U.S. Department of Justice

United States Attorney
Eastern District of New York

271-A Cadman Plaza East
Brooklyn, New York 11201

February 18, 2026

By ECF

Honorable Hector Gonzalez
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Martinez de la Cruz v. Russo et al.*, Civil Action No. 26-629 (HG)

Dear Judge Gonzalez:

This Office represents Respondents Director Francis Russo in his official capacity as Director of Field Operations for U.S. Customs and Border Protection, New York Field Office; Judith Almodovar, in her official capacity as Acting Field Office Director, New York City Field office, U.S. Immigration and Customs Enforcement ("ICE"); Kristi Noem, in her official capacity as Secretary, U.S. Department of Homeland Security; and Pamela Bondi, in her capacity as United States Attorney General (collectively, "Respondents"). For reasons set forth below, the Court should modify the Court's February 5, 2026 Order (the "February 5 Order") to permit Respondents to transfer Petitioner to an ICE facility where, while detained, he can receive appropriate medical care and be monitored by medical professionals.

STATEMENT OF FACTS

The facts relevant to this motion are set forth in the Declaration of Deputy Field Office Director William P. Joyce ("Joyce Decl.") and the Declaration of Deep Chopra ("Chopra Decl.") and are summarized here.

A. Petitioner's Immigration and Criminal History

Petitioner, a native and citizen of the Dominican Republic, became a conditional permanent resident of the United States on March 21, 19990; those conditions were removed on February 22, 2001. Joyce Decl. ¶¶ 9, 11. Petitioner has a substantial criminal history. *Id.* ¶¶ 12-17. Most relevant here, he has two convictions for controlled substance offenses – a March 9, 2007 conviction of possession of cocaine with intent to sell, manufacture, or deliver, in violation of Florida Statute § 893.13(1)(a)(1); and a June 30, 2008 conviction for possession of cocaine in violation of Florida Statute § 893.13(6)(a). *Id.* ¶¶ 14-16.

On January 8, 2014, Petitioner applied for admission into the United States at John F. Kennedy International Airport. ("JFKIA") Joyce Decl. ¶ 18. After discovering his prior criminal record and convictions, Customs and Border Protection ("CBP") issued to him a Notice to Appear for removal proceedings, which charged him as being inadmissible under 8 U.S.C. §§

1182(a)(2)(A)(i)(I), 1182(a)(2)(A)(i)(II), and 1182(a)(2)(A)(i). CBP released him from custody that same day. *Id.* The removal proceedings are ongoing. *Id.* ¶¶ 19-29.

Petitioner left the United States on August 17, 2025, when he departed from John F. Kennedy International Airport ("JFKIA"). Chopra Decl. ¶ 5. On January 19, 2025, Petitioner commenced a habeas action in this District, in which he alleged that he arrived at JFKIA late on the evening of January 18, 2025, and was being detained by CBP at JFKIA. *Martinez de la Cruz v. Russo*, 26-cv-303 (E.D.N.Y., Cogan, J.) ("*Martinez I*"). Petitioner's counsel subsequently discontinued that action because Petitioner was not in immigration custody, and the Honorable Brian M. Cogan dismissed that action. *See Martinez I* Order dated January 21, 2026; *see also* Joyce Decl. ¶ 30. In fact, Petitioner was not at JFKIA at any time in January 2026, as he did not return to the United States until February 4, 2026. Chopra Decl. ¶ 4.

On that date, Petitioner applied for admission into the United States at JFKIA. Joyce Decl. ¶ 31. During secondary inspection, CBP and ICE determined that Petitioner suffers from severe dementia and learned that an Immigration Judge had declared him incompetent during the course of his removal proceedings. *Id.* ICE therefore requested a Fit for Confinement Letter from a medical institution prior to taking custody of Petitioner. *Id.*

B. The Detention of Petitioner

Also on February 4, 2026, Petitioner was transported, in CBP custody, to Jamaica Hospital for a full evaluation. *Id.* ¶ 32. The report of the evaluation identified Petitioner's only medical problem as forgetfulness. *Id.* After the evaluation was completed, he was returned to JFKIA at approximately 8:00pm. *Id.* He was then taken into ICE custody due to his being found fit for confinement. *Id.* ICE then transferred him to 26 Federal Plaza – he was booked him into the Temporary Hold Room there at approximately 11:00pm -- for staging while ICE sought bed space at a facility that can appropriately accommodate his medical needs. *Id.* ¶ 33. His detention is mandatory pursuant to 8 U.S.C. § 1226(c)(1)(A) because, due to his criminal convictions, he is inadmissible under 8 U.S.C. § 1182(a)(2)(C). *Id.* ¶ 34.

C. The Commencement of this Action

Petitioner commenced this action on February 4, 2026 at 7:54pm. Dkt 1. His Petition alleges that "he suffers from severe dementia" and "can no longer reliably perform basic daily tasks such as cooking, using a phone or going places without getting confused or lost". Dkt. 1 ¶ 1. The Petition further alleges that "[h]is deteriorating cognitive function has also led to severe anxiety and depression" and that [he] suffers from myriad other chronic health conditions including high blood pressure, obesity, high cholesterol, cataracts, and, potentially, diabetes". *Id.*

The following day, Your Honor issued the February 5 Order, which, *inter alia*, prohibited Respondents from transferring Petitioner to a facility outside this District and the Southern District of New York. Due to that Order, ICE is detaining him at 26 Federal Plaza *Id.* ¶ 43; *see also id.* ¶ 34.

The February 5 Order also directed the parties to meet and confer to determine if they could resolve this action without judicial intervention, and to file a status report by noon on February 10, 2026; and set a briefing schedule in the event the parties could not resolve this action without judicial intervention. The parties timely filed their joint status report on the morning of February 10, 2026. By letter dated February 11, 2026, Petitioner informed the Court that Petitioner intends

to file an amended petition by February 25, 2025. Dkt. 7. By Order dated February 12, 2026, Your Honor issued a revised briefing schedule.

THE COURT SHOULD AMEND THE FEBRUARY 5 ORDER TO PERMIT ICE TO TRANSER PETITIONER TO KSPC

ICE is aware of, and takes very seriously, the concerns about Petitioner's medical condition. Thus, for example, ICE arranged for a virtual evaluation of Petitioner by a neurologist that took place on February 17, 2026, and lasted approximately one hour. Joyce Decl. ¶¶ 41-42. But ICE has no facility in the Eastern and Southern Districts of New York that can provide Petitioner with the services he needs. *Id.* ¶ 35.

Respondents therefore respectfully request that the Court amend the February 5 Order to permit ICE to detain Petitioner at ICE's Krome North Service Processing Center ("KSPC"), located in Miami, Florida. KSPC has determined that Petitioner meets the admission criteria for KSPC's Medical Housing Unit mental health area. *Id.* KSPC is the only ICE detention facility in the Eastern United States that can accommodate Petitioner's needs regarding his physical and mental health. *Id.* KSPC is a level 4 medical/mental health facility that can handle patients with medical and mental health needs. *Id.* ¶ 36. KSPC has access to local and community medical and mental health resources that can be utilized as needed. *Id.* Significantly, at KSPC, Petitioner will be subject to monitoring by medical personnel, including social workers, *id.* – which is necessary due to his dementia. Furthermore, KSPC has virtual attorney visitation and the ability to produce Petitioner for his removal proceedings before the immigration court using a similar medium. *Id.* And ICE will arrange to have his removal proceedings transferred to Florida. *Id.* ¶ 37.

Petitioner seeks release, without giving any indication that Petitioner will be subject to supervision by medical personnel upon release. *See* Dkt. 6 at 1. Petitioner contends that he should remain in New York City so he can be treated by his physicians and a social worker. *Id.* Yet Petitioner cannot have seen, in person, any physician or social worker in New York City at any time over the past six months. He left the United States six months and one day ago, on August 17, 2025, and has been detained since shortly after he returned to the United States at JFKIA on February 4, 2026. Chopra Decl. ¶¶ 4-5; Joyce Decl. ¶ 32.

Respondents note that transferring Petitioner to KSPC will in no way affect this Court's jurisdiction over this habeas action. It is undisputed that this District is the proper forum for this action because Petitioner was detained in this District when he commenced this action on February 4, 2025 at 7:54pm. The Second Circuit has made it very clear that the proper forum for a habeas action is the district in which the petitioner was detained at the time the action was commenced, even if the petitioner is subsequently transferred to another district. *See Ozturk v. Hyde*, 136 F.4th 382, 390-92 (2d Cir. 2025).

Finally, Respondents emphasize that they request that Petitioner be transferred to KSPC for only so long as he needs services that KSPC can provide, but ICE detention facilities in, or closer to, this District cannot provide.

Thank you for Your Honor's consideration of this submission.

Respectfully submitted,

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