

No. 08-1234

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In the  
**Supreme Court of the United States**

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JAMAL KIYEMBA, *et al.*,  
*Petitioners,*

v.

BARACK H. OBAMA, *et al.*,  
*Respondents.*

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**On Writ of Certiorari to the United States Court of  
Appeals for the District of Columbia Circuit**

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**BRIEF OF SCHOLARS OF NINETEENTH-  
CENTURY AMERICAN LEGAL HISTORY AS  
*AMICUS CURIAE* IN SUPPORT OF  
PETITIONERS**

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**STATEMENT OF INTEREST OF THE *AMICI*  
*CURIAE*<sup>1</sup>**

Several scholars of nineteenth-century American legal history submit this brief *amicus curiae* in support of Petitioners, to explore a prominent legal contest in that era which illuminates this Court's authority and duty to release unlawfully detained prisoners in the United States.

**SUMMARY OF THE ARGUMENT**

An important precedent of this Court contradicts the government's assertion that the judiciary lacks the power to release the Uighurs in the United States. This brief discusses a notorious case in which this Court ordered just such a release. In 1841, the Court in *United States v. Libellants & Claimants of the Schooner Amistad* ("*Schooner Amistad*")<sup>2</sup> ordered a group of native Africans to be released in Connecticut, rejecting demands by the executive that they be returned either to Spanish authorities or to the executive for deportation to Africa. In *Schooner Amistad* the rule of law triumphed over domestic political passions and international pressure. The decision illustrates the power and duty of the civil courts to order the

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<sup>1</sup> All parties consent to the filing of this *amicus curiae* brief. Pursuant to Supreme Court Rule 37.6, the *amici* state that no counsel for any party authored this brief in whole or in part, and no person or entity other than the *amici curiae* made a monetary contribution to the preparation or submission of this brief.

<sup>2</sup> 40 U.S. 518 (1841).

release of wrongly-detained prisoners in the United States.

## I. The *Amistad*

### The Kidnapping And Descent Into Slavery

In the spring of 1839, a West African farmer named Cinque<sup>3</sup> was kidnapped,<sup>4</sup> taken to a slave prison in Sierra Leone, and from there transported to Cuba on the slave ship *Teçora* with other kidnapped Africans.<sup>5</sup> During the months-long voyage to Havana, the captives were chained together and packed tightly into the ship's hold.<sup>6</sup> Many perished.<sup>7</sup> Once near the Cuban shore, the Africans had to be smuggled onto the island because Spain had outlawed the importation of slaves.<sup>8</sup>

In Havana, Cinque and forty-eight other captives were purchased by Don Jose Ruiz, a Spaniard; Don Pedro Montez, another Spanish

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<sup>3</sup> Cinque's African name was Sengbeh Pieh. Sengbeh was given the Spanish name "Joseph Cinque" or "Cinque" before boarding the *Amistad*. See Michael S. Lief & H. Mitchell Caldwell, *The Amistad Odyssey, in And The Walls Came Tumbling Down* 61, 64 (2004); see also, Howard Jones, *Mutiny on the Amistad: The Saga of a Slave Revolt and Its Impact on American Abolition, Law, and Diplomacy* 23 (rev. ed. 1997). The name Cinque is used throughout because it is the name used in the Supreme Court decision.

<sup>4</sup> *Schooner Amistad*, 40 U.S. at 529.

<sup>5</sup> Lief & Caldwell, *supra* note 3, at 63–64; see also, Jones, *supra* note 3, at 15.

<sup>6</sup> Lief & Caldwell, *supra* note 3, at 64; see also, Jones, *supra* note 3, at 15.

<sup>7</sup> Jones, *supra* note 3, at 15, 23.

<sup>8</sup> *Id.* at 16.

subject, purchased four African children.<sup>9</sup> Both men intended to transport the fifty-three Africans to another Cuban port in the schooner *Amistad*,<sup>10</sup> though only *ladino* slaves—slaves long domiciled on the island—could legally be transported within Spanish territory.<sup>11</sup> Despite that law, Montez and Ruiz changed the African names of their captives to Spanish names and acquired papers permitting transport from the Governor General of Cuba. These papers listed the Africans as property.<sup>12</sup>

### A Brief Taste Of Freedom

Once aboard the *Amistad*, Cinque and his fellow captives were again crowded below deck in fetid, brutal conditions.<sup>13</sup> Several days into the journey, Cinque slipped his chains, liberated his fellow captives, killed the ship's captain and cook, and seized control of the schooner.<sup>14</sup> The Africans spared Ruiz and Montez to steer the ship back to

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<sup>9</sup> *Schooner Amistad*, 40 U.S. at 526. Ruiz paid \$450 for each African. See Lief & Caldwell, *supra* note 3, at 64; see also, Jones, *supra* note 3, at 23.

<sup>10</sup> Jones, *supra* note 3, at 23.

<sup>11</sup> *Gedney v. L'Amistad*, 10 F. Case. 141, 146 (D. Conn. 1840) (No. 5,294a). In his testimony before the district court, Lt. Madden, British Superintendent of Liberated Africans in Havana, described *ladinos* as Africans long settled in Cuba and introduced to the island prior to 1820. See *Schooner Amistad*, 40 U.S. at 534.

<sup>12</sup> *Schooner Amistad*, 40 U.S. at 530–31, 587.

<sup>13</sup> *Id.* at 526; see also, Lief & Caldwell, *supra* note 3, at 64–65; Jones, *supra* note 3, at 23–24.

<sup>14</sup> *Schooner Amistad*, 40 U.S. at 529, 588; Lief & Caldwell, *supra* note 3, at 65.

Africa.<sup>15</sup> The Spaniards did so by day, but at night turned the *Amistad* west to increase their chances of encountering American coastal ships.<sup>16</sup> After several weeks, the *Amistad* was taken off the coast of Long Island by the *USS Washington*, under the command of Lieutenant Commander Thomas Gedney.<sup>17</sup> Gedney ordered the ship towed to New London, Connecticut for salvage.<sup>18</sup>

The United States Marshal and the United States District Judge (Andrew Judson) came to New London to conduct an inquiry.<sup>19</sup> Ruiz and Montez filed complaints alleging that the Africans committed murder and piracy.<sup>20</sup> Documents found on board the *Amistad* listed the Africans as the property of Ruiz and Montez.<sup>21</sup> Judge Judson

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<sup>15</sup> Jones, *supra* note 3, at 2; Lief & Caldwell, *supra* note 3, at 65.

<sup>16</sup> Lief & Caldwell, *supra* note 3, at 65.

<sup>17</sup> *Schooner Amistad*, 40 U.S. at 588. *See also*, Lief & Caldwell, *supra* note 3, at 67; Jones, *supra* note 3, at 28.

<sup>18</sup> *Schooner Amistad*, 40 U.S. at 530; *see also*, Lief & Caldwell, *supra* note 3, at 67; Douglas O. Linder, *Salvaging Amistad*, 31 J. of Mar. L. & Com. 559, 565 (2000); Jones, *supra* note 3, at 28–29. The decision to take the Africans to Connecticut rather than New York was a calculated one. New York had outlawed slavery and its admiralty court would not have awarded the captain and crew salvage on the *Amistad* “slaves.”

<sup>19</sup> John Warner Barber, *A History of the Amistad Captives* (1840), available at <http://amistad.mysticseaport.org/library/misc/arber.1840.amis.capt.html>.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

ordered that Cinque and the others be detained pending trial.<sup>22</sup>

### **The Criminal Hearing: Spanish Interference And Executive Intervention**

To provide a legal defense for the Africans, prominent abolitionists formed the Committee on Behalf of the African Prisoners.<sup>23</sup> In September 1839 they enlisted several attorneys, including Roger S. Baldwin, an active abolitionist and the grandson of a signer of the Declaration of Independence.<sup>24</sup>

As the case gained notoriety, the administration of President Martin Van Buren grew concerned about it. The presidential election was approaching and the Administration wished to avoid controversy over slavery.<sup>25</sup> Moreover, the Spanish government was pressing for the return of the *Amistad* and her cargo, including the Africans,<sup>26</sup> who Spain claimed as “merchandise” under Pinckney’s Treaty of 1795 (“1795 Treaty” or “Treaty”).<sup>27</sup> The

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<sup>22</sup> Lief & Caldwell, *supra* note 3, at 68, 70. *See also*, Linder, 31 J. of Mar. L. & Com. at 573; Jones, *supra* note 3, at 29.

<sup>23</sup> Lief & Caldwell, *supra* note 3, at 71; *see also*, Jones, *supra* note 3, at 39.

<sup>24</sup> Lief & Caldwell, *supra* note 3, at 71–72; *see also*, Jones, *supra* note 3, at 36–37.

<sup>25</sup> Jones, *supra* note 3, at 45–50, 53, 56–57.

<sup>26</sup> *Id.* at 50; *see also*, Lief & Caldwell, *supra* note 3, at 73.

<sup>27</sup> Article nine of the treaty, upon which the Government principally relied provided “that all ships and merchandise, of what nature soever, which shall be rescued out of the hands of any pirates or robbers, on the high seas, shall be brought into some port of either state, and shall be delivered to the custody

Spanish minister insisted to the American Secretary of State, John Forsyth, that the United States must return the Africans to stand trial in Cuba for murder and mutiny.<sup>28</sup> The Spaniard also argued that American courts had no jurisdiction over the Africans or the schooner.<sup>29</sup>

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of the officers of that port, in order to be taken care of and restored entire to the true proprietor, as soon as due and sufficient proof shall be made concerning the property thereof.” *Schooner Amistad*, 40 U.S. at 592. If the *Amistad* captives were deemed “slaves,” they were property and not human beings and therefore fell within the category of “merchandise” pursuant to Pinckney’s Treaty. The government’s case also depended on American authorities having rescued the Africans from “pirates and robbers” on the “high seas” which was also highly problematic. The Treaty was later upheld by the Adams-Onís Treaty of 1819. Jones, *supra* note 3, at 51.

<sup>28</sup> Letter from A. Calderon De La Barca, Spanish Minister, to John Forsyth, U.S. Sec’y of State (Sept. 6, 1839), *reprinted in* U.S. Congress, House Executive Documents, No. 185, 26th Congress, 1st Session at 6–10 (1840), *available at* [http://books.google.com/books?id=G68TAAAYAAJ&pg=RA3-PR1-IA1&lpg=RA3-PR1-IA1&dq=%22message+from+the+president%22+%22December+24,+1839%22&source=bl&ots=W5LPCjp0zg&sig=Kxi4NM0pnmKiJru4qtxjACsV-X4&hl=en&ei=wTQYS7\\_ZD4uutgeQ48TfAw&sa=X&oi=book\\_result&ct=result&resnum=7&ved=0CBcQ6AEwBg#v=onepage&q=&f=false](http://books.google.com/books?id=G68TAAAYAAJ&pg=RA3-PR1-IA1&lpg=RA3-PR1-IA1&dq=%22message+from+the+president%22+%22December+24,+1839%22&source=bl&ots=W5LPCjp0zg&sig=Kxi4NM0pnmKiJru4qtxjACsV-X4&hl=en&ei=wTQYS7_ZD4uutgeQ48TfAw&sa=X&oi=book_result&ct=result&resnum=7&ved=0CBcQ6AEwBg#v=onepage&q=&f=false) (select PDF option).

<sup>29</sup> *Id.* In the letter, the Spanish minister referred to the rescue of the *Amistad* stating: “The act of humanity thus performed would have been complete, had the vessel at the same time been set at liberty, and the negroes sent to be tried by the proper tribunal, and by the violated laws of the country of which they are subjects.” *Id.* at 7. The Spanish minister goes on to refer to the district court as an “incompetent tribunal.” *Id.* at 7, 9.

In a meeting with District Attorney, William Holabird, the Spanish consul in Boston demanded that the Africans be returned to Cuba without recourse to the courts.<sup>30</sup> On September 9, 1839, Holabird wrote Secretary Forsyth requesting permission to deliver the Africans to the Spanish authorities before court proceedings began.<sup>31</sup> The Secretary replied that the President was being consulted on the matter; in the meantime, Holabird should “take care that no proceeding of [the] circuit court or of any other judicial tribunal places the vessel, cargo, or slaves *beyond the control of the Federal Executive.*”<sup>32</sup>

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<sup>30</sup> Lief & Caldwell, *supra* note 3, at 73.

<sup>31</sup> Letter from W.S. Holabird, Esq., U.S. Attorney for the District of Connecticut, to John Forsyth, U.S. Sec’y of State (Sept. 9, 1839), *reprinted in* U.S. Congress, House Executive Documents, No. 185, 26th Congress, 1st Session at 39 (1840), *available at* [http://books.google.com/books?id=G68TAAAYAAJ&pg=RA3-PR1-IA1&lpg=RA3-PR1-IA1&dq=%22message+from+the+president%22+%22December+24,+1839%22&source=bl&ots=W5LPCjp0zg&sig=Kxi4NM0pnmKiJru4qtxjACsV-X4&hl=en&ei=wTQYS7\\_ZD4uutgeQ48TfAw&sa=X&oi=book\\_result&ct=result&resnum=7&ved=0CBcQ6AEwBg#v=onepage&q=&f=false](http://books.google.com/books?id=G68TAAAYAAJ&pg=RA3-PR1-IA1&lpg=RA3-PR1-IA1&dq=%22message+from+the+president%22+%22December+24,+1839%22&source=bl&ots=W5LPCjp0zg&sig=Kxi4NM0pnmKiJru4qtxjACsV-X4&hl=en&ei=wTQYS7_ZD4uutgeQ48TfAw&sa=X&oi=book_result&ct=result&resnum=7&ved=0CBcQ6AEwBg#v=onepage&q=&f=false) (select PDF option).

<sup>32</sup> Letter from John Forsyth, United States Secretary of State, to W.S. Holabird, Esq., U.S. Attorney for the District of Connecticut (Sept. 11, 1839), *reprinted in* U.S. Congress, House Executive Documents, No. 185, 26th Congress, 1st Session at 40 (1840) (emphasis added), *available at* [http://books.google.com/books?id=G68TAAAYAAJ&pg=RA3-PR1-IA1&lpg=RA3-PR1-IA1&dq=%22message+from+the+president%22+%22December+24,+1839%22&source=bl&ots=W5LPCjp0zg&sig=Kxi4NM0pnmKiJru4qtxjACsV-X4&hl=en&ei=wTQYS7\\_ZD4uutgeQ48TfAw&sa=X&oi=book\\_result&ct=result&resnum=7&ved=0CBcQ6AEwBg#v=onepage&q=&f=false](http://books.google.com/books?id=G68TAAAYAAJ&pg=RA3-PR1-IA1&lpg=RA3-PR1-IA1&dq=%22message+from+the+president%22+%22December+24,+1839%22&source=bl&ots=W5LPCjp0zg&sig=Kxi4NM0pnmKiJru4qtxjACsV-X4&hl=en&ei=wTQYS7_ZD4uutgeQ48TfAw&sa=X&oi=book_result&ct=result&resnum=7&ved=0CBcQ6AEwBg#v=onepage&q=&f=false) (select PDF option).

The case before the circuit court presented questions of criminal law, property law, international law, and admiralty. Criminal charges were pending against the Africans for the killing of the *Amistad's* captain and cook.<sup>33</sup> Ruiz and Montez claimed the Africans as their property, pointing to the documents found aboard the ship, though the Africans insisted they were free men who were kidnapped in violation of Spanish law and natural law.<sup>34</sup> Pressing a claim for salvage in admiralty, Lt. Cdr. Gedney and others claimed a share of the value of the ship and cargo.<sup>35</sup>

District Attorney Holabird sought relief in the alternative.<sup>36</sup> If the Africans were slaves, he argued, the 1795 Treaty applied and the Africans should be turned over to the executive branch for return to Spain. If the Africans were not slaves, he asked that they be remanded to the executive for return to Africa under an 1819 U.S. law barring the importation of slaves.<sup>37</sup>

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<sup>33</sup> Lief & Caldwell, *supra* note 3, at 74.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*; see also, Linder, 31 J. of Mar. L. & Com. at 570–71.

<sup>36</sup> Jones, *supra* note 3, at 67.

<sup>37</sup> *Id.* At one point in the proceeding, Holabird conceded that the Africans were “free men . . . brought within the jurisdiction of the United States.” This unexpected concession surprised all parties because it undermined Spain’s property claims. The change of position was likely an attempt to minimize political repercussions occasioned by growing public sympathy for the Africans’ plight. Whether the Africans were sent to Cuba or back to Africa, they would be removed from the United States. *Id.* at 76–77, 113.

In September 1839, Justice Smith Thompson ruled, while riding circuit, that the circuit court could not hear the criminal case because the alleged crimes were committed against Spanish subjects, aboard a Spanish vessel, and on the high seas.<sup>38</sup> He ordered the Africans back to their cells<sup>39</sup> until the district court could decide whether Montez and Ruiz held any property right in them.<sup>40</sup>

### The Civil Trial

In January 1840, District Judge Judson ruled that the Africans were “born free, and ever since have been, and still of right are free, and not slaves.”<sup>41</sup> Judson also found that the passports issued by the Governor General of Cuba, indicated the Africans were *ladino* slaves owned by Ruiz and Montez, “did not truly describe the said persons.”<sup>42</sup> He ordered the Africans “delivered to the President of the United States to be transported to Africa” under the 1819 statute.<sup>43</sup> At the request of the President, District Attorney Holabird appealed

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<sup>38</sup> Lief & Caldwell, *supra* note 3, at 74; Linder, 31 J. of Mar. L. & Com. at 573.

<sup>39</sup> Lief & Caldwell, *supra* note 3, at 74; Linder, 31 J. of Mar. L. & Com. at 573.

<sup>40</sup> The Judge reasoned that because slavery “is not only sanctioned by foreign powers but is recognized by the Supreme Court,” he could not, as a matter of law, hold that the Africans were not slaves. Lief & Caldwell, *supra* note 3, at 74; *see also*, Linder, 31 J. of Mar. L. & Com. at 573.

<sup>41</sup> *Schooner Amistad*, 40 U.S. at 529.

<sup>42</sup> *Id.* at 531; *see also*, Jones, *supra* note 3, at 131.

<sup>43</sup> *Schooner Amistad*, 40 U.S. at 531–32, 590.

several elements of the district court ruling.<sup>44</sup> The circuit court upheld the decisions granting the Africans their freedom and remanding them to the executive for return to Africa.<sup>45</sup> The government sought review by this Court.<sup>46</sup>

### **This Court Orders the Africans Released In the State of Connecticut**

Before this Court, former President John Quincy Adams and Roger Baldwin appeared for the Africans. In March 1841, this Court held that the Africans were never the slaves of a Spanish subject, so they were not merchandise under the 1795 Treaty.<sup>47</sup> The Court also found that because the Africans were “not slaves, but [ ] kidnapped Africans, who, by the laws of Spain itself, are entitled to their

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<sup>44</sup> Letter from John Forsyth, U.S. Sec’y of State, to W. S. Holabird, Esq., U.S. Attorney for the District of Connecticut (Jan. 17, 1840), *reprinted in* U.S. Congress, House Executive Documents, No. 185, 26th Congress, 1st Session at 57 (1840), *available at* [http://books.google.com/books?id=G68TAAAYAAJ&pg=RA3-PR1-IA1&lpg=RA3-PR1-IA1&dq=%22message+from+the+president%22+%22December+24,+1839%22&source=bl&ots=W5LPCjp0zg&sig=Kxi4NM0pnmKiJru4qtxjACsV-X4&hl=en&ei=wTQYS7\\_ZD4uutgeQ48TfAw&sa=X&oi=book\\_result&ct=result&resnum=7&ved=0CBcQ6AEwBg#v=onepage&q=&f=false](http://books.google.com/books?id=G68TAAAYAAJ&pg=RA3-PR1-IA1&lpg=RA3-PR1-IA1&dq=%22message+from+the+president%22+%22December+24,+1839%22&source=bl&ots=W5LPCjp0zg&sig=Kxi4NM0pnmKiJru4qtxjACsV-X4&hl=en&ei=wTQYS7_ZD4uutgeQ48TfAw&sa=X&oi=book_result&ct=result&resnum=7&ved=0CBcQ6AEwBg#v=onepage&q=&f=false) (select PDF option).

<sup>45</sup> *Schooner Amistad*, 40 U.S. at 590.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 593. The Court noted that “[i]t is plain beyond controversy, if we examine the evidence, that these negroes never were the lawful slaves of Ruiz or Montez, or any other Spanish subjects. They are natives of Africa, and were kidnapped there, and were unlawfully transported to Cuba, in violation of the laws and treaties of Spain, and the most solemn edicts and declarations of that government.”

freedom,” they were not subject to the Treaty as pirates or robbers.<sup>48</sup> The Court rejected the government’s contention that it could not look behind the documents issued by Cuba’s Governor General.<sup>49</sup>

In the portion of its decision most important for this case, the Court declared that because the Africans were never slaves, there was “no ground to assert that the case comes within the purview of the act of 1819, or of any other of our prohibitory slave trade acts.”<sup>50</sup> When the *Amistad* arrived, the Court reasoned, the Africans possessed her and properly asserted their freedom.<sup>51</sup> Those free Africans could not have intended to import themselves into the United States to be sold as slaves.<sup>52</sup> This Court ordered that the Africans “be declared to be free, and be dismissed from the custody of the Court” in Connecticut.<sup>53</sup>

### **This Court May Tailor Remedial Relief to the Facts of A Case.**

Several parallels emerge between the Africans in *Schooner Amistad* and the Petitioners in this case.

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<sup>48</sup> *Id.* at 593–94.

<sup>49</sup> *Id.* at 594–95. The government argued that because the ship, cargo, and Africans were duly documented as belonging to Spanish subjects, the Court should not inquire further. The Court could not assent to this argument and noted that the documents could be impugned for fraud.

<sup>50</sup> *Id.* at 596.

<sup>51</sup> *Id.* at 596–97.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 597.

- Both groups were sold into captivity against their will—the Africans by slave traders, and the Uighurs by Pakistani villagers.<sup>54</sup>
- Both groups were transported hundreds of miles from their homes and detained in American prisons.
- Both groups were considered dangers to the established order—the Africans as purported murderers and pirates, and the Uighurs as purported enemy combatants.
- Both groups had to seek release through the courts of the United States, while controversy swirled around them.
- The efforts of both groups to gain their freedom were opposed by foreign governments—Spain in the *Schooner Amistad litigation*, and China in this case.<sup>55</sup>

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<sup>54</sup> *In re Guantanamo Bay Detainee Litig.*, 581 F. Supp. 2d 33, 35 (D.D.C. 2008).

<sup>55</sup> See Tim Golden, *Chinese Leave Guantánamo for Albanian Limbo*, N.Y. Times, June 10, 2007, available at <http://www.nytimes.com/2007/06/10/world/europe/10resettle.html> (“American diplomats say they have asked nearly 100 countries to provide asylum to the detainees, only to find that Chinese officials have warned some of the same countries not to accept them.”); see also, Reuters, *China Demands U.S. Send Guantanamo Uighurs Back*, June 11, 2009, <http://reuters.com/articlePrint?articleId=USTRE55A1QX20090611> (The Chinese Foreign Ministry has stated that “China demands the U.S. side implement relevant resolutions of the UN Security Council as well as live up to international anti-terrorism obligations, stop the transfer of these subjects to any third country and repatriate them to China.”).

The most important parallel, though, is in the relief ordered in *Schooner Amistad*. Though this Court's decision did not involve a habeas petition, it nonetheless illustrates the courts' power in this case. *Schooner Amistad* found that because the Africans were not slaves, they could not be returned to their supposed Spanish owners under the 1795 Treaty, nor could they be returned to Africa under the 1819 statute.<sup>56</sup> The Treaty and the slave trade laws did not apply to them. Consequently, the Africans were declared free and released in Connecticut.<sup>57</sup>

In this case, the government insists that they cannot release the Uighurs in this country because the immigration laws give the executive branch the power to exclude them.<sup>58</sup> Yet the Uighurs are no more immigrants than the *Amistad* Africans were slaves. The Uighurs never applied to enter the United States as immigrants. They were brought into American jurisdiction by force, just like the *Amistad* Africans. The immigration statutes are as irrelevant to the Uighurs as the 1795 Treaty and the 1819 statute were to the *Amistad* Africans.

## CONCLUSION

The *Schooner Amistad* provides clear precedent for this Court's responsibility to uphold the rule of law when political forces from home and abroad would weaken it. For the foregoing reasons,

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<sup>56</sup> *Schooner Amistad*, 40 U.S. at 593–98.

<sup>57</sup> *Id.* at 597.

<sup>58</sup> Brief for Respondents in Opposition to Writ of Certiorari, at 11–12, *Kiyemba, et al. v. Obama et al.*, No. 08-1234 (May 29, 2009).

and those presented on behalf of Petitioners and those other *amici* supporting them, the decision of the court below should be reversed and the order of the district court reinstated.

Respectfully submitted,

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APPENDIX

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<sup>1</sup> Affiliations of *amici* are listed for identification purposes only. The *amici* submit this brief in their individual capacities; the views expressed herein do not reflect the views of their respective institutions.