IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 25-cv-3742

MARIANA CARAGICA (alien registration number A[redacted]

Petitioner,

v.

JUAN BALTAZAR, in his official capacity as Warden of the ICE Denver Contract Detention Facility,

ROBERT HAGAN, in his official capacity as Director of the Denver Field Office of United States Immigration and Customs Enforcement, Enforcement and Removal Operations,

KRISTI NOEM, in her official capacity as Secretary of Homeland Security, and

PAMELA JO BONDI, in her official capacity as Attorney General of the United States,

Respondents.

PETITION FOR WRIT OF HABEAS CORPUS

Introduction

1. Petitioner Mariana Caragica entered the United States without inspection or valid immigration documents as a 17-year-old child and has lived here for six years. She and her father encountered officers of Customs and Border Patrol (CBP) shortly after their entry and were both released on orders of release on recognizance under Immigration and Nationality Act (I.N.A.) § 236(a), 8 U.S.C. § 1226(a) (2024).
2. During her time in the United States, Ms. Caragica has been entirely law abiding. She has attended all hearings and has not been arrested for any criminal activity.
3. More than that, she has built a life here. Until October of this year, she was living with her two young children, both citizens of the United States, and their father, who is a lawful permanent resident, in Sacramento, California. She is several months pregnant.
4. Ms. Caragica was on her way from California to Colorado to visit her stepsister when Ice officers stopped her. Without citing to any wrongdoing on her part, they detained her and transported her to the ICE Denver Contract Detention Facility in Aurora, Colorado, where she remains to this day.
5. At the time of her detention, Ms. Caragica was nearly six months' pregnant. She has had medical complications in the past relating to childbirth and is not receiving the care she needs in the detention center.
6. And thanks to the Board of Immigration Appeals' (the BIA's) recent decision in *Yajure Hurtado*, 29 I. & N. Dec. 216 (B.I.A. 2025), she cannot even request a bond hearing. In *Yajure Hurtado*, the BIA, departing from decades of settled law and practice, stripped immigration judges of authority to entertain bond requests by noncitizens who entered the

United States without inspection (i.e., without presenting themselves at ports of entry with valid immigration documents). It accomplished this feat by alleging that all noncitizens present in the United States without inspection were subject to the mandatory detention provision of I.N.A. § 235(b)(2), 8 U.S.C. § 1225(b)(2), which prescribes how applicants for admission encountered at or near the border should be treated, rather than I.N.A. § 236(a), which generally governs the detention of those who have entered the United States. Courts around the country have almost uniformly rejected this novel misreading of the statutes Congress enacted, and Ms. Caragica seeks a determination that she has been detained under I.N.A. § 236(a), 8 U.S.C. § 1226(a) and is entitled, at a minimum, to a bond hearing.

7. Ms. Caragica has done nothing to justify the revocation of her release. While the government had wide discretion about how to treat her when she arrived, its decision to release her on her own recognizance gave her a strong protected interest in remaining at liberty. Depriving her of her liberty without a hearing where it could present evidence about what the change in circumstances that necessitated this detention represents a violation of her due-process rights.

8. Ms. Caragica therefore petitions the Court to issue a writ of habeas corpus ordering either her immediate release or that she be provided with a bond hearing within seven days at which the government will bear the burden of proving by clear and convincing evidence that her continued detention is justified and during which her ability to pay must be considered in fixing any bond amount.

Jurisdiction and Venue

9. The court has federal question subject matter jurisdiction over this petition because it arises under the laws of the United States. *See* 28 U.S.C. § 1331. Specifically, the Court has jurisdiction to issue a writ of habeas corpus pursuant to 28 U.S.C. § 2241(a), (c)(1)(, (3). *See also* U.S. Const. Art. I, § 9, Cl. 2. Ms. Caragica is in the custody of the United States government and pursuant to its authority, and her re-detention without the possibility of receiving a bond hearing violates her Fifth-Amendment due-process rights.
10. Venue is proper in the District of Colorado insofar as all the events giving rise to this action, which does not involve any real property, occurred in Colorado and Ms. Caragica is detained at the Denver Contract Detention Facility in Aurora, Colorado. *See* 28 U.S.C. § 1391(e)(1)(B), (C).

The Parties

11. Ms. Caragica is a 23-year-old citizen of Romania. She is of the Roma ethnicity and consequently experienced considerable discrimination in Romania. She is currently detained at the ICE Denver Contract Detention Facility.
12. On information and belief, Juan Baltazar is the warden of the ICE Denver Contract Detention Facility, which is run by the Geo Group. He oversees the facility where Ms. Caragica is physically confined. He is sued solely in his official capacity.
13. Robert Hagan is the director of the Denver Field Office of United States Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO). He oversees ICE's work in Colorado and Wyoming to detain and, as necessary, remove noncitizens suspected of violating the Immigration Laws. He is sued solely in his official capacity.

14. Kristi Noem is Secretary of Homeland Security. She is one of the several cabinet officials charged with the overall administration and enforcement of the immigration laws. She bears overall responsibility for DHS's detention policies nationwide. ICE is a component of the Department of Homeland Security and therefore falls under her authority. She is sued solely in her official capacity.

15. Pamela Jo Bondi is Attorney General of the United States. The Executive Office for Immigration Review (EOIR), which operates the United States immigration courts and the BIA, is part of the Department of Justice (DOJ) and thus falls under her control. She is sued solely in her official capacity.

Factual and Legal Background

16. Ms. Caragica is a 23-year-old native of Italy and citizen of Romania. Her Roma ethnicity caused her to suffer constant humiliation and discrimination at school. At the age of ten, she was assaulted by some ethnic Romanian youths and, after considerable difficulty due to the doctors' reluctance to serve a "gypsy," got stiches in her hand. Eventually, her family tired of the unrelenting hatred and abuse that are the lot of the Romanian Roma and decided to come to the United States to build safer lives for themselves.

17. On November 6, 2019, Ms. Caragica and her father, Nicolae Ghinea, entered the United States around San Luis, Arizona. Neither had any documents permitting their entry to the United States. *See* Exhs. A and B.

18. They encountered CBP agents the same day and were detained at the Yuma Border Patrol Station. Exh. B at 3. The next day, Mr. Ghinea was released with an order of release on recognizance pursuant to I.N.A. § 236(a), 8 U.S.C. § 1226(a). Exh. C. Ms. Caragica does

not retain a copy of an order in her case but, on information and belief, she was also released on her own recognizance.

19. Ms. Caragica and her father settled in California and were placed in removal proceedings, during which Mr. Ghinea applied for asylum and related forms of protection. Ms. Caragica was charged with inadmissibility as one present in the United States without being admitted or paroled. *See* Exh. A at 1; I.N.A. § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i).

20. Eventually, Ms. Caragica began living together with Walter Dumitru, a lawful permanent resident. Exh. H. They have two children, [redacted] and [redacted] Exhs. F and G. Ms. Caragica is expecting another child in February 2026. Exh. I.

21. From January 2023 to October 2025, Ms. Caragica was living at [redacted].

22. Ms. Caragica has never failed to appear at a scheduled hearing before the Immigration Court, nor has she had any encounters with criminal law enforcement officers.

23. On October 21, 2025, Ms. Caragica was on her way from California to Colorado to visit her stepsister when she was stopped in Rock Springs, Wyoming. Though she had not violated any criminal laws and was in pending removal proceedings, she was taken into ICE's custody and transferred to the Denver Contract Detention Facility, where she remains in detention.

24. As of the filing of this Petition, her case remains pending at the Sacramento Immigration Court. No hearings are scheduled, so she has no idea how long it will take to resolve her removal proceedings while she gets closer to her due date in ICE detention. *See* Exh. E.
25. Under the BIA's recently issued decision in *Yajure Hurtado*, an immigration judge does not have authority to grant her bond. Thus, any request she would make for a bond hearing would be summarily denied. This is because, according to the BIA, she is detained under I.N.A. § 235(b)(2), 8 U.S.C. § 1225(b)(2), not I.N.A. § 236(a), 8 U.S.C. § 236(a). As she now explains, this interpretation departs from decades of settled practice and law and is simply incorrect.
26. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.
27. First, I.N.A. § 236, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an immigration judge. Individuals detained under subsection (a) of this statute are generally entitled to a bond hearing at the outset of their detention. *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d). Noncitizens who have been arrested, charged with, or convicted of certain crimes, meanwhile, are subject to mandatory detention, *see* I.N.A. § 236(c), 8 U.S.C. § 1226(c).
28. Second, the INA prescribes mandatory detention for noncitizens subject to expedited removal under I.N.A. § 235(b)(1), 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission, who are covered in § 1225(b)(2).

29. Last, the INA provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings. *See* I.N.A. § 241(a)(b), 8 U.S.C. § 1231(a),(b).

30. As Ms. Caragica has already mentioned, this case concerns the interplay between the detention provisions at I.N.A. § 235(b)(2), 8 U.S.C. § 1225(b)(2) and I.N.A. § 236(a), 8 U.S.C. § 1226(a).

31. Both provisions were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. I.N.A. § 236(a), 8 U.S.C. § 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

32. Shortly after the IIRIRA's enactment, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under I.N.A. § 235, 8 U.S.C. § 1225 and that they were instead detained under I.N.A. § 236, * U.S.C. § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

33. In the decades that followed, most people who entered without inspection and were placed in standard removal proceedings thus received bond hearings unless their criminal history rendered them ineligible pursuant to I.N.A. § 236(c), 8 U.S.C. § 1226(c). That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an

immigration judge or other hearing officer. *See* I.N.A. § 242(a), 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

34. On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected the well-established understanding of the statutory framework and reversed decades of practice.

35. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[1] claims that all persons who entered the United States without inspection shall now be subject to the mandatory detention provision in I.N.A. § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, or even decades.

36. The BIA's decision in *Yajure Hurtado*, published on September 5, 2025, adopts this novel interpretation of the detention provisions.

37. Courts across the country have almost uniformly rejected ICE's new policy and the BIA's reasoning in *Yajure Hurtado*.

38. Even before these nationwide policies came into existence, IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here. The United States District Court for the Western District of Washington found that such a reading of the

[1] *Available at* https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

INA is likely unlawful and that I.N.A. § 236(a), 8 U.S.C. § 1226(a), not I.N.A. § 235(b), 8 U.S.C. § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

39. Since then, courts across the country have followed suit, finding that this new reading of the statutes is untenable. *See. E.g., Arauz v. Baltazar*, No. 1:25-cv-3260-CNS, 2025 WL 3041840, at *2 (D. Colo. Oct 31, 2025) (collecting cases from the District of Colorado and other districts).

40. DHS's and EOIR's new interpretation is contrary to the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the statutory provisions demonstrates that INA § 236(a), 8 U.S.C. § 1226(a), not I.N.A. § 235(b), 8 U.S.C. § 1225(b), applies to people like Ms. Caragica.

41. I.N.A. § 236(a), 8 U.S.C. § 1226(a) applies by default to all persons "pending a decision on whether [they are] to be removed from the United States." These removal hearings are held under I.N.A. § 240, 8 U.S.C. § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

42. The text of I.N.A. § 236, 8 U.S.C. § 1226, also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* I.N.A. § 236(c)(1)(E), 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, they are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally

applies." *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010).

43. I.N.A. § 236, 8 U.S.C. § 1226, then, leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

44. By contrast, I.N.A. § 235(b), 8 U.S.C. § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. I.N.A. § 235(b)(2)(A), 8 U.S.C.
§ 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

45. In sum, the mandatory-detention provision at I.N.A. § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A), does not apply to Ms. Caragica.

46. Moreover, courts throughout the United States have found that re-detaining a previously released noncitizen without a pre-deprivation hearing constitutes a violation of that noncitizens' due-process rights. *See, e.g., Lopez-Arevelo v. Ripa*, No. EP-25-cv-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Sampiao v. Hyde*, No. 1:25-cv-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Lopez Benitez v. Francis*, No. 25 Civ. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Garro Pinchi v. Noem*, 792 F. Supp. 3d 1025 (N.D. Cal. 2025).

47. As the *Garro* Pinchi court explained, once the government releases people from custody, it has implicitly promised them that their liberty will be revoked only if they violate some condition of their release. *Garro Pinchi*, 792 F. Supp. 3d at 1032. This implied promise creates a strong protected interest in liberty of which the government cannot deprive people without a hearing before a neutral decisionmaker.
48. While in detention, Ms. Caragica has already been taken to the hospital at least once. She has had previous pregnancy-related medical complications and wishes to be able to rely on her family and medical care in California as her child's birth approaches.

Statement of Claims

COUNT ONE — VIOLATION OF THE INA

49. Ms. Caragica incorporates by reference paragraphs 1 through 48 as if fully set forth herein.
50. The mandatory detention provision at I.N.A. § 235(b)(2), 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country, were released, and have been residing here for years. Such noncitizens are detained under I.N.A. § 236(a), 8 U.S.C. § 1226(a), unless they are subject to I.N.A. § 235(b)(1), 8 U.S.C. § 1225(b)(1), I.N.A. § 236(c), 8 U.S.C. § 1226(c), or I.N.A. § 241, 8 U.S.C. § 1231.
51. The application of I.N.A. § 235(b)(2) to Ms. Caragica unlawfully mandates her continued detention and violates the INA.

COUNT TWO — VIOLATION OF MS. CARAGICA'S DUE-PROCESS RIGHTS UNDER THE FIFTH AMENDMENT

52. Ms. Caragica incorporates by reference paragraphs 1 through 48 as if fully set forth herein.

53. The Fifth Amendment to the United States Constitution provides that "No person shall . . . be deprived of . . . liberty . . . without due process of law." As the Supreme Court has stated, "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty [the Due-Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

54. Ms. Caragica has a strong interest in being free from confinement. There is no reason to believe that she poses a danger to the community. And her residence in the United States for six years while attending all required hearings and appointment demonstrates that she does not pose a flight risk.

55. DHS previously released Ms. Caragica on her own recognizance. In doing so, it implicitly promised her that she would remain at liberty unless she violated a condition of her release. She is unaware of any condition that she has violated, and her re-detention without a hearing before a neutral decisionmaker where the government bears the burden of proving that this re-detention is justified unconstitutionally deprives her of her protected liberty interest.

Prayer for Relief

Wherefore, Ms. Caragica respectfully prays the Court to grant the following relief:

A. Assume jurisdiction over this matter;

B. Issue a writ of habeas corpus ordering that the government either immediately release Ms. Caragica or provide her with a bond hearing at which the government will bear the burden of proving by clear and convincing evidence that her continued detention is justified and during which his ability to pay will be considered in fixing the amount of any bond;

C. Award her reasonable attorney's fees and costs;

and

D. Grant such further relief as the Court deems just and proper.

Respectfully submitted this 21st day of November 2025,

s/ Henry D. Hollithron

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