TWO DOLLARS

THE UNITED STATES V.S. IMARI ABUBAKARI OBADELE , I

THE ARTICLE THREE BRIEFS

ESTABLISHING THE LEGAL CASE FOR THE EXISTENCE OF THE BLACK NATION

THE REPUBLIC OF NEW AFRICA IN NORTH AMERICA

The Mutiny Aboard the Amistad, 1839. From The Amistad Murals, 1939.

BRIEFS WRITTEN BY PRESIDENT IMARI ABUBAKARI OBADELE,I
AND ATTY. GAIDI OBADELE (sn MILTON R. HENRY)

FILED IN U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT
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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

CRIMINAL ACTION NO. 4394-N

UNITED STATES OF AMERICA — PLAINTIFF

VS.

IMARI ABUBAKARI OBADELE, I.
f/k/a RICHARD HENRY — DEFENDANT

BRIEF IN SUPPORT OF MOTION TO QUASH INDICTMENT
FOR LACK OF JURISDICTION UNDER ARTICLE III, U.S. CONSTITUTION
BROUGHT BY THE DEFENDANT

Part One:

The Legal Foundation of the Republic of New Africa, New African Citizenship, and the present New African Government

1. Prior to the United States Confiscation Acts of 6 August 1861 and 17 July 1862 and the Emancipation Proclamation, which went into effect on 1 January 1863, "persons" - so denominated by Article One, Section 2, Paragraph 3 of the United States Constitution; Article One, Section 9, Paragraph 1, and Article Four, Section 2, Paragraph 3 of the same Constitution--kept in slavery in the United States were legally held to be a class of property. Those held in slavery were of the African race, since, according to Mr. Chief Justice Taney of the United States Supreme Court,

speaking for the majority in Dred Scott v. Sandford (1857) 19 How 393

> the traffic in slaves in the United States had always been confined to them.

That these enslaved Africans were a class of property prior to the 1863 Emancipation Proclamation is made abundantly clear by the same Chief Justice Taney in Dred Scott v. Sandford, Supra. He said:

> Now...the right of property in a slave is distinctly and expressly affirmed in the Constitution. The right to traffic in it, like any ordinary article of merchandise and property, was guaranteed to the citizens of the United States, in every state that might desire it, for twenty years. And the Government in express terms is pledged to protect it in all future time, if the slave escapes from his owner...And no word can be found in the Constitution which gives Congress a greater power over slave property, or which entitles property of that kind to less protection than property of any other description.

2. However, in 1862, acting under his war powers and "as a fit and necessary war measure for suppressing said rebellion," United States President Abraham Lincoln issued an Emancipation Proclamation, which took effect on 1 January 1863. On that date, with that act, the Chief Executive of the United States significantly enlarged the new class of free men which had been first called into existence by the Confiscation Acts of 6 August 1861 and 17 July 1862 and which theretofore did not exist in United States legal contemplation. Moreover, this new class of free men was not made United States citizens - subsequent United States Congressional debates settled this point beyond doubt - nor did the Acts or the Proclamation which

created this new class in any way include this class inside the American political-social community. This new class clearly was left outside of the American political-social community. The pertinent words of the Emancipation Proclamation are these:

> That on the first day of January, in the year of our Lord one thousand eight hundred and sixty three, all persons held as slaves within any State, or designated part of a State, the people whereof shall then be in rebellion against the United States, shall be then, thenceforward, and forever free; and the Executive Government of the United States, including the military and naval authority thereof, will recognize and maintain the freedom of such persons, and will do no act or acts to repress such persons, or any of them, in any efforts they may make for their actual freedom.
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> And by virtue of the power and for the purpose aforesaid, I do order and declare that all persons held as slaves within said designated States and parts of States are, and henceforward shall be, free; and that the Executive Government of the United States, including the military and naval authorities thereof, will recognize and maintain the freedom of said persons.

3. In January 1865 the United States Congress passed and President Lincoln signed, a proposed Thirteenth Amendment to the United States Constitution, abolishing slavery. That Amendment - which confirmed what the United States Congress and President Lincoln had done in the Confiscation Acts and what Lincoln had done in the Emancipation Proclamation, and went on to extend the abolition of slavery to the whole class of persons held in slavery in the United States - became part of the organic law of the United States when it was ratified by the requisite number of States in

December 1865. Again, like the Confiscation Acts and the Emancipation Proclamation before it, this Amendment confirmed the creation - in legal contemplation - of a new class of free men but, significantly, left this class outside of the American political-social community. Like the Emancipation Proclamation before it, the Thirteenth Amendment contains no statement of political or social rights in the American community which were, by either the Acts, the Proclamation, or the Amendment, conferred by the American community, at that time, upon this former class of property now became a class of free men. And subsequent history makes clear that no conferring of political or social rights in the American community was intended. The new class was simply created and left.

4. But, being composed of free men, as the Proclamation so emphatically insisted and the Amendment confirmed, this new class and its members individually were possessed of rights - irrespective of action or inaction by the American community - simply because they were no longer property but free men. We take as our guide the American Declaration of Independence, the foundation upon which the United States Constitution itself rests. This Declaration tells us that men, as opposed to property, are endowed with certain "unalienable rights" and that among these rights are life and liberty. The new class of men, and its members individually, though left outside of the American political-social community, nevertheless possessed the unalienable right of liberty. Indeed the possession of this right becomes of

immense importance precisely because the new class was left outside of the American political-social community.

5 And what exactly is the right of liberty? Mr. Chief Justice Warren, writing for a unanimous court in the 1954 decision in Bolling v. Sharpe 347 US 497, 98 L.ed 884, 74 S Ct 693, said:

> Although the Court has not assumed to define "liberty" with any great precision, that term is not confined to mere freedom from bodily restraint. Liberty under law extends to the full range of conduct which the individual is free to pursue, and it cannot be restricted except for a proper governmental objective.

6. It is of relevance to remark here that since the new class existed outside of the American political-social community, a "proper governmental objective" could not be determined by reference to the Americans alone: there were now, because of the Confiscation Acts and the Emancipation Proclamation and the Thirteenth Amendment, two separate communities, each with its own view of a proper governmental objective. By definition no limiting of liberty for a class or for individuals who possess liberty as an inherent right can ever occur in a legal sense without the consent of said class or individuals. And, as we shall show, the nationalist portion of the new class never gave such consent to the American community either explicitly or implicitly.

7. Above all the right to liberty inhering in the new class and its individual members necessarily extended to political activity. And the most pressing political matter facing the new class was the matter of its future political construction and/or future political relations. Certainly the liberty of the class would extend to the right to seek

admission, as citizens, to the American community. The right to liberty for the class would extend to the right to return home, to Africa; for, these men were in America as the result of kidnapping and wrongful transportation. The right of liberty would extend to the right to general emigration. And, not least, the right of liberty in the new class would extend to the right to set up an independent State of its own: for, after all, this class had been legally constructed by the Confiscation Acts and the Emancipation Proclamation, and confirmed by the Thirteenth Amendment, outside of the American community, and found itself on "American" soil in great numbers, extreme poverty, enforced ignorance, and severed homeland ties precisely because of wrongful kidnapping, wrongful transportation, and wrongful exploitation, all by the Americans. Importantly, all four options - all four of which would actually be pursued by members of the new class in exercise of their inalienable liberty - were conceded to the new class by the United States Government when first confronted by the existence of the class.

8. In his first message to Congress in December 1865, United States President Andrew Johnson conceded the right of the new class to general emigration, including necessarily the right to return home, to Africa. Said President Johnson: "While their right to voluntary migration and expatriation is not to be questioned, I would not advise their forced removal and colonization."

9. Earlier the United States President Abraham Lincoln, acting under authority given him by the

Confiscation Act of 17 July 1862, sought to colonize slaves freed by the war, in Panama. In this same period Mr. Lincoln received an island from Haiti, by cession, and here he attempted through the Secretary of the Interior, in 1863, to settle members of the new class in an independent state of their own, similar to Liberia. Four hundred members of that portion of the New Class which sought independent Statehood actually went to the island. But the project was ill-supported, and many died. The rest returned to the United States in a United States naval vessel, rejoining their fellows in the struggle to secure full sovereignty for the independent New African nation - but, now, on the soil where they had been for generations. This activity of the American "Executive Government," to use President Lincoln's words, in negotiating with this first Government created in the United States by the nationalist portion of the new class, points clearly to the fact that the American government understood that in addition to the right to join the American community and the right to return home (to Africa) and the right to emigrate elsewhere, the new class also possessed, as a matter of that liberty which is an inalienable right of men, a fourth right: the right to establish formally its own independent nation. Moreover, having worked in conjunction with that nation's Government in the United States in the Haiti-ceded island project, the American Executive Government had given recognition to the independent New African nation that had already

formed among a portion of the new class. Lincoln's action was completely consistent with the obligation which the Emancipation Proclamation placed on the United States to "recognize and maintain the freedom of such persons". It was, moreover, consistent with the directions given by Congress in the Confiscation Act of 1862.

10. In like manner, proceeding under powers granted by the United States Constitution and by Congress in the Confiscation Acts and by the President in the Emancipation Proclamation, other representatives of the United States Executive Government extended recognition to other centers of Government of the New African nation. During the Christmas season of 1864, for instance, United States Secretary of War Edwin McMasters Stanton and United States Army General William Tecumseh Sherman met in Savannah, Georgia, with a black Government Council representing the new class. As a result of these negotiations, General Sherman issued his Special Field Order Number 15, dated 16 January 1865. This order set aside for blacks "the islands from Charleston south, the abandoned rice fields along the rivers for 30 miles back from the seas and the country bordering St. Johns River, Florida." The Order further said "...in the possession of which land the military authorities will afford them protection until such time as they can protect themselves or until Congress shall regulate their title." Further, in accordance with the negotiating position of this Savannah-based Southeast Coast New African Government, General Sherman's Order also provided that "on the islands and in the settlements hereafter to be established, no white persons whatever, unless military

officers and soldiers detailed for duty, will be permitted to reside; and the sole and exclusive management of affairs will be left to the free people themselves, subject only to the United States military authority and the acts of Congress." Forty-thousand members of the new class were settled under this order.

11. Here, then, was the establishment of self-governing New African communities under the protection of the United States on land to which the Americans claimed ultimate title but to which the New Africans had been given possessory title by General Sherman, acting lawfully for the Congress and the President. It must be recalled that the judgment of the United States Congress as expressed in the Wade-Davis bill of 4 July 1864, and confirmed later by the Reconstruction Act of 1867, was that the States in rebellion had all committed "suicide" as States and were now in the status of territories. Under Article Four, Section Three, Paragraph Two of the United States Constitution, Congress had and has "Power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States," and General Sherman - proceeding under the Confiscation Acts and the Emancipation Proclamation - was acting as agent not only of the President but of the Congress. Thus, his transferring of the land to the New African communities was completely in accordance with the law. And the placing of the communities under United States protection with only possessory titles put the New African nation here on a footing with the various Indian nations. That neither General Sherman

nor the Southeast Coast New African Government expected the New African communities to remain for long under United States protection is clearly captured in the words of General Sherman's order which envisioned the development of New African military capacity. The General promised the protection of United States Military authorities "until such time as they can protect themselves..." It is to be kept in mind, however, that this center of the New African nation, while in a subject relationship to the United States, was nevertheless a center of free men possessed of the inalienable right to liberty, including self-determination, just as were the thirteen British colonies in America. The parallel with the Thirteen Colonies, and with Liberia, is further heightened by the language used by General Rufus Saxton, who was placed in charge of Executing the Sherman order, when he, General Saxton, was called upon later to testify. Said he: "General Sherman's Special Field Order Number 15 ordered their colonization on forty-acre tracts...Public meetings were held and every exertion used by those whose duty it was to execute this order to encourage emigration to the Sea Islands, and the faith of the Government was solemnly pledged to maintain them in possession."

12. Similar centers of the New African nation under New African Governments were established in Mississippi. Captain John Eaton, named Superintendent of Negro Affairs by General Ulysses Grant in 1862, had, by July 1864, settled 72,500 members of the new class "in cities on plantations

and in freedman's villages, "almost all of whom, Superintendant Eaton reported, were "entirely self-supporting - the same as any industrial class anywhere else - as planters, mechanics, barbers, hackmen, draymen, etc., conducting enterprises on their own responsibility or working as hired laborers." Davis Bend, Mississippi, in what is now Wilkinson County, including the plantations of Confederate President Jefferson Davis, was occupied by the Union Army in December 1864. Here a New African government was established with all the property under its control and with districts under New African sheriffs and judges and other officers. Again, as on the east Coast, the centers of New African Government in Mississippi remained under the protection of the United States Army and ultimately subject to United States law, like many of the Indian nations. But also, like the East Coast centers of the New African nation, these communities were established on land that was in territorial status, and they were composed of persons who, like the residents of the Thirteen Colonies, possessed the inalienable right to liberty.

13. Moreover, the Liberian experience was quite close in point of time to Presidents Lincoln and Johnson, their subordinate officials, and the United States Congress. Liberia was settled by the private enterprise of freed slaves and white supporters, with United States government help in 1822. In 1847 it was declared a republic. The words and deeds of the said United States officials with respect to the Haiti-ceded land, with respect to the South Carolina Sea Islands, and with respect to the Mississippi

frontier make clear that a similar establishment was envisioned by them.

14. Consistent with this impressive pattern of recognition and with an understanding of the right of the new class to independent Statehood, President Lincoln, following the passage of the Thirteenth Amendment by both houses of the United States Congress in January 1865, and his signing, but prior to ratification by the States, directed General Butler to report to him on the logistics of removing the whole class or, at least, "the Negroes whom We have armed and disciplined." President Lincoln went on to add: "I believe that it would be better to export them all to some fertile country with a good climate, which they could have to themselves." Thus, by word and action, did the American government recognize the fledgling New African nation and the right of the new class, in exercise of its inherent liberty, to independent Statehood.

15. However, the American community soon began to narrow the options for the new class which it, the American community, as a matter of political action, would accept. As early as December 1863 the United States Secretary of the Interior suggested that the new class (and the free blacks) should not be sent away because they were needed in the United States Army. Also, in April 1865, General Butler replied to President Lincoln's request for logistical information that "using all your naval vessels and all the merchant marine fit to cross the seas with safety,

it will be impossible for you to transport to the nearest place that can be found fit for them - and that is the Island of Domingo, half as fast as Negro children will be born here." In the report of the United States Congress' Joint Committee of Fifteen, 18 June 1866, the Congress explains how this difficult logistical problem - meaning that the new class would stay in the United States and largely in the South - helped determine, from the viewpoint of the American community, that the new class should be given the vote and United States citizenship. The new class, as voters, could be counted upon to support the United States government in power, whereas that segment of the American community until recently denominated the Confederacy could be counted upon to oppose the government in power. If the new class remained voteless, as they were during slavery, when each slave was counted as only three-fifth a man in the basis on representation, their numbers as free men would nevertheless give the former Confederacy a huge increase in members in the House of Representatives and the Electoral College, because now, even if voteless, the free man would be counted as five-fifths, instead of three-fifths, a man. Said the Committee: "The increase of representation necessarily resulting from the abolition of slavery was considered the most important element in the questions arising out of the changed condition of affairs, and the necessity for some fundamental action in this regard seemed imperative."

16. Similarly, the voice of the business sector in the American community spoke in the "Nation Magazine in January 1866: "Viewed as a practical matter, what would be the effect upon Government securities of the immediate

admission to Congress of 58 Southern Representatives and 22 Senators, nearly all of whom could be counted on as determined repudiationists?...It would hardly be a safe thing for the national credit to have such a body of men in Congress, reinforced as they probably would be, by a considerable number of Northern men ready to go for at least qualified repudiation."

17. Thus, the American community - reacting to its own need for black labor, and reacting to what it believed to be a difficult logistical problem in emigration, and reacting to a fear of increased political power for the Confederates - determined to limit the liberty of the new class of men, in the political arena, to the single option of United States citizenship. The Fourteenth Amendment, passed by Congress in June 1866 and ratified by the States in July 1868, was, then, the consecration of a campaign of war and fraud by the American community against the new class, wrongfully and illegally to prevent the new class from exercising the full range of political liberty that belonged to it. The new class was not to be barred from accepting membership in the American community - indeed, the Fourteenth Amendment attempted to order the new class into the American community - although that membership would be limited politically and socially. The new class would not be prevented from emigrating in small numbers and at its own expense. But it would be prevented - under this illegal campaign consecrated by the Fourteenth Amendment - from establishing independent sovereignty over a land mass in what the American community

deemed to be the actual and potential land of the United States. But the campaign was - and is - an illegal application of the Fourteenth Amendment.

18. It is all important to keep in mind that the new class of free men had come into existence - in contemplation of American law - with the Confiscation Act of 6 August 1861 and had, with the Thirteenth Amendment in 1865, finally embraced into itself all persons still held as slaves. <u>This class of free people legally stood outside the American political-social community for years</u>. On 9 April 1866 the United States Civil Rights Act sought tentatively to fold the new class into the American political-social community, but, under the United States Constitutional dispersal of powers between federal and state governments, this Act was flawed and uncertain of legal efficacy. The Fourteenth Amendment then was ratified - on 28 July 1868 - and made it legally possible, under American law, to introduce the new class into the American political-social community. The Fourteenth Amendment has also generally been interpreted as "conferring" United States citizenship upon all members of the new class, but that is not only too generous an interpretation, it is unsound and legally incorrect. The pertinent wording of the Fourteenth Amendment is itself quite cautious. It reads:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

The distinguished historian Dr. W.E.B. Dubois, writing in his study, "Black Reconstruction in America 1860-1880,"

advises that there were 400,000 members of the new class who, in 1865, had not been born in the United States. These people could not be deemed to have been made citizens by any interpretation of the Fourteenth Amendment's citizenship clause. And on a statistical basis it may be soundly assumed that many of this number were members of the nationalist portion of the new class.

19. Moreover, the new class - a class of free persons with the inalienable right of liberty, including political liberty, guaranteed by the Confiscation Acts, the Emancipation Proclamation, and the Thirteenth Amendment - could not at the late date of 1866 or 1868 be introduced into the American community without its consent. In short, United States citizenship could be offered to members of the new class; the Fourteenth Amendment could not - as popular interpretation suggests - impose citizenship upon the new class or its members. It is of crucial importance that the informed opinion and desires of the new class itself were not solicited, and the new class never gave its informed consent to American citizenship. Citizenship in the Fourteenth Amendment was the work of others, both friends and foes, and after the death of Abraham Lincoln the new class instead of being consulted was fraudulently led to believe, by both friend and foe, that its members had no choices other than (a) to remain an exploited labor class appended to the American community or (b) to become American citizens. Yet the landmark case of United States v. The Libelants and Claimants of the Schooner Amistad 15 Pet 518, 10 L ed 826, decided in the United States Supreme Court in 1841, deals with the rights

of Africans freed from illegal kidnapping and enslavement, and says otherwise, and must be regarded as binding. Under this decision such freed persons are clothed with inalienable human rights, and these rights are a shield against unilaterally definitive actions of other political communities. The impact of the Amistad decision is immediately apparent if, in reading it, one substitutes the words "Fourteenth Amendment" wherever the words "treaty with Spain" appear and substitutes the word "American" wherever the word "Spanish" appears. The Court held:

> It is also a most important consideration in the present case, which ought not to be lost sight of, that, supposing these African negroes not to be slaves, but kidnapped and free negroes, the treaty with Spain cannot be obligatory upon them and the United States are bound to respect their rights as much as those of Spanish subjects. The conflict of rights between the parties under such circumstances becomes positive and inevitable, and must be decided upon the eternal principles of justice and international law.
>
> A fortiari, the doctrine must apply where human life and human liberty are in issue and constitute the very essence of the controversy. The treaty with Spain never could have intended to take away the equal rights of all foreigners of the protection given them by other treaties, or by the general law of nations.

20. Further, a full appreciation of the erroneous interpretation which lies upon the Fourteenth Amendment when it is conceived to have <u>imposed</u> citizenship upon the new class, either in 1868 or anytime since, or when it is conceived as being capable of doing so, cannot be had without a recognition

of the role of fraud in leading many members of the new class to assume they were or are United States citizens and that, in 1868, we had no choices except United States citizenship or unprotected peonage. After the assassination of Mr. Lincoln, there is no evidence anywhere that the United States government or any of the private institutions that concerned themselves with the freedman and Reconstruction attempted to inform the freedman of his rights under international law or, worse, that either the United States government or these private institutions did anything except promote the idea that the new class had only the two said options, U.S. citizenship or peonage - except for a tiny minority of private institutions which assisted with emigration overseas.

21. This massive fraud, continuing today, constitutes almost certainly the most infamous such fraud and rape of the rights of free men in all history. Today New Africans, fully aware of their rights under international law and the fraud which has been perpretated upon us, appear in American courts maintaining our nationality as New African and asserting our freedom and right to this nationality under the Confiscation Acts, the Emancipation Proclamation, the Thirteenth Amendment, and Article Fifteen of the Universal Declaration of Human Rights, but are summarily told by prosecutor and Court that We are not New Africans, and are not possessed of inalienable liberty, and are - under the Fourteenth Amendment - United States Citizens. That is an invidious, illegal, and wrong interpretation of the Fourteenth Amendment.

22. Charges are made that New Africans have served in the U.S. military; but We have served only under duress and compulsion. Under U.S. law only voluntary service would be persuasive evidence of an intention to give up New African citizenship. It is said that New Africans (though not the defendant since before the Declaration of Independence of March 1968) have voted in American elections. But the fact is that the New Africans have used the American vote only under two circumstances: (a) from an erroneous belief consciously fostered by Americans that New Africans, too, are American citizens, or (b) as a means of protecting the interests of New Africans. For it must be clear that residents of the United States need not always be citizens of the United States in order to vote in U.S. elections. As long ago as 1857, Mr. Chief Justice Taney, Dred Scott vs. Sanford, supra, wrote: "So, too, a person may be entitled to vote by the law of the State, who is not a citizen even of the State itself. And in some States of the Union foreigners not naturalized are allowed to vote."

23. Not only that, but United States law, shortly after the "birth" of the new class by United States legal construction, began to endow this new class with a wide range of civil rights enforceable in American courts, all without United States citizenship. The 1864 and 1866 acts of Congress for The Establishment of a Bureau for the Relief of Refugees, Freedmen, and Abandoned Lands are examples of this process, making the contracts of members of the new class enforceable, providing for their right to purchase land, and

protecting them against violations of life and liberty. The 1866 Civil Rights Act, although it attempted and failed to impose U.S. citizenship on the new class, broadened the class's protected civil rights. The Reconstruction Act of 1867 - notably prior to ratification of the Fourteenth Amendment - gave suffrage in United States elections to the new class, expressly for the purpose of enabling the class to protect itself. Thus, from the beginning, members of the new class - without being United States citizens - have been arrayed with legal protections for civil rights to a degree beyond that usually experienced by aliens. The explanation for this lies in the peculiar history of this class - its presence on land claimed by the United States, as the result of kidnapping sanctioned by United States law - rather than in any presumed status as United States citizens. U.S. citizenship was not in the beginning - and should not now be so considered - a pre-condition for the enjoyment of civil rights, or suffrage in U.S. elections, by this uniquely situated new class. The class and its situation are unique, and United States law has consistently recognized this through today.

24. Thus, for executive officers of the United States government or for United States courts to certify New Africans, who assert their New African nationality, as U.S. citizens under the Fourteenth Amendment is to certify fraudulently. Such a practice need not continue. An escape from this dishonorable course is provided in law in the dicta of the same 1841 Amistad Decision, supra. The court need not be bound by the fraudulent certificates or representations of

any branch of the U.S. government. The Amistad majority wrote:

> "What we proceed upon is this, that although public documents of the government, accompanying property found on board of the private ships of a foreign nation, certainly are to be deemed prima facie evidence of the facts which they purport to state, yet they are always open to be impugned for fraud; whether that fraud be in the original obtaining of these documents, or in the subsequent fraudulent and illegal use of them, when once it is satisfactorily established it overthrows all their sanctity, and destroys them as proof. Fraud will vitiate any, even the most solemn transactions..."

The Fourteenth Amendment could not operate upon a free group of people, constructed outside of the American community, without that group's informed consent or without the repealing of the Thirteenth Amendment and the Emancipation Proclamation. Read it forward or backward, from bottom to top or top to bottom, the cautious words of the Fourteenth Amendment cannot in anyway be construed as having repealed the Thirteenth Amendment, the Emancipation Proclamation, or the freedom-effect of the Confiscation Acts. Further, the route to naturalization for members of the new class by the Fourteenth Amendment is so irreconcilable with the route for aliens proceeding under the naturalization act, and the oath required of such aliens, as to be inherently invalid for members of the new class who assert their New African citizenship. All this being true, the new class as a legal entity with its inalienable right to liberty exists, and the citizenship provision of the Fourteenth Amendment is unavailing against the new class without the non-fraudulent consent of the class or its members, and that has never been given by the nationalists. As in the Amistad case the defendant is entitled to a ruling that to deem him and other New Africans, who assert their New African nationality

to be American citizens under the Fourteenth Amendment is to engage in fraud; that, further, the defendant and those similarly situated are of right, and by their own declaration, of New African nationality.

25 Yet, as We have said, despite the actual legal situation, the Fourteenth Amendment represented a political decision by the American community. That decision - patently illegal since based on the Fourteenth Amendment - was to limit the new class largely to the option of a curtailed United States citizenship and to wage war against the nationalist portion of the new class. It is fair to say that this was actually begun three years before the ratification of the Fourteenth Amendment; it began with the acession of Mr. Andrew Johnson to the United States Presidency following the assasination of Mr. Lincoln in April 1865. President Johnson himself favored overseas colonization for the new class, but not at U.S. expense. He himself did not favor citizenship for the new class, except on such narrow terms as to be hardly recognizable as such. But, supported by the U.S. Congress, which <u>had</u> decided for citizenship for the new class and against independence, President Johnson led in suppressing the centers of New African government. All of these centers - from the territory of Tunis Campbell, later State Senator in Georgia, and the South Carolina Sea Islands governments in the east, to Davis Bend and the Mississippi governments in the west - were put down by 1866 by the United States Army, the United States Courts, and other United States functionaries. Significantly the U.S. Army was resisted in several places by armed

New African militia - a clear sign that these centers of New African government had opted for complete independence in the manner of the Thirteen colonies, and through this use of their right to independence, carried out on land to which they asserted sovereign rights, based on principles of long occupancy and reparations, while that land was still in territorial status, had given full substance to the existence of the New African nation. Yet the forms were put down. In addition, the meetings and conventions of both that segment of the new class pursuing citizenship and that segment seeking independence were harassed and subjected to terror. When, in 1867, Congressional Reconstruction came in, the segment of the new class willing to proceed along lines dictated by the U.S. Congress received some support of the U.S. Army against the widespread white violence to which it was being subjected. But the nationalist segment remained the object of suppression by the total white community, although that suppression never succeeded in eliminating the New African nation.

26. It is not too strong to say that all this was - and is - war. The words of Mr. Justice Johnson of the U.S. Supreme Court, writing in his concurring separate opinion in "Cherokee Nation v. The State of Georgia," 5 Peters 25, 8L. ed., at the Court's January Term in 1831, come readily to mind. Said he: "What does this series of allegations exhibit but a sovereign independent State, and set out that another sovereign State has, by its laws, its functionaries, and its armed force, invaded their state and put down their authority. This is war in fact; though not being declared

with the usual solemnities, it may perhaps be called war in disguise." Despite this war by the stronger community against the weaker, which took clear form in 1868, and has continued ever since, except for a brief respite in 1968, that portion of the new class of men which deemed itself to be a nation, has persisted in its nationhood down through the present. Its forms have not always been conventional, because of the necessity to be plastic in order to survive the war being waged against it. But the New African nation has persisted.

27. Thus, in 1880 a leader of the New African nation, Henry Adams, is found testifying before a U.S. Senate Committee on the petitions sent to Congress by New Africans in Louisiana and Mississippi in 1874-76. Brother Adams is quoted as saying: "Well, in that petition We appealed there, if nothing could be done to stop the turmoil and strife, and give us our rights in the South, We appeal then, at that time, for a territory to be set apart for us to which We could go and take our families and live in peace and quiet." Mr. Adams was a leader of the organized New African nation as it had to exist, under a state of war imposed by a more powerful nation, at that time. Since the 1880's We have seen, similarly, the organized nation led by others and exhibiting various forms: in the 1890's, Thomas Fortune and the National Afro-American League; from World War I into the 1930's Marcus Garvey and the Universal Negro Improvement Association; from 1940 through the present, Elijah Muhammad and the Nation of Islam; and from 1968 through the present, the Republic of New Africa. The fact that the right of the people to maintain

their own independent nation persisted through all this - and was not annihilated despite warfare and suppression by the United States - is validated by a principle enunciated in the American Declaration of Independence. Arraigning the English King George III, the founders of the United States declared:

> "He has dissolved representative houses repeatedly for opposing, with manly firmness, his invasions on the rights of the people.
>
> "He has refused, for a long time after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise; the state remaining, in the meantime, exposed to all the danger of invasion from without, and convulsions within."

28. That at the present time the nationalists among the new class should be led by two major political states - the Nation of Islam and the Republic of New Africa - is no derogation of the black nationalists. The United States itself was originally composed of not just two but thirteen sovereign States and ultimately added such disparate units as Louisiana and Puerto Rico. The emergence of the Nation of Islam and the Republic of New Africa is the result of black nationalist efforts - despite the war being waged against us by the more powerful American nation - to create a more perfect political union and more conventional forms of government. All that has gone before represents a continuous evolution of the black nation in America, from the Haitian-island group through the Sea Islands and Davis Bend governments and the less conventional forms that followed, to the Nation of Islam and

the Republic of New Africa, in the face of a severe, illegal, and unrelenting war of extinction waged by the American nation. Through it all, the New African nation has continued to exist.

29. Moreover, there have been the requisite acts by the United States Government constituting recognition of the New African nation and the nation's governments for this Court to have judicial knowledge of the New African State and the Government of the Republic of New Africa. Specifically these acts, by the executive and legislative departments of the United States government and its Mississippi subdivisions, include the following:

a. The passage by the U.S. Congress of the 1861 and 1862 Confiscation Acts, the issuance of the 1863 Emancipation Proclamation by the U.S. Chief Executive, and the approval of the 1865 Thirteenth Amendment to the United States Constitution by the Chief Executive, the Congress and the States were acts which gave birth, in a legal construction, to a new class of free men <u>with the inherent right to liberty</u>, who were outside of the American political-social community. The Confiscation Acts, the Emancipation Proclamation and the Thirteenth Amendment, therefore, became covenants of recognition by the United States, of the predictable, likely, directly derivative results of the use of that liberty by the class, one of which such results was the establishment of an independent nation and its governments. The Emancipation Proclamation, moreover, clearly and without restriction in manner or time, pledges the U.S. Executive Government to "recognize and maintain the freedom of such persons" - persons deemed by the Proclamation to be "thenceforth and <u>forever</u> free" - and to "do no acts to

repress such persons, or any of them in any efforts they may make for their actual freedom."

b. The commerce between U.S. President Lincoln and the representatives of the New African Government which resulted in the Haitian-island project was an explicit U.S. recognition of the New African nation and government, as were the meetings between Secretary Stanton and General Sherman and the East Coast New African Government Council, which resulted in the Sea Islands Governments, as was the creation of the Davis Bend Government under Superintendent John Eaton in Mississippi.

c. In May 1968 the defendant, then serving as Minister of Information for the Government of the Republic of New Africa, and acting in that capacity, notified the U.S. State Department of the desire of the Government of the Republic of New Africa to deliver an official note to the government of the United States. U.S. State Department officials set an appointment for the RNA Minister. On or about 28 May 1968 the defendant, acting for the Government of the Republic of New Africa was duly received at the U.S. Department of State in Washington, District of Columbia, where he conferred with two representatives of the U.S. State Department who accepted the note of the Government of the Republic of New Africa and promised it would be studied. The note contained a request for negotiations over questions of land and reparations. It is well established that a nation asserting a policy of non-recognition toward another nation would refuse to receive that other nation's official emissaries. For example,

in March 1861, a group of commissioners from the newly established Confederate Government, which was not recognized by the United States came to Washington to treat for transfer of federal forts and other property. The U.S. Department of State refused to meet with them. This important change in U.S. policy toward the New African nation by U.S. President Lyndon Johnson in 1968, reverting to President Abraham Lincoln's policy of recognizing and treating with the New African State, was consistent with the radical approach to race relations pursued by President Johnson since his accession to office in November 1963. Since that time through 1968, in response to Dr. Martin Luther King and other leaders of that portion of the new class who petitioned and demonstrated for full American citizenship, U.S. President Johnson had used his powers to attempt to bring this citizenship - seeking portion of the new class fully into the American political-social community. President Johnson's recognition of the Republic of New Africa followed by seven weeks the assassination of Dr. King and the burning of sections of 125 American cities. While not exclusively a nationalist phenomenon, that burning was the culmination of nationalist discontent at suppression. President Johnson's recognition of the Republic of New Africa was manifestly an effort to end one hundred years of frustration and open the door to a peaceful solution for the heirs of Brother Malcolm X, the father of the Government of the Republic of New Africa, in the struggle of the nationalist portion of the new class to end suppression of the nation. Five months later however, a different man - Richard Nixon - had been elected

resident of the United States. U.S. President Nixon has failed during his first four years to build upon the initiative of President Johnson, although technically, the RNA note - together with RNA proposals given to Mr. Nixon in March 1971 by United States Congressman John Conyers, Jr. - is still under study.

d. In April 1971 representatives of the U.S. Justice Department's Conciliation Service, acting in their official capacities, called upon the President of the Republic of New Africa in Jackson, Mississippi, and the President received them in his official capacity.

e. In April 1971 the Attorney General for the State of Mississippi explained to representatives of the press that as Mississippi Attorney General he had no authority to negotiate with the Republic of New Africa, since he had no authority to negotiate in the area of foreign affairs.

30. The primary points, then, being made with regard to our first main question - the legal foundation of the nation and the judicial knowledge of the Court - are these:

a. First, the Confiscation Acts of 1861 and 1862 and the Emancipation Proclamation in 1863 created, in contemplation of American law, a new class of men, confirmed in existence by the Thirteenth Amendment of 1865, which had an inalienable right to liberty; that right to liberty included the right to independent nationhood; and the creation of this right to independence by action of the U.S. Executive and Congress constitutes in itself a binding and sufficient act of recognition, by the United States for the States and Governments which arose from the use of the right, and such recognition

is judicial knowledge of the New African States and Governments by this Court;

b. Second, the right of the nation to exist and the very existence of the nation and its Governments were explicitly recognized by the Executive Department of the U.S. Government in President Lincoln's commerce with the Government of the Haitian-island group and the establishment of centers of New African Government in South Carolina Mississippi, and elsewhere with cooperation of agents of the U.S. President and Congress; this also constitutes sufficient basis for judicial knowledge of the New African States and Governments by this Court;

c. Similarly, basis for judicial knowledge consists in the acceptance of a diplomatic note formally delivered by the Government of the Republic of New Africa to the Government of the United States in May 1968;

d. Fourth, by a unilateral decision the American community passed the Fourteenth Amendment in 1868 and, pursuant to it, has unlawfully waged war against the new class, insisting illegally and fraudulently that members of the new class are U.S. citizens, and attempting to crush the fledgling New African nation and to prevent the new class from using any further its right to maintain an independent and sovereign nation; however,

e. Fifth, the American community under its own law could neither annihilate nor legally deny the use of this right to the new class without first repealing the Emancipation Proclamation and the Thirteenth Amendment and reinstituting slavery, which it did not do, and so the Thirteenth Amendment stands in

American law as unrevoked and as having confirmed in existence a new class of free men, outside of the American political-social community, with the inalienable right to liberty, including the right to establish and maintain an independent nation; and this right in the people to maintain a separate nation, being incapable of annihilation, even when frustrated and denied full political expression, remains the possession of the new class even through today; it remains the right of the new class until cured by political arrangements between the New African Governments and the Government of the United States and/or by action of the legislatures of the New African Governments and the Government of the United States.

f. Sixth, the U.S. war against the new class, particularly against the New African nationalists in the class, was and is a political activity and in its larger form may be beyond the reach of this Court, but the Court may fully inquire into the nationality and status of the persons before it, and the Court may note that the New African nation has never been extinguished by the lengthy, illegal warfare waged by the American community against it, though forced by this warfare to assume various non-conventional forms from time to time; rather, since 1968 and the founding of the Republic of New Africa, the nation has achieved a more perfect union and a more conventional government.

31. It is of paramount importance that the Thirteenth Amendment has never been repealed, either implicitly or explicitly. For this Amendment, confirming the Confiscation

Acts and the Emancipation Proclamation in creating a new class of men with the inalienable right to liberty, but outside the American political- social community, provides for American courts ample proof that all three branches of the U. S. government have given fundamental and unrevoked recognition to the inalienable liberty of the class and its members to create of the class, or of some portion or portions of the class, an independent nation - or several independent nations. This American recognition of liberty to act - given by the roles played by the U.S. Chief Executive and the Congress and three-fourths of the States in passing the Amendment, and the U.S. Courts in upholding it - in this situation is fundamentally a recognition of the results of that action: which is to say, is fundamentally a recognition of the New African nation and Governments. We must return to the clear pledge of the Emancipation Proclamation which the Thirteenth Amendment confirmed: "The Executive Government of the United States... will recognize and maintain the freedom of such persons, and will do no act or acts to repress such persons, or any of them, in any efforts they may make for their actual freedom."

32. It is vital to appreciate that under American law once the Confiscation Acts and the Emancipation Proclamation were in effect, particularly once confirmed by the Thirteenth Amendment, their results, while in general predictable, could no longer be controlled unilaterally by those who had issued the Acts, the Proclamation, and the Amendment; the results were to be controlled also by that class of men which, in the legal sense, the Acts, the Proclamation, and the Amendment had called into being. In their operation the

Confiscation Acts, the Emancipation Proclamation, and the Thirteenth Amendment are like the U.S. legislation which called the Philippine Republic into being as a sovereign state. Prior to the effectivity of that legislation the United States might legally and unilaterally, under U.S. law, have prevented creation of the Phillipine nation. Once the legislation went into effect, however, the Phillipines were sovereign, their right to be sovereign acknowledged by U.S. law, and the United States could not legally reverse Phillipine sovereignty out of existence - except by repeal of the creating legislation and successful war. But even war at that point, under American law, could not annihilate the people's right to independence merely by putting down the nation's independent forms: the people themselves would have to be annihilated - because the right inheres in them and, once recognized in law, remains inalienable until yielded by voluntary consent. Such is the ineradicable meaning of those cited words from the American Declaration of Independence: "whereby the legislative powers, incapable of annihilation, have returned to the people at large..."

33. Mr. Justice Baldwin of the U.S. Supreme Court, in his separate concurring opinion in the 1831 Cherokee Nation v. State of Georgia decision, supra, gives the rule for judicial knowledge of foreign States. He asserts: "That the existence of foreign states cannot be known to this court except by some act or recognition of the other departments of this government, is, I think, fully established." Yet the

United States was so intricately involved in the birth of the Philippine Republic that no court could rightly hold - even in a situation where there had been no exchange of Ambassadors or other contacts - that no other department of the U.S. government had engaged in "some act or recognition" and that the Philippines could not be known judicially. The very act of mid-wifery would make a mockery of such a denial of recognition or judicial knowledge. Similarly the Thirteenth Amendment confirmed the Confiscation Acts and the Emancipation Proclamation in calling into being a new class of free men with the inherent and predictable liberty to become U.S. citizens and/or emigrants and/or nationalists. Thus, the Acts, the Proclamation and the Amendment themselves - like the Philippine legislation - took from the United States the right to determine unilaterally which of these courses the freed men would follow, while they left the United States so intricately involved in the birth of the new class and its liberty as to constitute recognition of all likely and predictable political choices which the new class or members of the class would determine upon - including independent sovereign Statehood. And elevating this conclusion beyond doubt is the unequivocal pledge of the Emancipation Proclamation to "recognize and maintain the freedom of such persons" and to refrain from any act to repress the new class "in any efforts they may make for their actual freedom." The war against the new class was and is illegal because it violates this solemn pledge in law. Moreover, before this war was launched, the nationalist segment used its inherent liberty to establish the New African nation. The war succeeded temporarily in putting down the

conventional forms of the New African governments, but neither the nation nor the right of the people to be a nation, firmly rooted in the Emancipation Proclamation and the Thirteenth Amendment, were annihilated, either in fact or - as long as the Thirteenth Amendment remains unrepealed - in U.S. legal contemplation.

34. Finally, the United States and the State of Mississippi appear to seek to deny the due protections of the law of nations and the U.S. Constitution to the defendant as a public minister - indeed, the sovereign - of a foreign nation not only because they erroneously, as We have shown, deem the defendant to be a United States citizen but also because they presume it to be necessary that the defendant and those similarly situated first be "received and accepted" by the United States Executive Government in consequence of its power to conduct foreign affairs, before such protections can be afforded. This also is in error. First, it must be recognized that what is before the Court is not the standing of foreign public ministers who are coming from a distant and separate territory. This is a unique case of foreign public ministers - indeed, of an entire nation - being found in places over which the United States claims jurisdiction and sovereignty, and being here of necessity and right. It would seem sufficient that the United States have official knowledge of the nation's presence, and its ministers, as it is clear it does, particularly since actions of the United States are largely responsible for the existence of the nation in this place.

35. But even were the United States to be conceded the right, even in this exceptional circumstance, to accept or reject the ministers sent by the New African Government to be accredited to it, as the United States may so accept or reject the foreign ministers of other nations, the case now before the Court is singular because it affects not simply a public minister but the New African Head of State, the New African Sovereign, himself. In Schooner Exchange v. McFadden, 7 Cranch 116, 137, supra page 551, Mr. Chief Justice Marshall early laid down the principle that foreign sovereigns enjoy immunity from jurisdiction of other States. Further, it can be deemed no accident that Article Three of the U.S. Constitution, in giving original jurisdiction in all cases "affecting ambassadors, other public ministers. and consuls" to the United States Supreme Court, does not mention Sovereigns or Heads of State. For, it is unthinkable in contemplation of accepted practices of international relations and the law of nations that one nation or government would dare lay hands upon the person of the Sovereign or Head of State of another nation or government. The fact is that neither the courts of the State of Mississippi nor the Courts of the United States have any jurisdiction over the Sovereign or Head of State of another nation, and specifically over the Sovereign and Head of State of the Repuplic of New Africa.

36. But - if through some abnormal situation - the Courts of the United States or the courts of one of the several states should attempt to assert such jurisdiction, Article Three provides saving language to tell us where jurisdiction - if at all, would lie. First, Article Three says

the judicial power of the United States "shall extend to all cases, in law and equity, arising under this Constitution, and, the laws of the United States" and "to all cases affecting ambassadors, other public ministers and consuls" and to controversies "between a State, or the citizens thereof, and foreign States, citizens or subjects." Article Three also gives original jurisdiction over cases involving ambassadors and public ministers to the United States Supreme Court. It is a well established principle that, as U.S. Secretary of State Kellogg expressed to the Secretary of the Treasury on 3 November 1926, "the privileges and immunities granted foreign diplomatic officers are premised on the fact that such officers are the personal representatives of their sovereigns. There can be no doubt that Queen Marie is entitled to no less consideration than a foreign diplomatic officer of the highest rank." Thus, where a case arising under the laws of the United States or one of the States involves a foreign Sovereign or Head of State or Chief Executive Officer, it is clear that original jurisdiction - if there be any jurisdiction at all - lies with the United States Supreme Court, the same as it would in the case of an ambassador.

37. Now, were the law of nations, the United States Constitution, or the Courts to permit the United States Government, or <u>any</u> government, to use its privilege of diplomatic recognition to tell another nation and government who its Head of State or other officers may be, that government so permitted would in fact be exercising rights which belong to the people of the affected nation and its government.

Neither the law of nations nor the United States Constitution coutenances such a presumptive and destructive use of the privilege of diplomatic recognition. To allow the United States Executive Government to use its power of diplomatic recognition to determine, in effect, who the Sovereign or Head of State or Chief Executive Officer of the Republic of New Africa will be, would be to allow a violation of the law of nations, the Thirteenth Amendment, and the Emancipation Proclamation.

38. It is of importance also that U.S. Public Law 92-53, 24 October 1972, amending Title 18, imposes criminal penalties on individuals who threaten or harm foreign officials, regardless of whether the countries of these officials are recognized by the United States.

39. The key facts before the Court are that the defendant is a New African citizen and the Sovereign and Head of State of the Republic of New Africa and the Chief Executive Officer of the Government of the Republic of New Africa, and that said Sovereign, Head of State, and Chief Executive is of right and necessity, owing to circumstances beyond his control and largely the doing of the United States, on territory over which the United States claims to be sovereign. The rights of the defendant to New African citizenship and to hold his positions of Sovereign, Head of State, and Chief Executive are protected by the Thirteenth Amendment to the United States Constitution, the Emancipation Proclamation, and Article Fifteen of the Universal Declaration of Human Rights. Therefore, pursuant to the law of nations and Article Three of

the United States Constitution, the Courts of Mississippi, and the United States District Courts have no jurisdiction over the defendant, and the indictments should therefore be quashed and all charges dismissed.

PART TWO

CRITERIA FOR A STATE AND A COMPARISON OF THE REPUBLIC OF NEW AFRICA WITH SAID CRITERIA

1. The 1831 Cherokee Nation vs. the State of Georgia case before the U.S. Supreme Court (supra) provides valuable standards in determining whether the Republic of New Africa is a foreign State. In this case the Cherokee Nation sued for an injunction to prevent the State of Georgia from executing its laws within the lands and against the property and citizens of the Cherokee Nation. Chief Justice Marshall spoke for the Court's majority and denied the injunction on grounds that the Court lacked jurisdiction because the Cherokee Nation was not a "Foreign State" within the meaning of the U.S. Constitution. The majority also doubted its ability to grant the relief sought. Wrote Mr. Chief Justice Marshall: "The propriety of such an interposition by the Court may well be questioned. It savors too much of the exercise of political power to be within the proper province of the judicial department." Mr. Justice Johnson and Mr. Justice Baldwin, concurring, wrote separate opinions. Mr. Justice Thompson and Mr. Justice Story dissented in a joint opinion.

2. While holding that "the majority is of the opinion that an Indian Tribe or nation within the United States is not a foreign state in the sense of the Constitution," the Court nevertheless ruled that the Cherokee Nation is a State. The Indian tribes and nations may, reads the opinion, "more correctly, perhaps, be denominated domestic dependent nations." The Court said:

> "So much of the argument as was intended to prove the character of the Cherokees as a State, as

> a separate political society separated from others, capable of managing its own affairs and governing itself, has in the opinion of a majority of judges, been completely successful. They have been uniformly treated as a state from the settlement of our country. The numerous treaties made with them by the United States recognize them as a people capable of maintaining the relations of peace and war, of being responsible in their political character for any violations of their engagements, or for any aggression committed on the citizens of the United States by any individual of their community. Laws have been enacted in the spirit of these treaties. The acts of our government plainly recognize the Cherokee Nation as a State, and the Courts are bound by those acts.
>
> "A question of much more difficulty remains. Do the Cherokees constitute a foreign state in the sense of the Constitution? The Counsel have shown conclusively that they are not a State of the Union, and have insisted that individually they are aliens, not owing allegiance to the United States. An aggregate of aliens composing a State must, they say, be a foreign State. Each individual being foreign, the whole must be foreign.
>
> "This argument is imposing, but We must examine it more closely before We yield to it. The condition of the Indians in relation to the United States is perhaps unlike that of any other two people in existence. In the general, nations not owing a common allegiance are foreign to each other. The term 'foreign nations' is, with strict propriety, applicable by either to the other. But the relation of the Indians to the United States is marked by peculiar and cardinal distinctions which exist nowhere else."

3. The majority goes on to say that the United States holds the Indian territory to be part of its own "though the Indians are acknowledged to have an unquestionable and, heretofore, unquestioned right to the lands they occupy until that right shall be extinguished by a voluntary cession to our government." Further, says the majority, in the commerce clause of the U.S. Constitution the Indians "are as clearly contradistinguished by a name appropriate to themselves from foreign nations as from the several states composing the Union." And, further, the majority says: "They acknowledge themselves

in their treaties to be under the protection of the United States; they admit that the United States shall have the sole and exclusive right of regulating the trade with them and managing all their affairs as they think proper." The Court goes on:

> "They look to our government for protection: they rely upon its kindness and its power; appeal to it for relief to their wants, and address the President as their great father. They and their country are considered by foreign nations, as well as by ourselves, as being so completely under the sovereignty and dominion of the United States that any attempt to acquire their lands, or to form political connection with them, would be considered by all as an invasion of our territory and an act of hostility."

4. Now, let us extract from the Court's opinion those criteria by which it was determined that the Cherokee Nation was a State. Let us compare these criteria with what We know of the Republic of New Africa as a State. Next let us extract the criteria used by the majority in determining that the Cherokee Nation was not a "foreign" State and then compare this with what We know of the Republic of New Africa.

a. Criteria for Statehood. The Court laid out these criteria for a State.

(1) Existence as a distinct political society separated from others.

(2) Capability of managing its own affairs and governing itself.

(3) Capability of maintaining the relations of peace and war.

(4) Being responsible in their political character for any violation of their engagements or for any aggression committed on the citizens of the United States by any individual of their community.

(5) Treaties with the United States recognizing them as a State.

b. The Republic of New Africa Measured Against the Criteria. In general the Republic of New Africa, as a more perfect form of union for the New African nation in America, was declared in existence at a publicly advertised convention of the descendants of African slaves in the United States held in Detroit, Michigan on 30-31 March 1968. Approximately 100 persons out of 500 in attendance signed the Declaration of Independence "for ourselves and for those who look to us but who are unable personally to fix their signatures hereto " The Declaration was then promulgated by various means, including the press. The Founding Convention also created fundamental law and elected the first Provisional Government. The Fundamental Law called for the election of a New Government and the enactment of a Constitution by 1 January 1970. A Constitutional crisis arose in November 1969 when some members of the First Provisional Government sought to postpone the election of the new government. A court test, conducted completely in a New African court, under New African procedures, placed the nation in the hands of a transitional Government, the Ujamaa Committee, which organized and conducted new elections in March 1970; the present RNA Government, with the defendant as its president, was chosen at those elections, and a constitution, the Code of Umoja, was voted into force. The signers of the New African Declaration of Independence declare its citizens and the nation to be "forever free and independent

of the jurisdiction of the United States of America and the obligations which that country's unilateral decision to make our ancestors and ourselves paper citizens placed on us." All RNA citizens of record take an oath pledging total allegiance to the Republic of New Africa and are committed to a Creed which defines the New African political community as one of love and law and work toward common national goals. Wherever they are physically, New African citizens live and act in this prescribed political context.

(1) Political Society and Managing Own Affairs. The foregoing general description makes clear that the Republic of New Africa is a separate political community. The ability to manage our own affairs is manifest not only in the handling of the Constitutional crisis but in the day to day maintenance and operation of the Government Centers in various cities and the National Government Ministries.

(2) Maintaining Peace and War. The Court may take judicial notice that the defendant together with RNA Vice President Nekima Ana and other RNA officers and citizens, was charged in Criminal Action #20654, in the Circuit Court for the First Judicial District of Hinds County, Mississippi, with levying war against the State of Mississippi, that former Prosecutor Jack Travis swore to this accusation as the belief of himself and the State of Mississippi, and that the succeeding Prosecutor Ed Peters maintained this action as the view of the State of Mississippi. Further, the present First District Prosecutor, Ed Peters, is proceeding against the defendant as

an accessory to murder (Action No. 20631), apparently on the theory and belief that the defendant, as President of the RNA Government, is capable of giving RNA citizens "orders" to take life, which these citizens would follow. With respect to peace, the Republic of New Africa has declared war against no one and no nation - including the State of Mississippi and the United States of America, despite gross provocations by both Mississippi and the United States. Indeed, the Republic of New Africa, through the defendant, delivered an official note to representatives of the United States State Department in Washington, D.C., requesting peaceful negotiations over the issue of land and reparations, in May 1968, and since then has sent numerous similar overtures, messages, to the United States in the interest of peace and seeking relief from the unjust warfare being waged against us by the United States and the State of Mississippi. Similar overtures for settlement of issues by peaceful means have gone from the defendant, for the RNA Government, to the Mississippi Attorney General A. F. Summer and to the Mayor of the city of Jackson, Mississippi. The result has been to maintain a greater degree of peace than would exist without these RNA Government foreign affairs efforts. In addition the Government of the Republic of New Africa has consistently maintained a peaceful stance.

(3) Being Responsible for Violations. The RNA court system works at the local and national levels. The RNA People's Court held in Jackson, Mississippi, in June 1971 in a land dispute, involved in addition to the New African Government

as plaintiff a non-New African citizen-of-record and the State of Mississippi. A judgment was duly rendered after the hearing, and the defendents were provided appeal procedures, the judgment having been entered against them. The degree of observance of RNA law by RNA citizens of record is at least as great as that in other states and higher than in many. So far, in cases of alleged "aggression committed on citizens of the United States by any individual of their community," including the defendant's own case before the Court, the United States and its political sub-divisions have uniformity failed to refer these matters to RNA authorities, who are thoroughly competent and willing to assume jurisdiction. Such action by the United States has almost always resulted in the sequestering or destruction of vital facts and evidence by the United States, preventing impartial investigation by the RNA. Yet, despite such continuous United States intervention and refusal to refer, the RNA Government is ready and capable of execution of all responsibilities in said matters.

(4) Treaties Recognizing New Africa as a State

General Sherman's Order Number 15 and Superintendent Eaton's accords are the basic agreements between the New African nation or the New African Governments and the United States. There are no treaties, per se. However, as submitted above, the Confiscation Acts, the Emancipation Proclamation and the Thirteenth Amendment are the fundamental covenants between the United States and the

New African nation, whose existence was given legal life as a predictable, likely, and directly derivative consequence of the Proclamation and Amendment. These covenants are a quite forceful substitute for treaties. Further, it is to be recalled that in July 1868, a mere two and one half years after the passage of the Thirteenth Amendment, the United States, passing the Fourteenth Amendment, without repealing the Thirteenth Amendment and by repeal degrading the new class of free men to something less than free men, embarked - illegally in light of the Thirteenth Amendment - upon a policy to close to the new class - the option of independence. Therefore, any further compact or treaty with the nationalist portion of the new class would have been inconsistent with the illegal U.S. policy after July 1868 and, therefore, did not occur.

(5) Covenants Substituting for Treaties

Yet it must be also remarked that the United States has today given up her persumed right to deny judicial knowledge of foreign States, as Mr. Justice Baldwin said, "except by some act or recognition of the other departments of this government." This occurred when the United States, in order to host the United Nations headquarters in New York, agreed to accept within United States jurisdiction representatives of all nations recognized by the United Nations whether recognized by the United States itself or not and to allow the United Nations, as an organization, and the sending country, whether recognized by the United States itself or not, to determine along with the United States what individual diplomats will be accorded diplomatic status in the United States. As a result, for instance, the States of Cuba and China, neither of which is recognized by the United States, have

their nationals on U.S. territory in enjoyment of full diplomatic immunity. And certainly United States courts under proper circumstances - for instance, a controversy between such a U.N. Ambassador and a landlord or a state police agency - would take judicial knowledge of such a nation's state and government, even though unrecognized by the United States. Thus, the principle is admitted today that the three departments of the U.S. Government - the Courts, through the action of the Congress and the Executive - yield the question of the existence of States and Governments and the knowledge thereof to general usages of international law and to self-operating covenants. Such covenants include those between the United States and the United Nations, and the Emancipation Proclamation and the Thirteenth Amendment, between the United States and the New African nation.

c. Criteria for a Foreign State and the RNA

There are four factors raised by the majority as reasons for deeming the Cherokee, though a State, not a "foreign" nation: (1) The U.S. claim to the land, (2) the subordination of the Cherokee in treaties, (3) the Cherokee's right to send a delegate to the U.S. Congress and (4) the language of the Commerce Clause. We shall deal with all four and make the RNA comparison simultaneously.

(1) First Bar to Foreign Statehood: U.S. Claim to the Land. The majority asserts the fundamental claim of the United States to all the land of the Cherokee. The Court says, speaking of the Cherokee Nation: "They occupy a territory to which we assert a title independent of their will, which must take effect in point of possession when their right of possession

ceases." The Cherokee, of course, maintained a different point of view and so stated in their bill of complaint. The Court speaks as follows of the Cherokee bill of complaint:

> "The foundation of this charter, the bill states, is asserted to be the right of discovery to the territory granted; a ship manned by the subjects of the king having'about two centuries and a half before, sailed along the coast of the western hemisphere, from the fifty-sixth to the thirty-eighth degree of north latitude and looked upon the face of that coast without ever landing on any part of it.' This right as affecting the right of the Indian nation, the bill denies; and asserts that the whole length to which the right of discovery is claimed to extend among European nations is to give to the first discoverer the prior and exclusive right to purchase these lands from the Indian proprietors against all other European sovereigns: to which principle the Indians have never assented; and which they deny to be a principle of the natural law of nations, or obligatory on them.
>
> "The bill alleges that it never was claimed under the charter of George the Second that the grantees had a right to disturb the self government of the Indians who were in possession of the country, and that, on the contrary, treaties were made by the first adventurers with the Indians, by which a part of the territory was acquired by them for a valuable consideration, and no pretension was ever made to set up the British laws

in the country owned by the Indians. That various treaties have been, from time to time made...in all of which the Cherokee Nation and the other nations have been recognized as soverign and independent States; possessing both the exclusive right to their territory, and the exclusive right of self government within that territory."

(a) Acceptance of Coincident Sovereignty.

It is to be noted that these diametrically opposed views as to who had sovereignty over the land, gave the Court's majority no hesitation in pronouncing the Cherokees a State. The Court accepted this fact of "coincident sovereignty" - in which the Indians had possession yet the United States claimed absolute title, while the Indians also claimed absolute title - as no bar to affirming legally, the existence of the Cherokee State. To put it another way, the Court did not require that the Cherokee have sovereignty over land in order to be deemed a State. This is a crucial point. For, in the U.S. - Cherokee situation of coincident sovereignty, we have exactly paralleled the situation which exists today between the United States and the Republic of New Africa. The Republic of New Africa claims sovereignty over the five states of Louisiana, Mississippi, Alabama, Georgia, and South Carolina, in the name of Black people, the new class, for (1) reparations due from the United States from slavery and unjust war during and after slavery, and because (2) these states are the traditional homeland of Africans in America, where - at least in Mississippi, Louisiana, and South Carolina - We were for decades in the numerical majority.

Moreover, in Mississippi, South Carolina and Georgia, as We have seen, the New African nation had established its sovereignty over specific land masses, based on long occupancy and reparations due, at a moment in history (the 1860's) when these areas were deemed to be territories and therefore subject to the disposition of the U.S. Congress and Executive agents empowered by the Congress. This further establishes the legal right of the New African nation to the land. Since the establishment of those first centers of New African government in the 1860's there have been, of course, a series of political acts by the U.S. Executive and the individual states attempting to supress all evidence of the New African State and thereby reverse irreversible processes. Nevertheless the New African <u>right</u> to the land remains, and New Africans occupy the land, though We don't control it politically, and We claim sovereignty over it. It is our information and belief that the U.S. also claims sovereignty over these areas

(b) <u>Statehood Without Land</u>. That the lack of sovereignty over land was found by every member of the Court save one to be no bar to a finding of statehood is perhaps even more readily understood when We refer to the concurring separate opinion of Mr. Justice Johnson. The justice is emphatic in his insistence that the Cherokee are not a "foreign" state. But, he writes:

> "nowever, I will enlarge no more upon this point, because I believe, in one view and in one only, if at all, they are or may be deemed a State, though not a sovereign State, at least while they occupy a country within our limits. Their condition is some thing like that of the Israelites when inhabiting

> the deserts. Though without land that they can call theirs in the sense of property, their right of personal self government has never been taken from them, and such a form of government may exist though the land occupied be in fact that of another. The right to expel them may exist in that other, but the alternative of departing and retaining the right of self-government may exist for them."

(c) The Impact of Coincident Sovereignty for the RNA. Thus, Mr. Justice Johnson reaches forward 142 years to embrace a situation which involves the descendants of persons whom he then held to be property - a situation which he hardly could have foreseen. For, We are submitting to the Court in this brief today that the Emancipation Proclamation and the Thirteenth Amendment created men with the inalienable right of liberty, out of property; that this new class of men, standing outside the American political social community, had in this inalienable liberty the equally inalienable right to form among themselves a nation, and that the nationalists in the new class did so, and that this nation has persisted despite a century of an official policy of U.S. opposition, and has today produced the more perfect union represented by two major black States and Governments: the Nation of Islam and the Republic of New Africa. We are maintaining that if the lack of sovereignty over land was no bar to a ruling of statehood for the Cherokee, it can be no bar for the RNA, Mr. Justice Johnson deems even landless, wandering Israelites a "State" and says that a "government may exist though the land be in fact that of another." He emphasized that that "other" may have the power to expel such a people, but the people themselves - not those with power over them - have the "alternative of departing and retaining the right of self government."

(d) RNA Right to Statehood Never Extinguished. In like manner, We point out, that the public policy of the United States to oppose the existence of an independent sovereign nation created by the new class, a policy consecrated with the ratification of the Fourteenth Amendment in 1868, could not destroy the class's right to the liberty of creating and maintaining an independent sovereign nation. The fact is that the United States has failed in a century of war and other political action to extinguish the African nation in America, even though, as in Mr. Justice Johnson's simile, We have from time to time been like the "Israelites while inhabiting the desert". But even had the United States succeeded (as it did not) in extinguishing the nation as an organized entity at any given time, so long as the Thirteenth Amendment remained unrevoked the right of the new class to the liberty of creating and maintaining an independent nation could not be extinguished. We say that United States public policy might prevent the full use of the right; to extinguish the right itself, however, it would have to roll back events to the point where the new class of men was still property — that is to say, repeal the Confiscation Acts, the Emancipation Proclamation, and the Thirteenth Amendment, and then enact a new Thirteenth Amendment which at the same instant would bring the former persons classed as property directly into the American political-social community

(e) The Pregnant Pause. It is not an exaggeration to say that the reason there existed a new class of men endowed

with the inalienable right of liberty, outside of the American community, at all, is because the American community hesitated: they waited five years, instead of acting instantly, before legislating to bring the African inside of the American community. Our right to the liberty of self-determined political action and nationhood - and, therefore, also to land - derives precisely from America's fateful moment of pause - the creation, from property, of a class of men with the inalienable right to liberty, who were left outside of the American political social community.

(f) The Right to Statehood Has Passed to Today's Heirs. And it must follow that where the right itself has not been extinguished - and it has not been, for the Emancipation Proclamation and the Thirteenth Amendment remain unreppealed and despite the ability of the united States, pursuing its anti-black nationalist policy, to prevent full use of the right, the right becomes an inheritance, passing into possession of each succeeding generation of nationalists, all the nationalist progeny, to be used by them like any other inextinguished right when will and circumstances combine to permit. No other meaning can attach to the Emancipation Proclamation's declaration that the new class should be "thenceforth and forever free". Thus, the creation of the Republic of New Africa and its law and Government in 1968, even if it were not a culmination of a continuous historical process to form a more perfect political union of the nation, and it was, would nevertheless be justified in law as the work of the heirs to the inalienable rights of 1863's New class of men.

(g) A Weak State Remains a State. That states may be states though they are weak and subordinate to other states is no mystery in international law. Mr. Justice Thompson, dissenting from the Court's majority view that the Cherokee were not a "foreign" state, writes:

> "We ought, therefore, to reckon in the number of sovereigns those states that have bound themselves to another more powerful, although by an unequal alliance. The condition of these unequal alliances may be infinitely varied; but whatever they are, provided the inferior ally reserves to itself the sovereignty or the right to govern its own body it ought to be considered an independent State. Consequently a weak State, that, in order to provide for its safety, places itself under the protection of a more powerful one without stripping itself of the right of government and sovereignty, does not cease on this account to be placed among the sovereigns who acknowledge no other power. Tributary and feudatory States do not cease to be sovereign and independent States so long as self-government and sovereign and independent authority is left in the administration of the State. Vattel, c. 1 pp 16, 17

On casual review it might seem that any limiting of sovereignty involves mutually exclusive terms: If a power is sovereign, it cannot be limited. However, the concept persists in international law even in our own day. The Universal Declaration of Human Rights, to which the United States is signatory, in speaking of the rights of individuals, says that "no distinction shall be made on the basis of the international status of the country or territory to which a person belongs whether it be independent, trust, non-self governing or under any other limitation of sovereignty. Furthner, the official opinion issued in the Indonesian Case, U.N.S.C.O.R., July 31 and August 1, 1947, 3 U.N. Bulletin 215 225, held:

> "Neither the Charter nor our Rules of Procedures stipulate that any state, to be considered a state, shall have complete independence. States may be

said to fall into two general classifications, i.e. independent and dependent. They may be more specifically classified as simple, composite, neutralized, vassal or semi-sovereign and protected states. International law is not especially concerned with names or classifications of states."

(h) Lack of Sovereignty Over Land No Bar.

From all this it is possible to understand why a nearly unanimous court saw the absence of sovereignty over land to be no bar to a finding of Statehood. In like manner the lack of sovereignty does not seem to rise as a serious bar, for the Court's majority, in judging whether or not the Cherokee were a "foreign" state. To be sure, Mr. Chief Justice Marshall recites the matter from a candidly American viewpoint: "The Indian Territory," he writes, "is admitted to compose part of the united States. In all our maps, geographical treaties, histories and laws, it is so considered. In all our intercourse with foreign nations, in our commercial regulations, in many attempt at intercourse between Indians and foreign nations, they are considered as within the jurisdictional limits of the United States, subject to many of those restraints which are imposed upon our own citizens." This of course, was not strictly true when one considers the traffic between Indians and Spain in Florida and Georgia and between Indians and the French along the Mississippi in the Chief Justice's own times. Besides, Spain a few years earlier had been able to speak in precisely the same terms about West Florida and the Baton Rouge area of Louisiana – both of which the United States claimed as part of the Louisiana Purchase, but which Spain boldly proclaimed as theirs and held for nearly a decade after the Purchase, and which Spain included "in all our

maps, geographical treaties, histories and laws." The American claim to the Cherokee land, like the Spanish claim to American land — keeping in mind the view of the Cherokee toward rights in the land — clearly reflect power relationships rather than legal rights. Mr. Justice Thompson would not allow such power relationships to void a judgement of "foreign" State, and the Court's majority itself seemed to hold them less important than other factors.

(2) Second Bar to Foreign Statehood: Subordination of the Cherokee in Treaties. The majority in the Cherokee Nation Case, supra, writes as follows: "They acknowledge themselves in their treaties to be under the protection of the United States; they admit that the United States shall have the sole and exclusive right of regulating the trade with them, and managing all their affairs as they think proper.". By contrast no document or attitude of the Republic of New Africa carries any such massive subservience to the United States. The New African Declaration of Independence specifically describes the nation as "forever free and independent of the jurisdiction of the United States of America." New Africa has a foreign policy distinct from that of the United States and conducts its own foreign affairs, carrying on business with representatives of the United States, of the United Nations, and of individual foreign governments in the name of the Republic of New Africa independently and on the New African Government's own initiative.

(3) Third Bar to Foreign Statehood: Right of the Cherokee to a Delegate. The Cherokee Nation Case majority

supra, writes as follows: "The Cherokee in particular were allowed by the Treaty of Hopewell, which preceeded the Constitution, to send a deputy of their choice, whenever they think fit, to Congress." Rather than being invited to send a representative to Congress, the Republic of New Africa is generally ignored officially at the parliamentary level by the United States as part of the Fourteenth Amendment consecrated policy to oppose nationhood for blacks. In any event, the policy of the Republic of New Africa makes clear that the RNA would not join the U.S. Congress and thereby settle short of full independence.

(4) Fourth Bar to Foreign Statehood: The Language of The Commerce Clause. Further, in the Commerce Clause of the U.S. Constitution, Mr. Chief Justice Marshall says, "they are as clearly distinguished by a name appropriate to themselves from foreign nations as from the several States composing the Union." The essential clause in the United States Constitution relative to the independent New African nation is the Thirteenth Amendment, and this Amendment, being the source from which the right to create and maintain the nation arises, and confirming the Emancipation Proclamation with its promise to "recognize and maintain" New African freedom, supports rather than subverts the distinction of the Republic of New Africa as a foreign State

5 The Republic of New Africa is a Foreign State. Clearly the Republic of New Africa, sharing with the Cherokee – as We have shown – all the attributes of a State, must, like the Cherokee, also be judged a State; while, lacking those impediments which prevented the Cherokee from being denominated

a "foreign" State, the Republic of New Africa must be deemed to be not just a State, but a foreign State, within the meaning of the U S. Constitution. Especially is this true when one recalls Mr. Chief Justice Marshall's definition of "foreign State" in the Cherokee Nation Case, supra, majority opinion: "In the general," he writes, "nations not holding a common allegiance are foreign to each other. The term foreign nation is with strict propriety, applicable by each to the other." There is no doubt that the Republic of New Africa and the United States do not hold a common allegiance.

6 Motion Ought to be Sustained. The impact of this finding on the Motion to Quash now before the Court is obvious. The Republic of New Africa is a foreign State, with a duly elected Government, of which the defendant Brother Imari Abubakari Obadele, I, is Sovereign, Head of State, and Chief Executive Officer. These facts make clear that the Mississippi and U.S. Courts have no jurisdiction over the defendant or, at least, bring the defendant witnin the definition of a "public minister" as used in Article Three of tne U.S. Constitution and do, therefore, serve to sustain the motion to quash the indictment and dismiss all charges and/or to establish a lack of jurisdiction in United States District Courts.

PART THREE

THE EXISTENCE OF THE NEW AFRICAN GOVERNMENT AS DISTINCT FROM THE STATE

1. In further support of the Court's lack of jurisdiction or, in the alternative, the defendant's standing as a "public minister," irrespective of the existence of the Republic of New Africa as a foreign State, the Court should note that the Constitutional basis of the instant motion is that the defendant is the Sovereign, Head of State and Chief Executive of a foreign government, and, consequently, a "public minister". A judgement of the correctness of this claim, therefore, goes properly to the question of whether the defendant is an officer of a foreign Government rather than, strictly speaking, to the question of the existence of his State as a foreign State. This is to say that, though his State is foreign, the defendant does not argue lack of jurisdiction and/or original jurisdiction because of that. Lack of jurisdiction and original jurisdiction are argued because the defendant is a public officer of a government, Ultimately the question is whether <u>the Government</u>, <u>and not the State</u>, exists. The distinction is not as delicate as it may first seem. We propose to show further, as Mr. Justice Johnson implied in the example of the Israelites, that it is not uncommon for lawful governments to exist before such governments partake of full sovereignty. Conversely it is clearly manifest, keeping in mind the recent history of Europe, that a State can exist without a government. A government may, then, be defined as a group of persons organized under law to lead the political life of the nation.

2. The pre cedents for the existence of governments prior to their partaking of full sovereignty are clear, germane, and forceful. Before listing those most salient for us, it is instructive to turn again to the words of Mr. Justice Thompson, who joined in the majority's view (Cherokee Nation Case, supra) that the Cherokee were a State but dissented from the majority's finding that the Cherokee were not a "foreign" State. Mr. Justice Thompson writes:

> "In the diplomatic use of the term We call every minister a foreign minister who comes from another jurisdiction or government. And this is the sense in which it is judicially used by this Court, even as between the different states of this Union. In the case of Buckner v. Finley, 2 Peters, 590, it was held that a bill of exchange drawn in one State of the Union on a person living in another State, was a foreign bill, and to be treated as such in the courts of the United States. The court says that in applying the definition of a foreign bill to the political character of the several States of this union in relation to each other, We are all clearly of opinion that bills drawn in one of these States upon persons living in another of them, partake of the character of foreign bills, and ought to be so treated. That for all national purposes embraced by by the federal constitution the States and the citizens thereof are one; united under the same sovereign authority, and governed by the same laws. In all other respects the States are necessarily foreign to, and independent of each other; their constitutions and forms of government being, although republican, altogether different, as are their laws and institutions. So in the case of Warder v. Arrell, decided in the Court of Appeals of Virginia, 2 Wash. 298. The Court in speaking of foreign contracts, and saying that the laws of the foreign country where the contract was made must govern, add: The same principle applies, though with no greater force, to the different States of America; for though they form a confederated government, yet the several States retain their individual sovereignties; and, with respect to their municipal regulations, are to each other foreign.
>
> "It is manifest from these cases that a foreign State, judicially considered, consists in its being under a different jurisdiction or government, without any reference to its territorial position."

As We proceed it is well to bear in mind Mr. Justice Thompson's

key words in the quotation above, not just the last paragraph but the first sentence: "In the diplomatic use of the term, we call every minister a foreign minister who comes from anotner jurisdiction or government."

3. To put the case for lack of jurisdiction even farther beyond dispute we will approach the question of the legitimacy of the existence of the RNA Government from a somewhat different direction. To begin with, there should now be no question that the Confiscation Acts and the Emancipation Proclamation, both confirmed by the Thirteenth Amendment, gave rise to a new class of men with the inalienable right to liberty, and are therefore the sources of the right of that class, or portion of that class, to establish one or more independent and sovereign nations. Whether or not the new class was or is actually able to establish an independent and sovereign nation depends on political factors. But what remains important for this Court, for purposes of the instant motion, is not whether the new class succeeded in establishing an independent and sovereign State but, rather, whether the right to do so survived until 31 March 1968, the date of the creation of the Government of the Republic of New Africa.

4 We say that the right survived. We say, as We have said, that there are only three ways in which the right could be extinguished. On the one hand the Emancipation Proclamation and the Thirteenth Amendment would have to be repealed and slavery re-instituted. On the other hand, the Emancipation Proclamation and the Thirteenth Amendment would have to be repealed, slavery re-instituted, and then a new Amendment, abolishing slavery

and introducing the new class immediately into the American political - social community enacted. Finally, the new class - all of it - would have to voluntarily extinguish the right. None of these has occurred, and so the right survives.

5. Further, the right could not in any event be extinguished by the Fourteenth Amendment, which legally could speak in a mandatory fashion only to those within the American political-social community. The Amistad decision, supra, makes this clear. The Fourteenth Amendment — since it neither implicitly nor explicitly repealed the Emancipation Proclamation and the Thirteenth Amendment and reinstituted slavery - could not be held to be mandatory upon a class existing outside the American political - social community and already in possession of the inalienable right to the liberty of accepting or rejecting the admission to the American community, in the form of U.S. citizenship, proferred by the Fourteenth Amendment. It must be remembered also that Fourteenth Amendment citizenship could not and did not, by its own terms, reach 400,000 members of the new class. And it is clear that, from the Haiti island group through Malcolm X, the nationalist portion of the new class, despite fraudulent advice and coercion has consistently rejected even implied acceptance of U.S. citizenship.

6. Finally, there could be no resort to the rule of jus soli as a means of extinguishing the right of the class to the liberty of political options other than U.S. citizenship. First, the rule of jus soli must be construed as intended to protect the individual from being left with no nationality. It cannot be construed as intended to conspire in the nefarious

ends of kidnapping, international piracy, and slave exploitation by serving as a means whereby a State having richly benefitted from kidnapping, international piracy, and slavery might divest itself of the more burdensome consequences of that kidnapping, piracy, and slave exploitation. The Amistad majority - speaking of international law treaties in this case - said, "it can never be presumed that either State intends to provide the means of perpetrating or protecting frauds, but all the provisions are to be construed as intended to be applied to bona fide transactions." In fine, the United States could be conceived as having the obligation to offer citizenship to the new class; the new class - victims of kidnapping and piracy including wrongful transportation - had no obligation to accept.

7. Further, by United States legal construction, the Emancipation Proclamation and the Thirteenth Amendment did not make the former slave a citizen or endow him with political or social rights in the American community. This is beyond dispute. For instance, U.S. President Andrew Johnson, speaking after ratification of the Thirteenth Amendment, in his message vetoing the 1866 civil rights act which sought to give U.S. citizenship and civil and social rights to the new class, expressed this view succinctly: "Four million of them have just emerged from slavery into freedom. Can it be reasonably supposed that they possess the requisite qualifications to entitle them to all the privileges and equalities of citizens of the United States?" The U.S. Congressional debates leading to the passage of the Fourteenth Amendment, and the substance of the Fourteenth

Amendment itself, make clear that the American community held the rule of jus soli not to have been activated for the new class with either the Emancipation Proclamation or the Thirteenth Amendment.

8. Since, then, the right to establish and maintain an independent and sovereign State was never extinguished, those who were heir to the right might logically use it whenever circumstances and will combined to make use possible - just as is true of any other right. One such occasion took place on 31 March 1968. A more perfect union of the nation was declared, and the Government of the Republic of New Africa was established - a group of persons organized under law to lead the political life of the nation. For a legal comparison one is led immediately to the ratification of the present U.S. Constitution in 1789 and the consequent creation of the third United States Government. The first United States Government operated under the assumptions of the Second Continental Congress. The second United States Government operated under the Articles of Confederation. The new, or third, U.S. Government was brought into being by the Constitution of 1789, and the creation of that government - according to the Constitution's preamble - was by the authority not of the Thirteen States but of the people of the United States. And the purpose was the creation of a more perfect union. It is conceived in American law that the creation of this third government did not negate the existence of the American nation - which existed prior to the creation of both the second and third governments - even though this new American Government was called into existence by the people.

9. The Government of the Republic of New Africa - a conventional, modern government - was established as a matter of legal right in March 1968 and, politically, served to bring the already existing New African nation to a more perfect union. The establishment of this Government, then, was the legitimate exercise of a right, and it occurred on the basis of action by those who possessed the right, unilaterally, against any action by the American community. That is to say, the American community possessed no right to prevent the establishment of the Government of the Republic of New Africa and, politically, used insufficient power to do so. The Government of the Republic of New Africa was established by the people of the New African nation, who, alone, had the right to do so, and that Government continues to exist and operate today.

10. Let us concede that, nevertheless, the American community has been able to prevent the exercise of full sovereignty by the New African Government over both its citizens and its territory. Does such interference with New African sovereignty - such limitation on governmental sovereignty - in itself negate the existence of the New African Government? The answer is no. Two important American precedents unmistakably assure us that (a) a legitimate government may be created even <u>before</u> it achieves sovereignty and (b) governments, apart from those of the Cherokee and other Indians, have existed within the American political context under conditions of extreme limitation of sovereignty. And it is to be noted that a government is always composed of individuals - of public ministers.

11. The first precedent is, of course, the Mayflower Compact, which created the law and the government for Plymouth Colony. Drawn on shipboard on 11 November 1620, before the Pilgrims either had set foot on the land or had any title to it whatsoever, in other words, before they had sovereignty over any land - the Compact created the basic law of the Colony, and remained the basic law of the Colony for years, and also organized the men who signed the Compact into a Government. The Compact speaks quite well for itself:

> "In the name of God, Amen. We whose names are underwritten, the Loyal Subjects of our dread Sovereign Lord King James, by the Grace of God, of Great Britain, France and Ireland, King, Defender of the Faith, etc. Having undertaken for the Glory of God and Advancement of the Christian Faith, and the Honour of our King and Country, a voyage to plant the first colony in the northern Parts of Virginia; Do by these Presents, solemnly and mutually in the Presence of God and one another, covenant and combine ourselves together into a civil Body Politick, for our better Ordering and Preservation, and Furthermore of the Ends aforesaid; and by Virtue hereof do enact, constitute, and frame, such just and equal laws, Ordinances, Acts, Constitutions, and Offices, from time to time, as shall be thought most meet and convenient for the general Good of the Colony; unto which we promise all due Submission and Obedience. In WITNESS whereof We have hereunto subscribed our names at Cape Cod the eleventh of November, in the Reign of our Sovereign Lord King James of England, France, and Ireland, the Eighteenth and of Scotland the fifty fourth; Anno Domini, 1620."

12. The second vital American precedent consists in the various Reconstruction Governments. In Mississippi William L. Sharkey was appointed Provisional Governor by U.S. President Andrew Johnson on 15 June 1865 under a plan of Presidential Reconstruction. Among Governor Sharkey's duties was the organization of a new, elected government, Governor and legislature. The election for this new government was held

on 2 October 1865, and Provisional Governor Sharkey notified President Johnson that the new government had been chosen. However, President Johnson told Governor Sharkey to retain his powers and said the legislature must accept the Thirteenth Amendment and pass a code to protect freedom.

13. Here, then, was an interesting juridical situation: a government had been duly created, but the person responsible for releasing to it its grant of sovereignty — the U. S. President — released its sovereignty only in part. The provisional governor was told to retain a superintending control, yet the new government was considered sufficiently sovereign to be able to pass binding legislation. And, incidentally, this government did pass binding legislation for many months.

14. This classic case of a government being created and afterwards acquiring sovereignty — and this a highly limited sovereignty — was not unique to Mississippi but occurred also in other States. Indeed, the process of creating a government and the government's afterwards acquiring sovereignty is a quite common process in world history.

15. What, then, may We say of the persons who compose such governments? Certainly We would not have denied to the members of the Mississippi Reconstruction government just described, standing as "public ministers" despite their severely limited sovereignty and despite the fact that they were created as a government before their sovereignty was assured and, finally, received only a limited measure of it.

16. The comparison and impact for the Government of the Republic of New Africa are clear. Apart from any consideration of the character of the New African State, the Government of the Republic of New Africa was duly created and enjoys a real sovereignty over citizens and land - though the land sovereignty may be said to be coincident with that of the United States. The Government of the Republic of New Africa can and has passed laws defining and protecting the rights of citizens and others who come within New African jurisdiction, no less than the said Mississippi Reconstruction government. It is clear that the members of this Government, since the Government does govern and its members are of necessity constantly in an inter-State commerce with the United States, are public ministers.

17. Further, relying upon an argument of the Cherokee Nation which Mr. Justice Marshall, writing for the Supreme Court's majority, called imposing, We submit that the citizens of the Republic of New Africa and the members of the Republic's Government do not owe a common allegiance with citizens of the United States or members of the United States Government, and are, therefore, alien to the United States: an aggregate of aliens composing a State must be a foreign State; each individual being foreign, the whole must be foreign. An aggregate of aliens composing a Government must be a foreign government.

18. Officers of the Government of the Republic of New Africa are, therefore, foreign "public ministers" and fall

within that class of persons so described in Article Three of the United States Constitution, for whom the United States Supreme Court has original jurisdiction.

19. For these reasons the motion now before the Court to Quash the Indictment and Dismiss all criminal charges brought by the United States of America against the defendant, the President and Head of State and Chief Executive Officer of the Government of the Republic of New Africa, should be sustained on the grounds that the Courts have no jurisdiction or, in the alternative, on grounds that any further prosecution would be in violation of the United States Supreme Court's original jurisdiction.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

CRIMINAL ACTION NO. 4384-N

UNITED STATES OF AMERICA — PLAINTIFF

VS.

IMARI ABUBAKARI OBADELE, I. f/k/a/RICHARD HENRY — DEFENDANT

AFFADAVIT

STATE OF MISSISSIPPI

COUNTY OF HINDS

I have read the foregoing Brief in Support of Motion to Quash Indictment for Lack of Jurisdiction under Article III U.S. Constitution Brought by the Defendant and the same is true to the best of my knowledge and belief.

RAYMOND E. WILLIS

SUBSCRIBED AND SWORN BEFORE ME this day of June, 1973.

NOTARY PUBLIC

Commission Expires:

(BRIEF PREPARED BY PRESIDENT IMARI ABUBAKARI OBADELE, I)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

United States of America

Plaintiff,

v

Criminal
No. 4384-N

IMARI ABUBAKARI OBADELE, I.
f/k/a RICHARD HENRY,

Defendant.

BRIEF IN SUPPORT OF MOTION

TO QUASH INDICTMENT FOR LACK OF JURISDICTION

UNDER ARTICLE III, U.S. CONSTITUTION

BROUGHT BY THE DEFENDANT

Article III, Sec. 2 of the United States Constitution provides:

> "In all cases affecting Ambassadors, and other public ministers and consuls, ... the Supreme Court shall have original jurisdiction."

What is meant by "Public Ministers and Consuls" has not been clearly defined, but certaintly the language "Public Ministers and Consuls" cannot be construed to mean less than the "official representatives of a government or an international organization."

In Public Law 92-539, enacted October 24, 1972, the term "foreign official" was defined as:

> A chief of state, or the political equivalent, President, Vice President, Prime Minister, Ambassador, Foreign Minister or other officer of cabinet rank or above of a foreign government, or the chief executive of an international organization . . . Title 18 USC Sec. 1116 (b)(1)

Further, Sec.(B) (2) enlarges that definition to include "any person of foreign nationality who is duly notified to the U.S. as an officer . . . of a foreign government or international organization, and who is in the United States on official business."

Further, the act provides explicitly, "Foreign Government" means the government of a foreign country, irrespective of recognition by the United States.

That it is unlawful to imprison such a person is clear from Sec. 112, Title 18 USC, which proscribes such action and makes of it a criminal offense punishable by 10 years imprisonment and a $10,000 fine.

Of immediate importance then is our determination of whether Imari Obadele is a person within the ambit of either subsections (b) (1) or (b) (2) of Title 18 USC.

To qualify as such person under Sec. (b)(2), one must show that he is a "person of foreign nationality who is duly notified to the United States as an officer of the foreign government or international organization, and who is in the United States on official business."

The proofs clearly established that Obadele is the Chief of State of the Republic of New Africa. It also appeared that the United States Department was officially presented his credentials defining the nature of his government, his responsibilities thereunder, and the object of his intended negotiations with the United States Government.

Every element of the limits of Sec. (b)(2) clearly exist, with the exception of Obadele showing that he is a person of foreign nationality.

That question, however, is a matter of law and requires a decision upon the issue of whether black folks now within the United States have ever been converted, in accordance with settled principles of universally established law, into United States citizens, and divested altogether of their original foreign African nationality.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

CRIMINAL ACTION NO. 4384 N

UNITED STATES OF AMERICA — PLAINTIFF

VS.

IMARI ABUBAKARI OBADELE, I.
f/k/a/ RICHARD HENRY — DEFENDANT

PROOF OF SERVICE

I hereby certify that I have this day personally served a copy of the foregoing Brief in Support of Motion to Quash Indictment For Lack of Jurisdiction Under Article III, United States Constitution Brought by the Defendant to the Honorable Robert Hauberg, United States Attorney Post Office Box 2091, Jackson, Mississippi, by delivering a copy fo his office on the third Floor of the united States Post Office Building, Jackson, Mississippi this 25th day of June, 1973.

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(BRIEF PREPARED BY PRESIDENT IMARI ABUBAKARI OBADELE, I)

Blacks came to this Country as kidnapped slaves against their free will. Whatever they were before coming here they now remain. Dred Scott v Sanford, 60 US 393, clearly established that blacks were not citizens of the United States. That rather, they were enslaved Africans.

Slavery was not simply an economic institution, it was a social and, by exclusion, a political institution as well. By Constitutional, statutory, decisional, administrative and customary law, the position of the slave was fixed.

He could not possess arms or liquor, make contracts, own land or personalty, travel freely, give testimony or serve as a juror or in any other public office, learn to read or write, act independently as a religious leader, intermarry with whites, compete in the free labor market. Above all, he had no political rights. Note Crandell v Nevada, 6 Wall 35 (1968) where the Court held that the right "to pass freely from State to State" was a right of national citizenship.

As Justice Taney succintly expressed it in the Dred Scott case, "The negro slave has no rights which the white man is bound to respect." Scott v Sanford, 60 US (19 How) 690, 701 (1856).

That this population of slaves were Aliens is clear from any fair analysis of the literature of the time. Cf. Journal of Negro History, January 1968, pp. 38, 39 where we find written:

> "Realistic Southern politicians -- a fortiori Northern politicians -- could not deceive themselves that they understood the inclinations and aspirations of a vast alien population which they had dealt with only as masters in the context of slavery. The politicians of the North and South had together made their Revolution, remade their society, established a viable political structure.

> "Like every successful government, the early American Republic rested upon basic consensus expressed in a defined balance of political power ultimately satisfactory to politicians and constituents alike. How could any 'responsible' person -- where 'responsible' connotes fundamental agreement in the basic structure of American society and politics -- look with equanimity on the accretion to the political and social population of an immense Negro mass, alien to the body politic, whose unarticulated aspirations might pursue any direction under any leaders."

Indeed, this alien body politic might acquire to itself leaders, who would then express hitherto unarticulated aspirations which might reach in any political direction.

That possibility was clearly seen as the right of freed slaves.

As early as 1842, Justice Story in Prigg v Pennsylvania , 16 Peters 611-2, said that slavery was a"mere regulation founded upon and limited to the range of territorial laws. He concluded that except for the Fugitive Slave Clause of the United States Constitution, any state could declare "free all runaway slaves coming within its limits."

In the famous Somerset case , decided June 22, 1772, in the Court of Kings Bench, from the Easter Term, 12 Geo. (3) to Michaelmas 14 Geo. 3, Capel Lofft, by Lord Mansfield, it was established as a principle of International Law that the condition of slavery simply operated to impose artificial restraints, which when removed left the slaveholder powerless to exercise any control whatever over his former slave.

In other words, whatever he was before disability, he reverted to after the removal of that disability.

If Africans were Africans before they were enslaved by American Municipal Law, they remained Africans after the amendment of that Municipal Law by any means.

The case of the United States v The Libelants and Claimants of the Schroner Amistad, decided in the United States Supreme Court in 1841, 15 Peters 826, 840, makes clear that the Constitution contained no language recognizing human beings as anything other than human beings.

On page 841, the Court said:

> "The law of nature and the law of nations find us effectively to render justice to the African . . . and in a case like this, where it is admitted that the African . . . owe no allegiance to (any Nations laws) their rights are to be determined by the law which is of universal obligation - the law of nature."

And on page 842, the Court said:

> "The presumption of law is, always, that the domicile of origin is retained until the change is proved. . . . The burden of proving the change is cast on him who alleges it."

Further, on page 842, and of critical importance to the within case, the Court said:

> "The domicile of origin prevails until the party has not only acquired another, but has manifested and carried into execution an intention of abandoning his former domicile and acquiring another as his sole domicile. As it is the will or intention of the party which alone determines what is the real place of domicile which he has chosen, it follows that a former domicile is not abandoned by residence in another if that residence be not voluntarily chosen. Those who are in exile, or in prison, as they are never presumed to have abandoned all hope of return, retain their former domicile. That these victims of fraud and piracy - husbands torn from their wives and familes - children from their parents and kindred - neither intended to abandon the land or their nativity, nor had lost all hope of recovering it, sufficiently appears from the facts on this record. It cannot, surely be claimed that a residence, under such circumstances of these helpless beings. . . changed their native domicile."

The case of Cherokee Nation v Georgia, 9 Peters, makes clear the principle that the enslaved Africans in America at the time of Emancipation were a distinct political society, separated from others, and as such were a Nation or of separate nationality.

The Thirteenth Amendment, when adopted in February of 1865, removed all vestiges of servitude from the enslaved African and therefore accordingly reverted him to his former national condition.

That document left the former slave free to decide where he should go and what his estate should be.

The Fourteenth Amendment, adopted June of 1866, did nothing more that extend the status of United States Citizenship to the freed Africans. It certainly was ineffectual as a matter of law to eradicate his African Nationality, nor could it deprive him, as a free man, of the right to choose leaders of his own, to plot his separate political course.

In Bolling v Sharpe, 347 US 497, 499, the Court said:

> "Liberty under law extends to the full range of conduct which the individual is free to pursue, and it cannot be restricted except for a proper governmental objective."

Liberty therefore, as applied to the freed African, clearly extended to political activity and to the question of self determination.

In his message of December, 1865, the United States President, Andrew Johnson, conceded the right of the new class, freed by the Thirteenth Amendment, to general emigration to Africa. He stated that "while their right to voluntary migration and expatriation is not to be questioned, I would not advise them their forced removal and colonization."

If their right to "expatriation" was not to be questioned, then, it certainly follows that it ought not now be questioned. The term "expatriation" implicitly recognizes the fact of a rightful homeland different from that of America. The right of this new class to form a separate political nation was certainly one of the included inalienable rights of men.

Indeed, the Government has expressly recognized that right. In 1864, the United States Secretary of War Edwin Stanton and the United States Army General, William Sherman, at Savannah, Georgia, met with a black government council representing the freed class. As a result of these negotiations, General Sherman issued his Special Field Order No. 15, dated January 16, 1865 setting aside specific land in South Carolina for the benefit of these persons. No white persons were permitted to reside there.

No law has ever superseded this order. Gen. Sherman acted under Art. IV, Sec. 3(2) of the United States Constitution and the sense of the Wade Davis Bill of 4 July 1864 and the Reconstruction Act of 1867, which gave Congress power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.

Similar centers were established in Mississippi. Capt. John Eaton, named Superintendent of Negro Affairs by Ulysses Grant in 1862, had, by July of 1864, settled 72,500 members of the new class in "freedmans villages." Davis Bend, Mississippi in present Washington County, including plantations of the Confederate President, Jefferson Davis, was occupied by the Union army in 1864, and here a new African government was established under the protection of the United States Government, just as were many of the Indian Nations.

In April of 1865, in response to President Lincoln's directive to him to report on the logistics of "removing the whole class of Negroes" from the country, Gen. Butler replied "using all your naval vessels and all the merchant marine, fit to cross the seas with safety, it would be impossible

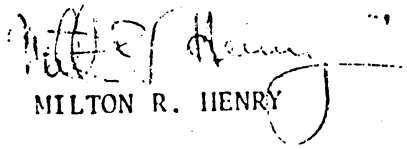
for you to transport them to the nearest place that can be found fit, that is the island of San Domingo, half as fast as Negro children will be born here."

Because of this report, the Congress determined that from the standpoint of the white community, the new class should be given the vote and the U.S. citizenship, Report of the United States Congressional Joint Committee of 15, 18 June 1866. Accordingly, the Fourteenth Amendment was adopted.

Judging from the exploitive use intended to be made of the black vote by the Radical Republicans, this unilateral decision, was a clear imposition upon the total class, and was illegal.

The right of blacks to form a Republic of New Africa has now been exercised. Blacks generally in the United States, in all of their national conferences, have recognized the RNA and its objectives. Blacks have conceded that the RNA is a nation capable of dealing for the nationalist class of blacks within the United States . That is all the law requires. Obadele qualifies as a person of foreign nationality who may not be prosecuted in a United States District Court for his actions in attempting to further the ends of his Government.

Respectfully submitted,



MILTON R. HENRY

IMARI ABUBAKARI OBADELE, I