

19-2213-cv

Rodriguez v. Gusman

1
2 UNITED STATES COURT OF APPEALS
3 FOR THE SECOND CIRCUIT
4

5
6 August Term, 2020
7

8 (Argued: August 17, 2020

Decided: August 31, 2020)

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10 Docket No. 19-2213-cv
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13
14 JOSE RODRIGUEZ,
15

16 *Plaintiff-Appellant,*
17

18 v.
19

20 DR. MIKAIL A. GUSMAN, MEDICAL DIRECTOR, EASTERN CORRECTIONAL
21 FACILITY, FKA DR. GUZMAN, FKA DR. GUSMAN, NANCY ANTHONY,
22 REGISTERED NURSE, EASTERN CORRECTIONAL FACILITY, FKA MS.
23 ANTHONY, DR. ANN ANDOLA, REGISTERED NURSE, EASTERN
24 CORRECTIONAL FACILITY, FKA MS. ANNDOLA, FKA DOCTOR
25 ANANDOLAS, JEFFREY MCKOY, DR. BIPIN BHAVSAR, EASTERN
26 CORRECTIONAL FACILITY, MEGAN MCGLYNN, ROGER TRAYNOR,
27 DAVID JACOBS, AMANDA DEMSHICK,
28

29 *Defendants-Appellees.*¹
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31

32
33 Before: NEWMAN, POOLER, and HALL, *Circuit Judges.*

¹ The Clerk of Court is directed to amend the caption as above.

1
2 Jose Rodriguez appeals from the June 21, 2019 decision and order of the
3 United States District Court for the Northern District of New York (Mae A.
4 D'Agostino, J.) adopting the Magistrate Judge's sua sponte order
5 administratively closing Rodriguez's civil rights suit against defendants and
6 denying Rodriguez's motion to reconsider. The district court concluded that,
7 because Rodriguez had been deported to the Dominican Republic, Rodriguez
8 would be unavailable in the United States for depositions, further medical
9 examinations, and trial testimony, and the case should be closed. Our Circuit has
10 yet to address what standard guides administrative-closure decisions when a
11 plaintiff is unavailable. We hold that an administrative closure in such
12 circumstances is a last resort that is appropriate only when all other alternatives
13 are virtually impossible or so impractical as to significantly interfere with the
14 operations of the district court or impose an unreasonable burden on the party
15 opposing the plaintiff's claim. On the present record, numerous alternatives to
16 the issues identified by the district court exist, and none appears to meet the
17 above-articulated standard. We accordingly vacate the district court's order and
18 remand for further proceedings consistent with this opinion.

VACATED and REMANDED.

ROBERT J. O'LOUGHLIN, Paul, Weiss, Rifkind,
Wharton & Garrison LLP (Karen King, Ayelet M.
Evrony, Amanda B. Horowitz, *on the brief*), New York,
N.Y., *for Plaintiff-Appellant Jose Rodriguez*.

FRANK BRADY, Assistant Solicitor General (Jeffrey W.
Lang, Deputy Solicitor General, *on the brief*), *for* Letitia
James, Attorney General of the State of New York, New
York, N.Y., *for Defendant-Appellees*.

POOLER, *Circuit Judge*:

Jose Rodriguez appeals from the June 21, 2019 decision and order of the
United States District Court for the Northern District of New York (Mae A.
D'Agostino, J.) adopting the Magistrate Judge's sua sponte order
administratively closing Rodriguez's civil rights suit against defendants² and

² The defendants in this case are Dr. Mikail A. Gusman, the Medical Director of New York's Eastern Correctional Facility ("ECF"); Nancy Anthony, a registered nurse at ECF; Dr. Ann Andola, a doctor at ECF; Jeffrey McKoy, the Deputy Commissioner of Program Services at ECF; Dr. Bipin Bhavsar, a doctor at ECF; Megan McGlynn, a Department of Corrections and Community Supervision Inmate Classification Analyst; Roger Traynor, the Supervising Rehabilitation Coordinator at Franklin Correctional Facility; David Jacobs, a Rehabilitation Counselor at Franklin Correctional Facility; and Amanda Demshick, the Offender Rehabilitation Coordinator at the Shawangunk Correctional Facility (collectively, "Defendants").

1 denying Rodriguez's motion to reconsider. The district court concluded that,
2 because Rodriguez had been deported to the Dominican Republic, Rodriguez
3 would be unavailable in the United States for depositions, further medical
4 examinations, and trial testimony, and the case should be closed. Our Circuit has
5 yet to address what standard guides administrative-closure decisions when a
6 plaintiff is unavailable. We hold that an administrative closure in such
7 circumstances is a last resort that is appropriate only when other all alternatives
8 are virtually impossible or so impractical as to significantly interfere with the
9 operations of the district court or impose an unreasonable burden on the party
10 opposing the plaintiff's claim. On the present record, numerous alternatives to
11 the issues identified by the district court exist, and none appears to meet the
12 above-articulated standard. We accordingly vacate the district court's order and
13 remand for further proceedings consistent with this opinion.

14 BACKGROUND

15 Rodriguez is a former lawful permanent resident of the United States who
16 currently lives in the Dominican Republic. The present suit arises out of an
17 incident that occurred while Rodriguez was incarcerated at New York's Eastern
18 Correctional Facility ("Eastern"). In 2011, Rodriguez began suffering from a

1 rapid heart rate and irregular breathing. On February 16, 2012, Rodriguez
2 ultimately had a stroke, which left him partially paralyzed. He alleges that
3 Defendants' deliberate indifference to his medical needs while he was
4 incarcerated at Eastern led to his stroke. As relevant here, Rodriguez alleges that
5 Defendants failed to respond to his complaints about his symptoms over several
6 months; did not consult his medical doctors or provide a Spanish interpreter; did
7 not prescribe any medication; did not adequately monitor his condition; and
8 minimized his complaints, such as when on one occasion, defendant Dr. Bipin
9 Bhavsar merely instructed him to meditate.

10 On May 19, 2015, Rodriguez filed suit, proceeding as a pro se prisoner.
11 Initially, Rodriguez raised only an Eighth Amendment deliberate-indifference
12 claim. Acting sua sponte, the district court dismissed Rodriguez's complaint with
13 prejudice as time barred. After appointing pro bono counsel, this Court vacated
14 and remanded, holding that the district court erred in failing to provide
15 Rodriguez an opportunity to amend. *Rodriguez v. Griffin*, 672 F. App'x 106 (2d
16 Cir. 2016).

17 Pro bono counsel continued to represent Rodriguez, and he subsequently
18 amended his complaint and added claims of First Amendment retaliation and

1 access to the courts. In the amended complaint, Rodriguez alleges that after he
2 filed the above-mentioned appeal, he was, without justification, transferred to a
3 remote prison near the Canadian border, which made it difficult for him to meet
4 with counsel, and that he was subject to new limitations on the number and
5 length of calls with counsel.

6 On October 3, 2017, after discovery had begun and Rodriguez had been
7 released from prison, Rodriguez was deported to the Dominican Republic.
8 Rodriguez cannot return to the United States for twenty years absent special
9 permission from the Attorney General. *See* 8 U.S.C. § 1326(a)(2). The case
10 continued to be actively litigated by pro bono counsel on Rodriguez's behalf; for
11 instance, from January through November 2018, pro bono counsel deposed five
12 Defendants and one additional witness.

13 On October 15, 2018, during a telephonic discovery conference, the
14 Magistrate Judge sua sponte raised the issue of whether the case should be
15 administratively closed until Rodriguez returns to the United States. After the
16 parties briefed the issue, the Magistrate Judge administratively closed the case,
17 stating:

1 The Court commends Plaintiff's *pro bono* counsel for the
2 excellent work they have done on Plaintiff's behalf and their
3 willingness to continue to represent Plaintiff in this action despite the
4 substantial burden created by his deportation to the Dominican
5 Republic. Nonetheless, considering the logistical difficulties and
6 substantial cost of continuing with discovery; the logistical
7 difficulties, required technological resources from the court, and
8 prohibitive cost of trying the case without the Plaintiff in the
9 courtroom; and the inefficient use of judicial resources in addressing
10 the difficulties and disputes between the parties that would no doubt
11 arise and require court intervention and resolution throughout the
12 litigation, including throughout the remaining discovery and at trial,
13 the Court concludes there is no further reason to maintain this action
14 on the open docket for statistical purposes and directs administrative
15 closure of the case.

16
17 App'x at 150-51. The text order noted that the case could be reopened for "good
18 cause shown," which was defined as Rodriguez's "reentry into the United States
19 and ability to complete prosecution of the case."

20 Rodriguez then moved for reconsideration. The district court adopted the
21 Magistrate Judge's report and recommendation. It explained that "[a] significant
22 body of jurisprudence—developed primarily in connection with lawsuits filed by
23 incarcerated persons—instructs federal district courts not to dismiss or
24 administratively close actions in which litigants are unable to appear without
25 first considering less drastic alternatives." App'x at 213-14. The district court then
26 listed those alternatives, including making provisions so the prisoner can travel

1 and attend the trial in person; trying the case on depositions or affidavits, or with
2 video; and trying the case without a jury at a location near where the prisoner is
3 located. The district court found that “none of the alternatives are practical” and
4 Rodriguez “will be unavailable to appear at trial,” App’x at 214, but failed to
5 explain why the alternatives were unworkable.

6 The district court noted that “discovery in this case has not yet concluded.”
7 App’x at 214. While acknowledging that “there are mechanisms through which
8 depositions can be taken remotely,” it focused on the fact that “the nature of
9 Plaintiff’s allegations and alleged injuries will more than likely require additional
10 examinations of Plaintiff.” App’x at 215. It also decided that Defendants would
11 not have a reasonable opportunity to depose any physicians treating Rodriguez
12 in the Dominican Republic, but it did not explain why that was. Finally, the
13 district court found that the case “will likely require the retention of an expert
14 witness, who would necessarily be forced to conduct a physical examination of”
15 Rodriguez in the Dominican Republic. App’x at 215. While “not unsympathetic”
16 to Rodriguez, the district court concluded that it “would be unduly prejudicial
17 to Defendants and an inefficient use of judicial resources” to allow the case to
18 continue absent Rodriguez’s return. App’x at 215.

1 Rodriguez timely appealed.

2 DISCUSSION

3 This Court reviews a district court's decision to administratively close a
4 case under an abuse of discretion standard. *Leftridge v. Conn. State Trooper Officer*
5 *No. 1283*, 640 F.3d 62, 67 (2d Cir. 2011). A district court abuses its discretion
6 when it "bases its ruling on an erroneous view of the law or on a clearly
7 erroneous assessment of the evidence, or if its decision—though not necessarily
8 the product of a legal error or a clearly erroneous factual finding—cannot be
9 located within the range of permissible decisions." *Id.* (internal quotation marks,
10 brackets, and citations omitted).

11 I. The Governing Legal Standard

12 The issue of what standard a court applies in deciding whether to
13 administratively close a case is an issue of first impression in our Circuit. The
14 Fourth Circuit has taken up this question, however, and its decision is
15 instructive.

16 In an analogous case involving an incarcerated litigant, the Fourth Circuit
17 explained that "the most drastic alternatives of dismissal for failure to prosecute
18 or indefinite stay should only be considered, if at all, as last resorts after all other

alternatives, starting with securing the prisoner's presence, have been rejected.”
Muhammad v. Warden, 849 F.2d 107, 112-13 (4th Cir. 1988). Thus, while “an
incarcerated litigant's right is necessarily qualified, . . . [that] does not mean that
it can be arbitrarily denied by dismissal or indefinite stays; the law requires a
reasoned consideration of the alternatives,” such as:

making provisions for the prisoner to attend in person, either at his
own expense, or at government expense, and in any case in
government custody; trying the case without the prisoner's presence
in the courtroom, either on depositions or affidavits or with aid of
video; and even trying the case without a jury in the place of
incarceration.

Id. at 111-12.

We agree with the Fourth Circuit that administrative closure, as one of the
“most drastic alternatives” available to a district court, should be used sparingly
and only as a last resort. But we must still consider what that entails in practice.
Is administrative closure properly considered as a last resort when other
alternatives are infeasible, or only when other alternatives are actually
impossible?

We hold that other alternatives must be virtually impossible, or so
impractical as to significantly interfere with the operations of the district court or

1 impose an unreasonable burden on the party opposing the plaintiff's claim, in
2 order to justify an administrative closure. An administrative closure lasting
3 years, decades even, makes finding witnesses and conducting discovery
4 "difficult if not impossible." *See id.* at 110. At bottom, an administrative closure
5 effectively ends a case. *Id.* But this runs afoul of the fundamental principle set
6 forth by Chief Justice Marshall, and echoed by courts ever since, that "where
7 there is a legal right, there is also a legal remedy by suit or action at law,
8 whenever that right is invaded." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163
9 (1803) (internal quotation marks and citation omitted).

10 The importance of this principle is even greater in civil rights suits given
11 the weighty public interest in ensuring accountability for officials who violate the
12 Constitution. This interest exists regardless of whose rights are violated. But
13 when plaintiffs are unavailable due to incarceration or deportation, in particular,
14 administrative closure may insulate officials from liability for violating the rights
15 of prisoners or immigrants subject to removal. A strict standard is necessary to
16 ensure that these plaintiffs are not deeply prejudiced.

17 We are mindful, of course, of the well-settled principle that "a district
18 court possesses inherent authority to control the disposition of the causes on its

docket and has power to stay an action as an incident of that authority.” *Range v. 480-486 Broadway, LLC*, 810 F.3d 108, 113 (2d Cir. 2015) (internal quotation marks and citation omitted). Our holding limits district courts’ ability to administratively close a case as a matter of convenience in light of the countervailing prejudice to plaintiffs, but it does not bar administrative closure when appropriate. If, for instance, there is only a slim likelihood that an alternative will be possible, a district court may nonetheless administratively close the case.

Having determined that administrative closure is only appropriate as a last resort when other alternatives are virtually impossible or so impractical as to significantly interfere with the operations of the district court or impose an unreasonable burden on the party opposing the plaintiff’s claim, we now turn to the question of whether that standard is met in Rodriguez’s case based on the present record.

II. Application of this standard to Rodriguez’s case

Rodriguez argues that the alternatives listed in *Muhammad* are sufficient here because Rodriguez and other witnesses can adequately testify or be deposed by video, Defendants can obtain additional medical examinations through local

1 physicians in the Dominican Republic or by sending a physician there from the
2 United States, and Rodriguez's pro bono counsel can effectively prosecute the
3 case in Rodriguez's absence. In response, Defendants focus exclusively on their
4 need to conduct additional medical examinations of Rodriguez, arguing that
5 traveling to the Dominican Republic for examinations is cost-prohibitive and
6 unduly burdensome.

7 On the present record, we cannot agree with Defendants that the
8 alternatives Rodriguez has proposed meet the standard articulated in this
9 opinion. We thus vacate the district court's order and remand for further
10 proceedings, including any additional development of the record.

11 **A. The Need for Rodriguez to Appear at Trial**

12 The district court's first basis for closing the case was Rodriguez's
13 unavailability to appear at trial. The court summarily concluded that the
14 alternatives provided in *Muhammad*, 849 F.2d at 112-13, which include making
15 provisions for the litigant to travel and attend the trial in person, trying the case
16 without the litigant's presence through affidavits or depositions, or trying the
17 case without a jury where the litigant is located, were not "practical" in
18 Rodriguez's case. App'x at 214. We agree that providing for Rodriguez to travel

1 and moving the trial to the Dominican Republic may not be possible. But we
2 cannot conclude that the use of video depositions or videoconference at trial is
3 virtually impossible or so impractical as to significantly interfere with the
4 operations of the district court or impose an unreasonable burden on Defendants
5 in this case, and there is no other need for Rodriguez to appear.

6 Under Federal Rule of Civil Procedure 43(a), “the judge has discretion to
7 allow live testimony by video for good cause in compelling circumstances and
8 with appropriate safeguards.” *Thomas v. Anderson*, 912 F.3d 971, 977 (7th Cir.
9 2018) (internal quotation marks omitted). And circuit and lower courts alike have
10 found a witness’s immigration status to constitute good cause. *See, e.g., El-Hadad*
11 *v. United Arab Emirates*, 496 F.3d 658, 669 (D.C. Cir. 2007) (affirming the district
12 court’s decision to allow the witness to testify from Egypt by Internet video after
13 repeatedly being denied a visa to enter the United States); *Lopez v. Miller*, 915 F.
14 Supp. 2d 373, 396 n.9 (E.D.N.Y. 2013) (“Diaz was deported in 2003 to Santo
15 Domingo . . . and may not legally reenter the United States, thus easily satisfying
16 Rule 43(a)’s requirement.” (citations omitted)). There is no evidence in the record
17 to suggest that appropriate safeguards would be unavailable or that testimony
18 by video would be infeasible, let alone virtually impossible.

1 Nor are there any other reasons why Rodriguez's physical presence at trial
2 would be required. The district court cited to *Del Rio v. Morgado*, No. 10-cv-8955,
3 2013 WL 5520218, at *3 (C.D. Cal. Oct. 3, 2013); *Kuar v. Mawn*, No. 08-cv-4401,
4 2012 WL 3808620, at *9 (E.D.N.Y. Sept. 4, 2012); and *Brown v. Wright*, No. 05-cv-
5 82, 2008 WL 346347, at *4 (N.D.N.Y. Feb. 6, 2008), for the proposition that
6 "[c]ourts have regularly found that dismissal is appropriate in similar situations"
7 when a litigant is unavailable at trial. App'x at 214, 215. But whether a litigant's
8 unavailability at trial is cause for administrative closure is a case-specific inquiry,
9 and thus any reliance on these cases requires some discussion of their
10 applicability when compared to the facts in the present case.

11 A review of the facts in these cases indicates that they are distinct from the
12 one at hand. *Del Rio*, *Kuar*, and *Brown* all involved pro se plaintiffs whose cases
13 could not be prosecuted at trial without their physical presence. As such, the
14 district courts in these cases recognized that the obstacle posed by these
15 plaintiffs' unavailability could have been overcome with the assistance of
16 counsel. See *Del Rio*, 2013 WL 5520218, at *3; *Kuar*, 2012 WL 3808620, at *1; *Brown*,
17 2008 WL 346347, at *4. By contrast, Rodriguez here has able and dedicated
18 counsel, who the Magistrate Judge commended for "the excellent work they

1 have done on Plaintiff's behalf." App'x at 150. At oral argument, Rodriguez's
2 counsel committed to continuing litigating on his behalf. Rodriguez's absence at
3 trial perhaps could have posed an insurmountable hurdle had he been
4 prosecuting the action pro se. Because Rodriguez's counsel will be presenting his
5 claims, however, Rodriguez's absence will be inconsequential.

6 Because there is no support for the conclusion that the alternatives to
7 Rodriguez's appearance at trial are virtually impossible or so impractical as to
8 significantly interfere with the operations of the district court or impose an
9 unreasonable burden on Defendants, Rodriguez's need to testify does not
10 provide sufficient grounds to justify the district court's conclusion that the case
11 must be administratively closed.

12 **B. The Need for Additional Rule 35 Examinations**

13 The district court also found that gathering additional medical evidence
14 while Rodriguez is located in the Dominican Republic would be too burdensome
15 for Defendants. We agree with the district court that "the nature of Plaintiff's
16 allegations and alleged injuries will more than likely require additional
17 examinations of Plaintiff by medical professionals hired by one or both parties."

1 App'x at 215.³ But based on this record, we cannot say that allowing the case to
2 continue without Rodriguez in the United States would unduly prejudice
3 Defendants.

4 Under Rule 35, “[u]sually [the] plaintiff will be required to come to the
5 place where he or she filed suit for the examination, in the absence of facts
6 showing substantial reasons for insisting upon examination at his or her
7 residence.” 8B Charles Alan Wright, Arthur R. Miller & Richard L. Marcus,
8 Federal Practice and Procedure § 2234 (3d ed. 2010); *see also Williams v. Nguyen*,
9 No. 16-cv-13983, 2017 WL 1177914, at *2 (E.D. La. Mar. 30, 2017) (“However, the
10 usual case may give way where the plaintiff can demonstrate that the trip would
11 be injurious to his health, *or that there is any other compelling reason for his*
12 *reluctance.*” (internal quotation marks and citation omitted) (emphasis added)); *cf.*
13 *Romano v. Levitt*, No. 15-cv-518A, 2017 WL 2544076, at *2 n.1 (W.D.N.Y. May 5,
14 2017) (citing cases requiring a showing of inability to pay for travel expenses or
15 other “unreasonable hardship or exceptional circumstances sufficient to

³ To be clear, the district court has not yet issued an order for a physical examination, which “is not granted as of right.” 8B Charles Alan Wright, Arthur R. Miller & Richard L. Marcus, Federal Practice and Procedure § 2234.1 (3d ed. 2010).

1 overcome plaintiff's general obligation to travel at own expenses to examination
2 by defense in district where plaintiff filed suit").

3 Rodriguez has established a compelling or substantial reason for his
4 inability to appear in New York for an examination: he is legally barred from
5 reentering the United States absent special permission from the Attorney
6 General. *See* 8 U.S.C. § 1326(a)(2). Similar to medical conditions or financial
7 hardship, Rodriguez's immigration status impedes his ability to travel to the
8 United States. Thus, Rodriguez has ample justification for a waiver of the general
9 requirement of appearing in the venue of jurisdiction for an examination. Indeed,
10 district courts in our Circuit generally find that an individual's immigration
11 status is "good cause" to waive the typical requirement that trial testimony be
12 provided in person. *See, e.g., Lopez*, 915 F. Supp. 2d at 396 n.9 (noting that a
13 witness's deportation and inability to reenter under 8 U.S.C. § 1326(a) is good
14 cause "easily satisfying" Rule 43(a)'s requirement). We fail to see why this
15 reasoning should not apply here.

16 Defendants' arguments to the contrary are unavailing. As Defendants
17 acknowledge, they have options in the event that Rodriguez needs to be
18 examined—such as sending a physician from the United States to the Dominican

1 Republic or hiring a local physician to examine Rodriguez. At oral argument,
2 other options like using telemedicine or hiring a United States-based physician
3 already planning travel to the Dominican Republic for unrelated reasons, such as
4 vacationing, were discussed as well. Defendants argue in their briefing that
5 sending a physician would be cost-prohibitive and that they should not be
6 required to use a local physician who is unfamiliar to them.⁴ But the record is
7 devoid of any evidence to support the assertions made in the brief as to cost, and
8 there is likewise no apparent reason why Defendants could not find and vet a
9 local physician to conduct the examination or use the alternatives raised at oral
10 argument. On remand, the district court is directed to allow the parties to
11 develop the record on the possible alternatives to an in-person appearance before
12 reconsidering the issue.

13 **C. The Need for Additional Depositions**

⁴ We note here as well that there is no absolute right for the moving party to choose the physician. 8B Charles Alan Wright, Arthur R. Miller & Richard L. Marcus, Federal Practice and Procedure § 2234.2 (3d ed. 2010). But we assume for purposes of addressing Defendants' argument that they would be allowed to choose the physician.

1 The third basis the district court relied on in administratively closing
2 Rodriguez's case is the need for additional depositions. Although the district
3 court stated "that there are mechanisms through which depositions can be taken
4 remotely," it found that "Defendants would not have a reasonable opportunity"
5 to depose Rodriguez's overseas physicians on ongoing treatments. App'x at 214-
6 15.

7 Many courts allow depositions by videoconference when the deposed
8 individuals live abroad. *See, e.g., United States v. One Gulfstream G-V Jet Aircraft*
9 *Displaying Tail No. VPCES*, 304 F.R.D. 10, 17-18 (D.D.C. 2014) ("Ample case law
10 recognizes that a videoconference deposition can be an adequate substitute for
11 an in-person deposition, particularly when significant expenses are at issue or
12 when the deposition will cover a limited set of topics."). This is true even when
13 there have been "claims that the difficulty of 'coordination of document review'
14 is one reason why a video deposition would be inappropriate" as "such issues
15 are regularly satisfied by exchanging the documents in advance." *U.S. Sec. &*
16 *Exchange Comm'n v. Aly*, 320 F.R.D. 116, 119 (S.D.N.Y. 2017). Other courts permit
17 depositions to occur in a third, mutually accessible location distinct from the
18 forum district. *See Republic of Turkey v. Christie's, Inc.*, 326 F.R.D. 402, 406

1 (S.D.N.Y. 2018) (ordering depositions of witnesses for the Republic of Turkey
2 take place in London). If necessary, a court may shift the costs so that they are
3 borne by the moving party. *See Packard v. City of New York*, 326 F.R.D. 66, 68
4 (S.D.N.Y. 2018).

5 Nothing in the record suggests that one of the above-mentioned
6 alternatives would be virtually impossible or so impractical as to significantly
7 interfere with the operations of the district court or impose an unreasonable
8 burden on Defendants in the circumstances of the present case. Absent such
9 evidence, we must reject the district court's conclusion that the need for
10 additional depositions justifies the administrative closure.

11 CONCLUSION

12 Based on the record before us, the district court exceeded the bounds of its
13 discretion in administratively closing this case, which should only be done as a
14 "last resort[]." *Muhammad*, 849 F.2d at 112-13. Numerous alternatives to the
15 issues identified by the district court exist, and on the present record, none seems
16 virtually impossible or so impractical as to significantly interfere with the
17 operations of the district court or impose an unreasonable burden on the party
18 opposing the plaintiff's claim. We therefore vacate the district court's order

1 administratively closing Rodriguez's case and remand for further proceedings,
2 including additional development of the record, consistent with this opinion. If
3 upon remand the district court once more administratively closes Rodriguez's
4 case and this matter returns to this Court, in light of the history of this litigation
5 and the panel's familiarity with the matter, we respectfully direct the Clerk of
6 this Court to return the matter to this panel for further review and adjudication.
7 *Cf. United States v. Jacobson*, 15 F.3d 19 (2d Cir. 1994).