

June 25, 2009

By Hand

Hon. William K. Suter,
Clerk
United States Supreme Court
1 First Street N.E.
Washington, D.C. 20543

Re: *Kiyemba v. Obama*, No. 08-1234; conference scheduled today

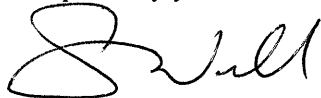
Dear Mr. Suter:

The Solicitor General advised this morning that the President yesterday signed new spending legislation relevant to petitioners' release into the United States. The new legislation is an argument for granting, not denying *certiorari*. At the heart of this case is the question whether *habeas corpus* represents a real check on the political branches. The new legislation sharpens that question.

In another case, a remand to address the new legislation might be the prudent course. But because the Court of Appeals ruled for the government, whether such a remand would illuminate the issues presented here is doubtful. There are no other circuits in which this issue may percolate. And the petitioners are now in their eighth year of imprisonment.

A failure either to affirm or reverse the decision below will leave unsettled a question that goes to the heart of habeas jurisdiction and the decision in *Boumediene v. Bush*, 128 S.Ct. 2229 (2008), and that has broad relevance.¹ The impact of the new act (which appears to be an unlawful suspension) should be addressed in the merits briefing.

Respectfully yours,



Sabin Willett

cc: Hon. Elena Kagan, Solicitor General
Counsel for Petitioners and *Amici*
(each by electronic and first-class mail)

¹ The district courts continue to recognize their powerlessness in the face of *Kiyemba's* command that they may only request, but not require, the release of any Guantanamo prisoner. See, e.g., Memorandum Order, *Al Ginco v. Obama*, No. 05-429 (RJL) (D.D.C. June 22, 2009) (in a case where the government's justification for detention "defies common sense," requiring the government to "take all necessary and appropriate diplomatic steps" to facilitate release).

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