COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss. PLYMOUTH DIVISION SUPERIOR COURT
CIVIL ACTION NUMBER NO. 2583CV01090

UNITED AMERICAN INDIANS OF NEW ENGLAND & another[1]

v.

TOWN OF PLYMOUTH & another[2]

MEMORANDUM OF DECISION AND ORDER ON PLAINTIFF'S RENEWED EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, AND DECLARATORY RELIEF

The Plaintiffs, United American Indians of New England ("UAINE") and Mahtowin Munro ("Munro") file this Emergency Motion for a temporary restraining order, preliminary injunction, and declaratory relief against the Defendants Town of Plymouth and the Town of Plymouth's Town Manager, Derek Brindisi ("Plymouth"), "so that UAINE's annual National Day of Mourning ("NDOM") may take place, unburdened and properly staged, on Thursday, November 26, 2026." (UAINE and Munroe's Emergency Motion, p.1). After hearing and due consideration, the Motion is **ALLOWED** in part and **DENIED** in part.

BACKGROUND

UAINE and Munro's Motion "relies on the same underlying facts as previously submitted in connection with its earlier Motion for TRO[3], including its Memorandum of Law, and Declaration of Mahtowin Munro, Declaration of David Nathanson, Esq. (Dkts 3.1, 3.2, 3.3)." The Declaration of Mahtowin Munro provides some background:

> 3. UAINE was organized in 1970 by Wamsutta Frank James (Aquinnah Wampanoag) and other Indigenous people living in Massachusetts and other New England states. UAINE was formed to serve as the political

[1] Mahtowin Munro
[2] Derek Brindisi, Town Manager, in his official capacity
[3] Temporary Restraining Order.



wing of the then-existing Federated Eastern Indian League. The leadership was then and is now entirely Native American.

4. The original purpose of UAINE was to educate about Native American history and current issues, to refute the common belief that "All the New England Indians died off," to engage politically, and to work by various means towards advancing Native American peoples and sovereignty. The first action taken UAINE was in November 1970, when the first National Day of Mourning ("NDOM") occurred on the Thanksgiving holiday. While UAINE engaged in many other activities during the year, National Day of Mourning continues to be UAINE's signature event.

6. NDOM began in 1970. In 1970, Wamsutta Frank James was asked to give a speech at a Commonwealth event commemorating the three hundred and fiftieth anniversary of the Pilgrims' arrival in what is now Plymouth. His speech was deemed unacceptable by organizers. He refused to give a different, conciliatory speech. Instead, he helped organize the first NDOM to create an event where Indigenous peoples were free to express the truth about European colonization and its aftermath.

7. NDOM continues to this day. It is a solemn, spiritual, and highly political day. Many participants fast from sundown the day before through the afternoon of NDOM and break their fasts after NDOM concludes. UAINE and participants mourn Native ancestors and the genocide of Native peoples and the theft of Native lands.

8. Participants gather at noon on Cole's Hill, overlooking Plymouth Rock. NDOM begins with Indigenous prayers and ceremony that are permitted by UAINE to be filmed. After the speeches and marching that day have concluded, NDOM ends with a closing of the circle by prayers and ceremony. The entire event is considered a religious ceremony by the organizers and many attendees. Attendees are specifically instructed that the religious portions of the program at the beginning and end are not to be recorded in order to preserve the sanctity of religious practices. There is a program of speeches on Cole's Hill that lasts until approximately 1:30 p.m. Speeches tend to recount the history of Native peoples in Massachusetts and the region and link it to the current status and condition of Indigenous peoples. Representatives from Indigenous groups from throughout the United States and the world attend, bringing greetings, solidarity, news, and prayer. The program emphasizes solidarity among oppressed groups and resistance to systems that harm Indigenous peoples.

9. Following the program of speakers, participants march through downtown Plymouth on a short march which proceeds as follows: from Cole's Hill to Carver Street and up Leyden Street, right on Main Street to Brewster Street, turning right on Brewster Street, turning right onto Water Street,

proceeding to Plymouth Rock where a rally is held. The march then proceeds along Water Street, turning right of Leyden Street, then proceeding up to old Post Office Square (Town Square) for a final rally near the site of Metacomet historical marker.

10. The march includes chants and speeches, with spiritual elders positioned in the front of the march who burn incense and sage.

11. NDOM is culturally, politically, and spiritually significant to UAINE members because NDOM provides an opportunity for Indigenous peoples to speak the truth about European colonization, land theft, persecution of Indigenous religious practices, and war against Indigenous peoples at a time ("Thanksgiving") and at a place (Plymouth) which is central to the myth that colonization was benign and Indigenous peoples have vanished.

12. NDOM expresses Indigenous peoples' mourning for murdered ancestors, demand for the return of stolen lands, demand for the protection of Indigenous territory, demand for respect for sovereignty of Indigenous governments, and demand that authorities address the problem of missing and murdered Indigenous peoples today. Particularly women and girls.

13. During the 1997 National Day of Mourning, Native Americans delivered several speeches on Cole's Hill. The group of approximately 200 participants led largely by women and children at the front, then proceeded up Leyden Street, a public thoroughfare. The participants held at least one banner which read, "You are on Indian land." A police line was set up along Leyden Street immediately after a bend in the road. When the participants approached this police line, they were ordered to disperse. Some participants moved onto the sidewalk while others remained in the street, insisting that they had a right to be there, especially since UAINE had marched there in many years prior.

14. One participant, Steven Kirschbaum, approached the Plymouth Police in order to negotiate. He was arrested almost immediately, as were the co-leaders of UAINE. Another participant, Sam Sapiel (Penobscot), was UAINE's spiritual leader and was arrested while trying to urge everyone onto the sidewalk and otherwise protect participants. Numerous people were pepper-sprayed and some knocked to the ground by police. Altogether 25 people were arrested. The charges resulting from this incident were dismissed approximately one year later.

15. As a result of the 1997 incident UAINE and the Town of Plymouth entered into negotiations and an agreement was eventually executed.

The agreement between UAINE and Plymouth ("1997 Agreement"[4]) was signed on October 19, 1997. That agreement provides in part:

> 1. UAINE will be allowed to conduct a demonstration, which may include a march, between the hours of 12 p.m. and 3 p.m. every Thanksgiving Day/Day of Mourning, beginning at Cole's Hill in the Town of Plymouth.

Apparently the agreement allowed the NDOM to be held for the next several years.

Ms. Munro's Declaration provides that:

> 18. The settlement agreement further provides: "PLYMOUTH agrees to make available to UAINE its 'showmobile' for use during the National Day of Mourning speeches. If UAINE elects to use the 'showmobile,' the Town of Plymouth will ask for the appropriate permits from the State of Massachusetts. UAINE recognizes that PLYMOUTH cannot guarantee that those permits will be issued. If UAINE elects to provide its own stage and sound system PLYMOUTH will cooperate to facilitate its installation and powering on the Day of Mourning."
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> 19. This "showmobile" was offered for use by the Town in response to UAINE's request for a stage to be provided.
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> 20. In recent years, due to the deterioration of the showmobile, NDOM has allowed for a non-mobile stage to be set up by the Town for the purposes of UAINE's speeches and expressive activities.

However, last year, 2025, problems began to arise concerning the 1997 Agreement. Plymouth sought to obtain some insurance or a bond providing indemnity, defense or hold-harmless agreements. This resulted in UAINE filing the present lawsuit on November 24, 2025. The parties entered into a Joint Agreement[5], that applies to the November 27, 2025 NDOM. That agreement provides:

> 4. Defendants [Plymouth], and their employees, agents, servants, officers, and persons in concert with Defendant, are required to facilitate, prepare, and enable the National Day of Mourning activities to take place, consistent with historical practice after the 1998 Settlement, including

[4] The Parties, for some reason refer to the agreement as the "1998 Agreement". As the agreement was signed in 1997, the Court will refer to it as the 1997 Agreement.
[5] Paper #7.

without limitation, the erection of a stage on Cole's Hill for National Day of Mourning 2025.

This provision, by its terms is limited to the National Day of Mourning in 2025. The parties clearly understood this, for:

> 6. Counsel for the parties agree that on or before February 1, 2026 counsel will meet to negotiate agreements in any form, the future National Days of Mourning arrangements.

The parties were unable to come up with any new agreement. In UAINE and Munro's Motion, it states:

> Now one year later, and again on the eve of NDOM, this case persists because the Town has doubled down on its repudiation of the 1998 Settlement agreement with the Plymouth Select Board voting on November 10, 2026 to cease compliance with the 1998 Settlement Agreement and end its decades-long facilitation of preparatory activities for NDOM's opening speeches on Cole's Hill by either providing a showmobile or setting up a stage. Plymouth has declared it will do neither, leaving UAINE without a stage days before over a thousand people travel across the country to attend NDOM.

Relief Sought

In the motion for a preliminary injunction, UAINE and Munro requests the following relief:

1. The Parties' 1998 Settlement Agreement remains binding and valid;

2. Defendants and their employees, agents, servants, officers, and persons in concert with Defendants, are enjoined from requiring UAINE to obtain any form of insurance or financial bond in relation to its National Day of Mourning activities;

3. Defendants, and their employees, agents, servants, officers, and persons in concert with Defendants, are enjoined from requiring UAINE to execute any form of indemnity, defense, or hold-harmless agreement, or to assume any premium-shifting obligation, in relation to its Nation Day of Mourning activities;

4. Defendants, and their employees, agents, servants, officers, and persons in concert with Defendants, are enjoined from requiring UAINE to obtain municipal permits for its National Day of Mourning activities;

5. Defendants, and their employees, agents, servants, officers, and persons in concert with Defendants, are enjoined from repudiating or ceasing performance of the 1998 Settlement Agreement, including as voted by the Plymouth Select Board on November 10, 2026;

6. Defendants, and their employees, agents, servants, officers, and persons in concert with Defendants, are required to facilitate, prepare, and enable the National Day of Mourning activities take place, consistent with the 1998 Settlement Agreement and historical practice, including without limitation the erection of a stage on Cole's Hill for NDOM 2026 or substitutionary performance acceptable to UAINE.

Plymouth filed an opposition to the motion for preliminary injunction. A hearing was held on November 23, 2026, at the Plymouth Superior Court sitting in Plymouth.

DISCUSSION

A party seeking a preliminary injunction must demonstrate a likelihood of success on the merits of his legal claims, that irreparable harm will result from the denial of an injunction, and that in light of his likelihood of success on the merits, the risk of irreparable harm to him outweighs the potential harm to the non-moving party in granting the injunction. *Doe* v. *Worcester Pub. Sch.*, 484 Mass. 598, 601 (2020); *Garcia* v. *Department of Hous. and Community Dev.*, 480 Mass. 736, 747 (2018). "Where a party seeks to enjoin government action, the judge also must determine that the requested order promotes the public interest, or, alternatively, that the equitable relief will not adversely affect the public" (quotations and citations omitted). *Garcia*, 480 Mass. at 747.

In seeking to enjoin Plymouth, UAINE and Munro look to the 1997 Agreement. In pertinent part, that agreement provides:

1. UAINE will be allowed to conduct a demonstration, which may include a march, between the hours of 12 p.m. and 3 p.m. every Thanksgiving Day/Day of Mourning, beginning at Cole's Hill in the Town of Plymouth.

This provision clearly contemplates an agreement for future Thanksgiving/Day of Mourning, and is not limited to only the Thanksgiving/Day of Mourning of 1997.

> 4. PLYMOUTH officials will work with UAINE so that preparatory activities for the noon assembly at Cole's Hill will be facilitated

On its face, this section speaks for itself, however, what exactly "preparatory activities" encompasses is not defined in the agreement. Therefore, such activities, for the purposes of this motion will be those that are consistent with this decision.

> 13. PLYMOUTH agrees to make available to UAINE its "showmobile" for use during the National Day of Mourning speeches. If UAINE elects to use the "showmobile" the Town of Plymouth will ask for the appropriate permits from the State of Massachusetts. UAINE recognizes that PLYMOUTH cannot guarantee that those permits will be issued. If UAINE elects to provide its own stage and sound system, PLYMOUTH will cooperate to facilitate its installation and powering on the Day of Mourning.

This provision refers to "its Showmobile" indicating reference to a specific vehicle owned by Plymouth. As noted in Munro's Declaration:

> 20. In recent years, due to the deterioration of the showmobile, NDOM has allowed for a non-mobile stage to be set up by the Town for the purposes of UAINE's speeches and expressive activities.

There is no longer a "showmobile" to be used by UAINE. Therefore it can no longer be considered in the interpretation of the agreement. There is no other mention of any other stage in the entire agreement but for the last sentence in paragraph 13. Plymouth has no obligation under the agreement to provide a stage for UAINE[6].

Hence, the Court is not convinced that UAINE and Munro have a likelihood of success as to any claim concerning the erection of a stage.

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[6] Potentially complicating matters, is the fact that where the stage is sought to be set up is not on Plymouth owned property, but Commonwealth of Massachusetts owned property. As this issue was not raised, the Court declines to comment further on it.

As to the next consideration, balancing harms, UAINE and Munro will not be irreparably harmed by the failure to issue the injunction because UAINE and Munro have the option of providing their own stage. Further, as mentioned in Munro's Declaration:

> 10. The march includes chants and speeches, with spiritual elders positioned in the front of the march who burn incense and sage.

Speeches are contemplated during the march.

ORDER

For the foregoing reasons, it is hereby **ORDERED** that

1. The Parties' 1998 Settlement Agreement remains binding and valid; is **ALLOWED**

2. Defendants and their employees, agents, servants, officers, and persons in concert with Defendants, are enjoined from requiring UAINE to obtain any form of insurance or financial bond in relation to its National Day of Mourning activities; **ALLOWED**

3. Defendants, and their employees, agents, servants, officers, and persons in concert with Defendants, are enjoined from requiring UAINE to execute any form of indemnity, defense, or hold-harmless agreement, or to assume any premium-shifting obligation, in relation to its Nation Day of Mourning activities; **ALLOWED**

4, Defendants, and their employees, agents, servants, officers, and persons in concert with Defendants, are enjoined from requiring UAINE to obtain municipal permits for its National Day of Mourning activities; **ALLOWED**

5. Defendants, and their employees, agents, servants, officers, and persons in concert with Defendants, are enjoined from repudiating or ceasing performance of the 1998 Settlement Agreement, including as voted by the Plymouth Select Board on November 10, 2026; **DENIED**

6. Defendants, and their employees, agents, servants, officers, and persons in concert with Defendants, are required to facilitate, prepare, and enable the National Day of Mourning activities take place, consistent with the 1998 Settlement Agreement and historical practice, including without limitation the erection of a stage on Cole's Hill for NDOM 2026 or substitutionary performance acceptable to UAINE. **DENIED**

Brian S. Glenny
Justice of the Superior Court

Date: November 24, 2026

CC: Counsel of Record