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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

FABIAN LAYTON VARGAS,

Plaintiff,

-against-

KRISTI NOEM, in her official capacity as  
Acting Secretary of Homeland Security;  
PETE R. FLORES, in his official capacity as  
Commissioner of the U.S. Customs and  
Border Protection; and RICARDO WONG, in  
his official capacity as Field Office Director  
of the ICE ERO Chicago, C. Carter in his  
official capacity as WARDEN of FCI  
Leavenworth,

Defendants.

25 CV 3155-JWL

**PETITION FOR WRIT OF  
HABEAS CORPUS**

**INTRODUCTION**

1. Petitioner, Fabian Leyton-Vargas, is a forty-seven-year-old native and citizen of Colombia, was paroled into the United States for criminal prosecution on May 29, 2019. He has been in the custody of U.S. Immigration and Customs Enforcement (“ICE”) since January 31, 2024, following his release from the Federal Bureau of Prisons. On April 16, 2024, Respondent filed his Form I-589, application for deferral of removal under Article 3 of the Convention against Torture.

2. On December 4, 2024, an Immigration Judge in Chicago ordered that Respondent be removed to Colombia, but removal to Colombia be deferred under Article 3 of the Convention Against Torture finding it is more likely than not that Respondent will be subject to torture in Colombia by Colombian officials and by others with the acquiescence of Colombian officials. That finding prohibits DHS from carrying out the removal to Colombia for as long as the risk remains.

3. His continued detention is unconstitutional and unlawful because it has become prolonged without a foreseeable end in sight, and his removal to Colombia is not reasonably foreseeable given the substantial, well-documented likelihood that he will be tortured or killed upon return. Accordingly, to vindicate Petitioner's statutory, constitutional, and regulatory rights, this Court should grant the instant petition for a writ of habeas corpus and order his immediate release under appropriate conditions of supervision.

4. Absent an order from this Court, Petitioner will remain in indefinite and unlawful immigration detention, deprived of his liberty without a foreseeable removal date, and subjected to continued harm in violation of his statutory, constitutional, and regulatory rights.

5. Petitioner asks this Court to find that his continued detention is unlawful because it has become unreasonably prolonged without a foreseeable removal date, and order his immediate release.

### **JURISDICTION**

6. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

7. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause). Jurisdiction is proper because Petitioner challenges the legality of his

ongoing immigration detention, which has become unreasonably prolonged in violation of the Constitution, federal statutes, and regulations.

8. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

### **VENUE**

9. Venue is proper because Petitioner is detained at the Leavenworth Detention Center in Leavenworth, Kansas, which is within the jurisdiction of this District.

10. Venue is also proper because Respondents are officers, employees, or agencies of the United States, and Warden of FCI Leavenworth, resides in this District. In addition, a substantial part of the events or omissions giving rise to this action occurred in this District, and no real property is involved in this action. 28 U.S.C. § 1391(e).

### **REQUIREMENTS OF 28 U.S.C. § 2243**

11. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return “within *three days* unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.* (emphasis added).

12. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

**PARTIES**

13. Petitioner Fabian Leyton-Vargas is a native and citizen of Colombia who is currently detained at the FCI Leavenworth. He is in the custody and under the direct control of Respondents and their agents.

14. Respondent C. Carter is the Warden of the FCI Leavenworth, where Petitioner is currently detained. Respondent Hudson has immediate physical custody of Petitioner pursuant to the facility's contract with U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner.

15. Respondent Ricardo Wong is sued in his official capacity as the Field Office Director of the ICE Enforcement and Removal Operations (ERO) Chicago Field Office. Respondent Wong is a legal custodian of Petitioner and has authority to release him from ICE custody.

16. Respondent Pete R. Flores is sued in his official capacity as the Commissioner of U.S. Customs and Border Protection (CBP). In this capacity, Respondent Flores is responsible for the administration and enforcement of the nation's immigration laws at and between ports of entry. Respondent Flores is a legal custodian of Petitioner.

17. Respondent Kristi Noem is sued in her official capacity as the Acting Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention and custody. Respondent Noem is a legal custodian of Petitioner.

**STATEMENT OF FACTS**

18. Petitioner, Fabian Leyton-Vargas (“Mr. Leyton”), is a forty-seven-year-old native and citizen of Colombia. He is currently detained by U.S. Immigration and Customs Enforcement (“ICE”) at FCI Leavenworth, under the jurisdiction of the Chicago Field Office.

19. On April 26, 2018, Petitioner was arrested in Bogotá, Colombia, by agents of the U.S. Drug Enforcement Administration (“DEA”) and the Colombian National Police. His arrest and alleged cooperation with the DEA were widely publicized in Colombian national media, including *El Tiempo*, which specifically linked him to notorious Colombian drug trafficker Daniel “El Loco” Barrera. In 2018, investigative journalist Marta Soto also featured Petitioner in her book *Narcojets*, further identifying him as a DEA informant.

20. On May 29, 2019, Petitioner was paroled to the United States. On November 1, 2019, in the United States District Court for the Eastern District of Virginia, Petitioner pleaded guilty to Conspiracy to Distribute Five Kilograms or More of Cocaine, in violation of 21 U.S.C. §§ 959(a), 960, and 963, knowing and intending that the cocaine would be unlawfully imported into the United States.

21. Petitioner was sentenced to 144 months in the custody of the Bureau of Prisons, followed by five years of supervised release. Due to substantial cooperation with U.S. prosecutors and the DEA—providing information that assisted in the investigation and prosecution of others—his sentence was reduced to 60 months, and he served approximately 59 months in custody.

22. Petitioner’s early release from federal prison has further solidified his public reputation in Colombia as a government informant, increasing the likelihood of retaliation by actors in the Colombian drug trade, including the Barrera organization, guerrilla factions, paramilitary groups, and corrupt officials within the Colombian Air Force and National Police.

23. On January 31, 2024, immediately upon release from federal custody, Petitioner was taken into ICE custody. ICE issued a Notice to Appear the same day and has detained Petitioner without bond ever since.

24. On April 16, 2024, Petitioner filed an application for deferral of removal under Article 3 of the Convention Against Torture (“CAT”) in the Chicago Immigration Court. Petitioner continues to be held in ICE custody despite the Immigration Judge’s December 4, 2024, order deferring removal to Colombia under the Convention Against Torture. Because DHS is barred from removing Petitioner to Colombia at this time and has identified no alternative country of removal, there is no significant likelihood that his removal will occur in the reasonably foreseeable future.

25. DHS cannot execute that removal to Colombia right now because of the CAT deferral. If conditions change or DHS believes the risk no longer exists, they can try to reopen or terminate the deferral in the future.

26. On April 23, 2025, ICE Officer Shawn Byers personally served Petitioner with a custody review notice dated April 16, 2025. Petitioner remains in prolonged detention without a foreseeable removal date.

27. Given the substantial risk of torture or death in Colombia, and the indefinite nature of his current detention, Petitioner’s continued confinement is unconstitutional and unlawful.

#### **LEGAL FRAMEWORK**

28. Federal law authorizes the government to detain certain noncitizens during removal proceedings or after the entry of a final order of removal. See 8 U.S.C. §§ 1226, 1231. Such detention, however, is subject to constitutional limits.

29. The Supreme Court has held that immigration detention is civil in nature and must be reasonably related to its purpose—ensuring the noncitizen’s appearance at removal proceedings and protecting the community. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Detention that is prolonged, indefinite, or no longer reasonably related to its purpose violates the Due Process Clause of the Fifth Amendment. *Zadvydas*, 533 U.S. at 699–701.

30. Under *Zadvydas*, when removal is not reasonably foreseeable, detention beyond six months is presumptively unreasonable and unconstitutional absent a showing by the government that removal is significantly likely in the reasonably foreseeable future. *Id.* at 701.

31. The writ of habeas corpus under 28 U.S.C. § 2241 provides a vehicle for noncitizens to challenge the legality of their detention and to secure release where detention is unlawful or unconstitutional. The Suspension Clause of Article I, § 9, cl. 2 of the U.S. Constitution preserves the writ as a check against unlawful executive detention.

## **CLAIMS FOR RELIEF**

### **COUNT ONE**

#### **Violation of Fifth Amendment Right to Due Process**

32. The allegations in the above paragraphs are realleged and incorporated herein by reference.

33. Petitioner’s ongoing detention—now exceeding 8 months—is arbitrary, excessive, and no longer reasonably related to its lawful purpose of securing removal. Petitioner’s removal to Colombia is not reasonably foreseeable given the substantial risk of torture or death he faces there, his pending protection claims, and the absence of any concrete removal timeline.

34. Prolonged immigration detention without a bond hearing or other meaningful process to determine whether continued confinement is justified violates the Due Process Clause

of the Fifth Amendment to the United States Constitution. See *Zadvydas v. Davis*, 533 U.S. 678 (2001).

35. For these reasons, Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

## **COUNT TWO**

### **Violation of 8 U.S.C. § 1231(a)(6)**

36. The allegations in the above paragraphs are realleged and incorporated herein by reference.

37. Under 8 U.S.C. § 1231(a)(6) and its implementing regulations, the government may detain a noncitizen after a final order of removal only for a period reasonably necessary to effectuate removal. The Supreme Court has construed this statute to prohibit detention beyond six months where removal is not reasonably foreseeable. *Zadvydas v. Davis*, 533 U.S. 678, 699–701 (2001).

38. Petitioner has been detained well beyond the six-month presumptively reasonable period, and there is no significant likelihood of removal in the reasonably foreseeable future. ICE has taken no concrete steps to effectuate his removal, and substantial, well-documented barriers—including credible threats to Petitioner's life and the likelihood of torture in Colombia—make such removal impracticable.

39. By continuing to detain Petitioner without demonstrating that his removal is significantly likely in the reasonably foreseeable future, Respondents are violating 8 U.S.C. § 1231(a)(6) and the implementing regulations governing post-order custody reviews.

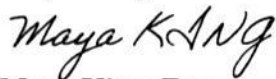
### **PRAYER FOR RELIEF**

Wherefore, Petitioner respectfully requests this Court to grant the following:



1. Assume jurisdiction over this matter;
2. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
3. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, 8 U.S.C. § 1231(a)(6).
4. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately under appropriate conditions of supervision; and
5. Grant any further relief this Court deems just and proper.

Respectfully submitted,



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*Counsel for Petitioner*

Dated: August 11, 2025

**VERIFICATION PURSUANT TO 28 U.S.C. § 2242**

I represent Petitioner, **Fabian Leyton-Vargas**, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 11th day of August, 2025.

/s/ Maya King

Maya King, Esq.  
Attorney for Petitioner