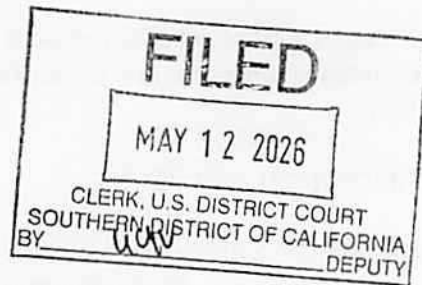


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
333 West Broadway, Suite 420
San Diego, California 92101

NESTOR JESUS MOREIRA OSTAIZA


Petitioner,



'26CV2983 BJC JLB

v.

DIRECTOR, OTAY MESA DETENTION CENTER;
SECRETARY OF THE DEPARTMENT OF HOMELAND SECURITY;
DIRECTOR OF U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE),
Respondents.

PETITION FOR WRIT OF HABEAS CORPUS
28 U.S.C. § 2241

INTRODUCTION

Petitioner, NESTOR JESUS MOREIRA OSTAIZA, respectfully submits this Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, challenging the legality of his current immigration detention.

Petitioner entered the United States in October 2024 through humanitarian parole after presenting himself at the Brownsville, Texas Port of Entry. Subsequently, the United States Government granted him employment authorization valid until October 2026 and allowed him to remain in the country while his immigration proceedings continued.

Before his detention, Petitioner had an immigration hearing scheduled for the year 2028 and remained physically present within the United States under valid humanitarian parole and employment authorization.

On March 3, 2026, Petitioner was detained by immigration agents while he was inside the United States carrying out normal daily activities. Petitioner was not attempting to reenter the country, was not located at any port of entry, and was not seeking admission into the United States at the time of his arrest.

Since then, Petitioner has remained detained at the Otay Mesa Detention Center without receiving an individualized bond hearing, despite having no criminal record and despite requesting custody review before an immigration judge.

Petitioner's current detention violates the Fifth Amendment of the United States Constitution and constitutes an improper and unconstitutional application of mandatory detention under INA § 235(b).

JURISDICTION AND VENUE

This Court has jurisdiction pursuant to 28 U.S.C. § 2241, and venue is proper in this District because Petitioner is detained at the Otay Mesa Detention Center.

FACTUAL BACKGROUND

Petitioner is a citizen of Ecuador.

Petitioner entered the United States in October 2024 through humanitarian parole after presenting himself at the Brownsville, Texas Port of Entry.

After his entry, the United States Government granted him employment authorization valid until October 2026.

Petitioner has remained physically present within the United States since his entry and has not departed the country at any time.

Before his detention, Petitioner had pending immigration proceedings and an immigration hearing scheduled for the year 2028.

Petitioner has no criminal record.

On March 3, 2026, Petitioner was detained by immigration agents while inside the United States carrying out normal daily activities.

At the time of his arrest, Petitioner:
Was not seeking admission;

Was not located at a port of entry;

Was not attempting to reenter the country;

Was physically present inside the United States under valid humanitarian parole and employment authorization.

Petitioner was subsequently transferred to the Otay Mesa Detention Center.

Petitioner requested custody review before an immigration judge but, to date, has not received an individualized bond hearing.

Petitioner previously filed a pro se habeas corpus petition, which was dismissed because the filing was not adequately structured and did not contain sufficient legal and constitutional arguments.

The present petition is not duplicative because it includes substantially more developed constitutional and legal arguments that were not adequately presented in the prior petition.

LEGAL ARGUMENT

A. Improper Application of Mandatory Detention Under INA § 235(b)

Petitioner:

Was not seeking admission;

Was not located at a port of entry;

Was not attempting to reenter the country;

Was physically present within the United States with active immigration proceedings;

Possessed valid humanitarian parole and employment authorization through October 2026;

Has no criminal record.

The application of INA § 235(b) under these circumstances is legally improper. Petitioner should not continue to be treated as a person who is merely arriving in the United States or who is seeking initial admission into the country. At the time of his detention, Petitioner had already been physically living within the United States for several months under valid humanitarian parole and employment authorization, with active immigration proceedings pending and without having departed the country.

Therefore, Petitioner should instead be treated under INA § 236, which provides for the possibility of an individualized bond hearing and custody review, rather than being automatically subjected to mandatory detention under INA § 235 as though he were a newly arriving individual with no right to bond. The continuation of such classification is arbitrary, excessive, and incompatible with the due process protections guaranteed by the Fifth Amendment of the United States Constitution.

B. Violation of the Fifth Amendment – Due Process

The Fifth Amendment protects all persons within the United States against arbitrary deprivations of liberty without due process of law.

Petitioner has been deprived of his liberty without:

An individualized bond hearing;

A specific determination of danger or flight risk;

Adequate procedural protections.

Prolonged detention without individualized review violates substantive and procedural due process protections guaranteed by the Constitution.

C. Arbitrary Detention

Petitioner was detained within the territory of the United States despite maintaining valid humanitarian parole and employment authorization, without evidence of criminal conduct and without any recent attempt to enter the country.

The continuation of such detention constitutes an arbitrary deprivation of liberty incompatible with the Constitution.

D. Suspension Clause – Article I, Section 9

The Suspension Clause protects the fundamental right to habeas corpus against unlawful detention.

Denying meaningful judicial review of the constitutionality of this detention would violate that constitutional principle.

E. Relevant Case Law

Federal courts and the Ninth Circuit have recognized due process protections in cases involving prolonged immigration detention, including:

Zadvydas v. Davis, 533 U.S. 678 (2001);

Diouf v. Napolitano, 634 F.3d 1081 (9th Cir. 2011);

Singh v. Holder, 638 F.3d 1196 (9th Cir. 2011).

These decisions recognize that prolonged immigration detention without adequate review may violate the Constitution.

REQUEST FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

Declare that his detention is unlawful and unconstitutional;

Order that Petitioner not be transferred while this case is pending;

Order Petitioner's immediate release; OR, in the alternative,
Order an individualized bond hearing where the Government bears the burden of proving that
continued detention is necessary;

Grant any other relief this Court deems just and proper.

VERIFICATION

I, NESTOR JESUS MOREIRA OSTAIZA, declare under penalty of perjury that the foregoing is
true and correct.

Nestor Moreira

NESTOR JESUS MOREIRA OSTAIZA

Pro Se


Otay Mesa Detention Center
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Date: 05-08-2026