

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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PEDRO WABIBI AUGUSTO, et al.,

Plaintiffs,

Civil Action  
No. 20-cv-10685-ADB

v.

April 1, 2021

ANTON MONIZ, et al.,

Defendants.

Pages 1 to 8

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TRANSCRIPT OF STATUS CONFERENCE  
BEFORE THE HONORABLE ALLISON D. BURROUGHS  
UNITED STATES DISTRICT COURT

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Official Court Reporter  
John J. Moakley U.S. Courthouse  
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1       **APPEARANCES:**

2               **FOR THE PETITIONERS:**

3       **DANIEL L. MCFADDEN**  
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20               **FOR THE RESPONDENTS:**

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P R O C E E D I N G S

(The following proceedings were held via Zoom conference before the Honorable Allison D. Burroughs, United States District Judge, United States District Court, District of Massachusetts, on August 1, 2021.)

THE CLERK: This is civil action 20-10685, Augusto, et al., versus Moniz. Will counsel identify themselves for the record.

MS. MCCREADY: Laura McCreedy for petitioners.

MR. MCDERMOTT: William McDermott of K & L Gates. With me is Christopher Warner and Molly Maidman from K & L Gates as well for the petitioners.

MR. MCFADDEN: Good morning, Your Honor. Dan McFadden also for the petitioners.

MR. WEIDA: Good morning, Your Honor. Assistant U.S. Attorney Jason Weida for the respondent. Along with me is Patrick Lee who is the general counsel for the facility in this case.

THE COURT: All right. We are here for a joint motion on voluntary dismissal without prejudice in the case. Just to recap a bit, in April of 2020, the case was filed on behalf of 64 civil and immigration detainees in unit C3 at Plymouth. The allegation was that Plymouth was unlawfully failing to protect the detainees from COVID-19. There were various requests along the way concerning release, but the

1       gist of the lawsuit from my perspective was an effort to keep  
2       the prisoners safe from COVID.

3               In June also of 2020, I certified the class. Since  
4       then, at least from my perspective, this litigation has been  
5       enormously successful. Not one detainee in C3 came down with  
6       COVID. And I think that it's a testament to the efforts of  
7       all that we managed to keep all of those people safe for the  
8       better part of a year.

9               The situation now is that all staff members and  
10       people in custody including all the remaining class members  
11       and all the new intakes to C3 have been offered the vaccine.  
12       Seven of the nine remaining class members in C3 have been  
13       fully vaccinated. An eighth member has received the first  
14       dose of the vaccine. And generally speaking, everybody in C3  
15       has been offered the vaccine.

16              I know that some of them have been released since  
17       then, but as an ongoing matter, people in C3 have had access  
18       to the vaccine. Over the course of a year the unit has been  
19       substantially de-populated. What started with more than 60  
20       has been well below 60 for most of the class period.  
21       Everybody in C3 has been tested repeatedly, and again no one  
22       has tested positive at least since -- no one has tested  
23       positive to my knowledge during the class period.

24              All sorts of other safety precautions have been put  
25       into place. When I talked about being de-populated, ICE has

1 released more than 38 class members from C3 during the  
2 pendency of the class. From my view this has been a  
3 tremendous success.

4 In light of the success and pursuant to the motions  
5 filed by the parties, the Court has now preliminarily  
6 approved the voluntary dismissal of the class without  
7 prejudice. The Court approved the notice. The parties have  
8 now confirmed the distribution of the notice both in English  
9 and in Spanish to everybody on C3. I know there have been no  
10 written objections filed. I'm not aware of any other  
11 objections of any form, oral or written.

12 Are any of the parties aware of any objections from  
13 my of the class members.

14 MS. MCCREADY: No, Your Honor.

15 MR. WEIDA: No, Your Honor.

16 THE COURT: In light of the fact that there have  
17 been no objections, I'm going to make the following findings  
18 that this is a fair, reasonable, and adequate resolution. In  
19 determining that I've considered and I find that the class  
20 representatives and the counsel have more than adequately  
21 represented the class. The dismissal was negotiated at arm's  
22 length by very competent counsel. The relief is adequate at  
23 this point given that we've managed to keep everybody safe,  
24 and the proposal treats all class members equitably relative  
25 to each other.

1 I should say also that it will be dismissed without  
2 prejudice. If the situation changes at Plymouth, we can  
3 revisit this.

4 Are there any other findings that anybody wants me  
5 to make as a prelude to dismissing without prejudice?

6 Ms. McCready?

7 MS. MCCREADY: No, Your Honor. Thank you.

8 THE COURT: Mr. Weida?

9 MR. WEIDA: None from the government, Your Honor.

10 THE COURT: So based on those findings and the  
11 contents of all the other information that is known to me  
12 from presiding over this for this long and provided to me by  
13 the parties through their written submissions, the joint  
14 motion for voluntary dismissal without prejudice is granted.

15 Anything else that anyone feels I need to do today?  
16 Ms. McCready?

17 MS. MCCREADY: No, Your Honor. Thank you.

18 THE COURT: Mr. Weida?

19 MR. WEIDA: No, Your Honor. But thank you for your  
20 time and efforts throughout this case.

21 THE COURT: I really do want to thank you all. I  
22 think that throughout everybody managed to keep their eye on  
23 the ball which is keeping the people in C3 safe. I feel like  
24 the litigation was properly moderated to achieve that goal,  
25 and I'm proud of us all that we managed to achieve that goal.

1 Again a job well done by all. You've all done extremely well  
2 by your clients. The petitioners have kept the class safe.  
3 And, Mr. Weida, I compliment you on being so measured and  
4 responsive to everything that happened during this  
5 litigation.

6 MR. WEIDA: Thank you, Your Honor.

7 THE COURT: Thank you all. If there's nothing  
8 else, I will recess the case, and we'll enter the order of  
9 voluntary dismissal. Thanks, everyone.

10 (Court recessed at 10:09 a.m.)

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**CERTIFICATION**

I certify that the foregoing is a correct transcript of the record of proceedings in the above-entitled matter to the best of my skill and ability.

/s/ Joan M. Daly

April 20, 2021

\_\_\_\_\_  
Joan M. Daly, RMR, CRR  
Official Court Reporter

\_\_\_\_\_  
Date