

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

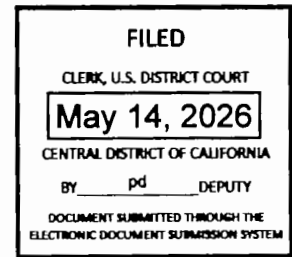
MARLON JUVENAL CHAVEZ MERCHAN,



Petitioner,

v.

**WARDEN, OTAY MESA DETENTION CENTER;
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT;
DEPARTMENT OF HOMELAND SECURITY;
ATTORNEY GENERAL OF THE UNITED STATES,**
Respondents.



IFP Submitted

Case No: 2:26-cv-05188-DMG-AS

EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS

28 U.S.C. § 2241

AND REQUEST FOR IMMEDIATE RELEASE OR INDIVIDUALIZED BOND HEARING

I. INTRODUCTION

Petitioner **MARLON JUVENAL CHAVEZ MERCHAN**, a citizen of Ecuador, is currently detained by ICE at **Otay Mesa Detention Center**, located in San Diego, California.

This Petition challenges the legality of his continued immigration detention under **28 U.S.C. § 2241**, the **Fifth Amendment Due Process Clause**, and controlling constitutional principles requiring that civil immigration detention remain reasonably related to a legitimate governmental purpose.

Petitioner is not a criminal. He has no known criminal convictions. He is not a danger to the community. His attempted reentry was not motivated by disregard for U.S. law, but by **immediate fear for his life** after being located, threatened, and pursued in Ecuador following his return.

Petitioner possesses documentary evidence from Ecuador showing that he was the victim of extortion, threats, intimidation, and violence by unknown armed individuals who demanded monthly payments and threatened to kill him and his family.

The government's continued detention of Petitioner, without meaningful individualized review, without adequate consideration of his fear-based circumstances, and while he seeks protection from persecution and torture, violates due process and exceeds the permissible bounds of civil immigration custody.

II. JURISDICTION AND VENUE

This Court has jurisdiction under:

28 U.S.C. § 2241, because Petitioner is "in custody" under federal authority;

28 U.S.C. § 1331, because this action arises under the Constitution and laws of the United States;

U.S. Const. amend. V, because Petitioner challenges unlawful detention without due process;

and *INS v. St. Cyr*, 533 U.S. 289 (2001), recognizing habeas review over legal and constitutional challenges in immigration detention.

Venue is proper in the Southern District of California because Petitioner is detained at **Otay Mesa Detention Center**, within this District, and his immediate custodian is located here.

III. PARTIES

Petitioner

Marlon Juvenal Chavez Merchan

Country of Birth: Ecuador
Current Facility: Otay Mesa Detention Center
7488 Calzada de la Fuente
San Diego, CA 92154

Respondents

Respondents include the Warden of Otay Mesa Detention Center, ICE, DHS, and the Attorney General, who exercise custody and legal authority over Petitioner's detention and immigration enforcement.

IV. STATEMENT OF FACTS

Petitioner is a citizen of Ecuador. He fled Ecuador because he was targeted by criminal actors who extorted, threatened, and physically assaulted him.

On or about **December 16, 2024**, while Petitioner was working in his store in the community of Shumiral, Camilo Ponce Enríquez, Azuay, Ecuador, several unknown individuals arrived and demanded money from him. They had previously threatened him, demanding monthly payments of thousands of dollars.

When Petitioner refused or could not pay, the individuals forcibly took him to an unknown location, beat him, threatened him, and warned that if he did not pay, they would kill him and his family.

Petitioner reported the incident to the **Fiscalía General del Estado de Ecuador**. The official complaint identifies the offense as **intimidación**, states that the incident was consummated, and records Petitioner as both complainant and victim.

Petitioner later sought protection in the United States. His immigration proceedings resulted in a grant of voluntary departure. After returning or attempting to comply with departure, Petitioner was again placed in danger in Ecuador. Once he arrived, individuals began looking for him again. He was forced to flee again to save his life.

Petitioner then attempted to reenter the United States through **Tecate, California**, seeking protection, not to commit a crime or evade justice.

Petitioner is currently detained at Otay Mesa Detention Center. According to immigration case information, there are no future hearings currently scheduled, and no BIA appeal was received.

Petitioner also states that an attorney failed to submit essential asylum documentation despite the existence of supporting evidence. This raises serious due process concerns and supports reopening or further protection-based review under **Matter of Lozada, 19 I&N Dec. 637 (BIA 1988)**, which recognizes ineffective assistance of counsel as a basis for reopening when properly supported.

V. LEGAL STANDARD

Federal courts retain habeas jurisdiction to review unlawful immigration detention. Habeas corpus is available where detention violates the Constitution, exceeds statutory authority, or lacks sufficient procedural safeguards.

Immigration detention is civil, not punitive. Therefore, it must remain reasonably related to a legitimate immigration purpose and cannot become arbitrary, excessive, or indefinite.

The Supreme Court has held that noncitizens are protected by due process in immigration detention matters and that detention may become unconstitutional when it is prolonged or lacks adequate procedural safeguards. See **Zadvydas v. Davis, 533 U.S. 678 (2001)**; **Demore v. Kim, 538 U.S. 510 (2003)**; **Jennings v. Rodriguez, 583 U.S. 281 (2018)**.

In the Ninth Circuit, habeas challenges remain available to test whether detention has become constitutionally unreasonable and whether a bond hearing is required. District courts in this Circuit, including in California, have repeatedly recognized that prolonged detention without individualized bond review may violate due process. Recent Southern District of California cases involving Otay Mesa detainees have granted habeas relief requiring bond hearings where detention became constitutionally prolonged.

VI. ARGUMENT

A. Petitioner's Continued Detention Violates the Fifth Amendment Due Process Clause

The Due Process Clause protects all persons within the United States, including noncitizens detained by immigration authorities.

Petitioner's detention is civil. It cannot be used as punishment. It must be tied to legitimate purposes such as ensuring appearance or protecting the community.

Here, Petitioner is not dangerous. He has no criminal convictions. He has a documented fear of persecution and torture in Ecuador. He attempted to return to the United States because he was being hunted and threatened, not because he intended to violate the law for unlawful gain.

Continued detention without a meaningful individualized bond hearing is excessive and constitutionally defective.

B. The Government Must Provide an Individualized Custody Hearing

Due process requires a meaningful opportunity to be heard. Where detention becomes prolonged or severe, the government must justify continued custody by proving that the person is a danger or flight risk.

The Ninth Circuit has recognized that immigration detainees may be entitled to bond hearings when detention becomes prolonged. Cases such as **Casas-Castrillon v. DHS, 535 F.3d 942 (9th Cir. 2008)**, **Singh v. Holder, 638 F.3d 1196 (9th Cir. 2011)**, and **Diouf v. Napolitano, 634 F.3d 1081 (9th Cir. 2011)** support heightened procedural protection in prolonged detention contexts.

Even after **Jennings**, federal courts continue to consider constitutional habeas claims challenging prolonged detention. Recent decisions recognize that statutory interpretation limits do not eliminate constitutional due process review.

Therefore, this Court should order immediate release or, at minimum, a custody hearing where the government bears the burden of proving by clear and convincing evidence that detention is necessary.

C. Petitioner Has Strong Humanitarian and Protection-Based Claims

Petitioner has documentary evidence from Ecuador showing that he was threatened, extorted, beaten, and targeted.

The official Ecuadorian complaint confirms:

- formal oral complaint;
- offense: intimidation;
- incident date: December 16, 2024;
- location: Camilo Ponce Enríquez, Azuay, Ecuador;
- threats by unknown individuals;
- demand for monthly payments;
- threats to kill Petitioner and his family;
- physical aggression;
- fear for his life.

This evidence supports fear of persecution and torture. It also shows that Petitioner's attempted reentry was driven by emergency self-preservation.

If Petitioner is subject to reinstatement or expedited protection procedures, he must be given access to reasonable fear screening and withholding/CAT review. Federal regulations provide that a person who expresses fear after prior removal-related proceedings may be referred for a reasonable fear process, and a positive reasonable fear determination leads to immigration judge review for withholding-only protection.

D. Detention Is Unreasonable Because Petitioner Is Neither a Danger Nor a Flight Risk

Petitioner satisfies the traditional bond factors.

He is not a danger because:

1. he has no criminal convictions;
2. the evidence shows he is a victim, not a perpetrator;
3. his Ecuadorian complaint documents threats against him;
4. he seeks lawful protection.

He is not a flight risk because:

1. he has a strong incentive to pursue asylum, withholding, CAT, or reopening;
2. he has provided identity documentation;
3. he can comply with ICE supervision;
4. alternatives to detention are available.

The government cannot justify detention merely because Petitioner crossed the border again. The Constitution requires individualized review.

E. Ineffective Assistance of Counsel Supports Equitable Relief and Further Review

Petitioner states that he had an asylum claim and supporting documents, but his attorney failed to submit or provide necessary filings.

Under **Matter of Lozada**, ineffective assistance may support reopening where the respondent provides an affidavit, identifies the agreement with counsel, gives counsel notice and an opportunity to respond, and files or explains the absence of a disciplinary complaint.

This Court need not decide the full reopening issue to grant habeas relief. However, the ineffective assistance issue strengthens Petitioner's claim that detention and removal without meaningful review would violate due process.

F. Removal Before Protection Review Would Cause Irreparable Harm

Petitioner faces a concrete risk of death, torture, or severe harm if returned to Ecuador.

The harm is not speculative. It is supported by:

- official police/prosecutorial complaint;
- direct threats;
- physical assault;
- extortion demands;
- renewed pursuit after return;
- inability of local authorities to protect him.

Once removed, Petitioner may be killed or disappeared before his claims are reviewed. That is irreparable harm.

VII. CLAIMS FOR RELIEF

Claim One

Unlawful Detention Under 28 U.S.C. § 2241

Petitioner is in federal custody. His detention is unlawful because it is not reasonably related to a legitimate civil purpose and lacks adequate procedural safeguards.

Claim Two

Violation of Fifth Amendment Due Process

Respondents have detained Petitioner without meaningful individualized review, without proper consideration of his fear-based evidence, and without showing that detention is necessary.

Claim Three

Failure to Provide Meaningful Protection Review

Petitioner has expressed fear of return and possesses evidence supporting reasonable fear, withholding of removal, CAT protection, and/or reopening. Removal or detention without review violates due process.

Claim Four

Arbitrary and Excessive Civil Detention

Civil immigration detention becomes unconstitutional when it is arbitrary, prolonged, punitive, or unnecessary. Petitioner's detention is excessive because alternatives to detention exist.

VIII. REQUEST FOR RELIEF

Petitioner respectfully requests that this Court:

1. Grant this Petition for Writ of Habeas Corpus;
2. Order Respondents to immediately release Petitioner under appropriate supervision;
3. Alternatively, order Respondents to provide an individualized bond hearing before an immigration judge within 7 days;
4. Require the government to bear the burden of proving danger or flight risk by clear and convincing evidence;
5. Prohibit removal while this habeas petition and any protection-based review remain pending;
6. Order ICE/DHS to provide Petitioner access to reasonable fear, withholding, CAT, or reopening procedures;
7. Grant any other relief the Court deems just and proper.

IX. VERIFICATION

I, **Marlon Juvenal Chavez Merchan**, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

DETAINED

MARLON JUVENAL CHAVEZ MERCHAN



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MARLON JUVENAL CHAVEZ MERCHAN,


Petitioner,

v.

WARDEN, OTAY MESA DETENTION CENTER, et al.,

Respondents.

Case No.: _____

NOTICE OF FILING

TO THE CLERK OF THE COURT, RESPONDENTS, AND ALL PARTIES OF RECORD:

PLEASE TAKE NOTICE that Petitioner, **MARLON JUVENAL CHAVEZ MERCHAN**, hereby files the following documents in support of his emergency habeas corpus proceedings:

1. Emergency Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241;
2. Emergency Motion for Temporary Restraining Order and Preliminary Injunction;
3. Application to Proceed In Forma Pauperis (AO 240);
4. Declaration of Petitioner;
5. Supporting Exhibits and Documentary Evidence.

These filings concern Petitioner's ongoing immigration detention and imminent risk of removal to Ecuador despite credible fear, documented threats, and substantial constitutional and humanitarian concerns.

Petitioner respectfully requests expedited review due to the risk of irreparable harm should removal occur before adjudication of the pending claims.

Respectfully submitted,

DETAINED

MARLON JUVENAL CHAVEZ MERCHAN


Pro Se Petitioner

OTAY MESA DETENTION CENTER
7488 CALZADA DE LA FUENTE
SAN DIEGO, CA 92154

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Clerk of the Court
United States District Court
Central District of California

Re: Request for Assistance in Filing and Transfer to the Southern District of California
Petitioner: MARLON JUVENAL CHAVEZ MERCHAN



Dear Clerk of the Court:

I respectfully submit this letter requesting assistance regarding the filing and transfer of my emergency habeas corpus pleadings to the United States District Court for the Southern District of California.

My name is MARLON JUVENAL CHAVEZ MERCHAN,  and I am currently detained by Immigration and Customs Enforcement (ICE) at:

OTAY MESA DETENTION CENTER
7488 Calzada de la Fuente
San Diego, CA 92154

I am proceeding pro se and remain in immigration detention without meaningful access to electronic filing systems, legal resources, or the ability to electronically submit pleadings directly to the appropriate federal court.

I respectfully request that the Court accept and forward, transfer, or otherwise facilitate the filing of my enclosed emergency pleadings to the United States District Court for the Southern District of California, which appears to be the proper jurisdiction because I am physically detained within that district.

The enclosed filings include:

1. Emergency Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241;
2. Emergency Motion for Temporary Restraining Order and Preliminary Injunction;
3. Application to Proceed In Forma Pauperis (AO 240);
4. Notice of Filing;
5. Certificate of Service;
6. Supporting declarations and exhibits.

I respectfully explain that, because I am detained, indigent, and without electronic filing access, it is extremely difficult for me to comply with filing procedures that require electronic submission or direct filing in another district.

Additionally, my filings involve emergency constitutional and humanitarian issues, including fear of persecution, threats to my life in Ecuador, and risk of irreparable harm if removed before judicial review can occur.

For these reasons, I respectfully request that the Court:

- assist in docketing or transmitting these pleadings to the Southern District of California;
- preserve the filing date to avoid prejudice caused by detention-related limitations;
- and provide any additional relief the Court deems appropriate under the circumstances.

I sincerely appreciate the Court's consideration and assistance.

Respectfully submitted,

DETAINED

MARLON JUVENAL CHAVEZ MERCHAN



Pro Se Petitioner

OTAY MESA DETENTION CENTER
7488 Calzada de la Fuente
San Diego, CA 92154