Vanessa Molina (SBN 325672)
The Law Office of Vanessa Molina
1530 Lancaster Point Way
San Diego, CA 92154
Phone: (619) 790-4300
Email: vanessa@vanessamolinalaw.com

Bonnie Smerdon
Florida Bar #123933
22966 Overseas Highway
Cudjoe Key, FL 33042
Phone: (954) 624-2622
Fax: (954) 416-6602
bsmerdon@lucelawpllc.com
(Pro hac vice application forthcoming)

Counsel for Petitioner

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

'26CV4082 JES MSB

Frank Escobar Meneces, Petitioner, v. Christopher J. LaRose, Warden, Otay Mesa Detention Center; Gregory Archambault, San Diego Field Office Director, U.S. Immigration and Customs Enforcement; Markwayne Mullin, Secretary of Homeland Security; and Todd Blanche, Acting Attorney General of the United States, Respondents.	Case No.: **VERIFIED PETITION FOR WRIT OF HABEAS CORPUS 28 U.S.C. § 2241**

INTRODUCTION

This case concerns the arbitrary deprivation of liberty after the government had already litigated—and lost—the legal question it now relies upon to justify Petitioner's detention.

Petitioner Frank Escobar Meneces, a Guatemalan national who entered the United States as an unaccompanied minor in February 2024, has a Form I-589 asylum application that has been pending, unadjudicated, before USCIS since August 2024 — filed while he was still classified as an Unaccompanied Alien Child ("UAC"). Under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA"), 8 U.S.C. § 1158(b)(3)(C), and the Board of Immigration Appeals' decision in *Matter of M-A-C-O-*, 27 I&N Dec. 477 (BIA 2018), USCIS retains exclusive initial jurisdiction over that application unless and until DHS formally terminates Petitioner's UAC classification. DHS has never done so.

DHS already litigated this exact jurisdictional question, on this exact record, and lost. On July 23, 2025, the Honorable Mark Sameit, Immigration Judge at the San Diego Immigration Court, granted Petitioner's Motion to Terminate Proceedings, expressly finding that "USCIS has primary jurisdiction over the I-589 since the respondent was a UAC." Both parties waived appeal. That order is final and has never been disturbed.

Almost one year later, on or about June 25, 2026, DHS re-arrested Petitioner —on his way to work — and served him with a new Notice to Appear charging the identical ground of removability, on a factual record even less developed than the one DHS already lost on. When Petitioner's counsel filed a renewed Motion to Terminate attaching Judge Sameit's order, and the matter came on for hearing before the Honorable Christine Martyak on July 13, 2026, DHS did not defend its position — it asked for a continuance. Over that previous weekend, without notice to counsel, DHS transferred Petitioner across the country to the Otay Mesa Detention Center in San Diego — the same facility where he was detained

the first time, and where, the first time, three separate requests for a bond hearing were never substantively decided because DHS mooted each one through withdrawal, transfer, or release before any judge could rule on the merits.

Petitioner is now told, through counsel's contacts in San Diego, that ICE is again asserting mandatory detention under 8 U.S.C. § 1225(b)(2)(A) — the same theory, offered this time without any attempt to relitigate the jurisdictional question a second Immigration Judge had already been asked to confront. Petitioner has been afforded no bond hearing. He is entitled to immediate release.

The Constitution protects individuals against arbitrary deprivations of liberty, particularly where the government seeks to disregard the practical effect of its own prior adjudications without any intervening change in circumstances.

PARTIES

1. Petitioner **Frank Escobar Meneces** is a national and citizen of Guatemala. His Alien Registration Number is A[redacted]. He is currently detained at the Otay Mesa Detention Center, 7488 Calzada De La Fuente, San Diego (Otay Mesa), California 92154.
2. Respondent **Christopher J. LaRose, Warden, Otay Mesa Detention Center,** is the individual responsible for the day-to-day operations of the Otay Mesa Detention Center and is Petitioner's immediate custodian. He is named in his official capacity.
3. Respondent **Gregory Archambault** is the San Diego Field Office Director of U.S. Immigration and Customs Enforcement and exercises legal authority over Petitioner's detention. He is named in his official capacity.
4. Respondent **Markwayne Mullin** is the Secretary of the U.S. Department of Homeland Security. He is named in his official capacity.

5. Respondent **Todd Blanche** is the Acting Attorney General of the United States. He is named in his official capacity.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this Petition pursuant to 28 U.S.C. § 2241, which authorizes federal district courts to grant writs of habeas corpus to persons held in custody in violation of the Constitution or laws of the United States. *Zadvydas v. Davis,* 533 U.S. 678, 687 (2001); *INS v. St. Cyr,* 533 U.S. 289, 305 (2001).

7. Neither 8 U.S.C. § 1252(g) nor 8 U.S.C. § 1252(b)(9) strips this Court of jurisdiction. Petitioner does not challenge DHS's authority to commence or adjudicate removal proceedings against him. He challenges only (a) his continued detention without a bond hearing, and (b) DHS's relitigation, in a second removal proceeding, of a jurisdictional question already finally decided against it — claims collateral to the removal process. *J.E.F.M. v. Lynch,* 837 F.3d 1026, 1032 (9th Cir. 2016).

8. Venue is proper in this district under 28 U.S.C. § 2241 because Petitioner is physically detained within the Southern District of California.

FACTUAL ALLEGATIONS

A. Petitioner's Entry as a UAC and His Pending, Unadjudicated Asylum Application

9. Petitioner was born on [redacted] in San Marcos, Guatemala.

10. Petitioner entered the United States on or about February 4, 2024, when he was 17 years old. Upon arrival he was determined and classified by DHS as an Unaccompanied Alien Child ("UAC") pursuant to 6 U.S.C. § 279(g)(2), and was placed in the custody of the Office of Refugee Resettlement ("ORR").

11. On February 24, 2024, ORR released Petitioner from federal custody to the care of his father and sponsor, Yener Samuel Escobar Angel, in Key West, Florida, pursuant to a Sponsor Care Agreement.

12. While still classified as a UAC and still a minor, Petitioner submitted a Form I-589 application for asylum for filing on May 24, 2024. The application was twice rejected for reasons unrelated to its merits — including that it had been sent to the wrong service center or address — before finally being accepted and receipted by USCIS on August 23-24, 2024.

13. That I-589 application remains pending before USCIS to this day. USCIS has never interviewed Petitioner on the application, has never adjudicated it, and — critically — DHS has never issued any formal determination terminating Petitioner's UAC classification.

14. Under the TVPRA, 8 U.S.C. § 1158(b)(3)(C), and 6 U.S.C. § 279(g)(2), as construed in *Matter of M-A-C-O-*, 27 I&N Dec. 477 (BIA 2018), an individual who files an asylum application while classified as a UAC retains USCIS's exclusive initial jurisdiction over that application regardless of the applicant's subsequent age or placement in removal proceedings, unless and until DHS formally terminates the UAC classification. Petitioner is further protected as a member of the certified class in *J.O.P. v. DHS,* No. 8:19-cv-01944 (D. Md.), under which DHS and EOIR are preliminarily enjoined from deferring to EOIR determinations of jurisdiction, or from taking the position in an individual's removal proceedings that USCIS lacks initial jurisdiction over a pending asylum application, so long as UAC status was never formally terminated. *J.O.P. v. DHS,* No. 8:19-cv-01944, ¶ 3(c)-(d) (D. Md. Dec. 21, 2020) (prelim. injunction).

B. DHS Already Litigated — And Lost — the Identical Jurisdictional Question

15. DHS placed Petitioner in removal proceedings in San Diego based on the same underlying entry. On July 14, 2025, Petitioner, through counsel, moved to terminate those proceedings on the ground

that USCIS retained exclusive jurisdiction over his pending I-589 under *Matter of M-A-C-O-* and the *J.O.P. v. DHS* settlement.

16. During the pendency of that motion, Petitioner sought custody redetermination on three separate occasions. None resulted in a substantive ruling on the merits of his eligibility for bond:

    a. A custody redetermination request filed while Petitioner was detained in the El Paso area was withdrawn without decision after DHS transferred Petitioner out of that jurisdiction;

    b. On July 7, 2025, Immigration Judge Meghan Heesch, Otay Mesa Immigration Court, took no action on Petitioner's custody redetermination request because Petitioner withdrew it in order to supplement his filing to address a possible jurisdictional bar DHS had itself raised; and

    c. On July 24, 2025, Immigration Judge Paula Dixon, Otay Mesa Immigration Court, found the renewed custody redetermination request moot because an I-830 had been filed showing Petitioner had been released.

17. On July 23, 2025, the Honorable Mark Sameit, Immigration Judge at the San Diego Immigration Court, granted Petitioner's Motion to Terminate Proceedings. The order expressly found: "USCIS has primary jurisdiction over the I-589 since the respondent was a UAC." Both DHS and Petitioner waived appeal on the record. The order is final and has never been disturbed.

C. DHS Re-Arrests Petitioner on the Identical Ground, on a Materially Weaker Factual Record

18. Almost one year later, on or about June 25, 2026, Petitioner was arrested by U.S. Border Patrol while on his way to work, at or near Marathon, Florida. He was served with a new Notice to Appear, Event No. [redacted], charging him under INA § 212(a)(6)(A)(i) as an alien present in the United States without admission or parole — the identical ground of removability underlying the proceedings Judge Sameit had already terminated.

19. Tellingly, the new Notice to Appear alleges that Petitioner entered the United States at an "unknown place" on an "unknown date" — despite DHS's own records documenting his February 4, 2024, entry, UAC determination, and subsequent ORR release in detail sufficient to support the very proceedings Judge Sameit terminated a year earlier. DHS does not explain this discrepancy. Having already lost on a fully developed record showing exactly when, where, and how Petitioner entered, DHS's decision to instead plead ignorance of those same facts in the new charging document is not consistent with an agency proceeding in good faith on a fresh assessment of the case. It is consistent with an agency attempting to distance the new proceeding from the record of the one it already lost.

20. Petitioner's I-589 application remains pending before USCIS. It has not been adjudicated. DHS has still never terminated Petitioner's UAC classification. Nothing has changed since Judge Sameit's order except the calendar.

21. DHS has never identified any new factual circumstance occurring after Judge Sameit's order that would justify reopening Petitioner's detention. Petitioner committed no crimes, violated no reporting obligations, failed to appear for any proceeding, or otherwise engaged in conduct suggesting danger or flight risk. The only material change is DHS's decision to initiate a second proceeding after losing the first.

D. DHS Avoids Adjudication a Second Time Through Transfer

22. Petitioner's counsel filed a renewed Motion to Terminate before the Honorable Christine Martyak at the Krome (Miami) Immigration Court, attaching Judge Sameit's July 23, 2025 order and the underlying motion, and requesting that the court terminate proceedings and refer jurisdiction to USCIS on the identical, already-decided legal question.

23. The matter came on for a master calendar hearing on July 13, 2026. Rather than defend its position on the merits, DHS requested a continuance, representing to the court that it wished to "expedite" Petitioner's USCIS interview. Judge Martyak did not rule on the Motion to Terminate after Petitioner's counsel withdrew the motion to refile in the Otay Mesa Court because the Petitioner had been transferred.

24. Over the weekend immediately preceding that hearing, without notice to counsel, DHS transferred Petitioner across the country to the Otay Mesa Detention Center in San Diego, California — the same facility in which he was detained during his first removal proceedings. When counsel appeared for the July 13, 2026, hearing at Krome, the court advised that Petitioner was no longer there.

25. Petitioner is now told, through contacts in San Diego, that ICE is asserting that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), and that no bond hearing will be provided.

26. This is precisely the pattern of the prior year: transfer after transfer, ensuring no single tribunal is ever squarely presented with — and forced to rule on — the jurisdictional and detention questions DHS has already lost once. Three custody hearings in 2025 were mooted or withdrawn without decision because of DHS transfers or last-minute developments; the renewed effort in July 2026 was cut off the same way, mid-proceeding, by another cross-country transfer.

E. Petitioner's Personal Circumstances

27. Petitioner has no criminal history. He resided with his father, Yener Samuel Escobar Angel, in Florida following his 2024 release, and complied with every reporting and appearance requirement asked of him. No immigration judge has ever concluded that continued detention is necessary to protect the community or ensure Petitioner's appearance.

LEGAL FRAMEWORK

A. A. DHS's Relitigation of a Jurisdictional Question It Already Lost Confirms the Arbitrary Nature of Petitioner's Detention

28. Courts routinely give preclusive effect to an agency's final adjudication of an issue after both parties had a full and fair opportunity to litigate it. *United States v. Utah Constr. & Mining Co.*, 384 U.S. 394, 422 (1966). That principle matters here not because this Court is being asked to independently resolve whether USCIS retains exclusive jurisdiction over Petitioner's I-589 — that question remains for the immigration court in the first instance — but because the fact that DHS already litigated and lost this identical jurisdictional question, without appeal, on this identical record, is powerful evidence that Petitioner's re-detention is arbitrary rather than the product of any individualized assessment of risk or any legitimate new development.

29. Judge Sameit necessarily determined, after full briefing and participation by both parties, that USCIS retained exclusive initial jurisdiction over Petitioner's pending asylum application because he filed it while classified as a UAC. DHS waived appeal, and that determination has never been disturbed. The government's decision to re-detain Petitioner and initiate materially identical proceedings — without identifying any new factual or legal development since that adjudication — is itself evidence that Petitioner's detention is untethered from any individualized judgment about him and is instead the product of DHS's unwillingness to accept an outcome it already litigated and lost. That prior adjudication substantially increases the risk of erroneous deprivation of liberty and weighs heavily in favor of immediate judicial intervention under the Due Process Clause.

B. If Petitioner Is Detained At All, He Is Detained Under § 1226(a), Not § 1225(b)(2)(A)

30. Although Petitioner was initially encountered by DHS at the border, Congress specifically removed unaccompanied alien children from the ordinary inspection-stage custody framework by

enacting the specialized custody provisions of the Trafficking Victims Protection Reauthorization Act. *See* 8 U.S.C. § 1232(b)(3). Once DHS determined that Petitioner was an Unaccompanied Alien Child, custody transferred to the Office of Refugee Resettlement, which exercised its statutory authority by releasing him to his father's care. Petitioner thereafter resided in the United States for nearly two years while his asylum application remained pending before USCIS. Having been released pursuant to the UAC statutory framework and permitted to establish substantial liberty interests in the interior, Petitioner's subsequent re-detention bears little resemblance to the initial inspection-stage detention contemplated by § 1225(b)(2)(A). Section 1225(b)(2)(A) mandatory detention applies only to an "applicant for admission" who is presently "seeking admission." 8 U.S.C. § 1225(b)(2)(A); *Sharma v. Casey,* No. 25-cv-03335-BAS-DDL, 2025 WL 3677658, at *3 (S.D. Cal. Dec. 18, 2025).

31. Petitioner entered the United States over two years ago, was released by the government itself into the interior to his father's custody as a UAC, and has resided here since. He is not, in any present-tense sense, "seeking admission." *Castañon-Nava v. U.S. Dep't of Homeland Sec.,* 161 F.4th 1048, 1062 (7th Cir. 2025); *Barbosa da Cunha v. Freden,* 175 F.4th 61 (2d Cir. 2026); *Hernandez Alvarez v. Warden, Fed. Det. Ctr. Miami,* 175 F.4th 1258 (11th Cir. 2026); *Santillan Quiroz v. Mullin,* No. 26-6019, 2026 WL 1876709 (10th Cir. June 30, 2026).If Petitioner is detained at all, his detention is governed by § 1226(a), and he is entitled to an individualized bond hearing before an Immigration Judge.

C. Petitioner's Continued Detention Without a Bond Hearing Violates Due Process

32. Petitioner's prior release — first by ORR to his father's custody, and again following Judge Sameit's termination order — created a substantial protected liberty interest that DHS cannot

revoke without individualized process. *Morrissey v. Brewer,* 408 U.S. 471, 482 (1972); *Pinchi v. Noem,* 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025).

33. Under *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), Petitioner's liberty interest is exceptionally weighty because DHS seeks to revoke liberty that it previously restored and allowed him to exercise for nearly two years. The risk of erroneous deprivation is unusually high because DHS has never identified any changed factual circumstance warranting renewed detention and instead seeks to relitigate a jurisdictional issue previously resolved against it. Conversely, the government's interest in denying any individualized custody determination is minimal where no adjudicator has ever found Petitioner dangerous or likely to abscond.

D. A Renewed Motion to Terminate or Bond Hearing Is Not an Adequate Remedy Here

34. A post-hoc hearing cannot cure a due process violation already suffered. *Faizyan v. Casey,* No. 3:25-cv-02884-RBM-JLB (S.D. Cal. Nov. 17, 2025); *E.A.T.-B. v. Wamsley,* 795 F. Supp. 3d 1316, 1323 (W.D. Wash. 2025).

35. This case demonstrates a recurring pattern. Each time Petitioner's detention or the jurisdictional basis for his removal proceedings approached meaningful judicial review, DHS altered Petitioner's custodial status or transferred him before a tribunal could resolve the merits. Three custody proceedings in 2025 never resulted in a substantive decision because of withdrawals, transfers, or DHS's own release of Petitioner. When counsel again sought termination before Judge Martyak in July 2026, DHS requested a continuance and transferred Petitioner across the country before the court could decide the motion. Under these circumstances, another remand merely creates another opportunity for the same pattern to repeat rather than providing an effective remedy for the constitutional injury. Ordering another bond hearing, or remanding for another motion to terminate, invites the same result: mootness by transfer, not adjudication. *See Haiguang Zheng v.*

Rokosky, 826 F.Supp.3d 545, 560 (D.N.J. 2026); *Singh v. Valdez,* 2026 WL 890240, at *5-6 (D. Colo. Apr. 1, 2026); *Carlos v. Noem,* No. 25-cv-1900, 2025 WL 2998184, at *4 (D. Nev. Oct. 24, 2025).

36. Immediate release is the remedy that restores Petitioner to the position he occupied before this unlawful re-detention. *Munaf v. Geren,* 553 U.S. 674, 693 (2008); *Cifuentes v. Soto,* No. 25-cv-18029, 2025 WL 3771380, at *4 (D.N.J. Dec. 31, 2025); *Alfaro Herrera v. Baltazar,* No. 1:25-cv-04014, 2026 WL 91470, at *13-14 (D. Colo. Jan. 13, 2026); *Ambroladze v. Maldonado,* No. 26-CV-00474 (HG), 2026 WL 280182, at *3 (E.D.N.Y. Feb. 3, 2026).

GROUNDS FOR RELIEF

CLAIM ONE:

Petitioner's Continued Detention, After DHS Already Litigated and Lost the Identical Jurisdictional Question On Which That Detention Depends, Is Arbitrary and Violates Due Process.

37. Petitioner realleges and incorporates by reference all of the foregoing paragraphs.

38. The jurisdictional question underlying Petitioner's removability — whether USCIS retains exclusive initial jurisdiction over his I-589 because he was a UAC when he filed it — was actually litigated and decided against DHS by Judge Sameit on July 23, 2025, on a full record, with DHS's participation, and without appeal. DHS has never identified any new factual or legal development since that adjudication. Detaining Petitioner on a charge DHS already litigated and lost, without any individualized justification and without any changed circumstance, is arbitrary governmental action that deprives him of liberty without due process of law.

CLAIM TWO:

Petitioner Is Unlawfully Detained Under 8 U.S.C. § 1225(b)(2)(A) When He Should Be Detained, If At All, Under 8 U.S.C. § 1226(a), and Is Therefore Entitled to an Individualized Bond Hearing.

39. Petitioner realleges and incorporates by reference all of the foregoing paragraphs.

40. Petitioner is not an alien seeking admission within the meaning of 8 U.S.C. § 1225(b)(2)(A). He is an alien already present in the United States whose detention, if any, is governed by § 1226(a), and who is entitled to an individualized bond hearing before an Immigration Judge who must assess whether he poses a danger to the community or a risk of flight.

CLAIM THREE:

Petitioner's Continued Detention Without a Bond Hearing Violates the Due Process Clause of the Fifth Amendment.

41. Petitioner realleges and incorporates by reference all of the foregoing paragraphs.

42. Under *Mathews v. Eldridge,* 424 U.S. 319 (1976), the balance of factors — the gravity of Petitioner's liberty interest, the high risk of erroneous deprivation absent an individualized hearing, and the minimal legitimate burden on the government of conducting one — compels the conclusion that the Constitution requires, at minimum, an individualized bond hearing before Petitioner may be detained further.

CLAIM FOUR:

Immediate Release Is Warranted Because DHS Has Demonstrated, in This Case, That Neither a Bond Hearing Nor a Renewed Motion to Terminate Will Be Permitted to Reach the Merits.

43. Petitioner realleges and incorporates by reference all of the foregoing paragraphs.

44. DHS's repeated pattern of transferring Petitioner to moot or short-circuit review — three times in 2025, and again in July 2026 on the eve of a hearing on the identical question — demonstrates that remanding for further administrative proceedings would not provide a meaningful remedy. This Court should order Petitioner's immediate release as the remedy that comes closest to restoring him to the position he occupied before this unlawful re-detention.

45. The Due Process Clause does not prohibit only unlawful detention in the abstract; it prohibits arbitrary governmental deprivation of liberty. Here, Petitioner's liberty was restored, exercised responsibly for nearly two years, and then revoked without any individualized determination,

without changed circumstances, and while DHS sought to relitigate issues it had previously litigated unsuccessfully. Under these extraordinary facts, immediate release—not merely another administrative proceeding—is the only remedy capable of restoring the liberty interest the Constitution protects.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

A. Assume jurisdiction over this Petition pursuant to 28 U.S.C. § 2241;

B. Issue a writ of habeas corpus ordering Respondents to immediately release Petitioner from immigration detention on his own recognizance or on reasonable conditions of supervision;

C. Declare that DHS is collaterally estopped from relitigating USCIS's exclusive jurisdiction over Petitioner's pending I-589 application, and that Petitioner's detention on that basis violates due process;

D. Declare that Petitioner's detention without a bond hearing violates 8 U.S.C. § 1226(a) and the Fifth Amendment to the United States Constitution;

E. In the alternative, if this Court does not order immediate release, issue a writ of habeas corpus ordering Respondents to provide Petitioner with an individualized bond hearing before a neutral Immigration Judge within fourteen (14) days of the Court's order, with the burden on the Respondents by clear and convincing evidence that detention is warranted for danger to the community or flight risk, and enjoin Respondents from transferring Petitioner outside the Southern District of California pending resolution of that hearing;

F. Order that Petitioner not be transferred outside the Southern District of California pending resolution of this Petition;

G. Award Petitioner his costs and any other relief this Court deems just and proper.

Respectfully submitted,

Date: July 16, 2026

s/ Vanessa Molina
Vanessa Molina
SBN 325672
The Law Office of Vanessa Molina
1530 Lancaster Point Way
San Diego, CA 92154
(619) 790-4300
vanessa@vanessamolinalaw.com

/Bonnie Smerdon
Bonnie Smerdon
Florida Bar #123933
22966 Overseas Highway
Cudjoe Key, Florida 33042
(954) 624-2622 T
(954) 416-6602 F
bsmerdon@lucelawpllc.com
(Pro hac vice application forthcoming)

Counsel for Petitioner

VERIFICATION

I, Bonnie Smerdon, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that to the best of my knowledge and belief, the foregoing facts are true and correct based upon information available to me at this time.

Respectfully submitted,

Dated: July 16, 2026

/Bonnie Smerdon
Bonnie Smerdon
Florida Bar #123933
22966 Overseas Highway
Cudjoe Key, Florida 33042
(954) 624-2622 T
(954) 416-6602 F
bsmerdon@lucelawpllc.com
(Pro hac vice application forthcoming)

Counsel for Petitioner