UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Margaret O'Connor, Petitioner, v. Warden, Karnes County Immigration Processing Center Field Office Director, San Antonio Field Office Enforcement and Removal Operations U.S. Immigration and Customs Enforcement Pamela Bondi, U.S. Attorney General Director, U.S. Citizenship and Immigration Services Respondents.	**VERIFIED PETITION FOR WRIT OF HABEAS CORPUS** Case No. 5:25-cv-947 Agency Case No. [redacted]

INTRODUCTION

1. Margaret O'Connor is an Irish national detained at Karnes County Immigration Processing Center. She entered the United States lawfully under the Visa Waiver Program. She has four U.S. citizen children. She has never been arrested or convicted for a crime. She is eligible for asylum as well as lawful permanent residence. Her application for permanent residence was already pending when she flew from New York to Key West, Florida to celebrate her husband's 50th birthday twelve weeks ago. When she was waiting at the gate for her return flight, an officer of U.S. Customs and Border Protection approached her, apparently at random, and requested her papers. Mrs. O'Connor has been detained without a bond hearing since then.

2. This Court should issue a writ of habeas corpus. First, Mrs. O'Connor is eligible for bond under 8 U.S.C. § 1226(a). However, a decision of the Board of Immigration Appeals prevents 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. Mrs. O'Connor asks the Court to provide her the bond hearing she is entitled to under 8 U.S.C. § 1226(a).
3. Second, the Court should issue a writ of habeas corpus *ad testificandum* to permit Mrs. O'Connor to attend a hearing on her application for lawful permanent residence scheduled for August 28, 2025 on Long Island, New York. Otherwise, the Court should order respondents to permit her to appear at the interview remotely.
4. Relief from this Court will ensure that Mrs. O'Connor's detention serves the purposes of the immigration laws and that she does not miss out on the few forms of immigration relief that she is eligible for.

JURISDICTION

5. 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).
6. 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

7. Venue is proper because Petitioner is detained at Karnes County Immigration Processing Center in Karnes County, Texas, 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

8. 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).

9. 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

10. Petitioner is a native of England and a citizen of Ireland. She is detained at Karnes County Immigration Processing Center under the custody and control of Respondents and their agents.

11. Respondent Warden of Karnes County Immigration Processing 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.

12. Respondent Field Office Director is head of the San Antonio 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.

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

14. Respondent Director of U.S. Citizenship and Immigration Services ("USCIS") is in charge of the agency which is processing Mrs. O'Connor's application for lawful permanent residence and not permitting her to appear for her interview because of her detention.

15. All respondents are sued in their official capacities.

FACTS

16. Petitioner Margaret O'Connor is a 47-year old native of England and citizen of Ireland. From 1998 to 2009 she visited the U.S. frequently. Since 2009 she has resided exclusively in the U.S. She is married to Myles O'Connor, who is also an Irish national who has likewise lived in the U.S. for 16 years. Mrs. 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 Mrs. O'Connor and her family have resided for many years. Before Mrs. O'Connor's detention, she lived with her husband Myles and her children Gerard, E.O, and M.O. in Brookhaven, New York on Long Island. Mrs. O'Connor and her husband own their own home in Brookhaven.

17. Mrs. O'Connor is deeply embedded in the community on Long Island. She has attended mass at The Shrine of Our Lady of the Island for 10 years and volunteered her time serving the parish during the COVID-19 pandemic. Ex. 9 – Church Letter.

18. Mrs. O'Connor and her 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.

19. Mrs. O'Connor last entered the United States on April 23, 2022 under the Visa Waiver Program. When her son Gerard turned 21 in 2024 he became eligible to file an immigrant visa petition for Mrs. O'Connor. Thus, Mrs. O'Connor began the process of seeking lawful permanent residence.[1]

20. On November 25, 2024 Gerard submitted to U.S. Citizenship and Immigration Services ("USCIS") form I-130, Petition for Alien Relative. Mrs. O'Connor concurrently filed form I-485, Application to Register Permanent Residence or Adjust Status. Mrs. O'Connor also filed form I-765, Application for Employment Authorization. Ex. 2 – Receipt Notices.

21. The applications had been pending for several months when the 50th birthday of Mrs. O'Connor's husband approached. Mrs. O'Connor, her husband, her children, and several

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[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).

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. Mrs. O'Connor showed her identification. The officer arrested Mrs. O'Connor, her husband, and her two brothers.

22. The arresting officer had large muscles and handled Mrs. O'Connor's family roughly. He tightened the handcuffs so much that they restricted circulation to the wrists of Mrs. O'Connor's husband, even though he did not resist and showed his identification voluntarily. The officer made politically motivated and demeaning statements, such as "Daddy Trump is in town now." He asked Mrs. O'Connor's husband whether he felt embarrassed, saying, "Look at all these people looking at you in handcuffs, do you feel bad now?"

23. Mrs. O'Connor's husband was transferred to a detention center in Florida and is still detained. Her brothers were released on bond because they entered the United States without inspection. Under the precedents of the Board of Immigration Appeals, entering illegally vests them with more rights than someone who entered legally, like Mrs. O'Connor.

24. 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. N2, *supra*, at 2.

25. Mrs. O'Connor was transferred to Karnes County Immigration Processing Center, a privately owned, for-profit prison operated by The Geo Group, Inc.

26. Mrs. O'Connor asked ICE to release her on parole. It was construed as a request for a stay of removal and denied. Ex. 5 – Denial of Stay of Removal.

27. Mrs. O'Connor is afraid of persecution in Ireland on account of being a Traveller. She expressed a fear of persecution. Both she and her attorney have requested that she be 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).

28. Meanwhile, the Long Island Field Office of USCIS continued processing her application for lawful permanent residence. She was scheduled for an interview on her application on June 10, 2025 at the USCIS office in Holtsville, New York. Ex. 3 – Interview Notice. However, she missed the interview because she was detained. The detention has interfered with the orderly processing of her application for permanent residence. USCIS has scheduled another interview for August 28, 2025. Ex. 4 – Rescheduled Interview Notice. She risks having the application denied if she does not appear for the rescheduled interview. 8 C.F.R. § 103.2(b)(13)(ii) (indicating that USCIS will deem an application abandoned if the applicant does not appear for an interview).

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

LEGAL FRAMEWORK

29. 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. 6). 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).

30. 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)

31. The allegations in the above paragraphs are realleged and incorporated herein.

32. Mrs. O'Connor is detained under 8 U.S.C. § 1226(a) and she is eligible for a bond hearing before an immigration judge. The immigration court system is wrongfully denying her a bond hearing.

33. In 1996 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) (emphasis added).

34. This is the statute that *Matter of A-W-* relied on to deprive Mrs. 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.

35. Mrs. O'Connor's detention is governed by 8 U.S.C. § 1226(a) because her case is "pending a decision on whether the alien is to be removed from the United States." She is in the process

of seeking both asylum and adjustment of status, and success on either application will provide her legal status and prevent deportation. No decision has yet been made on whether she will be removed from the U.S. A decision is pending, so her detention is under § 1226(a) and she may seek bond.

36. 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); *see also Gjergj v. Edwards*, No. 19-5059, 2019 WL 1254561, at *3 (D.N.J. March 18, 2019) (ordering a bond hearing for Visa Waiver Program entrant under 8 U.S.C. § 1226(a)).

37. 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. 7 – Stipulations to Grant Bond Hearings).

38. 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.

COUNT TWO: WRIT OF HABEAS CORPUS *AD TESTIFICANDUM*

39. Petitioner incorporates by reference paragraphs 1 through 30 above.

40. Mrs. O'Connor asks for a writ of habeas corpus *ad testificandum* to permit her to appear for any hearing on her application for adjustment of status to that of a lawful permanent resident. Such a hearing was initially scheduled to occur on June 10, 2025 at the Long Island Field Office of USCIS at 30 Barretts Avenue, Holtsville, New York 11742. Mrs. O'Connor was unable to appear at that hearing. If she does not appear at the rescheduled hearing for August 28, 2025, USCIS may deem her application abandoned. Mrs. O'Connor's detention has prevented her from following the process for one of the few avenues she has to obtain lawful status. If the application for permanent residence is approved, then further detention will not be necessary.

41. 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).

42. 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…").

43. 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).

44. Writs are available to permit prisoners to appear before administrative tribunals. 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 before administrative agencies. There is support at common law for issuing testimonial writs to appear before

administrative tribunals. *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 gaol 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.").

45. The Court may order ICE to transport Mrs. O'Connor, or the Court may entrust her custody to a third party, such as a licensed bail bondsman. Mrs. O'Connor would return to custody after the interview. Alternatively, Mrs. O'Connor asks the Court to order that she be allowed to participate in the adjustment of status interview remotely by telephone or video.

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) Conduct a bond hearing or issue a writ of habeas corpus ordering Respondents to provide an immediate bond hearing before an immigration judge;

(4) Issue a writ of habeas corpus *ad testificandum* to facilitate Mrs. O'Connor's appearance at the interview on her application for adjustment of status or permit her to appear remotely;

(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,

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Counsel for Petitioner

VERIFICATION

I am the son of Petitioner Margaret O'Connor. I am familiar with the facts mentioned in the complaint and I submit this verification on my mother'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.

Signed under penalty of perjury this August 1, 2025.

G.OConnor
Gerard O'Connor

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