

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HWANG GEUM JOO, et al.,

Plaintiffs,

v.

JAPAN,

Defendant.

Civil Action No. 00-CV-2288
Judge Henry H. Kennedy, Jr.

STATEMENT OF INTEREST
OF THE UNITED STATES OF AMERICA

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<u>CASES</u>	Page(s)
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<u>Carl Marks & Co., Inc. v. Union of Soviet Socialist Republics</u> , 841 F.2d 26 (2d Cir. 1988), <u>cert. denied</u> , 487 U.S. 1219 (1988)	6, 7
<u>Chicago & Southern Air Lines, Inc. v. Waterman S. S. Corp.</u> , 333 U.S. 103 (1948)	passim
<u>Cicippio v. Islamic Republic of Iran</u> , 30 F.3d 164 (D.C. Cir. 1994), <u>cert. denied</u> , 513 U.S. 1078 (1995)	20
<u>Coleman v. Miller</u> , 307 U.S. 433 (1939)	21
<u>Committee Of U.S. Citizens Living In Nicaragua v. Reagan</u> , 859 F.2d 929 (D.C. Cir. 1998) ..	16

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<u>Crosby v. National Foreign Trade Council</u> , 530 U.S. 363 (2000)	32
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<u>Luftig v. McNamara</u> , 373 F.2d 664 (D.C. Cir.), <u>cert. denied</u> , 387 U.S. 945 (1967)	30
<u>Marbury v. Madison</u> , 5 U.S. 137 (1803)	21
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<u>Regan v. Wald</u> , 468 U.S. 222 (1984)	32
<u>Republic of Mexico v. Hoffman</u> , 324 U.S. 30 (1945)	5
<u>Ex parte Republic of Peru</u> , 318 U.S. 578 (1943)	5
<u>Riegle v. Federal Open Market Committee</u> , 656 F.2d 873 (D.C. Cir.), <u>cert. denied</u> , 454 U.S. 1082 (1981)	32

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<u>Sablan v. Inginoef</u> , No. 88-366, 199 WL 291893, 1 N.M.I. 146 (N. Mariana Islands 1990)	16
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<u>Seetransport Wiking Trader Schiffahrtsgesellschaft MBH & Co. v. Navimpex Centrala Navala</u> , 989 F.2d 572 (2d Cir. 1993)	12
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<u>Slade v. United States of Mexico</u> , 617 F. Supp. 351 (D.D.C. 1985), <u>aff'd</u> , 790 F.2d 163 (1987)	6
<u>Smith v. Socialist People's Libyan Arab Jamahiriya</u> , 101 F.3d 239 (2d Cir.), <u>cert. denied</u> , 520 U.S. 1204 (1997)	passim
<u>Sumitomo Shoji America, Inc. v. Avagliano</u> , 457 U.S. 176 (1982)	35
<u>Tenney v. Mitsui & Co., Ltd.</u> , Case No. CV-99-11545 (C.D. Cal. Feb. 24, 2000)	28
<u>The Schooner Exchange v. M'Faddon</u> , 11 U.S. 116 (1812)	4
<u>U.S. v. Belmont</u> , 301 U.S. 342 (1937)	29
<u>United States v. Curtiss-Wright Export Corp.</u> , 299 U.S. 304 (1936)	29, 34
<u>United States v. Li</u> , 206 F.3d 56 (1st Cir.), <u>cert. denied</u> , 121 S. Ct. 379 (2000)	34
<u>United States v. Matta-Ballesteros</u> , 71 F.3d 754 (9th Cir. 1995), <u>cert. denied</u> , 519 U.S. 1118 (1997)	16
<u>United States v. Pink</u> , 315 U.S. 203 (1942)	29
<u>United States v. Rostenkowski</u> , 59 F.3d 1291 (D.C. Cir. 1995)	22
<u>Verlinden B.V. v. Central Bank of Nigeria</u> , 461 U.S. 480 (1983)	4, 5,

	Page(s)
<u>In re World War II Era Japanese Forced Labor Litigation</u> , 114 F. Supp. 2d 939 (N.D. Cal. 2000)	passim
<u>Xuncax v. Gramajo</u> , 886 F. Supp. 162 (D. Mass. 1995)	16
<u>Z & F Assets Realization Corp. v. Hull</u> , 114 F.2d 464 (D.C. Cir. 1940), <u>aff'd</u> , 311 U.S. 470 (1941)	30

STATUTES

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28 U.S.C. §§ 1330, 1602, <u>et seq.</u>	passim
50 U.S.C. App. §§ 2001-2017 (1994)	24, 25

LEGISLATIVE MATERIALS

H.R. Rep. No. 94-1487, 94th Cong. 2d Sess	7, 11
98 Cong. Rec. 2327, 2361, 2450, 2462, 2594 (1952)	25
42 Cong. Rec. 4570, 4586, 4591-93 (March 13, 1996)	10
94 Cong. Rec. 564 (1948)	25
142 Cong. Rec. 4814-15, 4836, 4846 (March 14, 1996)	10
S. Exec. Rep. No. 82-2 (1952)	23, 24, 29

TREATIES

Treaty of Peace with Japan of September 8, 1951, 3 U.S.T. 3169	passim
Treaty of Peace Between the Republic of China and Japan, April 28, 1952, 1858 U.N.T.S. 38	26
Joint Communiqué of the Government of Japan and the Government of the People's Republic of China	27
The Treaty of Peace and Friendship between China and Japan, August 12, 1978, 19784 U.N.T.S. 269	27

Agreement on the Settlement of Problems Concerning Property and Claims and On Economic Cooperation Between Japan and the Republic of Korea, June 22, 1965, 8473 U.N.T.S. 259	27
--	----

HISTORICAL AND OTHER MATERIALS

See Reimann, <u>A Human Rights Exception to Sovereign Immunity: Some Thoughts on Princz</u> , 16 Mich. J. Int'l L. 403 (1995)	16
--	----

Sung-Hwa Cheong, <u>The Politics of Anti-Japanese Sentiment in Korea: Japanese-South Korean Relations under American Occupation, 1945-1952</u> (1991)	27, 28
---	--------

U.S. Dep't of State Publications, <u>Record of Proceedings of the Conference for the Conclusion and Signature of the Treaty of Peace with Japan</u> (1951)	26
--	----

Comments on British Draft, Memorandum by the Officer in Charge of Economic Affairs in the Office of Northeast Asian Affairs (Hemmendinger) to the Deputy to the Consultant (Allison), April 24, 1951, <u>reprinted in</u> Foreign Relations of the United States 1951, Vol. VI, Asia and the Pacific (1977)	23, 24
--	--------

Memorandum of Conversation, by the Deputy Director of the British Commonwealth and Northern European Affairs (Satterthwaite), Washington, March 30, 1951, <u>reprinted in</u> Foreign Relations of the United States 1951, Vol. VI, Asia and the Pacific (1977)	25
---	----