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February 19, 2026

By ECF

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

Re: *Martinez de la Cruz v. Russo et al.*, 26-cv-629 (HG)

Dear Judge Gonzalez:

We represent the Petitioner, Mr. Jose Martinez de la Cruz, in the above-referenced habeas corpus matter. We respectfully request that the Court deny the Respondents' letter motion to modify the Court's February 5, 2026, Order ("February 5th Order") to permit them to transfer Petitioner to Krome North Service Processing Center ("KSPC"), in Miami Florida. In support of their motion, Respondents assert, without evidence, that KSPC is the only facility in the "Eastern United States" where they will be able to provide him appropriate medical care.

Respondents' motion should be denied. Transfer to KSPC would undermine Mr. Martinez de la Cruz's ability to meaningfully participate in these habeas proceedings and to access counsel. *See Ozturk v. Hyde*, 136 F.4th 382, 402 (2d Cir. 2025). Transfer would also impede this Court's ability to resolve the case fairly and expeditiously. *See Lieogo v. Freden*, No. 6:25-CV-06615 EAW, 2025 WL 3290694, at *5 n.4 (W.D.N.Y. Nov. 26, 2025) ("The Court has observed firsthand in its handling of the numerous petitions filed . . . that allowing a petitioner to be transferred outside the Court's jurisdiction impedes the efficient and effective resolution of the pending habeas corpus petition").

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Additionally, KSPC is notorious for overcrowding, squalid conditions, abuse by guards, and notably, denial of required medical care. *See* Human Rights Watch, " 'You Feel Like Your Life Is Over' Abusive Practices at Three Florida Immigration Detention Centers Since January 2025," Jan. 21, 2025, https://www.hrw.org/report/2025/07/21/you-feel-like-your-life-is-over/abusive-practices-at-three-florida-immigration. Given the severity of Mr. Martinez de la Cruz's medical conditions, confinement at KSPC poses "excessive risk" to his health and safety. *Charles v. Orange Cnty.*, 925 F.3d 73, 86 (2d Cir. 2019). Respondents have not demonstrated that there is no appropriate detention center closer to New York, such that Mr. Martinez de la Cruz's interests in access to counsel and participation in these, and his removal proceedings, would be protected.

Transfer Would Impede Access to Counsel

First, this Court should deny Respondents' motion because transfer to KSPC would deny Mr. Martinez de la Cruz adequate access to counsel. *See Samb v. Joyce*, No. 25-cv-6373 (S.D.N.Y. Aug. 4, 2025), ECF No. 3. Undersigned counsel would not be able to meet with Mr. Martinez de la Cruz in-person, were he transferred to KSPC, to prepare for his habeas case and his immigration removal case. Undersigned counsel's firm, The Bronx Defenders, is a non-profit organization that represents low-income New Yorkers pro bono and cannot afford to send undersigned counsel to KSPC.

In-person meetings are crucial to ensure Mr. Martinez de la Cruz adequate access to counsel, given his neurocognitive disorder. In his June 2022 competency hearing, an immigration judge found that he was incompetent, based on his inability to understand the nature of his proceedings, remember facts about his life relevant to his defense, and consult with counsel. ECF. No. 1 at ¶¶ 29-32. She found that safeguards were required to protect his rights to Due Process, a full and fair hearing. *See Reid v. Bondi,* 132 F.4th 109, 121 (2d Cir. 2024) (safeguards must be adequate to protect a non-citizen's right to a full and fair hearing under the Due Process Clause

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of the Fifth Amendment and 8 U.S.C. § 1229a(b)(4)(B) and right to counsel under the Sixth Amendment and 8 U.S.C. § 1229a(b)(4)(A)). She ordered such safeguards, including an in-person hearing, because she determined that appearing in-person, as opposed to via video, would reduce his confusion and aid him in remembering facts in support of his defense. *Id.* Thus, Respondents' assertion that Mr. Martinez de la Cruz would be provided attorney visitation via video does not provide him adequate access to counsel in light of his incompetency, because it would increase his confusion and harm his ability to assist counsel in his own defense. ECF No. 8-1 at ¶ 36; *see Palamaryuk by & through Palamaryuk v. Duke*, 306 F. Supp. 3d 1294, 1300¬02 (W.D. Wash. 2018) (enjoining transfer away from counsel when non-citizen's competency rendered in-person visitation necessary to ensure meaningful access to counsel). Given his difficulties in communicating via video, video visitation would also obstruct undersigned counsel's ability to gather facts from him regarding his health and conditions of confinement, hindering this Court's ability to adjudicate his habeas petition. *See Ozturk v. Trump*, 779 F. Supp. 3d 462, 495 (D. Vt. Apr. 18, 2025) (requiring transfer when it would "facilitate [petitioner's] ability to work with her attorneys" which would assist the Court in evaluating her habeas claims).

Further, transfer might require undersigned counsel to withdraw from Mr. Martinez de la Cruz's removal case, per the terms of The Bronx Defenders' retainer, which cannot guarantee representation if the case is transferred outside of the jurisdiction. *See* ECF No. 8-1 at ¶ 37 (Respondents assert that Petitioner's removal case would be transferred to the Miami Krome Immigration Court). The Bronx Defenders has represented Mr. Martinez de la Cruz in New York immigration court since 2018 and is well versed in the extensive procedural history of the case and facts essential to Mr. Martinez de la Cruz's claim for the relief, that he cannot adequately relay to the immigration court or new counsel, due to his incompetency. This Court therefore should continue to enjoin transfer because transfer would implicate his right to counsel. *Cf. Ledesma-Valdes v. Sava*, 604 F. Supp. 675, 682

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(S.D.N.Y. 1985) (rejecting transfer from NY to Texas as violative of the right to counsel when government proved "nonavailability of adequate detention facilities in [New York], and the availability of secure family accommodations in Texas" and New York counsel failed to show "personal or professional relationship to any one of the petitioners"). New counsel (*if* Mr. Martinez de la Cruz could secure counsel), would also likely have to request adjournments for attorney preparation, further prolonging his detention.

In light of these circumstances, this Court should continue to enjoin transfer to ensure Mr. Martinez de la Cruz has adequate access to counsel. *See Perez y Perez v. Noem,* No. 25-CV-4828, 2025 WL 1908284, at *3 (S.D.N.Y. June 13, 2025) (enjoining transfer when counsel's "ability to provide adequate representation to Petitioner will be harmed if Petitioner is transferred to a location that renders in-person contact impossible"); *Palamaryuk by & through Palamaryuk v. Duke*, 306 F. Supp. 3d 1294, 1300–02 (W.D. Wash. 2018) (enjoining transfer away from counsel in the case of a non-citizen incompetent to proceed).

Transfer Will Impede Necessary Fact-Finding as to Petitioner's Claims

Second, this Court should deny Respondent's request because transfer to KSPC would hinder the Court's ability to make the required factual findings regarding his medical conditions, needs, and conditions of confinement. *See Ozturk*, 136 F.4th at 402 (requiring transfer to the District where "would allow the Court to conduct appropriate fact-finding") (*quoting Ozturk*, 779 F. Supp. 3d at 495).

To rule on his Rehabilitation Act claim, this Court must make findings of fact as to the nature and severity of his disabilities. Pet. ECF No. 1 at ¶¶ 58-79 (this Court will have to determine: if he is disabled within the meaning of the Act; the extent to which his cognitive and mental health conditions prevent him from meaningfully accessing benefits offered by Respondents; and the reasonableness of the accommodation requested, given his specific needs); *see also Wright v. New York State Dep't of Corr.*, 831 F.3d 64, 77–80 (2d Cir. 2016) (failure to accommodate

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actions require an "individualized inquiry" as to the "specific needs" of the plaintiff). His forthcoming deliberate indifference claim also requires the Court to evaluate the severity of his medical needs and additionally requires the Court to assess if the conditions of confinement fail to meet that need. ECF No. 7; *See Charles.*, 925 F.3d at 85.

Transfer would frustrate Mr. Martinez de la Cruz's ability to work with his attorney and provide her with facts relevant to his habeas petition. Mr. Martinez de la Cruz's doctors, friends, social workers, and attorneys who have prior knowledge of his cognitive functioning, mental health, and physical health are all located in New York City. ECF. No 1 at ¶¶ 26-47; ECF No. 1-4 (Medical records from NYU Langone, dated 2018-2025); ECF No. 1-5 (2022 Evaluation from New-York-based neuropsychologist, Dr. Vasquez-Casals); ECF No. 1-6 (2026 Letter from New-York-based neurologist, Dr. Boylan); ECF No 1-8 (Social Work Letter). Additionally, given the neurodegenerative nature of Mr. Martinez de la Cruz's dementia, a new, in-person evaluation is required to evaluate the extent of his impairments and assess what medical treatment is necessary and what conditions of confinement are appropriate. ECF No. 1-6 (Letter from Dr. Vasquez-Casals).[1] Both of the doctors who have previously evaluated his conditions are based in the New York City Area and, given the Bronx Defenders' limited financial resources, both doctors would be unable to conduct the required in-person evaluation of him were he to be transferred to KSPC. *Id.*; ECF No. 1-5 (2022 Evaluation from New-York-based neuropsychologist, Dr. Vasquez-Casals); ECF. No 1-6 (2026 Letter from New-York-based neurologist, Dr. Boylan). Thus, Respondents should not be permitted to transfer Petition to KSPC. *See Ozturk*, 779 F. Supp. 3d at 495 (requiring

[1] Dr. Boylan, who virtually evaluated Mr. Martinez de la Cruz on February 17, 2026, because Respondents will not allow her to visit him in person, has told undersigned counsel that a video evaluation is not sufficient to assess his current neurocognitive functioning and mental health. Evidence as to this will be provided with Petitioner's amended complaint.

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transfer back to the District when transfer would "facilitate [the petitioner's] ability to receive a neutral medical evaluation, as her medical condition will be a factor for the Court to consider when addressing the question of release").

Transfer Prevents Petitioner's Meaningful Access to these Proceedings

Third, this Court should not allow Respondents to transfer Mr. Martinez de la Cruz to KSPC because transfer would prevent him from meaningfully participating in his proceedings before this Court. Meaningful participation in these proceedings requires that Respondent's produce Mr. Martinez de la Cruz to Court. *See Ozturk*, 136 F.4th at402 ("Inherent in the term "habeas corpus" is the notion that the government is required to produce the detainee in order to allow the court to examine the legality of her detention"); *see also* 28 U.S.C. § 2243 ("Unless the application for the writ and the return present only issues of law the person to whom the writ is directed shall be required to produce at the hearing the body of the person detained."). In addition, given his neurocognitive disorder, Mr. Martinez de la Cruz will be less able to understand these proceedings and thus meaningfully participate, if he is not produced in-person. *See* ECF. No. 1 at ¶¶ 29-32 (in his 2022 competency hearing, the immigration judge ordered that he be allowed to appear in person, to reduce his confusion and aid his memory, in order to protect his constitutional right to Due Process and statutory rights). Respondents have provided no indication that they plan to produce him to this Court from KSPC. *See Lieogo*, 2025 WL 3290694, at *5 n.4 (noting that "transfers of petitioners undermine the petitioners . . . ability to participate in the habeas corpus proceedings").

Deplorable Conditions and Grossly Inadequate Medical Care at KSPC

Fourth, this Court should deny Respondents' motion because they cannot demonstrate that transfer outside of the Southern and Eastern Districts of New York is necessary to provide Mr. Martinez de la Cruz appropriate medical care, or that they would provide him such care or confine him in constitutionally adequate conditions at KSPC.

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Mr. Martinez de la Cruz's medical records demonstrate that he suffers from major neurocognitive disorder (dementia), severe anxiety, depression, high blood pressure, obesity, benign prostatic hyperplasia (enlarged prostate), and high cholesterol. ECF No 1 at ¶ 34. He has been prescribed medications for his dementia (memetine), high blood pressure (amlodipine), and atorvastatin (high cholesterol). ECF No. 1-6 at ¶¶ 11, 13.

Respondents' assertations that KSPC "is a level 4 medical/mental health facility which can handle patients with medical and mental health needs" and that Mr. Martinez de la Cruz would be "continuously monitored by medical professionals" do not demonstrate that he would be provided adequate medical care or detained in constitutionally adequate conditions of confinement. ECF No. 8-1 at ¶ 35.

KSPC is infamous for its inhumane conditions of confinement, violence, and denial of required medical care. *See, e.g.,* Human Rights Watch, "'You Feel Like Your Life Is Over' Abusive Practices at Three Florida Immigration Detention Centers Since January 2025," Jan. 21, 2025, https://www.hrw.org/report/2025/07/21/you-feel-like-your-life-is-over/abusive-practices-at-three-florida-immigration. Human Rights Watch concludes:

> This report finds that staff at [KSPC] . . . subjected detained individuals to dangerously substandard medical care, overcrowding, abusive treatment, and restrictions on access to legal and psychosocial support. Officers denied detainees critical medication and detained some incommunicado in solitary confinement as an apparent punishment for seeking mental health care. Facility officers returned some detainees to detention directly from hospital stays with no follow-up treatment. They detained others in solitary confinement or transferred them without notice, disrupting legal representation. They forced them to sleep on cold concrete floors without bedding and gave them food

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> which was sometimes substandard, and in many instances ignored their medical requirements. Some officers treated detainees in dehumanizing ways.

Id. Other reports confirm these findings. *See, e.g.,* Amesty International, "USA: Torture and enforced disappearances in the Sunshine State: Human Rights Violations at 'Alligator Alcatraz' and Krome in Florida," Dec. 5, 2025, https://www.amnesty.org/en/documents/AMR51/0511/2025/en/ ("Amnesty International documented delays in intake procedures, overcrowding in temporary processing areas, inadequate and inaccessible medical care, alarming disciplinary practices including the use of prolonged solitary confinement, and challenges in access to legal representation and due process at Krome"); Jasmine Garsd, "In recorded calls, reports of overcrowding and lack of food at ICE detention centers," NPR, Jun. 6, 2025, https://www.npr.org/2025/06/05/nx-s1-5413364/concerns-over-conditions-in-u-s-immigration-detention-were-hearing-the-word-starving.

Considering these reports, Respondents' statements are insufficient to demonstrate that they would provide him with constitutionally adequate medical care at KSPC. Mr. Martinez de la Cruz requires medications for his dementia, hypertension, and high cholesterol. ECF No. 8-6. Adequate treatment for his dementia includes regular cognitive and psychological assessments, lab tests and physical examinations, medications, access to a comprehensive care team, and behavioral support. *Id.* Furthermore, the conditions at KSPC would precipitate Mr. Martinez de la Cruz's "rapid cognitive and functional decline," cause "delirium, behavioral destabilization, and medical emergencies," and "increase the likelihood that [his previously documented paranoia] would progress to a full-blown psychosis and, possibly, loss of behavioral control or disinhibition." *Id.*[2]

[2] Respondents' argument that they are requesting transfer to KSPC for "only so long as he needs services that KSPC, [but not closer detention centers] can

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Availability of Adequate Local Detention Facilities

Lastly, Respondents have not demonstrated that there is no appropriate detention center closer to New York, such that Mr. Martinez de la Cruz's interests in access to counsel and participation in these, and his removal proceedings, would be protected. They provide no evidence to support their claim that "KSPC is the only ICE detention facility in the Eastern United States that can accommodate Petitioners needs regarding his physical and mental health" beyond Deputy Director Joyce's statement that "Orange County Jail and Metropolitan Detention Center Brooklyn . . . do not provide the services that KSPC can provide to Petitioner." ECF No. 8 at 3; ECF No. 8-1 at ¶ 35; *Cf. Vasquez Salgado v. Francis et al,* 1:25-cv-06524 (S.D.N.Y. Aug. 21, 2025), ECF. No. 20 (ordering the Government to "explain in detail its position that the Jackson Parish Correctional Facility is the only facility in the United States appropriate for Petitioner's detention" in the case of a Petitioner held long-term at 26 Federal Plaza). There is no evidence as to what services Orange County Jail, the Metropolitan Detention Center, or other detention centers in the region

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provide" is unavailing. ECF. 8 at 3. Dementia is a neurodegenerative condition, and as such, there will not come a time when Mr. Martinez de la Cruz requires fewer services. ECF. 1-6. Additionally, Respondents' counsel's implication that ICE's transfer request is temporary, is belied by Deputy Director Joyce's statements that ICE will file a Form I-830, Notice to EOIR: Alien Address, triggering transfer of his removal proceedings, only "once ICE can place Petitioner in a long-term detention facility," and that they will file such a form once he has been transferred to KSPC. ECF. 8-1 at ¶¶ 39, 37. If, for some reason, Mr. Martinez de la Cruz were not able to challenge the conditions of confinement at KSPC in these proceedings, he would be precluded from filing a subsequent habeas petition once transferred into the jurisdiction of the 11th Circuit. *See e.g., Abreu v. Rivera*, No. 25-20821-CIV, 2025 WL 2163051, at *2 (S.D. Fla. May 12, 2025), *report and recommendation adopt*ed, No. 25-20821-CIV, 2025 WL 2160163 (S.D. Fla. July 30, 2025) (holding that petitioner detained at KSPC cannot bring claims challenging his detention on the basis "that he has not received any care for his heart condition, respiratory complications, and seizures" in habeas).

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provide, or evidence as to the adequacy of such programs to treat Mr. Martinez de la Cruz's chronic conditions.[3] Respondents also provide no evidence that they have attempted to place Mr. Martinez de la Cruz at detention facilities closer to New York City.

Petitioner maintains that the conditions of his detention at 26 Federal Plaza are not constitutionally adequate and asserts that he is not receiving adequate medical care. He is not being provided adequate access to counsel or necessary in-person medical evaluation. But transfer to a distant location is not the remedy; it would further inhibit his abilities to access counsel and participate in his proceedings and prevent this Court from expeditiously and fairly adjudicating his habeas petition. Further, detention at KSPC would violate his constitutional right to adequate conditions of confinement and potentially frustrate his ability to challenge his confinement.

Ultimately, all of this could be resolved if Respondents, like they did in 2014 and 2024, paroled Mr. Martinez de la Cruz from custody. ECF. No. 1 at ¶¶ 23, 47l ECF. No. 8-2 at 4. The criminal convictions Respondents claim subject Mr. Martinez de la Cruz to mandatory detention pre-date these prior paroles. In fact, Mr. Martinez de la Cruz has not been convicted of any new crime after being placed in immigration removal proceedings.

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[3] There is no indication that ICE has adequately evaluated Mr. Martinez de la Cruz's medical conditions in order to determine what treatment he requires or what conditions of confinement would be appropriate. Deputy Director Joyce states that, "ICE determined that Petitioner suffers from severe dementia," but found that he was "fit for confinement" based a doctor at Jamaica Hospital's contradictory determination that "Petitioner's only medical problem [is] forgetfulness." ECF No. 8-1 at ¶¶ 31-32. Respondents do not provide evidence as to whether the Jamaica Hospital evaluated Mr. Martinez de la Cruz's neurocognitive functioning or mental health, physically examined him, or conducted lab tests related to his physical health.

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For the above reasons, Petitioner respectfully requests that this Court deny Respondents' request to transfer him to KSPC. Thank you to the Court for its time and consideration of this letter.

Respectfully,

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cc: Counsel of Record (by ECF)