

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

Carlos Morales Feliciano, et al.

v.

Civil No. 79-cv-04 (PB)

Alejandro Garcia Padilla, et al.

MEMORANDUM AND ORDER

More than thirty years ago, a group of inmates incarcerated in Puerto Rico's prisons brought this class action lawsuit challenging the conditions of their confinement. During the course of the litigation, the court found defendants in contempt on multiple occasions, and required Puerto Rico to pay hundreds of millions of dollars in fines. The court collected some, but not all, of the fines, and used the bulk of that money to benefit the plaintiff class in various ways. It also assessed, but did not collect, more than \$140,000,000 in additional contempt fines.

In this Memorandum and Order, I explain how I will dispose of the remaining fines.

I. BACKGROUND

This litigation began in the 1970s, when a group of inmates incarcerated in Puerto Rico's prisons brought a sweeping

constitutional challenge to their conditions of confinement. [Morales Feliciano v. Romero Barcelo](#), 497 F. Supp. 14, 18-19 (D.P.R. 1979). In 1979, the district court determined that then-existing prison conditions violated plaintiffs' constitutional rights. *Id.* at 18. The court consequently issued a preliminary injunction, which required defendants to address some of the worst problems, including overcrowding, inadequate healthcare, and inmate abuse. *Id.* at 39-41.

In the years that followed, the district court became increasingly frustrated with ongoing problems in the prisons, and with defendants' noncompliance with court orders. Therefore, in 1986, the court appointed two monitors to report on prison conditions, and to recommend remedial actions. [Morales Feliciano v. Romero Barcelo](#), 672 F. Supp. 591, 621 (D.P.R. 1986). With the monitors' help, the court issued a series of orders over the ensuing years requiring defendants to improve conditions, holding defendants in contempt for failing to comply with those orders, and assessing multimillion dollar contempt fines. *See, e.g.,* [Morales Feliciano v. Hernandez Colon](#), 754 F. Supp. 942, 951 (D.P.R. 1991) (ordering a daily fine of \$10 per prisoner whenever an inmate was held in less than 55 square feet of living space and ordering the fine to increase by \$5 per month per prisoner); [Morales Feliciano v. Hernandez Colon](#), 697 F. Supp. 37, 51 (D.P.R. 1988) (imposing a

\$50 per day fine for each inmate in excess of capacity); Morales Feliciano v. Hernandez Colon, 697 F. Supp. 26, 36 (D.P.R. 1987) (ordering the Governor, Administrator of Correction, and members of the Parole Board to pay \$50,000 in sanctions and a daily fine of \$10 per inmate living in an institution where the population exceeded capacity). During the ensuing years, the court assessed and collected hundreds of millions of dollars in fines (the "Collected Fines").

The court also assessed, but did not collect, more than \$140 million in additional fines (the "Uncollected Fines"). See Doc. No. 10318-2. With several exceptions, including a \$10 million fine assessed in 2000, Doc. No. 7791, the court stopped assessing fines in the early 1990s. In addition, pursuant to a December 1991 stipulation by the parties, the court suspended fine collections. See Doc. Nos. 3413 at 7 ("[D]efendants' obligation to pay fines imposed pursuant to the court's prior orders in this cause . . . shall be suspended"); 3575 (order approving stipulation). Thereafter, the Court Monitors continued to issue reports assessing fines, and the court continued to review and approve those reports, but the court "provisionally suspend[ed] defendants' obligation of payment." Doc. No. 3413 at 7; see, e.g., Doc. Nos. 3755; 3814; 3843; 3851; 3894 (suspending specific contempt payments).

The December 1991 stipulation further provided that, if

defendants substantially complied with the stipulation's provisions aimed at reducing overcrowding for six consecutive months, "the fines calculated for that six-month period shall be permanently discharged." Doc. No. 3413 at 7. But, if defendants did not substantially comply with the stipulation, plaintiffs could "move the court for execution for any fines calculated and assessed." Id. The court, meanwhile, retained the "discretion" to "order the execution of such amount of fines, if any, it deem[ed] appropriate." Id. Defendants subsequently filed motions to discharge fines assessed during particular six-month periods, Doc. Nos. 3922; 4320, but voluntarily withdrew those motions pursuant to a later stipulation. See Doc. Nos. 4477 at 3; 4494 (court approving stipulation).

In most cases, contempt fines are paid to the United States Treasury. See Winner Corp. v. H. A. Caesar & Co., 511 F.2d 1010, 1015 (6th Cir. 1975) ("Coercive civil contempt fines in federal courts are ordinarily paid to the United States."). In this case, however, the district court retained control of the fine funds, and issued numerous orders directing the expenditure of those monies to benefit the plaintiff class. The parties ultimately acquiesced in the district court's actions, and the First Circuit Court of Appeals permitted this use of fine funds. See Morales Feliciano v. Rullan, 378 F.3d 42, 47 (1st Cir.

2004); [Morales-Feliciano v. Parole Bd. of P.R.](#), 887 F.2d 1, 6 (1st Cir. 1989) (noting that “the fine money has been deposited in an interest-bearing account, and the district court may decide to use it to help defray” costs related to decreasing overcrowding). Accordingly, “the law of this case includes a legal determination that the court has the power to direct the expenditure of fine funds to correct problems that led to the imposition of the fines.” Doc. No. 9962 at 8.

The district court put the Collected Fines to various uses. The court awarded tens of millions of dollars, for example, to the Correctional Health Services Corporation, a non-profit entity created to improve inmate healthcare. [See Morales Feliciano v. Rullan](#), 378 F.3d at 46-47. The court also disbursed fine funds to pay plaintiffs’ legal fees, and to finance a legal services corporation that worked on plaintiffs’ behalf.¹ [See](#) Doc. No. 7710 at 4 (“The Court finds that the funds expended on financing the [legal services] Corporation are necessary to the remediation process, in eliminating the underlying causes of this case, and contribute significantly to the public interest in the administration of justice.”). As a result of these programs, and the court’s other orders,

¹Between 1997 and August 2011, the legal services corporation received approximately \$40 million in fine funds. [See](#) Doc. No. 9962 at 1.

conditions in Puerto Rico's prisons steadily improved. See Doc. No. 10541 at 1 ("Although work remains to be done, this litigation has brought about real improvements for those incarcerated in Puerto Rico.").

I was assigned this case in 2011. In 2012, I entered a consent decree that replaced all prior orders and decrees, and resolved all of plaintiffs' outstanding claims for prospective equitable relief. See Doc. No. 10196 at 5. That decree aimed to transition the court away from its longstanding involvement in the day-to-day operation of Puerto Rico's prisons. Id. at 1. But, it did not resolve issues related to monetary damages, or dispose of the fine funds. See id. at 5. Moreover, by its terms, the consent decree was judicially enforceable for only two years, and expired without objection at the end of 2014. See Doc. No. 10525 at 3.

The parties therefore continued to pursue a final resolution to their dispute, and, in May 2015, reached a private settlement agreement. See Doc. No. 10483-1. Pursuant to that agreement, defendants must provide various benefits to members of the plaintiff class who were incarcerated between 1980 and 2000. Id. at 3-4. Benefits include educational opportunities, lower-cost healthcare services, and discounts on vacation rentals, public transportation, and certain government permits. Id. at 5-9. The agreement does not, however, provide for

individualized monetary relief, or address the fine funds. The agreement calls for a six-month claims period, during which time class members can submit claims for benefits.

I granted the parties' joint motion for final approval of the proposed settlement agreement in November 2015. See Doc. No. 10541. The six-month claims period began on May 15, 2016, and runs until November 15, 2016. See Doc. No. 10586. As of the date of this order, the claims process is ongoing.

I have continued to authorize the use of fine funds since becoming involved with this suit. For example, consistent with the prior court's practice, I disbursed fine funds to implement an updated medical records system. See, e.g., Doc. Nos. 10001-1 at 4; 10003. I have reviewed attorney invoices, and used fine funds to reimburse counsel for qualifying legal work done on plaintiffs' behalf. See, e.g., Doc. Nos. 10478; 10479; 10480. I have approved the use of fine funds for consulting services, including services rendered during settlement negotiations. See, e.g., Doc. Nos. 10364 (granting request for \$26,229.32 for consulting services performed by Dr. James Austin, an expert in inmate classification); 10565 (order regarding distribution of funds to Professor Francis McGovern, one of the two special settlement masters). And, more recently, I have granted properly-supported requests to reimburse expenses incurred in winding up the case, and in notifying class members of their

potential entitlements under the settlement agreement. See, e.g., Doc. Nos. 10576 (granting motion to disburse \$12,998.32 to plaintiffs' counsel for file storage and destruction expenses); 10615 (disbursing \$8,691.72 for translation costs and notice publication in local newspapers).

III. ANALYSIS

Significant funds nonetheless remain. As of the date of this Memorandum and Order, the court controls approximately \$4,500,000.00 in Collected Fines.² Puerto Rico owes an additional \$140,626,100 in Uncollected Fines. Of that approximately \$140 million, \$20 million is being held in a segregated "guaranty account" with the Governmental Development Bank. Doc. No. 10318-2 at 2.

A. Parties' Proposals

With this litigation nearing its long-awaited conclusion, in February 2016, I invited the parties to submit proposals for the disposition of the remaining fine funds. Doc. No. 10561.

²This figure is an approximation, and does not reflect expenditures that the court will make between now and the time that judgment is entered. For instance, I have approved the use of Collected Fines to implement a media campaign during the claims period, to ensure that class members receive adequate notice of their potential entitlements. See Doc. No. 10590. Moreover, the parties may incur additional expenses in winding up this case that should be reimbursed.

Plaintiffs submitted their memorandum in May 2016.³ See Doc. No. 10592. Defendants responded with their own suggestions. See Doc. No. 10594. I held a status conference on July 26, 2016 to discuss the parties' recommendations. See Doc. No. 10622.

In their submission, plaintiffs suggest several investments, totaling \$140 million, to be credited against the Uncollected Fines. Doc. No. 10592 at 1-2. These investments include finishing the Correctional Medical Center, continuing to update the prisons' electronic medical record system, installing an electronic surveillance system in correctional facilities, funding a nonprofit legal services foundation, and building a new women's prison. Id. at 2. Plaintiffs do not, however, "make any concrete proposal about the disposition of" the Collected Fines. Id. at 1 n.1.

Defendants do not address the Collected Fines either. See Doc. No. 10594. With respect to the Uncollected Fines,

³ In September 2015, plaintiffs' counsel submitted a "motion for attorney's fees." Doc. No. 10529. According to that motion, although "[n]either the undersigned nor any other attorney has demanded or is seeking fees for the services provided in the lengthy and time consuming process that resulted in the" settlement agreement, plaintiffs' counsel requested \$7.5 million, presumably from Collected Fines, to be "used exclusively as seed money to fund a not for profit entity that will provide services to incarcerated persons in the future." Id. Plaintiffs reiterated this same suggestion in their May 2016 memorandum. See Doc. No. 10592 at 2 (requesting \$7,500,000.00 to "[f]und a not for profit foundation that will provide legal services to inmates"). Accordingly, I address only plaintiffs' May 2016 filing here.

defendants request a \$70 million credit for the construction of the Correctional Medical Center. Id. at 1. The defendants further suggest that the Department of Correction and Rehabilitation spend the \$20 million currently held in the "guaranty account" to expand electronic supervision within the Commonwealth's correctional facilities, "as well as for other purposes that will benefit the inmates within the correctional system." Id. at 2. As to the remaining Uncollected Fines, defendants propose "a yearly expenditure of \$10,000,000 earmarled [sic] within the budget of the Department of Corrections and Rehabilitations." Id.

B. Disposition

Having carefully considered the parties' recommendations, I order the following. The Collected Fines that remain in the court's control after all remaining expenses have been satisfied shall be paid to the Commonwealth of Puerto Rico. The Commonwealth will hold those monies, and the \$20 million now in the guaranty account, in a segregated account. The Commonwealth shall use those funds within the next three years for new capital and non-capital expenditures -- above and beyond what is otherwise appropriated for the Department of Correction and Rehabilitation -- that benefit inmates in Puerto Rico's correctional system.

At least ninety days before the Commonwealth intends to expend funds from this account, it shall submit a memorandum to the district court describing the proposed expenditure, and explaining how the project would benefit inmates. The plaintiff class will have an opportunity to respond to the Commonwealth's submission. The court will then consider any objections, and either approve or reject the Commonwealth's proposal. The court's role, however, will be limited to determining whether the planned expenditure is consistent with this Memorandum and Order, and will benefit the Commonwealth's inmates.

Beyond these instructions, I decline to micro-manage the Commonwealth's use of these funds. The time has come to close this case. See [Morales Feliciano v. Rullan](#), 378 F.3d at 60 (urging the district court, in 2004, to "extricat[e] itself from the toils of this litigation"). The parties have identified several projects -- including purchasing and installing additional electronic surveillance equipment, and miscellaneous infrastructure repairs and improvements -- that may be appropriate uses of the segregated fine funds. See Doc. Nos. 10592; 10594. At this stage, however, the Commonwealth has regained control of the day-to-day operation of its prisons, and is best suited to decide how to use these additional funds. Therefore, subject to plaintiffs' input and limited judicial involvement, these decisions should be left to the Commonwealth.

With respect to the remaining Uncollected Fines, I decline to collect them at this late stage in the litigation. First, defendants are entitled to a \$70 million credit for the construction of the Correctional Medical Center, the “modern, high-security medical facility” that was created to “address current and recurring shortcomings related to inmates’ access to medical care” Doc. No. 9888 at 1-2. The prior district court indicated that “all monies paid for construction, purchase of equipment, payment of contractors, subcontractors, consultants and financing of the [Correctional Medical Center] project shall be offset or credited against the assessed and uncollected fines” Id. at 3. In their recent memorandum, the defendants represented that the Center “was built and furnished at a total cost of \$70,000,000.” Doc. No. 10594 at 1. Based upon that representation, and the court’s previous orders, it is appropriate to credit \$70 million against the Uncollected Fines for the Center’s construction.

Second, collecting the remaining \$50 million in Uncollected Fines would not serve the principal purpose for which the fines were assessed. The judge previously assigned to this case imposed contempt fines largely to compel defendants to comply with the court’s orders, and to speed improvements at Puerto Rico’s prisons. See, e.g., Morales Feliciano v. Rosello Gonzalez, 124 F. Supp. 2d 774, 785 (D.P.R. 2000) (“The real

purpose of a civil contempt order is purely remedial – to coerce obedience to a decree passed in complainant's favor, or to compensate complainant for loss caused by respondent's disobedience of such decree."); [Morales Feliciano v. Hernandez Colon](#), 775 F. Supp. 477, 487 (D.P.R. 1991) ("This court . . . is firmly convinced of the need to continue sanctions at least at their current level if compliance with its orders is ever to be achieved."). Since the court assessed those fines several decades ago, however, the deplorable prison conditions that gave rise to the court's orders have improved. Moreover, the court's prior orders are no longer judicially enforceable, and the parties' settlement agreement resolved all of plaintiffs' claims. As such, it is no longer necessary to coerce defendants to follow the court's orders.

The parties' December 1991 stipulation underscores this point. Pursuant to that stipulation, the parties agreed to suspend fine collection, and further agreed that defendants could "permanently discharge[]" their obligation to pay certain fines if they "substantially compli[ed]" with the stipulation's provisions intended to reduce overcrowding. Doc. No. 3413 at 7. These provisions suggest that, according to the parties, it would be unnecessary to collect fines if defendants satisfied their contractual, and constitutional, obligation to improve prison conditions. Although that process has taken several

decades, conditions have improved.

Third, collecting the Uncollected Fines would further delay the conclusion of this case. Particularly given the Commonwealth's current financial straits, collecting and disbursing the outstanding \$50 million in Uncollected Fines would likely be a difficult and time-consuming process.⁴ That process would require continued judicial involvement in, and interference with, the Commonwealth's governance. That kind of ongoing oversight is inconsistent with the First Circuit's instructions to end this litigation. Therefore, in light of these considerations, and given the totality of the circumstances of this case, it is appropriate to cancel defendants' obligation to pay these remaining Uncollected Fines.

IV. CONCLUSION

For the foregoing reasons, the court orders that the Collected Fines that remain in the court's control after all remaining expenses have been satisfied shall be paid to the Commonwealth of Puerto Rico. The Commonwealth will hold those monies, and the \$20 million now in the guaranty account, in a segregated account. The Commonwealth shall use those funds

⁴ It is appropriate to treat the \$20 million currently held in the "guaranty account" differently, because the Commonwealth has already set that money aside in the guaranty account.

within the next three years for new capital expenditures that benefit inmates in Puerto Rico's correctional system. At least ninety days before the Commonwealth intends to expend funds from this account, it shall submit a memorandum to the district court describing the proposed expenditure, and explaining how the project would benefit inmates. The court will then consider any objections, and either approve or reject the Commonwealth's proposal. It is further ordered that the Commonwealth's obligation to pay the remaining Uncollected Fines is cancelled.

To the extent that they are inconsistent with this Memorandum and Order, the parties' motions, Doc. Nos. 10529, 10592, 10594, are denied.

SO ORDERED.

/s/Paul Barbadoro
Paul Barbadoro
United States District Judge

August 23, 2016

cc: Counsel of Record