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1 P-R-O-C-E-E-D-I-N-G-S

2 (10:20 A.M.; OPEN COURT.)

3 THE COURT: Good morning, everyone. All right.

4 THE DEPUTY CLERK: Matter before the court, Civil  
5 Action No. 05-1509, Jamal Kiyemba, et al versus George W.  
6 Bush, et al.

7 Counsel, I ask you to approach the podium to address  
8 the Court, please. State your name for the Court and the  
9 reporter.

10 MR. WILLETT: Good morning, Your Honor. Sabin  
11 Willett of Bingham McCutchen with my colleagues, Elizabeth  
12 Gilson and the Kramer Levin firm, Miller Chevalier and Baker &  
13 McKenzie.

14 We are here this morning on motions for parole and  
15 for release, but we will be focusing on the parole motion.

16 These Guantanamo imprisonments are now, I think --

17 THE COURT: I think other counsel need to --

18 MR. WILLETT: I'm sorry, Your Honor.

19 THE COURT: -- introduce themselves as well. All  
20 right.

21 THE DEPUTY CLERK: We need all counsel to identify  
22 yourselves for the record and the reporter.

23 THE COURT: Even if by reference as was done by  
24 other counsel.

25 MR. O'QUINN: John O'Quinn for the Government, Your

1 Honor, and I'm joined at counsel table by the Assistant  
2 Attorney General for the Civil Division, Gregory Katsas,  
3 Mr. Terry Henry, Mr. Sean O'Donnell, Mr. Andrew Warden,  
4 Mr. Jud Subar and Mr. David White.

5 THE COURT: Thank you. Good morning. Good morning,  
6 everyone, ladies and gentlemen.

7 All right. Let me suggest to you how we're going to  
8 do things. I'm going to make some preliminary rulings that  
9 will put everyone on the same page as far as salient matters  
10 are concerned, and then I believe that counsel have provided  
11 more than ample briefings on the issues before the Court  
12 today.

13 If counsel really feel the strong need to iterate,  
14 and I don't mean reiterate what's already been stated in your  
15 very well prepared and generous submissions, if you feel the  
16 need to emphasize something once again, you'll have that  
17 opportunity briefly. I will make some more rulings, and if  
18 those rulings necessitate the calling of witnesses for more  
19 information relevant to the issues extent at that point, then  
20 we will call the witnesses.

21 First of all, let me say that the authorizations  
22 that have been submitted representing the authority of the  
23 Petitioners' counsel to act on their behalf are satisfactory.  
24 I accept them and I have examined them, particularly under the  
25 guidelines provided by *Adem versus Bush*.

1           Secondly, I'd like to confirm that the 17 Uighurs  
2 before the Court in this matter today have similar factual  
3 backgrounds, that is to say that the parties acknowledge that  
4 there are no material differences between the individual  
5 Petitioners that the Court should be made aware of at this  
6 time.

7           If the answer to that question is "yes," then the  
8 factual determination made by this circuit in *Parhat* will  
9 apply to all the Petitioners. Are we in agreement?

10           MR. WILLETT: Your Honor, we believe the Government  
11 has conceded that point.

12           THE COURT: All right. I know that as of September  
13 the 30<sup>th</sup> the remaining -- the Uighurs not previously  
14 recognized as non-enemy combatants have now been designated as  
15 non- -- or treated as non-enemy combatants; is that correct?

16           MR. O'QUINN: That's correct, Your Honor.

17           THE COURT: All right. So is my assumption correct?

18           MR. O'QUINN: Yes, Your Honor.

19           THE COURT: All right. Now, both sides have really  
20 done an excellent job in presenting their positions and  
21 explicating and explaining and interpreting the law and the  
22 policies that each side believes behooves this court to rule  
23 in a particular fashion.

24           I have reviewed not only what's been submitted, but  
25 I've also done additional research to assist the Court in

1 finding any other issues that might be salient and resolving  
2 the ones that have been squarely presented to the Court.

3 So, if either side would like to make additional  
4 arguments at this time, you may do that. I say briefly and I  
5 say please do not reiterate what's already been amply  
6 presented.

7 MR. WILLETT: Your Honor, Sabin Willett for the  
8 Petitioners. I am mindful, particularly from the transcript  
9 in August, that the Court had already explored these issues,  
10 so maybe what I should do is focus merely on what has happened  
11 since August. It is touched on in the briefs, but it might be  
12 well to emphasize it.

13 As we argued before, *Parhat* laid out three options  
14 for the Government: Release, transfer or re-C-cert. They  
15 waived one of them, and we argued that release must mean  
16 something different than transfer.

17 The Government disagreed. They went to the Circuit.  
18 They asked for reconsideration on that exact point. They  
19 said, "Please clarify that you didn't mean release into the  
20 United States." The motion was denied; the mandate issued.

21 So *Parhat* has been reinforced, and it says what it  
22 says about release in three separate places.

23 The second point is the one we just touched on,  
24 which is that on September 30<sup>th</sup> the Government conceded that  
25 everyone is in the same boat. It is well, I think, to

1 remember that many of these Petitioners have now been in this  
2 habeas case since July of 2005 and we only find ourselves at  
3 the merits point today because the Government asked for a  
4 stay.

5           It turns out that if they had made returns about who  
6 these people really are, they wouldn't have been within the  
7 habeas strip at all because they wouldn't have been properly  
8 designated as enemy combatants, so the men have already paid a  
9 three-year price for that stay, and that's why we think a  
10 remedy is so urgent today.

11           I think Your Honor has on board our points about how  
12 to read *Parhat*, and I think you have on board our arguments  
13 about the fact that we're not seeking an immigration remedy  
14 and our clients wouldn't obtain an immigration status by means  
15 of a parole remedy, but one point that came up late in the day  
16 perhaps bears emphasis, which is the suspension clause point.

17           The argument in *Boumediene* was there's an act of  
18 Congress and it bars habeas, happens to be called the DTA, and  
19 the Supreme Court said no. It's the same argument here,  
20 except it's a different set of acts of Congress. They say  
21 there's a group of immigration laws that would bar this  
22 remedy. There is no way around *Boumediene* from that position  
23 because it comes to the same thing.

24           They say those acts of Congress bar Your Honor from  
25 giving the judicial imperative of a remedy in a habeas case,

1 and so their immigration arguments, even if they were well  
2 taken on the statute, which we have argued the briefs they're  
3 not, would be barred by the suspension clause.

4           The last point to make also came out late, and  
5 that's because of the September 30<sup>th</sup> acknowledgment.  
6 Running through all of the legal arguments has always been  
7 this undertow of, "Well, they're really bad guys. Trust us on  
8 this, Judge. Yes, we haven't charged them with a crime for  
9 six years, and yes, we won't -- we'll plead no contest to  
10 their statuses as noncombatants. Yes, we're telling all of  
11 our allies all across the world that they should take them,  
12 but whisper, whisper, they're really bad guys."

13           And we've always been willing to confront that  
14 whispering campaign and the Government has barred us from  
15 doing that by having them not here. So, today is no day for  
16 the Government to be trying to create a new theory of  
17 detention.

18           I think, from Your Honor's opening remarks, that now  
19 is not the moment to get into the practical solution. We do  
20 have a proffer and we have witnesses available for ample  
21 questioning, but I think you don't want us to get there yet,  
22 so I'll reserve that for later and leave with you, if I may,  
23 Your Honor, with two thoughts, which is that this case,  
24 Kiyemba, is of a piece with all the other Guantanamo cases  
25 since 2002.

1           It represents a narrow vision of what the judicial  
2 branch is, a vision that has continually been rejected by the  
3 courts of appeals and the Supreme Court in *Rasul*, in *Hamdi* and  
4 *Hamdan*, in *Boumediene* and *Parhat* itself. The courts above  
5 have reinforced the notion that this is the place where cases  
6 and controversies are resolved, that courts can give real  
7 remedies, and the Government, even to this day, takes a  
8 position that would essentially say that no judge in this  
9 building can resolve any Guantanamo case.

10           And what I mean by that is, there's only two places  
11 to go from Guantanamo. You can come here or you can go  
12 somewhere else in the world, but somewhere else in the world  
13 requires the cooperation of a foreign sovereign, and Your  
14 Honor cannot order the King of Saudi Arabia or the President  
15 of France to accept a prisoner, so the only unilateral order  
16 that judiciary can give is the kind of order we seek in this  
17 case and the Government says you can't do that.

18           So, the Government, what they're really saying is,  
19 there's no relief any court can give in any of these cases,  
20 and we think that's wrong.

21           You've heard us at great length on the problem of  
22 delay and the price paid by our clients for it. I would  
23 suggest that if, hypothetically, Your Honor's order were to  
24 continue this hearing for 30 days but order that Mr. O'Quinn  
25 and I spend that 30 days in Guantanamo, people would think

1 that a harsh order, but neither Mr. O'Quinn nor I has a  
2 greater claim on freedom than these men in light of the  
3 Government's concession, and so delay is a price every bit a  
4 shock for them as it would be for us in that hypothetical and  
5 a price that the Supreme Court said in *Boumediene* must not  
6 fall any longer on them.

7 That's why we ask so urgently for the remedy today  
8 and why we are prepared to show you in practical terms how  
9 that can be made real from and after this afternoon.

10 Thank you, Your Honor.

11 THE COURT: Thank you.

12 MR. O'QUINN: Thank you, Judge Urbina. As the  
13 Government acknowledged at the outset, the Department of  
14 Defense has determined that it no longer makes sense to  
15 contest the enemy combatant status of these 17 Petitioners and  
16 that they should be free to go.

17 The issue is that they have nowhere to go. Now, the  
18 United States Government is not actually preventing them from  
19 leaving Guantanamo Bay in the sense that if there were a  
20 willing country -- if there were a country willing to accept  
21 them, they would be free to go. It's the fact that there is  
22 no willing country and their own home country is one that U.S.  
23 policy prevents us from returning them to force -- forcibly  
24 because of humanitarian concerns.

25 The United States is actively and diligently seeking

1 to find a country where they can be repatriated, but in the  
2 meantime, they are being treated as non-enemy combatants and  
3 they've been given living conditions consistent with that  
4 treatment.

5           However, these 17 Petitioners seek what is an  
6 unprecedented remedy in having this court order the Government  
7 to bring them into the United States to release or parole them  
8 where some of them would hope to settle here in the  
9 Washington, D.C. area. Now, this was the same issue that was  
10 presented to the Court in *Qassim*.

11           THE COURT: What would you say is the difference  
12 between release and parole?

13           MR. O'QUINN: Well, in this context, Judge Urbina,  
14 I'm not sure that there is one. These are terms of art that  
15 the Petitioners are using because habeas cases recognize that  
16 when you have someone who is in the United States and you  
17 don't have any of the immigration or the sovereignty issues  
18 implicated, that parole is a lesser included -- a lesser  
19 included right that a court may grant, but it presupposes that  
20 there's the greater right, which the right ultimately of  
21 release.

22           On the habeas cases that they rely on, all involve  
23 persons who were indisputably within the United States where  
24 the issues of sovereignty that are presented in this case are  
25 simply -- were simply not at issue, not implicated.

1           This court, as the Supreme Court has made  
2 consistently clear in cases like the *Mezei* case in particular,  
3 *Mezei versus Shaughnessy*, *Landon versus Plasencia*, that this  
4 court may no more order the United States to bring a person  
5 into this country than it could order a foreign country to  
6 accept a person. The issue of entry into the United States is  
7 one of sovereign prerogative, and so the question that this  
8 case presents is really where does the *Boumediene* decision  
9 end.

10           THE COURT: Do you believe that? Do you really  
11 believe that this court's authority to order a person into the  
12 United States by a United States court is equivalent to this  
13 court's authority to order an individual in detention into  
14 another country and order another country and another  
15 sovereignty to accept that? You really believe that?

16           MR. O'QUINN: That certainly appeared to be the  
17 implication of the Supreme Court's decision in *Mezei*. I mean,  
18 the question that this case really presents is where does the  
19 right in *Boumediene* end and where do the limitations on the  
20 Court's authority, as recognized in *Mezei*, begin?

21           Mezei is directly analogous here where you have a  
22 person who actually had lived in the United States for many  
23 years, had a much greater claim for entry into the United  
24 States but they were not -- they were not a citizen. They had  
25 left the country, and when they attempted to return to the

1 country, they were inadmissible aliens and they were not  
2 admitted into the United States, and they were also not able  
3 to return to the countries from which -- from which they came,  
4 made several attempts to return to other countries. The  
5 Supreme Court recognized that habeas jurisdiction lied and  
6 then was presented with the question of whether or not this  
7 individual must be released into the country.

8           The Court concluded the answer to that question was  
9 no, even though it recognized that that worked a hardship, and  
10 the Government recognizes the current situation works a  
11 hardship, and we are actively seeking to find a country that  
12 will accept them for repatriation, but that was the  
13 consequence in *Mezei* where there was a hardship because the  
14 political branches had not deemed to admit the person into the  
15 country and there was no country from which they could return.

16           And I think in this context the Court should be  
17 particularly mindful of the consequences of ordering release  
18 into this country of someone who had been captured as a  
19 suspected enemy combatant. These Petitioners were captured  
20 near Tora Bora in late 2001 when the United States military  
21 was hunting for Osama bin Laden in the same area. Their  
22 capture was consistent with the laws of war, and I don't think  
23 anybody can reasonably dispute that it was sound and  
24 responsible for our troops on the ground to make the command  
25 decision to take them into custody at that time.

1           For the Court now to say that such individuals,  
2 individuals who have received paramilitary training on AK-47,  
3 Kalashnikov assault rifles, to be released into the United  
4 States because their original basis for detention is one the  
5 Government is no longer contesting would fundamentally alter  
6 and frankly chill the effective waging of war by the Executive  
7 because of the consequence --

8           THE COURT: The Government has already determined  
9 clearly, however, that these detainees were not waging war on  
10 the United States, have never waged war on the United States,  
11 were not training to wage war on the United States, and to  
12 date, I believe the Government has conceded that these people  
13 are not a security risk or a danger to the United States;  
14 isn't that right?

15           MR. O'QUINN: That's not quite right, Judge Urbina,  
16 in the sense that the United States is not contesting the  
17 determination of enemy combatancy. That's another way of  
18 saying that the United States presented evidence to the D.C.  
19 Circuit to show that Petitioner Parhat was an enemy combatant.  
20 The D.C. Circuit said that that evidence was --

21           THE COURT: D.C. Circuit said that the information  
22 the Government was relying on was unreliable and that it could  
23 not constitute a basis for concluding that he was an enemy  
24 combatant even though the CSRT said he was.

25           MR. O'QUINN: The D.C. Circuit said that the

1 Government's evidence that had been presented was  
2 insufficient. Because the Government had already determined,  
3 separate and apart from that, that it would not be a risk to  
4 United States security to release them to a foreign country --

5 THE COURT: What is the risk to -- the security risk  
6 to the United States? What page is that on? What is the  
7 security risk to the United States should these people be  
8 permitted to live here? What is it? You've had seven years  
9 to study this issue. What is the security risk?

10 MR. O'QUINN: Judge Urbina, these individuals would  
11 be inadmissible aliens as under the terrorism --

12 THE COURT: I'm not talking about status. I'm  
13 talking about what is the security risk. What is the risk to  
14 national security if these individuals were admitted? Forget  
15 about the legal --

16 MR. O'QUINN: Congress has made the determination,  
17 Judge Urbina, that people who received military type training  
18 that they received in order to commit insurrection and to take  
19 up arms against another country, whether it's the United  
20 States or whether it's any other country, are inadmissible  
21 aliens because they are a security risk to this country.  
22 Congress has made that determination.

23 They squarely fall into that category. It is  
24 undisputed that Petitioner Parhat, for example, undertook  
25 weapons training at this camp, whether he was affiliated with

1 ETIM formally or whether it was any other organization.

2 THE COURT: Is there any evidence that he was  
3 affiliated with ETIM?

4 MR. O'QUINN: Judge Urbina, there is evidence about  
5 him being affiliated with ETIM based on who was running the  
6 camp at which he participated, but in terms of inadmissibility  
7 into the United States, it's really beside the point of  
8 whether or not he was part of ETIM or whether it was part of  
9 two or more, whether or not organized.

10 I'm quoting from the immigration law now: Whether  
11 or not organized, who engaged in terrorist activities, and  
12 terrorist activities include the plan to commit terrorist  
13 activities and that includes the use of firearms for purposes  
14 other than personal gain, and in their own testimony, in  
15 C-cert proceedings, certainly demonstrates that would be an  
16 issue with respect to Petitioners.

17 The issue before the D.C. Circuit in *Parhat* was not  
18 whether or not they would be a danger to the United States or  
19 a danger to any particular person in the United States if they  
20 were admitted into the country. The limited question before  
21 the D.C. Circuit is whether or not they were enemy combatants,  
22 which is a much narrower category than whether or not somebody  
23 is a terrorist, whether or not they are dangerous, whether or  
24 not they should be set free into American society.

25 THE COURT: So your answer is these -- these Uighurs

1 are a risk to national security because Congress says so.

2 MR. O'QUINN: My answer, Judge Urbina, without  
3 offering any -- you know, I don't have available to me today  
4 any particular specific analysis as to what the threats of --  
5 from a particular individual might be if a particular  
6 individual were let loose on the street.

7 What I do have is Congress' determination, the  
8 people who received the training that they received should not  
9 be admitted to the United States under all our -- would be  
10 ineligible for asylum in the United States. That's Congress'  
11 determination, and you're in an area where the Supreme Court  
12 has made repeated -- has repeatedly made clear that these are  
13 questions that are for the political branches.

14 All right. I get the thrust of that argument. Move  
15 on to your next argument, please, or your next point.

16 MR. O'QUINN: Judge Urbina, my next point, just to  
17 respond to a couple of the points that my colleague made. The  
18 D.C. Circuit's decision in *Parhat* does not resolve the issue  
19 of release into the United States, and indeed, several of the  
20 follow-up cases, there were four other -- there were four  
21 other cases involving four of these Petitioners in which the  
22 United States agreed to the entry of the same judgment that  
23 was entered in *Parhat*, the panel made very clear that the  
24 court there was not deciding the issue of what country these  
25 persons may be released to.

1           So that the notion that the D.C. Circuit has already  
2 decided that they may be released into the United States,  
3 despite the Supreme Court's decision in *Mezei*, despite the  
4 long line of Supreme Court cases and D.C. Circuit cases, cases  
5 like *Bruno versus Albright* in which the D.C. Circuit made very  
6 clear that the issue of entry of somebody into the country is  
7 one for the political branches, in the face of all of that,  
8 the D.C. Circuit didn't in *sub selentio* and *Parhat* rule they  
9 could be admitted into the United States.

10           And the court in *Boumediene* itself doesn't purport  
11 to resolve that issue. *Boumediene* makes clear and *Munaf*,  
12 decided unanimously on the same day, make abundantly clear  
13 that just because a habeas jurisdiction lies doesn't mean that  
14 there will always be a remedy of release available. *Munaf*  
15 could not be any clearer on that point, recognizing for  
16 reasons of comity, in this context reasons of separation of  
17 powers, that the remedy of release may not be appropriate in  
18 all cases, and this is certainly one of those cases.

19           THE COURT: Shouldn't those cases be read to mean  
20 that release is not always appropriate because, for example,  
21 there may be the convening of another CSRT hearing or there  
22 may be a retrial or there may be some other circumstance that  
23 would militate against the release because further government  
24 action is contemplated?

25           MR. O'QUINN: Judge Urbina, I don't think so because

1 in *Boumediene* itself, the Court separately referred to the  
2 idea of conditional release. But even if that's what  
3 *Boumediene* meant when it said that release might not always be  
4 available, you can't avoid what the Supreme Court said in  
5 *Munaf*. It's -- it is particularly clear in *Munaf* where it  
6 says habeas corpus is governed by equitable principles and the  
7 Supreme Court has recognized that prudential concerns such as  
8 comity may require a federal court to forego the exercise of  
9 its habeas power.

10 So, even if the Court concluded that it had power  
11 here, and we would say that *Mezei* demonstrates that the Court  
12 simply does not have the power here to order release into the  
13 United States, but even if the Court concluded that it did  
14 have such power, for the same reasons that Judge Robertson  
15 recognized in *Qassim*, this court should forego the exercise of  
16 that power.

17 And let me just turn to --

18 THE COURT: Of course, Judge Robertson decided  
19 *Qassim* before *Parhat* and before *Boumediene* and before the  
20 guidance of those cases were provided by our circuit and the  
21 Supreme Court.

22 MR. O'QUINN: That's correct, Your Honor. And in  
23 fact, the point that I was next going to make is that  
24 nothing -- no intervening decision changes the rationale or  
25 the result that should -- that should come from Judge

1 Robertson's decision. And what I mean by that is if you look  
2 at what happened between *Qassim* and today, Congress enacted  
3 the Military Commission's Act that removed habeas jurisdiction  
4 from Guantanamo Bay.

5 Now, at the time *Qassim* was decided, the Supreme  
6 Court had decided *Rasul*. It predated the decision by Congress  
7 to enact the MCA, and so the situation then was exactly the  
8 same as the situation today in terms of Supreme Court  
9 precedent. That is, the writ ran to Guantanamo Bay and Judge  
10 Robertson was faced with exactly the question that the Court  
11 is faced with. The MCA was then adopted. *Boumediene* simply  
12 restored the status quo ante in terms of finding that the  
13 jurisdiction strip was invalid as applied to Petitioners at  
14 Guantanamo Bay seeking to challenge their status as enemy  
15 combatants.

16 So, there's nothing about the intervening Supreme  
17 Court decision in *Boumediene* that makes any difference  
18 whatsoever in terms of affecting or upsetting Judge  
19 Robertson's analysis in *Qassim*.

20 And the same is true of the *Parhat* decision. Again,  
21 *Parhat* turned on the fact that the D.C. Circuit concluded that  
22 the evidence that the Government had presented was  
23 insufficient to show not that petitioner wasn't a member of  
24 ETIM, not that petitioner wasn't potentially dangerous if  
25 released into the United States, but -- and not that

1 petitioner wasn't a threat potentially to other countries such  
2 as China, and I'll come back to that point in a moment, but  
3 simply that the Government had not provided sufficient  
4 evidence -- sufficient reliable evidence to show that ETIM was  
5 affiliated with al Qaida and thus didn't satisfy the  
6 requirement for enemy combatancy, a very narrow and limited  
7 question as compared to the question of whether or not there  
8 would be any security risks from releasing a person into this  
9 country from Guantanamo Bay.

10           And that brings me back to one of the points that  
11 Judge Robertson made in *Qassim*. One of the points that he  
12 recognized --

13           THE COURT: Well, let's not forget that Judge  
14 Robertson also concluded that the detention was illegal.

15           MR. O'QUINN: Well, he did --

16           THE COURT: Yes, he did decide it was an illegal  
17 detention. He said regrettably he did not want to interfere  
18 with the functions usually delegated the Executive Branch at  
19 that time.

20           MR. O'QUINN: Well, I think he actually concluded  
21 that he could not interfere with the functions that the  
22 Constitution gives to the Executive Branch and the Legislative  
23 Branch.

24           I know that Judge Robertson found the detention was  
25 unlawful, and with all due respect, I would have to disagree

1 for the reasons that the Supreme Court set forth in *Mezei*.

2           Because if the detention -- if the detention for  
3 persons who were captured at Tora Bora at a time and a place  
4 and under circumstances where there was every reason to  
5 believe that there were enemy combatants, and if subsequently  
6 the Government determines that it's not proper to hold them as  
7 enemy combatants but there's nowhere to release them to in  
8 terms of you can't send them back to their home country and no  
9 third country is willing to accept them, we would submit that  
10 that falls within the Government's authority to orderly  
11 wind-up detention, but whether you agree with that or not,  
12 it's exactly like the situation -- we now find ourselves  
13 exactly in the situation that the Supreme Court confronted in  
14 *Mezei*.

15           THE COURT: Well, let's talk about *Mezei*. *Mezei*  
16 concerned an alien permanently excluded from the United States  
17 on security grounds but stranded on Ellis Island because other  
18 countries would not take him back. The Government, in that  
19 case, would not disclose to the district court the evidence by  
20 which it determined the Petitioner to be a threat to the  
21 public interest and the court.

22           The court, in turn, determined that the detention --  
23 that detention longer than 21 months was excessive. That's  
24 what the court said. The court then directed the petitioner's  
25 conditional parole on bond and the Supreme Court in a 5-4

1 decision back in 1953, I think it was when this case was  
2 decided, deemed the petitioner's detention on Ellis Island the  
3 equivalent of being stopped at the border.

4           It held that times being what they are, that's a  
5 quote, and whatever or individual estimate of Congress' policy  
6 to exclude without hearing aliens who pose a threat to the  
7 public, and the fears on which it rests, the petitioner's  
8 right to enter the United States depends on the congressional  
9 will and courts cannot substitute their judgment for the  
10 legislative mandate.

11           Commenting further on *Mezei*, to the extent that  
12 *Mezei* held that indefinite detention of excludable aliens is  
13 constitutionally permissible, there have been a number of  
14 decisions that dispute that and question it. The Sixth  
15 Circuit surmised that that conclusion has been fatally  
16 undermined by the court's later decisions, and I think we can  
17 all cite additional decisions that may undermine it.

18           The facts in that case, of course, were quite  
19 different than the ones that we're looking at here. I don't  
20 think that that case is on all fours with this case. But in  
21 any event, proceed.

22           MR. O'QUINN: Well, Judge Urbina, you're right,  
23 there were some significant differences in the facts.

24           THE COURT: There were two cases, in particular,  
25 that created -- that had created a distinction. One is called

1 *Zadvydas*, right, and the other is *Clark versus Martinez*.

2 MR. O'QUINN: Well, Judge Urbina, *Zadvydas* and *Clark*  
3 do not in any way upset the Supreme Court's decision in *Mezei*.  
4 *Zadvydas* involved persons who were within the United States  
5 and were being -- who had been admitted to the United States.  
6 They were admitted aliens who, as *Zadvydas* recognized, there  
7 is a strong current that runs through Supreme Court precedent  
8 that there is a fundamental distinction between aliens who are  
9 in the United States and aliens who are not in the United  
10 States, and *Zadvydas* seized upon that distinction, used it to  
11 engage in not in a constitutional holding but in  
12 constitutional avoidance to construe the statute to find that  
13 for somebody who was being removed from the United States, the  
14 Attorney General could only hold them -- it was then the  
15 Attorney General, now the Secretary of Homeland Security --  
16 can only hold them for six months absent a showing that they  
17 were reasonably likely to be removed in the near future.

18 That's fundamentally different because it involves  
19 people who had effected an entry into the United States.  
20 *Clark versus Martinez* did not extend that holding because the  
21 Court suggested that the constitutional avoidance issues  
22 presented in *Zadvydas* applied to admissible aliens. In fact,  
23 Justice Scalia's opinion for the majority there specifically  
24 said that that wasn't the basis for the decision at all.

25 The basis for the decision in *Clark* was the fact

1 that because the Court had construed the statute -- the  
2 removal statute a particular way in *Zadvydas* in order to avoid  
3 any potential constitutional implications for persons who had  
4 been admitted into the United States and had full due process  
5 rights, that because the Court had construed the statute a  
6 certain way as to them, the Court had to apply the same  
7 statutory language, the same statute to all aliens who were  
8 covered by the statute the same way.

9 I think it's very important to note, as Justice  
10 Kennedy's dissent in *Zadvydas* does, what the Supreme Court in  
11 *Zadvydas* specifically distinguished the *Mezei* case recognizing  
12 that there was a fundamental difference between aliens who are  
13 inside the United States and aliens who are outside the United  
14 States.

15 And the fact that habeas corpus runs to Guantanamo  
16 Bay doesn't change that analysis because habeas corpus ran to  
17 Ellis Island where the petitioner in *Mezei* was located. So  
18 neither *Zadvydas* nor *Clark versus Martinez* in any way upset  
19 the holding in *Mezei*, and frankly, even if they do cast  
20 potential doubt on it, the Supreme Court in *Agostin versus*  
21 *Felton* has instructed the courts of appeals and the district  
22 court that if a precedent of this court has direct application  
23 in a case yet appears to rest on a reason rejected in some  
24 other line of decisions, the court of appeals should follow  
25 the case which directly controls leaving to this court the

1 prerogative of overruling its own decisions.

2           So, whether or not the Sixth Circuit thinks that  
3 *Mezei* is still good law, it is still the binding precedent  
4 unless and until the Supreme Court itself decides to overrule  
5 it. And the reasons for that are exactly the reasons the  
6 judge -- that Judge Robertson recognized in *Qassim*, which is  
7 that an order requiring release into the United States, even  
8 into some kind of parole bubble, some legal fictional status  
9 in which they would be here but would not have been admitted,  
10 would have national security and diplomatic implications  
11 beyond the competence or authority of this court.

12           And while I'm not in a position to talk about  
13 specific issues of national security, certainly there would be  
14 concerns about our relationship, for example, with other  
15 countries, say, for example, China, if the Court put the  
16 Government in a position of not being able to speak with one  
17 voice, and that's something that the *Munaf* decision harkens  
18 back to.

19           In these issues where you potentially -- where  
20 courts are potentially treading in the areas that the  
21 Constitution commits to the political branches, that you have  
22 to be particularly circumspect because of the potential for  
23 interference with foreign relations and with diplomacy,  
24 needless to say, and I can't speak to with any specificity in  
25 this setting, but the Court's aware of what we provided in our

1 classified declarations and there certainly would be concerns  
2 that would be implicated were the Court to undermine the  
3 ability of the Government to speak with one voice in regard to  
4 its determination on whether or not to release or admit  
5 somebody into the United States itself.

6 If the Court has no further questions.

7 THE COURT: I think you covered them all. Thank  
8 you, sir.

9 MR. O'QUINN: Thank you.

10 THE COURT: All right. You may have a brief moment  
11 in rebuttal.

12 MR. WILLETT: Your Honor, I think one of the  
13 particular benefits of the parole remedy here is that there  
14 will be conditions, and parole is something you can revoke, so  
15 if any of these concerns of Mr. O'Quinn actually were realized  
16 in some way or threatened to be realized, that can be  
17 protected against through monitoring, through reporting,  
18 through conditions as to where people travel and the kinds of  
19 things that the Court's familiar with.

20 Mezei is a volunteer. He comes to the border. Our  
21 clients are bought for bounties, they're shackled, they're put  
22 on a plane, they're brought to Guantanamo in chains. They are  
23 brought here. This is a problem that the Government's making,  
24 and they are brought to a place where the Supreme Court says  
25 the constitutional privilege of habeas corpus runs, and then

1 it says the alternative scheme Congress gave was inadequate  
2 because it didn't provide for release.

3           And then *Parhat*. I still don't follow the  
4 Government's argument on *Parhat*. *Parhat* orders them to  
5 release or transfer, and whatever we think that means, we can  
6 all agree four months later they haven't done either one.  
7 It's an order. It's final. It hasn't been stayed by anybody,  
8 so in one sense all we're doing in this habeas case is  
9 carrying out an order that was given by the Circuit in the  
10 only way that's available to us; in fact, the most limited way  
11 that's available to us through parole.

12           I'd never heard anyone suggest before that our  
13 relationships with other nations are a lawful basis to hold  
14 somebody in a prison. I mean, we release people all the time  
15 from Sri Lanka, from Vietnam, from Cuba in the cases cited in  
16 the papers. All of them actually did present some real risk,  
17 and the district judges said, we read *Clark*, there's no basis  
18 for the detention.

19           Thank you, Your Honor.

20           THE COURT: After detaining 17 Uighurs in Guantanamo  
21 Bay, Cuba for almost seven years, free until recently from  
22 judicial oversight, I think the moment has arrived for the  
23 Court to shine the light -- shine the constitutional -- the  
24 light of constitutionality on the reasons for that detention  
25 past and prospective in determining whether the detention is

1 itself legal and in further determining what if any remedy the  
2 Court is empowered to apply.

3           Indeed, our circuit has examined this situation  
4 through the lenses provided in the *Parhat* case and has  
5 determined that in that particular instance there was a lack  
6 of sufficient indicia of reliability to support a finding made  
7 by a military court with respect to that individual's status  
8 as an enemy combatant.

9           After reviewing this circuit's decision in *Parhat*  
10 *versus Gates*, the Government concluded that it no longer  
11 considered the 17 Uighur detainees enemy combatants. In light  
12 of these developments and the Supreme Court's recent rulings  
13 in *Boumediene versus Bush*, restoring the Court's jurisdiction  
14 over detainees' habeas corpus petitions, the detainees filed  
15 motions alleging that their continued detention is unlawful  
16 and requesting that the Court order the Government to release  
17 them into the United States.

18           Because the Constitution prohibits indefinite  
19 detention without cause, the Government -- the Government's  
20 continued detention of Petitioners is unlawful. Furthermore,  
21 because of separation-of-powers concerns do not trump the very  
22 principle upon which this nation was founded, the unalienable  
23 right to liberty, the Court orders the Government to release  
24 the Petitioners into the United States.

25           Congress passed the Authorization for use of

1 Military Force authorizing the President to use all necessary  
2 and appropriate force against those nations, organizations, or  
3 persons he determined planned, authorized, committed or aided  
4 the terrorist attacks that occurred on September 11, 2001, or  
5 harbored such organizations or persons in order to prevent any  
6 future acts of intentional terrorism against the United States  
7 by such nations, organizations or persons.

8           As the Supreme Court found in *Hamdi versus Rumsfeld*  
9 and again in *Boumediene versus Bush*, inclusive in this grant  
10 is the authority to detain individuals who fought against the  
11 United States in Afghanistan for the duration of that  
12 particular conflict. The Deputy Secretary of Defense issued  
13 an order on July the 7<sup>th</sup>, 2004 setting forth an enemy  
14 combatant standard to assist military tribunals in deciding  
15 whether to detain someone caught in the theater of war.

16           This standard defines an enemy combatant as, quote,  
17 an individual who was part or supporting -- part of or  
18 supporting Taliban or al Qaida forces or associated forces  
19 that are engaged in hostilities against the United States or  
20 its coalition partners. Thus far, this standard is the only  
21 one recognized by the Supreme Court for legally detaining  
22 individuals under the Authorization For Use of Military Force  
23 Act.

24           In this case, the Government has already absolved  
25 the Petitioners of their enemy combatant title; that is to

1 say, they have indicated that none of these 17 are to be  
2 treated as enemy combatants, so its theory for continued  
3 detention is based on an inherent Executive authority to  
4 quote/unquote wind-up detentions in an orderly fashion.

5           Initially, the Petitioners' protest that this  
6 wind-up authority should -- should it exist, would not apply  
7 to them because they were never lawfully detained in the first  
8 instance, but in *Boumediene*, the Supreme Court made it clear  
9 that habeas is not available the moment a person is taken into  
10 custody, and in any event, the record is too undeveloped as to  
11 the circumstances regarding their transfer from Pakistan  
12 officials to U.S. custody to make that determination.

13           As stated in *Qassim versus Bush* by a judge in this  
14 court, my esteemed colleague and friend, Judge Robertson, the  
15 Government's use of the "Kafkaesque" term should no longer --  
16 the term being "no longer enemy combatants," deliberately begs  
17 the question whether these Petitioners ever were enemy  
18 combatants.

19           Accordingly, the Court assumes, for the sake of this  
20 discussion, that the Petitioners were lawfully detained and  
21 that the Executive does have some inherent authority to wind  
22 up wartime detentions. The parties bicker over how long the  
23 Executive may detain individuals pursuant to its wind-up  
24 authority.

25           The Petitioners contend that the Government

1 determined long ago that it cannot effect transfer, and after  
2 five years of failed efforts, any wind-up authority has been  
3 used up. The Government recites examples of past wars in  
4 which the United States has detained prisoners of war for  
5 several years after the ending of hostilities, noting that  
6 thousands of Iraqis held after the Gulf War, the hundred  
7 thousand -- hundred thousand Chinese and Korean prisoners of  
8 war detained at the end of the Korean War and thousands of  
9 prisoners of war at the end of World War II who did not want  
10 to repatriate.

11 The Government then concludes that because it  
12 determined only days ago to forego its option of attempting to  
13 conduct a new combat status review tribunal, that the  
14 continued detention is constitutional.

15 The court in *Qassim* informed its decision on this  
16 point by looking to analogous immigrant statutes. Citing the  
17 Supreme Court cases of *Zadvydas versus Davis* and *Clark versus*  
18 *Martinez*, the *Qassim* court observed that the presumptive limit  
19 to detain an inadmissible or removable alien is six months.  
20 The Court concluded that the Government's nine-month detention  
21 of the Petitioners after determining that the Petitioners were  
22 no longer an enemy combatant was unlawful.

23 *Zadvydas* and *Clark* cases, however, are not strictly  
24 analogous to the present inquiry. Both *Zadvydas* and *Clark*  
25 interpret an immigration statute as authorizing the Government

1 to detain aliens for six months, a presumptively reasonable  
2 period.

3           The Court chose to not read the statute to authorize  
4 indefinite detention because such a reading would approach  
5 constitutional limits. In these constitutional limits, we  
6 find the resolution of the issue before the Court. It is  
7 these constitutional limits that are at issue in this case.

8           The Government argues that the Supreme Court case of  
9 *Shaughnessy versus United States ex rel. Mezei*, M-e-z-e-i,  
10 provides a better read on the constitutional limits to  
11 detention than either the *Zadvydas* or *Clark* case.

12           At the Court -- as the Court has stated, the *Mezei*  
13 case concerns an alien immigrant permanently excluded from the  
14 United States on security grounds but stranded in his  
15 temporary haven on Ellis Island because other countries will  
16 not take him back. The Government would not disclose to the  
17 courts the evidence by which it considered the petitioner to  
18 be a threat to the public interest; nevertheless, the Supreme  
19 Court, in a 5-4 decision, deemed the petitioner's detention on  
20 Ellis Island the equivalent of being stopped at the border.

21           It held that times being what they are, at that time  
22 the Cold War -- I believe the issue was whether he was a  
23 Communist -- and whatever our individual estimate of Congress'  
24 policy to exclude aliens who pose a threat without holding a  
25 hearing and the fears on which it rests, the petitioner's

1 right to enter the United States depends on congressional will  
2 and the courts cannot substitute their judgment for the  
3 legislative mandate, close quotes.

4           The Court disagrees with the Government's assertion  
5 that the logic of *Mezei* and that decision applies with even  
6 greater force to this case. The opening sentence of *Mezei* --  
7 of the *Mezei* decision, noting that the petitioner is stranded  
8 in his temporary haven, indicates that the court was not  
9 intending to tackle the constitutionality of indefinite  
10 detention. To the extent that *Mezei* and the court did make a  
11 determination as to indefinite detention, it has either been  
12 distinguished or ignored by subsequent courts.

13           For example, the Sixth Circuit in *Rosales-Garcia*  
14 *versus Holland* observed that the Court's conclusion in *Mezei*  
15 regarding the indefinite detention at issue has been  
16 undermined by post-*Mezei* cases that regard indefinite  
17 detention as raising constitutional concerns.

18           Furthermore, the *Clark* court did not bother  
19 distinguishing its holding from the holding in *Mezei* and  
20 *Zadvydas*, and the *Zadvydas* court explained that the cases  
21 differed in that the alien in *Mezei* was stopped at the border  
22 seeking re-entry, whereas the alien in *Zadvydas* was already  
23 inside the United States.

24           Additionally, a couple of very important  
25 distinctions exist between *Mezei* and this case. First, the

1 *Mezei* court was unaware of what evidence, if any, existed  
2 against the petitioner. And because the Court accepted the  
3 Government's unsupported allegations as true, the *Mezei* court  
4 and its determination regarding continued detention is  
5 categorically different from the determination facing this  
6 court.

7           Here, pursuant to the Detainee Treatment Act and  
8 *Boumediene*, the Government represented evidence justifying its  
9 detention of the petitioners but failed to meet its burden.

10           Secondly, *Mezei*, the petitioner, unlike the current  
11 Petitioners, came voluntarily to the United States seeking  
12 admission. Drawing primarily from the principles espoused in  
13 *Clark* and *Zadvydas*, those cases, the Court concludes that the  
14 constitutional authority to wind-up detentions during wartime  
15 ceases once, one, detention becomes effectively indefinite;  
16 and two, it is a reasonable certainty that the petitioner will  
17 not return to the battlefield to fight against the United  
18 States; and three, an alternative legal justification has not  
19 been provided for continued detention. Once these elements  
20 are met, further detention is unconstitutional.

21           First, in determining whether the detention has  
22 become effectively indefinite, the Court considers what  
23 efforts have been made to secure release for the Petitioners  
24 and then uses that to evaluate the likelihood that these  
25 efforts or any supplemental efforts will be successful in the

1 future.

2 Looking back, the Government had already cleared 10  
3 of the Petitioners for release by then and by the end of 2003.  
4 The Government cleared an additional five Uighurs for release  
5 or transfer in 2005; one of the -- one for transfer in 2006  
6 and one for transfer in May of this year.

7 Throughout this period, the Government has been  
8 engaged in quote/unquote, extensive diplomatic efforts, close  
9 quote, to resettle the Petitioners.

10 Accordingly, the Government cannot provide a date by  
11 which it anticipates release or transferring the Petitioners,  
12 and their detention has become -- accordingly, has become  
13 effectively indefinite.

14 The second element has also been satisfied by the  
15 Circuit's decision in *Parhat versus Gates*. The Circuit  
16 observed that it is undisputed that the petitioner is not a  
17 member of al Qaida or the Taliban and that he has never  
18 participated in any hostile action against the United States  
19 or its allies, thus dispelling any concerns that the  
20 Petitioners would return to the field of battle.

21 Finally, as to the last element, the Government  
22 acknowledges that it is -- that it no longer considers the  
23 Petitioners to be enemy combatants and it has only presented  
24 one alternative theory for detaining the Petitioners, its  
25 wind-up authority. Accordingly, this element has not been --

1 this element has been satisfied as well.

2           The Court's authority to order the release of an  
3 alien unlawfully detained into the United States has not been  
4 directly addressed by any court. The Supreme Court's most  
5 recent pronouncement in *Boumediene* regarding Guantanamo  
6 detainees assured them certain procedural guarantees but  
7 hedged when discussing remedy.

8           The Court qualified that release need not be the  
9 exclusive remedy and is not the appropriate remedy in every  
10 case in which the writ is granted. In *Hamdi*, the Court  
11 concluded that absent a suspension of the writ by Congress, a  
12 citizen detained as an enemy combatant is entitled to this  
13 process, to make his way to court with a challenge to the  
14 factual basis for his detention by his government.

15           Under its broad constitutional authority, Congress  
16 has authorized the Secretary of Homeland Security to parole  
17 and/or admit aliens into the United States. It is undisputed  
18 that he has not acted in this authority -- on this authority  
19 with respect to the Petitioners in this case.

20           Normally, the discussion would end here and the  
21 Court would have no reason to insinuate itself into a field  
22 normally dominated by the political branches; however, the  
23 circumstances now pending before the Court are exceptional.  
24 The Government captured the Petitioners and transported them  
25 to a detention facility where they will remain indefinitely.

1 The Government has not charged these petitioners with a crime  
2 and has presented no reliable evidence that they would pose a  
3 threat to U.S. interests. Moreover, the Government has  
4 stymied its own efforts to resettle the Petitioners by  
5 insisting, until recently, that they were enemy combatants,  
6 the same designation given to terrorists willing to detonate  
7 themselves amongst crowds of civilians.

8 The Petitioners' request that the Court order their  
9 release into the United States is not a simple one. It  
10 strikes at the heart of our constitutional structure, raising  
11 serious separation-of-powers concerns.

12 The Petitioners argue that the Circuit's *Parhat*  
13 decision resolved any separation of powers issue when it  
14 ordered the Government to release a Uighur Petitioner well  
15 aware of the fact that release could only mean release into  
16 the United States.

17 The Government counters that the Circuit explicitly  
18 reserved judgment as to whether it even had the authority to  
19 release the Petitioner under the DTA and filed a motion with  
20 the Circuit requesting clarification of its order. The  
21 Petitioners' retort that the Circuit's denial of the  
22 Government's request for clarification, quote, resolved the  
23 question of whether it may order release pursuant to the DTA.

24 As stated at the outset of this opinion, the Court's  
25 focus is on assessing the validity of the final decision of a

1 CSRT. The Circuit holds that the evidence was insufficient to  
2 support the CSRT's determination and explicitly reserves  
3 judgment as to whether the DTA grants the Circuit authority to  
4 release detainees.

5 And the Circuit noted in a recent order explaining  
6 the *Parhat* decision to four other Uighur detainees, quote, no  
7 issue regarding the places to which these Petitioners may be  
8 released is before this panel. But, in the *Parhat* decision,  
9 the Circuit also explicitly directs the Government, quote, to  
10 release or to transfer the petitioner, or to expeditiously  
11 hold a new CSRT consistent with this opinion, and declares  
12 that there is no question but that the district court will  
13 have the power to order *Parhat* released, close quotes.

14 Regardless of whether these statements arose by fit  
15 of aspiration or simple inadvertence, the Circuit's message is  
16 muddled. As this circuit noted in *Department of Labor versus*  
17 *Insurance Company of North America*, it is not for this court  
18 to clarify the Circuit's intent to read into the language  
19 reasoning and explanation that are simply not there.

20 Thus, the Court does not consider the Circuit's  
21 *Parhat* decision to have resolved this court's authority to  
22 order the Petitioners released into the United States. The  
23 Government proposes that this court follow the holding reached  
24 by a fellow district judge in *Qassim versus Bush*.

25 In assessing the weight to be accorded *Qassim*, the

1 Court notes the legal landscape has changed since *Qassim* was  
2 issued in 2005. In June of this year, the Supreme Court  
3 handed down its *Boumediene* decision unequivocally extending to  
4 Guantanamo detainees the constitutional right to habeas  
5 corpus, and in the process, the Court re-emphasized the  
6 importance of the writ in preserving liberty.

7 The Court succinctly states that the writ must be  
8 effective. Additionally, this court's decision -- this  
9 Circuit's decision in *Parhat* observed that it is undisputed  
10 that a Uighur detainee is not a member of al Qaida or the  
11 Taliban and that he has never participated in any hostile  
12 actions against the United States or its allies.

13 In addition to not having the benefit of these  
14 recent cases, the case law cited in *Qassim* is not entirely  
15 supportive of the absolute deference the Court affords the  
16 political branches or that the Court is urged to afford the  
17 political branches. The *Qassim* court initially proffers a  
18 sound proposition, quote, a strong and consistent current runs  
19 through immigration/alien exclusion cases that respect --  
20 and respects and differs -- defers, excuse me -- that respects  
21 and defers to the special province of the political branches,  
22 particularly the Executive, with regard to the admission or  
23 removal of aliens, close quotes.

24 But then the Court extends this deference to  
25 circumstances, including indefinite detention without cause.

1 Such absolute deference cannot bear the weight of case law.  
2 As cases cited in *Qassim* recognize, the power to exclude or  
3 expel aliens is vested in the political branches, except so  
4 far as the judicial department is authorized by treaty or  
5 statute, or is required by the Constitution to intervene.

6 *Boumediene* -- the *Boumediene* court noted that these  
7 qualifications are important, indeed essential to preserving  
8 habeas corpus; it says, quote, an indispensable mechanism for  
9 monitoring the separation of powers, speaking of habeas  
10 corpus. The judicial authority to consider habeas petitions  
11 is derived from the guiding principle that personal liberty is  
12 secured by adherence to separate powers -- excuse me -- by  
13 adherence to separation of powers. And the Supreme Court  
14 further determined in *Immigration & Naturalization Service*  
15 *versus St. Cyr*, C-y-r, that the court's authority to safeguard  
16 an individual's liberty from unbridled executive fiat reaches  
17 its zenith when the Executive brings an individual  
18 involuntarily within the court's jurisdiction, detains that  
19 individual and then subverts diplomatic efforts to secure  
20 alternative channels for release.

21 Liberty finds its liberator in the great writ, and  
22 the great writ, in turn, finds protection under the  
23 Constitution.

24 The political branches may not simply dispense with  
25 these protections, thereby limiting the scope of habeas review

1 by asserting that they are using their best efforts to  
2 resettle the Petitioners in another country. These efforts  
3 have failed for the last four years and have no foreseeable  
4 date by which they may succeed.

5 As the court in *Boumediene* recognize, to accede to  
6 such manipulation would grant the political branches, quote,  
7 the power to switch the Constitution on or off at will, close  
8 quotes.

9 This, quote, will permit a striking anomaly in our  
10 tripartite system of government, leading to a regime in which  
11 Congress and the President, not this court, speaking of the  
12 Supreme Court, say what the law is. Clearly, each branch has  
13 its own function: The Executive Branch to enforce the law,  
14 the Legislative Branch to write the law, and the Judicial  
15 Branch to interpret the law.

16 Thus, the unilateral carte blanche authority the  
17 political branches purportedly wield over the Uighurs is not  
18 in keeping with our system of governance. As the Court in  
19 *Hamdi* held, quote, whatever power the United States  
20 Constitution envisions for the Executive in its exchanges with  
21 other nations or with enemy organizations in times of  
22 conflict, it's -- it most assuredly envisions a role for all  
23 three branches when individual liberties are at stake, close  
24 quote.

25 Accordingly, because the Petitioners' detention has

1 already crossed the constitutional threshold into infinitum  
2 and because our system of checks and balances is designed to  
3 preserve the fundamental right of liberty, the Court grants  
4 the Petitioners' motion for release into the United States.

5 A formal opinion will follow which further  
6 elaborates on the points made during this summary explanation  
7 of the Court's decision.

8 Therefore, the Petitioners' motion for release into  
9 the United States is granted, and the motion for immediate  
10 release on parole pending resolution of their habeas corpus  
11 petitions is moot.

12 I will now take testimony related to what assurances  
13 and what conditions proposed by the Petitioners, as  
14 accompanying their release into this community, and we'll take  
15 a 10-minutes recess.

16 THE DEPUTY CLERK: All rise.

17 (A BRIEF RECESS WAS TAKEN.)

18 THE DEPUTY CLERK: Remain seated. This honorable  
19 court is again in session.

20 MR. O'QUINN: Your Honor, we appreciate the Court's  
21 ruling and will want to review it.

22 What I would ask on behalf of the Government is if  
23 we could have a stay pending appeal of the Court's ruling. I  
24 don't know whether appeal at this point would be authorized.  
25 That's something that would have to be conferred by the

1 Solicitor General. I can tell you those discussions are under  
2 way, but I'm not in a position to say that one way or the  
3 other.

4 As the Court said, the Court recognized that no  
5 court, other than the *Qassim* court, has directly addressed the  
6 issue of release into the United States before. The Court  
7 also recognized in the opinion that you read that there is  
8 serious separation-of-powers concerns implicated here, and for  
9 those reasons and reasons that we're happy to make in a more  
10 formal and more complete motion, the Government would seek a  
11 stay.

12 A stay would serve two purposes. One, for the  
13 Government to review its options and seek appeal if that is  
14 ultimately authorized; and No. 2, also to -- it might very  
15 well provide some opportunity to discuss and determine what  
16 our position would be on some of the issues that I think that  
17 the Petitioners would like to raise today; namely, what would  
18 be the implications of the Petitioners' release into the  
19 United States and what would immediately follow.

20 The Court ruled that the Government did not have  
21 authority to detain them at Guantanamo Bay because they were  
22 no longer being treated as enemy combatants. If, however,  
23 they are inadmissible aliens for the reasons that I  
24 articulate, particularly under 8 U.S.C. 1182 (a)(3)(B), then  
25 if they were in the United States, it may very well be that

1 DHS would be required to take them into custody pending  
2 removal proceedings.

3 Those are all things that the Government would need  
4 some time to assess. I'm sure that opposing counsel would  
5 appreciate the opportunity to at least discuss what options  
6 might look like if they ultimately are to be released into the  
7 United States, and as I said at the outset, of course, there  
8 are serious issues for the Government to consider, vis-a-vis,  
9 appeal.

10 So, I know that my colleague is prepared to put on  
11 witnesses. The Government's position would be that that is  
12 premature and would ask that the Court would --

13 THE COURT: What is that noise?

14 THE DEPUTY CLERK: I believe someone has an  
15 electronic device on. All electronic devices such as cell  
16 phones or Blackberrys are to be turned off.

17 THE COURT: Otherwise, it interferes with the voice  
18 system in the courtroom and with the court reporter's ability  
19 to hear what's being said, so if you've got a Blackberry or  
20 cell phone or anything else, turn it off, please.

21 All right. Finish up.

22 MR. O'QUINN: I just would ask that the Court would  
23 stay its ruling pending review.

24 THE COURT: All right.

25 MR. O'QUINN: Thank you.

1           MR. WILLETT: Your Honor, for all the reasons that  
2 you mentioned in your order, we would ask you to deny the  
3 motion for stay. I have no doubt that there will be some  
4 effort to seek an appellate ruling, but it really would be for  
5 the Court of Appeals to say whether this is a case that merits  
6 a stay, and given their close examination of the same case in  
7 *Parhat*, it seems remote indeed that one would be granted, so  
8 we would ask that the stay be -- request for stay be denied.

9           We are prepared, in response to your remarks, to  
10 either put on evidence or perhaps it might be more efficient  
11 to make a proffer as to where these people would go and what  
12 arrangements are in place, and I also have some proposals for  
13 conditions.

14           Now, I understand that your ruling was on release  
15 and that parole is now moot, but we've always been willing to  
16 give the Court and the Government the comfort of conditions,  
17 and so I would propose to go into that as well.

18           THE COURT: All right. Let me put it this way: If  
19 the Court of Appeals concludes that my ruling should stand, it  
20 would be my intention to have these -- this group of Uighurs  
21 admitted to the United States back before me every six months  
22 or so, so that I could take a close look at their adjustment  
23 and how they're complying with the conditions we might  
24 decide -- agree upon today.

25           Because I think the Court of Appeals should have the

1 full scope of what -- of the implications and the full scope  
2 of evidence relevant to the reality of these individuals being  
3 released into the United States, I think that a proffer and a  
4 proposal of conditions that would govern their presence here  
5 is appropriate, so the Court of Appeals cannot only look at  
6 the law and look at the circumstances but could also look at  
7 the facts that will accompany their presence here should their  
8 status be legitimized by the Court.

9           So, the bottom line is, I want to either take  
10 evidence, or I get proffers that are clear and certain so that  
11 the Court of Appeals can look at that as part of its  
12 deliberations in the case.

13           Second of all, I think that the decision on whether  
14 or not there should be a stay should be that of the Court of  
15 Appeals. I have urged that there is, in my view, a pressing  
16 need to have these people who have been incarcerated for seven  
17 years, to have those conditions changed as promptly as  
18 possible.

19           I'm not in a -- I'm not disposed to grant the stay,  
20 but it may be that arguments can be presented to the Court of  
21 Appeals that will persuade it. All of this means more delay,  
22 and delay is the name of the game up until this point.  
23 Everything has been delayed.

24           Third of all, this suggestion that if this court  
25 mandates something and the Court of Appeals approves it and

1 these individuals are brought into the United States by virtue  
2 of the Court's directives, that they may be descended upon by  
3 I.C.E. officials, arrested and taken into custody, that's not  
4 how the three branches of government work together. That is  
5 not how things work.

6 That would be inappropriate to even suggest that at  
7 this point one branch of government makes a firm decision on  
8 the legitimacy of someone's presence in the country and  
9 another branch goes out and scurries to get these individuals  
10 now present by virtue of the Court's directives arrested. I  
11 assume that won't happen. I certainly wouldn't take it  
12 kindly.

13 But in any event, put on your evidence or give us  
14 the proffer that underlies the conditions that you are about  
15 to recommend.

16 MR. WILLETT: Thank you, Your Honor. And I'll  
17 begin, if I may, with Susan Krehbiel. I will proffer her  
18 evidence. If Susan would stand.

19 You can sit down now, Susan. Thank you. Susan is  
20 with the Lutheran Immigration & Refugee Services based in  
21 Baltimore, Maryland. Since 1939, this organization, working  
22 closely with the State Department, has been responsible for  
23 the resettlement of hundreds -- I'm sorry, of tens of  
24 thousands of refugees from all over the world fleeing  
25 disasters of every kind, war, famine, genocide, the like.

1           LIRS works through a network. She will testify of  
2 26 affiliates and 20 suboffices through the country. They  
3 have closely worked with, in this case, a network of churches,  
4 synagogues and mosques, and other entities in the D.C. area to  
5 provide what's called scattered site housing and support for  
6 as many as 17 of the Uighur men.

7           So, these arrangements, which she could describe to  
8 you, would be for a place to live, some financial support  
9 limited, food, medical care, transportation, details of that  
10 kind.

11           Second, Your Honor, we would proffer the evidence of  
12 Kent Spriggs. I would ask Mr. Spriggs to stand for a moment.  
13 Kent is an attorney from Tallahassee, Florida. He represented  
14 several detainees in Guantanamo cases with considerably more  
15 skill than we have. His clients are home. But he has  
16 organized a network of both lay and clergy in the Tallahassee  
17 area who are deeply experienced in the problems of refugee  
18 resettlement, having done this for Vietnamese, for Mariel  
19 boatlift refugees and for Katrina victims.

20           He has -- and we can put into the record -- a  
21 commitment from 19 leaders in faith communities in  
22 Tallahassee, Christian, Jewish, Muslim, all of whom have  
23 offered their personal welcome and support and their  
24 commitment to rally those communities to provide practical  
25 support for three Uighurs.

1           And we submitted with our papers a detailed plan  
2 that explains that this goes to the level of a spiritual home,  
3 the Islamic Center of Tallahassee, of housing, of jobs, of  
4 transportation, of healthcare, language training in general,  
5 social integration. This has been done before and on a much  
6 greater scale, actually, than is involved here.

7           Next, Your Honor, I'd ask Ms. Rebiya Kadeer to  
8 stand. You may sit. Thanks.

9           Rebiya is president of the World Uighur Congress and  
10 of the Uighur American Association. She lives in the D.C.  
11 area and she's probably the world's most famous Uighur  
12 dissident. She spent almost six years in a Chinese prison.  
13 She has a son in a Chinese prison today. She was at one time  
14 one of the wealthiest and most successful businesswomen in all  
15 of China, but when she went to speak out about Uighur  
16 conditions, she was imprisoned. And after Human Rights  
17 organizations rallied to her cause, Secretary of State Rice  
18 personally interceded and she was admitted to this country as  
19 a refugee.

20           She was awarded the Norwegian Rafto Prize. She has  
21 been honored by the First Lady and by President Bush himself.

22           Now, Ms. Kadeer has organized 17 Uighur families in  
23 the Washington area, some of whom are in the courtroom today,  
24 and all of whom have made two commitments. The first is a  
25 short-term housing commitment as a bridge between the release

1 of the men and the more permanent solution that Susan at  
2 Lutheran Services and Kent with the Tallahassee group have  
3 lined up.

4 And the second is a longer term support arrangement  
5 that is logistical in nature. So, for language support, for  
6 transportation support, for a cultururation, for helping people  
7 get to their meetings that they may need to get to for  
8 purposes of reporting, things of that kind, there is a  
9 tremendous amount of support from the Uighur American  
10 community which has followed these cases with great interest.

11 And last, if I can ask Sara Beinert to stand. Sara  
12 is the large donor coordinator for the Center for  
13 Constitutional Rights in New York City, an organization well  
14 known to this court as -- for its prominence in the Guantanamo  
15 litigation.

16 What you may not know, however, is that it also  
17 serves as a clearinghouse for so many concerned citizens  
18 around the country who want to help and do something about  
19 what they perceive as an injustice, and many of those have  
20 made financial contributions.

21 Ms. Beinert has located a substantial donor, a  
22 former successful software businessman who has made a very  
23 substantial financial commitment to help resettle such  
24 Guantanamo detainees as courts may admit to the country.

25 Now, I would prefer if I could identify his name and

1 the extent of the commitment to the Court and counsel off the  
2 record just to preserve his privacy, but it is a substantial  
3 commitment that she can provide details about.

4 So, Your Honor, those are the highlights of the  
5 program that exists now, and all of these witnesses are  
6 available for your questions or the Government's if you would  
7 like more detail. If the Government wants to pass on that, I  
8 can proceed to what might make sense as a set of orders to  
9 accompany your order on the motion for release.

10 THE COURT: Well, let me ask the Government, do you  
11 wish to make inquiry of any of these persons proffered as  
12 resources for the Petitioners should their release be secured?

13 MR. O'QUINN: Judge Urbina, I don't think it would  
14 make good sense and be good use of the Court's time for the  
15 Government to make such inquiries.

16 In terms of what conditions might be for persons who  
17 the Court would bring into the country under some heretofore  
18 undefined status, I think, presents issues for the Department  
19 of Homeland Security in terms of what conditions that they  
20 might want to impose. Because of the nature of this hearing  
21 today in which the Court had noticed that it was going to be a  
22 hearing on a motion for release and had noticed in its minute  
23 order that the factual issues weren't going to be presented, I  
24 don't think we're prepared to make a proffer in terms of what  
25 DHS would like to see in terms of conditions.

1 I understand the Court's concern and I didn't mean  
2 to suggest that, you know, it would be, you know, follow as  
3 the night does the day that, you know, the moment they showed  
4 up in the United States they would be potentially taken into  
5 custody. All I'm saying, Your Honor, is that in terms of the  
6 INA itself, there are various provisions that would be  
7 implicated by their presence in the country that are not  
8 implicated while they're outside the country.

9 I don't know how all that would play out. It's a  
10 lot of complicated issues. So, the way to -- I understand  
11 that the Court is not inclined itself to grant a stay. If the  
12 Court were to -- perhaps the Court would consider granting  
13 what I'd call an administrative stay just for purposes of us  
14 to be able to put our papers to the Court of Appeals, and then  
15 this issue, on terms of what conditions might potentially look  
16 like, is something that could potentially be addressed by the  
17 Court at a further point in time.

18 THE COURT: Well, if what you're asking for is a  
19 period of time in order to review matters and determine  
20 whether or not you're going to pursue appeal or not, that's  
21 one thing, but if what you're asking me to do today is to  
22 issue a stay on the order itself, I'm not inclined to do that.  
23 So if you can clarify precisely.

24 I mean, I certainly would want to give you and the  
25 Attorney General and the Department of Justice time to sort

1 things out. I don't want you-all to make a hurried decision  
2 because my view is that discussions might very well -- could  
3 very well resolve matters that now appear to be in  
4 controversy, but I'm not going to undermine my own decision by  
5 granting a stay because I don't feel and I don't recognize  
6 that there is a reason for me to grant a stay under the  
7 circumstances, so tell me precisely what you need.

8 MR. O'QUINN: Judge Urbina, if you would give us a  
9 week to be able to discuss the matter internally to take on  
10 appeal if the Government determines that an appeal is -- to  
11 seek a stay from the Court of Appeals if the Government  
12 determines that an appeal is appropriate, and that would also,  
13 if an appeal was not taken at that time, because the  
14 Government has, obviously, a longer period of time than that,  
15 at the conclusion of that period of time, perhaps we would be  
16 in a better situation to engage in terms of what release into  
17 the United States should actually look like.

18 THE COURT: All right. And all of that, of course,  
19 presupposes good faith on everyone's part because what you're  
20 asking me to do is to hold off on executing the order that  
21 goes along with this judgment --

22 MR. O'QUINN: I am --

23 THE COURT: -- for a week.

24 MR. O'QUINN: For a week. And in the course of that  
25 week, Judge Urbina, we would file our stay papers assuming

1 that the decision to make -- to take an appeal was made, file  
2 our stay papers with the Court of Appeals. If the Court of  
3 Appeals granted a stay, then obviously that would be -- that  
4 would be that, and if it didn't, then we'd be in a position to  
5 better -- in a better position to deal with the specific  
6 issues of logistics that I think the Court wants to get into  
7 now.

8 THE COURT: All right.

9 MR. WILLETT: Your Honor, I would ask to add to the  
10 evidentiary record two exhibits.

11 THE COURT: Do you have a response to the request  
12 that's just been made that the Court hold off a week on  
13 issuing the order or executing the order so that you-all may  
14 have some time and the Government may have some time to review  
15 its options?

16 MR. WILLETT: Yes, Your Honor. Here is my proposal  
17 on that. I am going to suggest a set of conditions, one of  
18 which would be that your order, which we would suggest enter  
19 today, require that the prisoners be brought here on no later  
20 than Friday.

21 That would give the Government time to seek a stay  
22 if it is so minded to do and we will be in conference with  
23 them immediately following this hearing if they want that as  
24 well, but I don't see why we have to wait a week. They have  
25 to be focused on this case. It's the first Guantanamo merits

1 case. They have to have considered their options already, so  
2 I would suggest that your order simply set a date in the  
3 calendar by which the men must be here and then they either  
4 get a stay of that or they don't, and Friday is the  
5 suggestion.

6 THE COURT: And where would they be accommodated?  
7 Where would they be placed?

8 MS. MANNING: Well, my suggestion is --

9 THE COURT: Is that based on the suggestions you've  
10 made with respect to resources that can be provided by the  
11 persons you've introduced to the Court?

12 MR. WILLETT: Yes, if they were to be brought here  
13 or to some other place by the parties' agreement in this area,  
14 then they would be met both by the service groups we've talked  
15 about from the Lutheran group and the Tallahassee group and  
16 also by the Uighur American community itself and the 17  
17 families who are prepared right now to provide the immediate  
18 bridge, and one of the exhibits I want to offer relates to  
19 that.

20 So, whichever day you pick, even if you were to name  
21 tomorrow, which is probably not feasible, logistically, but  
22 whichever day you pick, we'll be ready to literally accept  
23 those men as they arrive.

24 Now, if the Government says, "Look, this courtroom  
25 is not the right place to do that handover; we want to do it

1 at Andrews Air Force base," or whatever they may say, that's  
2 fine, too. I'm sure we could reach agreement on that as long  
3 as it's not North Dakota or somewhere, but that would be my  
4 suggestion that your order -- that you order that entry today,  
5 set a deadline that will require them to either obtain a stay  
6 or not prior to that deadline.

7 MR. O'QUINN: Judge Urbina, the only point I wanted  
8 to make in response is that if the Court is inclined to set a  
9 date certain by which they must be brought into the United  
10 States before any -- the Court engages in any kind of hearing  
11 on what that might look like, if it is the Court's position  
12 that there is no role for DHS, for immigration and customs  
13 enforcement to play, we'd ask that the Court spell that out in  
14 its order so that that issue can be teed up for the Court of  
15 Appeals.

16 As I said, I think it's a separate issue from the  
17 issue of ordering release as to their current conditions.

18 THE COURT: What do you mean by "no role"?

19 MR. O'QUINN: I mean, that is sort of the question,  
20 Judge Urbina. I mean, if you bring them into the country with  
21 no status at all, which is what your order would do, we're in  
22 completely unchartered territory. Normally, people who are in  
23 the country without any kind of status can be taken into  
24 custody. It would depend on -- and particularly persons  
25 who -- and I'm happy to walk through a litany of their own

1 admissions as to why it puts them in this category, but  
2 persons who would be covered by 1182 would, I think, actually  
3 be required under law to be taken into custody pending removal  
4 proceedings.

5           Now, I understand that that seems somewhat at  
6 loggerheads with what the Court is hoping to accomplish with  
7 its order. I think that's a function of the fact that we are  
8 in completely uncharted territory once somebody is ordered  
9 into the country having had no previous -- no previous status  
10 in the country, and so that's part of why my suggestion would  
11 be that if the Court -- you know, this is a -- I understand  
12 this to be a -- an injunction. You're ordering them to be  
13 brought into the country.

14           If the Court gives us a week, we can explore our  
15 options with the Court of Appeals, and then separate and apart  
16 from that, we can explore with the Department of Homeland  
17 Security what if any role it thinks that it would play if they  
18 were brought into the -- if they were brought into the  
19 country, and if a stay was not granted by the Court of  
20 Appeals, then we could have a hearing in which the Court can  
21 hear from the Government what we think the consequences of  
22 them coming into the country might potentially be and what --  
23 what conditions, what arrangements, whether that's anything  
24 again ranging from whether our view is that the law would  
25 potentially require them to be taken into some form of

1 protective custody or all the way through to whether it's some  
2 sort of reporting requirement or what have you. Those are all  
3 issues that this court could then deal with then.

4           If the Court is just simply saying, "Well, they are  
5 going to be released into society and there is no role for the  
6 Government to play in the sense of, you know, DHS," you know,  
7 maybe normally for persons who meet these criterion, you would  
8 have reporting requirements or not, but the Court's view is  
9 that because it's ordering them brought into the country, that  
10 is without condition as if they have all of the vestiges of  
11 having been admitted into the country, that itself presents a  
12 separation-of-powers issues.

13           But if that were the case, then there wouldn't be a  
14 role for DHS to play. So, I really think this is a function  
15 of us being in somewhat uncharted territory once the Court  
16 orders somebody who doesn't previously have any status and  
17 hasn't been in the country into the country. So that's the  
18 distinction that I'm trying to draw, Your Honor.

19           THE COURT: Okay. Uh-huh. I understand. What does  
20 Tuesday's --

21           (PAUSE.)

22           THE COURT: All right. I think the way to proceed,  
23 as far as I'm concerned, is this: I am going to order that  
24 the Petitioners be brought into the country by Saturday. We  
25 will have a hearing on Thursday. What time, Mr. Dales?

1 THE DEPUTY CLERK: We can do it 2:00 o'clock.

2 THE COURT: 2:00 o'clock.

3 MR. WILLETT: The hearing as it would be on  
4 conditions?

5 THE COURT: Yeah, the hearing would be on  
6 conditions. A representative of Homeland Security should be  
7 present. I do not expect that these Uighurs will be molested  
8 or bothered by any member of the United States Government.  
9 I'm a federal judge, I've issued an order, and what it says it  
10 says and what it implies, it implies, and that's comity among  
11 the branches. Nothing will happen to these people until  
12 Thursday when this hearing convenes.

13 A representative of Homeland Security will be  
14 present and that individual at that time, through counsel, if  
15 necessary, can state its position and lay out its view on what  
16 the necessities of the situation are, legal or -- legally or  
17 otherwise, but nothing is to bother these people until I see  
18 them on Thursday. No one is to bother these people until I  
19 see them on Thursday, and they are all to be present here in  
20 this courtroom.

21 MR. WILLETT: On Saturday?

22 THE COURT: On Thursday. We have the hearing on  
23 Thursday. They all are to be here in the country by Saturday.

24 MR. WILLETT: Okay. And where would they come on  
25 Saturday, because, Your Honor, we would arrange for the -- do

1 you want them ordered brought here or some other place that we  
2 agree?

3 THE COURT: Well, the --

4 MR. WILLETT: So that we can arrange the handoff.

5 THE COURT: What are you recommending?

6 MR. WILLETT: Well, my guess is that here,  
7 particularly on a Saturday, it may be infeasible to meet  
8 actually.

9 THE COURT: Friday.

10 MR. WILLETT: All right. Then I suggest that Your  
11 Honor order that they be brought to the courtroom at an hour  
12 that you will name on Friday, unless the Government and  
13 counsel agree on some other place of hand-over which may be  
14 more convenient, and I don't -- the Government will have  
15 better ideas on that than I do.

16 THE COURT: All right. It is so ordered.

17 MR. WILLETT: Okay. Your Honor, may I add two items  
18 to the record? And I've shown these to counsel for the  
19 Government.

20 The first is a statement on resettlement of Uighur  
21 parolees from Tallahassee, Florida, and it is the commitment  
22 of 19 members of the faith communities in Tallahassee to  
23 support the enterprise I describe in the proffer.

24 Mr. Spriggs, who's in the court, would testify that each of  
25 the persons on what I'll call Petitioner's Exhibit 1 has

1 expressed his or her support for this enterprise.

2 THE COURT: All right. So we will convene here on  
3 Friday. The handoff will take place. The hearing, taking  
4 other matters into consideration, will happen on the following  
5 Thursday.

6 MR. WILLETT: Your Honor, I've just been advised  
7 that -- and this may apply to both sides. That Thursday is  
8 Yom Kippur. I think the judge has ordered this Thursday.

9 THE COURT: Next Thursday.

10 MR. WILLETT: I'm sorry, Your Honor.

11 THE COURT: They will be here by Friday. The  
12 following Thursday is when we'll have the hearing.

13 MR. WILLETT: Your Honor, I am completely confused  
14 about the dates.

15 MR. O'QUINN: I think I'm confused as well, Judge  
16 Urbina. I thought that the idea was to have a hearing prior  
17 to a time when they would be brought into the country.

18 THE COURT: No.

19 MR. O'QUINN: What are you --

20 THE COURT: Speak up. I can't hear you.

21 THE DEPUTY CLERK: The Court is still in session.

22 THE COURT: All right. Please, please, please.

23 MR. O'QUINN: What I had requested, Judge Urbina,  
24 was that we have a hearing on the issues that -- as to what  
25 their conditions -- what restrictions, if any, there would be

1 once they were in the country, that that hearing take place  
2 before they be brought into the country.

3 If they're brought into the country first, I think  
4 we'll be in some sort of a uncertainty in limbo as to what --  
5 you know, what law applies, what the conditions are, and  
6 frankly, what you have in mind, and so --

7 THE COURT: Well, there has already been a list of  
8 resources referenced. Let me ask counsel for the Petitioners:  
9 Are these individuals, either collectively or individually,  
10 able and willing to provide housing and support for these  
11 individuals from Friday of this week through Thursday of next  
12 week when the hearing will be convened?

13 MR. WILLETT: Yes, Your Honor.

14 THE COURT: All right. That's the way it's going to  
15 be.

16 MR. O'QUINN: Okay. And I take that, from the  
17 Court's order, that DHS could not take them into custody or  
18 interview them or anything?

19 THE COURT: DHS will have a full opportunity here  
20 because they will all be here and they will be permitted  
21 whatever access DHS or the Attorney General feels is necessary  
22 to ensuring the interests that you are protecting.

23 MR. O'QUINN: Okay. But in the meantime, from the  
24 Friday that they arrive until the Thursday of the hearing,  
25 there will be no supervision of them; is that my understanding

1 of the Court's order?

2 THE COURT: That's right.

3 MR. O'QUINN: Okay. Thank you, Your Honor.

4 MR. WILLETT: Your Honor, may I then, just so that  
5 we have them in the record, if there's going to be some sort  
6 of quick trip to another court, can I offer in evidence these  
7 two exhibits?

8 THE COURT: Yes. What I would like you to do is to  
9 memorialize once again, for purposes of attachment to the  
10 record of this case and for review by the Court of Appeals, if  
11 necessary, the proffers that you have made with the  
12 description of the individuals ready, willing and able to  
13 take -- to provide assistance and what other documents you  
14 have.

15 MR. WILLETT: There were two -- two statements, Your  
16 Honor, one from the Tallahassee group. I'm sorry, Your Honor.  
17 Maybe what you're asking me to do is to present the entire  
18 proffer in writing later today?

19 THE COURT: That's right.

20 MR. WILLETT: Okay.

21 THE COURT: So, in time, that it can be attached to  
22 the record in this case for use by the Government and review  
23 by the Court of Appeals.

24 MR. WILLETT: We will present -- we will file that  
25 later today. We'll serve the Government that proffer in

1 writing today.

2 THE COURT: All right.

3 MR. WILLETT: And can I just be clear about the  
4 dates that have been ordered? It is Friday of this week.

5 THE COURT: Friday of this week is the 10<sup>th</sup>.

6 MR. WILLETT: And on that day we are to be back  
7 before Your Honor with the prisoners present to discuss  
8 conditions?

9 THE COURT: Correct. And then -- well, we've set  
10 Thursday of next week for the actual hearing. I want to meet  
11 with these Uighurs and I want to have them here. I want to  
12 see the individuals who will be taking custody of them pending  
13 the hearing on Thursday, and then on Thursday is when the  
14 Department of Homeland Security and any other persons that the  
15 Government wishes to have present will be available to  
16 represent their position and to examine any witnesses that you  
17 present in support of your position.

18 MR. WILLETT: Thank you, Your Honor.

19 THE COURT: 2 o'clock.

20 MR. WILLETT: What time on Friday, Your Honor?

21 THE COURT: Friday, 10:00 o'clock. And Thursday the  
22 16<sup>th</sup>, 2:00 o'clock.

23 MR. WILLETT: Thank you very much, Your Honor.

24 MR. TIRSCHWELL: Judge, could we still have one  
25 minute to discuss something?

1 THE COURT: All right. Let's finish up, please.

2 MR. TIRSCHWELL: Thank you.

3 (PAUSE.)

4 MR. WILLETT: Your Honor, one last thing. My  
5 colleague reminds me that the Government was kind enough to  
6 permit our colleague, Wells Dixon, who is in Guantanamo right  
7 now, to actually meet with the Petitioners together -- This  
8 has never been permitted before -- later today.

9 So I am very gratified that they'll actually be able  
10 to learn of Your Honor's order, perhaps -- provided we can  
11 find some way to communicate the message to Mr. Dixon, but  
12 I'll ask the Government to help us accomplish that this  
13 afternoon.

14 THE COURT: All right. I'm sure the Government will  
15 assist you if it's possible.

16 MR. WILLETT: Thank you, Your Honor.

17 THE COURT: All right, Mr. Dales.

18 THE DEPUTY CLERK: All rise.

19 (PROCEEDINGS END AT 12:16 P.M.)

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CERTIFICATE OF REPORTER

I, Catalina Kerr, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

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Catalina Kerr

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Date