

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

Thomas 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. 0:25cv61569

**VERIFIED PETITION FOR
WRIT OF HABEAS CORPUS**

INTRODUCTION

1. Thomas Anthony O'Connor is an Irish national detained at Broward Transitional Center. He entered the United States lawfully under the Visa Waiver Program. He has never been arrested or convicted for a crime. He is eligible for asylum. His application for asylum was already pending when he flew from New York to Key West to celebrate his son-in-law's 50th birthday twelve 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. 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.

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 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 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 Thomas Anthony O’Connor is a 73-year-old native and citizen of Ireland. Since the early 2000s he has visited the U.S. frequently. Since 2023 he has resided exclusively in

the U.S. He was married to Evelyn Monica O'Connor, an Irish national who passed away on April 9, 2022, and received a solemn burial in Kilkenny, Ireland. Mr. O'Connor has five adult children: James O'Connor (age 35), Alan O'Connor (age 40), Jason O'Connor (age 50), Lisa O'Connor (age 48) and Jerry O'Connor (age 37; AKA Jerrard). Since Mrs. O'Connor's passing, Mr. O'Connor has fully taken responsibility for his son Jerry O'Connor's care who suffers from Severe Combined Immunodeficiency (SCID) disease, and subsequently, has special needs. Most of Mr. O'Connor's eldest children reside in the United States and have hosted their father during his visits and stay in the United States.

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 October 8, 2023, under the Visa Waiver Program. On December 22, 2023, Mr. O'Connor submitted to U.S. Citizenship and Immigration Services ("USCIS") form I-589, Application for Asylum and for Withholding of Removal seeking protection from the past persecution he has suffered as result of being part of the Irish Travellers community. Mr. O'Connor also filed form I-765, Application for Employment Authorization on October 29, 2024. Ex. 3 – Receipt Notices.
17. The applications had been pending for several months when Mr. O'Connor and his family members traveled from New York to Key West, Florida to celebrate Mr. O'Connor's son-in-law's 50th birthday. 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 daughter, and his son-in-law.

18. Mr. O’Connor was initially detained in Krome Detention Center, where he fainted and collapsed due to low blood pressure which has been exacerbated by detention and deprivation of medical care.
19. 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.”¹ Conditions are life-threatening, including in Florida where two immigrants have died in immigration detention since the start of the year. N1, *supra*, at 2.
20. Mr. O’Connor was later transferred to Broward Transitional Center, a privately owned, for-profit detention center operated by The Geo Group, Inc. In this location, Mr. O’Connor fainted twice and was taken to the hospital to receive medical attention. Mr. O’Connor’s

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

health has deteriorated. Mr. O'Connor's family members have observed him suffering from lethargy and hallucinations.

21. Mr. O'Connor expressed a fear of persecution in Ireland on account of being a Traveller. ICE set bond on July 14, 2025, but when his family attempted to pay the bond ICE determined he was not releasable. 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). The proceedings are pending, though no hearing is currently scheduled. Ex. 2 – Immigration Court Case Information.
22. Besides Mr. O'Connor's declining health conditions, his detention impacts his son Jerry O'Connor's physical health and psychological stability. Jerry O'Connor suffers from a delicate immunodeficiency disease and relies on his father, who is his legal guardian. Ex. 6 – Letter of Michael O. O'Brien & Co. Mr. O'Connor's presence and continuous support are indispensable for Jerry O'Connor to satisfy his basic needs.

LEGAL FRAMEWORK

23. 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. 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).

24. 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).

CLAIM FOR RELIEF: 8 U.S.C. § 1226(a)

25. The allegations in the above paragraphs are realleged and incorporated herein.
26. 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.
27. 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).

28. 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.

29. 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).

30. ICE appears to know that there is a problem with *Matter of A-W-*. In recent years, the agency has twice stipulated to providing bond hearings to Visa Waiver Program entrants. *Semelik v. Field Office Director*, No. 24-cv-24924, ECF 11 Order on Stipulation of Dismissal (S.D. Fla. Dec. 31, 2024); *Krause v. Joyce*, No. 25-cv-2379, ECF 14 Stipulation and Order (S.D.N.Y. March 27, 2025) (both attached as ex. 5 – Stipulations to Grant Bond Hearings).
31. 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 order Respondents to provide a bond hearing before an immigration judge. The bond hearing should occur promptly so that Mr. O'Connor can prepare for his asylum case in a non-detained setting, which significantly increases the chance of approval.²

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;
- (3) Order Respondents to provide a bond hearing before an immigration judge within 10 days;
- (4) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- (5) Grant any further relief this Court deems just and proper.

² American Immigration Counsel, "Access to Counsel in Immigration Court," Sept. 28, 2026, <https://www.americanimmigrationcouncil.org/report/access-counsel-immigration-court/> (indicating that nondetained people are five times more likely to obtain relief from deportation).

Respectfully submitted,

/s/ Frank Scaglione

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

I, James O'Connor, am the son of Petitioner Thomas 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 25th day of July, 2025.


James O'Connor

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6. Letter of Michael A. O'Brien & Co.
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