

THE DIEGO JHOVANNI CALDERÓN NIETO CASE (MEXICO)



DIEGO JHOVANNI CALDERÓN NIETO

- Wrongfully convicted in Mexico.
- Falsely accused of kidnapping and organized crime.
- In preventive custody since 2012.
- Tortured by federal police agents.
- Witnesses coerced to testify against him.
- Health condition in constant deterioration.
- Has not received medical attention.

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Presentation of the Case

DIEGO JHOVANNI CALDERÓN NIETO has been deprived of his freedom at the CEFERESO #4 "Noroeste," as a defendant in preventive custody since 2012, under the criminal case noted in the heading issued by the Ninth District Court in the state of Mexico, in Ciudad Nezahualcóyotl.

Translation from the Original Spanish Version: Jorge B.

Illegal and Violent Detention on March 9, 2012

Diego Jhovanni was arrested on March 9, 2012, between 11:30 am and 12:30 pm. According to the version of federal agents, he was arrested while committing a crime of extortion, along with his two co-defendants, ALBERTO GONZÁLEZ RAMÍREZ and RENÉ HERNÁNDEZ RIVERA. However, the alleged arrest happened not as established in the police report (in which two streets that do not match are mentioned) but also in an illegal manner.

Actually, Diego Jhovanni was picked up while he was riding a motorcycle with GUADALUPE REYES MAYET on Avenida Carmelo Pérez, between Corrido del Norte and Rancho Grande. Diego Jhovanni saw a black Chevy car and a white van with hooded people aboard. Without identifying themselves, they violently forced him into the van while beating him. They blindfolded him and began beating him, telling him that he was "The Payer." They asked him about the owner of the motorcycle, and he told them that it was not his, that it was from a friend named Héctor Alberto González Ramírez, to whom in fact he had just left his pickup. Between the blows and the psychological damage, he was suffering, Diego Jhovanni could hear that there were other people with them inside

the van, whom they were also beating. The attackers made Diego Jhovanni take them to the motorcycle workshop of Héctor Alberto González Ramírez to see if it was true that the motorcycle belonged to him. It is important to state that for almost two hours the subjects drove him around, beating him. When he told them that the motorcycle workshop was located on Avenida Chimalhuacán and Tepozanes, they took off the blindfold so that he could tell them where the workshop was and after a long wait, they also got Héctor Alberto González Ramírez on the van and got out a lady they had in it. Then the beatings and threats continued for quite some time, but he cannot say for how long or what time it was. Then they arrived at a place where they got them off the van, where they realized that it was already night-time. There they took him aside and began beating him, asking Diego Jhovanni for information that he was unaware of. In addition, they never introduced themselves as federal agents and never showed them an arrest warrant. They were kept without food and water from the moment of their arrest.

The codefendants Héctor Alberto González Ramírez and René Hernández Rivera presented as evidence the map of Ciudad Nezahualcóyotl, where they showed that the streets indicated in the police report do not match.

The codefendants Héctor Alberto González Ramírez and René Hernández Rivera presented as evidence the CEFERESO No. 4 videos from the security cameras found on Avenida Tepozanes corner of Chimalhuacán. Those videos were presented as evidence to show that everything the police report says is a lie, since the arrest did not happen as the arresting officers said, nor at the stated time. In those videos, it can be seen when they get Héctor Alberto González Ramírez out of his motorcycle workshop to get them the van started. It is important to note that Héctor in his statements mentioned that he was in a white van. It is in that van that they also got him in. The videos and his statement show that the arrest of Diego Jhovanni was illegal.

This evidence, that is, the security camera videos and the plan of Ciudad Nezahualcóyotl, is already in the file and can be shown as being in favour of Diego Jhovanni as an important fact, since they show that it is true what Diego Jhovanni says about his arrest, an illegal act. With the timeline that the videos indicate, it can also be shown that there was a delay in their being handed over to the agent of the Public Ministry.

Presentation to the Media Orchestrated by the Federal Police and Violation of the Presumption of Innocence

When the beatings finally stopped, they removed the blindfolds, gave them water to wash their faces and, one by one, they were taken into a room where there were cameras and many people, who apparently were reporters. Behind them there was a mug shot

background with the logos of the Federal Police. There they began asking him many questions and at the same time they told him what he had to answer when they would start recording. When the time came to start recording the interview, the reporters and federal policemen wrote down on notebooks and cards what he had to say. Thus, his image was tarnished before the public media as an extortionist and kidnapper, and before society, without first having had a trial and judgment.

Unexcused Delay in Handing Him Over to the Public Ministry Office at the SIEDO, Violation of Due Process, and Fabricated Confession

It was then that he realized that he was inside the barracks of the Federal Police. They were there for many hours, without food and water, constantly being beaten. After a while, they were put on a Federal Police van, where the beatings continued sporadically in places on the body where they were not visible. Subsequently, they were taken to a forensic doctor for a physical assessment. From there, they took them out in the same truck, where they were beaten harder and taken to the SIEDO (Office of the Attorney-General for Special Investigation into Organized Crime). They were no longer beaten there. Up until they arrived at the SIEDO, they were given only a glass of juice, an apple and a cake as a meal. It was then between 5:00 and 5:30 am, because Diego Jhovanni saw the time on the computer when he gave his statement.

It is important to note that he never had a private interview with his public defender as required by law, and there is no document signed by him stating that he had his interview that by right he must have before making a statement to the police. Later, they asked him to sign his statement without letting him read it. They were then beaten once again and taken to their cells, no longer knowing the time. They were put into a room where there was a [one-way] mirror, the room was a "Gesell Chamber" or Recognition and Identification Chamber; right there the right to an adequate defense, enshrined in Article XX of the Mexican Constitution, was violated since, during the recognition proceedings, his public defender or a private defender was not present to make sure that everything was done in accordance with the law.

"VIII. You will have the right to an adequate defence by a lawyer, whom you will freely choose, even from the moment of your arrest. If you do not want or cannot appoint a lawyer, after being required to do so, the judge will appoint a public defender for you. You will also have the right to have your defender present in all acts of the process, and he will have the obligation to do so as many times as required." (Article XX. section B, section VIII)

After three days, the detainees were placed in a detention house located in the Doctores neighbourhood in Mexico City. It is important to state that during their time of detention, they were not given food or water. During his more than four times in the detention house, he had illegal recognition proceedings through the Gesell Chamber since his private defender, Oscar Isaac (Diego Jhovanni does not remember his surnames), was not present in the proceedings. He would be taken in alone with the Agent of the Public Ministry to those illegal proceedings, thus violating his right to an adequate defence. In addition, because his defender was absent from the recognition proceedings, he was in a total [state of defencelessness](#).

Probable Incitement of Witnesses during his Time in Detention

The non-conforming recognition proceedings in the Gesell Chamber resulted in the three accusations against him by the alleged victims of the crime of kidnapping: Raúl Salazar Benítez, Ana Lilia Rebollar López and Carlos Peláez Lucero. Those persons in their ministerial statements never mentioned him until after the recognition proceeding in the Gesell Chamber where he actively participated, alone and without a defender. It was how the illegal accusations were made, without his lawyer being present.

- In his ministerial statement dated December 8, 2011, RAÚL SALAZAR BENÍTEZ does not make any mention of Diego Jhovanni until March 10, 2012, where he looked at him at through a glass where he actively participated without a defender present. It was then there that the alleged victim made the “voice accusation” against him.
- In her ministerial statement dated September 3, 2011, ANA LILIA REBOLLAR LÓPEZ did not mention him at all until after she looked at him in the recognition proceedings through the Gesell Chamber during the extension of her declaration dated March 16, 2012. In this statement, she accuses him as “one of those who was in charge of taking care of them and feeding them.” She said that she recognized his tattoos and the names of his sister Alejandra and daughter Vania. Nevertheless, in her first ministerial statement she did not mention anything at all until after the recognition proceeding through the Gesell Chamber in which he was alone and without a defender. There she said that she recognized Diego Jhovanni through his voice and physical appearance, which shows that the Public Ministry vitiated her accusation.
- In his ministerial statement of unknown date, CARLOS PELÁEZ LUCERO, the alleged kidnapping victim, also makes no mention of Diego Jhovanni. It wasn't until after the recognition proceedings through the Gesell Chamber, where he

expanded his statement and pointed him out as one of the people who participated in his kidnapping. He said he recognized Diego Jhovanni by his voice and physical appearance. It is presumed that his statement to the Public Ministry was vitiated.

The evidence that the Public Ministry presented against Diego Jhovanni lacks legality, and it should not be taken into account as evidence that proves his responsibility for the crimes.

"Any evidence obtained in violation of fundamental rights will be void" (Article 20, section A, section IX)

Violations to the Rules of Procedure

The Federal Code of Criminal Procedures in its articles 259, 260, 261, 262, 263 and 264 mentions how a recognition procedure should be carried out. However, the Public Ministry did not respect the procedure or his right to an [adequate defence](#). This is evidenced by the absence of the corresponding signatures in the certificates of recognition of the people who must have participated in said proceedings. The certificates of recognition and identification of Diego Jhovanni through the Gesell Chamber lack the signature of his lawyer. These documents are in the file of the criminal case 39/2012-3 filed against him. It is important to point out that since he was not assisted by a public or private defender in those proceedings, they cannot be called "recognition," but rather, a clear inducement to get him incriminated, violating his constitutional rights. In addition, the accusations that were made and the statements of the alleged victims are illegal since there was no adequate defence during the proceedings. There was neither a public or private defender to protect him, and thus, in a clear state of defenselessness, the guarantee of legality and legal security was violated, along with his right to due process, enshrined in the Magna Carta.

Detained Again After Being Release at the End of his Preventive Detention

Upon being detained, Diego Jhovanni states that he was taken to the detention house in the Doctores neighbourhood, where he was held for 80 days. Once the detention days were up, they released him and once outside he was detained again by federal agents due to an alleged arrest and location warrant. No such order was ever shown to him, nor was there such an order. He was taken to the Public Ministry, which at that time was the

SIEDO. There they wanted to accuse him of six more kidnappings and two days later they released him. But when leaving the SIEDO facilities, AFI (Federal Investigations Agency) investigators had already an arrest warrant issued by the Ninth District Judge in the State of Mexico, and he was taken to this Federal Center, CEFERESO No. 4

Conclusion

It is important to point out that since Diego Jhovanni's arrest, his constitutional and human rights have been violated by being illegally detained and placed at the disposal of the agent of the Public Ministry with a **delay of more than ten hours**. During that time delay, he was beaten. At the time of the recognition proceedings, his right to an **adequate defence**, as established in Article XX of the Constitution, was not respected. His right to due process was also violated since for seven years he has been tried with evidence obtained in violation of his constitutional rights in view that the **accusations are illegal**, by not meeting the requirements established by law." Those accusations should not be taken into account when issuing a conviction because they are part of the illegal evidence that the Public Ministry presented against him. His lawyer or public defender, or other people who participated with him in the Gesell Chamber, were not present at these recognition proceedings. This is demonstrated by the lack of forms in the records of said proceedings and that is why these accusations lack legal value to prove his responsibility in the crimes that he is being charged with.

DIEGO JHOVANNI CALDERÓN NIETO has spent almost **10 years in preventive detention**. His health condition continues to deteriorate (kidney failure, asthma, and high blood pressure), without the prison authorities attending to his condition, despite repeated requests by **EN VERO**.

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- To Help Us Help Diego: <https://en-vero.org/donate/>

