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Via ECF

The Honorable William F. Kuntz, II
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: *United States v. Motovich et al.*, 21-CR-497 (WFK)

Dear Judge Kuntz:

We write on behalf of our client David Motovich to respectfully request a Court Order directing the Brooklyn Metropolitan Detention Center (“MDC”) to allow Mr. Motovich to have religious meals delivered to him through the Chaplain and religious services unit of the MDC. Mr. Motovich makes this request to ensure adequate adherence to the First Amendment’s protection of free expression of religion and to enforce his rights under the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc *et seq.*. Since this Court’s detention order of July 30, 2024, the so-called kosher meals given to Mr. Motovich at the MDC fail to meet basic nutritional needs and gravely endanger his physical health. This inadequate food service has forced Mr. Motovich to decide whether to violate his fundamental religious principles or starve. No detainee in this country should confront such constitutional and physically harmful deprivations.

As background, this Court revoked Mr. Motovich’s pretrial bail¹ upon the return of guilty verdicts after trial on July 30, 2024. *See* 18 U.S.C. § 3143(a). The Court’s detention order was affirmed by the Second Circuit by summary order on September 10, 2024. *See United States v. Motovich*, 24-2108, slip op., (2d Cir., Sept. 10, 2024).

Immediately upon detention, Mr. Motovich was designated to the Brooklyn MDC, where he continues to be detained. As the Court is aware, Mr. Motovich is a religiously observant member of the Jewish faith. This has been well documented in multiple bail modification

¹ Mr. Motovich had posted a considerable bail within three weeks of his arrest in August 2021. It included generally: (1) more than \$20 million in secured assets, largely the family homes of sureties; (2) 14 co-signors, including family members, friends, neighbors, work colleagues, and his rabbi; (3) the surrender of his and his children’s passports; (4) home detention and electronic monitoring; (5) a voluntary and legally advised affidavit from Mr. Motovich agreeing to extradition if he were ever found in Israel during the pendency of this litigation; and (6) strict pretrial supervision. Mr. Motovich’s father, Boris Motovich, also voluntarily liened three commercial properties on behalf of the government as additional security under the bond.

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requests made during three years of pretrial litigation. Mr. Motovich's commitment to keeping kosher and only eating kosher meals is clearly religious in nature.

Upon his intake at Brooklyn MDC, Mr. Motovich requested a kosher diet. While the MDC agreed to provide these religious meals, they have proved to be absolutely inadequate on a basic nutritional level. Mr. Motovich informs us that these "meals" consist of nutritionally deficient, spoiled, contaminated or inedible food. Mr. Motovich's daily intake of food has left him starving. For breakfast, he is given a bag of oats or Chex cereal. The oats are not cooked, and he has no means to heat them. For lunch, he is given two or three chicken wings, or sometimes hot dogs and beans. The hot dogs are often still frozen or spoiled. And dinner is a can of sardines. These are sub-standard conditions at a basic, human level. Sadly, Mr. Motovich's complaints about contaminated and spoiled food are not new to the Brooklyn MDC. See e.g. *United States v. Chavez*, No. 22 Cr. 303 (JMF) (S.D.N.Y. Jan. 4, 2024), ECF Doc. 31 (describing the conditions at MDC as "dreadful" and "longstanding" and noting that the issues with food contamination and hazardous physical conditions were an "ongoing tragedy").² Indeed, the Bureau of Prisons itself recently has confirmed the inadequate housing conditions at Brooklyn MDC Brooklyn by issuing a policy decision that it will no longer designate sentenced defendants to that facility. See <https://www.nydailynews.com/2024/09/15/fed-prison-system-stops-sending-newly-sentenced-inmates-to-notorious-mdc-brooklyn-jail>. The reason is clear: it is an unfit penal institution.

Mr. Motovich should not be given the Hobson's Choice of abandoning his fundamental religious beliefs, which are also constitutionally protected, or starve. He has complained internally with MDC officials about his meals and was told he can simply eat what other inmates eat. Of course, this denies him his religious freedom. "[C]ourts have generally found that to deny prison inmates the provision of food that satisfies the dictates of their faith ... [substantially] burden[s] their free exercise rights." *McEachin v. McGuinnis*, 357 F.3d 197, 203

² Finally, several courts in this District and the Southern District of New York have recognized that the conditions at Brooklyn MDC are not fit for pre-trial detention. Just earlier this summer, an inmate was murdered. See John Annese, *Inmate at Brooklyn's Troubled Metropolitan Detention Center Is Stabbed to Death*, *NY Daily News* (Jun. 20, 2024), available at: <https://www.nydailynews.com/2024/06/20/inmate-at-brooklyns-troubled-metropolitan-detentioncenter-is-stabbed-to-death-sources>. At least four inmates have died by suicide there in the past three years. See Fola Akinnibi & Marie-Rose Sheinerman, *Beleaguered Brooklyn Jail Blasted by Candidates in Crowded N.Y. Congressional Race*, *Bloomberg* (Aug. 16, 2022), available at: <https://www.bloomberg.com/news/articles/2022-08-16/ny-10-democratic-candidates-call-on-feds-to-fix-brooklyn-jail>. See also *United States v. Morgan*, No. 19 Cr. 209 (RMB) (S.D.N.Y. May 5, 2020), ECF Doc. 90, Tr. 12-15 (describing the MDC as "dirty," "infested with drugs," and plagued by violence); see also *United States v. Boyd*, No. 21 Cr. 486 (SHS) (S.D.N.Y. Feb. 3, 2022), ECF Doc. 74 (describing overcrowding, staffing issues, and lockdowns at the MDC); *United States v. Days*, No. 19 Cr. 619 (CM) (S.D.N.Y. Apr. 29, 2021), ECF Doc. 35, Tr. 19 (describing MDC conditions as "disgusting [and] inhuman as anything I've heard about any Colombian prison, but more so because we're supposed to be better than that").

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(2d Cir. 2004); *see also Ford v. McGinnis*, 352 F.3d 582, 597 (2d Cir. 2003) (“[A] prisoner has a right to a diet consistent with his or her religious scruples. . . .”); *Jolly v. Coughlin*, 76 F.3d 468, 477 (2d Cir. 1996) (“[A] substantial burden exists where the state ‘put[s] substantial pressure on an adherent to modify his behavior and to violate his beliefs.’” (alteration in original) (quoting *Thomas v. Review Bd. of the Ind. Emp’t Sec. Div.*, 450 U.S. 7078, 718 (1981))).

The government in its press release after Mr. Motovich’s verdict made what was apparently mocking reference about the difficult prison conditions of the MDC detention ordered by this Court after trial. *See* U.S.A.O. E.D.N.Y. Press Release, July 30, 2024, available at: <https://www.justice.gov/usao-edny/pr/brooklyn-business-owner-convicted-operating-unlicensed-money-transmitting-business>. (“‘And although his shady business allowed him to lease a high-end apartment with expensive renovations and luxury cars, today’s verdict will ensure that his next lease is only for a prison cell, no renovations required,’ said Thomas M. Fattorusso, Special Agent in Charge of IRS CI New York.”). This is an unfortunate and degrading commentary on our criminal justice system. The MDC’s horrific conditions should be the topic of prison reform, not prosecutorial retribution. The deprivation of Mr. Motovich’s religious freedom through inadequate religious meal services is not a just and fair consequence of losing trial. It is an unconstitutional response.

We respectfully request that the Court recognize Mr. Motovich’s right to the free exercise of his religion without the threat to his physical health by directing the MDC to allow Mr. Motovich to have religious meals delivered to him through its own religious services unit. We can arrange with MDC officials to bring daily meals to Mr. Motovich that pass religious and nutritional muster through the Chaplain’s office of the MDC. Indeed, this is a practice we are told that is applied by the MDC for other special religious needs.

We welcome the Court to inquire directly to MDC officials about this practice and are available for any hearing the Court would like to hold on these issues.

These issues are ripe for this Court’s determination to protect Mr. Motovich’s basic physical health and constitutional rights of religious expression while he awaits sentencing in this case. We would not seek unnecessarily to burden this Court with matters of Mr. Motovich’s pre-sentence detention if the matters were not urgent and fundamental. The current MDC conditions threaten Mr. Motovich’s basic health and religious freedom. It is an urgent issue that needs Court intervention and cannot await an endless series of administrative review. Exhaustion of administrative remedies is not required if the inmate’s safety is imminently endangered and administrative delays threaten to cause irreparable harm to the inmate. *See Antrobus v. Warden of GRVC*, No. 11 Civ. 5128 (JMF), 2012 WL 1900542, at *2 (S.D.N.Y. May 25, 2012) (quoting *Hemphill v. New York*, 380 F.3d 680, 686 (2d Cir. 2004) (in determining whether a court must await the exhaustion of administrative remedies, the Court “should consider whether special circumstances have been plausibly alleged that justify the prisoner’s failure to comply with administrative procedural requirements”) (internal citations omitted)).

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We therefore request the Court's prompt attention to these issues and ask the Court to direct the MDC Brooklyn to accept religious meals to be delivered to Mr. Motovich through the direction and coordination of the religious services unit of that facility.

Respectfully submitted,

/s/ HEM
Henry E. Mazurek
Counsel for Mr. David Motovich

cc: Counsel of record (*by ECF*)