benign, constitutes a crime. Such a ban on mere falsity creates an intolerable level of discretion.

Were the Court to hold that the interest in truthful discourse alone is sufficient to sustain a ban on speech . . . it would give government a

broad censorial power unprecedented in this Court’s cases or in our constitutional tradition. The mere potential for the exercise of that power casts a chill, a chill the First Amendment cannot permit if free speech, thought, and discourse are to remain a foundation of our freedom.

Alvarez, 567 U.S. at 723 (striking down federal statute that criminalized false statements about receipt of military honors); *see also Masson v. New Yorker Mag., Inc.*, 501 U.S. 496, 517 (1991) (holding that “[m]inor inaccuracies do not amount to falsity” for purposes of civil libel); *Mangual*, 317 F.3d at 68 (noting the importance of a criminal libel statute’s requirement that a false statement actually cause a “material change in [] meaning,” thereby avoiding prosecutions for “small inaccuracies”).

The first provision of Section 5.14(a) also contains no definitional limits on what kind of “warning or false alarm” about an “imminent . . . catastrophe” triggers prosecution. Thus, a person could be criminally charged for fantastical, apocryphal, or hyperbolic speech made during a state-declared emergency or disaster—e.g., warnings that aliens are invading Earth, that the world is ending, or that World War III is about to start—even though no reasonable person would understand such alarms to be real. *Compare Alvarez*, 567 U.S. at 740 (Alito, J., dissenting) (arguing that the Stolen Valor Act should have been upheld since it applied “only to statements that could reasonably be interpreted as communicating actual facts” that can “be proved or disproved with near

certainty”), with *Rodríguez-Cotto*, 668 F. Supp. 3d at 110 (observing that Section 5.14(a) has “no such limitation”). Where a legislature provides discretionary guidelines for enforcement, “a criminal statute may permit a standardless sweep [that] allows policemen, prosecutors, and juries to pursue their personal predilections.” *Kolender v. Lawson*, 461 U.S. 352, 358 (1983) (internal quotations omitted).

The second provision of Section 5.14(a) is likewise riddled with vague, undefined terms. It creates criminal liability for anyone who communicates a knowingly false notice or alarm “when as a result of their conduct it puts the life, health, bodily integrity or safety of one or more persons *at imminent risk*, or *endangers* public or private property” (emphasis added). Liability thus turns on the consequence of the speech, even when the consequence was neither intended by the speaker nor reasonably foreseeable. Moreover, a journalist or other speaker cannot reliably predict what speech will result in “imminent risk” (an undefined term) to another person’s health or safety, or will “endanger” (also undefined) property during a rapidly evolving emergency involving multiple complexities. See *United States v. Paz-Alvarez*, 799 F.3d 12, 28 (1st Cir. 2015) (stating that a statute cannot criminalize conduct “in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application”) (internal citation omitted).

Equally concerning, “imminent risk” and “endanger[ment]” both fall short of actual harm. In other words, there is no requirement that any injury actually result from the speech for the speaker to be charged and convicted under the second provision of Section 5.14(a).

As the district court noted, Section 5.14(a)’s “open-ended nature” sits in stark contrast to more constitutionally sound false-alarm statutes such as the Federal Communications Commission’s broadcast hoax rule, 47 C.F.R. § 73.1217 (2024). *See Rodríguez-Cotto*, 668 F. Supp. 3d at 107. The broadcast hoax rule also punishes the distribution of knowingly false information. However, the rule further requires that: (1) the false content foreseeably resulted in “substantial public harm”; (2) the public harm began immediately; and (3) the public harm did cause “direct and *actual damage* to property or to the health or safety of the general public,” or diversion of public safety authorities from their duties. 47 C.F.R. § 73.1217 (emphasis added). Section 5.14(a) contains no analogous guardrails. Instead, it authorizes prosecution based on unforeseen consequences of speech to as few as one person (not the general public) where no harm actually resulted. Such wide-ranging and unpredictable liability invites the government to selectively enforce the law based on its officials’ whims and preferences. *See Kolender*, 461 U.S. at 358.

IV. Section 5.14(a) Threatens the Democratic Process by Chilling Speech and Impeding the Free Flow of Information to the Public.

A vague law criminalizing “false information” during times of government-declared emergencies in a territory that has a history of prosecuting unflattering speech about its public officials is a recipe for First Amendment violations. But even if the Puerto Rican government were never to enforce Section 5.14(a)—and the government has made no representation of intended non-enforcement—the law’s mere existence, without a permanent injunction, would be sufficient to chill speech. *See City of Lakewood*, 486 U.S. at 757 (“the mere existence of . . . unfettered discretion, coupled with the power of prior restraint, intimidates parties into censoring their own speech, even if the discretion and power are never actually abused”); *Van Wagner Boston, LLC v. Davey*, 770 F.3d 33, 37 (1st Cir. 2014) (“laws that cede unfettered discretion to government officials over expression . . . may prompt regulated parties to self-censor their speech”) (internal citation omitted).

If Section 5.14(a) goes into effect, untold numbers of would-be speakers will rationally choose not to speak during times of emergency or disaster rather than risk criminal prosecution. *See Dombrowski v. Pfister*, 380 U.S. 479, 494 (1965) (“So long as the statute remains available to the State the threat of prosecutions of protected expression is a real and substantial one.”). This chilling effect is the predictable and impermissible by-product of a statute that

broadly restrains speech, uncabined by standards or guardrails. *See N.H. Right to Life Pol. Action Comm. v. Gardner*, 99 F.3d 8, 13 (1st Cir. 1996) (recognizing that a cognizable First Amendment injury arises when a party “is chilled from exercising her right to free expression or forgoes expression in order to avoid enforcement consequences”).

Meanwhile, the audiences deprived of the chilled speakers’ information, knowledge, and ideas will suffer a reciprocal infringement of their own First Amendment rights. *See Bd. of Educ. v. Pico*, 457 U.S. 853, 867 (1982) (“the right to receive ideas is a necessary predicate to the *recipient’s* meaningful exercise of his own rights of speech, press, and political freedom” and “is an inherent corollary of the rights of free speech and press that are explicitly guaranteed by the Constitution”) (emphasis in original); *Stanley*, 394 U.S. at 564 (“It is now well established that the [First Amendment] protects the right to receive information and ideas.”); *Fitts v. Kolb*, 779 F. Supp. 1502, 1510 (D.S.C. 1991) (observing that chilling speakers “reduces the amount of information and the range of opinion and viewpoint available for the readers to receive”; striking down criminal libel statute that prohibited circulating false information).

Finally, there is an overarching First Amendment interest in the free flow of information and ideas on matters of public concern. *See Hustler Mag., Inc. v. Falwell*, 485 U.S. 46, 50 (1988) (“At the heart of the First Amendment is the

recognition of the fundamental importance of the free flow of ideas and opinions on matters of public interest and concern.”). Speech about the causes and conditions of state-declared emergencies or disasters, and about the government in relation thereto, is quintessentially speech of public concern. *See Mills v. Alabama*, 384 U.S. 214, 218 (1966) (“[T]here is practically universal agreement that a major purpose of [the First] Amendment was to protect the free discussion of governmental affairs.”). Yet speech critiquing or disagreeing with the government stands to be chilled under Section 5.14(a), to the detriment of the democratic process. *See Minneapolis Star & Trib. Co. v. Minn. Comm’r of Revenue*, 460 U.S. 575, 585 (1983) (stating that “an informed public is the essence of working democracy”); *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964) (“[D]ebate on public issues should be uninhibited, robust, and wide-open, and . . . may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials”); *Garrison v. Louisiana*, 379 U.S. 64, 74–75 (1964) (“[S]peech concerning public affairs is more than self-expression; it is the essence of self-government”).

A free press also performs the essential First Amendment function of informing the public about what their government is doing (or not doing)—which is particularly important in times of emergency. *See Grosjean*, 297 U.S. at 250 (“A free press stands as one of the great interpreters between the government and

the people. To allow it to be fettered is to fetter ourselves.”); *Minneapolis Star*, 460 U.S. at 585 (“[T]he basic assumption of our political system [is] that the press will often serve as an important restraint on government.”). In today’s media landscape, the press includes not only traditional news outlets but also citizen journalists, bloggers, and community organizers using social media.²² These diverse voices, particularly in remote communities, may be the only source of real-time updates when traditional media cannot reach disaster zones. Yet the chilling effect of Section 5.14(a) will impede the ability of both journalists and non-journalists alike to share information and inform the broader public, and will do so specifically during times when the public’s need for information is at its peak. *See Stromberg v. California*, 283 U.S. 359, 369 (1931) (“The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people . . . is a fundamental principle of our constitutional system.”). Thus, to ensure the continued free flow of information to the public, which is the lifeblood of democracy, Section 5.14(a) should remain permanently enjoined.

²² *See Social Media and News Fact Sheet*, PEW RES. CTR. (Sept. 17, 2024), <https://www.pewresearch.org/journalism/fact-sheet/social-media-and-news-fact-sheet/> (reporting that over half of U.S. adults at least sometimes get their news from social media).

CONCLUSION

Vague, chilling, and ripe for abuse, Section 5.14(a) imperils free speech and free press rights while inhibiting the free flow of information on matters of public concern. The statute goes far beyond violating the First Amendment rights of the individual parties in this case; it deeply impoverishes the First Amendment interests of speakers and listeners at large. *Amici* urge this court to therefore affirm the district court's permanent injunction of Section 5.14(a).

Respectfully submitted this 19th day of August, 2025.

/s/ Clare R. Norins

Clare R. Norins, No. 1194890
FIRST AMENDMENT CLINIC*
University of Georgia School of Law
P.O. Box 388
Athens, Georgia 30603
(706) 542-1419
cnorins@uga.edu

*Thank you to co-authors Ben
Privitera, Ellie Wilson-Wade, and
Christina Lee

Counsel for Amici Curiae

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) because it contains 4,775 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

I further certify that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6), because it has been prepared in a proportionally spaced typeface using Microsoft Word 14-point Times New Roman font.

Executed this 19th day of August, 2025.

/s/ Clare R. Norins
Clare R. Norins
Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of Court for the United States Court of Appeals for the First Circuit by using the appellate CM/ECF system on August 19, 2025.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Executed this 19th day of August, 2025.

/s/ Clare R. Norins
Clare R. Norins
Counsel for Amici Curiae