

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

Genesis Abigail OCHOA FONSECA

Petitioner,

v.

Kristi Noem, et. al

Respondents.

No.8:26-cv-00128-ABA

**PETITIONER'S MOTION FOR PETITIONER'S RELEASE BASED ON FIFTH
AMENDMENT CONSTITUTIONAL VIOLATIONS BY RESPONDENTS**

Petitioner, by and through undersigned counsel, respectfully moves this Honorable Court to order Petitioner's immediate release from custody due to Respondents', inter alia, violations of Petitioner's Constitutional Rights. In support thereof, Petitioner states as follows:

I. Background

1. On January 16, 2026, this Honorable Court held that Petitioner is detained pursuant to 8 U.S.C. § 1226(a) and ordered that she be afforded a bond hearing within ten (10) days consistent with the governing regulations.

2. Prior to Petitioner being able to file the motion for bond hearing with supporting documentation, DHS initiated a bond proceeding unbeknownst to Petitioner's counsel. Even though we have been her counsel throughout the removal proceedings and the habeas proceedings, bond proceedings are separate and apart from removal proceedings, and so neither the Respondents nor the Immigration Court notified petitioner or her counsel of the bond hearing.
3. The immigration judge conducted that proceeding without Petitioner having the assistance of counsel and without affording her an opportunity to present supporting documentation.
4. The immigration judge denied bond at the end of the brief hearing.
5. Subsequently, Petitioner filed an unopposed motion to reconsider and separately requested a bond hearing with substantial supporting documentation, consistent with this Court's Order.
6. Thereafter, a bond hearing was scheduled for February 4, 2026; however, the immigration judge denied reconsideration without conducting the scheduled hearing.
7. As a result, Petitioner has never received a meaningful bond hearing consistent with this Court's January 16, 2026 Order.

II. Petitioner has a Statutory and Fifth Amendment Right to Counsel at a § 1226(a) Bond Hearing

Although immigration proceedings are civil in nature and therefore not governed by the Sixth Amendment, noncitizens possess a well-established right to counsel at their own expense grounded in both statute and the Fifth Amendment's Due Process Clause.

The Due Process Clause of the Fifth Amendment guarantees noncitizens a full and fair hearing in removal (including bond) proceedings. Courts have consistently recognized that the

right to counsel is an essential component of that constitutional guarantee. See *Tawadrus v. Ashcroft*, 364 F.3d 1099, 1103 (9th Cir. 2004) (recognizing that while the Sixth Amendment does not apply, Congress has acknowledged the right to counsel as stemming from the Fifth Amendment's due process protections); *Colindres-Aguilar v. INS*, 819 F.2d 259, 260 n.1 (9th Cir. 1987) (holding that the right to counsel is protected by the Fifth Amendment's guarantee of a full and fair hearing); *Rios-Berrios v. I.N.S.*, 776 F.2d 859, 862 (9th Cir. 1985) (explaining that the INA provisions guaranteeing counsel make explicit the Fifth Amendment due process right to representation).

More recently, a federal district court reaffirmed that the right to counsel in immigration proceedings arises from both statute and due process. *Lahamendu v. Bondi*, No. 2:25-cv-02155, 2025 U.S. Dist. LEXIS 216228, at *14-15 (W.D. Wash. Nov. 3, 2025) (recognizing that the Fifth Amendment guarantees noncitizens the right to counsel at their own expense in immigration hearings).

Further, Congress codified this right in the Immigration and Nationality Act. 8 U.S.C. § 1362 provides that “[i]n any removal proceedings before an immigration judge ... the person concerned shall have the privilege of being represented (at no expense to the Government) by such counsel as he shall choose.” Likewise, 8 U.S.C. § 1229a(b)(4)(A) guarantees noncitizens “the privilege of being represented, at no expense to the Government, by counsel of the alien’s choosing.”

Bond hearings conducted pursuant to 8 U.S.C. § 1226(a) are held before an immigration judge under EOIR authority and are part of removal proceedings. Accordingly, the statutory and constitutional right to counsel applies to such proceedings.

Here, Petitioner had retained counsel. DHS initiated a bond proceeding without notice to counsel, and the immigration judge proceeded in counsel's absence. Petitioner was not afforded the opportunity to meaningfully present evidence through counsel before bond was denied. The immigration judge then denied reconsideration without conducting the scheduled bond hearing, even though DHS did not oppose reconsideration.

A bond proceeding conducted without notice to retained counsel and without the opportunity to meaningfully present evidence does not satisfy the guarantees of 8 U.S.C. §§ 1362 and 1229a(b)(4)(A), nor does it comport with the Fifth Amendment's requirement of a full and fair hearing.

III. The Proceedings did not satisfy this Court's Order.

This Court ordered that Petitioner be afforded a bond hearing under § 1226(a). A proceeding conducted without notice to retained counsel, without meaningful opportunity to submit supporting documentation, and followed by the denial of reconsideration without holding the scheduled hearing cannot be deemed in compliance with that Order. The bond hearing contemplated by this Court was one consistent with governing regulations and constitutional protections and with the assistance of counsel. That did not occur. Respondents were provided the opportunity to comply with this Court's directive. They failed to do so. Petitioner remains detained despite the Court's Order.

IV. Relief Requested

WHEREFORE, Petitioner respectfully requests that this Honorable Court:

1. Find that this Court's January 16, 2026 Order was not complied with;
2. Find that Petitioner was deprived of her statutory and Fifth Amendment right to counsel at her § 1226(a) bond proceeding;

3. Order Petitioner's immediate release from custody under reasonable conditions of supervision; and
4. Grant such other relief as this Honorable Court deems just and proper.

Dated: February 25, 2026

Respectfully submitted,

/s/ Ronald D. Richey

Ronald D. Richey, Esq.
MD Bar# 0906240005
Law Office of Ronald D. Richey
19785 Crystal Rock Dr., Ste. 307
Germantown, MD 20874
T: (301) 738-2338
info@immigrationlawrichey.com
Attorney for Petitioner

**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND**

Genesis Abigail OCHOA FONSECA

Petitioner,

v.

Kristi Noem, et. al

Respondents.

No.8:26-cv-00128-ABA

ORDER

Upon consideration of Petitioner's Motion for Petitioner's Release Based on Fifth Amendment Constitutional Violations by Respondents, it is on this ____ day of _____ 2026, by the United States District Court for the District of Maryland:

ORDERED that Petitioner's Motion for Immediate Release Based on Respondents' Failure to Comply with this Court's January 16, 2026, Order BE and HEREBY IS GRANTED; and it is further:

ORDERED that Respondents must immediately release Petitioner.

United States District Judge