

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MARLON JUVENAL CHAVEZ MERCHAN,

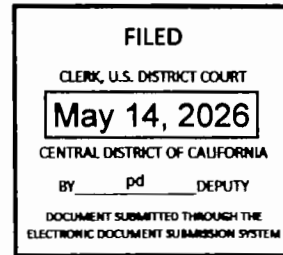


Petitioner,

v.

WARDEN, OTAY MESA DETENTION CENTER;

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE);
DEPARTMENT OF HOMELAND SECURITY (DHS);
ATTORNEY GENERAL OF THE UNITED STATES,
Respondents.



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

EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER (“TRO”)

AND PRELIMINARY INJUNCTION

I. INTRODUCTION

Petitioner MARLON JUVENAL CHAVEZ MERCHAN respectfully moves this Honorable Court for an immediate Temporary Restraining Order (“TRO”) and Preliminary Injunction prohibiting Respondents from removing, transferring, expelling, deporting, or otherwise transporting Petitioner outside the jurisdiction of this Court while his Petition for Writ of Habeas Corpus and protection-based claims remain pending.

Absent emergency injunctive relief, Petitioner faces imminent and irreparable harm, including potential persecution, kidnapping, torture, or death if returned to Ecuador.

Petitioner has already been threatened, extorted, physically assaulted, and pursued by criminal actors in Ecuador. He possesses documentary evidence, including an official complaint filed with the Fiscalía General del Estado of Ecuador, demonstrating that armed individuals threatened to kill him and his family unless he complied with extortion demands.

After previously leaving the United States, Petitioner returned to Ecuador, where he was immediately sought out again by the same or related actors, forcing him to flee for his life.

The government’s continued detention and potential removal of Petitioner before adjudication of his constitutional and protection-based claims would violate the Fifth Amendment, federal statutory protections, and the United States’ obligations under domestic and international anti-refoulement principles.

Emergency relief is therefore necessary.

II. LEGAL STANDARD

A Temporary Restraining Order and Preliminary Injunction may issue where the moving party demonstrates:

1. A likelihood of success on the merits;
2. Likelihood of irreparable harm absent relief;
3. The balance of equities tips in the movant's favor; and
4. An injunction serves the public interest.

Winter v. Natural Resources Defense Council, 555 U.S. 7 (2008)

Federal courts maintain broad equitable authority to preserve jurisdiction and prevent irreparable constitutional injury pending review.

III. ARGUMENT

A. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS

Petitioner's habeas claims present serious constitutional and statutory questions.

Petitioner challenges:

- unlawful immigration detention;
- denial of meaningful due process;
- failure to provide adequate protection review;
- unconstitutional prolonged civil detention;
- and potential unlawful removal despite credible fear and documentary evidence of persecution.

Federal courts possess jurisdiction over constitutional challenges to immigration detention under:

- 28 U.S.C. § 2241;
- *INS v. St. Cyr*, 533 U.S. 289 (2001);
- *Zadvydas v. Davis*, 533 U.S. 678 (2001).

Petitioner also raises substantial due process concerns under:

- *Casas-Castrillon v. DHS*, 535 F.3d 942 (9th Cir. 2008);
- *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011);
- *Diouf v. Napolitano*, 634 F.3d 1081 (9th Cir. 2011).

Additionally, Petitioner's claim of ineffective assistance of prior counsel implicates constitutional fairness concerns recognized in:

Matter of Lozada, 19 I&N Dec. 637 (BIA 1988)

because counsel allegedly failed to submit critical asylum-related documentation despite the existence of supporting evidence.

Petitioner therefore raises substantial claims warranting preservation of the status quo.

B. PETITIONER FACES IMMEDIATE AND IRREPARABLE HARM

The irreparable harm here is overwhelming.

Petitioner has already suffered:

- death threats;
- extortion;
- physical assault;
- forced abduction;
- intimidation;
- targeting by criminal actors.

The Ecuadorian Fiscalía complaint confirms that armed individuals demanded monthly extortion payments and threatened to kill Petitioner and his family.

Petitioner returned to Ecuador once before after immigration proceedings but was immediately pursued again, forcing him to flee.

Removal under these circumstances may expose Petitioner to:

- torture;
- kidnapping;
- violent retaliation;
- or death.

Courts consistently recognize that deportation to potential persecution or torture constitutes irreparable harm.

Leiva-Perez v. Holder, 640 F.3d 962 (9th Cir. 2011)

C. THE BALANCE OF EQUITIES STRONGLY FAVORS PETITIONER

The equities overwhelmingly favor temporary relief.

Petitioner:

- is not a danger to the community;
- has no criminal convictions;
- seeks humanitarian protection;
- possesses identity documentation;
- seeks lawful review of his claims.

By contrast, the government suffers minimal harm from temporarily preserving the status quo while the Court adjudicates constitutional and statutory issues.

Once removed, however, Petitioner may be permanently deprived of meaningful judicial review.

D. THE PUBLIC INTEREST SUPPORTS INJUNCTIVE RELIEF

The public interest favors:

- preservation of constitutional due process;
- orderly judicial review;
- prevention of wrongful deportation;
- compliance with anti-refoulement obligations;

- and ensuring that individuals with credible fear claims are not returned to danger without adequate process.

The United States has long recognized that individuals fearing persecution must receive meaningful access to protection procedures.

IV. THIS COURT HAS AUTHORITY TO PRESERVE ITS JURISDICTION

Federal courts may issue injunctive relief to preserve jurisdiction over pending habeas proceedings and prevent mootness caused by removal.

Removal of Petitioner before adjudication would effectively destroy this Court's ability to provide meaningful relief.

Courts have repeatedly recognized authority to stay removal where constitutional or habeas claims remain pending.

V. REQUEST FOR IMMEDIATE RELIEF

Petitioner respectfully requests that this Court:

1. ISSUE an immediate Temporary Restraining Order prohibiting ICE, DHS, or any federal agency from removing, deporting, expelling, transferring internationally, or otherwise transporting Petitioner outside the United States pending resolution of this action;
2. ENJOIN Respondents from transferring Petitioner outside this Court's jurisdiction absent prior Court authorization;
3. ORDER expedited briefing;
4. SET an emergency hearing;
5. PRESERVE the status quo pending adjudication of the Petition for Writ of Habeas Corpus;
6. GRANT any additional relief the Court deems just and proper.

VI. MEMORANDUM REGARDING EX PARTE RELIEF

Emergency ex parte relief is necessary because Petitioner faces imminent risk of removal before this Court can fully adjudicate his claims.

Absent immediate intervention, Respondents may remove Petitioner, rendering the habeas proceedings effectively moot and exposing Petitioner to irreparable harm.

The extraordinary circumstances presented justify immediate temporary relief.

VII. CONCLUSION

Petitioner faces extraordinary danger if removed to Ecuador.

He has already been threatened, abducted, assaulted, and pursued by criminal actors.

His claims are supported by documentary evidence.

His detention and potential removal raise substantial constitutional and humanitarian concerns.

Without immediate judicial intervention, Petitioner risks irreparable injury or death before this Court can adjudicate the merits of his habeas petition.

Accordingly, Petitioner respectfully requests that this Court immediately issue a Temporary Restraining Order and Preliminary Injunction preserving the status quo and preventing removal.

Respectfully submitted,

DETAINED

~~MARLON JUVENAL CHAVEZ MERCHAN~~

Pro Se Petitioner

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

DECLARATION OF PETITIONER IN SUPPORT OF TRO

I, MARLON JUVENAL CHAVEZ MERCHAN, declare under penalty of perjury under the laws of the United States that:

1. I am currently detained by ICE at Otay Mesa Detention Center.
2. I fear returning to Ecuador because criminal individuals threatened to kill me and my family.
3. I was physically assaulted and extorted in Ecuador.
4. I filed a complaint with the Fiscalía General del Estado of Ecuador.
5. After returning to Ecuador, individuals began searching for me again.
6. I fled because I believed my life was in danger.
7. I request protection and fear being killed if removed.

I declare under penalty of perjury that the foregoing is true and correct.

DETAINED

~~MARLON JUVENAL CHAVEZ MERCHAN~~