

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

SEAMUS THOMAS CULLETON)
Petitioner–Plaintiff,)
v.)
MARY DE ANDA-YBARRA, Field Office)
Director, Enforcement and Removal)
Operations (ERO), U.S. Immigration and)
Customs Enforcement; TODD LYONS,)
Acting Director, U.S. Immigration and)
Customs Enforcement; KRISTI NOEM,)
Secretary, U.S. Department of Homeland)
Security; PAMELA BONDI, Attorney)
General of the United States; and)
ANGEL GARITE, in his official capacity)
as Assistant Field Office Director of the)
El Paso Field Office of U.S. Immigration)
and Customs Enforcement, Enforcement)
and Removal Operations,)
Respondents–Defendants.)

Civil Action No. 1:25-cv-01841

**EMERGENCY EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER
AND STAY OF REMOVAL PENDING ADJUDICATION OF PETITION FOR
WRIT OF HABEAS CORPUS AND INJUNCTION RELIEF
(WITH INCORPORATED MEMORANDUM OF LAW)**

I. INTRODUCTION

Pursuant to Fed. R. Civ. P. 65 and Local Rules CV-7 and CV-65 of this Court, Petitioner–Plaintiff, Seamus Thomas Culleton (“Petitioner”) respectfully moves on an emergency, *ex parte* basis for a Temporary Restraining Order (“TRO”) and Stay of Removal prohibiting Respondents from removing Petitioner from the United States pending this Court’s adjudication of Petitioner’s request for a Writ of Habeas Corpus and Injunctive Relief.

Petitioner is a 42-year-old native and citizen of Ireland who entered the United States lawfully under the Visa Waiver Program (“VWP”) in 2009 and has resided in the United States continuously ever since. He has no criminal history, is married to a U.S. citizen, Tiffany Smith. Petitioner and his wife have a pending I-130/I-485 marriage-based adjustment of status case with U.S. Citizenship and Immigration Services (“USCIS”). USCIS has already scheduled the couple for a marriage-based adjustment interview currently set for December 8, 2025 in Boston, Massachusetts.

Despite Petitioner’s ongoing and bona fide pursuit of lawful permanent residence in the United States as the immediate relative of a U.S. citizen, Immigration and Customs Enforcement (“ICE”) has:

1. Detained Petitioner since September 6, 2025;
2. Obtained revocation of a previously-granted \$4,000 bond in the immigration court by asserting that the Immigration Judge lacked jurisdiction over bond because of Petitioner’s VWP entry status; and
3. Served Petitioner on November 14, 2025 with an order of removal based on an alleged VWP overstay and is now poised to remove him at any time.

If Respondents remove Petitioner, his pending adjustment of status process will be effectively destroyed, his marital relationship with his U.S. citizen spouse, Tiffany Smith will be gravely impaired, and this Court’s jurisdiction over his habeas petition will become moot or severely undermined. These harms are immediate, irreparable, and constitutionally significant.

Petitioner therefore respectfully requests this Honorable Court to issue a brief Temporary Restraining Order that would enjoin Respondents from removing or attempting to remove Petitioner from the United States, prohibits Petitioner’s transfer outside the reach of this Court

without prior order, and preserves the status quo pending resolution of his habeas petition and request for injunctive relief (and, at minimum, through the scheduled USCIS adjustment interview).

II. FACTUAL BACKGROUND

Petitioner is a native and citizen of Ireland, age 42. He lawfully entered the United States on or about March 1, 2009, as a WT Waiver Tourist under the Visa Waiver Program (“VWP”), pursuant to INA § 217, 8 U.S.C. § 1187. Since his entry in 2009, Petitioner has resided continuously in the United States. He is self-employed owner of a plastering company that works on numerous residential and municipal projects and contributes economically and socially to his community of Wakefield, Massachusetts, and its environs.

Petitioner is lawfully married to a U.S. citizen, with whom he has resided in a shared household in Wakefield, Massachusetts, for nearly four years. Their relationship is genuine and supported by substantial documentation, including joint residence, financial commingling, and other documentary evidence. On or about March 2025, Petitioner’s U.S. citizen spouse filed a Form I-130, Petition for Alien Relative, and Petitioner concurrently filed Form I-485, Application to Register Permanent Residence or Adjust Status, based on their bona fide marriage. USCIS accepted scheduled the couple for their marriage-based interview on November 5, 2025. If approved, it will result in Petitioner becoming a lawful permanent resident under INA § 245. Due solely to Petitioner’s detention by ICE in a distant facility, counsel requested a continuance. USCIS granted a short continuance and rescheduled the interview for December 8, 2025.

In early September 2025, Petitioner was intercepted by officers of the Immigration and Customs Enforcement (ICE) at his local Home Depot store in Massachusetts during a routine

license plate check. Petitioner was cooperative and presented valid identification. Again, Petitioner had no prior arrest, no convictions, and no pending criminal charges. Nonetheless, he was arrested and detained by ICE for over two months. Petitioner was initially detained in Buffalo, New York, and subsequently transferred to ERO El Paso Camp East ICE facility.

On September 6, 2025, Petitioner sought a pre NTA bond redetermination hearing pursuant to 8 U.S.C. § 1236. During the October 16, 2025, bond hearing, an Immigration Judge granted bond and ordered Petitioner released upon the posting of a \$4,000 bond. Petitioner's wife posted bond which was accepted by ICE and Petitioner was slated to be released from custody the next day.

Two days after the grant of bond by the immigration judge, the Department of Homeland Security ("DHS") filed a Motion to Reconsider, asserting that because Petitioner entered under the VWP, he was not therefore placed into full removal proceedings under 8 C.F.R. § 1240 and therefore that the Immigration Judge lacked jurisdiction to review custody conditions. The DHS relied on the authority of the Matter of A-W-, 25 I&N Dec. 45 (BIA 2009) (VWP entrant in asylum-only proceedings not entitled to bond jurisdiction). On November 3, 2025, the Immigration Judge revoked Petitioner's bond and agreed that the court lacked jurisdiction to grant bond in light of Matter of A-W-.*id.*

REMOVAL IS IMMINENT

On November 14, 2025, ICE served Petitioner with an Order of Removal based on alleged violation of the terms of the Visa Waiver Program admission. It is ICE's position that that because Petitioner initially entered as a VWP visitor, he may be removed without a hearing before an Immigration Judge, notwithstanding his pending and bona fide marriage-based adjustment of status application and scheduled USCIS interview on December 8, 2025 in

Boston. Given Respondents' aggressive enforcement posture and the newly issued removal order, Petitioner's removal is imminent and could occur at any time, before USCIS adjudicates his pending I-130/I-485, and before this Court adjudicates his habeas petition and constitutional/APA claims.

Petitioner has filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 requesting Injunctive Relief, invoking 28 U.S.C. §§ 1331, 1343, 2201–2202; the Administrative Procedure Act, 5 U.S.C. §§ 702, 706; and the Suspension Clause of the U.S. Constitution. Without immediate injunctive relief, Respondents will remove Petitioner, thereby extinguishing his pending statutory right to adjustment adjudication, disrupting his marital relationship, and frustrating this Court's jurisdiction.

III. JURISDICTION AND VENUE

This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus) to review the legality of Petitioner's detention and to issue orders necessary to protect its jurisdiction and 28 U.S.C. § 1331 (federal question jurisdiction) because Petitioner raises claims under the U.S. Constitution, the Immigration and Nationality Act, and the Administrative Procedure Act. Furthermore, this court is vested with jurisdiction under 5 U.S.C. § 702 and § 706, because Petitioner challenges agency actions as arbitrary, capricious, an abuse of discretion, and contrary to law; as well as under the Suspension Clause of the U.S. Constitution, art. I, § 9, cl. 2, which protects a meaningful opportunity for judicial review of unlawful detention and removal where statutory review is inadequate.

To the extent 8 U.S.C. § 1252 purports to limit certain forms of review, Petitioner reiterates that it seeks not direct review of the removal order itself, but rather:

- (1) protection of this Court's habeas jurisdiction, and
- (2) prospective relief to prevent ultra vires and unconstitutional actions that would moot Petitioner's statutory rights and foreclose meaningful review.

Venue is proper in this District and Division under 28 U.S.C. § 1391(e) because the Petitioner is held within this District and at least one Respondent is in this District. Furthermore, a substantial part of the events or omissions giving rise to the claims has occurred and will occur here.

IV. LEGAL STANDARD FOR TEMPORARY RESTRAINING ORDER

The standard for a TRO and preliminary injunction within the Fifth Circuit is the same. The movant must show:

1. a likelihood of success on the merits;
2. a substantial threat of irreparable injury if the injunction is not granted;
3. that the threatened injury outweighs any harm the injunction might cause the opposing party; and
4. that the injunction is in the public interest.

These factors parallel the Supreme Court's familiar test in *Winter v. NRDC*, 555 U.S. 7 (2008) (likelihood of success, irreparable harm, balance of equities, and public interest).

In the context of removal, courts also frequently apply the stay-of-removal factors articulated in *Nken v. Holder*, 556 U.S. 418 (2009), which mirror the same four factors.

V. ARGUMENT

A. Petitioner Is Likely to Succeed on the Merits as Petitioner presents multiple independent grounds for relief:

1. Unlawful application of the Visa Waiver Program and statutory rights to adjustment;
2. Violation of Fifth Amendment due process;
3. Arbitrary and capricious agency action under the APA; and
4. Interference with this Court's core habeas jurisdiction and the Suspension Clause.

Each is sufficient to justify injunctive relief; together they strongly show a likelihood of success.

1. Petitioner is Likely to Succeed on the Merits as his Removal Constitute Statutory and Regulatory Violations; VWP Does Not Authorize the Ultra Vires Use of Removal Here

While VWP entrants typically waive their right to contest removal except for asylum claims, an immediate relative of a U.S. citizen may still adjust status under INA § 245, even if he has overstayed his VWP admission, when USCIS exercises jurisdiction and accepts the adjustment filing. USCIS guidance and case law recognize that VWP overstays can be eligible for adjustment as immediate relatives. See. USCIS PM-602-0093; Nov 14, 2013

In this case, USCIS has already accepted and is actively adjudicating Petitioner's I-130/I-485 application. In fact, USCIS has scheduled an adjustment interview, which has already been rescheduled once due solely to ICE detention. Removal now would preempt USCIS's adjudication and nullify Petitioner's statutory path to lawful permanent residence. DHS cannot wield the VWP framework to sidestep Congress's specific accommodation for immediate relatives. Using summary removal here is *ultra vires* to the statutory scheme and defeats the very relief Congress made available.

Moreover, courts have recognized that VWP waivers must be knowing and voluntary in order to extinguish fundamental due process rights. Petitioner is married to a U.S. citizen and has resided for in the United States for sixteen (16) with no criminal record. These are strong countervailing equities and so Petitioner cannot reasonably be forced to waive his right to pursue an immediately available, marriage-based adjustment of status that Congress expressly permits.

2. **Petitioner is Likely to Succeed on the Merits as his Removal would Violate the Fifth Amendment Due Process Clause of the U.S Constitution**

The Due Process Clause protects both Petitioner's liberty interest in remaining in the United States where he has deep ties and ongoing statutory rights; and his marital relationship with his U.S. citizen spouse, which carries recognized constitutional weight. By executing the removal order before USCIS adjudicates the pending marriage-based adjustment and without any meaningful opportunity to be heard on these equities, DHS and ICE are effectively extinguishing a pending statutory claim; interfering with the couple's ability to appear together at their USCIS interview, one which the agency scheduled; and depriving Petitioner of liberty and family unity without a constitutionally adequate process.

Due process, at minimum, requires that Respondents defer removal long enough for Petitioner's adjustment application and this Court's habeas review to be meaningfully adjudicated.

3. **Petitioner is Likely to Succeed on the Merits as the Actions of Respondents are Arbitrary and Capricious Agency Action under the APA**

Under the Administrative Procedure Act, a reviewing court must set aside agency actions that are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. See 5 U.S.C. § 706(2)(A). Respondents' conduct is arbitrary and capricious to the extent that they have ignored the pending adjustment of status process and scheduled USCIS interview and

employed the VWP framework in a rigid, inflexible manner that defeats Congress's accommodation for immediate relatives. Finally, Respondents' conduct in relying on *Matter of A-W-*, which concerns asylum-only VWP proceedings and bond jurisdiction, to justify continued detention and to deny bond, while simultaneously pressing forward with removal despite a ready statutory route to LPR status is egregious. Effectively short-circuiting the normal adjudicative processes by issuing a removal order at the precise moment Petitioner is poised to gain lawful status is an abuse of discretion. Indeed, this lack of a rational connection between the relevant facts (marriage, long residence, no criminal history, pending USCIS interview) and the agency's choice (immediate removal) is the very hallmark of arbitrary and capricious decision-making.

4. **Protection of Habeas Jurisdiction and the Suspension Clause**

Removing Petitioner now would moot or severely undermine this Court's ability to adjudicate his habeas petition, which challenges the legality of his detention and the ultra vires application of immigration statutes and regulations. Courts and scholars have recognized that district courts retain jurisdiction to issue stays of removal necessary to preserve meaningful judicial review, notwithstanding 8 U.S.C. § 1252(g), under principles of constitutional avoidance and the Suspension Clause. A TRO is therefore necessary to protect the Court's jurisdiction and ensure that statutory and constitutional claims are not rendered illusory by a rush to remove.

B. **Petitioner Faces Immediate and Irreparable Harm**

Irreparable harm is clear and overwhelming as described below:

i. **Loss of an Available Immigration Benefit**

If Culleton is removed now, his pending marriage-based adjustment—including a scheduled interview—will be frustrated or effectively extinguished, a harm courts

routinely recognize as irreparable because the statutory opportunity to regularize status cannot be fully restored once removal occurs.

ii. Severe Harm to the Marital Relationship and Family Life

Removal will separate Petitioner from his U.S. citizen spouse and shared household of nearly four years. Such disruption to family unity and marital life is a classic form of irreparable harm that cannot be adequately compensated later with money damages.

iii. Loss of Habeas and Judicial Rights of Review

Once Petitioner is removed, his habeas petition and related claims may be deemed moot or significantly harder to vindicate, undermining his constitutional right to meaningful review. Loss of the opportunity for judicial review itself is an irreparable injury.

iv. Ongoing, Unlawful Detention

Absent relief, Petitioner will remain detained under a contested legal framework (VWP detention without bond jurisdiction), even though an Immigration Judge initially found him appropriate for release on \$4,000 bond. Continued detention under an allegedly unlawful regime is also an irreparable harm. These harms are not speculative: ICE has already issued the removal order and can deport Petitioner at any time. The TRO is the only effective means to prevent those harms now.

C. The Balance of Equities Strongly Favors Petitioner

On the other hand, Respondent will suffer no cognizable prejudice from a short pause in removal to allow the pending federal habeas petition to be adjudicated; and USCIS to conduct an already-scheduled adjustment interview.

By contrast, the harm to Petitioner and his spouse if removal proceeds is catastrophic and irreversible. A TRO simply maintains the status quo for a short period, while preserving both the

integrity of statutory immigration processes and this Court's jurisdiction. The balance of hardships squarely favors Petitioner.

D. The Public Interest Supports Granting a Temporary Restraining Order Herein

The public has a strong interest in ensuring that the Defendant-Respondents adhere to statutory limits and do not wield discretionary removal power in an arbitrary, capricious, or unconstitutional manner. Furthermore, preserving family unity, especially where an individual is married to a U.S. citizen and has no criminal record; and maintaining the rule of law and meaningful judicial review, especially in matters implicating liberty and the Suspension Clause are all matters of strong public interest and support.

In this case, a Temporary Restraining Order here serves these interests by allowing USCIS to perform its regular adjudicative function for a marriage-based adjustment case; allowing this Court to review the legality of detention and removal practices; and avoiding the perception that the government may preempt judicial review by racing to deport.

VI. EX PARTE RELIEF IS WARRANTED

Fed. R. Civ. P. 65(b) authorizes *ex parte* TROs where immediate and irreparable injury will result before the adverse party can be heard. Here, Petitioner faces **imminent removal** at any time following service of a removal order. Given ICE's current enforcement posture, delay in permitting full briefing risks rendering this Court's review meaningless. Petitioner's counsel will promptly notify the U.S. Attorney's Office and relevant agency counsel of this filing and is prepared to confer on a swift briefing schedule and an expedited hearing on any motion to convert the TRO into a preliminary injunction.

VII. REQUESTED RELIEF

For the foregoing reasons, Petitioner respectfully requests that this Honorable Court:

1. Issue an immediate Temporary Restraining Order enjoining Respondents, their officers, agents, servants, employees, and all persons acting in concert with them from removing or attempting to remove Petitioner from the United States;
2. Prohibit Respondents from transferring Petitioner outside the jurisdiction of this Court or to any facility that would impair counsel's access absent further order of the Court;
3. Direct Respondents to provide at least 14 days' written notice to Petitioner and this Court of any planned removal or transfer;
4. Maintain this TRO in effect until the Court has adjudicated Petitioner's habeas petition and request for injunctive relief, or, at minimum, through a date after USCIS has conducted and completed the currently scheduled December 8, 2025 adjustment interview and USCIS has issued a decision;
5. Set an expedited schedule for Respondents' response and a hearing on conversion of the TRO into a preliminary injunction; and
6. Grant such other and further relief as the Court deems just and proper, including waiver of any security requirement under Fed. R. Civ. P. 65(c).

Respectfully submitted,

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VERIFICATION.

I Represent Petitioner, Seamus Thomas Celleton, And Submit This Verification on His Behalf.

I hereby verify that the factual statements made in the foregoing Emergency Ex Parte Motion for Temporary Restraining Order and Stay of Removal Pending Adjudication of Petition for Writ of Habeas Corpus and Injunction Relief are true and correct to the best of my knowledge.

Dated this 17 day of November, 2025.

/s/ Ogor Winnie Okoye

OGOR WINNIE OKOYE