United States Court of Appeals
For the First Circuit

No. 17-1511

IN RE: RICHARD LEE PAIVA,

Petitioner, Appellant.

Before

Thompson, Kayatta and Barron,
<u>Circuit Judges</u>.

JUDGMENT

Entered: December 21, 2018

Appellant Richard Lee Paiva appeals from the <u>sua</u> <u>sponte</u> denial of his motion seeking to hold Rhode Island prison officials ("RIDOC") in contempt for violating a 1972 consent decree and a 1974 injunction entered in <u>Joseph Morris</u> v. <u>Anthony Travisono</u>, D.R.I. No. 4192. The district court denied relief on the ground that, <u>inter</u> <u>alia</u>, appellant had no legal basis for seeking contempt relief by motion in a closed federal case. Even assuming <u>Morris</u> is a closed case, that event in and of itself would not necessarily bar a motion to address a claimed violation of an injunction if the injunction has not expired or been terminated. Here, appellant's motion alleges just such a violation. Given the absence of any indication in the present record that the injunction is no longer in effect, we believe that it makes better sense for the district court to get RIDOC's response before considering whether dismissal is appropriate.

Consequently, after careful review of the record, appellant's submission to this court, and relevant case law, we vacate the denial of appellant's motion for further relief and remand for further proceedings. On remand, the district court shall order RIDOC to file a response to appellant's motion. We take no position on the relative merits of appellant's claims or on the ultimate disposition of the contempt motion.

<u>Vacated</u> and <u>remanded</u>. 1st Cir. R. 27.0(c).

By the Court:

Maria R. Hamilton, Clerk

cc:
Hon. John J. McConnell
Hanorah Tyer-Witek, Clerk, United States District Court for the District of Rhode Island
Richard Lee Paiva