[ORAL ARGUMENT SCHEDULED FOR NOVEMBER 24, 2008]

Consolidated Case Nos. 08-5424, 08-5425, 08-5426, 08-5428, 08-5429

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

JAMAL KIYEMBA, ET AL.,
Petitioners-Appellees,

v.

GEORGE W. BUSH, ET AL.,
Respondents-Appellants.

On Appeal from a Final Judgment of the
United States District Court for the District of Columbia

BRIEF OF NATIONAL IMMIGRATION JUSTICE CENTER AND AMERICAN IMMIGRATION LAWYERS ASSOCIATION AS *AMICI CURIAE*, SUPPORTING AFFIRMANCE

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Amicus curiae respectfully submit this Certificate as to Parties, Rulings and Related Cases, pursuant to Circuit Rule 28(a)(1):

A. **Parties:** Except for the following, all parties and amici appearing before the district court and in this court are listed in the Brief for Appellants.

Amici Curiae:

(1) The National Immigrant Justice Center.

(2) The Brennan Center, The Constitution Project, and The Rutherford Institute;

(4) the Uig The American Immigration Lawyers Association

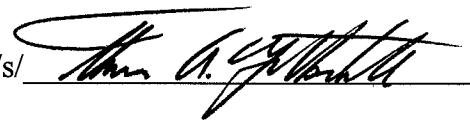
(3) hur American Association.

(5) Law professors Susan Akram, Michael J Churgin, Sarah H. Cleveland, Niels W. Frenzen, Bill Ong Hing, Kevin R. Johnson, Daniel Kanstroom, Stephen H. Legomsky, Hiroshi Motomura , Gerald L. Neuman, Margaret Taylor, Charles D. Weisselberg, Michael J. Wishnie.

(6) Legal and historian habeas scholars Paul Finkelman, Eric M. Freedman, Austin Allen, Paul Halliday, Eric Altice, Gary Hart, H. Robert Baker, William M. Wiecek, Abraham R. Wagner, Cornell W. Clayton, David M. Cobin, Mark R. Shulman, Marcy Tanter, Samuel B. Hoff, Nancy C. Unger, Karl Manheim, and Gabriel J. Chin.
(7) The National Association of Criminal Defense Lawyers.

B. **Ruling Under Review:** Reference to the rulings at issue are listed in the Brief for Appellants.

C. **Related Cases:** References to related cases are listed in the Brief for Appellants.

/s/ 

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GLOSSARY

AILA	American Immigration Lawyers Association
DHS	Department of Homeland Security
GAO	Government Accountability Office
ICE	Immigration & Customs Enforcement
IIRIRA	Illegal Immigration Reform and Immigrant Responsibility Act of 1996
INA	Immigration and Nationality Act
LIRS	Lutheran Immigration and Refugee Services
NIJC	National Immigrant Justice Center

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INTEREST OF *AMICI CURIAE*[1]

Amicus National Immigrant Justice Law Center is a Chicago-based non-profit organization that operates on a regional, national, and international scale, providing legal services for immigrants and engaging in national policy-reform advocacy with respect to immigration law. 0*Amicus* American Immigration Lawyers Association ("AILA") is a national association with over 11,000 members throughout the United States, including lawyers and law school professors who practice and teach in the field of immigration and nationality law. AILA seeks to advance the administration of law pertaining to immigration, nationality and naturalization; to cultivate the jurisprudence of the immigration laws; and to facilitate the administration of justice and elevate the standard of integrity, honor and courtesy of those appearing in a representative capacity in immigration and naturalization matters. AILA's members practice regularly before the Department of Homeland Security and before the Executive Office for Immigration Review (immigration courts), as well as before the United States District Courts, Courts of Appeal, and the Supreme Court of the United States. *Amici* believes that, given the unique facts of this case, immigration law does not preclude or prohibit the release of the petitioners into the United States. We write to share our informed expertise on the immigration aspects of this case.

SUMMARY OF ARGUMENT

In challenging the District Court's October 9, 2008 Order granting the Uighurs' release, the Government relies extensively on the argument that immigration law prohibits the Uighurs' release

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[1] This brief is filed with the consent of the parties.

into the United States, whether because the order intrudes upon the Government's plenary powers over immigration or because the immigration statutes themselves render the Uighurs inadmissible. However, the Government's arguments fundamentally mischaracterize the District Court's order and the impact of the immigration laws on the power of courts to release aliens into the United States pending the determination of their immigration status.

First, immigration law has little relevance to the District Court's order, which merely released from federal detention aliens who were brought involuntarily into the jurisdiction of the United States. The Uighurs have never sought admission under the immigration laws of the United States. Rather, they were involuntarily seized and brought by the Government into the jurisdiction of the United States at Guantanamo Bay, where the Government has detained them for almost seven years. Immigration law recognizes the distinction between aliens voluntarily seeking to enter the United States and those who were brought here involuntarily, and the limited relevance of exclusion to the latter. Moreover, the District Court's order did not purport to confer immigration status on the Uighurs, but only required their physical release inside the United States.

Second, the Government argues that 8 U.S.C. § 1182 precludes the Uighurs' release into the United States because they have no right to enter under § 1182. However, the Uighurs' status under § 1182 has no bearing on the District Court's authority to release the Uighurs from unlawful detention. Immigration laws should not be interpreted to nullify aliens' relief under habeas corpus. The Supreme Court has recognized that aliens, including those inadmissible under immigration laws, cannot be detained indefinitely pending efforts to remove them. Even inadmissible aliens who have been convicted of criminal offenses must be released into the United States pending efforts to remove them to another nation, where removal cannot be accomplished within a reasonable time period. Such a release neither depends upon nor impacts the alien's immigration status.

Indeed, the District Court's order does not restrict the Government's ability to pursue exclusion or institute removal proceedings, provided that the Uighurs are not unlawfully detained during those efforts. The purpose of detention pending removal proceedings is to effectuate removal, not to punish. Consequently, courts have recognized that indefinite detention without any reasonably foreseeable removal would raise serious constitutional questions and violate immigration law. Here, the Government concedes that the Uighurs cannot be returned to their home nation and, despite years of effort, no other nation has indicated a willingness to accept them. Consequently, both constitutional norms and immigration law prohibit the Uighurs' continued detention at Guantanamo or elsewhere, at least until removal is reasonably foreseeable.

Finally, contrary to the Government's apparent assumption, neither release nor parole implies that the alien may "live at large" in the community. After considering any evidence that the Government decides to submit, the District Court may order both formal supervision and reasonable conditions of release. If any petitioner subsequently violates those conditions, his release can be revoked.

ARGUMENT

I. IMMIGRATION LAW HAS LITTLE RELEVANCE TO A DISTRICT COURT'S ORDER TO RELEASE FROM FEDERAL DETENTION TO THE UNITED STATES ALIENS WHO WERE BROUGHT INVOLUNTARILY TO THE UNITED STATES.

The Government seeks to recast this case as one mired in the intricacies of immigration law, despite the fact that the District Court did not act under the United States immigration laws, but rather under that "great bulwark of personal liberty," the writ of habeas corpus. 3 Joseph Story, Commentaries on the Constitution § 1333. The District Court ordered the Uighurs released into the United States because it concluded that the length and indefinite nature of their unlawful detention

required immediate release and the United States was the only country immediately available. *See* District Court Oct. 9, 2008 Opinion ("Opinion") 16-17, J.A. 1615-16 ("[The Government's] 'best efforts' to resettle the petitioners in another country . . . have failed for the last 4 years and have no foreseeable date by which they may succeed. . . . Because [the Uighurs'] detention has already crossed the threshold into infinitum . . . the court grants the petitioners' petition for release into the United States."). The Government has never contended that it can release the Uighur prisoners to another country without delay. *See* Appellants' Br. at 8 ("[D]espite extensive diplomatic efforts on petitioners' behalf, the Government has not to date located an appropriate country willing to accept them for resettlement.").

The Government's arguments that the Uighurs have "no right to admission" to the United States *see* Appellants' Br. at 27, are misplaced. The Uighurs did not come within the jurisdiction of the United States voluntarily. They were captured by bounty hunters in Pakistan, ransomed to the U.S. military, and imprisoned for almost seven years in territory dominated by and under the indefinite control of the United States. *See* Opinion 3, J.A. 1602. Precedents in both the immigration field and in the federal courts limit the application of immigration law when an alien is involuntarily brought under United States jurisdiction. Moreover, the Uighurs' habeas petition did not request admission, nor did the District Court purport to order that remedy. The District Court did not "admit" the Uighurs or make an unnecessary foray into immigration law. Rather, the District Court (1) ordered the release of the prisoners under the writ of habeas corpus, Opinion 17, J.A. 1616, (2) implicitly forbade the immediate re-imprisonment of the Uighurs by the Department of Homeland Security, *see* Transcript 60, J.A. 1592 (Judge Urbina declaring, "I do not expect that these Uighurs will be molested or bothered by any member of the United States Government" pending

further proceedings), and (3) expressed no opinion on the eventual application of the immigration laws to the Uighurs.

A. Immigration Precedent Distinguishes Immigrants Who Voluntarily Seek Admission From Those Who Are Brought To The United States Against Their Will.

The Government transported the Uighurs to a territory that "while technically not part of the United States, is under the complete and total control" of the United States Government.[2] *Boumediene v. Bush*, 128 S. Ct. 2229, 2262 (2008). Because the Uighur prisoners have unwillingly found themselves in the jurisdiction of the United States, *see Boumediene*, 128 S. Ct. at 2261; *Rasul v. Bush*, 542 U.S. 466, 480 (2006), they do not presently fall within the purview of immigration law as aliens seeking admission. That is, immigration concepts such as deportation, exclusion and incidental detention have little, if any, relevance to them, at least until they seek admission. Under immigration precedent, persons brought involuntarily into the United States, "per se" are not "applicants for admission" until they affirmatively seek admission or, until after having been released from captivity and given "a fair and reasonable opportunity to depart" the United States.

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[2] The Government relies heavily on 8 U.S.C. § 1101(a)(38), which defines the United States "in a geographical sense," as not including Guantanamo Bay, to argue that petitioners' available remedies are limited because they are not located within the physical boundaries of the United States. *See* Appellants' Br. at 44, 49. This provision cannot bear the weight the Government seeks to place on it. That geographic location is not determinative under immigration law has long been evidenced by the "entry fiction," *Rosales-Garcia v. Holland*, 322 F.3d 386, 391 n.2 (6th Cir. 2003), whereby an alien may be physically within our borders, but not "within the United States" for purposes of immigration law. *See Leng May Ma v. Barber*, 357 U.S. 185, 186 (1958) (holding that an alien who was paroled within the geographic boundaries of the United States was not "in the United States" for purposes of immigration law). Moreover, since 1996, admissibility determinations no longer take place solely within the United States, see 8 U.S.C. § 1225a (preinspection stations located abroad), and removal proceedings may now occur even while non-citizens reside abroad, *see* 8 U.S.C. § 1225(a)(3)(C). The precise status of Guantanamo under the immigration laws, however, need not be resolved here, because the District Court had authoirity under habeas to order that release, regardless of the legal status of Guantanamo.

United States v. Brown, 148 F. Supp. 2d 191, 198 (E.D.N.Y. 2001), *abrogated on other grounds by United States v. Garcia-Jurado*, 281 F. Supp. 2d 498 (E.D.N.Y. 2003); *Matter of Badalamenti*, 19 I&N Dec. 623, 627 (BIA 1988). Because such aliens are not applicants for admission, they are not subject to exclusion or deportation proceedings, *Brown*, 148 F. Supp. 2d at 198, and such aspects of immigration law have no meaningful relevance to them. *See also Matter of Yam*, 16I. & N. Dec. 535, 537 (BIA 1978) ("[a]n alien does not effect an entry into the United States unless, while free from actual or constructive rerstraint, he crosses into the territory of the United States"; where noncitizen had not entered the United States voluntarily, the "immigration judge was without jurisdiction to determine the issue of deportability.")

The Board of Immigration Appeals in *Badalamenti* addressed an analogous situation to that of the Uighurs. In *Badalamenti*, an Italian citizen was extradited to the United States "against his will," for the purpose of criminal prosecution. *See Badalamenti*, 19 I&N Dec. at 626. After Mr. Badalamenti was acquitted of the charges against him, the Government revoked his parole, and immediately instituted removal proceedings. *Id.* at 625-27. The Board of Immigration Appeals explained that normally "when the purpose of parole has been served, . . . [an alien] shall continue to be dealt with in the same manner as that of any other applicant for admission," and will "at some point become subject to exclusion proceedings as an applicant for admission." *Id.* at 626. However, the Board was "not satisfied that Mr. Badalamenti [was] an applicant for admission to the United States" because "[h]e was brought here against his will." *Id.* Furthermore, the Board held that Mr. Badalamenti would not become an applicant for admission until after he had been given a reasonable opportunity to depart the country voluntarily. The Board declined to identify the length of time required, but noted that relevant factors included "any particular difficulties the alien may have in departing," and "[a]ny evidence that the United States Government impeded his efforts to depart."

Id. at 627. The Board's interpretation of the immigration laws receive *Chevron* deference, *INS v. Aguirre-Aguirre*, 526 U.S. 415, 424-25 (1999); *Chevron, USA, Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 (1984).

Here, the Uighurs face "particular difficulties" in departing due at least in part to the Government's actions.[3] The Uighurs cannot physically leave, because the Government currently holds them in prison in Guantanamo. And, as the Government has acknowledged, the Uighurs cannot return to their native country, China, because there they would face persecution and possible torture (in part due to the U.S. Government's identification of them as Uighur separatists). *See* Appellants' Br. at 8 (citing J.A. 425–26, 437–38, 440, 491, 503–505; 528, 538–40). Nor will any other country accept the Uighurs, at least in part because the Government has previously designated them "enemy combatants," essentially labeling them terrorists. *See* Opinion 12, J.A. 1611. To the extent that the Government has impeded an alien from departing the country, as it has here, it cannot then detain the alien for not departing; our law does not compel the impossible. *See Matter of C-C-*, 3 I&N Dec. 221, 222 (BIA 1948) (holding under the doctrine of impossibility that an alien held in custody during trial could not be deported once acquitted for overstaying his visa);

While the Courts of Appeals have not addressed this legal issue, the Second Circuit has found that affirmative action by the government to entice or bring a non-citizen to the United States may confer protection under the Constitution. *See United States ex rel. Paktorovics v. Murff*, 260

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[3] The Government's argument that it detains the Uighurs only to prevent them from voluntarily entering the territory of the United States takes too simplistic a view of the Uighurs' circumstances. The Uighurs are not *voluntarily* seeking entry to the United States, and they are not seeking admission to the United States at all; as *Amici* understand their position, the Uighurs only seek release from prison. The Government has placed them in a Catch-22 position where the only effective release is within the United States' geographical borders. But this cannot be held against the Uighurs. If the only door out of their legally unjustified prison leads across the United States' geographical borders, the Uighurs must be permitted to take that route.

F.2d 610 (2d Cir. 1958). In *Paktorovics*, the Court found that a non-citizen had a Fifth Amendment due process right to a hearing prior to the revocation of his parole, despite the fact that he was "outside" the United States under the entry doctrine and, therefore, generally would not be entitled to such a hearing. The Court distinguished Paktorovics's situation from *Shaughnessy v. United States ex rel. Mezei,* 345 U.S. 206 (1953), by noting that "Paktorovics was invited here pursuant to the announced foreign policy of the United States as formulated by the President," and reinforced by Congress. *Paktorovics,* 260 F.2d at 614. The court concluded that "the tender of such an invitation and its acceptance by [Paktorovics]" effected "a change in the status of Paktorovics sufficient to entitle him to the protection of our Constitution." *Id.* Of course, the Uighurs did not respond to an "invitation" as did Paktorovics, but the Government affirmatively brought them to Guantanamo and detained them there for almost seven years, approximately five years after the Government determined that the majority of them were eligible for release. *See* Opinion 3, J.A. 1602.

The Government, citing *United States v. Verdugo-Urquidez,* 494 U.S. 259, 274–75 (1990), argues that the Uighurs' lack of a voluntary connection to the United States cuts against constitutional status. That argument misreads *Verdugo*. First, *Verdugo* found that the Fourth Amendment did not apply to the search of a Mexican resident-citizen's home *in Mexico*. *Id.* at 274–75. It said nothing about an alien's constitutional rights while inside the jurisdiction of the United States. *See id.* at 264. To the contrary, Justice Kennedy expressly noted this important limitation on the decision: "The United States is prosecuting a foreign national in a court established under Article III, and all of the trial proceedings are governed by the Constitution. All would agree, for instance, that the dictates of the Due Process Clause of the Fifth Amendment protect the [alien] defendant." *Id.* at 278 (Kennedy, J., concurring). Second, the Supreme Court noted that Fourth Amendment violations are unique because "a violation of the Amendment is 'fully accomplished' at

the time of an unreasonable governmental intrusion. . . . [T]herefore, if there were a violation, it occurred solely in Mexico." *Verdugo*, 494 U.S. at 264. Here, in contrast, the violation was not accomplished elsewhere, but is continuing, and for purposes of applying habeas protections to individuals detained from the Afghanistan conflict, "[i]n every practical sense Guantanamo is not abroad; it is within the constant jurisdiction of the United States." *Boumediene*, 128 S. Ct. at 2261.

The Government also relies on *Sale v. Haitian Centers Council, Inc.* to argue that it is irrelevant under immigration law whether aliens are involuntarily brought to the United States. 509 U.S. 155 (1993). The Government posits that even though the Haitian and Cuban migrants were brought to Guantanamo involuntarily, this "had no effect on the Government's authority to exclude them from the United States." Appellants' Br. at 44. However, the Government ignores the fact that while the migrants in *Sale* were indeed diverted to Guantanamo Bay, they were desperately and voluntarily trying to enter the United States to seek asylum protection when they were diverted. *See Sale*, 509 U.S. at 162–63 (detailing drowning deaths of Haitian refugees attempting to reach U.S. territories). Unlike the Haitian refugees, the Uighur prisoners had no intention of traveling to the United States—they were abducted and forcibly taken to Guantanamo Bay. Because *Sale* addresses aliens willingly seeking to enter the United States, *Badalamenti* remains the controlling precedent for aliens involuntarily brought to the United States.

Because the Uighurs were brought involuntarily to Guantanamo Bay, and were exonerated of the charges against them, the immigration laws present no obstacle to the Uighurs' release into the United States to remedy their current detention.

B. The District Court's Order Does not Unlawfully Challenge The Government's Power Under Immigration Law But Only Provides For Release Under Habeas Corpus.

The District Court's order made no determination regarding the immigration status of the Uighurs. Rather, the District Court exercised its authority in habeas corpus proceedings. Opinion 10-17, J.A. 1609-16. The District Court did prohibited the immediate use of detention authorized by the Department of Homeland Security (DHS). It did not prohibit the institution of removal proceedings at some point in the future, and it made no final orders regarding when, or under what conditions, the Uighur detainees could be brought into DHS custody. *See id.* Thus, rather than impermissibly intruding on the power of the Executive, the District Court's order left the Uighurs' legal status an open question to be determined upon the petitioners' appearance in Judge Urbina's courtroom, where a representative from DHS will be present to advocate that agency's interests. Transcript 65, J.A. 1597.

II. 8 U.S.C. § 1182 DOES NOT BAR THE RELEASE OF THE UIGHURS INTO THE UNITED STATES

The Government argues that the Uighurs have no right to admission under the immigration laws, and contends that immigration law bars the Uighurs' release into the United States. Appellants' Br. at 27-31, 51-52; 8 U.S.C. § 1182. However, Supreme Court precedent recognizes that federal courts have the authority to release non-citizens from detention into the United States regardless of whether they are admissible under § 1182. *See Clark v. Martinez*, 543 U.S. 371 (2005). Furthermore, the release order does not admit the Uighurs into the United States for purposes of immigration law. Indeed, immigration law similarly provides for the parole of inadmissible aliens into the United States, without changing their immigration status. The District Court's order does not preclude the Government from instituting removal proceedings or taking other action under

immigration law to exclude the Uighurs. Nonetheless, becauseremoval is not substantially likely in the reasonably foreseeable future, immigration law would forbids the Government from indefinitely detaining the Uighurs pending completion of such proceedings. Furthermore, the District Court order does not preclude the Government from imposing reasonable supervision and conditions on any release.

A. Federal Courts May Order Release Of Aliens Inadmissible Under 8 U.S.C. § 1182 Without Impacting Their Legal Status.

The Supreme Court has made clear that federal courts have the authority to order the release of non-citizens from detention into the United States—including non-citizens inadmissible under the immigration laws. *See Boumediene*, 128 S. Ct. 2229; *Martinez*, 543 U.S. 371.

In *Martinez*, the Supreme Court held that aliens could not be indefinitely detained, but must be presumptively released from detention into the United States after six months of detention, even though the aliens in *Martinez* were inadmissible under immigration law for having committed serious crimes. 543 U.S. 371. *Martinez* affirms the flexible nature of habeas corpus remedies, including the power to order the release from detention an inadmissible non-citizen into the United States. *Id.* at 374. As the *Boumediene* Court observed, "common-law habeas was, above all, an adaptable remedy", and one that is not "static, narrow, [or] formalistic. . . ." 128 S. Ct. at 2267 (citation omitted). As the immigration laws did not prevent releasing inadmissible non-citizens into the United States in *Martinez*, so too the Uighurs' purportedly inadmissible status should not bar their release from detention into the United States. In addition, the District Court's order of release

does not "admit" the Uighurs for purposes of immigration law or otherwise confer legal status.[4] *See Martinez*, 543 U.S. at 386.

The Government seeks to distinguish *Martinez* by asserting that it applied a provision of the immigration laws that is not at issue in this case. Contrary to the Government's reading, however, *Martinez* sets forth the broad principle that when the Government lacks a continued statutory basis for detaining inadmissible aliens, it must release them. Furthermore, the Court reiterated, in *Zadvydas v. Davis*, 533 U.S. 678 (2001), that statutes authorizing immigration detention ought not to be read to authorize indefinite detention because such a reading "would approach constitutional limits." *Martinez*, 543 U.S. at 384; *see Zadvydas*, 533 U.S. at 696, 699 (applying doctrine of constitutional avoidance because allowing indefinite detention would present "a serious constitutional threat" to the alien's rights under due process). Indeed, courts should not interpret immigration statutes to take away the constitutional rights of habeas corpus unless Congress expressly stated such intent. *I.N.S. v. St. Cyr*, 533 U.S. 289 (2001). Under the Court's rulings in both *Martinez* and *Boumediene*, federal courts have the authority in habeas corpus proceedings to order the release from detention of inadmissible non-citizens. Nothing in § 1182 nullifies such individual's habeas corpus rights, and § 1182 should not be construed to authorize that result.

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[4] Given that the Uighurs did not seek refugee status, 8 U.S.C. § 1157, nor did the District Court grant that status, the Government's reference to 8 U.S.C. § 1252(a)(2)(B)(ii) is inapt. Appellants' Br. at 30 n. 5. Moreover, 8 U.S.C. § 1252(a)(B)(ii) only precludes review of discretionary decisions, not legal or constitutional matters. *See e.g., Nolan v. Holmes*, 334 F.3d 189, 194 (2d. Cir. 2003) ("purely legal challenge" of statutory construction justiciable, not within purview of § 1252(a)(2)(B)); *Gonzalez-Oropeza v. Attorney Gen.*, 321 F.3d 1331, 1333 (11th Cir. 2003) ("Notwithstanding this jurisdictional bar ... § 1252(a)(2)(B) allows review of substantial constitutional challenges to the INA"); *Sierra v. I.N.S.*, 258 F.3d 1213, 1217 (10th Cir. 2001) ("It is never within the Attorney General's discretion to act unconstitutionally.").

B. Immigration Law Further Reflects That The Uighurs Could Be Paroled Into The United States Without Determining Admissibility Under 8 U.S.C. § 1182 Or Their Legal Status.

The Government argues that the District Court erred in granting the *release* of the Uighurs into the United States, because (it argues) they are inadmissible under 8 U.S.C. § 1182(a). As noted by other amici, the Government could comply with District Court's order, if it chose, by paroling the Uighurs into the United States. 8 U.S.C. § 1182(d)(5)(A). Section 1182 makes clear that such parole would not effect an admission of the Uighurs into the United States. 8 U.S.C. § 1182(d)(5)(A) ("[S]uch parole of such alien shall not be regarded as an admission of the alien. . . . ").

Further, Supreme Court precedent plainly establishes that parole does not require admission of the alien, and confers no legal status. *See Leng May Ma*, 357 U.S. at 190, *superseded in part by statute*, Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009, *as recognized in Fieran v. I.N.S.*, 268 F.3d 340, 343–44 (6th Cir. 2001) ("The parole of aliens seeking admission is simply a device through which needless confinement is avoided while administrative proceedings are conducted. It was never intended to affect an alien's status."); *Kaplan v. Tod*, 267 U.S. 228, 229-30 (1925) (inadmissible alien paroled into the United States for over ten years held not to have made "entry" under immigration law). Accordingly, the Uighurs' § 1182 admissibility is irrelevant to the determination of whether they could be released into the United States under habeas corpus.

C. Regardless Of Whether The Uighurs Were Released Or Paroled Into The United States, The Government Could Pursue Removal Proceedings, Provided They Are Not Unlawfully Detained.

Releasing the Uighurs into the United States does not preclude the Government from seeking their subsequent removal, and nothing in the District Court's order is to the contrary. Upon their arrival, however, the Government may not simply detain the Uighurs anew under the pretext of