

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 26-CV-60214-DMM

ALBERTO VERDERA MILIAN filed by
Next Friend YENNIFER CRUZ MILIAN,

Petitioner,

v.

WARDEN, Broward Transitional
Center, *et al.*

Respondents.

**RESPONDENTS OMNIBUS RESPONSE IN OPPOSITION TO PETITIONER'S
EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND REQUEST
FOR IMMEDIATE INJUNCTIVE RELIEF [DE 3], EMERGENCY MOTION TO
EXPEDITE [DE 4], AND EMERGENCY MOTION FOR IMMEDIATE RELEASE [DE 5]**

Respondents by and through the undersigned Assistant United States Attorney hereby file this Omnibus¹ Response in Opposition to Petitioner's Emergency Motion for Temporary Restraining Order and Request for Immediate Injunctive Relief [DE 3] ("Motion for TRO"), Emergency Motion to Expedite [DE 4] ("Motion to Expedite"), and Emergency Motion for Immediate Release [DE 5] ("Motion for Immediate Release") (otherwise collectively referred to herein as the "Motions"), and in support thereof, state as follows:

¹ The Court's "Order to Show Cause - 28 U.S.C. § 2241" [DE 7] states that Respondents shall also file "a response" to the Petitioner's pending motions [DE 3; DE 4; DE 5]. Therefore, for efficiency purposes and due to the substantive overlap in the motions, Respondents file this Omnibus Response in Opposition.

I. INTRODUCTION

Petitioner, Alberto Verdera Milian's ("Petitioner") Motions are all filed in support of his Petition for Writ of Habeas Corpus [DE 1] and essentially raise the same complaint which is that he challenges the constitutionality of his detention due to the conditions of his confinement. While it is true that claims challenging the constitutionality of a Petitioner's continued confinement are properly brought in a § 2241 federal habeas petition, conditions such as the denial of medical care or otherwise fall outside of habeas corpus.

II. ARGUMENT

A. Applicable Law – Standards

In order to obtain the extraordinary remedy of a preliminary injunction, a plaintiff must prove: "(1) substantial likelihood of success on the merits; (2) irreparable injury will be suffered unless the injunction issues; (3) the threatened injury outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction would not be adverse to the public interest." *McDonald's Corp. v. Robertson*, 147 F.3d 1301, 1306 (11th Cir. 1998). Because a preliminary injunction is "an extraordinary and drastic remedy", it should not be granted unless the plaintiff "clearly carries the burden of persuasion as to the four prerequisites." *Zardui-Quintana v. Richard*, 768 F.2d 1213, 1216 (11th Cir. 1985) (citation and internal quotations marks omitted).

As a preliminary matter, the Eleventh Circuit prohibits release as a remedy for a conditions of confinement claim. The Supreme Court, while not foreclosing habeas relief for a conditions of confinement claim, has refused to recognize it as a proper vehicle to obtain such relief. *Bell v. Wolfish*, 441 U.S. 520, 526 n. 6, (1979) ("Thus, we leave to another day the question of the propriety of using a writ of habeas corpus to obtain review of the conditions of confinement, as

distinct from the fact or length of the confinement itself."). The Eleventh Circuit reiterated that "[c]laims challenging the fact or duration of a sentence fall within the 'core' of habeas corpus, while claims challenging the conditions of confinement fall outside of habeas corpus law." *Vaz v. Skinner*, 634 F. App'x, 780, 781 (11th Cir. 2016). Petitioners do not cite to any precedential authority for this Court to find to the contrary.

In sum, the Court should find release under § 2241 unavailing when the alleged constitutional violation is predicated upon the conditions of a petitioner's confinement. *See, e.g., Matos v. Lopez Vega*, 614 F. Supp. 3d 1158, (S.D. Fla. May 6, 2020); *Vasquez v. Vega*, No. 20-60959-CIV-DIMITROULEAS, 2020 U.S. Dist. LEXIS 93830, at *2 (S.D. Fla. May 27, 2020). Although Petitioner's conditions of confinement claim should not be entertained, Respondents will address how Petitioner fails to clearly establish the burden of persuasion as to all four prerequisites for the reasons that will be discussed below.

1. There is No Substantial Likelihood of Success on the Merits.

Petitioner asserts he will be successful on the merits in his TRO because he has demonstrated clear constitutional violations, including unlawful arrest, inhumane conditions of confinement, deliberate indifference to serious medical needs and coercive practices. [DE 3, p. 1]. Petitioner makes similar argument in the Motion to Expedite [DE 4, p. 1]. Here, Petitioner presents no evidence or facts to support these allegations. Of note, "the only relief available on habeas corpus is immediate release or discharge from the custody complained of," *Simmons v. United States*, 437 F.2d 156, 157 (5th Cir. 1971), and courts have long recognized that an unlawful arrest, by itself, doesn't warrant release, *see, e.g., Williams v. Sec'y, Dep't of Corr.*, 2019 WL 2717202, at *4 (M.D. Fla. June 28, 2019) (Jung, J.) ("[A] Fourth Amendment violation during arrest does not by itself warrant habeas relief." (citation omitted)). Additionally, the Broward Transitional Center, the facility at which Petitioner is detained has investigated these condition-of-

confinement allegations pursuant to the 2025 Performance-Based National Detention Standards sections 4.1, 4.3, 4.4, and 7.2. [DE 11-2, ¶ 21]. The conclusion from this investigation was that the allegations were determined to be unfounded. *Id.*

Further, in Petitioner's proposed order to the Motion for TRO, he requests that respondents, their agents, employees, and all persons acting in concert with them are temporarily restrained from removing, deporting, or transferring Petitioner from the Southern District of Florida. *See* [DE 3, p. 2]. "[T]he place of detention is left to the discretion of the Attorney General." *Kapiamba v. Gonzalez*, No. 07-CV-335, 2007 WL 3346747, 2007 U.S. Dist. LEXIS 82767, *2-3 (W.D. Mich., Nov. 7, 2008) (citing, *Sinclair v. Attorney General of the United States*, 198 F. App'x. 218, 222 n. 3 (3rd Cir. 2006) (listing cases). *See also, Marogi v. Jenifer*, 126 F. Supp. 2d 1056, 1066 (E.D. Mich. 2000) ("Congress has placed the responsibility for determining where aliens are to be detained within the sound discretion of the Attorney General").

Based upon a review of Petitioner's medical records, an extensive medical intake was conducted on November 25, 2025. [DE 11-10, p. 33]. Petitioner was asked how he felt, and he stated, "good". *Id.* On December 26, 2025, he complained of limited hearing in his left ear. *Id.* at p. 14. Petitioner also indicated that his left ear itched and felt moist. *Id.* at 13. On December 29, 2025, Petitioner still complained of his left ear itching but denied any loss of hearing. *Id.* at 11. No other complaints were raised during this visit. On December 31, 2025, Petitioner was seen by medical because of his request for reading glasses due to the trouble he was experiencing in reading small print. *Id.* at 7. By January 7, 2026, Petitioner's left ear was normal upon examination, but he complained of cold like symptoms, and did not appear in any distress. *Id.* at 1, 3.

2. There is no Substantial Threat Petitioner will Suffer Irreparable Injury if he is Not Released.

Petitioner then alleges in his Motion for TRO that continued exposure to unconstitutional conditions, untreated medical conditions, and psychological abuse constitutes irreparable harm. [DE 3, 1]. Again, in Petitioner's Motion to Expedite, he states that irreparable harm would be caused due to medical neglect, physical deterioration, and severe psychological distress. [DE 4, p. 1]. Considering the medical records do not support these allegations which were also investigated and unfounded, Petitioner has not demonstrated that he currently faces a substantial threat of immediate and irreparable injury from the Respondents absent issuance of the requested injunction. His claim for injunctive relief is purely speculative and does not present a "case or controversy" under Article III. *See L.A. v Lyons*, 461 U.S. 95, 101-10, (1983); *O'Shea v Littleton*, 414 U.S. 488, 493-95 (1974). In the absence of any facts or evidence, Petitioner fails to make a showing that he would be irreparably harmed if the TRO is not granted. This necessarily leads to the third factor.

3. The Threatened Injury to Petitioner Does Not Outweigh the Potential Harm the Injunction May do to the Respondents.

Petitioner then asserts in his Motion for TRO that he poses no danger to the community and is not a flight risk, thus any harm to Petitioner would outweigh the speculative administrative burden to Respondents. [DE 3, p. 1-2]. Petitioner's argument as to the balancing of equities in his Motion to Expedite do not differ. [DE 4, p. 1]. Nevertheless, balancing potential harm to the parties clearly weighs more heavily in favor of the Respondents because the issuance of the requested injunction would severely undermine the authority of officials by limiting their ability to run the detention center. *See e.g. Woodford v Ngo*, 548 U.S. 81, 94 (2006)(explaining that "it is difficult to imagine an activity in which a state has a stronger interest, or one more intricately bound up

with state laws, regulations, and procedures than the administration of its prisons”)(internal quotations omitted).

4. The Public Interest Will be Impaired if the Injunction is Granted.

Petitioner does not state a prima facie case for preliminary injunctive relief. Moreover, he has not complied with Federal Rule Civil Procedure 65(b)(1)(A) requiring that the specific facts or allegations be set forth in an affidavit or verified complaint, that is verified having been made under the penalty of perjury. While the motion is verified, specific facts are both lacking and ultimately unfounded. "Finally, where the government is the party opposing the preliminary injunction, its interest and harm merge with the public interest." *Swain v. Junior*, 958 F.3d 1081 (11th Cir. 2020) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)).

B. The Motion for Immediate Release Should be Denied.

Petitioner’s Motion for Immediate Release [DE 5] mirrors the arguments set forth in both the Motion for TRO [DE 3] and Motion to Expedite [DE 4], therefore, Respondents incorporate its position as set forth above in response. The only additional allegation to the Motion to Expedite not otherwise addressed in the response is Petitioner’s argument that the conditions of confinement violate due process. [DE 5]. Once more, Petitioner’s argument is based on the conditions of confinement which cannot be reviewed for purposes of habeas corpus proceedings. *See Vaz*, 634 F. App’x. at 781; *see also Mackey*, 2022 WL 17830252, at *2. The Court should reject these arguments because “detention during deportation proceedings is a constitutionally valid aspect of the deportation process.” *See Demore v. Kim*, 538 U.S. 510 (2003). To the extent Petitioner relies on *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001) to support his claim that his detention is unlawful, such reliance is misplaced. *See* [DE 1, ¶ 41]. *Zadvydas* deals with *post-removal order* immigration detention under 8 U.S.C. § 1231. Even if the *Zadvydas* framework did apply to Petitioner, his

Petition would be premature as he has only been detained since November 16, 2025, which is less than the presumptively reasonable six-month period discussed in *Zadvydas*.

III. CONCLUSION

Based upon the foregoing, Petitioner's Motion for TRO [DE 3], Motion to Expedite [DE 4], and Motion for Immediate Release [DE 5] should be denied.

Dated: February 4, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of February, 2026, I electronically filed the foregoing document with the Clerk of Court using CM/ECF. I also certify that the foregoing document is being placed in the mail to Plaintiff and Next Friend at the addresses provided in the Service List below.

By: /s/ Jeanette M. Lugo
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SERVICE LIST

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