IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

JAMAL KIYEMBA, NEXT FRIEND, et al., Appellees, v. GEORGE W. BUSH, et al., Appellants.	Appeal Nos. 08-5424, 08-5425, 08-5426, 08-5427, 08-5428 and 08-5429

OPPOSITION TO EMERGENCY MOTION FOR STAY

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PRELIMINARY STATEMENT

By its overnight stay application, the Government would prolong by months, and perhaps years, an imprisonment whose legal justification it has conceded away. The seventeen Uighur appellees ("Appellees") whose liberty is at issue here are stateless refugees who fled Chinese oppression years ago. The Government brought them to Guantánamo Bay prison in 2002. For more than six years they have been imprisoned under the legal theory that they are "enemy combatants" of the United States. In a series of admissions following the Court's decision in *Parhat v. Gates*, 532 F.3d 834 (D.C. Cir. 2008), the Government has now conceded "that it no longer makes sense to contest the enemy combatant status of these 17 [Appellees] and that they should be free to go." Hrg. Tr. 10 (attached to Emergency Stay Motion ("Mot.")).

Almost four months ago, on June 12, 2008, the Supreme Court held in *Boumediene v. Bush*, 128 S. Ct. 2229, 2275 (2008), that the Guantánamo detainees, including the Appellees here, are "entitled to a prompt *habeas corpus* hearing" and that "the costs of delay can no longer be borne by those who are held in custody." Shortly thereafter, this Court decided *Parhat*. In addition to finding that Parhat was improperly determined to be an "enemy combatant" based on unreliable and inadequate evidence, this Court held, following the mandate of *Boumediene*, that Parhat was entitled to seek *habeas corpus* relief and that "in that proceeding there

is no question but that the court will have the power to order him released," and directed the Government to "release Parhat, to transfer him, or to expeditiously convene a new [Combatant Status Review Tribunal ("CSRT")]." *Parhat*, 532 F.3d at 851. In August, the Government elected not to re-CSRT Parhat. Nearly four months have passed since the *Parhat* decision, but—in clear violation of this Court's mandate in *Parhat*—the Government has not released or transferred him. Nor has it released or transferred any of the sixteen other Uighurs whom the Government now concedes are identically situated in all material respects.

Yesterday, the district court entered the only order that could possibly effectuate the mandates of *Boumediene* and *Parhat*: finding Appellees' indefinite continuing detention illegal and unconstitutional, it ordered their release. Recognizing that there was no legal or factual basis for the continued imprisonment of the men and that the Government's multi-year diplomatic efforts to find a suitable country to repatriate the men have failed, the district court ordered that the Appellees be released into the only country where its Article III power extends—the United States. The Government has moved for an Emergency Stay of the district court's order.

In essence, the Government asks this Court to rule that Appellees must wait many more months—and more likely years if Supreme Court review is sought (as seems certain to be the case)—and must remain imprisoned in military custody

while the Government appeals the release order. No doubt it will access all the usual tools: motions for reconsideration, for *en banc* review, petitions for certiorari, and Supreme Court review. This request cannot be squared with *Boumediene's* mandate that "the costs of delay can no longer be borne by those who are held in custody." 128 S. Ct. at 2275. Nor can it be reconciled with a balance of hardships that overwhelmingly weighs in Appellees' favor. Granting the stay means perpetual[1] imprisonment for seventeen men whom the Government concedes are not "enemy combatants" and "should be free to go." Denying the stay would restore precious freedom to the Appellees, after unconscionable delay, until the Executive finds permanent homes.

At yesterday's hearing, the district court invited the Government to point to any alleged harm. The Government *could offer not a single fact.* Pointedly asked by the court to identify "the security risk to the United States should these people be permitted to live here," Hrg. Tr. 15, the government stammered, "I don't have available to me today any particular specific analysis as to what the threats of—from a particular individual might be if a particular individual were let loose on the street," Hrg. Tr. 17. The overnight hysteria of unsourced stay papers was far more

[1] The charge that Appellees "sought to wage terror" boggles the mind. The charge is false. But it makes no difference. The fact that our Government has said that in a public pleading *guarantees* that no government will accept them from Guantánamo.

congenial than evidence presented to a district judge. It now fails to articulate *any* harm other than theoretical legal harms of alleged impingement on Executive authority and the "clouding" of Appellees' alien status, all of which will be addressed and resolved on appeal.

So weak is the Government's position on the merits that it resorts to scare tactics in the form of innuendo and unsubstantiated, exaggerated, and false rhetoric aimed at painting Appellees as dangerous men, including the astonishing assertion, never before made in three years of litigation through all levels of the federal system, that these men were preparing to "wage terror on a sovereign government." Mot. 4. Nothing in the record justifies that statement. The government had "seven years to study this issue," Hrg. Tr. 15, three years' notice of these *habeas* cases, three months notice of the release motion, and six weeks' notice of the hearing. It offered nothing. The district court correctly found that the Government "has presented no reliable evidence that [Appellees] would pose a threat to U.S. interests," Hrg. Tr. 38, and the Government offers no argument for overturning that finding.

The Government's position boils down to this: the judicial branch is without authority to order Appellees released into the United States, and thus it may imprison them without lawful basis indefinitely. If the Government is correct, *Boumediene* and *Parhat* were empty exercises and the Great Writ is effectively

suspended for these seventeen Appellees. But the Government is not correct. The motion should be denied.

BRIEF FACTUAL AND PROCEDURAL HISTORY

Appellees in these consolidated cases were imprisoned by the United States and transported to Guantánamo Bay in 2002. *Parhat*, 532 F.3d at 837 (discussing the facts surrounding the capture and imprisonment of most of the Appellees). As early as 2003, for ten Appellees, and continuing through May of this year for the rest, the United States military concluded that Appellees should be released. Grg. Tr. 36. "Throughout this period, the Government has been engaged in quote[], extensive diplomatic efforts, close quote, to resettle the Appellees." *Id.* The Government represented at least as early as 2005 that these same "diplomatic efforts" were resulting in "progress . . . being made on the diplomatic front." *Qassim v. Bush*, 407 F. Supp. 2d 198, 200 (D.D.C. 2005). Three years on, progress is indiscernible. The efforts have failed.

During this time, Appellees were imprisoned in a variety of conditions. These range from communal imprisonment to solitary confinement. All but one of Appellees has spent substantial time imprisoned in Camp 6. Several declarations have outlined the specifics of these conditions. *See, e.g.*, January 20, 2007 Declaration of Sabin Willett ¶¶ 15-17, *Parhat v. Gates*, Dkt. No. 06-1397 (D.C. Cir.) ("No cell admits any natural light or air"; Appellees communicate "[b]y

crouching at the door and yelling" to other prisoners; "[t]he rooms are illuminated by bright fluorescent lights that come on and off outside the prisoner's control."). Amnesty International has described the conditions in excruciating detail. Amnesty International, *Cruel and Inhuman: conditions of isolation for detainees at Guantánamo Bay,* AMNESTY INT'L (April 2007) (explaining that Appellees are "completely cut-off from human contact" and that the conditions are "[c]ontrary to international standards"). Appellees are, to the best knowledge of their counsel as of this filing, presently imprisoned in "Camp Iguana"—a makeshift camp formed from space formerly used for client interviews. This represents better conditions than Camp 6 no doubt, but still very much a prison.[2]

Although many Appellees were designated as eligible for release, in 2004 and 2005 the Government determined Appellees to be enemy combatants through its Combatant Status Review Tribunal process. Appellees filed these *habeas* cases in 2005. In December 2006, Petitioner Parhat filed, under the Detainee Treatment Act of 2005 ("DTA"), Pub. L. No. 109-148, 119 Stat. 2680, a petition in this Court challenging his imprisonment. On June 20, 2008, after reviewing the

[2] On information and belief, when counsel sought to meet with these Appellees in Guantanamo last evening, he had to speak to them through chain link fence, which is topped by razor wire, under the close inspection of MPs. Appellees are monitored penned in a small camp twenty-four hours a day, watched by MPs, unable to contact family members, and subject at the whim of JTF-GTMO to retransfer to solitary confinement.

Government's case[3] as to the propriety of Parhat's enemy combatant status, this Court concluded, "we cannot find that the Government's designation of Parhat as an enemy combatant is supported by a 'preponderance of the evidence' and 'was consistent with the standards and procedures' established by the Secretary of Defense" because to do so, based on the insufficient evidence presented, "would be to place a judicial imprimatur on an act of essentially unreviewable Executive discretion." 532 F.3d at 836. The Court ordered the Government "to release Parhat, to transfer him, or to expeditiously convene a new Combatant Status Review Tribunal to consider evidence submitted in a manner consistent with this opinion." *Id.*

On July 23, 2008, Petitioner Parhat filed a motion for judgment in his habeas case, as well as a motion seeking the lesser remedy of parole. . Dkt. 133, 134. On August 4, 2008, the Government—in its Petition for Rehearing on the question of whether this, or any other court, has the power to order Petitioner Parhat's release—conceded that it would not convene a new Combatant Status Review Tribunal for Petitioner Parhat. Petition for Rehearing, *Parhat v. Gates*, Dkt. No. 06-1397 (D.C. Cir. filed August 4, 2008). It was denied on September 2, 2008.

[3] Neither Parhat nor any other petitioner has ever been afforded the exculpatory materials required by this Court's series of decisions in *Bismullah v. Gates*.

On August 18, 2008, the Government conceded the application of Parhat to four other Appellees: Abdusemet, Jalal Jalaldin, Khalid Ali and Sabir Osman. On August 21, 2008, in open court, Appellees Abdusemet, Jalal Jalaldin, Khalid Ali and Sabir Osman joined in Petitioner Parhat's motion for release into the United States. On September 30, 2008, pursuant to a Minute Order issued by the District Court dated August 21, 2008, the Government conceded that none of the Appellees in these consolidated cases are enemy combatants. Notice of Status, *Kiyemba v. Bush*, Dkt. No. 05-1509 (D.D.C. filed September 30, 2008). All remaining Appellees joined in Petitioner Parhat's motion for release into the United States.

On October 7, 2008, the District Court granted the motions of all seventeen Appellees seeking release and entered an order requiring the Government to bring all Uighur Appellees to the United States on October 10, 2008 and setting a hearing regarding conditions of their release for October 16, 2008. The district court entered its order only after carefully delineating and applying a rigorous three-part test to find that any proffered Government power to "wind up" war-time detentions that might have existed had now ceased. Hrg. Tr. 35-37. The district court also required detailed factual proffers from Appellees' counsel as to the conditions under which they would be released into the United States, including

who would host them and where—proffers that the Government declined to challenge. Hrg. Tr. 43-52.[4] It is this order that it is the subject of this appeal.

ARGUMENT

Federal Rule of Appellate Procedure 23(c) provides, with respect to review of *habeas corpus* proceedings, that "[w]hile a decision ordering the release of a petitioner is under review, the prisoner must—unless the court or judge rendering the decision, or the court of appeals, or the Supreme Court, or a judge or justice of either court orders otherwise—be released on personal recognizance, with or without surety." Fed. R. App. P. 23(c). As the Supreme Court has held, the rule "undoubtedly creates a presumption of release from custody" while a court considers whether to stay a district court order granting relief pending the appeal of that order. *Hilton v. Braunskill*, 481 U.S. 770, 774 (1987). Similarly, Fed R. App. P. 24(d) "creates a presumption of correctness" with respect to a district court's release order. *Id.* That presumption can be overcome in the Court of Appeals, but only upon "special reasons shown." *Id.*

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[4] The proposition that "[t]he district court ordered that it would not consider imposing any restrictions on the detainees until a subsequent hearing on Thursday, October 16, 2008," Mot. 12 n.6, does a gross disservice to Judge Urbina, omitting pages of context that show the Court was reacting to the Government's provocative assertion that the men would be jailed by DHS on their arrival. Hrg. Tr. 46-52. The district court made quite clear that it retains the authority to set appropriate conditions at any time, including when the parties return before it this Friday, October 10th.

The Government's Emergency Motion for a Stay fails to demonstrate that the Court should cast this presumption aside and consign Appellees to continued imprisonment. The Government has abandoned the only basis for lawful imprisonment it ever asserted. The men must be released, or habeas corpus is a fiction. Even under the factors the Government suggests should guide the Court's decision, the Government cannot show it is entitled to the extraordinary remedy of a stay.[5]

A. Likelihood of Success on the Merits

A party seeking a stay must demonstrate a "strong" likelihood of success on the merits. *Virginia Petroleum Jobbers v. FPC*, 259 F.2d 921 (D.C. Cir. 1958). The Government cannot demonstrate the necessary strong likelihood of success

[5] While the Supreme Court held in *Hilton v. Braunskill* that, in considering a stay in the habeas corpus context, courts should "be guided not only by the language of [Rule 23(c)] itself but also by the factors traditionally considered in deciding whether to stay a judgment in a civil case [*i.e.*,] (i) likelihood of success on the merits; (ii) irreparable injury to movant absent a stay; (iii) substantial injury to other parties by issuance of stay; and (iv) the public interest]," 481 U.S. at 777, it is not clear that those four traditional factors apply in the unique circumstances of this case. In *Hilton*, the Court indicated that its decision to reject a narrower standard used by the Court of Appeals – which would have permitted a stay only where "there was risk that [the habeas petitioner] would not appear for subsequent proceedings," *id.* at 773 – was predicated in part on the fact that Hilton had previously been found guilty of a crime in state court and was subject to re-trial following issuance of the *habeas corpus* writ. *Id.* at 779. Appellees in this case, of course, have not been convicted of a crime, and the Government itself has conceded away the only lawful basis yet asserted for imprisonment.

because it has conceded away the only detention authority it ever claimed in these cases—that the men were "enemy combatants."

The Government's core proposition can never survive the *Boumediene* decision's holding as to the Suspension Clause. Its argument is that acts of Congress (in that case it was the MCA; in this it is laws related to immigration) bar habeas relief to a petitioner within the jurisdiction of the district court, held indefinitely by the executive without lawful basis. The case is on all fours with *Boumediene*. That the arguably offending statute is an immigration law, makes no difference. Congress had no power to deprive the Appellees of this remedy, which explains why, when this Court decided over three months ago that Parhat is not an enemy combatant, it noted the unquestionable power of the district court to do precisely what it did. *Parhat*, 532 F.3d at 834.

The Government contends that the district court's decision is "flatly at odds with the principle that the decision whether to admit an alien into this country is vested in the political branches." Mot. 8. The argument ignores Supreme Court precedents granting *habeas* relief to aliens who, like these Appellees, had never made an entry, *see Clark v. Martinez*, 543 U.S. 371, 386 (2005), and whom the INS found either inadmissible or removable, and who could not find another country willing to accept them, *id.*; *Zadvydas v. Davis*, 533 U.S. 678, 699-700 (2001). In both *Martinez* and *Zadvydas*, the Supreme Court ordered the release of

aliens into the United States, notwithstanding—as the Government argues is true of the Uighur Appellees—that they had no legal entitlement to be here. *Martinez*, 543 U.S. at 386; *Zadvydas*, 533 U.S. at 699-700.

The Government also contends that the district court's order is "flatly inconsistent with the holding in *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 215-16 (1953)." Mot. 7. *Mezei* is distinguishable on at least three grounds. First, as the district court correctly observed, the *Mezei* Court was not provided with an evidentiary basis for the petitioner's exclusion. Thus, as the district court here noted, "because the Court accepted the Government's unsupported allegations as true, the Mezei [C]ourt and its determination regarding continued detention is categorically different from the determination facing this court." Hrg. Tr. 35. Indeed, this Court in *Parhat* determined that the Government's evidence provided no basis for Parhat's imprisonment, and the Government has waived its right to litigate this issue further.

Second, Mezei "came voluntarily to the United States seeking admission," *id.*, while Appellees were abducted by profit-seeking Pakistani bounty hunters, turned over to U.S. military forces in Pakistan and Afghanistan, and then transported to Guantánamo in hoods and shackles. There is a material difference between a petitioner, such as Mezei, who comes to the threshold, knocks on the door, is barred from admission, is detained simply because he got to a place from

which he cannot be sent anywhere, and now seeks habeas to enter, and the Uighur Appellees who were brought against their will to a place under United States control by the Government, and who now cannot be released through no fault of their own. The Executive cannot unilaterally and unlawfully bring someone to a prison, and then complain that its own discretionary authority over immigration matters prevents it from freeing the prisoner. The Government's current problem is of its own making.

Third, after *Boumediene*, *Mezei* cannot bar relief to the Uighur Appellees. *Boumediene*'s core principle is that the separation of powers embedded in the Constitution's structure and design demands habeas and a judicial review of unwarranted Executive intrusion into liberty. This principle is lost without the habeas remedy of release. The principle is the central focus of section III.A of the *Boumediene* decision and of the authorities cited therein. 128 S. Ct. at 2244-46. "[T]he writ of *habeas corpus* is itself an indispensable mechanism for monitoring the separation of powers. The test for determining the scope of this provision must not be subject to manipulation by those whose power it is designed to restrain." *Id.* at 2259. The Government's assertion of an entitlement to unilateral decision-making "serves only to condense power into a single branch of Government," *Hamdi v. Rumsfeld*, 542 U.S. 507, 536 (2004), in contravention of *Boumediene*'s most pressing concern — the need to have a judicial remedy against executive

overreaching during one of those "pendular cycles" when the Executive has gone too far.

B. Irreparable Harm to the Government

The Government fails to demonstrate that denial of its stay motion will cause it irreparable injury, and thus fails to provide support for the proposition at the heart of its motion, *viz.*, that the Court's failure to act now, on an emergency basis, will effectively preclude the Government from pursuing its interests on appeal.

First, the Government claims that the district court's order "impinges on the Executive's exclusive authority under our Constitution and laws over the admission of aliens, and over the winding up the detention of enemy combatants." Mot. 11. This is simply a restatement of the Government's merits position, and what will presumably form the basis of its argument on appeal. If an adverse finding of law, in and of itself, could constitute "irreparable injury," any legal ruling by a district court would meet the standard.

Second, the Government claims that releasing Appellees into the United States would "cloud the clear legal and factual distinction between their present status as inadmissible aliens not lawfully in the United States and their desired status as detained aliens within the United States." Mot. 11-12 (citations omitted). Rather than pointing to a concrete (much less irreparable) injury that denying the

stay motion would inflict on the Government, the Government is simply arguing that it will suffer the purely abstract, and eminently remediable harm of adverse legal ruling in the district court. This cannot provide the basis for irreparable injury justifying extraordinary relief, and the Government cites no case suggesting that it does.

Finally, the Government claims that "compliance with the district court's order would pose a serious security risk and a risk to the interests of the United States." Mot. 12. The ostensible basis for this claim is that Appellees "engaged in weapons training at a [Taliban-sponsored] military training camp" in Afghanistan, "sought to wage terror on a sovereign Government," and "trained for armed insurrection" against China. Mot. 2-4. These arguments are in part misleading, in part untrue, and completely unproven. They also are too late.

There simply is no evidence in the record, much less any finding, that any Appellee was involved in what the Government calls "an organized attempt to attack a sovereign Government" (i.e., China)—and the Government cites absolutely none. As to whether the camp where certain Appellees were living was "sponsored by the Taliban," this Court in *Parhat* thoroughly discredited the Government's presentation on this issue, noting that the Government had failed to

disclose or present substantial contradictory and exculpatory evidence. *Parhat*, 532 F.3d at 845. [6]

The Government wheels out its old and tired "danger" arguments notwithstanding the fact that just hours before filing its emergency stay motion, and despite two months notice of the hearing for release or parole and over six years of detaining Appellees, when pointedly asked by the district court to identify "the security risk to the United States should these people be permitted to live here," Hrg.Tr. 15, the Government could only respond with: "I don't have available to me today any particular specific analysis as to what the threats of—from a particular individual might be if a particular individual were let loose on the street," Hrg. Tr. 15-17.

The Government has shrunk from every opportunity to offer proof of its allegations, preferring imprisonment-by-defamation. It was invited to hold another CSRT proceeding and abandoned the opportunity. Joint Status Report at 1. It resisted bringing any of the Appellees to court for the October 7 hearing, during

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[6] Even assuming the Government could prove allegations that the Appellees were thinking about the possibility they might some day "fight against the Chinese Government" as part of a Uighur resistance movement, Mot. 9 n.4, that would not be enough to find they pose a threat to the United States or even would be inadmissible under our immigration laws. *See Cheema v. Ashcroft*, 383 F.3d 848, 858 (9th Cir. 2004) (Noonan, J.) ("We cannot conclude automatically that those individuals who are activists for an independent Tibet are necessarily threats to the United States because they have been labeled by China as insurgents.")

which Appellees were prepared to defend themselves against the Government's specious dangerousness allegations, arguing that "Appellees' presence at the October 7 hearing is utterly unnecessary for the Court to address the legal question of whether the Government can be compelled to parole Guantánamo detainees who are treated as if they were no longer enemy combatants into the United States." Opp'n to Mot. For Procs. at 6.

This Court has already reviewed the government's record, and concluded that as to Parhat, who is materially indistinguishable from the sixteen other Uighur Appellees—"[i]t is undisputed that he is not a member of al Qaida or the Taliban, and he has never participated in any hostile action against the United States or its allies." *Parhat*, 532 F.3d at 835-836. Finally, the Government's dangerousness argument cannot be squared with the fact that Appellees would *not* be too dangerous to the over one hundred foreign countries the Government has reportedly lobbied to resettle the Uighurs (including, according to press reports, Canada, Germany and other western European allies). *As recently as October 3, the Government offered classified declarations detailing its prodigious efforts to settle these men with our allies. And they are wagers of terror?*

In the face of this record, the district court correctly found that "[t]he Government has not charged these Appellees with a crime *and has presented no*

reliable evidence that they would pose a threat to U.S. interests." (Tr. 38 (emphasis added)).[7]

C. Substantial Harm to Appellees

While the Government cannot point to any concrete irreparable injury it will suffer should its motion be denied, if the stay motion is granted Appellees stand to endure what has long been recognized as one of the most substantial injuries imaginable: deprivation of liberty. *Hilton*, 481 U.S. at 777 (characterizing as "always substantial" the "interest of the habeas petitioner in release pending appeal"); *United States v. Bogle*, 855 F.2d 707, 710-11 (11th Cir. 1988) ("unnecessary deprivation of liberty clearly constitutes irreparable harm"); *Hernandez-Carrera v. Carlson*, 2008 WL 956742 at *1 (D. Kan. April 7, 2008) (refusing to grant emergency stay of release following grant of *habeas* petition, noting that "the risk of harm to Appellees if a stay is entered is significant, and is clearly recognized as substantial"). Appellees have been imprisoned for more than six years, thousands of miles from their friends and families. During that time they

[7] Since the Government pleads no contest to the non-combatant status of each Appellee, there is no question that each has the privilege not only of constitutional, but of statutory *habeas*, since the "habeas strip" of 28 U.S.C. § 2241(e) never applied in the first place to a person unless he was "determined . . . to have been properly detained as an enemy combatant or is awaiting such determination." That means that each petitioner was entitled to be present to contradict and refute evidence offered to justify imprisonment. 28 U.S.C. § 2243 (cl. 5th). Each petitioner asserted that right, and the Government objected, asserting that there were no factual issues in the case. Opp'n to Mot. for Procs. at 5-6.

have been subjected to interrogation by the Chinese, physical and psychological abuse by prison guards, and solitary confinement. Indeed, until last week, several Appellees were held in Camp 6, a maximum-security facility where they were held in isolation, without access to fresh air or sunlight for twenty-two hours a day.

While the Government, in response to repeated efforts by Appellees' counsel and pressure from the district court, recently agreed, after more than six years, to transfer Appellees to less restrictive conditions, Appellees remain confined against their will in a prison. The Government has conceded that it does not have a basis to hold Appellees as enemy combatants, and the district court has found their imprisonment to be unlawful. It is no answer for the Government to say that Appellees' current conditions of confinement are "the least restrictive conditions practicable," Mot. 12-13, or that a stay would delay their release from Government custody by only a "brief" period, *id.* at 13. The Government has delayed long enough, and at this stage there is no question that each day Appellees spend at Guantánamo constitutes substantial, concrete, and irreparable harm.

D. The Public Interest

The public interest cannot lie with the continued imprisonment of men who the Government concedes are not enemy combatants and are being held without charge. Nor can it rest with more delay by the Government after almost three years of litigation premised on a strategy of delay. Under this Court's order in

Parhat (and as subsequently applied to the sixteen other Uighurs), and now under the release order, the Government, having conceded the issue of enemy-combatant status and having failed to transfer Appellees elsewhere, must release Appellees.

To the extent the legislative branch has weighed in, it too has indicated that Appellees should not be held a day longer. Nearly four months ago, following an investigation by the House Subcommittee on International Organizations, Human Rights, and Oversight, the Chairman (Bill Delahunt (D-Mass)) and Ranking Member (Dana Rohrabacher (R-Cal)) of that committee wrote jointly to Secretary of Defense Gates and requested that Appellees "promptly be paroled into the United States." *See* Exh. A. As noted in their letter, and as explained above, Appellees pose no threat to the United States or its citizens, and arrangements have been made to ensure that once released, Appellees will be in reliable hands and will not pose any undue burden on, or risk to, the community. Under these circumstances, the public interest weighs strongly in favor of denying the stay.

CONCLUSION

For the foregoing reasons, the Government's emergency motion for stay should be denied.

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Exhibit A

ONE HUNDRED TENTH CONGRESS

CONGRESS OF THE UNITED STATES

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June 19, 2008

The Honorable Robert Gates
Secretary of Defense
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Re: Transfer of Uighur Prisoners Out of Camp 6 and parole into the United States

Dear Mr. Secretary:

On the basis of the Subcommittee on International Organizations, Human Rights, and Oversight's investigation into detention at Guantanamo Bay, we request that the Uighur detainees at Guantanamo Bay promptly be paroled into the United States, and that while those arrangements are being made, those Uighurs being held in Camp 6 immediately be transferred from Camp 6 to Camp 4.

The Uighurs are friends of the United States, and based upon the facts of their political inclinations and struggle against the Communist Chinese regime, they should not be grouped, even in appearance, with the other detainees at Guantanamo Bay. Accordingly, Mr. Secretary, we are requesting that your office intervene to put this transfer and parole into motion.

The parole requested in this letter would accomplish the Uighurs' physical transfer to the continental United States, but would not, of itself, constitute a formal grant of asylum. We have consulted with Rabiya Kadeer, President of the Uighur American Association, and have been informed the Uighur community is willing to support these individuals during their stay in the United States.

We look forward to the opportunity to speak with your office about the means for carrying out our request. Please respond to this letter by July 19, 2008. Please contact either Natalie Coburn or Paul Berkowitz of the Subcommittee staff at (202) 226-6434 if you need more information.

Sincerely,

BILL DELAHUNT
Chairman
Subcommittee on
International Organizations,
Human Rights, and Oversight

DANA ROHRABACHER
Ranking Member
Subcommittee on
International Organizations,
Human Rights, and Oversight

cc: Sandra Hodgkinson
Deputy Assistant Secretary of Defense for Detainee Affairs
United States Department of State