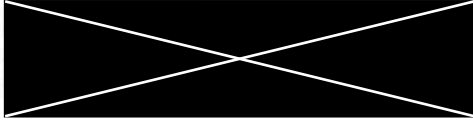


**UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND**

Genesis Abigail OCHOA FONSECA



Petitioner,

v.

Kristi Noem, Secretary of DHS  
2707 Martin Luther King Jr Ave, SE  
Washington, DC 20528-0525

Pam Bondi, U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Ave, NW  
Washington, DC 20530-0001

Todd Lyons, Acting Director  
Immigrations and Customs Enforcement  
500 12<sup>th</sup> Street SW  
Washington, DC 20536

Nikita Baker, Acting Director  
ICE Baltimore Field Office  
31 Hopkins Plaza #630  
Baltimore, MD 21201

Respondents.

No.

PETITION FOR WRIT OF  
HABEAS CORPUS

**PETITION FOR A WRIT OF HABEAS CORPUS**

### INTRODUCTION

1. Ms. Genisis Abigail OCHOA FONSECA is a 29-year-old native and citizen of Honduras. On or about March 2, 2018, Petitioner was apprehended by CBP at the U.S. border. CBP decided to release her and her family members into the U.S. She has lived with her family in the U.S. since that time without any incident. She has been attending her removal hearings and attended her asylum merits hearing on November 20, 2025. Therefore, Petitioner timely filed an appeal of the immigration judge's removal decision on December 22, 2025. (A screenshot of the EOIR Case Portal showing Petitioner's timely filed appeal is attached hereto and made a part hereof as Exhibit 1). That appeal is pending before the BIA. Thus, she does not have a final administrative order of removal. Petitioner has committed no crimes and has been reporting to ICE as requested. There has been no real change in her circumstances since the time of her release at the border.
2. Petitioner is the mother of five minor children, two of whom are U.S. citizens. Petitioner is the sole caregiver of her minor children, as their father is not present. The children do not currently have anyone to care for them while their mother is in ICE custody.
3. Petitioner was required to report to ICE/ISAP in Baltimore on a monthly basis, and she consistently did so. However, on January 13, 2026, when Petitioner arrived at Baltimore ICE/ISAP for her monthly reporting appointment, she was abruptly arrested by ICE officials without a warrant and detained without explanation or just cause. Petitioner is held at the Immigration and Customs Enforcement Baltimore Field Office at 31 Hopkins Plaza, Suite 630, Baltimore, MD 21201, in deplorable and inhumane conditions.

4. Petitioner Genisis Abigail OCHOA FONSECA petitions this Honorable Court to issue a Writ of Habeas Corpus seeking relief to remedy her arbitrary, capricious, and unlawful detention by ICE. 28 U.S.C. § 2241.
5. Petitioner OCHOA FONSECA has very strong family and community ties in Maryland, including her minor children, two of whom are U.S. citizens, who completely depend on her for their well-being and financial stability, friends, stable employment, and local counsel: (Petitioner's 2 U.S.C. children's birth certificate and 2 letters from her friends are attached hereto and made a part hereof as Exhibits 2 and 3, respectively). Further, and importantly, Petitioner has no criminal record.

#### **CUSTODY**

6. Petitioner is in the physical custody of Respondents. Petitioner is detained at 31 Hopkins Plaza, Suite 630, Baltimore, MD 21201. Petitioner is under the direct control of Respondents and/or their agents.

#### **JURISDICTION AND VENUE**

7. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq., and the Administrative Procedure Act (APA), 5 U.S.C. § 701, et seq. 4. This Court has jurisdiction under 28 U.S.C. § 2241; Art. I § 9, cl. 2 of the United States Constitution (Suspension Clause) and 28 U.S.C. § 1331, as Petitioner is presently in custody under the alleged color of authority of the United States, and such custody is in violation of the Constitution, laws, and/or treaties of the United States. This Court may grant relief pursuant to 28 U.S.C. § 2241, 5 U.S.C. § 702, and the All Writs Act, 28 U.S.C. § 1651.

8. Venue is proper in the District of Maryland because that is where Petitioner is detained and that is where Petitioner resides. *See* 28 U.S.C. § 1391(b); *Kholyavskiy v. Achim*, 443 F.3d 946 (7th Cir. 2006).

#### THE PARTIES

9. Petitioner Genesis Abigail OCHOA FONSECA is a female citizen and national of Honduras who has been present in the U.S. since 2018.
10. Defendant Krisiti Noem is the Secretary of the Department of Homeland Security in Washington, D.C. Ms. Noem is responsible for the enforcement of the U.S. immigration laws, including those governing the admissibility of foreign nationals in the U.S. Ms. Noem and agents acting under her direction are at present detaining Petitioner. Ms. Noem is being sued in her official capacity only.
11. Defendant Todd Lyons is the Acting Director of Immigration and Customs Enforcement in Washington, D.C. Mr. Lyons is responsible for the enforcement of the U.S. immigration laws, and the agents holding Ms. OCHOA FONSECA are under his direction. Mr. Lyons is being sued in his official capacity only.
12. Defendant Nikita Baker is the current Acting Deputy Director of the ICE Baltimore Field Office, the facility where Petitioner is currently detained. Ms. Baker is responsible for ICE operations in the Maryland area. Ms. OCHOA FONSECA is held by ICE agents under Ms. Baker's direction. Ms. Baker is being sued in her official capacity only.

#### FACTUAL ALLEGATIONS

13. Petitioner is a national and citizen of Honduras who was apprehended by CBP at the border on or about March 2, 2018, and then released by CBP into the United States with three of her children and her spouse. They have not departed the United States since 2018.

14. On January 13, 2026, Petitioner reported for her monthly check-in with ICE/ISAP. Shortly after arrival, Petitioner was arrested by ICE officers without a warrant and without being informed of the reasons for her sudden arrest and detention, where no change in circumstances existed. Petitioner is being held at the Immigration and Customs Enforcement Baltimore Field Office at 31 Hopkins Plaza, Suite 630, Baltimore, MD 21201, in deplorable conditions.
15. Ms. OCHOA FONSECA does not have a final administrative order of removal, but is in the midst of her removal proceedings. Petitioner timely filed an appeal of the immigration judge's decision with the Board of Immigration Appeals; it is currently pending. At present, the Board is taking between three and five years to issue a decision on a pending appeal.
16. Petitioner resides with her five minor children, two of whom are U.S. citizens. She is the sole primary caregiver and financial provider for these five minor children. Since Petitioner OCHOA FONSECA's detention, the children have been left with no one to care for them. (See Exhibits 2 and 3).

### **LEGAL BACKGROUND**

#### **A. Statutory and Constitutional Limits for Immigration Detention**

17. The Fifth Amendment to the U.S. Constitution provides limits on detention. As the Supreme Court has noted, "[i]t is well-established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings." *Demore v. Hyung Joon Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of liberty," that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678,690 (2001). This fundamental due process protection

applies to all noncitizens, even if they are removable or inadmissible. *See id.* at 721 (Kennedy, J., dissenting) (“(B)oth removable and inadmissible aliens are entitled to be free from detention that is arbitrary or capricious.”). Under these due process principles, detention must “bear [a] reasonable relation to the purpose for which the individual [was] committed.” *Id.* at 690 (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)).

18. Due process, therefore, requires "adequate procedural protections" to ensure that the government's asserted justification for physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Id.* at 690 (internal quotations omitted). In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention to mitigate the risks of danger to the community and to prevent flight. *Id.*; *Demore*, 538 U.S. at 538.
19. Following *Zadvydas*, *supra* and *Demore*, *supra*, most circuit courts to confront the issue have protected the due process rights of people detained in civil immigration detention by requiring a custody hearing for noncitizens subject to unreasonably prolonged detention pending removal proceedings. *See Sopo v. U.S. Att'y Gen.*, 825 F.3d 1199 (11th Cir. 2016); *Reid v. Donelan*, 819 F.3d 486 (1st Cir. 2016); *Lora v. Shanahan*, 804 F.3d 601 (2d Cir. 2015); *Rodriguez v. Robbins (Rodriguez III)*, 804 F.3d 1060 (9th Cir. 2015); *Diop v. ICE/Homeland Sec.*, 656 F.3d 221 (3d Cir. 2011); *Ly v. Hansen*, 351 F.3d 263 (6th Cir.2003).
20. In addition to the amount of time in detention, courts weigh the following factors when assessing reasonableness: (1) how long the detention will likely continue in the absence of judicial relief; (2) the nature and extent of removal proceedings, including whether any delays are attributable to the government or the immigrant; (3) the conditions of detention;

and (4) the likelihood that the proceedings and judicial review will end with a removal order.

**FIRST CLAIM FOR RELIEF**

**VIOLATION OF THE DUE PROCESS CLAUSE OF THE U.S. CONSTITUTION**

21. Petitioner re-alleges and incorporates by reference the paragraphs above.
22. Petitioner's detention violates substantive and procedural Due Process guarantees of the U.S. Constitution. On January 13, 2026, when Petitioner arrived for her monthly check-in with ICE/ISAP in Baltimore, she was immediately arrested by ICE officials without a warrant and detained. It is a violation of due process and unjustified for Respondents to have arrested and detained Petitioner without a warrant when she was attending her monthly reporting appointment as required. Moreover, Petitioner had always been attending her monthly reporting appointments.
23. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. Amend. V.
24. "[T]he Due Process Clause applies to all 'persons' within the United States, including [non-U.S. citizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas, supra* at 693 (2001). For this reason, even "removable and inadmissible [non-U.S. citizens] are entitled to be free from detention that is arbitrary and capricious," *Id.* at 721 (Kennedy, J., dissenting). That Constitutional protection is unaffected by the government's authority to make rules for "admission" that regulate the immigration status of noncitizens. *See* 8 U.S.C. § 1101(a)(13)(A) (defining admission as "the lawful entry of the alien").

25. “A statute permitting indefinite detention of a [non-U.S. citizen] would raise a serious constitutional problem” under the Fifth Amendment’s Due Process Clause. *Id.* at 690.
26. Specifically, Petitioner’s due process rights were procedurally violated in that when she reported on January 13, 2026, for her monthly check-in with ICE/ISAP in Baltimore, she was immediately arrested and detained without a warrant, explanation, or a hearing regarding any alleged change in circumstances. Before depriving Petitioner of her liberty interest, she should at least be afforded an opportunity to be heard. Procedural due process requires, at a minimum, an opportunity to be heard “at a meaningful time and in a meaningful manner.” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Applying the *Mathews* factors, courts consistently find that: (a) the private interest in freedom from physical restraint is “the most elemental of liberty interests”; (b) the risk of erroneous deprivation is high where detention occurs without a hearing; and (c) the government’s interest in immediate detention without process is minimal. *See P.T. v. Hermosillo*, No. 2:2025cv02259 (W.D.W.A) (applying *Mathews* and finding detention unconstitutional where ICE failed to provide pre-deprivation process); *see also Ngha v. Noem*, No. 8:25-CV-04055-BAH, 2025 (D. Md. Dec. 11, 2025). Applying the three *Mathews* factors to Petitioner’s facts shows: 1) Petitioner invokes “the most significant liberty interest there is—the interest in being free from imprisonment,” and a “person’s liberty interest cannot be abridged without adequate procedural protections;” 2) the risk of erroneous deprivation is high because no determination was made prior to, or at the time of, Petitioner’s arrest, and the Government has alleged no change in circumstances to justify detention; and 3) the Government’s interest is minimal, particularly where continued detention is not supported by individualized findings or adequate procedural safeguards. *See Artiga v.*

*Genalo*, No. 25-CV-5208, Mem. & Order at 19 (E.D.N.Y. Oct. 5, 2025). Due to Petitioner's unique circumstances, including five minor children, two of whom are U.S. citizens, for which she is the sole caregiver and provider, no criminal record, an appeal pending before the BIA, her *Mathews* factors support that she should be entitled to be free from arbitrary and capricious detention under the due process clause.

27. Additionally, Respondents' arrest and detention of Petitioner violates her substantive due process rights. The Supreme Court in *Zadvydas v. Davis*, 522 U.S. 678 (2001), held that detention where removal cannot occur within the reasonably foreseeable future is unconstitutional and found that a six-month period is a presumptive maximum period of reasonable detention. Here, Petitioner's removal is not reasonably foreseeable, as she has no final administrative order of removal. Petitioner timely filed an appeal with the Board of Immigration Appeals on December 22, 2025, and Respondents are legally barred from executing removal while that appeal remains pending. BIA appeals routinely last three to five years, making removal during the pendency of the appeal neither imminent nor reasonably foreseeable. Because detention no longer bears a reasonable relationship to effectuating removal, Petitioner's continued custody exceeds statutory authority and violates due process.

28. Finally, this Court "cannot ignore the conditions of confinement." *Chavez-Alvarez v. Warden York Cty. Prison*, 783 F.3d 469, 476 (3d Cir. 2015). Where "the facility for the civil immigration detention is [not] meaningfully different from a penal institution for criminal detention[,]" prolonged immigration detention is more likely to be unreasonable. *Sopo*, 825 F.3d at 1218 (citing *Chavez-Alvarez*, 783 F.3d at 478; *Ly v. Hansen*, 351 F.3d 263, 272 (6th Cir. 2003)). Petitioner is detained in a non-regular immigration detention

center; it is only a holding center that consists of deplorable conditions, including no beds, no opportunity for showers, and unsatisfactory food.

29. Petitioner should be released or at least be allowed a hearing regarding the alleged change in circumstances or any other reasons for why she was unexpectedly arrested and detained on January 13, 2026.
30. Further, preventive detention is only constitutional when “subject to strong procedural protections.” *Zadvydas, supra*, at 690 (2001) (citing *Foucha v. Louisiana*, 504 U.S. 71 (1992) (striking down civil commitment statute for placing the burden on the detainee)).

### **SECOND CLAIM FOR RELIEF**

#### **VIOLATION OF THE FOURTH AMENDMENT OF THE U.S. CONSTITUTION**

31. The Fourth Amendment prohibits arbitrary, warrantless seizures unsupported by any legitimate governmental purpose. U.S. Const. amend. IV. A warrantless arrest is per se unreasonable unless the government establishes that it was justified by probable cause based on specific, articulable facts, not speculation or conclusory assertions.
32. Petitioner’s arrest was unlawful because ICE effected a warrantless civil immigration arrest while she was voluntarily appearing for a scheduled ICE check-in, without probable cause to believe she was likely to escape before a warrant could be obtained, as required by 8 U.S.C. § 1357(a)(2). As Judge Howell, in the DC District Court, held in *Escobar Molina et al. v. DHS*, warrantless civil immigration arrests are unlawful where immigration officers fail to make an individualized, pre-arrest determination that the noncitizen poses an escape risk, particularly where the individual is complying with ICE supervision and appearing as directed. *See Escobar Molina*, Civ. Action No. 25-3417 (D.D.C. Dec. 2, 2025) (granting class action injunction in DC against warrantless arrests lacking escape-risk

probable cause). Arresting Petitioner while she was affirmatively reporting to ICE, rather than evading authorities, demonstrates the absence of any plausible escape risk and renders the warrantless arrest statutorily and constitutionally unlawful.

**THIRD CLAIM FOR RELIEF**

**VIOLATION OF 28 U.S.C. § 1361 (Writ of Mandamus)**

33. Petitioner re-alleges and incorporates by reference the paragraphs above.
34. Petitioner's detention despite having many years of presence in the United States, five minor children (two of whom are U.S. citizens), employment, family, and community ties, is an abuse of discretion, arbitrary, capricious, and unlawful.

**FOURTH CLAIM FOR RELIEF**

**VIOLATION OF THE ADMINISTRATIVE PROCEDURES ACT**

35. Petitioner re-alleges and incorporates by reference the paragraphs above.
36. Under the APA, a court shall "hold unlawful and set aside agency action" that is arbitrary and capricious. 5 U.S.C. § 706(2)(A). An agency action is arbitrary and capricious if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).
37. Here, ICE's decision to detain and attempt to transfer Petitioner, who does not have a final removal order, was complying with ICE supervision requirements, no criminal record, and

has strong family and community ties in Maryland, is arbitrary and capricious. Despite this, Respondents abruptly arrested and detained Petitioner without articulating any change in real factual circumstances, legal authority, or public-safety justification.

38. For these reasons, this Court should order Immigration and Customs Enforcement to immediately release Petitioner from detention and/or order a bond hearing based on violations of, inter alia, her Fourth and Fifth Amendment rights, her pending appeal before the Board of Immigration Appeals, and strong family and community ties within the United States. She is not a danger to the community, nor is she likely to abscond due to her ties here in the community. Petitioner's minor children, two of whom are U.S. citizens, wholly depend on her for their well-being and care.

**PRAYER FOR RELIEF**

WHEREFORE, Petitioner respectfully requests that this Honorable Court:

- 1) Assume jurisdiction over this matter;
- 2) Grant a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately, on reasonable conditions of supervision if necessary, and/or order Respondents to conduct a bond hearing within seven days;
- 3) Order Respondents to show cause, returnable within seven days pursuant to 28 U.S.C. §2243, as to why the relief requested in this petition should not be granted;
- 4) Declare the Petitioner's detention is unlawful and violates, inter alia, Due Process; and
- 5) Grant such further relief as the Court deems just and proper.

Respectfully submitted,

/s/ Ronald D. Richey

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