

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION**

Myles O'Connor,

Petitioner,

v.

Warden, Broward Transitional Center;

Field Office Director, Miami Field Office
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement

Pamela Bondi, U.S. Attorney General

Respondents.

Case No. 0:25cv61338

**EMERGENCY VERIFIED
PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

1. Myles O'Connor is an Irish national detained at Broward Transitional Center. He entered the United States lawfully under the Visa Waiver Program. He has four U.S. citizen children. He has never been arrested or convicted for a crime. He is eligible for asylum as well as lawful permanent residence through a visa petition by his U.S. citizen son. His application for permanent residence was already pending when he flew from New York to Key West to celebrate his 50th birthday eight weeks ago. When he was waiting at the gate for his return flight, an officer of U.S. Customs and Border Protection approached him, apparently at random, and requested his papers. Mr. O'Connor has been detained without a bond hearing since then.
2. This Court should issue a writ of habeas corpus on several grounds. First, Mr. O'Connor is eligible for bond under 8 U.S.C. § 1226(a). However, a decision of the Board of

Immigration Appeals bars an immigration judge from considering bond. *See Matter of A-W-*, 25 I&N Dec. 45 (BIA 2009). Several district courts have disagreed with that decision and refused to defer to it even under the deferential *Chevron* framework. *Matter of A-W-* is erroneous because it found that detention of Visa Waiver Program entrants is governed by 8 U.S.C. § 1187(c)(2)(E). But that statute says nothing about authorizing detention, it only obligates Visa Waiver Program countries to accept repatriations. Second, if the Court does not find Mr. O'Connor statutorily eligible for bond, the Court should order a bond hearing under the Due Process clause and the Suspension Clause. Third, the Court should issue a writ of habeas corpus *ad testificandum* to permit Mr. O'Connor to attend a hearing on his application for lawful permanent residence scheduled for July 15, 2025 on Long Island, New York.

3. Relief from this Court will ensure that Mr. O'Connor's detention serves the purposes of the immigration laws and that he does not miss out on the few forms of immigration relief that he is eligible for.

JURISDICTION

4. 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).
5. 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

6. Venue is proper because Petitioner is detained at Broward Transitional Center in Pompano

Beach, Florida, which is within this District. Also, Respondents are officers of the United States who reside in the district, and the detention which gave rise to the claim is ongoing in the district. 28 U.S.C. § 1391(e).

REQUIREMENTS OF 28 U.S.C. § 2243

7. The Court must grant the 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 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).
8. 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

9. Petitioner is a native of England and a citizen of Ireland. He is detained at Broward Transitional Center under the custody and control of Respondents and their agents.
10. Respondent Warden of Broward Transitional Center has immediate physical custody of Petitioner pursuant to the facility’s contract with U.S. Immigration and Customs Enforcement (“ICE”) to detain noncitizens. The Warden is a legal custodian of Petitioner.
11. Respondent Field Office Director is head of the Miami Field Office of U.S. Immigration and Customs Enforcement’s office of Enforcement and Removal Operations. They are responsible for the implementation and enforcement of the Immigration and Nationality Act,

and they oversee Petitioner's detention by ICE. They are a legal custodian of Petitioner.

12. Respondent Pamela Bondi is the U.S. Attorney General and responsible for overseeing the immigration court system, which denied Respondent a bond hearing.

13. All respondents are sued in their official capacities.

FACTS

14. Petitioner Myles O'Connor is a 50-year old native of England and citizen of Ireland. From 1998 to 2009 he visited the U.S. frequently. Since 2009 he has resided exclusively in the U.S. He is married to Margaret O'Connor, who is also an Irish national who has likewise lived in the U.S. for 16 years. Mr. O'Connor has four children, all U.S. citizens born in the United States: Gerard O'Connor (age 21), Alice O'Connor (age 21) (twins), E.O. (age 13), and M.O. (age 9). The children were all born in New York state, where Mr. O'Connor and his family have resided for many years. Before Mr. O'Connor's detention, he lived with his wife, Gerard, E.O, and M.O. in Brookhaven, New York on Long Island. Mr. O'Connor and his wife own their own home in Brookhaven.

15. Mr. O'Connor and his family are members of the Irish Travellers group, a traditionally nomadic, indigenous, ethno-cultural group in Ireland. Travellers speak their own language, Shelta, and have their own cultural and artistic traditions. Travellers are ostracized and discriminated against in Ireland. They do not have equal access to education, they are denied housing, they are denied service in restaurants, shops, and hotels, and they are the targets of frequent slurs. Travellers have significantly lower life expectancy than most Irish people.

16. Mr. O'Connor last entered the United States on March 13, 2009 under the Visa Waiver Program. When his son Gerard turned 21 in 2024 he became eligible to file an immigrant

visa petition for Mr. O'Connor. Thus, Mr. O'Connor began the process of seeking lawful permanent residence.¹

17. On November 25, 2024 Gerard submitted to U.S. Citizenship and Immigration Services ("USCIS") form I-130, Petition for Alien Relative. Mr. O'Connor concurrently filed form I-485, Application to Register Permanent Residence or Adjust Status. Mr. O'Connor also filed form I-765, Application for Employment Authorization. Ex. 3 – Receipt Notices.
18. The applications had been pending for several months when Mr. O'Connor's 50th birthday approached. He, his wife, his children, and several extended family members traveled from New York to Key West, Florida to celebrate the occasion. After vacationing in Key West for a week, the family went to the Key West airport for their return flight to New York. On or around April 30, 2025 they cleared security and were waiting at the gate for their flight when an officer of U.S. Customs and Border Protection ("CBP") entered the area. He did not appear to be looking for the O'Connors, since he first called the name of an unknown person and spoke to some people at a different table. Then, he approached the O'Connors, apparently at random, and asked to see their papers. Mr. O'Connor showed his identification. The officer arrested Mr. O'Connor, his wife, and his two brothers-in-law.
19. The arresting officer had large muscles and handled Mr. O'Connor roughly. He tightened the handcuffs so much that they restricted Mr. O'Connor's circulation, even though he did not resist and showed his identification voluntarily. The officer made politically motivated and

¹ USCIS Policy Memorandum 602-0093, "Adjudication of Adjustment of Status Applications for Individuals Admitted to the United States Under the Visa Waiver Program" Nov. 14, 2013, AILA Doc. No. 13111840, *available at* <https://www.aila.org/library/uscis-memo-adjudication-adjustment-applications> (indicating USCIS will adjudicate applications for adjustment of status filed by immediate relatives of U.S. citizens who entered the U.S. under the Visa Waiver Program) (attached as exhibit 5).

demeaning statements, such as “Daddy Trump is in town now.” He asked Mr. O’Connor whether he felt embarrassed, saying, “Look at all these people looking at you in handcuffs, do you feel bad now?”

20. Mr. O’Connor’s wife was transferred to Texas and is still detained. His brothers-in-law were released on bond because they entered the United States without inspection, which, under the precedents of the Board of Immigration Appeals, vests them with more rights than someone who entered legally, like Mr. O’Connor.

21. Mr. O’Connor was initially detained for six days in a short-term facility where he was forced to sleep on a concrete floor with no blankets or pillows. He slept with 57 other people in a cell designed for 20. Inmates slept on the floor even around the toilet. Mr. O’Connor was denied food several times.

22. Recent reporting indicates that conditions in immigration detention centers are dire. “Some immigrants have gone a week or more without showers. Others sleep pressed tightly together on bare floors. Medications for diabetes, high blood pressure and other chronic health problems are often going unprovided. In New York and Los Angeles, people have been held for days in cramped rooms designed for brief processing, not prolonged confinement, and their lawyers and family members have remained in the dark about their whereabouts.”² Conditions are life-threatening, including in Florida where two immigrants have died in immigration detention since the start of the year. N2, *supra*, at 2.

23. Mr. O’Connor was later transferred to Broward Transitional Center, a privately owned, for-profit detention center operated by The Geo Group, Inc.

² New York Times, “Concerns Grow Over Dire Conditions in Immigrant Detention” 1, June 28, 2025, attached as exhibit 6.

24. Mr. O'Connor expressed a fear of persecution in Ireland on account of being a Traveller. He was referred to an immigration judge for asylum-only proceedings under 8 U.S.C. § 1187(b)(2) and 8 C.F.R. § 1208.2(c). At the first hearing, the immigration judge advised he could not release Mr. O'Connor from detention and that he should request parole from ICE (*see* 8 U.S.C. § 1182(d)(5)). Mr. O'Connor requested parole verbally from an ICE officer and was denied. The next immigration court hearing is scheduled for July 15, 2025. Ex. 2 – Immigration Court Case Information.

25. Meanwhile, the Long Island Field Office of USCIS continued processing his application for lawful permanent residence. He is now scheduled for an interview on his application on July 14, 2025 at the USCIS office in Holtsville, New York. Ex. 4 – I-485 Case Status. If he does not appear for the interview, USCIS will deem his application abandoned. 8 C.F.R. § 103.2(b)(13)(ii).

LEGAL FRAMEWORK

26. Under the Visa Waiver Program, nationals of eligible countries are able to enter the United States without a visa. Forty-two countries are in the Visa Waiver Program, predominately European countries. The Visa Waiver Program is authorized by 8 U.S.C. § 1187. The Visa Waiver Program allows eligible travelers to enter the United States visa free, typically for up to 90 days. Although such travelers need not obtain visas, they must register online using the Electronic System for Travel Authorization. Visa Waiver Program travelers must waive the right to seek most forms of relief from removal, such as cancellation of removal. 8 U.S.C. § 1187(b). However, they are eligible for asylum (*see* 8 U.S.C. § 1187(b)(2)) and for adjustment of status to lawful permanent resident as the immediate relative of a U.S. citizen (*see* ex. 5). A Visa Waiver Program entrant who expresses a fear of persecution is referred to

an immigration judge for asylum-only proceedings. 8 C.F.R. § 1208.2(c)(1)(iii). However, bond proceedings before an immigration judge are separate from removal proceedings or asylum only proceedings. *See Matter of R-A-V-P-*, 27 I&N Dec. 803, 804 (BIA 2020).

27. Detention authority for noncitizens being subjected to removal proceedings is governed by 8 U.S.C. 1226. Immigration judges have discretionary authority to release a noncitizen on bond “pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. 1226(a). However, noncitizens with certain criminal convictions or who have engaged in terrorist activities are ineligible for bond. 8 U.S.C. 1226(c).

CLAIMS FOR RELIEF

COUNT ONE: 8 U.S.C. § 1226(a)

28. The allegations in the above paragraphs are realleged and incorporated herein.
29. Mr. O’Connor is detained under 8 U.S.C. § 1226(a) and he is eligible for a bond hearing before an immigration judge. The immigration court system is wrongfully denying him a bond hearing.
30. The Board of Immigration Appeals, sitting *en banc*, issued a precedential decision finding that Visa Waiver Program entrants are eligible for bond. *Matter of Gallardo-Fresneda*, 21 I&N Dec. 210 (BIA 1996). However, in 2009 the Board issued a superseding decision finding that, in fact, Visa Waiver Program entrants are not eligible for bond. *Matter of A-W-*, 25 I&N Dec. 45 (BIA 2009). The fundamental error in *Matter of A-W-* is its finding that “the statutory authority for the applicant’s detention is contained in [8 U.S.C. § 1187(c)(2)(E)]... not [8 U.S.C. § 1226.]” *Id.* at 47. However, that statute does not authorize detention and in fact disclaims any impact on release from detention. It merely obligates Visa Waiver Program countries to accept repatriations:

The government of the country accepts for repatriation any citizen, former citizen, or national of the country against whom a final executable order of removal is issued not later than three weeks after the issuance of the final order of removal. Nothing in this subparagraph creates any duty for the United States or any right for any alien with respect to removal or release. Nothing in this subparagraph gives rise to any cause of action or claim under this paragraph or any other law against any official of the United States or of any State to compel the release, removal, or consideration for release or removal of any alien.

8 U.S.C. § 1187(c)(2)(E).

31. This is the statute that *Matter of A-W-* relied on to deprive Mr. O'Connor of a bond hearing.

Since the statute does not authorize detention, *Matter of A-W-* was wrongly decided.

Detention for Visa Waiver Program entrants is governed by 8 U.S.C. § 1226, the default detention statute for noncitizens in removal proceedings.

32. Several district courts have disagreed with *Matter of A-W-* and refused to give it deference, even under the highly deferential (and now discarded) *Chevron* framework. First, the District of Massachusetts faulted *Matter of A-W-* for not identifying “where in 8 U.S.C. § 1187(c)(2)(E) the BIA finds the Secretary of Homeland Security’s authority to detain aliens.” *Neziri v. Johnson*, 187 F. Supp. 3d 211, 213 (D. Mass. 2016). The following year, the District of New Jersey agreed with *Neziri*, “This Court, therefore, concludes that Petitioner is detained pursuant to 8 U.S.C. § 1226(a), and he may seek a bond redetermination pursuant to 8 C.F.R. § 1236.1(d).” *Sutaj v. Rodriguez*, No. CV 16-5092, 2017 WL 66386, at *5 (D.N.J. Jan. 5, 2017). Another judge in the District of New Jersey ruled similarly the same year, “This Court finds the reasoning in *Sutaj* and *Neziri* persuasive. As noted in those two cases, § 1187 is silent about the detention of aliens pending their removal under the VWP, while § 1226 expressly provides for the detention of aliens during the pendency of their removal proceedings.” *Szentkiralyi v. Ahrendt*, No. CV 17-1889, 2017 WL 3477739, at *4 (D.N.J. Aug. 14, 2017).

33. Petitioner is detained under 8 U.S.C. § 1226 and entitled to a bond hearing. *Matter of A-W-* was incorrectly decided. The Court should conduct a bond hearing or order Respondents to provide a bond hearing before an immigration judge. The bond hearing should occur on or before July 10, 2025 to permit Petitioner to post bond and travel to New York for the hearing on his application for lawful permanent residence on July 15, 2025.

COUNT TWO: DUE PROCESS

34. Petitioner incorporates by reference paragraphs 1 through 27 above.
35. The Due Process clause of the Fifth Amendment prohibits the government from detaining Mr. O'Connor without a bond hearing before a neutral and detached magistrate.
36. Mr. O'Connor entered the United States lawfully, he was not detained at the border, and he has established deep ties with the United States, including by raising four U.S. citizen children and owning a home on Long Island. The government cannot lock him up without a modicum of Due Process:

A statute permitting indefinite detention of an alien would raise a serious constitutional problem. The Fifth Amendment's Due Process Clause forbids the Government to "depriv[e]" any "person ... of ... liberty ... without due process of law." Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects... And this Court has said that government detention violates that Clause unless the detention is ordered in a criminal proceeding with adequate procedural protections...or, in certain special and "narrow" nonpunitive "circumstances,"... where a special justification, such as harm-threatening mental illness, outweighs the "individual's constitutionally protected interest in avoiding physical restraint." *Kansas v. Hendricks*, 521 U.S. 346, 356, 117 S.Ct. 2072, 138 L.Ed.2d 501 (1997).

Zadvydas v. Davis, 533 U.S. 678, 690 (2001) (citations omitted).

37. Detaining Mr. O'Connor without a bond hearing violates Due Process.

COUNT THREE: WRIT OF HABEAS CORPUS *AD TESTIFICANDUM*

38. Petitioner incorporates by reference paragraphs 1 through 27 above.

39. Mr. O'Connor asks for a writ of habeas corpus *ad testificandum* to permit him to appear for a hearing on his application for adjustment of status to that of a lawful permanent resident, which is scheduled for July 15, 2025 at the Long Island Field Office of USCIS at 30 Barretts Avenue, Holtsville, New York 11742. If that application is approved, then further detention will not be necessary. Moreover, given the limited avenues for immigration relief available to Visa Waiver Program entrants, that is his only chance to prevent deportation, other than asylum.
40. Both federal statute and the common law authorize this Court to issue a writ of habeas corpus *ad testificandum*, a "lesser writ" that directs a witness's custodian to permit or bring that witness to appear at a proceeding and give testimony. 28 U.S.C. §§ 2241(c)(1), (c)(5); *Barber v. Page*, 390 U.S. 719, 724 (1968) (noting that "federal courts [have] the power to issue writs of habeas corpus ad testificandum" in "case of a prospective witness currently in federal custody" where testimony is necessary).
41. Such writs are not subject to the usual territorial boundaries of the court's jurisdiction. "It is...clear that a district court can reach beyond the boundaries of its own district in order to issue a testimonial writ." *United States v. Moussaoui*, 382 F.3d 453, 466 (4th Cir. 2004); *see also Barnes v. Black*, 544 F.3d 807, 809 (7th Cir. 2008) ("These writs can be used to get a prisoner into the district court from anywhere in the country...").
42. Although the writs are most often used to facilitate testimony in judicial proceedings, they are not so limited. They have frequently been issued to permit appearance at legislative hearings. Senator James Abourezk remarked during a Congressional debate, "The purpose of such a writ is to make a person incarcerated in a State or Federal prison available to a committee as a witness. Petitions for such writs are routine for subcommittees like the

Permanent Investigations Subcommittee of the Governmental Affairs Committee, which often investigates criminal conduct.” 123 Cong. Rec. 20960 (1977). Legislative writs were frequent at common law, such as *In the Matter of Sir Edward Price, a Prisoner*, which involved “[a] habeas corpus ad testificandum issued to bring up a prisoner to give evidence before an election committee of the House of Commons....” 102 Eng. Rep. 956 (1804). “A *habeas corpus* will issue to bring up a prisoner before a committee of the House of Commons.” 2 Archibald J. Stephens, *Law of Nisi Prius, Evidence in Civil Actions, and Arbitration & Awards* 1712 (1842).

43. In the modern age, when so many important matters have been taken out of the jurisdiction of courts and placed under administrative agencies, there is no reason to deny prisoners access to the historical writ to permit their appearance at critical hearings. There is support for this at common law. *Id.* at 1711-12 (“[A] judge of either of the courts may, at his discretion, award such writ for bringing a prisoner, detained in any goal in England, before a court-martial, or before commissioners of bankrupts, or commissioners for auditing the public accounts, or other commissioners acting by virtue of any royal commission or warrant.”).

44. The Court may order ICE to transport Mr. O’Connor, or the Court may entrust his custody to a third party, such as a licensed bail bondsman. Mr. O’Connor would return to custody after the interview.

PRAYER FOR RELIEF

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

- (1) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.

- (2) Declare that Petitioner's detention without a bond hearing violates 8 U.S.C. § 1226 and the Due Process clause of the Fifth Amendment;
- (3) Conduct a bond hearing or issue a writ of habeas corpus ordering Respondents to provide a bond hearing before an immigration judge, with any such bond hearing to occur on or before July 10, 2025;
- (4) Issue a writ of habeas corpus ad testificandum to facilitate Mr. O'Connor's appearance at the hearing on his application for adjustment of status July 15, 2025 in Holtsville, New York;
- (5) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- (6) Grant any further relief this Court deems just and proper.

Respectfully submitted,

/s/ Frank Scaglione

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

I, Gerard O'Connor, am the son of Petitioner Myles O'Connor. I am familiar with the facts mentioned in the complaint and I submit this verification on my father's 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 27th day of June, 2025.

G. O'Connor
Gerard O'Connor

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