

JUDGE KATHLEEN CARDONE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

FILED
FEB 04 2026
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY *[Signature]*
DEPUTY CLERK

Fabian Vega-Guashca
Petitioner

v.

Mary De-Anda-Ybarra, Acting Director of
El Paso Field Office Field Office, U.S.
Immigration and Customs Enforcement;
Todd Lyons, Acting Director, U.S. Immigration
and Customs Enforcement;
Kristi Noem, Secretary of the U.S. Department
of Homeland Security;
Marisa Flores Warden of the El Paso Camp,
East Montana

PETITION FOR WRIT
OF HABEAS CORPUS

EP 26CV0326

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INTRODUCTION

1. Petitioner Fabian Vega-Guashca (Mr. Vega-Guashca) is a forty-five-year-old Ecuadorian citizen
2. Mr. Vega-Guashca entered the United States without inspection in November 1st, 2019, through the Arizona border.
3. He has no criminal background.

4. On September 10th, 2025, he was arrested by ICE, while leaving home to work.
5. He had been at liberty in the United States for over six prior to his detention.
6. Mr. Vega-Guashca is eligible for Asylum and withholding Removal
7. In order to vindicate Petitioner's constitutional, statutory and regulatory rights, this Honorable Court should grant this instant petition for a writ of habeas corpus to ensure his continued freedom. Mr. Vega-Guashca humbly asks this Honorable Court to find that his detention to be unlawful and to order ICE to release him.

JURISDICTION

8. This instant action is rooted in the United States Constitution and the Immigration and Nationality Act (INA).
9. This Honorable court has jurisdiction over this matter 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)

VENUE

10. Venue is proper because the petitioner is currently detained at the ERO El Paso Camp East Montana Detention Facility, located at 6920 Digital Drive, El Paso, TX 79936. Therefore, the petitioner remains detained within the Western District of Texas.

REQUIREMENTS SET FORTH ON 28 U.S. U.S.C. § 2243

11. The Honorable Court must grant this instant petition for writ of habeas corpus or issue an order to show-cause 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 Honorable Court must require respondents to file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed”

PARTIES AND FACTS ALLEGED

12. The Petitioner, **Fabian Vega-Guashca**, upon information provided by ICE, is currently detained at the El Paso Detention Facility.
13. Respondent **Mary De-Anda-Ybarra** is sued in her official capacity as Acting Director of El Paso Field Office Field Office, U.S. Immigration and Customs Enforcement (ICE).

14. Respondent **Todd Lyons** is sued in his capacity as the Acting Director for the U.S. Immigration and Customs Enforcement (ICE).
15. Respondent **Kristi Noem** is sued in her capacity as the Secretary of the U.S. Department of Homeland Security (DHS).
16. Respondent **Marisa Flores** is sued in his capacity as Warden of the El Paso Camp, East Montana.
17. All respondents are named in their official capacities.

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Due Process Clause

18. The Fifth Amendment provided that “no person shall be deprived of life, liberty, or property without due process of law”
19. “[t]he Due Process clause applies to all persons within the United States, including aliens, whether their presence here is lawful, unlawful, temporary or permanent” *Zadvydas v. Davis*, 533 U.S. 693 (2001)
20. Respondent mandatory detention without consideration for release on bond or access to a bond hearing violates his due process rights.

COUNT TWO

Violation of 8 U.S.C. § 1226(a) Unlawful Denial of Release on Bond

21. Mandatory detention as set forth on 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States whom are subject to the ground of inadmissibility, most relevant, it does not apply to those who previously entered the country and have been residing in the U.S. prior to being detained by Defendants, historically, such noncitizens would be detained under § 1226(a), and therefore, eligible for release on bond.
22. Nonetheless, the Board of Immigration Appeals, under the Department of Justice, issued a decision on September 5th, 2025, binding on all Immigration Judges, thus rendering the Petitioner ineligible for release on Bond. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

COUNT THREE

Violation of the Bond Regulations, 8 C.F.R. §§ 236.1, 1236.1 and 1003.19 Unlawful Denial of Release on Bond

23. In 1997, following enactment of IIRIRA, EOIR and the Immigration and Naturalization Service issued an interim rule interpreting its detention provisions. Under the heading “Apprehension, Custody, and Detention of [Noncitizens],” the agencies clarified that “[d]espite being applicants for

admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination.” 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). Thus, individuals who entered without inspection are eligible for custody redetermination hearings under 8 U.S.C. § 1226 and its implementing regulations.

24. Application of 8 U.S.C. § 1225(b)(2) to Petitioner, who is bond-eligible, unlawfully mandates his continued detention in contravention of 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT FOUR

Violation of the Administrative Procedure Act Contrary to Law and Arbitrary and Capricious Agency Police

25. The Administrative Procedure Act (“APA”) requires that a “reviewing court shall...hold unlawful and set aside agency action, findings, and conclusions found to be...arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).
26. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens physically present in the United States who are subject to grounds of inadmissibility. Critically, it does not apply to those

who have already entered the country and resided here prior to being apprehended and placed into removal proceedings. Such individuals fall under 8 U.S.C. § 1226(a), which provides for release on bond absent applicability of § 1225(b)(1), § 1226(c), or § 1231.

27. Nevertheless, DHS and the Immigration Court have applied § 1225(b)(2) to Petitioner.
28. This application is arbitrary, capricious, and contrary to law, and therefore violates the APA. See 5 U.S.C. § 706(2)

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) Order that Defendants not remove Petitioner from the State of Texas;
- 4) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment as well as the relevant statute and regulations governing detention of noncitizens;
- 5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately;

- 6) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- 7) Grant any further relief this Court deems just and proper.

Respectfully Submitted,

Fabian Vega-Guashca

Petitioner

By and through undersigned counsel.

/s/ Stephen A. Lagana

Dated: February 3, 2026

Stephen A. Lagana, Esq.
Law Offices of Stephen A. Lagana
145 Essex Street
Lawrence, MA 01840
BBO-MA# 565811

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

I represent Petitioner, **Fabian Vega-Guashca** 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.

/s/ Stephen A. Lagana

Dated: February 3, 2026

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LAW OFFICES OF STEPHEN A. LAGANA

Attorney & Counselors at Law

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U.S. District Court
Western District of Texas
525 Magoffin Avenue, Suite 105
El Paso, Texas 79901
ATTN: U.S. District Clerk's Office

RE: **FABIAN VEGA-GUASHCA** ()

Dear Sir/Madam;

Enclosed please find the following documents pertaining to the above-captioned matter:

1. Petition for Writ of Habeas Corpus 28 U.S.C. § 2241;
2. Civil Cover Sheet;
3. Motion for Pro Hac Vice Admission;
4. Money Order in the Amount of \$5.00 for Habeas Filing Fee;
5. Check in the Amount of \$100.00 for the Pro Hac Vice Fee;
6. Copy of Admission Letter (pending ceremony);

If you have any questions or concerns, please do not hesitate to contact our office at (978) 794-2331 or via email at lagana.law@gmail.com.

Very Truly Yours,

/s/ Stephen A. Lagana
Stephen A. Lagana, Esq.
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145 Essex Street
Lawrence, MA 01840
BBO-MA# 565811

Date: 02/03/2026