September 4, 2018

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RE: Ansly Damus (A[redacted])
L[redacted] H[redacted]-A[redacted] (A[redacted])

To All Concerned:

We write to demand the immediate release of our clients, Ansly Damus (A[redacted]) and L[redacted] H[redacted]-A[redacted] (A[redacted]). Mr. Damus and Mr [redacted] have been subjected to prolonged and arbitrary immigration detention in violation of their constitutional and statutory rights. If the government does not comply with this demand by **Monday, September 10 at 5:00 pm EST**, we will take immediate legal action and pursue all available remedies under the law to secure their release.

Mr. Damus is a former ethics teacher who is seeking asylum in the United States. He fled Haiti after he was beaten and received death threats from the armed gang associated with a local government official. Mr. Damus had mentioned that official in seminars on corruption, and was targeted as a result. He fled first to Brazil; after encountering discrimination and harassment there as well, he sought

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asylum in the United States. He has been in immigration detention for nearly two years, since October 2016, despite having twice won asylum before an immigration judge (the government twice appealed). He is currently in custody at the Geauga County Safety Center in Chardon, Ohio, under the authority of the U.S. Immigration and Customs Enforcement ("ICE") Detroit Field Office.

Mr. H[redacted] is a student from El Salvador seeking asylum in the United States. In El Salvador, members of MS-13 approached him in May 2016 and demanded that he join their gang, sell drugs for them, and pay them $300 per month. They threatened to kill him and his family if he did not comply. When Mr. H[redacted] responded that he did not have the money, the gang members beat him and told him they'd be back the following day. They also warned him not to go to the police, who they said worked for them. Mr. H[redacted] fled the next day, made his way to the U.S. border, and applied for asylum at a port of entry. He has been detained for more than two years, since May 2016. That period was prolonged because Mr. H[redacted] was initially the victim of fraud: he agreed to be represented by [redacted] a nonlawyer who falsely claimed that she was an attorney and whom the detention center negligently allowed to visit Mr. H[redacted]. As a result of that fraudulent representation, Mr. H[redacted] first received an asylum hearing on April 20, 2018; he is currently appealing. Mr. H[redacted] is detained at the El Paso Processing Center in El Paso, Texas, under the authority of the ICE El Paso Field Office. Mr. H[redacted] is only 23 years old.

Mr. Damus and Mr. H[redacted] both presented themselves to the authorities at a port-of-entry to the United States, and both of them were found by an asylum officer to have a credible fear of persecution. Both of them have been denied release on parole several times—most recently on August 8, 2018 for Mr. Damus and on July 24, 2018 for Mr. H[redacted]—despite meeting the criteria for the parole of arriving asylum seekers with a credible fear. *See* ICE Directive 11002.1, Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture (Dec. 2009) ("Parole Directive"). The Parole Directive provides for the parole in the public interest where, absent exceptional circumstances, an asylum seeker establishes his identity and proves he presents neither a flight risk nor a danger to the community. *Id.* ¶ 6.2.[1] At no point has the government alleged that Mr. Damus or Mr.

[1] Mr. Damus and Mr. H[redacted] are both named plaintiffs in *Damus v. Nielsen*, 313 F. Supp. 3d 317 (D.D.C. 2018), a class action lawsuit challenging five ICE Field Offices' failure to provide individualized custody reviews. ICE provided Mr. Damus and Mr. H[redacted]'s most recent parole reviews in response to a preliminary injunction order issued in *Damus* requiring ICE to comply with its own Parole Directive. *See id.* at 343.

H[redacted] pose a danger to the community. Instead, the sole reason the government has asserted for their ongoing detention is flight risk.

However, Mr. Damus and Mr. H[redacted] are *not* flight risks. The sole reason ICE has asserted for deeming Mr. Damus a flight risk is that he purportedly lacks "substantial ties to the community." This is plainly incorrect. Rather, Mr. Damus has developed extensive ties to the community in Ohio. As Mr. Damus explained in his most recent parole request of July 20, 2018, 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. 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 and provide support to Mr. Damus upon his release. The fact that Mr. Damus has developed such strong ties to Ohio is remarkable given that he has spent the entirety of his two years in the United States behind bars; indeed, it is difficult to imagine an arriving asylum seeker in his position developing stronger community ties. In addition, Mr. Damus has a strong incentive to appear for further immigration proceedings, since he has won asylum twice before the immigration judge, and is represented by an expert immigration attorney in his removal case.

ICE likewise deemed Mr. H[redacted] a flight risk, stating only that he had failed to provide additional documentation or demonstrate significant changed circumstances that would alter ICE's previous decision to deny parole. But Mr. H[redacted] is not a flight risk either. Mr. H[redacted] explained in his parole request that if released, he would live with his uncle, a naturalized U.S. citizen who lives and works in Santa Ana, California, and provided an updated sponsorship letter with accompanying evidence. Mr. H[redacted]'s prolonged detention is especially egregious because a significant portion of it resulted from the government's negligence in allowing a nonattorney to enter his detention center and fraudulently enter an appearance in his case, which resulted in a one-year delay in his court proceedings. Mr. H[redacted] is now represented by an expert attorney in his removal case and has strong incentives to appear for further immigration proceedings.

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Both Mr. Damus and Mr. H[redacted] are willing to submit to reasonable conditions of supervision—including electronic monitoring—if necessary to secure their release. Such alternatives to detention are highly effective at ensuring appearance for court hearings.[2]

ICE's continued detention of Mr. Damus and Mr. H[redacted] violates their fundamental due process rights. "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). Nor does their status as "arriving aliens" change this, especially given that they have passed credible fear interviews and been referred for full asylum proceedings before an immigration judge. *See, e.g., Rosales-Garcia v. Holland*, 322 F.3d 386, 409 (6th Cir. 2003) (en banc) (holding that "excludable aliens," even those with final orders of removal, "are clearly protected by the Due Process Clauses of the Fifth and Fourteenth Amendments.") *Chi Thon Ngo v. INS,* 192 F.3d 390, 396 (3d Cir.1999) ("Even an excludable alien is a 'person' for purposes of the Fifth Amendment and is thus entitled to substantive due process."); *Maldonado v. Macias*, 150 F. Supp. 3d 788, 800 (W.D. Tex. 2015) (same). Thus, immigration detention is permissible only when it is reasonably related to the government's interests in preventing flight or protecting the community from harm. *See Zadvydas*, 533 U.S. at 690-91. Moreover, as detention grows in length, the government is required to provide a stronger justification for the increasingly severe deprivation of individual liberty. *See id.* at 701; *see also Jackson v. Indiana*, 406 U.S. 715, 738 (1972) ("duration of commitment" must bear "reasonable relation" to its purpose).

Mr. Damus and Mr. H[redacted]'s prolonged detentions are not reasonably related to the government's interests. Mr. Damus and Mr. H[redacted] clearly have demonstrated that they do not pose a flight risk that warrants their imprisonment. Both of them have identified sponsors who would provide housing and support upon their release,

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[2] *See* Mark Noferi, *A Humane Approach Can Work: the Effectiveness of Alternatives to Detention for Asylum Seekers*, American Immigration Council 2 (July 2015), https://www.americanimmigrationcouncil.org/research/humane-approach-can-work-effectiveness-alternatives-detention-asylum-seekers (reporting the "very high rates of compliance with proceedings by asylum seekers who were placed into alternatives to detention"); *see also* U.S. Government Accountability Office ("GAO"), *Alternatives to Detention: Improved Data Collection and Analyses Needed to Better Assess Program Effectiveness* 30-31 (Washington, DC: GAO, 2014), http://www.gao.gov/assets/670/666911.pdf. (from fiscal years 2011 to 2013, 95 percent of participants in ICE's "full-service" Intensive Supervision Appearance Program ("ISAP") appeared at their scheduled removal hearings).

and they have strong incentives to litigate their removal cases and appear for court proceedings. Mr. Damus also has established strong ties to the Ohio community. Moreover, both Mr. Damus and Mr. H[redacted] are ready to comply with all reasonable conditions of supervision, including electronic monitoring. Thus, their continued detention is not justified.

Moreover, Mr. Damus's and Mr. H[redacted]'s detention violates their statutory and due process rights even under the more deferential "facially legitimate and bona fide" standard that has often been applied to parole denials, since there is no facially legitimate or bona fide reason for their ongoing imprisonment. At a minimum, the government must "articulate[] *some* individualized facially legitimate and bona fide reason for denying parole, and *some* factual basis for that decision in each individual case." *Marczak v. Greene*, 971 F.2d 510, 518 (10th Cir. 1992). *See also Nadarajah v. Gonzales*, 443 F.3d 1069, 1082-83 (9th Cir. 2006) (finding no facially legitimate and bona fide basis for the government's parole denial). It has not done so here.

Because the imprisonment of Mr. Damus and Mr. H[redacted] violates their constitutional and statutory rights, we demand that the government release them immediately on reasonable conditions of supervision. If the government does not comply with this demand by **Monday, September 10, 2018 at 5:00pm EST**, we will take immediate legal action and pursue all available remedies under the law to secure Mr. Damus's and Mr. H[redacted]'s release.

Please contact Michael Tan at 347-714-0740 / mtan@aclu.org should you wish to discuss this letter. Thank you in advance for your response.

Sincerely,

Michael K.T. Tan

David Hausman

Attorneys for Mr. Damus and Mr. H[redacted]

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Attachments:

Ex. A, Parole Request of Ansly Damus, dated July 20, 2018
Ex. B, Parole Denial of Ansly Damus, dated August 8, 2018
Ex. C, Parole Request of L[redacted] H[redacted]-A[redacted], dated July 18, 2018
Ex. D, Parole Denial of L[redacted] H[redacted]-A[redacted], dated July 24, 2018