

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

Ansly Damus

Petitioner,

v.

Rebecca Adducci, Field Office
Director, Detroit Field Office, U.S.
Immigration and Customs
Enforcement; Kirstjen Nielsen,
Secretary of DHS; Ronald Vitiello,
Acting Director, U.S. Immigration and
Customs Enforcement; Jefferson
Beauregard Sessions III, Attorney
General of the United States;
Lieutenant Kathy Rose, Corrections,
Geauga County Sheriff's Office,

Respondents.

Case No. ____

Hon. _____

**PETITION FOR WRIT OF
HABEAS CORPUS**

David Hausman* (NY 5510011)
Michael K.T. Tan* (NY 4654208)
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
IMMIGRANTS' RIGHTS PROJECT
125 Broad St., 18th Floor
New York, NY 10004
(212) 549-2660
dhausman@aclu.org
mtan@aclu.org

Russell Abrutyn (P63968)
Cooperating Attorney, ACLU Fund of
Michigan
ABRUTYN LAW PLLC
3765 12 Mile Road

Michael J. Steinberg (P43085)
Abril Valdes (P77865)
AMERICAN CIVIL LIBERTIES UNION
FUND OF MICHIGAN
2966 Woodward Avenue
Detroit, MI 48201
(313) 578-6814
msteinberg@aclumich.org
avaldes@aclumich.org

Freda J. Levenson* (Ohio 0045916)
AMERICAN CIVIL LIBERTIES UNION
OF OHIO FOUNDATION
4506 Chester Ave.
Cleveland, OH 44103

Berkley, MI 48072
(248) 965-9440
russell@abrutyn.com

(614) 586-1958
flevenson@acluohio.org

David Carey (Ohio 0088787)
AMERICAN CIVIL LIBERTIES
UNION OF OHIO FOUNDATION
1108 City Park Ave.
Columbus, Ohio 43206
(614) 586-1972
dcarey@acluohio.org

Attorneys for Petitioner

*E.D. Michigan application for admission forthcoming

INTRODUCTION

Petitioner Ansly Damus, an ethics teacher fleeing beatings and death threats in Haiti, sought asylum at a port of entry in Calexico, California on or around October 26, 2016. He has been imprisoned by the immigration authorities ever since—for nearly two years. Although an immigration judge has twice granted Mr. Damus asylum, the United States government has appealed both decisions, prolonging Mr. Damus’s imprisonment.

Throughout this time, the government has never explained why Mr. Damus’s detention is reasonably related to any government purpose. Indeed, Mr. Damus has never even received the basic due process of a bond hearing before a neutral decision-maker at which he could contest his imprisonment. Instead, the government has continued Mr. Damus’s detention based merely on custody reviews by Immigration and Customs Enforcement (“ICE”)—the jailing authority—known as “parole reviews” that offer no reasons apart from preprinted sentences alongside check boxes on a form letter. ICE has never offered *any* factual basis for its conclusion that Mr. Damus presents a flight risk, and has never addressed Mr. Damus’s evidence that he has sponsors with whom he would live as well as an extensive network of supporters in the community, including religious leaders and government officials who have written letters on his behalf. And even ICE has never suggested that Mr. Damus poses any danger to the community.

Despite having followed all the rules, including every procedure for seeking asylum in this country—and twice winning his asylum claim—Mr. Damus remains imprisoned in a windowless room in Geauga County Safety Center in Chardon, Ohio. He has not had a glimpse of the outdoors for nearly two years.

Mr. Damus's prolonged detention violates the Due Process Clause of the Fifth Amendment and the Immigration and Nationality Act. This Court should order Mr. Damus's immediate release because his detention bears no reasonable relation to any government purpose and because his parole reviews fail to provide any factual basis or facially legitimate and bona fide reason for his ongoing imprisonment. In the alternative, this Court should order an immediate bond hearing, before this Court or before an immigration judge, where the government bears the burden of justifying by clear and convincing evidence that Mr. Damus's detention is necessary to prevent his flight or to protect public safety.

Petitioner respectfully alleges, by undersigned counsel, as follows:

JURISDICTION AND VENUE

1. Petitioner is currently detained in the custody of Respondents at the Geauga County Safety Center in Chardon, Ohio.
2. Jurisdiction is proper under 28 U.S.C. §§ 1331, 2241, and the Suspension Clause, U.S. Const. art. I, § 2.

3. Venue is proper in the Eastern District of Michigan. Mr. Damus is detained under the authority of the ICE Detroit Field Office, and the Detroit Field Office Director is his immediate custodian and the appropriate respondent in a habeas petition challenging his detention. *Roman v. Ashcroft*, 340 F.3d 314, 320 (6th Cir. 2003); 28 U.S.C. § 1391 (venue proper in any district in which a defendant resides).

PARTIES

4. Mr. Damus is a citizen of Haiti who fled his home country to seek asylum in the United States. He presented himself to immigration officers at a port of entry to the United States in October 2016, and was detained by those officers.

5. Respondent Rebecca Adducci is sued in her official capacity as the Detroit Field Office Director of U.S. Immigration and Customs Enforcement (“ICE”).

6. Respondent Kirstjen Nielsen is sued in her official capacity as the Secretary of the Department of Homeland Security. In this capacity, she directs the U.S. Department of Homeland Security (“DHS”) and ICE. As a result, Respondent Nielsen has responsibility for the administration of the immigration laws pursuant to 8 U.S.C. § 1103 and is a legal custodian of Petitioner.

7. Respondent Ronald D. Vitiello is sued in his official capacity as Acting Director of ICE, which is the sub-agency of DHS that is responsible for detaining

noncitizens in removal proceedings and that oversees Mr. Damus's detention at the Geauga County Safety Center.

8. Respondent Jefferson Beauregard Sessions III is sued in his official capacity as the Attorney General of the United States. In this capacity, he has responsibility for the administration of the immigration laws pursuant to 8 U.S.C. § 1103, oversees the Executive Office of Immigration Review, and is a legal custodian of Petitioner.

9. Respondent Lieutenant Kathy Rose is sued in her official capacity as head of Corrections at Geauga County Sheriff's Office.

FACTUAL BACKGROUND

10. Mr. Damus is currently detained by U.S. Immigration and Customs Enforcement ("ICE") at the Geauga County Safety Center in Chardon, Ohio. He has been in immigration detention since the end of October 2016, or over 22 months, even though the immigration judge has twice granted him asylum.

11. Mr. Damus was born in Haiti in 1976, and has a wife and two children. They all live in Haiti.

12. Mr. Damus was forced to flee Haiti in September 2014 because of political persecution that he faced at the hands of "La Meezorequin" ("the Shark Bones Army"), an armed gang that supported a local government official, Benjamin Ocenjac.

13. In Haiti, Mr. Damus worked as a teacher, with courses in several areas, including ethics. In one of his seminars, Mr. Damus used Mr. Ocenjac as an example of a politician who had used bandits to terrorize the population.

14. In retribution, members of La Meezorequin attacked Mr. Damus while he was riding home on his motorcycle. They accused him of telling his students not to vote for Ocenjac, and they set his motorcycle on fire. They also beat him.

15. The gang threatened to kill Mr. Damus. Fearing for his life, Mr. Damus left Haiti about ten days later.

16. Mr. Damus eventually reached Brazil in December 2014, and remained there for about 18 months. He lived first in a refugee camp and then in a shared room. Mr. Damus suffered discrimination in Brazil and feared for his safety, as many Haitians were being killed in hate crimes in Brazil at that time.

17. Mr. Damus left Brazil in July 2016. On or around October 26, 2016, he presented himself for inspection to immigration authorities at a port of entry in Calexico, California and asked for asylum.

18. On December 6, 2016, an asylum officer determined that Mr. Damus had a credible fear of persecution and referred him to immigration court to pursue his asylum claim.

19. Mr. Damus had his first hearing before the immigration judge (“IJ”) on December 28, 2016. His case was continued until January 9, 2017 for him to find a

lawyer. His lawyer filed an asylum application on his behalf on January 23, 2017, and his asylum hearing took place on February 13, 2017.

20. After that hearing, on April 4, 2017, the IJ found that Mr. Damus had testified credibly to his fear of persecution in Haiti and granted him asylum. The government then appealed Mr. Damus's asylum grant to the Board of Immigration Appeals ("BIA"). On September 29, 2017, the BIA found that Mr. Damus had testified credibly to his experiences, but reversed the IJ's decision. The BIA remanded for further proceedings to determine whether Mr. Damus had firmly resettled in Brazil, and was thus ineligible for a grant of asylum, and whether Mr. Damus was entitled to asylum based on his fear of future persecution in Haiti as a result of the political opinions imputed to him by the La Meezorequin gang.

21. On January 10, 2018, after holding a new hearing in Mr. Damus's case, the IJ again found his testimony credible and granted him asylum a second time. The IJ found that the government had not met its burden of showing that Mr. Damus was firmly resettled in Brazil. The IJ also found that Mr. Damus would continue to face threats to his life from La Meezorequin if he were to return to Haiti. Indeed, La Meezorequin has continued to harass Mr. Damus's wife in an effort to draw him back to Haiti since he left.

22. The government once again appealed the immigration judge's decision, resulting in months' more imprisonment for Mr. Damus. On July 5, 2018, the BIA

again remanded Mr. Damus's case. This time the BIA held that the immigration judge erred in finding that DHS had not met its burden of presenting *prima facie* evidence that Mr. Damus was firmly resettled in Brazil—that is, that he had permission to remain there permanently. Such firm resettlement, if proven, would be a bar to asylum. The BIA remanded once more for the IJ to hold a new hearing.

23. That hearing before the IJ took place on September 5, 2018. At that hearing, Mr. Damus testified that he faced discrimination in Brazil and that he therefore falls within an exception to the firm resettlement doctrine. He is currently awaiting a written decision from the immigration judge.

24. Throughout Mr. Damus's nearly two years of immigration proceedings, he has only sought a continuance once, in order to seek representation. That continuance was under two weeks long.

25. Nearly three quarters of Mr. Damus's time in detention has taken place after his first grant of asylum, on April 4, 2017, as a result of the government's decisions to appeal.

26. During Mr. Damus's detention, he has sought parole from ICE three times.

27. Mr. Damus submitted a first parole request on January 4, 2017. That request included evidence of his identity—including a birth certificate, marriage certificate, and Haitian identity card—as well as evidence that Mr. Damus would, if released, reside with a lawful permanent resident whom he has known for over

three decades. Mr. Damus's request also explained that he has no criminal record and poses no conceivable danger to the community.

28. ICE denied Mr. Damus's request without offering him any reason or even any written or oral decision. Mr. Damus learned of his parole denial in immigration court on January 23, 2017, when the ICE attorney told the IJ that ICE had decided not to release him.

29. On February 19, 2018, after Mr. Damus had been detained for over a year and had been granted asylum for a second time, Mr. Damus's attorney submitted a second parole request in light of that second grant of asylum.

30. That request was denied the following day. ICE informed Mr. Damus's attorney of the denial by telephone.

31. Mr. Damus challenged that parole denial as a named plaintiff in a class action in the District of Columbia. In that case, he challenged ICE's failure to conduct individualized parole determinations. (None of the claims brought in this action are being litigated in that action.) The court held that ICE had violated its own parole directive and issued a preliminary injunction requiring ICE to conduct new, individualized determinations. *See Damus v. Nielsen*, 313 F. Supp. 3d 317, 343 (D.D.C. 2018).

32. After that preliminary injunction, Mr. Damus sought a new parole determination.

33. Mr. Damus explained in that parole request that he would live, if released, with U.S. citizen sponsors in Cleveland Heights, Ohio, who have come to know him well during his time in detention, visiting him weekly and writing him letters three times a week.

34. Mr. Damus's sponsors—Melody Hart and Gary Benjamin, a magistrate for the City of Cleveland Heights—submitted a joint letter in support of Mr. Damus's parole request, explaining their support for him and describing the strong ties that he has developed to the community while in detention. In addition, Mr. Damus submitted a dozen letters from community members supporting his release to Ms. Hart and Mr. Benjamin, including letters from a judge of the Cleveland Heights Municipal Court, a Councilmember of the Cleveland Heights City Council, local faith leaders, and the members of a campaign organized by local community members to advocate for Mr. Damus and provide support for him upon his release.

35. For the first time, Mr. Damus received a written response to his parole request. The response was a form letter from the ICE Detroit Field Office with three boxes ticked, next to the sentences: "You have not established to ICE's satisfaction that you are not a flight risk," "You did not establish, to ICE's satisfaction, substantial ties to the community," and "Imposition of a bond or other conditions of parole would not ensure, to ICE's satisfaction, your appearance at required immigration hearings pending the outcome of your case."

36. The parole denial included no factual basis for the decision.

37. For example, the denial did not address Mr. Damus's evidence that he would live with Ms. Hart and Ms. Benjamin, that he has substantial ties to the community, and that in any event he does not pose a flight risk because his asylum claim creates a strong incentive for him to appear for subsequent hearings.

38. Throughout this time, Mr. Damus has lived in unhealthy and painful conditions in the Geauga County Safety Center. Immigration detainees at that center are kept in windowless rooms and not permitted any outside recreation. Mr. Damus has not been outside, or even seen natural light, for nearly two years. He sleeps in a dormitory on a thin pallet on a metal frame and lacks access to any computer or to the internet.

39. Mr. Damus misses his privacy, his family, and his freedom. He hopes to begin a new life in America. He does not understand why he has been jailed for 22 months despite having applied for asylum correctly and having won asylum from the IJ twice, and despite posing no danger or flight risk if he is released.

EXHAUSTION

40. There are no further administrative procedures that Petitioner is required to exhaust.

LEGAL BACKGROUND

41. 8 U.S.C. § 1225(b) provides procedures for the inspection of applicants for admission, including the expedited removal of individuals who present at ports of entry and are deemed inadmissible on specified grounds.

42. Mr. Damus is imprisoned pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii). That provision applies to individuals who are otherwise subject to expedited removal but establish a “credible fear of persecution” during an interview with an asylum officer. Individuals who establish a credible fear of persecution have shown that there is a “significant possibility” that they are eligible for asylum in the United States. *Id.* § 1225(b)(1)(B)(v).

43. Section 1225(b)(1)(B)(ii) provides that these individuals “shall be detained for further consideration” of their application for asylum, which occurs at a removal hearing inside the United States. “The credible fear standard is designed to weed out non-meritorious cases so that only applicants with a likelihood of success will proceed to the regular asylum process. If the alien meets this threshold, the alien is permitted to remain in the U.S. to receive a full adjudication of the asylum claim—the same as any other alien in the U.S.” H.R. Rep. No. 104-469, pt. 1, at 158 (1996).

44. Arriving noncitizens are ineligible for bond hearings before an IJ even after they have passed their credible fear interviews. *See* 8 C.F.R. 1003.19(h)(2)(i)

(“[A]n immigration judge may not redetermine conditions of custody . . . [for] arriving aliens in removal proceedings.”).

45. The statute provides that individuals in Mr. Damus’s situation—those who presented themselves at ports of entry and were screened into this country after a favorable credible fear determination—can be considered for release only through the “parole” process. 8 U.S.C. § 1182(d)(5)(A); *see also Jennings v. Rodriguez*, 138 S. Ct. 830, 844 (2018). ICE officers (i.e. the jailing authorities) informally conduct such reviews. Officers make parole decisions—that result in months or years of additional incarceration—by checking boxes on a form that contains no explanation of the factual basis for the decision.

46. The Due Process Clause forbids prolonged arbitrary imprisonment. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty” that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Under due process principles, detention must “bear [a] reasonable relation to the purpose for which the individual [was] committed.” *Id.* at 690 (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). *See also Ly v. Hanson*, 351 F.3d 263, 269 (6th Cir. 2003) (“[T]he time of [immigration] incarceration is limited by constitutional considerations, and must bear a reasonable relation to removal.”).

47. These basic due process protections apply to all noncitizens, including both removable and inadmissible noncitizens. *See Rosales-Garcia v. Holland*, 322 F.3d 386, 409 (6th Cir. 2003) (en banc) (holding that “excludable aliens . . . are clearly protected by the Due Process Clauses of the Fifth and Fourteenth Amendments.”). *See also Zadvydas*, 533 U.S. at 721 (Kennedy, J., dissenting) (noting that “both removable and inadmissible aliens are entitled to be free from detention that is arbitrary or capricious”); *Chi Thon Ngo v. I.N.S.*, 192 F.3d 390, 396 (3d Cir. 1999), amended (Dec. 30, 1999) (“Even an excludable alien is a ‘person’ for purposes of the Fifth Amendment and is thus entitled to substantive due process.”).

48. Under these principles, due process requires an individual’s release when detention is no longer reasonably related to a government purpose.

49. Due process and the parole statute also require that the government “articulate[] *some* individualized facially legitimate and bona fide reason for denying [a request for release on] parole, and *some* factual basis for that decision in each individual case” that is reasonably founded on the record evidence. *Marczak v. Greene*, 971 F.2d 510, 518 (10th Cir. 1992); *see also Sierra v. INS*, 258 F.3d 1213, 1219 (10th Cir. 2001); *Nadarajah v. Gonzales*, 443 F.3d 1069, 1082-84 (9th Cir. 2006) (ordering the petitioner released where the government had based its parole denial on “facially implausible evidence” and where the petitioner’s detention was unreasonably prolonged).

50. At a minimum, due process requires “adequate procedural protections” to ensure that the government’s asserted justification for physical confinement “outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted).

51. Prolonged civil detention is impermissible without an individualized hearing before a neutral decisionmaker that tests the Government’s justification for incarceration. *See United States v. Salerno*, 481 U.S. 739, 750-51 (1987) (upholding civil pretrial detention of individuals charged with crimes only upon individualized findings of dangerousness or flight risk at custody hearings); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (requiring individualized finding of mental illness and dangerousness for civil commitment); *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997) (upholding civil commitment of sex offenders after jury trial on lack of volitional control and dangerousness); *Ly*, 351 F.3d at 273 (holding, on constitutional avoidance grounds, that “the reasonableness of the length of detention is subject to review by federal courts in habeas proceedings” and affirming grant of habeas to noncitizen detained 18 months).

52. In *Jennings*, 138 S. Ct. at 845, the Supreme Court held that Section 1225(b) authorizes detention until the conclusion of removal proceedings without a bond hearing. However, the Court did not address the *constitutionality* of prolonged

detention without a bond hearing. *Id.* at 851 (“[W]e do not reach [the constitutional] arguments.”).

53. Outside the national security context, the Supreme Court has never authorized prolonged civil confinement without the bedrock protection of an individualized hearing as to the need for incarceration. *See Toyosaburo Korematsu v. United States*, 323 U.S. 214 (1944); *Ludecke v. Watkins*, 335 U.S. 160 (1948); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953).

CLAIMS FOR RELIEF

Count One (Due Process—Right to Release)

54. All of the foregoing allegations are repeated and realleged as though fully set forth herein.

55. The Due Process Clause of the Fifth Amendment to the United States Constitution provides that “[n]o person shall . . . be deprived of life, liberty, or property, without due process of law.” U.S. Const. amend V.

56. Petitioner should be released because his prolonged detention is not reasonably related to any government purpose and violates the Due Process Clause.

Count Two
(Due Process—Right to Bond Hearing)

57. All of the foregoing allegations are repeated and realleged as though fully set forth herein.

58. To justify Petitioner's ongoing prolonged detention, due process requires that the government establish, at an individualized hearing before a neutral decisionmaker, that Petitioner's detention is justified by clear and convincing evidence of flight risk or danger.

59. For these reasons, Petitioner's ongoing prolonged detention without a hearing violates due process, and the Court should order an immediate bond hearing where the government bears the burden of showing by clear and convincing evidence that his detention is necessary.

Count Three
(Due Process and Immigration and Nationality Act—Invalid Parole Denial)

60. All of the foregoing allegations are repeated and realleged as though fully set forth herein.

61. Under the Due Process Clause and the parole statute, 8 U.S.C. § 1182(d)(5)(A), Petitioner should be released for the additional reason that ICE's denial of Petitioner's parole request without providing any factual basis and individualized, facially legitimate, and bona fide reason for the denial violates the Due Process Clause and the INA.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully prays the Court to:

- a. Issue a Writ of Habeas Corpus; order Petitioner's immediate release, with appropriate conditions of supervision if necessary, on the grounds that his detention is not reasonably related to any government purpose, and that the government has failed even to provide any factual basis or facially legitimate and bona fide reason for his ongoing detention.
- b. In the alternative, order an immediate bond hearing before this Court or the immigration court where the government bears the burden of showing that Petitioner's ongoing detention by clear and convincing evidence is justified based on a flight risk or dangerousness.
- c. Issue a declaration that Petitioner's ongoing prolonged detention violates the Due Process Clause of the Fifth Amendment;
- d. In the alternative, issue a declaration that Petitioner's ongoing prolonged detention without an individualized hearing violates the Due Process Clause of the Fifth Amendment;
- e. Award Petitioner's costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412; and
- f. Grant such further relief as the Court deems just and proper.

Dated: September 11, 2018

Respectfully submitted,

David Hausman* (NY 5510011)
Michael K.T. Tan* (NY 4654208)
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
IMMIGRANTS' RIGHTS PROJECT
125 Broad St., 18th Floor
New York, NY 10004
(212) 549-2660
dhausman@aclu.org
mtan@aclu.org

/s/Michael J. Steinberg
Michael J. Steinberg (P43085)
Abril Valdes (P77865)
AMERICAN CIVIL LIBERTIES UNION
FUND OF MICHIGAN
2966 Woodward Avenue
Detroit, MI 48201
(313) 578-6814
msteinberg@aclumich.org
avaldes@aclumich.org

Russell Abrutyn (P63968)
Cooperating Attorney, ACLU Fund of
Michigan
ABRUTYN LAW PLLC
3765 12 Mile Road
Berkley, MI 48072
(248) 965-9440
russell@abrutyn.com

Freda J. Levenson* (Ohio 0045916)
AMERICAN CIVIL LIBERTIES UNION
OF OHIO FOUNDATION
4506 Chester Ave.
Cleveland, OH 44103
(614) 586-1958
flevenson@acluohio.org

David Carey (Ohio 0088787)
AMERICAN CIVIL LIBERTIES
UNION OF OHIO FOUNDATION
1108 City Park Ave.
Columbus, Ohio 43206
(614) 586-1972
dcarey@acluohio.org

Attorneys for Petitioner

*E.D. Michigan application for admission forthcoming

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of September, 2018, I caused a PDF version of the foregoing document to be electronically transmitted to the Clerk of the Court, using the CM/ECF System for filing.

Dated: September 11, 2017

Respectfully submitted,

/s/ Michael J. Steinburg
Michael J. Steinburg (P43085)