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DEFENDANT
Pro se

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI'I

WELLS FARGO BANK, N.A. A NATIONAL ASSOCIATION, AS TRUSTEE FOR OPTION ONE MORTGAGE LOAN TRUST 2007-FXD2 ASSET-BACKED CERTIFICATES, SERIES 2007-FXC2,	)	CIVIL NO. 11-1-0106 (GSH)
	)	(Foreclosure-Ejectment)
	)	(Hilo)
)	
Plaintiff,	)	DEFENDANT ELAINE E.
	)	KAWASAKI'S MOTION TO
vs.	)	DISMISS COMPLAINT PURSUANT
	)	TO HRCP 12(b)(1); MEMORANDUM
	)	IN SUPPORT OF MOTION TO
	)	DISMISS; DECLARATION OF
ELAINE E. KAWASAKI; AND JOHN AND MARY DOES 1-10,	)	DEFENDANT; EXHIBITS "1-4";
	)	NOTICE OF HEARING;
Defendants.	)	CERTIFICATE OF SERVICE
)	
)	
	)	<u>HEARING:</u>
)	
	)	DATE: _____
	)	TIME: _____
	)	JUDGE: _____

DEFENDANT'S MOTION TO DISMISS COMPLAINT PURSUANT TO HRCP 12(b)(1)

COMES NOW the Defendant ELAINE E. KAWASAKI, hereinafter DEFENDANT, in pro se, makes the following Motion to Dismiss Complaint for lack of subject matter jurisdiction, which can be raised at any time throughout the proceedings pursuant to *Tamashiro v. State of Hawai'i*, 112 Haw. 388, 398; 146 P.3d 103, 113 (2006), and a request for judicial notice of the enclosed exhibits attached to Defendant's Declaration.

DEFENDANT moves pursuant to Rule 12(b)(1) of the Hawaii Rules of Civil Procedure to dismiss Complaint for want of subject matter jurisdiction in that the suit would manifestly require the Court to act outside the constitutional limitations of its judicial power, and unlawfully intrude upon, and in effect seize political control over two executive agreements entered into between President Grover Cleveland of the United States and Queen Lili'uokalani of the Hawaiian Kingdom. The first agreement is the *Lili'uokalani assignment* (January 17th 1893) that mandates the President to administer Hawaiian

Kingdom law and the second is the *Agreement of restoration* (December 18th 1893) that mandates the President to restore the Hawaiian Kingdom government and the Queen thereafter to grant amnesty to the insurgents. As is more fully shown in Defendant's Brief in support of this dismissal motion, the Complaint attempts to have the Court act outside the confines of the judicial power and fails to give rise to any claim or issue over which the Court could constitutionally exercise subject matter jurisdiction without violating the *Supremacy clause*, in particular, the 1893 Executive Agreement and the precedence set in U.S. v. Belmont, 301 U.S. 324 (1937), U.S. v. Pink, 315 U.S. 203 (1942), and American Insurance Association v. Garamendi, 539 U.S. 396 (2003) regarding executive agreements that do not require Senate ratification to have the force and effect of a treaty.

WHEREFORE, DEFENDANT respectfully prays that the foregoing motion to dismiss be inquired into and sustained, that the Complaint, to the extent that it is sought to be maintained against the DEFENDANT, be dismissed for the reasons stated in this motion as well as in the more fully detailed statement of the facts, set forth with pertinent legal background and authority, in the simultaneously filed Brief of the DEFENDANT in support of the motion to dismiss.

DATED: Kurtistown, Hawai'i, May 18, 2012.

ELAINE E. KAWASAKI
Defendant, pro se

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IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI'I

WELLS FARGO BANK, N.A. A NATIONAL)	CIVIL NO. 11-1-0106 (GSH)
ASSOCIATION, AS TRUSTEE FOR OPTION	)	(Foreclosure-Ejectment)
ONE MORTGAGE LOAN TRUST 2007-FXD2	)	(Hilo)
ASSET-BACKED CERTIFICATES, SERIES)	
2007-FXC2,)	
	)	MEMORANDUM IN SUPPORT OF
Plaintiff,	)	MOTION TO DISMISS
)	
vs.)	
)	
ELAINE E. KAWASAKI; AND JOHN AND)	
MARY DOES 1-10,)	
)	
Defendants.)	
_____)	

MEMORANDUM IN SUPPORT OF MOTION

Defendant, ELAINE E. KAWASAKI, in pro se, (hereafter “DEFENDANT”), herein submits this Memorandum in support of their Motion to Dismiss Complaint.

I. INTRODUCTION

WELLS FARGO BANK, N.A. A NATIONAL ASSOCIATION, AS TRUSTEE FOR OPTION ONE MORTGAGE LOAN TRUST 2007-FXD2 ASSET-BACKED CERTIFICATES, SERIES 2007-FXC2 (hereafter “PLAINTIFF”) filed a complaint in the Circuit Court of the Third Circuit against DEFENDANT for foreclosure and ejectment. PLAINTIFF claims this court has jurisdiction over the complaint.

The PLAINTIFF cannot claim relief from the Circuit Court of the Third Circuit because the appropriate court with subject matter jurisdiction in the Hawaiian Islands is an Article II Court established under and by virtue of Article II of the U.S. Constitution in compliance with Article 43, 1907 Hague Convention IV (36 U.S. Stat. 2277), and pursuant to two sole-executive agreements entered into between President Cleveland and Queen Lili‘uokalani as are more fully explained hereafter. Article II Courts are Military Courts established by authority of the

President,¹ being Federal Courts, which were established as “the product of military occupation.” See Bederman, Article II Courts, 44 Mercer Law Review 825-879, 826 (1992-1993).

Military Courts “are generally based upon the occupant’s customary and conventional duty to govern occupied territory and to maintain law and order.” See United States Law and Practice Concerning Trials of War Criminals by Military Commissions, Military Government Courts and Military Tribunals, 3 United Nations War Crimes Commission, Law Reports of Trials of War Criminals 103, 114 (1948); see also Jecker v. Montgomery, 54 U.S. 498 (1851); Leitensdorfer v. Webb, 61 U.S. 176 (1857); Cross v. Harrison, 57 U.S. 164 (1853); Mechanics' & Traders' Bank v. Union Bank, 89 U.S. 276 (1874); United States v. Reiter, 27 Federal Case 768 (1865); Burke v. Miltenberger, 86 U.S. 519 (1873); New Orleans v. Steamship Co., 87 U.S. 387 (1874); In re Vidal, 179 U.S. 126 (1900); Santiago v. Nogueras, 214 U.S. 260 (1909); Madsen v. Kinsella, 343 U.S. 341 (1952); Williamson v. Alldridge, 320 F. Supp. 840 (1970); Jacobs v. Froehlke, 334 F. Supp. 1107 (1971).

II. BURDEN ESTABLISHING SUBJECT MATTER JURISDICTION RESTS WITH THE PLAINTIFF

In State of Hawai'i v. Lorenzo, 77 Haw. 219 (1994), the Defendant claimed to be a citizen of the Hawaiian Kingdom and that the State of Hawai'i courts did not have jurisdiction over him. In 1994, the case came before the Intermediate Court of Appeals (ICA) and Judge Heen delivered the decision. Judge Heen affirmed the lower court’s decision denying Lorenzo’s motion to dismiss, but explained that “Lorenzo [had] presented no factual (or legal) basis for concluding that the Kingdom exists as a state in accordance with recognized attributes of a state’s sovereign nature.” *Id.*, 221. In other words, the reason Lorenzo’s argument failed was because he “did not meet his burden of proving his defense of lack of jurisdiction.” *Id.* In Nishitani v. Baker, 82 Haw. 281, 289 (1996), however, the Court shifted that burden of proof not upon the Defendant, but upon the Plaintiff, whereby “proving jurisdiction thus clearly rests with the prosecution.” The Court explained, “although the prosecution had the burden of proving beyond a reasonable fact establishing jurisdiction, the defendant has the burden of proving facts in support of any defense...which would have precluded the court from exercising jurisdiction over the defendant (emphasis added).” *Id.* “‘Substantial evidence’ ...is credible evidence which is of sufficient quality and probative value to enable a person of reasonable caution to support a conclusion.” In re Doe, 84 Hawai'i 41, 46 (Haw. S.Ct. 1996).

¹ These types of courts were established during the Mexican-American War, Civil War, Spanish-American War, and the Second World War, while U.S. troops occupied foreign countries and administered the laws of these States.

PLAINTIFF will be unable to meet such a burden of proving subject matter jurisdiction “beyond a reasonable fact” because of two executive agreements entered into between President Cleveland of the United States and Queen Lili`uokalani of the Hawaiian Kingdom, called the *Lili`uokalani assignment* (Exhibit “A” of Expert Memorandum of Dr. David Keanu Sai, Exhibit “4” Declaration of DEFENDANT) of executive power and the *Agreement of restoration* (Exhibit “B” of Expert Memorandum of Dr. David Keanu Sai, Exhibit “4” Declaration of DEFENDANT). Congress was apprised of the *Lili`uokalani assignment* by Presidential Message, December 18, 1893, *See* United States House of Representatives, 53d Cong., Executive Documents on Affairs in Hawaii: 1894-95, 443-465 (1895). Presidential Message, January 13, 1894, apprised Congress of the *Agreement of restoration*. *See Id.*, 1241-1284.

III. STANDARD OF REVIEW

Rule 12(b)(1) of the HRCF reads as follows:

(b) How presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter.

Jurisdictional issues, whether personal or subject matter, can be raised at any time and that subject matter jurisdiction may not be waived. Wong v. Takushi, 83 Hawai`i 94, 98 (1996), *see also* State of Hawai`i v. Moniz, 69 Hawai`i 370, 372 (1987). In Tamashiro v. State of Hawai`i, 112 Haw. 388, 398; 146 P.3d 103, 113 (2006), the Hawai`i Supreme Court stated, “The lack of jurisdiction over the subject matter cannot be waived by the parties. If the parties do not raise the issue, a court *sua sponte* will, for unless jurisdiction of the court over the subject matter exists, any judgment rendered is invalid.” “[I]t is well-established . . . that lack of subject matter jurisdiction can never be waived by any party at any time.” Chun v. Employees' Ret. Sys. of Hawai`i, 73 Haw. 9, 14, 828 P.2d 260, 263 (1992). *See also* Amantiad v. Odum, 90 Haw. 152, 159, 977 P.2d 160, 167 (1999) (“A judgment rendered by a circuit court without subject matter jurisdiction is void”).

The U.S. Constitution provides that treaties, like acts of Congress, are considered the “supreme law” of the land; *see* U.S. Constitution Article VI (2), and Maiorano v. Baltimore & Ohio R.R. Co., 213 U.S. 268, 272-73 (1909). Also, Executive Agreements entered into by the President under his sole constitutional authority with foreign States are treaties that do not require ratification by the Senate or approval of Congress. *See* United States v. Belmont, 301 U.S. 324,

326 (1937). Given that valid executive agreements are binding treaties, this Court should grant Defendant's Motion to Dismiss in order to accomplish justice.

IV. SUMMARY OF ARGUMENT

DEFENDANT asserts that this Court lacks subject matter jurisdiction because of two executive agreements, the *Lili'uokalani assignment* (January 17, 1893) and the *Agreement of restoration* (December 18, 1893). These executive agreements provide the legal and factual evidence that the federal government currently recognizes the Hawaiian Kingdom. (In United States v. Lorenzo, 995 F.2d 1448, 1456 (1993), the 9th Circuit concluded that “[t]he appellants have presented no evidence that the Sovereign Kingdom of Hawaii is currently recognized by the federal government.”) These executive agreements also provide the “basis for concluding that the Kingdom exists as a state in accordance with recognized attributes of a state’s sovereign nature” pursuant to the evidentiary standard set by Lorenzo, at 221. The Circuit Court of the Third Circuit claim to jurisdiction is in conflict with the 1893 Executive Agreements and the precedence in Belmont, U.S. v. Pink, 315 U.S. 203 (1942), and American Insurance Association v. Garamendi, 539 U.S. 396, (2003), where sole executive agreements preempt State law.

Rebuttable presumptions of law have been created by means of judicial notice. In Belmont, 301 U.S. 324, 330 (1937) the U.S. Supreme Court stated, “We take judicial notice of the...assignment set forth in the complaint.” The Court was making reference to an assignment that “was effected by an exchange of diplomatic correspondence between the Soviet Government and the United States,” Id., at 326. The appellant argued that the laws of New York could not be invoked as to deprive the faithful execution of a sole executive agreement, being an international compact. The Court applied the supremacy rule of treaties over state laws to the assignment being an international compact or sole-executive agreement. The Court stated, “And when judicial authority is invoked in aid of such consummation, state constitutions, state laws, and state policies are irrelevant to the inquiry and decision. It is inconceivable that any of them can be interposed as an obstacle to the effective operation of a federal constitutional power (citation omitted).” Id., at 332. The taking of judicial notice of the legal phenomenon that executive agreements preempt State law gives rise to the presumption.

Reinforcing the rule established in Belmont, the U.S. Supreme Court in Pink, at 223, “added that ‘**all international compacts and agreements**’ are to be treated with similar **dignity**, for the reason that ‘complete power over international affairs is in the national government, and is not and cannot be subject to any curtailment or interference on the part of the several states (emphasis added).’” In Garamendi, at 416, the U.S. Supreme Court ruled, “valid

executive agreements are fit to preempt state law, just as treaties are.” See also Belmont, at 327, 331; Pink, at 223, 230-231. This rule is a mandatory precedent by the U.S. Supreme Court that binds all the courts of states to follow. State courts, however, are not bound to follow persuasive precedents, but they may choose to unless there is a contradictory mandatory precedent. The preemption rule of valid executive agreements is a mandatory precedent, not a persuasive precedent.

“[A] rule based upon the Constitution of the United States which, under the Supremacy Clause, is binding upon state courts as well as upon federal courts.” Henry et al. v. City of Rock Hill, 376 U.S. 776, 777; 84 S. Ct. 1042, 1043 (1964); “Art. VI of the Constitution makes it of binding effect on the States ‘any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.’ Every state legislator and executive and judicial officer is solemnly committed by oath taken pursuant to Art. VI, cl. 3, ‘to support this Constitution.’” Cooper v. Aaron, 358 U.S. 1, 18; 78 S. Ct. 1401, 1410 (1958).

The U.S. Supreme Court has final authority on questions of the U.S. Constitution. When the U.S. Supreme Court held that valid executive agreements preempt “state constitutions, state laws, and state policies,” then that precedent in its interpretation of sole executive agreements binds every court as it applies to jurisdictional claims by States. Until the U.S. Supreme Court changes the ruling, the binding precedent is authoritative on the meaning of sole executive agreements. The Court has no discretion to apply the rule, but must carry out the rule even if the Court disagrees.

V. ARGUMENT: CIRCUIT COURT OF THE THRID CIRCUIT LACKS SUBJECT MATTER JURISDICTION

In State of Hawai‘i v. Lee, 90 Haw. 130, 142; 976 P.2d 444, 456 (1999), the Hawai‘i Supreme Court, in referencing Lorenzo, stated, “**it is an open legal question whether the ‘Kingdom of Hawai‘i’ still exists.**” This open legal question has since not been conclusively answered pursuant to the ICA’s instructive exposition because defendants have not provided evidence that the Hawaiian Kingdom continues to exist as a state. See State of Hawai‘i v. Rodenhurst, 2010 Haw. App. LEXIS 588, (Haw. Ct. App. Oct. 29, 2010); State of Hawai‘i v. Makekau, 2009 Haw. App. LEXIS 633 (Haw. Ct. App. Sept. 29, 2009); State v. Ampong, 2009 Haw. App. LEXIS 72 (Haw. Ct. App. Feb. 27, 2009); State of Hawai‘i v. Ball, 2007 Haw. App. LEXIS 267 (Haw. Ct. App. Apr. 19, 2007); State of Hawai‘i v. Spinney, 2005 Haw. App. LEXIS 43 (Haw. Ct. App. Feb. 4, 2005); State of Hawai‘i v. Fergerstrom, 106 Haw. 43, 101 P.3d 652, 2004 Haw. App. LEXIS 349 (Haw. Ct. App. 2004); State of Hawai‘i v. Keliikoa, 2004 Haw.

App. LEXIS 227 (Haw. Ct. App. July 21, 2004); Betsill Bros. Constr., Inc. v. Akahi, 2004 Haw. App. LEXIS 205 (Haw. Ct. App. June 28, 2004); State of Hawai'i v. Araujo, 2004 Haw. App. LEXIS 3 (Haw. Ct. App. Jan. 14, 2004); Makapono Partners, LLC v. Simeona, 2003 Haw. App. LEXIS 108, p. 17 (Haw. Ct. App. Apr. 14, 2003); State of Hawai'i v. Lindsey, 2002 Haw. App. LEXIS 32, p. 8 (Haw. Ct. App. Mar. 8, 2002); State of Hawai'i v. Sherman, 2000 Haw. App. LEXIS 218, p. 4 (Haw. Ct. App. Dec. 11, 2000); Chalon Int'l of Haw., Inc. v. Makuaole, 2000 Haw. App. LEXIS 192, p. 7 (Haw. Ct. App. Oct. 24, 2000); and Baker.

Cases before the United States District Court for the District of Hawai'i also cited Lorenzo for denying motions to dismiss on the same grounds that defendants failed to provide evidence of Hawaiian Kingdom state continuity. See Epperson v. Hawaii, 2009 U.S. Dist. LEXIS 100045, p. 3 (D. Haw. Oct. 27, 2009); Simeona v. United States, 2009 U.S. Dist. LEXIS 59107, p. 3 (D. Haw. July 10, 2009); Kupihea v. United States, 2009 U.S. Dist. LEXIS 59023, p. 4 (D. Haw. July 10, 2009); United States v. Goo, 2002 U.S. Dist. LEXIS 2919, p. 3, 93 A.F.T.R.2d (RIA) 2097 (D. Haw. 2002); First Interstate Mortgage Co. v. Lindsey, 1995 U.S. Dist. LEXIS 18172, p. 16 (D. Haw. Nov. 15, 1995).

In Lorenzo, the ICA cited qualities of a state to be “an entity that has a defined territory and a permanent population, under the control of its own government, and that engages in, or has the capacity to engage in, formal relations with other such entities.” Lorenzo, at 221. The ICA restated Klinghoffer v. S.N.C. Achille Lauro, 937 F.2d 44, 47 (2d Cir. 1991), which drew from §201, Restatement (Third) Foreign Relations Law of the United States. The Restatement (Third) drew its definition of a state from Article I, Montevideo Convention, 49 U.S. Stat. 3097, 3100 (1933), which provided, “The state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states.” In 2001, the Permanent Court of Arbitration in The Hague acknowledged that the Hawaiian Kingdom “existed as an independent State recognized as such by the United States of America, the United Kingdom, and various other States.” Larsen v. Hawaiian Kingdom, 119 International Law Reports 566, 581 (2001).

The ICA also cited “essential attributes of sovereign statehood: [is] the power to declare and wage war; to conclude peace; to maintain diplomatic ties with other sovereigns; to acquire territory by discovery and occupation; and to make international agreements and treaties.” Lorenzo, at 222. Therefore, pursuant to Lorenzo, the continuity of the Hawaiian Kingdom as a state is dependent on whether or not the defendant can provide “factual or legal” evidence that “essential attributes of sovereign statehood” are maintained and continue to exist to date.

A. Essential Attributes of Hawaiian Kingdom Statehood

1. Power to Declare and Wage War & to Conclude Peace

The power to declare war and to conclude peace is constitutionally vested in the office of the Monarch pursuant to Art. 26, Haw. Const., “The [Queen] is the Commander-in-Chief of the Army and Navy, and for all other Military Forces of the Kingdom, by sea and land; and has full power by [Her]self, or by any officer or officers [She] may judge best for the defence and safety of the Kingdom. But [she] shall never proclaim war without the consent of the Legislative Assembly.” (Exhibit “1” of Declaration of DEFENDANT, at 91).

2. To Maintain Diplomatic Ties with Other Sovereigns

Maintaining diplomatic ties with other States is vested in the office of Monarch pursuant to Art. 30, Haw. Const., “It is the [Queen’s] Prerogative to receive and acknowledge Public Ministers...” (Exhibit “1” of Declaration of DEFENDANT, at 91). The officer responsible for maintaining diplomatic ties with other States is Minister of Foreign Affairs whose duty is “to conduct the correspondence of [the Hawaiian] Government, with the diplomatic and consular agents of all foreign nations, accredited to this Government, and with the public ministers, consuls, and other agents of the Hawaiian Islands, in foreign countries, in conformity with the law of nations, and as the [Queen] shall from time to time, order and instruct.” Haw. Civ. Code, §437. (Exhibit “3” of Declaration of DEFENDANT, at 108). The Minister of Foreign Affairs shall also “have the custody of all public treaties concluded and ratified by the Government; and it shall be his duty to promulgate the same by publication in the government newspaper. When so promulgated, all officers of this government shall be presumed to have knowledge of the same.” Haw. Civ. Code, §441. (Exhibit “3” of Declaration of DEFENDANT, at 109).

3. To Acquire Territory by Discovery or Occupation

Between 1822 and 1886, the Hawaiian Kingdom exercised the power of discovery and occupation that added five additional islands to the Hawaiian Domain. By direction of Ka‘ahumanu in 1822, Captain William Sumner took possession of the Island of Nihoa. On May 1, 1857; Laysan Island was taken possession by Captain John Paty for the Hawaiian Kingdom; on May 10, 1857 Captain Paty also took possession of Laysianky Island; Palmyra Island was taken possession of by Captain Zenas Bent on April 15, 1862; and Ocean Island was acquired September 20, 1886, by proclamation of Colonel J.H. Boyd.

4. To Make International Agreements and Treaties

Pursuant to Art. 29, Haw. Const., “The [Queen] has the power to make Treaties. Treaties involving changes in the Tariff or in any law of the Kingdom shall be referred for approval to the Legislative Assembly.” (Exhibit “1” of Declaration of DEFENDANT, at 91). As a result of the

United States' recognition of Hawaiian independence, the Hawaiian Kingdom entered into a Treaty of Friendship, Commerce and Navigation, Dec. 20th 1849 (9 U.S. Stat. 977); Treaty of Commercial Reciprocity, Jan. 13th 1875 (19 U.S. Stat. 625); Postal Convention Concerning Money Orders, Sep. 11th 1883 (23 U.S. Stat. 736); and a Supplementary Convention to the 1875 Treaty of Commercial Reciprocity, Dec. 6th 1884 (25 U.S. Stat. 1399).

The Hawaiian Kingdom also entered into treaties with Austria-Hungary, June 18th 1875; Belgium, Oct. 4th 1862; Bremen, March 27th 1854; Denmark, Oct. 19th 1846; France, July 17th 1839, March 26th 1846, Sep. 8th 1858; French Tahiti, Nov. 24th 1853; Germany, March 25th 1879; Great Britain, Nov. 13th 1836 and March 26th 1846; Great Britain's New South Wales, March 10th 1874; Hamburg, Jan. 8th 1848); Italy, July 22nd 1863; Japan, Aug. 19th 1871, Jan. 28th 1886; Netherlands, Oct. 16th 1862; Portugal, May 5th 1882; Russia, June 19th 1869; Samoa, March 20th 1887; Spain, Oct. 9th 1863; Sweden-Norway, April 5th 1855; and Switzerland, July 20th 1864.

B. The Lili'uokalani Assignment of Executive Power & the Agreement of Restoration of the Hawaiian Kingdom Government

“Governmental authority is the basis for normal inter-State relations; what is an act of a State is defined primarily by reference to its organs of government, legislative, executive or judicial.” Crawford, at 56. Since 1864, the Hawaiian Constitution fully adopted the separation of powers doctrine:

Article 20. The Supreme Power of the Kingdom in its exercise, is divided into the Executive, Legislative, and Judicial; these shall always be preserved distinct.”

Article 31. **To the King [Queen] belongs the executive power** (emphasis added).

Article 45. The Legislative power of the Three Estates of this Kingdom is vested in the King, and the Legislative Assembly; which Assembly shall consist of the Nobles appointed by the King, and of the Representatives of the People, sitting together.

Article 66. The Judicial Power shall be divided among the Supreme Court and the several Inferior Courts of the Kingdom, in such manner as the Legislature may, from time to time, prescribe, and the tenure of office in the Inferior Courts of the Kingdom shall be such as may be defined by the law creating them. (Exhibit “1” Declaration of DEFENDANT).

On January 17, 1893, Queen Lili'uokalani, who was constitutionally vested with the “executive power” under Article 31 of the Hawaiian Constitution, was unable to apprehend certain insurgents calling themselves the provisional government without armed conflict between

U.S. troops and the Hawaiian police force headed by Marshal Charles Wilson. She was forced to temporarily assign her executive power to the President of the United States:

I, Liliuokalani, by the grace of God and under the constitution of the Hawaiian Kingdom, Queen, do hereby solemnly protest against any and all acts done against myself and the constitutional Government of the Hawaiian Kingdom by certain persons claiming to have established a provisional government of and for this Kingdom.

That I yield to the superior force of the United States of America, whose minister plenipotentiary, His Excellency John L. Stevens, has caused United States troops to be landed at Honolulu and declared that he would support the said provisional government.

Now, to avoid any collision of armed forces and perhaps the loss of life, I do, under this protest, and impelled by said force, yield my authority until such time as the Government of the United States shall, upon the facts being presented to it, undo the action of its representatives and reinstate me in the [executive] authority which I claim as the constitutional sovereign of the Hawaiian Islands (emphasis added). (Exhibit "A" of Expert Memorandum of Dr. David Keanu Sai, Exhibit "4" Declaration of DEFENDANT, at 461).

In a dispatch to the new U.S. Diplomat, Albert Willis, assigned to the Hawaiian Kingdom, on October 18, 1893, U.S. Secretary of State Gresham apprised him of the findings of the Presidential investigation:

The Provisional Government was not established by the Hawaiian people, or with their consent or acquiescence, nor has it since existed with their consent. The Queen refused to surrender her powers to the Provisional Government until convinced that the minister of the United States had recognized it as the *de facto* authority, and would support and defend it with the military force of the United States, and that resistance would precipitate a bloody conflict with that force. She was advised and assured by her ministers and by leaders of the movement for the overthrow of her government, that if she surrendered under protest her case would afterwards be fairly considered by the President of the United States. The Queen finally wisely yielded to the armed forces of the United States then quartered in Honolulu, relying upon the good faith and honor of the President, when informed of what had occurred, to undo the action of the minister and reinstate her and the authority which she claimed as the constitutional sovereign of the Hawaiian Islands.

After a patient examination of Mr. Blount's reports the President is satisfied that the movement against the Queen, if not instigated, was encouraged and supported by the representative of this Government at Honolulu; that he promised in advance to

aid her enemies in an effort to overthrow the Hawaiian Government and set up by force a new government in its place; and that he kept this promise by causing a detachment of troops to be landed from the *Boston* on the 16th of January, and by recognizing the Provisional Government the next day when it was too feeble to defend itself and the constitutional government was able to successfully maintain its authority against any threatening force other than that of the United States already landed.

The President has therefore determined that he will not send back to the Senate for its action thereon the treaty which he withdrew from that body for further consideration on the 9th day of March last. On your arrival at Honolulu you will take advantage of an early opportunity to inform the Queen of this determination, making known to her the President's sincere regret that the reprehensible conduct of the American minister and the unauthorized presence on land of a military force of the United States obliged her to surrender her sovereignty, for the time being, and rely on the justice of this Government to undo the flagrant wrong.

You will, however, at the same time inform the Queen that, when reinstated, the President expects that she will pursue a magnanimous course by granting full amnesty to all who participated in the movement against her, including persons who are, or have been, officially or otherwise, connected with the Provisional Government, depriving them of no right or privilege which they enjoyed before the so-called revolution. All obligations created by the Provisional Government in due course of administration should be assumed. (emphasis added). (Exhibit "A" of Expert Memorandum of Dr. David Keanu Sai, Exhibit "4" Declaration of DEFENDANT, at 463-464).

In the initial meeting with U.S. Minister Willis on November 13, 1893, at the U.S. Legation in Honolulu, the Queen refused to grant amnesty and cited Chapter VI—Treason, Hawaiian Penal Code (Exhibit "3" Declaration of DEFENDANT):

1. **Treason is hereby defined to be any plotting or attempt to dethrone or destroy the King, or the levying of war against the King's government, or the adhering to the enemies thereof giving them aid and comfort, the same being done by a person owing allegiance to this kingdom** (emphasis added).

9. **Whoever shall commit the crime of treason, shall suffer the punishment of death; and all his property shall be confiscated to the government** (emphasis added).

But after one month of continued negotiation with U.S. Minister Willis, Queen Lili'uokalani, on December 18, 1893, signed the following declaration agreeing to grant amnesty after the government is restored.

I, Liliuokalani, in recognition of the high sense of justice which has actuated the President of the United States, and desiring to put aside all feelings of personal hatred or revenge and to do what is best for all the people of these Islands, both native and foreign born, do hereby and herein solemnly declare and pledge myself that, **if reinstated as the constitutional sovereign of the Hawaiian Islands, that I will immediately proclaim and declare, unconditionally and without reservation, to every person who directly or indirectly participated in the revolution of January 17, 1893, a full pardon and amnesty for their offenses, with restoration of all rights, privileges, and immunities under the constitution and the laws which have been made in pursuance thereof, and that I will forbid and prevent the adoption of any measures of proscription or punishment for what has been done in the past by those setting up or supporting the Provisional Government.** I further solemnly agree to accept the restoration under the constitution existing at the time of said revolution and that I will abide by and fully execute that constitution with all the guaranties as to person and property therein contained. I furthermore solemnly pledge myself and my Government, if restored, to assume all the obligations created by the Provisional Government, in the proper course of administration, including all expenditures for military or police services, it being my purpose, if restored, to assume the Government precisely as it existed on the day when it was unlawfully overthrown. (emphasis added). (Exhibit "B" of Expert Memorandum of Dr. David Keanu Sai, Exhibit "4" of Declaration of DEFENDANT, at 1269).

On December 20, 1893, Willis dispatched the Queen's acceptance of the condition of restoration to Gresham in Washington, D.C. In a dispatch to Willis on January 13, 1893, Gresham acknowledged receipt of the Queen's declaration.

On the 18th ultimo the President sent a special message to Congress communicating copies of the Mr. Blount's reports and the instructions given to him and you. On the same day, answering a resolution of the House of Representatives, he sent copies of all correspondence since March 4, 1889, on the political affairs and relations of Hawaii, withholding, for sufficient reasons, only Mr. Stevens' No. 70 of October 8, 1892, and your No. 3 of November 16, 1893. The President therein announced that the conditions of restoration suggested by him to the Queen had not proved acceptable to her, and that since the instructions sent to you to insist upon those conditions he had not learned that the Queen was willing to assent to them. The

President thereupon submitted the subject to the more extended powers and wider discretion of Congress, adding the assurance that he would be gratified to cooperate in any legitimate plan which might be devised for a solution of the problem consistent with American honor, integrity, and morality.

Your reports show that on further reflection the Queen gave her unqualified assent in writing to the conditions suggested, but that the Provisional Government refuses to acquiesce in the President's decision.

The matter now being in the hands of Congress the President will keep that body fully advised of the situation, and will lay before it from time to time the reports received from you, including your No. 3, heretofore withheld, and all instructions sent to you. In the meantime, while keeping the Department fully informed of the course of events, you will, until further notice, consider your special instructions upon this subject have been fully complied with. (emphasis added). (Exhibit "B" of Expert Memorandum of Dr. David Keanu Sai, Exhibit "4" Declaration of DEFENDANT, at 1283-1284).

The purpose of President Cleveland submitting the matter to Congress was to seek the authorization of force to be employed against the insurgents. It was not to seek authority for the agreements with Queen Lili'uokalani. "In foreign policymaking, the President, not Congress, has the 'lead role.' (Citations omitted). Specifically, the President has authority to make 'executive agreements' with other countries, requiring no ratification by the Senate or approval by Congress. (Citation omitted)." Garamendi, at 397; "We held that although [an executive agreement] might not be a treaty requiring ratification by the Senate, it was a compact negotiated and proclaimed under the authority of the President, and as such was a 'treaty...'" Belmont, at 331.

After President Cleveland notified Congress by Presidential message on January 13, 1894 of the *Agreement of restoration* made with Queen Lili'uokalani, newspapers reported the settlement and the defiance of the insurgency to step down. See *New York Tribune*, January 14, 1894; *St. Paul Sunday Globe newspaper*, January 14, 1894; *The Los Angeles Herald*, January 14, 1894; *The Princeton Union newspaper*, January 18, 1894; and *Hawai'i Holomua newspaper*, January 24, 1894. (Library of Congress, *Chronicling America: Historic American Newspapers*, <http://chroniclingamerica.loc.gov/>).

Under and by virtue of the *Lili'uokalani assignment*, executive power of the Hawaiian Kingdom remains vested in the President of the United States to faithfully administer Hawaiian Kingdom law, until the Hawaiian Kingdom government is restored pursuant to the *Agreement of restoration*, whereby the executive power is reassigned and thereafter the Monarch to grant amnesty. The failure of Congress to authorize the President to use force did not diminish the validity of the executive agreements, being the *Lili'uokalani assignment* and the *Agreement of*

restoration. Despite over a century of non-compliance, these executive agreements remain binding upon the office of President of the United States to date. According to Wright, the President binds “himself and his successors in office by executive agreements.” See Quincy Wright, The Control of American Foreign Relations, (1922), 235.

C. The Sole Executive Agreements

In Belmont and Garamendi, the U.S. Supreme Court affirmed that executive agreements entered into between the President and a sovereign nation does not require ratification from the U.S. Senate to have the force and effect of a treaty; and executive agreements bind successor Presidents for their faithful execution. According to Justice Douglas, in Pink, at 241, executive agreements “must be read not as self-contained technical documents, like a marine insurance contract or a bill of lading, but as characteristically delicate and elusive expressions of diplomacy.” “An exchange of diplomatic notes has often sufficed, without any further formality of ratification or exchange of ratifications, or even of proclamation, to effect purposes more usually accomplished by the more complex machinery of treaties...” See Report of Mr. Foster, Sec. of State, to the President, Dec. 7, 1892, S. Ex. Doc. 9, 52 Cong. 2 sess.; H. Doc. 471, 56 Cong. 1 sess. 16-17.

The ability for the U.S. to enter into agreements with foreign States is not limited to treaties, but includes executive agreements, whether jointly with Congress or under the President’s sole constitutional authority. While treaties require ratification from the U.S. Senate, sole-executive agreements do not, and U.S. “Presidents have made some 1600 treaties with the consent of the Senate [and] they have made many thousands of other international agreements without seeking Senate consent.” See Henkin, Foreign Affairs and the United States Constitution, 2nd ed. (1996), at 215.

Presidents from Washington to Clinton have made many thousands of agreements, differing in formality and importance, on matters running the gamut of U.S. foreign relations. In 1817, the Rush-Bagot Agreement disarmed the Great Lakes. Root-Takahira (1908) and Lansing-Ishii (1917) defined U.S. policy in the Far East. A Gentlemen’s Agreement with Japan (1907) limited Japanese immigration into the United States. Theodore Roosevelt put the bankrupt customs houses of Santo Domingo under U.S. control to prevent European creditors from seizing them. McKinley agreed to contribute troops to protect Western legations during the Boxer Rebellion and later accepted the Boxer Indemnity Protocol for the United States. Franklin Roosevelt exchanged over-age destroyers for British bases early during the Second World War. Potsdam and Yalta shaped the political face of the world after the Second World War. Since the

Second World War there have been numerous sole agreements for the establishment of U.S. military bases in foreign countries. *Id.*, at 219.

The “executive branch claims four sources of constitutional authority under which the President may enter into [sole] executive agreements: (1) the president’s duty as chief executive to represent the nation in foreign affairs; (2) the president’s authority to receive ambassadors and other public ministers; (3) the president’s authority as commander in chief; and (4) the president’s duty to ‘take care that the laws be faithfully executed.’” See 11 Foreign Affairs Manual 721.2(b)(3), October 25, 1974. The agreement with the Queen evidently stemmed from the President’s role as “chief executive,” “commander in chief,” and his duty to “take care that the laws be faithfully executed.” In Belmont, Justice Sullivan stated there are different kinds of treaties that do not require Senate approval. The case involved a Russian corporation that deposited some of its funds in a New York bank prior to the Russian revolution of 1917. After the revolution, the Soviet Union nationalized the corporation and sought to seize its assets in the New York bank with the assistance of the United States. The assistance was “effected by an exchange of diplomatic correspondence between the Soviet government and the United States [in which the] purpose was to bring about a final settlement of the claims and counterclaims between the Soviet government and the United States.” *Id.*, at 326. Justice Sutherland explained:

That the negotiations, acceptance of the assignment and agreements and understandings in respect thereof were within the competence of the President may not be doubted. Governmental power over internal affairs is distributed between the national government and the several states. Governmental power over external affairs is not distributed, but is vested exclusively in the national government. And in respect of what was done here, the Executive had authority to speak as the sole organ of that government. The assignment and the agreements in connection therewith did not, as in the case of treaties, as that term is used in the treaty making clause of the Constitution (article 2, 2), require the advice and consent of the Senate. *Id.*, at 330.

D. Violations of the *Lili‘uokalani* assignment and the Agreement of Restoration

After the President, by Presidential Message on January 13, 1894, apprised the Congress of the *Restoration agreement* with Queen Lili‘uokalani, both the House of Representatives² and

² House Resolution on the Hawaiian Islands, February 7, 1894:

“*Resolved*, First. That it is the sense of this House that the action of the United States minister in employing United States naval forces and illegally aiding in overthrowing the constitutional Government of

Senate³ took deliberate steps “warning the President against the employment of forces to restore the monarchy of Hawaii.” See Corwin, The President’s Control of Foreign Relations, 45 (1917). Senator Kyle’s resolution introduced on May 23, 1894 specifically addresses the *Agreement of restoration*. The resolution was later revised by Senator Turpie and passed by the Senate on May 31, 1894. Senator Kyle’s resolution stated:

Resolved, That it be the sense of the Senate that the Government of the United States shall not use force for the purpose of restoring to the throne the deposed Queen of the Sandwich Islands or for the purpose of destroying the existing Government: that, the Provisional having been duly recognized, the highest international interests require that it shall pursue its own line of polity, and that intervention in the political affairs of these islands by other governments will be regarded as an act unfriendly to the Government of the United States. (U.S. Senate Resolution on Hawai‘i, 53 Cong., 2nd Sess., 5127 (1894))

Not only do these resolutions acknowledge the executive agreements between Queen Lili‘uokalani and President Cleveland, but also these resolutions violate the separation of powers doctrine whereby the President is the sole representative of the United States in foreign relations. “[C]ongressional resolutions on concrete incidents are encroachments upon the power of the Executive Department and are of no legal effect.” See Wright, The Control of American Foreign Relations 281 (1922).

By virtue of the temporary and conditional grant of Hawaiian executive power, the U.S. was obligated to restore the Hawaiian Kingdom government, but instead illegally occupied the Hawaiian Kingdom for military purposes on August 12, 1898 during the Spanish-American War, and has remained in the Hawaiian Islands ever since. See Sai, A Slippery Path Towards Hawaiian Indigeneity, 10 *Journal of Law and Social Challenges* 68-133 (Fall 2008).

the Hawaiian Islands in January, 1893, and in setting up in its place a Provisional Government not republican in form and in opposition to the will of a majority of the people, was contrary to the traditions of our Republic and the spirit of our Constitution, and should be condemned. Second. That we heartily approve the principle announced by the President of the United States that interference with the domestic affairs of an independent nation is contrary to the spirit of American institutions. And it is further the sense of this House that the annexation of the Hawaiian Islands to our country, or the assumption of a protectorate over them by our Government is uncalled for and inexpedient; that the people of that country should have their own line of policy, and that foreign intervention in the political affairs of the islands will not be regarded with indifference by the Government of the United States.” (U.S. Senate Resolution on Hawai‘i, 53 Cong., 2nd Sess., 2000 (1894)).

³ Senate Resolution on the Hawaiian Islands, May 31, 1894:

“*Resolved*, That of right it belongs wholly to the people of the Hawaiian Islands to establish and maintain their own form of government and domestic polity; that the United States ought in nowise to interfere therewith, and that any intervention in the political affairs of these islands by any other government will be regarded as an act unfriendly to the United States.” (U.S. House Resolution on Hawai‘i, 53 Cong., 2nd Sess., 5499 (1894)).

According to Professor Marek, “the legal order of the occupant is...strictly subject to the principle of effectiveness, while the legal order of the occupied State continues to exist notwithstanding the absence of effectiveness [e.g. no government]. ...[Occupation] is thus the classical case in which the requirement of effectiveness as a condition of validity of a legal order is abandoned.” See Marek, Identity and Continuity of States in Public International Law (1968), 102. Referring to the United States’ occupation of the Hawaiian Kingdom in his law journal article, Dumberry states:

[T]he 1907 Hague Convention protects the international personality of the occupied State, even in the absence of effectiveness. Furthermore, the legal order of the occupied State remains intact, although its effectiveness is greatly diminished by the fact of occupation. As such, Article 43 of the 1907 Hague Convention IV provides for the co-existence of two distinct legal orders, that of the occupier and the occupied. See Dumberry, The Hawaiian Kingdom Arbitration Case and the Unsettled Question of the Hawaiian Kingdom’s Claim to Continue as an Independent State under International Law, 2(1) Chinese Journal of International Law 655-684 (2002).

The *Lili`uokalani assignment* mandates the President to administer Hawaiian Kingdom law until the Hawaiian Kingdom government can be restored pursuant to the *Agreement of restoration* under the exclusive authority of the President by virtue of Article II of the U.S. Constitution. Therefore, these executive agreements divest this Court from exercising subject matter jurisdiction because the appropriate court with subject matter jurisdiction would be an Article II Court.

Additional evidence of the Hawaiian Kingdom’s continuity as a state in accordance with recognized attributes of a state’s sovereign nature was the international arbitration case, Larsen v. Hawaiian Kingdom, 119 International Law Reports 566 (2001), at the Permanent Court of Arbitration, The Hague, Netherlands, whereby **only states** have access to international proceedings at the Permanent Court of Arbitration. In other words, the international arbitration would not have taken place if the Hawaiian Kingdom were not a state. See Bederman & Hilbert, Arbitration—UNCITRAL Rules—justiciability and indispensable third parties—legal status of Hawai`i, 95 American Journal of International Law 927-933 (2001); Dumberry, The Hawaiian Kingdom Arbitration Case and the Unsettled Question of the Hawaiian Kingdom’s Claim to Continue as an Independent State under International Law, 2(1) Chinese Journal of International Law 655-684 (2002); Sai, American Occupation of the Hawaiian State: A Century Gone Unchecked, 1 Hawaiian Journal of Law and Politics 46-81 (Summer 2004); and Sai, A Slippery Path towards Hawaiian Indigeneity: An Analysis and Comparison between Hawaiian State Sovereignty and Hawaiian Indigeneity and its Use and Practice in Hawai`i today, 10 Journal of

Law and Social Challenges 68-133 (Fall 2008).

In the Twenty-sixth Legislature of the State of Hawai‘i (2011), Representative Mele Carroll introduced House Concurrent Resolution 107 “Establishing a Joint Legislative Investigating Committee to Investigate the Status of Two Executive Agreements entered into in 1893 between the United States President Grover Cleveland and Queen Lili‘uokalani of the Hawaiian Kingdom, called the *Lili‘uokalani Assignment* and the *Agreement of Restoration*.” Representative Carroll stated that the purpose of House Concurrent Resolution 107 is to:

ensure that we, as Legislators, who took an oath to support and defend not only the Constitution of the State of Hawai‘i, but also the Constitution of the United States, must be mindful of our fiduciary duty and obligation to conform to the *Supremacy Clause* of the United States Constitution. As Majority Whip for the House of Representatives of the State of Hawai‘i, it is my duty to bring the executive agreements to the attention of the Hawai‘i State Legislature and that the joint investigating committee have the powers necessary to receive all information for its final report to the Legislature. (See News Release—Office of Rep. Mele Carroll, March 14, 2011, <http://MeleCarroll.wordpress.com>)

VI. REQUEST FOR JUDICIAL NOTICE

On a motion to dismiss, a court may take judicial notice of matters of public record in accordance with Federal Rules of Evidence 201 without converting the motion to dismiss to a motion for summary judgment. Lee v. City of Los Angeles, 250 F.3d 668, 688-689 (9th Cir. 2001) (citing Mack v. South Bay Beer Distributors, Inc., 798 F.2d 1279, 1282 (9th Cir. 1986)). Courts may take judicial notice of documents outside of the complaint that are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Fed.R.Evid. 201(d); Wietschner v. Monterey Pasta Co., 294 F. Supp. 2d 1102, 1109 (N.D. Cal. 2003). Courts can take judicial notice of such matters when considering a motion to dismiss. Wietschner, 294 F. Supp. 2d at 1109; MGIC Indem. Corp. v. Weisman, 803 F. 2d 500, 504 (9th Cir. 1986). Further, Courts "may take judicial notice of facts of 'common knowledge' in ruling on a motion to dismiss." Newcomb v. Brennan, 558 F.2d 825, 829 (7th Cir. 1977). Hawai‘i Rules of Evidence have adopted the same provisions as the Federal Rules of Evidence.

Judicial notice is the act by which a court recognizes the existence and truth of certain facts that have a bearing on the case. “All courts are bound to take judicial notice of the territorial extent of the jurisdiction exercised by the government, and that extent and boundaries of the territory under which they can exercise jurisdiction.” See 29 Am.Jur.2d Evidence, §83 (2008). “State and federal courts must judicially notice all treaties [executive agreements] of the United

States.” *Id.*, §123. “When considering a treaty [executive agreement], courts must take judicial notice of all facts connected therewith which may be necessary for its interpretation or enforcement, such as the historical data leading up to the making of the treaty [executive agreement].” *Id.*, §126. Rule 201(d) of the Hawai‘i Rules of Evidence states that the Court is **mandated** to “take judicial notice if requested by a party and supplied with the necessary information,” provided the Defendant supplies the Court with data consistent with the requirement of Rule 201(b). See Rule 201 Commentary, Hawai‘i Rules of Evidence, at 401.

All courts, including state courts, take judicial notice of United States treaties, which includes sole executive agreements. *State v. Marley*, 54 Haw. 450, 509 P.2d 1095 (1973). The contents and interpretation of treaties and sole executive agreements that are part of United States law and that are invoked as applicable law in case are not matters for evidentiary proof. *Id.*

Exhibits “1”, “2”, and “3” are laws of the Hawaiian Kingdom published by authority of the Hawaiian government. Exhibits “A,” “B,” “C,” and “D” of Expert Memorandum of Dr. David Keanu Sai attached as Exhibit “4” to Declaration of DEFENDANT herein, are copies of official government publications. Exhibits “A” and “B” are copies made under the seal of the United States Department of State’s government printing office, 1895; and exhibits “C” and “D” are copies from the United States Congress government printing office, 1898. Rule 902(5) of the Hawai‘i Rules of Evidence provides that “A book, pamphlet, or other publication purporting to be issued by a public authority” requires “no extrinsic evidence of authenticity in order to be admitted.” According to 3 Wigmore (Evidence) §1684 (1904):

In general, then, where an official printer is appointed, his printed copies of official documents are admissible. It is not necessary that the printer should be an officer in the strictest sense, nor that he should be exclusively concerned with official work; it is enough that he is appointed by the Executive to print official documents. **As for authentication of his copies, it is enough that the copy offered purports to be printed by authority of the government; its genuineness is assumed without further evidence.**

DEFENDANT hereby formally requests this Court to take judicial notice pursuant to Rules 201(d) and 902(5), Hawai‘i Rules of Evidence, of the following:

Exhibit	Description
1	<ul style="list-style-type: none"> Hawaiian Kingdom Constitution.
2	<ul style="list-style-type: none"> Chapter VI— Treason, Penal Code of the Hawaiian Kingdom
3	<ul style="list-style-type: none"> Chapter VIII— Department of Foreign Affairs, Compiled Laws of the Hawaiian Kingdom.
4	<ul style="list-style-type: none"> (Exhibit “A” of Expert Memorandum of Dr. David Keanu Sai) <i>Lili‘uokalani</i>

	<p><i>assignment</i>, January 17, 1893, comprising of an exchange of diplomatic notes acknowledging the assignment of executive power and conclusions of a Presidential investigation (United States House of Representatives, 53rd Congress, <u>Executive Documents on Affairs in Hawaii: 1894-95</u>, (Government Printing Office, 443-464, 1895);</p> <ul style="list-style-type: none"> • (Exhibit “B” of Expert Memorandum of Dr. David Keanu Sai) <i>Agreement of restoration</i>, December 18, 1893, comprising an exchange of diplomatic notes that acknowledged negotiations and settlement of the illegal overthrow of the Hawaiian Kingdom government and its restoration (United States House of Representatives, 53rd Congress, <u>Executive Documents on Affairs in Hawaii: 1894-95</u>, (Government Printing Office, 1269-1270; 1283-1284, 1895); • (Exhibit “C” of Expert Memorandum of Dr. David Keanu Sai) Statements made on the floor of the House of Representatives by Representative Thomas Ball are copies from the 55th Cong. 2nd Sess., 5975-5976 (1898); • (Exhibit “D” of Expert Memorandum of Dr. David Keanu Sai) Statements made on the floor of the Senate by Senator Augustus Bacon are copies from the 55th Cong., 2nd Sess., 6148-6150 (1898).
	<ul style="list-style-type: none"> • Treaty of Friendship, Commerce and Navigation, Dec. 20th 1849 (9 U.S. Stat. 977).
	<ul style="list-style-type: none"> • Treaty of Commercial Reciprocity, Jan. 13th 1875 (19 U.S. Stat. 625).
	<ul style="list-style-type: none"> • Postal Convention Concerning Money Orders, Sep. 11th 1883 (23 U.S. Stat. 736).
	<ul style="list-style-type: none"> • Supplementary Convention to the 1875 Treaty of Commercial Reciprocity, Dec. 6th 1884 (25 U.S. Stat. 1399).
	<ul style="list-style-type: none"> • <u>Larsen v. Hawaiian Kingdom</u>, 119 International Law Reports 566 (2001).
	<ul style="list-style-type: none"> • <u>United States v. Belmont</u>, 301 U.S. 324 (1937).
	<ul style="list-style-type: none"> • <u>United States v. Pink</u>, 315 U.S. 203 (1942).
	<ul style="list-style-type: none"> • <u>American Insurance Association v. Garamendi</u>, 539 U.S. 396, (2003).
	<ul style="list-style-type: none"> • <u>State of Hawai‘i v. Lorenzo</u>, 77 Haw. 219 (1994).

VII. CONCLUSION

Pursuant to Lorenzo, at 222, the “essential attributes of sovereign statehood: the power to declare and wage war; to conclude peace; to maintain diplomatic ties with other sovereigns; to acquire territory by discovery or occupation; and to make international agreements and treaties,” are inherent in the executive power of the Queen under the Constitution and laws of the Hawaiian

Kingdom, which are temporarily and conditionally vested in the Office of the President of the United States by the *Lili'uokalani assignment*.

Therefore, DEFENDANT has provided the factual and legal basis “for concluding that the Kingdom exists as a state in accordance with recognized attributes of a state’s sovereign nature,” State of Hawai‘i v. Lorenzo, 221. As treaties, these executive agreements continue to remain binding upon the office of the President, and present irrefutable evidence that “the Sovereign Kingdom of Hawaii is currently recognized by the federal government.” United States v. Lorenzo, 995 F.2d 1448, 1456 (9th Cir. 1993).

In event the Court grants or denies the instant Motion, DEFENDANT requests the Court to direct the prevailing party to draft proposed findings of fact and conclusions of law for the granting or denial of the DEFENDANT’S motion to dismiss complaint under 12(b)(1), Hawaii Rules of Civil Procedure. Pursuant to Rule 52, Hawaii Rules of Civil Procedure, the Court is requested to direct the prevailing party to (a) submit proposed findings of fact and conclusions of laws and (b) a draft decision.

Prior to rendering its final order, the Court is requested to ask the prevailing party to draft findings of fact, conclusions of law and a draft decision. This will provide a clear record in the event an appeal is filed.

Dated: Kurtistown, Hawai‘i, May 18, 2012.

ELAINE E. KAWASAKI
Defendant, pro se

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI'I

WELLS FARGO BANK, N.A. A NATIONAL	)	CIVIL NO. 11-1-0106 (GSH)
ASSOCIATION, AS TRUSTEE FOR OPTION	)	(Foreclosure-Ejectment)
ONE MORTGAGE LOAN TRUST 2007-FXD2	)	(Hilo)
ASSET-BACKED CERTIFICATES, SERIES)	
2007-FXC2,)	
	)	DECLARATION OF ELAINE E.
Plaintiff,	)	KAWASAKI; EXHIBITS "1-4"
)	
vs.)	
)	
ELAINE E. KAWASAKI; AND JOHN AND)	
MARY DOES 1-10,)	
)	
Defendants.)	
_____)	

DECLARATION OF ELAINE E. KAWASAKI

I, ELAINE E. KAWASAKI do hereby declare as follows:

1. Attached to this Declaration as Exhibit "1" is a true and correct copy of the Hawaiian Kingdom Constitution.
2. Attached as Exhibit "2" is a true and correct copy of Chapter VI—Treason, Penal Code of the Hawaiian Kingdom, published by authority of the Hawaiian government.
3. Attached as Exhibit "3" is a true and correct copy of Chapter VIII—Department of Foreign Affairs, Compiled Laws of the Hawaiian Kingdom, published by authority of the Hawaiian government.
4. Attached as Exhibit "4" is a true and correct copy of the Declaration of Dr. Keanu Sai and exhibits attached thereto.

I, ELAINE E. KAWASAKI, DO DECLARE UNDER PENALTY OF LAW THAT THE FOREGOING IS TRUE AND CORRECT.

Dated: Kurtistown, Hawai‘i, May 18, 2012.

ELAINE E. KAWASAKI
Defendant, pro se

Exhibit “1”

ROSTER
LEGISLATURES OF HAWAII
1841-1918

CONSTITUTIONS OF MONARCHY AND REPUBLIC
SPEECHES OF SOVEREIGNS AND PRESIDENT

COMPILED FROM THE OFFICIAL RECORDS

BY

ROBERT C. LYDECKER
LIBRARIAN, PUBLIC ARCHIVES

PUBLISHED BY AUTHORITY OF THE BOARD OF
COMMISSIONERS OF PUBLIC ARCHIVES

C. P. IAUKEA
Chairman and Executive Officer

A. G. M. ROBERTSON

M. M. SCOTT
Commissioners

CONSTITUTION.

GRANTED BY HIS MAJESTY KAMEHAMEHA V, BY THE GRACE OF GOD, KING OF THE HAWAIIAN ISLANDS, ON THE TWENTIETH DAY OF AUGUST, A. D. 1864.

ARTICLE 1. God hath endowed all men with certain inalienable rights; among which are life, liberty, and the right of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.

ARTICLE 2. All men are free to worship God according to the dictates of their own conscience; but this sacred privilege hereby secured, shall not be so construed as to justify acts of licentiousness, or practices inconsistent with the peace or safety of the Kingdom.

ARTICLE 3. All men may freely speak, write, and publish their sentiments on all subjects, being responsible for the abuse of that right, and no law shall be enacted to restrain the liberty of speech, or of the press, except such laws as may be necessary for the protection of His Majesty the King and the Royal Family.

ARTICLE 4. All men shall have the right, in an orderly and peaceable manner, to assemble, without arms, to consult upon the common good, and to petition the King or Legislative Assembly for redress of grievances.

ARTICLE 5. The privilege of the writ of *Habeas Corpus* belongs to all men, and shall not be suspended, unless by the King, when in cases of rebellion or invasion, the public safety shall require its suspension.

ARTICLE 6. No person shall be subject to punishment for any offense, except on due and legal conviction thereof, in a Court having jurisdiction of the case.

ARTICLE 7. No person shall be held to answer for any crime or offense (except in cases of impeachment, or for offenses within the jurisdiction of a Police or District Justice, or in summary proceedings for contempt), unless upon indictment, fully and plainly describing such crime or offense, and he shall have the right to meet the witnesses who are produced against him face to face; to produce witnesses and proofs in his own favor; and by himself or his counsel, at his election, to examine the witnesses produced by himself, and cross-examine those produced against him, and to be fully heard in his defense. In all cases in which the right of trial by Jury has been heretofore used, it shall be held inviolable forever, except in actions of debt or assumpsit in which the amount claimed is less than Fifty Dollars.

ARTICLE 8. No person shall be required to answer again for an offense, of which he has been duly convicted, or of which

he has been duly acquitted upon a good and sufficient indictment.

ARTICLE 9. No person shall be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property without due process of law.

ARTICLE 10. No person shall sit as a judge or juror, in any case in which his relative is interested, either as plaintiff or defendant, or in the issue of which the said judge or juror, may have, either directly or through a relative, any pecuniary interest.

ARTICLE 11. Involuntary servitude, except for crime, is forever prohibited in this Kingdom; whenever a slave shall enter Hawaiian Territory, he shall be free.

ARTICLE 12. Every person has the right to be secure from all unreasonable searches and seizures of his person, his house, his papers and effects; and no warrants shall issue but on probable cause supported by oath or affirmation and describing the place to be searched, and the persons or things to be seized.

ARTICLE 13. The King conducts His Government for the common good; and not for the profit, honor, or private interest of any one man, family, or class of men among His subjects.

ARTICLE 14. Each member of society has a right to be protected by it, in the enjoyment of his life, liberty, and property, according to law; and, therefore, he shall be obliged to contribute his proportional share to the expenses of this protection, and to give his personal services, or an equivalent when necessary; but no part of the property of any individual shall be taken from him, or applied to public uses, without his own consent, or the enactment of the Legislative Assembly, except the same shall be necessary for the military operation of the Kingdom in time of war or insurrection; and whenever the public exigencies may require that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor.

ARTICLE 15. No subsidy, duty or tax of any description shall be established or levied, without the consent of the Legislative Assembly; nor shall any money be drawn from the Public Treasury without such consent, except when between the session of the Legislative Assembly the emergencies of war, invasion, rebellion, pestilence, or other public disaster shall arise, and then not without the concurrence of all the Cabinet, and of a majority of the whole Privy Council; and the Minister of Finance shall render a detailed account of such expenditure to the Legislative Assembly.

ARTICLE 16. No Retrospective Laws shall ever be enacted.

ARTICLE 17. The Military shall always be subject to the laws of the land; and no soldier shall, in time of peace, be quar-

tered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by the Legislature.

ARTICLE 18. Every Elector shall be privileged from arrest on election days during his attendance at election, and in going to and returning therefrom, except in cases of treason, felony, or breach of the peace.

ARTICLE 19. No Elector shall be so obliged to perform military duty, on the day of election, as to prevent his voting; except in time of war, or public danger.

ARTICLE 20. The Supreme Power of the Kingdom in its exercise, is divided into the Executive, Legislative, and Judicial; these shall always be preserved distinct, and no Judge of a Court of Record shall ever be a member of the Legislative Assembly.

ARTICLE 21. The Government of this Kingdom is that of a Constitutional Monarchy, under His Majesty Kamehameha V, a Constitutional Monarch, and His Heirs and Successors.

ARTICLE 22. The Crown is hereby permanently confirmed to His Majesty Kamehameha V, and to the Heirs of His body lawfully begotten, and to their lawful Descendants in a direct line; failing whom, the Crown shall descend to Her Royal Highness the Princess Victoria Kamehameha Kaahumanu, and the heirs of her body, lawfully begotten, and their lawful descendants in a direct line. The Succession shall be to the senior male child, and to the heirs of his body; failing a male child, the succession shall be to the senior female child, and to the heirs of her body. In case there is no heir as above provided, then the successor shall be the person whom the Sovereign shall appoint with the consent of the Nobles, and publicly proclaim as such during the King's life; but should there be no such appointment and proclamation, and the Throne should become vacant, then the Cabinet Council, immediately after the occurring of such vacancy, shall cause a meeting of the Legislative Assembly, who shall elect by ballot some native Alii of the Kingdom as Successor to the Throne; and the Successor so elected shall become a new *Strips* for a Royal Family; and the succession from the Sovereign thus elected, shall be regulated by the same law as the present Royal Family of Hawaii.

ARTICLE 23. It shall not be lawful for any member of the Royal Family of Hawaii who may by Law succeed to the Throne, to contract Marriage without the consent of the Reigning Sovereign. Every Marriage so contracted shall be void, and the person so contracting a Marriage, may, by the Proclamation of the Reigning Sovereign, be declared to have forfeited His or Her right to the Throne, and after such Proclamation, the Right of Succession shall vest in the next Heir as though such offender were *Dead*.

ARTICLE 24. His Majesty Kamehameha V, will, and His Successors upon coming to the Throne, shall take the following

oath: I solemnly swear in the presence of Almighty God, to maintain the Constitution of the Kingdom whole and inviolate, and to govern in conformity therewith.

ARTICLE 25. No person shall ever sit upon the Throne, who has been convicted of any infamous crime, or who is insane, or an idiot.

ARTICLE 26. The King is the Commander-in-Chief of the Army and Navy, and of all other Military Forces of the Kingdom, by sea and land; and has full power by Himself, or by any officer or officers He may appoint, to train and govern such forces, and He may judge best for the defence and safety of the Kingdom. But he shall never proclaim war without the consent of the Legislative Assembly.

ARTICLE 27. The King, by and with the advice of His Privy Council, has the power to grant reprieves and pardons, after conviction, for all offences, except in cases of impeachment.

ARTICLE 28. The King, by and with the advice of His Privy Council, convenes the Legislative Assembly at the seat of Government, or at a different place, if that should become dangerous from an enemy or any dangerous disorder; and in case of disagreement between His Majesty and the Legislative Assembly, he adjourns, prorogues, or dissolves it, but not beyond the next ordinary Session; under any great emergency, he may convene the Legislative Assembly to extraordinary Sessions.

ARTICLE 29. The King has the power to make Treaties. Treaties involving changes in the Tariff or in any law of the Kingdom shall be referred for approval to the Legislative Assembly. The King appoints Public Ministers, who shall be commissioned, accredited, and instructed agreeably to the usage and law of Nations.

ARTICLE 30. It is the King's Prerogative to receive and acknowledge Public Ministers; to inform the Legislative Assembly by Royal Message, from time to time, of the state of the Kingdom, and to recommend to its consideration such measures as he shall judge necessary and expedient.

ARTICLE 31. The person of the King is inviolable and sacred. His Ministers are responsible. To the King belongs the Executive power. All laws that have passed the Legislative Assembly, shall require His Majesty's signature in order to their validity.

ARTICLE 32. Whenever, upon the decease of the Reigning Sovereign, the Heir shall be less than eighteen years of age, the Royal Power shall be exercised by a Regent or Council of Regency, as hereinafter provided.

ARTICLE 33. It shall be lawful for the King at any time when he may be about to absent himself from the Kingdom, to appoint a Regent or Council of Regency, who shall administer the Government in His name; and likewise the King may, by

His last Will and Testament, appoint a Regent or Council of Regency to administer the Government during the minority of any Heir to the Throne; and should a Sovereign decess, leaving a Minor Heir, and having made no last Will and Testament, the Cabinet Council at the time of such decess shall be a Council of Regency, until the Legislative Assembly, which shall be called immediately, may be assembled, and the Legislative Assembly immediately that it is assembled shall proceed to choose by ballot, a Regent or Council of Regency, who shall administer the Government in the name of the King, and exercise all the Powers which are Constitutionally vested in the King, until he shall have attained the age of eighteen years, which age is declared to be the Legal Majority of such Sovereign.

ARTICLE 34. The King is Sovereign of all the Chiefs and of all the People; the Kingdom is His.

ARTICLE 35. All Titles of Honor, Orders, and other distinctions, emanate from the King.

ARTICLE 36. The King coins money, and regulates the currency by law.

ARTICLE 37. The King, in case of invasion or rebellion, can place the whole Kingdom or any part of it under martial law.

ARTICLE 38. The National Ensign shall not be changed, except by Act of the Legislature.

ARTICLE 39. The King's private lands and other property are inviolable.

ARTICLE 40. The King cannot be sued or held to account in any Court or Tribunal of the Realm.

ARTICLE 41. There shall continue to be a Council of State, for advising the King in all matters for the good of the State, wherein He may require its advice, and for assisting him in administering the Executive affairs of the Government, in such manner as he may direct; which Council shall be called the King's Privy Council of State, and the members thereof shall be appointed by the King, to hold office during His Majesty's pleasure.

ARTICLE 42. The King's Cabinet shall consist of the Minister of Foreign Affairs, the Minister of the Interior, the Minister of Finance, and the Attorney General of the Kingdom, and these shall be His Majesty's Special Advisers in the Executive affairs of the Kingdom; and they shall be *ex officio* Members of His Majesty's Privy Council of State. They shall be appointed and commissioned by the King, and hold office during His Majesty's pleasure, subject to impeachment. No act of the King shall have any effect unless it be countersigned by a Minister, who by that signature makes himself responsible.

ARTICLE 43. Each member of the King's Cabinet shall keep an office at the seat of Government, and shall be accountable for

the conduct of his deputies and clerks. The Ministry hold seats *ex officio*, as Nobles, in the Legislative Assembly.

ARTICLE 44. The Minister of Finance shall present to the Legislative Assembly in the name of the Government, on the first day of the meeting of the Legislature, the Financial Budget, in the Hawaiian and English languages.

ARTICLE 45. The Legislative power of the Three Estates of this Kingdom is vested in the King, and the Legislative Assembly; which Assembly shall consist of the Nobles appointed by the King, and of the Representatives of the People, sitting together.

ARTICLE 46. The Legislative Body shall assemble biennially, in the month of April, and at such other time as the King may judge necessary, for the purpose of seeking the welfare of the Nation. This Body shall be styled the Legislature of the Hawaiian Kingdom.

ARTICLE 47. Every member of the Legislative Assembly shall take the following oath: I most solemnly swear, in the presence of Almighty God, that I will faithfully support the Constitution of Almighty God, and conscientiously and impartially discharge my duties as a member of this Assembly.

ARTICLE 48. The Legislature has full power and authority to amend the Constitution as hereinafter provided; and from time to time to make all manner of wholesome laws, not repugnant to the provisions of the Constitution.

ARTICLE 49. The King shall signify His approval of any Bill or Resolution, which shall have passed the Legislative Assembly, by signing the same previous to the final rising of the Legislature. But if he shall object to the passing of such Bill or Resolution, He will return it to the Legislative Assembly, who shall enter the fact of such return on its journal, and such Bill or Resolution shall not be brought forward thereafter during the same session.

ARTICLE 50. The Legislative Assembly shall be the judge of the qualifications of its own members, and a majority shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and compel the attendance of absent members, in such manner and under such penalties as the Assembly may provide.

ARTICLE 51. The Legislative Assembly shall choose its own officers and determine the Rules of its own proceedings.

ARTICLE 52. The Legislative Assembly shall have authority to punish by imprisonment, not exceeding thirty days, every person, not a member, who shall be guilty of disrespect to the Assembly, by any disorderly or contemptuous behavior in its presence; or who, during the time of its sitting, shall publish any false report of its proceedings, or insulting comments upon the same; or who shall threaten harm to the body or estate of any

of its members, for anything said or done in the Assembly; or who shall assault any of them therefor, or who shall assault or arrest any witness, or other person ordered to attend the Assembly, in his way going or returning, or who shall rescue any person arrested by order of the Assembly.

ARTICLE 53. The Legislative Assembly may punish its own members for disorderly behavior.

ARTICLE 54. The Legislative Assembly shall keep a journal of its proceedings; and the yeas and nays of the members, on any question, shall, at the desire of one-fifth of those present, be entered on the journal.

ARTICLE 55. The Members of the Legislative Assembly shall, in all cases, except treason, felony, or breach of the peace, be privileged from arrest during their attendance at the Sessions of the Legislature, and in going to and returning from the same; and they shall not be held to answer for any speech or debate made in the Assembly, in any other Court or place whatsoever.

ARTICLE 56. The Representatives shall receive for their services a compensation to be ascertained by law, and paid out of the Public Treasury, but no increase of compensation shall take effect during the year in which it shall have been made; and no law shall be passed, increasing the compensation of said Representatives beyond the sum of One Hundred and Fifty Dollars for each session.

ARTICLE 57. The King appoints the Nobles, who shall hold their appointments during life, subject to the provisions of Article 53; but their number shall not exceed twenty.

ARTICLE 58. No person shall be appointed a Noble who shall not have attained the age of twenty-one years and resided in the Kingdom five years.

ARTICLE 59. The Nobles shall be a Court, with full and sole authority to hear and determine all impeachments made by the Representatives, as the Grand Inquest of the Kingdom, against any officers of the Kingdom, for misconduct or maladministration in their offices; but previous to the trial of every impeachment the Nobles shall respectively be sworn, truly and impartially to try and determine the charge in question, according to evidence and the law. Their judgment, however, shall not extend further than to removal from office and disqualification to hold or enjoy any place of honor, trust, or profit, under this Government; but the party so convicted shall be, nevertheless, liable to indictment, trial, judgment and punishment according to the laws of the land. No Minister shall sit as a Noble on the trial of any impeachment.

ARTICLE 60. The Representation of the People shall be based upon the principle of equality, and shall be regulated and appointed by the Legislature according to the population, to be ascertained, from time to time, by the official census. The Representa-

tatives shall not be less in number than twenty-four, nor more than forty, who shall be elected biennially.

ARTICLE 61. No person shall be eligible for a Representative of the People, who is insane or an idiot; nor unless he be a male subject of the Kingdom, who shall have arrived at the full age of Twenty-(2)ne years—who shall know how to read and write—who shall understand accounts—and shall have been domiciled in the Kingdom for at least three years, the last of which shall be the year immediately preceding his election; and who shall own Real Estate, within the Kingdom, of a clear value, over and above all incumbrances, of at least Five Hundred Dollars; or who shall have an annual income of at least Two Hundred and Fifty Dollars, derived from any property, or some lawful employment.

ARTICLE 62. Every male subject of the Kingdom, who shall have paid his taxes, who shall have attained the age of twenty years, and shall have been domiciled in the Kingdom for one year immediately preceding the election; and shall be possessed of Real Property in this Kingdom, to the value over and above all incumbrances of (One Hundred and Fifty Dollars—or of a Lease-hold property on which the rent is twenty-five Dollars per year—or of an income of not less than Seventy-five Dollars per year, derived from any property or some lawful employment, and shall know how to read and write, if born since the year 1840, and shall have caused his name to be entered on the list of voters of his District as may be provided by law, shall be entitled to one vote for the Representative or Representatives of that District. *Provided, however,* that no insane or idiotic person, nor any person who shall have been convicted of any infamous crime within this Kingdom, unless he shall have been pardoned by the King, and by the terms of such pardon have been restored to all the rights of a subject, shall be allowed to vote.

ARTICLE 63. The property qualifications of the Representatives of the People, and of the Electors, may be increased by law.

ARTICLE 64. The Judicial Power of the Kingdom shall be vested in one Supreme Court, and in such Inferior Courts as the Legislature may, from time to time, establish.

ARTICLE 65. The Supreme Court shall consist of a Chief Justice, and not less than two Associate Justices; any of whom may hold the Court. The Justices of the Supreme Court shall hold their offices during good behavior, subject to removal upon impeachment, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office. *Provided, however,* that any Judge of the Supreme Court or any other Court of Record may be removed from office, on a resolution passed by two-thirds of the Legislative Assembly, for good cause shown to the satisfaction of the King. The Judge against whom the Legislative Assembly may

be about to proceed, shall receive notice thereof, accompanied by a copy of the causes alleged for his removal, at least ten days before the day on which the Legislative Assembly shall act thereon. He shall be heard before the Legislative Assembly.

ARTICLE 66. The Judicial Power shall be divided among the Supreme Court and the several Inferior Courts of the Kingdom, in such manner as the Legislature may, from time to time, prescribe, and the tenure of office in the Inferior Courts of the Kingdom shall be such as may be defined by the law creating them.

ARTICLE 67. The Judicial Power shall extend to all cases in law and equity, arising under the Constitution and laws, of this Kingdom, and Treaties made, or which shall be made under their authority, to all cases affecting Public Ministers and Consuls, and to all cases of Admiralty and Maritime jurisdiction.

ARTICLE 68. The Chief Justice of the Supreme Court shall be the Chancellor of the Kingdom; he shall be *ex officio* President of the Nobles in all cases of impeachment unless when impeached himself; and exercise such jurisdiction in equity or other cases as the law may confer upon him; his decisions being subject, however, to the revision of the Supreme Court on appeal. Should the Chief Justice ever be impeached, some person specially commissioned by the King shall be President of the Court of Impeachment during such trial.

ARTICLE 69. The decisions of the Supreme Court, when made by a majority of the Justices thereof, shall be final and conclusive upon all parties.

ARTICLE 70. The King, His Cabinet, and the Legislative Assembly, shall have authority to require the opinions of the Justices of the Supreme Court, upon important questions of law, and upon solemn occasions.

ARTICLE 71. The King appoints the Justices of the Supreme Court, and all other Judges of Courts of Record; their salaries are fixed by law.

ARTICLE 72. No judge or Magistrate can sit alone on an appeal or new trial, in any case on which he may have given a previous judgment.

ARTICLE 73. No person shall ever hold any office of Honor, Trust, or Profit under the Government of the Hawaiian Islands, who shall, in due course of law, have been convicted of Theft, Bribery, Perjury, Forgery, Embezzlement, or other high crime or misdemeanor, unless he shall have been pardoned by the King, and restored to his Civil Rights, and by the express terms of his pardon, declared to be appointable to offices of Trust, Honor, and Profit.

ARTICLE 74. No officer of this Government shall hold any office, or receive any salary from any other Government or Power whatever.

ARTICLE 75. The Legislature votes the Appropriations biennially, after due consideration of the revenue and expenditure for the two preceding years, and the estimates of the revenue and expenditure of the two succeeding years, which shall be submitted to them by the Minister of Finance.

ARTICLE 76. The enacting style in making and passing all Acts and Laws shall be, "Be it enacted by the King, and the Legislative Assembly of the Hawaiian Islands, in the Legislature of the Kingdom assembled."

ARTICLE 77. To avoid improper influences which may result from intermixing in one and the same Act, such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in its title.

ARTICLE 78. All laws now in force in this Kingdom, shall continue and remain in full effect, until altered or repealed by the Legislature; such parts only excepted as are repugnant to this Constitution. All laws heretofore enacted, or that may hereafter be enacted, which are contrary to this Constitution, shall be null and void.

ARTICLE 79. This Constitution shall be in force from the Twentieth day of August in the year One Thousand Eight Hundred and Sixty-four, but that there may be no failure of justice, or inconvenience to the Kingdom, from any change, all officers of this Kingdom, at the time this Constitution shall take effect, shall have, hold, and exercise all the power to them granted, until other persons shall be appointed in their stead.

ARTICLE 80. Any amendment or amendments to this Constitution may be proposed in the Legislative Assembly, and if the same shall be agreed to by a majority of the members thereof, such proposed amendment or amendments shall be entered on its journal, with the yeas and nays taken thereon, and referred to the next Legislature; which proposed amendment or amendments shall be published for three months previous to the next election of Representatives; and if in the next Legislature such proposed amendment or amendments shall be agreed to by two-thirds of all the members of the Legislative Assembly, and be approved by the King, such amendment or amendments shall become part of the Constitution of this country.

KAMEHAMEHA R.

Exhibit “2”

THE
PENAL CODE

OF

THE HAWAIIAN KINGDOM,

COMPILED

FROM THE PENAL CODE OF 1850,

AND THE VARIOUS PENAL ENACTMENTS SINCE MADE,

PURSUANT TO ACT OF THE LEGISLATIVE

ASSEMBLY, JUNE 22D, 1868.

PUBLISHED BY AUTHORITY.

PRINTED AT THE GOVERNMENT PRESS:

HONOLULU, OAHU.

1869.

CHAPTER VI.

TREASON.

CONTENTS.

SECTION 1. Treason defined.

2. Allegiance.

3. Local allegiance.

4. Ambassadors and others.

5. An overt act is requisite to levying war.

6. The war must be levied for the dethroning or destruction of the King, or for some general purpose.

7. An accessory before the fact.

8. The testimony of two witnesses requisite to convict of treason.

9. Punishment.

10. Punishment for concealing knowledge of the commission of treason.

1. Treason is hereby defined to be any plotting or attempt to dethrone or destroy the King, or the levying of war against the King's government, or the adhering to the enemies thereof, giving them aid and comfort, the same being done by a person owing allegiance to this kingdom.

2. Allegiance is the obedience and fidelity due to the king: dom from those under its protection.

3. An alien, whether his native country be at war or at peace with this kingdom, owes allegiance to this kingdom during his residence therein, and during such residence, is capable of committing treason against this kingdom.

4. Ambassadors and other ministers of foreign states, and their alien secretaries, servants and members of their families, do not owe allegiance to this kingdom, though resident therein, and are not capable of committing treason against this kingdom.

5. To constitute the levying of war, contemplated in the first section of this chapter, it shall be requisite that the persons concerned therein be parties to some overt act, in or towards procuring, preparing or using force, or putting themselves in a condition in readiness to use force, either by being present at such overt act, or by promoting, aiding in, or being otherwise accessory before the fact to the same.

6. In order to constitute the levying of war, the force must be employed or intended to be employed for the dethroning or destruction of the King or in contravention of the laws, or in opposition to the authority of the King's government, with an intent or for an object affecting some of the branches or departments of said government generally, or affecting the enactment, repeal or enforcement of laws in general, or of some general law; or affecting the people, or the public tranquility generally; in distinction from some special intent or object, affecting individuals other than the King, or a particular district.

7. An accessory before the fact to treason is guilty of treason, and shall be subject to prosecution, trial and punishment therefor, though the principals more directly concerned have not been convicted, or are not amenable to justice.

8. No person shall be convicted of treason but by the testimony of two or more lawful witnesses to the same overt act of treason whereof he stands charged, unless he shall in open court, confess such treason.

9. Whoever shall commit the crime of treason, shall suffer the punishment of death; and all his property shall be confiscated to the government.

10. If any person who shall have knowledge of the commission of treason against this kingdom, shall conceal the same, and shall not, as soon as may be, disclose and make known such treason to the Governor of the island on which he resides, he is guilty of a great crime, and shall be punished by a fine not exceeding five thousand dollars, or imprisonment at hard labor not exceeding ten years, in the discretion of the court.

Exhibit “3”

COMPILED LAWS

OF THE

HAWAIIAN KINGDOM.

PUBLISHED BY AUTHORITY.

HONOLULU :

PRINTED AT THE HAWAIIAN GAZETTE OFFICE,

. 1884

CHAPTER VIII.

DEPARTMENT OF FOREIGN AFFAIRS.

ARTICLE IX—THE MINISTER OF FOREIGN AFFAIRS, HIS POWERS AND DUTIES IN GENERAL.*

§436. There shall be an executive department styled the Department of Foreign Affairs, which shall be presided over by an officer called the Minister of Foreign Affairs, who shall reside and keep an office at the seat of Government.

§437. It shall be the duty of said Minister to conduct the correspondence of this Government, with the diplomatic and consular agents of all foreign nations, accredited to this Government, and with the public ministers, consuls, and other agents of the Hawaiian Islands, in foreign countries, in conformity with the law of nations, and as the King shall, from time to time, order and instruct.

§438. It shall be the duty of said minister, before transmitting any diplomatic dispatch, making any claim or complaint on behalf of, or in answer to, any claim or complaint made against the authorities of the government of His Majesty, or before transmitting any other important dispatch, involving national responsibility, to submit the same to the King for adoption or amendment, to the end that His Majesty may not become liable for any official act, of which he shall not have had previous knowledge.

§439. The Minister of Foreign Affairs shall keep a full and faithful record of all the transactions of his department, and preserve in some form convenient for reference, all his official correspondence, which shall be, at all times, accessible to the King.

§440. Said minister may, from time to time, publish such

*The offices of Secretary of War and the Navy, abolished 1874, Ch. XXXIX.

portions of his correspondence, as the King may authorize or direct to be published.

§441. Said minister shall have the custody of all public treaties concluded and ratified by the Government; and it shall be his duty to promulgate the same by publication in the government newspaper. When so promulgated, all officers of this government shall be presumed to have knowledge of the same.

§442. It shall be the duty of the Minister of Foreign Affairs to instruct the ministers, consuls, and other foreign agents of this government, in relation to their duties and conduct, in such manner as the King may, from time to time, direct.

§443. Said minister shall also prescribe the fees and perquisites to be received by the consuls, and other foreign agents of this government.

§444. The compensation of the foreign agents of this government shall be such as may, from time to time, be determined by the King: provided, always, that no money shall be applied to this purpose, except as the same may be appropriated by the Legislature.

§445. Every minister, commissioner, consul, or vice-consul,* of the Hawaiian Islands, in any foreign country, may take and certify, under his official seal, all acknowledgements of any deed, mortgage, lease, release, or other instrument affecting the conveyance of real or personal estate in this Kingdom—and such acknowledgement shall entitle such instrument to be recorded.

§446. Such ministers, commissioners, consuls, and vice-consuls, shall have power to take acknowledgments of powers of attorney, to administer oaths, and to take depositions and affidavits, to be used in this Kingdom.

*Consular certificates required on foreign invoices, 1864, p. 61.

§447 It shall be the duty of the Minister of Foreign Affairs to issue and promulgate all proclamations, and orders in council, in anywise affecting the relations of this government with any foreign nation.

§448. The Minister of Foreign Affairs is charged with the requisition upon foreign governments, for the surrender of persons charged with the commission of crimes within this Kingdom; and he is also charged with the surrender of fugitives from justice, coming to this kingdom from any foreign country.

American
Treaty,
Chapter XIV.

§449. The respective judges and magistrates of the Kingdom shall have authority, upon complaint made under oath, to issue a warrant for the apprehension of any person charged with the commission of a crime, in any foreign country, that he may be brought before such judges, or other magistrates respectively, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the Minister of Foreign Affairs, that he may issue a warrant for the surrender of such fugitive.

§450. Before issuing any such warrant, the Minister of Foreign Affairs shall be satisfied that the expenses of apprehension and detention of the fugitive have been paid, or that the representative of the nation has assumed the payment of such expenses.

§451. The warrant of the Minister of Foreign Affairs, directing the surrender of any fugitive from justice, shall be binding upon all officers of His Majesty's Government, in anywise having the custody of such fugitive.

§452. Every fugitive from justice may be retained in prison after his surrender, until a suitable opportunity occurs for his removal, at the expense of the officer to whom he is surrendered.

§453. The Minister of Foreign Affairs may issue passports to all ministers, diplomatic agents, and consuls of the King, sent abroad, and to the consuls and other commercial agents of foreign governments, and to all subjects of the Kingdom going abroad, who may desire the same.

P. C.
Chapter XXIX.

§454. Said passports shall be issued free of charge, signed by the said minister, and impressed with the seal of his department; and shall exonerate all masters of vessels, from any liabilities for having conveyed the persons named in such passports out of the jurisdiction of this Kingdom.

P. C.
Chapter XXIX.

§455. The Minister of Foreign Affairs, upon being duly notified that any alien foreigner has died intestate within this Kingdom, leaving residuary assets therein, but no heirs, shall immediately give notice thereof to the accredited representative, or consul, of the nation to which the deceased belonged.

Bremen Treaty
Chapter III.

§456. If such residuary assets shall be claimed in behalf of any foreign heir, the Minister of Foreign Affairs, upon being satisfied of the claimant's right to receive them, shall order the same to be delivered to him, after deducting the proper charges for receiving and keeping the same. And all persons having such assets in custody, shall deliver the same to the person named in such order.

§457. In case, the Minister of Foreign Affairs shall not be satisfied of the claimant's right to receive such residuary assets, it shall be competent for such claimant to institute a suit for their recovery, against said minister, before the courts of the Kingdom, and the final judgment rendered in the case shall be conclusive upon the parties.

ARTICLE X—THE DIPLOMATIC AND CONSULAR AGENTS OF FOREIGN NATIONS.

§458. It shall be incumbent upon all foreign consuls-general, consuls, vice-consuls, and consular agents, to present their com-

missions through the diplomatic agents of their several nations, if such exist, and if not, direct to the Minister of Foreign Affairs, who, if they are found to be regular, shall, unless otherwise directed by the King, give them exequaturs under the seal of his department; and it shall be the duty of said minister to cause all such exequaturs to be published in the Government Gazette.

§459. No foreign consul, or consular or commercial agent shall be authorized to act as such, or entitled to recover his fees and perquisites in the courts of this Kingdom, until he shall have received his exequatur.

§460. It shall be incumbent upon every diplomatic agent, coming accredited to the King, to notify the Minister of Foreign Affairs of his arrival, and to request an audience of the King, for the purpose of presenting his credentials. Said minister, upon receipt of such notice, with copy of his credentials, shall take His Majesty's orders in regard thereto, and communicate the same to such agent.

§461. After any such foreign diplomatic agent shall have presented his credentials to, and been received by the King, it shall be the duty of the Minister of Foreign Affairs, to announce that fact to the public, by notification in the Government Gazette.

§462. No person shall arrest, or otherwise molest, any foreign public minister, received and acknowledged as such by the King, or any attaché, or servant of such minister, except for acts of political sedition, and machinations endangering the political safety of the King's Government: provided, nevertheless, that no subject or inhabitant of this Kingdom, who shall have contracted debts prior to his entering into the service of any such public minister, which debt shall still be due and unpaid, shall have, take, or receive any benefit of this law; nor shall any person be proceeded against by virtue of this law, for having arrested or sued any domestic servant of such public minister, unless the name of such servant shall have been previously furnished to the department of Foreign Affairs.

§463. It shall be the duty of the Minister of Foreign Affairs, upon the receipt of a list of the attaches, and domestic servants of any such public minister, to cause the same to be published in the Government Gazette, and to furnish a copy of such list to the Marshal.

§464. Foreign public ministers are not amenable to the civil or criminal jurisdiction of the Kingdom, and therefore all writs or process, whereby the person of any public minister, received as such by the King, shall be arrested, or imprisoned, or his property distrained, seized, or attached, shall be utterly null and void, to all intents and purposes whatsoever: provided, always, that force may be applied to confine, or send away any such minister, when the safety of the State, which is superior to all other considerations, absolutely requires it, arising either from the violence of his conduct, or the influence and danger of his machinations.

§465. All writs or process, for the arrest or imprisonment of any attache of a public minister, whose name has been furnished to the Department of Foreign Affairs, as provided in section 462, or for the seizure or attachment of his property, shall be null and void; subject, however, to the provisions of section 462: and provided, always, that he shall enjoy no greater privileges than are accorded to him by the law of nations.

§466. If any person assault, strike, wound, imprison, or in any other manner infract the law of nations, by offering violence to the person of a public minister, such person so offending, on conviction, shall be imprisoned not exceeding five years, and fined at the discretion of the Court; and, if an officer of this Government, shall be liable to removal from office.

P. C.
Chapter IX.
Section 10.

§467. All foreign diplomatic agents, received and acknowledged as such by the King, as having the representative character, in a political sense, shall enjoy the exemption from duties upon stores and supplies imported for their private use and consumption, allowed by their respective nations to foreign diplomatic

agents of the same rank, and accredited in the same manner; provided that each foreign diplomatic agent shall, previously, adduce to the Minister of Foreign Affairs, satisfactory proof that the exemption claimed by him would be allowed by his own nation to a Hawaiian agent of the same rank, under the like circumstances.

CHAPTER IX.

DEPARTMENT OF FINANCE.

ARTICLE XI—THE MINISTER OF FINANCE—HIS POWERS AND DUTIES IN GENERAL.

§468. There shall be an executive department, styled the Department of Finance, which shall be presided over by an officer called the Minister of Finance, who shall reside and keep an office at the seat of government.

§469. It shall be the duty of the Minister of Finance to have a general supervision over the financial affairs of the Kingdom, and to faithfully and impartially execute the duties assigned by law to his department. He is charged with the enforcement of all revenue laws; the collection of duties on foreign imports; the collection of taxes; the safe keeping and disbursement of the public moneys, and with all such other matters as may, by law, be placed in his charge.

§470. It shall be his duty to make a biennial report to the Legislature, of the transactions and business of his department, showing the revenue and expenditure for the two preceding years,

Exhibit “4”

DECLARATION OF DAVID KEANU SAI, PH.D

I, DAVID KEANU SAI, declare under penalty that the following is true and correct:

1. I have a Ph.D. in political science specializing in international relations, international law, U.S. constitutional law and Hawaiian constitutional law. My contact information is 47-605 Puapo'o Place, Kaneohe, Hawai'i, 96744, 808-383-6100 and e-mail address at keanu.sai@gmail.com.
2. Attached herein as Exhibit "1" is a true and correct copy of my Ph.D. degree in Political Science.
3. Attached herein as Exhibit "2" is a true and correct copy of my Curriculum Vitae verifying my qualifications to testify as an expert on such matters. I have previously been qualified and testified as an expert witness, on matters referred to hereinabove, in the District Court of the Third Circuit.
4. Attached herein as Exhibit "3" is a true and correct copy of my "Expert Memorandum on the Legal Continuity of the Hawaiian Kingdom as an Independent and Sovereign State," dated November 28, 2010.
5. I am qualified and competent to testify on the matters stated herein and further as an expert witness in matters concerning the Legal Continuity of the Hawaiian Kingdom as an Independent and Sovereign State.

I declare under penalty of perjury that the following is true and correct.

DATED: Kane'ohē, O'ahu, Hawai'i, May 17, 2012.

A handwritten signature in black ink, reading "David Keanu Sai". The signature is written in a cursive style with a prominent initial "D" and a long, sweeping tail for the "Sai".

David Keanu Sai

Exhibit “1”

The Regents of
The University of Hawai'i
on the recommendation of the Faculty at
University of Hawai'i at Mānoa

have conferred upon

David Keam Sai

the degree of

Doctor of Philosophy
Political Science

with all its privileges and obligations

Given at Honolulu, Hawai'i, this twentieth day of December,
two thousand eight

Vivian D. Hildan
Chancellor

Allan R. Landon
Chairperson, Board of Regents



David McClain
President

Exhibit “2”

Curriculum Vitae

DR. DAVID KEANU SAI, Ph.D.



EXPERTISE:

International relations, state sovereignty, international laws of occupation, United States constitutional law, Hawaiian constitutional law, and Hawaiian land titles.

ACADEMIC QUALIFICATIONS:

- Dec. 2008: Ph.D. in Political Science specializing in international law, state sovereignty, international laws of occupation, United States constitutional law, and Hawaiian constitutional law, University of Hawai`i, Manoa, H.I.
- Doctoral dissertation titled, “American Occupation of the Hawaiian Kingdom: Beginning the Transition from Occupied to Restored State.”
- May 2004: M.A. in Political Science specializing in International Relations, University of Hawai`i, Manoa, H.I.
- May 1987: B.A. in Sociology, University of Hawai`i, Manoa, H.I.
- May 1984: A.A. in Pre-Business, New Mexico Military Institute, Roswell, N.M., U.S.
- May 1982: Diploma, Kamehameha Schools, Honolulu, H.I.

TEACHING EXPERIENCE:

Graduate Assistant (Political Science), University of Hawai`i at Manoa

47-605 Puapo`o Place
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Tel: (808) 383-6100
anu@hawaii.edu

- Fall 2004 – Spring 2005
- Fall 2005 – Spring 2006
- Fall 2006 – Spring 2007

Fall 2011

- Hawaiian Studies 107 (online course), *Introduction to the History of the Hawaiian People*, Windward Community College
- Hawaiian Studies 255 (online course), *Introduction to the Hawaiian Kingdom*, Windward Community College

Spring 2011

- Hawaiian Studies 107, *Introduction to the History of the Hawaiian People*, Windward Community College
- Hawaiian Studies 107, *Introduction to the History of the Hawaiian People*, Windward Community College
- Hawaiian Studies 107 (online course), *Introduction to the History of the Hawaiian People*, Windward Community College
- Hawaiian Studies 190-V, *Hawaiian Land Tenure*, University of Hawai`i Maui College

Fall 2010

- Hawaiian Studies 107, *Introduction to the History of the Hawaiian People*, Windward Community College

Spring 2010

- Hawaiian Studies 297(WI), *Introduction to the Hawaiian Kingdom*, Kapi`olani Community College

Fall 2009

- Hawaiian Studies 107 (online course), *Introduction to the History of the Hawaiian People*, Kapi`olani Community College

Spring 2009

- Political Science 110, *Introduction to Political Science*, Kapi`olani Community College

Spring 2007

- Political Science 110 (3), *Introduction to Political Science*, University of Hawai`i at Manoa

Fall 2006

- Political Science 110 (6), *Introduction to Political Science*, University of Hawai`i at Manoa

Spring 2006

- Political Science 130 (2), *Introduction to American Politics*, University of Hawai`i at Manoa

Fall 2005

- Anthropology, 699-399, *Hawaiian Land Titles*, co-taught with Ty Tengan, Assistant Professor, University of Hawai'i at Manoa
- Political Science 130 (1), *Introduction to American Politics*, University of Hawai'i at Manoa

Spring 2005

- Anthropology 699, *Introduction to the Hawaiian State*, co-taught with Ty Tengan, Assistant Professor, University of Hawai'i at Manoa
- Political Science 120 (1), *Introduction to World Politics—Hawai'i's View*, University of Hawai'i at Manoa

Fall 2004

- Anthropology 699, *Introduction to the Hawaiian State*, co-taught with Ty Tengan, Assistant Professor, University of Hawai'i at Manoa
- Political Science 120 (2), *Introduction to World Politics—Hawai'i's View*, University of Hawai'i at Manoa

Spring 2004

- Anthropology 750D, *Introduction to the Hawaiian State*, University of Hawai'i at Manoa
- Hawaiian Studies 301(2), *Introduction to the Hawaiian State*, co-taught with Kanalu Young, Associate Professor, University of Hawai'i at Manoa

Fall 2003

- Anthropology 699, *Directed Reading on the Hawaiian State*, co-taught with Ty Tengan, Assistant Professor, University of Hawai'i at Manoa

Spring 2000

- Ethnic Studies 221, *The Hawaiians: A Critical Analysis*, co-taught with Lynette Cruz, Ph.D. candidate, University of Hawai'i at Manoa

PANELS AND PRESENTATIONS:

- *Puana Ka `Ike Lecture Series (Imparting Knowledge)*, Kamehameha Investment Corporation, Keahou Hotel, Kona, Hawai'i. A presentation entitled "1893 Overthrow Settled by Executive Agreements," March 18, 2011.
- "1893 Overthrow Settled by Executive Agreements," *Native Hawaiian Education Association Conference*, Windward Community College, March 18, 2011.
- "The American Occupation of the Hawaiian Kingdom: Beginning the Transition from Occupied to Restored State." *Sustainability for Biological Engineers Lecture Series*, University of Hawai'i at Manoa, Agricultural Science Bldg. 219, December 7, 2010.

- “1893 Cleveland-Lili`uokalani Executive Agreements and their Impact Today.” Presentation at the *Annual Convention of Hawaiian Civic Clubs*, Sheraton Keauhou Bay Resort & Spa, Island of Hawai`i, November 9, 2010.
- “The History of the Hawaiian Kingdom.” Presentation at the annual convention of the *Victorian Society of Scholars*, Kana`ina Bldg., Honolulu, October 28, 2010.
- “Pu`a Foundation: E pu pa`akai kakou.” Joint presentation with Pu`a Foundation of an educational package and curriculum I authored for teaching Hawaiian history, *Healing Our Spirit World, The Sixth Gathering*, Hawai`i Convention Center, September 7, 2010.
- “Evolution of Hawaiian land Titles and the Impact of the 1893 Executive Agreements.” Sponsored by the County of Maui, Real Property Tax Division, HGEA Bldg, Kahului, June 28, 2010.
- “Evolution of Hawaiian land Titles and the Impact of the 1893 Executive Agreements.” Sponsored by the City & County of Honolulu, Real Property Assessment Division, Mission Memorial Auditorium, June 9, 2010.
- “Hawai`i’s Legal and Political History.” Sponsored by *Kokua A Puni Hawaiian Student Services*, UH Manoa, Center for Hawaiian Studies, UHM, May 26, 2010.
- “Ua Mau Ke Ea: Sovereignty Endured.” Joint presentation with Pu`a Foundation of an educational package and curriculum I authored for teaching Hawaiian history, *Native Hawaiian Education Association Conference*, Windward Community College, March 19, 2010.
- *Puana Ka `Ike Lecture Series (Imparting Knowledge)*, Kamehameha Investment Corporation, Keahou Hotel, Kona, Hawai`i. A presentation entitled “Evolution of Hawaiian Land Titles and its Impact Today,” March 12, 2010.
- “1893 Cleveland-Lili`uokalani Agreement of Restoration (Executive Agreement).” Sponsored by the Haloa Research Center, Baldwin High School Auditorium, February 20, 2010.
- “1893 Cleveland-Lili`uokalani Agreement of Restoration (Executive Agreement).” Sponsored by Kamehameha Schools’ Kula Hawai`i Teachers Professional Development, Kapalama Campus, Konia, January 4, 2010.
- “The Legal and Political History of Hawai`i.” Sponsored by House Representative Karen Awana, National Conference of Native American State Legislators, State of Hawai`i Capital Bldg, November 16, 2009.
- “The Myth of Ceded Lands: A Legal Analysis.” Sponsored by Hawaiian Studies, Ho`a and Ho`okahua (STEM), Maui Community College, Noi`i 12-A, November 2, 2009.

- “The Legal and Political History of Hawai`i.” Presentation to the *Hui Aloha `Aina Tuahine*, Center for Hawaiian Studies, University of Hawai`i at Manoa, October 30, 2009.
- “The Legal and Political History of Hawai`i.” Presentation to *Kahuewai Ola*, Queen Lili`uokalani Center for Student Services, University of Hawai`i at Manoa, October 23, 2009.
- “The Myth of Ceded Lands: A Legal Analysis.” Sponsored by Kamehameha Schools Ka`iwakiloumoku Hawaiian Cultural Events Series, Ke`eliokalani Performing Arts Center, Kamehameha Schools Kapalama campus, October 21, 2009.
- “The Myth of Ceded Lands: A Legal Analysis.” Sponsored by ASUH and Hawaiian Studies, Paliku Theatre, Windward Community College, September 10, 2009.
- *Puana Ka `Ike Lecture Series (Imparting Knowledge)*, Kohana Center/Kamehameha Investment Corporation, Keauhou II Convention Center, Kona, Hawai`i. A presentation entitled “The Myth of Ceded Lands: A Legal Analysis,” March 13, 2009.
- “American Occupation of the Hawaiian Kingdom: Beginning the Transition from Occupied to Restored State.” Briefing for Colonel James Herring, Army Staff Judge Advocate, 8th Theater Sustainment Command, and his staff officers, Wheeler AAF Courthouse, U.S. Army Pacific, Wahiawa, Hawai`i, February 25, 2009.
- *Ka Nalu: Towards a Hawaiian National Consciousness*, Symposium of the Hawaiian Society of Law and Politics, University of Hawai`i at Manoa, Imin Conference Bldg (East West Center). Presented a portion of my doctoral dissertation entitled “The Myth of Ceded Lands: A Legal Analysis,” February 28, 2009.
- *Manifold Destiny: Disparate and Converging Forms of Political Analysis on Hawai`i Past and Present*, International Studies Association Annual Conference, San Francisco, California, March 26, 2008. Presented a paper entitled “A Slippery Path Towards Hawaiian Indigeneity: An Analysis and Comparison between Hawaiian Nationality and Hawaiian Indigeneity and its Use and Practice in Hawai`i today,” March 26, 2008.
- *Mana Kupuna Lecture Series*, University of Waikato, New Zealand. A presentation entitled “Legal and Political History of the Hawaiian Kingdom,” March 5, 2008.
- *Indigenous Politics Colloquium* speaker series, Department of Political Science, University of Hawai`i at Manoa. Presented an analysis and comparison between Hawaiian State sovereignty and Hawaiian indigeneity and its use and practice in Hawai`i today,” January 30, 2007.
- Conference at Northeastern Illinois University entitled *Dialogue Under Occupation: The Discourse of Enactment, Transaction, Reaction and Resolution*. Presented a paper on a panel entitled “Prolonged Occupation of the Hawaiian Kingdom,” Chicago, Illinois, November 10, 2006.

- The 14th Biennial Asian/Pacific American Midwest Student Conference, “Refocusing Our Lens: Confronting Contemporary Issues of Globalization and Transnationalism.” Presented article “American Occupation of the Hawaiian State: A Century Unchecked” on Militarization Panel, Oberlin College, Ohio, February 18, 2006.
- 2005 American Studies Association Annual Conference. Panelist on a roundtable discussion entitled, “The Case for Hawai`i's Independence from the United States - A Scholarly and Activist Roundtable Discussion,” with Keala Kelly and Professor Kehaulani Kauanui. Renaissance Hotel, Washington, D.C., November 4, 2005.
- Kamehameha Schools 2005 Research Conference on Hawaiian Well-being, sponsored by the Kamehameha Schools *Policy Analysis & Systems Evaluation* (PACE). Presented article “Employing Appropriate Theory when Researching Hawaiian Kingdom Governance” with two other presenters, Malcolm Naea Chun and Dr. Noelani Goodyear-Kaopua. Radisson Prince Kuhio Hotel, Waikiki, October 22, 2005.
- 1st Annual Symposium of the *Hawaiian Society of Law & Politics* showcasing the first edition of the *Hawaiian Journal of Law & Politics* (summer 2004). Presented article “American Occupation of the Hawaiian State: A Century Gone Unchecked,” with response panellists Professor John Wilson, Political Science, and Kanale Sadowski, 3rd year law student, Richardson School of Law. Imin International Conference Center, University of Hawai`i at Manoa, April 16, 2005.
- “A Symposium on Practical Pluralism.” Sponsored by the *Office of the Dean*, William S. Richardson School of Law. Panelist with Professor Williamson Chang and Dr. Kekuni Blaisdell, University of Hawai`i at Manoa, Honolulu, April 16-17, 2004.
- “Mohala A`e: Blooming Forth,” *Native Hawaiian Education Association's 5th Annual Conference*. Presented a workshop entitled “Hawaiian Epistemology.” Windward Community College, Kane`ohe, March 23, 2004.
- “First Annual 'Ahahui o Hawai`i Kukakuka: Perspectives on Federal Recognition.” Guest Speaker at a symposium concerning the Akaka Bill. Sponsored by the *'Ahahui o Hawai`i* (organization of native Hawaiian law students), University of Hawai`i at Manoa Richardson School of Law, Honolulu, March 12, 2004.
- “The Status of the Kingdom of Hawai`i.” A debate with Professor Didrick Castberg, University of Hawai`i at Hilo (Political Science), and moderator Professor Todd Belt University of Hawai`i at Hilo (Political Science). Sponsored by the *Political Science Club*, University of Hawai`i at Hilo, Campus Center, March 11, 2004.
- “The Political History of the Hawaiian Kingdom: Past and Present.” A presentation to the *Hawai`i Island Association of Hawaiian Organizations*, Queen Lili`uokalani Children's Center, Hilo, February 13, 2004.

- “Globalization and the Asia-Pacific Region.” Panel with Dr. Noenoe Silva (Political Science). *East-West Center Spring 2004 Core Course*, Honolulu, February 4, 2004.
- Televised symposium entitled, “Ceded Lands.” Other panelists included Professor Jon Van Dyke (Richardson School of Law) and Professor Lilikala Kame`eleihiwa (Center for Hawaiian Studies). Sponsored by the *Office of Hawaiian Affairs*, Wai’anae, August 2003.
- “Hawai`i’s Road to International Recovery, II.” Sponsored by *Kipuka*, University of Hawai`i at Hilo, September 25, 2003.
- “An Analysis of Tenancy, Title, and Landholding in Old Hawai`i.” Sponsored by *Kipuka*, University of Hawai`i at Hilo, September 26, 2002.
- “The Hawaiian Kingdom in Arbitration Proceedings at the Permanent Court of Arbitration, The Hague, Netherlands.” A presentation at the 6th World Indigenous Peoples Conference on Education, Stoney Park, Morley, Alberta, Canada, August 6, 2002.
- "The Hawaiian Kingdom and the United States of America: A State to State Relationship." *Reclaiming the Legacy*, U.S. National Archives and Records Administration, University of San Francisco, May 4, 2002
- “Hawai`i’s Road to International Recovery.” Sponsored by *Kipuka*, University of Hawai`i at Hilo, April 11, 2002.
- “Hawai`i’s Road to International Recovery,” a presentation to the Officers Corps of the 25th Infantry Division, U.S. Army, Officer’s Club, Schofield Barracks, Wahiawa, February 2001.
- “Lance Larsen vs. the Hawaiian Kingdom,” presentation to the *Native Hawaiian Bar Association*, quarterly meeting, Kana`ina Building, Honolulu, 2001.
- “Hawaiian Political History,” *Hawai`i Community College*, Hilo, March 5, 2001.
- “The History of the Hawaiian Kingdom,” A guest speaker at the *Aloha March* rally in Washington, D.C., August 12, 1998.
- Symposium entitled, “Human Rights and the Hawaiian Kingdom on the occasion of the 50th anniversary of the Universal Declaration of Human Rights.” Other panelist included Francis Boyle (Professor of International Law, University of Illinois), Mililani Trask (Trustee, Office of Hawaiian Affairs), Richard Grass (Lakota Sioux Nation), and Ron Barnes (Tununak Traditional Elders Council, Alaska). University of Hawai`i at Hilo, April 16, 1998.
- Symposium entitled, “Perfect Title Company: Scam or Restoration.” Sponsored by the *Hawai`i Developers Council*, Hawai`i Prince Hotel, Honolulu, August 1997.

PUBLICATIONS:

Book, “Ua Mau Ke Ea—Sovereignty Endures: An Overview of the Political and Legal History of the Hawaiian Islands,” (Pu‘a Foundation, Honolulu, 2011), online at <http://www.puafoundation.org/products/>.

Article, "1893 Cleveland-Lili'uokalani Executive Agreements." November 28, 2009, unpublished, online at <http://www2.hawaii.edu/~anu/publications.html>.

Article, "Establishing an Acting Regency: A Countermeasure Necessitated to Preserve the Hawaiian State." November 28, 2009, unpublished, online at <http://www2.hawaii.edu/~anu/publications.html>.

Book, “Land Titles in the Hawaiian Islands: From Origins to the Present (forthcoming).” Contract signed with University of Hawai‘i Press, May 7, 2009.

Article, “The Myth of Ceded Lands and the State’s Claim to Perfect Title.” *Ka Wai Ola o OHA Newspaper*, Office of Hawaiian Affairs, April 2009.

Book, “American Occupation of the Hawaiian Kingdom: Beginning the Transition from Occupied to Restored State (forthcoming).” Contract signed with University of Hawai‘i Press, February 13, 2009.

Dissertation, “American Occupation of the Hawaiian Kingdom: Beginning the Transition from Occupied to Restored State,” University of Hawai‘i at Manoa, Political Science, December 2008, online at <http://www2.hawaii.edu/~anu/publications.html>.

Article, “A Slippery Path towards Hawaiian Indigeneity: An Analysis and Comparison between Hawaiian State Sovereignty and Hawaiian Indigeneity and its Use and Practice in Hawai‘i Today,” *Journal of Law and Social Challenges* (San Francisco School of Law), Vol. 10 (Fall 2008), online at <http://www2.hawaii.edu/~anu/publications.html>.

Book Review for “Kahana: How the Land was Lost,” *The Contemporary Pacific: A Journal of Island Affairs*, Vol. 15, No. 1 (2005), online at <http://www2.hawaii.edu/~anu/publications.html>.

Article, “Experts Validate Legitimacy of International Law Case.” *Ka Wai Ola o OHA Newspaper*, Office of Hawaiian Affairs, August 2004.

“American Occupation of the Hawaiian State: A Century Unchecked,” *Hawaiian Journal of Law and Politics*, vol. 1 (Summer 2004), online journal at: <http://www2.hawaii.edu/~hslp/journal.html>.

Article, “The Indian Commerce Clause sheds Light on Question of Federal Authority over Hawaiians,” *Ka Wai Ola o OHA Newspaper*, Office of Hawaiian Affairs, September 2003.

Article, “Before Annexation: Sleight of Hand—Illusion of the Century.” *Ka Wai Ola o OHA Newspaper*, Office of Hawaiian Affairs, July 1998.

“Unpublished Short Essays” on line at <http://hawaiiankingdom.org/info-nationals.shtml>

- “The Hawaiian Kingdom: A Constitutional Monarchy”
- “The Relationship between the Hawaiian Kingdom and the United States”
- “Revisiting the Fake Revolution of January 17, 1893”
- “What does TWA Flight 800 and the Hawaiian Kingdom have in Common”
- “American Migration to the Hawaiian Kingdom and the Push for State into the American Union”
- “Hawaiian Nationality: Who Comprises the Hawaiian Citizenry?”
- “The Vision of the *acting* Council of Regency”

VIDEO/RADIO:

Video: “Hawai`i and the Law of Occupation.” *Lecture Series of the Kaleimaileali`i Hawaiian Civic Club*, `Olelo Community Television, March 11, 2009.

Video: “Title Insurance and Land Ownership in Hawai`i.” *Lecture Series of the Kaleimaileali`i Hawaiian Civic Club*, `Olelo Community Television, February 4, 2009.

Video: “What are Ceded Lands?” *Lecture Series of the Kaleimaileali`i Hawaiian Civic Club*, `Olelo Community Television, December 22, 2009.

Video: “Hawaiian Kingdom Law and Succession.” *Lecture Series of the Kaleimaileali`i Hawaiian Civic Club*, `Olelo Community Television, November 16, 2008.

Video: “Kamehameha I: From Chiefly to British Governance.” *Lecture Series of the Kaleimaileali`i Hawaiian Civic Club*, `Olelo Community Television, July 23, 2008.

Internet Radio: “The Gary Baumgarten Report News Talk Online: Hawai`i 'Kingdom' Proponent Makes Case For An Independent Hawai`i.” Guest on a daily talk internet radio show, <http://garybaumgarten.blogspot.com/2008/04/hawaii-kingdom-proponent-makes-case-for.html>, April 11, 2008.

Radio: “Talk Story with Uncle Charlie.” Guest on a weekly talk radio show. *KNUI AM 900*, Kahului, January 23, 2004.

Radio: “Perspective.” Co-host with Keaumiki Akui for a weekly talk radio show concerning Hawaiian political history. *KCCN AM 1420*, Honolulu, 1999-2001.

Video: “Hawaiian Kingdom Law a Presentation.” *Na Maka o ka Aina*, 1999.

Video: Segments of *Aloha Quest* (six-hour broadcast), KFVE television, Honolulu, December 19, 1999.

- “The Hawaiian Kingdom”
- “What is a Hawaiian subject”
- “Attempted Overthrow of 1893”

- “The Annexation that Never Was”
- “Internal Laws of the United States”
- “Supreme Courts and International Courts”
- “U.S. Senate debate: Apology resolution, Oct. 1993”

LEGAL EXPERIENCE:

- Expert consultant and witness for Defence, *Fukumitsu v. Fukumitsu* (case no. 08-1-0843 RAT)
- Expert consultant and witness for Defence, *Onewest Bank v. Tamanaha* (case no. 3RC 10-1-1306)
- *Pro se* litigant in Complaint filed with the U.S. District Court for the District of Columbia, *Sai v. Obama, Clinton, Gates, Willard and Lingle*, June 1, 2010.
<http://hawaiiankingdom.org/sai-obama.shtml>
- Expert consultant for Petitioner Contested hearing, BLNR, *Kale Gumapac v. OTEC*, 2010.
- Expert consultant and witness for Defence, *State of Hawai`i v. Larsen* (case no. 3DTA 08-03139)
- Expert consultant for Defence, *State of Hawai`i v. Kaulia* (case no. 09-1-0352K)
- Expert consultant and witness for Defence, *State of Hawai`i v. Larsen* (case no. 3DTC 08-023156)
- Expert consultant for Plaintiff, *OHA vs. Housing and Community Development Corp. of Hawaii*, (a.k.a. Ceded Land Case), October-December 2001.
- Agent for the Hawaiian Kingdom in a *Complaint* filed with the United Nations Security Council concerning the U.S. illegal occupation of the Hawaiian Kingdom, July 5, 2001.
<http://hawaiiankingdom.org/united-nations.shtml>
- Agent for the Hawaiian Kingdom in the *Lance Larsen vs. Hawaiian Kingdom* arbitration at the Permanent Court of Arbitration, The Hague, Netherlands, November 1999-September 2001, *International Law Reports*, Volume 119, pp. 566-598.
<http://www.AlohaQuest.com/arbitration/index.htm>
- Plaintiff for the Hawaiian Kingdom in a *Complaint* filed at the U.S. Supreme Court, August 4, 1998, Case No. M-26.
- Plaintiff for the Hawaiian Kingdom in a *Petition for Writ of Mandamus* filed at the U.S. Supreme Court in November 17, 1997, Case No. 97-969.

MILITARY EXPERIENCE:

Aug. 1994: Honourably Discharged
Dec. 1990: Diploma, *U.S. Army Field Artillery Officer Advanced Course*, Fort Sill, OK
May 1990: Promoted to Captain (O-3)
Apr. 1990: Diploma, *U.S. Air Force Air Ground Operations School*, Hurlbert Field, FL
May 1987: Promoted to 1st Lieutenant (O-2)
Sep. 1987: Diploma, *U.S. Army Field Artillery Officer Basic Course*, Fort Sill, OK
Sep. 1984: Assigned to *1st Battalion, 487th Field Artillery*, Hawai`i Army National Guard, Honolulu, H.I.
May 1984: Army Reserve Commission, 2nd Lieutenant (O-1), Early Commissioning Program (ECP) from the New Mexico Military Institute, Roswell, NM

GENERAL DATA:

Nationality: Hawaiian/United States
Born: July 13, 1964, Honolulu, H.I.

Exhibit “3”



Expert Memorandum on the Legal Continuity of the Hawaiian Kingdom as an Independent and Sovereign State

November 28th 2010

According to article I, Montevideo Convention (1933), “The state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states.”¹

Synopsis

The Hawaiian Kingdom had these attributes when Great Britain and France entered into a joint proclamation acknowledging and recognizing Hawai`i as an independent and sovereign State on November 28th 1843, and on July 6th 1844, United States Secretary of State John C. Calhoun notified the Hawaiian government of the United States formal recognition of the Hawaiian Kingdom as an independent and sovereign state since December 19th 1842 by President John Tyler.² As a result of the United States’ recognition, the Hawaiian Kingdom entered into a Treaty of Friendship, Commerce and Navigation, Dec. 20th 1849;³ Treaty of Commercial Reciprocity, Jan. 13th 1875;⁴ Postal Convention Concerning Money Orders, Sep. 11th 1883;⁵ and a Supplementary Convention to the 1875 Treaty of Commercial Reciprocity, Dec. 6th 1884.⁶ The Hawaiian Kingdom also entered into treaties with Austria-Hungary, June 18th 1875; Belgium, Oct. 4th 1862; Bremen, March 27th 1854; Denmark, Oct. 19th 1846; France, July 17th 1839, March 26th 1846, Sep. 8th 1858; French Tahiti, Nov. 24th 1853; Germany, March 25th 1879; Great Britain, Nov. 13th 1836 and March 26th 1846; Great Britain’s New South Wales, March 10th

¹ 49 U.S. Stat. 3097, 3100.

² David Keanu Sai, *American Occupation of the Hawaiian Kingdom: Beginning the Transition from Occupied to Restored State*, Doctoral Dissertation, University of Hawai`i, Political Science (December 2008), 72; see also David Keanu Sai, *A Slippery Path Towards Hawaiian Indigeneity*, 10 *Journal of Law and Social Challenges* 74 (Fall 2008).

³ 9 U.S. Stat. 977.

⁴ 19 U.S. Stat. 625.

⁵ 23 U.S. Stat. 736.

⁶ 25 U.S. Stat. 1399.



1874; Hamburg, Jan. 8th 1848); Italy, July 22nd 1863; Japan, Aug. 19th 1871, Jan. 28th 1886; Netherlands, Oct. 16th 1862; Portugal, May 5th 1882; Russia, June 19th 1869; Samoa, March 20th 1887; Spain, Oct. 9th 1863; Sweden-Norway, April 5th 1855; and Switzerland, July 20th 1864.

In the 21st century, an international tribunal and the Ninth Circuit Court of Appeals acknowledged the Hawaiian Kingdom’s status as an internationally recognized state in the 19th century. In *Larsen v. Hawaiian Kingdom* (2001), the Permanent Court of Arbitration in The Hague stated, “in the nineteenth century the Hawaiian Kingdom existed as an independent State recognized as such by the United States of America, the United Kingdom, and various other States.”⁷ The 9th Circuit Court, in *Kahawaiola`a v. Norton* (2004), also acknowledged the Hawaiian Kingdom’s status as “a co-equal sovereign alongside the United States;”⁸ and in *Doe v. Kamehameha* (2005), the Court stated that, “in 1866, the Hawaiian Islands were still a sovereign kingdom.”⁹

Having established the Hawaiian Kingdom’s internationally recognized status as an independent state in the 19th century, the next question is whether or not the Hawaiian Kingdom status as a state was extinguished after its government was overthrown by U.S. troops on January 17th 1893. As a subject of international law, statehood of the Hawaiian Kingdom can only be measured and determined by the rules of international law and not the domestic laws of any State to include the United States and the Hawaiian Kingdom. According to Professor Crawford, “A State is not necessarily extinguished by substantial changes in territory, population or government, or even, in some cases, by a combination of all three.”¹⁰ In particular, military “occupation does not extinguish the State pending a final settlement of the conflict. And, generally, the presumption—in practice a strong presumption—favours the continuity and disfavors the extinction of a an established State.”¹¹ Professor Wright, a renowned scholar in U.S. foreign relations law, states that, “international law distinguishes between a government and

⁷ *Larsen v. Hawaiian Kingdom*, 119 ILR 566, 581 (2001).

⁸ *Kahawaiola`a v. Norton*, 386 F.3rd 1271 (2004).

⁹ *Doe v. Kamehameha*, 416 F.3d 1025, 1048 (2005).

¹⁰ James Crawford, *The Creation of States in International Law*, 2nd ed. (Oxford University Press, 2006), 700.

¹¹ *Id.*, 701.



the state it governs.”¹² And according to §201, Restatement (Third) Foreign Relations Law of the United States, “A state may continue to be regarded as such even though, due to insurrection or other difficulties, its internal affairs become anarchic for an extended period of time;”¹³ and “Military occupation, whether during war or after an armistice, does not terminate statehood.”¹⁴ Therefore, a sovereign State would continue to exist despite its government being overthrown by military force. Two contemporary examples illustrate this principle of international law, the overthrow of the Taliban (Afghanistan) in 2001 and of Saddam Hussein (Iraq) in 2003. The former has been a recognized sovereign State since 1919,¹⁵ and the latter since 1932.¹⁶ Professor Dixon explains:

If an entity ceases to possess any of the qualities of statehood...this does not mean that it ceases to be a state under international law. For example, the absence of an effective government in Afghanistan and Iraq following the intervention of the USA did not mean that there were no such states, and the same is true of Sudan where there still appears to be no entity governing the country effectively. Likewise, if a state is allegedly ‘extinguished’ through the illegal action of another state, it will remain a state in international law.¹⁷

After the Hawaiian Kingdom government was illegally overthrown, two executive agreements were entered into between President Cleveland of the United States and Queen Lili`uokalani of the Hawaiian Kingdom in 1893. The President entered into these executive agreements under his sole constitutional authority to represent the United States in foreign relations and the Congress cannot intervene without violating the separation of powers doctrine being an encroachment upon the executive power. The first agreement, called the *Lili`uokalani assignment*, (Exhibit A), assigned executive power to the United States President to administer Hawaiian Kingdom law and to investigate the overthrow of the Hawaiian government. The second agreement, called the *Restoration agreement*, (Exhibit B), obligated the President of the United States to restore the Hawaiian government as it was prior to the landing of U.S. troops on

¹² Quincy Wright, *The Status of Germany and the Peace Proclamation*, 46(2) American Journal of International Law 299-308, 307 (April 1952).

¹³ *Restatement (Third) Foreign Relations Law of the United States*, Reporter’s Note 2, §201.

¹⁴ *Id.*, Reporter’s Note 3.

¹⁵ Manley O. Hudson, *Afghanistan, Ecuador, and the Soviet Union in the League of Nations*, 29 American Journal of International Law 109-116, 110 (1935).

¹⁶ Manley O. Hudson, *The Admission of Iraq to Membership in the League of Nations*, 27 American Journal of International Law 133-138, 133 (1933).

¹⁷ Martin Dixon, *Textbook on International Law*, 6th ed. (Oxford University Press, 2007), 119.



January 16th 1893, and for the Queen, after the government was restored and the executive power returned to grant full amnesty to those members and supporters of the provisional government who committed treason.

First Executive Agreement—Lili`uokalani assignment

On January 17th 1893, Queen Lili`uokalani, by explicit grant, “yielded” her executive power to the President of the U.S. to do an investigation of their diplomat and military troops who illegally landed on Hawaiian territory in violation of Hawai`i’s sovereignty. The Queen specifically stated,

That I yield to the superior force of the United States of America whose Minister Plenipotentiary, His Excellency John L. Stevens, has caused United States troops to be landed at Honolulu and declared that he would support the said Provisional Government.

Now to avoid any collision of armed forces, and perhaps the loss of life, I do this under protest, and impelled by said force yield my authority until such time as the Government of the United States shall, upon facts being presented to it, undo the action of its representative and reinstate me in the authority which I claim as the constitutional sovereign of the Hawaiian Islands.¹⁸

The quintessential question is what “authority” did the Queen yield as the “constitutional sovereign”? This authority is specifically stated in the Hawaiian constitution, which declares, “To the King [Queen] belongs the Executive power.” In *Grieve v. Gulick* (1883),¹⁹ Justice Austin of the Hawaiian Supreme Court stated that, “the Constitution declares [His Majesty] as the executive power of the Government,” which, according to the Indiana Supreme Court, “is the power to ‘execute’ the laws, that is, carry them into effect, as distinguished from the power to make the laws and the power to judge them.”²⁰

¹⁸ United States House of Representatives, 53d Cong., Executive Documents on Affairs in Hawaii: 1894-95, 461 [hereinafter *Executive Documents*.] (Exhibit A).

¹⁹ 5 Hawai`i 73, 76 (1883)

²⁰ *Tucker v. State of Indiana*, 218 Ind. 614, 35 N.E. 2d 270, 291 (1941).



President Cleveland acknowledged receipt of this conditional grant in March when he received the protest from the Queen through her attorney in fact, Paul Neumann, in Washington, D.C. This acceptance of the conditional grant of Hawaiian executive power to investigate is called the *Lili`uokalani Assignment*. In a report to the President after the investigation was completed, Secretary of State Gresham acknowledged the temporary transfer of the Queen's executive power by stating, "The Government of Hawaii surrendered its authority under a threat of war, until such time only as the Government of the United States, upon the facts being presented to it, should reinstate the constitutional sovereign."²¹ The President, in his message to Congress, also acknowledged the temporary transfer of executive power. Cleveland stated, the Queen "surrendered not to the provisional government, but to the United States. She surrendered not absolutely and permanently, but temporarily and conditionally until such time as the facts could be considered by the United States."²² This was the first of two international agreements to have taken place through an exchange of diplomatic notes committing the President to the administration of Hawaiian Kingdom law while he investigated the overthrow of the Hawaiian government. The investigation concluded that U.S. Minister John Stevens with the illegal presence of U.S. troops bore the responsibility for the overthrow of the Hawaiian government. As a result, negotiations would ensue whereby a second agreement was sought by the United States to restore the Hawaiian Kingdom government. On the responsibility of State actors, Oppenheim states that "according to special circumstances and conditions the home State may be obliged to disown an act of its envoy, to apologize or express its regret for his behaviour, or to pay damages."²³ Therefore, on October 18th 1893, U.S. Secretary of State Walter Gresham directed U.S. Minister Plenipotentiary Albert Willis to initiate negotiations with Queen Lili`uokalani for settlement and restoration of the Hawaiian Kingdom government. He stated to Willis,

On your arrival at Honolulu you will take advantage of an early opportunity to inform the Queen of...the President's sincere regret that the reprehensible conduct of the American minister and the unauthorized presence on land of a military force of the United States obliged her to surrender her

²¹ Executive Documents, 462 (Exhibit A).

²² *Id.*, 457.

²³ Lassa Oppenheim, *International Law: A Treatise*, 3rd ed., ed. Ronald F. Roxburgh, Vol. II (London: Longmans Green and Co., 1921), 252.



sovereignty, for the time being, and rely on the justice of this Government to undo the flagrant wrong.

You will, however, at the same time inform the Queen that, when reinstated, the President expects that she will pursue a magnanimous course by granting full amnesty to all who participated in the movement against her, including persons who are, or have been, officially or otherwise, connected with the Provisional Government, depriving them of no right or privilege which they enjoyed before the so-called revolution. All obligations created by the Provisional Government in due course of administration should be assumed.

Having secured the Queen's agreement to pursue this wise and humane policy, which it is believed you will speedily obtain, you will then advise the executive of the Provisional Government and his ministers of the President's determination of the question which their action and that of the Queen devolved upon him, and that they are expected to promptly relinquish to her constitutional authority.²⁴

On November 13th 1893, Willis met with the Queen at the U.S. Legation in Honolulu, "who was informed that the President of the United States had important communications to make to her."²⁵ Willis explained to the Queen of the "President's sincere regret that, through the unauthorized intervention of the United States, she had been obliged to surrender her sovereignty, and his hope that, with her consent and cooperation, the wrong done to her and to her people might be redressed."²⁶ In his message to the Congress, the President concluded that the "members of the provisional government and their supporters, though not entitled to extreme sympathy, have been led to their present predicament of revolt against the Government...by the indefensible encouragement and assistance of our diplomatic representative."²⁷ According to Wright, "statements of a decision on fact or policy, authorized by the President, must be accepted by foreign nations as the will of the United States."²⁸ Therefore, the Queen saw these conclusions by the President as representing the "will of the United States," and according Oppenheim, Willis, who was the U.S. envoy accredited to the Hawaiian Kingdom, represented "his home State in the totality of its international relations," and that he was "the mouthpiece of the head of

²⁴ *Executive Documents*, 464 (Exhibit A).

²⁵ *Executive Documents*, 1242.

²⁶ *Id.*

²⁷ *Executive Documents*, 457 (Exhibit A).

²⁸ Quincy Wright, *The Control of American Foreign Relations* (New York: The Macmillan Company, 1922), 22.



his home State and its Foreign Secretary, as regards communications to be made to the State to which he is accredited.”²⁹

The President’s investigation also concluded that members of the provisional government and their supporters committed the crime of treason and therefore subject to the pains and penalties of treason under Hawaiian law. On this note, the Queen was then asked by Willis, “[s]hould you be restored to the throne, would you grant full amnesty as to life and property to all those persons who have been or who are now in the Provisional Government, or who have been instrumental in the overthrow of your government?”³⁰ The Queen refused to grant amnesty and referenced Chapter VI, section 9 of the Penal Code, which states, “[w]hoever shall commit the crime of treason shall suffer the punishment of death and all his property shall be confiscated to the Government.” When asked again if she would reconsider, she responded, “[t]hese people were the cause of the revolution and the constitution of 1887. There will never be any peace while they are here. They must be sent out of the country, or punished, and their property confiscated.”³¹ In the government transcripts of this meeting, it states that the Queen called for beheading as punishment, but the Queen adamantly denied making such a statement. She later explained that beheading “is a form of punishment which has never been used in the Hawaiian Islands, either before or since the coming of foreigners.”³²

In a follow-up dispatch to Willis, Gresham adamantly stated, “You will insist upon amnesty and recognition of obligations of the Provisional Government as essential conditions of restoration.”³³ In another communication on December 3rd 1893, Gresham directed Willis to continue to negotiate with the Queen, and should she “refuse assent to the written conditions you will at once inform her that the President will cease interposition in her behalf.”³⁴ Gresham acknowledged that the President had a duty to restore the constitutional government of the Islands, but it was dependent upon an unqualified agreement of the Queen to assume all

²⁹ Oppenheim, *International Law* (3rd ed), 556.

³⁰ *Executive Documents*, 1242.

³¹ *Id.*

³² Lili‘uokalani, *Hawai‘i’s Story by Hawai‘i’s Queen* (Rutland: Charles E. Tuttle Co., Inc., 1964), 247.

³³ *Executive Documents*, 1191.

³⁴ *Id.*



administrative obligations incurred by the Provisional Government, and to grant full amnesty to those individuals instrumental in setting up or supporting the Provisional Government. He stated “The President feels that by our original interference and what followed we have incurred responsibilities to the whole Hawaiian community, and it would not be just to put one party at the mercy of the other.”³⁵ Gresham also stated “Should the Queen ask whether, if she accedes to conditions, active steps will be taken by the United States to effect her restoration, or to maintain her authority thereafter, you will say that the President can not use force without the authority of Congress.”³⁶

Second Executive Agreement—Agreement of restoration

On December 18th 1893, Willis was notified by the Queen’s assistant, Joseph Carter, that she was willing to spare their lives, not, however, their property, which, “should be confiscated to the Government, and they should not be permitted to remain in the Kingdom.”³⁷ But later that day, the Queen sent a communication to Willis. She stated,

Since I had the interview with you this morning I have given the most careful and conscientious thought as to my duty, and I now of my own free will give my conclusions.

I must not feel vengeful to any of my people. If I am restored by the United States I must forget myself and remember only my dear people and my country. I must forgive and forget the past, permitting no proscription or punishment of anyone, but trusting that all will hereafter work together in peace and friendship for the good and for the glory of our beautiful and once happy land.

Asking you to bear to the President and the Government he represents a message of gratitude from me and from my people, and promising, with God’s grace, to prove worthy of the confidence and friendship of your people.”³⁸

An agreement between the two Heads of State had finally been made for settlement of the international dispute called the *Restoration Agreement*. Coincident with the agreement was the temporary and conditional assignment of executive power by the Queen to the President of the

³⁵ *Id.*

³⁶ *Id.*, 1192.

³⁷ *Id.*, 1267.

³⁸ *Id.*, 1269 (Exhibit B).



United States, and that the assignment and agreement to restore the Hawaiian government “did not, as in the case of treaties, as that term is used in the treaty-making clause of the Constitution (Art. II, § 2), require the advice and consent of the Senate.”³⁹ Attached to the communication was the following pledge that was dispatched by Willis to Gresham on December 20th 1893.

I, Liliuokalani, in recognition of the high sense of justice which has actuated the President of the United States, and desiring to put aside all feelings of personal hatred or revenge and to do what is best for all the people of these Islands, both native and foreign born, do hereby and herein solemnly declare and pledge myself that, if reinstated as the constitutional sovereign of the Hawaiian Islands, that I will immediately proclaim and declare, unconditionally and without reservation, to every person who directly or indirectly participated in the revolution of January 17, 1893, a full pardon and amnesty for their offenses, with restoration of all rights, privileges, and immunities under the constitution and the laws which have been made in pursuance thereof, and that I will forbid and prevent the adoption of any measures of proscription or punishment for what has been done in the past by those setting up or supporting the Provisional Government. I further solemnly agree to accept the restoration under the constitution existing at the time of said revolution and that I will abide by and fully execute that constitution with all the guaranties as to person and property therein contained. I furthermore solemnly pledge myself and my Government, if restored, to assume all the obligations created by the Provisional Government, in the proper course of administration, including all expenditures for military or police services, it being my purpose, if restored, to assume the Government precisely as it existed on the day when it was unlawfully overthrown.⁴⁰

On the same day the Queen accepted the President’s conditions of restoration on December 18th 1893, the President delivered a message to Congress apprising them of the conclusion of his investigation and the pursuit of settlement with the Queen. He was not aware that the Queen accepted the conditions. This was clarified in a correspondence with Willis from Gresham on January 12th 1894, whereby the Queen’s acceptance of the President’s offer was acknowledged, and on the following day, these diplomatic correspondences were forwarded to the Congress by message of the President on January 13th 1893.

Gresham stated,

On the 18th ultimo the President sent a special message to Congress communicating copies of the Mr. Blount’s reports and the instructions given to

³⁹ *U.S. v. Belmont*, 301 U.S. 324, 330 (1937).

⁴⁰ *Executive Documents*, 1269 (Exhibit B).



him and you. On the same day, answering a resolution of the House of Representatives, he sent copies of all correspondence since March 4, 1889, on the political affairs and relations of Hawaii, withholding, for sufficient reasons, only Mr. Stevens' No. 70 of October 8, 1892, and your No. 3 of November 16, 1893. The President therein announced that the conditions of restoration suggested by him to the Queen had not proved acceptable to her, and that since the instructions sent to you to insist upon those conditions he had not learned that the Queen was willing to assent to them. The President thereupon submitted the subject to the more extended powers and wider discretion of Congress, adding the assurance that he would be gratified to cooperate in any legitimate plan which might be devised for a solution of the problem consistent with American honor, integrity, and morality.

Your reports show that on further reflection the Queen gave her unqualified assent in writing to the conditions suggested, but that the Provisional Government refuses to acquiesce in the President's decision.

The matter now being in the hands of Congress the President will keep that body fully advised of the situation, and will lay before it from time to time the reports received from you, including your No. 3, heretofore withheld, and all instructions sent to you. In the meantime, while keeping the Department fully informed of the course of events, you will, until further notice, consider your special instructions upon this subject have been fully complied with.⁴¹

Supremacy Clause, U.S. Constitution

Since the United States is a Federal government, States within the Federal Union are subject to the supremacy of Federal laws and treaties, in particular, executive agreements. Article VI, clause 2, of the U.S. constitution, provides: "This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding." This provision of the U.S. constitution is known as the *Supremacy clause* that binds every State of the federal union to faithfully observe. In *United States v. Belmont* (1937),⁴² the U.S. Supreme Court affirmed that executive agreements entered into between the President and a sovereign nation does not require ratification from the U.S. Senate to have the force and effect of a treaty; and executive agreements bind successor Presidents for

⁴¹ *Executive Documents*, 1283-1284 (Exhibit B).

⁴² *United States v. Belmont*, 301 U. S. 324 (1937).



their faithful execution. Other landmark cases on executive agreements are *United States v. Pink* (1942)⁴³ and *American Insurance Association v. Garamendi* (2003).⁴⁴ In *Garamendi*, the Court stated, “Specifically, the President has authority to make ‘executive agreements’ with other countries, requiring no ratification by the Senate or approval by Congress.”⁴⁵ According to Justice Douglas, *U.S. v. Pink* (1942), executive agreements “must be read not as self-contained technical documents, like a marine insurance contract or a bill of lading, but as characteristically delicate and elusive expressions of diplomacy.”⁴⁶

The U.S. Supreme Court has held that under no circumstances could state law be found to legally supersede an agreement between the national government and a foreign country. The external powers of the federal government could be exercised without regard to the laws of any state within the union. In *Belmont*, the Court also stated, “Plainly, the external powers of the United States are to be exercised without regard to state laws or policies,”⁴⁷ and “[i]n respect of all international negotiations and compacts, and in respect of our foreign relations generally, state lines disappear.”⁴⁸ In *United States v. Pink* (1942), the Court reiterated, “It is, of course, true that even treaties with foreign nations will be carefully construed so as not to derogate from the authority and jurisdiction of the States of this nation unless clearly necessary to effectuate the national policy.... But state law must yield when it is inconsistent with, or impairs the policy or provisions of, a treaty or of an international compact or agreement.... Then, the power of a State to refuse enforcement of rights based on foreign law which runs counter to the public policy of the forum . . . must give way before the superior Federal policy evidenced by a treaty or international compact or agreement.”⁴⁹ Both *Belmont* and *Pink* were reinforced by *American Insurance Association v. Garamendi* (2003), where the Court reiterated, that “valid executive agreements are fit to preempt state law, just as treaties are,”⁵⁰ and that the preemptive power of an executive agreement derives from “the Constitution’s allocation of the foreign relations power

⁴³ *United States v. Pink*, 315 U.S. 203 (1942).

⁴⁴ *American Insurance Association v. Garamendi*, 539 U.S. 396 (2003).

⁴⁵ *Id.*, 397.

⁴⁶ *U.S. v. Pink*, 315 U.S. 203, 241 (1942).

⁴⁷ *United States v. Belmont*, 301 U. S. 324, 330 (1937).

⁴⁸ *Id.*

⁴⁹ *United States v. Pink*, 315 U.S. 203, 230 (1942).

⁵⁰ *American Insurance Association v. Garamendi*, 539 U.S. 396 (2003).



to the National Government.”⁵¹ All three cases affirm that the *Lili`uokalani assignment* preempts all laws and policies of the State of Hawai`i. In *Edgar v. Mite Corporation* (1982), Justice White ruled, “A state statute is void to the extent that it actually conflicts with a valid federal statute; and ‘[a] conflict will be found ‘where compliance with both federal and state regulations is a physical impossibility.’”⁵²

United States’ Violation of the Executive Agreements

Since 1893, the United States government has violated the terms of its obligations under these executive agreements and in 1898 unilaterally annexed the Hawaiian Kingdom by enacting a congressional joint resolution justified as a military necessity during the Spanish-American War, and thereafter occupied Hawai`i. After the President, by Presidential Message on January 13th 1894, apprised the Congress of the *Restoration agreement* with Queen Lili`uokalani, both the House of Representatives⁵³ and Senate⁵⁴ took deliberate steps “warning the President against the employment of forces to restore the monarchy of Hawaii.”⁵⁵ Senator Kyle’s resolution introduced on May 23rd 1894 specifically addresses the *Agreement of restoration*. The resolution

⁵¹ *Id.*

⁵² *Edgar v. Mite Corporation*, 457 U.S. 624, 631 (1982).

⁵³ House Resolution on the Hawaiian Islands, February 7, 1894:

“*Resolved*, First. That it is the sense of this House that the action of the United States minister in employing United States naval forces and illegally aiding in overthrowing the constitutional Government of the Hawaiian Islands in January, 1893, and in setting up in its place a Provisional Government not republican in form and in opposition to the will of a majority of the people, was contrary to the traditions of our Republic and the spirit of our Constitution, and should be condemned. Second. That we heartily approve the principle announced by the President of the United States that interference with the domestic affairs of an independent nation is contrary to the spirit of American institutions. And it is further the sense of this House that the annexation of the Hawaiian Islands to our country, or the assumption of a protectorate over them by our Government is uncalled for and inexpedient; that the people of that country should have their own line of policy, and that foreign intervention in the political affairs of the islands will not be regarded with indifference by the Government of the United States.” (U.S. Senate Resolution on Hawai‘i, 53 Cong., 2nd Sess., 2000 (1894)).

⁵⁴ Senate Resolution on the Hawaiian Islands, May 31, 1894:

“*Resolved*, That of right it belongs wholly to the people of the Hawaiian Islands to establish and maintain their own form of government and domestic polity; that the United States ought in nowise to interfere therewith, and that any intervention in the political affairs of these islands by any other government will be regarded as an act unfriendly to the United States.” (U.S. House Resolution on Hawai‘i, 53 Cong., 2nd Sess., 5499 (1894)).

⁵⁵ Edward Corwin, *The President’s Control of Foreign Relations*, (Princeton: Princeton University Press, 1917), 45



was later revised by Senator Turpie and passed by the Senate on May 31st 1894. Senator Kyle's resolution stated:

Resolved, That it be the sense of the Senate that the Government of the United States shall not use force for the purpose of restoring to the throne the deposed Queen of the Sandwich Islands or for the purpose of destroying the existing Government: that, the Provisional having been duly recognized, the highest international interests require that it shall pursue its own line of polity, and that intervention in the political affairs of these islands by other governments will be regarded as an act unfriendly to the Government of the United States. (U.S. Senate Resolution on Hawai'i, 53 Cong., 2nd Sess., 5127 (1894))

Not only do these resolutions acknowledge the executive agreements between Queen Lili'uokalani and President Cleveland, but also these resolutions violate the separation of powers doctrine whereby the President is the sole representative of the United States in foreign relations. According to Professor Wright, "congressional resolutions on concrete incidents are encroachments upon the power of the Executive Department and are of no legal effect."⁵⁶

On May 4th 1998, Representative Francis Newlands (D-Nevada) introduced House Resolution 259 to the House Committee on Foreign Affairs. Representative Robert Hitt (R-Illinois) reported the Newlands Resolution out of Committee, and entered the House of Representatives for debate on May 17th 1998. Representative Thomas H. Ball (D-Texas) stated on June 15th 1898:

The annexation of Hawai'i by joint resolution is unconstitutional, unnecessary, and unwise. If the first proposition be true, sworn to support the Constitution, we should inquire no further. I challenge not the advocates of Hawaiian annexation, but those who advocate annexation in the form now presented, to show warrant or authority in our organic law for such acquisition of territory. To do so will be not only to subvert the supreme law of the land but to strike down every precedent in our history. ...Why, sir, the very presence of this measure here is the result of a

⁵⁶ Quincy Wright, *The Control of American Foreign Relations*, (New York: The Macmillan Company, 1922), 281.



deliberate attempt to do unlawfully that which can not be done lawfully.⁵⁷

Over the constitutional objections, the House passed the measure and the Newlands Resolution entered the Senate on June 16, 1898. Senators as well objected to the measure on constitutional grounds. In particular, Senator Augustus Bacon (D-Georgia) stated on June 20th 1898:

That a joint resolution for the annexation of foreign territory was necessarily and essentially the subject matter of a treaty, and that it could not be accomplished legally and constitutionally by a statute or joint resolution. If Hawai'i was to be annexed, it ought certainly to be annexed by a constitutional method; and if by a constitutional method it can not be annexed, no Senator ought to desire its annexation sufficiently to induce him to give his support to an unconstitutional measure.⁵⁸

...Now, a statute is this: A Statute is a rule of conduct laid down by the legislative department, which has its effect upon all of those within the jurisdiction. In other words, a statute passed by the Congress of the United States is obligatory upon every person who is a citizen of the United States or a resident therein. A statute can not go outside the jurisdiction of the United States and be binding upon the subjects of another power. It takes the consent of the subjects of the other power, speaking or giving their consent through their duly authorized government, to be bound by a certain thing which is enacted in this country; and therein comes the necessity for a treaty.⁵⁹

What is it that the House of Representatives has done? ...The friends of annexation, seeing that it was impossible to make the treaty in the manner pointed out by the Constitution, attempted then to nullify the provision in the Constitution by putting that treaty in the form of a statute, and here we have embodied the provisions of the treaty in the joint resolution which comes to us from the House.⁶⁰

⁵⁷ United States Congress, 55th Cong., 2nd Session, 31 Congressional Record: 1898, 5975 (Exhibit C).

⁵⁸ *Id.*, 6148 (Exhibit D).

⁵⁹ *Id.*, 6150 (Exhibit D).

⁶⁰ *Id.* (Exhibit D).



Notwithstanding the constitutional objections, the Senate passed the resolution on July 6th 1898, and President McKinley signed the joint resolution into law on July 7th 1898. Since 1900, the United States Congress has enacted additional legislation establishing a government in 1900 for the Territory of Hawai`i,⁶¹ and in 1959 transformed the Territory of Hawai`i into the State of Hawai`i.⁶² According to Born, “American courts, commentators, and other authorities understood international law as imposing strict territorial limits on national assertions of legislative jurisdiction.”⁶³ In *Rose v. Himely* (1807),⁶⁴ the Court illustrated this view by asserting, “that the legislation of every country is territorial.” In *The Apollon* (1824),⁶⁵ the Court stated that the “laws of no nation can justly extend beyond its own territory” for it would be “at variance with the independence and sovereignty of foreign nations,”⁶⁶ and in *Belmont*,⁶⁷ Justice Sutherland resounded, “our Constitution, laws and policies have no extraterritorial operation, unless in respect of our own citizens.” Consistent with this view of non-extraterritoriality of legislation, *acting* Assistant Attorney General Douglas Kmiec opined “It is...unclear which constitutional power Congress exercised when it acquired Hawaii by joint resolution. Accordingly, it is doubtful that the acquisition of Hawaii can serve as an appropriate precedent for a congressional assertion of sovereignty over an extended territorial sea.”⁶⁸

Because U.S. legislation has no extraterritorial force and effect, except over U.S. citizens, it cannot be considered to have extinguished the Hawaiian Kingdom as a state, and the executive agreements are *prima facie* evidence that the United States recognizes the sovereignty and legal order of the Hawaiian Kingdom despite the overthrow of its government. In §207(a) of the *Restatement (Third) Foreign Relations Law of the United States*, provides that “A state acts through its government, but the state is responsible for carrying out its obligation under international law regardless of the manner in which its constitution and laws allocate the

⁶¹ 31 U.S. Stat. 141

⁶² 73 U.S. Stat. 4

⁶³ Gary Born, *International Civil Litigation in United States Courts*, 3rd ed. (Den Hague, The Netherlands: Kluwer Law International, 1996), 493.

⁶⁴ *Rose v. Himely*, 8 U.S. 241, 279 (1807).

⁶⁵ *The Apollon*, 22 U.S. 362, 370 (1824).

⁶⁶ *Id.*

⁶⁷ *U.S. v. Belmont*, 301 U.S. 324, 332 (1937).

⁶⁸ Douglas Kmiec, *Legal Issues Raised by Proposed Presidential Proclamation to Extend the Territorial Sea*, 12 Op. Off. Legal Counsel 238-263, 252 (1988).



responsibilities and functions of government, or of any constitutional or other internal rules or limitations.” And §115(b), of the *Restatement (Third) Foreign Relations Law*, provides that “although a subsequent act of Congress may supersede a rule of international law or an international agreement as domestic law, the United States remains bound by the rule or agreement internationally... Similarly, the United States remains bound internationally when a principle of international law or a provision in an agreement of the United States is not given effect because it is inconsistent with the Constitution.”

By virtue of the temporary and conditional grant of Hawaiian executive power, the U.S. was obligated to administer Hawaiian law and thereafter restore the Hawaiian Kingdom government, but instead illegally occupied the Hawaiian Kingdom for military purposes, and has remained in the Hawaiian Islands ever since. The failure to administer Hawaiian Kingdom law under the *Lili'uokalani Assignment* and then to reinstate the Hawaiian government under the *Restoration agreement* constitutes a breach of an international obligation, as defined by the *Responsibility of States for Internationally Wrongful Acts*,⁶⁹ and the breach of this international obligation by the U.S. has “a continuing character [that] extends over the entire period during which the act continues and remains not in conformity with the international obligation.”⁷⁰ The extended lapse of time has not affected in the least the international obligation of the U.S. under the both executive agreements; despite over a century of non-compliance and prolonged occupation, and according to Wright, the President binds “himself and his successors in office by executive agreements.”⁷¹ More importantly, the U.S. “may not rely on the provisions of its internal law as justification for failure to comply with its obligation.”⁷²

According to Professor Marek, “the legal order of the occupant is...strictly subject to the principle of effectiveness, while the legal order of the occupied State continues to exist notwithstanding the absence of effectiveness [e.g. no government]. ...[Occupation] is thus the classical case in which the requirement of effectiveness as a condition of validity of a legal order

⁶⁹ United Nations, “Responsibility of States for Internationally Wrongful Acts” (2001), Article 12.

⁷⁰ *Id.*, Article 14(2).

⁷¹ Wright, 235.

⁷² Responsibility of States, Article 31(1).



is abandoned.”⁷³ Referring to the United States’ occupation of the Hawaiian Kingdom in his law journal article, Professor Dumberry states:

the 1907 Hague Convention protects the international personality of the occupied State, even in the absence of effectiveness. Furthermore, the legal order of the occupied State remains intact, although its effectiveness is greatly diminished by the fact of occupation. As such, Article 43 of the 1907 Hague Convention IV provides for the co-existence of two distinct legal orders, that of the occupier and the occupied.⁷⁴

Conclusion

As a result of the President’s failure to establish a military government in the islands to administer Hawaiian law by virtue of the *Lili`uokalani assignment* (January 17th 1893) and the international laws of occupation, which was mandated under the 1863 Lieber Code, art. 6, G.O. 100, A.G.O. 1863, and then superseded by the 1907 Hague Convention, IV, art. 43, all acts performed by the provisional government, the Republic of Hawai`i, the Territory of Hawai`i and the State of Hawai`i, on behalf of or concerning the Hawaiian Islands cannot be considered lawful. The only exceptions, according to the seminal *Namibia* case, are the registration of births, deaths and marriages.⁷⁵ By estoppel, the United States cannot benefit from the violation of these executive agreements.

All persons who reside or temporarily reside within Hawaiian territory are subject to its laws. §6, Hawaiian Civil Code, Compiled Laws of the Hawaiian Kingdom (1884), provides:

The laws are obligatory upon all persons, whether subjects of this kingdom, or citizens or subjects of any foreign State, while within the limits of this kingdom, except so far as exception is made by the laws of nations in respect to Ambassadors or others. The property of all such persons, while such property is within the territorial jurisdiction of this kingdom, is also subject to the laws.

⁷³ Krystyna Marek, *Identity and Continuity of State in Public International Law*, (Geneve: Librairie Droz, 1968), 102.

⁷⁴ Patrick Dumberry, *The Hawaiian Kingdom Arbitration Case and the Unsettled Question of the Hawaiian Kingdom’s Claim to Continue as an Independent State under International Law*, 2(1) Chinese Journal of International Law 655-684 (2002).

⁷⁵ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276*, Advisory Opinion of June 21, 1971, ICJ Reports, 1971.



It is my professional opinion that there is clear and overwhelming evidence that the Hawaiian Kingdom continues to exist as a state in accordance with recognized attributes of a state's sovereign nature, and that the *Lili'uokalani assignment* and the *Agreement of restoration*, being sole executive agreements, are *prima facie* evidence of the United States' acknowledgment and continued recognition of the legal order of the Hawaiian Kingdom, being a recognized attribute of a state's sovereign nature, notwithstanding the United States violation of these sole executive agreements for the past 118 years.

David Keanu Sai, Ph.D.

Exhibit A

APPENDIX II

FOREIGN RELATIONS

OF THE

UNITED STATES

1894

AFFAIRS IN HAWAII



WASHINGTON
GOVERNMENT PRINTING OFFICE
1895

MESSAGE.

To the Senate and House of Representatives:

In my recent annual message to the Congress I briefly referred to our relations with Hawaii and expressed the intention of transmitting further information on the subject when additional advices permitted.

Though I am not able now to report a definite change in the actual situation, I am convinced that the difficulties lately created both here and in Hawaii and now standing in the way of a solution through Executive action of the problem presented, render it proper, and expedient, that the matter should be referred to the broader authority and discretion of Congress, with a full explanation of the endeavor thus far made to deal with the emergency and a statement of the considerations which have governed my action.

I suppose that right and justice should determine the path to be followed in treating this subject. If national honesty is to be disregarded and a desire for territorial extension, or dissatisfaction with a form of government not our own, ought to regulate our conduct, I have entirely misapprehended the mission and character of our Government and the behavior which the conscience of our people demands of their public servants.

When the present Administration entered upon its duties the Senate had under consideration a treaty providing for the annexation of the Hawaiian Islands to the territory of the United States. Surely under our Constitution and laws the enlargement of our limits is a manifestation of the highest attribute of sovereignty, and if entered upon as an Executive act, all things relating to the transaction should be clear and free from suspicion. Additional importance attached to this particular treaty of annexation, because it contemplated a departure from unbroken American tradition in providing for the addition to our territory of islands of the sea more than two thousand miles removed from our nearest coast.

These considerations might not of themselves call for interference with the completion of a treaty entered upon by a previous Administration. But it appeared from the documents accompanying the

treaty when submitted to the Senate, that the ownership of Hawaii was tendered to us by a provisional government set up to succeed the constitutional ruler of the islands, who had been dethroned, and it did not appear that such provisional government had the sanction of either popular revolution or suffrage. Two other remarkable features of the transaction naturally attracted attention. One was the extraordinary haste—not to say precipitancy—characterizing all the transactions connected with the treaty. It appeared that a so-called Committee of Safety, ostensibly the source of the revolt against the constitutional Government of Hawaii, was organized on Saturday, the 14th day of January; that on Monday, the 16th, the United States forces were landed at Honolulu from a naval vessel lying in its harbor; that on the 17th the scheme of a provisional government was perfected, and a proclamation naming its officers was on the same day prepared and read at the Government building; that immediately thereupon the United States Minister recognized the provisional government thus created; that two days afterwards, on the 19th day of January, commissioners representing such government sailed for this country in a steamer especially chartered for the occasion, arriving in San Francisco on the 28th day of January, and in Washington on the 3d day of February; that on the next day they had their first interview with the Secretary of State, and another on the 11th, when the treaty of annexation was practically agreed upon, and that on the 14th it was formally concluded and on the 15th transmitted to the Senate. Thus between the initiation of the scheme for a provisional government in Hawaii on the 14th day of January and the submission to the Senate of the treaty of annexation concluded with such government, the entire interval was thirty-two days, fifteen of which were spent by the Hawaiian Commissioners in their journey to Washington.

In the next place, upon the face of the papers submitted with the treaty, it clearly appeared that there was open and undetermined an issue of fact of the most vital importance. The message of the President accompanying the treaty declared that “the overthrow of the monarchy was not in any way promoted by this Government,” and in a letter to the President from the Secretary of State, also submitted to the Senate with the treaty, the following passage occurs: “At the time the provisional government took possession of the Government buildings no troops or officers of the United States were present or took any part whatever in the proceedings. No public recognition was accorded to the provisional government by the United States Minister until after the Queen’s abdication and when they were in effective possession of the Government buildings,

the archives, the treasury, the barracks, the police station, and all the potential machinery of the Government." But a protest also accompanied said treaty, signed by the Queen and her ministers at the time she made way for the provisional government, which explicitly stated that she yielded to the superior force of the United States, whose Minister had caused United States troops to be landed at Honolulu and declared that he would support such provisional government.

The truth or falsity of this protest was surely of the first importance. If true, nothing but the concealment of its truth could induce our Government to negotiate with the semblance of a government thus created, nor could a treaty resulting from the acts stated in the protest have been knowingly deemed worthy of consideration by the Senate. Yet the truth or falsity of the protest had not been investigated.

I conceived it to be my duty therefore to withdraw the treaty from the Senate for examination, and meanwhile to cause an accurate, full, and impartial investigation to be made of the facts attending the subversion of the constitutional Government of Hawaii, and the installment in its place of the provisional government. I selected for the work of investigation the Hon. James H. Blount, of Georgia, whose service of eighteen years as a member of the House of Representatives, and whose experience as chairman of the Committee of Foreign Affairs in that body, and his consequent familiarity with international topics, joined with his high character and honorable reputation, seemed to render him peculiarly fitted for the duties entrusted to him. His report detailing his action under the instructions given to him and the conclusions derived from his investigation accompany this message.

These conclusions do not rest for their acceptance entirely upon Mr. Blount's honesty and ability as a man, nor upon his acumen and impartiality as an investigator. They are accompanied by the evidence upon which they are based, which evidence is also herewith transmitted, and from which it seems to me no other deductions could possibly be reached than those arrived at by the Commissioner.

The report with its accompanying proofs, and such other evidence as is now before the Congress or is herewith submitted, justifies in my opinion the statement that when the President was led to submit the treaty to the Senate with the declaration that "the overthrow of the monarchy was not in any way promoted by this Government", and when the Senate was induced to receive and discuss it on that basis, both President and Senate were misled.

The attempt will not be made in this communication to touch

upon all the facts which throw light upon the progress and consummation of this scheme of annexation. A very brief and imperfect reference to the facts and evidence at hand will exhibit its character and the incidents in which it had its birth.

It is unnecessary to set forth the reasons which in January, 1893, led a considerable proportion of American and other foreign merchants and traders residing at Honolulu to favor the annexation of Hawaii to the United States. It is sufficient to note the fact and to observe that the project was one which was zealously promoted by the Minister representing the United States in that country. He evidently had an ardent desire that it should become a fact accomplished by his agency and during his ministry, and was not inconveniently scrupulous as to the means employed to that end. On the 19th day of November, 1892, nearly two months before the first overt act tending towards the subversion of the Hawaiian Government and the attempted transfer of Hawaiian territory to the United States, he addressed a long letter to the Secretary of State in which the case for annexation was elaborately argued, on moral, political, and economical grounds. He refers to the loss to the Hawaiian sugar interests from the operation of the McKinley bill, and the tendency to still further depreciation of sugar property unless some positive measure of relief is granted. He strongly inveighs against the existing Hawaiian Government and emphatically declares for annexation. He says: "In truth the monarchy here is an absurd anachronism. It has nothing on which it logically or legitimately stands. The feudal basis on which it once stood no longer existing, the monarchy now is only an impediment to good government—an obstruction to the prosperity and progress of the islands."

He further says: "As a crown colony of Great Britain or a Territory of the United States the government modifications could be made readily and good administration of the law secured. Destiny and the vast future interests of the United States in the Pacific clearly indicate who at no distant day must be responsible for the government of these islands. Under a territorial government they could be as easily governed as any of the existing Territories of the United States."

* * * "Hawaii has reached the parting of the ways. She must now take the road which leads to Asia, or the other which outlets her in America, gives her an American civilization, and binds her to the care of American destiny." He also declares: "One of two courses seems to me absolutely necessary to be followed, either bold and vigorous measures for annexation or a 'customs union,' an ocean cable from the Californian coast to Honolulu, Pearl Harbor perpetually ceded to the United States, with an implied but not ex-

pressly stipulated American protectorate over the islands. I believe the former to be the better, that which will prove much the more advantageous to the islands, and the cheapest and least embarrassing in the end to the United States. If it was wise for the United States through Secretary Marcy thirty-eight years ago to offer to expend \$100,000 to secure a treaty of annexation, it certainly can not be chimerical or unwise to expend \$100,000 to secure annexation in the near future. To-day the United States has five times the wealth she possessed in 1854, and the reasons now existing for annexation are much stronger than they were then. I can not refrain from expressing the opinion with emphasis that the golden hour is near at hand."

These declarations certainly show a disposition and condition of mind, which may be usefully recalled when interpreting the significance of the Minister's conceded acts or when considering the probabilities of such conduct on his part as may not be admitted.

In this view it seems proper to also quote from a letter written by the Minister to the Secretary of State on the 8th day of March, 1892, nearly a year prior to the first step taken toward annexation. After stating the possibility that the existing Government of Hawaii might be overturned by an orderly and peaceful revolution, Minister Stevens writes as follows: "Ordinarily in like circumstances, the rule seems to be to limit the landing and movement of United States forces in foreign waters and dominion exclusively to the protection of the United States legation and of the lives and property of American citizens. But as the relations of the United States to Hawaii are exceptional, and in former years the United States officials here took somewhat exceptional action in circumstances of disorder, I desire to know how far the present Minister and naval commander may deviate from established international rules and precedents in the contingencies indicated in the first part of this dispatch."

To a minister of this temper full of zeal for annexation there seemed to arise in January, 1893, the precise opportunity for which he was watchfully waiting—an opportunity which by timely "deviation from established international rules and precedents" might be improved to successfully accomplish the great object in view; and we are quite prepared for the exultant enthusiasm with which in a letter to the State Department dated February 1, 1893, he declares: "The Hawaiian pear is now fully ripe and this is the golden hour for the United States to pluck it."

As a further illustration of the activity of this diplomatic representative, attention is called to the fact that on the day the above letter was written, apparently unable longer to restrain his ardor, he issued a proclamation whereby "in the name of the United

States" he assumed the protection of the Hawaiian Islands and declared that said action was "taken pending and subject to negotiations at Washington." Of course this assumption of a protectorate was promptly disavowed by our Government, but the American flag remained over the Government building at Honolulu and the forces remained on guard until April, and after Mr. Blount's arrival on the scene, when both were removed.

A brief statement of the occurrences that led to the subversion of the constitutional Government of Hawaii in the interests of annexation to the United States will exhibit the true complexion of that transaction.

On Saturday, January 14, 1893, the Queen of Hawaii, who had been contemplating the proclamation of a new constitution, had, in deference to the wishes and remonstrances of her cabinet, renounced the project for the present at least. Taking this relinquished purpose as a basis of action, citizens of Honolulu numbering from fifty to one hundred, mostly resident aliens, met in a private office and selected a so-called Committee of Safety, composed of thirteen persons, seven of whom were foreign subjects, and consisted of five Americans, one Englishman, and one German. This committee, though its designs were not revealed, had in view nothing less than annexation to the United States, and between Saturday, the 14th, and the following Monday, the 16th of January—though exactly what action was taken may not be clearly disclosed—they were certainly in communication with the United States Minister. On Monday morning the Queen and her cabinet made public proclamation, with a notice which was specially served upon the representatives of all foreign governments, that any changes in the constitution would be sought only in the methods provided by that instrument. Nevertheless, at the call and under the auspices of the Committee of Safety, a mass meeting of citizens was held on that day to protest against the Queen's alleged illegal and unlawful proceedings and purposes. Even at this meeting the Committee of Safety continued to disguise their real purpose and contented themselves with procuring the passage of a resolution denouncing the Queen and empowering the committee to devise ways and means "to secure the permanent maintenance of law and order and the protection of life, liberty, and property in Hawaii." This meeting adjourned between three and four o'clock in the afternoon. On the same day, and immediately after such adjournment, the committee, unwilling to take further steps without the coöperation of the United States Minister, addressed him a note representing that the public safety was menaced and that lives and property were in danger, and concluded as follows:

“We are unable to protect ourselves without aid, and therefore pray for the protection of the United States forces.” Whatever may be thought of the other contents of this note, the absolute truth of this latter statement is incontestable. When the note was written and delivered, the committee, so far as it appears, had neither a man nor a gun at their command, and after its delivery they became so panic-stricken at their position that they sent some of their number to interview the Minister and request him not to land the United States forces till the next morning. But he replied that the troops had been ordered, and whether the committee were ready or not the landing should take place. And so it happened that on the 16th day of January, 1893, between four and five o'clock in the afternoon, a detachment of marines from the United States steamer *Boston*, with two pieces of artillery, landed at Honolulu. The men, upwards of 160 in all, were supplied with double cartridge belts filled with ammunition and with haversacks and canteens, and were accompanied by a hospital corps with stretchers and medical supplies. This military demonstration upon the soil of Honolulu was of itself an act of war, unless made either with the consent of the Government of Hawaii or for the *bona fide* purpose of protecting the imperilled lives and property of citizens of the United States. But there is no pretense of any such consent on the part of the Government of the Queen, which at that time was undisputed and was both the *de facto* and the *de jure* government. In point of fact the existing government instead of requesting the presence of an armed force protested against it. There is as little basis for the pretense that such forces were landed for the security of American life and property. If so, they would have been stationed in the vicinity of such property and so as to protect it, instead of at a distance and so as to command the Hawaiian Government building and palace. Admiral Skerrett, the officer in command of our naval force on the Pacific station, has frankly stated that in his opinion the location of the troops was inadvisable if they were landed for the protection of American citizens whose residences and places of business, as well as the legation and consulate, were in a distant part of the city, but the location selected was a wise one if the forces were landed for the purpose of supporting the provisional government. If any peril to life and property calling for any such martial array had existed, Great Britain and other foreign powers interested would not have been behind the United States in activity to protect their citizens. But they made no sign in that direction. When these armed men were landed, the city of Honolulu was in its customary orderly and peaceful condition. There was no

symptom of riot or disturbance in any quarter. Men, women, and children were about the streets as usual, and nothing varied the ordinary routine or disturbed the ordinary tranquillity, except the landing of the *Boston's* marines and their march through the town to the quarters assigned them. Indeed, the fact that after having called for the landing of the United States forces on the plea of danger to life and property the Committee of Safety themselves requested the Minister to postpone action, exposed the untruthfulness of their representations of present peril to life and property. The peril they saw was an anticipation growing out of guilty intentions on their part and something which, though not then existing, they knew would certainly follow their attempt to overthrow the Government of the Queen without the aid of the United States forces.

Thus it appears that Hawaii was taken possession of by the United States forces without the consent or wish of the government of the islands, or of anybody else so far as shown, except the United States Minister.

Therefore the military occupation of Honolulu by the United States on the day mentioned was wholly without justification, either as an occupation by consent or as an occupation necessitated by dangers threatening American life and property. It must be accounted for in some other way and on some other ground, and its real motive and purpose are neither obscure nor far to seek.

The United States forces being now on the scene and favorably stationed, the committee proceeded to carry out their original scheme. They met the next morning, Tuesday, the 17th, perfected the plan of temporary government, and fixed upon its principal officers, ten of whom were drawn from the thirteen members of the Committee of Safety. Between one and two o'clock, by squads and by different routes to avoid notice, and having first taken the precaution of ascertaining whether there was any one there to oppose them, they proceeded to the Government building to proclaim the new government. No sign of opposition was manifest, and thereupon an American citizen began to read the proclamation from the steps of the Government building almost entirely without auditors. It is said that before the reading was finished quite a concourse of persons, variously estimated at from 50 to 100, some armed and some unarmed, gathered about the committee to give them aid and confidence. This statement is not important, since the one controlling factor in the whole affair was unquestionably the United States marines, who, drawn up under arms and with artillery in readiness only seventy-six yards distant, dominated the situation.

The provisional government thus proclaimed was by the terms of

the proclamation "to exist until terms of union with the United States had been negotiated and agreed upon". The United States Minister, pursuant to prior agreement, recognized this government within an hour after the reading of the proclamation, and before five o'clock, in answer to an inquiry on behalf of the Queen and her cabinet, announced that he had done so.

When our Minister recognized the provisional government the only basis upon which it rested was the fact that the Committee of Safety had in the manner above stated declared it to exist. It was neither a government *de facto* nor *de jure*. That it was not in such possession of the Government property and agencies as entitled it to recognition is conclusively proved by a note found in the files of the Legation at Honolulu, addressed by the declared head of the provisional government to Minister Stevens, dated January 17, 1893, in which he acknowledges with expressions of appreciation the Minister's recognition of the provisional government, and states that it is not yet in the possession of the station house (the place where a large number of the Queen's troops were quartered), though the same had been demanded of the Queen's officers in charge. Nevertheless, this wrongful recognition by our Minister placed the Government of the Queen in a position of most perilous perplexity. On the one hand she had possession of the palace, of the barracks, and of the police station, and had at her command at least five hundred fully armed men and several pieces of artillery. Indeed, the whole military force of her kingdom was on her side and at her disposal, while the Committee of Safety, by actual search, had discovered that there were but very few arms in Honolulu that were not in the service of the Government. In this state of things if the Queen could have dealt with the insurgents alone her course would have been plain and the result unmistakable. But the United States had allied itself with her enemies, had recognized them as the true Government of Hawaii, and had put her and her adherents in the position of opposition against lawful authority. She knew that she could not withstand the power of the United States, but she believed that she might safely trust to its justice. Accordingly, some hours after the recognition of the provisional government by the United States Minister, the palace, the barracks, and the police station, with all the military resources of the country, were delivered up by the Queen upon the representation made to her that her cause would thereafter be reviewed at Washington, and while protesting that she surrendered to the superior force of the United States, whose Minister had caused United States troops to be landed at Honolulu and declared that he would support the provisional government, and that she

yielded her authority to prevent collision of armed forces and loss of life and only until such time as the United States, upon the facts being presented to it, should undo the action of its representative and reinstate her in the authority she claimed as the constitutional sovereign of the Hawaiian Islands.

This protest was delivered to the chief of the provisional government, who endorsed thereon his acknowledgment of its receipt. The terms of the protest were read without dissent by those assuming to constitute the provisional government, who were certainly charged with the knowledge that the Queen instead of finally abandoning her power had appealed to the justice of the United States for reinstatement in her authority; and yet the provisional government with this unanswered protest in its hand hastened to negotiate with the United States for the permanent banishment of the Queen from power and for a sale of her kingdom.

Our country was in danger of occupying the position of having actually set up a temporary government on foreign soil for the purpose of acquiring through that agency territory which we had wrongfully put in its possession. The control of both sides of a bargain acquired in such a manner is called by a familiar and unpleasant name when found in private transactions. We are not without a precedent showing how scrupulously we avoided such accusations in former days. After the people of Texas had declared their independence of Mexico they resolved that on the acknowledgment of their independence by the United States they would seek admission into the Union. Several months after the battle of San Jacinto, by which Texan independence was practically assured and established, President Jackson declined to recognize it, alleging as one of his reasons that in the circumstances it became us "to beware of a too early movement, as it might subject us, however unjustly, to the imputation of seeking to establish the claim of our neighbors to a territory with a view to its subsequent acquisition by ourselves". This is in marked contrast with the hasty recognition of a government openly and concededly set up for the purpose of tendering to us territorial annexation.

I believe that a candid and thorough examination of the facts will force the conviction that the provisional government owes its existence to an armed invasion by the United States. Fair-minded people with the evidence before them will hardly claim that the Hawaiian Government was overthrown by the people of the islands or that the provisional government had ever existed with their consent. I do not understand that any member of this government claims that the

people would uphold it by their suffrages if they were allowed to vote on the question.

While naturally sympathizing with every effort to establish a republican form of government, it has been the settled policy of the United States to concede to people of foreign countries the same freedom and independence in the management of their domestic affairs that we have always claimed for ourselves; and it has been our practice to recognize revolutionary governments as soon as it became apparent that they were supported by the people. For illustration of this rule I need only to refer to the revolution in Brazil in 1889, when our Minister was instructed to recognize the Republic "so soon as a majority of the people of Brazil should have signified their assent to its establishment and maintenance"; to the revolution in Chile in 1891, when our Minister was directed to recognize the new government "if it was accepted by the people"; and to the revolution in Venezuela in 1892, when our recognition was accorded on condition that the new government was "fully established, in possession of the power of the nation, and accepted by the people."

As I apprehend the situation, we are brought face to face with the following conditions:

The lawful Government of Hawaii was overthrown without the drawing of a sword or the firing of a shot by a process every step of which, it may safely be asserted, is directly traceable to and dependent for its success upon the agency of the United States acting through its diplomatic and naval representatives.

But for the notorious predilections of the United States Minister for annexation, the Committee of Safety, which should be called the Committee of Annexation, would never have existed.

But for the landing of the United States forces upon false pretexts respecting the danger to life and property the committee would never have exposed themselves to the pains and penalties of treason by undertaking the subversion of the Queen's Government.

But for the presence of the United States forces in the immediate vicinity and in position to afford all needed protection and support the committee would not have proclaimed the provisional government from the steps of the Government building.

And finally, but for the lawless occupation of Honolulu under false pretexts by the United States forces, and but for Minister Stevens's recognition of the provisional government when the United States forces were its sole support and constituted its only military strength, the Queen and her Government would never have yielded to the provisional government, even for a time and for the

sole purpose of submitting her case to the enlightened justice of the United States.

Believing, therefore, that the United States could not, under the circumstances disclosed, annex the islands without justly incurring the imputation of acquiring them by unjustifiable methods, I shall not again submit the treaty of annexation to the Senate for its consideration, and in the instructions to Minister Willis, a copy of which accompanies this message, I have directed him to so inform the provisional government.

But in the present instance our duty does not, in my opinion, end with refusing to consummate this questionable transaction. It has been the boast of our Government that it seeks to do justice in all things without regard to the strength or weakness of those with whom it deals. I mistake the American people if they favor the odious doctrine that there is no such thing as international morality, that there is one law for a strong nation and another for a weak one, and that even by indirection a strong power may with impunity despoil a weak one of its territory.

By an act of war, committed with the participation of a diplomatic representative of the United States and without authority of Congress, the Government of a feeble but friendly and confiding people has been overthrown. A substantial wrong has thus been done which a due regard for our national character as well as the rights of the injured people requires we should endeavor to repair. The provisional government has not assumed a republican or other constitutional form, but has remained a mere executive council or oligarchy, set up without the assent of the people. It has not sought to find a permanent basis of popular support and has given no evidence of an intention to do so. Indeed, the representatives of that government assert that the people of Hawaii are unfit for popular government and frankly avow that they can be best ruled by arbitrary or despotic power.

The law of nations is founded upon reason and justice, and the rules of conduct governing individual relations between citizens or subjects of a civilized state are equally applicable as between enlightened nations. The considerations that international law is without a court for its enforcement, and that obedience to its commands practically depends upon good faith, instead of upon the mandate of a superior tribunal, only give additional sanction to the law itself and brand any deliberate infraction of it not merely as a wrong but as a disgrace. A man of true honor protects the unwritten word which binds his conscience more scrupulously, if possible, than he does the bond a breach of which subjects him to

legal liabilities ; and the United States in aiming to maintain itself as one of the most enlightened of nations would do its citizens gross injustice if it applied to its international relations any other than a high standard of honor and morality. On that ground the United States can not properly be put in the position of countenancing a wrong after its commission any more than in that of consenting to it in advance. On that ground it can not allow itself to refuse to redress an injury inflicted through an abuse of power by officers clothed with its authority and wearing its uniform; and on the same ground, if a feeble but friendly state is in danger of being robbed of its independence and its sovereignty by a misuse of the name and power of the United States, the United States can not fail to vindicate its honor and its sense of justice by an earnest effort to make all possible reparation.

These principles apply to the present case with irresistible force when the special conditions of the Queen's surrender of her sovereignty are recalled. She surrendered not to the provisional government, but to the United States. She surrendered not absolutely and permanently, but temporarily and conditionally until such time as the facts could be considered by the United States. Furthermore, the provisional government acquiesced in her surrender in that manner and on those terms, not only by tacit consent, but through the positive acts of some members of that government who urged her peaceable submission, not merely to avoid bloodshed, but because she could place implicit reliance upon the justice of the United States, and that the whole subject would be finally considered at Washington.

I have not, however, overlooked an incident of this unfortunate affair which remains to be mentioned. The members of the provisional government and their supporters, though not entitled to extreme sympathy, have been led to their present predicament of revolt against the Government of the Queen by the indefensible encouragement and assistance of our diplomatic representative. This fact may entitle them to claim that in our effort to rectify the wrong committed some regard should be had for their safety. This sentiment is strongly seconded by my anxiety to do nothing which would invite either harsh retaliation on the part of the Queen or violence and bloodshed in any quarter. In the belief that the Queen, as well as her enemies, would be willing to adopt such a course as would meet these conditions, and in view of the fact that both the Queen and the provisional government had at one time apparently acquiesced in a reference of the entire case to the United States Government, and considering the further fact that in any event the provisional

government by its own declared limitation was only "to exist until terms of union with the United States of America have been negotiated and agreed upon," I hoped that after the assurance to the members of that government that such union could not be consummated I might compass a peaceful adjustment of the difficulty.

Actuated by these desires and purposes, and not unmindful of the inherent perplexities of the situation nor of the limitations upon my power, I instructed Minister Willis to advise the Queen and her supporters of my desire to aid in the restoration of the status existing before the lawless landing of the United States forces at Honolulu on the 16th of January last, if such restoration could be effected upon terms providing for clemency as well as justice to all parties concerned. The conditions suggested, as the instructions show, contemplate a general amnesty to those concerned in setting up the provisional government and a recognition of all its *bona fide* acts and obligations. In short, they require that the past should be buried, and that the restored Government should reassume its authority as if its continuity had not been interrupted. These conditions have not proved acceptable to the Queen, and though she has been informed that they will be insisted upon, and that, unless acceded to, the efforts of the President to aid in the restoration of her Government will cease, I have not thus far learned that she is willing to yield them her acquiescence. The check which my plans have thus encountered has prevented their presentation to the members of the provisional government, while unfortunate public misrepresentations of the situation and exaggerated statements of the sentiments of our people have obviously injured the prospects of successful Executive mediation.

I therefore submit this communication with its accompanying exhibits, embracing Mr. Blount's report, the evidence and statements taken by him at Honolulu, the instructions given to both Mr. Blount and Minister Willis, and correspondence connected with the affair in hand.

In commending this subject to the extended powers and wide discretion of the Congress, I desire to add the assurance that I shall be much gratified to cooperate in any legislative plan which may be devised for the solution of the problem before us which is consistent with American honor, integrity, and morality.

GROVER CLEVELAND.

EXECUTIVE MANSION,

Washington, December 18, 1893.

DEPARTMENT OF STATE,
Washington, October 18, 1893.

The PRESIDENT:

The full and impartial reports submitted by the Hon. James H. Blount, your special commissioner to the Hawaiian Islands, established the following facts:

Queen Liliuokalani announced her intention on Saturday, January 14, 1893, to proclaim a new constitution, but the opposition of her ministers and others induced her to speedily change her purpose and make public announcement of that fact.

At a meeting in Honolulu, late on the afternoon of that day, a so-called committee of public safety, consisting of thirteen men, being all or nearly all who were present, was appointed "to consider the situation and devise ways and means for the maintenance of the public peace and the protection of life and property," and at a meeting of this committee on the 15th, or the forenoon of the 16th of January, it was resolved amongst other things that a provisional government be created "to exist until terms of union with the United States of America have been negotiated and agreed upon." At a mass meeting which assembled at 2 p. m. on the last-named day, the Queen and her supporters were condemned and denounced, and the committee was continued and all its acts approved.

Later the same afternoon the committee addressed a letter to John L. Stevens, the American minister at Honolulu, stating that the lives and property of the people were in peril and appealing to him and the United States forces at his command for assistance. This communication concluded "we are unable to protect ourselves without aid, and therefore hope for the protection of the United States forces." On receipt of this letter Mr. Stevens requested Capt. Wiltse, commander of the U. S. S. *Boston*, to land a force "for the protection of the United States legation, United States consulate, and to secure the safety of American life and property." The well armed troops, accompanied by two gatling guns, were promptly landed and marched through the quiet streets of Honolulu to a public hall, previously secured by Mr. Stevens for their accommodation. This hall was just across the street from the Government building, and in plain view of the Queen's palace. The reason for thus locating the military will presently appear. The governor of the Island immediately addressed to Mr. Stevens a communication protesting against the act as an unwarranted invasion of Hawaiian soil and reminding him that the proper authorities had never denied permission to the naval forces of the United States to land for drill or any other proper purpose.

About the same time the Queen's minister of foreign affairs sent a note to Mr. Stevens asking why the troops had been landed and informing him that the proper authorities were able and willing to afford full protection to the American legation and all American interests in Honolulu. Only evasive replies were sent to these communications.

While there were no manifestations of excitement or alarm in the city, and the people were ignorant of the contemplated movement, the committee entered the Government building, after first ascertaining that it was unguarded, and read a proclamation declaring that the existing Government was overthrown and a Provisional Government established in its place, "to exist until terms of union with the United States of America have been negotiated and agreed upon." No audience was present when the proclamation was read, but during the reading 40 or 50 men, some of them indifferently armed, entered the room. The executive and advisory councils mentioned in the proclamation at once addressed a communication to Mr. Stevens, informing him that the monarchy had been abrogated and a provisional government established. This communication concluded:

Such Provisional Government has been proclaimed, is now in possession of the Government departmental buildings, the archives, and the treasury, and is in control of the city. We hereby request that you will, on behalf of the United States, recognize it as the existing *de facto* Government of the Hawaiian Islands and afford to it the moral support of your Government, and, if necessary, the support of American troops to assist in preserving the public peace.

On receipt of this communication, Mr. Stevens immediately recognized the new Government, and, in a letter addressed to Sanford B. Dole, its President, informed him that he had done so. Mr. Dole replied:

GOVERNMENT BUILDING,
Honolulu, January 17, 1893.

SIR: I acknowledge receipt of your valued communication of this day, recognizing the Hawaiian Provisional Government, and express deep appreciation of the same.

We have conferred with the ministers of the late Government, and have made demand upon the marshal to surrender the station house. We are not actually yet in possession of the station house, but as night is approaching and our forces may be insufficient to maintain order, we request the immediate support of the United States forces, and would request that the commander of the United States forces take command of our military forces, so that they may act together for the protection of the city.

Respectfully, yours,

SANFORD B. DOLE,
Chairman Executive Council.

His Excellency JOHN L. STEVENS,
United States Minister Resident.

Note of Mr. Stevens at the end of the above communication.

The above request not complied with.

STEVENS.

The station house was occupied by a well-armed force, under the command of a resolute capable officer. The same afternoon the Queen, her ministers, representatives of the Provisional Government, and others held a conference at the palace. Refusing to recognize the new authority or surrender to it, she was informed that the Provisional Government had the support of the American minister, and, if necessary, would be maintained by the military force of the United States then present; that any demonstration on her part would precipitate a conflict with that force; that she could not, with hope of success, engage

in war with the United States, and that resistance would result in a useless sacrifice of life. Mr. Damon, one of the chief leaders of the movement, and afterwards vice-president of the Provisional Government, informed the Queen that she could surrender under protest and her case would be considered later at Washington. Believing that, under the circumstances, submission was a duty, and that her case would be fairly considered by the President of the United States, the Queen finally yielded and sent to the Provisional Government the paper, which reads:

I, Liliuokalani, by the grace of God and under the constitution of the Hawaiian Kingdom, Queen, do hereby solemnly protest against any and all acts done against myself and the constitutional Government of the Hawaiian Kingdom by certain persons claiming to have established a Provisional Government of and for this Kingdom.

That I yield to the superior force of the United States of America, whose minister plenipotentiary, his excellency John L. Stevens, has caused United States troops to be landed at Honolulu and declared that he would support the Provisional Government.

Now, to avoid any collision of armed forces and perhaps the loss of life, I do, under this protest, and impelled by said force, yield my authority until such time as the Government of the United States shall, upon the facts being presented to it, undo the action of its representative and reinstate me and the authority which I claim as the constitutional sovereign of the Hawaiian Islands.

When this paper was prepared at the conclusion of the conference, and signed by the Queen and her ministers, a number of persons, including one or more representatives of the Provisional Government, who were still present and understood its contents, by their silence, at least, acquiesced in its statements, and, when it was carried to President Dole, he indorsed upon it, "Received from the hands of the late cabinet this 17th day of January, 1893," without challenging the truth of any of its assertions. Indeed, it was not claimed on the 17th day of January, or for some time thereafter, by any of the designated officers of the Provisional Government or any annexationist that the Queen surrendered otherwise than as stated in her protest.

In his dispatch to Mr. Foster of January 18, describing the so-called revolution, Mr. Stevens says:

The committee of public safety forthwith took possession of the Government building, archives, and treasury, and installed the Provisional Government at the head of the respective departments. This being an accomplished fact, I promptly recognized the Provisional Government as the *de facto* government of the Hawaiian Islands.

In Secretary Foster's communication of February 15 to the President, laying before him the treaty of annexation, with the view to obtaining the advice and consent of the Senate thereto, he says:

At the time the Provisional Government took possession of the Government building no troops or officers of the United States were present or took any part whatever in the proceedings. No public recognition was accorded to the Provisional Government by the United States minister until after the Queen's abdication, and when they were in effective possession of the Government building, the archives, the treasury, the barracks, the police station, and all the potential machinery of the Government.

Similar language is found in an official letter addressed to Secretary Foster on February 3 by the special commissioners sent to Washington by the Provisional Government to negotiate a treaty of annexation.

These statements are utterly at variance with the evidence, documentary and oral, contained in Mr. Blount's reports. They are contradicted by declarations and letters of President Dole and other annexationists and by Mr. Stevens's own verbal admissions to Mr. Blount.

The Provisional Government was recognized when it had little other than a paper existence, and when the legitimate government was in full possession and control of the palace, the barracks, and the police station. Mr. Stevens's well-known hostility and the threatening presence of the force landed from the *Boston* was all that could then have excited serious apprehension in the minds of the Queen, her officers, and loyal supporters.

It is fair to say that Secretary Foster's statements were based upon information which he had received from Mr. Stevens and the special commissioners, but I am unable to see that they were deceived. The troops were landed, not to protect American life and property, but to aid in overthrowing the existing government. Their very presence implied coercive measures against it.

In a statement given to Mr. Blount, by Admiral Skerrett, the ranking naval officer at Honolulu, he says:

If the troops were landed simply to protect American citizens and interests, they were badly stationed in Arion Hall, but if the intention was to aid the Provisional Government they were wisely stationed.

This hall was so situated that the troops in it easily commanded the Government building, and the proclamation was read under the protection of American guns. At an early stage of the movement, if not at the beginning, Mr. Stevens promised the annexationists that as soon as they obtained possession of the Government building and there read a proclamation of the character above referred to, he would at once recognize them as a *de facto* government, and support them by landing a force from our war ship then in the harbor, and he kept that promise. This assurance was the inspiration of the movement, and without it the annexationists would not have exposed themselves to the consequences of failure. They relied upon no military force of their own, for they had none worthy of the name. The Provisional Government was established by the action of the American minister and the presence of the troops landed from the *Boston*, and its continued existence is due to the belief of the Hawaiians that if they made an effort to overthrow it, they would encounter the armed forces of the United States.

The earnest appeals to the American minister for military protection by the officers of that Government, after it had been recognized, show the utter absurdity of the claim that it was established by a successful revolution of the people of the Islands. Those appeals were a confession by the men who made them of their weakness and timidity. Courageous men, conscious of their strength and the justice of their cause, do not thus act. It is not now claimed that a majority of the people, having the right to vote under the constitution of 1887, ever favored the existing authority or annexation to this or any other country. They earnestly desire that the government of their choice shall be restored and its independence respected.

Mr. Blount states that while at Honolulu he did not meet a single annexationist who expressed willingness to submit the question to a vote of the people, nor did he talk with one on that subject who did not insist that if the Islands were annexed suffrage should be so restricted as to give complete control to foreigners or whites. Representative annexationists have repeatedly made similar statements to the undersigned.

The Government of Hawaii surrendered its authority under a threat of war, until such time only as the Government of the United States, upon the facts being presented to it, should reinstate the constitutional

sovereign, and the Provisional Government was created "to exist until terms of union with the United States of America have been negotiated and agreed upon." A careful consideration of the facts will, I think, convince you that the treaty which was withdrawn from the Senate for further consideration should not be resubmitted for its action thereon.

Should not the great wrong done to a feeble but independent State by an abuse of the authority of the United States be undone by restoring the legitimate government? Anything short of that will not, I respectfully submit, satisfy the demands of justice.

Can the United States consistently insist that other nations shall respect the independence of Hawaii while not respecting it themselves? Our Government was the first to recognize the independence of the Islands and it should be the last to acquire sovereignty over them by force and fraud.

Respectfully submitted.

W. Q. GRESHAM.

[Confidential.]

Mr. Gresham to Mr. Willis.

No. 4.]

DEPARTMENT OF STATE,
Washington, October 18, 1893.

SIR: Supplementing the general instructions which you have received with regard to your official duties, it is necessary to communicate to you, in confidence, special instructions for your guidance in so far as concerns the relation of the Government of the United States towards the *de facto* Government of the Hawaiian Islands.

The President deemed it his duty to withdraw from the Senate the treaty of annexation which has been signed by the Secretary of State and the agents of the Provisional Government, and to dispatch a trusted representative to Hawaii to impartially investigate the causes of the so-called revolution and ascertain and report the true situation in those Islands. This information was needed the better to enable the President to discharge a delicate and important public duty.

The instructions given to Mr. Blount, of which you are furnished with a copy, point out a line of conduct to be observed by him in his official and personal relations on the Islands, by which you will be guided so far as they are applicable and not inconsistent with what is herein contained.

It remains to acquaint you with the President's conclusions upon the facts embodied in Mr. Blount's reports and to direct your course in accordance therewith.

The Provisional Government was not established by the Hawaiian people, or with their consent or acquiescence, nor has it since existed with their consent. The Queen refused to surrender her powers to the Provisional Government until convinced that the minister of the United States had recognized it as the *de facto* authority, and would support and defend it with the military force of the United States, and that resistance would precipitate a bloody conflict with that force. She was advised and assured by her ministers and by leaders of the movement for the overthrow of her government, that if she surrendered under protest her case would afterwards be fairly considered by the President of the United States. The Queen finally wisely yielded to the armed forces of the United States then quartered in Honolulu, relying upon the good faith and honor of the President, when informed

of what had occurred, to undo the action of the minister and reinstate her and the authority which she claimed as the constitutional sovereign of the Hawaiian Islands.

After a patient examination of Mr. Blount's reports the President is satisfied that the movement against the Queen, if not instigated, was encouraged and supported by the representative of this Government at Honolulu; that he promised in advance to aid her enemies in an effort to overthrow the Hawaiian Government and set up by force a new government in its place; and that he kept this promise by causing a detachment of troops to be landed from the *Boston* on the 16th of January, and by recognizing the Provisional Government the next day when it was too feeble to defend itself and the constitutional government was able to successfully maintain its authority against any threatening force other than that of the United States already landed.

The President has therefore determined that he will not send back to the Senate for its action thereon the treaty which he withdrew from that body for further consideration on the 9th day of March last.

On your arrival at Honolulu you will take advantage of an early opportunity to inform the Queen of this determination, making known to her the President's sincere regret that the reprehensible conduct of the American minister and the unauthorized presence on land of a military force of the United States obliged her to surrender her sovereignty, for the time being, and rely on the justice of this Government to undo the flagrant wrong.

You will, however, at the same time inform the Queen that, when reinstated, the President expects that she will pursue a magnanimous course by granting full amnesty to all who participated in the movement against her, including persons who are, or have been, officially or otherwise, connected with the Provisional Government, depriving them of no right or privilege which they enjoyed before the so-called revolution. All obligations created by the Provisional Government in due course of administration should be assumed.

Having secured the Queen's agreement to pursue this wise and humane policy, which it is believed you will speedily obtain, you will then advise the executive of the Provisional Government and his ministers of the President's determination of the question which their action and that of the Queen devolved upon him, and that they are expected to promptly relinquish to her her constitutional authority.

Should the Queen decline to pursue the liberal course suggested, or should the Provisional Government refuse to abide by the President's decision, you will report the facts and await further directions.

In carrying out these general instructions you will be guided largely by your own good judgment in dealing with the delicate situation.

I am, sir, your obedient servant,

W. Q. GRESHAM.

Mr. Gresham to Mr. Willis.

[Telegram sent through dispatch agent at San Francisco.]

DEPARTMENT OF STATE,
Washington, November 24, 1893.

The brevity and uncertainty of your telegrams are embarrassing. You will insist upon amnesty and recognition of obligations of the Provisional Government as essential conditions of restoration. All interests will be promoted by prompt action.

W. Q. GRESHAM.

Exhibit B

APPENDIX II

FOREIGN RELATIONS

OF THE

UNITED STATES

1894

AFFAIRS IN HAWAII



WASHINGTON
GOVERNMENT PRINTING OFFICE
1895

Mr. Willis to Mr. Gresham.

[Confidential.]

No. 16.]

LEGATION OF THE UNITED STATES,
Honolulu, Hawaiian Islands, December 20, 1893.

SIR: On Monday afternoon at 6 p. m., before the report of the Washington Place interview, referred to in my dispatch, No. 15, of December 19, had been written from the stenographic notes, Mr. Carter called at the legation and read to me a note to him, just received from the Queen, in which she unreservedly consented, when restored as the constitutional sovereign, to grant amnesty and assume all obligations of the Provisional Government.

On yesterday (Tuesday) morning at 9 o'clock Mr. Carter brought a letter from the Queen, a copy of which I inclose, and an agreement signed by her, binding herself, if restored, to grant full amnesty, a copy of which I inclose.

Very respectfully,

ALBERT S. WILLIS.

[Inclosure 1 with No 16.]

WASHINGTON PLACE,
Honolulu, December 18, 1893

His Excellency ALBERT WILLIS,
Envoy Extraordinary and Minister Plenipotentiary, U. S. A. :

SIR: Since I had the interview with you this morning I have given the most careful and conscientious thought as to my duty, and I now of my own free will give my conclusions.

I must not feel vengeful to any of my people. If I am restored by the United States I must forget myself and remember only my dear people and my country. I must forgive and forget the past, permitting no proscription or punishment of any one, but trusting that all will hereafter work together in peace and friendship for the good and for the glory of our beautiful and once happy land.

Asking you to bear to the President and to the Government he represents a message of gratitude from me and from my people, and promising, with God's grace, to prove worthy of the confidence and friendship of your people,

I am, etc.,

LILIUOKALANI.

[Inclosure 2 with No. 16.]

I, Liliuokalani, in recognition of the high sense of justice which has actuated the President of the United States, and desiring to put aside all feelings of personal hatred or revenge and to do what is best for all the people of these Islands, both native and foreign born, do hereby and herein solemnly declare and pledge myself that, if reinstated as the constitutional sovereign of the Hawaiian Islands, that I will immediately proclaim and declare, unconditionally and without reservation, to every person who directly or indirectly participated in the revolution of January 17, 1893, a full pardon and amnesty for their offenses, with restoration of all rights, privileges, and immunities under the constitution and the laws which have been made in pursuance thereof, and that I will forbid and prevent the adoption of any measures of proscription or punishment for what has been done in the past by those setting up or supporting the Provisional Government.

I further solemnly agree to accept the restoration under the constitution existing at the time of said revolution and that I will abide by and fully execute that constitution with all the guaranties as to person and property therein contained.

I furthermore solemnly pledge myself and my Government, if restored, to assume all the obligations created by the Provisional Government, in the proper course of

administration, including all expenditures for military or police services, it being my purpose, if restored, to assume the Government precisely as it existed on the day when it was unlawfully overthrown.

Witness my hand this 18th of December, 1893.

LILIUOKALANI.

Attest:

J. O. CARTER.

Mr. Willis to Mr. Gresham.

[Confidential.]

No. 17.]

LEGATION OF THE UNITED STATES,
Honolulu, December 20, 1893.

SIR: On Monday, December 18, the interview with the Queen at her residence, Washington Place, was held, lasting until 1 p. m.

At 5:30 p. m. of the same day I received a communication from the Provisional Government, through the Hon. S. B. Dole, minister of foreign affairs, referring to my visit to the Queen. He asked to be informed whether I was "acting in any way hostile to this (his) Government," and pressed for "an immediate answer." I inclose a copy of the communication.

As I had two days before notified a member of the cabinet, Hon. W. O. Smith, attorney-general, that I would be ready in forty-eight hours to make known to the Provisional Government the President's decision, and as the tone of the communication—doubtless without intention—was somewhat mandatory, I thought it best not to make any reply to it. Moreover, at that hour I had not received the written pledge and agreement of the Queen, without which I could take no step.

This morning at 9:30 o'clock I received the letter and agreement of the Queen, as set forth in my No. 16 of this date. I immediately addressed a note to the minister of foreign affairs, Mr. Dole, informing him that I had a communication from my Government, which I desired to submit in person to the president and ministers of his Government at any hour during the day that it might please him to designate. I inclose a copy of my letter. This note was delivered to the minister of foreign affairs by Mr. Mills, and the hour of 1:30 p. m. was verbally designated for the interview.

At the hour appointed I went to the executive building and met the President and his associate ministers, to whom I submitted the decision of the President of the United States.

A memorandum of what I said upon the occasion was left with them after delivery, a copy of which I inclose.

It may be proper at this time briefly to state my course of action since arriving here on Saturday the 4th day of November last. My baggage containing credentials did not come to hand until 4 o'clock, before which time the offices of the Provisional Government were closed.

On Monday morning following, Mr. Mills, our consul-general, bore a note to the minister of foreign affairs asking that he designate a time for the presentation of Mr. Blount's letter of recall and my letter of credence. Mr. Mills was authorized to say, and did say to him, that I was ready on that day (Monday) to present my credentials. The Provisional Government, however, appointed the following day (Tuesday) at 11 o'clock, at which time I was formally presented.

As our Government had for fifty years held the friendliest relations with the people of these islands—native as well as foreign born—in

WILLIS,

WASHINGTON, *January 12, 1894.**Minister, Honolulu:*

Your numbers 14 to 18, inclusive, show that you have rightly comprehended the scope of your instructions, and have, as far as was in your power, discharged the onerous task confided to you.

The President sincerely regrets that the Provisional Government refuses to acquiesce in the conclusion which his sense of right and duty and a due regard for our national honor constrained him to reach and submit as a measure of justice to the people of the Hawaiian Islands and their deposed sovereign. While it is true that the Provisional Government was created to exist only until the islands were annexed to the United States, that the Queen finally, but reluctantly, surrendered to an armed force of this Government illegally quartered in Honolulu, and representatives of the Provisional Government (which realized its impotency and was anxious to get control of the Queen's means of defense) assured her that, if she would surrender, her case would be subsequently considered by the United States, the President has never claimed that such action constituted him an arbitrator in the technical sense, or authorized him to act in that capacity between the Constitutional Government and the Provisional Government. You made no such claim when you acquainted that Government with the President's decision.

The solemn assurance given to the Queen has been referred to, not as authority for the President to act as arbitrator, but as a fact material to a just determination of the President's duty in the premises.

In the note which the minister of foreign affairs addressed to you on the 23d ultimo it is stated in effect that even if the Constitutional Government was subverted by the action of the American minister and an invasion by a military force of the United States, the President's authority is limited to dealing with our own unfaithful officials, and that he can take no steps looking to the correction of the wrong done. The President entertains a different view of his responsibility and duty. The subversion of the Hawaiian Government by an abuse of the authority of the United States was in plain violation of international law and required the President to disavow and condemn the act of our offending officials, and, within the limits of his constitutional power, to endeavor to restore the lawful authority.

On the 18th ultimo the President sent a special message to Congress communicating copies of Mr. Blount's reports and the instructions given to him and to you. On the same day, answering a resolution of the House of Representatives, he sent copies of all correspondence since March 4, 1889, on the political affairs and relations of Hawaii, withholding, for sufficient reasons, only Mr. Stevens' No. 70 of October 8, 1892, and your No. 3 of November 16, 1893. The President therein announced that the conditions of restoration suggested by him to the Queen had not proved acceptable to her, and that since the instructions sent to you to insist upon those conditions he had not learned that the Queen was willing to assent to them. The President thereupon submitted the subject to the more extended powers and wider discretion of Congress, adding the assurance that he would be gratified to cooperate in any legitimate plan which might be devised for a solution of the problem consistent with American honor, integrity, and morality.

Your reports show that on further reflection the Queen gave her unqualified assent in writing to the conditions suggested, but that the

Provisional Government refuses to acquiesce in the President's decision.

The matter now being in the hands of Congress the President will keep that body fully advised of the situation, and will lay before it from time to time the reports received from you, including your No. 3, heretofore withheld, and all instructions sent to you. In the meantime, while keeping the Department fully informed of the course of events, you will, until further notice, consider that your special instructions upon this subject have been fully complied with.

GRESHAM.

Exhibit C

CONGRESSIONAL RECORD:

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OF THE

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war ships would beset our path and we would be compelled to send with every coal barge a full complement of our own war ships, and we would, indeed, realize that we must win our way through "bloody seas." Again, it is declared to be a defensive necessity from a war standpoint.

We are told that we need the islands as a kind of military break-water against attack on our western coast. Eminent military authority is offered for this statement. Both land and naval officers are produced to justify this claim. All honor, Mr. Speaker, to our soldiers on land and sea. I glory in their just fame. Their deeds of valor are known wherever civilized man is found. They have carried our glorious flag to victory in every land, on every sea where they have fought, from the day they wrested from Great Britain the power to longer enslave us to that May day just gone when they sent to the bottom of Manila Harbor a Spanish fleet with every man on board.

But, Mr. Speaker, the calm judgment of a free people who believe, aye, know, that "eternal vigilance is the price of liberty" realizes, and in the years to come, if not now, will so declare, that the military arm of the Government can not safely be intrusted with the duty of controlling and shaping its civil policy. The profession, the training, and tendency of military life forbids it. The tendency of the military, whether on land or sea, is toward aggression and ever toward imperialism. And, again, we are to be made believe that if the United States does not annex the Hawaiian Islands some other power will, either with the consent of the islands or without it, and by the force of its own army and navy.

Does anybody really believe this? Has not this country many times declared that it would view with alarm and treat as an hostile act any such attempt? It could never be done and would not be attempted by any government of the Old World, unless it was predetermined and known that it could only be done by conquering the resistance of the United States. If such a determination is ever reached, our present annexation and possession of the islands would not stay the government that so lusts for territory, for the same power that could overcome our resistance in the first instance could wrest our occupation and possession in the last, and neither would or could ever be accomplished.

What do we fear, Mr. Speaker, and whom? Certainly not the ghost of dead and forgotten Spain. The throes of internal discord and colonial revolutions have rendered this effete Kingdom powerless for harm. Does Germany threaten us? No. Her good sense will restrain any ambition she otherwise might indulge for conquest. Does France? Most assuredly not. Nor Russia, nor Prussia, nor Italy. No Eastern power threatens our Western supremacy. In the meantime the British lion licks the hand that twice smote him, and England's Queen sends greeting and begs us believe she is willing to join hands with us and march forth on a mission of conquest and plunder.

No, Mr. Speaker; no cloud flicks the horizon in token of the brewing storm. None will appear unless we, "forgetful, stray after little lures;" unless we forget that Jefferson told us to have friendly relations with all nations, entangling alliances with none; unless we mix up in the politics of the East, none will appear. Finally, Mr. Speaker, we are urged to take Hawaii anyhow; the islands are offered, and let us take them. Suppose we take them, what form of government under our system by our Constitution will we give them? Is it proposed, does anyone believe, would any member of this House consent, to go 2,200 miles from our shores into the Pacific Ocean and erect a State in the American Union? No one contemplates, none would consent to such a proposition. Conditions will not warrant the making of a Territory of these islands, for the Constitution would control in this case as in that of the State.

What, then, remains to be done? Nothing is left except a military government for them; and surely no American who is not forgetful of the teachings of our fathers, unmindful of the traditions of the past, and, I hope, our welfare in the future, will ever consent to have any portion of this country in such condition. To do it we must write a new policy, tear down every safeguard of a free people—a democratic form of government—and declare our Republic a sham and a delusion. We must affirm our faith to be: The military is of right and ought to be superior to the civil arm of the Government. When this time comes, farewell, my country; thy honor and thy glory have departed forever; thy strength proved thy weakness.

This land has been dedicated to freedom. Here and under our system no chains of class or prejudice can fetter the wings of aspiring, ambitious genius. Here in free America true worth, whether it comes heralded from the palaces of the rich or springs of its own unaided strength from the hovels of the poor, may hope to find its just reward. In the twinkling of an eye things have changed—a military satrapy is set up, a ruling class is constituted.

Mr. Speaker, by every memory of the past, by every hope for the future; in the name of my country, whose institutions and people I love and whose greatness and glory I share, I appeal to its

Representatives on this floor not to enter upon this policy of aggression, fraught, as so many believe, with danger at every step. Have regard for the promise given the world but recently, and hedged about with all the binding force and obligation that official utterance could lend it, when you said in your declaration of war against Spain that war was to be waged for freedom's sake, in the cause of humanity, that no purpose of conquest or gain animated the purposes of the United States. On this declaration we won the world's respect and confidence and the approving smile of Him who holds in the hollow of His hand the destiny of nations as He does of individuals. It seems, however, the die is cast, the determination is entered upon, and take these islands we will.

Mr. Speaker, what do we need them for and what will we do with them? I suppose we might fit them up in royal style as a sort of national vaudeville theater or up-to-date "Midway Plaisance," and by Congressional enactment interdict any cheap and mere vulgar imitations that shall take place, but that only the original and genuine Hulas may appear in all the glory and splendor of nakedness unadorned, and give to the denizens of this benighted country daily and nightly exhibitions of their innocent divertisement. Or rather, shall we throw off the mask, come into the open, and join in the cry, but feebly heard now, On to Manila, to Puerto Rico, to the Carolinas, to the Canaries; down with the people; on with the empire? Mr. Speaker, what sound is it I hear? Is it the coming of the "Man on Horseback"?

Mr. DINSMORE. I yield fifteen minutes to the gentleman from Texas [Mr. BALL].

Mr. BALL. Mr. Speaker, in the limited time allotted me I can not attempt a full or satisfactory discussion of the pending resolution. I would not speak at all did I not in my heart believe that the question under consideration involves the most crucial period in our national history, not excepting the fratricidal conflict between the States.

The glowing picture presented by those who would lightly set aside the traditional policy of this Government and enter upon a career of colonial aggrandizement supported by a great army and navy, is certainly no more alluring than was Napoleon's dream of universal empire. Let us hope that, once entered upon, the result may not prove equally disastrous.

Mr. Speaker, in opposing this measure I shall present for the consideration of the House three propositions only. The annexation of Hawaii by joint resolution is unconstitutional, unnecessary, and unwise. If the first proposition be true, sworn to support the Constitution, we should inquire no further. I challenge not the advocates of Hawaiian annexation, but those who advocate annexation in the form now presented, to show warrant or authority in our organic law for such acquisition of territory. To do so will be not only to subvert the supreme law of the land but to strike down every precedent in our history. I know, as was said by the gentleman from Arkansas [Mr. DINSMORE], that the mention of the Constitution in this body often invokes a smile, and yet it can not be that a majority of this body agree with the insignificant few "that there is a higher law than the Constitution;" or with that former member of this House who, in his good fellowship, "did not think the Constitution should come between friends."

Why, sir, the very presence of this measure here is the result of a deliberate attempt to do unlawfully that which can not be lawfully done. The gentleman from Minnesota [Mr. TAWNEY], in a very able argument in support of annexation on March 15 last, rested his case upon the general power in our Constitution and the express power in the constitution of Hawaii, conferred upon the Presidents and Senates of the two countries, to conclude a treaty of annexation. Now that, in pursuance of those powers, the President has submitted the treaty to the United States Senate and has been unable to obtain the consent of two-thirds of that body, we are called upon to override the constitutions of both parties to the proposed contract in order that we may do this thing.

When Louisiana was acquired, when Florida was received, when Alaska came to us, no statesman connected with the executive or legislative branch of the Government dreamed the territory sought to be added to our possessions could be received, except by treaty duly ratified. In their desperation, grasping at shadows for substance, those who now resort to this subterfuge cite the admission of the imperial State from which I hail—Texas—as warrant and authority for their purpose.

Mr. Speaker, no one familiar with the history of that transaction should make such claim. Advocates of the annexation of Texas rested their case upon the express power conferred upon Congress in the Constitution to admit new States. Opponents of the annexation of Texas contended that even that express power did not confer the right to admit States not carved from territory already belonging to the United States or some one of the States forming the Federal Union. Whether, therefore, we subscribe to the one or the other school of thought in that matter, we can find no precedent to sustain the method here proposed for admitting foreign territory.

Members need only refer to the extended debates in Senate and House of Representatives while the annexation of Texas was being considered to be assured of the correctness of this conclusion. The original proposition as offered contemplated the formation of a State from certain prescribed limits within the territory embraced in the Republic of Texas, while the balance of the area of the Republic was to be ceded as territory to the United States. The treaty having failed of ratification by the Senate, annexation by joint resolution was resorted to, and the outcome of the whole matter was that the entire Republic of Texas was admitted as one State, with the right to carve therefrom four additional States, this being done for the purpose alone of coming within the constitutional power to admit new States and in recognition of the fact that territory could only be constitutionally acquired by treaty.

I have not time to review much that was interestingly said about the matter. I shall quote only a few of the opinions advanced during the discussion of that matter. The Senate committee on Foreign Affairs consisted of five members, four of whom questioned the right to admit new States out of foreign territory, claiming it could only be done by treaty, the other member of the committee admitting that foreign territory could only be acquired by treaty, but contending that Texas could be admitted as a State.

Mr. Walker, of Mississippi, claiming to be the author of the idea to have Texas admitted under the clause of the Constitution authorizing Congress to admit new States, said—

That he was rejoiced that the great American question of the reannexation of Texas was being presented on all hands on the grounds on which it was placed originally by him [Mr. Walker] in his Texas letter of the 8th of January, 1844.

He [Mr. Walker] then proposed, more than a year since, to admit Texas as a State of the Union by the action of Congress under that clause of the Constitution which authorizes Congress to admit new States into the Union. That clause was not confined to our then existing territory, but was without limitation, and the framers of the Constitution had expressly refused to limit the general power contained in this clause to the territory then embraced within the Union. The general power was in express words, and no man had a right to interpolate restrictions, especially restrictions which the framers of the Constitution had rejected.

Mr. Buchanan, of Pennsylvania, the dissenting member of the Foreign Affairs Committee, advocating the resolution, said:

All the reasoning and ingenuity in the world could not abolish the plain language of the Constitution, which declared that new States might be admitted by Congress into the Union.

Mr. Henderson, of Mississippi, Mr. Benton, of Missouri, and other able advocates of the annexation of Texas urged the same arguments in support of the measure.

In the House of Representatives Mr. Yancey, of Alabama, supporting the resolution, advanced the same line of argument. On the other hand, the opposition, insisting that the power to admit new States was confined to territory already belonging to the United States, put forward many able advocates.

Mr. Morehead, of Kentucky, speaking for the Foreign Affairs Committee of the Senate, contended—

In the case now under consideration it was not proposed by the joint resolution before the Senate that Texas should be acquired according to what he considered the constitutional mode of proceeding, by the treaty-making power. The proposition is for Congress to admit her as a State. Now—

He asked—

when this Government was about to add a foreign domain to ours, was there any other mode of accomplishing that object except by the interposition of the treaty-making power, composed of the President of the United States in conjunction with the Senate? Was it constitutional to annex Texas by the treaty which was submitted to the Senate last session?

He believed there were few, if any, constitutional objections made. If, then, the power to annex foreign territory by treaty does appertain to the treaty-making power, he should like to see upon what ground it could be held that the Congress of the United States possesses concurrent legislative power upon this subject. If that which it is competent for the treaty-making power alone to accomplish, the majority of a quorum of both Houses of Congress could accomplish. The argument, he apprehended, would be this, that as a constitutional mode of proceeding we do not deny that foreign territory can be admitted into this Union by the treaty-making power. But there is another clause in the Constitution which gives Congress the power to admit new States into the Union. He proposed now to consider what was the character of that article and upon what conditions it rests. [Mr. Buchanan: That is the true ground.] His friend from Pennsylvania said that was the question, and to it he proposed to call particular attention.

Mr. Choate for three hours reviewed the whole question, bringing to bear his knowledge of the Constitution and its formation and the history of the country, clothed in redundant adjectives. He denied that the clause in the fourth article in the Constitution giving the power to Congress of admitting new States into the Union was given with the most remote idea of its being ever applied to anything but domestic territory. Said he:

No man could believe that by that provision it was intended to confer the tremendous power of admitting new States in any part of the world without limitation as to habits, customs, language, principles, or anything but the semblance of republicanism. Until it was found the treaty of last session had no chance of passing the Senate, no human being save one, no man, woman, or child in the Union or out of the Union, wise or foolish, drunk or sober, was ever heard to breathe one syllable about this power in the Constitution of admitting new States being applicable to the admission of foreign nations, governments, or states. It was a new and monstrous heresy on the Constitution, got up not from any well-founded faith in its orthodoxy, but for the mere purpose of carrying a measure by a bare majority of Congress that could not be carried by a two-thirds majority of the Senate in accordance with the treaty-making power.

Mr. Speaker, I will not further quote from this discussion. The language used by Mr. Choate certainly applies with peculiar force to the proposition now pending, and the entire debate upon both sides of that proposition shows conclusively that the advocates of this measure have no ground to stand upon so far as the annexation of Texas is concerned.

The gentleman from North Carolina [Mr. PEARSON] and the gentleman from Ohio [Mr. GROSVENOR] seek to aid their contentions in favor of this measure by the decision of Chief Justice Marshall. Let us see if they are sustained thereby:

The course—

Said Judge Marshall—

which the argument has taken will require that in deciding this question the court should take into view the relation in which Florida stands to the United States. The Constitution confers absolutely upon the Government the powers of making war and of making treaties; consequently that Government possesses the power of acquiring territory either by conquest or by treaty.

Thus it will be seen, Mr. Speaker, that Chief Justice Marshall not only fails to sustain these gentlemen, but bases the acquisition of territory, either by conquest or treaty, upon the war-making and treaty-making powers conferred by the Constitution upon the Government. Certainly, the treaty having failed to pass, no gentleman will contend that we are attempting to take Hawaii by conquest or by the power to admit States. They must therefore stand with the chairman of the Foreign Affairs Committee [Mr. HERR], who insists, in substance, that the National Government has the inherent right to acquire territory in this manner. The Constitution having pointed out the several ways in which territory may be lawfully acquired, I for one decline to accept this new doctrine by which territory can eventually come into partnership with the States and have equal rights and representation on the floor of Congress and elsewhere without first running the gantlet of every constitutional safeguard.

Mr. Speaker, I shall even venture to differ with those who declare this measure to be a military necessity. Even the array of expert testimony they bring to their support is not conclusive. A leading member of the bar once defined unreliable testimony as of three classes: "Ordinary liars, accomplished liars, and expert witnesses." [Laughter.] While I do not accede to this classification, I do know that great military and naval authority is not agreed at all times. It is also true that only witnesses in the matter were called who favored annexation. Even then, as stated by the gentleman from Missouri [Mr. CLARK], General Schofield, upon cross-examination, admitted that Pearl Harbor, now possessed by this country, was the only harbor that could be successfully fortified and defended. I will say in passing that we possess this harbor by treaty that can not be abrogated except by the consent of this Government. Again, we should bear in mind that, by professional instinct, Army and Navy officers are naturally predisposed toward that policy which would make this country a great military and naval power.

Mr. CLARK of Missouri. Will the gentleman allow me an interruption?

Mr. BALL. Yes; certainly.

Mr. CLARK of Missouri. I want to make one statement, and it is the gospel truth, that every one of these statements in favor of annexation was an ex parte statement, and I believe that any ordinary lawyer, just a plain, ordinary, average lawyer, can take every one of these men and on cross-examination make him swear to the same thing that General Schofield swore to, that that is the only harbor that can be fortified.

Mr. BALL. All right, put that in my speech. Now, against their judgment we have the safest of all guides—experience. For more than fifty years the Atlantic Ocean has bounded our eastern, the Gulf and Republic of Mexico our southern, the Pacific our western, and the British possessions our northern borders. During this period we have made marvelous strides in progress, the development of our resources, and increase of population. We have waged the greatest of all wars in our own borders, placing in hostile conflict two armies either of which could have whipped the combined legions of Napoleon or Wellington.

Since then we have nearly doubled our resources and population, and even now we are demonstrating to the world that the foreign power which breaks our peace must whip every man within our borders from Maine to Texas, from New York to California, before they can successfully give us battle. Why, then, extend our borders more than 2,000 miles in the Pacific Ocean? To do so will be a breach of public and national faith.

December 19, 1840, Mr. Webster announced that—

The Government of the Sandwich Islands ought to be respected; that no power ought to take possession of the islands, either as a conquest or for purposes of colonization.

President Tyler, two years afterwards, reiterated the same doctrine.

In 1843 Secretary of State Legaré notified our minister to England—

That we had no wish to acquire or plant colonies abroad, but would, if necessary, feel justified in using force to prevent their acquisition by one of the great powers of Europe.

Exhibit D

CONGRESSIONAL RECORD:

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No Senator would ever think of interrupting another under those conditions; but yet, strictly speaking, according to parliamentary rule, the Senator yielding the floor had lost it. No Senator can call for the regular order when a Senator is on the floor discussing any question in the Senate, because he is not required under the laws of the Senate to speak germanely to the subject under consideration, and he can not be interrupted unless he is speaking out of order, as suggested, or is committing some impropriety or some violation of parliamentary ethics or parliamentary rule; but the fact that he is speaking about something else than the bill under consideration does not entitle any Senator to call him to order. Every Senator is supposed to have judgment himself upon all such questions and to discuss whatever he thinks is proper. The great liberty of debate which here exists has been one of the things which has also made service in this body pleasant.

Mr. President, I only mention this for fear there will grow up a feeling here that a Senator who gets the floor and does not proceed to make a speech has any claim to the floor, or that he is under any obligation to go on and make a speech. He may decline to make a speech after having given notice that he intended to make it. It may embarrass others, who are not prepared to go on, and all that, and sometimes retard the business of the body; but that is one of the rights of a Senator. No one can say, "I insist now that the Senator from Georgia go on," if he does not wish to go on.

I have said this because I thought it was a good time to do so. If the Senator from Georgia had been himself pressing, I would not have said this at all.

I believe we can go through this debate in a Senatorial way. The question is one of a good deal of importance, about which some of us have a great deal of feeling. I myself have. I am so decidedly in favor of this joint resolution, and so thoroughly impressed that the interests of this country require its adoption, that I should be willing to vote right now, without a word of explanation or any defense of my vote, which I have not had an opportunity to make, except in executive session; and yet I would not deny, upon a great question like this, to every Senator who does not agree with me the right to present his views. There can be no such haste in coming to a conclusion in this case as to justify the American Senate in taking any unusual course and departing from the well-established and well-regulated rules of this Senate—not all of which are in a book, but rules which are well understood by members of this body who have served here for a good many years and which, I can say, are universally obeyed in the Senate.

One of the cardinal rules here has been that every Senator's convenience, even though it may lead to delay, shall be consulted. Of course if the request for delay is for the purpose of postponement, for the purpose of preventing a vote, then the Senate has the right to insist upon speedy and prompt action; but it has always been the custom since I have been a member of the Senate, when a Senator rose in his seat and said he was not prepared to go on, to give him time, especially when there is no constitutional limit as to the length of the session, as is the case now.

I should be delighted, Mr. President, to have a vote this week on this proposition; but I should not be willing to vote on this proposition this week if the members of the Senate who desire to discuss it have not had a fair opportunity to do so.

The PRESIDING OFFICER. The Chair will state that, under strict parliamentary law, he understands when a Senator yields the floor to another for a speech, of course the Senator originally having the floor loses his right to the floor. The custom, however, has grown up that when a Senator begins a long speech and yields for collateral matters, he retains the floor, and the Chair has simply respected that custom. The Senator from Washington [Mr. WILSON] was taken from the floor not by any order of the Chair, but by his own consent.

Mr. WHITE. Under duress, as I understand.

The PRESIDING OFFICER. The Chair recognizes the Senator from Georgia [Mr. BACON].

Mr. WILSON. The Senator thought I was through. Perhaps I should have finished a little bit earlier, but it was no fault of the Chair or of anybody else that I lost the floor, and I do not care anything about it.

Mr. BACON. All this very pleasant episode was occasioned by an act of courtesy on my part, which I did not anticipate would consume so much time. I simply yielded to the Senator from Arkansas [Mr. JONES] in order to make the statement that he had not called for a quorum for the purpose of delay, and I thought that would be the end of it.

Mr. President, the Senator from Colorado [Mr. TELLER] says that he would be very glad to vote on this question to-day; that his mind is made up. The Senator from Colorado is one of the Senators whom I am anxious to speak to to-day, not because I believe I can change his mind or his opinion on the general merits of this question, but because I desire to ask him and all Senators, especially those who are lawyers, to consider the question whether

or not they have the right, under their constitutional obligations, to vote for this resolution, however much they may favor the annexation of Hawaii.

Mr. TELLER. Will the Senator permit me to answer that now?

Mr. BACON. I beg that the Senator will hear me before he answers.

Mr. TELLER. I want to say that I will hear the Senator, but the Senator is not to understand that I have not myself considered this question very carefully. I will hear the Senator, of course.

Mr. BACON. Mr. President, of course I do not presume that the Senator from Colorado had not considered this question, but we are here for the purpose of interchanging views. I have great confidence in the Senator from Colorado, and am gratified by the fact that I seldom differ from him, and I shall be more than gratified if we can get together upon this question.

I assume that Senators will not vote for a resolution if they can be satisfied that it is unconstitutional. I assume that they will not vote for an unconstitutional resolution which directly impairs and strikes down one of the highest prerogatives of the Senate; and it is to that question that I propose to address myself to-day and upon which I am extremely anxious to have the hearing of Senators who favor the annexation of Hawaii.

The proposition which I had stated before the interruption was this: That a joint resolution for the annexation of foreign territory was necessarily and essentially the subject-matter of a treaty, and that it could not be accomplished legally and constitutionally by a statute or joint resolution. If Hawaii is to be annexed, it ought certainly to be annexed by a constitutional method; and if by a constitutional method it can not be annexed, no Senator ought to desire its annexation sufficiently to induce him to give his support to an unconstitutional measure.

I trust, Mr. President, that the time has not come when a Senator can not appeal with confidence to his fellow-Senators in opposition to a measure on the ground that it is unconstitutional. It matters not how important it may be that Hawaii should be annexed, it matters not how valuable it may be, it will be too costly if its price is the violation of a great fundamental provision of the Constitution of the United States.

Mr. President, it is a painful fact that not only people at large, but officials are losing to some extent the reverence which they ought to have for constitutional obligations. It is a matter of a smile with some when you oppose a measure on the ground that it is unconstitutional, and I confess that I have been pained when I have heard, as I have heard in this Chamber, learned and distinguished Senators say that they would approve and applaud the action of the President of the United States if he would seize Hawaii and run up upon it the flag of the United States, and take possession of it as the property of the United States as a war measure.

I say I have been pained when I have heard that, as I have heard it in this Chamber from very learned and very distinguished Senators, and I have been more than gratified that the President of the United States has not suffered himself to be guided by such foolish and such unwise counsels. If he had done so, every lover of his country must have been grieved that such a blow had been stricken at the integrity of the Constitution.

Mr. President, it surprises me that I even have to mention such a proposition; but if the President of the United States can in time of war, or at any other time, without the action of Congress in the performance of its constitutional functions, take possession of the territory of a friendly power, proclaim it as the territory of the United States, run the flag of the United States up over it as the insignia of its power and its dominion—if he can do so in one case, he can do so in any.

If the President of the United States can do it in the case of Hawaii, he can with equal propriety and legality do it in the case of Jamaica, and I repeat that I am more than gratified, although my apprehensions were aroused by the source from which those intimations came, that the President of the United States has not seen proper to listen to their unwise counsels.

And yet, Mr. President, if my view of this question is correct, the President of the United States would have as much power to take possession of the Island of Hawaii by a proclamation as would the Congress of the United States have the power to gain possession of it by a joint resolution of the two Houses. The powers of the executive department and the legislative department are as distinctly divided the one from the other as are the powers of the judicial department and the legislative department.

There are two kinds of law which are recognized by the Constitution of the United States and which are provided for by the Constitution of the United States, and each of these kinds of law is termed in the Constitution of the United States the supreme law of the land. One class of these laws is statute law, and it is provided that statute law shall be enacted by Congress; that statute law shall be made by a majority vote of the House of Representatives and of the Senate, with the approval of the President, or

that it may be made, in case of the disapproval of the President, by the two-thirds vote of the House of Representatives and the two-thirds vote of the Senate, overriding his veto, and that law, when made, is declared by the Constitution of the United States to be the supreme law of the land. In the same way the Constitution of the United States declares that there are other laws which are also supreme, and those laws are made as treaties. The Constitution of the United States in the same section declares both of these as the supreme law of the land.

The Supreme Court of the United States in construing the question of supremacy has ruled that each is supreme. It has ruled that a treaty may be nullified by a statute and that a statute may be nullified by a treaty, and that where they come in conflict the question of the later is the one invoked to determine which shall prevail. As to those two classes of law, each one of them supreme, there is provided in the Constitution an entirely distinct method by which they may be enacted or made. I have stated the manner in which the statute law is made. Now, in an entirely different manner, the Constitution of the United States declares how a treaty, which is also a supreme law, shall be made. It declares that a treaty must be made by the President of the United States, by and with the advice and consent of two-thirds of the Senate present. I am not quoting literally, but stating it substantially.

I ask the attention of Senators to this most marked provision in the Constitution of the United States and the two distinct classes of law, each of them declared by the Constitution to be supreme, each of them declared by the Supreme Court of the United States in construing that provision to be equally supreme with the other, which are made and enacted in specific ways in the manner pointed out in the Constitution, one totally different from the other. Is that provision of the Constitution a vital principle? Does it mean anything? Is it possible that the power which is clothed by the Constitution with the authority to make one class of laws can make the other class of laws?

Is it possible that the power which is conferred upon the Congress of the United States, the lawmaking power, the Senate and the House, with the approval of the President, can be used to make that other supreme law which the Constitution says shall be made in a different way, to wit, by the President, with the advice and consent of the Senate? If it is possible for the House of Representatives and the Senate and the President, acting in the lawmaking capacity, and known generally in the Constitution as Congress, can make a treaty, and in so making it make it the supreme law of the land, then this joint resolution is constitutional. But if it be true that when the Constitution devolved upon the President and the Senate the power to make treaties it denied to the Congress of the United States the right to make treaties, then the joint resolution is necessarily unconstitutional, as I shall endeavor to show.

Mr. President, the Constitution gives to the President the power to appoint all officers of the United States by and with the advice and consent of the Senate. If Congress can by statute make a treaty, why may it not by a statute make an ambassador or a chief justice or a general of the Army?

Mr. President, there are two ways in which the provision in the Constitution conferring upon the President of the United States and the Senate the power to make treaties can be absolutely nullified. One is the manner I have suggested, by Congress openly and boldly assuming to make a treaty; and if constitutional restrictions are not to be respected, if no man is bound by the Constitution, if a Senator or a Representative, because forsooth he may be in the majority can effect his purpose by overriding the Constitution and disregarding it, then that is the simplest way to do it. There is still another way in which this provision in the Constitution can be nullified, and that is by undertaking to put into the form of a statute that which in reality is a treaty. Now, one method is just as effective as the other, and either method is as absolutely illegal as the other.

Before going further in that line of argument, in order that I may have the attention of Senators and that they may not think there is an answer which I do not recognize, I desire to say that I of course fully understand the argument which is made in reply that the State of Texas was admitted in this way. I can not stop to interrupt the thread of the argument at the present point to show that that reply is not a good one. Not to elaborate it further, I will merely state that it is the distinction between the authority of Congress to admit a State, to do which it is given the power in words in the Constitution, and the power to acquire foreign territory not for the purpose of making it a State, which, as I shall endeavor to show, is essentially and necessarily the subject-matter of treaty between two governments.

Mr. President, when the framers of the Constitution put the word "treaties" into the Constitution without any other defining words or without any limitation, is it to be supposed for a moment that they did not recognize the fact that the term "treaties" had a distinct, legitimate, necessary, well-understood meaning? Is it

to be supposed that they for one moment contemplated that when the question came up whether a certain measure which involved a negotiation and agreement between this country and another should be accomplished in the way it provided, through a treaty by the President and the Senate, or whether it should be remitted to Congress, that the question of the form of the measure would control?

Is it to be supposed for a moment that they supposed that that which is essentially a treaty, and which they had provided should be made only by the President and the Senate, would be by any species of legislative legerdemain converted into the form of a statute, and another power or department of the Government, which had had distinct powers conferred upon it and which had been denied this power, would usurp it and that its usurpation would be recognized?

Mr. ELKINS. Will the Senator from Georgia allow me to interrupt him?

Mr. BACON. Certainly.

Mr. ELKINS. Does the Senator admit now that Congress can admit a State into the Union?

Mr. BACON. Undoubtedly.

Mr. ELKINS. And it admitted Texas?

Mr. BACON. Yes; but I will say to the Senator that I am coming to the distinct discussion of that branch of the case.

Mr. ELKINS. I merely want to put this question—

Mr. BACON. And I would be very glad if the Senator would pretermitt the question until I reach that point, and I shall be very happy at that time to take it up. I am now discussing another line. I am coming to the question of the power to admit States, and that will be the time for the question.

Mr. ELKINS. Having it in mind now, I should like to ask why, if it can admit a State, it can not admit anything less than a State; something that is not a State?

Mr. BACON. I am coming to that, and would be very glad if the Senator would repeat his question if I do not answer it before I get through, because I do the Senator the justice to say that I believe if I can possibly satisfy him of the unconstitutionality of the joint resolution he will not vote for it, however much he may desire the annexation of Hawaii. It is true I am very much discouraged by the fact that the Senator said to me, in private conversation, when I asked him if he was bound by the Constitution, yes, as he interpreted it.

Mr. ELKINS. No; now tell the whole of it. I beg the Senator's pardon. I said as the Supreme Court of the United States interpreted it and as I interpreted it.

Mr. BACON. Very well.

Mr. ELKINS. And not as the Senator interpreted it.

Mr. TELLER. Will the Senator from Georgia allow me?

Mr. BACON. Let me answer the Senator from West Virginia first. If the Senator from West Virginia will stand to that proposition, I will promise to show him a decision of the Supreme Court of the United States which says that the United States Government has no right—I do not go so far as the Supreme Court go in this particular, and I am merely stating this for the benefit of the Senator from West Virginia—to annex territory which it does not intend to make into a State, and Senators themselves say they do not intend to make a State of Hawaii.

Mr. ELKINS. You can not state what will be the intention of the Government a hundred years from now?

Mr. BACON. I am not putting it on that ground at all. Now I yield to the Senator from Colorado.

Mr. TELLER. The position of the Senator from West Virginia is good Democratic doctrine, a doctrine which old Jackson pressed on the country with great force, that every Senator and every Representative could construe the Constitution as he understood it.

Mr. BACON. Of course.

Mr. TELLER. And it was his duty not to look to the Supreme Court of the United States, but to his own judgment and conscience in these matters.

Mr. BACON. I am perfectly satisfied if that shall be the rule. I was discouraged by the fact that the manner of the reply of the Senator from West Virginia indicated that he would not be controlled by what some of the more distinctive lawyer members of the Senate might consider to be the law. He was going to take it into his own hands.

But to return, I am coming to a discussion of the question, to which I ask the attention of Senators, as to what the framers of the Constitution meant when they said "treaties" and what they must necessarily have meant. I asked the question whether it was possible that the framers of the Constitution when they put the word "treaties" into the Constitution in this connection understood that it simply meant an agreement or a negotiation put in a certain form, and that if it were not put in that certain form, it could be refined away and the exercise of the function could be usurped by Congress which had been denied the right to make a treaty. I had asked that question when the Senator from West Virginia interrupted me.

Now, Mr. President, has the word "treaty" a definite, well-fixed meaning? Is a treaty only that which is put in the form of a treaty as we usually see it when submitted to the Senate on the part of the President, or does a treaty mean a certain thing regardless of the form? I say the latter. The distinction between a statute and a treaty does not depend on the form. A statute may be in various forms. It may be in the ordinary form of a statute or in the form of a joint resolution. One has the same effect as the other. A treaty depends for the fact that it is a treaty according to the substance of it and what it proposes to accomplish.

Now, a statute is this: A statute is a rule of conduct laid down by the legislative department, which has its effect upon all of those within the jurisdiction. In other words, a statute passed by the Congress of the United States is obligatory upon every person who is a citizen of the United States or a resident therein. A statute can not go outside the jurisdiction of the United States and be binding upon the subjects of another power. It takes the consent of the subjects of the other power, speaking or giving their consent through their duly authorized government, to be bound by a certain thing which is enacted in this country; and therein comes the necessity for a treaty.

A treaty is that which is binding upon the people of two countries by mutual agreement that it shall be binding upon the two countries. A treaty is binding on two countries because the authority in each country undertakes that it shall be binding in its particular country, and that is the essential element and feature of a treaty, that it is binding on two countries because the authority which makes it binding is the particular authority in each country, not having a general authority over both.

If it were practicable for a statute to be made obligatory upon the citizens of another country, there would be no need of a treaty. We could simply enact what we wanted, and the people in the other country would have to obey. But as we can not do it, we have to invoke the consent of the people or the authority in that other country that they will also be bound by the same law, and that makes a treaty.

Now, Mr. President, I repeat possibly, but I desire to state it in another shape, that the distinction between a treaty and a statute is this: The statute affects only the people within the jurisdiction of the authority by which it is enacted. There is no consent required on the part of those who are subject to such a statute. It is made obligatory upon them by the authority of those who enact it.

A treaty, on the other hand, is something which involves negotiation with another country. It requires the consent of the duly authorized department in this Government, and it also requires that they shall negotiate and obtain the consent of the power in the other Government. This is stated with very great clearness in a report made by the Senate Committee on Foreign Relations in 1844—I have forgotten the number of the Congress—when it had under consideration the Texas resolutions. I will read it. This is a definition of a treaty. I read from Senate Documents, volume 3, 1844 and 1845. It is broken up so that the pages can not be told, as the documents are bound together, but it is Document No. 79, page 5 thereof; not the page of the volume.

But let it be remembered—

And I ask the attention of Senators now to this definition of a treaty—

on the other hand, that although this treaty only acts for other powers and in the singular sphere of exterior concerns, within this sphere no other power has privilege to intrude; the domain is all its own; in a property exclusive. If the affair to be accomplished be exterior and require the intervention of compact to accomplish it, here with the treaty-making power is the office, and sole office, to accomplish it. No other power has privilege to touch.

I do not know whether or not I make my distinction clear, but the framers of the Constitution had in view certain actions by this Government when they set up a distinct and separate department of Government for the making of treaties and when they conferred upon that department exclusive power to make treaties; and I suggest and urge as the crucial feature in this consideration that the framers of the Constitution necessarily, when they said that the President should have the power to make treaties, with the consent of the Senate, meant to put within that department the power to conduct all negotiations between this country and another country, and to come to any agreement with that other country as to what should be a rule of conduct between them.

If that be true, necessarily everything which is of that nature, everything which can be that and nothing else, must be the subject-matter of a treaty. If not, as I have said before, the framers of the Constitution made a great mistake when they unnecessarily put into the Constitution this machinery by which the power was conferred upon the President of the United States, by and with the advice and consent of the Senate, to make treaties.

Mr. President, I said that it was within the power of Congress to nullify this provision of the Constitution in two ways, either by directly making a treaty with another foreign Government or

by putting into the shape of a statute that which in reality is a treaty. Let me illustrate as to the latter, because that is what is attempted to be done here now. The attempt here is to make a treaty by statute. The treaty, as I understand it, which was proposed and negotiated by the President of the United States with the authority of Hawaii, and all the reports in connection with it have been made public, so that I can with propriety speak of them here.

A treaty was negotiated between the President of the United States and the Hawaiian Government. Why did the President of the United States and the Hawaiian Government negotiate a treaty for the annexation of those islands? I hope Senators who are considering this question and who propose to answer it will consider this particular feature of it. Why did the President of the United States negotiate with the Hawaiian Government by means of a treaty for the annexation of those islands except that the President of the United States and the authorities of the Hawaiian Islands recognized that it was the proper subject-matter of a treaty?

Why did the Senate of the United States, when the President submitted the treaty here, undertake to consider it and to give its consent to the treaty which had been negotiated between the President of the United States and the Hawaiian authorities? Why was it that it did not return it to the President and say "This is not the subject-matter of a treaty, and we should not be asked for our advice or consent?" Simply because of the fact that the Senate of the United States, without exception, regardless of what the opinion of any Senator might be on the merits, recognized that it was the proper subject-matter of a treaty.

Aside from this direct recognition it comes within the general definition of that which must be a treaty. It is to accomplish something which can not be accomplished by the unaided act of the United States. It is to accomplish something which requires not only the consent of the United States, but the consent of Hawaii, and therefore must be in its essence and in its character a treaty. And yet, Mr. President, as I have said, in the joint resolution now before the Senate there is an effort made to nullify this provision in the Constitution in the second of the methods which I suggested, to wit, in the method of putting in the form of a statute that which of necessity can be nothing else but the subject-matter of a treaty.

Mr. WHITE. If the Senator from Georgia will permit me, in line with the point he is making, it may be that the treaty was suggested because of the provision of the Hawaiian constitution, found in the thirty-second article of that instrument, which provides specifically for annexation to the United States by treaty, which treaty, of course, has never been made.

Mr. BACON. I understand that. I have no doubt that point will be fully brought out by the Senators who discuss the merits of the question.

What is it that the House of Representatives has done? And I say the House of Representatives, not in any spirit of criticism of it particularly, because the Senate, through its Foreign Relations Committee, had previously proposed the same thing. Here was the case of a treaty, which was not only recognized by both parties as a treaty and acted upon by both parties as a treaty, but which, in its essence, must of necessity be a treaty, which was practically abandoned in the Senate for the reason that in the manner and the method pointed out by the Constitution it could not be made law. The framers of the Constitution, in their wisdom, had provided that the President of the United States should make a treaty if two-thirds of the Senators present concurred in it.

Now, whether wise or unwise, that is the law. If only a majority concur, the treaty can not be made. Therefore the effect of the failure in the Senate to ratify that treaty was the same as the failure of an attempted passage of a statute law. The friends of annexation, seeing that it was impossible to make this treaty in the manner pointed out by the Constitution, attempted then to nullify the provision in the Constitution by putting that treaty in the form of a statute, and here we have embodied the provisions of the treaty in the joint resolution which comes to us from the House.

I will state the object I have in calling attention to this point. It is perfectly within the power of Congress—and when I speak of Congress in this discussion I mean the lawmaking power—if it has a majority in each House, if it can pursue the method legally which is sought to be pursued here, it is perfectly within the power of Congress not only to nullify and destroy that provision in the Federal Constitution, but to effect by statute any treaty that can not command a two-thirds vote in the Senate.

Mr. TELLER. I should like to ask the Senator if he thinks there is any treaty that we can not annul by a direct act of Congress?

Mr. BACON. I do not. I have so stated already. But I ask the learned Senator—

Mr. TELLER. Then the legislative power can not be inferior to the treaty-making power.

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI'I

WELLS FARGO BANK, N.A. A NATIONAL	)	CIVIL NO. 11-1-0106 (GSH)
ASSOCIATION, AS TRUSTEE FOR OPTION	)	(Foreclosure-Ejectment)
ONE MORTGAGE LOAN TRUST 2007-FXD2	)	(Hilo)
ASSET-BACKED CERTIFICATES, SERIES)	
2007-FXC2,)	
	)	NOTICE OF HEARING MOTION
Plaintiff,)	
)	
vs.)	
)	
ELAINE E. KAWASAKI; AND JOHN AND)	
MARY DOES 1-10,)	
)	
Defendants.)	
)	
_____)	

NOTICE OF HEARING MOTION

NOTICE IS HEREBY GIVEN that Defendant ELAINE E. KAWASAKI'S Motion to Dismiss Complaint, shall come on for hearing before the Honorable Presiding Judge of the above-entitled Court, in his/her courtroom at _____, Courtroom _____, Hilo, Hawai'i, on _____ or as soon thereafter as Defendant can be heard.

Dated: Kurtistown, Hawai'i, May 18, 2012.

Respectfully presented,

ELAINE E. KAWASAKI
Defendant, pro se

CERTIFICATE OF SERVICE

The undersigned hereby certify that the foregoing document were duly served upon the following by mailing a copy of same via hand delivery or U.S. Postal Service, postage prepaid or electronic delivery to the last known address to:

RCO HAWAII, LLLC
900 Fort Street Mall, Suite 800
Honolulu, HI 96813

Attorneys for Plaintiff
WELLS FARGO BANK

Dated: Kurtistown, Hawai'i, May 28, 2012.

Respectfully presented,

ELAINE E. KAWASAKI
Defendant, pro se