

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Margaret O'Connor,

Petitioner,

v.

Warden, Karnes County Immigration Processing
Center, et al.

Respondents.

**MOTION FOR TEMPORARY
RESTRAINING ORDER**

Case No. 5:25-cv-00947-FB

Introduction

Petitioner is scheduled for an interview on her application for lawful permanent residence at the Holtsville, New York office of U.S. Citizenship and Immigration Services ("USCIS") on Thursday, August 28, 2025. *See* ex. 4 to habeas petition, Rescheduled Interview Notice, ECF No. 1-4. Petitioner respectfully asks the Court to enter a Temporary Restraining Order ("TRO") that either: (1) releases her from custody temporarily for the purpose of appearing at the interview, or (2) allows her to participate in the interview remotely from detention.

Petitioner's counsel informed the U.S. Attorney's Office of this motion. On August 26, 2025 petitioner's counsel Mark Stevens sent a copy of the petition for habeas corpus and this motion for a TRO by electronic mail to Mary Kruger, Chief of the Civil Division of the U.S. Attorney's Office for the Western District of Texas, at mary.kruger@usdoj.gov, and to Assistant U.S. Attorney Lacy McAndrew at lacy.mcandrew@usdoj.gov. *See* ex. 2, Email to U.S. Attorney's Office.

Standard for a Temporary Restraining Order

Four elements are required for “the granting of a temporary restraining order: (1) a substantial likelihood that plaintiff will prevail on the merits, (2) a substantial threat that plaintiff will suffer irreparable injury if the injunction is not granted, (3) a threatened injury to plaintiff that outweighs the potential harm the injunction causes the defendant, and (4) a finding that granting the temporary restraining order will not disserve the public interest.” *Deerfield Med. Ctr. v. Deerfield Beach*, 661 F.2d 328, 332 (5th Cir. 1981). Petitioner satisfies these elements.

Petitioner is Likely to Succeed on the Merits

First, the petitioner is likely to succeed on the merits of her claim that she deserves a writ of habeas corpus *ad testificandum*. The Court is empowered to issue writs of habeas corpus *ad testificandum* to permit petitioners to deliver testimony before tribunals and other government bodies. 28 U.S.C. §§ 2241(c)(1), (c)(5). Petitioner briefed her request for a testimonial writ in her Verified Petition for Writ of Habeas Corpus, ECF No. 1 at 11-13 (second cause of action). Rather than repeat that briefing here, petitioner incorporates the briefing by reference as her briefing on the merits.

However, habeas corpus is an adaptable remedy that rises to the needs of the moment:

Indeed, common-law habeas corpus was, above all, an adaptable remedy. Its precise application and scope changed depending upon the circumstances. See 3 Blackstone (describing habeas as “the great and efficacious writ, in all manner of illegal confinement”); see also *Schlup v. Delo*, 513 U.S. 298, 319, 115 S.Ct. 851, 130 L.Ed.2d 808 (1995) (Habeas “is, at its core, an equitable remedy”); *Jones v. Cunningham*, 371 U.S. 236, 243, 83 S.Ct. 373, 9 L.Ed.2d 285 (1963) (Habeas is not “a static, narrow, formalistic remedy; its scope has grown to achieve its grand purpose”).

Boumediene v. Bush, 553 U.S. 723, 779–80 (2008).

As an alternative to releasing the petitioner from custody to attend the interview, the Court may consider ordering respondents to permit her to participate in the interview remotely by telephone or video. A separate habeas corpus petition is pending for petitioner’s husband, Myles

O'Connor, who was detained at the same time and for similar reasons as petitioner. *Myles O'Connor v. Warden, Broward Transitional Center et al.*, 0:25-cv-61338-MD, Emergency Verified Petition for Writ of Habeas Corpus (S.D.F.L. filed July 1, 2025). In that case, the government represented that Myles O'Connor could participate in his interview remotely. Judge Melissa Damian in the Southern District of Florida further ordered that Myles O'Connor's counsel also be permitted to participate remotely. *See* ex. 1, Order Following Show Cause Hearing. This practical solution allowed Myles O'Connor to consummate his application for permanent residence. Despite providing this relief voluntarily to petitioner's husband, the government has not yet expressed any intention to provide it to petitioner, even though they are similarly situated.

Petitioner Will Suffer Irreparable Harm Without a TRO

Without relief, petitioner will suffer irreparable harm because her application for permanent residence will be deemed abandoned:

Except as provided in 8 CFR 335.6, if USCIS requires an individual to appear for biometrics capture, an interview, or other required in-person process but the person does not appear, the benefit request shall be considered abandoned and denied unless by the appointment time USCIS has received a change of address or rescheduling request that the agency concludes warrants excusing the failure to appear.

8 C.F.R. § 103.2(b)(13)(ii) (8 C.F.R. § 335.6 details an exception for naturalization applications that is not relevant here). Petitioner already missed an interview previously scheduled for June 10, 2025. *See* Interview Notice, ex. 3 to Verified Petition for Habeas Corpus. USCIS took the extraordinary step of rescheduling the interview rather than deeming the application abandoned. Further forbearance cannot be counted on because of USCIS's regulation which directs the agency to deem applications abandoned unless it finds an excuse warranted.

The Balance of Equities and Public Interest Favor a TRO

The balance of equities and the public interest favor issuing a TRO. If USCIS grants petitioner's application for lawful permanent residence, then no further detention will be necessary, saving government funds and permitting petitioner to live her life in peace.

Respectfully submitted,

/s/ Tate L. Hemingson

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Index of Exhibits

<u>Number</u>	<u>Description</u>
1	Order Following Show Cause Hearing – <i>Myles O'Connor v. Warden, Broward Transitional Center et al.</i> , 0:25-cv-61338-MD, ECF 18 (S.D.F.L. July 10, 2025)
2	Email to U.S. Attorney's Office